

UNITED STATES INTERNATIONAL TRADE COMMISSION

**CERTAIN BRAKE DRUMS AND ROTORS FROM CHINA**

Investigation No. TA-421-3

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3622, August 2003)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

## Investigation No. TA-421-3

### CERTAIN BRAKE DRUMS AND ROTORS FROM CHINA

#### DETERMINATION

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,<sup>1</sup> that certain brake drums and rotors<sup>2</sup> from the People's Republic of China are not being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

#### BACKGROUND

Following receipt of a petition, as amended, filed on June 6, 2003, on behalf of the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers, the Commission instituted investigation No. TA-421-3, *Certain Brake Drums and Rotors from China*, under section 421 of the Trade Act of 1974 to determine whether certain brake drums and rotors from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's website ([www.usitc.gov](http://www.usitc.gov)) and by publishing the notice in the *Federal Register* of June 16, 2003 (68 FR 35702). The hearing was held on July 18, 2003 in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup>19 U.S.C. § 2451(b)(1).

<sup>2</sup> For purposes of this investigation, aftermarket brake drums and aftermarket brake rotors are defined as certain brake drums and certain brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake drums and brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished aftermarket brake drums and finished aftermarket brake rotors are those that are ready for sale and installation without any further operations. Semifinished aftermarket brake drums and semifinished aftermarket brake rotors are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished aftermarket brake drums and unfinished aftermarket brake rotors are those which have undergone some grinding or turning.

The brake drums and brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer which produces vehicles sold in the United States (e.g., General Motors, Ford, DaimlerChrysler, Honda, Toyota, Volvo). Brake drums and brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake drums and composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.

The imported products are provided for in subheading 8708.39.50 of the HTS at a general duty rate of 2.5 percent ad valorem. Although the HTS category is provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

# VIEWS OF THE COMMISSION ON MARKET DISRUPTION

## I. INTRODUCTION

### A. Determination

Pursuant to section 421(b)(1) of the Trade Act of 1974 (19 U.S.C. § 2451(b)(1)) and on the basis of the information obtained in this investigation, the Commission determines that certain (aftermarket) brake drums and certain (aftermarket) brake rotors (aftermarket brake drums and rotors) from China are not being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of aftermarket brake drums and the domestic producers of aftermarket brake rotors.

### B. Summary

We find that the record before the Commission does not indicate that rapidly increasing imports of aftermarket brake drums and aftermarket brake rotors from China are a significant cause of market disruption because the respective domestic industries are neither materially injured nor threatened with material injury. Both industries generally showed healthy profits throughout the period examined, and their profitability improved toward the end of the period. Prices for representative products were higher at the end of the period examined than at the beginning. As for the domestic industry producing aftermarket brake drums, while the indicators relating to the condition of the industry fell early in the period examined, during the more recent and relevant time period, they have been mixed but relatively steady. Likewise, as for the domestic industry producing aftermarket brake rotors, the various indicators fell early in the period examined, but they have been more positive in the recent period. More specifically, any idling or closing of facilities occurred early in the period and were unrelated to subject imports; both industries have shown general improvements in profitability since 2000 with 2001 being the low point and 2002 improving significantly; and while both industries showed declining employment early in the period, these declines have minimized and, at least for rotors, productivity improved. Moreover, we also do not find that the domestic aftermarket brake drums and brake rotors industries are threatened with material injury because the relevant indicators do not show evidence of a recent and continuing deterioration in the condition of the domestic industry. Rather, the indicators, particularly for 2002, show the brake drum industry's condition to be relatively stable and the brake rotor industry's condition to be relatively stable and even improving.

While we are not required to make findings with respect to causation having made a negative material injury or threat determination, we also would have found that rapidly increasing imports are not a significant cause of the claimed material injury or threat of material injury.<sup>1</sup> This is an expanding market. Demand for aftermarket brake drums and rotors is derived exclusively from demand for replacement of worn brake drums and rotors in motor vehicles that are beyond their warranty period. Over the course of the period examined, demand, as measured by U.S. apparent consumption, for these products, has increased (\*\*\*) percent on an annual basis for brake drums and (\*\*\*) percent for brake rotors). This demand is affected by several factors including the number and age distribution of vehicles on the road, which has increased modestly; the average number of miles driven per vehicle, which has been stable; the number of rotors per vehicle for vehicles entering the service mileage stage, which has increased

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<sup>1</sup>Commissioner Miller, finding no material injury or threat of material injury, and hence no market disruption or threat of market disruption, does not proceed to an analysis of causation and does not join in this paragraph or the following two paragraphs on causation.

significantly; and the shift to smaller and lighter brake drums and rotors, which must be replaced more frequently than the larger, heavier earlier products. Demand also is affected to the extent that low-cost aftermarket brake drums and rotors substitute for machining of worn brake drums or rotors. While the domestic industries' share of the market may have declined over the period, it did so only because subject imports captured an expanding share of the expanding market. It is not related in any significant way to domestic producers losing shipment volume in the recent period.

Competition is attenuated between the respective domestic industry's premium-line products and the subject and non-subject economy-line products. U.S. producers typically market their domestically produced aftermarket brake drums and rotors as premium-line products under a brand name, and market their purchased Chinese and imported non-subject (sourced from other countries) aftermarket brake drums and rotors as economy-line products. The pricing data show that the price of the domestic premium-line products has increased or remained steady and the gap between the domestic price and the Chinese economy-line price has remained fairly stable. Because of attenuated competition between the domestic product and the Chinese product, subject imports have had little, if any, impact on prices of domestic aftermarket brake drums and rotors.

Finally, two large domestic producers testified that they would continue to produce aftermarket brake drums and rotors domestically with the same cost structure because, absent relief, they would not invest to make their products more cost competitive with imports from China.<sup>2</sup> Until the industry alters its cost structure, it cannot produce domestically an economy-line of aftermarket brake drums and rotors. Thus, domestic producers to a large degree regard the imported Chinese and other imported non-subject economy-line products as complementary to their domestic premium lines and they use imports, whether from China or from other sources, to compete in the economy-line segment of the market, which domestic producers do not, and generally, cannot supply domestically.

### **C. Background and scope of investigation**

The Commission instituted this investigation effective June 6, 2003, following receipt of a petition filed by the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.<sup>3</sup> The petition alleged that aftermarket brake drums and rotors from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.<sup>4</sup>

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<sup>2</sup>If they could alter their cost structure, they indicated they would do so only if they did not compromise their current quality standards.

<sup>3</sup>The Coalition is an unincorporated association of U.S. producers of aftermarket brake drums and rotors. Its current members are Dana Corp. (Brake and Chassis Division)/Brake Parts, Inc. (Dana), Federal Mogul Corp. (Federal Mogul), and Thyssen Krupp Waupaca/Waupaca Foundry, Inc. (Waupaca).

<sup>4</sup>The Commission notes that incomplete and late responses by petitioning domestic producers to Commission data requests substantially hindered the Commission's task of compiling a record in this investigation. The petitioner and other domestic producers failed prior to the Commission's hearing to provide complete data or to respond satisfactorily to Staff questions. The domestic industry requesting relief is the only party in an investigation that can begin the task of compiling data before the case is filed. While these difficulties in compiling a record were not a consideration in the Commission's decision in this case, and the Commission's determination is based entirely on the information in the record at the time of the vote, for purposes of future investigations, the Commission reminds petitioners and other parties of the need to assist the Commission in its investigations by being forthcoming and timely in their responses to requests for information, particularly in a section 421 investigation, given its compressed schedule. See 19 U.S.C. § 2451(e).

The imported aftermarket brake drums and rotors from China that are the subject of this investigation consist of the following:

certain brake drums and certain brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches and in weight from 8 to 45 pounds. The size parameters (weight and dimension) of the brake drums and brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under “one ton and a half,” and light trucks designated as “one ton and a half”. . . .

The brake drums and brake rotors are for motor vehicles, and do not contain in the casting a logo of an OEM which produces vehicles sold in the United States (e.g., General Motors, Ford, DaimlerChrysler, Honda, Toyota, Volvo). Brake drums and brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States.<sup>5</sup>

Brake drums and rotors are critical elements in two different motor vehicle braking systems. Brake drums are bowl-shaped parts used in drum brake systems found primarily on rear wheels.<sup>6</sup> Brake rotors, on the other hand, are components solely of disc braking systems.<sup>7</sup> Disc brakes generally have replaced brake drums on nearly all front wheels of passenger cars because of their simpler design and lighter weight.<sup>8</sup> Disc brakes are generally more efficient in transferring the heat from braking action, which is particularly important for front-wheel-drive vehicles.<sup>9</sup> The increased number of front-wheel-drive motor vehicles in the United States has contributed to greater demand for rotors, as has a design shift to a disc braking system using four, rather than two, rotors.<sup>10</sup> Brake drums and brake rotors have individual design characteristics that limit their use to specific models and model years of motor vehicles.

Brake drums and rotors are sold as original equipment to automobile manufacturers and as replacement parts in the “aftermarket.” Those sold as original equipment manufacturer (OEM) products for use in new cars or for warranty replacement must meet the strict specifications of the automobile manufacturer, while those sold as non-warranty replacement parts do not.<sup>11</sup> As a result, the aftermarket

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<sup>5</sup>Confidential Staff Report (CR) at I-1, n. 3; Public Staff Report (PR) at I-1, n.3.

<sup>6</sup>CR at I-7, 10; PR at I-6-8. The drums enclose mechanical parts, which typically include brake shoes, shoe-retracting springs, certain assemblies, and parking brake parts. When the brake pedal is applied, hydraulic pressure at the wheel cylinder increases and overcomes the pressure of the retracting springs, which allows the brake shoes to push against the brake drum to slow or stop the vehicle. Id.

<sup>7</sup>CR at I-10; PR at I-8. The rotor is a circular rotational component attached to the wheel hub. A hydraulic caliper and disc brake pads are mounted on an adapter that straddles the rotor. The hydraulic braking process is the same as that of drum brakes, but in the case of disc brakes, the calipers force the braking pads against the rotating disc in a clamping action to slow or stop the vehicle. CR at I-7-8; PR at I-6-7.

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

<sup>9</sup>CR at I-8; PR at I-6. This is because the greater portion of vehicle weight and braking pressure is applied to the front wheel brake assemblies. Id.

<sup>10</sup>CR at I-8; PR at I-6.

<sup>11</sup>CR at I-9-10; PR at I-7-8.

product cannot be used in applications that require the OEM product.<sup>12</sup> The imported and domestic aftermarket brake drums and rotors are interchangeable and can be used on the same motor vehicles.<sup>13</sup>

#### **D. Statutory framework**

The determination that the Commission must make is set out in section 421(b)(1)<sup>14</sup> of the Trade Act, which states in part that the Commission, upon the filing of a petition or receipt of a request or resolution, shall promptly conduct an investigation –

to determine whether products of the People’s Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

This standard is satisfied if the following conditions are met –

- (1) there is market disruption or the threat of market disruption to domestic producers of the like or directly competitive products; and
- (2) imports from China are in such increased quantities or under such conditions as to cause or threaten to cause such market disruption.

The term “market disruption” is defined in section 421(c)(1)<sup>15</sup> to exist –

whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

Thus, in order to determine that market disruption exists, the Commission must find that each of three conditions is satisfied –

- (1) imports of the subject product from China are increasing rapidly, either absolutely or relatively;
- (2) the domestic industry is materially injured, or threatened with material injury; and
- (3) such rapidly increasing imports are a significant cause of the material injury or the threat of material injury.<sup>16</sup>

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<sup>12</sup>CR at I-11; PR at I-8. Imports of OEM brake drums and rotors are not included within the scope of this investigation.

<sup>13</sup>CR at I-15-16; PR at I-12.

<sup>14</sup>19 U.S.C. § 2451(b)(1).

<sup>15</sup>19 U.S.C. § 2451(c)(1).

<sup>16</sup>Section 421(c)(2) further states that the term “significant cause” refers “to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.” 19 U.S.C. § 2451(c)(2).

If any one of these three conditions is not satisfied, then market disruption cannot be found to exist and the Commission must reach a negative determination.

Section 421(d)<sup>17</sup> provides that the Commission, in determining whether market disruption exists, shall consider objective factors, including –

- (1) the volume of imports of the product which is the subject of the investigation;
- (2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and
- (3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.

Section 421(d) further provides that the presence or absence of any of these three factors “is not necessarily dispositive of whether market disruption exists.”

## II. WHETHER MARKET DISRUPTION EXISTS

### A. Domestic industry

Section 421(c) defines the domestic industry in terms of the producers of “like or directly competitive” products. In making determinations under section 421(c), the Commission follows a two-step practice of first determining what constitutes the product like or directly competitive with the imports subject to the investigation, and then identifying who produces it (the domestic industry).<sup>18</sup>

#### 1. Like or directly competitive domestic article

##### (a) *The statutory framework and Commission practice*

When assessing what constitutes the like or directly competitive product, the Commission applies the definition of “like or directly competitive” in the legislative history of what is now section 202 of the Trade Act<sup>19</sup> and considers such factors as (1) the physical properties of the article, (2) its customs treatment, (3) its manufacturing process (i.e., where and how it is made), (4) its uses, and (5) the marketing channels through which the product is sold.<sup>20</sup> If the Commission finds that there is domestic production of a like product, it has not found it necessary to look further and determine whether there are also domestic producers of directly competitive products. The Commission considers the decision regarding the like or directly competitive product to be a factual determination.<sup>21</sup>

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<sup>17</sup>19 U.S.C. § 2451(d).

<sup>18</sup>See e.g., *Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 5.

<sup>19</sup>*Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 5; *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 5-6.

<sup>20</sup>*Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 5; *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 5-6.

<sup>21</sup>*Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 5; *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 5-6.

Once the Commission has identified the like or directly competitive goods, it then determines whether there are clear dividing lines between the domestic goods, and thus whether there are one or several domestic products like (or directly competitive with) the imported goods.<sup>22</sup>

(b) *Arguments of the parties*

The parties in this investigation disagree with respect to the definition of the like or directly competitive product. Petitioner asserts that the domestic aftermarket brake drums and rotors are “like” the imported Chinese brake drums and rotors in that both are manufactured to fit the same specific car or light truck models; are interchangeable; are sold through the same marketing channels;<sup>23</sup> and compete head-to-head in the domestic market.<sup>24</sup> Petitioner also asserts that domestic aftermarket brake drums and aftermarket brake rotors are two distinct “like” products, and cites differences in physical properties, lack of interchangeability, and different producer perceptions between aftermarket brake drums and aftermarket brake rotors.<sup>25</sup> However, petitioner asserts that domestically produced OEM brake drums and brake rotors are not like or directly competitive with the imported brake drums and rotors from China, citing differences in physical properties and production processes, facilities, and workers, differences in channels of distribution, lack of interchangeability in OEM applications, and differences in price and customer perception.<sup>26</sup>

The Chinese respondents assert that the imported and domestic aftermarket products are distinct products – that the imported Chinese goods are an “economy-line” product, while the domestically

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<sup>22</sup>*Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 5; *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 5-6.

<sup>23</sup>Petitioner asserts that the Chinese producers “simply copy” the domestic aftermarket models; that the imported and domestic products are interchangeable in that a car or light truck built to use a particular rotor (or drum) may use a Chinese or domestic rotor (or drum) as an aftermarket replacement; and both the imported and domestic products are sold through the same marketing channels, mainly to warehouse distributors. Petitioner’s pre-hearing brief at 6. Petitioner asserts that the domestic “like” product includes domestic OES (original equipment supply) brake drums and rotors sold in the non-warranty replacement market through OEM dealers and others, because like other aftermarket products they do not have to meet the more rigid OEM standards. Petitioner’s post-hearing brief at 21. Petitioner acknowledges, however, that there are “minor” differences between the Chinese and U.S.-made brake drums and rotors, but asserts that such differences are perceived only by the manufacturers. Petitioner said the distinctions relate to metallurgical and performance characteristics of the rotors and drums. Petitioner said that the same differences may be found between U.S.-made premium rotors or drums made by different manufacturers. Petitioner also attributes statements in Dana’s sales literature claiming that its product has superior qualities to the “normal business practice” of a manufacturer promoting the qualities of its products and comparing them to the competition. *Id.* at 29-30.

<sup>24</sup>Petitioner’s post-hearing brief at 30.

<sup>25</sup>Petition at 6. Petitioner cites the reasons given by the Commission in its finding of two like products in the 1997 antidumping case on brake drums and rotors from China – “rotors and drums do not operate in the same manner, are physically different, are not interchangeable, and are perceived differently by producers.” Petitioner’s pre-hearing brief at 10, citing *Certain Brake Drums and Rotors from China*, Inv. No. 731-TA-744, USITC Pub. 3035 (Apr. 1997), at 4.

<sup>26</sup>More specifically, petitioner asserts that OEM brake drums and rotors are made to more rigid specifications than aftermarket brake drums and rotors, and include the OEM name or logo cast into the part; are sold primarily to automobile manufacturers; are not interchangeable (non-OEM products cannot be used as original equipment or as warranty replacements); are produced by different production processes, in different facilities, by different workers (on an automated transfer line to obtain more efficient large-volume runs, using more specialized equipment); are much higher priced; and are perceived by customers as a different product and as being of higher quality. Petition at 7-9, and petitioner’s pre-hearing brief at 8-9.



produced aftermarket product is a “premium-line” product. They assert that the evidence points to clear dividing lines between the imported economy-line and domestically produced premium-line products based on physical characteristics, location of manufacture, and marketing channels and methods,<sup>27</sup> and that the domestic premium products compete more directly with OES products than with Chinese imports for non-warranty replacement sales.<sup>28</sup> They state that substantial evidence exists for the Commission to dismiss the petition on the ground that there is no domestic industry producing a like or directly competitive product because there is no domestic production of the economy-line product.<sup>29</sup> The Chinese respondents do not dispute that aftermarket brake drums and aftermarket brake rotors are two distinct products.

Respondent Qualis Automotive also cites differences in physical properties, uses, and marketing between imported “economy-line” and domestic “premium-line” aftermarket brake drums and rotors, and asserts that they are distinct products.<sup>30</sup> Qualis also asserts that imported Chinese economy line products compete primarily with a service, the turning of drums and rotors, and not with domestic premium products.<sup>31</sup>

(c) *Analysis*

After considering the factors the Commission traditionally applies (i.e., physical properties, customs treatment, production, processes and facilities, uses, and marketing channels), we find that domestically produced aftermarket brake drums and rotors are like the imported Chinese brake drums and rotors described in the Notice of Investigation.<sup>32</sup> We further find that there are clear dividing lines

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<sup>27</sup>Chinese respondents’ post-hearing brief at 33.

<sup>28</sup>Chinese respondents’ pre-hearing brief at 36.

<sup>29</sup>Chinese respondents’ post-hearing brief at 33.

<sup>30</sup>Qualis’ post-hearing brief at Q-2-7. Qualis asserts that there are three like or directly competitive products: (1) OEM drums and rotors, (2) aftermarket premium drums and rotors, and (3) aftermarket economy drums and rotors. Qualis asserts that OEM drums and rotors are distinct products and are not like aftermarket brake drums and rotors products for reasons similar to those given by petitioner. Qualis also asserts that premium and economy products are separate like or directly competitive products – that premium and economy products have different metallurgical properties and tolerances, and premium products last longer; that premium and economy products are not generally interchangeable (in particular, that economy-line products cannot be sold as premium-line); that there are some differences in marketing channels (premium-line and economy-line drums and rotors would not be stocked together, retail stores only stock economy, economy products are marketed as inferior to premium and at a lower price); and that economy drums and rotors are not produced in the United States. *Id.*

<sup>31</sup>Qualis’ pre-hearing brief at 24.

<sup>32</sup>We find that domestic OEM brake drums and rotors are not like or directly competitive with the imported subject Chinese product. OEM brake drums and rotors are not included in the scope of this investigation, and there were no known imports of the OEM product from China during the period examined. In addition, we note that none of the parties argued that the domestic OEM product was like or directly competitive with the imported subject Chinese aftermarket product. We find that there is a clear dividing line between OEM brake drums and rotors and aftermarket brake drums and rotors. As in *Garment Hangers*, in which we found that steel wire garment hangers were a distinct product from other types of hangers, such as wooden, plastic, and aluminum hangers, the facts here show that OEM and aftermarket brake drums and aftermarket brake rotors are distinct products. Although used to perform the same function as aftermarket brake drums and rotors, OEM brake parts and rotors have somewhat different physical properties (for example, they typically are machined to more exact tolerances, have different rotor finishes and different metallurgical composition, meet different structural and design specifications, and are identified by a logo or part number), are typically produced by a different production process (on automated transfer

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between aftermarket brake drums and aftermarket brake rotors, and that there are two domestic products “like” the subject imported product – aftermarket brake drums, and aftermarket brake rotors. We also find that the various types and models of aftermarket brake drums are part of a continuum, with no clear dividing line between them, and similarly, that the various types and models of aftermarket brake rotors are part of a continuum, with no clear dividing line between them.

We begin our analysis by examining the imported product or products. Our Notice of Investigation describes the imported product as follows:

Aftermarket brake drums and aftermarket brake rotors are defined as certain brake drums and certain brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake drums and brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under “one ton and a half,” and light trucks designated as “one ton and a half.”

Finished aftermarket brake drums and finished aftermarket brake rotors are those that are ready for sale and installation without any further operations. Semifinished aftermarket brake drums and semifinished aftermarket brake rotors are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished aftermarket brake drums and unfinished aftermarket brake rotors are those which have undergone some grinding or turning.

The brake drums and brake rotors are for motor vehicles, and do not contain in the casting a logo of an OEM which produces vehicles sold in the United States (e.g., General Motors, Ford, DaimlerChrysler, Honda, Toyota, Volvo). Brake drums and brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake drums and composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.

The imported products are provided for in subheading 8708.39.50 of the Harmonized Tariff Schedule of the United States (HTS) at a general duty rate of 2.5 percent ad valorem. Although the HTS category is provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

*Physical properties.* We find that domestic aftermarket brake drums and rotors have substantially the same physical properties as the imported aftermarket brake drums and rotors from China. The

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<sup>32</sup>(...continued)

lines) and by different firms, are generally not used interchangeably, and are sold through different marketing channels (generally directly to manufacturers of new automobiles). CR at I-9, 11, 14-15; PR at I-8-11. Although we are not bound by prior determinations, particularly those made under different statutory authority, we note that our domestic like product finding here is consistent with the Commission’s finding in the recent Title VII investigation *Certain Brake Drums and Rotors from China*, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (April 1997) at 4-9.

imported and domestic products are made of the same materials,<sup>33</sup> and look virtually the same.<sup>34</sup> The imported and domestic products each meet the fit and function criteria for use as parts in the U.S. replacement market, and there are no standards or certification requirements that differentiate the imported and domestic aftermarket products.<sup>35</sup> The imported and domestic aftermarket products are also interchangeable,<sup>36</sup> in that imported and domestic brake rotors designed for use on a specific vehicle model can be used interchangeably on the same vehicle. The evidence with respect to performance is mixed. Although there is evidence that the domestic aftermarket brake drums and rotors tend to be machined to higher tolerances and may wear better for this reason,<sup>37</sup> there is also evidence that at least some of the imported Chinese products perform as well as North American made products.<sup>38</sup>

*Manufacturing process.* The evidence indicates that both the imported aftermarket brake drums and rotors and domestic aftermarket brake drums and domestic aftermarket brake rotors are produced in the same manner.<sup>39</sup> Aftermarket brake drums and rotors are produced in two principal stages, casting and machining, with the casting step accounting for the majority of the value of the finished brake drum or rotor.<sup>40</sup> The principal alleged difference in the manufacturing process between the imported and domestic products is that the domestic product is machined to higher tolerances. Production of aftermarket brake drums and brake rotors is characterized by relatively short production runs and quick changeover times to facilitate quick adjustment to respond to customer demands.<sup>41</sup>

*Uses.* Although the imported and domestic products to some degree sell in different segments of the U.S. market,<sup>42</sup> the imported and domestic aftermarket products have the same uses – as replacement brake drums and replacement brake rotors in the vehicles for which they are designed – and are used interchangeably. This also was confirmed through Commission questionnaire responses. All four responding U.S. purchasers indicated that the U.S.-produced and imported Chinese products were used in

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<sup>33</sup>See, e.g., tr. at 273 (Mr. Fudalla), indicating the imported product is reverse engineered from the domestic product.

<sup>34</sup>CR at I-86-87; PR at I-45-46 (quoting \*\*\*); see also \*\*\* characterization that the average customer would see no difference in appearance between U.S.-produced and imported Chinese products, CR at I-87; PR at I-44.

<sup>35</sup>CR at I-15-16; PR at I-12.

<sup>36</sup>CR at I-89-90; PR at I-45-46 (\*\*\* responding U.S. producers asserted that the U.S.-produced and imported Chinese aftermarket brake drums and rotors were always interchangeable; of 11 responding importers, five asserted that the domestic and imported Chinese products were always interchangeable, five asserted that they were frequently interchangeable, and one asserted that they were sometimes interchangeable).

<sup>37</sup>CR at I-94; PR at I-48 (\*\*\*, a wholesale distributor, reported that it found the imported Chinese economy-line products to vary in the quality of the finish, whereas the domestic premium-line products always have a good finish); (three of four responding purchasers reported that in terms of quality and technical support, the U.S. produced products were superior to the Chinese).

<sup>38</sup>CR at I-85; PR at I-43 (citing \*\*\*); see also CR at I-85-86, citing \*\*\*, that the firm's return rate is the same for U.S. produced and imported Chinese aftermarket brake drums and rotors. *But compare* CR at I-85 and PR at I-43, indicating that \*\*\* regards the imported Chinese products as complements, not substitutes, for the domestic products; CR at I-85 and PR at I-43, indicating that \*\*\* views the Chinese products as having inconsistent quality and regards them as economy-line products.

<sup>39</sup>See, e.g., tr. at 127 (Mr. Easley); 162 (Mr. Button).

<sup>40</sup>CR at I-14; PR at I-10.

<sup>41</sup>CR at I-14-15; PR at I-10-11.

<sup>42</sup>CR at I-16; PR at I-12.

the same applications, although the purchasers indicated that the domestic product is more likely to be available for newer and older model vehicles.<sup>43</sup>

*Marketing channels.* The imported and domestic products are sold largely through the same channels of distribution, to automotive parts/warehouse distributors,<sup>44</sup> which in turn sell to jobbers that in turn sell to retail outlets, garages, and service stations.<sup>45</sup> Service stations and garages, as well as retail brake outlets, install aftermarket brake drums and rotors on a customer's vehicle, while retail outlets such as automotive supply chains sell aftermarket brake drums and rotors for installation by the customer.<sup>46</sup>

*Customs treatment.* Imported aftermarket brake drums and rotors are provided for under the same HTS statistical reporting number.

The principal alleged differences between the imported and domestic products appear to be price (the Chinese product is lower priced) and customer perceptions of quality, with some customers regarding the domestic product as of higher quality.<sup>47</sup>

In view of the above, in particular the similarity in physical properties, uses, and marketing channels for the imported and domestically produced aftermarket products, we find that domestically produced aftermarket brake drums and rotors are "like" the imported aftermarket brake drums and rotors in that they are "substantially identical in inherent or intrinsic characteristics (i.e., materials from which made, appearance, quality, texture, etc.)." The evidence does not support respondents' argument that "premium" and "economy" aftermarket products sold in the U.S. market are distinct products, and that the domestically produced "premium" products are not like or directly competitive with imported Chinese "economy" products. Other than to allege differences in price, customer perceptions, and country of origin, and to make general references to differences in physical characteristics, location of manufacturing, and differences in marketing channels and methods, they do not state where the clear dividing line falls between such premium and economy products other than in terms of the country in which the respective products are produced. This suggests that there is no clear dividing line. Testimony at the hearing indicating a possible middle line of product between economy and premium further suggests that no clear dividing line exists.<sup>48</sup> In sum, the evidence points to a continuum in the marketplace of aftermarket products of varying quality, customer perception, and price, with the imported

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<sup>43</sup>CR at I-94; PR at I-49. *See also* tr. at 266-68 (Mr. Fudalla), indicating that Chinese manufacturers produce 1,000 of 1,400 models; *but compare* tr. at 50 (Mr. Easley), indicating Chinese producers have increased the part numbers offered to 100 percent of the product line that Federal Mogul carries.

<sup>44</sup>CR at I-27; PR at I-17.

<sup>45</sup>CR at I-12; PR at I-9.

<sup>46</sup>CR at I-12; PR at I-9.

<sup>47</sup>CR at I-86; PR at I-44. For example, \*\*\* of \*\*\* cited price as the major difference between the imported and domestic products, but estimated that as much as 25 percent of the U.S. aftermarket brake drum and rotor market may consist of buyers who will purchase the domestic products due to brand-name recognition and the perception of better quality as well as "buy American" preferences. Otherwise, he said, domestic premium-line and imported economy-line aftermarket products compete head to head in a large share of the U.S. market. \*\*\* reported that cost-conscious customers buy the Chinese products, while customers motivated by product longevity and safety buy the U.S.-produced products. CR at I-87; PR at I-44-45.

<sup>48</sup>*See, e.g.,* tr. at 296-300 (Mr. Fudalla). However, respondents characterized this so-called "blended" product as comprising only 5 percent of the market.

Chinese product concentrated in the lower end and the domestic product in the upper end of the market.<sup>49</sup> As the domestic aftermarket products are substantially identical in inherent or intrinsic characteristics to the imported Chinese products, we find them to be “like” the subject imports.<sup>50</sup>

We find that aftermarket brake drums and aftermarket brake rotors are two distinct “like” products. While aftermarket brake drums and aftermarket brake rotors are both used in braking systems, tend to be produced by the same firms in the same plants, and are sold in the same marketing channels, they have different physical properties, are used in different braking systems, and are not interchangeable. Brake drums are bowl-shaped parts and are used in brake drum assemblies found primarily on rear wheels.<sup>51</sup> Brake rotors, on the other hand, are parts of disc brake assemblies and are used in conjunction with brake pads to stop the vehicle.<sup>52</sup> Brake drums cannot be used in conjunction with disc brake braking systems, and brake rotors cannot be used in drum braking systems.

We also find that the various types of aftermarket brake drums (i.e., brake drums designed to be used on a specific model of vehicle) are part of a continuum of aftermarket brake drum products and not several like products, and similarly, that the various types of aftermarket brake rotors are part of a continuum of brake rotor products. The various types of aftermarket brake drums have the same physical attributes (same materials, appearance, and finishing, although some differences to accommodate different vehicles), are produced by the same firms, in the same plants, and on the same equipment (with the exception of some differences in dies and finishing to meet the requirements of a particular model of vehicle), are used for the same end uses by the same end users, and are sold through the same marketing channels. The same is true in the case of aftermarket brake rotors.

In conclusion, in view of the above similarities in physical properties, manufacturing processes, uses, and channels of distribution among the various types of aftermarket brake drums and among the various types of aftermarket brake rotors, and in view of the distinctions between aftermarket brake drums, on the one hand, and aftermarket brake rotors, on the other hand, we find that the two like domestic products are aftermarket brake drums and aftermarket brake rotors.

## **2. The domestic industries**

Neither section 421 nor its legislative history defines the term “domestic industry.” However, the term is defined in other statutory authorities, including section 202 of the Trade Act. Section 202(c)(6)(A)(i) of the Trade Act<sup>53</sup> defines the term “domestic industry” to mean –

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<sup>49</sup>We note that the petitioner included non-warranty aftermarket OES brake drums and rotors in its data. These products are sold in the aftermarket and are distinct from OEM products. Petitioners stated that these parts meet aftermarket and not OEM specifications. CR at I-17 (note 70), I-74; PR at I-12 (note 70), I-37. They generally are priced higher than the premium-line brands of U.S.-produced aftermarket brake drum and rotor producers. CR at I-74. There are no known imports from China of aftermarket non-warranty OES brake drums and rotors. CR and PR, Table 7 (note 1).

<sup>50</sup>Although we disagree with respondents’ arguments that the domestic “premium-line” and imported Chinese “economy-line” aftermarket brake drums and rotors are distinct products and not like or directly competitive with each other, their arguments are considered further in the causation section of these views in the context of whether there is attenuated competition between the domestic and imported products.

<sup>51</sup>CR at I-7; PR at I-6.

<sup>52</sup>CR at I-7-8; PR at I-6-7.

<sup>53</sup>19 U.S.C. § 2252(c)(6)(A)(i).

with respect to an article, the domestic producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article.

In *Garment Hangers* and *Pedestal Actuators*, the Commission, having found domestic production of a like product, found the domestic industry to consist of the domestic firms and workers producing that product.<sup>54</sup> We follow that practice here.

In the current case, the Commission identified five domestic producers of aftermarket brake drums and six domestic producers of aftermarket brake rotors and collected varying degrees of financial and other data from them. We find that the domestic operations of the five firms producing aftermarket brake drums constitute a domestic industry, and the domestic operations of the six firms producing aftermarket brake rotors constitute a separate, second domestic industry.

## **B. Rapidly increasing imports**

**Statutory framework.** The first of the three statutory criteria for finding market disruption requires that the Commission find that imports of a product from China “are increasing rapidly, either absolutely or relatively.” Thus, under the statute the increase must be occurring “rapidly,” in either absolute or relative terms. The statute suggests that the rapid increase should be recent or continuing, as opposed to in the distant past. Section 421 does not otherwise define “rapidly increasing” or the timing or circumstances of the increase.

**Arguments of the parties.** The parties disagree with respect to whether imports are increasing rapidly. Petitioner states that imports from China have increased rapidly in both absolute and relative terms, and highlights in particular the 18.8 percent increase in U.S. imports of aftermarket brake rotors in interim 2003 compared to interim 2002. Petitioner also asserts that a “continuing” increase within the period of investigation meets the statutory test, and that Commission practice in the two previous section 421 cases makes it clear that there is no mandatory requirement in the law that the increase be recent. Petitioner asserts that the increased imports have continued, and that there is no period during the period of investigation that imports from China declined or remained stable. Petitioner also refers to the legislative history of the 1988 amendments to section 406 of the Trade Act (which also has an “increasing rapidly” test) that indicates that increased imports over a two to three-year period may satisfy the test. Petitioner disagrees with Chinese respondents that the Commission should exclude imports by domestic producers in determining whether import volumes are rapidly increasing, and refers to the Commission’s views in *Garment Hangers* in which the Commission concluded it lacked statutory authority to adjust import data to exclude imports by domestic producers.<sup>55</sup>

The Chinese respondents assert that the increasing rapidly test is not met in this case because imports from China in the recent period are increasing “merely at a steady or moderate pace.” They refer to the same legislative history of section 406 as petitioner, and assert that it indicates that imports must have “recently surged” in order to have increased rapidly. Based on this legislative history, they argue

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<sup>54</sup>*Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 9; *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 11.

<sup>55</sup>Petitioner’s post-hearing brief at 14-18.

that the Commission should focus here on imports entering primarily in 2000-2002 and interim 2003.<sup>56</sup> They argue this also would be consistent with Commission practice as well as coincide with the period since China acceded to the WTO (China acceded at the end of 2001); a rapid increase that occurred four or five years back would not be a condition of the current market.<sup>57</sup> Chinese respondents also argue that the rate of increase of subject imports has been declining throughout the period.<sup>58</sup> Finally, Chinese respondents argue that the Commission should exclude from its calculations imports or purchases of imports of the subject product by domestic producers because domestic producers control these imports and do not compete against them.<sup>59</sup> Respondent Qualis makes similar arguments. Qualis states that the greatest single increase of the investigation period was in 1998-1999, almost four years ago. While imports of aftermarket brake drums and rotors from China have increased since then, Qualis argues that they have not increased rapidly, the increase was not much higher than the increase in U.S. consumption of such products, and the increase has been in economy-line products that U.S. producers do not manufacture.<sup>60</sup>

**Analysis.** We first address Chinese respondents' argument that the Commission should exclude from the import numbers for purposes of determining whether imports are increasing rapidly imports or purchases of imports of aftermarket brake drums and rotors from China by U.S. producers. As we stated in *Garment Hangers*, the statute provides no authority for making such an adjustment, and we are unaware of any Commission precedent for doing so, including under sections 201 and 406 of the Trade Act,<sup>61</sup> which also contain increased imports requirements. Section 421(c) of the Trade Act defines market disruption to exist whenever "imports" of products from China are increasing rapidly so as to have certain effects. Under U.S. law, the term "imports" generally refers to merchandise entering the Customs Territory of the United States. The Chinese goods enter the Customs Territory of the United States and therefore are "imports" under the statute, regardless of whether the importer of record is a distributor or a domestic producer of similar goods. However, as we also stated in *Garment Hangers*, we take into account producer imports in deciding whether the other criteria for finding market disruption are met.<sup>62</sup>

In both *Pedestal Actuators* and *Garment Hangers*, we concluded that "the statute suggests that the rapid increase should be recent or continuing, as opposed to in the distant past."<sup>63</sup> Although we do not regard the legislative history of section 406 cited by the parties to be controlling here, since it was not expressly adopted by section 421 or cited in its legislative history, it does not appear to be inconsistent with the conclusions we reached in *Pedestal Actuators* and *Garment Hangers*. References in the legislative history of section 406 to a "steady trend toward higher import levels" and "imports on a rapid upswing" suggest a focus on recent imports and the current situation. With regard to the rapidity of the increase, the legislative history indicates that the test can be met in one of three ways – through a relatively sharp increase when the increase is concentrated in one year, through a steady, less dramatic

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<sup>56</sup>Chinese respondents' post-hearing brief at 7.

<sup>57</sup>Chinese respondents' post-hearing brief at 8-9.

<sup>58</sup>Chinese respondents' post-hearing brief at 9.

<sup>59</sup>Chinese respondents' post-hearing brief at 14-16.

<sup>60</sup>Qualis Automotive pre-hearing brief at 4-5.

<sup>61</sup>*Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 11.

<sup>62</sup>*Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 11.

<sup>63</sup>*Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 12; *Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 10.

increase over a longer period of two to three years, or as a result of a rapid upswing after imports have fluctuated up and down.<sup>64 65</sup>

**Finding.** The facts in this investigation show that imports of aftermarket brake drums from China and aftermarket brake rotors from China are increasing rapidly.

*Aftermarket brake drums.* U.S. imports of aftermarket brake drums from China increased in each year of the period examined, and were higher in interim 2003 than in interim 2002, as measured in actual terms, relative to domestic production, and relative to domestic consumption. While the largest one-year increase in imports, 413,000 units, occurred between the first and second years of the period examined, imports increased by at least 200,000 units in each of the following three years.<sup>66</sup> In actual terms, the volume of imports more than doubled during the period examined, and has increased by nearly 30 percent in the most recent two years.<sup>67</sup> The ratio of subject imports to production (by volume) increased more than \*\*\* (on an annual basis) during the period examined, and by \*\*\* percentage points in the most

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<sup>64</sup>The relevant legislative history of section 406 states as follows –

In applying the term “rapidly”, the ITC should examine whether imports have recently surged over historical levels. In conducting this inquiry, ITC should balance the amount of the increase and the period of time involved. Thus, if the ITC finds that the increase is concentrated in a single year, it should look for a relatively sharp increase. If, on the other hand, the increase has occurred over a 2-3 year period, the longer period will provide a more stable basis for comparison and may show a steady trend toward higher import levels that meets the “rapidly increasing” requirement. Thus, in the latter situation, the increase need not be as sharp or as dramatic as that required over a shorter period. If imports have fluctuated up and down, the fact that imports are on a rapid upswing can satisfy the “rapidly increasing” requirement, even though imports have not reached levels attained in a previous period. If, however, the ITC finds that imports are stable, declining in absolute terms and relative to domestic production, or increasing slowly, the “rapidly increasing” requirement would not be met.

Omnibus Trade and Competitiveness Act of 1988, House Conf. Rep. No. 100-576, 100<sup>th</sup> Congress, 2<sup>nd</sup> Sess., reprinted in 1988 U.S.C.A.A.N. at 1723-24.

<sup>65</sup>Chairman Okun and Commissioner Koplan focus their analysis on the more recent time rather than the beginning of the period of investigation because it is more relevant to the purpose underlying the statute. First, the legislative history to section 421 states that the legislation “implements the anti-surge mechanism established under the U.S.-China Bilateral Trade Agreement.” Second, Congress specifically designed the product specific safeguard to “address concerns about potential increased import competition from China in the future.” U.S. House of Representatives, Committee on Ways and Means, *Permanent Normal Trade Relations with the People’s Republic of China*, H.R. No. 106-632, 106<sup>th</sup> Cong., 2<sup>nd</sup> Sess., at 16, 19 (emphasis added). Chairman Okun and Commissioner Koplan interpret the section 421 legislative history as providing relief only if market disruption occurs or continues after China’s accession to the World Trade Organization (late 2001). At this early stage since China’s WTO accession, they will examine the time period before accession in the context of what has occurred following accession. As China’s accession becomes more distant, this will be less relevant.

<sup>66</sup>U.S. imports of aftermarket brake drums from China, in absolute terms, increased from 882,000 units in 1998 to 1.3 million units in 1999, to 1.6 million units in 2000, to 1.8 million units in 2001, and to 2.1 million units in 2002. Imports were 438,000 units in January-March 2002 (interim 2002), and 521,000 units in the same period of 2003. CR and PR, Table 8.

<sup>67</sup>The volume of subject imports of aftermarket brake drums increased by 134.6 percent in actual terms from 1998 to 2002, and by 25.1 percent between 1999 and 2000, 13.4 percent between 2000 and 2001, and 12.7 percent between 2001 and 2002; imports were 18.8 percent higher in January-March 2003 as compared to the same period of 2002. CR and PR, Table C-1.



recent two years.<sup>68</sup> The ratio of subject imports to apparent U.S. consumption similarly more than \*\*\* (by volume, on an annual basis) during the period examined, and increased by \*\*\* percentage points in the most recent two years.<sup>69</sup>

In sum, imports of aftermarket brake drums from China increased each year under each of the three forms of measurement. Each form of measurement shows subject imports at significantly higher levels in interim 2003 as compared to interim 2002. Accordingly, we find that U.S. imports of aftermarket brake drums from China are increasing rapidly in both actual and relative terms.

*Aftermarket brake rotors.* The quantity of U.S. imports of aftermarket brake rotors, in absolute terms, increased in each year of period examined. In actual terms, subject imports more than doubled between 1998 and 2002, and increased by almost 30 percent in the most recent two years; imports were 18.8 percent higher in interim 2003 than in interim 2002.<sup>70</sup> The ratio of subject imports to domestic production increased more than \*\*\* during the period examined, and by \*\*\* percentage points in the most recent two years.<sup>71</sup> The ratio of subject imports to apparent U.S. consumption (in terms of quantity) also increased by \*\*\* percentage points during the period examined, and by \*\*\* percentage points in the most recent two years.<sup>72</sup>

Thus, imports of aftermarket brake rotors from China increased each year under each of the three forms of measurement. Each form of measurement shows subject imports at significantly higher levels in interim 2003 as compared to interim 2002. Accordingly, we find that U.S. imports of aftermarket brake rotors from China are increasing rapidly in both actual and relative terms.

### C. Material injury or threat

**Statutory criterion.** The second criterion concerns whether the domestic industry is materially injured or threatened with material injury. The criterion is satisfied if we find either material injury or the threat of material injury.

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<sup>68</sup>The ratio of subject imports of aftermarket brake drums to production increased from \*\*\* percent in 1998, to \*\*\* percent in 1999, to \*\*\* percent in 2000, to \*\*\* percent in 2001, and to \*\*\* percent in 2002. The ratio was \*\*\* percent in interim 2002 and \*\*\* percent in interim 2003. CR at I-34; PR at I-18.

<sup>69</sup>The ratio of subject imports of aftermarket brake drums to consumption increased from \*\*\* percent in 1998, to \*\*\* percent in 1999, to \*\*\* percent in 2000, to \*\*\* percent in 2001, and to \*\*\* percent in 2002. The ratio was \*\*\* percent in interim 2002 and \*\*\* percent in interim 2003. CR and PR, Table 26.

<sup>70</sup>U.S. imports of aftermarket brake rotors from China increased from 11.2 million units in 1998 to 16.4 million units in 1999, to 20.6 million units in 2000, to 23.3 million units in 2001, and to 26.3 million units in 2002. Imports were 5.6 million units in January-March 2002 (interim 2002), and 6.6 million units in the same period of 2003. CR and PR, Table C-2. The volume of imports increased by 134.6 percent in actual terms from 1998 to 2002, and by 25.1 percent between 1999 and 2000, 13.4 percent between 2000 and 2001, and 12.7 percent between 2001 and 2002; imports were 18.8 percent higher in January-March 2003 as compared to the same period of 2002. CR and PR, Table C-2.

<sup>71</sup>The ratio of the subject imports of aftermarket brake rotors to production increased from \*\*\* percent in 1998, to \*\*\* percent in 1999, to \*\*\* percent in 2000, to \*\*\* percent in 2001, and to \*\*\* percent in 2002. The ratio was \*\*\* percent in interim 2002 and \*\*\* percent in interim 2003. CR at I-34; PR at I-18.

<sup>72</sup>The ratio of subject imports of aftermarket brake rotors to consumption increased from \*\*\* percent in 1998, to \*\*\* percent in 1999, to \*\*\* percent in 2000, to \*\*\* percent in 2001, and to \*\*\* percent in 2002. The ratio was \*\*\* percent in interim 2002 and \*\*\* percent in interim 2003. CR and PR, Table 26.

Neither section 421 nor its legislative history defines the terms “material injury” or “threat,” identifies economic factors to be considered, or cross-references any definitions, factors, or Commission practice under other statutory authorities to which the Commission might look for instruction. However, the term “material injury” appears in both section 406 of the Trade Act of 1974 and Title VII of the Tariff Act of 1930. Title VII of the Tariff Act defines “material injury” to mean “harm which is not inconsequential, immaterial, or unimportant.”<sup>73</sup> Section 406 does not define “material injury,” but its legislative history contrasts the term with “serious” injury used in section 201 –

the market disruption test is intended to be more easily met than the serious injury tests in section 201. . . . the term ‘material injury’ in section 406 is intended to represent a lesser degree of injury than the term ‘serious injury’ standard employed in section 201.<sup>74</sup>

In the absence of express direction in section 421, the Commission has found that “material injury” in section 421 cases represents a lesser degree of injury than “serious injury” under section 202 of the Trade Act.<sup>75</sup> This lesser degree of injury applies for both “present” injury and “threat” analyses. The Commission also has found it appropriate, in analyzing present material injury, to consider all relevant economic factors that have a bearing on the state of the industry, including the three broad factors in section 202(c)(1)(A) relating to idling of productive facilities, inability of firms to operate at a reasonable level of profitability, and unemployment or underemployment. It also has considered other relevant economic factors, such as production, sales, inventories, capacity and capacity utilization, market share, employment, wages, productivity, profits, capital expenditures, and research and development expenditures. We do not view any single factor as necessarily dispositive, and consider all relevant factors within the context of the relevant business cycle and conditions of competition that are distinctive to the affected industry.

Neither section 421 nor its legislative history defines the term “threat” of material injury, or cross references another definition, such as the statutory definition in section 202(c)(6)(D) of the Trade Act of 1974<sup>76</sup> or in title VII. Section 406 of the Trade Act did not define the term either. In past section 406 investigations, the Commission applied the definition in the 1974 legislative history of section 201, which defined a threat to exist “when serious injury, although not yet existing, is imminent.”<sup>77</sup> Section 202 of the Trade Act was amended in 1994 to add a definition – new section 202(c)(6)(D) defines “threat of serious injury” to mean “serious injury that is clearly imminent.”

In the absence of express direction in section 421, we find it appropriate to apply the definition of “threat” in section 202 of the Trade Act.<sup>78</sup> We also find the factors set out in section 202(c)(1)(B) of

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<sup>73</sup>Section 771(7)(A); 19 U.S.C. § 1677(7)(A).

<sup>74</sup>Trade Act of 1974, Senate Report No. 93-1298, 93<sup>rd</sup> Cong., 2<sup>nd</sup> Sess., *reprinted in* 1974 U.S.C.A.A.N. 7186, 7343-44.

<sup>75</sup>*Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 13. *See also Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 13; and Views of Chairman Okun at 34.

<sup>76</sup>19 U.S.C. § 2252(c)(6)(D).

<sup>77</sup>*See, e.g.*, U.S. House of Representatives, Committee on Ways and Means, *Trade Reform Act of 1973*, H.R. No. 93-571, 93<sup>d</sup> Cong., 1<sup>st</sup> Sess., p. 47.

<sup>78</sup>Having found present injury in the first two section 421 investigations, the majority of the Commissioners (Chairman Okun is the exception) have not had reason to address the meaning of the term “threat” of material injury in the context of a section 421 investigation. Chairman Okun made a negative determination in *Pedestal Actuators*

(continued...)

the Trade Act relating to threat of injury to be instructive and apply those factors.<sup>79</sup> We note that in section 201 cases the Commission has employed a somewhat different analysis in considering the issue of “threat” of injury, as opposed to present injury. In its “threat” analysis, the Commission has focused more on recent trends and projections – for example, on whether there has been a recent sharp deterioration in the condition of the industry and a recent surge in imports, and whether the surge in imports and decline in industry indicators are projected to continue into the future to injurious effect.<sup>80</sup>

**Arguments of the parties.** Petitioner asserts that both domestic industries are materially injured and threatened with further material injury. Petitioner states that most of the factors considered by the Commission show both industries to be materially injured, and cites a \*\*\*.<sup>81</sup> Petitioner asserts that imports of the subject brake drums and rotors from China have taken away the large-volume sales, forcing at least one domestic producer, Federal Mogul, to produce many more smaller-run products.<sup>82</sup> Petitioner also asserts that domestic producers have been forced to purchase economy-line imports from China for sale to retailers in order to survive in the industry by competing with their own premium-line products.<sup>83</sup> In support of its argument that the domestic industries are threatened with further material injury, petitioner cites increasing imports from China and asserts that such imports are likely to further increase. Petitioner also cites rising Chinese production capacity for both brake drums and brake rotors, rising import penetration, large underselling margins, and increasing inventories of the subject imports in the United States.<sup>84</sup>

The Chinese respondents argue that the domestic industries are not materially injured. They state that domestic production and shipments show upward trends; new data show \*\*\* profitability than prior data; petitioner has no answer to pricing data that show that prices for the domestically produced items

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<sup>78</sup>(...continued)

and addressed the term “threat” in her views in that investigation. See Dissenting Views of Chairman Deanna Tanner Okun in *Pedestal Actuators from China*, Inv. No. TA-421-1, USITC Pub. 3557 (November 2002) at 40-41, finding the definition of threat and list of factors in section 202 of the Trade Act to be instructive in making determinations under section 421 of the Trade Act.

As discussed above, section 421 requires a “threat” of “material injury,” a lesser degree of injury than “serious injury” found under section 202.

<sup>79</sup>The factors listed in section 202(c)(1)(B) are as follows –

- (i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,
- (ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,
- (iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets.

<sup>80</sup>See, e.g., *Crabmeat from Swimming Crabs*, Inv. No. TA-201-71, USITC Pub. 3349 (August 2000) at I-18-21; and *Lamb Meat*, Inv. No. TA-201-68, USITC Pub. 3176 (April 1999) at I-18-21. See also, *Steel*, Inv. TA-201-73, USITC Pub. 3479 (December 2001) at 163-66.

<sup>81</sup>Petitioner’s post-hearing brief at 22.

<sup>82</sup>Petitioner’s pre-hearing brief at 25-26.

<sup>83</sup>Petitioner’s post-hearing brief at 35.

<sup>84</sup>Petitioner’s post-hearing brief at 27-28.

have \*\*\* over the entire period examined, and in the case of rotors have exhibited a \*\*\* in the most recent periods; employment data do not show injury (levels have been steady since 2000, wage levels have increased at a higher rate than the average for the economy, and productivity is up); and the domestic industry has not idled capacity (the one plant closure occurred in 1999 due to labor unrest and the facilities were relocated to other plants).<sup>85</sup> They also argue that the Commission should not focus on five-year-old conditions in evaluating injury.<sup>86</sup> Qualis Automotive also argues that the domestic industry is not materially injured or threatened with material injury, and cites \*\*\* domestic industry profit levels, \*\*\* domestic production and sales since 1999, and prices that are stable if not increasing.<sup>87</sup> Qualis also argues that the imported Chinese economy-line aftermarket brake drums and rotors serve a different segment of the U.S. market than the domestically produced product, and offer an inexpensive alternative to turning or machining worn rotors.<sup>88</sup> Qualis further argues that domestic producers Dana and Federal Mogul have now recognized the need for such products and have become large purchasers of the Chinese economy line product, which they are now selling to several large retailers.<sup>89</sup>

**Finding.** For the reasons set forth below, we find that the domestic industries producing aftermarket brake drums and aftermarket brake rotors are not materially injured or threatened with material injury.

– *Overview of the domestic industries*

As indicated above, the domestic aftermarket brake drum and aftermarket brake rotor industries consist of five and six domestic producers, respectively. The Commission collected varying amounts of financial and other data from these firms for calendar years 1998 through 2002, and the interim periods January-March 2002 and January-March 2003.<sup>90</sup> Domestic producers sell their aftermarket brake drums and aftermarket brake rotors to warehouse distributors of motor vehicle parts, who in turn sell to jobbers, retailers of motor vehicle parts, service stations, and motor vehicle repair garages; jobbers also sell to the latter three types of firms.<sup>91</sup> The demand for aftermarket brake drums and aftermarket brake rotors is derived from demand for replacement of worn or worn-out brake drums and rotors in used motor vehicles that are beyond their warranty period.<sup>92</sup> The number of motor vehicles on the road showed a modest increase during the period examined, while the average vehicle mileage per year remained stable.<sup>93</sup> Apparent U.S. consumption of aftermarket brake drums during the period examined initially fell by \*\*\* percent between 1998 and 1999, and then rose by \*\*\* percent between 1999 and 2000, \*\*\* percent between 2000 and 2001, and \*\*\* percent between 2001 and 2002; apparent U.S. consumption fell by \*\*\*

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<sup>85</sup>Chinese respondents' post-hearing brief at 17-24.

<sup>86</sup>Chinese respondents' post-hearing brief at 24-26.

<sup>87</sup>Qualis Automotive's post-hearing brief at 2-10.

<sup>88</sup>Tr. at 189-93 (Mr. Fudalla).

<sup>89</sup>Tr. at 193 (Mr. Fudalla).

<sup>90</sup>In this investigation we have placed relatively less weight on the interim period data than in other investigations in view of the shortness of the interim period (three months) and the seasonal nature of sales. Questionnaire responses show that the peak season for replacement of brake drums and rotors occurs during April through August, then slows down some in September and October, and is very slow during November through March. CR at I-83; PR at I-42.

<sup>91</sup>CR at I-75; PR at I-37-38.

<sup>92</sup>CR at I-79; PR at I-40.

<sup>93</sup>CR at I-83; PR at I-42.

percent between interim 2002 and interim 2003.<sup>94</sup> Brake installation rates suggest a decline in brake drum replacement during the period examined, but the increase in consumption may have been driven by the availability of low-cost imported Chinese aftermarket brake drums acting as a substitute for machining of worn brake drums.<sup>95</sup> Apparent U.S. consumption of aftermarket brake rotors rose throughout the period examined, rising by \*\*\* percent between 1998 and 1999, \*\*\* percent between 1999 and 2000, \*\*\* percent between 2000 and 2001, and \*\*\* percent between 2001 and 2002; apparent U.S. consumption rose by \*\*\* percent between interim 2002 and interim 2003.<sup>96</sup> The number of brake rotors per thousand vehicles that first became available for repair/replacement during the period examined rose significantly, by 11.1 percent to 13.7 percent, depending on the category of vehicle. Replacement demand for brake rotors was greater than that for brake drums during the period examined because of the increased use of disc brakes instead of brake drums and because the rotors in disc brakes wear out more quickly than brake drums.<sup>97</sup> In addition, the availability of low priced imports from China may have encouraged replacement instead of machining of worn rotors.<sup>98 99</sup>

– *Analysis of factors*

– *Aftermarket brake drum industry*

*The domestic industry is not materially injured.* We find that the domestic aftermarket brake drum industry is not materially injured. For the most part, the indicators relating to the condition of the domestic aftermarket brake drum industry fell early in the period examined and since that time have been mixed but relatively steady, with some rising in one year by a small amount and then falling by a small amount in the next year, and others showing longer term incremental changes more suggestive of a trend. Since 1999, the indicators have not, as a group, shown an overall trend in one direction or the other. Moreover, the industry generally operated at healthy profit levels during the period examined, and profitability improved at the end of the period, from 2001 to 2002, and when the interim periods are compared. The rise in profitability at the end of the period coincided with an increase in U.S. producers' net sales unit values and U.S. shipments' unit values.

Despite declines in some indicators, operating income reported for U.S. producers on their aftermarket brake drum operations was positive in each year of the period, and increased from 2001 to 2002 and was higher in interim 2003 than in interim 2002. Operating income rose from \$\*\*\* in 1998 to \$\*\*\* in 1999, and then fell to \$\*\*\* in 2000 and \$\*\*\* in 2001, and then rose to \$\*\*\* in 2002; operating income was \$\*\*\* in interim 2002 and \$\*\*\* in interim 2003. Prices for representative products were higher at the end of the period examined than at the beginning.<sup>100</sup> None of the three reporting firms registered a \*\*\* in 2002 or in interim 2003.<sup>101</sup> Operating margins declined only slightly during the period

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<sup>94</sup>CR and PR, Table C-1.

<sup>95</sup>CR at I-84; PR at I-43.

<sup>96</sup>CR and PR, Table C-2.

<sup>97</sup>CR at I-80; PR at I-40-41.

<sup>98</sup>CR at I-83-84; PR at I-43. One study found that \*\*\*. \*\*\* report attached to petitioner's post-hearing brief at Exh. 15, p. 5-3.

<sup>99</sup>U.S. imports of aftermarket brake rotors (but not brake drums) from China are subject to a U.S. antidumping duty order. CR at I-2-3; PR at I-2-3.

<sup>100</sup>CR and PR, Tables 29 and 30.

<sup>101</sup>CR and PR, Table 13.

from \*\*\* percent in 1998 to \*\*\* percent in 2002, but improved over the interim periods to \*\*\* percent in interim 2003 as compared to \*\*\* percent in interim 2002.<sup>102 103</sup>

Other indicators of the domestic industry's condition have been mixed, but relatively steady over the period examined. The information shows that domestic capacity fluctuated during the period examined, falling early in the period, and then stabilizing.<sup>104</sup> The sharp decline in capacity in 1999 is attributable to Dana's closure of its Amherst, New York, plant in October 1999, and to Federal Mogul's \*\*\* , also in 1999, \*\*\*.<sup>105</sup> The subsequent increases in capacity are, for Dana, attributable to \*\*\* , and for Federal Mogul \*\*\*.<sup>106</sup>

Domestic production fell in each year, but most of the decline occurred early in the period examined. Production declined from \*\*\* units in 1998 to \*\*\* units in 1999, to \*\*\* units in 2000 and 2001, and to \*\*\* units in 2002; production was \*\*\* units in interim 2002 and \*\*\* units in interim 2003.<sup>107</sup> U.S. producers' shipments followed a similar trend.<sup>108</sup> U.S. producers' end-of-period inventories declined in each year of the period examined.<sup>109</sup> U.S. producers' market share declined in each year of the period examined, with the greatest decline occurring early in the period. U.S. producers' market share, by volume, fell from \*\*\* percent in 1998 to \*\*\* percent in 1999, \*\*\* percent in 2000, \*\*\* percent in 2001, and \*\*\* percent in 2002; U.S. producers' market share was \*\*\* percent in interim 2002, and \*\*\* percent in interim 2003.<sup>110</sup>

Employment declined each year during the period examined, with the largest decline occurring early in the period. Employment declined from \*\*\* production and related workers (PRWs) in 1998 to \*\*\* in 1999, \*\*\* in 2000, \*\*\* in 2001, and \*\*\* in 2002; the number of PRWs was \*\*\* in interim 2002

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<sup>102</sup>Of the financial indicators only industry capital expenditures fluctuated downward over the period examined. Industry capital expenditures were \$\*\*\* in 1998, rose to \$\*\*\* in 1999, and then fell to \$\*\*\* in 2000, \$\*\*\* in 2001, and \$\*\*\* in 2002; capital expenditures were \$\*\*\* in interim 2002, and rose to \$\*\*\* in interim 2003. CR and PR, Table 16. On a company basis (except for \*\*\*), the data show relatively large fluctuations in capital expenditures from year to year during the period examined, with one company, \*\*\* accounting for more than \*\*\* of industry capital expenditures. These fluctuations in expenditures appear to be related to specific plant modernizations made in a single year or over a two year period, as opposed to an ongoing multi-year effort. For example, \*\*\* , which accounted for less than \*\*\* percent of industry capital expenditures in 1999, accounted for more than \*\*\* of industry capital expenditures in 2000 and 2001, the years in which it was modernizing plant and equipment in preparation to begin producing aftermarket brake drums under its contract with \*\*\*. Id., and CR at I-58, n. 129; PR at I-29, n. 129.

<sup>103</sup>\*\*\* of the responding companies reported research and development (R&D) expenses for any of the years in the period examined. CR and PR, Table 20.

<sup>104</sup>Capacity fell from \*\*\* units in 1998 to \*\*\* units in 1999, and then rose to \*\*\* units in 2000 and \*\*\* units in 2001, and before declining to \*\*\* units in 2002; capacity remained the same at \*\*\* units in interim 2002 and 2003. The capacity utilization rate trended downward during the period, declining from \*\*\* percent in 1998 to \*\*\* percent in 1999, \*\*\* percent 2000, and \*\*\* percent in 2001, and then rose to \*\*\* percent in 2002; the rate was \*\*\* percent in interim 2002 and \*\*\* percent in interim 2003. CR and PR, Table 9.

<sup>105</sup>CR at I-35; PR at I-23.

<sup>106</sup>CR at I-35-36; PR at I-23-24. We note that Dana \*\*\*. CR at I-37, PR at I-24; CR at I-50 (n. 124), PR at I-27 (n. 124); petitioner's post-hearing brief at Exh. 6.

<sup>107</sup>CR and PR, Table 9.

<sup>108</sup>CR and PR, Table 10.

<sup>109</sup>Inventories declined from \*\*\* units in 1998 to \*\*\* units in 1999, \*\*\* units in 2000, \*\*\* units in 2001, and \*\*\* units in 2002; such inventories were \*\*\* units in interim 2002, and \*\*\* units in interim 2003. CR and PR, Table 11.

<sup>110</sup>CR and PR, Table C-1.

and rose slightly to \*\*\* in interim 2003. Hours worked followed the same trend. Total wages paid to production and related workers declined early in the period examined but have increased since 2000.<sup>111</sup> Hourly wages (in dollars per hour) increased in each year of the period examined and were at their highest level in 2002. Productivity remained relatively steady during the period examined, and was at the same level in 2002 as in 1998, but was lower in interim 2003 than in interim 2002.<sup>112</sup>

In view of the above, we find that the indicators relating to the condition of domestic industry, while mixed, do not show that the domestic aftermarket brake drum industry is materially injured. The industry as a whole was profitable throughout the period examined, and operating income was sharply higher in 2002 as compared to 2001; none of the reporting companies showed a loss in 2002. Production and shipments were comparable in 2000 and 2001, and only slightly lower in 2002. Moreover, the unit values of U.S. producers' U.S. shipments and net sales increased from 2001 to 2002 and between the interim periods. The pricing data calculated by the Commission generally show that U.S. producers' prices were higher at the end of the period examined than at the beginning.<sup>113</sup> The ratio of inventories to production, after rising sharply between 1998 and 1999, remained stable during the remainder of the period and was slightly lower in 2002 than in 2001.

The most significant declines in several of the indicators occurred four years ago, in 1999, when one major domestic producer closed a plant and a second \*\*\* a plant in order to meet the needs of a new customer agreement. Since 1999, the indicators largely have been stable, with some trending up slightly and others trending downward slightly. For example, as shown by the data above, domestic capacity in 2002 was higher than in 1999 and 2000, but slightly lower than in 2001; domestic capacity utilization, on the other hand, after having fallen earlier in the period, was slightly higher in 2002 than in 2001. While employment in the industry fell in each year of the period examined, most of that decline occurred in 1999, the year in which Dana closed its Amherst plant. Although still declining, employment in the industry has been relatively stable since 1999, and interim 2003 data show a slight increase over the interim 2002 level. Hours worked followed a similar trend, and were also higher in interim 2003 than in interim 2002. Wages paid, after initially falling, have increased each year since 2000, and hourly wages increased in each year of the period examined. Worker productivity remained relatively stable during the period and was at the same level in 2002 as in 1998. Thus, while some indicators showed declines, these declines do not rise to the level of material injury.

*The domestic industry is not threatened with material injury.* We also do not find that the domestic aftermarket brake drum industry is threatened with material injury; we do not find that material injury is clearly imminent. The relevant indicators as a group do not show evidence of a recent and continuing deterioration in the condition of the domestic industry. Rather, the indicators as a whole, particularly for 2001 and 2002 and the interim periods, while mixed, with some up and some down, show a relative overall stability in the industry's condition.

Significantly, operating income was higher in 2002 than in 2001 and profitability increased sharply in the most recent period examined, from 2001 to 2002 and between the interim periods. The industry operated at healthy profit margins throughout most of the period examined, including the most recent period. Prices for representative products were higher at the end of the period examined than at the

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<sup>111</sup>Wages paid totaled \$\*\*\* in 1998, and then fell to \$\*\*\* in 1999 and \$\*\*\* in 2000; wages paid then rose to \$\*\*\* in 2001 and \$\*\*\* in 2002; wages paid were \$\*\*\* in interim 2002 and rose to \$\*\*\* in interim 2003. CR and PR, Table 12.

<sup>112</sup>CR and PR, Table 12.

<sup>113</sup>CR and PR, Tables 29 and 30.

beginning and were relatively stable.<sup>114</sup> Comparing the above data for 2002 with data for 2000 and 2001, however, capacity in 2002 was down slightly from the 2001 level but above the level in 2000; the capacity utilization rate was higher in 2002 than in 2001, but below the level of 2000; production and shipments in 2002 were down from the levels in 2000 and 2001, but only slightly; the ratio of inventories relative to domestic production improved and was lower in 2002 than in either 2000 or 2001, but U.S. producers' market share was lower in 2002 than in either 2000 or 2001; the number of production and related workers and their hours worked was lower in 2002 than in 2000 and 2001, but wages paid and hourly wages were higher in 2002 than in 2000 or 2001; productivity in 2002 was down slightly from the 2001 level but above the 2000 level.

We also examined several other possible indicators of a threat of material injury, including importer inventories, the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of plants and equipment or maintain existing levels of research and development (R&D) expenditures, the extent to which the United States market is the focal point for the diversion of exports of the product by reason of restraints on imports or exports by other countries, and recent data and projections for Chinese brake drum capacity, production, and shipments. We do not find that the trends in these indicators show material injury to be imminent.

End-of-period importer inventories of aftermarket brake drums have increased in each year of the period examined, but most of the increase occurred between 1998 and 1999, and subsequent increases have been small; such inventories were lower in interim 2003 than in interim 2002.<sup>115</sup>

Domestic producers reported capital expenditures for each of the years examined, but \*\*\* of the firms reported R&D expenses for any of those years. As the data above show, domestic industry capital expenditures declined in each year after 1999, but were slightly higher in interim 2003 than in interim 2002. While domestic producers reported cancellation or rejection of expansion projects and investment proposals, \*\*\* reported a rejection of a bank loan, the lowering of a credit rating, or a problem related to the issuance of stocks or bonds.<sup>116</sup> The fact that the industry as a whole was profitable in each year of the period examined and reported increased operating income in 2002 suggests that firms in the industry have the ability to raise money and increase capital expenditures.

We are unaware of any restraints on imports or exports that have the effect of diverting aftermarket brake drums to the U.S. market.

Data provided by responding Chinese manufacturers of aftermarket brake drums show that their aftermarket brake drum capacity, production, and shipments, including shipments to the home market and to the U.S. and other foreign markets, all have increased significantly on an annual basis during the period examined, but the data also show that responding Chinese manufacturers project that their capacity, production, and shipments, including to the United States, will be lower in 2003 (full year) and in 2004 than in 2002.<sup>117</sup> The U.S. shipments reported by the responding Chinese manufacturers for 2002

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<sup>114</sup>CR and PR, Tables 29 and 30.

<sup>115</sup>End-of-period importer inventories rose from \*\*\* units in 1998 to \*\*\* units in 1999, \*\*\* units in 2000, \*\*\* units in 2001, and \*\*\* units in 2002; such inventories were \*\*\* units in interim 2002, and \*\*\* units in interim 2003. CR and PR, Table 25.

<sup>116</sup>CR at I-61; PR at I-30.

<sup>117</sup>CR and PR, Table 24.



represent about 75 percent of the U.S. aftermarket brake drum imports in 2002.<sup>118</sup> While other Commission data suggest that the increase in U.S. imports of aftermarket brake drums from China is continuing in 2003<sup>119</sup> rather than declining, evidence on the record indicates that the imported product is primarily economy-line aftermarket brake drums and the domestic product is primarily premium-line aftermarket brake drums,<sup>120</sup> and that further increases in imports of the Chinese product will not necessarily displace the domestic product.

In view of the above, we find that the domestic aftermarket brake drum industry is not threatened with material injury.

– *Aftermarket brake rotor industry*

*The domestic industry is not materially injured.* We find that the domestic aftermarket brake rotor industry is not materially injured. As in the case of the aftermarket brake drum industry, the various indicators fell sharply early in the period examined with the closing of Dana’s Amherst, New York, plant and \*\*\* of a Federal Mogul plant, both of which produced aftermarket brake drums and aftermarket brake rotors. However, the trends in the indicators for the aftermarket brake rotor industry have been more positive. In addition, as with the aftermarket brake drum industry, the aftermarket brake rotor industry generally operated at healthy profit levels during the period examined, and profitability improved sharply from 2001 to 2002.

With respect to financial indicators, operating income reported by U.S. producers on their aftermarket brake rotor operations was positive in each year of the period examined, and significantly higher in 2002 than in 2001. Operating income rose from \$\*\*\* in 1998 to \$\*\*\* in 1999, and then fell to \$\*\*\* in 2000 and \$\*\*\* in 2001, and then rose to \$\*\*\* in 2002; reported operating income was \$\*\*\* in interim 2002 and \$\*\*\* in interim 2003.<sup>121</sup> The industry’s operating margin, as measured in terms of operating income or (loss)/sales, was at a \*\*\* level in four of the five years examined, including the most recent full year, 2002, when it was \*\*\* percent.<sup>122</sup> Prices for representative products were higher at the end of the period examined than at the beginning.<sup>123</sup> Although capital expenditures fluctuated from year to year, the industry reported substantial capital expenditures in each year of the period examined.<sup>124 125</sup>

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<sup>118</sup>Comparing CR and PR, Table 24 with Table C-1.

<sup>119</sup>Commission interim year data show imports of aftermarket brake drums from China to be 18.8 percent higher in interim 2003 than in interim 2002. CR and PR, Table C-1.

<sup>120</sup>CR at I-74; PR at I-37.

<sup>121</sup>\*\*\*. CR and PR, Table 17.

<sup>122</sup>CR and PR, Table C-2.

<sup>123</sup>CR and PR, Tables 31 and 32.

<sup>124</sup>Industry capital expenditures were \$\*\*\* in 1998, fell to \$\*\*\* in 1999, rose to \$\*\*\* in 2000, and then fell to \$\*\*\* in 2001, and \$\*\*\* in 2002; capital expenditures were \$\*\*\* in interim 2002, and rose to \$\*\*\* in interim 2003. CR and PR, Table 20. \*\*\* of the reporting companies reported relatively large capital expenditures in at least one of the years examined, and in several instances that company’s expenditure accounted for more than \*\*\* the industry total for that year. For example, the relatively high industry capital expenditures in 2000 and 2001 reflect expenditures made in those years by \*\*\* to modernize plant and equipment to produce aftermarket brake rotors \*\*\* accounted for more than \*\*\* of total industry capital expenditures in those years. CR at I-58, n. 129; PR at I-29, n. 129; and CR and PR, Table 20. The relatively lower data 2002 reflect the fact that most of those improvements had been completed by the end of 2001.

<sup>125</sup>\*\*\* of the responding companies reported R&D expenses. CR and PR, Table 20.

Other indicators of the industry's condition were, for the most part, stable or improving over the period. The record shows that domestic aftermarket brake rotor capacity initially declined and then rose each year during the period examined.<sup>126 127</sup> The subsequent increases in capacity are, for Dana, attributable to \*\*\*, and for Federal Mogul \*\*\*.<sup>128</sup>

Domestic aftermarket brake rotor production initially fell and then rose each year during the period examined.<sup>129</sup> U.S. producers' shipments fell early in the period examined and then rose irregularly during the balance of period.<sup>130</sup> U.S. producers' end-of-period inventories declined irregularly during the period examined, from \*\*\* units in 1998 to \*\*\* units in 1999, and \*\*\* units in 2000, then rose to \*\*\* units in 2001 and 2002; such inventories were \*\*\* units in interim 2002 and \*\*\* units in interim 2003.<sup>131</sup> U.S. producers' market share dropped relatively sharply early in the period examined, and fell at a lesser rate in the remaining years. U.S. producers' market share fell from \*\*\* percent in 1998 to \*\*\* percent in 1999, and then fell to \*\*\* percent in 2000, \*\*\* percent in 2001, and \*\*\* percent in 2002; U.S. producers' market share was \*\*\* percent in interim 2002 and \*\*\* percent in interim 2003.<sup>132</sup>

The number of production and related workers declined in each year of the period examined, from \*\*\* persons in 1998, to \*\*\* in 1999, \*\*\* in 2000, \*\*\* in 2001, and \*\*\* in 2002; the number was \*\*\* in interim 2002 and \*\*\* in interim 2003. Hours worked similarly declined in each year of the period examined, and were lower in interim 2003 than in interim 2002.<sup>133</sup> Worker productivity, however, rose on an annual basis after an initial decline from 1998 to 1999, suggesting that the decline in employment in part may reflect productivity gains. Worker productivity fell from \*\*\* units per hour in 1998 to \*\*\* units per hour in 1999, and then rose each year thereafter, to \*\*\* units per hour in 2000, \*\*\* units per hour in 2001, and \*\*\* units per hour in 2002; productivity was \*\*\* units per hour in interim 2002 and \*\*\* units per hour in interim 2003.<sup>134</sup> Hourly wages initially fell, and then rose each year during the period examined. Total wages paid fluctuated during the period, falling in 1999 and again in 2000, rising in 2001 (the year with the smallest employment decline), and then falling in 2002.<sup>135</sup>

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<sup>126</sup>Capacity fell from \*\*\* units in 1998 to \*\*\* units in 1999, and then rose to \*\*\* units in 2000, \*\*\* units in 2001, and \*\*\* units in 2002; capacity was \*\*\* units in interim 2002 and fell slightly to \*\*\* units in interim 2003. CR and PR, Table 9.

<sup>127</sup>Domestic producers' capacity utilization rate fluctuated during the period, declining relatively sharply from \*\*\* percent in 1998 to \*\*\* percent in 1999, then falling to \*\*\* percent 2000 and \*\*\* percent in 2001, and then rising slightly to \*\*\* percent in 2002; the rate was \*\*\* in interim 2002 and \*\*\* percent in interim 2003. CR and PR, Table 9.

<sup>128</sup>CR at I-35-36; PR at I-23. We note that Dana \*\*\*. CR at I-37; PR at I-24; and petitioner's post-hearing brief at Exh. 6.

<sup>129</sup>Production fell from \*\*\* units in 1998 to \*\*\* units in 1999, and then rose to \*\*\* units in 2000, to \*\*\* units in 2001, and to \*\*\* units in 2002; production was \*\*\* units in interim 2002 and \*\*\* units in interim 2003. CR and PR, Table 9.

<sup>130</sup>U.S. producers' shipments fell from \*\*\* units in 1998 to \*\*\* units in 1999, rose to \*\*\* units in 2000, fell to \*\*\* units in 2001, and then rose to \*\*\* units in 2002; shipments were \*\*\* units in interim 2002 and \*\*\* units in interim 2003. CR and PR, Table 10.

<sup>131</sup>CR and PR, Table 11.

<sup>132</sup>CR and PR, Table C-2.

<sup>133</sup>CR and PR, Table 12.

<sup>134</sup>CR and PR, Table 12.

<sup>135</sup>CR and PR, Table 12.

Based on the above, we conclude that the aftermarket brake rotor industry is not materially injured. Most of the indicators are stable or improving. The industry as a whole was profitable throughout the period examined, and the industry reported a substantial increase in operating income in 2002 as compared to 2001.<sup>136</sup> Industry capacity and production, after declining early in the period, have increased each year since 1999; domestic industry shipments, while fluctuating from year to year, also have increased since 1999; hourly wages and worker productivity both rose, and were at their highest levels in 2002. We acknowledge that a few indicators, such as market share and employment, have declined throughout the period examined. We note, however, that while domestic producers' market share has declined, domestic shipments have remained stable or improved during a time when apparent U.S. consumption increased steadily. We also note that while employment and hours worked have declined, this appears to be due to productivity gains. Thus, while some indicators showed declines, these declines do not rise to the level of material injury.

*The domestic industry is not threatened with material injury.* We also do not find that the domestic aftermarket brake rotor industry is threatened with material injury; we do not find that material injury is clearly imminent. The relevant indicators do not show evidence of a recent and continuing deterioration in the condition of the domestic industry. Rather, the indicators, particularly for 2001 and 2002 and the interim periods, show the industry's condition to be relatively stable and even improving.

Comparing the above data for 2002 with data for 2000 and 2001, reported operating income was \*\*\* higher in 2002 than in 2001 but below the level of 2000. The industry operated at healthy profit levels throughout most of the period examined, including the most recent period, and had an operating margin of \*\*\* percent in 2002; prices for representative products were higher at the end of the period examined than at the beginning,<sup>137</sup> domestic capacity and production were higher in 2002 than in 2000 and 2001; capacity utilization was higher in 2002 than in 2001, but below the 2000 level; U.S. shipments in 2002 were higher in 2002 than in 2000 and 2001; U.S. producer end-of-period inventories were lower in 2002 than in 2001 but higher than in 2000; wages paid were higher in 2002 than in 2000, but lower than in 2001; hourly wages and productivity were higher in 2002 than in 2000 or 2001.

We also examined several other possible indicators of a threat of material injury, including importer inventories, the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of plants and equipment or maintain existing levels of R&D expenditures, the extent to which the United States market is the focal point for the diversion of exports of the product by reason of restraints on imports or exports by other countries, and recent data and projections for Chinese brake drum capacity, production, and shipments. We do not find that the trends in these indicators show material injury to be imminent.

End-of-period importer inventories of aftermarket brake rotors have fluctuated and were highest in 2000.<sup>138</sup> However, the ratio of importer inventories to imports fell in each year of the period examined,

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<sup>136</sup>Throughout the period the industry has maintained a continued program of capital expenditures, with the decline from 2001 to 2002 largely reflecting the completion in 2001 of a \*\*\*.

<sup>137</sup>CR and PR, Tables 31 and 32.

<sup>138</sup>End-of-period importer inventories rose from \*\*\* units in 1998 to \*\*\* units in 1999, and \*\*\* units in 2000, fell to \*\*\* units in 2001, and then increased \*\*\* units in 2002; such inventories were \*\*\* units in interim 2002, and \*\*\* units in interim 2003. CR and PR, Table 25.

from \*\*\* percent in 1998 to \*\*\* percent in 2002, but the ratio was higher in interim 2003 (\*\*\* percent) than in interim 2002 (\*\*\* percent).<sup>139</sup>

Domestic producers reported capital expenditures for each of the years examined, but \*\*\* of the firms reported R&D expenses for any of those years. As the data above show, although industry capital expenditures fluctuated from year to year, the industry made significant expenditures in each year. While domestic producers reported cancellation or rejection of expansion projects and investment proposals, \*\*\* reported a rejection of a bank loan, the lowering of a credit rating, or a problem related to the issuance of stocks or bonds.<sup>140</sup> The fact that the industry as a whole was profitable in each year of the period examined and reported significant increased operating income in 2002 suggests that firms in the industry have the ability to raise money and increase capital expenditures.

We are unaware of any restraints on imports or exports that have the effect of diverting aftermarket brake drums to the U.S. market.

Data provided by responding Chinese manufacturers of aftermarket brake rotors show that their aftermarket brake rotor capacity, production, and shipments, including shipments to the home market and to the U.S. and other foreign markets all have increased significantly during the period examined, and are projected to increase further in 2003 (full year) and in 2004.<sup>141</sup> The U.S. shipments reported by the responding Chinese manufacturers for 2002 represent about 40 percent of the U.S. aftermarket brake rotor imports in 2002.<sup>142</sup> Their projected increase in shipments to the U.S. market in full year 2003 is in line with Commission data that show imports of aftermarket brake rotors from China to be 18.8 percent higher in interim 2003 than in interim 2002.<sup>143</sup> However, evidence on the record indicates that the imported product is primarily economy-line aftermarket brake rotors and the domestic product is primarily premium-line aftermarket brake rotors, and that further increases in imports of the Chinese product will not necessarily displace the domestic product.

In view of the above, we find that the domestic aftermarket brake rotor industry is not threatened with material injury.

– *Conclusion*

For the above reasons, we find that neither the domestic aftermarket brake drum industry nor the domestic aftermarket brake rotor industry is materially injured or threatened with material injury. Accordingly, we find that market disruption does not exist and make a negative determination in this investigation under section 421(b)(1) of the Trade Act.

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<sup>139</sup>CR and PR, Table 25.

<sup>140</sup>CR at I-61; PR at I-30.

<sup>141</sup>CR and PR, Table 24.

<sup>142</sup>Comparing CR and PR, Table 24 with Table C-1.

<sup>143</sup>CR and PR, Table C-1.

#### D. A significant cause<sup>144</sup>

Having made a negative determination, we are not required to proceed further and make findings with respect to causation. We provide our causation analysis, however, because it explains that competition is attenuated between domestic producer premium-line products and the subject and non-subject economy-line products. Had the economic indicators relating to the condition of the respective industries been different and shown the domestic industries to be materially injured or threatened with material injury, we also would have found that rapidly increasing imports are not a significant cause of the material injury or threat of material injury.

**Statutory framework.** The term “significant cause” is defined in section 421(c)(2) of the Trade Act to mean “a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.”<sup>145</sup> Section 406 of the Trade Act uses the same causation test and definition.<sup>146</sup> The legislative history of section 406 describes the significant cause standard as follows –

Under this standard, the imports subject to investigation need not be the leading or most important cause of injury or more important (or even equal to) any other cause, so long as a direct and significant causal link exists. Thus, if the ITC finds that there are several causes of the material injury, it should seek to determine whether the imports subject to investigation are a significant contributing cause of the injury or are such a subordinate, subsidiary or unimportant cause as to eliminate a direct and significant causal relationship. . . .<sup>147</sup>

Section 421(d) includes a list of three criteria that the Commission is required to consider in determining whether market disruption exists and that relate to the Commission’s causation analysis –

- (1) the volume of imports of the product which is the subject of the investigation;
- (2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and
- (3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.<sup>148</sup>

The presence or absence of any of these factors is not necessarily dispositive of whether market disruption exists. The three factors are similar to a list of factors in section 406(e)(2)(C) of the Trade Act<sup>149</sup> and

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<sup>144</sup>Commissioner Miller, having found no material injury or threat of material injury, does not proceed to an analysis of causation and does not join in the discussion of “significant cause.”

<sup>145</sup>19 U.S.C. § 2451(c)(2).

<sup>146</sup>Section 406(e)(2)(B)(ii), 19 U.S.C. § 2436(e)(2)(B)(ii).

<sup>147</sup>Omnibus Trade and Competitiveness Act of 1988, House Conf. Report No. 100-576, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess., reprinted in 1988 U.S.C.A.A.N. 1547, 1724.

<sup>148</sup>19 U.S.C. § 2451(d).

<sup>149</sup>19 U.S.C. § 2451(e)(2)(C).

parallel the criteria in Title VII of the Tariff Act that the Commission must consider in determining whether a domestic industry is injured by reason of dumped imports.<sup>150</sup>

**Arguments of the parties.** Petitioner asserts that increased imports of aftermarket brake drums and rotors from China are a significant cause of material injury to the respective domestic industries. Petitioner asserts that domestic aftermarket brake drums and rotors are competitive with the Chinese product and are competing head-to-head in the marketplace, and that the testimony at the hearing regarding a middle line of aftermarket products negates any possibility of different market segments.<sup>151</sup> Petitioner argues that the primary reflection of injury to the domestic industries has been the loss of volume, which can be evidenced by the decline in domestic producers' capacity utilization.<sup>152</sup> Petitioner states that customers purchase brakes primarily on the basis of price, and that the large amount of underselling by the Chinese product explains why the domestic branded product is losing market share.<sup>153</sup> Petitioner also states that the Chinese product is not stimulating growth, but rather the growth in the aftermarket is the result of increased driving, increased use of rotors on light trucks, and changes in the design of drums and rotors to reduce weight, which causes the drum or rotor to wear out more quickly.<sup>154</sup> Petitioner states that domestic producers also import Chinese economy-line products in order to "survive," and that the Chinese products they import compete with their own domestically produced premium-line products.<sup>155</sup>

The Chinese respondents assert that there is no significant causal link between the Chinese imports and U.S. industry performance. They assert that the Chinese economy-line products and domestic premium-line products occupy different segments of the domestic market and do not compete.<sup>156</sup> They also cite Commission pricing data that indicate that the domestic price of the premium product has increased, indicating that the Chinese imports are not depressing or suppressing prices of the domestic product.<sup>157</sup> They also assert that domestic industry imports of aftermarket brake drums and rotors should be deemed to be non-injurious because they were undertaken to enter a segment of the market in which domestic producers do not compete.<sup>158</sup>

Respondent Qualis Automotive similarly asserts that there is no causal link between any injury the domestic industry may have suffered and Chinese imports. Qualis asserts that, regardless of how the Commission decides the like product question, the evidence shows that competition between premium and economy brake drums and rotors is limited. In support, Qualis cites price differences and argues that if competition were direct and the products interchangeable, there would be few if any sales of the domestic product.<sup>159</sup> Qualis also asserts that Chinese drums and rotors created demand by providing an alternative to turning rotors or foregoing replacement, and cites testimony at the hearing of Mr. Herzog, CEO of Herzog Automotive Parts, to the effect that the turning business is down 75 to 80 percent because

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<sup>150</sup>Section 771(7)(B)(i) of the Tariff Act of 1930, 19 U.S.C. § 1677(7)(B)(i).

<sup>151</sup>Petitioner's post-hearing brief at 28-30.

<sup>152</sup>Petitioner's post-hearing brief at 27.

<sup>153</sup>Petitioner's post-hearing brief at 30-33.

<sup>154</sup>Petitioner's post-hearing brief at 34-35.

<sup>155</sup>Petitioner's post-hearing brief at 35.

<sup>156</sup>Chinese respondents' post-hearing brief at 27-33.

<sup>157</sup>Chinese respondents' post-hearing brief at 36.

<sup>158</sup>Chinese respondents' post-hearing brief at 39.

<sup>159</sup>Qualis Automotive's post-hearing brief at 11-12.

consumers are buying new rotors rather than having them turned.<sup>160</sup> Qualis also cites the Commission's price comparison, which show rising prices for the subject premium products, as indicating that imports did not depress domestic prices.<sup>161</sup>

**Conditions of competition.** As indicated above, aftermarket brake drums and aftermarket rotors are used exclusively as replacement parts in used motor vehicles for after-warranty replacement of worn brake drums and rotors.<sup>162</sup> There are no substitute products.<sup>163</sup> Demand for aftermarket brake drums and rotors is derived exclusively from demand for replacement of worn or worn-out brake drums and rotors in used motor vehicles that are beyond their warranty period.<sup>164</sup> This demand is affected by several factors including general economic activity, seasonal variation in demand, the number and age distribution of vehicles on the road, the average number of miles driven per vehicle, and the number of rotors per vehicle for vehicles entering the service mileage stage; it also is affected to the extent that low-cost aftermarket brake drums and rotors substitute for machining of worn brake drums or rotors.<sup>165</sup> Demand also has been affected by the shift to smaller and lighter brake drums and rotors, which must be replaced more frequently than the larger, heavier earlier products.<sup>166</sup> For aftermarket brake rotors, demand also may have been affected by the changeover in disc brakes from asbestos brake pads to metal brake pads, which reportedly has led to increased wear of brake rotors.<sup>167</sup> Replacement demand for brake rotors tends to be greater than for brake drums because of the increased use of disc brakes instead of brake drums, and because the rotors in disc brakes tend to wear out more quickly than brake drums.<sup>168</sup> U.S. demand for aftermarket brake drums (as measured by estimated U.S. apparent consumption) fluctuated during the period examined, but rose from about \*\*\* units in 1998 to slightly more than \*\*\* units in 2002, or by a total of \*\*\* percent. U.S. demand for aftermarket brake rotors rose each year during the period examined, from \*\*\* units in 1998 to \*\*\* units in 2002, or by a total of \*\*\* percent. A recent study forecasts \*\*\*.<sup>169</sup>

U.S. producers typically market their domestically produced aftermarket brake drums and rotors as premium-line products under a brand name, and market their purchased Chinese and non-subject imported aftermarket brake drums and rotors as economy-line products.<sup>170</sup> The imported Chinese aftermarket brake drums and rotors carry a lower price and may be perceived to be of inconsistent or poorer quality as compared to the premium-line products,<sup>171</sup> but this has been changing.<sup>172</sup> In addition,

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<sup>160</sup>Qualis Automotive's post-hearing brief at 14.

<sup>161</sup>Qualis Automotive's post-hearing brief at 14-15.

<sup>162</sup>CR at I-74; PR at I-37.

<sup>163</sup>CR at I-84; PR at I-43.

<sup>164</sup>CR at I-79; PR at I-40.

<sup>165</sup>CR at I-79-80; PR at I-40-41. *See also* tr. at 178 (Mr. Herzog, stating that jobbers who turn rotors state that their business is down 75-80 percent because they are now selling new rotors); 193 (Mr. Fudalla); 206, 208 (Mr. Reilly).

<sup>166</sup>CR at I-80; PR at I-40.

<sup>167</sup>CR at I-80; PR at I-40.

<sup>168</sup>CR at I-80; PR at I-40-41.

<sup>169</sup>CR at I-82; PR at I-42.

<sup>170</sup>CR at I-74; PR at I-37; and tr. at 143-46 (Mr. LaVarra).

<sup>171</sup>CR at I-74; PR at I-37.

<sup>172</sup>CR at I-74; PR at I-37; and tr. at 143 (Mr. LaVarra).

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U.S. producers and importers sell their aftermarket brake drums and aftermarket brake rotors directly to warehouse distributors of motor vehicle parts, who in turn sell to jobbers, retailers of motor vehicle parts, service stations, and motor vehicle repair garages; jobbers also sell to the latter three.<sup>175</sup> Repair garages include service bays at motor vehicle dealerships and non-dealer garages; the latter include small independent garages, full-service gas stations, and chains such as Pep Boys and Midas.<sup>176</sup> The service bays at motor vehicle dealerships install mostly original equipment (OE) replacement brake drums and rotors, while the independent garages use OE and OES (at customers' request, normally purchased from dealerships) and aftermarket brake drums and rotors (both premium-line and economy-line).<sup>177</sup> The full-service gas stations and chain garages buy mostly aftermarket brake drums and rotors, both premium and economy lines. According to Commission questionnaire responses, 80 percent of aftermarket brake drums and rotors in the United States are installed professionally and 20 percent by do-it-yourself owners.<sup>178</sup>

**Analysis.** In performing our analysis, we first considered information relating to the three statutory factors that relate to causation analysis – the volume of imports, the effect of imports on domestic prices, and the impact of imports on the domestic industry.

#### *Volume*

As the data cited above show, imports of aftermarket brake drums from China are increasing rapidly. Imports of aftermarket brake drums from China increased each year during the period examined. In actual terms, the subject imports more than doubled during the period examined, and have increased by nearly 30 percent in the most recent two (calendar) years. The ratio of imports to production increased more than \*\*\* during the period examined, and by \*\*\* percentage points in the most recent two years. The subject imports also captured an increasingly large share of the domestic market for aftermarket brake drums. The ratio of imports of the Chinese product to U.S. apparent consumption more than \*\*\* during the period examined, rising from \*\*\* percent in 1998 to \*\*\* percent in 2002, or by \*\*\* percentage points. Most of this increase occurred between 1998 and 2000; since 2000, the market share held by Chinese imports has increased by \*\*\* percentage points.<sup>179</sup> China captured increased market share as the market share of U.S. producers declined, from \*\*\* percent in 1998 to \*\*\* percent in 2002; however, the share of the U.S. market held by imports from other sources also increased during the period, from \*\*\* percent in 1998 to \*\*\* percent in 2002.<sup>180</sup> While the volume of subject imports increased each year during the period examined and U.S. producers' share of the U.S. market decreased each year, we note

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<sup>173</sup>CR at I-74; PR at I-37.

<sup>174</sup>CR at I-74; PR at I-37.

<sup>175</sup>CR at I-75; PR at I-37.

<sup>176</sup>CR at I-75; PR at I-37.

<sup>177</sup>CR at I-75; PR at I-38.

<sup>178</sup>CR at I-74; PR at I-37.

<sup>179</sup>CR and PR, Table C-1.

<sup>180</sup>CR and PR, Table C-1.



that the U.S. market expanded by \*\*\* percent on an annual basis during the period examined, including by \*\*\* percent between 2001 and 2002.<sup>181</sup>

As the data cited above show, imports of aftermarket brake rotors from China are increasing rapidly. In actual terms, imports of such brake rotors more than doubled during the period examined, and have increased by nearly 30 percent during the most recent two years. The ratio of such imports to production increased more than \*\*\* during the period examined, and by \*\*\* percentage points in the most recent two years. The subject imports also captured a larger share of the U.S. market for aftermarket brake rotors. The ratio of imports of the Chinese product to U.S. apparent consumption rose from \*\*\* percent in 1998 to \*\*\* percent in 2002, or by \*\*\* percentage points. As in the case of imports of aftermarket Chinese brake drums, most of this increase took place between 1998 and 2000; since 2000, the market share held by Chinese imports has increased by \*\*\* percentage points.<sup>182</sup> China captured increased market share as the market share U.S. producers declined, but China also captured market share at the expense of some foreign producers, particularly Canadian producers; the share of the U.S. market held by foreign suppliers other than China declined irregularly from \*\*\* percent in 1998 to \*\*\* percent in 2002.<sup>183</sup> Moreover, subject imports captured an expanding share of the expanding market. The decline in domestic producer market share is not related in any significant way to domestic producers losing shipment volume in the recent period.<sup>184</sup>

### *Prices*

The Commission collected pricing data on two aftermarket brake drum products and two aftermarket brake rotor products. These products were suggested by petitioner as large-volume products encompassing representative competition between the U.S.-produced and imported Chinese aftermarket brake drums and rotors.<sup>185</sup> Three U.S. producers and 15 importers provided usable pricing data, although not all firms reported pricing data for all products. The pricing data for all four products show that (1) the Chinese products consistently undersold the comparable domestic products in every quarter of the period examined, and (2) prices of the Chinese products were generally falling and were underselling the domestic products by a widening margin, but (3) prices for the domestic products were stable and in some instances rising.<sup>186</sup> Prices for all four domestic products were higher, on average, in 2002 than in 1998. Prices for three of the four products were higher, on average, in 2001 and 2002 than in the three years 1998-2000.<sup>187</sup> Thus, the pricing data suggest that the rapidly increasing imports of aftermarket brake drums and rotors from China are having little if any impact on prices of domestic aftermarket brake drums and rotors, at least in the case of the four products suggested by petitioner as representative of

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<sup>181</sup>CR and PR, Table C-1.

<sup>182</sup>CR and PR, Table C-2.

<sup>183</sup>U.S. producers' share of the U.S. market (share of U.S. apparent consumption) of aftermarket brake rotors declined from \*\*\* percent in 1998 to \*\*\* percent in 2002; Canadian producers' share declined from \*\*\* percent in 1998 to \*\*\* percent in 2002. CR and PR, Table C-2.

<sup>184</sup>While petitioner argues that the domestic industry has lost volume, which can be evidenced by the decline in domestic producers' capacity utilization, shipments have remained steady. CR and PR, Table C-2. Moreover, any decline in capacity utilization is related to the fact that the domestic industry increased capacity at a faster rate than it increased production. CR and PR, Table C-2.

<sup>185</sup>CR at I-103, n. 224; PR at I-54, n. 224.

<sup>186</sup>CR at I-106-109; PR at I-55-56.

<sup>187</sup>CR at I-106-113; PR at I-55-56.

competition between the imported Chinese products and domestic products.<sup>188</sup> They also provide no evidence that the subject Chinese imports are acting as price leaders and forcing domestic producers to reduce prices.

### *Impact*

We conclude that the effect of the subject imports on the domestic industries, if any, has been limited, and in the case of each of the two domestic industries, less than the effect that would be required to find that the rapidly increasing imports are a “significant” cause of material injury or threat of material injury, had we so found such injury or threat. While we find the domestic aftermarket brake drums and brake rotors to be “like” the subject imported Chinese products in that they share the same physical properties, are used interchangeably, and are sold through the same marketing channels, we nevertheless find competition in the domestic marketplace between the subject imports and domestic products to be attenuated by differences in product quality, whether real or perceived, and in how the subject imports and the domestically produced products are marketed. The record shows that the domestically produced aftermarket products are uniformly marketed as brand-name “premium” products and advertised as having superior performance and wear qualities. Moreover, domestic producers have recently strengthened their presence in this part of the market through the negotiation of agreements to produce aftermarket brake drums and rotors under the aftermarket auto parts brand names of \*\*\*. Even U.S. producers acknowledge the distinction, by referring to the products they produce as “premium-line” products and to the Chinese products, including the Chinese products they import, as “economy-line” products.<sup>189</sup>

Pricing data for the domestic products, and industry profit and loss data and other indicators of the industries’ health, further support the conclusion that the subject imports have had only a limited effect on the two domestic industries. As indicated above, notwithstanding the rapid increase in imports, the pricing data collected by the Commission for the four “representative” products show prices for the domestically produced goods to have been stable or rising. With respect to profitability, the two domestic industries were profitable throughout the period examined, and profits for both industries were higher in 2002 than in 2001. As indicated in the previous section of these views, for the domestic aftermarket brake drum industry, the other indicators of the industry’s condition were mixed but have shown a certain stability since 1999. For the domestic aftermarket brake rotor industry, the indicators since 1999 have been relatively positive, with industry capacity, production, U.S. shipments, hourly wages, and worker productivity all higher. Thus, the pricing data and economic indicators show no evidence of a deterioration in the condition of the domestic industry, let alone a deterioration that coincides with the rapid increase in imports.

We also looked for evidence of lost sales and lost revenues to domestic producers that might be attributable to competition from the subject imports. The Commission asked U.S. producers to report such information in their responses to the Commission’s domestic producers’ questionnaires. While the four responding producers alleged lost sales and that they had lost revenues by reducing prices or rolling back price increases, most of the information furnished was general or unsupported, and the Commission

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<sup>188</sup>The petitioner furnished additional pricing information late in the investigation that purports to show different price trends for domestically produced aftermarket brake drums and rotors, but we place little credence on that information because Commission staff was unable to assess the accuracy of that information. We note, however, that even if we were to give any weight to this information, many of these products show price increases over the period. No additional pricing information on the Chinese products were available.

<sup>189</sup>CR at I-86; PR at I-44.

was able to confirm only one lost sale and one lost revenue allegation.<sup>190</sup> One of the alleged lost sales appears not to have been a lost sale at all, but rather an expansion by a retailer of its product line to include imported economy-line aftermarket brake drums and rotors supplied by one of the domestic producers.<sup>191</sup>

We also considered importations or purchases of imports of aftermarket brake drums and rotors made by domestic producers and whether they may have contributed to any injury. Dana stated at the hearing that it markets the aftermarket brake drums and rotors that it imports from China and other non-North American countries (Venezuela and Argentina) as economy-line products; Dana further stated that these products either carry no brand or a brand-name that is different from their premium line products, and that they are sold from different price sheets.<sup>192</sup>

In addition, Dana and Federal Mogul both stated at the hearing that they would continue to produce aftermarket brake drums and rotors domestically with the same cost structure because absent relief they would not invest to make their products more cost competitive with imports from China.<sup>193</sup> Until the industry alters its cost structure, it cannot produce domestically an economy-line of aftermarket brake drums and rotors. Thus, domestic producers to a large degree regard the imported Chinese and other imported non-subject economy-line products as complementary to their domestic premium lines and they use imports, whether from China or from other sources, to compete in the economy-line segment of the market, which domestic producers do not, and generally, cannot supply domestically. We find the facts in this investigation with respect to U.S. producer imports in this investigation to be distinguishable from those in *Garment Hangers*. In that case, we found there was no evidence that the Chinese hangers imported by domestic producers differed in any significant way from domestically produced hangers. We found that the producer imports had a volume effect comparable to other imports, that the producer imports represented sales that could otherwise have been made via domestic production, and that the producer imports, together with the other imports, are a significant cause of market disruption.<sup>194</sup> The evidence does not support such a finding in this case.

Thus, even had we found that the domestic industry is materially injured or threatened with material injury, for the above reasons, we would have found that the rapidly increasing imports are not a significant cause of such material injury or threat.

### III. CONCLUSION

Having found, for the reasons set forth above, that the domestic aftermarket brake drum industry and the domestic aftermarket brake rotor industry are not materially injured or threatened with material injury, we find that neither market disruption nor the threat of market disruption exists.

Accordingly, we determine that certain aftermarket brake drums and rotors from China are not being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of aftermarket brake drums and rotors.

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<sup>190</sup>CR at I-116-117; PR at I-58-59.

<sup>191</sup>CR at I-120-121; PR at I-60.

<sup>192</sup>Tr. at 144-146 (Mr. LaVarra).

<sup>193</sup>CR at I-87-88; PR at I-44-45. If they could alter their cost structure, they indicated they would do so only if they did not compromise their current quality standards. Tr. at 160-62.

<sup>194</sup>*Certain Steel Wire Garment Hangers from China*, Inv. No. TA-421-2, USITC Pub. 3575 (February 2003) at 21.