UNITED STATES INTERNATIONAL TRADE COMMISSION

Non-Malleable Cast Iron Pipe Fittings FROM China
Investigation No. 731-TA-990 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3586, March 2003)

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NON-MALLEABLE CAST IRON PIPE FITTINGS FROM CHINA

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China of non-malleable cast iron pipe fittings, provided for in subheadings 7307.11.00 and 7307.19.30 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). The Commission further determines that it would not have found material injury but for the suspension of liquidation.

BACKGROUND

The Commission instituted this investigation effective February 21, 2002, following receipt of a petition filed with the Commission and Commerce by Anvil International, Inc., Portsmouth, NH, and Ward Manufacturing, Inc., Blossburg, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of non-malleable cast iron pipe fittings from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing 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 October 24, 2002 (67 FR 65360). The hearing was held in Washington, DC, on February 11, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States is threatened with material injury by reason of imports of non-malleable and certain ductile cast iron pipe fittings from China that are sold in the United States at less than fair value.

I. DOMESTIC LIKE PRODUCT

A. In General

In determining whether 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."[1] 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."[2] 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 . . . ."[3]

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.[4] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[5] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[6] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[7]

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[1] 19 U.S.C. § 1677(4)(A).

[2] 19 U.S.C. § 1677(4)(A).

[3] 19 U.S.C. § 1677(10).

[4] 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).

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

[6] 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.").

[7] 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-

(continued...)

B. Product Description

Commerce's final determination defined the imported merchandise within the scope of this investigation as:

> finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from 1/4 inch to 6 inches, whether threaded or unthreaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as "cast iron pipe fittings" or "gray iron pipe fittings." These cast iron pipe fittings are normally produced to American Standards of Testings and Materials (ASTM) A-126 and American Society of Mechanical Engineers (ASME) B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.
>
> Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A-395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of this petition. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or Push On ends (PO), or flanged end and produced to the American Water Works Association (AWWA) specifications - AWWA C110 or AWWA C153 are not included.[8]

Accordingly, the subject imports include non-malleable cast iron pipe fittings as well as certain ductile cast iron pipe fittings, such as those that can be used in traditionally non-malleable pipe fitting applications. Pipe fittings generally are used to connect the bores of two or more pipes or tubes, connect a pipe to another apparatus, change the direction of fluid flow, or close a pipe. Cast iron, the material from which the subject fittings are made, is a general term for alloys which are primarily composed of iron, carbon (more than two percent), and silicon.[9]

Non-malleable iron (also referred to as gray iron) is defined by the ASTM as cast iron in which fine graphite flakes are formed during cooling.[10] Non-malleable irons have tensile strengths ranging from

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[7] (...continued)
752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[8] See 68 Fed. Reg. 7765, 7766 (Feb. 18, 2003) (full names of ASTM, ASME, and AWWA, and conforming changes, added). Imports of covered merchandise are classifiable under statistical reporting numbers 7307.11.0030, 7307.11.0060, 7307.19.3060, and 7307.19.3085 of the Harmonized Tariff Schedule of the United States (HTS) with normal trade relations tariff rates applicable to imports from China in 2003 of 4.8 percent ad valorem for non-malleable (gray) fittings and 5.6 percent ad valorem for ductile fittings. Id.

[9] Confidential Report (CR) at I-7, Public Report (PR) at I-5.

[10] CR at I-7, PR at I-5.

20,000 to 58,000 psi.[11] Pipe fittings produced from non-malleable cast iron are used primarily in fire protection/sprinkler systems, accounting for approximately 90 to 95 percent of shipments, but also are used in the steam conveyance heating systems in older buildings and other applications.[12] Non-malleable cast iron pipe fittings primarily are produced to ASTM A-126 and ASME B16.4 specifications.[13]

Ductile iron fittings are cast from iron to which a very small amount of magnesium has been added in the liquid state to induce the formation of graphites as spheroids or nodules.[14] The tensile strength of ductile iron exceeds that of non-malleable cast iron and ranges from 60,000 to 100,000 psi.[15] Ductile fittings corresponding to the dimensions of the subject merchandise generally are used in fire protection/sprinkler applications.

C. Domestic Like Product

In the preliminary phase of this investigation, the Commission considered a request to define non-malleable and ductile cast iron fittings as separate domestic like products, and another request to define the like product more broadly than the scope to include grooved fittings, ductile flanged fittings, and fittings with an inside diameter greater than six inches. The Commission found there was no indication on the preliminary record of domestic production of ductile cast iron fittings and that non-malleable cast iron pipe fittings are the domestic product most similar in physical characteristics and uses with the subject imported ductile fittings. The Commission also declined to broaden the domestic like product beyond articles coterminous with the scope. The Commission, therefore, concluded that there was a single domestic like product, non-malleable fittings, coextensive with the scope of the investigation.[16]

Petitioners support the Commission's finding in the preliminary determination of one domestic like product consisting of pipe fittings corresponding to the scope. No respondent parties have objected to the Commission's like product definition in the preliminary determination.[17]

Ductile Cast Iron Pipe Fittings. In the preliminary phase of this investigation there was no indication of domestic production of ductile fittings corresponding to the scope. The Commission learned in the final phase that Frazier and Frazier, a job shop foundry in Coolidge, Texas, produces such fittings.[18] Therefore, we have considered whether, under the Commission's traditional six-factor test, ductile fittings are a separate like product.

Ductile fittings are comparable to non-malleable fittings in castability, surface hardenability, and corrosion resistance. Ductile fittings are inferior to non-malleable fittings in ease of machining and vibration damping, and are superior in elastic properties, impact resistance, yield strength/weight, and

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[11] CR at I-8, PR at I-6.

[12] Id. The steam conveyance market represents 5 percent of shipments, while other applications constitute less than 5 percent of shipments. Id. Other applications include use in piping systems for the conveyance of such materials as paint and molasses and use as floor flanges. CR at I-8, n.28, II-6, PR at I-6, n.28, II-4.

[13] CR at I-8, PR at I-6.

[14] CR at I-8 - I-9, PR at I-6.

[15] CR at I-9, PR at I-6 - I-7.

[16] Non-Malleable Cast Iron Pipe Fittings, Inv. No. 731-TA-990 (Preliminary), USITC Pub. 3500 (April 2002) at 6.

[17] The importers that raised like product issues in the preliminary phase of this investigation did not submit briefs or appear at the hearing in the final phase of the investigation.

[18] CR at III-4, PR at III-3. Frazier's production of ductile fittings accounted for *** percent of combined non-malleable and ductile fitting production in the United States in 2001. CR and PR at Table III-1.

wear resistance.[19] Notwithstanding similarities and differences in the types of iron, both non-malleable cast iron fittings and ductile cast iron fittings are used primarily in fire protection/sprinkler applications.[20] Both ductile and non-malleable pipe fittings are produced using the sand casting method, and can be produced in the same facilities using the same processes and employees.[21] The principal differences between the two articles lie in the type of molten cast iron used in the process and the thickness of the walls of the fitting.[22] While certain perceived differences were reported relating to physical properties and individual users' preferences, ductile and non-malleable fittings generally are interchangeable in their dominant application, fire protection/sprinkler systems.[23] In addition, ductile fittings are sold through the same channels of distribution as the non-malleable fittings.[24] [25]

In conclusion, while there are physical differences between the two articles and an individual contractor or end user may have a preference for one or the other, both can be produced in the same facilities using the same production methods and workers, they generally are interchangeable, and have similar channels of distribution. In light of those factors, we find that ductile fittings are part of the single domestic like product coextensive with the scope.

Grooved Fittings. Grooved fittings and couplings, which are produced from ductile or malleable cast iron, are different forms of fittings in which a split coupling attaches to a circumferential groove near the end of each piece to be joined.[26] This contrasts with fittings within the scope, which typically are threaded. Although grooved fittings can be produced on the same equipment and machinery used to produce the merchandise like the subject merchandise, and Anvil produces ductile grooved fittings in the same facilities with the same workers as used to produce merchandise corresponding to the scope,[27] the

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[19] CR at I-9, PR at I-7.

[20] Id.

[21] CR at I-13 - I-15, I-19, PR at I-9 - I-10, I-13.

[22] CR at I-14, I-19, PR at I-10, I-13. To produce ductile iron, molten, low-sulfur iron is poured into a pressure ladle where it is treated, or "inoculated," with magnesium. CR at I-14, I-15, PR at I-10. Production of ductile iron fittings involves a longer and more closely controlled process. Although the cost of producing a ductile product is greater than the cost of producing a comparable non-malleable product, the greater tensile strength of ductile iron allows specifications to be met with a thinner-walled cast iron fitting, and therefore with less iron material input, than is needed when producing a non-malleable cast iron with the same inside diameter. Thus, the size and configuration of the mold cavity in which the fitting is cast may depend not only upon the configuration and inside diameter of the fitting being produced, but also upon whether the fitting is of non-malleable or ductile iron. CR at I-14, PR at I-10.

[23] CR at I-17 - I-19, PR at I-12 - I-13. One ***, although ***, argues that interchangeability between non-malleable fittings and ductile fittings is limited by the existing experience of the users, ***. CR at I-18, PR at I-12. In that regard, differences perceived by customers relate to the products' differing physical properties and individual users' preferences rather than to a lack of interchangeability. CR at I-18 - I-19, PR at I-12 - I-13.

[24] CR at I-18, PR at I-12. One *** maintained that, although some distributors carry both non-malleable and ductile fittings, most deal with one type of fitting. It contends that users in the mid-west and north-east markets prefer ductile fittings while those in the west coast and south prefer non-malleable fittings. Id.

[25] The record does not include information on prices of individual models of domestic ductile fittings to permit comparison of prices of non-malleable and ductile fittings. Frazier did not report sales of any of the four ductile products (products 2, 4, 6, and 8) for which pricing information was requested in the questionnaire. See CR and PR at Tables V-1 - V-8.

[26] CR at I-12, PR at I-8.

[27] CR at III-2 - III-3, PR at III-1 - III-2.

company believed to account for the vast majority of domestic grooved fitting production, Victaulic, does not manufacture merchandise corresponding to the scope.[28] Grooved fittings are sold through the same channels as the products corresponding to the scope, with the possible exception that gooved products may not be sold through manufacturers' representatives.[29] However, grooved fittings are perceived as a different product by customers and producers and are a higher priced product.[30] For these reasons, on balance, we find that the record does not support broadening the domestic like product to include grooved fittings.

Fittings over six inches. Non-malleable fittings, whether larger or smaller than six inches in inside diameter, share the same chemical composition. Unlike the smaller fittings, fittings larger than six inches in inside diameter generally are not threaded, but more often are flanged, grooved, or welded.[31] Fittings larger than six inches in inside diameter typically are made to specifications of the AWWA and often are used in waterworks applications.[32] This is in contrast to the smaller fittings within the scope, which typically are made to ASTM specifications and are used primarily in fire prevention/sprinkler applications.[33] Anvil produces the larger fittings using the same equipment and employees as smaller fittings, although ***.[34] Views on similarities in distribution channels and price were mixed.[35] On balance, we do not find that the domestic like product should be broadened to include fittings greater than six inches in inside diameter.

Ductile flanged fittings. Domestic producers did not report domestic production of ductile flanged fittings that would otherwise correspond to merchandise within the scope.[36] Accordingly, there is no data on domestic ductile flanged fittings that could be included in any broadened like product analysis. Any issue regarding possible broadening of the domestic like product to include ductile flanged fittings is therefore moot.

For the reasons stated above, we find the domestic like product to be non-malleable and ductile

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[28] Id., Conference Transcript at 9.

[29] CR and PR at Appendix D, D-10.

[30] CR and PR at Appendix D, D-10. *** stated in its questionnaire response that a grooved fitting is perceived to be a more "engineered," labor saving product over threaded, and can be used on pipes of a broad range of materials, whereas subject fittings are limited to use in iron and steel pipe applications. Id. Concerning perceptions, *** stated that subject fittings generally are used in 2 inch and below sizes, whereas grooved fittings are generally used in 2 inch and higher sizes. Id. Regarding the higher price of grooved fittings, responses indicate that the grooved fittings are, nonetheless, easier to install and one *** stated that ease of installation outweighs the price differences. CR and PR at Appendix D, D-11.

[31] CR and PR at Appendix D, D-6; see also Conference Transcript at 81-84, 106, and 154.

[32] CR and PR at Appendix D, D-7.

[33] Id.

[34] See final phase questionnaire responses of Anvil, Ward, and Frazier.

[35] CR and PR at Appendix D, D-7 - D-8. Regarding prices, there appeared to be agreement that price on a per pound basis is the same for fittings up to six inches and those above six inches, although *** stated that the waterworks market allows for higher margins, and *** stated that the price per pound may increase for dimensions greater than 12 inches. Id. at D-8.

[36] CR and PR at Table C-6. U.S. Pipe indicated during the final phase of the investigation that it produces ***. CR at I-15, n.65, PR at I-11, n.65. However, U.S. Pipe did not provide a questionnaire response, and no other responses indicated U.S. production of the product.

cast iron pipe fittings corresponding to the scope.

II. DOMESTIC INDUSTRY

The domestic industry is defined as "the producers as a [w]hole of a domestic like product …."[37] In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[38]

Based on our domestic like product finding, we find that the domestic industry consists of all producers of non-malleable and ductile cast iron pipe fittings corresponding to the scope.[39]

III. MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[40] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[41] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[42] In assessing whether 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.[43] 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

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[37] 19 U.S.C. § 1677(4)(A).

[38] 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).

[39] *** imported *** short tons of subject merchandise, valued at $***. CR at III-3 - III-4, PR at III-2 - III-3. Accordingly, *** is a related party under the statute. 19 U.S.C. § 1677(4)(B) (allowing the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers). Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case. Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). However, we conclude that appropriate circumstances do not exist to exclude *** from the domestic industry. *** production, reflecting *** percent of total domestic production in 2001 (CR and PR at Table III-1), indicates that *** is focused primarily on domestic production, particularly given that *** importation of subject merchandise from China *** was equivalent to *** percent of *** production in that period. CR and PR at IV-1, n.1. *** does not appear to have obtained any special advantage from its related party status, as ***. CR and PR at Tables VI-1, VI-2. For these reasons, we do not find appropriate circumstances to exclude *** from the domestic industry under the related parties provision of the statute.

[40] 19 U.S.C. § 1673d(b).

[41] 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).

[42] 19 U.S.C. § 1677(7)(A).

[43] 19 U.S.C. § 1677(7)(C)(iii).

industry."[44]

For the reasons discussed below, we determine that the domestic industry is not materially injured by reason of subject imports from China found to be sold in the United States at LTFV.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in this investigation. Subject cast iron pipe fittings are sold in a variety of configurations, dimensions, and compositions, and the decision to use a particular fitting depends upon the system into which the fittings will be integrated. Approximately 90 to 95 percent of non-malleable/ductile cast iron pipe fitting shipments are used in fire protection/sprinkler systems.[45] Demand for subject cast iron fittings and the domestic like product is ultimately derived from demand for end uses in which they are employed.[46] Apparent U.S. consumption of non-malleable/ductile cast iron fittings, by weight, declined from *** short tons in 1999 to *** short tons in 2001, a decrease of *** percent. Apparent U.S. consumption was only *** short tons in the first nine months of 2002, *** percent lower than the *** short tons in the same period in 2001.[47] [48]

The petitioners, Anvil and Ward, accounted for *** percent of production of the domestic like product in 2001, and Frazier accounted for *** percent of production.[49] Anvil and Ward also identified various jobbing facilities and vendors from which they purchased small amounts of non-malleable castings, amounting to *** percent of Anvil's production and *** percent of Ward's production in 2001.[50]

In 2001, Anvil closed its non-malleable cast iron pipe fitting facilities in Statesboro, Georgia. The company moved the casting equipment to its Columbia, Pennsylvania facility, and invested significantly in that facility, at which it did not previously produce non-malleable cast iron pipe fittings. Anvil now

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[44] Id.

[45] CR at I-8, PR at I-6.

[46] CR at II-6, PR at II-4.

[47] CR and PR at Tables IV-3, C-1. A range of perceptions were expressed by individual producers, importers, and purchasers concerning demand changes over the period considered. CR at II-6, PR at II-4. Data provided by parties, however, confirm the decline in demand suggested by trends in apparent U.S. consumption. Nonresidential building construction decreased by 4 percent between 2000 and 2001. Star Pipe Postconference Brief, Exhibit 2 at 3. Petitioners argued that new commercial construction indices omit demand derived from retro-fitting commercial buildings with sprinkler systems and that data on domestic shipments of sprinkler heads, collected by the National Fire Sprinkler Association (NFSA), would provide a better indication of demand than the data on total apparent consumption gathered by the Commission. Petitioners' Posthearing Brief at 6-7 and Exhibit 2. The data submitted by petitioners show a decline between 1999 and 2001, albeit a *** one, *** percent. Petitioner's Posthearing Brief at 6, Appendix 2. Petitioners' sprinkler head shipment data shows a *** decline in 2002, *** percent, than occurred between 1999 and 2001, *** percent. Id.

[48] We note that the weight of a ductile fitting for use in a particular application is less than the weight of the comparable non-malleable fitting owing to the thinner walls of the equivalent ductile fitting. For the period as a whole, there was no significant shift toward lighter ductile fittings that would explain the decline in apparent U.S. consumption observed over the period examined. CR and PR at Tables C-2, C-3. Compare CR and PR at Tables C-1 and C-3: by quantity, ductile fittings accounted for *** percent of apparent U.S. consumption of ductile and non-malleable fittings in 1999 and *** percent in interim 2002; by value, they accounted for *** percent of apparent U.S. consumption in 1999 and *** percent in interim 2002.

[49] CR and PR at Table III-1.

[50] CR at III-3, PR at III-2. Those purchases are included in the data supplied by Anvil and Ward. Id., CR at III-4, n.9, VI-1, n.2; PR at III-3, n.9, VI-1, n.2.

produces non-malleable, malleable, and ductile grooved fittings at the Columbia facility, sharing production equipment and employees across product lines.[51]

Purchasers focus on quality, supply, and price considerations.[52] A majority of purchasers view U.S. and Chinese non-malleable and ductile fittings as comparable in terms of supply and quality issues, while every purchaser but one ranked the Chinese product as superior in terms of lower price (U.S. producers had advantages in terms of delivery and product range).[53] Nine of 11 purchasers report that U.S. and Chinese non-malleable and ductile fittings are used in the same applications.[54] Use of the domestic like product, however, may be required in government projects to which "buy American" provisions apply, estimated to account for 5 to 20 percent of all projects.[55] Further, separate from such legal requirements, there may be a strong preference for the domestic product in certain projects, particularly ones in which the workers are members of trade unions.[56] Otherwise, the record suggests a high degree of substitutability among subject imports, nonsubject imports, and domestically produced non-malleable/ductile cast iron pipe fittings.

The record indicates that there is no market for the subject merchandise in China, that all Chinese production during 1999 - 2001 was exported, that *** exports from China of the merchandise were to the United States, and that Canada is the only, ***, alternative export market.[57]

Nonsubject cast iron pipe fittings were imported during the period examined.[58] Shipments of nonsubject imports declined slightly from *** short tons in 1999 to *** short tons in 2000, then declined to

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[51] CR at III-2 - III-3, PR at III-1 - III-2.

[52] See CR and PR at Table II-1 (quality ranks first as "most important factor considered when selecting a supplier," followed by price/cost and availability) and CR and PR at Table II-2 (consistency and meeting specifications "very important" to 12 purchasers, supply reliability and availability "very important" to 10-11 purchasers, lowest price "very important" to 8 purchasers).

[53] CR and PR at Table II-2. These perceptions are consistent with other elements of the record, such as the fact that virtually all purchasers certified or prequalified product (CR at II-11, PR at II-7) and inventories of the subject merchandise from China in the United States are substantial and growing (CR and PR at Table VII-2).

[54] CR at II-12, PR at II-8. See also CR at II-6 - II-8, PR at II-4 - II-5. All domestic producers and seven of nine importers reported that U.S. and subject Chinese non-malleable/ductile cast iron pipe fittings are used interchangeably. CR at II-13, PR at II-8. While four of the seven importers that answered the question reported no differences in product characteristics or sales conditions between domestic and Chinese product, differences reported by the other five importers included that some projects require U.S.-produced fittings, that ductile fittings are better, and that sales conditions (in terms of price, rebates, advertisement, FM/UL approval, and inventories and distribution networks) differ. CR at II-15, PR at II-10. All importers, except for one that was unfamiliar with nonsubject imports, reported that nonsubject imports are interchangeable with both the domestic like product and subject imports. CR at II-15, PR at II-10.

[55] CR at II-9, PR at II-6.

[56] CR at II-9, PR at II-6. Contractors in the South were described by witnesses at the hearing as largely non-unionized; contractors in the North and Midwest, however, appear to be largely unionized. For instance union jobs are estimated to account for two thirds of the market in the metropolitan New York area and 80 percent of construction jobs in St. Louis; unionized contractors are described as having a significantly lower presence in Dallas. Hearing Transcript at 93-95. Subject imports were described as currently used only to some degree by some of the union contractors. Id. at 95.

[57] CR at VII-3 - VII-4, PR at VII-2. Chinese producers in the preliminary phase of the investigation projected some home market sales in 2002 and 2003. Id. and CR and PR at Table VII-1.

[58] CR and PR at Table IV-2.

*** short tons in 2001.[59] Shipments of nonsubject imports were *** short tons in the interim 2002 period, compared with *** short tons in interim 2001.[60]

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."[61]

Subject import volume increased *** overall between 1999 and 2001. After rising from *** short tons in 1999 to *** short tons in 2000, subject imports fell to *** short tons in 2001, a net increase of only *** percent between 1999 and 2001.[62] [63] In interim 2002, however, imports of subject fittings from China were more than *** short tons (*** percent) higher than in interim 2001.[64] Specifically, in interim 2002, subject imports increased to *** short tons, compared with *** short tons in interim 2001.[65] This increase took place despite the fact that apparent U.S. consumption was *** percent lower in interim 2002 than in interim 2001.[66]

Shipments of subject imports as a share of apparent U.S. consumption increased from *** percent in 1999 to *** percent in 2000, and to *** percent in 2001. In interim 2002, subject imports' share of U.S. consumption reached *** percent, compared with *** percent in interim 2001. Accordingly, subject import market share grew by *** in 2000, *** in 2001, and *** in interim 2002 compared with interim 2001. Domestic producers' market share decreased from *** percent in 1999 to *** percent in 2000, a decline of ***, and decreased to *** percent in 2001, a decline of ***. In interim 2002, domestic producers' share decreased to *** percent, *** below the interim 2001 share of *** percent. Nonsubject imports' share of the market decreased slightly from *** percent in 1999 to *** percent in 2001, then increased in the interim 2002 period to *** percent compared with *** percent in interim 2001.[67]

We find that the increase in the volume of subject imports, most notably during January - September 2002, is significant. We note that this recent significant increase followed steady growth in subject import market share at the expense of the domestic industry and was accompanied by a significant increase in the volume of inventories held by U.S. importers.

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[59] CR and PR at Table IV-3

[60] Id.

[61] 19 U.S.C. § 1677(7)(C)(i).

[62] CR and PR at Table IV-2.

[63] Reflecting inventory adjustments, however, U.S. shipments of non-malleable/ductile fittings from China rose from *** short tons in 1999 to *** short tons in 2000, and to *** short tons in 2001, a net increase of *** percent. CR and PR at Table C-1 (measuring U.S. shipments of imports).

[64] CR and PR at Table IV-2.

[65] CR and PR at Table IV-2.

[66] CR and PR at Table IV-3. In interim 2002, shipments of subject imports were *** short tons, compared with *** short tons in interim 2001. Chinese inventories in the United States were *** percent higher in September 2002 than in September 2001 (*** percent higher for non-malleable fittings, *** percent higher for ductile fittings). CR and PR at Tables C-1, C-2, and C-3.

[67] CR and PR at Table C-1.

C. Price Effects of the Subject Imports

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

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[68]

The record in this investigation indicates that the domestic like product and subject imports are largely substitutable and that price is an important factor in purchasing decisions.[69] During the investigation, we obtained price data on four non-malleable and four ductile cast iron pipe fitting products. The price of each of the four domestic non-malleable products was compared to the price, to distributors and to end users, of the comparable non-malleable as well as the comparable ductile products from China.[70] The price comparison data indicate underselling by the subject non-malleable/ductile product in every comparison in each of the fifteen quarters of the period examined for sales to distributors and to end users, with margins of underselling ranging from 1.6 percent to 44.4 percent.[71] The margins of underselling increased markedly toward the end of the 15-quarter period.[72]

Although underselling by the subject imports reached significant levels late in the period examined,[73] the pricing data and other record information do not show depression or suppression of prices for the domestic like product. Rather, the pricing data show that prices for the domestic products increased over the period examined by as much as *** percent, rising in both 2000 and 2001,

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[68] 19 U.S.C. § 1677(7)(C)(ii).

[69] CR at II-10 - II-16, PR at II-7 - II-10. Asked to list the three most important factors considered when choosing a supplier, purchasers ranked price/cost second most frequently. CR at II-10, PR II-7, CR and PR at Table II-1. Eleven of twelve purchasers reported that they usually or sometimes purchase from the least expensive source. CR at II-12, PR at II-8.

[70] CR at V-3 - V-5, PR at V-2 - V-4. Frazier, the sole domestic producer of ductile fittings, did not report sales of the articles for which price comparison data were obtained.

[71] CR and PR at Tables V-1 - V-8.

[72] Id.

[73] The price trends and margins of underselling for the *** volume product (designated product 5 in the Commission's price data) sold to distributors are instructive. For product 5 (elbows with an inside diameter of one inch), margins of underselling fluctuated *** between the first quarter of 1999 and the second quarter of 2001. In the second half of 2001, prices for the domestic product increased while prices for the subject product decreased, with the *combined* effect of increasing the margin of underselling by ***. Through the third quarter of 2002, however, prices for the domestic product were *** while prices for the subject product fell by $*** per fitting, leading to an increase in the margin of underselling of ***. CR and PR at Table V-5. These data suggest that the *** increase in margins of underselling took place in interim 2002, a period for which there was not an increase in the price for the domestic product. Id.

notwithstanding declining apparent U.S. consumption.[74] Moreover, given the prevailing weak market conditions, it does not appear that the domestic industry would have been able to raise prices further, regardless of the effects of subject imports from China. Accordingly, we do not find significant price depression or suppression.[75] On balance, we do not find the price effects of the subject imports to be significant.

D. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[76] 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."[77] [78]

We find that the subject imports did not have a significant adverse impact on the domestic industry's performance. Although the volume of subject imports increased significantly late in the period examined, the impact of that volume was not significantly adverse in the absence of negative effects on domestic prices.

The domestic industry's production capacity, output (production), capacity utilization, sales (U.S. shipments), and market share generally were stable or decreased modestly between 1999 and 2000, then declined more noticeably in 2001 and in January-September 2002 (relative to January-September 2001).[79]

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[74] CR and PR at Tables V-1 - V-8. The greatest increase was for domestic product ***. Id.

[75] While we were able to confirm some of the lost sales allegations of the petitioners (CR at V-17 - V-20, PR at V-7), the confirmed instances are not sufficient to affect our conclusion of a lack of present significant price effects. There were no allegations of lost revenues, consistent with petitioners' own statement that the effects of subject imports were experienced primarily through lost volume because they had made a decision not to compete with the subject imports from China on the basis of price. Petitioners' Postconference Brief at 14-16.

[76] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885.).

[77] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

[78] 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 final determination, Commerce found the following dumping margins: Commerce determined final weighted-average less-than-fair-value margins of 7.08 percent for Jinan Meide Casting Co., Ltd., 6.34 percent for Shanghai Foreign Trade Enterprices Co. Ltd., and 75.50 percent for all others. Notice of Final Determination of Sales at Less Than Fair Value, Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China, 68 Fed. Reg. 7765, 7768 (Feb. 18, 2003).

[79] The domestic industry's production capacity was *** short tons between 1999 and 2000, while its production, capacity utilization, U.S. shipments, and market share decreased ***. Production declined from *** short tons in 1999 to *** short tons in 2000, while capacity utilization declined from *** percent in 1999 to *** percent. CR and PR at Table III-2. U.S. shipments declined from *** short tons in 1999 to *** short tons in 2000, although the average unit value of such shipments increased. CR and PR at Table III-3. The domestic industry's share of the U.S. market, *** percent in 1999, was *** percent in 2000. CR and PR at Table IV-3. Between 2000 and 2001, however,

(continued...)

Broad employment indicia declined as well,[80] although wages and productivity in the domestic industry generally were mixed.[81] Domestic producers' inventories increased between 1999 and 2000, then declined in 2001 and in interim 2002 compared with interim 2001.[82] We observe that the domestic industry's non-financial performance closely follows the trends in apparent U.S. consumption[83] and additionally in 2001 reflects in some respects the impact of Anvil's relocation of its non-malleable operations.[84]

The domestic industry's operating income also declined over the period.[85] As a percentage of total net sales, operating income *** in 1999 and 2000, and then declined to *** percent in 2001. In interim 2002, operating income remained barely above the break-even point, as reflected by an operating income margin of *** percent, compared with *** percent in interim 2001.[86]

Declining operating income over the period is due largely to increased unit costs beginning in

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[79] (...continued)
the domestic industry's production capacity, output, capacity utilization, and sales decreased noticeably, while its market share decreased moderately. Domestic producers' capacity declined from *** short tons in 2000 to *** short tons in 2001; production declined from *** short tons in 2000 to *** short tons in 2001, while capacity utilization declined from *** percent in 1999 to *** percent in 2001. CR and PR at Table III-2. U.S. shipments declined from *** short tons in 2000 to *** short tons in 2001, although the average unit value of such shipments continued to increase. CR and PR at Table III-3. The domestic industry's share of the U.S. market was *** percent in 2000 and *** percent through September of 2001, but declined to *** percent for 2001 as a whole. CR and PR at Table IV-3. During the interim period of January-September 2002, the general decline in the performance of the domestic industry continued or accelerated. The domestic industry's production capacity was *** short tons, *** percent lower than during interim 2001; production was *** short tons, *** percent lower than during interim 2001; capacity utilization was *** percent, *** lower than during interim 2001; U.S. shipments were *** short tons, *** percent lower than during interim 2001, although the average unit value of such shipments was higher; and in interim 2002, the domestic industry's share of the U.S. market was *** percent, *** lower than during interim 2001.

[80] The number of production workers in the industry declined from *** workers in 1999 to *** in 2000 and *** in 2001. The number of workers decreased in interim 2002 to ***, compared with *** in interim 2001. Hours worked declined from *** hours in 1999 to *** in 2000, and *** in 2001, and were *** hours in interim 2002, compared with *** in interim 2001. CR and PR at Table III-5.

[81] Wages paid by the domestic industry were $*** in 1999 and $*** in 2000 (essentially ***), and were *** percent higher on an hourly basis. Productivity increased by *** percent in 2000. In 2001, wages fell by *** percent to $*** million, but were *** percent higher on an hourly basis. Productivity increased in 2001 by *** percent. In interim 2002, wages were *** percent lower in the aggregate than during interim 2001, while hourly wages were *** percent higher. Productivity was *** percent lower in interim 2002 than during interim 2001. CR and PR at Table III-5.

[82] CR and PR at Table C-1. Inventories rose from *** short tons in 1999 to *** short tons in 2000, but declined thereafter to *** short tons in 2001 and to *** short tons in interim 2002. The record suggests that the increase in domestic inventories were in anticipation of Anvil's consolidation of its non-malleable operations with other operations in Columbia, Pennsylvania. Hearing Transcript at 85; Commission Staff Notes (John Fry), April 8, 2002.

[83] Apparent U.S. consumption decreased by *** percent in 2000, by *** percent in 2001, and was *** percent lower in interim 2002 than in interim 2001. CR and PR at Table IV-3.

[84] See, e.g., Hearing Transcript at 86 (none of Anvil's workers from Statesboro relocated to Columbia).

[85] Operating income decreased from $*** in 1999 to $*** in 2000 and $*** in 2001. Operating income increased in interim 2002 to $*** compared with operating income of $*** in interim 2001. CR and PR at Table VI-1.

[86] CR and PR at Table C-1.

2001.[87] Increases in unit cost of goods sold (COGS) over the period were caused in part by Anvil's large capital expenditures associated with the transfer of its non-malleable operations from Statesboro to Columbia in 2001,[88] and increases in environmental protection measures.[89]

As stated above, we find that subject imports did not prevent domestic producers' prices from rising so as to offset increasing costs. It is true that a portion of the increased unit costs was the result of reduced net sales quantities. While sales lost to imports from China were a factor, we find that a large majority of the decline in domestic producers' production and shipments resulted from a reduction in total consumption.[90] We also find that declines in the industry's other performance indicators, as described above, were also mainly due to the falling market consumption.[91]

For these reasons, we determine that the domestic industry producing non-malleable and ductile cast iron pipe fittings is not materially injured by reason of imports of non-malleable/ductile cast iron pipe fittings from China that are sold in the United States at less than fair value. We find, however, that the industry is vulnerable to the effects of subject imports in the imminent future in light of its currently weakened state.

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[87] CR and PR at Table VI-6. Unit COGS were $*** in 1999 and $*** in 2000, then increased to $*** in 2001. Unit COGS increased in the interim 2002 period to $***, compared with $*** in interim 2001. CR and PR at Table C-1.

[88] When asked about the effect of Anvil's relocation on its costs, witnesses testified that "the major cost for us (Anvil) was to relocate all the patterns and fixtures, retest them, get them operational on our Columbia machines." (Testimony of Mr. Fish, Hearing Transcript at 86-87). Capital expenditures associated with Anvil's moving its non-malleable operations to Columbia, Pennsylvania were estimated at $*** in the staff report (CR at III-2, PR at III-1) and $20 million at the hearing (Hearing Transcript at 82-84). Both of those figures *** from Anvil's reported total capital expenditures in 2001 of $***. CR and PR at Table VI-7.

Petitioners seek to attribute Anvil's move of its non-malleable operations from Statesboro, Georgia to Columbia, Pennsylvania to volume taken by subject imports. Petitioners' Prehearing Brief at 22, Petitioners' Posthearing Brief at 9-10 (alleging that the Statesboro plant was closed because Anvil, in the face of imports from China, could not maintain the level of capacity utilization necessary given the high fixed costs of operating a foundry and increasing environmental costs); see also CR at VI-9, PR at VI-3. The record does not indicate that consolidation of the Statesboro facilities with Anvil's other operations in Columbia, Pennsylvania, and the increased costs associated with that consolidation, can be attributed to subject imports. We note that the performance of Anvil ***; e.g., Anvil's operating income as a share of net sales was *** percent in 1999 and *** percent in 2000. CR and PR at Table VI-2.

[89] Anvil reported that total environmental costs at its Columbia plant ***. CR at VI-7, PR at VI-2.

[90] Between 1999 and 2001, apparent U.S. consumption fell by approximately *** short tons, as compared to an increase in shipments of subject imports of approximately *** short tons. Between interim periods, apparent U.S. consumption declined by *** short tons, as compared to a *** volume of shipments of subject imports. CR and PR at Table IV-3.

[91] For example, domestic consumption of non-malleable/ductile cast iron pipe fittings declined by *** percent between 1999 and 2001, and domestic producers' U.S. shipments declined by *** percent. At the end of the period, in interim 2002 compared with interim 2001, domestic consumption declined by *** percent while domestic producers' U.S. shipments decreased by *** percent. CR and PR at Table C-1.

IV. THREAT OF MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[92] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.[93] In making our determination, we have considered all statutory factors that are relevant to this investigation,[94] including the rate of the increase in the volume and market penetration of subject imports, unused production capacity, and the substantial inventories of subject merchandise.

For the reasons discussed below, we determine that the domestic industry is threatened with material injury by reason of subject imports. As stated in our discussion of material injury, supra, we find that record data reflect a significant rate of increase in subject import volume at the end of the period examined. When combined with the steady growth in subject imports' market share at the expense of the domestic industry, these data strongly indicate the likelihood of substantially increased imports. Specifically, in interim 2002, imports of subject fittings from China increased to *** short tons, compared with subject imports of *** short tons in the same nine-month period of 2001.[95] This reflects an increase of more than *** short tons, or *** percent, compared with interim 2001. Moreover, inventories of the Chinese merchandise in the United States reached *** short tons in interim 2002, compared with inventories of *** short tons in interim 2001.[96] These inventories are *** percent higher than at the end of interim 2001, and are equivalent to *** percent of annualized U.S. shipments of imports from China in the interim 2002 period.[97] [98] These import inventories alone were equivalent to *** percent of annualized

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[92] 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

[93] 19 U.S.C. § 1677(7)(F)(ii).

[94] 19 U.S.C. § 1677(7)(F)(i). Factor I is inapplicable in this investigation because no countervailable subsidy is involved. Factor VII is inapplicable in this investigation because it does not involve imports of a raw agricultural product.

[95] CR and PR at Table IV-2.

[96] CR and PR at Table VII-2.

[97] CR and PR at Tables VII-2 and C-1. In interim 2002, shipments of subject imports declined *** to *** short tons, compared with *** short tons in interim 2001. CR and PR at Table C-1. Contrasted with end-of-period inventories of subject merchandise in the United States at the end of interim 2002, those inventories were *** short tons in 1999, *** short tons in 2000, and *** short tons in 2001. CR and PR at Table VII-2. Ending inventories as a ratio to U.S. shipments of the subject imports were *** percent at the end of 1999, *** percent at the end of 2000, and *** percent at the end of 2001. CR and PR at Table VII-2.

[98] In the same interim 2002 period in which inventories as a ratio to shipments of subject imports increased by *** than in any prior, full-year, period, shipments of subject imports as a ratio to domestic production increased to *** percent, compared with *** percent in interim 2001. CR and PR at Table C-1. The percentage point increase in shipments of subject imports as a share of U.S. consumption was *** in the interim 2002 period, ***(from *** percent in interim 2001 to *** percent in interim 2002) than in any of the prior, full-year periods: *** in 2000 (from *** percent in 1999 to *** percent in 2000) and *** in 2001 (from *** percent in 2000 to *** percent in 2001). Id.

2002 apparent U.S. consumption of non-malleable/ductile cast iron pipe fittings.[99] This indicates that the volume of subject fittings from China already in the United States is likely to produce a substantial increase in the market share of those fittings.

We also find that producers in China have available inventories in China and existing excess capacity that will permit them to increase exports to the United States significantly in the imminent future. Based on data for full year 2001, the most recent period for which the Chinese producers furnished actual production data, the Chinese producers were operating at a low aggregate capacity utilization rate, 55.3 percent, and had excess production capacity of 4,818 short tons, equivalent to *** percent of apparent U.S. consumption in 2001.[100] This available capacity *** total shipments of subject imports in the first nine months of 2002.[101] Moreover, the United States is the only significant market for the subject merchandise.[102] Inventories in China increased from *** short tons in 1999 to *** short tons in 2001, and were projected to continue to increase in 2002 to *** short tons. Declining projected inventory levels in China in 2003 appear to be highly dependent on increasing total shipments of the subject merchandise by more than *** percent from the levels reported for 2001.[103] [104]

As we discussed previously, domestically produced and imported non-malleable/ductile cast iron fittings are substantially interchangeable, and price is a significant factor in purchasing decisions. The record indicates that the subject imports undersold the domestic product in all comparisons over the period examined, with the margins of underselling increasing in the latter part of the period, especially in late 2001 and 2002, and with respect to higher volume products.[105] The record indicates that the disparity between prices for the domestic like product and the subject merchandise has increased so significantly that the preference of certain purchasers for the domestic like product is likely to erode. The growing price disparity will likely heighten demand for subject imports and accelerate penetration of the market by subject imports as distributors, contractors and end-users increasingly switch from the domestic product to the subject imports to take advantage of the price difference.

In sum, the convergence of the accelerating rate of subject imports toward the end of the period examined, the presence of large volumes of subject import inventories in the United States, the substantial and growing available capacity in China to produce subject merchandise, the reliance of the Chinese industry almost exclusively on the U.S. market for sales of subject fittings, declining subject import prices, and increasing margins of underselling, indicate that a significant increase in the volume and market share

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[99] Compare CR and PR Tables IV-3, VII-2.

[100] CR and PR at Tables VII-1, C-1.

[101] CR and PR at Table C-1. The Chinese producers also projected significant excess capacity for 2002 and 2003, although, in the absence of significant participation by the Chinese producers in the final phase of this investigation, and their failure to furnish data for the interim 2002 period, we place greater reliance upon the actual, 2001 data than upon projections made in the preliminary phase of the investigation.

[102] CR and PR at Table VII-1. There was no Chinese home market for the merchandise during 1999 - 2001, and *** percent of the subject merchandise was exported to the United States in 2001. Id. , CR at VII-3, PR at VII-2.

[103] CR and PR at Table VII-1.

[104] We also have considered the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products. Three of the five responding producers of the subject merchandise in China reported producing malleable cast iron pipe fittings and one reported producing fire hydrant bodies using shared production equipment and employees. CR at VII-2, PR at VII-1.

[105] CR and PR at Tables V-1 - V-8 (regarding increased margins on high volume products, see CR and PR at Tables V-3 (China product 3), V-5 (China product 5), and V-7 (China products 7 and 8)).

of subject imports from China is likely in the imminent future.

We found above that subject imports did not have significant depressing or suppressing effects during the period examined. It appears that the domestic industry's current strategy is not to set prices in relation to Chinese prices. Accordingly, we have not relied upon a finding of likely price depression or suppression in finding a threat of material injury. However, the growing volume and underselling margins of subject fittings from China could cause the domestic industry to alter its approach and lower its prices, or refrain from raising its prices, to seek to limit its loss of additional sales.[106] In such an event, the domestic industry would also experience negative effects in the form of lower revenues and reduced profits. Regardless of the approach followed, the domestic industry would be materially injured. We have considered the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product. All three producers reported actual and potential negative effects.[107] The domestic industry's production, capacity, and capacity utilization levels all reached their lowest points over the period examined in 2002.[108] The domestic industry reported no R&D expenditures, and increasing levels of capital expenditures between 1999 and 2001, largely associated with ***.[109]

As discussed above, the volume of subject imports from China have already had some negative impact, albeit not significant, on the domestic industry over the period examined. The significantly increased volume and market share of imports in the imminent future will have a significant negative impact on the domestic industry's production, capacity utilization, employment, revenues, and profitability. Given the already weakened condition of the domestic industry, described above, this negative impact is such that the industry will be materially injured.

CONCLUSION

For the reasons stated above, we determine that the domestic industry producing non-malleable/ductile cast iron pipe fittings is threatened with material injury by reason of subject imports of non-malleable/ductile cast iron pipe fittings from China that are sold in the United States at less than fair value.[110]

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[106] CR and PR at Table V-12 (purchaser *** reporting that "the U.S. producers have not yet lost sales to *** but they are going to because the Chinese product is 25 percent cheaper"); Hearing Transcript at 37 ("unless the U.S. Government acts to impose antidumping duties on these products from China, Davis & Warshow will have to buy Chinese fittings in order to stay in business and be competitive"); Hearing Transcript at 34-35, testimony of Robert Clark, President of purchaser Clark Sprinkler Supply Company ("[W]e have a huge investment in our 12 stocking locations nationwide, and we cannot afford to be uncompetitive with the distributors who handle Chinese products. . Without relief for the domestic producers, I'm going to have to abandon my domestic suppliers so that I can save my family business and our employees").

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[107] CR at VI-9, VI-11, PR at VI-3.

[108] CR and PR at Table III-2.

[109] CR and PR at Table VI-7; CR at VI-9, PR at VI-3.

[110] Based on the record of this investigation, we do not find that material injury by reason of subject merchandise that is sold at less than fair value would have been found but for the suspension of liquidation of entries of such merchandise. 19 U.S.C. § 1673d(b)(4)(B).