

UNITED STATES INTERNATIONAL TRADE COMMISSION

BRAKE ROTORS FROM CHINA
Investigation No. 731-TA-744 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3528, July 2002)

UNITED STATES INTERNATIONAL TRADE COMMISSION

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BRAKE ROTORS FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on brake rotors from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on March 1, 2002 (67 FR 9462) and determined on June 4, 2002 that it would conduct an expedited review (67 FR 40964, June 14, 2002).

The Commission transmitted its determination in this review to the Secretary of Commerce on July 29, 2002. The views of the Commission are contained in USITC Publication 3528 (July 2002), entitled *Brake Rotors From China: Investigation No. 731-TA-744 (Review)*.

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

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order concerning brake rotors from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In April 1997, the Commission determined that an industry in the United States was materially injured by reason of imports of aftermarket brake rotors from China that the Department of Commerce (“Commerce”) determined to be sold at less than fair value (“LTFV”).¹ On March 1, 2002, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on brake rotors from China would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.²

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. In order to make this decision, the Commission first determines whether individual responses to the notice of institution are adequate. Next, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties—domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as importers, exporters, foreign producers, trade associations, or subject country governments)—demonstrate a sufficient willingness among each group to participate and provide information requested in a full review. If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.³

The Commission received one response to its notice of institution. This response was made by an unincorporated association of three domestic producers of the domestic like product that identified itself as the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers (“the Coalition”).⁴ The Coalition is estimated to account for *** percent of total domestic production of aftermarket brake rotors in 2001.⁵ The Coalition filed no comments on adequacy.

¹ Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (Apr. 1997) at 1 (“Original Determination”).

² 67 Fed. Reg. 9462 (Mar. 1, 2002).

³ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁴ The current members of the Coalition are Dana Corporation, Brake and Chassis Division (“Dana”); Federal Mogul Corporation (“Federal Mogul”); and Waupaca Foundry, Inc. (“Waupaca”). April 22, 2002, response of the domestic interested parties (“Initial Response”) at 2-3.

⁵ Confidential Report (“CR”) at I-3, n. 2, Public Report (“PR”) at I-3, n. 2. This range was calculated as the quantity of reported aggregate production (*** pieces) divided by the range of total domestic production estimated by the members of the Coalition (between *** pieces and *** pieces). Based on a comparison of this range with U.S. industry data collected in the Commission’s original investigation, the actual coverage figure is believed to be toward the upper end of the coverage range estimated by the Coalition members. Id.

On June 4, 2002, the Commission found that the domestic interested party group response was adequate. The Commission also found that the respondent interested party group response was inadequate. Pursuant to 19 U.S.C. § 1675(c)(3)(B), the Commission expedited review of this matter.⁶

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”⁷ The Act defines the “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 under this subtitle.”⁸

In its final five-year review determination, Commerce defined the imported product covered by the existing antidumping duty order as

brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under “one ton and a half”, and light trucks designated as “one ton and a half.” Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some grinding or turning. These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (“OEM”) which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semi-finished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.42 kilograms). Brake rotors are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (“HTSUS”).⁹

⁶ 67 Fed. Reg. 40964 (June 14, 2002).

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁹ 67 Fed. Reg. 45458, 45459 (July 9, 2002).

Brake rotors are part of disc brake assemblies, commonly used on front-wheel-drive vehicles, in which braking action is created by a hydraulic caliper that presses two brake pads against a rotating disc, or rotor, that is attached to the wheel hub. The braking unit is not enclosed, allowing disc brakes to transfer efficiently the heat generated by braking action. Brake rotors generally are produced from gray iron because this metal is highly resistant to wear, possesses a high coefficient of friction, absorbs vibrations, can be easily and inexpensively cast into complex shapes, and has excellent machinability. Brake rotors also may be manufactured from aluminum because of that material's light weight.¹⁰

The starting point of the Commission's like product analysis in a five-year review is the like product determination in the Commission's original investigation.¹¹ In the original investigation, the Commission had to determine (1) whether brake rotors and brake drums were distinct domestic like products and (2) whether the domestic like product(s) should be limited to aftermarket (i.e., non-OEM) products -- the products within the scope of the investigation -- or should encompass OEM products as well. The Commission determined that brake rotors and brake drums were separate domestic like products, based on different physical characteristics and lack of interchangeability. The Commission also determined that OEM brake rotors and drums and aftermarket brake rotors and drums, although physically similar, were different products made by different manufacturers for different markets. The Commission therefore found two domestic like products consisting of aftermarket brake rotors and aftermarket brake drums.¹² The Commission also found that these domestic like products included "unfinished" and "semi-finished" rotors and drums as well as finished rotors and drums.¹³ The Commission made an affirmative determination only with respect to aftermarket brake rotors.¹⁴

In its response to the Commission's notice of institution, the Coalition stated that it agrees with the Commission's original definition of the domestic like product.¹⁵ No new facts have been presented in this review to warrant a conclusion different from that reached by the Commission in the original investigation. We therefore define, based on the available information, a single domestic like product consisting of all aftermarket brake rotors, coextensive with Commerce's scope in this review.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant 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."¹⁶ In the original investigation, the

¹⁰ CR at I-6-I-7, PR at I-6-I-7.

¹¹ In its like product determination, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes, and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. See Timken, 913 F. Supp. at 584. No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49.

¹² Original Determination at 4-9.

¹³ Original Determination at 9, n. 43.

¹⁴ Original Determination at 1.

¹⁵ Initial Response at 21.

¹⁶ 19 U.S.C. § 1677(4)(A). In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively
(continued...)

Commission defined the domestic aftermarket brake rotor industry as all producers of aftermarket brake rotors except AlliedSignal Automotive (“AlliedSignal”), which it excluded pursuant to the related parties provision.¹⁷ The Commission found that AlliedSignal had imported aftermarket brake rotors from China during the period of investigation and that this importation dwarfed its domestic production of such brake rotors. The Commission thus determined that AlliedSignal was a related party and that appropriate circumstances existed to exclude AlliedSignal from the domestic industry. The Commission also found that two other domestic producers of aftermarket brake rotors, Kinetic Parts Manufacturing, Inc. (“Kinetic”) and ITT Automotive, Inc. (“ITT”), were related parties because the former had imported subject brake rotors from China during the period of investigation while the latter had ***. However, the Commission did not find appropriate circumstances to exclude either producer from the domestic industry because both maintained significant domestic production of aftermarket brake rotors and their importation activities did not improve the financial performance of their domestic production relative to that of domestic producers that did not import the subject brake rotors from China.¹⁸

In this review, the only domestic producers for which the Commission has current data are the members of the Coalition. In its response to the Commission’s request for clarification of its initial response to the notice of institution, the Coalition asserted that none of its members currently is importing the subject merchandise or otherwise is related to an exporter or importer thereof.¹⁹ There is no information in the record that indicates that appropriate circumstances exist to exclude any producer from the domestic industry.²⁰ We find, therefore, that the domestic industry consists of all domestic producers of aftermarket brake rotors.

¹⁶ (...continued)

consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States. See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d 96 F.3d 1352 (Fed. Cir. 1996).

¹⁷ Original Determination at 9. The related parties provision, 19 U.S.C. § 1677(4)(B), allows for the exclusion of certain domestic producers from the domestic industry for purposes of an injury determination. Applying the provision involves two steps. First, the Commission must determine whether a domestic producer meets the definition of a related party. Second, if a producer is a related party, the Commission may exclude such a producer from the domestic industry if “appropriate circumstances” exist.

¹⁸ Original Determination at 10-11.

¹⁹ May 2, 2002, clarification of initial response of domestic interested parties (“Clarification”) at 2.

²⁰ The record indicates that domestic producer Universal Automotive Industries, Inc. (“Universal”) purchases brake rotors from China that appear to be subject to the antidumping duty order, but it is not the importer of record. CR at I-14, n. 44, PR at I-11, n. 44. Universal did not respond to the notice of institution and is not included in the data provided in the Commission Report. The successor firms to AlliedSignal and Kinetic also did not respond to the Commission’s notice of institution and the record contains no information concerning these companies that could form the basis for a Commission determination that they are related parties. Moreover, the nature of the operations formerly conducted by AlliedSignal has changed since the original investigation. AlliedSignal merged with Honeywell, Inc./Honeywell International, Inc. (“Honeywell”) in 1999; the new Honeywell now manufactures both OEM and aftermarket brake rotors sold under the Honeywell name, and Honeywell is described by aftermarket brake rotor competitors as one of the “Big Three” domestic brake producers. CR at I-14, PR at I-11.

III. REVOCATION OF THE ORDER ON BRAKE ROTORS FROM CHINA IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order or finding unless it makes a determination that dumping is likely to continue or recur and the Commission makes a determination that material injury would be likely to continue or recur if the order or finding is revoked, as described in section 752(a).

Section 752(a) of the Act states that in a five-year review “the Commission shall determine whether revocation of an order [or finding], or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”²¹ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) indicates that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo—the revocation [of the order or finding] . . . and the elimination of its restraining effects on volumes and prices of imports.”²² Thus, the likelihood standard is prospective in nature.²³ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”²⁴ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty determinations].”²⁵

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.” It directs the Commission to take into account its prior injury determinations, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{26 27}

²¹ 19 U.S.C. § 1675a(a).

²² URAA SAA, H.R. Rep. No. 316, 103d Cong., 2d Sess., vol. I at 883-84 (1994).

²³ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determinations of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

²⁴ 19 U.S.C. § 1675a(a)(5).

²⁵ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

²⁶ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is

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Section 751(c)(3) of the Act and the Commission's regulations provide that in an expedited five-year review the Commission may issue a final determination "based on the facts available, in accordance with section 776."²⁸ We have relied on the facts available in this review, which consist primarily of the record in the original investigation and information submitted by the Coalition.

For the reasons stated below, we determine that revocation of the antidumping duty order on brake rotors from China would likely lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."²⁹ Conditions of competition relevant to the aftermarket brake rotor industry are discussed below.

In the original investigation, the Commission found that U.S. demand for aftermarket brake rotors had increased during the period of investigation and was likely to continue increasing due to the growing number of vehicles on the road, the greater proportion of new cars with disc brakes on all four wheels, and the decreased life span of OEM rotors. It also found that apparent U.S. consumption of aftermarket brake rotors, when measured by quantity, had increased 40.6 percent from 1993 to 1995, while apparent consumption measured by value had increased 25.3 percent during this same period.³⁰

Based on the facts available, Commission staff estimate that apparent U.S. consumption of aftermarket brake rotors increased *** percent between 1995 and 2001.³¹ The Coalition agrees that apparent U.S. consumption has increased since the time of the original investigation. It has supplied market research data showing that U.S. demand for aftermarket brake rotors should continue to increase annually through 2005.³²

The composition of the domestic industry has changed and become more consolidated since the original investigation. In 1995, there were eight domestic producers of finished aftermarket brake rotors:

²⁶ (...continued)

necessarily dispositive. SAA at 886.

²⁷ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce made no duty absorption findings in its five-year review determination. 67 Fed. Reg. 45458 (July 9, 2002).

²⁸ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a).

²⁹ 19 U.S.C. § 1675a(a)(4).

³⁰ Original Determination at 11-12.

³¹ CR at I-27, PR at I-20, CR/PR at Table I-4. This estimate is based on an assumption that current Coalition members accounted for the same proportion of domestic production in 2001 that they did in 1995. CR/PR at Table I-4, n. 1.

³² CR at I-27, PR at I-20; Initial Response at 11, Exhibit E. The market research data the Coalition has submitted consolidate data for aftermarket brake rotors and drums.

AlliedSignal, Brake Parts, Inc. (“Brake Parts”), Excel, Iroquois Tool Systems, Inc. (“Iroquois”), ITT, Kinetic, Overseas Auto Parts, Inc. (“Overseas”), and Wagner Brake Corp./Moog (“Wagner”). Currently there are known to be five: Dana (the successor to Brake Parts and Iroquois), Federal Mogul (the successor to Wagner), Honeywell (the successor to AlliedSignal), TRW Aftermarket/TRW Automotive/TRW Group (the successor to Kinetic), and Universal (which appears to be a relatively recent entrant to the industry).³³ As previously stated, the only producers from which the Commission has received data in this five-year review are Coalition members Dana and Federal Mogul, as well as Waupaca, a Coalition member that produces unfinished rotors.

In the original investigation, the Commission found that the subject brake rotors competed with domestically produced brake rotors on the basis of price, and price was critical in many purchasing decisions.³⁴ Price competition within the U.S. market for aftermarket brake rotors has remained intense since the original investigation.³⁵ Furthermore, the Commission noted in the original investigation that all domestic producers and importers who responded to Commission questionnaires indicated that the subject imports and the domestic like product were interchangeable, and that a substantial percentage of importers and purchasers perceived them to be of comparable quality.³⁶ Information in the record of the original investigation indicated that the subject brake rotors and domestically produced brake rotors are used in the same or similar motor vehicles.³⁷ Available information indicates that this is still true.³⁸

Based on the record evidence, we find that these conditions of competition in the U.S. market for aftermarket brake rotors are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that the foregoing conditions of competition provide the basis upon which we assess the likely effects of revocation within a reasonably foreseeable time.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.³⁹ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁴⁰

³³ CR at I-12-14, PR at I-10-I-11. Excel ceased production in early 1996. CR at I-13, n. 40, PR at I-10, n. 40. There is no record information regarding the current status of Overseas, and the current status of ITT is unclear. CR/PR at Table I-1 and accompanying note.

³⁴ Original Determination at 16-17.

³⁵ CR at I-12, PR at I-9.

³⁶ Original Determination at 17; CR at I-8-I-9, PR at I-7-I-8.

³⁷ CR at I-8, PR at I-7.

³⁸ Initial Response at Exhibit E.

³⁹ 19 U.S.C. § 1675a(a)(2).

⁴⁰ 19 U.S.C. § 1675a(a)(2)(A-D).

The record in this expedited review contains no data on the current volume of subject imports and only limited data on the market share of the domestic industry since the original investigation.⁴¹ Therefore, our conclusions with respect to the likely effects that revocation of the antidumping duty order will have on subject import volumes must be based on the facts available,⁴² which we derive largely from the record in the original investigation and the information submitted by the Coalition in this review. As noted above, no respondent interested parties responded to the Commission's notice of institution.

In the original investigation, the Commission found that the volume of subject brake rotor imports, as measured by quantity and by value, increased by 221.5 percent and 237.5 percent, respectively, from 1993 to 1995. It also found that subject import market penetration, measured by quantity, increased from 8.0 percent in 1993 to 18.3 percent in 1995, even as the domestic producers' market share, measured by quantity, declined from 40.5 percent in 1993 to 35.0 percent in 1995.⁴³ The Chinese aftermarket brake rotor industry's production and production capacity approximately doubled during the same period, and its capacity utilization declined from 93.0 percent in 1993 to 85.4 percent in 1995. Its export shipments increased during each year of the period investigated, both in absolute terms and as a percentage of total shipments, and the United States was the Chinese industry's primary export market.⁴⁴ Finally, the Commission Report in the original investigation identified the Chinese aftermarket brake rotor industry as one of China's fastest-growing industries, with expansion expected to continue through the next decade.⁴⁵

Current data on the volume of aftermarket brake rotors imported from China indicate that total imports have nearly tripled since 1995, increasing from 6.4 million units in 1995 to 18.9 million units in 2001, but these totals, as previously noted, include imports from both producers that are subject to the antidumping duty order and producers that are not subject to the order.⁴⁶ The combined market share of current Coalition members Dana and Federal Mogul, which accounted for *** percent of total U.S. production in 1995, and which are believed to account for a comparable share of U.S. production in 2001,⁴⁷ fell from *** percent in 1995 to *** percent in 2001.⁴⁸ The market share for brake rotors imported from China, including both subject and non-subject imports, increased from *** percent in 1995 to *** percent in 2001.⁴⁹ In contrast, the market share of imports of brake rotors from sources other than China declined from *** percent in 1995 to *** percent in 2001.⁵⁰ The imposition of the antidumping duty order in April 1997 therefore does not appear to have appreciably slowed the increase in overall imports from

⁴¹ In this review, the available volume data on U.S. imports from China are based on official Commerce statistics for basket HTS statistical reporting number 8708.39.5010 (OEM and aftermarket brake drums and rotors (discs) of vehicles). The great majority of U.S. imports from China under this provision are believed to be aftermarket brake rotors, but there is no clean breakout by product. The available import volume figures include both manufacturers/exporters of aftermarket brake rotors that are subject to the antidumping duty order and manufacturers/exporters that are not subject to the order. CR at I-23, PR at I-15, CR/PR at Figure I-1.

⁴² See 19 U.S.C. § 1677e(a).

⁴³ Original Determination at 16.

⁴⁴ CR at I-31, PR at I-23, CR/PR at Table I-5.

⁴⁵ CR at I-29, PR at I-22.

⁴⁶ CR at I-20-I-23, PR at I-14-I-15, CR/PR at Figure I-1, CR/PR at Table I-2.

⁴⁷ See CR at I-2, n. 2, PR at I-3, n. 2, CR/PR at Table I-1 and accompanying note.

⁴⁸ CR/PR at Table I-4.

⁴⁹ CR/PR at Table I-4.

⁵⁰ CR/PR at Table I-2.

China, although data are not available indicating to what extent the increase is attributable to products that are not subject to the antidumping duty order.⁵¹

The record in this expedited review contains no current data on the Chinese industry's production, production capacity, or capacity utilization, but U.S. Customs data indicate that the number of Chinese companies manufacturing brake rotors increased from *** in 1999 to *** in 2001,⁵² and the Coalition estimates that Chinese capacity utilization now has declined to 75 percent.⁵³ Furthermore, the Chinese State Economic and Trade Commission recently published its "Tenth Five-Year Plan (2001-2005) for the Development of the Automotive Industry," setting forth strategies for developing the Chinese automotive industry, one of which is to increase exports of automotive products.⁵⁴ The record in this expedited review contains no current data on the Chinese industry's export shipments to the United States, but the Coalition's response to the Commission's notice of institution identified 29 Chinese companies that have produced subject brake rotors that were sold in the United States.⁵⁵ Moreover, data from the original investigation indicated that the Chinese industry was export-oriented, with the United States its major market. Nothing on the record of this review indicates that this has changed.

In light of the increase in the volume and market shares of subject brake rotors during the original investigation, the on-going expansion of the Chinese aftermarket brake rotor industry, and the export orientation of that industry, we conclude that the likely volume of imports of the subject merchandise would be significant absent the restraining effect of the antidumping duty order.⁵⁶

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and if the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.⁵⁷

The record in this expedited review contains very little information comparing current prices of the domestic like product and the subject imports in the U.S. market. Consequently, our conclusions again must be based primarily on the facts available as derived from the record in the original investigation and the information submitted by the Coalition.

As previously noted, the Commission found in the original investigation that the subject brake rotors and domestically produced brake rotors competed on the basis of price. It collected pricing data on two domestically produced aftermarket rotor products and determined that U.S. producers' prices for both

⁵¹ CR at I-20, PR at I-15.

⁵² CR at I-32, PR at I-23.

⁵³ Initial Response at 7.

⁵⁴ CR at I-29, PR at I-22; Initial Response at Exhibit A.

⁵⁵ CR at I-31-I-32, PR at I-23; Initial Response at 14-16.

⁵⁶ Commissioner Bragg infers that, upon revocation, subject producers would increase their focus on exporting to the United States, as evidenced in the Commission's original determination. Based upon the limited record in this review, Commissioner Bragg finds that this increased focus will likely result in significant volumes of subject imports into the United States if the order is revoked.

⁵⁷ 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

products had declined over the period of investigation, while prices for the subject Chinese products had fluctuated irregularly over the same period. However, the subject imports undersold the domestic products by margins exceeding 20 percent in nearly every quarterly pricing comparison during the period examined.⁵⁸

In its initial response to the Commission's notice of institution, the Coalition asserts that aftermarket brake rotors from China have continued to undersell domestically produced brake rotors by 55 percent to 65 percent at warehouse distributor prices, even with the antidumping duty order in place.⁵⁹ Market research data indicate that the industry average price for brake rotors in the United States currently is declining.⁶⁰ The average unit value for U.S. commercial shipments of domestically produced brake rotors was \$*** in 1995, according to Commission questionnaire data. The comparable figure for 2000 was \$11.98, according to market research data.⁶¹ The average unit value of U.S. imports of aftermarket brake rotors from China (including both LTFV and non-LTFV sales) also has declined since the original investigation, falling from \$7.43 in 1995 to \$6.38 in 2001.⁶²

Given the price sensitivity of the U.S. market for aftermarket brake rotors, it is likely that subject Chinese exporters would offer even lower prices to U.S. purchasers in order to increase market share if the antidumping duty order were revoked. Consequently, prices for domestically produced aftermarket brake rotors in the United States likely would decline to a significant degree due to the effects of increased volumes of highly substitutable subject aftermarket brake rotors offered at lower prices.

Accordingly, we find that revocation of the antidumping duty order would be likely to result in significant price effects, including significant underselling by the subject imports of the domestic like product, as well as significant price depression or suppression in the reasonably foreseeable future.⁶³

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁶⁴ All relevant economic factors are to be considered within the context of the business cycle and the conditions of

⁵⁸ Original Determination at 16-17.

⁵⁹ CR at I-24, PR at I-15; Initial Response at 8.

⁶⁰ Initial Response at Exhibit E.

⁶¹ CR at I-19, PR at I-14, CR/PR at Table I-1; Initial Response at 8-9, Exhibit E, Exhibit G. Data on the average unit value for U.S. commercial shipments of domestically produced rotors in 2001 are not available.

⁶² CR at I-23-I-24, PR at I-15, CR/PR at Table I-2. The average unit value of brake rotor imports from Canada and other countries in 2001 was significantly *** than the values of the imports from China in 2001 and domestically produced brake rotors in 2000, with imports from Canada having a value of \$*** per unit and imports from other countries having a value of \$*** per unit. CR at I-24, PR at I-15, CR/PR at Table I-2.

⁶³ Commissioner Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original determination.

⁶⁴ 19 U.S.C. § 1675a(a)(4).

competition that are distinctive to the industry.⁶⁵ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁶⁶

The record in this expedited review contains limited current information concerning the condition of the domestic industry. Therefore, our conclusions again are based primarily on the record in the original investigation and the information submitted by the Coalition.

In the original investigation, the Commission found that the domestic industry's production and shipments increased over the period of investigation, but these increases were not commensurate with the growth in the U.S. market for aftermarket brake rotors. The Commission found that LTFV subject imports captured U.S. market share at the expense of the domestic industry and prevented the domestic industry from attaining the full benefit of newly added capacity intended to supply the growing U.S. demand. The Commission also found that the price-depressing and -suppressing effects of surging LTFV subject imports caused the domestic industry's profit margins and operating income to decline sharply during the period investigated, despite increases in the industry's sales revenues. By 1995, most industry participants had incurred operating losses and several had to sell or severely reduce the scope of their aftermarket brake rotor production because of import competition.⁶⁷

Although the record in this expedited review does not contain current production data for the entire domestic industry, we are able to estimate the change in production that occurred since 1995 for domestic producers Dana and Federal Mogul, which accounted for *** percent of total U.S. production in 1995 and are believed to account for a comparable share of total U.S. production in 2001. Domestic aftermarket brake rotor production by these companies increased *** percent from 1993 to 1995 (as compared to a 17.1 percent increase for the entire domestic industry during this same period), but has decreased by *** percent from 1995 to 2001 even as U.S. demand has grown by *** percent during the same period.⁶⁸

In its response to the Commission's notice of institution, the Coalition provided anecdotal information suggesting that the domestic industry currently is experiencing some difficulties. The Coalition asserted that revocation of the antidumping duty order will cost the domestic industry millions of dollars in lost sales and profits and result in the closing of U.S. manufacturing facilities and an overall decline in U.S.

⁶⁵ *Id.* Section 752(a) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

In the final results of its expedited sunset review of the antidumping order on brake rotors from China, Commerce determined that revocation of the order would likely lead to a continuation or recurrence of dumping by ten named exporter/producers at weighted-average margins ranging from 3.56 percent *ad valorem* to 16.07 percent *ad valorem*, with an all others rate of 43.32 percent *ad valorem*. Three named exporter/producers are not subject to the antidumping order and Commerce consequently did not assign them likely margins. 67 Fed. Reg. 45458, 45460 (July 9, 2002).

⁶⁶ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

⁶⁷ Original Determination at 18.

⁶⁸ CR/PR at Table I-4. It is not possible to make a similar calculation of domestic shipments. CR at I-17, PR at I-12.

production. It also predicted that investors will avoid the U.S. aftermarket brake rotor industry if the order is revoked, limiting the industry's efforts to improve production and product quality and its ability to conduct research and development activities. Finally, the Coalition claimed that employment in the domestic industry has declined or remained flat over the past several years and that both employment and hourly wages will continue to decrease if the order is revoked.⁶⁹

Based on the limited data in the record of this expedited review, we cannot conclude that the domestic industry is vulnerable to material injury if the antidumping duty order is revoked.⁷⁰ However, it does appear from the record that underselling of the subject imports has continued concurrent with an increase in the volume of the subject imports, even with the discipline of an antidumping duty order in place. It therefore seems reasonable for us to conclude that these conditions will only worsen if the order is revoked.

In light of the foregoing, we find that revocation of the antidumping duty order would likely lead to significant increases in the volume of subject imports at prices that would undersell the domestic like product and significantly depress or suppress U.S. prices. We further find that the volume and price effects of the subject imports would have a significant negative impact on the domestic industry and would likely cause the domestic industry to lose market share. In addition, the price and volume declines would likely have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. The reductions in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability, as well as its ability to raise capital and make and maintain necessary capital investments. Finally, we find it likely that revocation of the order will result in commensurate employment declines for the industry.

For all of the above reasons, we conclude that revocation of the antidumping duty order on brake rotors from China likely would have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on brake rotors from China would be likely to lead to continuation or recurrence of material injury to the U.S. aftermarket brake rotor industry within a reasonably foreseeable time.

⁶⁹ Initial Response at 10-12.

⁷⁰ Based on the available information, Commissioner Bragg finds that the domestic industry is vulnerable to material injury. In particular, Commissioner Bragg notes the continuing increase in volume and market share of lower-priced imports and the stagnant performance of the domestic industry in the context of a substantial increase in demand since the original investigation.