

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN CERAMIC STATION POST INSULATORS FROM JAPAN

Investigation No. 731-TA-1023 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3578, February 2003)

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 certain ceramic station post insulators (“CSPI”) from Japan 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.¹ 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.”²

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.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “[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.”⁴ 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.”⁵

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.⁶ No single factor is dispositive, and the Commission

¹ 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.

² 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).

³ 19 U.S.C. § 1677(4)(A).

⁴ Id.

⁵ 19 U.S.C. § 1677(10).

⁶ 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

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁸ 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.⁹

B. Product Description

Commerce has defined the imported merchandise within the scope of this investigation as:

station post insulators manufactured of porcelain, of standard strength, high strength, or extra-high strength, solid core or cavity core, single unit or stacked unit, assembled or unassembled, and with or without hardware attached, rated at 115 kilovolts (kV) voltage class and above (550 kilovolt Basic Impulse Insulation Level (BIL) and above), including, but not limited to, those manufactured to meet the following American National Standards Institute, Inc. (ANSI) standard class specifications: T.R.- 286, T.R.- 287, T.R.-288, T.R.-289, T.R.-291, T.R.-295, T.R.-304, T.R.- 308, T.R.-312, T.R.-316, T.R.-362 and T.R.-391. Subject merchandise is classifiable under subheading 8546.20.0060 of the Harmonized Tariff Schedule of the United States (HTSUS) Annotated. While the HTSUS subheading is provided for convenience and U.S. Customs purposes, the written description above remains dispositive as to the scope of the investigation.¹⁰

⁶ (...continued)

factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

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

⁸ 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.”).

⁹ 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).

¹⁰ 68 Fed. Reg. 4169, 4170 (January 28, 2003). Commerce’s discussion of the scope also notes that “[s]tation post insulators are manufactured in various styles and sizes, and are classified primarily according to the voltage they are designed to withstand. Under the governing industry standard issued by the Institute of Electrical and Electronic Engineers (IEEE), the voltage spectrum is divided into three broad classes: ‘medium’ voltage (i.e., less than or equal to 69 kilovolts), ‘high’ voltage (i.e., from 115 to 230 kilovolts), and ‘extra-high’ or ‘ultra-high’ voltage (i.e., greater than 230 kilovolts).” With respect to the tariff classifications, Commerce indicates that “HTSUS subheading 8546.20.00 includes ceramic electrical insulators in general. Station post insulators are classified under HTSUS number 8546.20.0060 which also includes non-subject merchandise.” Id.

CSPI are one-piece solid or hollow core porcelain columns with multiple petticoats or skirts from top to bottom.¹¹ They are composed of a porcelain body that has been turned on a lathe to form the characteristic shape.¹² They are manufactured in various styles and sizes, and are classified according to the voltage they are designed to withstand.¹³

High and extra-high voltage CSPI are designed and sold for use in electrical substations where electrical power is “stepped up” from generation voltage to transmission voltage or “stepped down” from transmission voltage to distribution voltage.¹⁴

C. Domestic Like Product

Petitioners urge the Commission to define the domestic like product coextensively with the scope of the investigation, which covers CSPI rated at 115 kV and above. Respondents do not oppose this definition.¹⁵ After considering the domestic like product factors, we define the domestic like product coextensively with the scope of the investigation and do not expand it to include medium voltage CSPI (which are rated at 69 kV and below), even though several domestic producers manufacture both medium voltage CSPI as well as both high and extra-high voltage CSPI.¹⁶

The record indicates that many physical characteristics of medium, high and extra-high voltage station post insulators are similar.¹⁷ However, medium voltage CSPI are used as single units unlike high and extra-high voltage CSPI, which are often stacked;¹⁸ moreover, high and extra-high voltage CSPI are used for transmission of electricity while medium voltage CSPI are used for distribution.¹⁹ With respect to interchangeability, high, extra-high and medium voltage CSPI cannot be used in the same applications because of their different voltage ratings.²⁰ These classes of station post insulators are, to a large extent, made on the same equipment in the same facilities by the same employees²¹ and are sold through similar channels of distribution.²²

¹¹ Confidential Staff Report, INV-AA-012, February 7, 2003 (“CR”) at I-5, Public Report (“PR”) at I-4.

¹² See Petition at Annex E.

¹³ CR at I-4, PR at I-3.

¹⁴ CR at I-6, PR at I-5.

¹⁵ Petitioners’ Postconference Brief at 4; Respondents’ Postconference Brief at 31. Respondents are Locke Insulators, Inc., NGK Insulators, Ltd., and NGK-Locke, Inc.

¹⁶ According to an IEEE standard, “medium” voltage is considered to be less than or equal to 69 kV, and “high” voltage is from 115 kV to 230 kV. CR at I-4, n.4, PR at I-3 n.4. There is no domestic consumption of station post insulators in the 70 kV to 114 kV range. CR at I-6 n.11, PR at I-5 n.11. Thus, there is a clear dividing line between medium voltage CSPI, on the one hand, versus high and extra-high voltage CSPI.

¹⁷ Petitioners’ Postconference Brief at 26.

¹⁸ CR at I-11 n.22, PR at I-8 n.22.

¹⁹ CR at I-11 n.22, PR at I-8 n.22.

²⁰ CR at I-11 n.22, PR at I-8 n.22.

²¹ CR at I-11 n.22, PR at I-8 n.22. See also, Conference Transcript at 64 (January 21, 2003) (“Tr.”) (indicating domestic producer Newell manufactures medium and high voltage station post insulators on the same equipment and with the same employees).

²² CR at I-11 n.22, PR at I-8 n.22.

Customers perceive medium voltage CSPI to be a less demanding, easier product to use that does not require a crane for installation.²³ Further, high and extra-high voltage CSPI command a price premium relative to medium voltage station post insulators.²⁴

Accordingly, for purposes of this preliminary determination, we define a single domestic like product co-extensive with the scope, *i.e.* encompassing both high and extra-high voltage station post insulators and excluding medium voltage CSPI.²⁵

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.”²⁶ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²⁷

Based on our domestic like product finding and for purposes of this preliminary determination, we determine that the domestic industry consists of all U.S. producers of high and extra-high voltage CSPI, with the exception of Locke Insulators, Inc. (“Locke”), which we exclude from the domestic industry as a related party, as discussed below.

B. Related Parties

We must 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.²⁸ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.²⁹

²³ CR at I-11 n.22, PR at I-8 n.22.

²⁴ Petitioners’ Postconference Brief at 26.

²⁵ For the remainder of this determination, we refer to subject merchandise and the domestic like product simply as “CSPI.”

²⁶ 19 U.S.C. § 1677(4)(A).

²⁷ 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).

²⁸ 19 U.S.C. § 1677(4)(B).

²⁹ 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 (continued...)

There are four domestic producers of station post insulators in the United States: Lapp Insulator Co. LLC (“Lapp”), Newell Porcelain Co. (“Newell”), Victor Insulators, Inc., (“Victor”), and Locke Insulators, Inc.³⁰ Locke was *** U.S. importer of the subject merchandise during the period of investigation³¹ and is a wholly owned subsidiary of NGK Insulators of Japan (“NGK”), the *** of the subject merchandise.³² Thus, Locke is a related party by virtue of being owned by an exporter of the subject merchandise as well as by virtue of its importation of the subject merchandise.

We must consider whether appropriate circumstances exist to exclude Locke from the domestic industry. The petitioners urge the Commission to exclude Locke from the domestic industry, contending that Locke, *** of the subject merchandise, was shielded from the effects of competition with the subject imports.³³

Respondents argue that appropriate circumstances do not exist to exclude Locke from the domestic industry.³⁴ They note that Locke is the *** U.S. producer of CSPI, accounts for *** percent of U.S. production and is continuing to make significant investments to ***.³⁵ They assert that Locke imported the subject merchandise in order to serve the spike in demand between 2000 and 2002,³⁶ and state that Locke placed its last order for subject imports in October 2002 for delivery by April 2003.³⁷

The record indicates that Locke is the *** domestic producer, accounting for *** of domestic production in 2001,³⁸ and appears committed to domestic production (as evidenced by its recent ***).³⁹ Moreover, Locke’s shipments of its domestic production ***.⁴⁰ Its shipments of its domestic production accounted for approximately *** of apparent U.S. consumption during the POI.⁴¹

Locke was *** during the POI. Shipments of subject imports accounted for *** percent of apparent U.S. consumption in 2001 and *** percent from January to September (“interim”) 2002.⁴²

²⁹ (...continued)

(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.

³⁰ CR at III-1, PR at III-1.

³¹ CR at IV-1, PR at IV-1.

³² CR at VI-1, PR at VI-1.

³³ Petitioners’ Postconference Brief at 23.

³⁴ Respondents’ Postconference Brief at 11-12, Exh. 1 at 3-5.

³⁵ Respondents’ Postconference Brief at 12, Exh. 1 at 3-5.

³⁶ Respondents’ Postconference Brief at 12, Exh. 1 at 3-5.

³⁷ Respondents’ Postconference Brief at 12, Exh. 1 at 3-5.

³⁸ CR/PR at Table III-1 (about *** percent).

³⁹ Locke increased its capacity from *** units in 1999 to *** units in 2001. CR/PR at Table III-2.

⁴⁰ See CR/PR at Table III-2.

⁴¹ CR/PR at Table IV-5.

⁴² CR/PR at Table IV-5. Locke imported *** units in 1999, *** units in 2000, *** units in 2001, *** units in Jan-Sep. 2001, and *** units in Jan-Sep. 2002. CR/PR at Table III-2.

Because Locke and its parent corporation ***,⁴³ Locke *** shielded from the competition with the subject imports that the three other U.S. producers faced. Locke's financial performance also was *** than that of the other three domestic producers.⁴⁴ This may be due in part to the benefit to Locke as a result of its being shielded from competition with the subject merchandise. It also may be due in part to financial or other benefits that Locke may have derived from its relationship to NGK, its Japanese parent corporation.⁴⁵ In any final investigation, we intend to examine the nature and extent of any benefits Locke may have received by virtue of its importing or its relationship with its corporate parent.

Based on the record in this preliminary investigation, we find the question of whether appropriate circumstances exist to exclude Locke from the domestic industry as a related party to be a close one. On the one hand, Locke is the *** of subject merchandise and a wholly owned subsidiary of the only exporter of the subject merchandise. In addition, Locke opposes the petition and *** members of the industry. On the other hand, it is the *** and appears committed to domestic production. On balance, for purposes of this preliminary investigation, we find appropriate circumstances exist to exclude Locke. We intend to reconsider this issue fully in any final investigation.

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS⁴⁶

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.⁴⁷ 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.⁴⁸ The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."⁴⁹ 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.⁵⁰ 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."⁵¹

⁴³ See CR at IV-1 n.2, PR at IV-1 n.2.

⁴⁴ See CR/PR at Table VI-5. Locke was ***. *Id.*

⁴⁵ See Petitioners' Postconference Brief at 17.

⁴⁶ The statute indicates the Commission is to terminate the investigation if subject imports constitute less than three percent of total imports for the 12 months preceding the filing of the petition. There is no issue regarding negligibility because imports of CSPI from Japan constituted substantially more than 3 percent of total imports in the period. See 19 U.S.C. §1677(24) and CR/PR at Table IV-1, Fig. IV-1.

⁴⁷ 19 U.S.C. §§ 1671b(a), 1673b(a).

⁴⁸ 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).

⁴⁹ 19 U.S.C. § 1677(7)(A).

⁵⁰ 19 U.S.C. § 1677(7)(C)(iii).

⁵¹ 19 U.S.C. § 1677(7)(C)(iii).

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

A. Conditions of Competition

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

Demand for CSPI is highly dependent upon electric utilities' investment in power plants and substations.⁵² Apparent U.S. consumption rose steadily throughout the period of investigation.⁵³ The increase in consumption was due to the investment in power generation that resulted from increased energy demand. However, in the aftermath of the bankruptcy of Enron in 2002 and resulting disruption in energy markets, energy projects were perceived as being less attractive and financing became difficult to obtain.⁵⁴ Consequently, there was reportedly a decline in orders for CSPI at the end of 2002, outside of our data collection period in this preliminary phase investigation.⁵⁵

There are five companies competing for sales in the U.S. market, *i.e.* Lapp, Newell, Victor, Locke/NGK, and Ceram Insulators.⁵⁶ Electric utilities, packagers and original equipment manufacturers are the primary purchasers of CSPI from the domestic producers.⁵⁷ Sales to original equipment manufacturers are generally under blanket agreements whereas sales to the electric utilities occur mostly on the spot market.⁵⁸ Price is an important factor in purchasing decisions as CSPI are standardized to ANSI and IEEE specifications.⁵⁹

The ceramic insulator industry is a long-established industry in the United States. Locke has been in existence for more than one hundred years.⁶⁰ Started in 1916, Lapp developed CSPI in the 1940s.⁶¹ Victor was founded in 1935.⁶² *** domestic producers added substantial capacity during the period of investigation, although ***.⁶³

⁵² CR at II-4, PR at II-3.

⁵³ Apparent U.S. consumption was 95,951 CSPI in 1999, 125,977 CSPI in 2000, and 146,837 CSPI in 2001. During interim 2002, apparent U.S. consumption was 119,034 CSPI versus 111,239 CSPI in interim 2001. Similarly, in dollar terms, apparent U.S. consumption increased from \$30.3 million in 1999 to \$40.6 million in 2000 to \$52.1 million in 2001. Apparent U.S. consumption was \$38.6 million in interim 2001 and \$42.3 million in interim 2002. CR/PR at Table IV-5.

⁵⁴ CR at II-4, PR at II-3.

⁵⁵ See CR at II-4, PR at II-3; Tr. at 33.

⁵⁶ Respondents' Postconference Brief at 13.

⁵⁷ CR at II-1, PR at II-1.

⁵⁸ CR at II-1, PR at II-1.

⁵⁹ CR at II-5, PR at II-4. Internet sales are growing in importance, suggesting increasing open competition for sales. CR at II-2, PR at II-1.

⁶⁰ Respondents' Postconference Brief at 1

⁶¹ Petition of December 31, 2002, at 14.

⁶² Respondents' Postconference Brief at 1

⁶³ See CR/PR at Table III-2.

The different domestic producers manufacture CSPI through different processes.⁶⁴ *** use the wet (green) process while *** use the dry process.⁶⁵ The wet process uses electric current and heat to reduce moisture in the ceramic “blanks” that become CSPI while the dry process only utilizes heat to dry the blanks.⁶⁶ The wet process appears to be a more efficient method of CSPI production.⁶⁷

Natural gas is a large cost component in the production of CSPI and natural gas prices tripled toward the end of the POI.⁶⁸ Locke asserts that it better managed natural gas prices through use of the futures market and as a result, unlike the other domestic producers, it did not attempt to add on an energy surcharge to its customers’ orders in 2001.⁶⁹

Nonsubject imports increased over the POI along with subject imports; between interim periods, however, nonsubject imports ***.⁷⁰ Lapp purchased CeramTec of Germany in 2000 and Lapp now imports CSPI from Germany.⁷¹

B. Volume of the Subject Imports

Section 771(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁷²

⁶⁴ See CR at I-8 n.18, PR at I-6 n.18.

⁶⁵ See CR at I-8 n.18, PR at I-6 n.18.

⁶⁶ CR at I-8, PR at PR at I-6.

⁶⁷ CR at I-10, PR at I-8.

⁶⁸ CR at V-1, PR at V-1.

⁶⁹ CR at V-1, PR at V-1; CR at V-1 n.3, PR at V-1 n.3; CR at VI-10 n.9, PR at VI-3 n.9.

⁷⁰ CR/PR at Fig. IV-1.

⁷¹ CR/PR at Table III-1.

⁷² 19 U.S.C. § 1677(7)(C)(I).

The volume of subject imports nearly *** from 1999 to 2001.⁷³ Over that period, subject imports increased their share of the U.S. market from *** percent to *** percent.⁷⁴ We note that Locke accounts for all known imports of the subject product. Locke claims it imported the subject product only to meet an unexpected surge in demand.⁷⁵ In any final investigation, we will further investigate the reasons for Locke's importations. Nonsubject imports also captured a growing share of the U.S. market, although ***.⁷⁶

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 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.⁷⁷

Subject imports and the domestic like product appear to be moderately to highly substitutable when made according to ANSI and IEEE specifications.⁷⁸ Thus, price is an important factor in purchasing decisions,⁷⁹ and competition for sales in the U.S. market appears to be intense.⁸⁰

⁷³ Subject imports rose from *** CSPI in 1999 to *** CSPI in 2000, and *** CSPI in 2001. There was a decrease between the interim periods, with imports falling from *** CSPI in interim 2001 to *** CSPI in interim 2002. CR/PR at Table IV-1. The value of subject imports followed a slightly different trend, falling from *** in 1999 to *** in 2000 and then rising to *** in 2001. The value of subject imports fell in the interim period comparison, from *** in interim 2001 to *** in interim 2002. Id. Reflecting ***, shipments of subject imports in the United States continued to increase in the interim comparison, while, as noted, the volume of subject imports decreased in this comparison. See CR/PR at Table IV; CR/PR at Table IV-4 n.1. Both subject imports and shipments of subject imports increased substantially over the POI.

⁷⁴ CR/PR at Table IV-5. The increase continued in the interim comparison, from *** in interim 2001 to *** in interim 2002. CR/PR at Table IV-5. In value terms, shipments of subject imports captured *** of the U.S. market in 1999, *** in 2000, and *** in 2001. Their share increased from *** in interim 2001 to *** in interim 2002. Id.

⁷⁵ Respondents Postconference Brief at 2.

⁷⁶ In quantity terms, nonsubject import market share rose from *** percent in 1999 to *** percent of the U.S. market in 2001, and from *** percent in interim 2001 to *** percent in interim 2002. CR/PR at Table IV-5.

⁷⁷ 19 U.S.C. § 1677(7)(C)(ii).

⁷⁸ All domestic producers indicated that CSPI produced in the United States and Japan are used interchangeably. CR at II-6, PR at II-4. Customers apparently are unaware whether Locke has sold them a Japanese or domestically produced product. CR at IV-1, PR at IV-1.

⁷⁹ CR at II-5, PR at II-4.

⁸⁰ Respondents' Postconference Brief at 1; CR at II-2, PR at II-1 (indicating growing prevalence of internet sales).

The Commission sought pricing data for three pricing products.⁸¹ Subject imports undersold the domestic product in *** calendar quarters in which comparisons between subject imports and the domestic product were possible.⁸² The margins of underselling were ***, ranging from *** percent to *** percent for product 1, and *** percent to *** percent for product 2. The volume of subject imports overselling domestic CSPI was ***, in comparison to the volume of subject imports that undersold the domestic like product, *i.e.*, *** units.⁸³ We find that the underselling by the subject imports was significant.⁸⁴

With respect to price depression or suppression, the limited information obtained by the Commission shows that prices for both the domestic like product and the subject imports generally declined over the period of investigation.⁸⁵ However, prices for product 3, for which there were no reported sales of subject imports, did not decline.⁸⁶ Based on this record, we find that subject imports depressed domestic prices to a significant degree.

The general decline in domestic prices occurred in a period in which, as described above, demand was increasing strongly. While the U.S. producers each ***,⁸⁷ their *** was ***. Thus, the general decline in prices does not appear to be a function of overcapacity. Additionally, the record suggests that domestic producers were unable to maintain elevated prices in the wake of the energy price increases and instead those producers who sought energy surcharges were compelled to withdraw them, suggesting price suppression by subject imports.⁸⁸

Accordingly, for purposes of this preliminary investigation, we find a reasonable indication that there has been significant price underselling by the subject imports, and that increasing volumes of the subject merchandise depressed prices and suppressed price increases to a significant degree.⁸⁹

⁸¹ See CR at V-4, PR at V-3. The Commission's pricing data accounted for 4.2 of U.S. producers' shipments and 2.4 percent of U.S. shipments of subject imports. Id. In any final investigation, we will seek greater pricing coverage.

⁸² CR/PR at Tables V-1 and V-2 (revised to excluded Locke's sales).

⁸³ CR/PR at Tables V-2 (revised to excluded Locke's sales).

⁸⁴ Individual U.S. producers had differing prices and the record indicates that there is strong intra-industry competition. Nonetheless, subject imports undersold the weighted average of domestic industry sales, and undersold at least some of the domestic producers in every quarter in which comparison was possible. See INV-AA-014, Feb. 12, 2003, at Fig. D-1 and Fig. D-2, PR at Fig. D-1 and Fig. D-2. We note, however, that *** reported the lowest prices toward the end of the period for product 1. In any final investigation, we intend to examine differences among U.S. producers' prices.

⁸⁵ CR at V-4 and V-11, PR at V-4; CR/PR at Fig. V-2 (product 1); CR/PR at Fig. V-3 (product 2). See also Tr. at 10, 102 (agreement of parties that prices have declined).

⁸⁶ ***. See CR/PR at Fig. V.

⁸⁷ The three domestic producers we included in the industry (Lapp, Newell, and Victor) *** from *** units from 1999 to 2001. CR/PR at Table III-2. Locke *** from *** CSPI in 1999 to *** CSPI in 2001. CR/PR at Table III-2. Apparent U.S. consumption increased from 95,591 CSPI in 1999 to 146,837 CSPI in 2001. CR/PR at Table IV-5.

⁸⁸ Prices for natural gas increased significantly during the POI and *** unsuccessfully attempted to pass the added cost on to their customers. CR at V-1, PR at V-1. As noted earlier, Locke did not attempt to pass on an energy surcharge in 2001 and it asserts that it had better managed natural gas prices through the use of the futures market.

⁸⁹ In any final phase investigation, we intend to further explore the various factors, e.g., intra-industry competition, increased domestic capacity, and increased nonsubject imports, that may have caused price depression (continued...)

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.⁹⁰ 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.”^{91 92 93}

Faced with an expanding market, the domestic industry⁹⁴ increased *** over the period examined although by less than the increase in apparent U.S. consumption.⁹⁵ However, as the subject imports increased, the domestic industry’s capacity utilization rates ***⁹⁶ and Lapp and Newell were forced to idle kilns during 2002.⁹⁷ The domestic industry experienced declining market share despite increases in apparent U.S. consumption.⁹⁸

⁸⁹ (...continued)
and suppression.

⁹⁰ 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).

⁹¹ 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.

⁹² 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 an estimated dumping margin of 105.8 percent. 68 Fed Reg. 4169, 4171 (Jan. 28, 2003).

⁹³ 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. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11, n.63.

⁹⁴ As we have excluded Locke from the definition of the domestic industry, we examine the impact of the subject imports on the domestic industry consisting of the other three producers.

⁹⁵ The industry’s capacity was *** CSPI in 1999, *** CSPI in 2000, and *** CSPI in 2001. CR/PR at Table C-2 (revised by INV-AA-015, Feb.12, 2003 to exclude Locke). Apparent U.S. consumption was 95,951 CSPI in 1999, 125,977 CSPI in 2000, and 146,837 CSPI in 2001. CR/PR at Table IV-5.

⁹⁶ Capacity utilization rates were *** percent in 1999, *** percent in 2000, *** percent in 2001; and *** percent and *** percent, respectively, in interim 2001 and interim 2002. CR/PR at Table C-2 (excluding Locke).

⁹⁷ Tr. at 25, 30.

⁹⁸ The domestic industry captured *** percent of the market in 1999, *** percent in 2000 and *** percent in 2001. Its share *** to *** percent in interim 2002 from *** percent in interim 2001. CR/PR at Table C-2 (excluding Locke).

Most of the indicators of the domestic industry's condition declined late in the period examined, or were weak throughout the period. The industry's production, shipments and net sales showed modest improvement during the early part of the POI, yet these indicators worsened when subject imports surged into the U.S. market in 2001.⁹⁹ Likewise, the domestic industry's employment *** during the period,¹⁰⁰ and capital expenditures trended ***.¹⁰¹ The industry's productivity *** in the interim comparison.¹⁰²

Despite the greater than fifty percent growth in apparent U.S. consumption from 1999-2001,¹⁰³ the domestic industry was never able to ***.¹⁰⁴ While the unit value of the domestic industry's net sales ***¹⁰⁵***, so the domestic industry remained ***.¹⁰⁶ The industry was unable to raise prices in response to *** in 2001.¹⁰⁷

Based on significant declines or sustained weaknesses in most of the performance indicators of the domestic industry during a period of increasing demand and at the same time that the subject merchandise was being imported in significantly increasing quantities and sold at prices significantly below the weighted average of domestic industry sales, we find that the subject imports had a significant adverse impact on the domestic industry.

⁹⁹ The industry's production was *** CSPI in 1999, *** CSPI in 2000, and *** CSPI in 2001. Production fell in the interim period comparison, from *** CSPI in interim 2001 to *** CSPI in interim 2002. CR/PR at Table C-2 (excluding Locke).

The industry's U.S. shipments were *** CSPI in 1999, *** CSPI in 2000, and *** CSPI in 2001. The interim period comparison reveals some *** from *** CSPI in interim 2001 to *** CSPI in interim 2002. CR/PR at Table C-2 (excluding Locke). Net sales were *** million in 1999, *** million in 2000, and *** million in 2001. However, net sales fell between the interim periods, from *** million to *** million. CR/PR at Table C-2 (excluding Locke).

¹⁰⁰ The number of production workers increased from *** in 1999 to *** in 2000 to *** in 2001, and declined between the interim periods, from *** in interim 2001 to *** in interim 2002. CR/PR at Table C-2 (excluding Locke). The domestic industry paid its workers *** million in 1999, *** million 2000, and *** million in 2001, but the total fell from *** million in interim 2001 to *** million in interim 2002. *Id.* The declines in 2002 reflect layoffs by ***. Tr. at 24; CR at VI-10 n.10, PR at VI-3 n.10.

¹⁰¹ Capital expenditures were *** in 1999, *** in 2000, *** in 2001, and *** and *** in interim 2001 and interim 2002, respectively. CR/PR at Table C-2 (excluding Locke).

¹⁰² The industry's productivity was *** units per 1,000 hours in 1999, *** units per 1,000 hours in 2000, and *** units per 1,000 hours in 2001. In interim 2001 and interim 2002 productivity was *** units per 1,000 hours and *** units per 1,000 hours, respectively. CR/PR at Table C-2 (excluding Locke).

¹⁰³ See CR/PR at Table IV-5.

¹⁰⁴ The domestic industry's operating income as a ratio to net sales was *** percent in 1999, *** percent in 2000, and *** percent in 2001. The ratio was *** in interim 2002 compared to *** in interim 2001. CR/PR at Table C-2 (excluding Locke).

¹⁰⁵ This occurred despite falling prices as ***. See CR at VI-10 n.11, PR at VI-3 n.11.

¹⁰⁶ See CR/PR at Table C-2 (excluding Locke) (unit value of net sales *** from *** in 1999 to *** in 2001 and the unit value of COGS *** from *** in 1999 to *** in 2001. We note the ***. See CR/PR at Table VI-5. In any final phase investigation, we intend to examine the relative efficiencies of the individual producers.

***. In any final investigation, we will examine the effects that these restructurings had on the cost structure of the domestic industry.

¹⁰⁷ See CR at VI-10, PR at VI-3 Customers reportedly were unwilling to accept energy surcharges that domestic producers attempted to impose. CR at VI-10 n.9, PR at VI-3 n.9; CR at V-1, PR at V-1.

In any final phase investigation we intend to examine further the other factors that affect the domestic industry and prices for the domestic like product. Further, while we examine the condition of the domestic industry as a whole, there is considerable variation in the condition of the individual domestic producers, and we will seek additional information regarding the reasons for such variations in any final investigation.

CONCLUSION

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

