

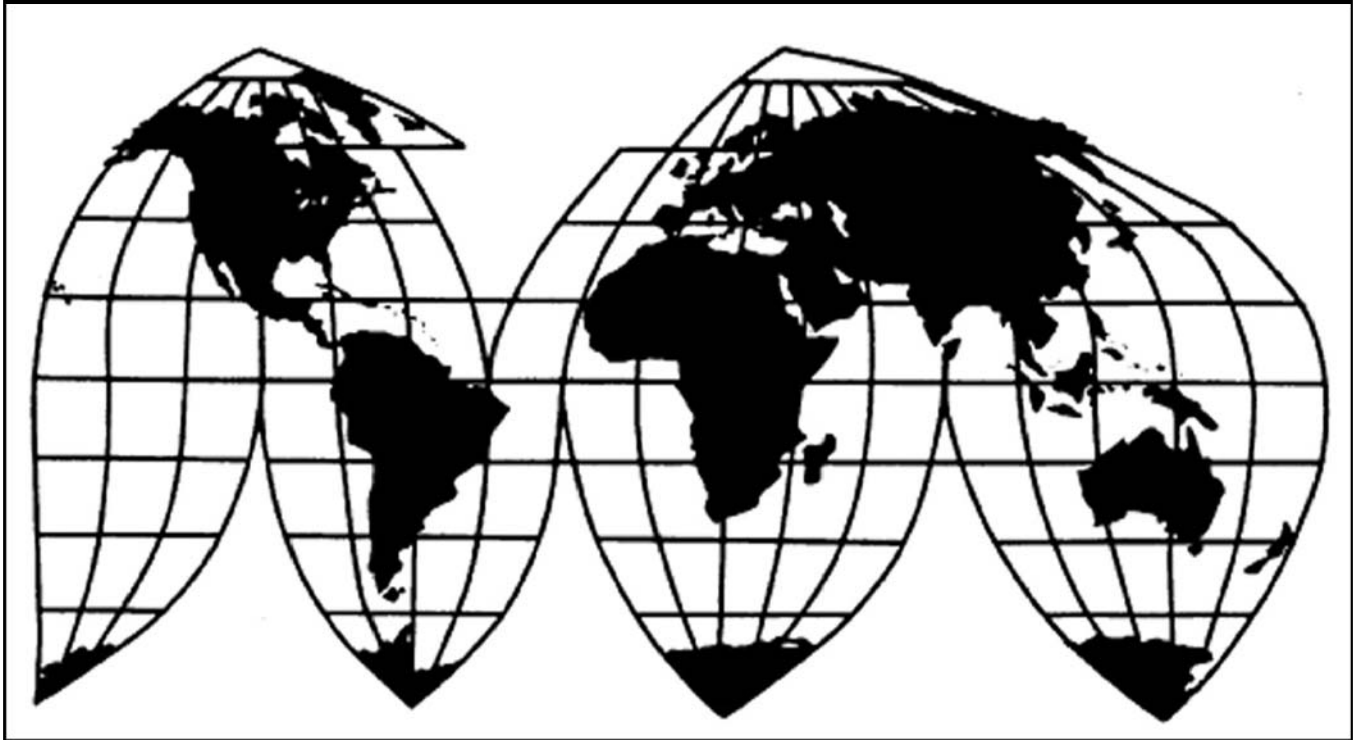
# **Diamond Sawblades and Parts Thereof from China and Korea**

Investigation Nos. 731-TA-1092 and 1093 (Final)(Remand)

**Publication 4007**

**May 2008**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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**Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been identified by the asterisks.**



## VIEWS OF THE COMMISSION (REMAND)

By opinion dated February 6, 2008, the U.S. Court of International Trade (“Court”) (Senior Judge R. Kenton Musgrave) remanded the Commission’s determination in *Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nos. 731-TA-1092-1093 (Final), USITC Pub. 3862 (July 2006). Upon consideration of the Court’s remand instructions and the parties’ comments, and based on the record, as supplemented in this remand proceeding, we determine that an industry in the United States is threatened with material injury by reason of imports of diamond sawblades and parts thereof from China and Korea that are sold in the United States at less than fair value (LTFV).<sup>1 2 3</sup>

### I. BACKGROUND

In July 2006, the U.S. International Trade Commission (“Commission”) determined, by a four-to-two vote, that an industry in the United States was not materially injured or threatened with material injury by reason of imports of diamond sawblades and parts thereof from China and Korea.<sup>4</sup> All six Commissioners determined that the domestic industry was not currently being materially injured by reason of the cumulated imports from China and Korea. Four Commissioners – Commissioners Daniel R. Pearson, Stephen Koplman, Deanna Tanner Okun, and Charlotte R. Lane – also determined that the domestic industry was not threatened with material injury by reason of the subject imports. Commissioners Shara L. Aranoff and Jennifer A. Hillman dissented, determining that the domestic industry was threatened with material injury.

On February 6, 2008, the Court remanded the Commission’s final negative determination for further consideration consistent with the court’s opinion. *Diamond Sawblades Manufacturers Coalition v. United States*, Slip Op. 08-18 (Feb. 7, 2008) (“Slip Op.”). In that opinion, the Court found that the Commission’s conclusion that competition between the subject

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<sup>1</sup> Chairman Daniel R. Pearson and Commissioners Deanna Tanner Okun and Charlotte R. Lane dissent, finding that an industry in the United States is not materially injured or threatened with material injury by reason of the subject imports. See Dissenting Views of Chairman Daniel R. Pearson and Commissioners Deanna Tanner Okun and Charlotte R. Lane. They join Sections I and II of these views.

<sup>2</sup> Commissioner Irving A. Williamson and Commissioner Dean A. Pinkert were not members of the Commission at the time of the original determinations. They made their determinations in this remand proceeding *de novo*, by weighing all of the evidence in the record and reaching their own independent conclusions.

<sup>3</sup> The Court’s remand order and instructions were directed at certain aspects of the original Commission majority’s determination that the domestic industry was not materially injured or threatened with material injury by reason of subject imports from China and Korea, including their findings on attenuated competition and the lack of correlation between subject underselling and domestic price declines. Because the new Commission majority’s affirmative remand determination does not rely on these findings of the prior Commission majority, the Commission’s majority remand views do not provide the additional explanation concerning these findings that were requested by the Court in its remand order. As can be seen below, however, the Commission’s majority remand views do address the general issues raised by the Court in its opinion, but come to different conclusions than the prior Commission majority.

<sup>4</sup> 71 Fed. Reg. 39,129 (July 11, 2006). *Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nos. 731-TA-1092-1093 (Final), USITC Pub. 3862 (July 2006).

imports and the domestic like product was attenuated based on sawblade diameter differences (Slip Op. at 13-15) and sawblade manufacturing process differences (Slip Op. at 15-16) was not supported by substantial evidence of record. The Court further found that the Commission failed to explain adequately its conclusion, also in the context of its limited competition analysis, that “branded distributors” and “other distributors” served different end users. Slip Op. at 16-18.

The Court also instructed the Commission on remand to provide a more thorough explanation of its finding that domestic producers’ price declines in certain instances reflected a volume/price tradeoff. In particular, the Court asked the Commission to explain whether the domestic producers’ volume increases were an adequate tradeoff for their lowered prices and how the purported volume/price tradeoff would indicate competition among domestic producers, as the Commission stated in a footnote. Slip Op. at 22-23. Finally, the Court remanded the Commission’s findings on subject import volume, price effects, impact, and threat of material injury because the Court was “in ‘substantial doubt’ whether the Commission ‘would have made the same ultimate finding with the erroneous findings removed from the picture.’” Slip Op. at 24 citing *U.S. Steel Corp. v. United States*, 18 CIT 1190, 1215, 873 F. Supp. 673, 696 (1994).

On remand, the Commission reopened the record to obtain additional information from purchasers about the degree of competition between subject imports and the domestic like product. The Commission sent supplemental questions concerning competition in the market to the 52 purchasers that responded to the Commission’s purchasers’ questionnaires during the original investigations.<sup>5</sup> The purchasers’ responses are summarized in the Commission’s staff report on remand.<sup>6</sup> The Commission published notice of its remand proceedings in the Federal Register on March 31, 2008, noting, inter alia, that the record had been reopened and that parties would be able to comment on the Court’s opinion and the supplemental record on remand.<sup>7</sup> On April 18, 2008, the domestic interested parties and respondent interested parties filed comments on these issues.

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<sup>5</sup> We note that we rejected 90 additional purchaser responses to the questions that were submitted by counsel for petitioners. As was noted in our letter to counsel dated April 7, 2008, the Commission reopened the record to send supplemental questions to the 52 purchasers that had responded to the Commission’s purchaser questionnaire during the original investigations. The Commission did not seek responses from other purchasers because, by sending the supplemental questions to the 52 purchasers that responded to the original questionnaire, it ensured that it had an appropriate context within which to analyze the responses to the additional questions. Second, the purchasers to which the Commission’s staff sent full questionnaires in the first instance, as part of its normal practice, were selected to achieve a representative purchaser group. The Commission did not direct or request that counsel for petitioners, or counsel for any party, forward the supplemental questions to other purchasers or solicit their responses.

<sup>6</sup> Memorandum INV-FF-032 (Apr. 7, 2008).

<sup>7</sup> 73 Fed. Reg. 16910 (March 31, 2008).



## II. DOMESTIC LIKE PRODUCT, DOMESTIC INDUSTRY, AND CUMULATION

As a preliminary matter, we adopt the original Views of the Commission with regard to the background of these investigations;<sup>8</sup> the definitions of the domestic like product and the domestic industry, including the Commission's original related party analysis;<sup>9 10 11</sup> and its findings on cumulation.<sup>12</sup>

## III. SUMMARY

Based on the record in these investigations, we determine that an industry in the United States is threatened with material injury by reason of LTFV imports of diamond sawblades and parts thereof from China and Korea.<sup>13</sup>

During the period of investigation ("POI") (2003–05), subject imports increased significantly, both on an absolute basis and relative to domestic consumption. During that period, subject imports also undersold the domestic like product by significant margins, and prices for the domestic like product declined. Nonetheless, we find that, because of considerably increasing demand for diamond sawblades and the industry's success in reducing expenses and improving productivity over the POI, the industry has been able to maintain its production, sales, profitability, and other performance indicators at reasonably stable, though declining, levels during the POI. Thus, we find that the domestic industry as a whole has not yet suffered material injury by reason of the subject imports from China and Korea. We also note, however, that most financial indicators trended downward during the POI, and that both U.S. demand and the industry's operational improvements are reportedly leveling off, which indicates that domestic producers will not be able to maintain their current levels of profitability in the face of LTFV imports, which the record indicates will continue to increase from their already significant levels. Accordingly, we find that, based on import trends, declining prices, flattening demand, the

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<sup>8</sup> See *Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nos. 731-TA-1092–1093 (Final), USITC Pub. 3862 (July 2006) at sec. I.

<sup>9</sup> See *Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nos. 731-TA-1092–1093 (Final), USITC Pub. 3862 (July 2006) at sec. II.

<sup>10</sup> Commissioner Pinkert notes that, for purposes of these investigations, he has not relied upon related parties' financial performance as a factor in determining whether there are appropriate circumstances to exclude any related party from the domestic industry.

<sup>11</sup> Having determined that certain companies should be excluded from the domestic industry under the related parties provision, Commissioners Williamson and Pinkert find it unnecessary, for purposes of the instant investigations, to reach the issue of whether the same companies are engaged in sufficient production-related operations to qualify as part of the domestic industry.

<sup>12</sup> See *Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nos. 731-TA-1092–1093 (Final), USITC Pub. 3862 (July 2006) at sec. III.

<sup>13</sup> Chairman Pearson and Commissioners Okun and Lane dissent, finding that an industry in the United States is neither materially injured nor threatened with material injury by reason of the subject imports. See *Dissenting Views of Chairman Pearson and Commissioners Okun and Lane*.

domestic industry’s weakening condition, and its diminished opportunities to reduce expenses or improve productivity, the industry is threatened with material injury by reason of the cumulated subject imports. We explain our findings below.

#### **IV. NO MATERIAL INJURY BY REASON OF THE CUMULATED SUBJECT IMPORTS**

##### **A. Legal Standard**

In the final phase of antidumping duty and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>14</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>15</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>16</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>17</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>18</sup>

##### **B. Conditions of Competition**

Several conditions of competition are pertinent to our analysis in these investigations. We discuss these conditions below.

###### **1. Physical characteristics, end uses, and channels of distribution**

Finished diamond sawblades are used for cutting solid surfaces, such as concrete, asphalt, marble, tile, brick, and stone. Diamond sawblades are produced in a wide range of sizes, typically ranging from 4 inches to 70 inches in diameter, with sawblades in the 10-inch to 14-inch size range considered “midrange” blades.<sup>19</sup> Finished diamond sawblades used by contractors involved in nonresidential construction projects, such as road construction and repair

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<sup>14</sup> 19 U.S.C. §§ 1671d(b) and 1673d(b).

<sup>15</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>16</sup> 19 U.S.C. § 1677(7)(A).

<sup>17</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>18</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>19</sup> CR at I-8, PR at I-6.

and other large construction projects, are often greater than 14 inches in diameter.<sup>20</sup> By comparison, finished diamond sawblades with diameters of 14 inches or less are typically used by general contractors and “do-it-yourself” (DIY) end users who are more often engaged in smaller-scale, residential construction projects.<sup>21</sup> Although respondents contend that the U.S. diamond sawblade market is “highly segmented” into “professional-use” and “general-use” categories, with larger-diameter blades often being used by the professional-use segment,<sup>22</sup> petitioners argue that there are no clear dividing lines.<sup>23</sup> Respondents themselves were unable to define the professional-use market clearly, arguing during the preliminary phase investigations that size was an important factor in establishing a dividing line between “professional” and “general” use and then arguing during the final phase investigations that the dividing line was based on the horsepower of the saw in which the blade was used.<sup>24</sup> Contrary to respondents’ argument, the record demonstrates an overlap in usage by “professional” contractors and DIY end users, notably in the midrange diameter category.<sup>25</sup> Further, we note that size is only one of the factors that determines a blade’s end use.

Other physical attributes of finished diamond sawblades in addition to size further dictate its ultimate end use. Diamond sawblade cores may be slotted to produce a notched, or “segmented,” rim, or be smooth to produce a “continuous” rim. Segmented rims allow the blades to flex under pressure, cool the blade while cutting, and facilitate the removal of cut material from the blade.<sup>26</sup> Segmented blades are generally used in the nonresidential construction market, where blades may be subjected to higher pressures than in the general contractor/DIY market. Although finished diamond sawblades for the general contractor/DIY market may be either segmented or continuous rim, they are used on lower-horsepower equipment and therefore are not designed to withstand the high-intensity usage to which nonresidential construction blades may be subjected.<sup>27</sup>

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<sup>20</sup> CR at I-16 - I-17, PR at I-11.

<sup>21</sup> CR at I-18, PR at I-12.

<sup>22</sup> Respondents assert that professional-use blades are often 20 inches in diameter or greater. Conference tr. at 142 (Lewis).

<sup>23</sup> CR at I-16 n.39, PR at I-10 n.39.

<sup>24</sup> Hearing tr. at 293 (Kim). During the hearing, respondents defined the professional-use market by the horsepower of the saw, stating that “we’ve chosen 35 horsepower as kind of the line in the sand that depicts the professional user.” Hearing tr. at 296 (Nixon).

<sup>25</sup> Hearing tr. at 355 (Park). *See also* Staff Report, INV-FF-032 (Remand) (Apr. 7, 2008) (“Remand Staff Report”) at Tables III-2, III-3 (majority of purchasers with familiarity in this regard reported that all sizes of sawblades used by professional diamond sawblade users always, frequently, or sometimes compete with those used by contractors for general use and DIYs).

<sup>26</sup> CR at I-8, PR at I-6.

<sup>27</sup> General-use blades run on one-quarter to one-half horsepower equipment, while professional-use blades run on high-horsepower (*e.g.*, 65 horsepower) equipment. Professional-use blades are therefore subjected to tolerance testing to ensure the elimination of imperfections that would otherwise render the blade too dangerous to use. CR at

Other considerations that may determine end uses for finished diamond sawblades include the physical characteristics of the diamond section and the method used for joining the diamond segments to the core of the blade.<sup>28</sup> With respect to the physical characteristics of the diamond section, the strength and concentration of the diamonds within the bonding matrix may differ among blades, with more diamonds in a stronger bond matrix resulting in better quality cuts. With respect to the method of attachment, diamond segments are either baked onto the sawblade core in a process known as “sintering,” soldered/brazed onto the sawblade’s core, or laser welded to the sawblade’s core.<sup>29</sup> For sawblades that were made using the soldered/brazed process of diamond attachment, a fluid must be used while cutting to lubricate and cool the blade.<sup>30</sup> Finished diamond sawblades that are laser welded are stronger, with fewer failure rates.<sup>31</sup> In 2005 the overwhelming majority of U.S. commercial shipments of both U.S.-produced diamond sawblades and cumulated subject imports were laser-welded, segmented blades.<sup>32</sup>

With respect to distribution channels, the majority of the domestic like product and cumulated subject imports was sold to distributors during the POI. Sales to distributors represented 50.3 percent of U.S.-produced finished diamond sawblades, 64.4 percent of finished diamond sawblades from China, and 60.4 percent of finished diamond sawblades from Korea.<sup>33 34</sup> Within the distributor category during the POI, the record draws distinctions between “branded” distributors,<sup>35</sup> to which subject imports were mostly sold, and “other” distributors,<sup>36</sup> to which the domestic like product was mostly sold.<sup>37</sup> Nevertheless, questionnaire responses by a

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I-17, PR at I-11.

<sup>28</sup> CR at I-8, PR at I-6.

<sup>29</sup> CR at I-11–I-12, PR at I-9.

<sup>30</sup> In the absence of the cooling lubricant, the heat generated in the cutting process would melt the solder, potentially destroying the blade and creating a safety hazard. CR at I-12, I-23, PR at I-9, I-15.

<sup>31</sup> CR at I-11, PR at I-9.

<sup>32</sup> CR/PR at Table I-2.

<sup>33</sup> CR/PR at Table II-1.

<sup>34</sup> As in the Commission’s original views (*e.g.*, USITC Pub. 3862 at 12 n.60), we rely primarily on value measures for subject import volume, apparent consumption, and domestic shipments. Value-based indicators are the best measure for the product here, which includes a vast and disparate grouping of items differing in size, characteristics, applications, and value.

<sup>35</sup> Branded distributors primarily sell finished diamond sawblades with their own label, affixed by the supplier or by the distributor. CR at II-1 n.1, PR at II-1 n.1.

<sup>36</sup> Other distributors primarily sell finished diamond sawblades with the label of their suppliers. *Id.*

<sup>37</sup> CR/PR at Table E-1, Table E-6. During the POI, U.S. producers’ shipments of finished diamond sawblades to branded distributors accounted for 14.2 percent of all shipments by value of U.S. product, while their shipments to other distributors accounted for 36.1 percent of all shipments. By contrast, U.S. importers’ shipments of finished

number of diamond sawblade purchasers, both branded distributors and other distributors, indicate that blades in sizes over 12" sold through each of these channels ultimately go to the same customers, primarily general contractors.<sup>38 39</sup> Although respondents are correct in their assertion that the type of distributor (branded or other) for domestic and imported diamond sawblades frequently differs, the products ultimately are purchased and used thereafter largely by the same types of end users.<sup>40</sup>

In addition to distributors, finished diamond sawblades are also commercially shipped to national "big-box" retail stores (e.g., Home Depot and Lowes) and other retail outlets, original equipment manufacturers (OEMs), professional construction firms, and other end users. The second-largest channel of distribution for U.S. produced finished diamond sawblades during the POI was the end user channel, and particularly professional construction firms, which alone represented 44.1 percent of U.S. shipments by value. The second-largest distribution channel for subject imports was the OEM channel.<sup>41</sup> This channel represented 18.1 percent and 27.9 percent of U.S. commercial shipments of imports from China and Korea, respectively.<sup>42</sup>

Based on the discussion above, although the physical characteristics of a diamond sawblade have some bearing on its ultimate end use, we do not find that the record supports respondents' argument that the U.S. diamond sawblades market is highly segmented. As previously discussed, there is an overlap in usage in all size ranges, but especially in the mid-range size category.<sup>43</sup> Additionally, the record demonstrates that the domestic like product and

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diamond sawblades from China to branded distributors accounted for 47.9 percent of all shipments by value of Chinese product, while their shipments to other distributors accounted for 16.6 percent of all shipments; and U.S. importers' shipments of finished diamond sawblades from Korea to branded distributors accounted for 44.8 percent of all shipments by value of Korean product, while their shipments to other distributors accounted for 15.5 percent of all shipments. *Id.*

<sup>38</sup> \*\*\*. Contrary to respondents' contention (Korean Respondents' Remand Comments (April 18, 2008) at 10-11), nothing requires the Commission to consider only the first sale by a producer or importer when it analyzes channel of distribution or customer type differences. Rather, the Commission may, as we do here, consider similarities or differences reflected in the channels of distribution as a whole, from first sale to end user.

<sup>39</sup> Notably, the one distributor that responded to the Commission's questionnaires as both a branded distributor and an other distributor explicitly stated in its questionnaire response that these blades go to the same customers. \*\*\* questionnaire response (see cross-reference in its "other distributors" response to its response under "branded distributors").

<sup>40</sup> Moreover, we note that a substantial majority of all purchasers familiar with the issue that responded to the question on remand reported that branded and unbranded sawblades always, frequently, or sometimes competed in all size ranges. Remand Staff Report at Table III-1.

<sup>41</sup> CR/PR at Table II-1.

<sup>42</sup> *Id.*

<sup>43</sup> Hearing tr. at 355 (Park). *See also* CR at I-18, PR at I-12 (diameters of general use blades for contractors and DIY end users may extend up to 20 inches); Remand Staff Report, INV-FF-032 (Remand) (Apr. 7, 2008) at Tables III-2, III-3 (majority of purchasers with familiarity in this regard reported that all sizes of sawblades used by professional diamond sawblade users always, frequently, or sometimes compete with those used by contractors for general use and DIYs).

subject imports competed against each other during the POI, as they were each present in every size category and were both sold for use in a wide range of applications.<sup>44</sup> Most market participants indicated that domestically produced finished diamond sawblades and imported merchandise from China and Korea were always or frequently interchangeable.<sup>45</sup>

## 2. Demand considerations

Demand for finished diamond sawblades is derived from activity in the residential construction market, including the home improvement market, and the nonresidential construction market, principally transportation, road, and office construction.<sup>46</sup> In some regions of the United States, demand for finished diamond sawblades is seasonal, especially in northern states where unfavorable weather conditions during winter months prohibit certain construction projects. Accordingly, one producer reports that the peak season for finished diamond sawblades is May through November.<sup>47</sup>

The record in these investigations indicates that, by value, apparent U.S. consumption of finished diamond sawblades and parts increased significantly during the POI. Such consumption increased from \$199.2 million in 2003 to \$231.2 million in 2005, or by 16.1 percent.<sup>48</sup> Similarly, apparent U.S. consumption of finished diamond sawblades increased during the POI, both on a quantity basis and on a value basis. By quantity, apparent U.S. consumption of finished diamond sawblades increased from 4.464 million units in 2003 to 6.754 million units in 2005, representing an increase of 51.3 percent.<sup>49</sup> On a value basis, apparent U.S. consumption of finished diamond sawblades increased from \$184.7 million in 2003 to \$214.9 million in 2005, or by 16.4 percent.<sup>50</sup>

The increase in apparent U.S. diamond sawblade consumption was driven largely by increased activity in the construction sector, where the combined value of residential and nonresidential construction increased by 21.1 percent during the POI.<sup>51</sup> Within the construction sector, the value of residential construction increased at a faster rate than nonresidential construction, with the former increasing at an average annual rate of 9.7 percent, compared with

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<sup>44</sup> CR/PR at Tables E-1, E-2, E-3; INV-DD-088 at Table E-6; Remand Staff Report at Tables III-5, III-6.

<sup>45</sup> CR/PR at Table II-5 (majority of producers, importers, and purchasers reported that the domestic like product, subject imports from China, and subject imports from Korea are always or frequently interchangeable with each other).

<sup>46</sup> CR at II-30, PR at II-18–II-19.

<sup>47</sup> *Id.*

<sup>48</sup> *See* Appendix 2 of these Views.

<sup>49</sup> *See* Appendix 1 of these Views.

<sup>50</sup> *See* Appendix 1 of these Views.

<sup>51</sup> Derived from CR/PR at Table II-2.

an average annual increase of 5.2 percent for nonresidential construction.<sup>52</sup> In addition, the number of U.S. big-box hardware stores, identified by respondents as a proxy for measuring DIY/general-purpose demand for diamond sawblades, increased from 2,590 stores to 3,253 stores during the POI, or by 25.6 percent.<sup>53</sup>

Even though demand has grown significantly during the POI, the record indicates that this significant growth will not continue in the imminent future. The majority of responding U.S. producers, importers, and purchasers expect U.S. demand for finished diamond sawblades to remain the same or decrease in the future. In particular, only 3 of 12 responding U.S. producers, 12 of 26 responding U.S. importers, and 14 of 44 responding U.S. purchasers expect future U.S. demand for finished diamond sawblades to increase. The remaining questionnaire respondents in each of these categories expect demand to remain the same or decline.<sup>54</sup>

### 3. Supply considerations

The U.S. diamond sawblade market is supplied by U.S. producers, subject imports from China and Korea, and imports from countries not subject to these investigations. On a value basis, U.S. producers accounted for the largest share of apparent U.S. consumption, although their share declined steadily throughout the POI. Diamond Products and Husqvarna accounted for the bulk of the quantity of U.S. finished diamond sawblades, representing \*\*\* percent and \*\*\* percent of production, respectively.<sup>55</sup> These two firms also accounted for the bulk of U.S. segment production, representing \*\*\* percent and \*\*\* percent of such production, respectively. In addition to these firms, there are a number of smaller domestic producers of finished diamond sawblades and segments. Western is the largest domestic producer of sawblade cores, accounting for \*\*\* percent of domestic production.<sup>56</sup>

The record indicates that U.S. producers had the ability to increase shipments of finished diamond sawblades during the POI in response to changes in demand. Such responsiveness was attributable largely to excess capacity, available inventories, and efficient production capabilities.<sup>57</sup> Indeed, U.S. producers' total reported capacity utilization in the production of finished diamond sawblades declined during the POI, from \*\*\* percent in 2003 to \*\*\* percent in

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<sup>52</sup> CR at II-33, PR at II-20.

<sup>53</sup> CR/PR at Table II-2.

<sup>54</sup> CR at II-37, PR at II-21–II-22.

<sup>55</sup> CR/PR at Table III-1.

<sup>56</sup> *Id.*

<sup>57</sup> CR at II-9, PR at II-6.

2005.<sup>58</sup> At the same time, U.S. producers' ending inventory quantities increased from \*\*\* units in 2003 to \*\*\* units in 2005.<sup>59</sup>

Despite their ability to increase shipments in response to rising demand, U.S. producers' share of the value of apparent U.S. consumption declined from \*\*\* percent in 2003 to \*\*\* percent in 2004 and \*\*\* percent in 2005.<sup>60</sup> At the same time, the value of imports of finished diamond sawblades from China and Korea as a share of the value of apparent U.S. consumption increased. The share of such imports from China increased from 7.5 percent in 2003 to 11.0 percent in 2004 and 14.3 percent in 2005, and the share of such imports from Korea increased from 20.3 percent in 2003 to 23.7 percent in 2004 and 25.7 percent in 2005.<sup>61</sup> The value of nonsubject imports as a share of domestic consumption increased slightly from 10.3 percent in 2003 to 10.9 percent in 2004 before declining to 8.1 percent in 2005.<sup>62</sup>

#### **4. Other considerations: substitutability**

The parties disagree as to the degree of substitutability between U.S.-produced diamond sawblades and those imported from China and Korea. Petitioners contend that domestic and subject producers of diamond sawblades compete directly, with U.S., Chinese, Korean, and nonsubject producers manufacturing and selling essentially the same product and competing directly within each size category.<sup>63</sup> In contrast, respondents argue that the U.S. diamond sawblades market is highly segmented. They maintain that there are thousands of sizes and product variations and that there are significant differences between the types of products that U.S. producers sell and those that are imported from China and Korea. Further, they note differences in channels of distribution and end-user categories into which subject and domestic diamond sawblades are sold.<sup>64</sup>

As noted above, the size and physical characteristics of a finished diamond sawblade have some bearing on its ultimate end use, with larger-diameter blades typically being used for large-scale, nonresidential construction projects and smaller-diameter blades typically being used in the general contractor/DIY market. It is clear from the record, however, that U.S. and subject imports of finished diamond sawblades competed in each size category throughout the POI.<sup>65</sup> There is significant overlap in the 10-inch to 14-inch size range, which, in 2005,

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<sup>58</sup> See Appendix 1 of these Views. The industry's finished diamond sawblade capacity increased from \*\*\* units in 2003 to \*\*\* units in 2005, while production increased from \*\*\* units in 2003 to \*\*\* units in 2005. *Id.*

<sup>59</sup> See Appendix 1 of these Views.

<sup>60</sup> See Appendix 1 of these Views.

<sup>61</sup> See Appendix 1 of these Views.

<sup>62</sup> See Appendix 1 of these Views.

<sup>63</sup> Petitioners' prehearing brief at 25.

<sup>64</sup> Respondents' prehearing brief at 19.

<sup>65</sup> Remand Staff Report at Tables III-5, III-6.



accounted for 43.4 percent of U.S. producers' U.S. commercial shipments by value and 44.4 percent of U.S. commercial shipments of cumulated subject imports by value.<sup>66</sup> U.S.-produced diamond sawblades, however, were present in smaller-diameter ranges as well, accounting for 6.1 percent of U.S. commercial shipments by value of finished diamond sawblades of sizes of 10 inches in diameter or less.<sup>67</sup> By value, a majority or near-majority of U.S. commercial shipments of U.S.-, Chinese-, and Korean-produced finished diamond sawblades were concentrated in the 14-inch and smaller size range throughout the POI.<sup>68</sup>

Subject imports of finished diamond sawblades from China and Korea were present in increasing volumes in the larger-diameter size ranges throughout the POI. In the 14-inch and larger size ranges, commercial shipments by value of finished diamond sawblades from China and Korea increased in absolute terms from \$6.2 million in 2003 to \$7.9 million in 2004 and \$10.1 million in 2005 and increased as a share of U.S. commercial shipments by value from 3.5 percent in 2003 to 4.1 percent in 2004 and 5.0 percent in 2005.<sup>69</sup> U.S. commercial shipments of subject imports in the 12-inch and greater ranges increased from \$20.7 million in 2003 to \$29.8 million in 2004 and \$39.6 million in 2005 and increased as a share of U.S. commercial shipments by value from 11.8 percent in 2003 to 15.3 percent in 2004 and 19.2 percent in 2005.<sup>70</sup> This trend indicates that subject import producers have the ability to produce and sell the larger-diameter finished diamond sawblades that are typically used in the nonresidential construction market. Thus, while respondents contend that customization requirements, servicing needs, and quick turnaround times in the professional-use market make it impossible to serve this market from abroad,<sup>71</sup> the record in these investigations demonstrates otherwise. Moreover, a number of respondent firms reported shipping finished diamond sawblades via air freight, with one company stating that it ships its products via air freight on the same day it receives the order.<sup>72</sup>

In addition to size, other considerations, such as whether the blade has a segmented or continuous rim and the way the diamonds are joined with the core, determine the ultimate end use of the blade. As discussed above, segmented, laser-welded blades are better suited for use in high-pressure-use environments, such as those in the nonresidential construction market, because they are easier to cool and have lower failure rates. As noted, the record demonstrates that, by

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<sup>66</sup> Derived from CR/PR at Table I-1.

<sup>67</sup> *Id.*

<sup>68</sup> Finished diamond sawblades in the 14-inch and smaller size range represented 51.3 percent of the value of U.S. producers' commercial shipments, 93.1 percent of the value of U.S. commercial shipments of imports from China, and 85.9 percent of the value of U.S. commercial shipments of imports from Korea during the POI. Derived from CR/PR at Table II-1.

<sup>69</sup> Derived from CR/PR at Table IV-4.

<sup>70</sup> *Id.* U.S. commercial shipments of subject imports in the 12-inch and greater range increased as a share of U.S. commercial shipments of subject imports by value from 41.2 percent in 2003 to 46.6 percent in 2005. Memorandum INV-DD-088 at Table 1-1, E-6 (the increase in these ranges is attributable to the increase in the share accounted for by 12-inch to 14-inch sawblades and decreases in the shares accounted for by less than 10-inch sawblades).

<sup>71</sup> Respondents' posthearing brief at 21.

<sup>72</sup> Petitioners' posthearing brief, Exhibit 1 at 5.

value in 2005, the overwhelming majority of U.S. commercial shipments of U.S.-produced finished diamond sawblades and those imported from China and Korea were laser-welded, segmented blades. In 2005, such blades accounted for 84.6 percent of U.S. commercial shipments of U.S.-produced finished diamond sawblades and 62.6 percent of U.S. commercial shipment values of cumulated subject imports.<sup>73</sup>

Finally, the majority of U.S. producer, importer, and purchaser responses to the Commission's questionnaire indicated that U.S.-produced finished diamond sawblades and finished sawblades imported from China and Korea were always or frequently interchangeable.<sup>74 75</sup>

In conclusion, while it is true that subject imports are more concentrated in the smaller size blades and domestic production is more concentrated in blades greater than 14 inches, the record leaves no doubt that there is considerable overlap in the mid-range sizes and that U.S., Chinese-, and Korean-produced finished diamond sawblades compete with each other in the same end-user markets and across the range of product sizes.<sup>76</sup>

### C. Volume of 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."<sup>77</sup>

There is no dispute among the parties that the volume of the cumulated subject imports increased, both on an absolute basis and relative to domestic consumption, during the POI. Petitioners argue that the increase in subject imports, whether measured on a value or quantity basis, directly affected domestic producers, as their market share declined and subject imports' market share increased.<sup>78</sup> In contrast, respondents contend that the increases in subject imports did not come at the expense of U.S. producers because competition between them is attenuated.<sup>79</sup>

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<sup>73</sup> CR/PR at Table I-2.

<sup>74</sup> CR at II-67, PR at II-34; CR/PR at Table II-5.

<sup>75</sup> Specifically, of 14 responding producers, 10 indicated that U.S.- and Chinese-produced finished diamond sawblades were always or frequently interchangeable, and 11 indicated that U.S.- and Korean-produced finished diamond sawblades were always or frequently interchangeable. Of 33 responding importers, 18 believed that U.S.- and Chinese-produced finished diamond sawblades were always or frequently interchangeable, and 19 indicated that U.S.- and Korean-produced finished diamond sawblades were always or frequently interchangeable. Of 32 responding purchasers, 18 indicated that U.S.- and Chinese-produced finished diamond sawblades were always or frequently interchangeable, and 23 indicated that U.S.- and Korean-produced finished diamond sawblades were always or frequently interchangeable. CR/PR at Table II-5.

<sup>76</sup> See also Staff Report, INV-FF-032 (Remand) (Apr. 7, 2008) at Tables III-1, III-2, III-3.

<sup>77</sup> 19 U.S.C. § 1677(7)(C)(i); The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 854 (1994) ("SAA").

<sup>78</sup> Petitioners' prehearing brief at 39-42.

<sup>79</sup> *Id.* at 37.

As discussed in the Conditions of Competition section above, however, we find that there is substantial competition between subject imports and the domestic like product throughout the market, as demonstrated by the presence of U.S.-, Chinese-, and Korean-produced finished diamond sawblades across the range of sizes and within each end-user market.

During the POI, the volume of subject imports increased significantly, both on an absolute basis and relative to domestic consumption. The value of U.S. shipments of cumulated subject imports of finished diamond sawblades increased by 67.9 percent during the period, from \$51.3 million in 2003 to \$86.1 million in 2005.<sup>80</sup> By quantity, U.S. shipments of subject imports of finished diamond sawblades increased by 85.7 percent during the period, from 2.7 million units in 2003 to 5.1 million units in 2005. With respect to finished diamond sawblades and parts, the value of U.S. shipments of subject imports increased by 66.2 percent, from \$54.4 million in 2003 to \$90.4 million in 2005.<sup>81</sup>

As discussed above, as a share of apparent U.S. consumption, both the value and quantity of cumulated subject imports of finished diamond sawblades increased throughout the POI. By value, the share of such imports increased from 27.7 percent in 2003 to 34.7 percent in 2004 and 40.0 percent in 2005.<sup>82</sup> On a quantity basis, cumulated imports of finished diamond sawblades from subject countries increased from 61.2 percent in 2003 to 67.6 percent in 2004 and 75.1 percent in 2005.<sup>83</sup> Cumulated imports of finished diamond sawblades and parts from subject countries followed a similar trend, with their share of apparent U.S. consumption value increasing from 27.3 percent in 2003 to 33.9 percent in 2004 and 39.1 percent in 2005.<sup>84</sup>

As the market share of subject imports increased during the POI, U.S. producers' market share declined. With respect to finished diamond sawblades, U.S. producers' share of domestic consumption by value declined from \*\*\* percent in 2003 to \*\*\* percent in 2004 and \*\*\* percent in 2005.<sup>85</sup> On a quantity basis, U.S. producers' share of domestic consumption declined from \*\*\* percent in 2003 to \*\*\* percent in 2004 and \*\*\* percent in 2005.<sup>86</sup> Similarly, with respect to finished diamond sawblades and parts, U.S. producers' share of domestic consumption by value declined from \*\*\* percent in 2003 to \*\*\* percent in 2004 and \*\*\* percent in 2005.<sup>87</sup>

Accordingly, we find that the volume of subject imports increased significantly, both on an absolute basis and relative to domestic consumption, during the POI.

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<sup>80</sup> See Appendix 1 of these Views.

<sup>81</sup> See Appendix 2 of these Views.

<sup>82</sup> See Appendix 1 of these Views.

<sup>83</sup> See Appendix 1 of these Views.

<sup>84</sup> See Appendix 2 of these Views.

<sup>85</sup> See Appendix 1 of these Views.

<sup>86</sup> See Appendix 1 of these Views.

<sup>87</sup> See Appendix 2 of these Views.

#### D. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>88</sup>

The Commission collected pricing data for seven finished diamond sawblade products that were both produced in the United States and imported from China and Korea.<sup>89</sup> Despite the significant increase in apparent U.S. consumption during the POI, which normally would be expected to lead to rising prices, the data clearly demonstrate significant underselling by subject imports and declining prices for the domestic like product across the range of price comparisons.

Subject imports from China undersold the domestic product in 112 of 115 selling price comparisons; subject imports from Korea undersold the domestic product in 189 of 245 selling price comparisons.<sup>90</sup> For imports from China, the greatest concentration of underselling occurred in products 3 (14-inch-diameter laser-welded blades for dry cutting) and 5 (14-inch diameter laser-welded blades for wet cutting cured concrete) with respect to sales to branded distributors and sales to professional construction firms.<sup>91</sup> For product 3, with respect to sales to branded distributors, underselling margins ranged between 61.4 percent and 63.7 percent during the quarters in which comparisons were possible; with respect to sales to professional construction firms, underselling margins ranged from 53.0 percent to 74.5 percent.<sup>92</sup> For product 5, with respect to branded distributors, underselling margins ranged from 37.3 percent to 64.7 percent; with respect to professional construction firms, underselling margins ranged from 48.4 percent to 65.5 percent during quarters for which pricing data were available.<sup>93</sup> With respect to

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<sup>88</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>89</sup> For a list and description of the products, as well as the coverage of the data, *see* CR at V-18–V-24, PR at V-13–V-17.

<sup>90</sup> *See* CR/PR at Tables V-1a - V-7c, V-9a - V-9c. Although the Korean respondents argue that the products the Commission used for quarterly price comparisons were not detailed enough to permit conclusions to be drawn regarding the significance of underselling shown by the quarterly comparisons and that these data should be viewed with caution (Korean respondents' posthearing brief at A-52), we find that the product descriptions and price data used by the Commission are sufficiently detailed and representative of the market. Moreover, the pricing products were largely consistent with product detail information provided by the Korean respondents. *See* CR at V-18, n.63, PR at V-13 n.63.

<sup>91</sup> CR at V-59, PR at V-37.

<sup>92</sup> CR/PR at Table V-3a, Table V-3c.

<sup>93</sup> CR/PR at Table V-5a, V-5c.

imports from Korea, the greatest concentration of underselling occurred in product 5, for shipments to branded distributors.<sup>94</sup> For that product, Korea’s underselling margins ranged between 61.9 percent and 71.9 percent throughout the POI.<sup>95</sup>

Petitioners assert that the margins of underselling during the POI were “staggering,” often exceeding 50 percent, occasionally nearing 80 percent.<sup>96</sup> In addition, petitioners argue that the persistent underselling led to declining prices for U.S. producers.<sup>97</sup> Respondents maintain that the Commission’s pricing data confirm that competition between subject imports and the domestic like product is attenuated. They argue that the huge price differences between the subject product and the domestic like product are indicative of the lack of competition between the two. They contend that, given the large margins of underselling, U.S. prices should have come down more than they did if there actually was competition between U.S. diamond sawblades and the subject imports.<sup>98</sup>

As discussed above, we find the existence of substantial competition between subject imports and the domestic like product across the range of blade sizes and within the same end-use markets. Accordingly, we reject respondents’ argument that we should discount the significance of the underselling data. We also note that within each blade category, blades may be marketed and sold based on grade, which further defines a blade’s performance.<sup>99</sup> In an effort to compete with lower-priced subject imports, U.S. producers have been forced to introduce lower-cost, lower-value products, which, for example, may contain fewer diamonds.<sup>100</sup> Such products are typically found in the smaller-size (4-inch to 18-inch) categories and are designed to compete with subject imports on price.<sup>101</sup>

Despite rising demand in both segments of the construction industry and a significant increase in apparent U.S. consumption during the POI, underselling by subject imports caused prices for the domestic like product to decline by significant margins. For sales to branded and other distributors, U.S. prices declined in all but one of the product categories.<sup>102</sup> For branded distributors, price declines ranged between 7.6 percent for product 3 and 18.4 percent for product

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<sup>94</sup> CR at V-59, PR at V-37.

<sup>95</sup> CR/PR at Table V-5a.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Respondents’ prehearing brief at 43–44.

<sup>99</sup> CR at I-18, PR at I-12.

<sup>100</sup> Hearing tr. at 155 (Jedick).

<sup>101</sup> *Id.*

<sup>102</sup> CR/PR at Table V-8a, Table V-8b. The exception was product 1 (4-inch laser-welded blades), where the quantity sold was relatively small. Domestic producers’ commercial shipments of finished diamond sawblades less than 7 inches in diameter averaged 3.9 percent of total commercial shipments during the POI. Derived from CR/PR at Table I-1.

6 (18-inch-diameter laser-welded blades for wet cutting).<sup>103</sup> For other distributors, price declines ranged from 6.1 percent for product 6 to 30.7 percent for product 3.<sup>104</sup> With respect to professional construction firms, the price of the U.S. product declined in five of seven product categories, with declines ranging from 9.7 percent for product 7 (24-inch-diameter laser-welded blades for wet cutting) to 26 percent for product 6.<sup>105</sup>

Accordingly, we find that subject imports undersold the domestic like product by significant margins during the POI and that such underselling contributed significantly to price depression.

### **E. Impact of the Subject Imports<sup>106</sup>**

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.”<sup>107</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>108</sup>

Several indicators of the domestic industry’s performance trended somewhat downward during the POI. The industry has remained profitable, however, and its performance at the end of the POI, while weakening, does not rise to the level of current material injury by reason of

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<sup>103</sup> CR/PR at Table V-8a.

<sup>104</sup> CR/PR at Table V-8b.

<sup>105</sup> CR/PR at Table V-8c.

<sup>106</sup> In its final affirmative determination for subject diamond sawblades from China, Commerce calculated a weighted-average dumping margin of 20.72 percent for 26 specific producer-exporter combinations, a rate of 34.19 percent for Bosun Tools Group, a rate of 48.50 percent for Hebei Jikai Industrial Group, a rate of 2.50 percent for Advanced Technology & Materials Co., and a China-wide rate of 164.09 percent. Advanced Technology & Materials Co. includes the following firms: Beijing Gang Yan Diamond Products Company as an exporter when merchandise was produced by Beijing GangYan Diamond Products Company, and Yichang HXF Circular Saw Industrial Co., Ltd as an exporter when merchandise was also produced by Yichang HXF Circular Saw Industrial Co., Ltd. 71 Fed. Reg. 29303, 29309 (May 22, 2006). In its final affirmative determination for subject diamond sawblades from Korea, Commerce calculated a weighted-average dumping margin of 12.76 percent for Ehwa, 6.43 percent for Hyosung, 26.55 for Shinhan, and 16.39 percent for all other producers and/or exporters of diamond sawblades from Korea. 71 Fed. Reg. 29310, 29312 (May 22, 2006).

<sup>107</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”). SAA at 885.

<sup>108</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

subject imports from China and Korea.<sup>109</sup> The domestic industry's finished diamond sawblades production capacity increased \*\*\* percent during the POI,<sup>110</sup> but its production did not keep pace, increasing only \*\*\* percent,<sup>111</sup> as reflected in a capacity utilization decline from \*\*\* percent in 2003 to \*\*\* percent in 2005.<sup>112</sup> Consistent with the rising demand but falling prices, the domestic industry's net sales of finished diamond sawblades increased by quantity over the POI by \*\*\* percent,<sup>113</sup> but the total value of net sales fell by \*\*\* percent as the unit value of those sales decreased \*\*\* percent.<sup>114</sup> As a result of these trends, the industry's operating income declined \*\*\* percent in absolute terms.<sup>115</sup> Its operating income margin also trended downward, even though it remained positive,<sup>116</sup> during a time when U.S. apparent consumption measured by value increased more than 16 percent.<sup>117</sup>

The domestic industry maintained relatively stable levels of production and sales and remained profitable during the POI despite declines in prices, shipment values, and market share.<sup>118</sup> It was able to do so only because of increasing total apparent U.S. consumption over the POI and the ability of some domestic producers to adopt cost-cutting measures and to introduce lower-value product offerings to compete with subject imports.<sup>119 120</sup> As a result of

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<sup>109</sup> In light of the significant share of diamond sawblades and parts accounted for by finished diamond sawblades, we have focused our analysis on data for finished diamond sawblades, but also consider data for both finished sawblades and parts.

<sup>110</sup> Capacity increased from \*\*\* units in 2003 to \*\*\* units in 2005. *See* Appendix 1 of these Views.

<sup>111</sup> Production increased from \*\*\* units in 2003 to \*\*\* units in 2005. *See* Appendix 1 of these Views.

<sup>112</sup> *See* Appendix 1 of these Views.

<sup>113</sup> Net sales increased from \*\*\* units in 2003 to \*\*\* units in 2005. *See* Appendix 1 to these Views.

<sup>114</sup> The value of net sales declined from \$\*\*\* in 2003 to \$\*\*\* in 2005; sales unit values declined from \$\*\*\* in 2003 to \$\*\*\* in 2005. *See* Appendix 1 to these Views.

<sup>115</sup> Operating income declined from \$\*\*\* in 2003 to \$\*\*\* in 2005. *See* Appendix 1 to these Views.

<sup>116</sup> The operating income margins decreased from \*\*\* percent in 2003 to \*\*\* percent in 2005. *See* Appendix 1 to these Views.

<sup>117</sup> Apparent U.S. consumption as measured by value increased from \$\*\*\* in 2003 to \$\*\*\* in 2005. *See* Appendix 1 to these Views.

<sup>118</sup> The producers of cores and a number of the smaller producers of finished blades were not able to continue to operate profitably in the wake of declining prices notwithstanding increasing apparent U.S. consumption over the POI.

<sup>119</sup> Several U.S. diamond sawblade producers, including one of the largest, turned to increasing automation and productivity as a method of reducing costs, which proved to be successful, but was at the expense of some producers' production workers. Hearing tr. at 33 (Brakeman), 145 (O'Day, Baron).

<sup>120</sup> The number of production and related workers (PRWs) producing finished diamond sawblades declined from \*\*\* in 2003 to \*\*\* in 2004, before partially recovering to \*\*\* in 2005, resulting in a net decrease of \*\*\* workers, or \*\*\* percent of the workforce. PRW hours worked fell from \*\*\* in 2003 to \*\*\* in 2004 and to \*\*\* in 2005, a net

cost cutting, the selling, general, and administrative (SG&A) expenses for the domestic industry decreased by \*\*\* percent over the POI,<sup>121</sup> driven primarily by \*\*\*.<sup>122</sup> The domestic industry has also been able to maintain its operating margins in part through the introduction of new value-priced products in most size ranges to compete with subject imports, with a new product every few years.<sup>123</sup> The U.S. producers that took these cost-cutting and new product steps to remain competitive with subject imports managed to mitigate the decline in the operating income ratio of the industry as a whole. We note, however, that \*\*\*,<sup>124</sup> indicating that the effectiveness of these measures was limited.

Accordingly, in light of the relative stability of the industry's performance indicators, including its production, sales, and operating income ratio, we find that the domestic industry, while experiencing some decline in its condition, is not currently materially injured by reason of the subject imports. Nevertheless, given the high demand for diamond sawblades during the POI, one would normally expect the industry's performance to have improved rather than stabilized or (in some instances) declined. As discussed below, we find the industry is threatened with material injury by reason of the subject imports.

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decrease of \*\*\* percent. Productivity, however, increased by \*\*\* percent between 2003 and 2005. CR/PR at Table C-1A (less data reported in \*\*\*'s producer questionnaire); data presented in Appendix to the Commission's views. The number of PRWs producing cores declined from \*\*\* in 2003 to \*\*\* in 2004 and 2005, resulting in a net decrease of \*\*\* workers, or \*\*\* percent of the workforce producing cores. PRW hours worked in production of cores fell from \*\*\* in 2003 to \*\*\* in 2004 and 2005, a net decrease of \*\*\* percent. Productivity in core production fell during the POI by \*\*\* percent. CR/PR at Table C-2.

Aggregate capital expenditures increased during the period from \$\*\*\* in 2003 to \$\*\*\* in 2004, before declining to \$\*\*\* in 2005, resulting in a net increase of \*\*\* percent. CR/PR at Table C-4A (less data reported in \*\*\*'s producer questionnaire); data are presented in Appendix Table 2 of these views. Research and development expenditures also increased over the period examined from \$\*\*\* in 2003 to \$\*\*\* in 2004 and to \$\*\*\* in 2005. CR/PR at Table VI-12 (less data reported in \*\*\* producer questionnaires).

<sup>121</sup> See Appendix 1 of these Views.

<sup>122</sup> Of the 12 companies that reported SG&A expenses during the POI, eight reported declines (including \*\*\*); of those eight, five also reported declining operating income ratios. \*\*\* reported declining operating income ratios; \*\*\* did not. CR/PR at Table VI-3 (we note that data for \*\*\* were taken from the preliminary phase of these investigations and that \*\*\* SG&A expenses are estimated (CR/PR at VI-1 n.1, Table VI-3 n.2)). Of the four companies that reported SG&A expense increases during the POI, three also reported declining operating income ratios. \*\*\* reported declining operating income ratios; \*\*\* did not. CR/PR at Table VI-3. Moreover, although \*\*\*, seven of the 10 smaller diamond sawblades producers had operating income ratios that dropped during the POI. \*\*\* reported declining operating income margins; \*\*\* did not. *Id.* (we note that data for \*\*\* were taken from the preliminary phase of these investigations and that \*\*\* SG&A expenses are estimated (CR/PR at VI-1 n.1, Table VI-3 n.2)). Five of those seven smaller producers with declining operating income ratios, reported losses in 2005 or during the entire POI. The operating income ratios of \*\*\* declined from positive (profits) to negative (losses) during the POI; the operating income ratios of \*\*\* declined deeper into losses during the POI. CR/PR at Table VI-3.

<sup>123</sup> Hearing tr. at 155–156 (Jedick, O'Day); CR at V-76, PR at V-46 (\*\*\*) reporting that in many cases new products are developed to meet competition price points, which reduce prices for similar products).

<sup>124</sup> Over the POI, the operating income ratio of \*\*\*. CR/PR at Table VI-3, Table VI-8.



## V. THE INDUSTRY IS THREATENED WITH MATERIAL INJURY BY REASON OF THE CUMULATED SUBJECT IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>125</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”<sup>126</sup> In making our determination, we have considered all factors that are relevant to these investigations.<sup>127</sup> For the

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<sup>125</sup> 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

<sup>126</sup> 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

<sup>127</sup> 19 U.S.C. § 1677(7)(F). The Commission must consider, in addition to other relevant economic factors, the following statutory factors in its threat analysis:

- (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement and whether imports of the subject merchandise are likely to increase,
- (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
- (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
- (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,
- (V) inventories of the subject merchandise,
- (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,
- (VII) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 1671d(b)(1) or 1673d(b)(1) of this title with respect to either the raw agricultural product or the processed agricultural product (but not both),
- (VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and
- (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

Moreover, the Commission shall consider the threat factors “as a whole” in making its determination “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur” unless an order issues. In addition, the Commission must consider whether dumping findings or

reasons discussed below, we determine that the domestic industry is threatened with material injury by reason of subject imports from Japan and Korea.

### **A. Cumulation for Purposes of Analyzing Threat of Material Injury**

Cumulation for purposes of a threat analysis is governed by Section 771(7)(H) of the Act, which leaves to the Commission's discretion whether to cumulate in analyzing threat of material injury.<sup>128</sup> We exercise our discretion to cumulate diamond sawblades and parts thereof from China and Korea in these investigations. In exercising our discretion to cumulate, we have taken into account our analysis supporting cumulation in the context of assessing present material injury.<sup>129</sup> We have also considered the similarity in conditions of competition under which subject imports from China and Korea have competed in the U.S. market during the POI, including the fact that there have been similarly increasing trends in the volumes of subject imports from both countries,<sup>130</sup> similar instances of underselling by the subject imports from both countries,<sup>131</sup> and similar mixes of blade characteristics and customer types for imports from both countries.<sup>132</sup>

### **B. Analysis of Statutory Threat Factors**

In order to understand the impact that subject import volumes have had, and in determining that the domestic industry is threatened with material injury by reason of subject imports, we take account of our discussions above analyzing data during the POI, including volume and price trends, and the current condition of the domestic industry.<sup>133</sup> Although the domestic industry as a whole has averted significant adverse impacts to date despite the rising volume and far lower prices of subject imports, we find that, particularly in the context of likely

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antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.

Factors I and VII are inapplicable to these investigations.

<sup>128</sup> 19 U.S.C. 1677(7)(H).

<sup>129</sup> *See* original determination, USITC Pub. 3862 at 18-23 (finding a reasonable overlap of competition based on analysis of fungibility, same geographic markets, simultaneous presence, and similarities in channels of distribution similarities).

<sup>130</sup> CR/PR at Table IV-1.

<sup>131</sup> CR/PR at Tables V-1a - V-7c.

<sup>132</sup> CR/PR at Tables I-1, I-3, II-1, IV-4, IV-5, E-2, E-3.

<sup>133</sup> In light of the significant share of diamond sawblades and parts accounted for by finished diamond sawblades, we have focused our analysis on data for finished diamond sawblades, but also consider data for the industry, including cores and segments.

flattening demand,<sup>134</sup> the industry is likely to suffer material injury in the imminent future if orders are not imposed.

We find that the volume of subject imports is likely to continue to rise because of the subject producers' export orientation and need for new markets, due in part to their increasing production capacity (especially with regard to the Chinese producers).<sup>135</sup> The cumulated production capacity, production, and overall export orientation of subject producers have increased over the POI, while their sales into their respective home markets as a share of total shipments have declined and the capacity utilization rate for the Chinese producers has decreased. In addition, although such projections must in general be analyzed with caution, Chinese producers nevertheless project an increase in their finished diamond sawblades production capacity of \*\*\* percent by 2007.<sup>136</sup>

Cumulated subject imports increased by 67.9 percent by value over the POI, taking market share from domestic producers and nonsubject imports alike, but more heavily from the domestic industry. There is no indication that these import trends will slow or reverse in the imminent future. Representatives of both Korean producers and a domestic producer that opposed the petition indicated at the hearing that the U.S. diamond sawblades market is higher priced than the European market, which is the other major market for diamond sawblades; this suggests that the United States is likely to remain an attractive market for subject imports in the future.<sup>137</sup> Subject producers have been selling – and likely can continue to sell – into the higher-priced U.S. market to their benefit at prices detrimental to the domestic industry, as evidenced by the persistent, and in many cases large, margins of underselling.<sup>138</sup> Given that U.S. demand is expected to level off in the future, we find that the significant likely increases in subject import volumes will have a significant impact on the sales volumes, production levels, profitability and market share of the domestic industry in the imminent future.

Contrary to respondents' arguments, no portion of the market, as defined by size or end-user category, is sheltered from competition with subject imports. Cumulated subject import sales are increasing in each size range, including the larger sizes in which professional customers that may require post-sale customer service dominate, and through many different channels of distribution. With regard to the largest size ranges examined in these investigations, cumulated

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<sup>134</sup> As noted in our Conditions of Competition discussion, the majority of producers, importers, and purchasers report they do not expect demand to continue to increase in the future. CR at II-37, PR at II-21–II-22.

<sup>135</sup> The petitioners contended that the Commission should draw adverse inferences in considering the subject producers' data because not all subject producers responded to the Commission's foreign producers questionnaire. The questionnaire responses in any investigation, however, often reflect less than complete coverage of the domestic industry, foreign producers, importers, and purchasers. In the absence of complete information, the Commission relies on the facts available, which, in the absence of a reason to believe that those data are not representative, is often the data actually on the record. We do not draw adverse inferences here.

<sup>136</sup> CR/PR at Table VII-2. The staff report details the expansion plans of four Chinese companies (\*\*\*) in 2006–2007. CR at VII-2, PR at VII-1.

<sup>137</sup> Hearing tr. at 346–347 (Kim {Ehwa} and Nixon {Saint Gobain}).

<sup>138</sup> The Chinese product undersold the domestic product in 112 of 115 quarterly comparisons, with margins of 17.8–86.4 percent. The Korean product undersold the domestic product in 189 of 245 quarterly comparisons, with margins of 1.2–80.8 percent. CR at V-58 n.77, PR at V-33 n.77; CR/PR at Table V-9c.

subject imports increased from \$4.7 million in 2003 to \$7.7 million in 2005 in the 14-inch to 20-inch sizes, and from \$1.5 million in 2003 to \$2.4 million in 2005 in the larger than 20-inch sizes. Furthermore, cumulated subject imports in each of these size ranges increased by value during the POI to all major distribution channels or customers, including branded distributors, other distributors, retailers, and professional construction.<sup>139</sup> U.S. commercial shipments of subject imports in the 12-inch and greater sizes increased from 41.2 percent of total U.S. commercial shipments of subject imports in 2003 to 46.6 percent of total U.S. commercial shipments of subject imports in 2005.<sup>140</sup> Cumulated subject import increases in these sizes during the POI are inconsistent with respondents' contentions that they are largely precluded from selling foreign-made diamond sawblades to these customers because of the post-sale customer service that purchasers require and that foreign producers are unable to provide.<sup>141</sup>

We further find that subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on prices for domestic diamond sawblades. Underselling is likely to continue, as the record reflects that U.S. prices declined broadly across the seven products and three distribution channels for which pricing information was sought during the POI, falling in 72 of 84 quarter-to-quarter comparisons from 2003 to 2005.<sup>142</sup> No evidence has been offered to indicate that this underselling will decrease significantly.

Growing inventory levels of both domestic and subject product will continue to put pressure on U.S. market prices as well. Over the POI, U.S. producers' U.S. shipments of finished diamond sawblades by quantity declined \*\*\* percent, and by overall value declined by \*\*\* percent.<sup>143</sup> Because U.S. production capacity and production both increased only slightly during the POI and export shipments by value declined \*\*\* percent, inventories of finished diamond sawblades increased from \*\*\* percent of total shipments in 2003 to \*\*\* percent in

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<sup>139</sup> CR/PR at Table E-6. For the 14-inch to 20-inch sizes, the values of sales of cumulated subject imports to OEMs increased as well from 2003 to 2005. *Id.*

<sup>140</sup> Memorandum INV-DD-088 at Table E-6 (the increase in these sizes overall is attributable to the increase in the share accounted for by 12-inch to 14-inch sawblades and decreases in the shares accounted for by sizes below 10-inches).

<sup>141</sup> Respondents' posthearing brief at 21. The parties disagree on the percentage of sales in the largest size ranges of diamond sawblades that require immediate or overnight producer delivery and/or onsite, post-sale customer service. The petitioners allege that the percentage is fairly small, while the respondents allege that the percentage is quite sizable. *See* hearing tr. at 87 (Garrison), 219 (Kim), 228 (Steiner), 232 (Nixon). The record in these investigations supports the conclusion that some but not all sales to professional concrete contractors may require customization, quick turnaround, or onsite customer service. We find, however, that subject producers can provide overnight shipping from production facilities in subject countries and onsite customer service through their U.S. sales affiliates. We also find that some distributors, rather than manufacturers, provide the desired customer service. *See* Petitioners' posthearing brief, Exhibit 1 at 5. Therefore, we reject respondents' argument that they cannot sell subject product in the higher-value larger sizes to professional concrete contractors. *See* hearing tr. at 338–339 (Steiner).

<sup>142</sup> CR/PR at Tables V-1a–V-7c. First quarter 2003 to first quarter 2005 and similar quarterly comparisons for 2003 to 2005 control for seasonal fluctuations in the pricing data, as petitioners and respondents agreed that diamond sawblades can be a seasonal-sale item. *See* CR at II-30, PR at II-19.

<sup>143</sup> *See* Appendix 1 of these Views.

2005.<sup>144</sup> Similarly, subject import inventories almost doubled by quantity over the POI; they declined from 42.9 percent of U.S. shipments of imports in 2003 to 41.9 percent in 2005<sup>145</sup> only because overall subject imports during the POI increased by 85.7 percent, as noted earlier.<sup>146</sup>

The domestic industry's ability to maintain profitability was attributable in large part to the high and increasing demand during the POI. Despite this favorable circumstance, as well as the success of a number of domestic producers in reducing their costs of production through increased productivity, reductions in employment, and investment in upgraded equipment,<sup>147</sup> the industry's operating income and operating income margin declined during the POI, as prices fell and material costs rose. We note that various domestic industry representatives testified that cost and efficiency improvements have reached a limit and are not expected to have additional impact on the industry going forward.<sup>148</sup> Now that demand is likely to flatten and low-priced subject imports are likely to continue to increase in the imminent future, the increasing volumes of imports will cause prices to decline further absent antidumping relief. These import increases and price declines will likely accelerate the loss of operating income, leading to material injury to the domestic industry.

Finally, we find that subject imports will have negative effects on the development and production efforts of the domestic industry in the imminent future. For finished diamond sawblades and parts, the ratio of cost of goods sold to net sales rose from \*\*\* percent in 2003 to

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<sup>144</sup> See Appendix 1 of these Views.

<sup>145</sup> CR/PR at Table VII-11.

<sup>146</sup> See Appendix 1 of these Views.

<sup>147</sup> This effort by the domestic industry is reflected in a \*\*\* percent decrease in their gross SG&A expenses, as well as a \*\*\* percent increase in capital expenditures, and a \*\*\* percent increase in R&D expenses. See Appendix 1 of these Views; see also CR/PR at Table VI-12 (individual producers' data). Although a majority of the R&D expenses were attributable to \*\*\*, four other domestic producers reported some R&D expenses during the POI. Similarly, \*\*\* of the domestic industry's capital expenditures were made by \*\*\*, but 11 other domestic producers had some level of capital expenditures during the POI. CR/PR at Table VI-12, Table VI-13.

<sup>148</sup> Conference tr. at 17 (Burnett: “[W]e continued to grow, even though imports of Chinese and Korean products were increasing. As we grew, we were doing everything in our power to keep costs down, including building our own manufacturing equipment, setting up our own computing systems, and refining our processes. ... As we worked to reduce our labor costs, indirect labor, indirect overhead, including administrative costs, and to reduce our material costs, we have had to keep reducing our prices to maintain our customer base.”); *id.* at 23 (Brakeman: “Even though we were able to decrease manufacturing, overhead, and material costs on goods we produced, we have had to continually reduce the selling price to get orders.”); *id.* at 37 (Palovochik: “Hoffman will continue to cut costs while maintaining our commitment through our employees and customers. Having said this, though, it’s becoming more and more difficult as prices continue to erode.”); hearing tr. at 100 (Kaplan: The domestic producers “have expressed that any types of cost savings, some of which were dramatic for individual firms, are now over. Everything is squeezed out.”); *id.* at 137 (Jedick: “[O]ver the last six to eight years, we have lost several percentage points of operating income and consistently through the period of the investigation, we’ve lost operating income maybe not as dramatically as previously. But, we have made a lot of cost improvements and cost controls that came into effect over the last few years, so that could probably be part of the reason.”); *id.* at 105 (O’Day: “We have eliminated our engineering department; we have eliminated two metallurgical positions; and we have cut our production staff. ... We have reached the place where there is very little more that we can cut.”).

\*\*\* percent in 2005,<sup>149</sup> indicating that the domestic industry cannot raise its prices to recoup its increasing raw material costs, even if rising demand throughout all segments of the market were to continue. The declining operating income ratios during the POI are likely to become losses under the present trends, with expected negative effects on employment<sup>150</sup> and returns on assets.<sup>151</sup>

## CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing diamond sawblades and parts is threatened with material injury by reason of subject imports from China and Korea sold at less than fair value.<sup>152</sup>

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<sup>149</sup> See Appendix 2 of these Views.

<sup>150</sup> The number of production workers over the POI declined from \*\*\* to \*\*\*, or by \*\*\* percent, but the number of hours worked declined from \*\*\* to \*\*\*, or by \*\*\* percent. Total wages paid during in the POI increased from \$\*\*\* to \$\*\*\*, or by \*\*\* percent, but that rise was largely because of an increase in hourly wages from \$\*\*\* to \$\*\*\* (\*\*% percent). See Appendix 1 of these Views.

<sup>151</sup> Aggregate return on assets declined from \*\*\* percent in 2003 to \*\*\* percent in 2005. CR/PR at Table VI-13 adjusted for \*\*\* data.

<sup>152</sup> The Federal Circuit decisions in *Bratsk Aluminium Smelter v. United States*, 444 F. 3d 1369 (Fed. Cir. 2006), and *Caribbean Ispat, Ltd. v. United States*, 450 F.3d 1346 (Fed. Cir. 2006), are not applicable here. Those cases call for a retrospective (*i.e.*, backward-looking) analysis, in the context of present material injury determinations, of whether nonsubject imports would have replaced subject imports without benefit to the domestic industry when a commodity product is at issue and price competitive nonsubject imports are a significant factor in the U.S. market. *Bratsk*, 444 F. 3d at 1375; *Caribbean Ispat*, 450 F.3d at 1351. Those cases do not apply to affirmative determinations based on threat of material injury, where a prospective (*i.e.*, forward-looking) analysis is involved, and we do not find that there is any reason to apply a replacement/benefit analysis where those cases do not require one.

## SEPARATE VIEWS OF VICE CHAIRMAN SHARA L. ARANOFF (REMAND)

By opinion dated February 6, 2008, the U.S. Court of International Trade (“Court”) (Senior Judge R. Kenton Musgrave) remanded the Commission’s determination in *Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nos. 731-TA-1092–1093 (Final), USITC Pub. 3862 (July 2006). Upon consideration of the Court’s remand instructions and the parties’ comments, and based on the record, as supplemented in this remand proceeding, I determine that an industry in the United States is threatened with material injury by reason of imports of diamond sawblades and parts thereof from China and Korea that are sold in the United States at less than fair value (LTFV).<sup>1</sup>

### I. BACKGROUND

In July 2006, the U.S. International Trade Commission (“Commission”) determined, by a four-to-two vote, that an industry in the United States was not materially injured or threatened with material injury by reason of imports of diamond sawblades and parts thereof from China and Korea.<sup>2</sup> All six Commissioners determined that the domestic industry was not currently being materially injured by reason of the cumulated imports from China and Korea. Four Commissioners—Commissioners Daniel R. Pearson, Stephen Koplan, Deanna Tanner Okun, and Charlotte R. Lane—also determined that the domestic industry was not threatened with material injury by reason of the subject imports. Commissioners Shara L. Aranoff and Jennifer A. Hillman dissented, determining that the domestic industry was threatened with material injury.

On February 6, 2008, the Court remanded the Commission’s final negative determination for further consideration consistent with the court’s opinion. *Diamond Sawblades Manufacturers Coalition v. United States*, Slip Op. 08-18 (Feb. 7, 2008) (“Slip Op.”). In that opinion, the Court found that the Commission’s conclusion that competition between the subject imports and the domestic like product was attenuated based on sawblade diameter differences (Slip Op. at 13–15) and sawblade manufacturing process differences (Slip Op. at 15–16) was not supported by substantial evidence of record. The Court further found that the Commission failed to explain adequately its conclusion, also in the context of its limited competition analysis, that “branded distributors” and “other distributors” served different end users. Slip Op. at 16–18.

The Court also instructed the Commission on remand to provide a more thorough explanation of its finding that domestic producers’ price declines in certain instances reflected a volume/price trade-off. In particular, the Court asked the Commission to explain whether the

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<sup>1</sup> The Court’s remand order and instructions were directed at certain aspects of the original Commission majority’s determination that the domestic industry was not materially injured or threatened with material injury by reason of subject imports from China and Korea, including their findings on attenuated competition and the lack of correlation between subject underselling and domestic price declines. Because neither my dissenting views in the original determination nor my views on remand rely on these findings of the prior Commission majority, my views do not provide the additional explanation concerning these findings that was requested by the Court in its remand order. As can be seen below, however, my remand views do address the general issues raised by the Court in its opinion, but come to different conclusions than the prior Commission majority.

<sup>2</sup> 71 Fed. Reg. 39,129 (July 11, 2006). *Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nos. 731-TA-1092–1093 (Final), USITC Pub. 3862 (July 2006).

domestic producers' volume increases were an adequate trade-off for their lowered prices and how the purported volume/price trade-off would indicate competition among domestic producers, as the Commission stated in a footnote. Slip Op. at 22–23. Finally, the Court remanded the Commission's findings on subject import volume, price effects, impact, and threat of material injury because the Court was "in 'substantial doubt' whether the Commission 'would have made the same ultimate finding with the erroneous findings removed from the picture.'" Slip Op. at 24, citing *U.S. Steel Corp. v. United States*, 18 CIT 1190, 1215, 873 F. Supp. 673, 696 (1994).

On remand, the Commission reopened the record to obtain additional information from purchasers about the degree of competition between subject imports and the domestic like product. The Commission sent supplemental questions concerning competition in the market to the 52 purchasers that responded to the Commission's purchasers' questionnaires during the original investigations.<sup>3</sup> The purchasers' responses are summarized in the Commission's staff report on remand.<sup>4</sup> The Commission published notice of its remand proceedings in the Federal Register on March 31, 2008, noting, inter alia, that the record had been reopened and that parties would be able to comment on the Court's opinion and the supplemental record on remand.<sup>5</sup> On April 18, 2008, the domestic interested parties and respondent interested parties filed comments on these issues.

## II. DOMESTIC LIKE PRODUCT, DOMESTIC INDUSTRY, AND CUMULATION

I adopt the original Views of the Commission with regard to the background of these investigations;<sup>6</sup> the definitions of the domestic like product and the domestic industry, including the Commission's original related party analysis;<sup>7</sup> and its findings on cumulation.<sup>8</sup>

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<sup>3</sup> The Commission rejected 90 additional purchaser responses to the questions that were submitted by counsel for petitioners. As was noted in the Commission's letter to counsel dated April 7, 2008, the Commission reopened the record to send supplemental questions to the 52 purchasers that had responded to the Commission's purchaser questionnaire during the original investigations. The Commission did not seek responses from other purchasers because, by sending the supplemental questions to the 52 purchasers that responded to the original questionnaire, it ensured that it had an appropriate context within which to analyze the responses to the additional questions. Second, the purchasers to whom the Commission's staff sent full questionnaires in the first instance, as part of its normal practice, were selected to achieve a representative purchaser group. The Commission did not direct or request that counsel for petitioners, or counsel for any party, forward the supplemental questions to other purchasers or solicit their responses.

<sup>4</sup> Memorandum INV-FF-032 (Apr. 7, 2008).

<sup>5</sup> 73 Fed. Reg. 16910 (March 31, 2008).

<sup>6</sup> *Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nos. 731-TA-1092–1093 (Final), USITC Pub. 3862 (July 2006) at sec. I.

<sup>7</sup> *Id.* at sec. II.

<sup>8</sup> *Id.* at sec. III.



### III. SUMMARY

Based on the record in these investigations, I determine that an industry in the United States is threatened with material injury by reason of LTFV imports of diamond sawblades and parts thereof from China and Korea. Although I reach the same determination as I did in the original investigations, my views on remand, which take into account the Court's remand instructions and the new information obtained on remand, fully replace my dissenting views from the original investigations.<sup>9</sup>

During the period of investigation ("POI") (2003–05), subject imports increased significantly, both on an absolute basis and relative to domestic consumption. During that period, subject imports also undersold the domestic like product by significant margins, and prices for the domestic like product declined. Nonetheless, I find that, because of the domestic industry's success in reducing expenses and improving productivity over the POI, the industry has been able to maintain its production, sales, profitability, and other performance indicators at reasonably stable, though declining, levels during the POI. Thus, I find that the domestic industry as a whole has not yet suffered material injury by reason of the subject imports from China and Korea. I also find, however, that most financial indicators trended downward during the POI and that U.S. demand and the industry's ability to achieve further operational improvements are leveling off, leading me to conclude that domestic producers will not be able to maintain their current levels of profitability in the face of LTFV imports, which I find will continue to increase from their already significant levels. Accordingly, I find that, based on import trends, declining prices, flattening demand, the domestic industry's weakening condition, and its diminished opportunities to reduce expenses or improve productivity, the industry is threatened with material injury by reason of the cumulated subject imports. I explain my findings below.

### IV. NO MATERIAL INJURY BY REASON OF THE CUMULATED SUBJECT IMPORTS

#### A. Legal Standard

In the final phase of antidumping duty and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>10</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>11</sup> The statute defines "material injury" as "harm which is not

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<sup>9</sup> *Id.* at 41 ("Dissenting Views of Vice Chairman Shara L. Aranoff and Commissioner Jennifer A. Hillman Concerning Threat of Material Injury").

<sup>10</sup> 19 U.S.C. §§ 1671d(b) and 1673d(b).

<sup>11</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). *See also Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

inconsequential, immaterial, or unimportant.”<sup>12</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, I consider all relevant economic factors that bear on the state of the industry in the United States.<sup>13</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>14</sup>

## **B. Conditions of Competition**

Several conditions of competition are pertinent to my analysis in these investigations. I discuss these conditions below.

### **1. Physical characteristics, end uses, and channels of distribution**

Finished diamond sawblades are used for cutting solid surfaces, such as concrete, asphalt, marble, tile, brick, and stone. Diamond sawblades are produced in a wide range of sizes, typically ranging from 4 inches to 70 inches in diameter, with sawblades in the 10-inch to 14-inch size range considered “midrange” blades.<sup>15</sup> Finished diamond sawblades used by specialized concrete contractors involved in nonresidential construction projects, such as road construction and repair and other large construction projects, are often greater than 14 inches in diameter.<sup>16</sup> By comparison, finished diamond sawblades with diameters of 14 inches or less are typically used by general contractors and “do-it-yourself” (DIY) end users who are more often engaged in smaller-scale, residential construction projects.<sup>17</sup> Although respondents contend that the U.S. diamond sawblade market is “highly segmented” into “professional-use” and “general-use” categories, with larger-diameter blades often being used by the professional-use segment (by which they mean specialized concrete contractors), petitioners argue that there are no clear dividing lines.<sup>18</sup> Respondents themselves were unable to define the professional-use market clearly, arguing during the preliminary phase investigations that size was an important factor in establishing a dividing line between “professional” and “general” use and then arguing during the final phase investigations that the dividing line was based on the horsepower of the saw in

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<sup>12</sup> 19 U.S.C. § 1677(7)(A).

<sup>13</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>14</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>15</sup> CR at I-8, PR at I-6.

<sup>16</sup> CR at I-16–I-17, PR at I-11.

<sup>17</sup> CR at I-18, PR at I-12.

<sup>18</sup> CR at I-16 n.39, PR at I-10 n.39.

which the blade was used.<sup>19</sup> Contrary to respondents' argument, the record demonstrates an overlap in usage by "professional" concrete contractors, general contractors, and DIY end users, notably in the midrange-diameter category.<sup>20</sup> Further, I note that size is only one of the factors that determines a blade's end use.

Other physical attributes of finished diamond sawblades in addition to size further dictate its ultimate end use. Diamond sawblade cores may be slotted to produce a notched, or "segmented," rim or be smooth to produce a "continuous" rim. Segmented rims allow the blades to flex under pressure, cool the blade while cutting, and facilitate the removal of cut material from the blade.<sup>21</sup> Segmented blades are generally used in the nonresidential construction market, where blades may be subjected to higher pressures than in the general contractor/DIY market. Although finished diamond sawblades for the general contractor/DIY market may be either segmented or continuous rim, they are used on lower-horsepower equipment and therefore are not designed to withstand the high-intensity usage to which nonresidential construction blades may be subjected.<sup>22</sup>

Other considerations that may determine end uses for finished diamond sawblades include the physical characteristics of the diamond section and the method used for joining the diamond segments to the core of the blade.<sup>23</sup> With respect to the physical characteristics of the diamond section, the strength and concentration of the diamonds within the bonding matrix may differ among blades, with more diamonds in a stronger bond matrix resulting in better quality cuts. With respect to the method of attachment, diamond segments are either baked onto the sawblade core in a process known as "sintering," soldered/brazed onto the sawblade's core, or laser welded to the sawblade's core.<sup>24</sup> For sawblades that were made using the soldered/brazed process of diamond attachment, a fluid must be used while cutting to lubricate and cool the blade.<sup>25</sup> Finished diamond sawblades that are laser welded are stronger, with fewer failure

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<sup>19</sup> Respondents assert that professional-use blades are often 20 inches in diameter or greater. Conference tr. at 142 (Lewis). During the hearing, respondents defined the professional-use market by the horsepower of the saw, stating that "we've chosen 35 horsepower as kind of the line in the sand that depicts the professional user." Hearing tr. at 296 (Nixon). *See also id.* at 293 (Kim).

<sup>20</sup> Hearing tr. at 355 (Park). *See also* Staff Report, INV-FF-032 (Remand) (Apr. 7, 2008) ("Remand Staff Report") at Tables III-2, III-3 (majority of purchasers with familiarity in this regard reported that all sizes of sawblades used by professional diamond sawblade users always, frequently, or sometimes compete with those used by contractors for general use and DIYs).

<sup>21</sup> CR at I-8, PR at I-6.

<sup>22</sup> General-use blades run on one-quarter to one-half horsepower equipment, while professional-use blades run on high-horsepower (e.g., 65 horsepower) equipment. Professional-use blades are therefore subjected to tolerance testing to ensure the elimination of imperfections that would otherwise render the blade too dangerous to use. CR at I-17, PR at I-11.

<sup>23</sup> CR at I-8, PR at I-6.

<sup>24</sup> CR at I-11–I-12, PR at I-9.

<sup>25</sup> In the absence of the cooling lubricant, the heat generated in the cutting process would melt the solder, potentially destroying the blade and creating a safety hazard. CR at I-12, I-23, PR at I-9, I-15.

rates.<sup>26</sup> In 2005 the overwhelming majority of U.S. commercial shipments of U.S.-produced diamond sawblades and cumulated subject imports were laser-welded, segmented blades.<sup>27</sup>

With respect to distribution channels, the majority of the domestic like product and cumulated subject imports was sold to distributors during the POI. Sales to distributors represented 50.3 percent of U.S.-produced finished diamond sawblades, 64.4 percent of finished diamond sawblades from China, and 60.4 percent of finished diamond sawblades from Korea.<sup>28</sup> Within the distributor category during the POI, the record draws distinctions between “branded” distributors,<sup>29</sup> to which subject imports were mostly sold, and “other” distributors,<sup>30</sup> to which the domestic like product was mostly sold.<sup>31</sup> Nevertheless, questionnaire responses by a number of diamond sawblade purchasers, both branded distributors and other distributors, indicate that blades in sizes larger than 12" sold through each of these channels ultimately go to the same customers, primarily general contractors.<sup>32</sup> Although respondents are correct in their assertion that the type of distributor (branded or other) for domestic and imported diamond sawblades frequently differ, the products ultimately are purchased and used thereafter largely by the same types of end users.<sup>33</sup>

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<sup>26</sup> CR at I-11, PR at I-9.

<sup>27</sup> CR/PR at Table I-2.

<sup>28</sup> CR/PR at Table II-1. As in the Commission’s original views (*e.g.*, *Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nos. 731-TA-1092–1093 (Final), USITC Pub. 3862 {July 2006} at 12 n.60), I rely primarily on value measures for subject import volume, apparent consumption, and domestic shipments. Value-based indicators are the best measure for the product here, which includes a vast and disparate grouping of items differing in size, characteristics, applications, and value.

<sup>29</sup> Branded distributors primarily sell finished diamond sawblades labeled with the distributor’s brand name. CR at II-1 n.1, PR at II-1 n.1.

<sup>30</sup> Other distributors primarily sell finished diamond sawblades under the manufacturer’s brand label. *Id.*

<sup>31</sup> CR/PR at Table E-1, Table E-6. During the POI, U.S. producers’ shipments of finished diamond sawblades to branded distributors accounted for 14.2 percent of all shipments by value of U.S. product, while their shipments to other distributors accounted for 36.1 percent of all shipments. By contrast, U.S. importers’ shipments of finished diamond sawblades from China to branded distributors accounted for 47.9 percent of all shipments by value of Chinese product, while their shipments to other distributors accounted for 16.6 percent of all shipments; and U.S. importers’ shipments of finished diamond sawblades from Korea to branded distributors accounted for 44.8 percent of all shipments by value of Korean product, while their shipments to other distributors accounted for 15.5 percent of all shipments. *Id.*

<sup>32</sup> \*\*\*. Notably, the one distributor that responded to the Commission’s questionnaires as both a branded distributor and an other distributor explicitly stated in its questionnaire response that these blades go to the same customers. \*\*\* questionnaire response (see cross-reference in its “other distributors” response to its response under “branded distributors”).

<sup>33</sup> Contrary to respondents’ contention (Korean Respondents’ Remand Comments {April 18, 2008} at 10–11), nothing requires the Commission to consider only the first sale by a producer or importer when it analyzes channel of distribution or customer-type differences. Rather, the Commission may, as I do here, consider similarities or differences reflected in the channels of distribution as a whole, from first sale to end user.

In addition to distributors, finished diamond sawblades are also commercially shipped to national “big-box” retail stores (*e.g.*, Home Depot and Lowes) and other retail outlets, original equipment manufacturers (OEMs), professional construction firms, and other end users. The second-largest channel of distribution for U.S.-produced finished diamond sawblades during the POI was the end-user channel, particularly professional construction firms, which alone represented 44.1 percent of U.S. shipments by value. The second-largest distribution channel for subject imports was the OEM channel.<sup>34</sup> This channel represented 18.1 percent and 27.9 percent of U.S. commercial shipments of imports from China and Korea, respectively.<sup>35</sup>

Based on the discussion above, although the physical characteristics of a diamond sawblade have some bearing on its ultimate end use, I do not find that the record supports respondents’ argument that the U.S. diamond sawblades market is highly segmented. As previously discussed, there is an overlap in usage in all size ranges, but especially in the midrange size category.<sup>36</sup> Additionally, the record demonstrates that the domestic like product and subject imports competed against each other during the POI, as they were each present in every size category and were both sold for use in a wide range of applications. Thus, most market participants indicated that domestically produced finished diamond sawblades and imported merchandise from China and Korea were always or frequently interchangeable.<sup>37</sup>

## 2. Demand considerations

Demand for finished diamond sawblades is derived from activity in the residential construction market, including the home improvement market, and the nonresidential construction market, principally transportation, road, and office construction.<sup>38</sup> In some regions of the United States, demand for finished diamond sawblades is seasonal, especially in northern states where unfavorable weather conditions during winter months prohibit certain construction projects. Accordingly, one producer reports that the peak season for finished diamond sawblades is May through November.<sup>39</sup>

The record in these investigations indicates that, by value, apparent U.S. consumption of finished diamond sawblades and parts increased significantly during the POI. Such consumption

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<sup>34</sup> CR/PR at Table II-1.

<sup>35</sup> *Id.*

<sup>36</sup> Hearing tr. at 355 (Park). *See also* CR at I-18, PR at I-12 (diameters of general-use blades for contractors and DIY end users may extend up to 20 inches); Remand Staff Report, INV-FF-032 (Remand) (Apr. 7, 2008) at Tables III-2, III-3 (majority of purchasers with familiarity in this regard reported that all sizes of sawblades used by professional diamond sawblade users always, frequently, or sometimes compete with those used by contractors for general use and DIYs).

<sup>37</sup> CR/PR at Table II-5 (majority of producers, importers, and purchasers reported that the domestic like product, subject imports from China, and subject imports from Korea are always or frequently interchangeable with each other).

<sup>38</sup> CR at II-30, PR at II-18–II-19.

<sup>39</sup> *Id.*

increased from \$199.2 million in 2003 to \$231.2 million in 2005, or by 16.1 percent.<sup>40</sup> Similarly, apparent U.S. consumption of finished diamond sawblades increased during the POI, both on a quantity basis and on a value basis. By quantity, apparent U.S. consumption of finished diamond sawblades increased from 4.464 million units in 2003 to 6.754 million units in 2005, representing an increase of 51.3 percent.<sup>41</sup> On a value basis, apparent U.S. consumption of finished diamond sawblades increased from \$184.7 million in 2003 to \$214.9 million in 2005, or by 16.4 percent.<sup>42</sup>

The increase in apparent U.S. diamond sawblade consumption was driven largely by increased activity in the construction sector, where the combined value of residential and nonresidential construction increased by 21.1 percent during the POI.<sup>43</sup> Within the construction sector, the value of residential construction increased at a faster rate than nonresidential construction, with the former increasing at an average annual rate of 9.7 percent, compared with an average annual increase of 5.2 percent for nonresidential construction.<sup>44</sup> In addition, the number of U.S. big-box hardware stores, identified by respondents as a proxy for measuring DIY/general-purpose demand for diamond sawblades, increased from 2,590 stores to 3,253 stores during the POI, or by 25.6 percent.<sup>45</sup>

Even though demand has grown significantly during the POI, the record indicates that this significant growth will not continue in the imminent future. The majority of responding U.S. producers, importers, and purchasers expect U.S. demand for finished diamond sawblades to remain the same or decrease in the future. In particular, only 3 of 12 responding U.S. producers, 12 of 26 responding U.S. importers, and 14 of 44 responding U.S. purchasers expect future U.S. demand for finished diamond sawblades to increase. The remaining questionnaire respondents in each of these categories expect demand to remain the same or decline.<sup>46</sup>

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<sup>40</sup> See Appendix 2 of these Views.

<sup>41</sup> See Appendix 1 of these Views.

<sup>42</sup> *Id.*

<sup>43</sup> Derived from CR/PR at Table II-2.

<sup>44</sup> CR at II-33, PR at II-20.

<sup>45</sup> CR/PR at Table II-2.

<sup>46</sup> CR at II-37, PR at II-21–II-22.

### 3. Supply considerations

The U.S. diamond sawblade market is supplied by U.S. producers, subject imports from China and Korea, and imports from countries not subject to these investigations. On a value basis, U.S. producers accounted for the largest share of apparent U.S. consumption, although their share declined steadily throughout the POI. Diamond Products and Husqvarna accounted for the bulk of the quantity of U.S. finished diamond sawblades, representing \*\*\* percent and \*\*\* percent of production, respectively.<sup>47</sup> These two firms also accounted for the bulk of U.S. segment production, representing \*\*\* percent and \*\*\* percent of such production, respectively. In addition to these firms, there are a number of smaller domestic producers of finished diamond sawblades and segments. Western is the largest domestic producer of sawblade cores, accounting for \*\*\* percent of domestic production.<sup>48</sup>

The record indicates that U.S. producers had the ability to increase shipments of finished diamond sawblades during the POI in response to changes in demand. Such responsiveness was attributable largely to excess capacity, available inventories, and efficient production capabilities.<sup>49</sup> Indeed, U.S. producers' total reported capacity utilization in the production of finished diamond sawblades declined during the POI, from \*\*\* percent in 2003 to \*\*\* percent in 2005.<sup>50</sup> At the same time, U.S. producers' ending inventory quantities increased from \*\*\* units in 2003 to \*\*\* units in 2005.<sup>51</sup>

Despite their ability to increase shipments in response to rising demand, U.S. producers' share of the value of apparent U.S. consumption declined from \*\*\* percent in 2003 to \*\*\* percent in 2004 and to \*\*\* percent in 2005.<sup>52</sup> At the same time, the value of imports of finished diamond sawblades from China and Korea as a share of the value of apparent U.S. consumption increased. The share of such imports from China increased from 7.5 percent in 2003 to 11.0 percent in 2004 and to 14.3 percent in 2005, and the share of such imports from Korea increased from 20.3 percent in 2003 to 23.7 percent in 2004 and to 25.7 percent in 2005.<sup>53</sup> The value of nonsubject imports as a share of domestic consumption increased slightly from 10.3 percent in 2003 to 10.9 percent in 2004 before declining to 8.1 percent in 2005.<sup>54</sup>

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<sup>47</sup> CR/PR at Table III-1.

<sup>48</sup> *Id.*

<sup>49</sup> CR at II-9, PR at II-6.

<sup>50</sup> See Appendix 1 of these Views. The industry's finished diamond sawblade capacity increased from \*\*\* units in 2003 to \*\*\* units in 2005, while production increased from \*\*\* units in 2003 to \*\*\* units in 2005. *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

#### 4. Other considerations: substitutability

The parties disagree as to the degree of substitutability between U.S.-produced diamond sawblades and those imported from China and Korea. Petitioners contend that domestic and subject producers of diamond sawblades compete directly, with U.S., Chinese, Korean, and nonsubject producers manufacturing and selling essentially the same product and competing directly within each size category.<sup>55</sup> In contrast, respondents argue that the U.S. diamond sawblades market is highly segmented. They maintain that there are thousands of sizes and product variations and that there are significant differences between the types of products that U.S. producers sell and those that are imported from China and Korea. Further, they note differences in channels of distribution and end-user categories into which subject and domestic diamond sawblades are sold.<sup>56</sup>

As noted above, the size and physical characteristics of a finished diamond sawblade have some bearing on its ultimate end use, with larger-diameter blades typically being used for large-scale, nonresidential construction projects and smaller-diameter blades typically being used in the general contractor/DIY market. It is clear from the record, however, that U.S. and subject imports of finished diamond sawblades competed in each size category throughout the POI.<sup>57</sup> There is significant overlap in the 10-inch to 14-inch size range, which, in 2005, accounted for 43.4 percent of U.S. producers' U.S. commercial shipments by value and 44.4 percent of U.S. commercial shipments of cumulated subject imports by value.<sup>58</sup> U.S.-produced diamond sawblades, however, were present in smaller-diameter ranges as well, accounting for 6.1 percent of U.S. commercial shipments by value of finished diamond sawblades of sizes of 10 inches in diameter or less.<sup>59</sup> By value, a majority or near-majority of U.S. commercial shipments of U.S.-, Chinese-, and Korean-produced finished diamond sawblades were concentrated in the 14-inch and smaller size range throughout the POI.<sup>60</sup>

Subject imports of finished diamond sawblades from China and Korea also were present in increasing volumes in the larger-diameter size ranges throughout the POI. In the 14-inch and larger size ranges, commercial shipments by value of finished diamond sawblades from China and Korea increased in absolute terms from \$6.2 million in 2003 to \$7.9 million in 2004 and to \$10.1 million in 2005 and increased as a share of U.S. commercial shipments by value from 3.5

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<sup>55</sup> Petitioners' prehearing brief at 25.

<sup>56</sup> Respondents' prehearing brief at 19.

<sup>57</sup> Remand Staff Report at Tables III-5, III-6.

<sup>58</sup> Derived from CR/PR at Table I-1.

<sup>59</sup> *Id.*

<sup>60</sup> Finished diamond sawblades in the 14-inch and smaller size range represented 51.3 percent of the value of U.S. producers' commercial shipments, 93.1 percent of the value of U.S. commercial shipments of imports from China, and 85.9 percent of the value of U.S. commercial shipments of imports from Korea during the POI. Derived from CR/PR at Table II-1.



percent in 2003 to 4.1 percent in 2004 and to 5.0 percent in 2005.<sup>61</sup> U.S. commercial shipments of subject imports in the 12-inch and greater ranges increased from \$20.7 million in 2003 to \$29.8 million in 2004 and to \$39.6 million in 2005 and increased as a share of U.S. commercial shipments by value from 11.8 percent in 2003 to 15.3 percent in 2004 and to 19.2 percent in 2005.<sup>62</sup> This trend indicates that subject import producers have the ability to produce and sell the larger-diameter finished diamond sawblades that are typically used in the nonresidential construction market. Thus, while respondents contend that customization requirements, servicing needs, and quick turnaround times in the professional-use market make it impossible to serve this market from abroad,<sup>63</sup> the record in these investigations demonstrates otherwise. Moreover, to the extent that quick turnaround is a factor in some large sales of diamond sawblades, a number of respondent firms reported shipping finished diamond sawblades via air freight, with one company stating that it ships its products via air freight on the same day it receives the order.<sup>64</sup>

In addition to size, other considerations, such as whether the blade has a segmented or continuous rim and the way the diamonds are joined with the core, determine the ultimate end use of the blade. As discussed above, segmented, laser-welded blades are better suited for use in high-pressure-use environments, such as those in the nonresidential construction market, because they are easier to cool and have lower failure rates. As noted, the record demonstrates that, by value in 2005, the overwhelming majority of U.S. commercial shipments of U.S.-produced finished diamond sawblades and those imported from China and Korea were laser-welded, segmented blades. In 2005, such blades accounted for 84.6 percent of U.S. commercial shipments of U.S.-produced finished diamond sawblades and 62.6 percent of U.S. commercial shipment values of cumulated subject imports.<sup>65</sup>

Finally, the majority of U.S. producer, importer, and purchaser responses to the Commission's questionnaire indicated that U.S.-produced finished diamond sawblades and finished sawblades imported from China and Korea were always or frequently interchangeable.<sup>66 67</sup>

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<sup>61</sup> Derived from CR/PR at Table IV-4.

<sup>62</sup> *Id.* U.S. commercial shipments of subject imports in the 12-inch and larger size range increased as a share of U.S. commercial shipments of subject imports by value from 41.2 percent in 2003 to 46.6 percent in 2005. Memorandum INV-DD-088 at Table E-6 (the increase in these ranges overall is attributable to the increase in the share in the 12-inch to 14-inch range and decreases in the shares in each of the ranges below 10-inch ).

<sup>63</sup> Respondents' posthearing brief at 21.

<sup>64</sup> Petitioners' posthearing brief, Exhibit 1 at 5.

<sup>65</sup> CR/PR at Table I-2.

<sup>66</sup> CR at II-67, PR at II-34; CR/PR at Table II-5.

<sup>67</sup> Specifically, of 14 responding producers, 10 indicated that U.S.- and Chinese-produced finished diamond sawblades were always or frequently interchangeable, and 11 indicated that U.S.- and Korean-produced finished diamond sawblades were always or frequently interchangeable. Of 33 responding importers, 18 believed that U.S.- and Chinese-produced finished diamond sawblades were always or frequently interchangeable, and 19 indicated that U.S.- and Korean-produced finished diamond sawblades were always or frequently interchangeable. Of 32

In conclusion, while it is true that subject imports are more concentrated in the smaller size blades and domestic production is more concentrated in blades greater than 14 inches, the record leaves no doubt that there is considerable overlap in the midrange sizes and that U.S.-, Chinese-, and Korean-produced finished diamond sawblades compete with each other in the same end-user markets and across the full range of product sizes.<sup>68</sup>

### C. Volume of 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.”<sup>69</sup>

There is no dispute among the parties that the volume of the cumulated subject imports increased, both on an absolute basis and relative to domestic consumption, during the POI. Petitioners argue that the increase in subject imports, whether measured on a value or quantity basis, directly affected domestic producers, as their market share declined and subject imports’ market share increased.<sup>70</sup> In contrast, respondents contend that the increases in subject imports did not come at the expense of U.S. producers because competition between them is attenuated.<sup>71</sup> As discussed in the Conditions of Competition section above, however, I find that there is substantial competition between subject imports and the domestic like product throughout the market, as demonstrated by the presence of U.S.-, Chinese-, and Korean-produced finished diamond sawblades across the range of sizes and within each end-user market.

During the POI, the volume of subject imports increased significantly, both on an absolute basis and relative to domestic consumption. The value of U.S. shipments of cumulated subject imports of finished diamond sawblades increased by 67.9 percent during the period, from \$51.3 million in 2003 to \$86.1 million in 2005.<sup>72</sup> By quantity, U.S. shipments of subject imports of finished diamond sawblades increased by 85.7 percent during the period, from 2.7 million units in 2003 to 5.1 million units in 2005. With respect to finished diamond sawblades and parts, the value of U.S. shipments of subject imports increased by 66.2 percent, from \$54.4 million in 2003 to \$90.4 million in 2005.<sup>73</sup>

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responding purchasers, 18 indicated that U.S.- and Chinese-produced finished diamond sawblades were always or frequently interchangeable, and 23 indicated that U.S.- and Korean-produced finished diamond sawblades were always or frequently interchangeable. CR/PR at Table II-5.

<sup>68</sup> See also Staff Report, INV-FF-032 (Remand) (Apr. 7, 2008) at Tables III-1–III-3.

<sup>69</sup> 19 U.S.C. § 1677(7)(C)(i); see also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) (“SAA”) at 854.

<sup>70</sup> Petitioners’ prehearing brief at 39–42.

<sup>71</sup> *Id.* at 37.

<sup>72</sup> See Appendix 1 of these Views.

<sup>73</sup> See Appendix 2 of these Views.

As discussed above, as a share of apparent U.S. consumption, both the value and quantity of cumulated subject imports of finished diamond sawblades increased throughout the POI. By value, the share of such imports increased from 27.7 percent in 2003 to 34.7 percent in 2004 and to 40.0 percent in 2005.<sup>74</sup> On a quantity basis, cumulated imports of finished diamond sawblades from subject countries increased from 61.2 percent in 2003 to 67.6 percent in 2004 and to 75.1 percent in 2005.<sup>75</sup> Cumulated imports of finished diamond sawblades and parts from subject countries followed a similar trend, with their share of apparent U.S. consumption value increasing from 27.3 percent in 2003 to 33.9 percent in 2004 and to 39.1 percent in 2005.<sup>76</sup>

As the market share of subject imports increased during the POI, U.S. producers' market share declined. With respect to finished diamond sawblades, U.S. producers' share of domestic consumption by value declined from \*\*\* percent in 2003 to \*\*\* percent in 2004 and to \*\*\* percent in 2005.<sup>77</sup> On a quantity basis, U.S. producers' share of domestic consumption declined from \*\*\* percent in 2003 to \*\*\* percent in 2004 and to \*\*\* percent in 2005.<sup>78</sup> Similarly, with respect to finished diamond sawblades and parts, U.S. producers' share of domestic consumption by value declined from \*\*\* percent in 2003 to \*\*\* percent in 2004 and to \*\*\* percent in 2005.<sup>79</sup>

Accordingly, I find that the volume of subject imports increased significantly, both on an absolute basis and relative to domestic consumption, during the POI.

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

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>80</sup>

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<sup>74</sup> See Appendix 1 of these Views.

<sup>75</sup> *Id.*

<sup>76</sup> See Appendix 2 of these Views.

<sup>77</sup> See Appendix 1 of these Views.

<sup>78</sup> *Id.*

<sup>79</sup> See Appendix 2 of these Views.

<sup>80</sup> 19 U.S.C. § 1677(7)(C)(ii).

The Commission collected pricing data for seven finished diamond sawblade products that are produced in the United States and imported from China and Korea.<sup>81</sup> Despite the significant increase in apparent U.S. consumption during the POI, which normally would be expected to lead to rising prices, the data clearly demonstrate significant underselling by subject imports and declining prices for the domestic like product across the range of price comparisons.

Subject imports from China undersold the domestic product in 112 of 115 selling price comparisons; subject imports from Korea undersold the domestic product in 189 of 245 price comparisons.<sup>82</sup> For imports from China, the greatest concentration of underselling occurred in products 3 (14-inch-diameter laser-welded blades for dry cutting) and 5 (14-inch diameter laser-welded blades for wet cutting cured concrete) with respect to sales to branded distributors and sales to professional construction firms.<sup>83</sup> For product 3, with respect to sales to branded distributors, underselling margins ranged between 61.4 percent and 63.7 percent during the quarters in which comparisons were possible; with respect to sales to professional construction firms, underselling margins ranged from 53.0 percent to 74.5 percent.<sup>84</sup> For product 5, with respect to branded distributors, underselling margins ranged from 37.3 percent to 64.7 percent; with respect to professional construction firms, underselling margins ranged from 48.4 percent to 65.5 percent during quarters for which pricing data were available.<sup>85</sup> With respect to imports from Korea, the greatest concentration of underselling occurred in product 5, for shipments to branded distributors.<sup>86</sup> For that product, Korea's underselling margins ranged between 61.9 percent and 71.9 percent throughout the POI.<sup>87</sup>

Petitioners assert that the margins of underselling during the POI were "staggering," often exceeding 50 percent, occasionally nearing 80 percent.<sup>88</sup> In addition, petitioners argue that the persistent underselling led to declining prices for U.S. producers.<sup>89</sup> Respondents maintain

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<sup>81</sup> For a list and description of the products, as well as the coverage of the data, *see* CR at V-18–V-24, PR at V-13–V-17.

<sup>82</sup> *See* CR/PR at Tables V-1a–V-7c, V-9a–V-9c. Although the Korean respondents argue that the products the Commission used for quarterly price comparisons were not detailed enough to permit conclusions to be drawn regarding the significance of underselling shown by the quarterly comparisons and that these data should be viewed with caution (Korean respondents' posthearing brief at A-52), I find that the product descriptions and price data used by the Commission are sufficiently detailed and representative of the market. Moreover, the pricing products were largely consistent with product detail information provided by the Korean respondents. *See* CR at V-18, n.63, PR at V-13 n.63.

<sup>83</sup> CR at V-59, PR at V-37.

<sup>84</sup> CR/PR at Table V-3a, Table V-3c.

<sup>85</sup> CR/PR at Table V-5a, V-5c.

<sup>86</sup> CR at V-59, PR at V-37.

<sup>87</sup> CR/PR at Table V-5a.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

that the Commission's pricing data confirm that competition between subject imports and the domestic like product is attenuated. They argue that the huge price differences between the subject product and the domestic like product are indicative of the lack of competition between the two. They contend that, given the large margins of underselling, U.S. prices should have come down more than they did if there actually was competition between U.S. diamond sawblades and the subject imports.<sup>90</sup>

As discussed above, I find the existence of substantial competition between subject imports and the domestic like product across the range of blade sizes and within the same end-use markets. Accordingly, I reject respondents' argument that I should discount the significance of the underselling data. I also note that within each blade category, blades may be marketed and sold based on grade, which further defines a blade's performance.<sup>91</sup> In an effort to compete with lower-priced subject imports, U.S. producers have been forced to introduce lower-cost, lower-value products, which, for example, may contain fewer diamonds.<sup>92</sup> Such products are typically found in the smaller-size (4-inch to 18-inch) categories and are designed to compete more closely with subject imports on price.<sup>93</sup>

Despite rising demand in both segments of the construction industry and a significant increase in apparent U.S. consumption during the POI, underselling by subject imports caused prices for the domestic like product to decline by significant margins. For sales to branded and other distributors, U.S. prices declined in all but one of the product categories.<sup>94</sup> For branded distributors, price declines ranged between 7.6 percent for product 3 and 18.4 percent for product 6 (18-inch-diameter laser-welded blades for wet cutting).<sup>95</sup> For other distributors, price declines ranged from 6.1 percent for product 6 to 30.7 percent for product 3.<sup>96</sup> With respect to professional construction firms, the price of the U.S. product declined in five of seven product categories, with declines ranging from 9.7 percent for product 7 (24-inch-diameter laser-welded blades for wet cutting) to 26 percent for product 6.<sup>97</sup>

Accordingly, I find that subject imports undersold the domestic like product by significant margins during the POI and that such underselling contributed significantly to price depression.

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<sup>90</sup> Respondents' prehearing brief at 43-44.

<sup>91</sup> CR at I-18, PR at I-12.

<sup>92</sup> Hearing tr. at 155 (Jedick).

<sup>93</sup> *Id.*

<sup>94</sup> CR/PR at Table V-8a, Table V-8b. The exception was product 1 (4-inch laser-welded blades), where the quantity sold was relatively small. Domestic producers' commercial shipments of finished diamond sawblades less than 7 inches in diameter averaged 3.9 percent of total commercial shipments during the POI. Derived from CR/PR at Table I-1.

<sup>95</sup> CR/PR at Table V-8a.

<sup>96</sup> CR/PR at Table V-8b.

<sup>97</sup> CR/PR at Table V-8c.

## E. Impact of the Subject Imports<sup>98</sup>

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.”<sup>99</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>100</sup>

Several indicators of the domestic industry’s performance trended somewhat downward during the POI. The industry has remained profitable, however, and its performance at the end of the POI, while weakening, does not rise to the level of current material injury by reason of subject imports from China and Korea.<sup>101</sup> The domestic industry’s finished diamond sawblades production capacity increased \*\*\* percent during the POI,<sup>102</sup> but its production did not keep pace, increasing only \*\*\* percent,<sup>103</sup> as reflected in a capacity utilization decline from \*\*\* percent in 2003 to \*\*\* percent in 2005.<sup>104</sup> Consistent with the rising demand but falling prices, the domestic industry’s net sales of finished diamond sawblades increased by quantity over the

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<sup>98</sup> In its final affirmative determination for subject diamond sawblades from China, Commerce calculated a weighted-average dumping margin of 20.72 percent for 26 specific producer-exporter combinations, a rate of 34.19 percent for Bosun Tools Group, a rate of 48.50 percent for Hebei Jikai Industrial Group, a rate of 2.50 percent for Advanced Technology & Materials Co., and a China-wide rate of 164.09 percent. Advanced Technology & Materials Co. includes the following firms: Beijing Gang Yan Diamond Products Company as an exporter when merchandise was produced by Beijing Gang Yan Diamond Products Company, and Yichang HXF Circular Saw Industrial Co., Ltd as an exporter when merchandise was also produced by Yichang HXF Circular Saw Industrial Co., Ltd. 71 Fed. Reg. 29303, 29309 (May 22, 2006). In its final affirmative determination for subject diamond sawblades from Korea, Commerce calculated a weighted-average dumping margin of 12.76 percent for Ehwa, 6.43 percent for Hyosung, 26.55 for Shinhan, and 16.39 percent for all other producers and/or exporters of diamond sawblades from Korea. 71 Fed. Reg. 29310, 29312 (May 22, 2006).

<sup>99</sup> 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”). SAA at 885.

<sup>100</sup> 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851, 885; *Live Cattle from Canada and Mexico*, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>101</sup> In light of the significant share of diamond sawblades and parts accounted for by finished diamond sawblades, I have focused my analysis on data for finished diamond sawblades, but also consider data for both finished sawblades and parts.

<sup>102</sup> Capacity increased from \*\*\* units in 2003 to \*\*\* units in 2005. *See* Appendix 1 of these Views.

<sup>103</sup> Production increased from \*\*\* units in 2003 to \*\*\* units in 2005. *Id.*

<sup>104</sup> *Id.*

POI by \*\*\* percent,<sup>105</sup> but the total value of net sales fell by \*\*\* percent as the unit value of those sales decreased \*\*\* percent.<sup>106</sup> As a result of these trends, the industry's operating income declined \*\*\* percent in absolute terms.<sup>107</sup> Its operating income margin also trended downward, even though it remained positive,<sup>108</sup> during a time when U.S. apparent consumption measured by value increased more than 16 percent.<sup>109</sup>

The domestic industry maintained relatively stable levels of production and sales and remained profitable during the POI despite declines in prices, shipment values, and market share.<sup>110</sup> It was able to do so principally because of the ability of some domestic producers to adopt aggressive cost-cutting measures.<sup>111 112</sup> As a result of cost cutting, the selling, general, and administrative (SG&A) expenses for the domestic industry decreased by \*\*\* percent over the POI,<sup>113</sup> driven primarily by SG&A declines attributable to \*\*\* but reflective of SG&A expense reductions made by smaller companies as well.<sup>114</sup> The domestic industry has also been able to

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<sup>105</sup> Net sales increased from \*\*\* units in 2003 to \*\*\* units in 2005. *Id.*

<sup>106</sup> The value of net sales declined from \$\*\*\* in 2003 to \$\*\*\* in 2005; sales unit values declined from \$\*\*\* in 2003 to \$\*\*\* in 2005. *Id.*

<sup>107</sup> Operating income declined from \$\*\*\* in 2003 to \$\*\*\* in 2005. *Id.*

<sup>108</sup> The operating income margins decreased from \*\*\* percent in 2003 to \*\*\* percent in 2005. *Id.*

<sup>109</sup> Apparent U.S. consumption as measured by value increased from \$\*\*\* in 2003 to \$\*\*\* in 2005. *Id.*

<sup>110</sup> The producers of cores and a number of the smaller producers of finished blades, however, were not able to continue to operate profitably in the wake of declining prices notwithstanding increasing apparent U.S. consumption over the POI.

<sup>111</sup> Several U.S. diamond sawblade producers, including one of the largest, turned to increasing automation and productivity as a method of reducing costs, which proved to be successful but at the expense of some producers' production workers. Hearing tr. at 33 (Brakeman), 145 (O'Day, Baron).

<sup>112</sup> The number of production and related workers (PRWs) producing finished diamond sawblades declined from \*\*\* in 2003 to \*\*\* in 2004, before partially recovering to \*\*\* in 2005, resulting in a net decrease of \*\*\* workers, or \*\*\* percent of the workforce. PRW hours worked fell from \*\*\* in 2003 to \*\*\* in 2004 and to \*\*\* in 2005, a net decrease of \*\*\* percent. Productivity, however, increased by \*\*\* percent between 2003 and 2005. CR/PR at Table C-1A (less data reported in \*\*\*'s producer questionnaire); data presented in Appendix to the Commission's views. The number of PRWs producing cores declined from \*\*\* in 2003 to \*\*\* in 2004 and 2005, resulting in a net decrease of \*\*\* workers, or \*\*\* percent of the workforce producing cores. PRW hours worked in production of cores fell from \*\*\* in 2003 to \*\*\* in 2004 and 2005, a net decrease of \*\*\* percent. Productivity in core production fell during the POI by \*\*\* percent. CR/PR at Table C-2. Aggregate capital expenditures increased during the period from \$\*\*\* in 2003 to \$\*\*\* in 2004, before declining to \$\*\*\* in 2005, resulting in a net increase of \*\*\* percent. CR/PR at Table C-4A (less data reported in \*\*\*'s producer questionnaire); data are presented in Appendix Table 2 of these views. Research and development expenditures also increased over the period examined from \$\*\*\* in 2003 to \$\*\*\* in 2004 and to \$\*\*\* in 2005. CR/PR at Table VI-12 (less data reported in \*\*\* producer questionnaires).

<sup>113</sup> See Appendix 1 of these Views.

<sup>114</sup> Of the 12 companies that reported SG&A expenses during the POI, eight reported declines (including \*\*\*); of those eight, five also reported declining operating income ratios. \*\*\* reported declining operating income ratios; \*\*\* did not. CR/PR at Table VI-3 (I note that data for \*\*\* were taken from the preliminary phase of these investigations

maintain its operating margins in part through the introduction of new value-priced products in most size ranges to compete with subject imports, with a new product every few years.<sup>115</sup> The U.S. producers that took these cost-cutting and new product steps to remain competitive with subject imports managed to mitigate the decline in the operating income ratio of the industry as a whole. I note, however, that \*\*\*,<sup>116</sup> indicating that the effectiveness of these measures was limited.

Accordingly, in light of the relative stability of the industry's performance indicators, including its production, sales, and operating income ratio, I find that the domestic industry, while experiencing some decline in its condition, is not currently materially injured by reason of the subject imports. Nevertheless, given the high demand for diamond sawblades during the POI, one would normally expect the industry's performance to have improved rather than stabilized or (in some instances) weakened. As discussed below, I find the industry is threatened with material injury by reason of the subject imports.

## **V. THE INDUSTRY IS THREATENED WITH MATERIAL INJURY BY REASON OF THE CUMULATED SUBJECT IMPORTS**

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>117</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”<sup>118</sup> In making my

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and that \*\*\* SG&A expenses are estimated (CR/PR at VI-1 n.1, Table VI-3 n.2)). Of the four companies that reported SG&A expense increases during the POI, three also reported declining operating income ratios. \*\*\* reported declining operating income ratios; \*\*\* did not. CR/PR at Table VI-3. Moreover, although \*\*\*, seven of the 10 smaller diamond sawblades producers had operating income ratios that dropped during the POI. \*\*\* reported declining operating income margins; \*\*\* did not. *Id.* (I note that data for \*\*\* were taken from the preliminary phase of these investigations and that \*\*\* SG&A expenses are estimated (CR/PR at VI-1 n.1, Table VI-3 n.2)). Five of those seven smaller producers with declining operating income ratios, reported losses in 2005 or during the entire POI. The operating income ratios of \*\*\* declined from positive (profits) to negative (losses) during the POI; the operating income ratios of \*\*\* declined deeper into losses during the POI. CR/PR at Table VI-3.

<sup>115</sup> Hearing tr. at 155–156 (Jedick, O’Day); CR at V-76, PR at V-46 (\*\*\*) reporting that in many cases new products are developed to meet competition price points, which reduce prices for similar products).

<sup>116</sup> Over the POI, the operating income ratio of \*\*\*. CR/PR at Table VI-3, Table VI-8.

<sup>117</sup> 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

<sup>118</sup> 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” *Metallwerken Nederland B.V. v. United States*, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing *American Spring Wire Corp. v. United States*, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387–88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).



determination, I have considered all factors that are relevant to these investigations.<sup>119</sup> For the reasons discussed below, I determine that the domestic industry is threatened with material injury by reason of subject imports from Japan and Korea.

### **A. Cumulation for Purposes of Analyzing Threat of Material Injury**

Cumulation for purposes of a threat analysis is governed by Section 771(7)(H) of the Act, which leaves to the Commission's discretion whether to cumulate in analyzing threat of material injury.<sup>120</sup> I exercise my discretion to cumulate diamond sawblades and parts thereof from China and Korea in these investigations. In exercising my discretion to cumulate, I have taken into

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<sup>119</sup> 19 U.S.C. § 1677(7)(F). The Commission must consider, in addition to other relevant economic factors, the following statutory factors in its threat analysis:

- (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement and whether imports of the subject merchandise are likely to increase,
- (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
- (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
- (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,
- (V) inventories of the subject merchandise,
- (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,
- (VII) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 1671d(b)(1) or 1673d(b)(1) of this title with respect to either the raw agricultural product or the processed agricultural product (but not both),
- (VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and
- (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

Moreover, the Commission shall consider the threat factors "as a whole" in making its determination "whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur" unless an order issues. In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.

Factors I and VII are inapplicable to these investigations.

<sup>120</sup> 19 U.S.C. 1677(7)(H).

account my analysis supporting cumulation in the context of assessing present material injury.<sup>121</sup> I have also considered the similarity in conditions of competition under which subject imports from China and Korea have competed in the U.S. market during the POI, including the fact that there have been similarly increasing trends in the volumes of subject imports from both countries,<sup>122</sup> similar instances of underselling by the subject imports from both countries,<sup>123</sup> and similar mixes of blade characteristics and customer types for imports from both countries.<sup>124</sup>

## **B. Analysis of Statutory Threat Factors**

In order to understand the impact that subject import volumes have had, and in determining that the domestic industry is threatened with material injury by reason of subject imports, I take account of my discussion above analyzing data during the POI, including volume and price trends, and the current condition of the domestic industry.<sup>125</sup> Although the domestic industry as a whole has managed to avert significant adverse impacts to date despite the rising volume and far lower prices of subject imports, I find that the industry has exhausted its options for averting such effects and will be materially injured by reason of the subject imports in the imminent future if orders are not imposed.

I find that the volume of subject imports is likely to continue to rise because of the subject producers' export orientation and need for new markets, due in part to their increasing production capacity (especially with regard to the Chinese producers).<sup>126</sup> The cumulated production capacity, production, and overall export orientation of subject producers have increased over the POI, while their sales into their respective home markets as a share of total shipments have declined and the capacity utilization rate for the Chinese producers has decreased. In addition, although such projections must in general be analyzed with caution,

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<sup>121</sup> See *Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nos. 731-TA-1092–1093 (Final), USITC Pub. 3862 (July 2006) at 18–23 (finding a reasonable overlap of competition based on analysis of fungibility, same geographic markets, simultaneous presence, and channels of distribution similarities).

<sup>122</sup> CR/PR at Table IV-1.

<sup>123</sup> CR/PR at Tables V-1a–V-7c.

<sup>124</sup> CR/PR at Tables I-1, I-3, II-1, IV-4, IV-5, E-2, E-3.

<sup>125</sup> In light of the significant share of diamond sawblades and parts accounted for by finished diamond sawblades, I have focused my analysis on data for finished diamond sawblades, but also consider data for the industry, including cores and segments.

<sup>126</sup> The petitioners contended that the Commission should draw adverse inferences in considering the subject producers' data because not all subject producers responded to the Commission's foreign producers questionnaire. The questionnaire responses in any investigation, however, often reflect less than complete coverage of the domestic industry, foreign producers, importers, and purchasers. In the absence of complete information, the Commission relies on the facts available, which, in the absence of a reason to believe that those data are not representative, is often the data actually on the record. I do not draw adverse inferences here.

Chinese producers nevertheless project an increase in their finished diamond sawblades production capacity of \*\*\* percent by 2007.<sup>127</sup>

Cumulated subject imports increased by 67.9 percent by value over the POI, taking market share from domestic producers and nonsubject imports alike, but more heavily from the domestic industry. There is no indication that these imports trends will slow or reverse in the imminent future. Representatives of Korean producers and a domestic producer that opposed the petition indicated at the hearing that the U.S. diamond sawblades market is higher priced than the European market, which is the other major market for diamond sawblades; this suggests that the United States is likely to remain an attractive market for subject imports in the future.<sup>128</sup> Subject producers have been selling—and likely can continue to sell—into the higher-priced U.S. market to their benefit at prices detrimental to the domestic industry, as evidenced by the persistent and, in many cases, large margins of underselling.<sup>129</sup>

Contrary to respondents' arguments, no portion of the market, as defined by size or end-user category, is sheltered from competition with subject imports. Cumulated subject import sales are increasing in each size range, including the larger sizes in which professional customers that may require post-sale customer service dominate, and through many different channels of distribution. With regard to the largest size ranges examined in these investigations, cumulated subject imports increased from \$4.7 million in 2003 to \$7.7 million in 2005 in the 14-inch to 20-inch sizes and from \$1.5 million in 2003 to \$2.4 million in 2005 in the larger than 20-inch sizes. Furthermore, cumulated subject imports in each of these size ranges increased by value during the POI to all major distribution channels and customer groupings, including branded distributors, other distributors, retailers, and professional construction.<sup>130</sup> U.S. commercial shipments of subject imports in the 12-inch and greater sizes increased from 41.2 percent of total U.S. commercial shipments of subject imports in 2003 to 46.6 percent of total U.S. commercial shipments of subject imports in 2005.<sup>131</sup> Cumulated subject import increases in these sizes during the POI are inconsistent with respondents' contentions that they are largely precluded from selling foreign-made diamond sawblades to these customers because of the post-sale customer service that purchasers require and that foreign producers are unable to provide.<sup>132</sup>

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<sup>127</sup> CR/PR at Table VII-2. The staff report details the expansion plans of four Chinese companies—\*\*\*—in 2006–2007. CR at VII-2, PR at VII-1.

<sup>128</sup> Hearing tr. at 346–347 (Kim {Ehwa} and Nixon {Saint Gobain}).

<sup>129</sup> The Chinese product undersold the domestic product in 112 of 115 quarterly comparisons, with margins of 17.8–86.4 percent. The Korean product undersold the domestic product in 189 of 245 quarterly comparisons, with margins of 1.2–80.8 percent. CR at V-58 n.77, PR at V-33 n.77; CR/PR at Table V-9c.

<sup>130</sup> CR/PR at Table E-6. For the 14-inch to 20-inch sizes, cumulated subject imports increased sales values to OEMS from 2003 to 2005. *Id.*

<sup>131</sup> Memorandum INV-DD-088 at Table E-6 (the increase in these sizes overall is attributable to the increase in the share accounted for by 12-inch to 14-inch sawblades and decreases in the shares accounted for by sizes less than 10 inches ).

<sup>132</sup> Respondents' posthearing brief at 21. The parties disagree on the percentage of sales in the largest size ranges of diamond sawblades that require immediate or overnight producer delivery and/or onsite, post-sale customer service. The petitioners allege that the percentage is fairly small, while the respondents allege that the percentage is

I further find that subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on prices for domestic diamond sawblades. Underselling is likely to continue, as the record reflects that U.S. prices declined broadly across the seven products and three distribution channels for which pricing information was sought during the POI, falling in 72 of 84 quarter-to-quarter comparisons from 2003 to 2005.<sup>133</sup> No evidence has been offered to indicate that this underselling will decrease significantly.

Growing inventory levels, both of domestic and subject product, will continue to put pressure on U.S. market prices as well. Over the POI, U.S. producers' U.S. shipments of finished diamond sawblades declined \*\*\* percent by quantity and \*\*\* percent by value.<sup>134</sup> Because U.S. production capacity and production both increased only slightly during the POI and export shipments by value declined \*\*\* percent, inventories of finished diamond sawblades increased from \*\*\* percent of total shipments in 2003 to \*\*\* percent in 2005.<sup>135</sup> Similarly, subject import inventories almost doubled by quantity over the POI; they declined from 42.9 percent of U.S. shipments of imports in 2003 to 41.9 percent in 2005<sup>136</sup> only because overall subject imports during the POI increased by 85.7 percent, as noted earlier.<sup>137</sup>

The domestic industry's net sales by value declined \*\*\* percent, and the cost of goods sold as a percentage of sales rose \*\*\* percentage points, while operating income ratios fell \*\*\* percentage points.<sup>138</sup> It would be reasonable to expect that the industry's operating income ratio would have declined more steeply than it actually did over the POI in the face of falling prices and rising material costs. A number of domestic producers, however, have proven successful at reducing their costs of production through increased productivity, reductions in employment, and investment in upgraded equipment. This effort by the domestic industry is reflected in a \*\*\*

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quite sizeable. *See* hearing tr. at 87 (Garrison), 219 (Kim), 228 (Steiner), 232 (Nixon). The record in these investigations supports the conclusion that some but not all sales to professional concrete contractors may require customization, quick turnaround, or onsite customer service. I find, however, that subject producers can provide overnight shipping from production facilities in subject countries and onsite customer service through their U.S. sales affiliates. I also find that some distributors, rather than manufacturers, provide the desired customer service. *See* Petitioners' posthearing brief, Exhibit 1 at 5. Therefore, I reject respondents' argument that they cannot sell subject product in the higher-value larger sizes to professional concrete contractors. *See* hearing tr. at 338–339 (Steiner).

<sup>133</sup> CR/PR at Tables V-1a–V-7c. First quarter 2003 to first quarter 2005 and similar quarterly comparisons for 2003 to 2005 control for seasonal fluctuations in the pricing data, as petitioners and respondents agreed that diamond sawblades can be a seasonal-sale item. *See* CR at II-30, PR at II-19.

<sup>134</sup> *See* Appendix 1 of these Views.

<sup>135</sup> *Id.*

<sup>136</sup> CR/PR at Table VII-11.

<sup>137</sup> *See* Appendix 1 of these Views.

<sup>138</sup> *Id.*; *see also* CR/PR at Table VI-12 (individual producers' data).

percent decrease in their gross SG&A expenses, as well as a \*\*\* percent increase in capital expenditures and a \*\*\* percent increase in R&D expenses.<sup>139</sup>

Nevertheless, various domestic industry representatives testified that improvements that they have made to their operations and cuts in costs of production they have enacted have reached a limit beyond which no further improvements can be expected.<sup>140</sup> As I have already determined that reductions by the domestic industry in their cost of production slowed the rate of decline in the industry's operating income ratio over the POI, now that the industry's cost reduction efforts are nearing the exhaustion point, the domestic industry can no longer rely on them to forestall the material injury that would inevitably follow, even if subject import levels remained at their current volume and price levels. Inasmuch as it is likely that subject import levels will continue rising immediately following the POI, absent antidumping relief, the increased volumes of imports will cause prices to decline further. These import increases and price declines will accelerate the industry's loss of operating income, leading to adverse overall consequences for the condition of the domestic industry and material injury.

Finally, I find that subject imports will have negative effects on the development and production efforts of the domestic industry in the imminent future. For finished diamond sawblades and parts, the ratio of cost of goods sold to net sales rose from \*\*\* percent in 2003 to \*\*\* percent in 2005,<sup>141</sup> indicating that the domestic industry cannot raise its prices to recoup its increasing raw material costs, even if rising demand throughout all segments of the market were to continue. As noted earlier, the domestic industry has reached its limit regarding the production improvements and cost-cutting measures that have thus far allowed the domestic industry to maintain positive but declining levels of profitability. Because it will be unable to rely on further cost savings, the declining operating income ratios during the POI are likely to become

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<sup>139</sup> See Appendix 1 of these Views. Although a majority of the R&D expenses were attributable to \*\*\*, four other domestic producers reported some R&D expenses during the POI. Similarly, \*\*\* of the domestic industry's capital expenditures were made by \*\*\*, but 11 other domestic producers had some level of capital expenditures during the POI. CR/PR at Table VI-12, Table VI-13.

<sup>140</sup> Conference tr. at 17 (Burnett: “{W}e continued to grow, even though imports of Chinese and Korean products were increasing. As we grew, we were doing everything in our power to keep costs down, including building our own manufacturing equipment, setting up our own computing systems, and refining our processes. ... As we worked to reduce our labor costs, indirect labor, indirect overhead, including administrative costs, and to reduce our material costs, we have had to keep reducing our prices to maintain our customer base.”); *id.* at 23 (Brakeman: “Even though we were able to decrease manufacturing, overhead, and material costs on goods we produced, we have had to continually reduce the selling price to get orders.”); *id.* at 37 (Palovochik: “Hoffman will continue to cut costs while maintaining our commitment through our employees and customers. Having said this, though, it’s becoming more and more difficult as prices continue to erode.”); hearing tr. at 100 (Kaplan: The domestic producers “have expressed that any types of cost savings, some of which were dramatic for individual firms, are now over. Everything is squeezed out.”); *id.* at 137 (Jedick: “{O}ver the last six to eight years, we have lost several percentage points of operating income and consistently through the period of the investigation, we’ve lost operating income maybe not as dramatically as previously. But, we have made a lot of cost improvements and cost controls that came into effect over the last few years, so that could probably be part of the reason.”); *id.* at 105 (O’Day: “We have eliminated our engineering department; we have eliminated two metallurgical positions; and we have cut our production staff. ... We have reached the place where there is very little more that we can cut.”).

<sup>141</sup> See Appendix 2 of these Views.

losses under the present trends, with the expected negative effects on employment<sup>142</sup> and returns on assets.<sup>143</sup>

## CONCLUSION

For the foregoing reasons, I determine that the domestic industry producing diamond sawblades and parts is threatened with material injury by reason of subject imports from China and Korea sold at less than fair value.<sup>144</sup>

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<sup>142</sup> The number of production workers over the POI declined from \*\*\* to \*\*\*, or by \*\*\* percent, but the number of hours worked declined from \*\*\* to \*\*\*, or by \*\*\* percent. Total wages paid during in the POI increased from \$\*\*\* to \$\*\*\*, or by \*\*\* percent, but that rise was largely because of an increase in hourly wages from \$\*\*\* to \$\*\*\* (\*\*% percent). See Appendix 1 of these Views.

<sup>143</sup> Aggregate return on assets declined from \*\*\* percent in 2003 to \*\*\* percent in 2005. CR/PR at Table VI-13 adjusted for \*\*\* data.

<sup>144</sup> The Federal Circuit decisions in *Bratsk Aluminium Smelter v. United States*, 444 F. 3d 1369 (Fed. Cir. 2006), and *Caribbean Ispat, Ltd. v. United States*, 450 F.3d 1346 (Fed. Cir. 2006), are not applicable here. Those cases call for a retrospective (*i.e.*, backward-looking) analysis, in the context of present material injury determinations, of whether nonsubject imports would have replaced subject imports during the POI without benefit to the domestic industry when a commodity product is at issue and price competitive nonsubject imports are a significant factor in the U.S. market. *Bratsk*, 444 F. 3d at 1375; *Caribbean Ispat*, 450 F.3d at 1351. Those cases do not apply to affirmative determinations based on threat of material injury, where a prospective (*i.e.*, forward-looking) analysis is involved, and I do not find that there is any reason to apply a replacement/benefit analysis where those cases do not require one.

## **DISSENTING VIEWS OF CHAIRMAN DANIEL R. PEARSON, AND COMMISSIONERS DEANNA TANNER OKUN AND CHARLOTTE R. LANE**

By decision and order dated February 6, 2008, the U.S. Court of International Trade remanded the Commission's negative determination in *Diamond Sawblades and Parts Thereof From China and Korea*, Inv. Nos. 731-TA-1092-1093 (Final), USITC Pub. 3862 (Jul. 2006).<sup>1</sup> *Diamond Sawblades Manufacturers Coalition v. United States*, Slip Op. 08-18 (Feb. 7, 2008). Upon consideration of the Court's remand order, the record, as supplemented in this remand proceeding, and parties' comments, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of diamond sawblades and parts thereof from China and Korea that are sold in the United States at less than fair value (LTFV).<sup>2 3</sup>

### **I. Summary**

We base this negative determination on three primary points. Competition between subject imports and the domestic like product is limited by a combination of differences in the type of end user to which sales are made, the size ranges of the blades sold, and differences in blade type and the manufacturing process. During the original investigation and this remand proceeding, the Commission collected extensive information from purchasers of the subject imports and the domestic like product. A significant majority of non-producer purchasers responding in this remand proceeding described a lack of competition between subject imports from China and Korea and domestic producers. The data collected on channels of distribution, product sizes and types, and pricing support the purchasers' description of the market. These data and responses lead us to conclude that while there is some competition between the subject imports and the domestic like product, the aforementioned factors, as detailed below, severely limit the level of competition.

In addition, regardless of our finding concerning the limitations on competition between subject imports and the domestic like product, we find little correlation between subject import volumes, prices and the condition of the domestic industry. The lack of causal nexus between the subject imports and the condition of the domestic industry, however, is explained by our finding that competition between subject imports and the domestic like product has been limited.

Finally, notwithstanding the significant increase in the volume of subject imports over the period of investigation, the industry remains very profitable. While there have been small

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<sup>1</sup> In these views, we cite to the public version of the Commission's original views and staff report as "USITC Pub. 3862." We cite the confidential version of these views as "CD."

<sup>2</sup> Commissioner Steven Koplan was among the Commission majority that determined in the original determinations on *Diamond Sawblades and Parts Thereof from China and Korea* that the domestic industry was not materially injured or threatened with material injury by reason of subject imports. Commissioner Koplan left the Commission at the expiry of his term after the original determinations were issued and before the Court's remand order and the Commission's proceedings on remand. The three remaining Commissioners that made up the majority in the original determination again determine that the domestic industry is not materially injured or threatened with material injury. However, their views are now the minority, dissenting determinations.

<sup>3</sup> We join sections I and II of the Views of the Commission.

declines in production, shipments, sales, and employment, we do not find this industry to be materially injured or threatened with materially injury by reason of subject imports.

## **II. Background**

We join the Background discussion at section I of the Commission majority views on remand.

## **III. The Domestic Like Product, the Domestic Industry, and Cumulation**

We also join section II of the majority views, adopting in their entirety and incorporating into these remand views the Commission's original determinations concerning the domestic like product and the domestic industry.<sup>4</sup> We also incorporate the Commission's previous discussion of the background information for these investigations.<sup>5</sup>

## **IV. No Material Injury by Reason of the Cumulated Subject Imports**

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

We adopt the Commission's original findings concerning conditions of competition in the U.S. market for diamond sawblades, except to the extent they are supplemented and revised herein and below.<sup>6</sup> The Court's remand instructions regarding our previous discussion of factors that limited the extent of competition between the subject imports and the domestic like product<sup>7</sup> are addressed in our discussion of the volume of subject imports, below. We do so because our limited competition finding is one of several elements essential to understanding our analysis of the volume of subject imports.

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<sup>4</sup> See USITC Pub. 3862 at 4-18; CD at 5-24.

<sup>5</sup> See USITC Pub. 3862 at 3, 28, 36; CD at 3, 29-30, 38-39.

<sup>6</sup> We take this opportunity to correct the statement in the Conditions of Competition section of the previous determination regarding the sawblade diameter range in which the overlap between the subject imports and the domestic like product was greatest. USITC Pub. 3862 at 27, CD at 28. See also Slip Op. 8-18 at 11. The accurate statement is that: The greatest degree of overlap with respect to finished sawblades appears to be in the 10-to-14 inch diameters: 42.9 percent of shipments of imports from China, 41.5 percent of shipments of imports from Korea, and 45.0 percent of U.S. producers' shipments on a value basis. CR/PR at Table II-1.

<sup>7</sup> See Slip Op. 8-18 at 11-18.



## B. Volume of Subject Imports

### 1. The Original Volume Finding

We adopt the Commission's previous analysis of the volume of subject imports, including its finding that, when considered in isolation, the increase in the volume of subject imports, measured by value or quantity, was significant over the period of investigation, and that the 2005 volume, measured by value or quantity, was also significant both in absolute terms and relative to domestic consumption. However, competition between the subject imports and the domestic like product had been limited and, as addressed in the price and impact discussions contained in the original determination, this volume had not had a significant impact on the prices or performance of the domestic producers.<sup>8</sup>

We emphasized in our previous finding regarding the volume of subject imports that competition was limited by differences in the concentrations of the subject imports and the domestic like product in terms of sawblade sizes and customer types.<sup>9</sup> We also noted in our previous discussion of conditions of competition that competition between the subject imports and the domestic like product was also limited to some extent by differing concentrations in terms of blade types; namely, a significant volume of the subject imports were sintered continuous rim blades, while there was no significant production of sintered continuous rim blades in the United States, and the domestic producers had some production of soldered and braised blades, while there was no significant presence of soldered or braised blades among the subject imports.<sup>10</sup> These blade type differences affect the applications in which the blades may be used and, therefore, impose limits on the extent to which the subject imports and the domestic like product compete in the U.S. sawblade market.<sup>11</sup>

In our previous analysis, we did not find blade size differences to be the sole basis for our limited competition finding.<sup>12</sup> Nor did we find customer/channel differences, or blade type differences, individually to be the basis for that finding.<sup>13</sup> Instead, we based our limited competition analysis on consideration of all those factors and the record as a whole. Nor did we find that there was *no* competition between subject imports and the domestic like product, only that several factors caused such competition to be *limited*.<sup>14</sup>

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<sup>8</sup> CD at 31-32.

<sup>9</sup> CD at 32.

<sup>10</sup> CD at 28-29.

<sup>11</sup> See, e.g., CR at I-8, I-10, II-42-II-44 (segmented versus continuous); II-45-II-47 (laserwelded versus sintered versus soldered); II-48-II-50 (diameters).

<sup>12</sup> CD at 28-29 (differences in size, end users, non-price factors) and 32 (imports concentrated in size ranges and customer types other than those served by the domestic industry).

<sup>13</sup> CD at 28-29.

<sup>14</sup> CD at 29 ("Accordingly, competition between the subject imports and the domestic like product is limited...") and 32 ("competition between the subject imports and the domestic like product has been limited...").

Nor was the previous limited competition finding the sole basis for our finding that the seemingly significant volume of subject imports had not had a significant impact on the prices or performance of the domestic industry. Rather, we based those conclusions on the record as a whole, including the importance of non-price factors in purchasers' decisions, instances in which changes in domestic producers' prices for narrowly-defined products did not correlate with subject import prices or trends, the limited number of confirmed instances in which domestic sales were lost to subject imports, and the fact that indicators of the condition of the domestic industry were largely positive, with most indicators having changed only modestly and with the industry having remained profitable over the POI.<sup>15</sup>

## **2. Responses to the Court's Instruction Regarding the Commission's Previous Limited Competition Analysis**

In its opinion, the Court concluded that the Commission had not adequately explained some aspects of its limited competition finding regarding blade size, blade type, and customer type differences. We address the Court's remand instructions below.

### **a. The Blade-size Aspect of the Limited Competition Finding**

The Court found that the Commission did not provide substantial support for the blade-size aspect of its finding that competition between the subject imports and the domestic merchandise was limited.<sup>16</sup> Although the Court acknowledged that the Commission correctly found that "nearly half" of the domestic sawblades were sold in sizes 14" and larger, as compared to only 7% of the subject imports, and that "nearly half of the subject imports" were blades of 10" or less, a size range that [was] occupied [by] only 6.3% of the domestic industry," it also noted that the Commission's "conclusion ignores the fact that the *other half* of domestic sawblades were sold in midrange (10-14") sizes, where, coincidentally, 'nearly half' of the subject imports are also concentrated."<sup>17</sup> Concluding that the Commission had not adequately addressed this competitive overlap in the midrange sizes in its limited competition findings, the Court remanded for the Commission to explain how these data reflect "attenuated competition based on blade size."<sup>18</sup>

The short answer to the Court's question of how the midrange blade data reflect attenuated competition is that, as the Court recognized, we based the blade-size aspect of our limited competition finding on sawblade dimensions under 10 inches and over 14 inches, where the overlap between the subject imports and the domestic like product is limited, not on the 10-

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<sup>15</sup> CD at 25-26, 28-29, 32-38.

<sup>16</sup> Slip Op. at 13-15.

<sup>17</sup> Slip Op. at 14 (emphasis in original).

<sup>18</sup> Slip Op. at 15.

inch to 14-inch range, where the greatest overlap existed.<sup>19</sup> Accordingly, it is the other size range data, not the data on the midrange sizes, that “reflect[ ] attenuated competition based on blade size.”

To the extent the Court is asking whether overlap in the midrange sizes translates into direct competition between the volume of subject imports and the domestic like product in the midrange sizes, we note that competition was further limited within the midrange sizes by differences in the channels of distribution and customer types to which the subject imports and the domestic like product were sold. For instance, in 2005, 47.2 percent of all subject imports of diamond sawblades 10 inches to 14 inches were sold to branded distributors, compared to only 17.9 percent of the domestic like product. Conversely, 46.8 percent of the domestically produced midrange sawblades were sold to other, non-branded distributors, compared to only 15.9 percent of subject imports. Nearly 33 percent of all domestically produced midrange sawblades were sold to professional construction end users, compared to less than 11.7 percent of all subject imports. Approximately 20 percent of subject imports were sold to original equipment manufacturers (OEMs), but only 1.5 percent of the domestically produced midrange sawblades were sold to OEMs in 2005.<sup>20</sup>

Purchaser responses obtained in the remand proceedings also confirm the limited nature of competition even in the 10-inch to 14-inch range: 17 of 21 non-producer purchasers reported that midrange size subject imports from China “never” or only “sometimes” compete with domestic product and 15 of 21 non-producer purchasers reported that midrange size subject imports from Korea “never” or only “sometimes” compete with domestic product.<sup>21</sup>

Accordingly, we again find that competition between the subject imports and the domestic like product was generally limited by, among other factors, differences in the size ranges in which each were concentrated. We also find that the limited nature of competition extends to the midrange sizes upon which the Court focuses, as highlighted by channel of distribution and customer type differences and by the responses of a majority of purchasers that the subject imports and the domestic like product either never, or only sometimes, compete in the midrange sizes.

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<sup>19</sup> CD at 28. In 2005, blades less than 10 inches in diameter accounted for 43.7 percent of commercial shipments of subject imports, compared to 6.1 percent of the domestic like product. At the other end of the size spectrum, blades greater than 14 inches in diameter accounted for 11.9 percent of subject imports, compared to 50.6 percent of the domestic like product. CR/PR at Table I-1 (as revised by Memorandum INV-DD-088).

<sup>20</sup> Calculated from CR at Tables E-1 (domestic like product) and E-6 (subject imports).

<sup>21</sup> Remand Staff Report at Tables III-5 & III-6. Responding producers who were also purchasers differed significantly from non-producing purchasers, both in their purchasing patterns and in their other responses. SR at Table II-2, Tables III-1-III-7. We have chosen to rely primarily on responses from non-producing purchasers except where otherwise noted, given the differences in purchasing patterns.

## b. The Product-type Aspect of the Limited Competition Finding

The Court also found that the Commission did not adequately explain its finding that competition between the subject importers and domestic producers was limited by differences in the product types sold by the two suppliers.<sup>22</sup> After noting that the Commission found that “a significant portion of the subject imports [were] produced using a sintering process to join component parts, whereas very little sintering [was] used in the U.S. industry”, the Court concluded that the record indicated “that the vast majority of sintered blades were confined to smaller diameter sawblades, where . . . the domestic industry had little presence to begin with.”<sup>23</sup> The Court added that, “in the midrange sawblades where most of the overlap occurred, the vast majority of the subject imports were not sintered, but laser-welded, just as the U.S.-produced blades were.”<sup>24</sup> The Court therefore concluded that the “finding that sintered blades typically do not compete with the laser welded variety only underscores the lack of competition in smaller diameter blades by further differentiating the imported product from that manufactured by the domestic industry.”<sup>25</sup> Thus, the Court stated that the Commission had not explained “how its data, which indicates that foreign and domestic sawblades in the midrange sizes are both laser welded and [sintered], show attenuated competition.”<sup>26</sup>

We agree with the Court’s observation that the lack of sintering in the domestic like product underscores the lack of competition in smaller diameter blades (and thus the Commission’s findings in that regard), by further differentiating the imported product. That is, the Court’s observation is not inconsistent with the Commission’s own limited competition finding regarding the smaller size blades.

We also agree with the Court’s statement that the majority (though not necessarily a “vast” majority) of the subject imports in the midrange size were not sintered, but laser-welded. Nonetheless, we find that competition between the subject imports and the domestic like product in the midrange size was limited to the extent the subject imports in the midrange were sintered rather than welded. As shown by the table upon which the Court relied in this regard, 40.1 percent of subject imports from Korea in the midrange sizes were sintered.<sup>27</sup> We emphasize in this regard that our finding is that the combination of several factors result in limited competition, not that they result in no competition at all.

Moreover, as noted above, the vast majority of non-producer purchasers reported on remand that midrange size subject imports from China and Korea either “never” or only

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<sup>22</sup> Slip Op. at 15-16.

<sup>23</sup> *Id.* at 15.

<sup>24</sup> Slip Op. at 15.

<sup>25</sup> Slip Op. at 16; *id.* at 7 (citing CR at I-9) (welded blades “noted to be stronger, have fewer failure rates, and are more reliable than sintered sawblades”); *see also* Original Conf. Views at 21 n.139.

<sup>26</sup> Slip Op. at 16.

<sup>27</sup> Slip Op. at 16 (16.8 / 41.9 = 40.1 percent).

“sometimes” compete with the domestic like product.<sup>28</sup> For these reasons we continue to include blade type differences among the factors which, combined, caused competition between the subject imports and the domestic like product to be more limited than their overlap in the midrange sizes might otherwise suggest.

**c. The Customer Type Difference Aspect of the Limited Competition Finding**

The Court also found that the Commission did not adequately explain its conclusion that competition between the subject imports and domestic products was limited because of differences between branded distributors and other distributors to which diamond sawblades were sold. In this regard, the Court focused on the Commission’s footnote explanation that:

The overlap of customers and end uses for diamond sawblades sold by branded distributors versus those sold by other distributors appears limited based on differences in diamond sawblade products and types of customers. U.S. importers of the Chinese and Korean diamond sawblades reported selling 47.9 percent and 44.8 percent, respectively, of the value of their U.S. commercial shipments of these products to branded distributors during 2003-05. These sales of the imported Chinese and Korean diamond sawblades represented 74.4 percent and 74.2 percent, respectively, of the U.S. importers’ sales to all U.S. distributors during this period. U.S. producers reported selling 36.1 percent of their U.S. commercial shipments of their U.S.-produced diamond sawblades to other distributors. These sales represented 71.8 percent of the U.S. producers’ sales to all U.S. distributors during this period. In addition, distributors were the single largest channel of distribution during this period for U.S. producers and importers selling diamond sawblades in the size range of greater than 12" to 14" in diameter, the size range showing the most overlap between U.S.-produced and subject imported diamond sawblades. CR/PR at Table II-1. Differences were reported between sales of diamond sawblades reported by branded distributors from those reported by other distributors. Ten branded distributors and 3 “other” distributors responded in their questionnaire responses to a question requesting information on the types of diamond sawblades, their end uses, and the types of customers to which they sell these products. U.S. purchaser questionnaire responses, section V-3. The branded distributors reported selling a larger range of smaller diameter products and a smaller range of larger diameter products and a broader range of type of diamond sawblade (laser-welded segmented, sintered continuous-rim, soldered/brazed, etc.) than the other distributors. In addition, the branded distributors sold to both end users and to resellers, the latter, in turn, sell to end users, whereas the other distributors reported selling only to end users. Differences among various suppliers regarding what constitutes professional construction end users of diamond sawblades also suggest differences in the types of contractors that the responding branded and other distributors refer to as their

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<sup>28</sup> Remand Staff Report at Tables III-5 & III-6. *See also* CR at II-69-II-70 (domestic producers, importers, and purchasers on differences between the domestic like product and subject imports from China and Korea).

customers (U.S. producer and importer questionnaire responses, sections IV-A-1 and III-A-1, respectively, and shown in the CR at II-7 - II-8, PR at II-6).<sup>29</sup>

The Court concluded that the Commission had not adequately explained why it felt that “branded distributors” and “other distributors” served different end users.<sup>30</sup> The Court also noted, with regard to the Commission’s note above, that the fact that a branded distributor sells a larger range of small sawblades and a smaller range of large sawblades does not “offer any insight as to how sales to that distributor attenuates competition in regard to *midrange* blades.”<sup>31</sup> Similarly, the Court noted, the fact that these distributors sold a broader range of sawblade types was neither surprising nor enlightening because branded distributors selling a large range of smaller products would necessarily end up with more sawblade types, since this range of products included sintered sawblades.<sup>32</sup>

The Court added that the only “colorable” argument on the customer categories finding made by the Commission is that distributors disagreed about “what constitutes professional construction end users of sawblades,” which suggests “differences in the types of contractors that the responding . . . distributors refer to as their customers.”<sup>33</sup> The Court found that, without a substantial amount of development and explanation, the Commission’s comment “confuses the matter even more.”<sup>34</sup> In this regard, the Court questioned whether the Commission could “draw a conclusion as to who the ‘end user’ is if the suppliers themselves are unable to do so.”<sup>35</sup> Further, the Court added, the Commission offered no explanation of why it cited U.S. producer and importer questionnaires as support for its finding as to who “distributors refer to as their customers.” Accordingly, the Court concluded, remand on this issue was necessary because it could not find “a rational connection between the facts found and the choice made.”

The footnote is a narrow representation of a broader distinction drawn between customer groupings during the final phase of the investigations.<sup>36</sup> The product specific price comparison tables, for instance, distinguished between branded and other distributors, and the prices of the subject imports and of the domestic like product differed significantly depending on whether the

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<sup>29</sup> CD at 29, n.193, PR at 27-28 n.193.

<sup>30</sup> Slip Op. at 17

<sup>31</sup> Slip Op. at 17.

<sup>32</sup> Slip Op. at 17.

<sup>33</sup> Slip Op. at 18.

<sup>34</sup> Slip Op. at 18.

<sup>35</sup> *Id.*

<sup>36</sup> See CR at V-17, V-19, V-22, V-23; CR/PR at Tables II-1, V-1a, V-1b, V-2a, V-2b, V-3a, V-3b, V-4a, V-4b, V-5a, V-5b, V-6a, V-6b, V-7a, V-7b, V-19c, E-1, E-2, E-3, E-4, E-5, E-6.

sale was to a branded or other distributor.<sup>37</sup> We find that, because prices for the product from the same source (domestic, China, or Korea) vary, in many instances, dramatically, for the same narrowly defined product depending on whether the product is sold to a branded or other distributor, there are very real differences between these two customer types. Accordingly, on that basis alone, we find that it was reasonable for the Commission in the original determination to identify the differing concentrations of subject imports and the domestic like product in the branded and other distributor sub-channels as a factor showing limitations on competition between subject imports and the domestic like product.

Moreover, with regard to the Court's statement that the Commission did not adequately explain why it found that branded distributors and other distributors served different end users,<sup>38</sup> we note that the Commission's practice, when considering channels of distribution to assess the extent of competition, is to examine the purchasers to whom U.S. producers and suppliers of subject imports sell the merchandise, not the customers of those purchasers further down the distribution chain. Although we referred in our original determination to the differences in the channels of distribution to which branded and other distributors may resell the sawblades they purchase,<sup>39</sup> we find that that information is not essential to our current finding that the respective concentrations of the subject imports and domestic product in the branded and other distributor sub-channels indicates limits on the extent to which they compete.

While consideration of the identity of customers of purchasers is neither required by statute nor central to our analysis of competition, we note that it appears to be the branded distributors, not the other distributors, who sell to big box retailers, such as Home Depot, Lowes, and Sears, who in turn sell to DIY and commercial/contractor end users.<sup>40</sup> This is consistent with our original finding that branded distributors sold to both end users and to resellers whereas the other distributors sold only to end users.<sup>41</sup> Pricing differences for sales of the same blade to branded distributors and other distributors, noticeable for both the domestic like product and subject imports, also suggest that those purchasers sell to different clientele.<sup>42</sup>

We also note that a majority of non-producer purchasers responding in the remand proceeding reported that branded and other distributors never or only sometimes compete in the sale of small and midrange size sawblades (13 of 23 purchasers for small blades; 14 of 23 for

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<sup>37</sup> CR/PR at Tables V-1a (product 1 to branded distributors) and V-1b (product 1 to other distributors); Tables V-2a (product 2 to branded distributors) and V-2b (product 2 to other distributors); Tables V-3a (product 3 to branded distributors) and V-3b (product 3 to other distributors); Tables V-4a (product 4 to branded distributors) and V-4b (product 4 to other distributors); Tables V-5a (product 5 to branded distributors) and V-5b (product 5 to other distributors); Tables V-6a (product 1 to branded distributors) and V-6b (product 1 to other distributors); Tables V-7a (product 1 to branded distributors) and V-7b (product 7 to other distributors).

<sup>38</sup> Slip Op. at 17

<sup>39</sup> We noted in that regard that available information indicated that branded distributors reported selling to both resellers and end users, whereas other distributors reported selling only to end users. Conf. Views at 29 n.193.

<sup>40</sup> CR at II-5; II-5 n.14 citing hearing tr. at 241 (Delahaut), 263 (Nixon), 270-71 (Kim).

<sup>41</sup> CD at 29, n.193, PR at 27-28 n.193.

<sup>42</sup> Compare CR at Tables V-1a and V-1b, V-2a and V-2b, V-3a and V-3b, V-5a and V-5b, and V6a and V-6b.

midsize blades).<sup>43</sup> Accordingly, even were we to limit our focus to the midrange sizes, we find it relevant for purposes of our limited competition finding that 47.2 percent of the subject imports, but only 17.9 percent of the domestic like product, were midrange blades sold to branded distributors in 2005, while 46.8 percent of the domestic like product, but only 15.9 percent of the subject imports, were midrange blades sold to other distributors.<sup>44</sup>

Finally, the branded/other distributor distinction is not the only channel of distribution or customer distinction reflecting limits on the extent to which the volume of subject imports competed with the domestic like product. As discussed above, 20.4 percent of subject imports were sold into OEM channels, compared to 1.5 percent of the domestic like product. Sales to professional construction end users accounted for 31.5 percent of sales of the domestic like product, compared to 11.7 percent for subject imports.<sup>45</sup>

Accordingly, we continue to find that limitations on competition between the subject imports and the domestic like product to be reflected in part in the distinctions between the channels of distribution and customers for the subject and domestic merchandise.<sup>46</sup>

## C. Price Effects of Subject Imports

### 1. The Original Price Effects Findings

We adopt the Commission's previous analysis of the price effects of the subject imports. That original finding of no significant price effects was based on analysis of a number of factors, including that (i) the pricing data did not show a clear and consistent correlation between subject underselling and domestic price declines, (ii) purchasers reported that a number of non-price related factors were more important than price in their purchasing decisions, (iii) there was

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<sup>43</sup> Remand Report at Table III-1. With respect to large sawblades, only 7 of 18 non-producer purchasers reported that there is never or only sometimes competition between branded and other distributors. *Id.*

<sup>44</sup> Calculated from CR at Tables E-1 (domestic) and E-6 (subject imports).

<sup>45</sup> Calculated from CR at Tables E-1 (domestic) and E-6 (subject imports).

<sup>46</sup> The Court also questioned how we supported a finding "as to who 'distributors refer to as their customers' with a citation to 'U.S. *producer and importer* questionnaire responses.'" Slip Op. at 18 (emphasis in original). In our original views, we found that the domestic like product and subject imports, even when sold in similar size ranges, were generally sold to different end users. CD at 29. We supported this finding by citing to tables in the record showing differences in channels of distribution by blade size for both the domestic like product and subject imports. CD at 29 n.193, *citing* CR at Table II-1 and Appendix E. This data, cited elsewhere in this opinion, support our finding that even midrange domestic sawblades are sold into different channels of distribution than are subject imports. The record indicates significant differences between branded distributors, who sell their own "branded" blades, and other distributors, who sell blades under the manufacturer's name. CR at II-1 n.1, II-5 n.14, II-7 n.22. Pricing data suggest significant differences for the same products sold into the different channels. *See, e.g.*, CR at Tables V-5a and V-5b, V-6a and V-6b. The Commission did not rely exclusively on questionnaire responses from producers or importers to reach its conclusion that the domestic like product and subject imports were sold into different channels of distribution. However, both domestic producers and importers sell directly to professional construction end users. CR at Tables E-1 and E-6. It was not unreasonable to ask producers and importers to identify the types of purchasers that could be classified as "professional construction end users." Nonetheless, our conclusion was supported by the data in Tables II-1, E-1, and E-6.



limited competition between the subject imports and the domestic like product during the POI, (iv) there was only a modest increase in the ratio of the industry's cost of goods sold to its net sales, indicating no significant degree of price suppression, and (v) few lost sales allegations were confirmed.

In concluding that underselling by the subject imports had not had a significant impact on domestic prices, the Commission noted that its price comparison data indicated a lack of correlation between subject import underselling and domestic price trends.<sup>47</sup> For example, the Commission noted, in four of its 21 price comparison tables, the domestic price was higher at the end of the POI than at the beginning of the period, notwithstanding that prices for the subject imports decreased or remained relatively constant over the period.<sup>48</sup> Similarly, six of the Commission's price comparison tables showed that the domestic product was lower at the end than at the beginning of the period, even though subject prices for the product increased or remained relatively constant over the period.<sup>49</sup> Further, in two of the Commission's price comparison tables, domestic prices declined even though the subject imported product oversold the domestic like product or even though there had been small volumes of subject imports competing against the domestic products.<sup>50</sup> In sum, the Commission found that those 12 of its 21 price comparison tables showed no correlation between underselling and domestic price declines. Those findings were not contested by plaintiffs and are not at issue in the Court's remand order.

In addition to those comparisons that indicated a lack of correlation between subject import underselling and domestic price trends, the Commission observed that in 12 of 17 product/channel combinations in which U.S. producers' prices trended downward over the period, the "downward prices were accompanied by increased volumes of the U.S. product over the period,<sup>51</sup> suggesting price/volume tradeoffs that reflect a broad range of factors unrelated to subject imports, including competition among domestic producers or demand conditions affecting only certain end users."<sup>52</sup> With respect to competition among domestic producers or

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<sup>47</sup> CD at 33, USITC Pub. 3862 at 31.

<sup>48</sup> *Id.* See CR/PR at Tables V-1a (4-inch to branded distributors), V-1b (4-inch to other distributors), V-1c (4-inch to professional construction firms), V-2c (12-inch to professional construction firms).

<sup>49</sup> *Id.* See CR/PR at Tables V-5a (14-inch to branded distributors), V-5b (14-inch to other distributors), V-6b (18-inch to other distributors), V-7a (24-inch to branded distributors), V-7b (24-inch to other distributors), V-7c (24-inch to professional construction firms).

<sup>50</sup> *Id.* See CR/PR at Tables V-3b (14-inch to other distributors), V-4c (a different 14-inch to professional construction firms).

<sup>51</sup> See CR/PR at Tables V-2a, V-2b, V-3a, V-3b, V-3c, V-4a, V-4b, V-4c, V-5a, V-5b, V-5c, V-6a, V-6b, V-6c, V-7a, V-7b, V-7c (the 17 product/channel combinations in which the domestic producers' prices decline over the period); Tables V-8a, V-8b, V-8c (summary of percentage changes over the period); CR/PR at Tables V-3b, V-4b, V-4c, V-5a, V-5b, V-5c, V-6a, V-6b, V-6c, V-7a, V-7b, V-7c (the 12 product/channels combinations in which the lower domestic price at the end of the period was accompanied by a higher volume); CR/PR at Tables V-4b, V-5c, V-6a, V-6c (the four of those 12 price comparison tables in which lower domestic prices were not accompanied by higher domestic volumes).

<sup>52</sup> CD at 33, USITC Pub. 3862 at 31.

demand condition differences, the Commission explained in a footnote that there were considerable differences among quarterly weighted average prices for certain producers (petitioners and supporters of the petition) on sales of products 2, 5, and 7 in certain channels.<sup>53</sup>

## **2. Responses to the Court’s Instruction Regarding the Commission’s Finding of Limited Correlations Between Domestic and Subject Prices**

The Court found that further elaboration would be needed to support the Commission’s finding that a price/volume tradeoff, rather than price depression, was suggested for the 12 of 17 price comparisons in which U.S. producers’ prices trended downward while the volumes of the U.S. product increased over the period.<sup>54</sup> In that regard the Court held that, “[i]n the common understanding of a price/volume tradeoff, the increased volume of sales must be sufficient to offset the reduced operating profit per unit,” meaning that it is a “price/volume/*profit* tradeoff.”<sup>55</sup> The Court added that the Commission’s finding of a price/volume trade-off was “devoid of any data indicating what the operating profit per unit was in each case.”<sup>56</sup> Because of this lack of unit profit data, the Court held, the Commission had “ignore[d] completely the question of whether the volume increase was an adequate ‘tradeoff’ for the lowered prices.”<sup>57</sup> Without further explanation of this issue, the Court held that it was unable to find that the Commission had provided a reasoned explanation for the finding. Furthermore, the Court noted, the Commission had attributed falling domestic prices to competition amongst the domestic producers, but based that finding on data contained in a single footnote that did not constitute a reasoned explanation of the finding.<sup>58</sup> Accordingly, the Court concluded, on remand, the Commission must provide a more thorough explanation for its price/volume tradeoff finding, as well as an explanation as to how the purported price/volume tradeoffs would indicate competition among the domestic producers.<sup>59</sup>

In response to the Court’s remand instructions, we note that, of the 12 price comparison tables to which the price/volume tradeoff analysis referred, only four were not already among those for which the Commission had found, on other grounds, no correlation between declining domestic prices and subject import prices.<sup>60</sup> That is, even ignoring the price/volume tradeoff analysis, 12 of the 21 price comparison tables indicated no correlation between subject import prices and prices for the domestic like product. Accordingly, the price/volume tradeoff finding

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<sup>53</sup> CD at 34 n.224, USITC Pub. 3862 at 31n.224.

<sup>54</sup> Slip Op. at 21-23.

<sup>55</sup> Slip Op. at 22 (*citing* Samuelson/Nordhaus, *Economics* at 137-40) (emphasis in original).

<sup>56</sup> Slip Op. at 22.

<sup>57</sup> Slip Op. at 23.

<sup>58</sup> Slip Op. at 23.

<sup>59</sup> Slip Op. at 23.

<sup>60</sup> CR/PR at Tables V-4b, V-5c, V-6a, and V-6c.

was not a critical aspect of our pricing analysis and, even without that subordinate finding, we would find no clear correlation between the prices of the subject imports and prices for the domestic like product.

Furthermore, we note that the industry's decisions to lower prices in these instances had no significant effect on the industry's profitability.<sup>61</sup> The Commission normally examines whether the domestic industry has experienced any price suppression during the period of investigation. Here, the industry was able to achieve an only modest increase in the ratio of its cost of goods sold to its net sales, indicating that, overall, the industry experienced no significant degree of price suppression or loss of profits notwithstanding any price/volume tradeoff.<sup>62</sup> The record suggests some considerable differences among quarterly weighted average prices of certain producers.<sup>63</sup> In addition, in the proceedings on remand, a majority of non-producer purchasers reported that that subject imports from China and Korea either "never" or only "sometimes" lead to lower domestic prices.<sup>64</sup>

Finally, regarding lost sales and revenue allegations, we observed in our previous determination that the Commission had been able to confirm only certain lost sales reported by the petitioners, and that those volumes represented only a very small share of domestic producers shipments during the POI.<sup>65</sup> We also noted that many of the petitioners' lost sale and lost revenue allegations lacked the specificity necessary to verify their accuracy and remained unsupported despite Commission requests for further information.<sup>66</sup> We found the limited number of confirmed lost sales and revenue allegations to be "consistent with our finding of no material injury by reason of the subject imports."<sup>67</sup> On remand, we continue to view the limited number of confirmed lost sales and lost revenues as wholly consistent with, and further evidence of, our finding of no material injury or threat thereof by reason of subject imports.<sup>68</sup>

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<sup>61</sup> The Commission generally does not request the level of data on an individual price item basis from members of the industry that would permit it to perform the type of analysis the Court seeks. Indeed, providing part number by part number pricing data would impose an extreme burden on domestic producers that the Commission seeks to avoid even with respect to factors the Commission is required to consider by statute.

<sup>62</sup> CR at Table C-1.

<sup>63</sup> CD at 34 n.224, *citing* CR at V-53 n.17.

<sup>64</sup> Remand Staff Report at Tables III-5 & III-6 (for subject imports from China, 15 of 19 purchasers regarding small blades, 17 of 21 purchasers regarding midrange blades, and 14 of 19 purchasers regarding large blades; for subject imports from Korea, 17 of 21 purchasers regarding small blades; 18 of 22 purchasers regarding midrange blades, and 15 of 20 purchasers regarding large blades).

<sup>65</sup> CD at 34, USITC Pub. 3862 at 32

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* n.227.

<sup>68</sup> The Court affirmed the Commission's lost sale finding, but suggested that, if the Commission were to base a negative determination "solely" on the small volume of confirmed lost sales, it could be obliged to "investigate" even lost sales allegations that the domestic producer did not support with the information the Commission requires. As the original determinations and this remand determination show, the negative determinations was based on numerous factors and the record as a whole, not solely on the limited number of confirmed lost sales. Moreover, our

In sum, we affirm our original finding that the price comparison data indicated no necessary correlation between the prices for subject imports and prices for the domestic like product and that the subject imports did not have significant adverse effects on prices for the domestic like product.

#### **D. Impact of the Subject Imports**

We adopt our previous analysis regarding the impact of the subject imports, and find that subject imports are not having a significant adverse impact on the domestic industry. Accordingly, we determine that an industry in the United States is not materially injured by reason of subject imports from China and Korea.

#### **V. No Threat of Material Injury by Reason of the Subject Imports**

We adopt our previous analysis of the threat of material injury and find that the domestic industry is not threatened with material injury by reason of the subject imports.

### **CONCLUSION**

For the reasons stated above, we find that the domestic industry producing diamond sawblades is not materially injured or threatened with material injury by reason of subject imports from China and Korea sold at less than fair value.

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investigation included providing the petitioning producers the opportunity to submit lost sale and revenue allegations in their petition (19 C.F.R. § 207.11(b)(2)(v)) and in response to questionnaires. When the required information was not included in most of the allegations made, staff provided the domestic producers several opportunities to complete or supplement their inadequate responses. “The staff requested during the [preliminary and] final phase[s] of these investigations that the petitioners provide the requested lost revenue and lost sales information for the general assertions that were cited in the petition, but the petitioners did not provide any of the requested information.” CR at V-77, V-77 n.87, PR at V-46-47, V-47 n.87. The Commission is not obliged to attempt to gather the threshold, or prima facie, information on domestic producers’ lost sales and revenues that the producers themselves are unwilling or unable to place on the record. The Commission can reasonably choose not to further investigate lost sales and revenue allegations for which domestic producers provided incomplete information. *U.S. Steel Group v. United States*, 18 CIT 1190, 873 F. Supp. 673, 698 (1994), *aff’d*, 96 F. 3d 1352 (Fed Cir 1996). Moreover, while the Commission may conclude that the only volume of sales lost to the subject imports are those for which the lost sale could be confirmed, we declined to draw adverse inferences in these investigations. CR at 34 n.227.

**Appendix 1**

**Finished diamond sawblades: Summary data concerning the U.S. market (excluding 3 firms from domestic industry data), 2003-05**

(Quantity=units, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per unit)

Item	2003	2004	2005
U.S. consumption quantity:			
Amount . . . . .	4,464,298	6,065,126	6,753,839
Producers' share (1):			
Excluding 3 firms (2) . . . . .	***	***	***
Excluded 3 firms (3) . . . . .	***	***	***
<hr/>			
Total . . . . .	12.2	9.1	8.0
Importers' share (1):			
China . . . . .	23.7	32.3	41.1
Korea . . . . .	37.5	35.3	34.0
<hr/>			
Subtotal (subject) . . . . .	61.2	67.6	75.1
Other sources . . . . .	26.6	23.3	16.9
<hr/>			
Total imports . . . . .	87.8	90.9	92.0
U.S. consumption value:			
Amount . . . . .	184,719	205,592	214,939
Producers' share (1):			
Excluding 3 firms (2) . . . . .	***	***	***
Excluded 3 firms (3) . . . . .	***	***	***
<hr/>			
Total . . . . .	61.9	54.3	51.9
Importers' share (1):			
China . . . . .	7.5	11.0	14.3
Korea . . . . .	20.3	23.7	25.7
<hr/>			
Subtotal (subject) . . . . .	27.7	34.7	40.0
Other sources . . . . .	10.3	10.9	8.1
<hr/>			
Total imports . . . . .	38.1	45.7	48.1

Table continued on next page.

**Appendix 1**

**Finished diamond sawblades: Summary data concerning the U.S. market (excluding 3 firms from domestic industry data), 2003-05**

(Quantity=units, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per unit)

Item	2003	2004	2005
U.S. producers' (2):			
Average capacity quantity . . . . .	***	***	***
Production quantity . . . . .	***	***	***
Capacity utilization (1) . . . . .	***	***	***
U.S. shipments:			
Quantity . . . . .	***	***	***
Value . . . . .	***	***	***
Unit value . . . . .	\$***	\$***	\$***
Export shipments:			
Quantity . . . . .	***	***	***
Value . . . . .	***	***	***
Unit value . . . . .	\$***	\$***	\$***
Ending inventory quantity . . . . .	***	***	***
Inventories/total shipments (1) . . . . .	***	***	***
Production workers . . . . .	***	***	***
Hours worked (1,000s) . . . . .	***	***	***
Wages paid (\$1,000s) . . . . .	***	***	***
Hourly wages . . . . .	\$***	\$***	\$***
Productivity (units/1,000 hours) . . . . .	***	***	***
Unit labor costs . . . . .	\$***	\$***	\$***

Table continued on next page.

**Appendix 1**

**Finished diamond sawblades: Summary data concerning the U.S. market (excluding 3 firms from domestic industry data), 2003-05**

(Quantity=units, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per unit)

Item	2003	2004	2005
Net sales:			
Quantity . . . . .	***	***	***
Value . . . . .	***	***	***
Unit value . . . . .	\$***	\$***	\$***
Cost of goods sold (COGS) . . . . .	***	***	***
Gross profit or (loss) . . . . .	***	***	***
SG&A expenses . . . . .	***	***	***
Operating income or (loss) . . . . .	***	***	***
Capital expenditures . . . . .	***	***	***
Unit COGS . . . . .	\$***	\$***	\$***
Unit SG&A expenses . . . . .	\$***	\$***	\$***
Unit operating income or (loss) . . . . .	\$***	\$***	\$***
COGS/sales (1) . . . . .	***	***	***
Operating income or (loss)/ sales (1) . . . . .	***	***	***

- (1) "Reported data are in percent.  
(2) Excluding data for \*\*\*.  
(3) \*\*\*.

Note.— Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires.

**Appendix 2**  
**Finished diamond sawblades and parts: Summary data concerning the U.S. market (excluding 3 firms from domestic industry data), 2003-05**  
**(Value=1,000 dollars)**

Item	2003	2004	2005
U.S. consumption value:			
Amount .....	199,173	221,100	231,200
Producers' share (1):			
Excluding 3 firms (2) .....	***	***	***
Excluded 3 firms (3) .....	***	***	***
<hr/>			
Total .....	62.2	55.1	52.6
Importers' share (1):			
China .....	7.1	10.3	13.6
Korea .....	20.3	23.6	25.5
<hr/>			
Subtotal (subject) .....	27.3	33.9	39.1
Other sources .....	10.5	11.0	8.3
<hr/>			
Total imports .....	37.8	44.9	47.4
Value of U.S. shipments			
of imports from:			
China .....	14,048	22,716	31,436
Korea .....	40,341	52,205	58,970
<hr/>			
Subtotal (subject) .....	54,389	74,921	90,406
All other sources .....	20,852	24,276	19,127
<hr/>			
All sources .....	75,240	99,197	109,534
Value of U.S. producers' (2):			
U.S. shipments .....	***	***	***
Export shipments .....	***	***	***
<hr/>			
Total shipments .....	***	***	***

Table continued on next page.



**Appendix 2**

**Finished diamond sawblades and parts: Summary data concerning the U.S. market (excluding 3 firms from domestic industry data), 2003-05  
(Value=1,000 dollars)**

Item	2003	2004	2005
Net sales . . . . .	***	***	***
Cost of goods sold (COGS) . . . . .	***	***	***
Gross profit or (loss) . . . . .	***	***	***
SG&A expenses . . . . .	***	***	***
Operating income or (loss) . . . . .	***	***	***
Capital expenditures . . . . .	***	***	***
COGS/sales (1) . . . . .	***	***	***
Operating income or (loss)/ sales (1) . . . . .	***	***	***
Value of U.S. producers' (3):			
U.S. shipments . . . . .	***	***	***
Export shipments . . . . .	***	***	***
Total shipments . . . . .	***	***	***

(1) "Reported data are in percent.

(2) Excluding data for \*\*\*.

(3) \*\*\*.

Note.— Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires.



## PART I: INTRODUCTION

### BACKGROUND

On May 3, 2005, the Diamond Sawblade Manufacturers' Coalition and its individual members<sup>1</sup> filed a petition with the U.S. International Trade Commission ("Commission" or "USITC") and the U.S. Department of Commerce ("Commerce") alleging material injury and threat of material injury to an industry in the United States by reason of less-than-fair-value ("LTFV") imports of diamond sawblades and parts thereof from China and Korea. Following institution of investigations by the Commission (and subsequent initiation of investigations by Commerce), the Commission conducted preliminary-phase investigations and, on July 25, 2005, transmitted its affirmative preliminary-phase determinations to Commerce.<sup>2</sup>

Over the course of 2005 and 2006 Commerce conducted preliminary and final investigations, issuing affirmative preliminary determinations with respect to the subject merchandise from China and Korea on December 29, 2005, and affirmative final determinations on May 22, 2006. The Commission issued its final-phase investigative schedule in January 2006 and proceeded with the final phase of its investigations, including a public hearing held on May 16, 2006. On July 5, 2006, the Commission transmitted negative determinations regarding diamond sawblades and parts thereof from China and Korea to Commerce.<sup>3</sup>

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<sup>1</sup> Blackhawk Diamond, Inc., Fullerton, CA; Diamond B, Inc., Santa Fe Springs, CA; Diamond Products, Elyria, OH; Dixie Diamond, Lilburn, GA; Hoffman Diamond, Punxsutawney, PA; Hyde Manufacturing, Southbridge, MA; Sanders Saws, Honey Brook, PA; Terra Diamond, Salt Lake City, UT; and Western Saw, Inc., Oxnard, CA.

<sup>2</sup> *Diamond Sawblades and Parts Thereof from China and Korea, Inv. Nos. 731-TA-1092-1093 (Preliminary)*, USITC Publication 3791, August 2005. Chairman Koplán and Commissioners Hillman and Lane determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of diamond sawblades and parts thereof from China and Korea. Vice Chairman Okun and Commissioners Miller and Pearson determined that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of diamond sawblades and parts thereof from China and Korea. *Ibid.*, p. 1.

<sup>3</sup> *Diamond Sawblades and Parts Thereof from China and Korea, Inv. Nos. 731-TA-1092-1093 (Final)*, USITC Publication 3862, July 2006. Chairman Pearson and Commissioners Koplán, Okun, and Lane determined that the domestic industry was neither materially injured nor threatened with material injury by reason of the subject imports. Vice Chairman Aranoff and Commissioner Hillman determined that the domestic industry was threatened with material injury. *Ibid.*, p. 1.

The Commission's determinations were appealed to the Court of International Trade ("CIT" or "Court"). On February 6, 2008, the Court issued a decision remanding the matter to the Commission for further proceedings consistent with that opinion.<sup>4</sup> In its opinion, the Court found that the Commission had not provided adequate explanation or substantial evidentiary support for certain of its findings. The Court instructed the Commission to provide further explanation of its finding regarding limited competition between the subject imports from China and Korea and the domestic like product, and to provide further explanation of its volume, price, impact, and threat findings, to the extent they were based on the Commission's limited competition finding. The Court also instructed the Commission to provide further explanation of certain aspects of its finding that there was not a correlation between domestic producers' price movements and prices for the subject imports. The Commission accordingly provided notice that it would re-open the record "for the limited purpose of collecting data pertinent to its analysis of the extent to which competition between subject diamond sawblade imports and the domestic like product was or was not limited during the period of investigation by differences in product and customer types."<sup>5</sup> Consistent with this purpose, staff issued supplemental questions to those purchasers that had provided the Commission with purchaser questionnaire responses in the final phase of the underlying investigations. The survey results are presented in Part II and Part III of this report.

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<sup>4</sup> *Diamond Sawblade Manufacturers v. United States*, Slip Op. 08-18 (CIT, February 6, 2008).

<sup>5</sup> *Diamond Sawblades and Parts Thereof From China and Korea: Notice of Remand Proceedings*, 73 F.R. 16910, March 31, 2008.

## SUMMARY OF PROCEEDINGS

Selected information relating to the schedule of the Commission's current remand proceedings is presented below.

<b>Effective date</b>	<b>Action</b>
February 6, 2008	CIT's remand order
March 31, 2008	Commission's notice of remand proceedings and reopening of record (73 F.R. 16910)
May 14, 2008	Commission's remand determinations transmitted to CIT



## **PART II: PROFILES OF RESPONDING U.S. PURCHASERS**

During the current remand proceeding on diamond sawblades, the Commission sent supplemental questions to the 52 U.S. firms that had responded to its purchaser questionnaire during the final phase of the antidumping duty investigations on diamond sawblades and parts thereof from China and Korea. Forty-three purchasers responded during this remand proceeding, but not necessarily to every question or period for which information was requested.<sup>1</sup> The 43 responding firms included the eight U.S. diamond sawblade producers that were on the purchaser list. Of the nine purchasers from which the Commission did not receive responses, two firms, \*\*\*, moved without providing a forwarding address or were no longer in business and one firm, \*\*\*, purchased only diamond sawblade segments.

Each of the 43 responding U.S. purchasers indicated in their supplemental responses the category(ies) that best described their firm as a purchaser of diamond sawblades during 2003-05; a few purchasers reported that more than one purchaser category applied to their firm.<sup>2</sup> The responses are summarized in table II-1.

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<sup>1</sup> The information requested in the supplements was based on the U.S. market during 2003-05 and was restricted to diamond sawblades and not the separate parts, such as diamond segments and the cores.

<sup>2</sup> Purchaser supplemental response, question 1.

**Table II-1**

**Diamond sawblades: Total number of firms responding for each purchaser category**

Type of purchaser	Number of firms	Type of purchaser	Number of firms
<b>Distributor:</b>		<b>OEM:</b>	
Branded distributor <sup>1</sup>	18	Special purpose equipment <sup>2</sup>	5
Unbranded distributor <sup>3</sup>	11	General purpose equipment <sup>4</sup>	5
<b>Retailer:</b>		<b>End user:</b>	
Big box retailer <sup>5</sup>	4	Professional cutting firm <sup>6</sup>	4
Rental firm	1	Other <sup>7</sup>	2
Other retailer	9		

<sup>1</sup> Branded distributors sell diamond sawblades primarily with their own firm's label (private label).

<sup>2</sup> These firms produce special purpose diamond saws, grinders, etc.

<sup>3</sup> Unbranded distributors sell diamond sawblades primarily with their supplier's label.

<sup>4</sup> These firms produce general purpose saws, grinders, etc.

<sup>5</sup> Big box retailers have multiple store locations (often national) with large square footage.

<sup>6</sup> Professional cutting firms earn a majority of their revenue by cutting and/or drilling concrete (and other materials such as marble, stone, etc.).

<sup>7</sup> One of the two responding firms, \*\*\*, identified itself as a pavement contractor, and the other responding firm, \*\*\*, identified itself as a general contractor.

Note: Because a few firms reported for more than a single purchaser category, the total number of firms shown in this tabulation exceeds the number of responding firms. \*\*\* identified itself as both a branded and unbranded distributor. \*\*\* identified itself as a branded and unbranded distributor and as an other retailer. \*\*\* identified itself as an unbranded distributor and an other retailer. \*\*\* identified itself as a rental firm and an other retailer. In addition, six U.S. diamond sawblade producers (\*\*\*) identified themselves as branded distributors and another one such producer (\*\*\*) identified itself as an unbranded distributor and other retailer. Three of these seven diamond sawblade producers (\*\*\*) plus another such producer (\*\*\*) identified themselves as manufacturers of special purpose saws, grinders, etc. Four of the eight diamond sawblade producers (\*\*\*) also identified themselves as manufacturers of general purpose saws, grinders, etc.

Source: Compiled from purchaser supplemental responses.

U.S. purchasers were also requested in their supplemental responses to report, based on their total annual U.S. purchases of diamond sawblades from all suppliers during 2003-05, the estimated percentage shares of their annual value of diamond sawblade purchases by each of three specified ranges of sawblade diameters.<sup>3</sup> Twenty-seven purchasers were able to provide estimated purchase shares, but not necessarily for all periods requested; 7 of the 8 U.S. diamond sawblade producers receiving purchaser

<sup>3</sup> Purchaser supplemental response, question 5.



supplements were among the 27 responding firms. The cumulative purchase shares are summarized in table II-2 by year and sawblade diameter category for all responding firms, for responding firms excluding the responding U.S. diamond sawblade producers, and for the responding U.S. diamond sawblade producers.

**Table II-2**  
**Diamond sawblades: Shares of the value of total U.S. purchases of diamond sawblades**

<b>Share (percent)</b>				
<b>Year/purchaser group</b>	<b>Diameter of diamond sawblade</b>			<b>Total</b>
	<b>≤10 inches</b>	<b>&gt; 10 but ≤ 14 inches</b>	<b>&gt; 14 inches</b>	
<b>2003:<sup>1</sup></b>				
All responding firms	41.9	40.1	18.0	100.0
Responding firms excluding responding DSB producers	43.8	36.4	19.8	100.0
Responding DSB producers	24.5	74.0	1.5	100.0
<b>2004:<sup>2</sup></b>				
All responding firms	42.0	37.5	20.4	100.0
Responding firms excluding responding DSB producers	44.5	33.4	22.1	100.0
Responding DSB producers	18.3	77.6	4.1	100.0
<b>2005:<sup>3</sup></b>				
All responding firms	50.3	30.7	19.0	100.0
Responding firms excluding responding DSB producers	51.8	28.6	19.6	100.0
Responding DSB producers	19.5	74.2	6.3	100.0
<sup>1</sup> Responses during 2003 involved total U.S. purchases of diamond sawblades of approximately \$14.9 million. <sup>2</sup> Responses during 2004 involved total U.S. purchases of diamond sawblades of approximately \$18.6 million. <sup>3</sup> Responses during 2005 involved total U.S. purchases of diamond sawblades of approximately \$24.7 million.				
Source: Compiled from purchaser supplemental responses.				



## **PART III: CONDITIONS OF COMPETITION**

### **COMPETITION BETWEEN BRANDED AND UNBRANDED DISTRIBUTORS**

U.S. purchasers were requested in their supplemental response to indicate, based on their experience in purchasing diamond sawblades during 2003-05, the extent to which U.S. branded and unbranded distributors competed against each other in selling diamond sawblades in each of three specified ranges of sawblade diameters to the firm during this period.<sup>1</sup> The purchasers were requested to check “A” to indicate that the diamond sawblades sold by branded and unbranded distributors *always* competed with each other, “F” to indicate that the diamond sawblades *frequently* competed, “S” to indicate that the diamond sawblades *sometimes* competed, “N” to indicate that the diamond sawblades *never* competed, and “O” to indicate *no familiarity* with such competition during this period. Forty-three purchasers responded to this question, but not necessarily for every specified range of sawblade diameters; of the responding purchasers, eight were U.S. diamond sawblade producers. The total number of responding firms are shown table III-1 by diameter category and reported competition level for all responding firms, for responding firms excluding the responding U.S. diamond sawblade producers, and for the responding U.S. diamond sawblade producers.

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<sup>1</sup> U.S. purchaser supplemental response, question 2. Branded distributors sell diamond sawblades primarily with their own firm’s label, whereas unbranded distributors sell diamond sawblades primarily with their supplier’s (U.S. producer and/or importer’s) label.

**Table III-1**

**Diamond sawblades: Competition between branded and unbranded distributors**

<b>Competition between branded and unbranded distributors</b>					
<b>Diameter and purchaser group</b>	<b>Number of purchaser responses</b>				
	<b>A</b>	<b>F</b>	<b>S</b>	<b>N</b>	<b>O</b>
<b><i>≤ 10 inches:</i></b>					
All responding firms	13	3	10	5	11
Responding firms excluding responding DSB producers	8	2	9	4	11
Responding DSB producers	5	1	1	1	-
<b><i>&gt; 10 but ≤ 14 inches:</i></b>					
All responding firms	12	3	8	8	11
Responding firms excluding responding DSB producers	7	2	8	6	11
Responding DSB producers	5	1	-	2	-
<b><i>&gt; 14 inches:</i></b>					
All responding firms	12	5	3	6	17
Responding firms excluding responding DSB producers	7	4	3	4	17
Responding DSB producers	5	1	-	2	-
Note.--A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity.					
Source: Compiled from purchaser supplemental responses.					

## DIAMOND SAWBLADE USE BY END USERS

U.S. purchasers were requested in their supplemental response to indicate, based on their experience in purchasing diamond sawblades during 2003-05, the extent to which diamond sawblades used by professional diamond sawblade users competed with (1) diamond sawblades used by contractors for general use and (2) do-it-yourself homeowners (DIYs) in each of three specified ranges of sawblade diameters during this period.<sup>2</sup> The purchasers were requested to check “A” to indicate that the diamond sawblades used by professional diamond sawblade users and diamond sawblades used by general contractors and by DIYs for general use *always* competed with each other, “F” to indicate that the diamond sawblades *frequently* competed, “S” to indicate that the diamond sawblades *sometimes* competed, “N” to indicate that the diamond sawblades *never* competed, and “0” to indicate *no familiarity* with such competition during this period. Forty-one purchasers responded to this question, but not necessarily for both types of competition or for the specified range of sawblade diameters; of the responding purchasers, seven were U.S. diamond sawblade producers. The total number of responding firms are shown in tables III-2 and III-3 (a separate table for each type of competition), by diameter category and reported competition level for all responding firms, for responding firms excluding the responding U.S. diamond sawblade producers, and for the responding U.S. diamond sawblade producers.

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<sup>2</sup> Purchaser supplemental response, question 3. Professional diamond sawblade users generated a majority of their revenue by cutting and/or drilling concrete (and other materials such as granite, stone, etc.), whereas diamond sawblades for general use included a number of different types of contractors and DIYs that used diamond sawblades for a variety of projects.

**Table III-2**

**Diamond sawblades: Competition between diamond sawblades used by professional users and by contractors for general use**

Diameter and purchaser group	Number of purchaser responses				
	A	F	S	N	O
<b>≤ 10 inches:</b>					
All responding firms	8	4	7	5	16
Responding firms excluding responding DSB producers	4	1	7	5	16
Responding DSB producers	4	3	-	-	-
<b>&gt; 10 but ≤ 14 inches:</b>					
All responding firms	8	4	8	5	15
Responding firms excluding responding DSB producers	4	1	8	5	15
Responding DSB producers	4	3	-	-	-
<b>&gt; 14 inches:</b>					
All responding firms	9	4	6	5	17
Responding firms excluding responding DSB producers	4	3	5	5	17
Responding DSB producers	5	1	1	-	-
Note.--A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity.					
Source: Compiled from purchaser supplemental responses.					

**Table III-3**

**Diamond sawblades: Competition between diamond sawblades used by professional diamond sawblade users and by DIYs**

Diameter and purchaser group	Number of purchaser responses				
	A	F	S	N	O
<b>≤ 10 inches:</b>					
All responding firms	5	4	6	7	17
Responding firms excluding responding DSB producers	2	1	5	7	17
Responding DSB producers	3	3	1	-	-
<b>&gt; 10 but ≤ 14 inches:</b>					
All responding firms	3	6	5	9	16
Responding firms excluding responding DSB producers	1	2	4	9	16
Responding DSB producers	2	4	1	-	-
<b>&gt; 14 inches:</b>					
All responding firms	2	5	5	9	19
Responding firms excluding responding DSB producers	1	2	2	9	19
Responding DSB producers	1	3	3	-	-
Note.--A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity.					
Source: Compiled from purchaser supplemental responses.					

**COMPETITION AMONG SUPPLIERS OF  
U.S.-PRODUCED AND IMPORTED DIAMOND SAWBLADES**

U.S. purchasers were requested in their supplemental response to indicate, based on their experience in purchasing diamond sawblades during 2003-05, (1) the extent to which U.S. producers of diamond sawblades competed among each other and with suppliers of imported product in selling to their firms, and (2) the extent to which such competition led to price decreases of the U.S.-produced diamond sawblades to their firms during this period.<sup>3</sup> Purchasers were requested to check “A” to indicate that such competition and/or its effects *always* occurred, “F” to indicate that such competition and/or its effects *frequently* occurred, “S” to indicate that such competition and/or its effects *sometimes* occurred, “N” to indicate that such competition and/or its effects *never* occurred, and “0” to indicate *no familiarity* with such competition and/or its effects during this period. The 43 reporting U.S. purchasers responded to this question, but not necessarily for every type of competition or every specified range of sawblade diameter; of the responding purchasers, eight were U.S. diamond sawblade producers. The total number of responding firms are shown in tables III-4 through III-7, with a separate table for each of the four specified types of competition and the associated price effects, by sawblade diameter category and reported competition level for all responding firms, for responding firms excluding the responding U.S. diamond sawblade producers, and for the responding U.S. diamond sawblade producers.

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<sup>3</sup> Purchaser supplemental response, question 4.



Table III-4

**Diamond sawblades: Extent of competition among U.S. diamond sawblade producers and extent to which such competition led to lower prices of the U.S.-produced diamond sawblades, based on individual firm experience**

Extent of competition among U.S. diamond sawblade producers					
Diameter and purchaser group	Number of purchaser responses				
	A	F	S	N	O
<b>≤ 10 inches:</b>					
All responding firms	3	2	8	15	14
Responding firms excluding responding DSB producers	1	1	6	12	14
Responding DSB producers	2	1	2	3	-
<b>&gt; 10 but ≤ 14 inches:</b>					
All responding firms	3	4	8	15	12
Responding firms excluding responding DSB producers	1	3	5	13	12
Responding DSB producers	2	1	3	2	-
<b>&gt; 14 inches:</b>					
All responding firms	2	6	9	12	13
Responding firms excluding responding DSB producers	1	4	6	10	13
Responding DSB producers	1	2	3	2	-
<b>Extent that such competition led to lower prices of the U.S.-produced diamond sawblades</b>					
<b>≤ 10 inches:</b>					
All responding firms	2	1	8	17	14
Responding firms excluding responding DSB producers	2	1	5	12	14
Responding DSB producers	-	-	3	5	-
<b>&gt; 10 but ≤ 14 inches:</b>					
All responding firms	2	1	10	16	13
Responding firms excluding responding DSB producers	2	1	6	12	13
Responding DSB producers	-	-	4	4	-
<b>&gt; 14 inches:</b>					
All responding firms	2	2	10	12	16
Responding firms excluding responding DSB producers	2	2	5	9	16
Responding DSB producers	-	-	5	3	-
Note.--A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity.					
Source: Compiled from purchaser supplemental responses.					

Table III-5

**Diamond sawblades: Extent of competition between U.S. diamond sawblade producers and suppliers of *Chinese* diamond sawblades and extent to which such competition led to lower prices of the U.S.-produced diamond sawblades, based on individual firm experience**

Extent of competition between U.S. diamond sawblade producers and suppliers of <i>Chinese</i> diamond sawblades					
Diameter and purchaser group	Number of purchaser responses				
	A	F	S	N	O
<b>≤ 10 inches:</b>					
All responding firms	7	2	4	14	16
Responding firms excluding responding DSB producers	2	1	4	12	16
Responding DSB producers	5	1	-	2	-
<b>&gt; 10 but ≤ 14 inches:</b>					
All responding firms	10	-	5	14	14
Responding firms excluding responding DSB producers	4	-	5	12	14
Responding DSB producers	6	-	-	2	-
<b>&gt; 14 inches:</b>					
All responding firms	9	1	9	10	14
Responding firms excluding responding DSB producers	4	1	7	9	14
Responding DSB producers	5	-	2	1	-
<b>Extent that such competition led to lower prices of the U.S.-produced diamond sawblades</b>					
<b>≤ 10 inches:</b>					
All responding firms	9	2	5	11	16
Responding firms excluding responding DSB producers	3	1	5	10	16
Responding DSB producers	6	1	-	1	-
<b>&gt; 10 but ≤ 14 inches:</b>					
All responding firms	11	-	6	12	14
Responding firms excluding responding DSB producers	4	-	6	11	14
Responding DSB producers	7	-	-	1	-
<b>&gt; 14 inches:</b>					
All responding firms	10	2	5	10	16
Responding firms excluding responding DSB producers	4	1	5	9	16
Responding DSB producers	6	1	-	1	-
Note.--A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity. Source: Compiled from purchaser supplemental responses.					

Table III-6

**Diamond sawblades: Extent of competition between U.S. diamond sawblade producers and suppliers of *Korean* diamond sawblades and extent to which such competition led to lower prices of the U.S.-produced diamond sawblades, based on individual firm experience**

Extent of competition between U.S. diamond sawblade producers and suppliers of <i>Korean</i> diamond sawblades					
Diameter and purchaser group	Number of purchaser responses				
	A	F	S	N	O
<b>≤ 10 inches:</b>					
All responding firms	7	3	6	13	14
Responding firms excluding responding DSB producers	2	2	6	11	14
Responding DSB producers	5	1	-	2	-
<b>&gt; 10 but ≤ 14 inches:</b>					
All responding firms	10	2	5	12	14
Responding firms excluding responding DSB producers	4	2	5	10	14
Responding DSB producers	6	-	-	2	-
<b>&gt; 14 inches:</b>					
All responding firms	9	3	9	9	13
Responding firms excluding responding DSB producers	4	3	7	8	13
Responding DSB producers	5	-	2	1	-
<b>Extent that such competition led to lower prices of the U.S.-produced diamond sawblades</b>					
<b>≤ 10 inches:</b>					
All responding firms	8	3	5	13	14
Responding firms excluding responding DSB producers	2	2	5	12	14
Responding DSB producers	6	1	-	1	-
<b>&gt; 10 but ≤ 14 inches:</b>					
All responding firms	10	1	7	12	13
Responding firms excluding responding DSB producers	3	1	7	11	13
Responding DSB producers	7	-	-	1	-
<b>&gt; 14 inches:</b>					
All responding firms	9	3	7	9	15
Responding firms excluding responding DSB producers	3	2	7	8	15
Responding DSB producers	6	1	-	1	-
Note.--A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity. Source: Compiled from purchaser supplemental responses.					

Table III-7

**Diamond sawblades: Extent of competition between U.S. diamond sawblade producers and suppliers of *nonsubject* diamond sawblades and extent to which such competition led to lower prices of the U.S.-produced diamond sawblades, based on individual firm experience**

Extent of competition between U.S. diamond sawblade producers and suppliers of <i>nonsubject</i> diamond sawblades					
Diameter and purchaser group	Number of purchaser responses				
	A	F	S	N	O
<b>≤ 10 inches:</b>					
All responding firms	-	1	6	16	20
Responding firms excluding responding DSB producers	-	1	6	9	19
Responding DSB producers	-	-	-	7	1
<b>&gt; 10 but ≤ 14 inches:</b>					
All responding firms	-	-	7	18	18
Responding firms excluding responding DSB producers	-	-	7	11	17
Responding DSB producers	-	-	-	7	1
<b>&gt; 14 inches:</b>					
All responding firms	-	-	8	16	19
Responding firms excluding responding DSB producers	-	-	7	10	18
Responding DSB producers	-	-	1	6	1
<b>Extent that such competition led to lower prices of the U.S.-produced diamond sawblades</b>					
<b>≤ 10 inches:</b>					
All responding firms	2	-	5	15	20
Responding firms excluding responding DSB producers	1	-	5	11	17
Responding DSB producers	1	-	-	4	3
<b>&gt; 10 but ≤ 14 inches:</b>					
All responding firms	1	-	6	16	20
Responding firms excluding responding DSB producers	-	-	6	12	17
Responding DSB producers	1	-	-	4	3
<b>&gt; 14 inches:</b>					
All responding firms	1	-	5	15	22
Responding firms excluding responding DSB producers	-	-	5	11	19
Responding DSB producers	1	-	-	4	3
Note.--A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity. Source: Compiled from purchaser supplemental responses.					

**APPENDIX A**

***FEDERAL REGISTER NOTICE***



review the subject ID. The investigation is hereby terminated. This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.41(a) and 210.42(h)(3) of the Commission's Rules of Practice and Procedure (19 CFR 210.41(a), 210.42(h)(3)).

By order of the Commission.

Issued: March 25, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-6436 Filed 3-28-08; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-641]

### In the Matter of Certain Variable Speed Wind Turbines and Components Thereof; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 27, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of General Electric Company of Fairfield, Connecticut. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain variable speed wind turbines and components thereof that infringe certain claims of U.S. Patent Nos. 5,083,039 and 6,921,985. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access

to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2571.

**AUTHORITY:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on March 25, 2008, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation is instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain variable speed wind turbines and components thereof that infringe one or more of claims 104 and 121-125 of U.S. Patent No. 5,083,039 and claims 1-12, 15-18, and 21-28 of U.S. Patent No. 6,921,985, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—General Electric Company, 3135 Easton Turnpike, Fairfield, Connecticut 06828-0001.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Mitsubishi Heavy Industries, Ltd., 16-5 Konan 2-Chome, Minato-ku, Tokyo 1088215, Japan; Mitsubishi Heavy Industries America, Inc., Headquarters, 630 Fifth Avenue, Suite 3155, New York, New York 10111; Mitsubishi Power Systems, Inc., 100 Colonial Center Parkway, Lake Mary, Florida 32746.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW.,

Room 401Q, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Carl C. Charneski is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist orders or both directed against the respondent.

By order of the Commission.

Issued: March 25, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-6496 Filed 3-28-08; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1092 and 1093 (Final) (Remand)]

### Diamond Sawblades and Parts Thereof From China and Korea

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of remand proceedings.

**SUMMARY:** The U.S. International Trade Commission ("Commission") hereby gives notice of the court-ordered remand of its final determinations in the antidumping investigation Nos. 731-TA-1092-1093 concerning diamond sawblades and parts thereof from China and Korea. For further information concerning the conduct of this

proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

**DATES:** *Effective Date:* March 24, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Douglas Corkran, Office of Investigations, telephone 202-205-3057, or Charles St. Charles, Office of General Counsel, telephone 202-205-2782, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record of investigation Nos. 731-TA-1092 and 1093 may be viewed on the Commission's electronic docket ("EDIS") at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.**—In July 2006, the Commission determined that an industry in the United States was not materially injured or threatened with material injury by reason of imports of diamond sawblades and parts thereof from China and Korea that are sold in the United States at less than fair value. The Commission's determinations were appealed to the Court of International Trade ("CIT" or "Court"). On February 6, 2008, the Court issued a decision remanding the matter to the Commission for further proceedings consistent with that opinion. *Diamond Sawblade Manufacturers v. United States*, Slip Op. 08-18 (Ct. Int'l Trade, Feb. 6, 2008). In its opinion, the Court found that the Commission had not provided adequate explanation or substantial evidentiary support for certain of its findings. The Court instructed the Commission to provide further explanation of its finding that there was limited competition between the subject imports from China and Korea and the domestic like product during the period of investigation, and to provide further explanation of its volume, price, impact, and threat findings, to the extent they were based on the Commission's limited competition finding. The Court also instructed the Commission to provide further explanation of certain aspects of its finding that there was not a

correlation between domestic producers' price movements and prices for the subject imports.

**Participation in the proceeding.**—Only those persons who were interested parties and parties to the proceeding in the investigations and were also parties to the action before the CIT may participate in the remand proceeding. Such persons need not make any additional filings with the Commission to participate in the remand proceeding. Business proprietary information ("BPI") referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the investigations.

**Written submissions.**—The Commission is reopening the record for the limited purpose of collecting data pertinent to its analysis of the extent to which competition between subject diamond sawblade imports and the domestic like product was or was not limited during the period of investigation by differences in product and customer types. The Commission will permit the parties to file comments addressing the new information obtained by the Commission on remand and the specific issues that are the subject of the CIT's remand instructions. The parties may not submit any new factual information in their comments; nor may they raise issues that are not the subject of the remand instructions. Any such comments must be filed with the Commission no later than April 18, 2008, and must be no more than twenty (20) double-spaced, single-sided pages of textual material. The Commission will not hold a hearing on remand.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A

through E (19 CFR Part 201), and part 207, subpart A (19 CFR Part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: March 24, 2008.

**William R. Bishop,**

*Acting Secretary to the Commission.*

[FR Doc. E8-6302 Filed 3-28-08; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701-TA-454; 731-TA-1144 (Preliminary)]**

### Welded Stainless Steel Pressure Pipe From China

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured,<sup>2</sup> or threatened with material injury<sup>3</sup> by reason of imports from China of welded stainless steel pressure pipe, provided for in subheading 7306.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary

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

<sup>2</sup> Commissioner Charlotte R. Lane, Commissioner Irving A. Williamson, and Commissioner Dean A. Pinkert determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of welded stainless steel pressure pipe from China.

<sup>3</sup> Chairman Daniel R. Pearson, Vice Chairman Shara L. Aranoff, and Commissioner Deanna Tanner Okun determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of welded stainless steel pressure pipe from China.