

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN COLOR TELEVISION RECEIVERS FROM CHINA AND MALAYSIA

Investigations Nos. 731-TA-1034 and 1035 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, 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 and Malaysia of certain color television receivers, provided for in subheadings 8528.12.28, 8528.12.32, 8528.12.36, 8528.12.40, 8528.12.44, 8528.12.48, 8528.12.52, and 8528.12.56 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).²

BACKGROUND

On May 2, 2003, a petition was filed with the Commission and Commerce by Five Rivers Electronic Innovations, LLC, Greeneville, TN; the International Brotherhood of Electrical Workers (“IBEW”), Washington, DC; and the IUE-CWA, the Industrial Division of the Communications Workers of America, Washington, DC, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of LTFV imports of certain color television receivers from China and Malaysia. Accordingly, effective May 2, 2003, the Commission instituted antidumping duty investigations Nos. 731-TA-1034 and 1035 (Preliminary).

Notice of the institution of the Commission’s investigations 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 May 13, 2003 (68 FR 25627). The conference was held in Washington, DC, on May 23, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Chairman Deanna Tanner Okun did not participate in these investigations.

VIEWS OF THE COMMISSION
Investigations Nos. 731-TA-1034 and 1035 (Preliminary)

CERTAIN COLOR TELEVISION RECEIVERS FROM CHINA AND MALAYSIA

Based on the record in these investigations, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain color television receivers (“CTVs”) from China and Malaysia that are alleged to be sold in the United States at less than fair value (“LTFV”).¹

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, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the subject imports.² 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.”³

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining 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.”⁴ 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.”⁵ 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”⁶

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.⁷ No single factor is dispositive, and the Commission

¹ Chairman Deanna Tanner Okun did not participate in these determinations.

² 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int’l Trade 1999).

³ 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).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

⁷ See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (CIT, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (CIT 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

may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁹ 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 LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Product Description

In its notice of institution, Commerce defined the scope of these investigations as follows: complete and incomplete direct-view or projection-type cathode-ray tube color television receivers, with a video display diagonal exceeding 52 centimeters, whether or not combined with video recording or reproducing apparatus, which are capable of receiving a broadcast television signal and producing a video image. Specifically excluded from these investigations are computer monitors or other video display devices that are not capable of receiving a broadcast television signal.¹¹

For purposes of these investigations, complete CTVs are those that are fully assembled and ready to function when purchased by the consumer. Incomplete CTVs contain all parts necessary for manufacturing complete CTVs, and include CTVs designated as color television receiver kits, unassembled CTVs, or unfinished CTVs. Incomplete CTVs are imported by U.S. producers and assembled into complete CTVs in U.S. production facilities.¹²

A CTV is an electronic product capable of receiving a broadcast television signal and producing a video image.¹³ Consumers use these products for watching broadcasts directly off the air or from a cable

‘unique facts of each case’ ”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (CIT 1996).

⁸ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁹ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹¹ 68 Fed. Reg. 32013 (May 29, 2003). CTVs with flat panel displays (which incorporate a display technology other than a color picture tube, such as plasma or liquid crystal display) are not included in the scope of these investigations; there is no domestic production of such televisions. The scope does include so-called “flat-screen” CTVs, which have a color picture tube with a flat faceplate.

¹² CR at I-6; PR at I-4. For the purpose of these investigations, incomplete CTVs consist of a color picture tube and a printed circuit board or ceramic substrate with components assembled onto the printed circuit board or ceramic substrate, designed to perform the intermediate frequency amplification function and the picture and audio demodulation functions of a color television receiver. See Commerce Notice of Initiation 68 Fed. Reg. 32013 (May 29, 2003).

¹³ CR at I-3; PR at I-2.

source. CTVs may also be used as display units for video games, video cassette recorders (“VCRs”), digital video disc (“DVD”) players, or computers. Combination CTVs contain in the same

cabinet a videocassette recorder/player and/or DVD player. The CTVs subject to investigation range in screen size from 21 inches to over 35 inches and include direct-view and projection CTVs. In addition to screen-size and direct-view versus projection, CTVs within the scope of these investigations may be distinguished from one another by a number of characteristics, including curved screen color picture tube (“CPT”) versus flat-screen CPT,¹⁴ aspect ratio, analog versus digital, and feature level.¹⁵

Direct-view CTVs display the image on a single CPT that is viewed directly. In contrast, projection CTVs generally use three monochrome cathode ray tubes (“CRTs”) - red, green, and blue - to project a color image onto a separate screen that is viewed.¹⁶ Projection CTVs may be either front-projection, where the image is projected onto the front of a reflective screen, like the screen of a movie theater, or rear-projection, where the image is projected onto the rear of a translucent screen and viewed through the screen. A projection television performs the same function as a direct view CTV, but is much larger and typically more expensive.¹⁷ Because of their size, most projection televisions sold in the United States are domestically produced.

C. Domestic Like Product Issues

Petitioners¹⁸ assert that there is only one domestic like product which is coextensive with the scope of these investigations, specifically, “complete and incomplete direct view or projection type cathode-ray tube color television receivers, with video display diagonal exceeding 52 cm (in effect, 21 inches and larger), whether or not combined with video recording or reproducing apparatus.”¹⁹ Respondents have not challenged petitioners’ domestic like product definition.

Given the lack of any alternative like product arguments, the existence of a domestically-produced equivalent to the imported product, and the apparent lack of any similar domestically-produced substitute product,²⁰ we define the domestic like product to be coextensive with the scope of the subject merchandise.

¹⁴ Flat-screen CPTs do not distort the image around the edge of the viewing area as do traditional curved-screen CPTs. Another advantage of the flat screen is less glare compared to curved-screen CPTs. There is a price premium to be paid for a flat screen, but that premium is shrinking. CR at I-4; PR at I-3.

¹⁵ CR at I-3; PR at I-2.

Aspect ratio: the aspect ratio is the ratio of picture width to picture height. CR and PR Appendix D at 3.

Analog: analog signals are data transmissions that use continuously varying electrical voltages. Analog video, whether transmitted over cables or read from video tapes or broadcast, is subject to degradation due to noise, distortion, and other electronic interference. CR and PR Appendix D at 3.

Digital: digital signals are data transmissions that use binary numbers. They are virtually immune to noise, distortion, crosstalk, and other quality problems associated with analog data transmissions. The digital signal can be compressed, allowing it to carry up to 5 times more information using the same amount of bandwidth as an existing analog signal. CR and PR Appendix D at 3.

There is an ongoing shift in the U.S. market from analog to digital television broadcasting. CR at I-4 - I-5; PR at I-3.

¹⁶ CR at I-3; PR at I-2.

¹⁷ CR at I-4; PR at I-2.

¹⁸ The petition was filed by Five Rivers Electronic Innovations, LLC (“Five Rivers”), the International Brotherhood of Electrical Workers, and the IUE-CWA, the International Division of the Communications Workers of America. CR at I-1; PR at I-1.

¹⁹ CR at I-3; PR at I-2.

²⁰ The record in these preliminary investigations indicates that there was some limited domestic production of CTVs under 21 inches between 2000 and 2002 by one domestic producer. In the final phase of these investigations, we intend to gather further information about domestic production of CTVs under 21 inches.

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . .”²¹ In defining the domestic industry, the Commission generally includes in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²²

1. Sufficient Production-Related Activities

Chinese respondents argued that Petitioner Five Rivers should be excluded from the domestic industry because it is an assembler and has insufficient production-related activities in the United States to be considered a domestic producer of the domestic like product.²³ Five Rivers claimed that, although it is an assembler of CTVs, it nevertheless performs sufficient production-related activities to be included in the domestic industry.²⁴

In deciding whether a firm qualifies as a domestic producer, the Commission analyzes the overall nature of a firm's production-related activities in the United States; production-related activity at minimum levels could be insufficient to constitute domestic production. The Commission generally considers six factors:

- (1) source and extent of the firm's capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) 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.

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation.²⁵

Based on the record in these preliminary investigations, we find that Five Rivers' CTV assembly operations constitute sufficient domestic production-related activity to be included in the domestic industry. Five Rivers reported that it spent \$*** on new production related facilities and equipment in 2002. It operates a state-of-the-art facility with ***.²⁶ Five Rivers' assembly process alone provided

²¹ 19 U.S.C. § 1677(4)(A).

²² See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

²³ Chinese Respondents Postconference Br. at 12. Malaysian Respondents have taken no position on whether Five Rivers should be excluded from the domestic industry.

²⁴ Petitioners Postconference Br. at 4.

²⁵ See DRAMs and DRAM Modules from Korea, Inv. No. 701-TA-431 (Preliminary), USITC Pub. 3569 (December 2002) at 7-11 (casing activities are production); 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 (finding that grinding was sufficient production related activity to constitute “production” in that case, although noting that the evidence was mixed).

²⁶ The cabinet-making operations belong to a company that is related to petitioner but did not join the petition. As such, respondents have argued that the cabinet-making operations should not factor into the Commission's decision whether to include Five Rivers in the domestic industry since those operations will not factor into the injury determination. See Chinese Respondents Posthearing Br. at 15.

\$\$\$ (roughly equivalent to *** percent of the value of its total shipments) in added value to the finished product in 2002.²⁷ In addition, *** of the color picture tubes used by Five Rivers in 2002, the primary and most expensive component of a CTV, were purchased from U.S. producers. Finally, Five Rivers reported that when fully operational, it employs *** workers who are engaged both directly and indirectly in the production of CTVs.²⁸ For these reasons, we do not exclude Five Rivers from the domestic industry.

We therefore find, for purposes of this preliminary phase, that the domestic industry consists of seven U.S. firms, including Five Rivers, that manufactured CTVs during all or part of the period examined. However, in any phase of these investigations we intend to seek additional information regarding whether any domestic producers should be excluded from the domestic industry based on insufficient production-related activities in the United States.

2. 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.²⁹ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.³⁰

In 2001 and 2002, domestic producer *** imported subject merchandise from ***, and thus is a related party. We do not, however, find that appropriate circumstances exist to exclude *** from the domestic industry for purposes of these preliminary investigations. *** and is ***. In 2000, when ***, producing *** CTV units, it imported no subject imports from ***.³¹ In 2001 ***. In 2002, that number had declined to *** units.³² In 2001 and 2002, *** imported *** units and *** units respectively from China and Malaysia. Although the volume of subject merchandise imported by *** in 2001 and 2002 was *** its domestic production in those years, this was due to the fact that it was ***. The record does not

²⁷ Petitioners Postconference Br. at 7.

²⁸ Petitioners Postconference Br. at 6, 7.

²⁹ 19 U.S.C. § 1677(4)(B).

³⁰ 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.

³¹ *** Importer Questionnaire Response at 4.

³² CR at II-6 and III-1; PR at II-4 and III-1.

indicate that *** reduced *** domestic production in order to benefit from subject imports. Rather, *** stated in its questionnaire response that ***,³³ *** financial performance, which was ***,³⁴ does not

³³ CR Appendix F at 3 and III-1; PR at Appendix F at 3 and III-1.

³⁴ *** Questionnaire Response at 6.

indicate that it benefitted from the subject imports or that the inclusion of its data would present a distorted view of the domestic industry.

For these reasons we find that appropriate circumstances do not exist to exclude *** from the domestic industry as a related party.

III. CUMULATION OF SUBJECT IMPORTS

A. In General³⁵

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.³⁶ In assessing whether subject imports compete with each other and with the domestic like product,³⁷ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.³⁸

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.³⁹ Only a “reasonable overlap” of competition is required.⁴⁰

³⁵ We note that the volume of the subject imports from China and Malaysia each accounted for 10 percent of total imports of CTVs to the U.S. market in 2002. Therefore, imports from neither country are negligible under the statute, 19 U.S.C. §1677(24), and negligibility is not an issue in these investigations. CR and PR at Table C-1.

³⁶ 19 U.S.C. § 1677(7)(G)(i).

³⁷ The SAA expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA at 848, citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

³⁸ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

³⁹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁴⁰ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

B. Analysis

No party in this preliminary phase argued against cumulation of the subject imports. The petitions were filed with respect to both subject countries on the same day, and based on the four factors that the Commission considers in analyzing cumulation, we find that there is a reasonable overlap of competition.

The record in these preliminary investigations indicates that subject imports are substantially interchangeable with the domestic like product and with one another. The record indicates a significant overlap among subject imports from China, subject imports from Malaysia, and the domestic product with respect to screen sizes and product types.⁴¹ Chinese and Malaysian respondents concede that products sold by domestic producer *** directly compete with subject imports from China and Malaysia.⁴² Ten out of 13 responding importers stated that imports from China were either always, frequently, or sometimes interchangeable with the domestic like product; 8 out of 11 importers stated that imports from Malaysia were either always, frequently, or sometimes interchangeable with the domestic product; and 7 out of 9 importers also reported that imports from China were either always, frequently, or sometimes interchangeable with imports from Malaysia.⁴³

Subject imports entered the U.S. market throughout the period of investigation. Since all producers and three-quarters of importers of subject merchandise sell CTVs on a nationwide basis⁴⁴ and subject imports from China and Malaysia are sold side-by-side in some of the same retail stores as the domestic like product, we find that the subject imports and domestically produced CTVs were simultaneously present in the same geographic markets during the period examined.⁴⁵

While most domestic products and subject imports are not sold through the same channels of distribution, there is some degree of overlap. Domestic CTVs are primarily sold by producers directly to retailers.⁴⁶ Most subject imports are sold by importers to large retail chains or are sold by importers to distributors, who in turn sell to retailers. Recently, however, some subject imports from Malaysia have been imported directly by retailers such as *** and Wal-Mart Stores, Inc. (“Wal-Mart”)⁴⁷ for everyday sales or special sales events.⁴⁸

Thus, we find that there is a reasonable overlap of competition among subject imports and the domestic like product, and we cumulatively assess the volume and effects of the subject imports from China and Malaysia in making our injury determinations.

⁴¹ CR and PR Tables III-4, III-5, IV-3, IV-4, IV-5 and IV-6. For example, in 2002, the majority of domestically produced CTVs, as well as imports from both China and Malaysia, were direct-view CTVs in the 21-26 inch and 27-31 inch screen size categories.

⁴² CR at II-3; PR at II-2.

⁴³ CR and PR Table II-4.

⁴⁴ CR at II-1, PR at II-1.

⁴⁵ Conference Tr. at 129.

⁴⁶ CR at II-1; PR at II-1.

⁴⁷ CR at II-1; PR at II-1.

⁴⁸ CR at II-1, PR at II-1.

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS⁴⁹

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁵⁰ In making this determination, the Commission must consider the volume of subject 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.⁵¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁵² 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.⁵³ 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.”⁵⁴

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports of CTVs from China and Malaysia.

A. Conditions of Competition

When performing our analysis in these investigations, we took into account the following conditions of competition.

Domestic demand for CTVs, as measured by apparent domestic consumption, increased by 19.2 percent between 2000 and 2002, from 15.6 million units in 2000 to 18.6 million units in 2002. However, demand was lower in January-March (“interim”) 2003 (3.2 million units) compared to interim 2002 (3.7 million units).⁵⁵ The trend in U.S. demand has been towards flat screens, larger screen sizes, and digital televisions. There has also been some shift to non-CRT CTVs (which are not within the scope of the investigations), such as plasma and LCD, during the period examined.⁵⁶

The domestic CTV market is characterized by price erosion over time, due to technology improvements that both increase quality and decrease cost. As with other goods such as automobiles,

⁴⁹ 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. Commerce estimated that dumping margins for imports of subject CTVs from China were 49.50 *ad valorem* for 27-inch curved screen CTVs and 78.45 percent *ad valorem* for 27-inch flat screen CTVs. Estimated dumping margins for imports of subject CTVs from Malaysia were 30.88 percent *ad valorem* based on a comparison between export price and the third-country price and 47.02 percent *ad valorem* based on a price-to-constructed value comparison.

⁵⁰ 19 U.S.C. §1673b(a).

⁵¹ 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).

⁵² 19 U.S.C. § 1677(7)(A).

⁵³ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁵ CR at II-9; PR at II-5.

⁵⁶ CR at II-9; PR at II-5. Two producers and three importers noted the existence of substitutes for CTVs (with *** being counted as a producer). Both producers noted plasma and LCD TVs (which are not within the scope of these investigations) as substitutes. Importers *** reported the same, with *** adding that LCD and plasma screens are much more expensive than CRT-based CTVs. CR at II-10; PR at II-5.

new models may come out every year, or more often, that are slightly different in style or performance from previous models and incorporate updated pricing or features. The consumer price index for

televisions has decreased each year since 1981.⁵⁷

Over the period examined, there were seven domestic producers of CTVs in the United States: Five Rivers; Matsushita Kotobuki Electronics Industries of America, Inc. (“MKA”); Orion America, Inc. (“Orion”); Sanyo Manufacturing Corp. (“Sanyo”); Sharp Manufacturing Corporation of America (“Sharp”); Sony Corporation of America (“Sony”); and Toshiba America Consumer Products, Inc. (“Toshiba”).⁵⁸ Between 2000 and 2002, Sharp completed the transfer of its U.S. manufacturing operations to Mexico.⁵⁹ Of the six remaining domestic producers at the end of the period examined, only Five Rivers is a petitioner.⁶⁰ ***.⁶¹ ***.⁶² All the domestic producers except Five Rivers are owned directly or indirectly by Japanese companies, and many have affiliates that produce CTVs in other countries including the subject countries and Mexico.⁶³

All producers and three quarters of importers sell CTVs on a nationwide basis.⁶⁴ Most domestic producers sell their CTVs directly to retail outlets. Five Rivers, however, assembles CTVs for *** which then sell the CTVs to retailers under their brand name.⁶⁵ This arrangement is known in the industry as “badging.”⁶⁶ Badging is thus a contractual arrangement in which one company will pay a second company to assemble CTVs with certain specifications and to place the first company’s brand on the finished product. Badging is a common practice in the industry; several domestic producers regularly assemble CTVs for other CTV producers.⁶⁷

Four of six domestic producers noted that they sold 100 percent of their CTVs via contracts.⁶⁸ Contracts are generally one year in length and include a fixed price with at least an estimated quantity. Of the remaining two domestic producers, *** noted that it sold *** percent of its production on a contract basis, while *** sold *** percent of its product on the spot market. Ten of 12 responding importers reported selling 100 percent of their CTVs on the spot market, and the remaining two either sold or purchased exclusively via contracts.⁶⁹

The parties disagreed as to the extent of direct competition between subject imports and the domestic product given the differences in brand name, perceived product quality, and product type between the subject imports and domestic product. Respondents argued that brand names have a large impact on pricing and perceived quality in the CTV market.⁷⁰ Domestic purchasers Sears Roebuck and Co. (“Sears”) and Wal-Mart reported that within the CTV market, purchasing decisions are highly influenced by consumer perceptions of quality and value, which are directly related to brand awareness and brand positioning.⁷¹ Thus, respondents asserted, most subject imports, which are not sold under well known brand names, have lower perceived quality and hence price.

⁵⁷ CR at V-7 - V-8; PR at V-6.

⁵⁸ CR at III-1; PR at III-1.

⁵⁹ CR at III-1; PR at III-1.

⁶⁰ CR and PR Table III-1.

⁶¹ CR and PR Table III-1.

⁶² CR and PR Table III-1.

⁶³ CR at III-1; PR at III-1.

⁶⁴ CR at II-1; PR at II-1.

⁶⁵ CR at II-1; PR at II-1.

⁶⁶ Five Rivers does have a brand of its own. Conference Tr. at 61-62.

⁶⁷ CR at II-1; PR at II-1.

⁶⁸ CR at V-3; PR at V-3.

⁶⁹ CR at V-3; PR at V-3.

⁷⁰ CR at II-3, PR at II-2.

⁷¹ Sears Postconference Br. at 3; Wal-Mart Postconference Br. at 2.

Respondents and purchasers further alleged that the CTV market is broken down into three segments, or tiers, on the basis of brand name; “good,” “better,” and “best.”⁷² The opening price point (“OPP”) segment is the lowest price segment in the market. Respondents and purchasers claimed that OPP sales are characterized by CTVs with very basic features, bearing lesser-known brand names such as Daewoo, Orion (which also uses the Sansui brand), and Goldstar.⁷³ According to respondents, Orion is the only domestic producer that competes in the OPP segment of the market.⁷⁴ The second tier is comprised of well known brands such as Toshiba, Philips, Magnavox and RCA, which are considered the “mid-level” brands by consumers.⁷⁵ The third (or top) tier is dominated by highly regarded brands, mainly Sony, and a few others, which offer high-end features and components and command the highest prices for their products.⁷⁶

Petitioners, on the other hand, argued that the CTV market has become so price competitive that brands have become much less influential in the price structure.⁷⁷ Petitioners described Sony as the only brand that can demand a premium in the market for a CTV that has features similar to those of another maker.⁷⁸ Petitioners also stated that newer brands in the marketplace, such as the Chinese and Malaysian brands, have to be priced aggressively to enter the market, but that requirement fades as consumers become more familiar with their products.⁷⁹ Petitioners also asserted that subject imports are not limited to basic, OPP models, pointing to subject import models with a full range of features, including some projection CTV models.⁸⁰ Moreover, petitioners state that several domestic producers compete in the OPP market.⁸¹

CTVs are sold to consumers primarily through national mass retail stores. Recently, these retailers have increased their market share significantly, and have increased their purchasing power as well. The top five retailers accounted for about 65 to 70 percent of all sets sold in the U.S. market in 2002, compared to about 40 percent 10 years ago.⁸² Wal-Mart and *** are the two largest mass retailers of CTVs in the United States; they offer domestically produced CTVs, subject imports, and nonsubject imports for sale in stores nationwide.⁸³ Wal-Mart *** stated that they market CTVs of Chinese and Malaysian origin *** and for ***.⁸⁴ In contrast, everyday sales account for the vast majority of Wal-Mart’s total sales of CTVs but only a small percentage of its imports.⁸⁵

⁷² CR at II-2; PR at II-2. We note that in its December 2000 and March 2001 issues, *Consumer Reports* divided the CTV market into three quality tiers roughly coextensive with the three tiers defined by respondents.

⁷³ Conference Tr. at 101.

⁷⁴ Conference Tr. at 103.

⁷⁵ Sears Postconference Br. at 2.

⁷⁶ Sears Postconference Br. at 2.

⁷⁷ Petitioners Postconference Br. at 17.

⁷⁸ Conference Tr. at 68.

⁷⁹ Conference Tr. at 70.

⁸⁰ The catalog of Apex Digital, Inc. (“Apex”), a U.S. importer of subject merchandise from China, includes a full range of higher-end CTVs Apex markets as its “GT Series,” “premium Series,” and “Projection TV Series.” These CTVs feature various higher-end features, including “Pure Flat” picture tubes, high definition technology, projection screens, and screen sizes of up to 65 inches. See June 4, 2003 submission by Apex of its catalog of products sold on the U.S. market.

⁸¹ CR at II-3; PR at II-2.

⁸² Conference Tr. at 33-34.

⁸³ Conference Tr. at 108; CR at Table II-2; CR at II-1.

⁸⁴ Conference Tr. at 122.

⁸⁵ Wal-Mart Postconference Br. at 4.

Wal-Mart stressed that it imported a large volume of subject merchandise for its huge post-Thanksgiving “Blitz” sale and that the volume of its subject imports for that special sale far exceeds the

volume of its subject imports for everyday sales.⁸⁶ Wal-Mart further stated that no domestic producer could or would meet its strict non-price requirements for supplying products for this sale. In particular, a supplier has to be able to provide a huge volume (more than *** units), with reliable on-time delivery, for the day after Thanksgiving.⁸⁷ The supplier must have a proven track record of reliability with Wal-Mart. Wal-Mart stated that the contract for this special sale is very different than for its everyday sales: the product goes through a separate bidding process involving ***, is ordered approximately *** months in advance, arrives in containers *** months before Thanksgiving, and is sold on pallets in the middle of aisles rather than in the electronics department.⁸⁸

In the final phase of these investigations we intend to seek more information on the extent to which subject imports and the U.S. product compete, both directly and indirectly, in the U.S. market, including the effects, if any, that OPP and special promotional sales (such as Wal-Mart's post-Thanksgiving Blitz) have on prices in the rest of the CTV market. In addition, we will seek information on brand recognition and market tiers, and will explore their significance with respect to prices of the domestic and imported products. We note, however, that the record in these preliminary investigations indicates that CTVs from subject countries often have the same or similar features as domestically-produced CTVs and that a significant number of subject CTVs sold in the U.S. market have higher-end features.⁸⁹

Finally, nonsubject imports from Mexico supply most of the U.S. market and were by far the largest source of imported CTVs during the period of investigation.⁹⁰ Several domestic producers such as *** also produce CTVs in Mexico and import them into the United States.⁹¹ In addition, domestic producers manufacture components in Mexico and assemble them in the United States. We intend to explore further in any final phase the role of nonsubject imports in the U.S. market.

B. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."⁹²

The volume of cumulated subject imports increased more than ten-fold over the period of investigation,⁹³ from 210,000 units in 2000 to 2.7 million units in 2002.⁹⁴ The most drastic increase occurred between 2001 and 2002 during which the subject imports increased from 371,000 to 2.7 million units.⁹⁵ There was a similar increase in the value of subject imports from \$91 million in 2001 to \$518

⁸⁶ Wal-Mart Postconference Br. at 4. "On Friday, November 29, 2002, Wal-Mart sold over \$1.4 billion in merchandise. Included within that merchandise was a promotional 27 inch CTV unit that Funai supplied." Wal-Mart sold *** subject CTVs on that day in 2002. Testimony of Wal-Mart representative, Conference Tr. at 104; Wal-Mart Importer Questionnaire response at 4.

⁸⁷ Conference Tr. at 105.

⁸⁸ Wal-Mart Postconference Br. at 6.

⁸⁹ CR and PR Table III-4 - III-5 and IV-3 - IV-5. See also, June 4, 2003 submission by Apex of its catalog of products sold on the U.S. market.

⁹⁰ Imports from Mexico were 97.1 percent of total imports in 2000 and were 77.5 percent of total imports in 2002. CR and PR Table IV-1.

⁹¹ CR at III-1; PR at III-1.

⁹² 19 U.S.C. § 1677(7)(C)(i).

⁹³ CR and PR Table IV-1.

⁹⁴ CR and PR Table IV-1.

⁹⁵ CR and PR Table IV-1.

million in 2002.⁹⁶ Subject imports continued to increase in interim 2003, when they totaled 361,000 units, compared to interim 2002, when subject imports totaled 143,000 units.⁹⁷

As a share of apparent domestic consumption, subject imports increased from 1.3 percent in 2000 to 14.2 percent in 2002.⁹⁸ Most of this increase occurred between 2001 and 2002, when subject import market share rose from 2.3 percent to 14.2 percent. Subject import market share also increased between the interim periods; it was 11.4 percent in interim 2003 compared to 3.8 percent in interim 2002. The domestic industry's market share declined from 2000 to 2002, from 32.6 percent in 2000 to 29.5 percent in 2001 and 25.3 percent in 2002.⁹⁹ During this same period, the market share of nonsubject imports, by quantity, also declined from 66.1 percent in 2000 to 60.5 percent in 2002.¹⁰⁰ Thus, subject import market share increased to a significant degree at the expense of domestic producers as well as nonsubject imports.

Based on the above, we find for the purposes of these preliminary investigations that the volume and increase in volume of subject imports are significant both in absolute terms and relative to domestic consumption in the United States.

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.¹⁰¹

The Commission requested U.S. producers and importers of CTVs to provide quarterly f.o.b. data for the total quantity and value of CTVs that were shipped to unrelated purchasers in the U.S. market for the period January 2000 to March 2003. Pricing data were requested for seven narrowly defined product categories, with sales to the retail market and to original equipment manufacturers (“OEMs”) reported separately.

Usable pricing data were received from four producers and seven importers.¹⁰² Pricing data reported by these firms accounted for 35.8 percent of U.S. producers' shipments of CTVs and 28.9 percent and 1.0 percent of U.S. shipments of subject imports from China and Malaysia, respectively, in 2002.¹⁰³

⁹⁶ CR and PR Table IV-1.

⁹⁷ CR and PR Table IV-1.

⁹⁸ In terms of value, subject imports adhered to a similar trend, increasing their market share from 0.7 percent in 2000 to 7.1 percent in 2002. As a share of apparent domestic production quantity, subject imports increased from 3.7 percent in 2000 to 54.1 percent in 2002. CR and PR at Table C-1.

⁹⁹ CR and PR at Table C-1 (as share of apparent domestic consumption).

¹⁰⁰ CR and PR at Table C-1 (as share of apparent domestic consumption).

¹⁰¹ 19 U.S.C. § 1677(7)(C)(ii).

¹⁰² CR at V-7; CR at V-5.

¹⁰³ Some of the subject imports from Malaysia were imported directly by retailers such as *** and Wal-Mart. CR at II-1; PR at II-1. These data, (presented at CR and PR at Table V-8), which account for *** percent of subject

Subject imports consistently undersold the domestic like product during the period of investigation.¹⁰⁴ Subject imports undersold the domestic like product in all 38 possible price comparisons.¹⁰⁵ Margins of underselling ranged from 1.6 percent to 50.3 percent, with approximately 60 percent of those margins ranging between 10 and 30 percent underselling.¹⁰⁶ We find this underselling to be significant.

Domestic prices, as well as those of the subject imports, trended downward throughout the period of investigation. For domestic CTVs sold to the retail market, the decline in prices ranged from *** percent (product ***) to *** percent (product ***) over the quarters for which data were available. For sales to the OEM market, prices fell just over *** percent for each of the three products. Prices for six of the seven products imported from China and Malaysia sold to the retail market fell by between *** and *** percent, while the price for product *** increased by *** percent.¹⁰⁷ For products *** imported and sold by retailers, the landed, duty-paid prices decreased by between *** percent (product ***) and *** percent (product ***) over the quarters for which data were available.¹⁰⁸

As noted earlier, the CTV market is characterized by price erosion over time.¹⁰⁹ However, the record indicates that in the domestic product categories (such as products *** and ***) that had similar features to subject imports and competed directly with them, domestic prices declined at a faster rate than the 4.3-percent average decline in the consumer price index for televisions between 1995 and 2001. We thus find that subject imports had significant price depressing effects.¹¹⁰

For the reasons stated above we find that the subject imports have had significant negative effects on prices of the domestic like product during the period of investigation. We will examine further the factors impacting domestic prices in any final phase of these investigations.¹¹¹

D. Impact of the Subject Imports

imports from Malaysia in 2002, could not be used for direct price comparisons because they were at a different level of trade than other imports. With these data, however, the pricing coverage for Malaysia is *** percent. CR at V-7; PR at 5.

¹⁰⁴ CR and PR Tables V-1 - V-4 and E-1-E-2.

¹⁰⁵ CR and PR Tables V-1, V-3, V-4, V-5, and V-6.

¹⁰⁶ CR and PR Tables V-1, V-3, V-4, V-5, and V-6. Respondents argued that, even though the Commission compared products with similar features, many price comparisons were not probative because they did not account for any brand premium enjoyed by some domestic manufacturers. As noted in our discussion of conditions of competition, in the final phase of these investigations we intend to seek further information regarding the significance of brand premiums in this market.

¹⁰⁷ It should be noted, however, that pricing data were received for product 4 only for the two most recent quarters.

¹⁰⁸ CR and PR tables V-1 to V-8 and figure V-2.

¹⁰⁹ CR at V-7; PR at V-6.

¹¹⁰ With regard to lost sales and lost revenue allegations, *** that it had lost sales or reduced prices in order to keep sales. *** did not report any specific lost sales or lost revenue allegations. *** did note, however, that it has ***. ***.

***.

¹¹¹ As noted earlier, in the final phase of these investigations we intend to address whether promotional and OPP sales affect domestic pricing and the extent to which domestic products enjoy price premiums due to brand recognition. In addition, we will explore Wal-Mart's contention that promotional and OPP sales increase demand in the market without affecting sales in other market tiers.

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on

the state of the industry.”¹¹² 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 industry.”¹¹³

We find that the subject imports of CTVs from China and Malaysia have had a significant negative impact on the condition of the domestic industry during the period of investigation. As discussed above, we find the volume and increase in volume of subject imports to be significant over the period of investigation and the negative price effects of the subject imports to be significant as well. Most financial and other performance indicators of the domestic industry declined as subject imports gained market share at prices that undersold the domestic like product.

The domestic industry’s production fell substantially, from 5.6 million units in 2000 to 4.9 million units in 2002, and was 819,000 units in interim 2002 compared to 1.1 million units in interim 2002.¹¹⁴ U.S. production capacity remained fairly constant, despite Sharp’s relocation of its manufacturing operations to Mexico, at 8.0 million units in 2000 and 8.1 million units in 2002.¹¹⁵ While Sharp’s actions reduced the combined firms’ capacity by *** units, this reduction was more than offset by the creation of nearly 1.3 million units of new capacity generated by four firms between 2000 and 2002.¹¹⁶ However, the data indicate that much of this capacity was unused as evidenced by the low capacity utilization rates for the overall domestic industry.¹¹⁷ Average domestic capacity utilization declined from 66.8 percent in 2000 to 56.6 percent in 2002.¹¹⁸ In interim 2003 average capacity utilization was 38.5 percent compared with 50.8 percent in interim 2002.¹¹⁹ The number of production-related workers declined from 4,184 in 2000 to 3,993 in 2002, and from 3,495 in interim 2002 to 2,884 in interim 2003.¹²⁰

Gross profits, operating income, operating income ratios and net income all declined from 2000 to 2002, and again in interim 2003 compared with interim 2002.¹²¹ Operating income fell from \$134 million in 2000 to \$106 million in 2002; it was \$10 million in interim 2003 compared with \$19 million in interim 2002. The operating income ratio fell from 4.8 percent in 2000 to 3.8 percent in 2001, then rose slightly to 4.1 percent in 2002, still below the level it was in 2000. The ratio was lower in interim 2003, 2.1 percent, than in interim 2002, 2.8 percent.¹²²

We note that some of the domestic industry’s decline in performance occurred between 2000 and 2001, before subject imports increased substantially. However, the domestic industry’s performance worsened in interim 2003 as subject imports continued to rise and subject import prices continued to

¹¹² 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).

¹¹³ 19 U.S.C. § 1677(7)(C)(iii).

¹¹⁴ CR and PR Table III-2.

¹¹⁵ CR and PR at Table III-2. Production capacity was 2.1 million units in interim 2001 and interim 2002.

¹¹⁶ CR at III-4; PR at III-2.

¹¹⁷ CR at III-4, PR at III-2.

¹¹⁸ CR and PR Table C-1.

¹¹⁹ CR and PR Table C-1.

¹²⁰ CR and PR Table C-1.

¹²¹ CR and PR Table VI-1.

¹²² CR and PR Table VI-1.

undersell the domestic like product. We will explore in any final phase all factors that may have contributed to the domestic industry's decline.

Finally, *** of seven domestic producers indicated in their questionnaire responses that ***.¹²³ Petitioner Five Rivers stated that it was forced to shut down part of its production operations due to the effects of subject imports. The *** domestic producers stating that they experienced no negative effects from subject import competition (***) are *** producers of *** CTVs that may be the least likely to experience head-to-head competition with subject imports.

Therefore, based on the record in these preliminary investigations, we find that subject imports from China and Malaysia are having a significant adverse impact on the domestic industry producing CTVs.¹²⁴

CONCLUSION

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

¹²³ See e.g., CR and PR Appendix F at 3. We noted that *** of the ***, ***, also stated that the cause of its reduced capital investments could not be directly attributed to subject imports.

¹²⁴ Respondents made arguments that individual producers were not injured by subject imports. See, e.g. Chinese Respondents Postconference Br. at 18-27, Malaysian Respondents Postconference Br. at 16-27. We are required to consider the condition of the domestic industry as a whole. 19 U.S.C. §1677(7)(C)(iii). However, as stated earlier, in any final phase investigations we intent to examine all factors that may have contributed to the domestic industry's decline.