

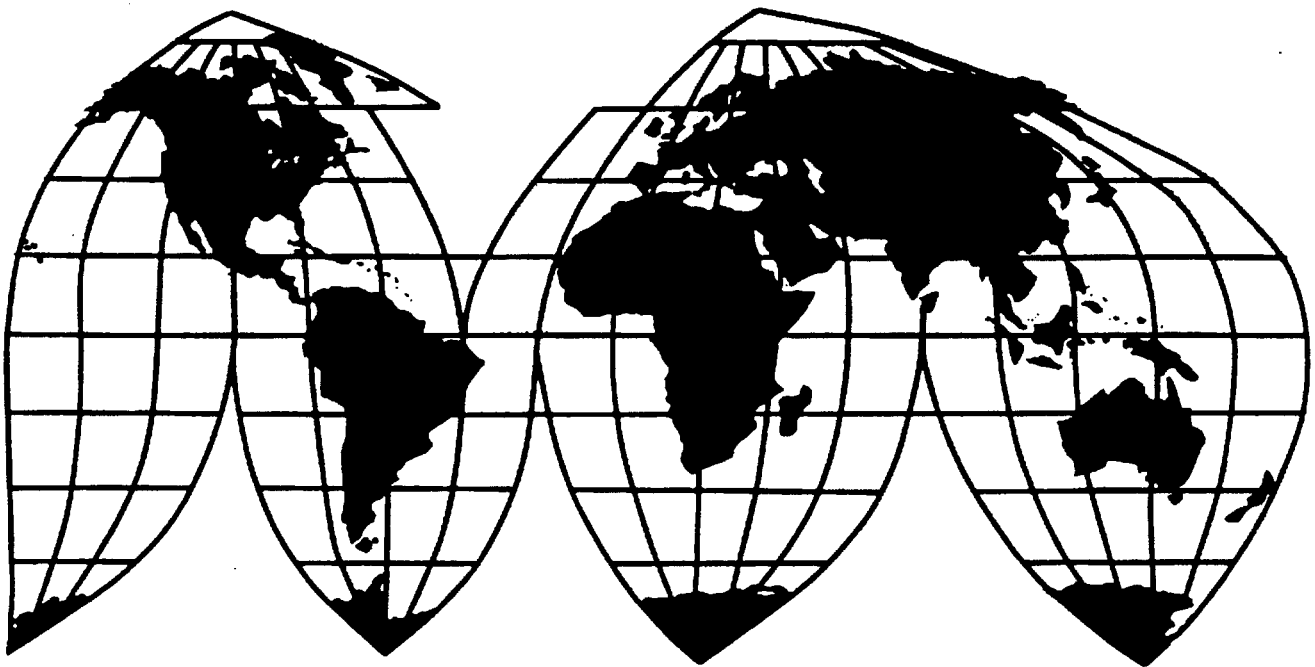
Tapered Roller Bearings From Japan

Investigations Nos. AA1921-143, 731-TA-343 (Review) (Remand)

Publication 3610

July 2003

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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VIEWS OF THE COMMISSION

I. BACKGROUND

By opinion and order dated April 24, 2003,¹ Senior Judge Nicholas Tsoucalas remanded three aspects of the Commission's June 2000 five-year review determination regarding tapered roller bearings ("TRBs") from Japan.² Based on the record in this five-year review remand proceeding as supplemented at the Court's instruction, we determine pursuant to section 751(c) of the Tariff Act of 1930, as amended, that revocation of the antidumping finding and order on TRBs from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time if the finding and order are revoked.³ We continue to apply the legal standards described

¹Timken Co. v. United States, Slip Op. 03-45 (Ct. Int'l Trade) (Ct. No. 00-08-00386). The Commission's five-year review at issue was part of a larger proceeding regarding certain bearings (including TRBs) from multiple countries, for which the public findings were published in June 2000. See Certain Bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom, Invs. Nos. AA1921-143, 731-TA-341, 731-TA-343 to 345, 731-TA-391 to 397 and 731-TA-399 (Review), USITC Pub. 3309 (June 2000). The confidential views of the Commission for the five-year review are referred to as Administrative Record ("AR"), List 2, Doc. 939.

In its appeal, Timken did not challenge the Commission's determination that TRBs are a separate domestic like product, the Commission's definition of the domestic industry as companies producing TRBs in the United States, or its related party analysis, nor did Timken challenge the Commission's decision not to cumulate subject imports from Japan with other subject imports. No party challenged the Commission's affirmative five-year review determination concerning TRBs from China or the Commission's negative five-year review determinations concerning TRBs from Hungary and Romania. The Commission's determinations concerning cylindrical roller bearings ("CRBs") and ball bearings ("BBs") are the subject of other litigation before the U.S. Court of International Trade. See Torrington Co. v. United States, Ct. No. 00-0385 (CRBs); NMB Singapore Ltd. v. United States, Consolidated Ct. No. 00-07-00373 (BBs). The Commission's determinations concerning spherical plain bearings (SPBs) are not the subject of litigation.

²The three aspects remanded are: (1) for investigation and further explanation of Japanese producers' reported capacity information; (2) for further explanation of the Commission's likely volume determination with respect to the domestic industry as a whole; and (3) for further explanation of the Commission's findings concerning the likely impact of subject imports in the context of the appropriate business cycle.

³Commissioner Marcia E. Miller dissenting. Having considered the submissions of the parties in this remand proceeding, Commissioner Miller incorporates her separate and dissenting views from the five-year review. See Separate and Dissenting Views of Commissioner Marcia E. Miller, Certain Bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom, Invs. Nos. AA1921-143, 731-TA-341, 731-TA-343 to 345, 731-TA-391 to 397 and

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in and adopt each of the findings in our five-year review determination concerning TRBs from Japan, including the definition of the domestic like product, the definition of the domestic industry and related party analysis, the non-cumulation of subject imports from Japan with other subject imports, the business cycle and conditions of competition that are distinctive to this industry, the likely volume of subject imports, the likely price effects of subject imports, and the likely impact of subject imports, except as otherwise further explained herein.

II. REVOCATION OF THE FINDING/ORDER ON SUBJECT TRB IMPORTS FROM JAPAN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports

While Timken challenged several aspects of the likely volume findings in the Commission's five-year review determination, the Court remanded the Commission's determination on only two bases: (1) for investigation and further explanation of Japanese producers' reported capacity information; and (2) for further explanation of the Commission's likely volume determination with respect to the domestic industry as a whole.⁴ The Court stated that "[it] has considered additional arguments raised by Timken regarding other volume ... findings arrived at by the Commission, and finds that they are without merit."⁵

1. Reported Capacity Information

In our original review determination, we found that Japanese producers had extremely high capacity utilization rates, ranging from 95.5 to 104.2 percent during the period examined in the five-year review.⁶ These data were derived from questionnaire responses of producers that accounted for almost all

731-TA-399 (Review), USITC Pub. 3309 at 83 (June 2000). Chairman Okun did not participate in the five-year review or this remand proceeding.

⁴See Timken v. United States, Slip Op. 03-45 at 23-36 (Ct. Int'l Trade Apr. 24, 2003).

⁵See Timken v. United States, Slip Op. 03-45 at 41-42, 48 (Ct. Int'l Trade Apr. 24, 2003).

⁶AR, List 2, Doc. 939 at 45.

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TRB production in Japan.⁷ The questionnaires' definition of "average production capacity" is the same one typically included in questionnaires sent to domestic and foreign producers in five-year reviews and original investigations regardless of the product at issue:

The level of production that your establishment(s) could reasonably have expected to attain during the specified periods. Assume normal operating conditions (i.e., using equipment and machinery in place and ready to operate; normal operating levels (hours per week/weeks per year) and time for downtime, maintenance, repair, and cleanup; and a typical or representative product mix).

On appeal, Timken argued that the Commission should have sought more detailed information regarding Japanese producers' foreign capacity, and that in its October 13, 1999, comments on the draft questionnaires, Timken requested that the Commission modify the definition of average production capacity for purposes of its domestic and foreign producer questionnaires to collect information regarding the capacity of any idled equipment as well as the number of shifts used to determine production capacity. Timken argued that the Commission's failure to collect more particularized information was especially problematic to the extent that the Japanese producers' reported information did not reconcile with certain confidential information compiled by an outside source that Timken submitted to the Commission.⁸

In accordance with the Court's instructions, the Commission reopened the record in this case to further investigate the basis that Japanese TRB producers used to report their capacity to produce TRBs to the Commission.⁹ On May 20, 2003, the Commission issued remand questionnaires to Japanese TRB producers in which they were asked to (1) review the average production capacity and production information that they reported for TRBs for their Japanese production facilities in their foreign producers'/exporters' questionnaire responses in the underlying five-year review and to report the number

⁷AR, List 2, Doc. 166 at TRB-IV-10.

⁸This information was submitted in the five-year review at attachment A, tab 2 of Timken's confidential domestic producer's questionnaire response, and was part of the record in the five-year review.

⁹See Tapered Roller Bearings from Japan, 68 Fed. Reg. 28837 (May 27, 2003).

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of shifts per day, the number of days per week, and the number of weeks per year that were the basis for that information for the reported periods; and (2) identify and quantify any idled equipment that was available to produce TRBs in their Japanese facilities in calendar years 1997 and 1998 and interim periods Jan. to Sept. 1998 and Jan. to Sept. 1999. In addition, because the outside information submitted by Timken was confidential, Japanese producers' representatives with access to business proprietary information under the Commission's administrative protective order were requested to reconcile the foreign production and production capacity information reported by the Japanese producers with the confidential information submitted by Timken, or to explain why such a reconciliation is not possible.¹⁰ Responses were received from Japanese producers that accounted for the great majority of TRB production in Japan,¹¹ and several interested parties took advantage of the opportunity to comment on this information.¹²

We find that the information received in this remand proceeding confirms our previous finding that Japanese producers had extremely high capacity utilization rates during the period examined in the five-year review. The capacity and production information reported in the five-year review questionnaire responses was validated by the Japanese producers, and in the remand questionnaires, the foreign producers explained the reporting basis for their information. In general, the Japanese producers

¹⁰On May 27, 2003, Timken decided to make public certain portions of this information, and submitted a public version containing two tables with Japan Bearing Industrial Association ("JBIA") data for production (value, pieces, and weight) and capacity ratios (capacity value per piece, capacity utilization (\$ and capacity utilization (piece)) for TRBs for each quarter between 1995 and the second quarter of 1998. On June 3, 2003, Timken decided to make public the complete document including the glossary.

¹¹AR, List 2, Doc. 166 at TRB-IV-10. Responses were received from [***]. In addition, Fuji Heavy Industries, Ltd. filed a letter on June 10, 2003, reporting that it is not a Japanese TRB producer but a reseller of the subject merchandise that exports to the United States, and as such, it noted that all of the questions in the Commission's request relating to production and capacity are not applicable to it.

¹²Comments were received from Timken, NTN, NSK, and Koyo.

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indicated that the average production capacity and production information they reported [[***]],¹³ and we find there was [[***]].¹⁴ These data account for producers that represented almost all TRB production in Japan during the review period, as we noted in our five-year review determination.¹⁵

In its analysis in the five-year review, the Commission relied on data from questionnaire responses as the most probative and reliable data. As in other five-year reviews, original investigations, and remand proceedings, the Commission required questionnaire respondents to certify the accuracy of their reported information. Moreover, the parties were on notice that submitted information was subject to review by the Commission as well as persons permitted access to the data under a protective order, was subject to verification by the Commission, and could be used by the Commission in this or related proceedings. In contrast, the outside information provided by Timken from World Bearing Statistics (hereinafter “the WBS data”) was based on information submitted by various member associations, including JBI, which themselves compile information from their own members. These data were collected on a substantially different basis than the data submitted to the Commission.¹⁶ The Japanese producers report that, in contrast to their data submissions to the Commission, the data submitted to the

¹³[[***]] reported its Japanese production capacity data based on [[***]]. [[***]], however, accounts for only [[***]] of total reported Japanese production capacity, [[***]] in calendar year 1998. Compare, e.g., [[***]] Foreign Producer Questionnaire Response (question II-17) with AR, List 2, Doc. 166 at Table TRB-IV-5.

¹⁴(derived from remand questionnaire responses).

¹⁵AR, List 2, Doc. 939 at 45.

¹⁶Whereas in the five-year review the Commission required the producers (both domestic and foreign) to report production capacity on an actual basis (to account for downtime) consistent with its established practice in original investigations and five-year reviews, the WBS data are collected on a theoretical capacity basis, based on a 5-day work week, 240 days/year and 16 straight hours of running time through the grinding operations, exclusive of down (set-up, repairs and maintenance) time. There may also be differences in the number of Japanese producers reporting to JBI and to the Commission as well as differences in their reporting methodologies to JBI and to the Commission. JBI did not release the underlying data to requesting Japanese producers. See May 29, 2003 remand questionnaire responses from [[***]] and June 10, 2003 comments by [[***]]. We note that the Commission does not ordinarily require parties to reconcile their reported, certified information to other publicly available information, let alone to information submitted on a confidential basis during Commission proceedings.

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JBIA carry no certification obligation, are not subject to verification or review by independent entities, may be revised and adjusted, and are not subject to the same rigors as information used in investigations such as the Commission's.¹⁷ Thus, consistent with our well established practice, the Commission continues to consider the questionnaire responses, as supplemented in this remand proceeding, as the most reliable data set for our analysis.

2. Likely Volume Determination

In our likely volume finding, we consider the likely volume effects of subject imports on the industry as a whole, and not just with respect to the U.S. production affiliates of Japanese producers. We find that Japanese producers were operating at extremely high capacity utilization levels (95.5 percent in 1998), as indicated above, and that Japanese producers had significant commitments to customers in their home- and third-country markets.¹⁸ Even if all available Japanese production capacity were used to produce TRBs for the U.S. market, that production level would equal **[[***]]** percent of the total apparent U.S. consumption by quantity in 1998, as confirmed by the information reported in the remand questionnaires.¹⁹

We also find that the domestic industry's capacity utilization rates had grown considerably from **[[***]]** percent in 1986 to **[[***]]** percent in 1998,²⁰ and the record indicates that **[[***]]**.²¹ Because demand is projected to grow moderately in the reasonably foreseeable future, any possible increase in subject import volume that might occur within the reasonably foreseeable future likely would come out of

¹⁷See May 29, 2003 remand questionnaire responses from **[[***]]** and June 10, 2003 comments by **[[***]]**.

¹⁸AR, List 2, Doc. 939 at 44-47.

¹⁹(derived from AR, List 2, Doc. 166 at Tables TRB-IV-5, TRB-III-2, and TRB-IV-1 as well as remand questionnaire responses); see also AR, List 2, Doc. 939 at 44-46.

²⁰AR, List 2, Doc. 939 at 38.

²¹AR, List 2, Doc. 166 at TRB-II-6 and Table TRB-III-1.

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an increased demand in the market, not at the expense of the domestic industry.

As the Court acknowledged in its opinion,²² in the five-year review determination the Commission also reasonably found that Japanese producers' commitment to their U.S. production facilities would act as a limitation on the likely volume of subject imports from Japan in the event of revocation. NTN and Koyo each had TRB production facilities in the United States and together accounted for approximately [[***]] percent of total Japanese TRB production in 1998; [[***]].²³ With respect to [[***]] of the TRB production in Japan, therefore, relationships with U.S. affiliates are an additional factor that would be likely to limit the volume of subject imports from Japan in the reasonably foreseeable future in the event of revocation. We note that it is only with respect to this component of our analysis of the likely volume of subject imports that we examined individual domestic producers, and we did so only with respect to their affiliation with TRB producers in Japan. In all other aspects of our analysis, including our evaluation of the likely impact of subject imports, we examined the entire domestic industry.

A final limitation on the likely volume of subject imports from Japan in the event of revocation is our finding about the difficulty and expense of product shifting.²⁴ These aforementioned conditions arose independently of the existence of the antidumping duty finding and order, and differed significantly from the conditions that led to the Commission's volume findings in the original investigations.²⁵ Thus, if the antidumping duty finding and order were revoked, there is no indication that the conditions that led to the Commission's findings in the original investigations are likely to recur.

Thus, we properly considered the entire domestic industry in our analysis of the likely volume of

²²See Timken v. United States, Slip Op. 03-45 at 29-31 (Ct. Int'l Trade Apr. 25, 2003).

²³AR, List 2, Doc. 166 at TRB-IV-10; AR, List 2, Docs. [[***]].

²⁴AR, List 2, Doc. 939 at 38.

²⁵See, e.g., AR, List 2, Doc. 939 at 35-39.

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subject imports, and we conclude that the likely small volume of subject imports from Japan is not likely to be significant either in absolute terms or relative to production or consumption in the United States, and is unlikely to cause material injury to the domestic industry.

B. Likely Price Effects of Subject Imports

Timken challenged several aspects of the likely price effects findings in the Commission's five-year review determination, and the Court expressly addressed some of them in its opinion.²⁶ With respect to the other arguments that Timken made regarding the Commission's likely price effects findings, the Court held that "[t]he Court has considered additional arguments raised by Timken regarding other ... price ... findings arrived at by the Commission, and finds that they are without merit."²⁷

C. Likely Impact of Subject Imports

Timken challenged several aspects of the likely impact of subject imports findings in the Commission's five-year review determination, but the Court remanded only one, as discussed below.²⁸ With respect to the other arguments that Timken made regarding the Commission's likely volume findings, the Court held that "[t]he Court has considered additional arguments raised by Timken regarding other ... impact on subject import findings arrived at by the Commission, and finds that they are without

²⁶See Timken v. United States, Slip Op. 03-45 at 42, 43-44 (Ct. Int'l Trade Apr. 24, 2003).

²⁷See Timken v. United States, Slip Op. 03-45 at 48 (Ct. Int'l Trade Apr. 24, 2003). Because the Court sustained the Commission's likely price effects finding in its entirety, we rejected Timken's requests during this remand proceeding that the Commission revisit an argument Timken made for the first time on appeal in its reply brief to this Court concerning a single sentence in the Commission's likely price effects analysis in the five-year review determination. This was the only sentence in the entire five-year review determination that was dependent on importer questionnaire responses, and whether the information reported by two importers is included, or completely excluded from consideration, the sentence in the five-year review determination remains valid, that is, "[t]he bulk of the subject imports are sold to transplant Japanese industries." AR, List 2, Doc. 939 at 47. Timken's argument about this sentence was addressed in oral argument, and the Court correctly rejected this argument along with Timken's other arguments concerning the Commission's likely price effects findings.

²⁸See Timken v. United States, Slip Op. 03-45 at 44-47 (Ct. Int'l Trade Apr. 24, 2003).

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merit.”²⁹

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³⁰ On appeal, Timken argued that the Commission failed to consider the likely impact of subject imports in light of the industry’s position in the business cycle. The Court remanded the Commission’s likely impact from subject imports finding for further explanation of the Commission’s findings in the context of the appropriate business cycle.

In some industries involving products such as dynamic random access memory semiconductors or agricultural products such as cattle or tomatoes, where record information about the product at issue indicates well recognized and regular growth cycles, life cycles or seasonality, the existence of a business cycle and the position of a particular industry in a business cycle may have some significance in our analysis. We do not find that to be the case in this five-year review.

As the Court noted in its opinion,³¹ the Commission made repeated requests during the five-year review for information concerning conditions of competition and the business cycle relevant to the domestic TRB industry. These requests did not yield much information evidencing a well-defined business cycle, let alone information pertinent to the domestic industry as a whole, or where the industry as a whole would be positioned with respect to a business cycle in the reasonably foreseeable future.³²

This is not unexpected, because in this industry, we found demand to be derived and driven by

²⁹See *Timken v. United States*, Slip Op. 03-45 at 42-43, 48 (Ct. Int’l Trade Apr. 24, 2003).

³⁰19 U.S.C. § 1675a(a)(4).

³¹See *Timken v. United States*, Slip Op. 03-45 at 46 (Ct. Int’l Trade Apr. 24, 2003).

³²Before the Commission, Timken simply asserted that the TRB industry cycle was dependent on the cyclical position of the TRB end users’ industries, and it estimated on a scale of 1 to 9, with 5 being the peak and 1 at the bottom of an ascent, that Timken’s U.S. TRB business for the year 2000 would be positioned as follows: [[***]]. AR, List 2, Doc. 133 at answers to Commissioner Bragg’s questions at 14-15.

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the demand for end-use products. As we observed in our five-year review determination, demand for TRBs has grown considerably since the original investigations.³³ U.S. apparent consumption of TRBs, measured by value, was \$1,418,791,000 in 1998, nearly double its 1986 level of [[***]]. We also found that demand in the automotive sector, which represents about 20 to 25 percent of TRB consumption, appears to have increased since the original investigations.³⁴ But the record indicates that TRBs are also used extensively in the heavy machinery sector – primarily in construction and agricultural equipment – as well as the railroad and general industry sectors, often in transmissions and wheel applications.³⁵

Thus, TRBs are sold to a wide variety of customers for use in a multitude of distinct industries through two primary channels of distribution – to original equipment manufacturers and to the aftermarket.³⁶ Most purchasers reported that TRBs only represent a small share of the cost of the item that they produce – less than 1 percent of the cost of agricultural equipment, between 1 to 25 percent of the cost of auto parts and a much smaller percentage of the cost of the entire vehicle, for example.³⁷ The record indicated that given the generally low cost share of TRBs and the lack of substitutes, quantity demanded would not be expected to respond greatly to changes in the price of TRBs.³⁸ Given the wide variety of customers and the multitude of distinct industries for which TRBs are used, we do not find this industry to be characterized by a regular and measurable business cycle that might be characteristic of other industries. Whereas the various industries that use TRBs in their end-use applications may be characterized by a specific business cycle, we find that TRB producers respond to those end user

³³AR, List 2, Doc. 939 at 35.

³⁴AR, List 2, Doc. 939 at 35.

³⁵AR, List 2, Doc. 166 at TRB-I-23 to TRB-I-24.

³⁶AR, List 2, Doc. 166 at TRB-I-25 to TRB-I-26.

³⁷AR, List 2, Doc. 166 at TRB-II-7.

³⁸AR, List 2, Doc. 166 at TRB-II-7.

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industries and their business cycles, but the record in this proceeding does not indicate a specific business cycle for TRBs. We further find that the diversity of customers and industries for which TRBs are used, as well as the small share of the cost of the finished products for which TRBs are used, limits the effect that downturns in demand from particular customers or user industries, particularly to the extent that at any given time, TRB end user industries are likely at different positions in their business cycles than other TRB end user industries.³⁹

The Commission conducted its analysis, as required by the statute, “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴⁰ As discussed above, the record did not indicate, and the Commission did not find, that there is a business cycle distinctive to the domestic TRB industry. Rather, the Commission finds that, to the extent the industries that consume TRBs experience business cycles, they vary from each other enough that when demand from one sector is down, it may well be up from another and vice versa, thereby contributing to the lack of a predominant cycle for the TRBs themselves.⁴¹

Our analysis, however, did explicitly take into account a number of conditions of competition distinctive to the industry. For example, we took into account the capital-intensive nature of the U.S. TRB industry. As we found, because of the industry’s high fixed costs, production facilities must operate at high capacity utilization rates in order to maximize return on investment. We also took into consideration the fact that TRBs consist of literally thousands of part numbers, and that even within part numbers specialization or customization, sometimes in the form of minor variations, can occur. We considered the fact that large OEM customers, particularly in the automotive and construction sectors, are

³⁹Our findings are supported by [[***]].

⁴⁰19 U.S.C. § 1675a(a)(4).

⁴¹Even if there was an indication of a distinctive business cycle for TRBs, or where the domestic industry was positioned within such a business cycle, this would be only one of several factors that we would be required to consider.

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few in number but represent a substantial proportion of TRB consumption and command market power, and that sales to them are generally via three- to five-year contracts, with prices fixed annually, whereas sales to distributors and the aftermarket are in the spot market through the use of bidding and price lists. We found that these and other factors were likely to prevail for the reasonably foreseeable future and thus provided an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future. Each of these findings concerning the conditions of competition distinctive to the U.S. TRB industry are discussed in further detail in our five-year review determination.⁴²

In this remand proceeding, our findings concerning the likely impact of subject imports are based on the above considerations about the lack of a distinctive business cycle in this industry, the conditions of competition distinctive to this industry, and several findings discussed in more detail in the five-year review determination. In our five-year review determination, we found that the domestic industry is not in a vulnerable state, that the TRB market is expanding, apparent domestic consumption is increasing, the domestic industry is highly concentrated and profitable, and the domestic industry's market share has increased to the level held during the original 1987 investigation as capacity and capacity utilization increased substantially.⁴³ Based on all of these findings as well as our findings concerning the absence of significant likely volume and price effects, discussed above, we again find that revocation of the antidumping finding and order on TRB imports from Japan would not be likely to impact significantly the domestic industry, including by reference to factors that are likely to have a bearing on the state of the industry, such as output, sales, market share, profits, return on investment, cash flow, inventories,

⁴²AR, List 2, Doc. 939 at 35-39.

⁴³AR, List 2, Doc. 939 at 47-48.

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employment, wages, growth, ability to raise capital and investment, or the existing development and production efforts of the industry.

CONCLUSION

For the foregoing reasons, we conclude that revocation of the antidumping finding and order on TRBs from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.