

UNITED STATES INTERNATIONAL TRADE COMMISSION

MALLEABLE IRON PIPE FITTINGS FROM CHINA

Investigation No. 731-TA-1021 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3568, December 2002)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury, by reason of imports from China of malleable iron pipe fittings, provided for in subheading 7307.19.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATION

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

BACKGROUND

On October 30, 2002, a petition was filed with the Commission and Commerce by Anvil International, Inc. of Portsmouth, NH, and Ward Manufacturing, Inc. of Blossburg, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of malleable iron pipe fittings from China. Accordingly, effective October 30, 2002, the Commission instituted antidumping duty investigation No. 731-TA-1021 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 6, 2002 (67 FR 67645). The conference was held in Washington, DC, on November 20, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce

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

on December 16, 2002. The views of the Commission are contained in USITC Publication 3568 (December 2002), entitled *Malleable Iron Pipe Fittings from China: Investigation No. 731-TA-1021(Preliminary)*.

IEWS OF THE COMMISSION

Based on the record in this investigation, we find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of malleable iron pipe fittings (MCIPF) from China that are allegedly sold in the United States at less than fair value.¹

The petition in this investigation was filed on October 30, 2002, by domestic producers Anvil International, Inc. (Anvil) and Ward Manufacturing, Inc. (Ward). Respondent is B&K Industries, Inc. (B&K), an importer of subject merchandise.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.² In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”³

¹ MCIPF have been the subject of prior antidumping duty investigations in the United States. In May 1986, the Commission determined that an industry in the United States was being materially injured by reason of less than fair value (LTFV) imports of MCIPF from Brazil, Korea, and Taiwan. Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986) (Original Brazil/Korea/Taiwan Determination). The Commission’s determination was affirmed on appeal. Fundicao Tupy S.A. v. United States, 859 F.2d 915 (Fed. Cir. 1988) (affirming 678 F. Supp. 898 (Ct. Int’l Trade 1988)).

In June 1987, the Commission determined that an industry in the United States was being materially injured by reason of LTFV imports of MCIPF from Japan, Certain Cast-Iron Pipe Fittings from Japan, Inv. No. 731-TA-347 (Final), USITC Pub. 1987 (June 1987) (Original Japan Determination), and, two months later, that an industry in the United States was being materially injured by reason of LTFV imports of MCIPF from Thailand. Certain Cast-Iron Pipe Fittings from Thailand, Inv. No. 731-TA-348 (Final), USITC Pub. 2004 (August 1987) (Original Thailand Determination).

On January 4, 1999, the Commission instituted five-year reviews of the antidumping duty orders on MCIPF from Brazil, Japan, Korea, Thailand, and Taiwan. 64 Fed. Reg. 369 (Jan. 4, 1999). In February 2000, the Commission determined that revocation of the antidumping duty orders covering MCIPF from Brazil, Taiwan, and Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty orders concerning MCIPF from Japan and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review), USITC Pub. 3274 (February 2000) (Sunset Determination) (Commissioner Bragg dissenting with respect to Brazil and Taiwan; Commissioner Koplan dissenting with respect to Taiwan).

² 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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

II. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁴ 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.”⁵ 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”⁶

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.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁹ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise allegedly sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰ The Commission must base its domestic like product determination on the record in this investigation. The Commission is not bound by prior determinations, pertaining even to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.¹¹

⁴ 19 U.S.C. § 1677(4)(A).

⁵ Id.

⁶ 19 U.S.C. § 1677(10).

⁷ 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).

⁸ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁹ 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 domestic 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.”).

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

¹¹ See Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp.2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Asociacion Colombiana de Exportadores de Flores v.

B. Product Description

In its notice of initiation, Commerce identified the merchandise within the scope of the investigation as follows:

certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule.¹²

Pipe fittings generally are used for connecting the bores of two or more pipes or tubes, connecting a pipe to some other apparatus, changing the direction of fluid flow, or closing the pipe. The material from which MCIPF are made, cast iron, is a general term for alloys composed primarily of iron, carbon (greater than two percent), and silicon.¹³ MCIPF are used when shock and vibration resistance is required and when fittings must withstand quick temperature changes. MCIPF are used principally in gas lines, piping systems of oil refineries, and building gas and water systems.¹⁴

C. Previous Commission Investigations

In previous antidumping investigations involving the subject pipe fittings, the Commission defined the domestic like product as all MCIPF other than grooved fittings.¹⁵ In the Japan/Thailand investigation, the Commission rejected arguments that the domestic like product should be defined more broadly to include grooved and/or non-malleable pipe fittings as well as MCIPF.¹⁶ In the Sunset Determination, the Commission found that the record demonstrated no basis to depart from the Commission's original domestic like product definitions of all MCIPF other than grooved fittings.¹⁷

United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

¹² 67 Fed. Reg. 70579 (October 25, 2002).

¹³ Confidential Staff Report, Mem. INV-Z-195 (December 9, 2002) (CR) at I-5-I-6 and Public Staff Report (PR) at I-4.

¹⁴ CR at I-7, PR at I-4.

¹⁵ Sunset Determination, USITC Pub. 3274 at 5; Original Thailand Determination, USITC Pub. 2004 at 4-5; Original Japan Determination, USITC Pub. 1987 at 4-5; Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 4.

¹⁶ The Commission found that non-malleable cast iron pipe fittings were not interchangeable with MCIPF and were significantly different in their material composition. It similarly found that grooved fittings were not interchangeable with MCIPF and differed significantly in physical characteristics and methods of production. Original Japan Determination, USITC Pub. 1987 at 5 n.10. See Original Thailand Determination, USITC Pub. 2004 at 4-5. See also Non-Malleable Cast Iron Pipe Fittings from China, Inv. 731-TA-990 (Preliminary), USITC Pub. 3500 at 8-9 (April 2002) (defining domestic like product as non-malleable cast iron pipe fittings; noting that in investigations involving malleable fittings, the Commission has consistently declined to expand the domestic like product to include grooved fittings); Certain Cast-Iron Pipe Fittings from Brazil, Inv. No. 701-TA-221 (Final), USITC Pub. 1681 at 4 (April 1985) (distinguishing malleable and non-malleable cast iron pipe fittings; finding two separate like products). Cf. Malleable Cast-Iron Pipe and Tube Fittings, Inv. No. TA-201-26, USITC Pub. 835 at 5 (September 1977) (domestic industry defined as facilities devoted to the production of malleable cast-iron pipe and tube fittings).

¹⁷ Sunset Determination, USITC Pub. 3274 at 7-8.

D. Analysis

Petitioners argue that the Commission should define a single domestic like product coextensive with the scope, i.e., MCIPF other than grooved fittings.¹⁸ Respondent concurs with the Petitioners' domestic like product definition.¹⁹

MCIPF share the same physical characteristics and uses, which distinguish them from non-malleable (or gray) cast iron pipe fittings (non-malleable fittings) and grooved fittings. MCIPF are available in many configurations, the most common being 90-degree elbows, tees, couplings, crosses, and unions. They are produced in both black (ungalvanized) and galvanized form. They are lighter, thinner, stronger, and less brittle than non-malleable fittings, which exhibit no elastic behavior and are comparatively weaker. Non-malleable fittings are used primarily in fire protection/sprinkler systems and to a much smaller degree in steam conveyance systems.²⁰ Grooved fittings, the vast majority of which are produced from ductile iron, are not threaded. Rather, a split coupling attaches to a circumferential groove near the end of each piece to be joined. A gasket inside the coupling serves as a seal for the pipe or coupling.²¹

Although MCIPF may be used in place of non-malleable fittings, the reverse is not true and, due to the higher cost of the product, the former is uneconomical.²² Given the differences in physical characteristics and specific uses, grooved fittings are generally not interchangeable with MCIPF.²³ As demonstrated by the parties' positions, producers and importers alike do not perceive the three types of fittings as one like product, nor is there any evidence that consumers have such a perception.

MCIPF are produced using similar types of machinery and equipment in a process that is considered technologically mature. Differences that exist between domestic and imported MCIPF lie mainly in the extent of the application of automation and in ancillary operations including environmental control facilities. MCIPF are subjected to annealing and controlled cooling processes after casting that distinguish their production from the production of non-malleable fittings and ductile cast iron fittings. The annealing process, which makes MCIPF more expensive to produce per pound than both non-malleable and ductile cast iron fittings, consists of rapidly heating the casting to approximately 1,750°F, followed by a slow, controlled cooling period. Malleable grooved fittings are subject to different machining than MCIPF.²⁴

The record demonstrates that domestic MCIPF are like the subject imports²⁵ and that, because of differences in physical characteristics, uses and production processes, the lack of interchangeability, and the perceptions of those in the trade, MCIPF are distinct from non-malleable and grooved cast iron pipe

¹⁸ Antidumping Duty Petition (Petition) at 20; Petitioners' Postconference Brief (Petitioners' Brief) at 5, A-1-A-5.

¹⁹ Transcript of Staff Conference (November 20, 2002) (Tr.) at 98 (John Smirnow, counsel for Respondent).

²⁰ CR at I-6-I-7, PR at I-4-I-5.

²¹ CR at I-8, PR at I-5; Tr. at 67-73 (various witnesses).

²² CR at I-7, I-10, PR at I-4-I-5.

²³ Petitioners' Postconference Brief (Petitioners' Brief) at A-3.

²⁴ CR at I-6, I-8-I-10, PR at I-4-I-6.

²⁵ As discussed below, B&K argues that domestic MCIPF and subject imports are sold in different market segments and that significant pricing differences illustrate further the lack of competition between the two, but these arguments pertain to the degree of competition between subject imports and the domestic like product in the same market segment. B&K does not contend that the record supports a finding of two distinct domestic like products.

fittings. Accordingly, consistent with prior Commission determinations, we find one domestic like product consisting of all MCIPF other than grooved fittings, coextensive with the scope in this preliminary investigation.

III. DOMESTIC INDUSTRY

The domestic industry is defined 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.”²⁶ 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.²⁷ We find one domestic industry consisting of all domestic producers of the domestic like product.

IV. CONDITIONS OF COMPETITION²⁸

Several conditions of competition are pertinent to our analysis in the preliminary phase of this investigation.

The U.S. market for MCIPF is mature.²⁹ In the Sunset Determination, we noted that we anticipated little, if any, growth over the foreseeable future.³⁰ Current trends continue to support that finding. Apparent U.S. consumption, in terms of quantity, declined during the period of investigation (POI) from *** short tons in 1999 to *** short tons in 2001, and from *** short tons in interim 2002 as compared to *** short tons in interim 2001.³¹ By value, apparent U.S. consumption dropped from \$*** million in 1999 to \$*** million in 2001, and was \$*** million in interim 2002 as compared to \$*** million in interim 2001.³²

The parties dispute whether substitute products have affected demand for MCIPF. B&K contends that increased competition from substitutable products such as flexible tubing has resulted in a decline in demand for MCIPF in the wholesale market.³³ Petitioners contend that substitute products have not made significant inroads.³⁴ We intend to explore the issue further in any final phase investigation, particularly as it relates to declines in domestic production and other indicators of the domestic industry’s performance.

²⁶ 19 U.S.C. § 1677(4)(A).

²⁷ 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).

²⁸ Subject imports from China were above the statute’s negligibility threshold, 19 U.S.C. § 1677(24)(A)(i)(I), during the relevant time period. CR, PR at Table IV-2.

²⁹ Sunset Determination, USITC Pub. 3274 at 7.

³⁰ Sunset Determination, USITC Pub. 3274 at 7.

³¹ CR, PR at Table IV-4. In this investigation, the interim periods are January through September.

³² CR, PR at Table IV-4.

³³ B&K identifies flexible tubing, in particular, as a direct substitute that is capturing sales from MCIPF in the wholesale market. Postconference Brief of B&K Industries, Inc. (B&K Brief) at 4-5; Tr. at 79-80 (Robert Tripp, Director of Global Sourcing, B&K).

³⁴ Tr. at 35-36 (Tom Gleason, Vice-President of Marketing and Sales, Ward). In Ward’s estimation, flexible tubing has replaced *** tons of MCIPF, approximately *** percent of U.S. consumption. Petitioners’ Brief at A-10.

Price is an important factor in purchasing decisions. Subject imports appear to have closed any quality gap that may have existed with the domestic product,³⁵ and responding U.S. producers and importers reported that U.S.-produced and imported Chinese MCIPF are used interchangeably.³⁶ Both subject imports and U.S.-manufactured MCIPF meet the same industry specifications: a material specification (ASTM); a dimensional specification (ANSI); and a thread specification.³⁷

Two domestic producers account for all U.S. production of finished MCIPF, Anvil and Ward.³⁸ In August 2001, Anvil sold its foundry in Statesboro, Georgia, at which it produced both malleable and non-malleable fittings, and consolidated production into one foundry in Columbia, Pennsylvania.³⁹

Subject and non-subject imports were present in the U.S. market throughout the period. During 1999 to 2001, imports from China increased 7.9 percent in quantity, from 12,457 short tons to 13,443 short tons.⁴⁰ Subject imports increased by 45.8 percent between the interim periods, increasing to 14,147 short tons in interim 2002 from 9,704 short tons in interim 2001.⁴¹ Subject imports accounted for between 56.6 percent and 58.7 percent of the volume of U.S. imports during 1999 to 2001. This share rose to 63.2 percent during interim 2002.⁴²

Non-subject imports decreased in quantity during 1999 to 2001, from 9,552 tons in 1999 to 9,446 short tons in 2001.⁴³ During interim 2002, the volume of non-subject imports was 8,229 short tons, 12.3 percent greater than in interim 2001.⁴⁴ By quantity, non-subject imports accounted for between *** percent and *** percent of apparent U.S. consumption during 1999 to 2001. This share was *** percent in interim 2001 and *** percent in interim 2002.⁴⁵

In the Sunset Determination, the Commission found the existence of “fairly distinct wholesale and retail markets for MCIPF.”⁴⁶ The Commission further found that the “overwhelming proportion of U.S.-produced MCIPF are sold in the wholesale market,” and that imports from China accounted for a major share of consumption in the retail market.⁴⁷ Relying in part on the Sunset Determination, B&K argues that competition between the domestic industry and subject imports is limited by the fact that the overall market consists of two segments, retail and wholesale, and that U.S. producers by choice focus on

³⁵ Tr. at 30 (Thomas E. Fish, President, Anvil) (“Today the quality issues are not there. I mean, these are equal products. They are the same.”)

³⁶ CR at II-8, PR at II-8.

³⁷ CR at I-10 n.24, II-9, PR at I-6 n.24, II-5-II-6.

³⁸ CR, PR at III-1. In 2001, Anvil accounted for *** percent of domestic production and Ward accounted for *** percent. For a discussion of the role of “jobbers” in the industry, see CR, PR at III-1 n.1; Tr. at 41-43 (Mr. Schagrin and Mr. Gleason).

³⁹ CR, PR at III-2, VI-1. As a result, domestic industry capacity declined from *** short tons in 2000 to *** short tons in 2001, a decline of *** percent. Domestic industry capacity declined from *** short tons in interim 2001 to *** short tons in interim 2002, a decline of *** percent. CR, PR at Tables III-2, C-1.

⁴⁰ CR, PR at Tables IV-2, C-1.

⁴¹ CR, PR at Tables IV-2, C-1.

⁴² CR, PR at Table IV-2.

⁴³ CR, PR at Table IV-2.

⁴⁴ CR, PR at Tables IV-2, C-1.

⁴⁵ CR, PR at Tables IV-4, C-1. In 2001, the majority (61.1 percent) of non-subject imports came from Thailand. CR at IV-3 n.4, PR at IV-1 n.4.

⁴⁶ Sunset Determination, USITC Pub. 3274 at 8.

⁴⁷ Sunset Determination, USITC Pub. 3274 at 8.

the higher-priced wholesale market, while subject imports are directed to the lower-priced retail market.⁴⁸

Petitioners take issue with the Commission's findings respecting channels of distribution in the Sunset Determination,⁴⁹ and argue that, in any event, the record in this investigation demonstrates direct competition between U.S. product and subject imports, with each distributed in the same manner to the same customers. They contend that the record shows that, (1) subject imports compete in the wholesale market in significant volumes; (2) domestic sales in the retail market are significant; and, (3) drawing a distinction between the retail and wholesale markets is artificial because retail outlets serve the same customers as suppliers in the wholesale distribution chain (i.e., contractors).⁵⁰

The record of U.S. producers' domestic shipments of MCIPF to distributors and retailers shows that *** sales are to distributors.⁵¹ However, the record in this preliminary investigation is less complete regarding channels of distribution for subject imports. Some testimony indicates that the lines between the retail and wholesale markets may have blurred since the Sunset Determination in February 2000.⁵² In any final phase investigation, we intend to explore further the nature and scope of the channels of distribution for MCIPF and subject imports and the degree to which the domestic industry and the subject imports participate in these different channels. We conclude under the standard applicable to this preliminary investigation⁵³ that the competition between domestic MCIPF and subject imports is sufficiently direct to support an affirmative threat determination, as described below.

V. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR IMPORTS⁵⁴

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."⁵⁵ The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."⁵⁶ In making our determination, we have considered all factors that are relevant to this

⁴⁸ B&K Brief at 2-3; Tr. at 78-79 (Mr. Tripp).

⁴⁹ Tr. at 27 (Mr. Schagrin).

⁵⁰ Petitioners' Brief at 5-15.

⁵¹ CR at II-3, PR at II-2. The record also shows that of Anvil's 10 major customers of MCIPF in 2001, *** among the major customers reported by importers of subject MCIPF from China. Of Ward's 10 major customers in 2001, *** among the major customers reported by importers of subject MCIPF from China. CR at II-3, PR at II-2.

⁵² Tr. at 27-29 (various witnesses).

⁵³ See American Lamb Co. v. United States, 785 F.2d at 1001.

⁵⁴ With respect to present material injury, Commissioner Bragg refers to her additional views. See Additional Views of Commissioner Lynn M. Bragg.

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

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

investigation.⁵⁷ Based on an evaluation of the entirety of the record, we determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports from China that allegedly are sold in the United States at less than fair value.

The volume and market penetration of the subject imports have increased during the period, particularly during interim 2002, indicating the likelihood of substantially increased imports in the imminent future. The volume of subject imports increased by 7.9 percent during 1999 to 2001, from 12,457 short tons in 1999 to 13,443 short tons in 2001.⁵⁸ In interim 2002, they increased 45.8 percent over the previous interim period (14,147 short tons in interim 2002 as compared to 9,704 short tons in interim 2001).⁵⁹ Subject imports gained *** percentage points of market share during 1999 to 2001, rising from *** percent of apparent U.S. consumption by quantity in 1999 to *** percent in 2001.⁶⁰ While apparent U.S. consumption by quantity increased by *** percent in interim 2002 in relation to interim 2001, subject imports' significant escalation in volume during the same period resulted in subject imports increasing their share of apparent U.S. consumption by *** percentage points.⁶¹ Subject imports' share of apparent U.S. consumption increased from *** percent in interim 2001 to *** percent in interim 2002.⁶² We find that the rate of increase in subject import volumes, both in absolute terms and as a share of apparent U.S. consumption, provides an indication that subject imports are likely to increase significantly in the imminent future.

The foreign producer data that the Commission obtained from questionnaire responses, while limited in coverage,⁶³ reveal significant increases in capacity and production from 1999 to 2002, with *** projected in each category in 2003.⁶⁴ Capacity for the responding producers increased *** percent during 1999 to 2001, from *** short tons in 1999 to *** short tons in 2001.⁶⁵ During interim 2002, capacity further rose to *** short tons or *** percent. Projected capacity for the complete year 2002 is *** short tons and for 2003, *** short tons.⁶⁶ In terms of production, these producers *** volume between 1999 and 2001, producing *** short tons in 1999 and *** short tons in 2001.⁶⁷ Production during interim 2002 was *** short tons compared with *** short tons in interim 2001, with projections for complete year 2002 of *** short tons and for 2003 of *** short tons.⁶⁸

⁵⁷ 19 U.S.C. § 1677(7)(F)(i). Factors I (regarding countervailing subsidies) and VII (involving imports of both a raw agricultural product and any product processed from such raw agricultural product) are inapplicable in this antidumping duty investigation.

⁵⁸ CR, PR at Tables IV-2, C-1.

⁵⁹ CR, PR at Tables IV-2, C-1.

⁶⁰ CR, PR at Tables IV-2, IV-4, and C-1.

⁶¹ CR, PR at Tables IV-2, IV-4, and C-1.

⁶² CR, PR at Tables IV-2, IV-4, and C-1.

⁶³ The responding producers estimate that together they account for *** percent of MCIPF production in China; combined they accounted for approximately *** percent of subject imports in 2001. CR, PR at VII-1 n.3.

⁶⁴ CR, PR at Table VII-1.

⁶⁵ CR, PR at Table VII-1. In comparison, the brochure for one of the producers from which the Commission did not receive a questionnaire response, Jinan Meide Casting Co., Ltd., identifies an annual capacity of 50,000 metric tons (55,115 short tons). This producer identifies itself as one of the largest producers of malleable iron pipe fittings in the world. CR, PR at VII-1 n.1

⁶⁶ CR, PR at Table VII-1.

⁶⁷ CR, PR at Table VII-1.

⁶⁸ CR, PR at Table VII-1.

U.S. importers' inventories of subject imports increased *** percent between 1999 and 2001, from *** short tons in 1999 to *** short tons in 2001.⁶⁹ During the interim periods, inventories rose *** percent, from *** short tons in interim 2001 to *** short tons in interim 2002.⁷⁰

The record further demonstrates that China's MCIPF industry is export-oriented⁷¹ and that the United States is *** for the industry.⁷² Antidumping measures imposed by other countries may contribute to an even greater focus on the U.S. market for MCIPF exports from China.⁷³

For all of these reasons, we find a likelihood of substantially increased imports of the subject merchandise into the United States for the purposes of this preliminary determination.

There were 60 quarterly price comparisons between U.S. produced and imported Chinese MCIPF. The subject imports undersold the domestic products in all 60 instances, with margins of underselling ranging from 34.2 percent to 53.4 percent.⁷⁴ Less clear are the effects of such underselling on domestic prices. In general, the pricing data collected on four specific MCIPF products showed that prices for U.S.-produced MCIPF increased by more than *** percent, while prices for subject imports showed little consistent movement up or down.⁷⁵ The average unit values (AUVs) for subject imports and the domestic like product, to the extent they afford a useful measure, similarly do not evidence clear price effects.⁷⁶ AUVs for U.S. producers' U.S. shipments increased *** percent during 1999 to 2001 and *** percent between the interim periods.⁷⁷ AUVs for U.S. imports from China increased 4.4 percent during 1999 to 2001 and declined 1 percent during the interim periods.⁷⁸ There is only limited evidence in the record of sales lost to subject imports.⁷⁹ As we noted above, we will examine further in any final phase investigation the degree to which subject imports and the domestic like product compete in different channels of distribution and the impact of prices of subject imports.⁸⁰

⁶⁹ CR, PR at Tables VII-2, C-1.

⁷⁰ CR, PR at Tables VII-2, C-1.

⁷¹ See CR, PR at Table VII-1 (for the reporting producers, exports of MCIPF from China constituted between *** percent and *** percent of the total quantity of their shipments during 1999 to 2001 and *** percent during interim 2002). In fact, based on the data the Commission received, the home market share in China ***. CR and PR at Table VII-1 (home market share of MCIPF shipments *** from *** percent in interim 2001 to *** percent in interim 2002, and is projected to *** in 2003 to *** percent).

⁷² See CR, PR at VII-1 (the United States constituted between *** percent and *** percent of the market for the reporting producers during 1999 to 2001, *** percent during interim 2002, and is projected to constitute *** percent in 2003).

⁷³ On August 18, 2000, the European Union imposed antidumping duties of 49.4 percent *ad valorem* on malleable fittings from China. "Malleable iron connections" from China are also subject to antidumping duties in Mexico as of July 1998. We note that Brazil initiated an antidumping duty investigation of malleable fittings from China on October 23, 2000, the results of which Brazil has not yet announced. CR at VII-6-VII-7, PR at VII-3.

⁷⁴ CR at V-11, PR at V-4.

⁷⁵ CR at V-4, PR at V-2; CR, PR at Tables V-1-V-4.

⁷⁶ We note further that the cost of goods sold (COGS) for the domestic industry as a ratio to sales reveal *** during the POI and a *** during the interim periods. CR, PR at Tables VI-1, C-1. This would normally indicate that prices are not being significantly suppressed in relation to costs.

⁷⁷ CR, PR at Tables III-3, C-1.

⁷⁸ CR, PR at Tables VII-1, C-1.

⁷⁹ See CR, PR at Table V-5.

⁸⁰ Commissioner Bragg does not join the foregoing discussion of price effects. With respect to price effects by reason of subject imports, Commissioner Bragg refers to her additional views. See Additional Views of

The record indicates that the likely increased volume of subject imports will likely adversely impact the domestic industry's condition, including revenues. U.S. producers' U.S. shipments declined *** percent between 1999 and 2001 and further declined *** percent comparing the interim periods.⁸¹ Production declined *** percent during 1999 to 2001 and further declined *** percent between the interim periods.⁸² U.S. producers' share of U.S. consumption quantity declined *** percentage points between 1999 and 2001 and further declined *** percentage points between the interim periods.⁸³ Capacity utilization declined *** percentage points between 1999 and 2001 and further declined *** percentage points between the interim periods.⁸⁴ Operating income declined *** percent from \$*** in 1999 to \$*** in 2001 and declined an additional *** percent from \$*** to \$*** in the interim periods.⁸⁵ Unit operating income *** percent in interim 2002 as compared to interim 2001.⁸⁶ We note that profitability has declined *** from 1999 to interim 2002 due to lost market share, notwithstanding domestic price increases.⁸⁷ Capital expenditures and research and development expenses also declined from 1999 to 2001.⁸⁸

Anvil consolidated to one foundry in August 2001.⁸⁹ The domestic industry had *** production-related workers in 1999 and *** in 2001.⁹⁰ The number dropped to *** in interim 2002.⁹¹ The number of hours worked declined *** percent between 1999 and 2001 and *** percent in the interim periods.⁹² Wages paid declined *** percent between 1999 and 2001 and *** percent in the interim periods.⁹³ Despite these declines in many of the performance indicators, the industry has maintained a *** operating income to sales ratio, with profitability exceeding *** percent in all periods.⁹⁴ Nevertheless, we note that operating income has declined *** during the period as subject imports' volume increased both in absolute and relative terms. Consequently, we find that the likely increasing volume of subject imports is likely to impact adversely

Commissioner Lynn M. Bragg.

⁸¹ U.S. shipments declined from *** short tons in 1999 to *** short tons in 2001 and, further, from *** short tons in interim 2001 to *** short tons in interim 2002. CR, PR at Tables III-3, C-1.

⁸² Production quantity was *** short tons in 1999 and *** short tons in 2001. Between the interim periods, production declined from *** short tons to *** short tons. CR, PR at Tables II-2, C-1. We note that some of this decline may be attributable to industry consolidation. We intend to examine this further in any final phase investigation.

⁸³ Between 1999 and 2001, this share dropped from *** percent to *** percent, between the interim periods from *** percent to *** percent. CR and PR at Tables IV-4, C-1.

⁸⁴ Capacity utilization declined from *** percent in 1999 to *** percent in 2001 and, in the interim periods, from *** percent to *** percent. CR, PR at Tables II-2, C-1.

⁸⁵ CR, PR at Tables VI-1, C-1.

⁸⁶ CR, PR at Tables VI-1, C-1.

⁸⁷ CR, PR at Tables VI-1, C-1.

⁸⁸ The latter declined further between the interim periods; the former increased in interim 2002 as compared to interim 2001. CR, PR at Table VI-3.

⁸⁹ Anvil combined the production of MCIPF and non-malleable fittings in this one foundry by incurring a capital investment of approximately \$17 million. CR, PR at VI-1. Anvil laid off more than 400 workers when it sold the foundry in Statesboro. Tr. at 12 (Mr. Fish). We will explore further the impact of this consolidation in any final phase investigation.

⁹⁰ CR, PR at Tables III-5, C-1.

⁹¹ CR, PR at Tables III-5, C-1.

⁹² CR, PR at Tables III-5, C-1.

⁹³ CR, PR at Tables III-5, C-1.

⁹⁴ CR, PR at Tables VI-1, C-1.

operating ratios.

Based on the record in the preliminary phase of this investigation, we determine that substantially increased dumped imports are imminent and that, in light of the declining performance of the domestic industry, the domestic industry will likely continue to lose significant sales volume to lower-priced subject imports resulting in a significant adverse impact on the domestic industry.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing MCIPF is threatened with material injury by reason of subject imports from China that are allegedly sold in the United States at less than fair value.

ADDITIONAL VIEWS OF COMMISSIONER LYNN M. BRAGG

As noted, I join my colleagues in finding a reasonable indication that the domestic industry producing malleable cast iron pipe fittings (“MCIPF”) is threatened with material injury by reason of subject imports from China. Notwithstanding the fact that I render a preliminary threat determination in this investigation, I believe it is also appropriate to address the question of present material injury in order to assist the parties in framing the issues for any final phase investigation.

I. Present Material Injury:

The period of investigation (“POI”) covers the full years 1999-2001 as well as the nine month interim period of January-September 2002. Over the POI, from January 1999 through September 2002, prices for the domestic like product increased between *** percent and *** percent, while the average unit value of U.S. shipments by the domestic industry increased by *** percent between 1999 and interim 2002.¹ These increasing price levels did not, however, lead to increased profitability for the domestic industry, as operating income declined by *** percent between 1999 and 2001, while between interim 2001 and interim 2002 operating income declined by *** percent.²

The declining trend in operating income results from the fact that price increases achieved by the domestic industry were more than offset by consistently declining U.S. shipment levels over the POI. Specifically, U.S. shipments by the domestic industry declined by *** percent between 1999 and 2001, while between interim 2001 and interim 2002 U.S. shipments declined by *** percent; these declines occurred in the context of a *** percent decline in apparent U.S. consumption between 1999 and 2001, while between interim 2001 and interim 2002 apparent U.S. consumption increased by *** percent.³ Overall, the domestic industry’s U.S. market share declined from *** percent in 1999 to *** percent in 2001, while between interim periods the domestic industry’s market share declined from *** percent in interim 2001 to *** percent in interim 2002.

In addition, production by the domestic industry declined by *** percent between 1999 and 2001, while between interim 2001 and interim 2002 production declined by *** percent; total capacity for the domestic industry declined by *** percent between 1999 and 2001, while between interim 2001 and interim 2002 capacity declined by *** percent; capacity utilization by the domestic industry declined from *** percent in 1999 to *** percent in 2001, while between interim periods capacity utilization declined from *** percent in interim 2001 to *** percent in interim 2002; end-of-period inventory levels for the domestic industry increased by *** percent between 1999 and 2001, while between interim 2001 and interim 2002 inventories declined by *** percent.⁴

The declines in production and U.S. shipments by the domestic industry and the erosion of the domestic industry’s market share appear attributable primarily to the increasing presence of subject imports in the U.S. market. Specifically, the volume of subject imports increased by 7.9 percent between 1999 and 2001, even as apparent U.S. consumption declined by *** percent, while between interim 2001 and interim 2002 the volume of imports surged by 45.8 percent even as apparent U.S. consumption increased by only *** percent; overall, the U.S. market share held by subject imports increased from *** percent in 1999 to

¹ See Confidential Report (“CR”) and Public Report (“PR”) at Tables V-1 through V-4 and C-1.

² CR/PR at Table C-1.

³ CR/PR at Table C-1.

⁴ CR/PR at Table C-1.

*** percent in 2001, while between interim periods the U.S. market share of subject imports increased from *** percent in interim 2001 to *** percent in interim 2002.⁵

The record thus indicates that as the domestic industry progressively lost market share to subject imports, production was scaled back to the point where capacity utilization may now be at ***. Indeed, between interim 2001 and interim 2002, the total cost of goods sold (“COGS”) for the domestic industry declined by *** percent and total SG&A expenses declined by *** percent—yet, on a per-unit basis, the decline in production and shipments for the domestic industry resulted in an increase in per-unit COGS of *** percent and an increase in per-unit SG&A of *** percent.⁶ As a result, per-unit operating income *** by *** percent between interim 2001 and interim 2002, while the operating margin for the domestic industry declined from *** percent in interim 2001 to *** percent in interim 2002.⁷ Accordingly, notwithstanding increasing price levels for the domestic industry over the POI, it appears that at least during interim 2002, the surging volume of uniformly lower-priced subject imports⁸ caused price suppression in the U.S. market.

Based upon the foregoing, I find that the record does provide some indication of present material injury by reason of subject imports. However, I further note that between 1999 and 2001 the operating margin for the domestic industry remained roughly the same, fluctuating between *** percent and *** percent, while per-unit operating income *** by *** percent over this period.⁹ On balance, for purposes of this preliminary determination, I do not make a finding of a reasonable indication of present material injury by reason of subject imports, although I find the question to be a close one.

Still, I do find that the foregoing context provides some indication of the vulnerability of the domestic industry to imminent material injury by reason of subject imports. In this regard I also note that capital expenditures by the domestic industry declined by *** percent between 1999 and 2001, while between interim 2001 and interim 2002 capital expenditures increased by *** percent. Importantly, over the POI, the depreciation/amortization expenses of the domestic industry *** capital expenditures, thus evidencing a progressive net contraction in the capital stock of the domestic industry;¹⁰ coupled with the progressive decline in capacity utilization noted above, I find that the domestic industry currently is in a vulnerable condition.

II. Conclusion:

In sum, for purposes of this preliminary determination I do not make a finding of a reasonable indication of present material injury by reason of subject imports; however, I do find that the domestic

⁵ CR/PR at Table C-1. In comparison, the volume of nonsubject imports declined by 1.1 between 1999 and 2001, while between interim 2001 and interim 2002 the volume of nonsubject imports increased by 12.3 percent (in contrast to the 45.8 percent surge in subject import volume between interim periods). *See id.* The U.S. market share held by nonsubject imports increased from *** percent in 1999 to *** percent in 2001, while between interim periods the market share of nonsubject imports increased from *** percent in interim 2001 to *** percent in interim 2002. *See id.*

⁶ CR/PR at Table C-1.

⁷ *See id.*

⁸ Subject imports undersold the domestic like product in 60 out of 60 quarterly pricing comparisons (with margins ranging from 34.2 percent to 53.4 percent), for a 100 percent incidence of underselling. The extent to which such underselling is attributable to differences between the channels of distribution for subject imports and the domestic like product remains an issue for any final phase investigation.

⁹ CR/PR at Table C-1.

¹⁰ Compare CR/PR at Table VI-1 and Table C-1.

industry is vulnerable to material injury and I join my colleagues in finding a reasonable indication of threat of material injury by reason of subject imports.¹¹

¹¹ See Views of the Commission.