Ni-Resist Piston Inserts from Argentina

Investigation No. 701-TA-460 (Final)

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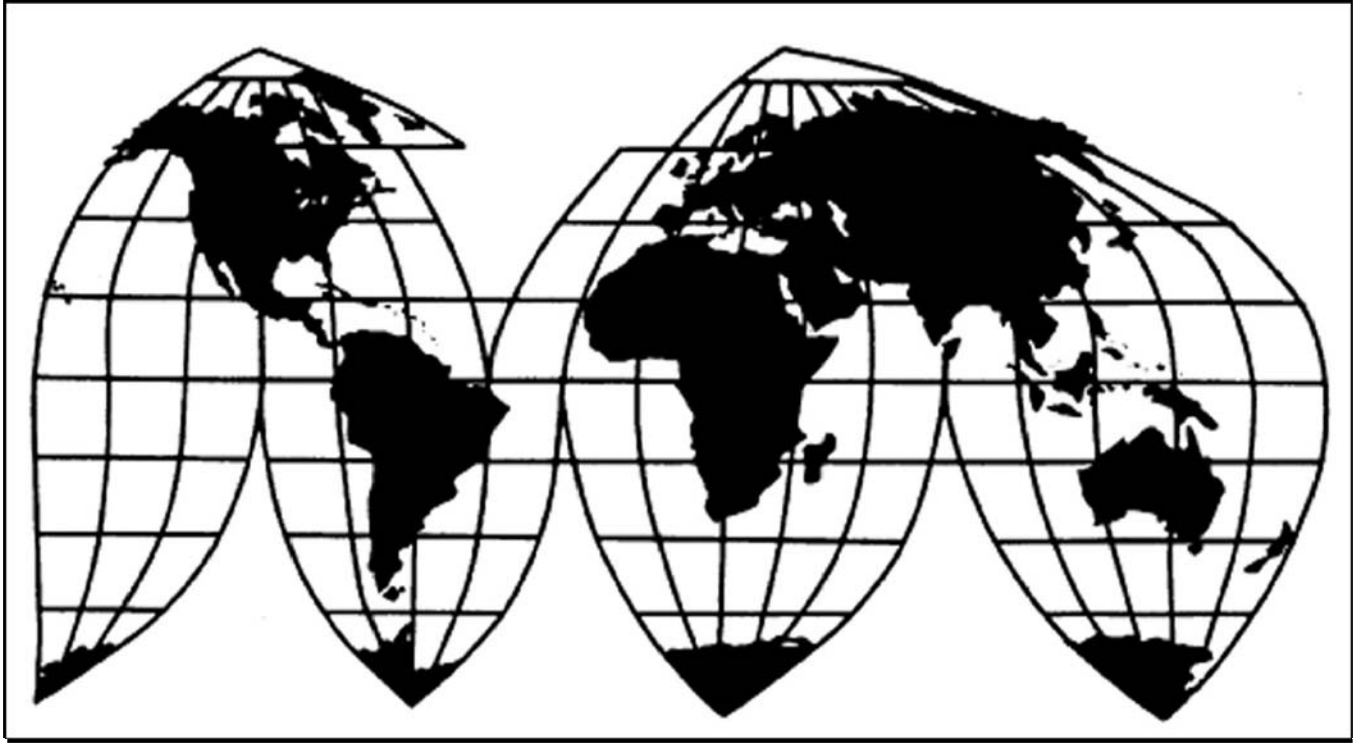
U.S. International Trade Commission



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Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 701-TA-460 (Final)

NI-RESIST PISTON INSERTS FROM ARGENTINA

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Argentina of Ni-resist piston inserts, provided for in subheading 8409.99.91 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of Argentina.

BACKGROUND

The Commission instituted this investigation effective January 26, 2009, following receipt of a petition filed with the Commission and Commerce by Korff Holdings LLC d/b/a Quaker City Castings, Salem, OH. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of Ni-resist piston inserts from Argentina were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of July 17, 2009 (74 FR 34784). The hearing was held in Washington, DC, on September 17, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in the final phase of this investigation, we unanimously find that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of Ni-resist piston inserts ("Ni rings") subsidized by the government of Argentina.[1]

I. BACKGROUND

Korff Holdings, LLC, doing business as Quaker City Castings ("QCC"), filed the petition in this investigation on January 26, 2009. The petition concerned imports from Argentina and Korea. The U.S. Department of Commerce ("Commerce") subsequently made a negative subsidy determination on Ni rings from Korea,[2] and the Commission accordingly terminated the investigation concerning subject imports from Korea.[3]

QCC, the only known domestic producer of Ni rings, appeared at the hearing and submitted prehearing and posthearing briefs. Three respondents entered appearances as parties. Karl Schmidt Unisia, Inc. ("Karl Schmidt"), an importer of subject merchandise from Argentina and a purchaser of domestically produced Ni rings, appeared at the hearing and submitted prehearing and posthearing briefs and final comments.[4] Clorindo Appo SRL ("Clorindo"), a producer and exporter of subject merchandise from Argentina, also entered an appearance. Federal-Mogul Corp., an importer of Ni rings from Korea and a purchaser of domestically produced Ni rings, filed a prehearing brief. Federal-Mogul ceased its active participation in the Commission investigation (and ceased to be an interested party) once Commerce reached a final negative subsidy determination in the investigation of Ni rings from Korea.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[5] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Tariff Act"), defines the relevant domestic industry as the "producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[6] In turn, the Tariff Act defines "domestic like

[1] Material retardation of the establishment of an industry is not an issue in this investigation.

[2] 74 Fed. Reg. 48059 (Sept. 21, 2009).

[3] 74 Fed. Reg. 51319 (Oct. 6, 2009).

[4] The second sentence of the second full paragraph on page 12 of Karl Schmidt's Final Comments contains new factual information in violation of 19 U.S.C. § 1677m(g) and 19 C.F.R. § 207.30(b). Accordingly, we have disregarded the information in this sentence.

[5] 19 U.S.C. § 1677(4)(A).

[6] 19 U.S.C. § 1677(4)(A).

product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation ... ."[7]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[8] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[9] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[10] Although the Commission must accept Commerce's determination as to the scope of the imported merchandise that is subsidized or sold at less than fair value,[11] the Commission determines what domestic product is like the imported articles Commerce has identified.[12]

B. Scope Definition

Commerce has defined the scope of the imported merchandise under investigation as follows:

> all Ni-resist piston inserts regardless of size, thickness, weight, or outside diameter. Ni-resist piston inserts may also be called other names including, but not limited to, "Ring Carriers," or "Alfin Inserts." Ni-resist piston inserts are alloyed cast iron rings, with or without a sheet metal cooling channel pressed and welded into the interior of the insert. Ni-resist piston inserts are composed of the material known as Ni-resist, of the chemical composition: 13.5% – 17.5% Ni (nickel), 5.5% – 8.0% Cu (copper), 0.8% – 2.5% Cr(chromium), 0.5% – 1.5% Mn (manganese), 1.0% – 3.0% Si (silicon), 2.4% – 3.0% C

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[7] 19 U.S.C. § 1677(10).

[8] See, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

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

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

[11] See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) ("The ITC may not modify the class or kind of imported merchandise examined by Commerce."); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), aff'd, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

[12] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298 n.1 ("Commerce's {scope} finding does not control the Commission's {like product} determination."); Torrington, 747 F. Supp. at 748-52 (affirming the Commission's determination defining six like products in investigations where Commerce found five classes or kinds).

> (carbon). The cast iron composition is produced primarily to the material specifications of the American Society for Testing and Materials (ASTM), ASTM A-436 grade 1. The scope of these investigations does not include piston rings nor any other product manufactured using the Ni-resist material.[13]

Ni rings are circular rings fused into the top portions of aluminum pistons used in diesel engines. The Ni ring expands and contracts at the same rate as the piston, thus improving the piston's wear resistance and working life.[14] Ni rings used in engines are only found in diesel engines that incorporate aluminum pistons. These engines are used to power motor vehicles (principally certain light trucks and medium- and heavy-duty trucks in the United States), farm and other off-road equipment, marine transports, and large compressors.[15]

C. Domestic Like Product Analysis

In the preliminary phase investigations, in which the issue of domestic like product was not disputed, the Commission defined a single domestic like product that was coextensive with the scope definition. It found that, despite variations in size and weight, all Ni rings have the same metal composition and perform the same function in aluminum pistons. Ni rings are alloyed cast iron rings whose chemistry consists of 15 percent nickel, 6.5 percent copper, 2 percent chrome, 1 percent manganese, 2 percent silicon, and 2.5 percent carbon. The Ni ring protects the aluminum piston during combustion inside the diesel engine cylinder. It absorbs impact from the piston ring and prevents wear to the piston.[16] Additionally, the record did not indicate that there were any substitute products performing the same functions as Ni rings.[17]

The Commission further emphasized that Ni rings are sold to the same channel of distribution. Domestically produced Ni rings are sold to end users, which are typically manufacturers of aluminum pistons for diesel engines that incorporate the Ni rings as a component in their production of finished pistons.[18]

The Commission found that all domestically produced Ni rings are produced in the same manner at the same facilities. The production process involves three steps: (1) metal is melted in an electric induction furnace; (2) the molten metal is poured into a mold and rotated during solidification, in a process called centrifugal casting; and (3) the centrifugally cast tube is machined to the desired specifications.[19]

The record relevant to the definition of the domestic like product has not changed in any material manner since the preliminary phase investigations, and no party submitted any argument during the final

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[13] 74 Fed. Reg. 47922 (Sept. 18, 2009).

[14] Confidential Report (CR) at I-7, Public Report (PR) at I-6.

[15] CR at I-10, PR at I-8.

[16] Ni-Resist Piston Inserts from Argentina and Korea, Inv. Nos. 701-TA-460-461 (Preliminary), USITC Pub. 4066 at 5, 7 (Mar. 2009) ("Preliminary Determinations").

[17] Preliminary Determinations, USITC Pub. 4066 at 6.

[18] Preliminary Determinations, USITC Pub. 4066 at 6.

[19] Preliminary Determinations, USITC Pub. 4066 at 6.

phase investigation concerning the definition of the domestic like product.[20] Accordingly, for the reasons stated in our opinion in the preliminary phase investigations, we again define a single domestic like product, encompassing all domestically produced Ni rings with the specifications provided in the scope definition.

D. Domestic Industry

The domestic industry is defined as the domestic "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[21] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

We define the domestic industry to encompass all domestic producers of Ni rings, consistent with our definition of the domestic like product. QCC is the only known domestic producer of Ni rings.[22] Accordingly, the domestic industry consists of QCC's Ni ring production operations.[23]

III. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS[24]

A. Legal Standards

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.[25] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the like product, but only in the context of U.S. production operations.[26] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[27] In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United

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[20] See generally CR at I-6-16, II-1, PR at I-5-11, II-1.

[21] 19 U.S.C. § 1677(4)(A).

[22] CR at III-1, PR at III-1.

[23] No party has asserted, and we cannot identify, any domestic industry or related party issues in this final phase investigation.

[24] Negligibility under 19 U.S.C. § 1677(24) is not an issue in this investigation. During the most recent 12-month period prior to filing of the petition, subject imports from Argentina accounted for *** percent of total imports of Ni rings. CR/PR, Table IV-2. Consequently, subject imports from Argentina exceed the 3 percent statutory negligibility threshold.

[25] 19 U.S.C. §§ 1671d(b), 1673d(b).

[26] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[27] 19 U.S.C. § 1677(7)(A).

States.[28] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[29]

Although the statute requires the Commission to determine whether the domestic industry is "materially injured by reason of" or threatened with material injury by reason of unfairly traded imports,[30] it does not define the phrase "by reason of," indicating that this aspect of the injury analysis is left to the Commission's reasonable exercise of its discretion.[31] In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the "by reason of" standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.[32]

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.[33] In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.[34] Nor does the

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[28] 19 U.S.C. § 1677(7)(C)(iii).

[29] 19 U.S.C. § 1677(7)(C)(iii).

[30] 19 U.S.C. §§ 1671d(b)(1), 1673d(b)(1).

[31] Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) ("{T}he statute does not 'compel the commissioners' to employ {a particular methodology}."), aff'g 944 F. Supp. 943, 951 (Ct. Int'l Trade 1996).

[32] The Federal Circuit, in addressing the causation standard of the statute, observed that "{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement." Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that "this court requires evidence in the record 'to show that the harm occurred "by reason of" the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.'" See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

[33] SAA at 851-52 ("{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports."); S. Rep. 96-249 at 75 (1979) (the Commission "will consider information which indicates that harm is caused by factors other than less-than-fair-value imports."); H.R. Rep. 96-317 at 47 (1979) ("in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;" those factors include "the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry"); accord Mittal Steel, 542 F.3d at 877.

[34] SAA at 851-52 ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports."); Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) ("{T}he

(continued...)

"by reason of" standard require that unfairly traded imports be the "principal" cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.[35] It is clear that the existence of injury caused by other factors does not compel a negative determination.[36]

Assessment of whether material injury to the domestic industry is "by reason of" subject imports "does not require the Commission to address the causation issue in any particular way" as long as "the injury to the domestic industry can reasonably be attributed to the subject imports" and the Commission "ensure{s} that it is not attributing injury from other sources to the subject imports."[37] [38] Indeed, the

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[34] (...continued)
Commission need not isolate the injury caused by other factors from injury caused by unfair imports ... . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports." (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int'l Trade 2002) ("{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury" or make "bright-line distinctions" between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that "{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an 'other causal factor,' then there is nothing to further examine regarding attribution to injury"), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute "does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.").

[35] S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

[36] See Nippon Steel Corp., 345 F.3d at 1381 ("an affirmative material-injury [sic] determination under the statute requires no more than a substantial-factor showing. That is, the 'dumping' need not be the sole or principal cause of injury.").

[37] Mittal Steel, 542 F.3d at 877-78; see also id. at 873 ("While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured 'by reason of' subject imports, the Commission is not required to follow a single methodology for making that determination ... . {and has} broad discretion with respect to its choice of methodology.") citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

[38] Commissioner Pinkert does not join this paragraph or the following four paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal, held that the Commission is required, when considering present material injury in certain circumstances, to undertake a particular kind of analysis of nonsubject imports. Mittal explains as follows:

> What Bratsk held is that "where commodity products are at issue and fairly traded, price-competitive, non-subject imports are in the market," the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether non-subject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878.

Federal Circuit has examined and affirmed various Commission methodologies and has disavowed "rigid adherence to a specific formula."[39]

The Federal Circuit's decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant "other factor" was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit's guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.[40] The additional "replacement/benefit" test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission's interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the Court requires the Commission to have "evidence in the record 'to show that the harm occurred 'by reason of' the LTFV imports,'" and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.[41] Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.[42] [43]

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence

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[39] Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 ("Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was 'by reason' of subject imports.").

[40] Mittal Steel, 542 F.3d at 875-79.

[41] Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission's alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

[42] Commissioner Lane also refers to her dissenting views in Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv. Nos. 731-TA-1131-1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of Mittal Steel.

[43] To that end, after the Federal Circuit issued its decision in Bratsk, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission's causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of nonsubject imports.

standard. Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.[44] [45]

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is material injury or threat of material injury by reason of subject imports from Argentina.

Demand Conditions. Apparent U.S. consumption of Ni rings declined during the period examined (January 1, 2006 through June 30, 2009). Apparent U.S. consumption of Ni rings declined from *** pounds in 2006 to *** pounds in 2007 and then to *** pounds in 2008. Apparent consumption was lower in the first six months of 2009 ("interim 2009"), at *** pounds, than it was during interim 2008, when it was *** pounds.[46]

Demand for Ni rings is directly linked to the demand for diesel engines that incorporate aluminum pistons.[47] These engines are used to power motor vehicles (which, in the United States, are largely certain light trucks and medium- to heavy-duty trucks), farm and other off-road equipment, marine transports, and large compressors.[48] The parties agree that, at least to some extent, the decline in Ni ring apparent consumption during the period examined reflects a decline in demand for the motor vehicles containing diesel engines.[49] Indeed, the sales of class 8 trucks, which QCC has identified as a good indicator for aluminum piston sales, declined by 53.5 percent from 2006 to 2008.[50]

Technological changes provide a major reason why demand has declined for motor vehicles containing diesel engines with aluminum pistons. Several aluminum piston producers characterized use of Ni rings as an older technology, and observed that as emission standards promulgated by the U.S. Environmental Protection Agency (EPA) become more stringent, engine producers increasingly prefer steel or articulated pistons, which can better withstand the increased heat associated with the greater cylinder pressure required under stricter emissions standards than can aluminum pistons. Unlike aluminum pistons, steel and articulated pistons do not incorporate Ni rings.[51] Changes in EPA vehicle emissions standards may also affect Ni ring demand; the parties have reported that historically there have been increases in demand just prior to the effective date of revised EPA emissions standards.[52]

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[44] Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC").

[45] We provide in the discussion of impact in section III.E. below a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

[46] CR/PR, Table IV-3.

[47] CR at II-7, PR at II-4.

[48] CR at I-10, PR at I-8.

[49] Tr. at 42 (J. Korff), 115 (Turcott); Federal-Mogul Prehearing Brief at 3-4.

[50] CR at II-10, PR at II-6.

[51] CR at I-11, PR at I-9; Federal-Mogul Prehearing Brief at 4-5; see also CR/PR at IV-1 n.3 (piston producer ***), Federal-Mogul Prehearing Brief, ex. 3 (showing evolution in demand from particular customers away from aluminum pistons to steel or articulated pistons).

[52] Tr. at 99 (Turcott); CR at II-8-9, PR at II-5-6.

The parties also reported that poor economic conditions in the United States affected demand during the latter portion of the period examined.[53] We observe, however, that the rate of decline in annual apparent U.S. consumption of Ni rings was sharper in 2007, before the current U.S. recession began, than in 2008.[54]

There are very few known U.S. producers of aluminum pistons for diesel engines that would purchase or use Ni rings in their operations. The two principal U.S. aluminum piston producers that purchase Ni rings are the two importers that entered appearances in this investigation: Federal-Mogul and Karl Schmidt. Two other firms responded to the Commission purchasers' questionnaire, but the record indicates that their purchase quantities ***.[55] Another firm, Mahle, was also identified by industry participants as a firm that produces aluminum pistons, ***.[56]

Supply Conditions. QCC is the sole known domestic producer of Ni rings.[57] QCC was acquired by the Korff family at a bankruptcy sale in 2004.[58] Joseph Korff, the president of QCC, testified that in the 1990s QCC sold as much as $10 million worth of Ni rings annually and that Ni rings constituted about half of QCC's total business.[59] By the time Mr. Korff acquired the business in 2004, QCC's sales of Ni rings had declined to somewhere in the range of $2.5 to $5 million a year and the Ni ring business had been unprofitable for several years.[60] Most of QCC's current business is in sand castings, which are nonsubject products that do not use the same production equipment or processes as Ni rings.[61] QCC also produces other products, such as lapping pots and cylinder liners, on the centrifugal casting equipment it uses to produce Ni rings.[62] QCC acknowledged at the hearing that its current productive capacity for Ni rings exceeds the sum of apparent U.S. consumption for that product and demand for the other centrifugally cast products it produces.[63] QCC's share of apparent U.S. consumption of Ni rings declined from *** percent in 2006 to *** percent in 2008, and was lower in interim 2009 (at *** percent) than in interim 2008 (when it was *** percent).[64]

Argentina was *** supplier of Ni rings to the U.S. market during the period examined. Subject imports' share of the quantity of apparent U.S. consumption of Ni rings declined from *** percent in 2006 to *** percent in 2008. It was higher in interim 2009 (at *** percent) than in interim 2008 (when it

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[53] Tr. at 42 (J. Korff), 115 (Turcott).

[54] CR/PR, Table C-1.

[55] CR at II-12 n.42, II-13 & n.43, PR at II-7 n.42, II-8 & n.43; CR/PR, Table III-3.

[56] Tr. at 111, 139-40 (Turcott). ***. See CR at IV-1 n.3, PR at IV-1 n.3.

[57] See CR at III-1, PR at III-1.

[58] Tr. at 12 (J. Korff).

[59] Tr. at 13-14 (J. Korff).

[60] Tr. at 15 (J. Korff); see Federal-Mogul Prehearing Brief, ex. 1.

[61] See Tr. at 36-37 (J. Korff).

[62] Tr. at 22 (J. Korff).

[63] Tr. at 25 (J. Korff).

[64] CR/PR, Table IV-4.

was *** percent).[65] Karl Schmidt was the sole importer of subject merchandise from Argentina during the period examined.[66]

Nonsubject sources supplied the next largest quantity of Ni rings to the U.S. market during the period examined. *** nonsubject imports were from Korea and were imported by Federal-Mogul.[67] Nonsubject imports' share of the quantity of apparent U.S. consumption of Ni rings rose from *** percent in 2006 to *** percent in 2008. It was lower in interim 2009 (at *** percent) than in interim 2008 (when it was *** percent).[68]

Other Conditions. Nickel is among the principal raw materials used to make Ni rings.[69] Nickel prices were volatile during the period examined, rising sharply in 2006 and early 2007, peaking during the second quarter of 2007, and declining irregularly thereafter.[70] Because of the volatility of nickel prices, nickel surcharges are common among Ni ring producers worldwide.[71]

Market participants perceive the subject imports and the domestic like product to be sometimes or always interchangeable.[72] *** reported that nonsubject imports and the domestic like product are always interchangeable.[73] Comparisons between the domestic like product and subject imports and the domestic like product and nonsubject imports from Korea were made by only one purchaser apiece. In each comparison, the responding purchaser found the domestic and imported products comparable with regard to *** purchasing factors.[74]

Karl Schmidt states that most of its Ni ring purchases are made pursuant to "long-term programs" of three to seven years in duration that involve commitments to purchase substantial quantities of product.[75] It will occasionally purchase smaller orders – typically in the tens of thousands of pieces – in the spot market.[76] Karl Schmidt states that it does not carry significant inventories of the components it uses to produce pistons and requires its suppliers to furnish these parts on a "just in time" basis.[77]

C. Volume of Subject Imports

In evaluating the volume of subject imports, section 771(7)(C)(i) of the Tariff Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is

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[65] CR/PR, Table IV-4.

[66] CR at IV-1, PR at IV-1.

[67] CR at IV-1, PR at IV-1.

[68] CR/PR, Table IV-4.

[69] CR at I-7, V-1, PR at I-6, V-1.

[70] CR/PR, Figure V-1.

[71] CR at V-1, PR at V-1.

[72] ***. CR/PR, Table II-3.

[73] CR/PR, Table II-3.

[74] In the comparison with subject imports, ***. In the comparison with nonsubject imports from Korea, ***. CR/PR, Table II-5.

[75] Tr. at 94-95 (Turcott).

[76] Tr. at 94-95 (Turcott).

[77] Karl Schmidt Prehearing Brief at 4.

significant."[78]

The quantity of subject imports declined on both an absolute and relative basis from 2006 to 2008.[79] Subject imports declined from *** pounds in 2006 to *** pounds in 2007 and then increased to *** pounds in 2008. There were *** pounds of subject imports in 2009, which was lower than the *** pounds in interim 2008.[80] U.S. shipments of subject imports declined from *** pounds in 2006 to *** pounds in 2007 and then declined further to *** pounds in 2008. There were *** pounds of U.S. shipments of subject imports in 2009, which was lower than the *** pounds shipped in interim 2008.[81]

The market penetration of subject imports declined from *** percent in 2006 to *** percent in 2007 and then to *** percent in 2008. Market penetration of subject imports was higher in interim 2009, when it was *** percent, than in interim 2008, when it was *** percent, despite the fact that the quantity of subject imports was lower in interim 2009 than in interim 2008.[82]

As stated above, Argentina is *** supplier of Ni rings to the U.S. market and the market penetration of subject imports was substantial throughout the period examined. Consequently, we find the volume of subject imports, both in absolute terms and relative to consumption in the United States, to be significant. We do not find there to be a significant increase in the volume of subject imports, because the quantity of subject imports declined throughout the period examined and their market share declined during the three full calendar years for which we collected data. As explained below, notwithstanding the significant volume of subject imports, we reach a negative determination of material injury by reason of subject imports in light of the lack of significant price effects and the lack of any causal nexus between the subject imports and any changes in the condition of the domestic industry.

D. Price Effects of Subject Imports

In evaluating the price effects of the subject imports, section 771(7)(C)(ii) of the Tariff Act provides that the Commission shall consider whether –

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[83]

The Commission collected price data concerning four products. QCC reported its prices ***. Karl Schmidt, the sole importer of subject merchandise, reported prices for subject imports from

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[78] 19 U.S.C. § 1677(7)(C)(i).

[79] Because the Commission terminated the investigation concerning Ni rings from Korea, 74 Fed. Reg. 51319 (Oct. 6, 2009), the statute bars the Commission from cumulating imports from Korea with subject imports from Argentina for purposes of its final determination. 19 U.S.C. § 1677(7)(G)(ii)(II).

[80] CR/PR, Table IV-2.

[81] CR/PR, Table IV-3.

[82] CR/PR, Table IV-4. The quantities of shipments of the domestic like product and nonsubject imports also were lower in interim 2009 than in interim 2008. CR/PR, Table IV-3.

[83] 19 U.S.C. § 1677(7)(C)(ii).

Argentina on *** basis. It also reported its prices for purchases from QCC on *** basis.[84] There were 17 quarterly observations of sales prices of the domestic like product, seven quarterly observations of purchase prices for the domestic like product, and 27 quarterly observations for purchase prices for the subject imports.[85]

The pricing data are of limited utility due to the nature of the underlying transactions. Because Karl Schmidt does not sell Ni rings, but uses them in the production of aluminum pistons, we are unable to conduct a comparison of domestic producers' first sales prices with importers' first sales prices as in a typical investigation. The most comparable pricing comparisons that the record permits are those comparing Karl Schmidt's *** prices for purchases from QCC and Karl Schmidt's *** prices for purchases of the subject imports. There are seven such comparisons. In six of them, the *** price for the subject imports was lower than the *** purchase price for the domestically produced product.[86]

Besides the absence of comparisons of first sales prices, there are several additional reasons why the available price comparisons are of limited utility. First, there are only a very limited number of comparisons. Additionally, Karl Schmidt purchased the subject imports and the domestically produced product under very different conditions of trade. As previously discussed, Karl Schmidt engages in both long-term programs for purchases of substantial quantities of Ni rings, and spot purchases of much smaller quantities.[87] Karl Schmidt has used Clorindo, the Argentine producer, as its primary supplier, and its single long-term supplier, for over a decade.[88] During the period examined, it relied on QCC for spot purchases only.[89] As might be expected in light of these purchasing patterns, for both pricing products for which comparisons can be made, Karl Schmidt purchased *** greater quantities of the subject imports than it did of the domestically produced product.[90] In light of the limitations of the available pricing data, and because the differences in reported purchase prices reflect the fact that the domestic like product and the subject imports were purchased in *** different quantities under dissimilar purchasing programs, we do not find that the record indicates significant underselling of the domestic like product by the subject imports.[91] [92]

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[84] CR at V-5 & n.25, PR at V-3 & n.25. The Commission requested that importers provide prices on a landed duty-paid basis, excluding U.S. inland transportation costs, if able to do so. ***. Id.

[85] CR/PR, Tables V-1-2, D-1-2.

[86] CR/PR, Tables V-1-2.

[87] Tr. at 94-95 (Turcott).

[88] Tr. at 85-86 (Kane); Karl Schmidt Prehearing Brief at 7.

[89] Tr. at 87 (Kane); Karl Schmidt Posthearing Brief at 4. We discuss in section III.E. below QCC's unsuccessful negotiations during the period examined to enter a long-term supply agreement with Karl Schmidt.

[90] CR/PR, Tables V-1-2. Moreover, as Karl Schmidt's witness testified at the hearing, during the portion of the period examined when it made many of its spot market purchases from QCC, "we didn't really have a lot of time to shop around." Tr. at 103 (Turcott). During the period examined, Karl Schmidt did not have any qualified suppliers for Ni rings other than Clorindo and QCC. See Tr. at 131 (Turcott).

[91] QCC did not provide any specific lost sales or revenues allegations to the Commission. CR at V-10-11, PR at V-4.

[92] Commissioner Lane does not join in this finding. For those pricing comparisons on a *** basis that are in the record, the subject imports undersold the domestic industry prices by margins ranging from *** to *** percent in six quarters and the overselling in one quarter was by a margin of approximately *** percent. Commissioner Lane finds that there was significant underselling by the subject imports.

The reported purchase prices for the subject imports rose during 2006, peaked during the second and third quarters of 2007, and then declined irregularly during the remainder of the period examined.[93] This appears generally to reflect the trends in nickel prices observed during the period examined.[94] Ascertaining price trends for the domestic like product is difficult because of the lack of any extended time series of data for any of the individual pricing products. To the extent an analysis is possible, it indicates that price movements for domestically produced Ni rings appear to be largely coincident with price fluctuations for nickel.[95]

For three of the four domestically produced pricing products, the latest available pricing observation was higher than the earliest available observation.[96] In light of this, we do not find significant price depression.

QCC's ratio of cost of goods sold (COGS) to net sales rose *** during the period examined, increasing from *** percent in 2006 to *** percent in 2008.[97] Notwithstanding this, the record indicates that QCC was able to recoup changes in raw materials costs on a per-unit basis. Its per unit metal margin (the difference between per unit sales value and per unit raw materials costs) increased from *** in 2006 to *** in 2008.[98] QCC's ratio of raw materials costs to net sales values did increase, but this is in part a function of the fact that, while nickel prices generally declined after 2007,[99] QCC consumed inventories of metals because declining sales volumes did not warrant making new metal purchases.[100] Declining sales volumes also explain why QCC was not able to recoup increases in its direct labor and other factory costs, which both rose *** on a per-unit basis; other factory costs also increased *** as a ratio to net sales values.[101] Because of low and *** declining sales volumes, these costs had to be absorbed over a smaller share of production.[102]

We find that the declines in sales volumes and accompanying revenues cannot be attributed to any significant degree to the subject imports. Karl Schmidt, the sole importer of subject merchandise, actually purchased *** more Ni rings from QCC in 2007 and 2008 than it did in 2006, while its subject import volumes were *** lower in both 2007 and 2008 than in 2006.[103] Thus, in 2008, when QCC's

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[93] CR/PR, Tables V-1-2.

[94] CR/PR, Figure V-1.

[95] CR/PR, Tables V-1-2, Tables D-1-2.

[96] CR/PR, Tables V-1-2, Tables D-1-2.

[97] CR/PR, Table VI-1. The *** percent ratio of COGS to sales in interim 2009 was lower than the *** percent ratio in interim 2008. Id.

[98] CR at VI-7 n.21, PR at VI-3 n.21. The per unit metals margin was also higher in interim 2009 than interim 2008. Id.

[99] CR/PR, Figure V-1.

[100] CR at VI-5-6, PR at VI-3.

[101] CR/PR, Table VI-1.

[102] CR at VI-6-7, PR at VI-3-4.

[103] CR/PR, Tables III-3, IV-2. Karl Schmidt testified at the hearing that its spot market needs peaked in 2007 because of a demand spike for aluminum pistons just prior to new EPA emissions regulations becoming effective in 2008. Tr. at 99 (Turcott).

QCC contends that it formerly sold significant quantities of Ni rings to piston producer Zollner Corp. until Karl Schmidt acquired Zollner in 1999. These transactions, however, occurred well before the period examined.

(continued...)

COGS to sales ratio ***, QCC's sales revenues from Karl Schmidt were higher than they were in 2006.[104] We cannot conclude that the cost/price squeeze the domestic industry experienced during the period examined was caused to any significant degree by the subject imports. In light of these considerations, we find that the subject imports from Argentina did not have significant price-suppressing effects.

Therefore, we find that subject imports have not had a significant effect on the prices of the domestic product.

E. Impact of Subject Imports

In examining the impact of subject imports, section 771(7)(C)(iii) of the Tariff Act provides that the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[105] These factors include output, sales, inventories, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[106]

Output-related indicators of domestic industry performance generally declined during the period examined. Production and shipments fell.[107] The confidential data the Commission collected corroborate QCC's public testimony that its current shipments are "zero or close to zero."[108] Because capacity

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[103] (...continued)
Moreover, the record does not contain any information about pertinent conditions of competition in 1999, nor does it indicate that QCC lost these sales for price reasons.

[104] CR/PR, Table III-3, VI-1.

[105] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.").

[106] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[107] The domestic industry's production declined from *** pounds in 2006 to *** pounds in 2007, and then declined further to *** pounds in 2008. Interim 2009 production of *** pounds was below interim 2008 production of *** pounds. CR/PR, Table III-1. U.S. shipments declined from *** pounds in 2006 to *** pounds in 2007, and then declined further to *** pounds in 2008. Interim 2009 U.S. shipments of *** pounds were below interim 2008 U.S. shipments of *** pounds. Export shipments also declined from 2006 to 2008, albeit at a *** rate than domestic shipments, and were lower in interim 2009 than in interim 2008. CR/PR, Table III-2.

Inventories declined from *** pounds in 2006 to *** pounds in 2007 and then to *** pounds in 2008. Interim 2009 inventories of *** pounds were less than interim 2008 inventories of *** pounds. Inventories as a ratio to U.S. shipments declined from 2006 to 2008 but were higher in interim 2009 than in interim 2008. CR/PR, Table III-4.

[108] Tr. at 14 (J. Korff).

remained constant, the reduced output caused reported capacity utilization to decline to *** levels.[109] The domestic industry's share of apparent U.S. consumption declined throughout the period.[110]

The number of production and related workers declined during the period examined.[111] Because production declined at a more rapid rate than employment, there were *** declines in productivity and increases in unit labor costs.[112]

QCC's operating performance declined during each year from 2006 to 2008, and was *** after 2007. Sales fell ***,[113] and the firm showed operating *** each year.[114]

The domestic industry's poor and declining performance during the period examined, however, was not a function of the subject imports to any significant degree.[115] Although the subject imports had a significant presence in the market, they were not responsible for the domestic industry's *** decline in market share from 2006 to 2008, as the subject imports themselves lost market share over that time period to nonsubject imports. Nor were the declines in the domestic industry's production, shipments, and employment caused by the subject imports to any significant degree.

We have examined the other factors that are having adverse effects on the domestic industry, as discussed herein. We find, in light of these other factors, that there is not a sufficient causal nexus between subject imports and material injury to the domestic industry.[116]

Instead, there are two significant factors explaining the declines in QCC's sales volumes and revenues. The first is *** reduced purchases by Federal-Mogul. As previously discussed, while Karl Schmidt's imports from Argentina declined from 2006 to 2008, its purchases from QCC increased.

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[109] Capacity was at *** pounds on an annual basis throughout the period examined. CR/PR, Table III-1. This was *** greater than apparent U.S. consumption, which declined from *** pounds in 2006 to *** pounds in 2008. CR/PR, Table IV-3. Reported capacity utilization declined from *** percent in 2006 to *** percent in 2007 and then to *** percent in 2008. It was lower in interim 2009 (when it was *** percent) than in interim 2008 (when it was *** percent). CR/PR, Table III-1.

[110] The domestic industry's share of the quantity of apparent U.S. consumption declined from *** percent in 2006 to *** percent in 2007 and then to *** percent in 2008. Its 2009 share of *** percent was below its interim 2008 share of *** percent. CR/PR, Table IV-4.

[111] The number of production and related workers was *** in 2006, declined to *** in 2007, and declined further to *** in 2008. Employment of *** in interim 2009 was lower than employment of *** workers in interim 2008. CR/PR, Table III-5.

[112] Productivity, in pounds per hour, declined from *** in 2006 to *** in 2007 and then increased to *** in 2008. The *** pounds per hour in interim 2009 was lower than the *** pounds per hour in interim 2008. Unit labor costs per pound rose from *** in 2006 to *** in 2007 and remained unchanged in 2008. Unit labor costs per pound were higher in interim 2009, when they were ***, than in interim 2008, when they were ***. CR/PR, Table III-5.

[113] Total net sales by quantity fell from *** pounds in 2006 to *** pounds in 2007 and then to *** pounds in 2008. Interim 2009 sales of *** pounds were below interim 2008 sales of *** pounds. CR/PR, Table VI-1.

[114] Operating *** were *** in 2006, *** in 2007, *** in 2008, *** in interim 2008 and *** in interim 2009. The operating ratio declined from *** percent in 2006 to *** percent in 2007, and then declined further to *** percent in 2008. Operating ratios in interim 2008 and interim 2009 were *** percent, respectively. CR/PR, Table VI-1.

There were *** capital or research and development expenditures reported *** during the period. CR/PR, Table VI-2.

[115] Commissioner Lane finds that although subject imports contributed to the injury to the domestic industry as reflected in its poor and declining performance during the period of investigation, the harm to the domestic industry "by reason of" the subject imports is not more than a minimal or tangential cause of such injury.

[116] Commissioner Pinkert discusses his causation analysis more fully in footnote 130.

Instead, QCC's production and sales declines were caused by the loss of *** sales to Federal-Mogul, the customer *** to nonsubject imports from Korea.[117] QCC's Ni ring sales to Federal-Mogul dropped from *** pounds in 2006 to *** pounds in 2008 as Federal-Mogul shifted its purchases from QCC to imports from the Korean producer, which, in light of Commerce's negative subsidy determination, must be considered fairly traded nonsubject imports.[118] Indeed, the decline in purchases by Federal-Mogul *** for QCC's total decline in sales from 2006 to 2008.[119]

The second factor is declining U.S. demand. While the record indicates that ***, declining demand also caused the quantity of Karl Schmidt's imports from Argentina to fall *** in interim 2009.[120] Declining demand also reduced the need for spot market purchases by Karl Schmidt.

We have also examined the degree to which price competition from the subject imports may have prevented the domestic industry from obtaining additional sales, or caused greater declines in production, shipments, market share, and employment than would have occurred otherwise. In this respect we have considered information on record concerning negotiations that took place between QCC and Karl Schmidt during 2007 and 2008 about a possible long-term supply contract.[121] The record corroborates Karl Schmidt's testimony that the negotiations ultimately foundered because QCC insisted on a surcharge based on the prices of all metals, instead of merely nickel.[122] Karl Schmidt testified that the common practice is to use a surcharge based solely on the price of nickel,[123] and other information on record indicates that QCC's use of surcharges based on prices of all metals ***.[124] Karl Schmidt's witnesses testified that the firm believes that it is the supplier's responsibility to accept the risk of fluctuation in metals prices, and that Karl Schmidt requires a predictable price (aside from nickel surcharges which it can pass on to its purchasers) before it can commit to a long-term agreement.[125] QCC's president, by contrast, testified that he does not believe that taking risks for fluctuations in metal prices other than nickel is prudent.[126] In light of this testimony, we find that the QCC-Karl Schmidt long-term contract negotiations did not fail for price reasons, in that Karl Schmidt was not in a position to compare fairly the prices offered by QCC and the subject imports because QCC's prices could fluctuate in a manner that the

[117] See CR/PR, Tables III-3, IV-3, and VI-1.

[118] CR/PR, Table III-3.

[119] CR/PR, Table III-3.

[120] CR/PR, Tables III-3, IV-2.

[121] The record of these negotiations provided to us does not indicate that there was any firm discussion of possible quantities that QCC would supply if it entered an agreement. To the contrary, ***. Karl Schmidt Posthearing Brief at C-23.

[122] Tr. at 95 (Turcott); see Karl Schmidt Posthearing Brief at C-39-42.

[123] Tr. at 95 (Turcott).

[124] CR at V-3, PR at V-2. QCC president Joseph Korff testified that he personally developed the all-metals surcharge formula in 1989 during his prior tenure with the company. Tr. at 45 (J. Korff).

[125] Tr. at 95-96 (Turcott), 108 (Turcott), 123-24 (Klingon).

[126] Tr. at 32, 63-64 (J. Korff).

subject imports would not.[127] [128] Instead, QCC's final offer reflected business practices unacceptable to Karl Schmidt that Karl Schmidt perceived – with reason – were not standard for such transactions.[129] Consequently, QCC's inability to obtain a long-term contractual agreement with Karl Schmidt, which might have enabled it to increase output and sales during the period examined, was not a function of the subject imports having a price advantage over the domestic like product.[130]

Accordingly, we find that the domestic industry's poor financial performance during the period examined was not due in any significant degree to the subject imports. The poor and declining operating performance of the domestic industry was caused by *** declining sales revenues and concomitant increases in the ratio of COGS to net sales. As explained above, these revenue declines are not a function of the subject imports, which did not have significant price effects. Instead, as with the declines in production and shipments, they are attributable to competition from nonsubject imports and declines in demand.

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[127] Moreover, QCC testified that its surcharge formula could serve to reduce prices (if metals prices declined) as well as to increase them. Tr. at 45 (J. Korff). This tends to reinforce Karl Schmidt's view that QCC's surcharge formula was problematic less because it inflated prices than because it made them unpredictable.

[128] Commissioner Pinkert finds that Karl Schmidt takes surcharge terms into account as a factor in the total cost of purchasing Ni rings. Karl Schmidt Posthearing Brief at 10-11, Ex. C at C-16.

[129] Chairman Aranoff notes that before the failure of the 2007-2008 negotiations between Karl Schmidt and QCC, Karl Schmidt had some reason to hesitate before expanding its business relationship with QCC. Shortly after his family purchased QCC in 2004, QCC president Joseph Korff sent a letter to three firms then producing aluminum pistons in the United States stating that "[t]o continue in the business, we need sales volume of at least $500,000 per month at base prices which allow us to generate sufficient profits to maintain and reinvest in the business as a stand alone." Karl Schmidt Prehearing Brief, ex. 3. At the hearing, Mr. Korff conceded that QCC never followed up on this letter with its customers. Tr. at 56-57 (J. Korff). The fact that QCC was still in the Ni ring business in 2007 despite never achieving the volume commitments it asserted were necessary casts some doubt on Karl Schmidt's claim that QCC is an unreliable supplier. Nevertheless, in light of the phrasing of the letter and the lack of any follow-up to counter potentially negative reactions from the recipients, subsequent negotiations took place against a pre-existing background of poor customer-supplier relations.

[130] As reflected in whole or in part in the text, Commissioner Pinkert finds that Clorindo has supplied Karl Schmidt with Ni rings under contract since before the period under examination; Clorindo's sales to Karl Schmidt represented a *** share of the U.S. market throughout the period; QCC wished to conclude a contract with Karl Schmidt during the period but was unable to do so, in large part because it was unable or unwilling to offer metal surcharge terms comparable to those offered by Clorindo (QCC ultimately insisted on an all-metals, rather than a nickel-only, surcharge); and QCC's financial performance with respect to Ni rings was *** throughout the period.

Although Commissioner Pinkert finds that QCC's financial performance with respect to Ni rings would have improved substantially had it obtained a contract with Karl Schmidt, he does not find that its failure to do so is by reason of the subsidized imports from Argentina, and he thus does not find that the subsidized imports from Argentina caused material injury to the domestic industry. Under the facts as set forth above, the only argument that could have convinced him otherwise would be that Clorindo was able to offer Karl Schmidt more attractive surcharge terms than QCC, and thereby prevent QCC from concluding a contract with Karl Schmidt, because Clorindo received countervailable subsidies. Cf. QCC Postconference Brief at 5; Tr. at 157 (G. Korff).

Commissioner Pinkert finds that argument, however, to be unsupported by the record in that the subsidization here is of a small magnitude – the net countervailable subsidy rate reported by Commerce is insufficient when applied to the average of the unit values of imports from Argentina to account for the risk of increased non-nickel metal costs – and is not related to metal prices. See 74 Fed. Reg. at 47923. In addition, he notes that the volume of contract sales QCC could have won from Karl Schmidt is unclear. ***. Karl Schmidt Posthearing Brief, Ex. C at C-23.

We therefore find that the subject imports have not had a significant impact on the domestic industry. Accordingly, we conclude that the domestic industry is not materially injured by reason of subject imports.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[131] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.[132] In making our determination, we consider all statutory threat factors that are relevant to this investigation.[133]

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[131] 19 U.S.C. § 1677(7)(F)(ii).

[132] 19 U.S.C. § 1677(7)(F)(ii).

[133] These factors are as follows:

> (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,
>
> (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
>
> (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
>
> (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,
>
> (V) inventories of the subject merchandise,
>
> (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products;
>
> . . .
>
> (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

19 U.S.C. § 1677(7)(F)(i). To organize our analysis, we discuss the applicable statutory threat factors using the same volume/price/impact framework that applies to a material injury analysis. Statutory threat factors (I), (II), (III), (V), and (VI) are discussed in the analysis of subject import volume. Statutory threat factor (IV) is discussed in the

(continued...)

Likely Subject Import Volume. We find that subject import volume is not likely to increase significantly in the imminent future. As previously discussed, the quantity of subject imports declined throughout the period examined and the market penetration of the subject imports declined from 2006 to 2008.[134] [135] The decline in the quantity of subject imports largely reflected declines in U.S. demand for Ni rings. As previously discussed, piston producers perceive that Ni rings embody an older technology and that demand will continue to move away from aluminum pistons incorporating Ni rings as EPA emissions requirements become more stringent. In particular, Karl Schmidt, which is the sole importer of the subject merchandise, projects that demand for the aluminum pistons it produces incorporating Ni rings will continue to decline.[136] Consequently, the record does not indicate that the U.S. demand trends for Ni rings observed during the period examined are likely to change in the imminent future.

We acknowledge that there is currently *** unused capacity in the Argentine industry, and that Clorindo projects that this unused capacity is likely to ***.[137] Nevertheless, we do not believe that this unused capacity makes further imports likely. Notwithstanding the unused capacity that existed during the period examined, Clorindo's shipments to the United States declined on both an absolute and a relative basis, as Clorindo directed increasing percentages of its shipments to other export markets.[138] Moreover, as discussed in section III.B., *** substantial purchasers of Ni rings in the United States are Karl Schmidt and Federal Mogul. There is no indication that Federal-Mogul is considering shifting its purchases from its current Korean supplier to Clorindo.[139] In light of these considerations, as well as the likely demand trends in the United States, we find Clorindo's projections that it will continue to direct *** percentages of shipments to export markets outside the United States to be credible.[140]

We have also examined several other statutory factors pertaining to likely subject import volume.[141] Inventories of the subject merchandise in Argentina were at low levels relative to production or total shipments throughout the period examined, and declined in both absolute and relative terms from

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[133] (...continued)
price effects analysis, and statutory threat factor (IX) is discussed in the impact analysis. Statutory threat factor (VII) is inapplicable, as no imports of agricultural products are involved in these investigations. There was no argument that the industry is currently engaging or will imminently engage in any efforts to develop a derivative or more advanced version of the domestic like product, which would implicate statutory threat factor (VIII).

[134] Although the market penetration of subject imports was higher in interim 2009 than in interim 2008, and the domestic industry's market share was lower, CR/PR at Table IV-4, this does not indicate a likelihood of the subject imports taking additional market share from the domestic industry. As discussed above, the record does not indicate that the subject imports used price-based competition to take sales from the domestic industry in interim 2009.

[135] Commissioners Lane and Pinkert do not join the previous footnote and note that, although the market penetration of subject imports was higher in interim 2009 than in interim 2008, and the domestic industry's market share was lower, CR/PR at Table IV-4, this does not indicate a likelihood of the subject imports taking additional market share from the domestic industry. As discussed above, the domestic industry lost market share due to the loss of Federal-Mogul's business and to the *** declines in apparent U.S. consumption, which accelerated in interim 2009, leading to a collapse in spot market demand during that period.

[136] Tr. at 116 (Turcott).

[137] CR/PR, Table VII-1. Clorindo states that it is currently ***. CR at VII-2, PR at VII-1.

[138] CR/PR, Table VII-1.

[139] See CR/PR, Table VII-3 (***).

[140] CR/PR, Table VII-1.

[141] We note that there are no antidumping or countervailing duty orders or investigations concerning the subject merchandise in other WTO member states. CR at VII-5, PR at VII-2.

2006 to 2008.[142] Inventories of the subject merchandise in the United States also declined both on an absolute and relative basis from 2006 to 2008.[143] Although inventories of the subject merchandise in both Argentina and the United States were higher on both a relative and absolute basis in interim 2009 than in interim 2008, this appears to be a function of demand declining more rapidly than production (in Argentina) or imports (in the United States).[144] This does not detract from our conclusion that significant additional quantities of subject imports are not likely.

Ni rings were *** produced and sold by Clorindo for the period for which data were collected,[145] so there is no likelihood of production being shifted to Ni rings from other products. We have also considered the nature of the subsidies. Commerce found that three Argentine programs provided countervailable subsidies, but made no findings that the subsidies were of the types described in Article 3 or 6.1 of the WTO Subsidies Agreement.[146]

Likely Price Effects. We found above that the subject imports do not currently have significant price effects, notwithstanding that their purchase prices were generally lower than purchase prices for the domestic like product. In light of our findings that the subject imports did not significantly undersell the domestic like product, nor depress or suppress prices to a significant degree, the record does not indicate that there is any significant likelihood that subject imports would use underselling to maintain or increase market share in relation to the domestic industry should demand for Ni rings continue to decline.[147] As discussed above, price movements appear to be largely coincident with price fluctuations for nickel. In light of these considerations, our prior finding that subject import volume is not likely to increase significantly, and the fact that subject import pricing did not stimulate demand for additional subject import volumes during the period examined, we do not believe that the subject imports will enter at prices that are likely to have a significant depressing or suppressing effect on domestic prices in the imminent future.

Likely Impact. Although the domestic industry is currently in a poor condition, the declines in industry performance that occurred during the period examined were not attributable to the subject imports to any significant degree. Similarly, because there is no likelihood in the imminent future of a significant increase in import volume, or significant price effects from the subject imports, we find that the subject imports will not likely have a significant impact. We accordingly conclude that the domestic industry is not threatened with material injury by reason of subject imports.

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[142] CR/PR, Table VII-1.

[143] CR/PR, Table VII-2.

[144] CR/PR, Tables VII-1-2; see CR at VII-2 n.4, PR at VII-1 n.4.

[145] CR at VII-1, PR at VII-1.

[146] The first Argentine program Commerce found to be a countervailable subsidy is the Reintegro program, which entitles Argentine exporters of new and unused goods manufactured in Argentina to a rebate of domestic indirect taxes that are levied during the production and distribution process of the finished export products. Memorandum from John M. Andersen to Ronald K. Lorentzen at 2 (Sept. 14, 2009). The second is Article 183.29 of the Santa Fe Fiscal Code, which provides a full stamp tax exemption on credits and loans to finance import and export and currency exchange transactions, and to financial and related transactions in the industrial sector. Id. at 6-7. The third is Article 127 of the Santa Fe Fiscal Code, which exempts export revenue from the province's turnover tax. Id. at 8.

[147] Commissioner Lane does not join this sentence.

CONCLUSION

For the foregoing reasons, we conclude that the domestic Ni ring industry is not materially injured or threatened with material injury by reason of subsidized imports from Argentina.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed with the U.S. Department of Commerce ("Commerce") and the U.S. International Trade Commission ("USITC" or "Commission") on January 26, 2009 by Korff Holdings LLC d/b/a Quaker City Castings ("QCC"), Salem, OH, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of subsidized imports of Ni-resist piston inserts ("Ni rings")[1] from Argentina and Korea.[2] Information relating to the background of the investigation is provided below.[3]

Effective date	Action
January 26, 2009	Petition filed with Commerce and the Commission; institution of the Commission's investigations (74 FR 5946, February 3, 2009)
February 23, 2009	Commerce's notice of initiation (74 FR 8054)
March 19, 2009	Commission's preliminary determinations (74 FR 12898, March 25, 2009)
July 6, 2009	Commerce's preliminary determinations (74 FR 31914 (Argentina)) and (74 FR 31919 (Korea)); scheduling of final phase of Commission investigations (74 FR 34784, July 17, 2009)
September 17, 2009	Commission's hearing[1]
September 18, 2009	Commerce's affirmative final determination on Argentina (74 FR 47922)
September 21, 2009	Commerce's negative final determination on Korea (74 FR 48059)
October 19, 2009	Date of the Commission's vote
October 29, 2009	Commission's determination transmitted to Commerce
[1] A list of witnesses appearing at the Commission's hearing is presented in app. B.	

[1] See the section entitled "The Subject Merchandise" in *Part I* of this report for a complete description of the merchandise subject to this investigation.

[2] Commerce made a final determination that countervailable subsidies are not being provided to producers and exporters of Ni rings from Korea, and therefore terminated the investigation concerning Korea. *Ni-Resist Piston Inserts from the Republic of Korea: Final Negative Countervailing Duty Determination*, 74 FR 48059, September 21, 2009. The Commission also terminated its investigation on Ni rings from Korea. 74 FR 51319, October 6, 2009.

[3] Relevant *Federal Register* notices are presented in app. A.

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the "Act") (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

> *shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.*

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

> *In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.*
> . . .
> *In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.*
> . . .
> *In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to*
> . . .
> *(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

Organization of the Report

Part I of this report presents information on the subject merchandise, subsidy rates, and the domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume and pricing of imports of the subject merchandise, respectively. *Part VI* presents information on the financial experience of the U.S. producer. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury as well as information regarding nonsubject countries.

U.S. MARKET SUMMARY

Ni rings are used to prolong the life of aluminum pistons used in diesel engines. The only U.S. producer of Ni rings is QCC, while producers of Ni rings outside the United States include Clorindo Appo SRL ("Clorindo") of Argentina and Incheon Metal Co., Ltd. ("Incheon") of Korea. The U.S. importer of Ni rings from Argentina is Karl Schmidt Unisia, Inc. ("Karl Schmidt") and the importer of Ni rings from Korea is Federal-Mogul Corp. ("Federal-Mogul"). *** imports of Ni rings into the United States from nonsubject countries are imports from Korea.

Apparent U.S. consumption of Ni rings totaled *** pounds ($***) in 2008. QCC's U.S. shipments of Ni rings totaled *** pounds ($***) in 2008, accounting for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. shipments of imports from Argentina totaled *** pounds ($***) in 2008, accounting for *** percent of apparent U.S. consumption by quantity and *** percent by value. The total quantity of U.S. shipments of imports from Argentina was *** percent lower in January-June 2009 than in January-June 2008, which coincided with apparent U.S. consumption being *** percent lower in January-June 2009 than in January-June 2008.

SUMMARY DATA AND DATA SOURCES

A summary of data collected in the investigation is presented in appendix C, table C-1. U.S. industry data are based on the questionnaire response of QCC, which accounted for all U.S. production of Ni rings during the period for which data were collected in the investigation (January 2006-June 2009). U.S. imports are based on questionnaire responses because the Harmonized Tariff Schedule of the United States ("HTS") category that includes Ni rings also includes other products that are not the subject of this investigation.

PREVIOUS AND RELATED INVESTIGATIONS

Ni rings have not been the subject of prior countervailing or antidumping duty investigations in the United States.

NATURE AND EXTENT OF SUBSIDIES

Argentina

On September 18, 2009, Commerce published a notice in the *Federal Register* of its affirmative final determination of countervailable subsidies for producers and exporters of Ni rings in Argentina.[4] Table I-1 presents Commerce's findings of subsidization for Ni rings from Argentina.

Commerce determined that three programs in Argentina are countervailable: (1) Tax Relief Under the Reintegro, (2) Article 183.29 Provincial Stamp Tax Exemption, and (3) Article 127 Provincial Turnover Tax Exemption. The Reintegro entitles Argentine exporters of new and unused goods manufactured in Argentina to a rebate of domestic indirect taxes that are levied during the production and distribution process of finished export products. Commerce determined the countervailable subsidy provided to Argentine producer Clorindo under the Reintegro to be 5.25 percent *ad valorem*. In addition, Commerce determined the countervailable subsidies obtained by Clorindo under the Provincial Stamp Tax Exemption to be 0.06 percent *ad valorem* and under the Provincial Turnover Tax Exemption to be 1.5 percent *ad valorem.*

Table I-1
Ni rings: Commerce's final subsidy determination with respect to imports from Argentina

Entity	Final countervailable subsidy rate (*percent*)
Clorindo Appo SRL	6.81
All others	6.81
Source: 74 FR 47922, September 18, 2009.	

THE SUBJECT MERCHANDISE

Commerce's Scope

Commerce has defined the scope of this investigation as follows:

> The scope of this investigation includes all Ni-resist piston inserts regardless of size, thickness, weight, or outside diameter. Ni-resist piston inserts may also be called other names including, but not limited to, 'Ring Carriers,' or 'Alfin Inserts.' Ni-resist piston inserts are alloyed cast iron rings, with or without a sheet metal cooling channel pressed and welded into the interior of the insert. Ni-resist piston inserts are composed of the material known as Ni-resist, of the chemical composition: 13.5%–17.5% Ni (nickel), 5.5%–8.0% Cu (copper), 0.8%–2.5% Cr (chromium), 0.5%–1.5% Mn (manganese), 1.0%–3.0% Si (silicon), 2.4%–3.0% C (carbon). The cast iron composition is produced primarily to the material specifications of the American Society for Testing and Materials (ASTM), ASTM A–436 grade 1.
>
> The scope of this investigation does not include piston rings nor any other product manufactured using the Ni- resist material. The subject imports are properly classified under subheading 8409.99.91.90 of the HTSUS, but have been imported under HTSUS 7326.90. The HTSUS

[4] *Ni-Resist Piston Inserts from Argentina: Final Affirmative Countervailing Duty Determination*, 74 FR 47922, September 18, 2009.

subheadings are provided for convenience and customs purposes. The written description is dispositive of the scope of this investigation.[5]

Tariff Treatment

Ni rings currently are classifiable in the HTS under subheading 8409.99.91 and reported for statistical purposes under statistical reporting number 8409.99.9190. This subheading is designated as according duty-free entry under the Generalized System of Preferences ("GSP"), but products of Argentina are not GSP-eligible goods under this tariff rate line. Ni rings are believed by QCC to also have entered the United States under HTS subheading 7326.90 (non-enumerated articles of iron or steel).[6] [7] Table I-2 presents current tariff rates for Ni rings.

Table I-2
Ni rings: Tariff rates, 2009

HTS provision	Article description	General[1]	Special	Column 2[2]
		Rates *(ad valorem)*		
8409	Parts suitable for use solely or principally with the engines of heading 8407 or 8408:			
8409.99	Other:			
8409.99.91	For vehicles of subheading 8701.20, or heading 8702, 8703, or 8704.....	2.5%	Free (A*, AU, B, BH, CA, CL, E, IL, J, JO, MA, MX, OM, P, PE, SG) ([3])	35%
8409.99.9190	Other.....			

[1] Normal trade relations, formerly known as the most-favored-nation duty rate, applicable to the subject imports from Argentina.
[2] Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.
[3] General note 3(c)(i) defines the special duty program symbols enumerated for this provision.

Source: Harmonized Tariff Schedule of the United States (2009), Supplement 1.

THE PRODUCT

Description and Applications

The product scope consists of all nickel-resist (Ni-resist) piston inserts ("Ni rings"), regardless of size, thickness, weight, or outside diameter. Ni rings are also referred to as "ring carriers" or "Alfin

[5] *Ni-Resist Piston Inserts from Argentina: Final Affirmative Countervailing Duty Determination*, 74 FR 47922, September 18, 2009.

[6] Petition, p. 9.

[7] U.S. Customs and Border Protection ("Customs") ***. Email from ***, March 3, 2009. ***.

inserts," and these terms are used interchangeably within the industry.[8] The product scope includes cooled ring carriers, a modification of Ni rings, which incorporate a sheet metal channel pressed and welded into the interior of the Ni rings.[9] Typical Ni rings range from 2 to 12 inches in outside diameter, and from 0.180 inch to 1.5 inches in thickness.[10] Ni rings are alloyed cast iron rings composed of the material known as Ni-resist, and are designed for use in aluminum pistons for diesel (compression-ignition) engines. The nominal chemistry for Ni-resist is 15 percent nickel, 6.5 percent copper, 2 percent chrome, 1 percent manganese, 2 percent silicon, and 2.5 percent carbon;[11] the cast iron component is produced primarily to ASTM A-436 grade 1.[12] The addition of nickel and other elements into this alloy replicates the thermal expansiveness of the aluminum piston, permitting the piston insert to expand and contract at the same rate as the piston, thus improving the wear resistance and working life of the piston.[13]

Piston inserts are circular rings that are fused into the top portion of aluminum pistons used in diesel engines.[14] Aluminum is used in piston production because of its relatively light weight, which reduces overall engine and vehicle weight.[15] Engine pistons, for both spark-ignition and diesel engines, generally are of similar design and comprise many of the same types of components, allowing for differences in engine size and weight, for example (figure I-1). Despite these similarities, petitioner and respondent agree that each aluminum piston design requires a unique Ni ring. The petitioner notes that ". . . each piston is a unique design and each Ni Resist insert carries a very unique part number; that you don't use one part number for, say, multiple pistons. It's one for one."[16] Karl Schmidt concurs, claiming that Ni rings are ". . . specifically designed to a specifically designed piston, and every piston in every different engine is different."[17]

Ni rings are found near the top of a piston, where piston rings (compression rings and oil control rings) are located. This section of the piston is grooved for the insertion of these rings. The Ni ring is generally cast into the piston to protect the first ring groove, but a second Ni ring may also be cast in after the second ring groove[18] (figure I-2). This process is undertaken by the piston producers that purchase the

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[8] Petition, p. 6.

[9] Request for Submissions made to Department of Commerce, p. 1 - received February 24, 2009. QCC considers cooled ring carriers to be ". . . the same product {as Ni rings}, produced in the same manner, but with a slight modification through the addition of the cooling channel." As a result of this modification, cooled ring carriers and regular Ni rings are not completely interchangeable, since the piston using a cooled ring carrier must be engineered to be fused with the cooled ring carrier rather than a regular Ni ring. QCC claims that customers expect both products to ". . . significantly increase the working life of diesel engines which use aluminum pistons . . ." and that they are sold to perform essentially the same task. QCC acknowledges that it has not produced a cooled ring carrier. Request for Submission made to Department of Commerce, pp. 2-4 - received February 24, 2009.

[10] Request for Submissions made to Department of Commerce, p. 1 - received February 24, 2009.

[11] Ibid.

[12] This gray iron alloy is used to produce Ni rings for use with aluminum pistons designed for diesel engines. Type (also referred to as "class" or "grade") 1 Ni-resist iron alloys are designed for heat-, corrosion-, and wear-resistant applications, and are alloyed with 13.5 percent to 17.5 percent nickel and 5.5 percent to 7.5 percent copper. *Iron Castings Handbook*, Iron Castings Society, Inc., 1981, p. 402.

[13] Petition, pp. 32-33.

[14] Petition, p. 7.

[15] Petition, p. 8.

[16] Hearing transcript, p. 163 (J. Korff).

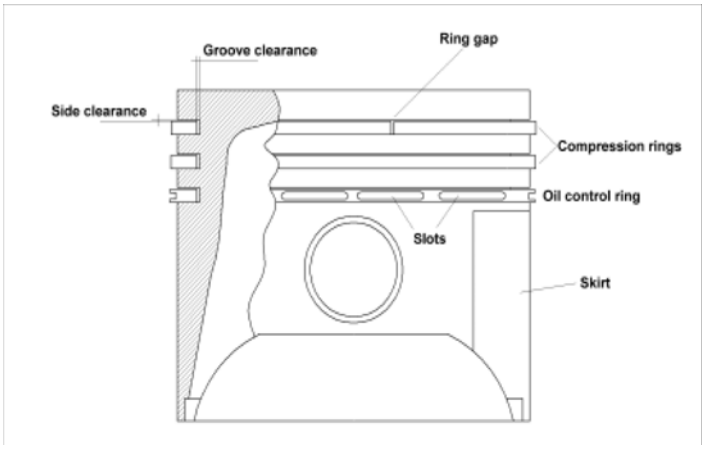
[17] Hearing transcript, p. 94 (Turcott).

[18] "Piston ring tribology: A literature survey," Peter Anderson, Jaana Tamminen, and Carl-Erik Sandström, VTT Research Notes 2178, 2002, found at http://www.vtt.fi/inf/pdf/tiedotteet/2002/T2178.pdf, retrieved February 25,

(continued...)

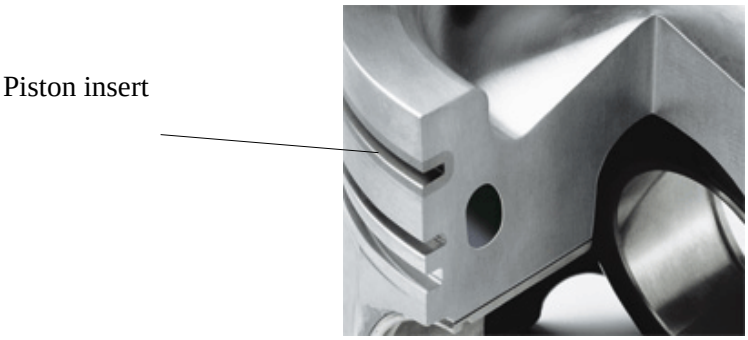
Ni rings. They place the inserts into piston molds and pour molten aluminum into the molds. The piston inserts bond with the aluminum, and become one with the solidified diesel engine piston.[19] After solidification, a groove is cut into the Ni ring to accommodate a piston ring.[20]

Figure I-1
Piston diagram



Source: "Piston ring tribology: A literature survey," Peter Anderson, Jaana Tamminen, and Carl-Erik Sandström, VTT Research Notes 2178, 2002, found at http://www.vtt.fi/inf/pdf/tiedotteet/2002/T2178.pdf, retrieved February 25, 2009.

Figure I-2
Piston with Ni-resist piston insert



Source: Mahle, "Aluminum - the material of the future," found at http://www.mahle.com/C125705E004FDAF9/CurrentBaseLink/W276RJX2513MARSEN, retrieved February 12, 2009.

[18] (...continued)
2009. QCC manufactures a double piston insert that is connected with three pins. Transcript of the February 17, 2009 staff conference in the preliminary phase of the investigations ("Conference transcript"), p. 66 (J. Korff).

[19] Petition, p. 6.

[20] Conference transcript, pp. 133-134 (Turcott).

As an integral part of the piston, the insert absorbs the impact from the piston ring and prevents wear to the piston itself.[21] The insert prevents ring groove wear in aluminum pistons,[22] which is the gradual erosion of the ring groove as a result of the piston movement. As the ring groove wears, the compression rings are less effective at sealing the combustion/exhaust chamber in the piston and at supporting heat transfer from the piston to the cylinder wall. Piston inserts are produced to the specifications of piston producers, and are unique to individual piston design.[23]

Because of the nature of the compression-ignition engine operation, Ni rings used in engines are only found in diesel engines that incorporate aluminum pistons.[24] These engines are used to power motor vehicles (in the United States, largely certain light trucks and medium- and heavy-duty trucks), farm and other off-road equipment, marine transport, and large compressors.[25] Diesel engines operate at very high compression relative to spark-ignition engines[26] and create a greater compressive force.[27] Unlike spark-ignition engines, which employ an ignition system (spark plugs) to fire the air/fuel mixture in the piston, diesel engines compress air to very high temperatures. When the fuel is injected into the piston with the heated air, the fuel ignites.[28] This greater concussive force affects all of the parts inside the engine, including the piston. Because aluminum is a relatively weak metal, the concussive force would cause rapid wear. By adding a Ni ring, the compression impact is transferred from the compression ring(s) through the insert(s) and then to the piston, thus absorbing some of the shock and increasing piston life.[29] With cooled ring carriers, the added sheet metal channel reduces heat transfer from the piston during combustion, thus extending the life of the piston.[30] Spark-ignition engines operate with a more uniform, controlled burn, and lower compression ratios, which lessen that impact on engine pistons and obviate the use of these inserts.[31]

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[21] Petition, p. 7.

[22] "Piston ring tribology: A literature survey," Peter Anderson, Jaana Tamminen, and Carl-Erik Sandström, VTT Research Notes 2178, 2002, found at http://www.vtt.fi/inf/pdf/tiedotteet/2002/T2178.pdf, retrieved February 25, 2009.

[23] Conference transcript, p. 65 (J. Korff).

[24] Petition, p. 7 and p. 36. Steel pistons predominate in other diesel and non-diesel engines. Steel is a stronger material and does not wear as fast as aluminum, which eliminates the need for Ni rings. Petition, p. 36.

[25] QCC also manufactures and sells Ni rings for use in compressor pistons that compress air or gas for industrial processes. Except for size, these Ni rings are essentially the same as those produced for aluminum pistons. Hearing transcript, pp. 67-68 (J. Korff).

[26] Compression ratios for spark-ignition engines generally do not exceed 12:1, whereas ratios for diesel engines generally range between 14:1 to 25:1. Ben Hewitt, "The Case for Diesel: Clean, Efficient, Fast Cars (Hybrids Beware!)," Popular Mechanics, January 2008, found at http://www.popularmechanics.com/automotive/new_cars/4237945.html?page=3, retrieved October 1, 2009. Compression ratios measure the ratio of the cylinder and combustion chamber volume when the piston is at the bottom of its stroke, to the volume of the cylinder and combustion chamber when the piston is at the top of its stroke. Don Goodsell, Dictionary of Automotive Engineering, Second Edition, Society of Automotive Engineers, 1995, p. 48.

[27] Petition, p. 7.

[28] "How Diesel Engines Work," http://auto.howstuffworks.com/diesel1.htm, retrieved February 20, 2009.

[29] Petition, p. 7.

[30] Request for Submissions made to Department of Commerce, p. 1 - received February 24, 2009.

[31] Petition, pp. 7-8.

Three firms noted that the use of Ni rings is an older technology. *** indicated that it no longer uses this older piston technology in its production.[32] *** indicated that the use of Ni rings is an older, lower cost technology that is in more demand in "other growing areas of the globe."[33] Karl Schmidt indicated that there has been a movement toward using steel pistons ". . . because the use of an aluminum piston with a Ni-resist insert has kind of reached its maximum capacity in terms of compression, horsepower, and the subsequent endurance."[34] *** indicated that aluminum pistons (which are the only pistons that use Ni rings) are becoming obsolete as new engines are manufactured and old engines are scrapped.[35]

However, the petitioner has indicated that, despite the use of steel pistons in higher compression engine applications, Ni rings will continue to be needed ". . . for a good, long period of time . . ." because of aftermarket requirements.[36] Karl Schmidt also acknowledged that demand for Ni-rings ". . . it's not going to just go off an edge of a cliff because there are many, many of those engines out there and they do last a long time."[37]

Manufacturing Process

The production process for Ni rings includes three basic steps: melting, centrifugal casting, and machining.[38] The process is capital-intensive, with extensive use of melting furnaces, casting machines, and automated machining equipment. The subject product is produced by pouring molten alloy cast iron in the shape of tubes by a centrifugal casting process, followed by machining the tubes into circular slices, or rings.[39] Melting of the Ni-resist alloy usually occurs in electric induction furnaces, according to Federal-Mogul.[40] QCC employs electric channel furnaces, a type of induction furnace, to provide a continuous flow of Ni-resist metal for its production of piston inserts. These channel furnaces are unique to its centrifugal casting operation.[41] ***, the ***, reported that it *** operates *** in the production of its Ni rings.[42]

Ni-resist metal is produced with a combination of scrap and virgin materials.[43] To attain the desired Ni-resist metal chemistry, type I molten scrap Ni-resist machining chips are added to the molten iron.[44] These chips are purchased as scrap on the open market and/or are generated internally as the result

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[32] ***.

[33] ***.

[34] Karl Schmidt noted that ". . . you're really pushing the limit on aluminum Ni-resist pistons in diesel engines when you're getting up close to 400 horsepower." Hearing transcript, p. 113 (Turcott).

[35] ***.

[36] Hearing transcript, p. 41 (J. Korff). Karl Schmidt's parent company, Kolbenschmidt Pierburg, states in its aluminum piston marketing brochure that there are many good reasons for continued use of aluminum pistons. Reasons include: "cost effective, offers excellent heat conductivity, low weight, good reliability and is very recycling friendly." QCC's posthearing brief, p. 4 and exh. 5.

[37] Hearing transcript, p. 116 (Turcott).

[38] Conference transcript, p. 90 (Lowe).

[39] Petition, p. 6.

[40] Conference transcript, pp. 90-91 (Lowe).

[41] Conference transcript, p. 47 (J. Korff).

[42] ***.

[43] ***.

[44] Conference transcript, p. 25 (J. Korff).

of the production process.[45] The molten chips must also be of the specified Ni-resist chemistry, which may require the producer to adjust the metal composition by adding certain metals or diluting the molten metal "to make the chemistry fall within specification."[46] In lieu of adding Ni-resist scrap metal, producers may dilute Monel,[47] a nickel/copper alloy, with pig iron and then add certain ferroalloys to yield the Ni-resist metal.[48] Additionally, producers can also purchase the necessary metallic components (e.g., copper, chrome, manganese, nickel) to develop the molten Ni-resist alloy.[49]

In centrifugal casting, the molten metal is poured into a permanent mold that rotates at high speeds (300 to 3000 rpm). During rotation, centrifugal force throws the molten metal towards the inside mold wall, where it solidifies after cooling,[50] and pushes any slag towards the inside diameter. The resulting metal is more uniform and cleaner than that which would result from other forms of casting.[51] The centrifugal casting equipment can be semi-automatic, with one worker tapping the metal, pouring the tube, and extracting the tube from the mold, as a series of molds process through the equipment in a continuous cycle. Other centrifugal casting equipment is limited to a single mold per unit, with one casting poured at a time.[52]

Machining is conducted on computer numerical controlled ("CNC") turning and boring machines that cut the rings from the cast tube and bore out the interior to the selected diameter for the rings.[53] These machine tools are used exclusively to machine ring or tube type products.[54] According to QCC, piston producers prefer dry machining rather than lubricated, wet machining of the inserts because of the need to bond the Ni ring with aluminum in the production of a piston.[55] Cooled ring carriers have a sheet metal channel that is pressed and welded into the interior of the Ni ring.[56]

QCC identified shell molding as another production process for piston inserts.[57] In this method, a metal pattern is covered with a mixture of sand and thermoset plastic and heated. This causes a thin skin of the sand/plastic mixture to stick to the pattern. This skin is removed from the pattern to form the shell mold. The two halves of the mold are fastened together and the metal is poured in the mold to form the part. Once the metal solidifies, the shell is broken.[58] However, QCC considered this process to be costly and uncompetitive. QCC also noted that piston inserts have been produced by static (nonspinning)

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[45] Conference transcript, p. 48 (J. Korff).

[46] Conference transcript, p. 43 (J. Korff).

[47] Monel is a product of the Special Metals Corporation. Special Metals Corp. website, found at http://www.specialmetals.com/general.php, retrieved February 20, 2009.

[48] Conference transcript, p. 48 (J. Korff).

[49] Conference transcript, p. 44 (J. Korff).

[50] Efunda Engineering Fundamentals, Centrifugal Casting, found at http://www.efunda.com/processes/metal_processing/centri_casting.cfm, retrieved February 20, 2009.

[51] Conference transcript, p. 63 (J. Korff).

[52] Conference transcript, p. 64 (J. Korff).

[53] Conference transcript, p. 19 (J. Korff).

[54] Hearing transcript, p. 22 (J. Korff).

[55] Conference transcript, p. 19 (J. Korff).

[56] Request for Submissions made to Department of Commerce, p. 3 - received February 24, 2009.

[57] Conference transcript, p. 18 (J. Korff).

[58] Efunda Engineering Fundamentals, Shell Mold Casting, found at http://www.efunda.com/processes/metal_processing/shell_mold.cfm, retrieved February 20, 2009.

casting using sand molds, but the bulk of current known production of Ni rings is believed to be manufactured by centrifugal casting.[59]

Following production, the Ni rings are subject to a variety of tests to ensure their conformance with customer specifications. These tests include spectrographic chemical analysis, microstructure examination, tensile testing, and carbon analysis.[60] In addition, the inserts must meet the dimensional and weight requirements specified by customers.

QCC also produces cylinder liners and lapping pots on its equipment used to produce Ni rings.[61] ***.[62] Moreover, ***.[63] ***;[64] ***.[65] ***.[66] In addition, ***.[67]

Manufacturers of Ni rings, as well as other original-equipment motor vehicle components, are subject to independent inspections or first-party audits to verify compliance with customer and product standards requirements, such as International Organization for Standardization ("ISO") standards.[68]

*** requires its bill of material ("BOM") suppliers, including its suppliers of Ni rings, to be ISO 9000 registered by an accredited third party registrar. BOM suppliers must also be approved by ***'s customers. *** itself must comply with Automotive Industry Action Group ("AIAG") Production Part Approval Process ("PPAP") for all of its BOM components including Ni rings.[69] ***.[70] QCC, the only U.S. producer of Ni rings, is certified to the ISO 9001:2000 standard.[71]

DOMESTIC LIKE PRODUCT

The Commission's decision regarding the appropriate domestic product(s) that are "like" the subject imported product is based on a number of factors including: (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price. In the preliminary phase of the investigations, the Commission found that there is a single domestic like product encompassing all

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[59] Conference transcript, p. 18 (J. Korff).

[60] Conference transcript, pp. 48-49 (J. Korff).

[61] Hearing transcript, pp. 13, 22, 36 (J. Korf).

[62] ***.

[63] ***.

[64] ***.

[65] ***.

[66] Email from ***, September 24, 2009.

[67] Ibid.

[68] ISO 9001:2000 is an international standard that includes requirements for an organization's Quality Management System (QMS), and is the only standard in the ISO 9000 family that can be used for the purpose of conformity assessment. "The requirements cover a wide range of topics, including {a} supplier's top management commitment to quality, its customer focus, adequacy of its resources, employee competence, process management (for production, service delivery and relevant administrative and support processes), quality planning, product design, review of incoming orders, purchasing, monitoring and measurement of its processes and products, calibration of measuring equipment, processes to resolve customer complaints, corrective/preventive actions and a requirement to drive continual improvement of the QMS." International Standards Organization, found at http://www.iso.org/iso/iso_catalogue/management_standards/iso_9000_iso_14000/more_resources_9000/9001supchain.htm, retrieved March 4, 2009.

[69] ***.

[70] ***.

[71] Conference transcript, p. 64 (J. Korff).

domestically produced Ni rings with the specifications provided in the scope. Information regarding these factors for the final phase of this investigation is discussed below.

QCC contends that the Commission should find that there is a single domestic like product coextensive with the scope definition.[72] It indicates that all piston inserts have the same characteristics (subject to customer-specified variations), and that there are no comparable products on the market that perform the same or similar tasks for aluminum pistons used in diesel engines. QCC did note that there had been experimentation with ceramic piston inserts, but was unaware of any production of ceramic piston inserts.[73] In the preliminary phase, respondents concurred with the definition of the domestic like product offered by QCC.[74] In the preliminary determinations, the Commission accordingly defined a single domestic like product encompassing all domestically produced Ni rings with the specifications provided in the scope definition.[75] The parties did not assert any arguments concerning the definition of the domestic like product during the final phase investigation.

[72] Petition, p. 10.

[73] Conference transcript, p. 42 (J. Korff).

[74] Conference transcript, p. 119 (Lowe and Kane). *** noted that no other products can be substituted for Ni rings. ***. *** indicated that there was another substitute product, steel pistons. Steel pistons compete with aluminum pistons (which require Ni rings) for diesel engine applications. ***.

[75] *Ni-Resist Piston Inserts from Argentina and Korea, Inv. Nos. 701-TA-460-461 (Preliminary)*, USITC Publication 4066, March 2009, pp. 6-7.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

U.S. MARKET CHARACTERISTICS AND CHANNELS OF DISTRIBUTION

Ni rings are used in the production of aluminum pistons for diesel engines. Specifically, they are "alloyed cast iron rings . . . placed into molds used by piston producers; then aluminum is poured into the molds" to form the piston. The Ni rings are "essential for commercial diesel truck engines and other heavy-duty diesel engines that use aluminum pistons."[1] Ni rings are also used in the production of compressor pistons.[2]

The Commission's questionnaire asked QCC to report the quantity of U.S. shipments sold to distributors and end users. *** of QCC's U.S. shipments went to *** during the period of study. ***.

GEOGRAPHIC MARKETS

The petitioner, QCC, sells the product ***. Accordingly, QCC reported that *** of its Ni rings were sold within distances of *** from its production facility.[3] QCC reported delivery lead times of *** for produced-to-order Ni rings and that *** of its products were produced to order. U.S. importers internally consume all imported Ni rings in their production of aluminum pistons for diesel engines.

SUPPLY AND DEMAND CONSIDERATIONS

Supply

Supplying the entire domestic Ni ring market are one domestic producer and imports from Argentina and Korea. The largest supplier of Ni rings to the U.S. market in 2008 was ***, which accounted for *** percent of U.S. consumption of Ni rings in 2008 on a quantity basis, followed by ***.

Domestic Production

The sensitivity of the domestic supply of Ni rings to changes in price depends on several factors including the level of excess capacity, the availability of alternate markets for U.S.-produced Ni rings, inventory levels, and the ability to shift to the manufacture of other products. The record in this investigation suggests that QCC has the ability to respond to changes in price with relatively large changes in output and U.S. shipments in response; this is due primarily to QCC's *** capacity utilization rates.

Industry capacity

QCC's capacity to produce Ni rings *** during the period of study at ***. ***, QCC's capacity utilization declined from *** percent in 2006 to *** percent in 2007 and to *** percent in 2008. Capacity utilization was *** percent in the first half of 2009 (i.e., interim 2009), compared with *** percent in the first half of 2008.

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[1] Petition, pp. 6-7.

[2] Compressor pistons compress air or gas for industrial processes. ***, and petition, p. 33. Federal-Mogul and Karl Schmidt reported that ***.

[3] ***.

Alternative markets

Exports, as a share of total shipments, increased from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. In the first half of 2009, exports accounted for *** percent of QCC's total shipments, compared with *** percent in the first half of 2008.

Inventory levels

The ratio of QCC's end-of-period inventories to its total shipments decreased from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. The ratio of inventories to total shipments was *** higher in the first half of 2009 (*** percent) compared with the first half of 2008 (*** percent); this increase is a reflection of ***.

Production alternatives

QCC reported that it produces other products using the same equipment, machinery, and/or production and related workers that it uses to produce Ni rings. In 2008, Ni rings accounted for *** percent of the company's capital machinery and labor, while production of cylinder liners and lapping pots accounted for *** and *** percent, respectively.

Foreign Supply

Argentina and Korea supply *** of the imports of Ni rings to the U.S. market.[4] The responsiveness of the supply of imports from Argentina and Korea to changes in price in the U.S. market is affected by factors such as capacity utilization rates, inventory levels, and the availability of home markets and other export markets. Based on available information, suppliers of subject and nonsubject imports have the ability to respond in changes in demand with *** changes in the quantity of shipments of Ni rings to the U.S. market mainly due to the existence of *** capacity and *** shipments to non-U.S. export markets.[5]

Subject imports from Argentina

Industry Capacity.–While capacity to produce Ni-rings of the sole known producer in Argentina, Clorindo ***, the capacity utilization rate decreased irregularly, from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. In the first half of 2009, Clorindo's capacity utilization was *** percent, compared with *** percent in the first half of 2008. Clorindo estimates that its capacity utilization rate will ***.

At the hearing, Geoffrey Korff, counsel for QCC, asserted that:

> ". . . the province in which this product is produced in Argentina, Santa Fe, has been undergoing an enormous upheaval in terms of their labor and the status of their metallurgical industry there, so much so that in fact the {Vice Minister of Labor of Santa Fe Province, Ms. Alicia Ciciliani,} stated within the past several months that most metallurgical industries, and that's in the province, are operating at approximately 30

[4] Based on submissions by parties, there are other producers of Ni rings in the world, including ***.

[5] *** reported changing their level of imports in response to the filing of the petition or Commerce's preliminary determinations.

> percent of capacity, and the only reason that they're able to maintain production is through a new subsidy program where basically employee wages are provided for by the government. There have been job walk-offs. Production has been cut."[6]

One article which QCC referenced in its testimony reportedly spoke of financial difficulties facing Clorindo; to the best of QCC's interpretation, representatives of Clorindo have appeared before a judge to have some prior judgments against it waived.[7] Clorindo disagreed with QCC's assessment of the situation. ***.[8]

Inventory Levels.–Clorindo's end-of-period inventories, as a ratio to its total shipments, decreased from *** percent in 2006 to *** percent in 2008, and were *** percent in interim 2009 compared with *** percent in interim 2008. Clorindo estimates that its ratio of inventories to total shipments will *** in 2009 and 2010. End-of-period inventories held by the U.S. importer, Karl Schmidt, as a ratio to imports from Argentina, decreased from *** percent in 2006 to *** percent in both 2007 and 2008. The ratio was higher in the first half of 2009 (*** percent) than in the first half of 2008 (*** percent).

Alternative Markets.–Clorindo's shipments to the Argentine home market are ***. Since 2006, they have increased irregularly, from *** percent of total shipments in 2006 to *** percent in 2007 and *** percent in 2008. The ratio of shipments to Clorindo's home market to its total shipments was *** higher in the first half of 2009 (*** percent) compared with the first half of 2008 (*** percent). Clorindo estimates that its home market shipments will account for *** percent of its total shipments in 2009 and 2010.

Exports to non-U.S. markets,[9] as a share of Clorindo's shipments, are *** and increased from 2006 to 2008 - from *** percent in 2006 to *** percent in 2008. This was due to both a decrease in shipments to the United States (from *** pounds in 2006 to *** pounds in 2008) and an increase in shipments to the rest of the world (from *** pounds to *** pounds over the same time frame). Export shipments to both the United States and the rest of the world were lower in interim 2009 than in interim 2008. The share of total shipments sent to the rest of the world was *** percent in interim 2009, compared with *** percent in interim 2008. ***, Clorindo estimates that it will ship *** of its Ni rings to countries other than Argentina and the United States in 2009 and 2010.

Clorindo reported that it is ***. ***.[10] Clorindo is also ***.[11]

Nonsubject imports from Korea

As noted earlier, Incheon is the sole Ni ring producer in Korea; Federal-Mogul reported that Incheon ***.

Industry Capacity.–Capacity to produce Ni rings in Korea increased from 2006 (*** pounds) to 2007 (*** pounds), then *** for 2008 and into the first half of 2009. During this time, the capacity utilization rate for the sole known producer of Ni rings in Korea, Incheon Metal Co., Ltd. ("Incheon"), increased irregularly, from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. In the first half of 2009, Incheon's capacity utilization was *** percent, compared with *** percent in the first

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[6] Hearing transcript, pp. 7-8 (G. Korff).

[7] Hearing transcript, p. 20 (J. Korff).

[8] Email from ***, September 24, 2009.

[9] Clorindo's other export markets include ***. Clorindo's foreign producer questionnaire response.

[10] Clorindo's foreign producer questionnaire response.

[11] Email from ***, September 24, 2009.

half of 2008. For the whole year of 2009, Incheon estimates that its capacity utilization rate will be *** percent.[12]

Inventory Levels.–Incheon's inventories, as a ratio to its total shipments, increased from *** percent in 2006 to *** percent in 2008. Its inventories as a share of total shipments were also higher in the first half of 2009 (*** percent) compared with the first half of 2008 (*** percent). Incheon estimates that this ratio will be *** percent for full-year 2009.

Inventories held by the U.S. importer, Federal-Mogul, as a ratio to imports from Korea, decreased from *** percent in 2006 to *** percent in 2007 and *** percent in 2008. Inventories as a ratio to imports were higher at the end of the first half of 2009 (*** percent) than at the end of the first half of 2008 (*** percent).[13]

Alternative Markets.–The share of Incheon's shipments sold into the Korean home market decreased consistently from *** percent in 2006 to *** percent in 2008. The share of shipments was higher in the first half of 2009 (*** percent) than in the first half of 2008 (*** percent).

Exports to non-U.S. markets,[14] as a share of Incheon's total shipments, increased *** from *** percent in 2006 to *** percent in 2008. These exports accounted for *** percent of its total shipments in the first half of 2008, but were lower (*** percent) in the first half of 2009. Incheon estimates that this ratio will be *** in full-year 2009.

Incheon reported that it intends to ***.[15]

Other Nonsubject Imports

There have been *** nonsubject imports of Ni rings into the United States ***. Respondent Karl Schmidt contends that *** have had a negative impact on the U.S. market for Ni rings, however, by allowing ***.[16]

Demand

U.S. Demand

Since Ni rings are used in aluminum pistons for diesel engines, the overall demand for Ni rings is directly linked to the demand for diesel engines that incorporate aluminum pistons. The price elasticity of demand for Ni rings is likely to be low since Ni rings have few, if any, substitutes and they account for a relatively small share of the total cost of the products in which they are used.

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[12] ***.

[13] The inventories of Ni rings reported by Federal–Mogul ***. The constructed data were reviewed by Federal-Mogul and it agrees with the methodology used and that the data are accurate. Staff telephone interview with ***, September 15, 2009.

[14] Incheon reported that it also exports to ***. Incheon's foreign producer questionnaire response.

[15] Incheon's foreign producer questionnaire response.

[16] Respondent Karl Schmidt's postconference brief, p. 10.

In terms of quantity, apparent U.S. consumption of Ni rings decreased by *** percent, from *** pounds in 2006 to *** pounds in 2007 and *** pounds in 2008. Additionally, apparent U.S. consumption of Ni rings was *** percent lower in interim 2009 (*** pounds) than in interim 2008 (*** pounds).[17] [18]

When asked how the U.S. demand for Ni rings had changed since January 1, 2006, QCC and the responding importers all reported that demand had decreased. *** attributed the decrease to a decline in demand for motor vehicles. At the hearing, Joseph Korff of QCC attributed declining demand to four factors: consolidation of the piston industry, more imports of finished pistons, decreased demand for diesel engines, and the general decline of the economy.[19] According to QCC, demand for Ni rings is cyclical due to emission requirements imposed by the EPA: every few years, the EPA has mandated new emission standards, "everybody wants to buy a truck with the old emissions standard it seems and to avoid the new one because they're usually . . . higher priced, lower mileage . . ."[20] QCC added that the new emission regulations standards will be announced in 2010, but with the current economic slowdown, the demand for trucks is low.[21] Even if demand for new engines containing Ni rings is declining, however, Mr. Korff added that there will continue to be a replacement market for rebuilt engines.[22]

Federal-Mogul attributed the decrease in demand for Ni rings to several factors: ***.[23] It, too, reported that new emissions standards, which began in 1991, were the reason for the shift away from aluminum pistons.[24] Also, increases in mechanical and thermal loading on pistons in more recent engine designs reportedly cause aluminum pistons to fail more readily, which has led to increased demand for steel pistons, thus decreasing demand for aluminum pistons, and, accordingly, Ni rings.[25]

Karl Schmidt attributed the decline in demand to the general decline in motor vehicle production, the shift from aluminum pistons to all-steel pistons, and ***.[26] A representative for Karl Schmidt also noted that "the general downturn in the demand for motor vehicles manufactured in the United States, technological advances, changes in customer requirements, and changes in non-highway uses for engines with {Ni rings} are the primary causes for the reduced demand for {Ni rings} in the United States."[27] [28]

In January 2001, the EPA announced the Highway Diesel Rule that included reductions in harmful pollutants of 90 percent for 2007 and subsequent model year heavy-duty diesel engines.[29] Counsel for Karl Schmidt testified that the increased market interest in QCC's Ni rings during 2007 may

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[17] On a value basis, apparent consumption decreased from 2006 to 2008, although prices charged for Ni rings increased due to increases in the cost of raw materials, especially nickel, during that time. As the cost of raw materials declined in 2009, the dollar value of apparent consumption decreased by a greater amount than the quantity.

[18] See table C-1.

[19] Hearing transcript, pp. 42-43 (J. Korff).

[20] Conference transcript, pp. 37-38 (J. Korff).

[21] Ibid.

[22] Hearing transcript, p. 41 (J. Korff), and QCC's posthearing brief, p. 4.

[23] ***.

[24] Federal-Mogul's postconference brief, p. 28.

[25] ***. ***.

[26] Karl Schmidt's postconference brief, pp. 10 and 16.

[27] Conference transcript, p. 84 (Kane).

[28] Another factor that could affect the demand for Ni rings is the technological advances prompted by mandates imposed by the Environmental Protection Agency (EPA), which reportedly have caused a significant increase in the production of all-steel pistons, a product which does not incorporate Ni rings. Conference transcript, pp. 84-85 (Kane).

[29] U.S. EPA, found at http://www.epa.gov/otaq/highway-diesel/index.htm, retrieved September 21, 2009.

have been due to the new emissions standards that were going into effect that year.[30] On the other hand, QCC reported that it tracked down the increase in interest of domestically produced Ni rings to "some kind of disruption in . . . shipments coming in for . . . maybe a six- to eight-week period." It reported that even MAHLE was interested in buying Ni rings during that time.[31]

Sales of diesel engine vehicles have declined greatly since 2006. Joseph Korff of QCC testified that the sales of Class 8 trucks is "a really good surrogate number for the number of . . . aluminum diesel pistons that are sold."[32] Sales of this heaviest class of trucks[33] declined by 53.5 percent from 2006 to 2008: 50.1 percent from 2006 to 2007, and a further 6.8 percent in 2008.[34] [35]

Substitute Products

QCC and the importers were asked to discuss the existence of any substitute products for Ni rings. *** reported that there are no products that can be substituted for Ni rings. QCC stated that there are experiments using ceramics, but it is not aware of an actual ceramic piston.[36] *** reported that steel pistons compete with aluminum pistons for diesel engine applications, especially in the original equipment market where steel pistons are dominant.[37] *** reported that there are no substitute products for Ni rings.

Cost Share

Based on available information, Ni rings account for a relatively small share of the total cost of the final products in which they are used as an input. *** reported that it did not know the cost share of the Ni ring relative to the end product. *** reported that the cost of the Ni ring accounted for approximately *** percent of the total cost of pistons for diesel engines. *** provided cost share estimates for Ni rings for four different diesel piston products; these estimates ranged from *** to *** percent.

Foreign Demand

*** reported declining demand outside the United States as well. Importer/purchaser Karl Schmidt reported that due to declining demand, there has been consolidation in the Ni ring market in Europe and elsewhere.[38] It also stated that globally engines are being built requiring higher peak

[30] The new emissions standards would allegedly increase the cost of trucks by $5,000 to $10,000. Hearing transcript, p. 86 (Kane).

[31] Hearing transcript, p. 24 (J. Korff).

[32] Conference transcript, pp. 38-39 (J. Korff).

[33] Class 8 trucks, i.e., those with a gross vehicle weight over 33,000 pounds, accounted for more than half of all heavy and medium truck sales (Class 3 through Class 8) in 2006-08.

[34] Ward's Automotive Yearbook (2007, 2008, 2009).

[35] Federal-Mogul presented ***. Sales of light- and medium-duty diesel vehicles fell 19.7 percent between 2006 and 2008. Ward's Automotive Yearbook (2007, 2008, 2009).

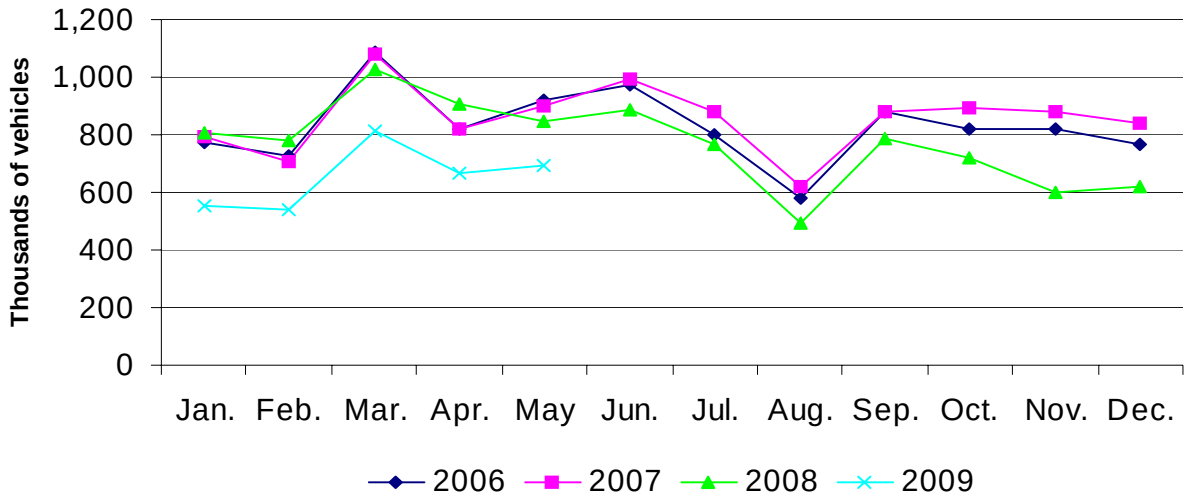
[36] Conference transcript, p. 42 (J. Korff).

[37] ***, imported aluminum pistons (which contain a Ni ring) compete with domestically produced aluminum pistons (which also contain a Ni ring). ***.

[38] Karl Schmidt's postconference brief, p. 16.

pressures and temperatures, and, accordingly, "***."[39] Argentine producer Clorindo stated that its "***."[40] Figure II-1 presents monthly diesel engine vehicle sales for the top 15 countries and Japan.[41] Comparing the period between June 2008 and May 2009 with that of the prior year, diesel vehicle sales dropped 21.5 percent on average.

Figure II-1
Diesel vehicles: Sales in the top 15 countries and Japan, monthly, January 2006-May 2009



Source: MarkLines Automotive Information Platform, found at http://www.marklines.com/en/numproduct/index.jsp, retrieved August 20, 2009.

SUBSTITUTABILITY ISSUES

The extent of substitutability between domestic products and subject and nonsubject imports, between subject imports from different sources, and between subject and nonsubject imports is examined in this section. The discussion is based upon the results of questionnaire responses from QCC and the importer/purchasers.[42]

Factors Affecting Purchasing Decisions

Table II-1 summarizes the importer/purchasers' responses on the top three major factors that they consider in their purchasing decisions. As indicated in the table, quality was cited as the number one factor in buying decisions by ***. In determining quality, the responses of *** indicate that a metallurgical and dimensional tolerance must be met, the surface condition must be clean and in good condition, and the product must not wear out too quickly.

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[39] Karl Schmidt's importer/purchaser questionnaire response.

[40] Clorindo's foreign producer questionnaire response.

[41] The top 15 countries are: Austria, Australia, Belgium, Brazil, France, Germany, Italy, the Netherlands, Portugal, South Korea, Spain, Thailand, Turkey, the United Kingdom, and the United States. MarkLines Automotive Information Platform, found at http://www.marklines.com/en/numproduct/index.jsp, retrieved August 20, 2009.

[42] *** provided information in response to the Commission's importer/purchaser questionnaire.

Table II-1
Ni rings: Ranking of factors used in purchasing decisions, as reported by U.S. importer/purchasers

* * * * * * *

Importer/purchasers and purchasers were asked to rate the importance of 16 factors in their purchasing decisions (table II-2). *** rated availability, delivery terms, delivery time, lowest price, minimum quantity requirements, product consistency, quality meets industry standards, reliability of supply, and surcharge formula as very important.[43] *** reported that it "usually" buys Ni rings offered at the lowest price, *** replied that it "usually" or "sometimes" buys Ni rings offered at the lowest price, *** "sometimes" does and *** "never" does.

Table II-2
Ni rings: Importance of purchase factors, as reported by U.S. importer/purchasers

* * * * * * *

All suppliers are required by importer/purchasers to become certified or prequalified for ***. Karl Schmidt reported that all its suppliers ***. Additionally, Karl Schmidt requires that ***. Federal-Mogul estimated that it takes ***. ***.[44] *** stated that it bases supplier qualification on reliability of the supplier and the quality of the product.

*** reported that they had not had any foreign or domestic producers fail to become a certified/qualified Ni ring supplier, nor had any company lost its certification. Karl Schmidt performed a quality audit of QCC on June 4, 2007, which noted five deficiencies ***.[45] QCC took corrective action on those five areas, and subsequently shipped tens of thousands of parts to Karl Schmidt with zero rejected parts.[46] QCC reported that it had received awards from Federal-Mogul for supplying parts with zero defects on a repeated basis.[47]

Though QCC is a qualified supplier to ***, *** reported that QCC's *** are inconsistent with other Ni ring suppliers' business practices. ***,[48] QCC charges *** for variations in prices of steel scrap, copper, nickel, carbon, chrome, manganese, and silicon, thus passing on the risk of price fluctuations for any of these inputs;[49] these are actual costs, not based on an independent index ***.[50] QCC testified that it does not hedge on metal input prices, as it is "always on the wrong side of that."[51] In the 1990s, surcharges were company-specific, and most foundries could use an all-metals type surcharge.[52]

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[43] In addition, *** reported that *** are very important, but did not note the importance of any other factors. ***. ***. Staff telephone interview with ***, August 6, 2009.

[44] ***.

[45] QCC's postconference brief, p. 3, and Karl Schmidt's prehearing brief, p. 7.

[46] QCC's postconference brief, p. 3.

[47] Hearing transcript, p. 60 (J. Korff).

[48] The surcharge formulas used by ***. Federal-Mogul's postconference brief, exhs. 15 and 17. ***. Federal-Mogul's postconference brief, exh. 16.

[49] Hearing transcript, p. 32 (J. Korff) and ***.

[50] Ibid., and ***.

[51] Hearing transcript, p. 63 (J. Korff).

[52] Hearing transcript, p. 47 (J. Korff).

In negotiations with Karl Schmidt, QCC reportedly offered ***, but the variable price components attributable to other metals made the total price too unpredictable for Karl Schmidt, given its inability to pass that risk downstream and the importance of risk management in its ability to remain competitive.[53] Originally, QCC had been using an all-metals surcharge, and tried to maintain it when it was told by Karl Schmidt that it needed to be adjusted to incorporate only changes in the price of nickel.[54] At the hearing, a representative of Karl Schmidt reported that it took a long time to negotiate agreements with its customers to accept fluctuations in nickel prices, and those customers will not accept a non-public surcharge.[55] ***, Karl Schmidt submitted that QCC offered on November 8, 2007 to only vary its price based on the price of nickel.[56] Karl Schmidt contends, however, that QCC reverted to offering its prior all-metals surcharge formula, leading to the breakdown in negotiations by the end of 2008.[57]

*** reported *** Ni rings in separate transactions, i.e., not as part of a package of other products. Federal-Mogul reported that QCC uses a ***. Since *** of Federal-Mogul's production at one of its plants ***.[58] Furthermore, Federal-Mogul contends that QCC *** including part numbers that are ***.[59] QCC reported that its Ni rings price quotes, sales, or contracts ***.[60] QCC testified that the cost of machine changes, die heat-ups, and warm-up pieces would cause Ni rings with very short runs to necessitate higher pricing, unless it was as part of an order that also included larger runs of, e.g., 10,000 pieces.[61] ***.[62]

Comparisons of Domestic Products with Subject and Nonsubject Imports

In order to determine whether U.S.-produced Ni rings can generally be used in the same applications as imports from Argentina and Korea, QCC and importer/purchasers were asked whether the products can "always," "frequently," "sometimes," or "never" be used interchangeably (table II-3).

Table II-3
Ni rings: Interchangeability of product from different sources

* * * * * * *

QCC claims that the domestically made product is like the imported subject and nonsubject merchandise, and that the products are indistinguishable.[63] It considers all Ni rings to be interchangeable in terms of production process and application, with no appreciable deviation in chemical properties among U.S. and foreign manufacturers. Because the casting and machining processes are essentially the same for all producers of Ni rings, they are manufactured using the same types of facilities, production lines, equipment, and skilled employees. These inserts are sold in bulk to manufacturers of aluminum

[53] Karl Schmidt's postconference brief, p. 14, and hearing transcript, pp. 95-96 (Turcott).

[54] Hearing transcript, p. 62 (J. Korff).

[55] Hearing transcript, pp. 95-96 (Turcott).

[56] *** and Karl Schmidt's postconference brief, p. 6 and exh. 9.

[57] Karl Schmidt's posthearing brief, pp. 9-10 and exh. C.

[58] ***.

[59] ***.

[60] ***.

[61] Hearing transcript, pp. 81-82 (J. Korff).

[62] ***.

[63] Conference transcript, p. 19 (J. Korff).

pistons used in diesel engines.[64] QCC also contends that customers and producers perceive all Ni rings to be the same product.

Importer/purchaser Federal-Mogul noted agreement with QCC regarding the interchangeability of the domestic and imported products. Federal-Mogul considers Ni rings to be " . . . a commodity product, meaning they are generally interchangeable, regardless of the source."[65] Furthermore, Federal-Mogul noted that the imported and domestic product were of equivalent quality.[66] Karl Schmidt reported that the products from the United States and Argentina can *** be used interchangeably. Karl Schmidt noted that "***."[67]

QCC and importers were also asked to compare U.S.-produced products with imports from Argentina and Korea in terms of product differences other than price such as quality, availability, product range, and technical support. Again, firms were asked whether these product differences are always, frequently, sometimes, or never significant (table II-4).

Table II-4
Ni rings: Differences other than price between products from different sources

* * * * * * *

When Federal-Mogul compared the U.S. product with that from Korea, it reported that differences other than price are *** significant, adding that:

"***."[68]

***, when Karl Schmidt compared the U.S. product with that from Argentina, it reported that differences other than price are *** significant. It added that it has had a ***.

Importer/purchasers and purchasers were also asked to compare subject imports on the 16 factors which they had previously rated in importance.[69] Table II-5 presents their responses.

[64] QCC notes that compressor pistons used to compress gas for industrial purposes may also use piston inserts, but that the two orders filled by QCC are considered to be negligible and virtually all Ni rings are believed to be for use in diesel engine aluminum pistons. Petition, pp. 33-34. Ni rings for compressor pistons are typically larger in diameter and somewhat thicker. QCC has one customer that buys Ni rings for compressor pistons. Hearing transcript, pp. 67-68 (J. Korff).

[65] Conference transcript, p. 94 (Lowe).

[66] Conference transcript, p. 99 (Czerwinski) and ***.

[67] Karl Schmidt's importer/purchaser questionnaire response.

[68] Federal-Mogul's importer/purchaser questionnaire response.

[69] Additionally, ***.

Table II-5
Ni rings: Comparisons between U.S.-produced and subject Argentine and nonsubject Korean products, as reported by U.S. importer/purchasers

* * * * * * *

Comparisons of Subject and Nonsubject Imports

When QCC compared the Argentine product with the Korean product, it reported that the products can *** be used interchangeably and that differences other than price are *** significant (tables II-3 and II-4).

ELASTICITY ESTIMATES

This section discusses elasticity estimates. While parties were encouraged to comment on these estimates in their briefs, none submitted any comments.

U.S. Supply Elasticity[70]

The domestic supply elasticity for Ni rings measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of Ni rings. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced Ni rings. Analysis of these factors earlier indicates that the U.S. producer has the ability to *** increase shipments to the U.S. market; an estimate in the range of 5 to 8 is suggested.

U.S. Demand Elasticity

The U.S. demand elasticity for Ni rings measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of Ni rings. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of the Ni rings in the production of any downstream products. Based on the available information, the aggregate demand for Ni rings is likely to be inelastic; a range of -0.2 to -0.5 is suggested.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.[71] Product differentiation, in turn, depends upon such factors as quality (e.g., chemistry, appearance, etc.) and conditions of sale (availability, sales terms/discounts/promotions, etc.). Based on available information, the elasticity of substitution between U.S.-produced Ni rings and imported Ni rings is likely to be high, in the range of 4 to 6.

[70] A supply function is not defined in the case of a non-competitive market.

[71] The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

PART III: U.S. PRODUCER'S PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information presented in this section of the report is based on the questionnaire response of QCC. This firm is believed to account for all U.S. production of Ni rings during the period for which data were collected (January 2006-June 2009).

U.S. PRODUCER

The Commission sent a producers' questionnaire to QCC, the only U.S. producer identified as having produced Ni rings during the period for which data were collected.[1] [2] QCC, a family business that was acquired at a bankruptcy auction in 2004,[3] is owned by Jason Korff and run by his father, Joseph Korff.[4] The firm operates an iron and steel foundry in Salem, Ohio[5] and uses two types of casting methods, static (various metal castings created using sand molds) and centrifugal (Ni rings, as well as other products such as cylinder liners and lapping pots). The firm sells products to the automotive, marine, and agricultural industries, among others.[6] During the period from ***, proceeds from QCC's centrifugal casting operations supported the firm's static casting operations, but in more recent years the trend has been reversed and static castings make up the large majority of QCC's business.[7]

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

In response to a question about changes to plant operations since January 1, 2006, QCC stated ***. Data on QCC's capacity, production, and capacity utilization are presented in table III-1. QCC's reported capacity was *** the level of apparent U.S. consumption of Ni rings during the period of investigation.

Table III-1
Ni rings: QCC's capacity, production, and capacity utilization, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

[1] Petition, p. 2.

[2] During the preliminary phase of the investigations, a producers' questionnaire was also sent to Dana Holding Corporation ("Dana"), which was identified in the petition as being the only other U.S. producer of the subject merchandise in recent years that was not acquired by QCC. Petition, p. 3. Dana certified that to the best of the firm's knowledge it has not produced Ni rings since ***. Email from ***, February 3, 2009. Furthermore, staff confirmed that ***. Staff telephone interview with ***, July 22, 2009.

[3] Conference transcript, p. 11 (J. Korff) and hearing transcript, pp. 12-15 (J. Korff).

[4] Although Korff Holdings, LLC is the owner of QCC, Joseph Korff has ultimate responsibility for decisions pertaining to the management of QCC. Conference transcript, pp. 31-32 (J. Korff).

[5] Petition, p. 3.

[6] http://www.qccast.com/centrifugal.html, retrieved August 12, 2009.

[7] July 2, 2004 letter from Joseph Korff to Federal-Mogul, Karl Schmidt, and MAHLE. Federal-Mogul's postconference brief, exh. 1; Karl Schmidt's postconference brief, exh. 1 and posthearing brief, exh. B.

QCC's capacity remained steady through the period for which data were collected, whereas production and capacity utilization decreased. In response to a question requesting firms to describe the constraints and limits experienced on their production capacity, QCC reported ***. QCC also stated that its plant is operating at less than *** percent capacity and has ***.[8]

U.S. PRODUCER'S U.S. SHIPMENTS AND EXPORT SHIPMENTS

QCC's total shipments are presented in table III-2. The volume of total shipments decreased by *** percent from 2006 to 2008, while the value of total shipments decreased by *** percent during the same period.[9] ***. On both a quantity and value basis, export shipments decreased from 2006 to 2007 and increased from 2007 to 2008. Unit values of total shipments increased from 2006 to 2007 and decreased *** from 2007 to 2008.[10] Unit values of commercial shipments *** from January-June 2008 to January-June 2009; ***.[11]

Table III-2
Ni rings: QCC's shipments, by type, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

Table III-3 presents quantity and value data for QCC's sales by customers. Sales to the importer of subject merchandise, Karl Schmidt, ***. The *** of sales to Karl Schmidt during January-June 2009 may be explained by the fact that Karl Schmidt has "only been a spot customer of QCC . . . when the need arose."[12]

Table III-3
Ni rings: QCC's sales, by customer, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

U.S. PRODUCER'S IMPORTS AND PURCHASES OF IMPORTS

QCC did not report any imports of subject merchandise during the period for which data were collected, nor is the firm related to the subject producer in Argentina.

U.S. PRODUCER'S INVENTORIES

Data on end-of-period inventories of Ni rings during the period for which data were collected are presented in table III-4.

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[8] During the hearing, QCC stated that it intends to maintain its capacity to produce any and all Ni rings and that if its Ni ring business does not return it will utilize its capacity for other centrifugal casting products. Hearing transcript, pp. 20-21 (J. Korff).

[9] Most of the decrease in QCC's shipments during 2006-08 consisted of ***. ***.

[10] According to QCC, unit values increased in recent years due to falling shipments of common size Ni rings coinciding with increased shipments of more expensive double-inserts to QCC's customer in Brazil. QCC's postconference brief, p. 8.

[11] Email from ***, August 17, 2009.

[12] Hearing transcript, pp. 9-10 (Kane) and Karl Schmidt's posthearing brief, p. 3.

Table III-4
Ni rings: QCC's end-of-period inventories, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by QCC on the number of production and related workers ("PRWs") engaged in the production of Ni rings, the total hours worked by such workers, and wages paid to such workers during the period for which data were collected in this investigation, are presented in table III-5. QCC's employment declined from 2006 to 2008 and hours worked decreased during the period for which data were collected. QCC reported its fewest PRWs in January-June 2009, which is consistent with QCC's response that its Ni ring business is almost non-existent and that it has laid off employees and its machines are idle.[13] Wages paid decreased during the period for which data were collected. Hourly wages increased from 2006 to 2008, while unit labor costs increased from 2006 to 2007 and remained the same from 2007 to 2008. Productivity decreased *** from 2006 to 2008.

Table III-5
Ni rings: QCC's employment-related data, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

[13] *** hearing transcript, pp. 7 (G. Korff) and 14 (J. Korff). Additionally, QCC has reported that *** employees solely related to the production of Ni rings have been laid off as a result of its lost business and *** employees have been transferred. This represents approximately *** percent of QCC's workforce. QCC's posthearing brief, p. 5. Staff clarified with QCC ***. Email from ***, September 28, 2009.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent U.S. importers'/purchasers' questionnaires to 16 firms believed to be importers of Ni rings from any country, as well as to the U.S. producer.[1] Questionnaire responses were received from two firms that are believed to account for *** U.S. imports of Ni rings.[2] Karl Schmidt was the sole importer of subject merchandise into the United States from Argentina during the period for which data were collected. Imports from nonsubject countries *** by Federal-Mogul of product from Korea; *** imports from nonsubject countries. There were no imports by QCC, the sole U.S. producer.

Table IV-1 lists all responding U.S. importers of Ni rings from Argentina and all other sources, their U.S. locations, and their quantities of imports, by source, in 2008.[3]

Table IV-1
Ni rings: Reported U.S. imports, by importers and by sources of imports, 2008

* * * * * * *

U.S. IMPORTS

The quantity of subject imports decreased from 2006 to 2007 and increased *** from 2007 to 2008. Nonsubject imports ***. U.S. importers attribute the decreased imports of Ni rings in recent years in part to a decrease in demand for the aluminum pistons requiring inserts. Importers contend this decline is attributable to declining demand for vehicles using diesel engines and a shift in demand from aluminum pistons to steel pistons resulting from more stringent emissions standards.[4] ***.[5] QCC stated that since the imposition of the provisional duties on subject imports from Argentina there has been no improvement for its Ni rings business. Currently, QCC has no orders for Ni rings.[6]

The average unit value of subject imports ***, increasing from 2006 to 2007 and then decreasing from 2007 to 2008. Table IV-2 shows quantity, value, average unit value, and share data on U.S. imports of Ni rings.

Table IV-2
Ni rings: U.S. imports, by sources, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

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[1] The Commission sent questionnaires to firms identified in the petition, and based on a review of proprietary Customs data. Questionnaires were sent to all substantial importers which imported products under HTS statistical reporting number 8409.99.9190.

[2] *** firms responded that they did not import Ni rings.

[3] MAHLE ***. Email from ***, February 26, 2009. ***. ***, August 4, 2009. ***. Email from ***, August 17, 2009.

[4] Conference transcript, p. 84 (Kane) and pp. 131-132 (Lowe); ***; hearing transcript, p. 113 (Turcott).

[5] ***. Karl Schmidt reported at the hearing and in its posthearing brief that if its relationship with Clorindo proves to be disadvantageous it will look overseas to source Ni rings from Korea and/or China. Hearing transcript, p. 10 (Kane) and Karl Schmidt's posthearing brief, p. 6.

[6] Hearing transcript, p. 26 (J. Korff).

NEGLIGIBILITY

The Tariff Act of 1930 provides for the termination of a countervailing duty investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition.[7] As the data in table IV-2 indicate, the share of the total quantity of U.S. imports accounted for by Argentina for the 2008 calendar year (which encompasses the 12-month period prior to filing of the petition) was well above the negligibility threshold.

APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of Ni rings are presented in table IV-3. In calculating apparent U.S. consumption, U.S. shipments of import data were used, based on questionnaire responses.

The quantity of apparent U.S. consumption decreased by *** percent in 2007, by *** percent in 2008, and was *** percent lower in January-June 2009 than in January-June 2008. The value of apparent U.S. consumption increased by *** percent in 2007 and decreased by *** percent in 2008, and then was *** percent lower in January-June 2009 than in January-June 2008. In addition to any declining demand for diesel vehicles, importers reported that the continuing decrease of apparent U.S. consumption of Ni rings is a result of a demand for higher horsepower with higher emission standards. These standards result in higher pressures and temperatures which are not as sustainable for aluminum pistons (which use Ni rings) as for steel pistons. Thus, there has been a migration to purchase steel pistons.[8] Moreover, ***.[9]

Table IV-3
Ni rings: U.S. shipments of domestic product, U.S. shipments of imports by source, and apparent U.S. consumption, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

U.S. MARKET SHARES

Data on market shares in the U.S. market for Ni rings are presented in table IV-4. On both a quantity and a value basis, QCC's market share decreased in the period during which data were collected. This decrease in market share coincided with increases in the market share of imports from nonsubject country Korea, although the market share of imports from Korea decreased in January-June 2009. The market share of imports from Argentina decreased during 2006-08 and increased in January-June 2009.

Table IV-4
Ni rings: U.S. consumption and market shares, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

[7] 19 U.S.C. § 1677(24)(A)(ii).

[8] *** and hearing transcript, p. 113 (Turcott).

[9] ***.

RATIO OF IMPORTS TO U.S. PRODUCTION

Data on the ratio of imports to U.S. production of Ni rings are presented in table IV-5.

Table IV-5
Ni rings: U.S. production, U.S. imports, and ratios of imports to U.S. production, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

PART V: PRICING AND RELATED INFORMATION

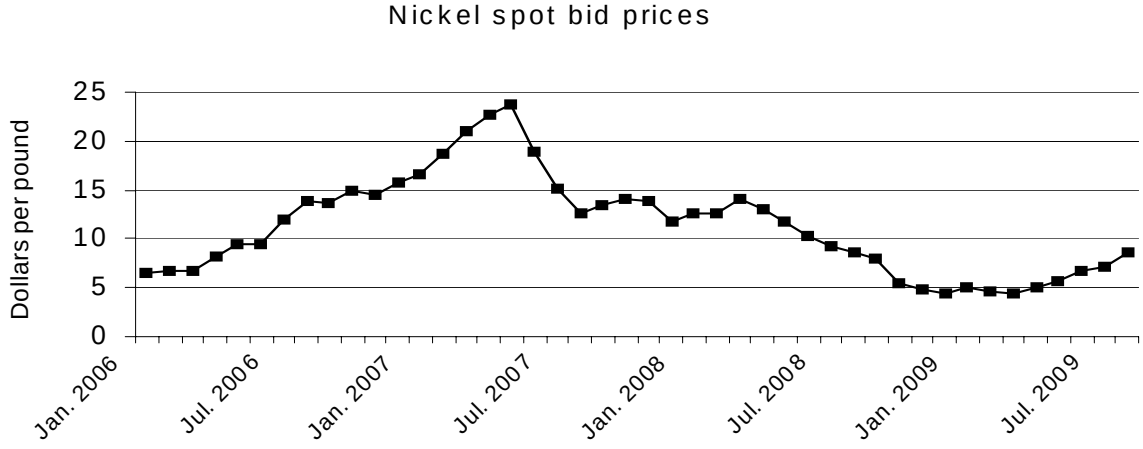
FACTORS AFFECTING PRICES

Raw Material Costs

The costs of manufacturing Ni rings include raw materials, other factory costs, and direct labor. During the period for which data were collected, *** represented the largest share of the cost of goods sold (*** percent).[1]

There are *** main raw materials used in manufacturing Ni rings: ***. Other raw materials include ***.[2] Though nickel is not the most abundant elemental input, its price is highly volatile and, accordingly, nickel surcharges are common in the Ni-ring industry.[3] Figure V-1 presents the trend of nickel prices since January 2006.[4]

Figure V-1
Nickel: Price per pound, monthly, January 2006-August 2009



Source: American Metal Market, http://www.amm.com, retrieved August 6, 2009.

U.S. Inland Transportation Costs

QCC did not report the share of delivered prices that is accounted for by U.S. inland transportation costs because ***. ***. *** percent of QCC's sales are made within 100 miles of its production or storage facility, and the remaining *** percent is shipped ***. It reported selling in ***.

[1] See *Part VI: Financial Experience and Condition of the U.S. Producer* of this report.

[2] Ibid.

[3] Conference transcript, p. 104 (Turcott).

[4] QCC reported that nickel tends to be a "volatile priced material in certain times." QCC stated that prices for nickel were very high historically in 2006 and 2007. Conference transcript, p. 23 (J. Korff).

PRICING PRACTICES

QCC reported that it uses price lists in order to arrive at prices for Ni rings, that it ***, and would charge the same price for spot or contract sales.[5] QCC quotes prices on *** basis and sells Ni rings typically on a spot basis.[6] Federal-Mogul reported that it purchases Ni rings ***. Karl Schmidt has purchased Ni rings on a contract basis from Clorindo, and has bought from QCC on a spot basis during the period for which data were collected.[7] No responding firm reported any ***. QCC reported that it typically requires payment on a *** basis. This is in contrast to QCC's basis as reported by ***.[8] In a quotation letter dated ***.[9] This differs from a prior ***.[10] ***.[11]

In addition, QCC reported that prices for Ni rings are made up of two components: a base price and a surcharge.[12] [13] QCC provided information on its surcharge formulas for ***. For sales to ***, QCC reported that the surcharge formula calculation ***. According to QCC, the formula ***.[14] [15] For its sales to ***, QCC reported that the surcharge is ***.[16] [17]

Karl Schmidt testified that it has been doing business with QCC for four and a half years, during which it purchased on a spot basis.[18] Whereas QCC considered Karl Schmidt's orders "significant," Karl Schmidt viewed orders of even up to 30,000 pieces as "not a lot, . . . a spot buy," and not part of a long-term program.[19] [20] Karl Schmidt stated, "No piston program volume commitments had been made by {Karl Schmidt} to customers in reliance on QCC's supplying {Karl Schmidt} with piston inserts."[21] When buying Ni rings from QCC, it was using ***. Karl Schmidt reported, ***, that in negotiations with

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[5] Hearing transcript, p. 58 (J. Korff).

[6] Hearing transcript, p. 49 (G. Korff).

[7] Hearing transcript, pp. 89 (Kane), pp. 98-99 (Turcott), and 120 (Kane).

[8] ***.

[9] Federal-Mogul's postconference brief, exh. 19.

[10] Federal-Mogul's postconference brief, exh. 18.

[11] Karl Schmidt's postconference brief, exh. 2.

[12] Conference transcript, p. 23 (J. Korff).

[13] For more information regarding metal surcharges as a condition of competition, see *Part II: Conditions of Competition in the U.S. Market*.

[14] The surcharge is ***.

[15] QCC noted the following:

> "***."

***.

[16] The surcharge for ***. ***.

[17] The surcharge formulas used by ***. Federal-Mogul's postconference brief, exhs. 15 and 17. ***. Federal-Mogul's postconference brief, exh. 16.

[18] Hearing transcript, p. 134 (Turcott).

[19] Hearing transcript, pp. 30 (J. Korff), p. 89 (Kane), and pp. 95-96 (Turcott).

[20] A Ni ring part number is specific to a type of engine, which may be produced for a number of years (e.g. three to seven, with possible extensions), and can be referred to as a "program." After a particular engine has gone out of production, there are service requirements for that engine, and thus, some remaining demand for that Ni ring specification. Hearing transcript, pp. 94-95 (Turcott). As reported by Karl Schmidt, "Long term programs are the basis of the ni-resist piston business." Hearing transcript, p. 94 (Turcott).

[21] Karl Schmidt's posthearing brief, p. 10.

QCC in 2007, QCC offered an all-metal surcharge formula like that offered to Federal-Mogul.[22] Then, in November 2007, terms were negotiated that included only nickel surcharges. ***.[23] QCC reverted to offering the more comprehensive all-metals purchase-price surcharge, and negotiations continued and finally broke down in November 2008.[24]

PRICE DATA

QCC and importers of Ni rings were asked to provide quarterly data for the total quantity and f.o.b. (U.S. point of shipment) value of selected products that were shipped to unrelated customers in the U.S. market from January 2006-June 2009.[25] As the importers internally consume all the Ni rings that they import, they reported purchase prices (direct from the foreign supplier) for the selected products. The products for which pricing data were requested were as follows:

***Product 1*.—Ni rings with a per-unit weight of 0.409 lbs. and an outer diameter of 4.602 inches (part number 61256 or 6056).**

***Product 2*.—Ni rings with a per-unit weight of 0.772 lbs. and an outer diameter of 5.220 inches (part number N-4590-6).**

***Product 3*.—Ni rings with a per-unit weight of 0.782 lbs. and an outer diameter of 5.859 inches (part number Ni-550-104PP).**

***Product 4*.—Ni rings with a per-unit weight of 1.874 lbs. and an outer diameter of 5.857 inches (part number Ni-550-233PP1).**

QCC, Federal-Mogul, and Karl Schmidt provided price data. Pricing data accounted for *** percent of the dollar value of QCC's U.S. shipments during January 2006-June 2009, *** percent of the dollar value of U.S. shipments of imports from Argentina, and *** percent of the dollar value of U.S. shipments of imports from Korea. Quarterly weighted-average sales prices for QCC *** for the above products are shown in tables V-1 and V-2 and figures V-2 and V-3. In addition, purchases made by *** are also reported in tables V-1 and V-2. These purchase quantities and values do not ***. Quarterly weighted-average sales prices for QCC and purchase prices for Federal-Mogul of imported Korean Ni rings are presented in appendix D. ***.

Table V-1
Ni rings: Average prices and quantities for product *, January 2006-June 2009**

* * * * * * *

[22] Hearing transcript, p. 95 (Turcott).

[23] Karl Schmidt's posthearing brief, exh. C.

[24] Karl Schmidt's posthearing brief, pp. 9-11.

[25] Importers were requested to provide purchase prices on a landed, duty-paid basis (excluding U.S. inland transportation costs). If, however, importers were not able to provide landed, duty-paid prices, they were instructed to provide delivered prices (i.e., including costs for delivery to the firm's U.S. facility). ***.

Table V-2
Ni rings: Average prices and quantities for product *, January 2006-June 2009**

* * * * * * *

Figure V-2
Ni rings: Average prices and quantities for product *, January 2006-June 2009**

* * * * * * *

Figure V-3
Ni rings: Average prices and quantities for product *, January 2006-June 2009**

* * * * * * *

Price Trends

Both sales and purchase prices for Ni rings generally increased from the first quarter of 2006 to the third quarter of 2007 (second quarter for product ***).[26] Sales and purchase prices have been generally declining since that time. Data were not available for all quarters for any country's Ni rings. Between the first and last quarters for which data are available, selling prices for domestically produced product 1 decreased by *** percent, while those for product 2 increased by *** percent.[27] In 2009, purchase prices for Argentine Ni rings (***) were lower than the price in the first quarter of 2006 ***.

Price Comparisons

Purchase prices for imported Ni rings from Argentina were lower than sales prices for U.S.-produced Ni rings in seven of eight quarters where both prices were reported. However, it is important to note that the prices reported by QCC are *** selling prices while the prices reported by ***. Thus, the U.S. producer's prices and prices for imported product are for transactions at different levels of trade and are not directly comparable. In addition, *** reported by Karl Schmidt (for imports of product from Argentina) ***; ***. On a *** basis, as reported by Karl Schmidt, prices of Ni rings from Argentina were lower than prices of U.S.-produced Ni rings in six of seven quarters.

LOST SALES AND LOST REVENUES

The Commission requested QCC to report any instances of lost sales or revenues it experienced due to competition from imports from Argentina from January 2006 to June 2009. QCC was not able to provide any specific lost sales or lost revenue allegations.[28] QCC did provide a quote that it sent to ***.[29]

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[26] Pricing data for products 1 and 2.

[27] It should be noted, however, that these price changes are mainly due to the timing of the available quarters of data. ***.

[28] QCC reported that it ***. ***.

[29] QCC noted the following:

"***."

***.

Additionally, QCC testified at the hearing that "about two years ago . . . we were consistently being told that our prices were high."[30] QCC reported that it was ***.[31]

Federal-Mogul and Karl Schmidt were requested to provide any information on switching from purchasing U.S.-made product to subject imports.[32] Karl Schmidt reported that it ***. Instead, Karl Schmidt reported that it used QCC as an alternative source to augment its supply via spot buys to meet demand[33] and ***.[34] ***.[35] Karl Schmidt noted that QCC ***. In contrast, QCC reportedly ***.[36]

[30] Hearing transcript, p. 71 (J. Korff).

[31] Correspondence from ***.

[32] Federal-Mogul reported that ***. QCC testified that it does have a minimum quantity requirement of 500 pieces that is necessary to cover all its costs; however, it would accept an order of about 200 pieces, even for a new piece, but QCC would have to charge a higher price. Conference transcript, p. 81 (J. Korff). ***. Federal-Mogul's preliminary phase importer/purchaser questionnaire response, supplement to section IV-1, as referenced by Federal-Mogul's final phase importer/purchaser questionnaire response.

[33] Hearing transcript, p. 99 (Turcott).

[34] Correspondence from ***, February 13, 2009. Negotiations with QCC continued into November 2008. Karl Schmidt's posthearing brief, p. 9.

[35] Karl Schmidt's posthearing brief, exh. C.

[36] Ibid., pp. 10-11.

PART VI: FINANCIAL EXPERIENCE AND CONDITION OF THE U.S. PRODUCER

BACKGROUND

QCC, the only U.S. producer of Ni rings during the period examined, reported its financial results on the basis of U.S. generally accepted accounting principles ("GAAP") and for calendar-year periods. U.S. commercial shipments represented *** of QCC's sales in all years and periods ***.[1] A verification of QCC's U.S. producer questionnaire response was conducted on September 9-10, 2009. Changes resulting from verification are reflected in this and other affected sections of this report.[2]

As described in Part III of this report, the current owner of QCC purchased the predecessor company's assets in 2004.[3] [4] At their peak in terms of sales volume prior to the period examined, Ni rings were characterized generally as a "substantial profit contributor" to the predecessor company's overall business.[5] [6]

QCC's Ni ring operations take place within its centrifugal castings department where cylinder liners and lapping pots are also manufactured. According to QCC, ***.[7] The company's other major

[1] As noted at the staff conference, QCC's exports were only to Brazil and represented a single type of Ni ring ("double ring with pins"). Conference transcript, pp. 12, 39 (J. Korff). ***. Email (first) from QCC to USITC auditor, August 12, 2009.

[2] September 22, 2009 verification report.

[3] The predecessor company filed bankruptcy in 2003. While the decline in Ni rings revenue may have contributed to the predecessor company's financial weakness prior to the period examined, a major factor related to its bankruptcy in 2003 was reportedly the 2001 bankruptcy of Federal-Mogul, a major customer. Conference transcript, p. 11 (J. Korff). Federal-Mogul entered and subsequently exited Chapter 11 bankruptcy on October 1, 2001 and December 27, 2007, respectively. "Litigation forces Federal-Mogul to file Ch. 11," Rubber & Plastics News, December 10, 2001, p. 18 and "Federal-Mogul makes smooth exit from Chapter 11," Motor Age, April 2008, p. 62.

[4] With respect to the current owner's purchase of QCC's assets in 2004, the Ni ring part of the business was not characterized as the primary focus of the purchase. Instead, operations related to Ni rings were characterized as a complement ("adder") to the company's sand foundry operations. Conference transcript, p. 57 (J. Korff). Hearing transcript, p. 34 (J. Korff). Verification report, pp. 3-4.

[5] Conference transcript, p. 50 (J. Korff). Staff notes that the description of Ni ring profitability prior to the period examined was what the QCC company official believed likely, based on the product's sales volume at that time; i.e., the description was not based on a formal review of the predecessor company's financial results.

[6] Sales of Ni rings by the predecessor company reportedly reached their highest level during the mid-1990s after which they declined. QCC petition, exh. 5 and conference transcript, p. 10 (J. Korff). At their peak prior to the period examined, sales of Ni rings represented about 50 percent of the company's total sales revenue. Conference transcript, p. 51 (J. Korff).

[7] Email with attachment from QCC to USITC auditor, February 20, 2009.

operations take place within its sand foundry department.[8] In full-year 2008 and interim 2009, Ni rings represented *** percent and *** percent, respectively, of QCC's total net sales.[9]

OPERATIONS ON Ni RINGS

QCC's income-and-loss data for Ni rings are presented in table VI-1. Due to changes in product mix during the period examined, as noted below, a variance analysis is not presented.

Table VI-1
Ni rings: Results of operations of the U.S. producer, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

As shown in table VI-1, higher average sales values correspond in part with the elevated level of average raw material cost after 2006. To some extent this pattern reflects the use of surcharges in determining the sales amount charged to customers. Notwithstanding changes in the surcharge amount, differences in period-to-period average unit sales value also reflect changes in product mix and underlying base prices.[10] For example, QCC's domestic commercial shipments for most of the period represented a broader range of Ni rings, while *** exports were concentrated in a single configuration. In 2006, domestic commercial shipments and exports represented *** percent and *** percent, respectively, of QCC's total Ni ring sales value. In interim 2009, these relative shares had changed to *** percent and *** percent.[11]

QCC's Ni ring operations historically represented all or the majority of the centrifugal department's output. In contrast, the period examined is transitional inasmuch as Ni ring sales volume has declined *** while the company attempts to shift the centrifugal department's focus to alternative production. At the staff conference, a company official stated that ". . . we're trying to develop other centrifugal products . . . {w}e're trying to retail a cylinder liner line of products. We've trade named it EZ Slider and we're selling it on the retail market. We're spending lots of money trying to develop it to maintain our use for our centrifugal capacity . . . but it is not at this point a business that will utilize effectively the centrifugal capacity."[12] In this context, it appears that QCC's increased average direct labor and other factory costs, as noted below, are generally consistent with declining Ni ring sales

[8] Conference transcript, pp. 46-47 (J. Korff). QCC's sand foundry department and centrifugal department are separate in terms of their manufacturing operations including the melt phase. The centrifugal department uses continuous furnaces which are in operation for 9-month periods, 24 hours a day, while the sand foundry department uses coreless induction furnaces on a batch basis. Conference transcript, p. 48 (J. Korff). As centrifugal department production and sales declined, QCC switched to using sand foundry furnaces to melt metal for the centrifugal castings operations. Hearing transcript p. 37 (J. Korff).

[9] Email (first) from QCC to USITC auditor, August 12, 2009, and USITC auditor prehearing notes.

[10] ***. USITC auditor preliminary phase notes.

[11] USITC auditor prehearing notes. ***.

[12] Conference transcript, pp. 12-13 (J. Korff).

***.[13] As shown in table III-1, Ni ring production and capacity utilization went from *** percent in 2006 to *** percent in 2008. With regard to interim 2009, QCC stated that ***.[14]

With respect to cost of goods sold ("COGS"), raw material is the *** to Ni rings; i.e., direct labor and other factory costs *** in order to develop the information reported to the Commission.[15] On a cumulative basis, other factory costs accounted for *** percent of total COGS during the period examined. This was followed closely by raw material costs at *** percent and then direct labor at *** percent.

The primary components of Ni ring raw material costs reflect the following items: ***. With the exception of ***, which declined marginally in 2007, the average prices paid by QCC for these inputs increased *** in 2007 and then generally declined in 2008.[16] Pursuant to verification, ***.[17]

As indicated above, during the period examined QCC's Ni ring product mix ***. According to the company, while weight on a per-insert basis varies, average per-pound raw material costs are reportedly not affected by changes in product mix.[18]

The *** share of total COGS accounted for by other factory costs, while generally consistent with a capital-intensive production process, also in part reflects relatively low and declining production volumes. According to QCC, other factory costs reflect a number of items: ***. Supplemental information provided by QCC shows that, consistent with its declining share of sales, the absolute amount of overall other factory costs allocated to Ni rings declined throughout the period.[19]

Direct labor cost, as described by QCC, reflects multiple items/activities identified as follows: ***.[20]

An important factor contributing to QCC's increasing gross loss margins between 2006 and 2008 was the decline in its metal margin as a share of sales value. QCC's gross losses (on an absolute basis and as a share of sales) in 2007 and 2008 also increased due to ***. In contrast, QCC's lower gross loss margin in interim 2009 compared to interim 2008 was *** due to an increase in its metal margin which in turn ***.[21]

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[13] In order to reduce costs as production declined in the centrifugal department, QCC redeployed some resources to the sand foundry department. QCC petition, p. 2.

[14] Email (first) from QCC to USITC auditor, August 12, 2009.

[15] Email with attachment from QCC to USITC auditor, February 16, 2009.

[16] Email with attachment from QCC to USITC auditor, February 20, 2009. ***. USITC auditor preliminary phase notes. Type I Ni-resist scrap is reportedly obtained from a variety of mostly domestic sources on a spot basis. Conference transcript, p. 49 (J. Korff).

[17] Verification report, pp. 7-8. ***.

[18] According to QCC, ***. Email with attachment from QCC to USITC auditor, February 16, 2009. ***. Email (first) from QCC to USITC auditor, August 12, 2009.

[19] Email with attachment from QCC to USITC auditor, February 20, 2009. ***. Ibid. At the Commission's hearing and with respect to machinery specifically, QCC noted depreciation as an example of a small cost to the company of maintaining idle centrifugal department production capacity. Hearing transcript, p. 23 (J. Korff). At smaller production volumes and smaller order sizes, the company also indicated that Ni ring costs increase due to reduced efficiencies. Hearing transcript, pp. 78, 81-82 (J. Korff).

[20] Ibid.

[21] As a share of sales value and as revised to reflect changes pursuant to verification, the metal margin (i.e., the difference between Ni ring sales values and corresponding raw material costs) was *** percent in 2006, *** percent in 2007, *** percent in 2008, *** percent in interim 2008, and *** percent in interim 2009. On a per-pound basis, the metal margin was $*** per pound in 2006, $*** per pound in 2007, $*** per pound in 2008, $*** per pound in interim 2008, and $*** per pound in interim 2009. Staff notes that "metal margin" is a benchmark and not an accounting term and typically refers to the difference between current sales prices and current average raw material

(continued...)

In conjunction with consistent gross loss margins after 2006, QCC's higher selling, general and administrative ("SG&A") expense ratios exacerbated its operating loss margins. According to the company, SG&A expenses reflect the following items: ***. Consistent with the overall decline in sales volume, there was a *** decline in the absolute level of SG&A expenses allocated to Ni rings in 2007 (see table VI-1).[22] SG&A expenses as a share of sales increased throughout the period, however, as corresponding revenue declined. In contrast with the full-year period, the *** increase in QCC's SG&A expense ratio in interim 2009 was offset by a higher metal margin and corresponding reduction in gross loss margin, as noted above. On anabsolute basis, however, it should be noted that QCC's lower operating loss in interim 2009 compared to interim 2008 was primarily due to reduced sales volume.

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Capital expenditures, research and development ("R&D") expenses, total assets, and return on investment ("ROI") are shown in table VI-2.

Table VI-2
Ni rings: Capital expenditures, research and development expenses, assets, and return on investment of the U.S. producer, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

QCC *** incur capital expenditures related to Ni rings during the period examined. With respect to the property, plant, and equipment component of total assets, QCC stated that ***.[23]

CAPITAL AND INVESTMENT

The Commission requested QCC to describe any actual or potential negative effects of imports from Argentina and Korea on its growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. QCC's responses are shown below.

Actual Negative Effects

QCC: ***.[24]

Anticipated Negative Effects

QCC ***.[25]

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[21] (...continued)
prices. Because it is based on revenue and cost information recognized by QCC for accounting purposes, the metal margin calculated by staff does not generally correspond to a standard industry definition. USITC auditor posthearing notes and preliminary-phase notes.

[22] ***. Email with attachment from QCC to USITC auditor, February 20, 2009. ***. Email (first) from QCC to USITC auditor, August 12, 2009.

[23] ***. QCC questionnaire response, attachment to III-12.

[24] ***. Email with attachment from QCC to USITC auditor, February 16, 2009.

[25] ***. Ibid.

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the nature and the extent of the subsidies was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in *Parts IV and V*; and information on the effects of imports of the subject merchandise on the U.S. producer's existing development and production efforts is presented in *Part VI*. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any subsidization in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries.

THE INDUSTRY IN ARGENTINA

The Commission requested data from four firms[1] in Argentina believed to be possible producers of Ni rings. Clorindo, which was listed in the petition as the sole Argentinian producer, provided a questionnaire response which accounted for all known Ni ring production in Argentina during the period for which data were collected. ***. Clorindo stated that the firm has ***. Ni rings were *** produced and sold by Clorindo during the period for which data were collected; ***.[2] Additionally, ***.[3]

Capacity remained steady during the period for which data were collected and is projected to *** in the next two years because, as stated above, Clorindo reports it is ***. Production fluctuated during the period of investigation (decreasing from 2006 to 2007, then increasing from 2007 to 2008, and was lower in January-June 2009 than in January-June 2008).[4] Clorindo's projections call for *** production from 2008 to 2009 followed by *** production in 2010 ***. Capacity utilization was between *** and *** percent during 2006-2008, with projections showing *** percent utilization in 2009 followed by *** in 2010 corresponding with the *** production level predicted for that year. Specifically, Clorindo plans to ***.[5]

Clorindo's exports to the United States as a share of the firm's total exports decreased during the period for which data were collected, from *** percent in 2006 to *** percent in 2008. Clorindo also exported some of its 2007-08 production to Brazil (between *** and *** percent of production), France (approximately *** percent), the Czech Republic, Mexico, and ***.[6] Table VII-1 presents data for reported production and shipments of Ni rings in Argentina by Clorindo.

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[1] Foreign producer questionnaires were sent to the following firms in Argentina identified using proprietary Customs data and internet research: ***.

[2] Clorindo's foreign producer questionnaire response and email from ***, September 24, 2009.

[3] Email from ***, September 24, 2009.

[4] During the hearing and in its posthearing brief, QCC suggested that Argentina's Santa Fe Province is experiencing an enormous upheaval in terms of its labor and its metallurgical industry and that as a result metallurgical plants are operating at 30 percent capacity and the Argentinian Government is subsidizing employee wages. Furthermore, it was reported by QCC that Clorindo may be part of a bankruptcy proceeding. Hearing transcript, pp 7-8 and 18-19 (G. Korff) and QCC's posthearing brief, pp. 2-3 and exhs. 2-4. ***. Email from ***, September 24, 2009.

[5] Email from ***, September 24, 2009.

[6] Clorindo's postconference brief, p. 2 and ***.

Table VII-1
Ni rings: Clorindo's reported production capacity, production, shipments, and inventories, 2006-08, January-June 2008, January-June 2009, and projections for 2009 and 2010

* * * * * * *

U.S. IMPORTERS' INVENTORIES

Reported inventories held by U.S. importers of subject merchandise from Argentina are shown in table VII-2.

Table VII-2
Ni rings: U.S. importers' end-of-period inventories of all imports, by source, 2006-08, January-June 2008, and January-June 2009

* * * * * * *

U.S. IMPORTERS' CURRENT ORDERS

The Commission requested importers to indicate whether they imported or arranged for the importation of Ni rings from Argentina after June 30, 2009. ***.

ANTIDUMPING AND COUNTERVAILING DUTY INVESTIGATIONS IN THIRD-COUNTRY MARKETS

There are no known antidumping or countervailing duty investigations on Ni rings reported in third-country markets.

INFORMATION ON NONSUBJECT COUNTRIES

In assessing whether the domestic industry is materially injured or threatened with material injury "by reason of subject imports," the legislative history states "that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including non-subject imports) 'to ensure that it is not attributing injury from other sources to the subject imports.'"[7]

There is no publicly available information regarding international production or exports of Ni rings during the period for which data were collected. Countries other than Argentina believed to produce Ni rings are Brazil, China, Germany, India, Korea, Poland, Taiwan, and Turkey.[8]

The known producer in Korea, Incheon, exports Ni rings to Federal-Mogul in the United States. The Commission requested data from three firms[9] in Korea believed to be possible producers of Ni rings. Incheon, which was listed in the petition as the sole Korean producer, provided a questionnaire response which accounted for all known Ni ring production in Korea during the period for which data were

[7] Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 2007-1552 at 17 (Fed. Cir., Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. I at 851-52; see also Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006).

[8] Clorindo's postconference brief, p. 1, and conference transcript, pp. 40 (J. Korff) and 97 (Lowe).

[9] Foreign producer questionnaires were sent to the following firms in Korea identified using proprietary Customs data and internet research: ***.

collected. ***. Ni rings represented *** percent of the firm's production in 2008, and other products produced on the same equipment were ***.[10]

Incheon's capacity increased from 2006 to 2007 and is projected to *** 2009.[11] Production and capacity utilization both increased from 2006 to 2007, decreased *** from 2007 to 2008, and are projected to *** in 2009.[12] Interim data collected for January-June 2008 and 2009 show production to be *** percent lower in interim 2009 than in interim 2008, and capacity utilization *** percent lower between the two periods. ***. Table VII-3 presents data for reported production and shipments of Ni rings in Korea by Incheon.

Table VII-3
Ni rings: Incheon's reported production capacity, production, shipments, and inventories, 2006-08, January-June 2008, January-June 2009, and projections for 2009 and 2010

* * * * * * *

The known producers in *** are affiliated with *** and the known producers in *** are affiliated with ***.[13] *** plant in *** had a capacity of *** Ni rings (referred to as "ring carriers") in 2008. It produced *** Ni rings, but its production ***. It exported *** percent of its production in 2008 to ***. It received ***. The plant in *** is not known to have ***.[14]

*** plant in *** had a capacity of *** Ni rings in 2008. It produced *** Ni rings and exported *** percent of its production in 2008 to ***. ***.[15]

[10] Incheon's foreign producer questionnaire response.

[11] Incheon was ***. However, ***. Incheon's foreign producer questionnaire response.

[12] Incheon expects ***. Incheon is ***. Incheon's foreign producer questionnaire response.

[13] ***. ***. ***, August 4, 2009. Interestingly, ***. Email from ***, August 17, 2009.

[14] Email from ***, March 13, 2009.

[15] Email from ***, March 18, 2009.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–460–461 (Final)]

Ni-Resist Piston Inserts From Argentina and Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation Nos. 701–TA–460–461 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Argentina and Korea of Ni-resist piston inserts, provided for in subheading 8409.99.91 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Dates:* July 6, 2009.

FOR FURTHER INFORMATION CONTACT: Angela M.W. Newell (202–708–5409), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Argentina of Ni-resist piston inserts. These investigations were requested in a petition filed on January 26, 2009, by Korff Holdings LLC d/b/a Quaker City Castings, Salem, OH.

Although the Department of Commerce has preliminarily determined that imports of Ni-resist piston inserts from Korea are not being and are not likely to be subsidized, for purposes of efficiency the Commission hereby waives rule 207.21(b) [1] so that the final phase of the investigations may proceed concurrently in the event that Commerce makes a final affirmative determination with respect to such imports.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these

[1] Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will publish a Final Phase Notice of Scheduling upon receipt of an affirmative final determination from Commerce.

investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 2, 2009, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on September 17, 2009, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 9, 2009. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 11, 2009, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 10, 2009. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 24, 2009; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before September 24, 2009. On October 9, 2009, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 14, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

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

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: July 13, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–16995 Filed 7–16–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–819]

Ni–Resist Piston Inserts from Argentina: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to a producer and exporter of Ni–resist piston inserts from Argentina. For information on the estimated subsidy rate, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: September 18, 2009.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

This investigation covers 22 programs. Clorindo Appo SRL (Clorindo) is the only producer/exporter of subject merchandise from Argentina under investigation. The petitioner is Korff Holdings, LLC d/b/a Quaker City Castings.

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to Argentina's most recently completed fiscal year. *See* 19 CFR 351.204(b)(2).

Case History

The following events have occurred since the preliminary determination notice was published in the **Federal Register** on July 6, 2009. *See Ni–Resist Piston Inserts From Argentina: Preliminary Affirmative Countervailing Duty Determination*, 74 FR 31914 (July 6, 2009) (*Preliminary Determination*).

From July 23 through July 29, 2009, we conducted verification of the questionnaire responses submitted by the Government of Argentina (GOA), including the provincial government of Santa Fe, and Clorindo. We issued the verification reports on August 13, 2009.[1]

On August 25 and 27, 2009, we received a case brief from Clorindo and the GOA, respectively.[2] On August 31, 2009, we received a rebuttal brief from Clorindo. On September 2, 2009, we received a case brief from the petitioner.[3] On September 9, 2009, we received from the GOA a rebuttal brief to the petitioner's case brief. We did not hold a hearing in this investigation, as one was not requested.

Scope of Investigation

The scope of this investigation includes all Ni–resist piston inserts regardless of size, thickness, weight, or outside diameter. Ni–resist piston inserts may also be called other names including, but not limited to, ''Ring Carriers,'' or ''Alfin Inserts.'' Ni–resist piston inserts are alloyed cast iron rings, with or without a sheet metal cooling channel pressed and welded into the interior of the insert. Ni–resist piston inserts are composed of the material known as Ni–resist, of the chemical composition: 13.5% - 17.5% Ni (nickel), 5.5% - 8.0% Cu (copper), 0.8% - 2.5% Cr (chromium), 0.5% - 1.5% Mn (manganese), 1.0% - 3.0% Si (silicon), 2.4% - 3.0% C (carbon). The cast iron composition is produced primarily to the material specifications of the American Society for Testing and Materials (ASTM), ASTM A–436 grade 1.

The scope of this investigation does not include piston rings nor any other product manufactured using the Ni–resist material. The subject imports are properly classified under subheading 8409.99.91.90 of the Harmonized Tariff Schedule of the United States (HTSUS), but have been imported under HTSUS 7326.90. The HTSUS subheadings are provided for convenience and customs purposes. The written description is dispositive of the scope of this investigation.

Injury Test

Because Argentina is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from Argentina materially injure, or threaten material injury to, a U.S. industry. On March 25, 2009, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is

[1] The public version of the verification reports and all public documents for this investigation are on file in the Central Records Unit, room 1117 in the main building of the Commerce Department.

[2] The GOA submitted a case brief on August 25, 2009; however, the case brief was rejected because it contained untimely new factual information. *See* Letter to Roberto Salafia, Minister, Economic and Commercial Section, Embassy of Argentina from Melissa G. Skinner, Director, Operations Office 3, regarding Rejection of Case Brief with Untimely Filed Information (August 26, 2009), which stated that the GOA could resubmit the case brief by August 28, 2009 provided the untimely information was removed.

[3] The petitioner submitted a case brief on August 20, 2009; however, the case brief was rejected because it contained an untimely new subsidy allegation and untimely new factual information. *See* Letter to Geoffrey Korff of the Korff Law Firm from Melissa G. Skinner, Director, Operations Office 3 (August 25, 2009), which stated that petitioner could resubmit the case brief, provided the untimely information was removed. On September 1, 2009, the Department granted to the petitioner an extension of time to resubmit the case brief. See Letter to Geoffrey Korff of the Korff Law Firm from Melissa G. Skinner, Director, Operations Office 3 (September 1, 2009).

[2] *See* Message number 9170203, available at http://addcvd.cbp.gov.

[3] *See, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Rescission, in Part, of Antidumping Duty Administrative Review*, 74 FR 7394 (February 17, 2009).

materially injured by reason of imports from Argentina of the subject merchandise. *See Ni–Resist Piston Inserts from Argentina and Korea; Determinations*, Investigation Nos. 701–TA–460–461 (Preliminary), 74 FR 12898 (March 25, 2009).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Decision Memorandum dated concurrently with, and which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Tariff Act of 1930, as amended (the Act), we have calculated an individual rate for Clorindo, the only company under investigation. We determine that the total estimated net countervailable subsidy rate is 6.81 percent ad valorem. The All Others rate is 6.81 percent *ad valorem*, which is the rate calculated for Clorindo.

As a result of the *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed the U.S. Customs and Border Protection to suspend liquidation of all entries of Ni–resist piston inserts from Argentina which were entered or withdrawn from warehouse, for consumption on or after July 6, 2009, the date of the publication of the *Preliminary Determination* in the **Federal Register**.

We will issue a countervailing duty order under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: September 14, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix Issues and Decision Memorandum

List of Comments and Issues in the Decision Memorandum

Comment 1: Tax Relief under the Reintegro

*Comment 2:*Stamp Tax Exemption
*Comment 4:*Procedural Guarantees Provided in the WTO SCM Agreement
*Comment 5:*More Expansive POI

[FR Doc. E9–22493 Filed 9–17–09; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–862]

Ni–Resist Piston Inserts from the Republic of Korea: Final Negative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are not being provided to producers and exporters of Ni–resist piston inserts from the Republic of Korea (Korea).

DATES: *Effective Date:* September 21, 2009.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

This investigation covers 15 programs and a single producer/exporter, Incheon Metal Co., Ltd. (Incheon Metal). The petitioner in this investigation is Korff Holdings LLC dba Quaker City Castings (Petitioner).

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the most recently completed fiscal year for Incheon Metal and the government of Korea (GOK). *See* 19 CFR 351.204(b) (2).

Case History

On July 6, 2009, the Department published in the **Federal Register** the preliminary determination in the countervailing duty investigation of Ni–resist piston inserts from Korea. *See Ni–Resist Piston Inserts from the Republic of Korea: Preliminary Negative Countervailing Duty Determination*, 74 FR 31919 (July 6, 2009) (*Preliminary Determination*).

In accordance with section 782(i)(1) of the Tariff Act of 1930, as amended (the Act), from July 30 through August 4, 2009, we conducted verification of the questionnaire responses submitted by the GOK and Incheon Metal (collectively, respondents). We issued the verification reports on August 14, 2009, and August 21, 2009, respectively.[1]

On August 27, 2009, we received a case brief from Petitioner. On August 31, 2009, we received a case brief from the GOK. On September 3, 2009 and September 8, 2009, we received rebuttal briefs from Incheon Metal and the GOK. No hearing was requested.

Scope of the Investigation

The scope of this investigation includes all Ni–resist piston inserts regardless of size, thickness, weight, or outside diameter. Ni–resist piston inserts may also be called other names including, but not limited to, ''Ring Carriers,'' or ''Alfin Inserts.'' Ni–resist piston inserts are alloyed cast iron rings, with or without a sheet metal cooling channel pressed and welded into the interior of the insert. Ni–resist piston inserts are composed of the material known as Ni–resist, of the chemical composition: 13.5% - 17.5% Ni (nickel), 5.5% - 8.0% Cu (copper), 0.8% - 2.5% Cr (chromium), 0.5% - 1.5% Mn (manganese), 1.0% - 3.0% Si (silicon), 2.4% - 3.0% C (carbon). The cast iron composition is produced primarily to the material specifications of the American Society for Testing and Materials (ASTM), ASTM A–436 grade 1.

The scope of this investigation does not include piston rings nor did any other product manufacture using the Ni–resist material. The subject imports are properly classified under subheading 8409.99.91.90 of the Harmonized Tariff Schedule of the United States (HTSUS), but have been imported under HTSUS 7326.90. The HTSUS subheadings are provided for convenience and customs purposes. The written description is dispositive of the scope of this investigation.

Injury Test

Because Korea is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury, to a U.S. industry. On March 25, 2009, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Korea of the subject merchandise. *See Ni–Resist Piston Inserts from Argentina and Korea*, Investigation Nos. 701–TA–460–461 (Preliminary), 74 FR 12898 (March 25, 2009).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Decision Memorandum. Attached to this notice as an Appendix is a list of the issues that parties raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c) (1) (B) (i) (I) of the Tariff Act of 1930 (as amended) (the Act), we have calculated an individual rate for the company under investigation, Incheon Metal which is the producer/exporter of the subject merchandise under investigation. We determine the total estimated net countervailable subsidy rates are as follows:

Producer/Exporter	Net Subsidy Rate
Incheon Metal Co., Ltd	*de minimis* percent *ad valorem*
All Others	*de minimis* percent *ad valorem*

In the *Preliminary Determination*, the total net countervailable subsidy rate was *de minimis* and, therefore, we did not suspend liquidation. Because the rate for Incheon Metal remains *de minimis*, we are not directing U.S. Customs and Border Patrol to suspend liquidation of entries of Ni–resist pistons from Korea.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

[1] The public version of the verification report and all public reports are on file in the Central Records Unit, Room 1117 in the main building of the Department.

Dated: September 14, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix–Issues and Decision Memorandum

List of Comments and Issues in the Decision Memorandum

Comment 1: Whether the Tax Benefits under the Namdong National Industrial Complex are Countervailable
Comment 2: Whether the Technical Development for Innovation Production Environment Program is de facto Specific
Comment 3: Whether the Department Should Expand the POI

[FR Doc. E9–22647 Filed 9–18–09; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–461 (Final)]

Ni-Resist Piston Inserts From Korea

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On September 21, 2009, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation *(Ni-Resist Piston Inserts from the Republic of Korea: Final Negative Countervailing Duty Determination,* 74 FR 48059, September 21, 2009). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the countervailing duty investigation concerning Ni-resist piston inserts from Korea (investigation No. 701–TA–461 (Final)) is terminated.

DATES: Effective Date: September 21, 2009.

FOR FURTHER INFORMATION CONTACT: Angela M. W. Newell (202–708–5409),

Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov).* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: September 30, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–23990 Filed 10–5–09; 8:45 am]

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APPENDIX B

HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Ni-Resist Piston Inserts from Argentina and Korea

Inv. Nos.: 701-TA-460-461 (Final)

Date and Time: September 17, 2009 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, DC.

OPENING REMARKS:

Petitioners (**Geoffrey Korff**, The Korff Law Firm, LLC)
Respondents (**Christopher M. Kane**, Simon Gluck & Kane LLP)

In Support of the Imposition of a Countervailing Duty Order:

The Korff Law Firm, LLC
Canfield, OH
on behalf of

Korff Holdings LLC d/b/a Quaker City Castings

Joseph Korff, President, Quaker City Castings

Geoffrey Korff) – OF COUNSEL

In Opposition to the Imposition of a Countervailing Duty Order:

Simon Gluck & Kane LLP
New York, NY
on behalf of

Karl Schmidt Unisia, Inc.

Robert G. Turcott, Vice President and General Counsel, Karl Schmidt Unisia, Inc.

Christopher M. Kane)
) – OF COUNSEL
Robert M. Klingon)

REBUTTAL/CLOSING REMARKS:

Petitioners (**Geoffrey Korff**, The Korff Law Firm, LLC)
Respondents (**Christopher M. Kane**, Simon Gluck & Kane LLP)

APPENDIX C

SUMMARY DATA

Table C-1
Ni rings: Summary data concerning the U.S. market, 2006-08, January-June 2008, and January-June 2009

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APPENDIX D

QUARTERLY DOMESTIC AND NONSUBJECT-COUNTRY PRICE DATA

Table D-1
Ni rings: Average prices and quantities for product *, January 2006-June 2009**

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Table D-2
Ni rings: Average prices and quantities for product *, January 2006-June 2009**

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Figure D-1
Ni rings: Average prices and quantities for product *, January 2006-June 2009**

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Figure D-2
Ni rings: Average prices and quantities for product *, January 2006-June 2009**

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