

UNITED STATES INTERNATIONAL TRADE COMMISSION

BALL BEARINGS FROM CHINA

Investigation No. 731-TA-989 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION (USITC Publication No. 3593, April 2003)

DETERMINATION

On the basis of the record¹ 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 not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China of certain ball bearings and parts thereof, provided for in subheadings 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.50, 8431.20.00, 8431.39.00, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.25, 8482.99.35, 8482.99.65, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.60, 8708.93.30, 8708.93.60, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.40, 8708.99.49, 8708.99.58, 8708.99.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90 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).

BACKGROUND

The Commission instituted this investigation effective February 13, 2002, following receipt of a petition filed with the Commission and Commerce by the American Bearing Manufacturers Association, Washington, DC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of ball bearings 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 23, 2002 (67 FR 65142) as amended on December 2, 2002 (67 FR 71588). The hearing was held in Washington, DC, on March 6, 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 not materially injured or threatened with material injury by reason of imports of ball bearings and parts thereof from China that are sold in the United States at less than fair value (“LTFV”).

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

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 a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

A. Product Description

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

all antifriction bearings, regardless of size, precision grade or use, that employ balls as the rolling element (whether ground or unground) and parts thereof (inner ring, outer ring, cage, balls, seals, shields, etc.) that are produced in China. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts and parts thereof, ball bearings (including thrust, angular contact, and radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. The scope includes ball bearing type pillow blocks and parts thereof and wheel hub units incorporating balls as the rolling element. With regard to finished parts, all such parts are included in the scope of the petition. With regard to unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the petition are those that will be subject to heat treatment after importation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.93.30, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4000, 8708.99.4960, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the written description of the merchandise under investigation is dispositive.

Specifically excluded from the scope are unfinished parts that are subject to heat treatment after importation. Also excluded from the scope are cylindrical roller bearings, mounted or unmounted, and parts thereof (CRB) and spherical plain bearings, mounted and unmounted, and parts thereof (SPB). CRB products include all antifriction bearings that employ cylindrical rollers as the rolling element. SPB products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends.⁸

Ball bearings permit free motion between moving and fixed parts by holding, separating, or guiding the moving parts to minimize friction and wear. Complete ball bearings typically consist of an inner ring, an outer ring, the balls, a cage, and lubrication. Ball bearings vary significantly in size and are typically made from a variety of high-quality carbon steels.⁹ Ball bearings are preferred over roller bearings when speed is more important than load-carrying capacity. Ball bearings are designed to carry radial or thrust loads or a combination of the two.¹⁰

⁸ 68 Fed. Reg. 10685, 10686 (March 6, 2003).

⁹ Petition, Vol. I at 9.

¹⁰ Staff Report, Confidential Version (CR) at I-4, Staff Report, Public Version (PR) at I-4; Certain Bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom, Inv. Nos. AA1921-143, 731-TA-341, 731-TA-343-345, 731-TA-391-397, and 731-TA-399 (Review), USITC Pub. 3309 (June (continued...))

Complete ball bearings are produced in a wide variety of types, sizes, and specifications and are used in a wide variety of applications.¹¹ They are produced in radial, angular, thrust, linear, or other non-radial designs.¹² They are produced to varying degrees of precision, and ball bearings produced to tighter tolerances carry a higher Annular Bearing Engineering Committee (ABEC) rating.¹³ Bearings produced to meet a higher ABEC rating provide greater running accuracy and higher speed capability.¹⁴

B. Prior Investigations

The Commission has conducted investigations on the ball bearing industry in the past, including a five-year review of orders on ball bearings from France, Germany, Italy, Japan, Singapore, and the United Kingdom completed in June 2000;¹⁵ a 1991 investigation of ball bearing imports from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey, and Yugoslavia;¹⁶ and a 1989 investigation of ball bearing imports from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom.^{17 18} In those prior investigations the Commission rejected arguments that the respective scopes covered several domestic like products containing balls as rolling elements, typically defined by differences in size, quality, or application.¹⁹ The Commission noted that there was a "wide variety of ball bearings, both in terms of size and precision," with no clear dividing lines among that variety.²⁰ The Commission further noted that, in such cases, its usual practice was to find one like product, viewing the product in terms of a continuum.²¹

In the instant investigation, the scope is similar, but not identical, to that covered by the most recent ball bearing investigation, the five-year review investigation completed in June 2000. The scope

¹⁰ (...continued)
2000), Vol. II at BB-I-23 (2000 Review).

¹¹ CR at II-11, PR at II-5.

¹² CR at II-1, PR at II-1.

¹³ CR at I-6 n.11, PR at I-4 n.11.

¹⁴ CR at I-6 n.11, PR at I-4 n.11.

¹⁵ 2000 Review, Vol. I at 3.

¹⁶ Ball Bearings, Mounted or Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey, and Yugoslavia (Preliminary), Inv. Nos. 701-TA-307, 731-TA-498-511, USITC Pub. 2374 (April 1991) at 3 (1991 Investigation).

¹⁷ Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Inv. Nos. 303-TA-19 and 20 (Final) and 731-TA-391 through 399 (Final), USITC Pub. 2185 (May 1989) (1989 Investigation).

¹⁸ The Commission must base its domestic like product determination on the record in each investigation. It is not bound by prior determinations concerning even the same imported product. Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1088 (Ct. Int'l Trade 1988). See also, e.g., Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp. 2d 1353, 1379 (Ct. Int'l Trade 1999) (Commission determinations are *sui generis*, "a particular circumstance in a prior investigation cannot be regarded by the Commission as dispositive of the determination in a later investigation"). However, the Commission may draw upon previous determinations in addressing pertinent like product issues. Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int'l Trade 2000).

¹⁹ See, e.g., 2000 Review, USITC Pub. 3309, Vol. I at 9-12; 1991 Investigation, USITC Pub. 2374 at 6-14; 1989 Investigation, USITC Pub. 2185 at 20-28.

²⁰ 1989 Investigation, USITC Pub. 2185 at 27.

²¹ 1989 Investigation, USITC Pub. 2185 at 27.

has been expanded explicitly to cover unground bearings, and covers parts that are heat-treated prior to importation as well as parts that are not heat-treated (green) and not destined for heat treatment after importation.²² The scope excludes green parts destined for heat treatment after importation.²³ In the preliminary phase of this investigation, we found a single domestic like product of all ball bearings and parts thereof, consistent with Commerce's scope.²⁴

D. Domestic Like Product

As it did in the preliminary phase of this investigation, petitioner American Bearing Manufacturers Association (ABMA) argues that the Commission should find one domestic like product consisting of all ball bearings and parts thereof, coterminous with the scope of the investigation.²⁵ Petitioner argues that unground bearings do not constitute a separate like product. Respondents do not contest the inclusion of unground bearings in a single domestic like product with ground bearings.²⁶

While ground bearings are subjected to grinding and honing operations designed to ensure that the components are sized to required precise tolerances and polished to ensure the smoothest possible rolling surface, unground bearings are not subjected to these processes.²⁷ Not all ball bearing applications require the tight tolerances and smooth finishes imparted by grinding; unground ball bearings offer a lower-cost alternative for such applications. In 2002, the domestic industry shipped *** unground ball bearing balls, compared to *** ground ball bearing balls.²⁸

The record indicates that, notwithstanding differences as to the finishing processes, unground and ground ball bearings share similar physical characteristics, are produced by the same domestic producers using the same production processes, equipment, and employees, and that both types of ball bearings compete in similar channels of distribution for similar customers and similar applications.²⁹ No evidence gathered in the final phase of this investigation contradicts our finding in the preliminary phase that unground ball bearings are properly included in a single domestic like product along with ground ball bearings. We are mindful that this investigation covers a continuum of products in many sizes and configurations, and that in such cases our practice is to treat the continuum itself as the domestic like product.³⁰ We do so here, and thus find that unground ball bearings are properly included with all other ball bearings in a single domestic like product, coterminous with the scope of the investigation.³¹ We

²² 68 Fed. Reg. at 10686.

²³ 68 Fed. Reg. at 10686.

²⁴ Ball Bearings from China, Inv. No. 731-TA-989 (Preliminary), USITC Pub. 3504 at 6 (May 2002) (Preliminary Determination).

²⁵ ABMA Prehearing Brief at 4.

²⁶ CR at I-8, PR at I-5.

²⁷ CR at I-7, PR at I-4.

²⁸ CR/PR at Table III-12.

²⁹ Conf. Tr. at 24-25 (Ms. May); ABMA Prehearing Brief at 7-8.

³⁰ 2000 Review, USITC Pub. 3309, Vol. I at 19; see also Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom, Inv. Nos. 701-TA-413 (Final) and 731-TA-913-916 and -918 (Final), USITC Pub. 3488 (February 2002) at 6-7; Cold-Rolled Steel, *supra*, USITC Pub. 3471 (November 2001) at 7; Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela, Inv. Nos. 701-TA-417-421 (Preliminary) and 731-TA-953-963 (Preliminary), USITC Pub. 3456 (October 2001) at 6.

³¹ In the preliminary phase of this investigation, respondents argued that the domestic like product should be expanded to include green parts excluded from the scope. Subsequently, however, respondents appear to have
(continued...)

therefore find one domestic like product, consisting of all ball bearings and parts thereof, coterminous with the scope of the investigation.

II. DOMESTIC INDUSTRY AND RELATED PARTIES

The domestic industry is defined as “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.”³² In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³³ Based on our finding of a single domestic like product, we find that the domestic industry consists of all domestic producers of ball bearings and parts thereof.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows 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.³⁴ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.³⁵

*** domestic producers imported subject merchandise from China during the period of investigation (POI).³⁶ For ***, in 2002, imports were equivalent to *** percent of domestic shipments.³⁷

³¹ (...continued)

abandoned this argument. Respondents’ Prehearing Brief at 4. Respondents continue to argue that green parts excluded from the scope should likewise be excluded from subject import volume. *Id.* As previously discussed, petitioner argues that the domestic like product should be defined coextensively with the scope and thus should exclude certain green parts. ABMA Prehearing Brief at 9-10. In light of respondents’ abandonment of this issue, we find that the record contains no compelling reason to include excluded green parts in the domestic like product.

³² 19 U.S.C. § 1677(4)(A).

³³ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir.1996).

³⁴ 19 U.S.C. § 1677(4)(B).

³⁵ 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). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

³⁶ CR/PR at Table IV-17.

³⁷ Calculated from CR/PR at Table IV-17.

Otherwise, over the POI, the value of imports shipped by each domestic producer was equivalent to *** of domestic shipments for each producer, and that ratio was greater than *** for only ***.³⁸

No party has argued for the exclusion of any domestic producer from the domestic industry on related-party grounds. The financial performance of some importing producers did differ sharply from that of the overall industry during the POI, but those firms who outperformed the industry by the greatest margins (e.g., ***) imported *** levels of subject imports relative to their domestic production.³⁹ The financial performance of ***, whose imports were equivalent to *** percent of its domestic shipments in 2002, was worse than that of the domestic industry as a whole in the only year in which it imported subject merchandise.⁴⁰ The record suggests that each of the producers in question has a greater interest in domestic production than in importation from China, and the record does not indicate that any firm benefitted from allegedly unfair trade practices. Thus, we find that appropriate circumstances do not exist to exclude any producer from the domestic industry as a related party.

III. NO MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS⁴¹

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.⁴² 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.⁴³ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁴⁴ 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.⁴⁵ 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.”⁴⁶

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.

³⁸ Calculated from CR/PR at Table IV-17.

³⁹ CR/PR at Tables IV-17 and VI-2.

⁴⁰ CR/PR at Tables IV-17 and VI-2.

⁴¹ Negligibility is not at issue in this determination, as subject imports exceeded three percent of all imports in the 12-month period preceding the filing of the petition. CR at IV-4, PR at IV-1.

⁴² 19 U.S.C. § 1673d(b).

⁴³ 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).

⁴⁴ 19 U.S.C. § 1677(7)(A).

⁴⁵ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁶ 19 U.S.C. § 1677(7)(C)(iii).

A. Conditions of Competition

1. Captive Production

In the preliminary phase of this investigation, we noted the presence of internal transfers and transfers to related firms by the domestic industry and determined to seek further information on those transfers to ascertain whether the statutory captive production provision was applicable.⁴⁷

Petitioner ABMA argues that all criteria of the captive production provision are met and the Commission should focus its analysis on the merchant market; or, in the alternative, the Commission should consider the significant volume of internal transfers as a relevant condition of competition.⁴⁸ Respondents argue that the provision does not apply because neither the threshold nor the second statutory criterion is satisfied.⁴⁹

⁴⁷ Preliminary Determination, USITC Pub. 3504 at 9 n.45. The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), which was added to the statute by the Uruguay Round Agreements Act (URAA), provides:

(iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that –

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

The Statement of Administrative Action (SAA) issued in conjunction with the URAA indicates that where a domestic like product is transferred internally for the production of another article coming within the definition of the domestic like product, such transfers do not constitute internal transfers for the production of a “downstream article” for purposes of the captive production provision. SAA, H.R. Rep. 103-316, vol. I at 853.

⁴⁸ To support its claim, petitioner ABMA argues that the threshold provision is met because internal transfers ***; the first criterion is met because ***; the second criterion is met because ***; and the third statutory criterion is met because the record contains no evidence that ***. ABMA Posthearing Brief at Response to Question 15, pp.2-4.

Petitioner ABMA argues that the Commission should “***.” ABMA Posthearing Brief at Response to Question 15, p.4. Even if we were to find that the captive production provision is met, we would not “exclude” any captive production from our analysis. The captive production provision directs the Commission to “focus primarily” on the merchant market in determining market share and the factors affecting financial performance when all statutory criteria of the provision are met, but does not provide grounds for excluding any producer or domestic production from the Commission’s overall analysis. 19 U.S.C. § 1677(7)(C)(iv). See also SAA at 852-53 (indicating that the captive production provision of the statute added by the URAA required separate consideration of captive and merchant operations for certain statutory factors in certain circumstances, rather than indicating that the Commission is to “exclude” captively consumed articles from its consideration).

⁴⁹ According to respondents, ***, makes substantial internal transfers, and respondents calculate that those internal transfers account for only *** percent of total U.S. production. Respondents further note that ball bearings account for only *** percent of the total cost of the final downstream product, and thus the second statutory criterion

(continued...)

We find that the requirements for applying the captive production provision are not satisfied. When measured by value, combined internal transfers and transfers to related parties of complete ball bearings accounted for *** percent of all shipments of the domestic like product in 2002.⁵⁰ For purposes of our analysis here, we assume, *arguendo*, that this percentage amounts to internal transfers of “significant production” of the domestic like product within the meaning of the threshold criterion for applying the captive production provision. We do not, however, decide the issue.⁵¹

Record evidence indicates that ball bearings account for no more than *** percent of the raw material cost of the downstream product.⁵² The second statutory criterion requires that the domestic like product be “the predominant material input” into the downstream product, and we do not find that a raw material that accounts for *** of the raw material cost can be described as “the predominant material input.”⁵³ The second statutory criterion is not met, and therefore we find that the captive production provision is not applicable.⁵⁴ We do, however, consider the presence of internal transfers and transfers to related parties for downstream production as a condition of competition.⁵⁵

2. Data Issues

In the course of this investigation, we gathered data on complete ball bearings, ball bearing balls, and ball bearing parts other than balls. Information on each category was gathered by both value and quantity.⁵⁶ We invited argument from the parties regarding which data provided the most reliable measure of ball bearing consumption in the U.S. market. Petitioner ABMA argues that, although the

⁴⁹ (...continued)
is not met. Respondents’ Posthearing Brief at Response to Question No. 2, p.2.

⁵⁰ CR at II-4, PR at II-3. Measured by quantity, combined internal transfers and transfers to related parties of complete ball bearings accounted for only *** percent of all domestic shipments, including complete ball bearings, ball bearing balls, and other ball bearing parts, over the course of the POI. Calculated from CR/PR at Tables III-5-III-7.

We rely primarily on value-based measures of volume. For a more complete discussion of this issue, please refer to section III.A.2. *infra*.

⁵¹ Commissioner Miller finds that the threshold criterion is not satisfied, but that, even if it were, the second and third criteria likely are not met for the reasons stated by the majority, and therefore the provision does not apply.

⁵² *** Producer Questionnaire at II-28.

⁵³ Petitioner ABMA argues that the second criterion is satisfied because “***. ABMA Posthearing Brief at Response to Question 15, p.3. Regardless of whether other inputs account for a greater share of raw material costs, or the “role” of ball bearings in the downstream products, the fact that ball bearings account for such a small share of raw material costs indicates that the second criterion is not satisfied.

⁵⁴ The evidence on the record also suggests that the third statutory criterion is not met. Over *** percent of all captive consumption of ball bearings was dedicated to the production of ***. The *** sector is the single largest consumer of domestically produced bearings, accounting for at least *** percent of shipments of domestically produced ball bearings by responding producers in 2002. CR/PR at Table III-14. The *** sector probably accounts for a *** share of shipments of domestically produced ball bearings, as Table III-14 does not include shipments to the open market by ***. *** Producer Questionnaire at II-25 and IV-C. To the extent that ball bearings sold in the merchant market are used in significant part to make ***, this would indicate an overlap between downstream products produced through captive consumption and downstream products produced from purchases on the merchant market such that we would not conclude that the product sold on the merchant market “is not generally used” in the production of downstream articles made from the captively consumed product.

⁵⁵ See, e.g., Nonfrozen Concentrated Apple Juice from China, Inv. No. 731-TA-841 (Final), USITC Pub. 3303 (May 2000) at 10; Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico, Invs. Nos. 731-TA-794-796 (Final), USITC Pub. 3190 (May 1999) at 14.

⁵⁶ See, e.g., CR/PR at Tables III-5-III-7.

Commission has focused on value measures in prior investigations, it should not do so here, because relying on value measures would factor dumping into the consumption calculations.⁵⁷ Domestic producer Timken argues that the availability of separate data sets on complete ball bearings, ball bearing balls, and other ball bearing parts mitigates concerns about relying on quantity measures.⁵⁸ Respondents argue that the Commission has always measured apparent domestic consumption and market share of ball bearings in terms of value and should do so again here.⁵⁹ Respondents also argue that the Commission must consider data not only on complete ball bearings, but also on ball bearing balls and parts other than balls.⁶⁰

We have considered the arguments of the parties, our past practices, and the data on the record in this investigation. We determine to rely primarily on value measures for apparent consumption, domestic shipments, and subject imports, as we have in prior ball bearing investigations, and for the same reasons.⁶¹ We are mindful of the limitations presented by using value measures rather than quantity measures, such as the difficulty in determining whether changes in value totals are caused by changes in product mix or changes in price. Nonetheless, we again rely on value-based indicators as the best measure for a continuum product that includes a vast and disparate grouping of items differing in size, configuration, application, and precision.⁶² Moreover, this is not the first investigation concerning ball bearings where subject imports originate from a low-cost producer.⁶³ We have considered quantity data where appropriate.

We also have been faced with the difficulty of choosing between subject import data gleaned from questionnaires and subject import data from official Commerce statistics. Questionnaire data conform to the scope of the investigation, but coverage is limited and apparently represents approximately

⁵⁷ ABMA Posthearing Brief at Response to Question 10, p.1-2.

⁵⁸ Timken Posthearing Brief at Okun-16.

⁵⁹ Respondents' Prehearing Brief at 22.

⁶⁰ Respondents' Posthearing Brief at Response to Question 1, p.3.

⁶¹ Preliminary Determination, USITC Pub. 3504 at 11; 2000 Review, USITC Pub. 3309, Vol. I at 39; 1991 Investigation, USITC Pub. 2374 at 19-20; 1989 Investigation, USITC Pub. 2185 at 67, 69, 71; Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers, from Hungary, the People's Republic of China, and Romania, Inv. Nos. 731-TA-341, 344-345 (Final), USITC Pub. 1983 (June 1987) at 16.

The Commission's practice of using value, rather than quantity, measures has been approved by the Court of International Trade. In the 1991 investigation of ball bearings, the Commission used a value measure in evaluating import volume for the purpose of its cumulation analysis. Torrington Co. v. United States, 790 F. Supp. at 1172. The CIT approved this use, noting that the statute did not expressly require the Commission to evaluate volume in terms of quantity. The court further noted that

[t]he record provides the construction of aggregate data regarding the quantity of imports would have been impractical due to variations in product sizes and weight per unit between complete bearings and parts. [citation omitted] In addition, the Commission has in other determinations used value-based measurements to ascertain import volumes of bearings products. [citation omitted]. Plaintiff's argument that the Commission must analyze the volume of imports in terms of quantity could lead to absurd results...

Id. at 1173.

⁶² For example, it would present a distorted picture of the market to consider a commodity bearing costing less than one dollar as equivalent to a precision bearing costing hundreds or even thousands of dollars.

⁶³ See, e.g., 2000 Review, USITC Pub. 3309; 1991 Investigation, USITC Pub. 2374; 1989 Investigation, USITC Pub. 2185.

one-half of subject imports.⁶⁴ Official import statistics offer broader coverage, but official import statistics include nonsubject green parts, and complete and accurate adjustments cannot be made to the official import statistics to make them conform to the scope.⁶⁵ All parties seem to agree that official import statistics are the more reliable measure of subject and nonsubject imports but note that those statistics include green parts that are excluded from the scope.⁶⁶ In light of these difficulties, we have considered both sets of data, but we rely primarily on official import statistics. We are mindful that the official import statistics overstate actual imports of the subject merchandise.

Additionally, data obtained from domestic producers on ball bearing balls and other ball bearing parts represent a relatively small number of producers and show unexplained, dramatic shifts in production levels.⁶⁷ While we have considered such data, we have given more weight to aggregate figures, which include complete ball bearings, ball bearing balls, and other ball bearing parts, particularly because financial information for the domestic industry was provided only on that basis.⁶⁸ When data are available for both the aggregate and for complete ball bearings (for which responding producers provided more complete data), we consider both.

3. Other Conditions of Competition

a. Demand

Demand for ball bearings depends on demand for the products that use ball bearings.⁶⁹ Ball bearings are used in a vast range of products and industries including automotive, construction, agriculture, aerospace, steel, paper and natural resource industries, and conveyors and materials handling.⁷⁰ Demand for these products tends to follow general economic conditions.⁷¹

Apparent domestic consumption of ball bearings, including complete ball bearings, ball bearing balls, and other ball bearing parts, was at its highest level in 2000, the first year of the POI, at \$3.04 billion.⁷² Apparent domestic consumption declined between 2000 and 2001, with total apparent consumption contracting by 10.2 percent to \$2.731 billion.⁷³ Apparent domestic consumption in 2002 was \$2.735 billion, essentially unchanged from 2001.⁷⁴ Apparent domestic consumption of complete ball

⁶⁴ Compare CR/PR at Tables C-1 and C-1-A.

⁶⁵ The Commission staff attempted to gather information on the importation of green parts. See note 108.

⁶⁶ ABMA Prehearing Brief at 33; ABMA Posthearing Brief at Response to Question 10, p.1; Respondents' Prehearing Brief at 23.

⁶⁷ Only *** responding producers provided production data for ball bearing balls and *** provided production data for other ball bearing parts. The decline in ball bearing ball production was *** and *** with any declines reported in production of other ball bearing parts or complete ball bearings, or increases in imported ball bearing balls. CR/PR at Tables III-5-III-7 and IV-7.

⁶⁸ Commission staff was advised that domestic producers could not provide separate financial data for complete ball bearings, ball bearing balls, and other ball bearing parts. Timken Comments on Draft Questionnaires, Oct. 25, 2002, p.2-3.

⁶⁹ CR at II-11, PR at II-4.

⁷⁰ CR at II-11, PR at II-4.

⁷¹ CR at II-11, PR at II-4.

⁷² CR/PR at Table C-4-A.

⁷³ CR/PR at Table C-4-A.

⁷⁴ CR/PR at Table C-4-A. If questionnaire data for subject imports are used in place of official import statistics, the trends are unchanged, with apparent domestic consumption at its highest level in 2000 at \$2.70 billion, sliding by
(continued...)

bearings followed a similar pattern, starting in 2000 at \$2.70 billion, dropping by 9.8 percent in 2001 to \$2.43 billion, and then rising by 0.7 percent in 2002 to \$2.45 billion.⁷⁵

b. Supply

Domestic producers accounted for approximately two-thirds of apparent domestic consumption throughout the POI.⁷⁶ Subject imports accounted for between *** percent and *** percent of apparent domestic consumption of complete ball bearings, ball bearing balls, and other ball bearing parts as measured by value over the POI.⁷⁷ Nonsubject imports, including nonsubject imports from China, accounted for the remainder.

The domestic industry producing ball bearings consists of a large number of firms, with no single firm accounting for a dominant share of the market. In 2002, *** was the leading producer as measured by value of shipments, and its share of reported shipments was *** percent.⁷⁸ Most domestic producers are multinational corporations with production facilities in many locations.⁷⁹ Ball bearing production is capital-intensive.⁸⁰

Domestic shipments account for the large majority of all shipments by domestic producers. In 2002, domestic shipments accounted for 92.1 percent of complete ball bearing shipments, *** percent of ball bearing ball shipments, and *** percent of other ball bearing parts shipments.⁸¹ In 2002, domestic producers exported 7.9 percent of their complete ball bearings, *** percent of their ball bearing ball production, and *** percent of their other ball bearing parts shipments.⁸² Internal transfers and transfers

⁷⁴ (...continued)

8.8 percent in 2001 to \$2.46 billion, and then rising 1.0 percent to \$2.48 billion in 2002. CR/PR at Table C-4.

Total open market shipments of all ball bearings in 2000 were \$*** billion. Calculated from CR/PR at Tables III-5 and C-4-A. In 2002 total open market shipments of all ball bearings were \$*** billion, down *** percent from 2000. Id.

⁷⁵ CR/PR at Table C-1-A. Measured by quantity, demand for complete ball bearings peaked in 2000 at 1.11 billion units and declined each year thereafter, although the decline between 2001 and 2002 was small. Id. Apparent domestic consumption of complete ball bearings by quantity in 2002 was 965 million units, down 13.0 percent from 2000. Id. Substituting import questionnaire data for official import statistics does not change trends in apparent consumption as measured either by value or by quantity. CR/PR at Table C-1-A.

Total open market shipments of complete ball bearings were \$*** billion in 2000. Calculated from CR/PR at Tables III-5 and C-1-A. In 2002 total open market shipments of complete ball bearings were \$*** billion, down *** percent from 2000. Id. Measured by quantity, total open market shipments of complete ball bearings declined by *** percent between 2000 and 2002. Id.

⁷⁶ CR/PR at Table C-4-A.

⁷⁷ CR/PR at Table C-4-A.

⁷⁸ CR/PR at Table III-1. ***. CR at II-4, PR at II-3; *** at II-25.

⁷⁹ CR/PR at Table III-1.

⁸⁰ Timken Prehearing Brief at 5-6; Timken Posthearing Brief at Okun-19.

⁸¹ CR/PR at Tables III-2-III-4. Measured by quantity, domestic shipments in 2002 accounted for 90.6 percent of complete ball bearings, *** percent of ball bearing balls, and *** percent of other ball bearing parts. Id.

⁸² CR/PR at Tables III-2-III-4. Measured by quantity, the domestic industry exported 9.4 percent of its complete ball bearings, *** percent of its ball bearing ball production, and *** percent of its other ball bearing parts production. Id.

to related parties for production of downstream products accounted for *** percent of the value of all shipments by domestic producers in 2002.⁸³

During the POI, domestic capacity for producing complete ball bearings increased by 1.3 percent, from 631.9 million bearings in 2000 to 640.1 million bearings in 2002.⁸⁴ As production fell, capacity utilization rates also fell.⁸⁵ Domestic capacity for producing ball bearing balls declined dramatically during the POI, slipping from *** billion in 2000 to *** billion in 2002, a decline of *** percent.⁸⁶ Domestic capacity for producing other ball bearing parts was essentially unchanged over the POI and stood at *** billion parts in 2002.⁸⁷

c. Distribution and Pricing

As noted above, ball bearings are consumed by a wide variety of industries. The vast majority of domestically produced ball bearings are sold directly to end users, with such direct sales accounting for 98.3 percent of total shipments in 2002.⁸⁸ Similarly, virtually all subject imports from China also are sold directly to end users, with such direct sales accounting for 99.1 percent of total shipments in 2002.⁸⁹

Most purchasers that responded to the Commission's questionnaire reported that they rarely or infrequently changed suppliers; fewer than half of the responding purchasers reported changing suppliers between 2000 and 2002.⁹⁰ Price is a moderately important factor in purchasing decisions for ball bearings. Only nine purchasers ranked it as the most important factor considered when selecting a purchaser, but 21 ranked it second and 18 ranked it third; quality was ranked as the most important factor by 31 respondents.⁹¹ Of the 22 purchasers that changed suppliers, 11 mentioned price as a reason for their change; other cited reasons were poor delivery and quality or performance problems.⁹²

Prices for both domestically produced ball bearings and subject imports generally are determined by transaction-by-transaction negotiations and by contracts.⁹³ Sales of domestically produced ball bearings to large-volume original equipment manufacturer (OEM) purchasers generally are determined through negotiated contracts, while smaller-volume sales to aftermarket distributors are more likely to be determined by price lists.⁹⁴ Neither domestic producers nor subject importers typically have set discount policies, and discounts also are negotiated.⁹⁵ Price de-escalation clauses, by which prices are reduced by

⁸³ CR at II-4, PR at II-3. Measured by quantity, combined internal transfers and transfers to related parties of complete ball bearings accounted for only *** percent of all domestic shipments. Calculated from CR/PR at Tables III-5-III-7.

⁸⁴ CR/PR at Table C-1-A.

⁸⁵ CR/PR at Table C-1-A.

⁸⁶ CR/PR at Table C-2.

⁸⁷ CR/PR at Table C-3.

⁸⁸ CR at II-1, PR at II-1.

⁸⁹ CR at II-1, PR at II-1.

⁹⁰ CR at II-14, PR at II-6.

⁹¹ CR/PR at Table II-2.

⁹² CR at II-14, PR at II-6.

⁹³ CR at V-2, PR at V-1.

⁹⁴ CR at V-2, PR at V-1.

⁹⁵ CR at V-2, PR at V-1.

a pre-determined percentage from year-to-year in multi-year contracts, have become standard in some large-volume contracts, especially within the automotive sector.⁹⁶

d. Market Segmentation

Both petitioner and respondents directed significant argument to the issue of market segmentation. Respondents maintain that the domestic market for ball bearings is segmented, with subject imports and the domestic like product occupying different niches based on the size, style, and quality of their respective bearings. Petitioners argue that the market is not segmented, and subject imports and the domestic like product compete for sales in most bearing sizes and in most industrial sectors.

The record indicates the existence of some degree of substitutability between the domestic like product and subject imports. Sixteen of 18 responding domestic producers reported that the domestic like product and subject imports from China are used interchangeably, although 11 of 19 reported significant differences in product characteristics or sales conditions.⁹⁷ Most responding purchasers reported that the domestic like product and subject imports were used in the same applications.⁹⁸ Responding producers, importers, and purchasers all noted some quality or other differences between subject imports and the domestic like product, each generally finding the domestic product superior in some aspects.⁹⁹

The record indicates that competitive overlap exists between the domestic like product and subject imports. Questionnaire data indicate that both the domestic like product and subject imports are concentrated in bearings with ABEC ratings of 1 or lower.¹⁰⁰ Contrary to respondents' arguments, subject imports during the POI included ball bearings with ABEC 3 ratings and ball bearings with larger outer diameter sizes.¹⁰¹ The domestic like product and subject imports are both sold to purchasers in a wide variety of industries, though the concentration of sales varies.¹⁰² *** of domestically produced complete ball bearings were consumed by the *** industries, while the *** sector accounted for *** percent of subject imports and *** subject imports were sold to the ***.¹⁰³ More than *** of the subject merchandise was reported as being sold to purchasers in the *** sectors, while those *** sectors accounted for *** percent of reported shipments of the domestic like product.¹⁰⁴

⁹⁶ Tr. at 131, 133 (Mr. Pedemonti); ABMA Posthearing Brief at Response to Question 7, p.1.

⁹⁷ CR at II-13, PR at II-6.

⁹⁸ CR at II-17, PR at II-7.

⁹⁹ CR at II-13-II-14, II-17, and Table II-3; PR at II-6-II-7 and Table II-3.

¹⁰⁰ CR/PR at Tables III-12 and IV-14.

¹⁰¹ CR/PR at Table IV-14. Imports of those sizes and ABEC ratings accounted for a relatively modest share of subject imports. *Id.*

¹⁰² CR/PR at Tables III-14 and IV-16.

¹⁰³ CR/PR at Tables III-14 and IV-16. The *** sector probably accounts for a *** share of shipments of domestically produced ball bearings, as Table III-14 does not include shipments to the open market by ***. *** Producer Questionnaire at II-25 and IV-C.

¹⁰⁴ CR/PR at Tables III-14 and IV-16.

B. Volume of Subject Imports

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.”¹⁰⁵

As noted above, apparent domestic consumption declined during the POI, with the value of complete ball bearings, ball bearing balls, and other ball bearing parts dropping by \$305.4 million, or 10 percent, between 2000 and 2002.¹⁰⁶ This decline was split almost evenly between nonsubject imports, which declined by \$153.6 million, and the domestic like product, which declined by \$163.1 million.¹⁰⁷

As overall domestic consumption, domestic like product shipments, and nonsubject imports all fell, the volume of subject imports increased over the POI.¹⁰⁸ The value of subject imports of complete ball bearings, ball bearing balls, and other ball bearing parts increased by *** percent between 2000 and 2002.¹⁰⁹ The market share held by subject imports as measured by value increased from *** percent in 2000 to *** percent in 2002.¹¹⁰ The value of subject imports of complete ball bearings increased by *** percent between 2000 and 2002, and the market share held by subject imports of complete ball bearings increased from *** percent in 2000 to *** percent in 2002.¹¹¹

Shipments of domestically produced and nonsubject complete ball bearings declined by 8.0 and *** percent respectively between 2000 and 2002.¹¹² However, the market share held by the domestic like

¹⁰⁵ 19 U.S.C. § 1677(7)(C)(i).

¹⁰⁶ CR/PR at Table C-4-A.

¹⁰⁷ CR/PR at Table C-4-A.

¹⁰⁸ As discussed in section III.A.2. supra, the official import statistics include nonsubject green parts and thus overstate subject imports. During the course of the investigation, the Commission staff attempted to gather information regarding the importation and purchase of nonsubject green parts. *** provided such information, and the data was in the form of purchases, not imports. Nonetheless, the data may be used to make a rough adjustment to the official import statistics. After such an adjustment, subject imports as measured by value increased by *** percent between 2000 and 2002, and their market share rose from *** percent to *** percent. The market share held by the domestic industry rose from *** percent in 2000 to *** percent in 2002. Calculated from CR/PR at Tables III-11 and C-4-A.

¹⁰⁹ CR/PR at Table C-4-A.

¹¹⁰ CR/PR at Table C-4-A. The market share of open market shipments held by subject imports as measured by value increased from *** percent in 2000 to *** percent in 2002. Id.

¹¹¹ CR/PR at Table C-1-A. Measured by quantity, subject imports increased by *** percent between 2000 and 2002, and market share rose from *** percent to *** percent. Id. Domestic market share fell from 35.9 percent to 32.9 percent, while nonsubject import share fell from *** percent to *** percent. Id.

The market share of open market shipments of complete ball bearings held by subject imports as measured by value increased from *** percent in 2000 to *** percent in 2002. Calculated from CR/PR at Tables III-5 and C-1-A. Measured by quantity, subject imports increased from *** percent of open market shipments of complete ball bearings in 2000 to *** percent in 2002. Id.

¹¹² CR/PR at Table C-4-A. Open market shipments of complete ball bearings by domestic producers declined by *** percent between 2000 and 2002 as measured by value. Calculated from CR/PR at Tables III-5 and C-1-A.

product increased, from 68.6 percent in 2000 to 70.4 percent in 2002.¹¹³ Thus, any market share gained by subject imports came at the expense of nonsubject imports rather than the domestic like product.¹¹⁴

While the volume of subject imports increased over the POI at a time when apparent domestic consumption slowed, the increases were modest, as was the absolute volume of subject imports in the U.S. market throughout the POI. At the end of the POI subject imports from China accounted for only *** percent of apparent domestic consumption of complete ball bearings, ball bearing balls, and other ball bearing parts, and that market share had increased by less than *** over the POI.¹¹⁵ The domestic like product accounted for over two-thirds of apparent domestic consumption, and this share increased over the POI.¹¹⁶ As noted, the small amount of market share gained by subject imports came at the expense of nonsubject imports.¹¹⁷ We find that the volume and the increase in volume of subject imports are not significant either in absolute or relative terms.¹¹⁸

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.¹¹⁹

¹¹³ CR/PR at Table C-1-A. The market share of open market shipments of complete ball bearings held by domestic shipments as measured by value increased from *** percent in 2000 to *** percent in 2002. Calculated from CR/PR at Tables III-5 and C-1-A. Measured by quantity, the market share held by domestic shipments fell from *** percent to *** percent. Id.

The market share of open market shipments of complete ball bearings as measured by value held by nonsubject imports declined from *** percent in 2000 to *** percent in 2002. Calculated from CR/PR at Tables III-5 and C-1-A. Measured by quantity, the market share of open market shipments held by nonsubject imports declined from *** percent in 2000 to *** percent in 2002. Id.

¹¹⁴ CR/PR at Table C-1-A. When measured by quantity, the gain in market share by subject imports was more notable, but still came both from the domestic like product and nonsubject imports, consistent with the declines in apparent domestic consumption discussed above. Id. The increase in quantity between 2000 and 2002, *** million bearings, is equivalent to *** percent of apparent domestic consumption in 2002. Id.

¹¹⁵ CR/PR at Table C-4-A. The increase in the value of total subject imports from China over the POI is equivalent to only *** percent of the loss in value of domestic shipments over the same period. Id.

¹¹⁶ CR/PR at Table C-4-A.

¹¹⁷ The record indicates that subject imports might have been more likely to take market share from other imports rather than from the domestic like product. Thirty-two of 35 responding purchasers reported that other imports were the most competitive alternative to subject imports. CR at II-16, PR at II-6.

¹¹⁸ Vice Chairman Hillman is willing to place some weight on quantity data. She finds that the volume of subject imports from China, when viewed in isolation, could be viewed as significant, particularly when examined with substantial weight on the quantity figures while still taking into account the value figures. However, given the lack of significant price effects as discussed below, the relatively modest decline in domestic market share measured by quantity, and the increase in domestic market share when measured by value, she concludes that, in this context, the volume of subject imports is not significant.

¹¹⁹ 19 U.S.C. § 1677(7)(C)(ii).

The Commission collected data on 15 products, including ball bearing balls, and collected data by ABEC rating and by channel of distribution.¹²⁰ The products selected were mostly those suggested by the petitioner as products where the most significant competition between the domestic like product and the subject imports occurred.¹²¹ For many product/distribution combinations, however, pricing data was submitted for only the domestic like product or subject imports, but not both.¹²² Product-specific data covered a relatively small share of total shipment values for the domestic like product,¹²³ and product-specific data for the domestic like product was ***.¹²⁴ The declines shown in the product-specific quantity data accounted for a disproportionately large share of the quantity lost by domestic producers over the POI.¹²⁵

Subject imports consistently undersold the domestic like product, typically by large margins.¹²⁶ However, a closer examination of the product-specific pricing data indicates that, notwithstanding the magnitude of the underselling, there was no consistent correlation between subject import prices and domestic like product prices. For several products, prices for the subject imports and the domestic like product did not move in the same direction.¹²⁷ This is also true on an aggregated basis. According to aggregate data presented by petitioner ABMA for eight ball bearing products sold to end users for which data on U.S. and Chinese products were obtained, domestic prices for complete ball bearings, when weighted by volume, actually rose between 2000 and 2001, as subject import prices dropped, and were *** in 2002 as in 2000.¹²⁸ Aggregate prices for subject imports of the same eight products fell by *** percent between 2000 and 2002.¹²⁹ This apparent lack of correlation is confirmed by the pricing data for

¹²⁰ CR at V-3-V-4, PR at V-2-V-3.

¹²¹ ABMA Comments on Draft Questionnaires, Oct. 25, 2002, at 5-6; Timken Comments on Draft Questionnaires, Oct. 25, 2002, at 5.

¹²² See CR/PR at Tables V-2 (products 1 and 2 to distributors, subject import data only); Table V-3 (product 2 to end users, subject import data only); V-5 (products 3 and 5 to distributors, subject import data only); V-10 (product 8 to distributors, domestic like product data only); V-13 (product 10 to end users and distributors, domestic like product data only); and V-18 (products 13, 14, and 15 to end users, domestic like product data only). No importers reported product-specific pricing data for subject imports of ball bearing balls. CR/PR at Tables V-18 and C-3.

¹²³ Pricing data reported by domestic producers accounted for 3.4 percent of the value of domestic producers' commercial shipments, while the pricing data reported by importers accounted for 13.3 percent of the value of subject imports. CR at V-4, PR at V-3.

¹²⁴ For sales to end users of products 1-12 (complete ball bearings), *** accounted for *** percent of the sales data by quantity and *** percent by value. For sales to distributors of products 1-12, *** accounted for *** percent of the sales data by quantity and *** percent by value. Calculated from *** Questionnaire Responses and CR/PR at Tables V-1-V-17.

¹²⁵ Domestic producers lost sales of *** million units on products 1, 3, 5, 7, 8, 9, 11, and 12 between 2000 and 2002. ABMA Posthearing Brief at Exh. 3. Total shipments of domestically produced complete ball bearings fell by 81.069 million units between 2000 and 2002. Calculated from CR/PR at Table C-1-A. Thus, the reported loss in sales volume on products 1-12 is equivalent to *** percent of the total loss in complete ball bearing shipments, even though those products accounted for *** percent of all shipments of domestically produced ball bearings over the POI. ABMA Posthearing Brief at Exh. 3 and CR/PR at Table C-1-A.

¹²⁶ CR/PR at Table V-20.

¹²⁷ CR/PR at Tables V-1 (product 1 to end users); V-9 (product 8 to end users); V-8 (product 7 to distributors); and V-17 (product 12 to distributors).

¹²⁸ ABMA Final Comments at Exh. 3. ABMA estimates that the weighted-average price for complete ball bearings in 2002 was only *** percent lower than in 2000. Id.

¹²⁹ ABMA Final Comments at Exh. 3.

products for which no sales of subject imports were reported. Domestic prices for sales of products 13, 14, and 15 all declined although no subject import sales were reported during the POI.¹³⁰

Moreover, there is no clear nexus between underselling and loss of domestic sales. Domestic sales quantities fell similarly both for products where subject imports undersold the domestic like product and for products for which there were no reported sales of subject imports.¹³¹ These considerations serve to reduce the significance of the observed underselling. Additionally, the confirmed allegations of domestic sales and revenues lost to subject imports over the POI are insignificant, amounting to less than *** of the value of domestic producers' commercial shipments over the period.¹³²

The record also does not support a conclusion that subject imports suppressed or depressed prices for the domestic like product to a significant degree. There is no consistent correlation between the presence of subject imports and the erosion of prices for the domestic like product. For several products where there was competition from the subject imports, prices for the domestic like product actually rose during the POI.¹³³ We are mindful of petitioner's argument that such increases in prices were caused by the loss of volume discounts as large-volume sales were lost to subject imports, leaving higher prices for smaller sales volumes.¹³⁴ However, there were few product categories in which subject imports gained significant sales, indicating that these sales were not being lost to subject imports on price competition. For example, for product 3 to end users,¹³⁵ product 5 to end users,¹³⁶ product 7 to distributors,¹³⁷ and product 11 to end users,¹³⁸ sales volume for both the domestic like product and subject imports fell over the POI. The price reported for end-user purchases of domestically produced product 1 rose by *** percent between the first quarter of 2000 and the fourth quarter of 2002, and sales fell by *** percent, or by *** million units. Sales of the subject imports rose by only *** units.¹³⁹

We acknowledge that there were some products as to which there were declines in prices for the domestic like product coincident with underselling by subject imports. These include sales to end users for products 3, 5, 7, 9, 11, and 12. As previously discussed, however, for three of these products

¹³⁰ CR/PR at Tables V-10, V-13, and V-18. We have examined certain price data published by the Bureau of Labor Statistics. These data show that, from 2000 to 2002: (1) prices for unmounted ball bearings fluctuated but ultimately remained at a similar level; (2) prices for radial ball bearings fell approximately 10 percent; and (3) prices for other types of antifriction bearings generally rose by varying amounts. CR at Figures V-37 and V-38. The ABMA and Timken argue that the fact that only radial ball bearing prices fell, and that radial bearings account for *** subject imports from China, indicates that subject imports depressed domestic prices. ABMA Posthearing Brief at Response to Question 3, p.7; Timken Final Comments at 7. We do not reach such a conclusion in the absence of significant information on market conditions pertaining to the other types of antifriction bearings. Moreover, the fact that domestic prices for certain pricing products (e.g., products 13, 14, 15) fell despite no reported subject import sales in those categories would tend to support the opposite conclusion; namely, that factors other than subject imports were affecting prices.

¹³¹ CR/PR at Tables V-10, V-13, and V-18.

¹³² CR at V-45-V-56 and Tables V-21 and V-22; PR at V-21 and Tables V-21 and V-22. Additional allegations regarding potential lost sales and lost revenues were submitted by Timken on March 24, 2003. We have not relied on those allegations in reaching our determination, as they involved sales or revenues not yet lost at the time the allegations were presented, involved losses that would, in any case, have occurred outside the POI, and were submitted too late to be investigated.

¹³³ See CR/PR at Tables V-1 and V-15.

¹³⁴ ABMA Prehearing Brief at 41.

¹³⁵ CR/PR at Table V-4.

¹³⁶ CR/PR at Table V-6.

¹³⁷ CR/PR at Table V-8.

¹³⁸ CR/PR at Table V-14.

¹³⁹ Calculated from CR/PR at Table V-1.

(products 3, 5, and 11), the subject imports lost sales as well. Moreover, any revenue losses to the domestic industry indicated by the product-specific data were modest in light of the size of the ball bearing market. Had the domestic industry maintained the same price and the same market share in 2002 as it had commanded in 2000 for products 1, 3, 5, 7, 8, 9, 11, and 12 sold to end users, the increase in revenue would have been less than \$*** million.¹⁴⁰ The domestic industry's commercial sales in 2002 were \$1.734 billion.¹⁴¹

The declines in prices and volume shown by the pricing data occurred when other market conditions would have resulted in price declines as well. Apparent domestic consumption contracted throughout the POI, and that loss of demand would have exerted a downward effect on prices. The effect of price-de-escalation clauses in domestic producers' high-volume contracts is difficult to estimate, but may also have been a source of downward pressure on prices, especially for high-volume products sold to end users. In light of these other factors, the lack of a correlation between subject import competition and domestic price movements, and the small volumes of subject imports at issue, we do not find that subject imports suppressed or depressed prices for the domestic like product to a significant degree. Thus, notwithstanding the underselling observed, we conclude that subject imports did not have significant price effects.

D. Impact of the Subject Imports

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.¹⁴² 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."^{143 144}

The domestic industry remained profitable throughout the POI.¹⁴⁵ Operating income as a percentage of net sales was *** percent in 2002, although it was down from *** percent in 2000.^{146 147}

¹⁴⁰ These eight products were singled out by ABMA as illustrating the price effects of subject imports. ABMA Final Comments at Exh. 3.

¹⁴¹ CR/PR at Table VI-1. To obtain the 2000 market share, the domestic industry would have had to produce *** million additional bearings. Thus, the additional revenue would not have translated into an equivalent increase in operating profits once the cost of producing the additional bearings was taken into account.

¹⁴² 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.).

¹⁴³ 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.

¹⁴⁴ 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 determinations, Commerce found the following dumping margins: 7.22 percent for Wanxiang Group Corp.; 8.33 percent for Xinchang Peer Bearing Co., Ltd; 7.80 percent for all other responding firms; and a PRC-wide rate of 59.30 percent. 68 Fed. Reg. 10685 (Mar. 6, 2003). Commerce issued a final determination of a *de minimis* margin of 0.59 percent for Ningbo Cixing Group Corp. Id.

¹⁴⁵ Separate financial data for open market transactions and captive production were not available.

¹⁴⁶ Our conclusion about the domestic industry as a whole is buttressed by evidence regarding particular firms. Between 2000 and 2002, the domestic industry's operating income declined by \$*** million. CR/PR at Table VI-2.

(continued...)

Some erosion in the position of the domestic industry occurred over the POI. Shipments for all bearings declined, whether measured by value or by quantity, as did net sales.¹⁴⁸ Capacity utilization rates declined.¹⁴⁹ The number of production and related workers declined, as did hours worked and total wages paid, although hourly wages increased.¹⁵⁰ Productivity also fell.¹⁵¹

Not all performance and financial indicators for the U.S. industry declined throughout the POI. The market share held by domestic producers, production capacity for complete ball bearings, and unit values of domestic shipments all increased over the period, as did the value of domestic producers' shipments between 2001 and 2002.¹⁵²

Total capital expenditures fell during the POI, but five of the 20 reporting producers incurred substantial amounts of capital expenditures during each year of the POI.¹⁵³ Expenditures on research and development declined over the POI but were somewhat higher in 2002 than in 2001.¹⁵⁴ Additionally, a significant number of firms, including not only ***, but also ***, answered in the negative when asked if the firm had experienced any actual negative effects on its return on its investment or its growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments, as a result of subject imports.¹⁵⁵

The current decline in the performance of the domestic industry has occurred during a period of reduced demand. Indeed, the drop in apparent domestic consumption, at 10.0 percent, was sharper than the decline in the value of domestic shipments, which declined by only 8.0 percent during the same time

¹⁴⁶ (...continued)

***, alone accounted for *** percent of that decline. CR/PR at Table VI-2. Yet *** compete extensively with subject imports from China. The domestic production of *** is concentrated in ball bearings with *** ABEC ratings and in sales to the ***; these are markets that are essentially closed to subject imports. *** Producer Questionnaire at II-9; CR/PR at Table IV-17; ABMA Posthearing Brief at Response to Question 2, p.10. The domestic production of *** is dedicated to the ***, another sector wherein subject imports have gained little market share; additionally, a significant portion of ***. *** Producer Questionnaire at II-9, II-25, IV-C; CR/PR at Table IV-17. These significant losses in operating income by producers who receive little or no competition from subject imports indicate that the declines were caused by other conditions in the market. See also CR at D-3 and D-5, PR at D-3-D-4.

¹⁴⁷ CR/PR at Table VI-2.

We note that we have based our determination on the state of the domestic industry without taking into account funds disbursed to some members of the domestic industry under the Continued Dumping and Subsidies Offset Act (19 U.S.C. § 1675c) (CDSOA). These funds were not reflected in the financial data reported by the domestic industry. Timken Posthearing Brief at Exhibit 1, Affidavit of ***, p.2. However, we note that ***. Id. We take no position at this time as to whether the exclusion of such funds from the data reported to the Commission was proper.

¹⁴⁸ CR/PR at Table C-4-A.

¹⁴⁹ CR/PR at Tables III-2-III-4. Capacity utilization rates for complete ball bearings fell from 70.9 percent in 2000 to 54.9 percent in 2002; capacity utilization rates for ball bearing balls fell from *** percent in 2000 to *** percent in 2002 despite a *** percent reduction in capacity; and capacity utilization rates for other ball bearing parts fell from *** percent in 2000 to *** percent in 2002, although the 2002 rate was marginally higher than the 2001 rate. Id.

¹⁵⁰ CR/PR at Table III-2-III-4.

¹⁵¹ CR/PR at Table III-2-III-4.

¹⁵² CR/PR at Tables C-1-A and C-4-A.

¹⁵³ CR at VI-6, PR at VI-3.

¹⁵⁴ CR/PR at Table VI-3.

¹⁵⁵ CR at D-3-D-4, PR at D-3.

period.¹⁵⁶ The domestic industry did not lose market share to subject imports, but rather gained market share.¹⁵⁷ The increase in the market share held by subject imports over the POI was less than ***.¹⁵⁸ The total increase in the value of subject imports of complete ball bearings, ball bearing balls, and other ball bearing parts was equivalent to only *** percent of the decline in the total value of domestic shipments during the POI.¹⁵⁹ Subject imports did not have a significant negative effect on the price received for the domestic like product.

We already have found that neither the volume nor the increase in volume of subject imports was significant and that subject imports did not have a significant effect on the price of the domestic like product. In light of those findings, we do not find that subject imports have had a significant adverse impact on the domestic industry producing the domestic like product.

Respondents have argued that subject imports could not be a source of harm to the domestic industry because subject imports and the domestic like product are sold into different, and non-overlapping, segments of the market. As we discussed above, however, the evidence gathered in this investigation does not wholly support that argument, and the evidence on the record supports a conclusion that subject imports and the domestic like product do compete in some sectors for some business.¹⁶⁰ Consequently, we do not base our determination on a finding of significant market segmentation.

Rather, we find that the impact of subject imports on the domestic industry has not been significant in light of the modest increase in volume and lack of significant effects on price. We therefore find that there is no material injury to the domestic injury by reason of the subject imports.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT 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.”¹⁶¹ 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 subject imports would occur unless an order is issued.¹⁶² In making our determination, we consider all statutory threat factors that are relevant to this investigation.¹⁶³

¹⁵⁶ CR/PR at Table C-4-A.

¹⁵⁷ CR/PR at Table C-4-A.

¹⁵⁸ CR/PR at Table C-4-A.

¹⁵⁹ CR/PR at Table C-4-A.

¹⁶⁰ See section III.A.3.d. *supra*.

¹⁶¹ 19 U.S.C. § 1677(7)(F)(ii).

¹⁶² 19 U.S.C. § 1677(7)(F)(ii).

¹⁶³ 19 U.S.C. § 1677(7)(F)(i). These factors include: any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country; a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports; whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on the domestic prices and are likely to increase demand for further imports; inventories of the subject merchandise; the potential for product shifting; and the actual and potential negative effects on the existing development and production efforts of the domestic industry. 19 U.S.C. § 1677(7)(F)(i). Statutory threat factor (I) is inapplicable, as no countervailable subsidies are involved, and statutory threat factor (VII) is inapplicable, as no imports of agricultural products are involved. *Id.*

We already have found that the volume and the increase in the volume of subject imports over the POI were not significant and did not significantly affect the domestic industry. The market share held by subject imports increased by less than *** over the POI, and domestic producers gained market share.¹⁶⁴ The record evidence indicates that an increase in subject import volume significantly larger than the modest increases experienced during the POI is not likely within the imminent future. All subject ball bearing imports, including complete ball bearings, ball bearing balls, and other ball bearing parts, increased by *** percent between 2000 and 2001 and by *** percent between 2001 and 2002.¹⁶⁵ During that time period, subject foreign producers reportedly operated at high rates of capacity utilization and devoted a significant portion of their exports to markets other than the United States.¹⁶⁶ The Chinese producers that responded to our questionnaires likely do not represent the entire Chinese industry producing ball bearings.¹⁶⁷ Unreported capacity presumably existed during the entire POI, but did not lead to a significant volume of subject imports or significant negative price effects. We have no basis to conclude that this situation will change in the imminent future. No party claims that other antifriction bearing capacity in China can be converted to production of the subject imports within the near future.

No party disputes that economic growth within China has been robust in recent years and is likely to continue to be so in the near future. Subject producers in China directed approximately *** percent of their shipments of complete ball bearings to the home market during the POI, along with 65 percent or more of shipments of ball bearing balls.¹⁶⁸ The growing home market is likely to demand at least as large a share of China's domestic production in the imminent future.

The vast majority of responding purchasers did not indicate that they were considering increased purchases of imports from China for contracts that expire in 2003. *** large ball bearing purchasers (***) indicated that they were examining imports from China, along with non-subject imports in two of the three cases, for contracts that expire in 2003.¹⁶⁹ The fact that these companies may increase purchases of subject imports is not a sufficient basis for us to conclude that an increase in subject imports that is significant in the context of the ball bearing market as a whole is imminent.

As discussed above, at their current volume levels, subject imports did not have significant price-depressing or -suppressing effects on the domestic like product during the POI. Because we do not believe that there is a likelihood of substantially increased import volumes, we conclude it is likely that the subject imports will continue not to have significant price effects in the imminent future.

Inventories of complete ball bearings held by producers in China have not grown significantly over the POI, and inventories held by importers in the United States at the end of 2002 were at the lowest level of the POI.¹⁷⁰ Consequently, inventory levels do not support an affirmative threat determination.¹⁷¹

Imports of single-row radial ball bearings from China are subject to antidumping and countervailing duties in Argentina, and a final-phase investigation regarding dumping of ball bearings up to 50 mm in bore diameter from China is underway in India, but these do not appear to be major export markets for ball bearings from China.¹⁷²

¹⁶⁴ CR/PR at Table C-4-A.

¹⁶⁵ CR/PR at Table C-4-A.

¹⁶⁶ CR/PR at Tables VII-1-A (complete ball bearings) and VII-2 (ball bearing parts).

¹⁶⁷ Timken Prehearing Brief at Vol. I, pp.38-43.

¹⁶⁸ CR/PR at Tables VII-1-A (complete ball bearings) and VII-2 (ball bearing parts).

¹⁶⁹ Timken Prehearing Brief, Vol. I at 44-45.

¹⁷⁰ CR/PR at Tables VII-1-A and VII-3.

¹⁷¹ 19 U.S.C. § 1677(7)(F)(i)(V).

¹⁷² CR at VII-11-VII-12, PR at VII-8-VII-9. Neither order or investigation apparently covers the full scope of items subject to this investigation. *Id.*

As we noted above, the domestic industry has remained profitable despite a drop in overall apparent domestic consumption, driven by general economic contraction. We do not find the domestic industry to be vulnerable to threat of material injury by reason of subject imports. The market for ball bearings in the United States remains a large one, and, after two years of economic contraction and increased subject imports, the domestic industry at the end of the POI accounted for a higher share of apparent domestic consumption than it did at the outset of the POI. We find that the domestic industry is not threatened with material injury by reason of subject imports.

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of ball bearings and parts thereof from China that are sold in the United States at less than fair value.