

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN APERTURE MASKS FROM JAPAN AND KOREA
Investigations Nos. 731-TA-823-824 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3185, April 1999)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-823-824 (Preliminary)

CERTAIN APERTURE MASKS FROM JAPAN AND KOREA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of certain aperture masks, provided for in subheading 8540.91.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).²

Also, pursuant to 19 U.S.C. § 1677(24)(A), the Commission determines that the subject imports from Korea that are alleged to be sold at LTFV are negligible. The Commission's investigation with respect to Korea is thereby terminated pursuant to 19 U.S.C. § 1673b(a)(1).

BACKGROUND

On February 24, 1999, petitions were filed with the Commission and the Department of Commerce by BMC Industries, Inc., Minneapolis, MN, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain aperture masks from Japan and Korea. Accordingly, effective February 24, 1999, the Commission instituted antidumping investigations Nos. 731-TA-823-824 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of March 3, 1999 (64 FR 10316). The conference was held in Washington, DC, on March 17, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Commissioners Carol T. Crawford and Stephen Koplan dissenting.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain aperture masks (“APMs”) from Japan that are allegedly sold in the United States at less than fair value (“LTFV”).^{1 2}

We also find that imports of certain aperture masks from Korea that are allegedly sold in the United States at LTFV are negligible.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or the establishment of an industry is materially retarded, by reason of the allegedly LTFV imports.³ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”⁴

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁵ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant 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 Act defines “domestic like product” as: “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁷

¹ Commissioner Carol T. Crawford finds that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain aperture masks from Japan. See Views of Commissioner Carol T. Crawford. She joins in Parts I, II, III, and IV.A. of this opinion.

² Commissioner Stephen Koplán finds that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain aperture masks from Japan. See Dissenting Views of Commissioner Stephen Koplán Regarding Imports from Japan. He joins in Parts I, II, III, and IV of this opinion.

³ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT ___, Slip Op. 96-51 at 4-6 (March 11, 1996).

⁴ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994). We note that information was obtained in these investigations from all of the domestic industry, from all subject foreign producers, and all U.S. purchasers, and virtually all U.S. importers. Confidential Report (“CR”) at I-2, II-1, VII-1, and VII-4, Public Report (“PR”) at I-2, II-1, and VII-1.

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

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 the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as:

all aperture masks (also known as “shadow masks”) made from aluminum-killed, open-coil annealed steel (decarburized) (known generally as “AK steel”) for color picture tubes (“CPTs”) used in television sets. AK steel includes the following types of steel: low carbon, AF (annealing-free) steel, AK type A steel (commonly known as AKM steel), AK type B steel, and general AK steel. The aperture masks covered by the scope generally have a vertical pitch (distance between the centers of two apertures) of greater than .28 mm.¹²

AK steel aperture masks for color picture tubes (“TV picture tubes” or “TV tubes”) are used in television sets. The aperture mask is a thin sheet of metal containing “thousands of precise holes designed to focus the

⁸ See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (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: (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 Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹¹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹² See 64 Fed. Reg. 13768, 13768-69 (March 22, 1999); CR at I-1 n.1, PR at I-1 n.1. The following products are explicitly excluded from Commerce’s scope: “1) aperture masks made from FeNi 36 alloy (whether sold under the brands names Invar, Inovar or LLTE); 2) aperture masks that have a vertical pitch of less than .28 mm that are generally used for color display tubes (“CDTs”) used in computer monitors; and 3) grille masks (a grille mask replaces the slots in an aperture mask with an array of finely tensioned vertical wires).” 64 Fed. Reg. at 13769; CR at I-1 n.1, PR at I-1 n.1.

beam emitted from an electron gun in a {TV picture tube} onto the proper phosphor color dot on the inside of the faceplate, in order to produce a crisp image.”¹³ AK steel aperture masks for TV picture tubes are hereinafter simply referred to as “APMs.” AK steel aperture masks are also used for color display tubes (“computer display tubes” or “computer tubes”) in computer monitors. In addition, aperture masks made from an alloy of iron and nickel, FeNi 36 alloy (sold under the brand names Invar, Inovar or LLTE and collectively referred to herein as “Invar aperture masks”) are used for both TV picture tubes and computer display tubes. A grille mask, in contrast to an aperture mask, consists of vertical wires held in a tensioned frame, and is also used in both TV tubes and computer tubes.¹⁴ These latter products — aperture masks for computer tubes, Invar aperture masks, and grille masks — are excluded from Commerce’s scope.

C. Domestic Like Product Issues

The petitioner argues that the domestic like product consists of all APMs and that the definition of the like product should not be expanded to include the other types of aperture and grille masks that are specifically excluded from Commerce’s scope.¹⁵ Although for purposes of these preliminary investigations the respondents are willing to accept petitioner’s like product definition, the Japanese respondents argue that the like product should be defined more broadly to include all types of aperture masks and grille masks, whether made from AK steel or Invar, and whether used in TV tubes or computer tubes, which are excluded from Commerce’s scope.¹⁶ As discussed below, we determine that the domestic like product consists of all APMs, but excluding the other types of masks.

1. Physical Characteristics and Uses

The record shows significant differences in physical characteristics between APMs and the other types of masks. First, AK steel and Invar aperture masks for computer tubes typically use an array of circular holes (or dots), rather than the elliptical holes (or slots) of masks for TV tubes.¹⁷ Second, the pitch (i.e. the distance between the centers of two apertures) of computer tube masks (whether made from AK steel or Invar) is significantly smaller than for masks for TV tubes, resulting in a far greater number of apertures and far greater resolution than comparably-sized TV tube masks.¹⁸ Moreover, Invar aperture masks for TV tubes or computer tubes are made from Invar steel, a different type of metal that imparts significantly better thermal properties and produces a brighter picture that is less subject to distortion than the AK steel used in APMs.¹⁹

Physically, grille masks for TV tubes or computer tubes are significantly different than APMs, replacing the aperture array with a series of vertical wires (or stripes) held in a tensioned frame. Such masks are also much heavier than APMs, because of the weight of material needed to hold the wires under tension,

¹³ CR at I-3, PR at I-2; see also Transcript of Conference Held March 17, 1999 (“Tr.”) at 16 (Mr. Nelson).

¹⁴ See CR at I-6-9, PR at I-5-7; Tr. at 16-20 (Mr. Nelson); 64 Fed. Reg. at 13679.

¹⁵ Petition at 13-17; Tr. at 16-20 (Mr. Nelson); Petitioner’s Postconference Brief at 20-23; Petitioner’s Producer Questionnaire Response at Part II, Response to Question II-9.

¹⁶ Japanese Respondents’ Postconference Brief at 3-4, Exhibit 1 at 3-5, and Exhibit 7; Tr. at 60-61 (Mr. Walders), 73-74 (Mr. Wechsler).

¹⁷ Petitioner’s Postconference Brief at 21-22; Petitioner’s March 11, 1999 Supplemental Filing at Exhibit 8.

¹⁸ See Petitioner’s Postconference Brief at Exhibit 8; Petition at 15.

¹⁹ See CR at I-6-7, PR at I-5-6; Petition at 14.

and have better thermal properties and produce a brighter picture that is less subject to distortion than APMs.²⁰

The record shows clear distinctions in uses among the different types of masks. APMs tend to be used on low-end, smaller-screen televisions, whereas Invar aperture masks for TV picture tubes, because of their superior physical characteristics, tend to be used on the larger-size, high-end televisions.²¹ In contrast to APMs, which are used in TV picture tubes and are designed to produce a crisp moving image to a viewer six feet from the front of the television, all masks for computer display tubes (including AK steel aperture masks, Invar aperture masks, and grille masks for computer tubes) are designed to produce a crisp, static image at approximately 18-24 inches from the front of the computer monitor.²² Grille masks (whether for TV tubes or computer tubes) are only used in Sony's Trinitron tubes and Trinitron tube "clones" and cannot be used in other manufacturers' TV or computer tubes.²³

2. Interchangeability

The record shows little to no interchangeability between APMs and the other types of masks.²⁴ For masks used in TV picture tubes, in theory APMs and Invar aperture masks for TV tubes are interchangeable, although practically the significantly higher price of Invar material substantially limits interchangeability.²⁵ APMs are not interchangeable with AK steel or Invar aperture masks for computer tube use.²⁶ Likewise, APMs are not interchangeable with grille masks (whether for TV or computer tubes), in that the latter are only used in Trinitron tubes and their clones and have significant design differences (e.g., a different support system for the grille mask).²⁷

3. Channels of Distribution

Aperture masks for use in televisions are sold directly to TV tube manufacturers. APMs are sold in the same channel of distribution as Invar aperture masks for TV picture tubes, i.e., to TV tube manufacturers.²⁸ APMs are sold in a different channel of distribution than the other types of masks, however. AK steel and Invar aperture masks for computer tubes are sold only to computer tube manufacturers. Grille masks for TV tubes and for computer tubes are only internally transferred and consumed by Sony Corporation to produce Trinitron tubes (whether for TV or computer tubes), or sold to firms licensed to make Trinitron tube clones, and are not sold in the merchant market to either TV or computer tube manufacturers.²⁹

²⁰ See CR at I-8-9, PR at I-6-7; Petition at 16-18.

²¹ Petitioner's Postconference Brief at 22; Petitioner's Producer Questionnaire Response at Part II, Response to Question II-9.

²² See Petition at Exhibit 19.

²³ Petition at 16.

²⁴ CR at II-6, PR at II-1-2.

²⁵ CR at I-7-8, II-6, PR at I-5-6, II-2; Tr. at 18 (Mr. Nelson).

²⁶ CR at I-8, PR at I-6; Petitioner's Postconference Brief at 22; Tr. at 19 (Mr. Nelson).

²⁷ Petitioner's Postconference Brief at 22; Tr. at 20 (Mr. Nelson).

²⁸ CR at I-8, PR at I-6.

²⁹ Petition at 16; Petitioner's Producer Questionnaire Response at Part II, Response to Question II-9.

4. Customer and Producer Perceptions of the Products

Customers and producers apparently perceive clear and significant differences between APMs and the other types of masks. APMs are apparently perceived as different from Invar aperture masks for TV tubes, from AK steel and Invar aperture masks for computer tubes, and from grille masks (whether for TV tubes or for computer tubes), based upon significant differences in physical characteristics, uses, and price.³⁰

5. Common Manufacturing Facilities, Production Processes and Production Employees

Petitioner produces all types of aperture masks (including APMs, AK steel aperture masks for computer tubes, and Invar aperture masks for TV tubes and computer tubes) except grille masks at its Cortland, New York plant.³¹ If an APM production line is “Invar capable,” Invar aperture masks for TV picture tubes can be produced on the same production lines as APMs.³² AK steel and Invar aperture masks for computer tubes are produced ***.³³ There is at least some overlap in employees between all of the Cortland facility’s production lines for APMs, AK steel aperture masks for computer tubes, and Invar aperture masks for TV tubes and computer tubes, although there appears to be more of an overlap in employees producing APMs and Invar aperture masks for TV tubes than employees producing AK steel and Invar aperture masks for computer tubes.³⁴ The production processes for APMs and Invar aperture masks for TV picture tubes are similar, except that producing Invar masks requires more careful product handling, softening of the Invar, and the addition of a *** to the production line.³⁵

Grille masks (for TV and computer tubes) — which in the United States are only produced by Sony Corporation at its U.S. facility — are produced at a different manufacturing facility using different production employees. The production process for grille masks (which are generally made from AK steel but also may be made from Invar) is apparently similar to the production process for the other type of aperture masks, except that a tension mechanism is required to keep the metal stiff and rigid during the etching process.³⁶

6. Price

The record shows significant price differences between APMs and the other types of masks. Invar aperture masks, whether for TV tubes or computer tubes, appear to be priced significantly higher than

³⁰ Petition at 17; Petitioner’s Postconference Brief at 22; Petitioner’s Producer Questionnaire Response at Part II, Response to Question II-9.

³¹ See, e.g., Petitioner’s Postconference Brief at Exhibit 8; CR at III-1, PR at III-1.

³² Petition at 14. In fact, petitioner has *** production lines producing APMs, *** of which are Invar capable. Petitioner’s Postconference Brief at Exhibit 8.

³³ CR at III-1, PR at III-1. Both AK steel and Invar aperture masks for computer tubes require ***, as opposed to *** required for APMs and Invar aperture masks for TV picture tubes. CR at I-7, PR at I-5; Petitioner’s Producer Questionnaire Response at Part II, Response to Question II-9.

³⁴ Tr. at 31 (Mr. Gugger, Mr. Nelson), 33-34 (Ms. Levinson, Mr. Nelson, Mr. Gugger).

³⁵ See Petitioner’s Postconference Brief at 31; CR at I-7, PR at I-5.

³⁶ See Petition at 17; CR at I-9, PR at I-6; Tr. at 35-36 (Mr. Nelson).

comparably-sized APMs, although the parties disagree as to exactly how much higher.³⁷ Moreover, AK steel aperture masks for computer tubes are apparently priced approximately *** times higher than comparably-sized APMs.³⁸ Finally, grille masks, whether for TV tubes or computer tubes, also appear to be significantly more expensive than APMs.³⁹

7. Conclusion

For the reasons described above, we find a clear dividing line between APMs and the other types of aperture and grille masks. Accordingly, we define the domestic like product to include all APMs.⁴⁰

D. Domestic Industry

The domestic industry is defined as “the producers as a whole of a domestic like product”⁴¹ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁴² Based on our finding that the domestic like product consists of all APMs, we find that the domestic industry consists of the only domestic producer of APMs, BMC Industries, Inc. (“BMC”).

III. NEGLIGIBLE IMPORTS

Imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.⁴³ The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States.⁴⁴ By operation of law, a finding of negligibility terminates the Commission’s investigations with respect to such imports.⁴⁵ The Commission is authorized to make “reasonable estimates on the basis of available statistics” of pertinent import levels for purposes of deciding negligibility.⁴⁶

³⁷ Compare Petition at 14 with Japanese Respondents Postconference Brief at Exhibit 15 p. 12.

³⁸ Petitioner’s Postconference Brief at 23.

³⁹ Petitioner’s Producer Questionnaire Response at Part II, Response to Question II-9.

⁴⁰ Commissioner Crawford notes that for purposes of these preliminary investigations she finds a single domestic like product consisting of all APMs. However, had there been any final phase investigations, she would have further explored the like product issues raised by these investigations.

⁴¹ 19 U.S.C. § 1677(4)(A).

⁴² See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int’l Trade 1994), aff’d, 96 F. 3d 1352 (Fed. Cir. 1996).

⁴³ 19 U.S.C. § 1677(24)(I).

⁴⁴ 19 U.S.C. § 1677(24)(A)(iv).

⁴⁵ 19 U.S.C. § 1673b(a)(1).

⁴⁶ 19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. 103-316, Vol. 1, at 856 (1994) (“SAA”).

Negligibility is an issue in these investigations with respect to imports from Korea. To evaluate negligibility, we have used APM imports for consumption based on importer questionnaire responses for calendar year 1998, the most recent 12-month period preceding the filing of the petition for which such data are available.⁴⁷ Based on importer questionnaire responses, subject imports from Korea were less than the three percent negligibility threshold and accounted for only *** percent of the volume of all APMs imported into the United States during calendar year 1998.⁴⁸

We also do not find, pursuant to 19 U.S.C. § 1677(24)(A)(iv), that subject imports from Korea will imminently account for more than three percent of the total volume of APM imports. Korea's share of total imports was *** and *** percent in 1996 and 1997, respectively, and then declined to *** percent in 1998.⁴⁹ Similarly, imports of the subject merchandise from Korea increased from *** masks in 1996 to *** masks in 1997, and then declined by nearly *** percent in 1998 (compared to the 1996 level) to *** masks.⁵⁰ The fact that Zenith ceased production in 1998 appears to be the reason for the nearly *** percent decline in subject imports from Korea.⁵¹ In fact, Zenith, which is affiliated with the sole Korean producer, LG Micron, was LG Micron's only customer for virtually all of the investigation period.⁵² There have not been any U.S. sales, or

⁴⁷ The importers that responded to the Commission's questionnaire are believed to account for 100 percent of U.S. imports during calendar year 1998. CR at I-2, IV-1, PR at I-2, IV-1. No public database is available that can be reliably used to calculate negligibility in these investigations. APMs are imported under HTSUS tariff subheading 8540.91.50, a "basket" category, "Parts of Cathode Ray Tubes, Other," which contains numerous types of non-subject merchandise, including not only other, nonsubject aperture and grille masks (whether for TV tubes or computer tubes and whether made from AK steel or Invar), but also other parts of cathode ray tubes (e.g., liners, ferrite cores, cross arms and correctors of television deflection yokes). See Petition at 5 and n.3, and Exhibit 9; Petitioner's March 11, 1999 Supplemental Filing at 11.

⁴⁸ CR at IV-2 and Table IV-1, PR at IV-2. We note that the petitioner has alleged that Korean APMs are being transhipped through Brazil and Mexico, based on publicly available import statistics (which indicate increases in imports from Brazil and Mexico in the HTSUS tariff subheading under which APMs are imported) and two bills of lading indicating shipments by the Korean producer to TV picture tube manufacturers in Brazil and Mexico. See Petition at 8; Petitioner's March 11, 1999 Supplemental Filing at 7 and Exhibit 5; Tr. at 40 (Ms. Levinson). We have found no evidence of transshipments, nor has the petitioner substantiated these allegations. The Commission's questionnaires requested information from importers and purchasers regarding transshipments. Importer/Purchaser Questionnaire at pp. 6, 12, 19, 21, 23. Significantly, "[t]here were no reported transshipments of Japanese or Korean APMs through other countries." CR at IV-2, PR at IV-1. Moreover, neither the Korean nor Japanese foreign producer respondents were aware of any transshipments through Brazil or Mexico, and the Korean producer submitted letters from its Brazilian and Mexican customers in which the customers deny that they have transhipped any APMs to the United States. Tr. at 91-92 (Mr. House), 119 (Mr. Loeb); Korean Respondent's Postconference Brief at 9 and Exhibit 4. In addition, simply because the HTSUS basket category under which APMs are imported shows increasing imports from Brazil and Mexico does not establish that transshipments of subject merchandise are occurring, because numerous products other than APMs are imported under this category. Moreover, this HTSUS data is being reported as product of Mexico and Brazil, not product of Korea. See Petition at Exhibit 7. Finally, we also note that the two bills of lading the petitioner provided in a supplemental filing do not show any transshipments of Korean APMs through Brazil or Mexico to the United States, but instead simply show shipments of APMs from Korea to Brazil and Mexico. See Petitioner's March 11, 1999 Supplemental Filing at 7 and Exhibit 5. As noted by the Korean respondent, the bill of lading with respect to Mexico shows that APMs are ***. Korean Respondents' Postconference Brief at 9 and Exhibit 4. None of this evidence shows any indication of transshipments through Brazil and Mexico to the United States.

⁴⁹ CR at Table IV-1.

⁵⁰ CR at Table IV-1.

⁵¹ See Korean Respondents' Postconference Brief at 11-12; Tr. at 123 (Mr. House).

⁵² CR at VII-4 n.5, PR at VII-2; Korean Respondent's Postconference Brief at 11 and n.22.

even contracts for U.S. sales, of APMs from Korea since February 1998.⁵³ Nor have there been any subject Korean imports thus far in 1999, and the Korean respondent projects *** sales to the United States for 1999 and 2000.⁵⁴

Excess capacity in Korea is limited and it does not appear that LG Micron will imminently increase shipments to the United States. LG Micron reports high capacity utilization rates of *** percent in 1996, *** percent in 1997, *** percent in 1998, and projects its capacity utilization rate to be *** percent for both 1999 and 2000.⁵⁵ Throughout the period of investigation, LG Micron's home market and other markets have been *** more significant than its U.S. exports.⁵⁶ Moreover, although LG Micron reports that it produces *** on the same production equipment it uses to produce APMs, there is no indication that it intends to shift from the production of *** to the production of APMs.⁵⁷ LG Micron's end-of-period inventories have also declined from *** masks in 1996 to *** in 1997, and declined again to *** in 1998.⁵⁸ In addition, U.S. importers reported *** end-of-period inventories of subject Korean merchandise in 1997 and 1998.⁵⁹

Finally, there is no confirmed evidence that the Korean producer has bid for 1999 sales. Although petitioner argued that LG Micron bid in 1998 for a sale to Thomson Consumer Electronics in 1999,⁶⁰ both Thomson and LG Micron denied that this occurred. Instead, they asserted that ***.⁶¹

Accordingly, we find no potential that subject imports from Korea will imminently exceed the three percent negligibility threshold, and the investigation with respect to Korea is therefore terminated.

IV. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS⁶²

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.^{63 64} In making this determination, the Commission must

⁵³ LG Micron's last shipment to the United States consisted of *** masks in February 1998. Korean Respondent's Postconference Brief at 2, 13.

⁵⁴ Korean Respondent's Postconference Brief at 11; Tr. at 123-24 (Mr. House); CR at Table VII-2.

⁵⁵ CR at Table VII-2.

⁵⁶ As a share of its total APM shipments, LG Micron's U.S. exports were *** percent in 1996, *** percent in 1997, *** percent in 1998, and are projected to be *** percent in 1999 and 2000. See CR at Table VII-2.

⁵⁷ CR at VII-4, PR at VII-2.

⁵⁸ CR at Table VII-2. LG Micron projects end-of-period inventories of *** APMs in 1999 and *** in 2000. CR at Table VII-2.

⁵⁹ CR at Table VII-3.

⁶⁰ Petitioner's Postconference Brief at 17; Tr. at 127 (Mr. Nelson); CR at V-29, PR at V-5.

⁶¹ Korean Respondents' Postconference Brief at 12 n.23; Thomson's Postconference Brief at 2; CR at V-29, PR at V-5; Tr. at 123-24 (Mr. Deyman, Mr. House).

⁶² Because the investigation with respect to Korea is terminated, the exception to cumulation based on terminated investigations applies. See 19 U.S.C. § 1677(7)(G)(ii)(II). Accordingly, we do not cumulate subject Korean imports for purposes of our analysis of material injury and threat of material injury concerning subject imports from Japan.

⁶³ 19 U.S.C. § 1673b(a).

⁶⁴ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic

(continued...)

consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁶⁵ The statute defines “material injury” as “harm which is not inconsequential, immaterial or unimportant.”⁶⁶ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁷ 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.”⁶⁸

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing APMs is materially injured by reason of subject imports from Japan.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations. First, because APMs are component parts that are used in TV picture tubes, which in turn are used in television sets, the demand for APMs is a derived demand that is dependent on the consumption of TV picture tubes and televisions.

Second, in the U.S. market for APMs, the production and purchases of APMs are concentrated. The petitioner, BMC, is the only U.S. producer. There were six U.S. purchasers (i.e., TV picture tube

⁶⁴(...continued)

industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 96-249, at 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 96-317, at 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249, at 74 (1979). Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 100-71, at 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, *see* Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’d* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

⁶⁵ 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 . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). *See also* Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁶⁶ 19 U.S.C. § 1677(7)(A).

⁶⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁸ 19 U.S.C. § 1677(7)(C)(iii).

manufacturers) of APMs during much of the period of investigation. During 1998, Zenith Electronics, which had been an important U.S. purchaser, ceased U.S. production operations.⁶⁹

Third, downstream competition among TV picture tube manufacturers, and falling television prices, have led to efforts by tube producers to reduce all component costs, including the costs of APMs. This, coupled with the derived demand for APMs and the limited number of U.S. purchasers, has led to substantial downward price pressure for all suppliers of TV picture tube components, including APM manufacturers.⁷⁰

Fourth, *** U.S. purchasers now employ a dual sourcing policy.⁷¹ Under this policy, U.S. purchasers maintain at least two sources of supply for masks. During 1998, *** was *** purchaser to implement a dual sourcing policy in the bid negotiations for 1999 sales.⁷²

Fifth, both petitioner and respondents agree that, in contrast to the beginning of the period of investigation, there is significant global overcapacity for production of APMs. The domestic producer nearly *** its production capacity in 1997, apparently in anticipation of increased demand for APMs. Domestic capacity increased from *** million masks in 1996 to *** million masks in 1997, and then declined somewhat in 1998 to *** million masks, nearly *** the 1996 level.⁷³ Over the same period, apparent U.S. consumption of APMs declined, from 21.3 million in 1996 to 20.1 million in 1998.⁷⁴ Thus, the increase in demand that BMC apparently anticipated has yet to materialize, leaving the domestic industry with significant unused capacity since approximately 1997. Consequently, the domestic industry's capacity utilization rate fell *** from *** percent in 1996 to *** percent in 1997, before increasing somewhat in 1998, to *** percent.⁷⁵

Finally, exports have accounted for a significant volume of the domestic industry's overall APM shipments throughout the investigation period.⁷⁶ The domestic industry's export shipments increased from *** million masks in 1996 to *** million masks in 1997, and increased again to *** million masks in 1998.⁷⁷ Export shipments accounted for *** percent of the industry's overall shipments in 1996, *** percent in 1997, then declined somewhat in 1998 to *** percent.⁷⁸

⁶⁹ See CR at II-1 and V-17, PR at II-1 and V-4.

⁷⁰ See, e.g., Japanese Respondents' Postconference Brief at 13-16; Thomson's Postconference Brief at 4; American Matsushita's Postconference Brief at 2-3; Tr. at 81-83 (Mr. Wechsler), 117 (Mr. Doerschuk).

⁷¹ See Tr. at 63-64 (Ms. Mizelle, Mr. Doerschuk), 83 (Mr. Wechsler); CR at II-7, V-9, V-17, PR at II-4, V-4. Two U.S. purchasers, Thomson Consumer Electronics and American Matsushita Electronics Corporation, explain that dual sourcing was established in order to avoid supply disruptions that would occur if there were unforeseen problems with a sole-source supplier. These purchasers observed that they had actually experienced problems with particular APM producers and that dual sourcing had enabled them to continue high-quality operations. Thomson's Postconference Brief at 3; American Matsushita's Postconference Brief at 1-2.

⁷² CR at V-9, PR at V-4.

⁷³ CR at Table III-1.

⁷⁴ CR at Table C-1.

⁷⁵ CR at Table III-1; see also CR at III-5 n.8 ("BMC reported in its 1997 annual report that during the start-up phase of its new {TV tube} and {computer tube} production lines in 1997, the performance of all production lines, including the existing lines, suffered.").

⁷⁶ Chairman Bragg did not consider the role of U.S. exports in her analysis, and does not join any discussion of U.S. exports contained in these views.

⁷⁷ CR at Table III-2.

⁷⁸ CR at Table III-2.

B. Volume of the Subject Imports⁷⁹

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁸⁰

The volume of subject imports from Japan has declined *** during the period examined. Subject imports declined by more than *** percent from 1996 to 1998, increasing from *** million masks in 1996 to *** million masks in 1997, and then declining by more than *** percent (compared to 1996) to *** million masks in 1998.⁸¹ Likewise, U.S. shipments of subject imports from Japan also declined over the period of investigation, increasing from *** million masks in 1996 to *** million masks in 1997, and then declining by more than *** percent (compared to 1996) to *** million masks in 1998.⁸² As subject import volumes fell, apparent U.S. consumption modestly declined, from 21.3 million APMs in 1996, to 21.2 million APMs in 1997, to 20.1 million APMs in 1998, for a net decrease in consumption from 1996 to 1998 of 5.5 percent.⁸³ As a result, the imports from Japan lost market share, while the domestic industry *** increased its market share over the same period. The share of apparent U.S. consumption by quantity held by subject imports from Japan, after increasing from *** percent in 1996 to *** percent in 1997, then declined to *** percent in 1998.⁸⁴ U.S. shipments accounted for *** percent of apparent U.S. consumption in 1996, *** percent in 1997, and increased to *** percent in 1998.⁸⁵

By any measure Japanese imports have declined *** in 1998, the most recent year examined. BMC has captured significant sales and market share from the subject imports from Japan in the same year. In light of the foregoing, we find that the volume of imports of the subject merchandise from Japan is not significant.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁸⁶

⁷⁹ Commissioner Crawford finds that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain aperture masks from Japan. Accordingly, she does not join the remainder of this opinion. See Dissenting Views of Commissioner Carol T. Crawford Regarding Imports from Japan.

⁸⁰ 19 U.S.C. § 1677(7)(C)(i).

⁸¹ CR at Table IV-1. By value, subject imports also declined by more than *** percent from 1996 to 1998, increasing from \$*** million in 1996 to \$*** million in 1997, and then declining *** to \$*** million in 1998. CR at Table IV-1.

⁸² CR at Table C-1. By value, U.S. shipments of Japanese imports also fell *** from 1996 to 1998, increasing from \$*** million in 1996 to \$*** million in 1997, and then declining to \$*** million in 1998. CR at Table C-1.

⁸³ CR at Table C-1. By value, U.S. consumption has also declined somewhat, from \$89.7 million in 1996, to \$88.5 million in 1997, to \$80.6 million in 1998, for an overall decline of 10.2 percent from 1996 to 1998. CR at Table C-1.

⁸⁴ CR at Table C-1. By value, the share of U.S. consumption held by subject imports from Japan fell from 1996 to 1998, increasing from *** percent in 1996 to *** percent in 1997, and then declining to *** percent in 1998. CR at Table C-1.

⁸⁵ CR at Table C-1.

⁸⁶ 19 U.S.C. § 1677(7)(C)(ii).

APMs are made to particular specifications, based on the customer's mask pattern, size, and thickness.⁸⁷ Domestic and Japanese APMs manufactured to similar specifications are generally interchangeable. Purchasers consider price to be an important factor in APM purchasing decisions, although a number of other factors, such as quality, delivery, reliability of supply, and dual sourcing, also play a significant role.⁸⁸ APMs are typically sold on the basis of yearly supply contracts, and purchasers (i.e., TV picture tube manufacturers) seek bids from mask suppliers "late in the calendar year for the following year's supply."⁸⁹ Purchasers use a negotiated bidding process to obtain favorable pricing terms from mask suppliers. The bidding process typically consists of two rounds of bidding (i.e., initial and final bids).⁹⁰ In addition, it is not uncommon for companies to know other companies' bid values.⁹¹ ***.⁹²

APM prices have declined throughout the period of investigation.⁹³ However, we find that subject imports from Japan have not depressed prices to a significant degree, nor have they significantly undersold the domestic product. As discussed above, the domestic industry gained *** market share and the volume of Japanese imports declined *** during the investigation period. This indicates that it was the domestic industry, not Japanese producers or importers, that priced its APMs sufficiently low to capture significant sales and increase its market share. Moreover, the declining prices also resulted from downstream competition in the TV picture tube and television industries that have, to a significant degree, pressed for lower prices from all suppliers, including mask suppliers.⁹⁴ TV picture tube manufacturers, who are the purchasers of APMs, cited pressure from television manufacturers to reduce prices for TV tubes.⁹⁵ Finally, the available bidding data does not establish a clear pattern of underselling or overselling by Japanese producers and importers.⁹⁶ In sum, in our view the price declines during the period examined result from the price-competitive environment in the downstream TV picture tube and television markets, as well as from pricing by BMC that was sufficiently low to maintain, or even *** gain, U.S. market share, after it had nearly *** its capacity, rather than from significant price depression caused by subject imports.⁹⁷

⁸⁷ See CR at I-3, PR at I-2.

⁸⁸ See CR at II-7-8, PR at II-4.

⁸⁹ CR at V-3, PR at V-1.

⁹⁰ CR at V-3, PR at V-1.

⁹¹ CR at V-4, PR at V-1.

⁹² CR at V-4-5, PR at V-3.

⁹³ For purposes of these investigations, BMC was requested to provide its ten largest bids and U.S. purchasers and importers were requested to provide information on their five largest bids for APMs for each year from 1996 to 1998. CR at V-5, PR at V-3. Based on the bidding data collected, virtually all APM prices have declined from 1996 to 1998. For instance, BMC's price for 27V masks sold to American Matsushita Electronics Corporation declined from \$*** per mask in 1996 to \$*** in 1997, and to \$*** in 1998. CR at Table V-1; see generally CR at Tables V-1, V-2, V-3, V-4, V-5, and V-6.

⁹⁴ We note in that regard that Thomson Consumer Electronics provided charts to the Commission indicating that the prices of other component parts of TV picture tubes (even those for which there apparently was no significant import competition) have declined at the same time as APM prices have declined. See Thomson's Post Conference Brief at 4 and Exhibit B. Moreover, the Japanese respondents provided evidence that prices for television sets have also declined in recent years. See Japanese Respondents' Postconference Brief at Exhibit 8.

⁹⁵ See, e.g., Japanese Respondents' Postconference Brief at 13-16; Thomson's Postconference Brief at 4; American Matsushita's Postconference Brief at 2-3; Tr. at 81-83 (Mr. Wechsler), 117 (Mr. Doerschuk).

⁹⁶ See CR at Table V-1, V-2, V-3, V-4, V-5, and V-6.

⁹⁷ As discussed above (see supra at p. 20), export sales were a significant part of the domestic industry's overall sales during the period examined. Although there may be some differences in product mix between export and domestic sales, we note that the unit value of the domestic industry's export shipments declined *** more rapidly than the unit
(continued...)

For the reasons given above, we find that the subject imports are not having significant adverse price effects on domestically produced APMs.

D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.” These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{98 99}

Consistent with our finding that the volume of the subject imports was not significant, and that the subject imports did not have significant effects on prices for domestically produced APMs, we find that the subject imports are not having a significant adverse impact on the domestic industry.

The domestic industry *** increased its market share over the period examined.¹⁰¹ Likewise, the domestic industry’s production and shipments increased, and, as mentioned, capacity nearly ***.¹⁰² Similarly, employment indicators all improved.¹⁰³

⁹⁷(...continued)

value of its domestic shipments from 1996 to 1998. See CR at Tables III-2 and C-1 (indicating that the unit values of the domestic industry’s U.S. shipments declined from \$*** in 1996, to \$*** in 1997, to \$*** in 1998; whereas the domestic industry’s unit values of export shipments were \$*** in 1996, increased to \$*** in 1997, and then declined *** to \$*** in 1998). Accordingly, it appears that the domestic industry’s prices did not decline as *** in the U.S. market as its prices did in the export market. Any decline in the domestic industry’s export prices could not have been caused by subject imports. As previously noted, Chairman Bragg does not join any discussion of U.S. exports contained in these views. See supra at n. 76.

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

⁹⁹ As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider “the magnitude of the margin of dumping” in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce identified estimated dumping margins for Japan ranging from 3.77 to 85.34 percent. 64 Fed. Reg. at 13770.

¹⁰⁰ Chairman Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

¹⁰¹ CR at Table C-1.

¹⁰² While the domestic industry’s capacity utilization rate declined from 1996 to 1998, we give less weight to this factor in light of the *** increases in domestic capacity during the period examined. See CR at Table III-1. The domestic industry’s production increased from *** million masks in 1996, to *** million masks in 1997, and to *** million masks in 1998. CR at Table III-1. Capacity increased from *** million masks in 1996, to *** million masks in 1997, then declined *** in 1998 to *** million masks in 1998, for a total increase of *** percent from 1996 to 1998. CR at Table III-1. The domestic industry’s U.S. commercial shipments were *** million APMs in 1996, declined to *** million APMs in 1997, then increased above the 1996 level to *** million APMs in 1998. CR at Table III-1.

¹⁰³ Employment increased by more than *** percent from 1996 to 1998, with the number of production and related workers increasing from *** workers in 1996, to *** workers in 1997, and to *** workers in 1998; hours worked, wages paid, and hourly wages all increased as well. CR at Table III-4.

The domestic industry's operating income declined *** over the period of investigation. Operating income declined from \$*** million in 1996, to \$*** million in 1997, and then declined *** to \$*** million in 1998.¹⁰⁴ Similarly, the ratio of operating income to net sales declined from *** percent in 1996 to *** percent in 1997 and then declined *** to *** percent in 1998.¹⁰⁵

In our view, however, the worsening income performance of the domestic industry resulted not from import competition, but rather from *** increasing costs. While overall net sales, both in terms of quantity and value, increased from 1996 to 1998, the domestic industry's cost of goods sold, including raw materials, direct labor, and other factory costs, increased ***.¹⁰⁶ The domestic industry's cost of goods sold per mask also increased ***, from \$*** per mask in 1996, to \$*** in 1997, and to \$*** in 1998.¹⁰⁷ The domestic industry's increasing costs resulted in large part from increases in factory overhead costs caused by *** in 1998, which followed on the heels of the nearly \$*** million in capital expenditures that BMC incurred in 1996 and 1997 to increase its production capacity, and *** appear to result from that over-capacity.¹⁰⁸ Indeed, at the same time as the domestic industry's costs were increasing in 1998 compared to 1996 and 1997 levels, the volume of subject imports was declining by more than half its 1996 level. While falling APM prices may have also played a role in the industry's financial performance, we found above that there was no significant price effect by subject imports, but that other factors were responsible for falling prices.¹⁰⁹

We thus find that the subject imports are not having an adverse impact on the domestic industry.

E. Conclusion

For the reasons stated above, we find that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports from Japan.

¹⁰⁴ CR at Table VI-1.

¹⁰⁵ CR at Table VI-1.

¹⁰⁶ The quantity of net sales was *** million APMs in 1996, declined to *** million APMs in 1997, and then increased above the 1996 level to *** million APMs in 1998. The value of net sales increased from \$*** million in 1996 to \$*** million in 1997, and then increased again to \$*** million in 1998. At the same, total costs of goods sold increased from \$*** million in 1996 to \$*** million in 1997, and then increased *** to \$*** million in 1998. The components of costs of goods sold all rose as well: raw materials increased from \$*** million in 1996, to \$*** million in 1997, to \$*** million in 1998; direct labor was \$*** million in 1996 and \$*** million in 1997, and then increased *** to \$*** million in 1998; and other factory costs increased *** as well from \$*** million in 1996, to \$*** million in 1997, to \$*** million in 1998. See generally CR at Table VI-1.

¹⁰⁷ CR at Table VI-2. On a per-mask basis, two of the three components of cost of goods sold increased from 1996 to 1998. Raw material costs were \$*** per mask in 1996, \$*** in 1997, and \$*** in 1998. Direct labor costs increased from \$*** per mask in 1996, to \$*** in 1997, and to \$*** in 1998. Other factory costs increased *** from \$*** per mask in 1996, to \$*** in 1997, and to \$*** in 1998. CR at Table VI-2.

¹⁰⁸ See CR at VI-3-4, PR at VI-1-2; Japanese Respondent's Postconference Brief at 11-13; BMC's SEC Form 10-K for Fiscal Year 1998 (Mar. 31, 1999) (attributing the shutdown in mask production lines to the "imbalance of mask supply and demand").

¹⁰⁹ BMC's financial data include operations on export sales. As noted above, the decline in unit values on export sales — which cannot be attributed to the subject imports' effects — was *** more significant than the decline in unit values of BMC's domestic sales. As previously noted, Chairman Bragg does not join any discussion of U.S. exports contained in these views.

V. **NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS**¹¹⁰

Section 771(7)(F) of the 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.”¹¹¹ The Commission may not make such a determination “on the basis of mere conjecture or supposition,”¹¹² and considers the threat factors “as a whole.”¹¹³ In making our determination, we have considered all factors¹¹⁴ that are relevant to these investigations.¹¹⁵

Based on an evaluation of the relevant statutory factors, we find no reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from Japan.

As discussed in our material injury analysis above, the volume of subject imports has declined by more than *** from 1996 to 1998, and the market penetration of subject imports has also declined *** during the same period. These decreases do not indicate “a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports.”¹¹⁶ Indeed, a *** import volume and market share are the opposite of what one would expect to see in a situation of threat of material injury.

The Japanese producers project that their exports to the United States will increase from 1998 to 1999 and 2000, to *** million APMs and *** million APMs, respectively.¹¹⁷ These projections, however, are essentially on a par with the U.S. volume levels that the Japanese producers obtained in 1996 and are lower than their volumes in 1997 (both years in which BMC acknowledges that it was not experiencing material injury).¹¹⁸ Accordingly, the Japanese producers’ projected volumes in 1999 and 2000 do not show a

¹¹⁰ Commissioner Koplan finds a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports from Japan. Accordingly, he does not join the remainder of this opinion. See Dissenting Views of Commissioner Stephen Koplan Regarding Imports from Japan.

¹¹¹ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

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

¹¹³ While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the SAA indicates the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 184.

¹¹⁴ The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the Antidumping and Subsidies Agreements, although “{n}o substantive change in Commission threat analysis is required.” SAA at 185.

¹¹⁵ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

¹¹⁶ 19 U.S.C. § 1677(7)(F)(i)(III).

¹¹⁷ CR at Table VII-1.

¹¹⁸ Tr. at 126 (Mr. Nelson). The Japanese producers’ exports to the United States increased from *** million APMs in 1996 to *** million APMs in 1997, and then declined dramatically to *** million APMs in 1998. CR at Table VII-1. Similarly, the volume of subject Japanese imports increased from *** million masks in 1996 to *** million masks in 1997, and then declined dramatically to *** million masks in 1998. CR at Table IV-1.

significant rate of increase in the volume or market penetration of subject imports indicating the likelihood of substantially increased subject imports in the imminent future.

Moreover, the Japanese producers' projected volumes in 1999 and 2000 may be overstated. U.S. purchasers predict increases over 1998 levels in their 1999 purchases of subject Japanese imports that are significantly less than those projected by the Japanese producers themselves. Specifically, U.S. purchasers predict purchasing *** million Japanese APMs in 1999, an increase from reported purchases of *** million APMs from Japan in 1998.¹¹⁹ The purchasers' projected increase is on a par with their reported mask purchases in 1996 and significantly less than their mask purchases in 1997.¹²⁰ Although purchasers' projections are based in part on the negotiated bidding process and consist of ***,¹²¹ U.S. purchasers could well be in a better position to anticipate their own needs in 1999 than are the Japanese producers.¹²² We also note that the vast majority of the gain projected for Japanese producers for 1999 sales is accounted for by one U.S. purchaser, ***, and appears to result from that company adopting a dual sourcing policy, rather than by reason of allegedly LTFV imports.¹²³ Just prior to the 1998 bidding cycle for 1999 sales, *** was alone among mask purchasers in using ***.¹²⁴ U.S. purchasers' projected increases in purchases of subject Japanese product in 1999 over 1998 levels therefore do not show a significant rate of increase in the volume or market penetration of subject imports indicating the likelihood of substantially increased subject imports in the imminent future, particularly in light of the level of purchases of subject Japanese product in 1996 and 1997.

Japanese producers also project declines in capacity and increases in capacity utilization in 1999 and 2000 over 1998 levels, and these projections will be on a par with the Japanese producers' capacity and capacity utilization levels in 1996 and 1997.¹²⁵ Moreover, although Japanese shipments to the United States, relative to total Japanese shipments, are projected to increase in 1999 and 2000 over 1998 levels, they will be on a par with levels in 1996 and 1997.¹²⁶ Third-country markets have also been very significant for the Japanese producers from 1996 to 1998 and are projected to remain so in 1999 and 2000.¹²⁷ We therefore do not find that producers in Japan have a substantial amount of excess capacity or underutilized capacity that may permit them to substantially increase exports to the United States in the imminent future, particularly in light of the significance of the Japanese producers' other export markets and the pattern of the Japanese producers' U.S. shipments from 1996 to 1998 and as projected for 1999 and 2000.

¹¹⁹ See CR at V-27, PR at V-5.

¹²⁰ See CR at V-27 (U.S. purchasers reported purchasing *** million Japanese APMs in 1996 and *** million in 1997), PR at V-5.

¹²¹ See CR at V-4-5, PR at V-3.

¹²² In any event, we have found just above that even the Japanese producers' projections do not support a determination of a reasonable indication of a threat of material injury.

¹²³ See CR at Table V-9.

¹²⁴ See CR at V-9, PR at V-4.

¹²⁵ The Japanese producers' production capacity increased from *** million APMs in 1996 to *** million APMs in 1997, and increased again to *** million APMs in 1998, but capacity is projected to decline to *** million APMs and *** million APMs in 1998 and 1999, respectively. CR at Table VII-1. The Japanese producers' capacity utilization rates *** declined from *** percent in 1996, to *** percent in 1997, to *** percent in 1998, but are projected to increase to *** percent in 1997 and to *** percent in 2000. CR at Table VII-1.

¹²⁶ Japanese producers' exports to the United States accounted for *** percent of their total shipments in 1996, *** percent in 1997, *** percent in 1998, and are projected to account for *** percent and *** percent of total shipments in 1999 and 2000, respectively. CR at Table VII-1.

¹²⁷ As a share of total shipments, Japanese producers' exports to third-country markets were *** percent in 1996, *** percent in 1997, *** percent in 1998, and are projected to be *** percent in 1999 and *** percent in 2000. CR at Table VII-1.

As discussed in our material injury analysis above, APM prices have steadily declined over the period examined, and exhibit no clear pattern of underselling and overselling by the Japanese producers.¹²⁸ The pattern holds true for 1998 bid information, which pertains to 1999 sales of APMs. However, we have found that subject imports did not have significant negative price effects in our present material injury analysis, and we have no reason to now attribute to subject imports the likely 1999 price declines for purposes of analyzing threat of material injury. As previously discussed, in our view the price declines that have occurred do not result from subject imports, but rather from price pressure from downstream users of APMs, and from the efforts of the domestic producer to win additional market share. Again, we have no reason to believe that the reasons for the current price conditions will change in the imminent future.

Although Japanese producers manufacture other types of aperture and grille masks on the same production equipment used to manufacture APMs, there is no evidence that they intend to shift production from those other types of masks to the production of APMs.¹²⁹ In addition, inventory levels do not appear to be a significant factor in these investigations, given that APMs are made to the specifications of particular customers and there are no “off the shelf” APMs.¹³⁰ The levels of inventories of the subject merchandise held by importers relative to total imports declined over the period examined, and the ratios of inventories held by foreign producers to their production has remained relatively stable.¹³¹

Nor do we find that subject imports are likely to have an actual or potential negative effect on the domestic industry’s existing development and production efforts. As previously discussed, the domestic industry *** increased its production capacity during the investigation period. Since the *** increase in capacity, capital expenditures have declined and there is no indication that the domestic industry intends to increase capacity further or engage in other major capital expenditures in the imminent future.¹³² Furthermore, the domestic industry’s R&D expenses “***.”¹³³

In sum, we find no reasonable indication that the domestic industry producing APMs is threatened with material injury by reason of subject imports from Japan.

CONCLUSION

For the foregoing reasons, we determine that there is no reasonable indication that the domestic industry producing certain aperture masks is materially injured or threatened with material injury by reason of

¹²⁸ CR at V-7-19 and Tables V-1, V-2, V-3, V-4, V-5, and V-6, PR at V-3-4.

¹²⁹ CR at VII-3-4 (indicating that *** of the Japanese producers produce *** on the same production equipment used to produce APMs), PR at VII-2.

¹³⁰ CR at I-3, PR at I-2.

¹³¹ See CR at Table VII-3 (importers’ inventories relative to imports increased from *** percent in 1996 to *** percent in 1997, but then declined to *** percent in 1998); CR at Table VII-1 (the Japanese producers’ inventories relative to production were *** percent in 1996 and *** percent in 1997, increased to *** percent in 1998, and are projected to be *** percent and *** percent in 1999 and 2000, respectively).

¹³² The domestic industry’s capital expenditures were \$*** million in 1996, \$*** million in 1997, and declined to \$*** million in 1998 after completion of the increase in capacity. See CR at II-2, III-2, VI-4, and Table VI-4, PR at II-1, III-1-2, VI-2.

¹³³ CR at VI-5, PR at VI-2; see also CR at Table VI-4 (the domestic industry’s R&D expenses were \$*** million in 1996, \$*** million in 1997, and \$*** million in 1996). We note that the petitioner asserted that it was attempting to develop a derivative or more advanced version of the domestic like product. See Petitioner’s Postconference Br. at 31 (noting that petitioner is currently ***). To the extent any shortfall exists in available funds for future product development efforts, such a situation would not be surprising in view of the nearly \$*** million BMC spent in 1996 and 1997 on increasing its capacity. CR at VI-4, PR at VI-2. In any event, we find this factor outweighed by the other factors indicating an absence of a reasonable indication of threat of material injury.

imports of certain aperture masks from Japan that are allegedly sold in the United States at less than fair value.

**DISSENTING VIEWS OF COMMISSIONER STEPHEN KOPLAN
REGARDING IMPORTS FROM JAPAN**

On the basis of the information obtained in this preliminary investigation, I determine that there is a reasonable indication that the industry in the United States producing certain aperture masks (“APMs”) is threatened with material injury by reason of imports of APMs from Japan that allegedly are sold in the United States at less-than-fair-value (“LTFV”). Therefore, I dissent from the Commission's determination with respect to imports from Japan. I join in the Commission's determinations that subject imports from Korea are negligible and that there is no reasonable indication that the industry in the United States producing APMs is materially injured by reason of the allegedly LTFV imports of APMs from Japan.¹

Section 771(7)(F) of the 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.”² The Commission may not make such a determination “on the basis of mere conjecture or supposition,”³ and considers the threat factors “as a whole.”⁴ In making my determination, I have considered all factors⁵ that are relevant to these investigations.⁶

Based on an evaluation of the relevant statutory factors, I find a reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from Japan. In particular, I find that the domestic industry is vulnerable to a threat of material injury. As the SAA states, in assessing whether the domestic industry is vulnerable to material injury, “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.”⁸ In a threat determination, “the Commission must carefully assess current trends and competitive conditions in the marketplace to determine the probable future impact of [subject] imports on the domestic industry and

¹ I also join the Commission's determination regarding the domestic like product, the domestic industry, and the conditions of competition.

² 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

³ 19 U.S.C. §1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” *Metallverken Nederland B.V. v. United States*, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), *citing American Spring Wire Corp. v. United States*, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984). *See also Calabrian Corp. v. United States*, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), *citing* H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

⁴ While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the Uruguay Round Agreements Act Statement of Administrative Action (“SAA”) states that the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 184.

⁵ The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the Antidumping and Subsidies Agreements, although “[n]o substantive change in Commission threat analysis is required.” SAA at 185.

⁶ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. *See* 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

⁷ In its notice of initiation, Commerce identified estimated dumping margins for Japanese producers ranging from 3.77 to 85.34 percent. 64 Fed. Reg. at 13770.

⁸ SAA at 885.

whether the industry is vulnerable to future harm.”⁹ In this regard, the domestic industry has ***.¹⁰ Under those circumstances, further ***.¹¹ Based on the current financial condition of the domestic industry and the trends in the market over the period of investigation, I find that the domestic industry “is in a weakened state” and will deteriorate further if significant quantities of lower-priced subject imports enter the U.S. market.¹²

With respect to the likely volume of subject imports in the imminent future, Japanese producers reported that their exports to the United States are projected to increase substantially over 1998 levels in 1999 and 2000, to *** million APMs and *** million APMs, respectively.¹³ As a consequence, assuming consumption does not continue to decline as it did during the period of investigation, subject imports would capture *** percent of the market in 1999, nearly double the *** percent held in 1998.¹⁴ U.S. purchasers also predict significant increases in imports from Japan into the United States in 1999, although the predicted increase is not as great as that projected by the Japanese producers.¹⁵ Using either projection, these increases in volume from 1998 to 1999 and 2000 indicate an admitted likelihood of substantially increased subject imports in the imminent future.¹⁶

I also find that producers in Japan have a substantial amount of excess capacity that may permit them to increase exports to the United States even beyond projected levels in the imminent future. The Japanese producers’ capacity utilization rates steadily declined from *** percent in 1996, to *** percent in 1997, to *** percent in 1998.¹⁷ Although their capacity utilization rate is projected to increase to *** percent in 1997 and to *** percent in 2000 from the 1998 level, the amount of their excess capacity nonetheless will remain significant. Moreover, the projected increase in capacity utilization reflects the projected substantial increase in exports of LTFV APMs from Japan to the U.S. market.

The United States has been a significant market over the period of investigation, and this trend will likely continue, given that the Japanese producers project that their U.S. shipments will dramatically increase over 1998 levels and in view of the fact that APM demand has weakened in third country markets.¹⁸ There is also a potential that Japanese producers may shift production *** to the production of APMs.¹⁹ Based on the

⁹ *Id.*

¹⁰ CR at VI-4-VI-5.

¹¹ See, e.g., Calabrian, at 387 (“A healthy industry can better withstand competition from future imports than can one that is functioning close to a state of material injury”). Thus, while the industry may be faulted for having acted *** during the period of investigation, nevertheless the statute provides that the industry should not be forced to compete with LTFV imports in the imminent future if those imports are likely to be a cause of material injury.

¹² *Id.*

¹³ CR at Table VII-1.

¹⁴ Of course, if consumption continues to decline as it did during the period of investigation, the market share held by subject imports would be even greater.

¹⁵ U.S. purchasers predict purchasing *** Japanese APMs in 1999, a substantial increase from reported purchases of *** APMs from Japan in 1998. See CR at V-27. I recognize that the purchasers’ projections are based on bids, which typically ***. See CR at V-4-5.

¹⁶ I normally would give limited weight to projected figures, regardless of the source, since projections by their nature must be based on informed conjecture about likely future occurrences. Nevertheless, in this investigation, both the foreign exporters and the U.S. purchasers project significant increases in subject imports. I note that neither the exporters nor the U.S. purchasers would stand to gain in this investigation from reporting such increases.

¹⁷ CR at Table VII-1.

¹⁸ CR at Table VII-1 (Japanese producers’ exports to the United States accounted for *** percent of their total shipments in 1996, *** percent in 1997, *** percent in 1998, and are projected to account for *** percent and *** percent of their total shipments in 1999 and 2000, respectively).

¹⁹ All of the Japanese producers produce *** on the same production equipment used to produce APMs. CR at VII-3-4. I also note that the levels of inventories of the subject merchandise held by importers relative to imports, declined

foregoing, I find that there is a strong likelihood that subject imports will increase substantially in the imminent future.

With respect to the likely effects on domestic prices, I note that domestically produced and Japanese APMs manufactured to the same specifications are broadly interchangeable, and price is a significant factor in purchasing decisions.²⁰ The record evidence indicates that APM prices have steadily declined over the period examined.²¹ The record evidence also indicates a mixed pattern of underselling and overselling by the Japanese producers.²² Nevertheless, the record evidence indicates price competition between the domestic producer and the Japanese producers in bidding and sales for APMs. In particular, this price competition is reflected in the data supplied by ***. Those data indicate that in most instances, the ***.²³ Although the domestic producer generally ***.²⁴

I note that, despite this bidding information, the record indicates that pressure from purchasers and the existence of BMC's *** forced prices down during the period of investigation, and these conditions are likely to continue to place downward pressure on domestic prices. Nevertheless, toward the end of the period of investigation ***.²⁵ I also note that there are no non-subject imports other than the imports from Korea that the Commission unanimously found to be negligible.²⁶ Therefore, the record indicates that competition from the likely significant volume of subject imports likely will materially contribute to further price declines in the imminent future, especially since the record reveals that the subject import ***.²⁷ Accordingly, based on the record in this preliminary phase of the investigation, I find that subject imports are likely to enter the U.S. at prices that are likely to significantly suppress or depress domestic prices.

Thus, as stated above, I find that there is a likelihood that subject imports will increase significantly, both in absolute terms and relative to domestic production, in the imminent future. I recognize that the projected increases would bring subject imports back up to approximately the level held in 1996, and that the

over the period examined, and the ratios of inventories held by foreign producers to their production remained relatively stable. CR at Table VII-3 (importers' inventories relative to imports increased from *** percent in 1996 to *** percent in 1997, but then declined to *** percent in 1998); CR at Table VII-1 (the Japanese producers' inventories relative to production were *** percent in 1996 and *** percent in 1997, increased substantially to *** percent in 1998, and are projected to be *** percent and *** percent in 1999 and 2000, respectively). Thus, inventories have increased since 1996. CR at Appendix C, Table C-1. While the projected data do not indicate increased inventories in the imminent future, this factor is outweighed by other factors which cause me to conclude that there is a reasonable indication that a substantial increase in subject imports is likely in the imminent future.

²⁰ See CR at II-7 ("All 10 importers/purchasers and BMC agreed that U.S.-produced and Japanese imported APMs are used interchangeably."); CR at II-7 (***) of the six U.S. purchasers of APMs indicated that price was one of the three most important factors in purchasing, with *** purchasers reporting that price was the most important factor); CR at II-7 (***) of the six U.S. purchasers reported that the lowest price will usually win the sale, but other factors play a role; *** of the six U.S. purchasers reported that the lowest price will sometimes win the sale).

²¹ See CR at V-7-19 and Tables V-1-V-6.

²² Based on the data collected for purposes of the preliminary phase of these investigations, Japanese producers were the low bidder for APM sales in 27 instances, and in 24 instances the domestic producer was the low bidder. CR at Tables V-1- V-6.

²³ CR at V-14-16, Table V-4.

²⁴ *Id.* I recognize that there is conflicting information regarding the importance of the initial bid in the bidding process. However, ***. Had this investigation proceeded to a final phase, I would have sought additional information on this issue.

²⁵ CR at V-9.

²⁶ CR at Appendix C, Table C-1.

²⁷ CR at V-11, Table V-3. I reiterate that, had this investigation proceeded to a final phase, I would have sought additional information regarding this issue.

domestic industry acknowledges that it was not experiencing material injury by reason of subject imports in 1996. Nevertheless, the industry currently is in a weakened condition, in stark contrast to 1996. From 1996 to 1998, apparent consumption declined 5.5 percent by volume and 10.2 percent by value, as prices and unit values declined while unit cost of goods sold ***.²⁸ Consequently, in contrast to the period of investigation, during which subject imports ceded market share to the domestic industry, in the imminent future, the LTFV subject imports will substantially increase market penetration on the basis of price at a time when the industry is not in a position to effectively compete against them. In sum, given these trends and the vulnerable condition of the domestic industry, together with my finding that the subject imports are likely to suppress or depress domestic prices to a significant degree if imported in such increasing volumes, I find that there is a reasonable indication that the domestic industry producing APMs is threatened with material injury by reason of the subject imports from Japan.

²⁸ CR at V-5-V-6, Appendix C, Table C-1.

VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in this preliminary investigation, I determine that there is a reasonable indication that the industry in the United States producing certain aperture masks (“APMs”) is materially injured by reason of imports of APMs from Japan that allegedly are sold in the United States at less-than-fair-value (“LTFV”). I concur in my colleagues’ conclusion that subject imports from Korea are negligible. I also join my colleagues in the findings with respect to like product and domestic industry and in the discussion of the conditions of competition that are distinctive to the domestic industry. However, I do not concur in the majority’s determination that there is no reasonable indication that the industry in the United States is materially injured or threatened with material injury by reason of the subject imports. Rather, I determine that there is a reasonable indication that the industry in the United States producing APMs is materially injured by reason of allegedly LTFV imports of APMs from Japan. Because my analysis and determination differ from the majority, my separate views follow.

I. ANALYTICAL FRAMEWORK

In determining whether there is a reasonable indication that a domestic industry is materially injured by reason of the allegedly LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,
- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . .¹

In making its determination, the Commission may consider “such other economic factors as are relevant to the determination.”² In addition, the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³

The statute directs that we determine whether a domestic industry is materially injured “by reason of” the unfairly traded imports. Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other “factors” that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh or prioritize the factors that independently are causing material injury. Rather, the Commission is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effects of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.”⁴ It is important, therefore, to assess the effects of the unfairly traded imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without

¹ 19 U.S.C. § 1677(7)(B)(i).

² 19 U.S.C. § 1677(7)(B)(ii).

³ 19 U.S.C. § 1677(7)(C)(iii).

⁴ S. Rep. No. 100-71 at 116 (1987) (emphasis added); Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury.⁵

In my analysis of material injury, I evaluate the effects of the dumping⁶ on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of the dumping on the quantity of domestic sales,⁷ I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales, and overall revenues is critical to determining the state of the industry, because the effects on the statutory impact factors⁸ (*e.g.*, employment, wages, *etc.*) are derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales, and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the dumped imports.

For the reasons discussed below, I determine that there is a reasonable indication that the domestic industry producing APMs is materially injured by reason of allegedly LTFV imports of APMs from Japan.

II. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the alleged dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (*e.g.*, how large a cost factor), whether they have options that allow them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product

⁵ Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, at 1361 (Fed.Cir. 1996), *aff’g* 873 F.Supp. 673, 694-695 (Ct. Int’l Trade 1994).

⁶ As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding, “the magnitude of the margin of dumping.” 19 U.S.C. § 1677(7)(C)(iii)(V).

⁷ In examining the quantity sold, I take into account sales from both existing inventory and new production.

⁸ 19 U.S.C. § 1677(7)(C)(iii).

increases. For the reasons discussed below, I find that the overall elasticity of demand for APMs is relatively low. Therefore, purchasers are not likely to reduce their purchases significantly if prices for these products increase.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of an intermediate product (*e.g.*, an input), the importance will depend on its cost relative to the total cost of the downstream product in which it is used. When the price of the input is a small portion of the total cost of the downstream product in which it is used, changes in the price of the input are less likely to alter demand for the input or for the downstream product.

Record evidence shows that the cost share of APMs accounts for a small percentage of the intermediate downstream products (*i.e.*, TV picture tubes and computer display tubes) in which they are used,⁹ suggesting a low elasticity of demand. Furthermore, the cost share of APMs in the final downstream products in which they are used (*i.e.*, color televisions) is even smaller.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

The record indicates that only very limited alternative products are available that can substitute for APMs given their proprietary nature, the necessity that they be made to exact specifications, and the fact that the cost of masks made from other materials limits the feasibility of substitutability.¹⁰ Based on the very small cost share of the final downstream products in which they are used and the limited availability of substitutable alternative products, I find that the overall elasticity of demand for APMs products is relatively low. That is, purchasers will not reduce significantly the amount of APMs they buy in response to a general increase in prices for these products.

B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, *etc.*; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations, and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand elasticity for APMs is relatively low, overall purchases likely will not decline significantly if the overall prices of them increase. However, purchasers can avoid price increases from one source by seeking other sources of APMs. In addition to any changes in overall demand for APMs, the demand for APMs from different sources will decrease or increase depending on their relative prices and their

⁹ Petitioner's post hearing brief at 30.

¹⁰ The necessity that aperture masks be made to exact specifications requires that producers contract once a year for the majority of that year's mask production.

substitutability. If APMs from different sources are substitutable, purchasers are more likely to shift their demand when the price from one source (*i.e.*, subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have only two potential sources of APMs: the domestic product and the subject imports.¹¹ Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among APMs from the different sources as follows.

For purposes of these preliminary investigations, I find that the domestic product is a fairly good substitute for the subject imports from Japan because both generally must meet proprietary specifications. In addition, the record indicates that substantial amounts of the domestic product and the subject imports are sold in the same channels of distribution, particularly to manufacturers of TV picture tubes and computer display tubes.¹² However, the overall substitutability is reduced somewhat by nonprice factors.

The record indicates that various TV picture tube manufacturers consider reliability, delivery, and the ability to respond to rush orders to be quite important in their purchasing decisions. Moreover, the record indicates that quality plays one of the most important roles in purchasers' decisions. The domestic like product has shown a higher number of factory rejects, which suggests that the subject imports likely are higher quality products. In addition, the producers of the subject imports have tended to better meet more difficult engineering requests.¹³ Other factors reducing substitutability for several TV tube manufacturers are: the requirement that dual sourcing of all components be maintained, the fact that not all purchasers use an open bidding process, and the tying of bids on the product to the sales of other aperture masks not the subject of this investigation.¹⁴

As discussed above, the quality of subject imports from Japan is at least as good as, and perhaps better than, the quality of the domestic product. Therefore, based on this evidence and the nonprice factors, I find that subject imports from Japan are at least moderate substitutes for the domestic product.

C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of APMs appears to be quite low.

Capacity Utilization and Capacity. Unused capacity can discipline prices. If there is a competitive market, no individual producer can make a price increase stick. Any attempt at a price increase by one producer would be beaten back by competitors that could produce more product to sell at the prevailing price. Here, the single domestic producer operated at only moderately high levels of capacity utilization throughout

¹¹ With Korean imports being negligible, and no other alternative product available, there is thus no viable alternative supply.

¹² CR at V-26.

¹³ CR at II-8.

¹⁴ CR at V-4.

the period of investigation, with a capacity utilization rate of *** percent in 1998.¹⁵ Thus, *** percent of the domestic industry's capacity to produce APMs in 1998 was not used and therefore was available to increase production. Given that the available capacity was significantly more than the total quantity of subject imports in 1998,¹⁶ the domestic industry had more than sufficient capacity available to supply the demand for the subject imports.

Inventories and Exports. The domestic industry had *** million aperture masks, representing *** percent of production, in inventories available in 1998 that it could have shipped into the U.S. market.¹⁷ Moreover, the domestic industry's exports are quite large, representing over *** percent of production in 1998, and thus represent another significant source of supply that could be diverted to the U.S. market.¹⁸ Therefore the domestic industry has substantial inventories and large quantities of exports available that could have filled the demand supplied by subject imports.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. In the U.S. market, however, there is only one domestic producer of APMs. Thus there is no competition, and petitioner is a monopoly within the domestic industry. As a monopolist, the domestic producer would have had the ability to increase prices by restricting the supply of APMs in the market. The extent to which prices would have increased depends on the manner and extent to which the domestic producer would have exercised its monopoly power. Because of the domestic producer's market power, it was in a position to choose whether to raise its prices or increase its production.

Based on available capacity, substantial inventories, large quantities of exports, and petitioner's monopoly power within the domestic industry, I find that the elasticity of supply is extremely high.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGED LTFV IMPORTS OF APMs FROM JAPAN

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

A. Volume of Subject Imports

Subject imports increased from *** million APMs in 1996 to *** million APMs in 1997, but decreased to *** APMs in 1998. The value of subject imports was \$*** million in 1996, \$*** million in 1997, and \$*** million in 1998.¹⁹ By quantity, subject imports held a market share of *** percent in 1996, *** percent in 1997, and *** percent in 1998. Their market share by value was *** percent in 1996, ***

¹⁵ CR at III-3.

¹⁶ CR at IV-3

¹⁷ CR at III-4

¹⁸ CR at C-4.

¹⁹ CR at IV-3.

percent in 1997, and *** percent in 1998.²⁰ While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price effects and impact. Based on the market share of the subject imports and the conditions of competition in the domestic market, I find that the volume of subject imports is significant in light of its price effects and impact.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of the subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the domestic market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

If the subject imports had not been allegedly dumped, their prices in the U.S. market would have increased considerably. Thus, if subject imports had been fairly priced, they would have become more expensive relative to domestic APMs. In such a case, if subject imports are good substitutes with other APMs, purchasers would have shifted towards the relatively less expensive products.

In this investigation the alleged dumping margin for the subject imports generally is quite large, ranging from 3.77 percent to 85.34 percent. Therefore, subject imports likely would have been priced significantly higher had they been fairly traded. At the higher, fairly-traded prices it is likely that most, if not all, of the demand for the subject imports would have shifted to the domestic product.

The domestic product and subject imports from Japan are at least moderate substitutes for each other. The market share of the subject imports is fairly large, *** percent in 1998,²¹ and thus it is likely that the shift in demand away from subject imports would have been significant. As discussed, it is likely that most, if not all, of the demand for the subject imports would have shifted to the domestic product. Because petitioner is the only domestic producer, the shift in demand likely would have given it monopoly power in the domestic market.

The elasticity of demand indicates that, as a monopolist, petitioner likely would have been able to exercise its monopoly power by increasing prices in response to this shift in demand. Consequently, I find that subject imports are having significant effects on prices for the domestic product.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.²² These factors

²⁰ CR at C-3.

²¹ CR at Table IV-3.

²² 19 U.S.C. § 1677(7)(C)(iii).

together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

As I have discussed above, the domestic industry would have increased its prices significantly if subject imports had not been sold at unfair prices. In addition, the domestic industry is operating at less than full capacity, and thus it would also have been able to increase its output and sales significantly had demand shifted away from the subject imports. The combination of circumstances in this case—inelastic demand, the significant volume of LTFV imports, and petitioner’s monopolistic market power—would have allowed petitioner to increase both output and prices. Therefore, revenues and profits would have increased significantly.²³ Consequently, the impact on the domestic industry would have been significant.

IV. CONCLUSION

On the basis of the foregoing analysis, I find that the domestic industry likely would have significantly increased its output, sales, and prices, and therefore its revenues, had the subject imports been fairly traded. Therefore, I find that the domestic industry would have been materially better off if the subject imports had not been dumped. Consequently, I determine that there is a reasonable indication that the domestic industry producing APMs is materially injured by reason of allegedly LTFV imports of APMs from Japan.

²³ A monopolist seeks to maximize profits. The combination of price and production levels that maximizes profits may or may not result in an increase in overall revenues. However, due to the low elasticity of demand in the APM market, I find that both an increase in profits and revenues would have occurred.