

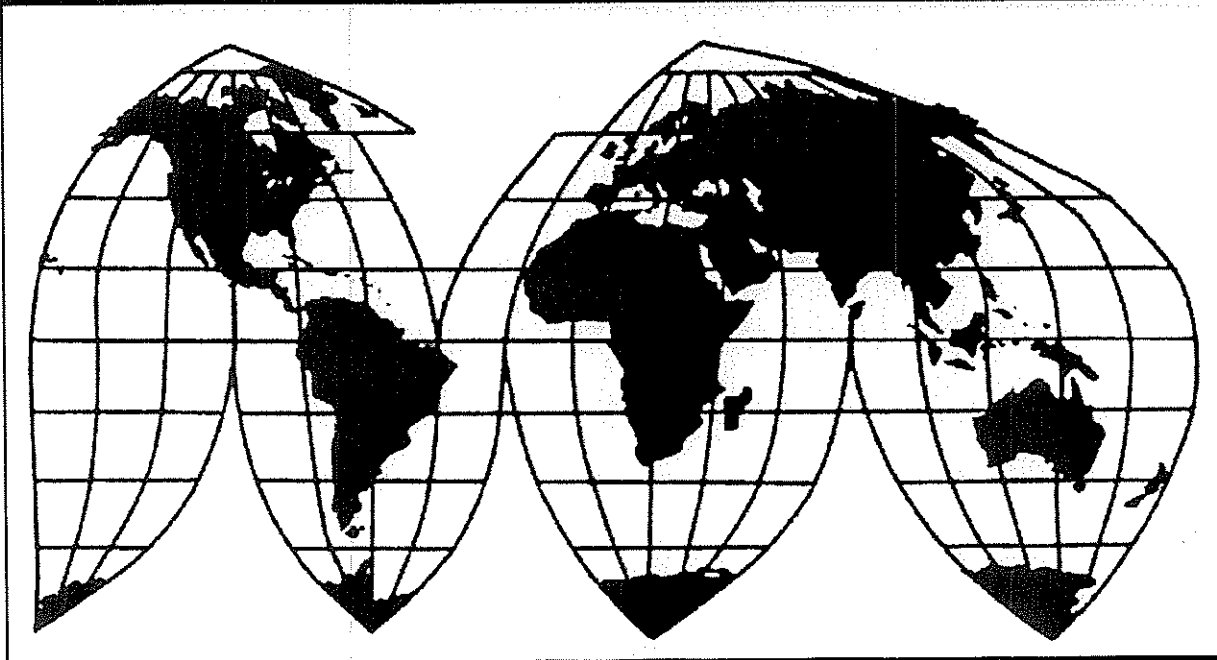
Circular Welded Carbon-Quality Steel Pipe from China

Investigation Nos. 701-TA-447 and 731-TA-1116 (Final)

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-447 and 731-TA-1116 (Final)

CIRCULAR WELDED CARBON-QUALITY STEEL PIPE FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of circular welded carbon-quality steel pipe, provided for in subheadings 7306.19.10, 7306.19.51, 7306.30.10, 7306.30.50, 7306.50.10, and 7306.50.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).^{2 3}

BACKGROUND

The Commission instituted these investigations effective June 7, 2007, following receipt of a petition filed with the Commission and Commerce by Allied Tube & Conduit, Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; Northwest Pipe Co., Portland, OR; Sharon Tube Co., Sharon, PA; Western Tube & Conduit Corp., Long Beach, CA; Wheatland Tube Co., Collingswood, NJ; and the United Steelworkers, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of welded carbon-quality steel pipe from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and 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 investigations 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 February 5, 2008 (73 FR 6738). The hearing was held in Washington, DC, on May 13, 2008, 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)).

² Commissioner Dean A. Pinkert recused himself to avoid any conflict of interest or appearance of a conflict.

³ The Commission further determines that critical circumstances do not exist with respect to those imports of the subject merchandise from China that were subject to the affirmative critical circumstances determination by the Department of Commerce.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is materially injured by reason of imports of circular welded carbon-quality steel pipe ("CWP") from China that are subsidized and sold in the United States at less than fair value ("LTFV").^{1 2}

I. BACKGROUND

A. In General

These countervailing and antidumping duty investigations result from a petition filed on June 7, 2007, by six domestic producers of CWP – Allied Tube & Conduit, IPSCO Tubulars, Inc., Northwest Pipe Company ("Northwest"), Sharon Tube Company, Western Tube & Conduit Corporation, Wheatland Tube Company ("Wheatland") – and the United Steelworkers, a labor union whose members are engaged in production of CWP (collectively "petitioners"). Petitioners and U.S. Steel Corporation (another U.S. producer of CWP) filed prehearing and posthearing briefs and were represented at the hearing on May 13, 2008, in support of the petition. In opposition to the petition, filing prehearing and posthearing briefs and represented at the hearing, were the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers & Exporters ("CCCMC"), representing its member producers and exporters of the subject merchandise; the Standard Pipe Importers' Coalition;³ MAN Ferrostaal, Inc., Commercial Metals Company, and QT Trading LP, importers of the subject merchandise ("MAN", "Commercial", and "QT"); and Western International Forest Products, LLC ("Western"), an importer of subject merchandise. A prehearing brief was also filed by Shuangjie Steel Pipe Co. Ltd. and its affiliate Tianjin Wa Song Imp. & Exp. Co., Ltd. ("Shuangjie"), a producer/exporter of the subject merchandise.

The Commission received usable questionnaire responses from 21 U.S. producers, accounting for more than 90 percent of U.S. production of CWP in 2007.⁴ The Commission also received usable questionnaire responses from 32 importers believed to account for 82.6 percent of CWP imports from China and 75.3 percent of imports from other sources in 2007,⁵ and from 15 Chinese producers of CWP accounting for an estimated 51.5 percent of CWP production in China in 2007, and an estimated 65.1 of exports of CWP to the United States in 2007.⁶

Tubular products, only some of which are CWP, frequently are distinguished by the following six end uses as defined by the American Iron and Steel Institute ("AISI").

- *Standard pipe* is ordinarily used for low-pressure conveyance of air, steam, gas, water, oil, or other fluids for mechanical applications. It is used primarily in machinery, buildings, sprinkler systems, irrigation systems and water wells rather than in pipe lines or utility distribution

¹ Commissioner Pinkert did not participate in this determination.

² As addressed further *infra*, we also determine that the imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the countervailing duty and antidumping duty orders to be issued on CWP from China.

³ Consisting of Pusan Pipe America, Inc. (d/b/a SeAH Steel America, Inc.); Kumkang America, Inc.; Oxbow Carbon & Minerals LLC (Mark Steel International); James Steel, Inc.; Hyundai Corp. USA; North American Pipe & Steel, Inc.; and Shamrock Building Materials Inc.

⁴ CR at III-1, PR at III-I.

⁵ CR at IV-1, PR at IV-I.

⁶ CR at VII-2, PR at VII-I.

No party has argued that any domestic producer should be excluded from the domestic industry under the related party provision. However, although they did not import subject merchandise, *** and *** purchased subject merchandise during the period of investigation.⁴⁴

*** purchased *** short tons of subject merchandise in 2006 and *** short tons in 2007.⁴⁵ However, *** does not appear to have purchased a predominant proportion of any importer's importations of the subject merchandise and, therefore, is not a related party by reason of those purchases.⁴⁶

*** purchased *** short tons of subject merchandise in 2006 and *** short tons in 2007.⁴⁷ The volume of *** purchases are small; accordingly, there is no indication that *** is responsible for a predominant portion of any importer's importations, and its purchases do not constitute a large proportion of total imports from China. We consequently find that *** is not a related party producer.

IV. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS⁴⁸

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.⁴⁹ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵⁰ The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."⁵¹ 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.⁵² 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."⁵³

⁴³ (...continued)

Macedonia, Inv. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (April 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (April 1997). See also SAA at 858.

⁴⁴ CR/PR at Table III-7.

⁴⁵ CR/PR at Table III-7.

⁴⁶ Specifically, *** purchased the Chinese CWP from *** U.S. importers, ***. *** did not list its primary (i.e., top 10) customers. ***, one of the *** U.S. importers of circular welded pipe from China, listed *** as purchasers of its subject CWP imports, but those purchases accounted for only *** percent of *** sales of CWP from China during the period. *** did not list its primary customers. Questionnaire responses of ***.

⁴⁷ CR/PR at Table III-7.

⁴⁸ No party argues that negligibility is an issue in these investigations under 19 U.S.C. § 1677(24). Subject imports from China were 65.0 percent of total imports during the most recent 12-month period prior to the filing of the petition for which data are available, June 2006 to May 2007, and thus are well above the three-percent negligibility threshold. CR/PR at Table IV-3. Consequently, we find that subject imports are not negligible.

⁴⁹ 19 U.S.C. §§ 1671d(a) and 1673d(a).

⁵⁰ 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).

⁵¹ 19 U.S.C. § 1677(7)(A).

⁵² 19 U.S.C. § 1677(7)(C)(iii).

⁵³ 19 U.S.C. § 1677(7)(C)(iii).

For the reasons stated below, we determine that the domestic industry producing CWP is materially injured by reason of subject imports from China.

A. Conditions of Competition and the Business Cycle

The following conditions of competition are pertinent to our analysis of the impact of subject imports of CWP on the domestic industry.

1. Demand Conditions

Demand for CWP is largely derived from nonresidential construction.⁵⁴ U.S. CWP demand, as measured by apparent U.S. consumption, increased from 2.36 million short tons in 2005 to 2.72 million short tons in 2006, then declined to 2.58 million short tons in 2007, for an overall increase of 9.0 percent.⁵⁵ The record is mixed regarding demand in 2008. Petitioners argue that CWP demand will decline in relation to a downturn in the economy generally, slowing nonresidential construction, tightened credit markets, and retail expansion cutbacks.⁵⁶ CCCMC asserts that CWP demand will increase slightly in 2008 in response to a modest increase in nonresidential construction spending.⁵⁷

The vast majority of shipments of CWP in the U.S. market, both of domestic product and imports, is to distributors.⁵⁸ Distributors can vary in terms of size, inventory, and types of customers they serve.⁵⁹ Nine of 22 responding purchasers identified themselves as master distributors.⁶⁰ Master distributors typically sell to other distributors, carry a larger selection of CWP in inventory than do smaller distributors, and purchase in greater volume and, thus, they are able to purchase CWP at lower prices than can the smaller distributors.⁶¹ The record indicates that master distributors have enhanced the ability of the subject imports to compete in the U.S. market.⁶²

2. Supply Conditions

The Commission received questionnaire responses from 21 U.S. producers, accounting for the vast majority of U.S. production of CWP during the period of investigation.⁶³ The industry's capacity declined over the period by 13.7 percent, largely as a result of closures by Wheatland of its Sharon, Pennsylvania plant in May 2006; its Little Rock, Arkansas facility and its Houston, Texas facility in

⁵⁴ CR at II-12 - II-14, PR at II-8 - II-9; Petitioners Postconference Brief at 7; Conference Transcript at 101-103 (Magno, Filetti, and Barnes); Respondents' Postconference Brief at 34-35.

⁵⁵ CR/PR at Table C-1.

⁵⁶ Petitioners' Prehearing Brief at 12 & Exhibit 2; CR at II-13, PR at II-9.

⁵⁷ CCCMC's Prehearing Brief at 55-56, CR at II-13 - II-14, PR at II-9.

⁵⁸ CR/PR at Table II-1.

⁵⁹ CR/PR at II-1.

⁶⁰ CR/PR at II-1, n.1.

⁶¹ CR/PR at II-1 - II-2.

⁶² CR/PR at II-2 & nn. 3, 4. We note that master distributors have existed in this market for at least 20 years (CR/PR at II-2) and "generally are more on the plumbing and heating . . . the industrial side[s] of the business as opposed to fire protection or fencing." Conference Transcript at 82 (Magno).

⁶³ CR/PR at Table III-1, CR at III-3, PR at III-4.

September 2007; and its Collingswood, New Jersey facility in December 2007.⁶⁴ The domestic industry's production increased overall by 5.1 percent.⁶⁵

Domestic producers' share of the U.S. market, by quantity, declined from 58.4 percent in 2005 to 49.3 percent in 2006, then increased to 55.2 percent in 2007, for an overall period decrease of 3.2 percentage points.⁶⁶ Subject imports' share of the U.S. market increased from 16.2 percent in 2005 to 26.4 percent in 2006 and 29.0 percent in 2007, for an overall period increase of 12.9 percentage points.⁶⁷ The U.S. market share held by nonsubject imports declined steadily during the period examined, from 25.4 percent in 2005 to 24.3 percent in 2006 and 15.8 percent in 2007, for an overall period decline of 9.6 percentage points.⁶⁸ Imports of CWP from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey, which are subject to antidumping orders (CWP from Turkey is also subject to a countervailing duty order), accounted for approximately half of the nonsubject imports over the period of investigation.⁶⁹

3. Substitutability and Other Conditions

The record indicates a moderately high degree of substitutability between CWP produced domestically and that imported from China.⁷⁰ CWP, regardless of source, is manufactured to meet common ASTM specifications (such as A-53, A-135, A-795, A-500, A-252 or F-1083) regarding materials, dimensions, and testing.⁷¹ The vast majority of market participants found domestically produced CWP always or frequently interchangeable with subject CWP from China.⁷² Additionally, the majority of market participants who compared subject imports to imports from nonsubject sources found them to be always or frequently interchangeable.⁷³ Domestic producers, importers, and purchasers differ somewhat on the importance of non-price factors – such as quality, availability, transportation network, product range, and technical support – when comparing CWP from one country with that from another.⁷⁴ The vast majority of purchasers identified price as a very important factor in their purchasing decisions.⁷⁵

⁶⁴ CR/PR at Table III-2 (the domestic industry's capacity declined from 2.57 million short tons in 2005 to 2.41 million short tons in 2006 and 2.22 million short tons in 2007), CR/PR at III-1 n.2 (Wheatland's closings), *see also* CR/PR at Table III-3 (summary of plant openings, relocations, expansions, acquisitions, closures, and prolonged shutdowns).

⁶⁵ Domestic production declined slightly from 1.39 million short tons in 2005 to 1.38 million short tons in 2006, then increased to 1.46 million short tons in 2007. CR/PR at Table III-2.

⁶⁶ CR/PR at Table IV-8.

⁶⁷ CR/PR at Table IV-8 and C-1.

⁶⁸ CR/PR at Table IV-8.

⁶⁹ CR/PR at Table IV-6.

⁷⁰ CR at II-17 - II-18, PR at II-11 - II-12.

⁷¹ CR at I-15 - I-16, PR at I-12 - I-13.

⁷² CR/PR at Table II-2.

⁷³ CR/PR at Table II-2.

⁷⁴ Responding U.S. producers reported most frequently that differences in non-price factors among CWP produced in the United States, imported from China, and imported from third countries were only sometimes or never significant, whereas the responding U.S. importers and purchasers were more divided in characterizing such factors as always, frequently, sometimes, and never significant. CR/PR at Table II-3.

⁷⁵ CR/PR at Table II-5. "Quality meets industry standards" was cited by purchasers most frequently as the primary factor in purchasing decisions, with "availability" and "price," respectively, a close second and third; price was cited by the most purchasers as one of the three most important factors in making purchasing decisions. CR/PR at Table II-5.

Importers reported that their average lead time (i.e., between order and delivery) for CWP from China that was produced to order was over 120 days, whereas domestic producers reported an average lead time of 31 days on produced-to-order CWP. Domestic producers reported lead times averaging 6 days for shipments from inventory. Of the six importers reporting shipping out of inventory, four reported lead times of 10 days or less and two reported lead times greater than 30 days.⁷⁶

The ability or willingness of domestic producers to reduce prices to compete with subject imports is limited by the high variable cost nature of CWP production.⁷⁷ The need to meet variable costs can lead producers, at least initially, to adjust sales volume rather than prices when competing with low-priced products.⁷⁸

B. Volume of the Subject Imports

Section 771(7)(c) 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."⁷⁹

Subject import volume increased from 382,122 short tons in 2005 to 715,728 short tons in 2006 and 748,181 short tons in 2007, for a period increase of 95.8 percent.⁸⁰ The market share held by subject imports increased from 16.2 percent of apparent U.S. consumption in 2005 to 26.4 percent in 2006 and to 29.0 percent in 2007, for a period increase of 12.9 percentage points.⁸¹ The market share held by the domestic industry declined from 58.4 percent in 2005 to 49.3 percent in 2006, before increasing to 55.2 percent in 2007, for an overall period decline of 3.2 percentage points.⁸² The market share held by nonsubject imports declined throughout the period, from 25.4 percent of apparent U.S. consumption in 2005 to 24.3 percent in 2006 and 15.8 percent in 2007, for a period decline of 9.6 percentage points.⁸³ As the data reflect, increasing subject import volumes took market share from the domestic industry, particularly in 2006, as well as from nonsubject imports. We also note that subject imports captured a substantial share of a growing market as apparent U.S. consumption increased by 9.0 percent over the period and by 14.8 percent from 2006 to 2007. *

⁷⁶ CR at II-2 - II-3, PR at II-2.

⁷⁷ A high variable cost industry is one in which variable costs (e.g., cost of direct materials and direct labor), which change directly with the amount of production, are high in relation to fixed costs (e.g., costs for plant facilities, equipment, and insurance), which remain constant in total regardless of changes in production volumes.

⁷⁸ CR/PR at Table VI-3; CR/PR at Table V-10 (while many responding purchasers reported that domestic producers reduced prices to compete with subject imports, a majority of purchasers reported that domestic prices were not reduced); Petitioners' Prehearing Brief at 10; USITC Pub. 3938 at 12; Conference Transcript at 72 (Magno, Barnes).

⁷⁹ 19 U.S.C. § 1677(7)(C)(i).

⁸⁰ CR/PR at Tables IV-2, C-1.

⁸¹ CR/PR at Table IV-8. The ratio of subject imports to U.S. production increased over the period by 23.7 percentage points, from 27.6 percent in 2005 to 51.3 percent in 2007. CR/PR at Table IV-9.

⁸² CR/PR at Table IV-8.

⁸³ CR/PR at Table IV-8.

The volume of subject imports declined sharply in the final months of 2007. While the pendency of these investigations may have had some impact on import volume,⁸⁴ as discussed above, even with the decline in the last quarter of 2007, subject import volume in 2007 was significantly greater than in 2005.⁸⁵

For the foregoing reasons, we find that the subject import volume and the increase in that volume are significant, both in absolute terms and relative to consumption and production in the United States.

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.⁸⁶

As discussed above, there is a moderately high degree of substitutability between domestic and subject CWP, both of which are commonly produced to ASTM specifications.⁸⁷ A majority of market participants found subject imports and the domestic like product to be always or frequently interchangeable.⁸⁸ Price plays an important role in sales of CWP.⁸⁹

The Commission collected quarterly weighted-average price data from U.S. producers and importers on four specific CWP products and four broader product categories.⁹⁰ Price data reported by U.S. producers accounted for 28.2 percent of their reported commercial shipments of CWP. Price data reported by U.S. importers accounted for 37.8 percent of their total reported U.S. commercial shipments. U.S. importers also reported pricing data for their commercial shipments of nonsubject imports, which accounted for 16.5 percent of total official imports of CWP from nonsubject countries in 2007.⁹¹ Ninety-six quarterly price comparisons were possible between domestic product and the subject imports across

⁸⁴ CR at II-8 - II-11, PR at II-6 - II-7.

⁸⁵ In conducting our analysis, we have given less weight to the decline in subject imports that occurred in the final months of 2007, since we find that it was at least partly due to the effects of the filing of the petitions. See 19 U.S.C. § 1677(7)(I).

⁸⁶ 19 U.S.C. § 1677(7)(C)(ii).

⁸⁷ CR at II-17 - II-18, PR at II-11 - II-12.

⁸⁸ CR/PR at Table II-2.

⁸⁹ CR/PR at Tables II-4, II-5.

⁹⁰ The Commission requested price data for: Product 1 - ASTM A-53 schedule 40 black plain-end pipe, with nominal outside diameter of 2-4 inches inclusive; Product 1a - ASTM A-53 schedule 40 black plain-end pipe, with nominal outside diameter of 2 inches; Product 2 - ASTM A-53 schedule 40 galvanized plain-end pipe, with nominal outside diameter of 2-4 inches inclusive; Product 2a - ASTM A-53 schedule 40 galvanized plain-end pipe, with nominal outside diameter of 2 inches; Product 3 - ASTM A-53 schedule 40 black plain-end pipe, with nominal outside diameter of 6-8 inches inclusive; Product 3a - ASTM A-53 schedule 40 black plain-end pipe, with nominal outside diameter of 6 inches; Product 4 - galvanized fence tube, with nominal outside diameter of 1-3/8 - 2-3/8 inches inclusive, and wall thickness of 0.055-0.075 inch; Product 4a - galvanized fence tube, with nominal outside diameter of 2 inches (also referred to as 2 and 3/8 inch in the fence tube industry), and wall thickness of 0.065 inch (+/- 10 percent). CR at V-9, PR at V-7.

⁹¹ CR at V-10, PR at V-8, as revised by Memorandum INV-FF-068 (June 16, 2008).

specific products and broader product categories.⁹² In all comparisons the subject imports undersold the domestic product, by margins ranging from 4.3 percent to 56.0 percent.⁹³ Domestic producers' prices for six of the eight pricing products declined over the period of investigation.⁹⁴ * *

As discussed earlier, CWP production entails relatively high variable costs. The record indicates that, in response to sharply increased volumes of low priced subject imports in 2006, the domestic industry generally maintained prices at the cost of sales volume and thus experienced declines in sales, shipments, and market share in 2006 compared with 2005.⁹⁵ In 2007, domestic producers appear to have competed more on price to regain market share. However, they were not able to regain the market share they had held in 2005, nor were they able to increase prices sufficiently to cover increased costs as subject imports undersold the domestic product in increasing volumes.⁹⁶ The domestic industry's total cost of goods sold ("COGS") as a share of net sales increased by 3.5 percentage points from 2005 to 2007.⁹⁷ Unit COGS, after declining from \$817 in 2005 to \$794 in 2006, increased to \$833 in 2007. Unit sales values, on the other hand, declined from \$954 in both 2005 and 2006 to \$933 in 2007.⁹⁸ We therefore find that U.S. producers' prices were suppressed to a significant degree because of persistent underselling by subject imports. The evidence of some confirmed lost sales provide additional support for our finding that subject imports have suppressed price increases that otherwise would have occurred to a significant degree.⁹⁹

In sum, the record indicates significant underselling by subject imports during the period of investigation, and that subject imports have suppressed domestic prices to a significant degree. Accordingly, we find that subject imports have had significant adverse effects on domestic prices during the period of investigation.

⁹² The difference between the average quarterly prices for the specific products and the broader product categories was generally small, averaging 2.3 percent. CR at V-27, PR at V-21.

⁹³ CR/PR at Table V-5.

⁹⁴ CR/PR at Tables V-1 - V-4a (increases only for products 2 and 2a).

⁹⁵ CR/PR at Table C-1 and V-7. Also, several purchasers indicated shifting, over the period of investigation, from domestic product to subject imports due to price differences. CR/PR at Table V-10.

⁹⁶ CR/PR at Table C-1 and V-7.

⁹⁷ CR/PR at Table C-1. COGS/sales declined from 85.6 percent in 2005 to 83.2 percent in 2006, before increasing to 89.2 percent in 2007. Id.

⁹⁸ CR/PR at Table C-1.

⁹⁹ CR/PR at Table V-9.

D. Impact of the Subject Imports on the Domestic Industry¹⁰⁰

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹⁰¹ These factors include output, sales, inventories, ability to raise capital, research and development, and factors affecting domestic prices. 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."¹⁰²

As an initial matter, we again note that the high variable cost nature of CWP production appears to have led domestic producers in 2006 to sacrifice sales volume rather than lowering prices to compete with increasing volumes of low-priced CWP from China.¹⁰³ Thus, while the shipments, sales quantity, sales revenue, and market share of the domestic industry declined in 2006, the industry was able in that year to maintain prices at levels sufficient to increase operating income, both absolutely and as a percent of net sales. However, in 2007, the domestic industry competed more on price in order to regain lost market share. As a result, the industry was unable to sustain its operating margin in the face of a cost/price squeeze due, to a significant extent, to the increased volume of low-priced subject imports, as described above.¹⁰⁴

The industry's capacity declined over the period from 2.57 million short tons in 2005 to 2.22 million short tons in 2007, a decline of 13.7 percent, largely as a result of Wheatland's facility closures.¹⁰⁵ While total apparent consumption increased by 14.8 percent in 2006 and by 9.0 percent in the period overall (for a total increase of 212,855 short tons), domestic production decreased from 1.39 million short tons in 2005 to 1.38 million short tons in 2006, before increasing to 1.46 million short tons in 2007, for an overall increase of 5.1 percent, or 71,169 short tons.¹⁰⁶ Although capacity utilization

¹⁰⁰ 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 antidumping duty determination regarding CWP from China, Commerce found dumping margins for subject imports of 69.20 percent for 31 specific combinations of exporters and one or more producers, and 85.55 percent for all others (PRC-wide entity rate). 73 Fed. Reg. 31970, 31973 (Jun. 5, 2008). The Commission may also consider the magnitude of countervailable subsidies. 19 U.S.C. § 1677(7)(C)(iii). In its final countervailing duty determination, Commerce found net subsidy rates of 29.57 percent for Weifang East Steel Pipe Co., Ltd.; 44.86 percent for Zhejiang Kingland Pipeline and Technologies Co., Ltd., and affiliated companies; 615.92 percent for Tianjin Shuangjie Steel Pipe Co., Ltd., Tianjin Shuangjie Steel Pipe Group Co., Ltd., Tianjin Wa Song Imp. & Exp. Co., Ltd., and Tianjin Shuanglian Galvanizing Products Co., Ltd.; and 37.22 percent for all others. 73 Fed. Reg. 31966, 31969 (Jun. 5, 2008).

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

¹⁰² 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 at 25 n.148 (Feb. 1999).

¹⁰³ See USITC Pub. 3938 at 12 (high variable cost industry discussion).

¹⁰⁴ E.g., CR/PR at Table C-1.

¹⁰⁵ CR/PR at III-1 n.2. While Wheatland's closings were largely responsible for the net decline in the industry's capacity, we note that there also were other plant openings, relocations, expansions, acquisitions, closures, and prolonged shutdowns that affected capacity over the period. See CR/PR at Table III-3.

¹⁰⁶ CR/PR at Table C-1.

increased over the period of investigation, its peak level was 65.7 percent in 2007 (it was 53.9 percent in 2005 and 57.5 percent in 2006).¹⁰⁷

Domestic producers' shipments decreased from 1.38 million short tons in 2005 to 1.34 million short tons in 2006 before increasing to 1.42 million short tons in 2007.¹⁰⁸ Domestic producers' market share declined from 58.4 percent in 2005 to 49.3 percent in 2006, then increased to 55.2 percent, for an overall decline of 3.2 percentage points. While domestic sales volume increased irregularly over the period by 5.1 percent, the value of domestic sales increased by only 2.9 percent.¹⁰⁹

During the period 2005-2007, domestic producers' ending inventories of CWP declined by 15.8 percent, and fell by 2.6 percentage points relative to the quantity of total shipments.¹¹⁰ U.S. importers' ending inventories of subject merchandise increased by 219.5 percent.¹¹¹

The industry's employment related data for the period is mixed. The average number of production-related workers and hours worked declined steadily from 2005 to 2007, by 3.1 percent and 3.0 percent respectively.¹¹² The domestic industry's average unit labor costs declined steadily by 4.1 percent from 2005 to 2007. Productivity rose by 8.4 percent.¹¹³

Net sales volume increased irregularly over the period, declining from 1.40 million short tons in 2005 to 1.36 million short tons in 2006, before increasing to 1.47 million short tons in 2007, a period increase of 5.1 percent.¹¹⁴ The net sales value increased overall to a lesser extent, by only 2.9 percent.¹¹⁵ As discussed previously, COGS as a ratio to sales increased overall from 2005 to 2007 by 3.5 percentage points.¹¹⁶

The domestic industry's financial indicators, including operating income and operating margins, improved from 2005 to 2006, but then fell to their lowest levels of the period in 2007. Operating income rose from \$140.5 million in 2005 to \$151.6 million in 2006, but fell to \$61.5 million in 2007, for a period decline of 56.2 percent.¹¹⁷ The industry's ratio of operating income to net sales followed a similar trend, growing from 10.5 percent in 2005 to 11.6 percent in 2006, before declining to 4.5 percent in 2007.¹¹⁸ The operating incomes of 17 of 20 domestic producers were lower in 2007 than in 2005.¹¹⁹

¹⁰⁷ CR/PR at Table C-1.

¹⁰⁸ CR/PR at Table C-1.

¹⁰⁹ CR/PR at Table C-1. Sales quantity decreased from 1.40 million short tons in 2005 to 1.36 million short tons in 2006, then increased to 1.47 million short tons in 2007. Total sales value decreased from \$1.36 billion in 2005 to \$1.30 billion in 2006, then increased to \$1.37 billion in 2007.

¹¹⁰ CR/PR at Table C-1.

¹¹¹ CR/PR at Table C-1.

¹¹² CR/PR at Table C-1. The average number of production workers declined from 2,528 in 2005 to 2,450 in 2007. While hours worked also decreased from 4.77 million in 2005 to 4.63 million in 2007, hourly wages increased from \$21.62 in 2005 to \$22.48 in 2007. Additionally, wages paid increased irregularly from \$103.20 million in 2005 to \$104.07 in 2007. CR/PR at Table C-1.

¹¹³ CR/PR at Table C-1. Productivity increased from 290.4 short tons per 1,000 hours in 2005 to 314.7 short tons per 1,000 hours in 2007.

¹¹⁴ CR/PR at Table C-1.

¹¹⁵ CR/PR at Table C-1. Net sales value declined from \$1.34 million in 2005 to \$1.30 million in 2006 before increasing to \$1.37 million in 2007. Id.

The industry's capital expenditures declined from \$42.7 million in 2005 to \$24.0 million in 2007.¹²⁰ R&D expenses increased from \$*** in 2005 to \$*** in 2007.¹²¹

As previously discussed, subject imports increased in volume and market share, undersold domestic product, and suppressed domestic prices. We find that these volume and price effects led to declines in many of the industry's performance indicators. Especially significant has been the decrease in industry profitability, due mainly to the significant price effects of the subject imports.

CCCMC argued that, because some domestic producers had fiscal years that did not end on December 31, the reported financial data masked the industry's actual profitability levels in calendar year 2007 due to price trends for hot-rolled steel that domestic producers had in inventory. The Commission therefore gathered financial data on a calendar year basis as well. We find the data on the two bases to be largely consistent and that the domestic industry is materially injured by reason of the subject imports, regardless of whether we rely on the fiscal year or calendar year for the industry's financial data.¹²²

CCCMC argued that ***. We note, however, that our analysis is based on the data for the industry as a whole and the poor performance of the industry in 2007 cannot be attributed *** when operating incomes of 17 out of 20 domestic producers were lower in 2007 than in 2005.¹²³ Moreover, the Commission ***. ***¹²⁴

CCCMC asserts that, rather than being adversely impacted by the growing volume of subject imports, the domestic industry was limited in its ability to supply CWP because of the industry's shift from production of CWP to production of energy tubulars, e.g., line pipe and OCTG. However, as noted above, the domestic industry's production increased over the period of investigation and the industry had substantial unused capacity with which it could have supplied additional CWP. Moreover, the major U.S. producers of CWP are not major producers of line pipe and OCTG, and the majority of increases in energy tubular production¹²⁵ has been by companies that are not major CWP producers.¹²⁶

CCCMC also attributes the industry's difficulties to the tight supply of the hot-rolled steel raw material during the period. However, supply and demand conditions for hot-rolled steel are dynamic, preventing characterization of the supply as tight for any extended period. While it appears that hot-rolled steel supply may have been relatively tight in early 2006, this was increasingly less true over the

¹²⁰ CR/PR at Table VI-5.

¹²¹ CR/PR at Table VI-5.

¹²² For instance, the operating margins on a calendar year basis were 10.5 percent in 2005, 11.6 percent in 2006, and 4.5 percent in 2007 (CR/PR at Table C-1); on a fiscal year basis they were *** percent in 2005, *** percent in 2006, and *** percent in 2007 (CR/PR at Table C-2).

¹²³ CR/PR at Table VI-2.

¹²⁴ With respect to the claim regarding Wheatland's reporting of interest expenses, we note that interest expenses impact only the industry's net income, not its operating income, and that our analysis has focused primarily on operating income:

It has been the Commission's consistent practice in assessing an industry's financial performance to focus primarily on its operating income. Any exceptions to this practice generally have occurred in investigations of agricultural products, where producers often do not calculate operating income in their financial statements. A firm's operating income more accurately reflects the results of its production operations than does its net income, which may be dependent on decisions regarding the form of financing that the firm undertakes and on its "other" income and expenses.

Coated Free Sheet Paper from China, Indonesia, and Korea, Inv. Nos. 701-TA-444-446 (Final) and 731-TA-1107-1109 (Final), USITC Pub. 3965 (Dec. 2007) at 19 n.127.

¹²⁵ CR/PR at Table III-4.

¹²⁶ Petitioners' Posthearing Brief at Exhibit C.

course of the second half of that year.¹²⁷ Additionally, the industry's operating margin was highest in 2006 as compared with the other years of the period, suggesting that any tightness in hot-rolled steel supply during that year did not have a significant adverse impact on the industry.¹²⁸

Consequently, based on the record in the final phase of these investigations, we conclude that subject imports had a significant adverse impact on the condition of the domestic industry during the period of investigation. In particular, we find that the absolute and relative volume of subject imports, and the increase in those volumes, are significant and that subject imports have undersold the domestic product and suppressed domestic prices to a significant degree. These volume and price effects have caused significant declines in the domestic industry's relevant economic factors over the period of investigation.

IV. APPLICATION OF THE *BRATSK ALUMINIUM SMELTER v. UNITED STATES* REPLACEMENT/BENEFIT TEST

Having reached an affirmative determination by application of the statutorily mandated factors, the Federal Circuit's decision in *Bratsk Aluminium Smelter v. United States* requires that we turn to an additional analysis which can, in some circumstances, negate an affirmative determination.¹²⁹ The Federal Circuit directed the Commission to undertake an "additional causation inquiry" whenever certain triggering factors are met: "whenever the antidumping investigation is centered on a commodity product, and price competitive nonsubject imports are a significant factor in the market."¹³⁰ The additional inquiry required by *Bratsk*, which we refer to as the *Bratsk* replacement/benefit test, is "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."¹³¹

As noted in other investigations, we respectfully disagree with *Bratsk* that the statute requires any analysis beyond that already included in our discussion of volume, price, and impact above, and do not reiterate the Commission's interpretation of the statutory scheme here.¹³² The Commission has a well established approach to addressing causation.¹³³ However, we apply the *Bratsk* replacement/benefit test to our analysis because the Federal Circuit has directed us to do so, notwithstanding that, in our considered view, this test is not required by, or consistent with, the statute.

¹²⁷ See CR at II-5 - II-6 (citing *** and MEPS), PR at II-4.

¹²⁸ CR/PR at Table C-1.

¹²⁹ 444 F.3d at 1369 (Fed. Cir. 2006).

¹³⁰ *Bratsk*, 444 F.3d at 1375.

¹³¹ *Bratsk*, 444 F.3d at 1375.

¹³² For a full discussion of our views on the applicability of *Bratsk*, see our Views in the Remand Determination for *Silicon Metal from Russia*, Inv. No. 731-TA-991 (Final) (Second Remand), USITC Pub. 3910 (March 2007) and Views of the Commission in *Certain Polyester Staple Fiber from China*, Inv. No. 731-TA-1104 (Final), USITC Pub. 3922 at 24-26 (June 2007). For a full discussion of Vice Chairman Pearson's views on the applicability of *Bratsk*, see his Separate and Additional Views in *Silicon Metal from Russia*. For a full discussion of Chairman Aranoff's views on the applicability of *Bratsk*, see the Views of the Commission in *Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, Inv. No. 731-TA-961 (Final) (Remand), USITC Pub. 3903 (January 2007). For a full discussion of Commissioner Okun's views of the applicability of *Bratsk*, see her Separate and Dissenting Views in *Certain Lined Paper School Supplies from China, India, and Indonesia*, Inv. Nos. 701-TA-442-443, 731-TA-1095-1097 (Final), USITC Pub. 3884 (Sept. 2006).

¹³³ See *Silicon Metal from Russia*, Inv. No. 731-TA-991 (Second Remand), USITC Pub. 3910 (Mar. 2007), at 3-8 (articulating in detail the Commission's long-standing interpretation of the "by reason of" causation standard).