

UNITED STATES INTERNATIONAL TRADE COMMISSION

REFINED BROWN ALUMINUM OXIDE FROM CHINA  
Investigation No. 731-TA-1022 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION  
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## REFINED BROWN ALUMINUM OXIDE FROM CHINA

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of refined brown aluminum oxide, provided for in subheading 2818.10.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### COMMENCEMENT OF FINAL PHASE INVESTIGATION

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

### BACKGROUND

On November 20, 2002, a petition was filed with the Commission and Commerce by Washington Mills Company, Inc., North Grafton, MA,<sup>2</sup> alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of refined brown aluminum oxide from China. Accordingly, effective November 20, 2002, the Commission instituted antidumping duty investigation No. 731-TA-1022 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 29, 2002 (67 FR 71195). The conference was held in Washington, DC, on December 11,

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

<sup>2</sup> On November 27, 2002, the petition was amended to include two additional petitioners, C-E Minerals, King of Prussia, PA, and Treibacher Schleifmittel Corporation, Niagara Falls, NY.

2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

## VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of refined brown aluminum oxide (“RBAO”) from China that allegedly are sold in the United States at less than fair value (“LTFV”).

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

### II. DOMESTIC LIKE PRODUCT

#### A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>3</sup> 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.”<sup>4</sup> 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 . . . .”<sup>5</sup>

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.<sup>6</sup> No single factor is dispositive, and the Commission

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<sup>1</sup> 19 U.S.C. §§ 1671b(a), 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996). We note that no party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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

<sup>3</sup> 19 U.S.C. § 1677(4)(A).

<sup>4</sup> Id.

<sup>5</sup> 19 U.S.C. § 1677(10).

<sup>6</sup> 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;

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.<sup>7</sup> The Commission looks for clear dividing lines among possible like products, and disregards minor variations.<sup>8</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>9</sup>

## **B. Product Description**

Commerce has defined the imported merchandise within the scope of these investigations as:

ground, pulverized or refined artificial corundum, also known as brown aluminum oxide or brown fused alumina, in grit size of 3/8 inches or less. Excluded from the scope of the investigation is crude artificial corundum in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than 3/8 inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheading 2818.10.20.00 of the Harmonized Tariff Schedule of the United States (HTSUS).<sup>10</sup>

RBAO is a solid inorganic chemical, and is one of the forms of aluminum oxide in mined bauxites. It is made by crushing, grinding, and sieving aluminum oxide ingot or crude brown aluminum oxide.<sup>11</sup>

## **C. Domestic Like Product**

We define the domestic like product as coextensive with the scope of this investigation. Petitioners argue that there is one domestic like product which corresponds to the scope defined by Commerce.<sup>12</sup> Petitioners further argue that white and pink aluminum oxide should not be included in the

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<sup>6</sup> (...continued)

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).

<sup>7</sup> See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

<sup>8</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>9</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

<sup>10</sup> 67 Fed. Reg. 77223 (December 17, 2002).

<sup>11</sup> Confidential Staff Report (“CR”) at I-2, Public Report (“PR”) at I-2.

<sup>12</sup> The only respondent that participated in this preliminary phase investigation, Cometals, Inc., an importer of  
(continued...)

domestic like product definition. We have considered whether the domestic like product should include white and pink aluminum oxide and have concluded that it should not, for the following reasons.

In terms of physical characteristics, all aluminum oxide is composed of  $Al_2O_3$ , although white and pink refined aluminum oxide differ in color and are up to 99.9 percent pure in terms of chemistry, compared to RBAO, which is darker and 93-97 percent pure.<sup>13</sup> All refined aluminum oxide, whether brown or white and pink, is used in abrasive and refractory applications. White and pink aluminum oxide, however, reportedly are used in “separate, specialized” abrasive and refractory applications and, unlike RBAO, are not used at all in general industrial applications.<sup>14</sup> Interchangeability between RBAO, and white and pink aluminum oxide appears to be at best limited. RBAO apparently cannot be used in the specialized applications that call for white or pink aluminum oxide.<sup>15</sup> Considering interchangeability in the other direction, it is unclear whether the white/pink product could be used in applications calling for RBAO. Even if it could be, the much higher price for white/pink product would make this uneconomical. RBAO and white and pink aluminum oxide are sold in the same channels of distribution, nearly evenly divided between end users and distributors.<sup>16</sup> RBAO and white and pink aluminum oxide are made in different production facilities so as to avoid any contamination of the white or pink product with RBAO.<sup>17</sup> Customers perceive RBAO and the white/pink product as being different.<sup>18</sup> Finally, white and pink aluminum oxide apparently are considerably more expensive than RBAO.<sup>19</sup> In sum, the record in the preliminary phase of this investigation does not support including white and pink aluminum oxide in the domestic like product.

### **III. DOMESTIC INDUSTRY AND RELATED PARTIES**

#### **A. Domestic Industry**

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.”<sup>20</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic producers of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>21</sup>

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<sup>12</sup> (...continued)

RBAO from China, did not address the domestic like product issue.

<sup>13</sup> Transcript of December 11, 2002 Conference (“Conference Transcript”) at 14 (testimony of Peter Williams, President of Washington Mills Company, Incorporated).

<sup>14</sup> CR at I-2-3, PR at I-2-3; and Petitioners’ Postconference Brief at A-4.

<sup>15</sup> CR at I-4, PR at I-2.

<sup>16</sup> CR at I-4, PR at I-3.

<sup>17</sup> CR at I-3, PR at I-2-3.

<sup>18</sup> CR at I-4, PR at I-3.

<sup>19</sup> CR at I-5, PR at I-3.

<sup>20</sup> 19 U.S.C. § 1677(4)(A).

<sup>21</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F. 3d 1352 (Fed. Cir. 1996).

Based on our domestic like product finding, we conclude that the domestic industry consists of all U.S. producers of RBAO, with the exception of Great Lakes Minerals, which we exclude from the domestic industry as a related party, as discussed below.<sup>22</sup>

## **B. Related Parties**

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.<sup>23</sup> Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.<sup>24</sup>

There are five domestic producers of RBAO: C-E Minerals, Detroit Abrasives, Great Lakes Minerals, Treibacher Schleifmittel, and Washington Mills. Each of these companies imported the subject merchandise during the period examined<sup>25</sup> and thus are related parties under the statute. We examine for each producer individually whether appropriate circumstances exist to exclude the firm from the domestic industry.

*C-E Minerals.* C-E Minerals is owned by Imerys, a multinational corporation with headquarters in France. C-E Minerals only began U.S. production of RBAO in June 2002,<sup>26</sup> but the company accounted for \*\*\* percent of domestic production in January-September ("interim") 2002. Before it

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<sup>22</sup> Great Lakes Minerals imports RBAO from China and further processes it by crushing and sizing the product. In any final-phase investigation we intend to examine whether Great Lakes engages in sufficient production related activity in the United States to qualify as a domestic producer. The factors that the Commission traditionally considers in making such a determination are: (1) the source and extent of a firm's capital investment; (2) the technical expertise involved in U.S. production activities; (3) the value added to the product in the United States; (4) employment levels; (5) the quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. See generally, e.g., Pure Magnesium from China and Israel, Inv. Nos. 701-TA-403 (Final) and 731-TA-895-96 (Final), USITC Pub. 3467 (November 2001) at 9-11.

<sup>23</sup> 19 U.S.C. § 1677(4)(B).

<sup>24</sup> 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.

<sup>25</sup> CR at IV-1, PR at IV-1.

<sup>26</sup> CR at III-3 n.8, PR at III-2 n.8

began domestic production, the company was a major importer of the subject merchandise.<sup>27</sup> Following the acquisition of the domestic producer Treibacher Schleifmittel by Imerys in July 2000, a decision was made that C-E Minerals would cease imports of the subject merchandise which previously had been in competition with Treibacher Schleifmittel's production. C-E Minerals stopped importing by the end of 2001 and began to produce RBAO in the United States in 2002.<sup>28</sup> Although it is not clear whether there was any temporal overlap between the company's sales of imports and the start of its production operations, the limited data on its production operations would not appear to have been distorted by any benefit from its importation of the subject merchandise. The financial results reported for the company in the Commission Report are for its domestic production operations only.<sup>29</sup> The company is a petitioner. Accordingly, we determine that appropriate circumstances do not exist to exclude C-E Minerals from the domestic industry.

*Detroit Abrasives.* Detroit Abrasives accounted for \*\*\* percent of domestic production in 2001. The company \*\*\*. It imported \*\*\* short tons of the subject merchandise in interim 2002.<sup>30</sup> By comparison, the company's net sales in interim 2002 were \*\*\* short tons.<sup>31</sup> Because \*\*\*, we determine that appropriate circumstances do not exist to exclude Detroit Abrasives from the domestic industry.

*Great Lakes Minerals.* Great Lakes Minerals accounted for \*\*\* percent of domestic production in 2001.<sup>32</sup> The company \*\*\*. Great Lakes Minerals imports RBAO from China and further processes it by crushing and sizing the product. Its imports of RBAO from China were equivalent to \*\*\* percent of its production throughout the period examined. The company is a \*\*\* importer of the subject merchandise: it accounted for \*\*\* percent of total imports from China in 1999, 2000, 2001, and interim 2002, respectively.<sup>33</sup> We conclude for purposes of this preliminary determination that appropriate circumstances exist to exclude Great Lakes Minerals from the definition of the domestic industry. The company \*\*\*, and thus presumably has a strong interest in maintaining its access to these imports. The company is a significant producer whose sales volumes and overall financial results towards the end of the period examined appear to reflect \*\*\*.<sup>34</sup> Indeed, Great Lakes' \*\*\*.<sup>35</sup> The company's share of the domestic industry's total sales \*\*\* over the period examined,<sup>36</sup> thereby increasing the potentially distortive effect of including the company in the domestic industry. We intend to reexamine the question of whether appropriate circumstances exist to exclude Great Lakes Minerals in any final phase investigation.

*Treibacher Schleifmittel.* Treibacher Schleifmittel accounted for \*\*\* percent of domestic production in 2001. Its imports of the subject merchandise were equivalent to \*\*\* percent of its production in 1999, 2000, 2001, and interim 2002, respectively. The company explained that it imports from China \*\*\*.<sup>37</sup> We determine that appropriate circumstances do not exist to exclude Treibacher Schleifmittel from the domestic industry, as its interests appear to lie more with domestic production than with importing. Compared to its domestic production, the volume of its imports was \*\*\*; its reason for

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<sup>27</sup> CR at III-2, PR at III-2.

<sup>28</sup> CR at IV-1, PR at IV-1.

<sup>29</sup> CR/PR at Table VI-2.

<sup>30</sup> CR at III-4, PR at III-2.

<sup>31</sup> CR/PR at Table VI-2.

<sup>32</sup> CR at III-3, PR at III-2.

<sup>33</sup> CR at III-3, PR at III-2.

<sup>34</sup> CR/PR at Table VI-2.

<sup>35</sup> CR/PR at Table VI-2.

<sup>36</sup> CR/PR at Table VI-2.

<sup>37</sup> CR at III-2 n.5, PR at III-1-2 n.5.



importing was to \*\*\*. In addition, it is a petitioner.

*Washington Mills.* Washington Mills accounted for \*\*\* percent of domestic production in 2001. Its imports of the subject merchandise were equivalent to \*\*\* percent of its production in 1999, 2000, 2001, and interim 2002, respectively. The company explained that it imports from China \*\*\*.<sup>38</sup>

We determine that appropriate circumstances do not exist to exclude Washington Mills from the domestic industry, as its interests appear to lie more with domestic production than with importing. Compared to its domestic production, the volume of its imports was \*\*\*; its reasons for importing were \*\*\*. In addition, it is a petitioner.

#### **IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS<sup>39</sup>**

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.<sup>40</sup> 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.<sup>41</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>42</sup> In assessing whether there is a reasonable indication that 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.<sup>43</sup> 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.”<sup>44</sup>

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing RBAO is materially injured by reason of subject imports from China that allegedly are sold in the United States at LTFV.

##### **A. Conditions of Competition**

The following conditions of competition in the RBAO industry inform our determination.

RBAO has three general uses: (i) refractories (heat-resistant furnace linings); (ii) abrasives (bonded abrasives such as grinding wheels, and coated abrasives such as sandpaper); and (iii) general industrial uses (such as in polishing and blasting).<sup>45</sup> While some market participants described a cyclical business pattern, others described minimal-to-steady declines in demand due to importation of

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<sup>38</sup> CR at III-1, PR at III-1.

<sup>39</sup> There is no issue regarding negligibility because imports of RBAO from China constituted substantially more than 3 percent of total imports in the period October 1, 2001 through September 30, 2002, the most recent 12 months for which import data are available. *See* 19 U.S.C. §1677(24) and CR/PR at Table IV-1.

<sup>40</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>41</sup> 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).

<sup>42</sup> 19 U.S.C. § 1677(7)(A).

<sup>43</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>44</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>45</sup> CR at I-2, PR at I-2, and Petition at 5-9.

intermediate parts or finished goods, declining basic industrial applications, and technological changes. Data collected in this investigation show that aggregate demand, as measured by apparent U.S. consumption, increased by 23.5 percent between 1999 and 2000, but then fell by 18.1 percent in 2001 to a level comparable to that of 1999. Apparent U.S. consumption in interim 2002 was 10.4 percent lower than in interim 2001.<sup>46</sup> Demand for RBAO apparently has been adversely affected in 2001 and interim 2002, due to fewer furnace relines, soft conditions in the bonded and coated market, and general weakness in the U.S. manufacturing economy.<sup>47</sup>

The supply of RBAO to the U.S. market was affected by a corporate acquisition during the period examined. In 2000, Imerys (a multinational corporation headquartered in France) acquired the domestic producer Treibacher Schleifmittel. Imerys also owns C-E Minerals which had been an importer of RBAO from China. After Imerys' acquisition of Treibacher Schleifmittel, a decision was made that C-E Minerals would stop importing and become a domestic producer.<sup>48</sup> C-E Minerals began domestic production of RBAO in interim 2002. Thus, this acquisition led to the introduction of a new domestic producer and at least a temporary reduction in subject imports.

Another condition of competition affecting the supply of RBAO was the sale at low prices by the Defense Logistics Agency of its stockpile of crude aluminum oxide (the raw material used by domestic producers) in 1999 and 2000. Petitioners state that these stockpiles were purchased mainly by the domestic industry, but that these stockpile sales have now ceased.<sup>49</sup>

Overall, U.S. producers and U.S. importers report that RBAO produced in the United States generally is interchangeable with RBAO produced in China, as well as with imports from nonsubject countries.<sup>50</sup> Half of the responding U.S. importers did indicate non-price differences between U.S. and Chinese RBAO, primarily based on product quality and availability.<sup>51</sup> The substantial and growing quantity, market share, and inventory level in the United States of RBAO from China, however, suggest that the subject merchandise is not markedly inferior to the domestic like product in those attributes.

Non-subject imports were a sizable source of supply in the U.S. market during the period examined, rising from 31.1 percent of apparent U.S. consumption on a quantity basis in 1999 to 36.3 percent in 2000, but then falling to 28.6 percent in 2001.<sup>52</sup>

## **B. Volume of the Subject Imports**

Section 771(C)(i) of the Act provides that the "Commission shall consider whether the volume of

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<sup>46</sup> CR at II-3, PR at II-2 (demand) and CR/PR at Table IV-3 (apparent U.S. consumption). Fluctuations in apparent U.S. consumption may reflect in part changes in nonsubject imports, the volume of which is overstated in the record due to the inclusion of white and pink aluminum oxide in the relevant HTS subheading. We intend to seek more accurate data in any final investigation.

<sup>47</sup> Petitioners' Postconference Brief at 2-3.

<sup>48</sup> Conference Transcript at 11-12; and Petitioners' Postconference Brief at 3-4.

<sup>49</sup> Conference Transcript at 10-11, and 15; Petitioners' Postconference Brief at 4. There is no information in the record as to whether any further sales from, or purchases for, the stockpile are likely.

<sup>50</sup> CR/PR at Table II-2.

<sup>51</sup> CR at II-5, PR at II-3-4.

<sup>52</sup> CR/PR at Table C-2. We note that the share of apparent U.S. consumption accounted for by non-subject imports may be somewhat overstated because, as noted earlier, the HTS data on non-subject imports may include a certain amount of white and pink aluminum oxide, which are outside the scope of this investigation. CR/PR at Table IV-1. We intend to seek more accurate data in any final investigation.

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.”<sup>53</sup>

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<sup>53</sup> 19 U.S.C. § 1677(7)(C)(i).

The quantity of subject imports increased by 98.1 percent from 1999 to 2001. Subject imports rose from 37,485 short tons in 1999 to 61,538 short tons in 2000 and 74,258 short tons in 2001. In interim 2001 and interim 2002, subject imports were 59,877 short tons and 29,205 short tons, respectively.<sup>54</sup> The quantity of U.S. shipments of subject imports increased by 73.4 percent from 1999 to 2001. U.S. shipments of subject imports rose from 32,745 short tons in 1999 to 52,031 short tons in 2000 and 56,765 short tons in 2001. In interim 2001 and interim 2002, U.S. shipments of subject imports were 44,448 short tons and 47,732 short tons, respectively.<sup>55</sup> The market share of subject imports, measured on the basis of U.S. shipments of those imports, also increased substantially. The market share of subject imports was 18.2 percent in 1999, 23.4 percent in 2000, and 31.2 percent in 2001. The market share of subject imports in interim 2002 was 37.5 percent, higher than their market share of 31.3 percent in interim 2001.<sup>56</sup> The ratio of subject import volume to domestic production was \*\*\* percent in 1999, \*\*\* percent in 2000, \*\*\* percent in 2001, and \*\*\* percent in interim 2002.<sup>57</sup> Imports of the subject merchandise reportedly competed for sales in each of the three main end-uses for RBAO.<sup>58</sup>

For purposes of this preliminary determination, we find the volume and increase in volume of the subject imports, both in absolute terms, and relative to production and to apparent consumption in the United States, to be significant.

### **C. Price Effects of the Subject Imports**

Section 771(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.<sup>59</sup>

Subject imports and the domestic like product appear to be at least moderately substitutable.<sup>60</sup> Accordingly, price is an important factor in purchasing decisions.<sup>61</sup>

The Commission sought pricing data for two types of RBAO. The information that the Commission obtained shows that prices for both the domestic like product and the subject imports

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<sup>54</sup> CR/PR at Table IV-1. The decline in imports in interim 2002, as compared with interim 2001, presumably was attributable, at least in part, to the cessation of imports by C-E Minerals.

<sup>55</sup> CR/PR at Table IV-3. We recognize that domestic producers imported some of the subject merchandise. CR/PR at Table IV-2. When the imports by \*\*\* and by \*\*\* are netted out, the adjusted shares of the domestic industry's imports to total imports were \*\*\* percent in 1999, \*\*\* percent in 2000, \*\*\* percent in 2001, \*\*\* percent in interim 2001, and \*\*\* percent in interim 2002. See Chart of Imports by Firm.

<sup>56</sup> CR/PR at Table IV-4.

<sup>57</sup> Calculated comparing CR/PR at Table IV-1 (subject import quantity) to CR/PR at Table C-2 (domestic industry production, excluding related party Great Lakes).

<sup>58</sup> CR at II-1, PR at II-1, and CR/PR at Table II-2.

<sup>59</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>60</sup> CR/PR at Table II-2.

<sup>61</sup> CR at II-5, PR at II-3; CR/PR at Table II-1.

generally declined over the period examined.<sup>62</sup> Subject imports undersold the domestic like product in all calendar quarters in which comparisons between subject imports and the domestic like product were possible.<sup>63</sup> The margins of underselling were substantial, ranging from 15.3 percent to 33.9 percent for one product, and \*\*\* percent to \*\*\* percent for the other. Distributors of RBAO testified at the conference in this investigation that subject import prices are lower than prices from domestic producers.<sup>64</sup> The record also contains some evidence of lost sales due to the lower priced subject imports.<sup>65</sup>

Based on the pricing data collected in this investigation, we find that there has been significant price underselling by the subject imports, and that increasing volumes of the subject merchandise depressed prices to a significant degree.<sup>66</sup>

#### **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.<sup>67</sup> 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.”<sup>68 69 70</sup>

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<sup>62</sup> CR/PR at Tables V-1 and V-2. For pricing product 1, the weighted-average quarterly prices for the U.S. produced product and the subject imports fell by 12.5 percent and 13.8 percent, respectively, over the period examined. For pricing product 2, the weighted-average quarterly prices for the U.S. produced product and the subject imports fell by 6.8 percent and 27.7 percent, respectively, over the period examined. CR at V-5, PR at V-3.

<sup>63</sup> CR/PR at Tables V-1 and V-2. We recognize that these pricing data \*\*\* of domestically produced RBAO and of subject imports. We will consider collecting pricing data for additional RBAO products in any final phase investigation.

<sup>64</sup> Conference Transcript at 25-26 (Plonsker, AGSCO Corporation), 27-28 (Kane, Midvale Industries), and 28-29 (Bell, Precision Finishing, Incorporated).

<sup>65</sup> CR at V-9-11, PR at V-4, and CR/PR at Table V-3.

<sup>66</sup> We recognize that demand for RBAO and domestic producers’ raw material costs fell over the period examined, and that these factors may have contributed to price declines. However, the evidence discussed above indicates that subject imports themselves had a significant price depressing effect.

<sup>67</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885).

<sup>68</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

<sup>69</sup> 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 notice of initiation, Commerce reported that petitioners have alleged estimated dumping margins of 131.38 percent. 67 Fed. Reg. 77223, 77225 (December 17, 2002).

<sup>70</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub.

(continued...)

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<sup>70</sup> (...continued)  
2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11, n.63.

Most of the indicators of the domestic industry's condition declined over the period examined, or were weak throughout the period. As the subject imports increased their share of the U.S. market,<sup>71</sup> the domestic industry's production, sales, and shipments all declined.<sup>72</sup> At the same time, the domestic industry's inventories increased.<sup>73</sup>

The domestic industry's capacity remained constant over the period examined, except for an increase between interim periods.<sup>74 75</sup> Capacity utilization rates rose slightly from 1999 to 2000, but then declined in 2001 and over the interim periods.<sup>76</sup>

Although the profitability of individual domestic producers varied greatly,<sup>77</sup> the overall operating results for the domestic industry were poor throughout the period examined.<sup>78</sup>

The domestic industry's employment and wages declined over the period examined,<sup>79</sup> while productivity and capital expenditures fluctuated.<sup>80</sup>

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<sup>71</sup> The market share of subject imports on a quantity basis rose from 18.2 percent in 1999 to 23.4 percent in 2000 and 31.2 percent in 2001. The market share of subject imports in interim 2002 was 37.5 percent, higher than their market share of 31.3 percent in interim 2001, notwithstanding the fact that C-E Minerals no longer was importing the subject merchandise in interim 2002. CR/PR at Table C-2. The domestic industry's market share declined from 50.7 percent in 1999 to 40.3 percent in 2000 and 40.2 percent in 2001. The domestic industry's market share was 39.8 percent in interim 2001 and 43.8 percent in interim 2002.

<sup>72</sup> Domestic production rose \*\*\* from \*\*\* short tons in 1999 to \*\*\* short tons in 2000, before falling \*\*\* to \*\*\* short tons in 2001. Domestic production in interim 2002, at \*\*\* short tons, was \*\*\* lower than in interim 2001, when it was \*\*\* short tons. CR/PR at Table C-2. The domestic industry's U.S. shipments fell from \*\*\* short tons in 1999 to \*\*\* short tons in 2000, and to \*\*\* short tons in 2001. These shipments were \*\*\* short tons and \*\*\* short tons in interim 2001 and interim 2002, respectively. Id. The industry's total net sales fell from \*\*\* short tons in 1999 to \*\*\* short tons in 2000 and \*\*\* short tons in 2001. Net sales were \*\*\* short tons and \*\*\* short tons in interim 2001 and interim 2002, respectively. Id.

<sup>73</sup> Inventories rose from \*\*\* short tons in 1999 to \*\*\* short tons in 2000 and \*\*\* short tons in 2001. Inventories were \*\*\* short tons and \*\*\* short tons in interim 2001 and interim 2002, respectively. CR/PR at Table C-2.

<sup>74</sup> Total domestic capacity was \*\*\* short tons in each full year of the period examined, and \*\*\* and \*\*\* in interim 2001 and interim 2002, respectively. CR/PR at Table C-2.

<sup>75</sup> We are mindful that some of the data for interim 2002 (for example, the data on capacity, capacity utilization, and capital expenditures) would have been affected by C-E Minerals' start of domestic production late in the period examined.

<sup>76</sup> Capacity utilization rates were \*\*\* percent in 1999, \*\*\* percent in 2000 and \*\*\* percent in 2001; they were \*\*\* percent and \*\*\* percent, respectively, in interim 2001 and interim 2002. CR/PR at Table C-2.

<sup>77</sup> CR/PR at Table VI-2. In particular, \*\*\* recorded \*\*\* operating losses throughout the period examined. \*\*\*, in contrast, recorded \*\*\* operating profits throughout the period. CR/PR at Table VI-2. See also appendix D, discussing \*\*\* financial situation which led to its acquisition by \*\*\*. In any final phase investigation, we intend to look closely at \*\*\* overall operations, the ramifications of its acquisition of \*\*\*, and \*\*\* own performance prior to \*\*\*.

<sup>78</sup> Operating income was \*\*\* in 1999, \*\*\* in 2000, and \*\*\* in 2001, and \*\*\* and \*\*\*, respectively, in interim 2001 and interim 2002. CR/PR at Table C-2. Operating income as a ratio to net sales was \*\*\* percent in 1999, \*\*\* percent in 2000, and \*\*\* percent in 2001, and \*\*\* percent and \*\*\* percent, respectively, in interim 2001 and interim 2002. Id.

<sup>79</sup> The number of production workers dropped from \*\*\* in 1999 and 2000 to \*\*\* in 2001, and was \*\*\* and \*\*\* in interim 2001 and interim 2002, respectively. CR/PR at Table C-2. The domestic industry paid its workers \*\*\* million in 1999 and 2000 and \*\*\* million in 2001, and \*\*\* million in interim 2001 and \*\*\* million in interim 2002. Id.

<sup>80</sup> The industry's productivity was \*\*\* short tons per 1,000 hours in 1999, \*\*\* short tons per 1,000 hours in 2000, \*\*\* short tons per 1,000 hours in 2001. In interim 2001 and interim 2002 productivity was \*\*\* short tons per 1,000 hours and \*\*\* short tons per 1,000 hours, respectively. CR/PR at Table C-2. Capital expenditures were \*\*\* in 1999,

(continued...)



Based on the decline or sustained weakness in most of the indicators of the domestic industry's condition over the period examined, coincident with the increasing quantity of subject imports that significantly depressed the prices of the domestic like product, we find that the subject imports had a significant adverse impact on the domestic industry.

### **CONCLUSION**

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing RBAO is materially injured by reason of imports from China that allegedly are sold in the United States at less than fair value.

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<sup>80</sup> (...continued)

\*\*\* in 2000, \*\*\* in 2001, and \*\*\* and \*\*\* in interim 2001 and interim 2002, respectively. See CR/PR at Table C-2.