

UNITED STATES INTERNATIONAL TRADE COMMISSION

HELICAL SPRING LOCK WASHERS FROM CHINA AND TAIWAN

Investigations Nos. 731-TA-624-625 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3384, January 2001)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-624-625 (Review)

## HELICAL SPRING LOCK WASHERS FROM CHINA AND TAIWAN

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty orders on helical spring lock washers from China and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### BACKGROUND

The Commission instituted these reviews on November 2, 1999 (64 F.R. 59204) and determined on February 3, 2000, that it would conduct full reviews (65 F.R. 7890, February 16, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on July 25, 2000 (65 F.R. 45801). The hearing was held in Washington, DC, on November 30, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

<sup>2</sup> Vice Chairman Okun and Commissioner Miller dissenting with respect to Taiwan; Commissioner Askey not participating.



## VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering helical spring lock washers (“HSLWs”) from China and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1 2</sup>

### I. BACKGROUND

On June 21, 1993, the Commission determined that a domestic industry was threatened with material injury by imports of carbon and stainless steel HSLWs from Taiwan,<sup>3</sup> and the Department of Commerce (“Commerce”) issued an antidumping duty order on such imports from Taiwan.<sup>4</sup> On October 8, 1993, the Commission determined that a domestic industry was threatened with material injury by imports of carbon and stainless steel HSLWs from China,<sup>5</sup> and Commerce issued an antidumping duty order on such imports from China.<sup>6</sup>

On November 2, 1999, the Commission instituted reviews pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the antidumping duty orders on imports of HSLWs from China and Taiwan would likely lead to continuation or recurrence of material injury.<sup>7</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.<sup>8</sup> If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

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<sup>1</sup> Neither former Commissioner Thelma J. Askey nor Commissioner Dennis M. Devaney participated in these determinations.

<sup>2</sup> Vice Chairman Deanna Tanner Okun and Commissioner Marcia E. Miller dissent with respect to imports from Taiwan and do not join section IV.D of the Commission’s Views. See the Dissenting Views of Vice Chairman Deanna Tanner Okun and Commissioner Marcia E. Miller.

<sup>3</sup> Certain Helical Spring Lock Washers from Taiwan, Inv. No. 731-TA-625 (Final), USITC Pub. 2651 (June 1993) (“Taiwan Determination”).

<sup>4</sup> 58 Fed. Reg. 34567 (June 28, 1993).

<sup>5</sup> Certain Helical Spring Lock Washers from China, Inv. No.731-TA-624 (Final), USITC Pub. 2684 (October 1993) (“China Determination”).

<sup>6</sup> 58 Fed. Reg. 53914 (Oct. 19, 1993).

<sup>7</sup> 64 Fed. Reg. 59204 (Nov. 2, 1999).

<sup>8</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

The Commission received two responses to the notice of institution. One was from domestic producer Shakeproof Assembly Components Division of Illinois Tool Works Inc. (“Shakeproof”), which represents \*\*\* percent of domestic production of HSLWs. The Commission also received a response from the American Association of Fastener Importers (“AAFI”), whose members have been importers of the subject merchandise from China.

On February 3, 2000, the Commission determined that both individual interested party responses to its notice of institution were adequate, and that the domestic interested party group response and the respondent interested party group response with respect to China were adequate, but that the interested party group response with respect to Taiwan was inadequate.<sup>9</sup> The Commission decided to conduct full reviews for both orders in these grouped reviews to promote administrative efficiency.<sup>10</sup>

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making determinations under section 751(c), the Commission defines “the domestic like product” and the “industry.”<sup>11</sup> 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 under this subtitle.”<sup>12</sup>

In its expedited sunset determinations, Commerce defined the subject merchandise in these reviews as:

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper. HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope remains dispositive.<sup>13</sup>

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<sup>9</sup> 65 Fed. Reg. 7890 (Feb. 16, 2000).

<sup>10</sup> See Explanation of Commission Determinations on Adequacy, Confidential Staff Report, INV-X-258, December 22, 2000 (“CR”) and Public Report (“PR”) at Appendix A. Commissioner Lynn M. Bragg found both respondent interested party group responses to be inadequate and dissented from the Commission’s determination to conduct full reviews.

<sup>11</sup> 19 U.S.C. § 1677(4)(A).

<sup>12</sup> 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (CIT 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

<sup>13</sup> 65 Fed. Reg. 35605 (June 5, 2000).

HSLWs are flat ring-shaped products used to provide spring or tension when combined with bolts, nuts and screws. The majority of HSLWs are made of carbon, carbon alloy, or stainless steel.<sup>14</sup> HSLWs serve to distribute a load over a greater area than that provided by the fastener.<sup>15</sup> The largest users are original equipment manufacturers, particularly the automotive industry.<sup>16</sup>

The starting point of the Commission's like product analysis in a five-year review is the like product determination in the Commission's original investigations.<sup>17</sup> In the original investigations, the Commission defined the domestic like product to be HSLWs of all sizes and metals although the scope of Commerce's investigation consisted only of steel HSLWs.<sup>18</sup> The Commission found similar channels of distribution, manufacturing facilities, production processes, and end uses for HSLWs, but noted some differences in physical characteristics and limits on interchangeability among HSLWs because resistance to corrosion differed between stainless and carbon steel HSLWs.<sup>19</sup> Nonetheless, "[b]ased upon the overlap in mechanical function and end uses, channels of distribution, common manufacturing facilities, production processes, equipment and employees, and interchangeability of products for some applications," the Commission defined the domestic like product to be all HSLWs.<sup>20</sup>

The record in these reviews indicates neither significant changes in the products at issue or in the factors we consider in our determinations, nor any other appropriate circumstance warranting revisiting the Commission's original like product determination.<sup>21</sup> Therefore, for the reasons relied upon in the original investigations, we define the domestic like product as all HSLWs.

## **B. Domestic Industry**

Section 771(4)(A) of the Act defines the relevant industry as the domestic "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."<sup>22</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant

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<sup>14</sup> CR at I-11 to I-12, PR at I-7.

<sup>15</sup> CR at I-11, PR at I-7.

<sup>16</sup> CR at I-12, PR at I-8.

<sup>17</sup> In its like product determination, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. See The Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996). No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49.

<sup>18</sup> Taiwan Determination at 8; China Determination at I-5.

<sup>19</sup> Taiwan Determination at 5-8.

<sup>20</sup> Taiwan Determination at 8.

<sup>21</sup> See Notice of Final Rulemaking, 63 Fed. Reg. 30599, 30602 (June 5, 1998).

<sup>22</sup> 19 U.S.C. § 1677(4)(A).

market, provided that adequate production-related activity is conducted in the United States.<sup>23</sup> Consistent with our definition of the like product, we find the domestic industry to be all domestic producers of HSLWs.<sup>24</sup>

### III. CUMULATION<sup>25</sup>

#### A. Framework

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.<sup>26</sup>

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market.

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<sup>23</sup> See, e.g., Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 at 8-9 (July 1999); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.19 (Nov. 1995) (“the Commission has generally included toll producers that engage in sufficient production-related activity to be part of the domestic industry”). See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>24</sup> Shakeproof is the larger of the two known U.S. producers of HSLWs and the only domestic producer that provided data to the Commission. A small niche producer of HSLWs, Wrought Washer, is privately held and little is known about its operations. Transcript of Public Hearing, Nov. 30, 2000 (“Tr.”) at 81 (Mr. Hauner).

<sup>25</sup> Commissioner Bragg does not join this section. While she concurs with the majority’s findings of a reasonable overlap of competition and likely discernible adverse impact in the event the orders are revoked, her cumulation determinations are based upon a different analytical framework than that of her colleagues. See Separate Views of Commissioner Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate From China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999); see also, Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, found in Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (Apr. 2000). In particular, Commissioner Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition in the event of revocation. Having found a reasonable overlap of competition in these reviews for the same reasons as those set forth by the Commission majority in Section III.B., Commissioner Bragg turns to the issue of no discernible adverse impact. Based upon the significant excess capacity in China as well as the Chinese and Taiwan subject producers’ strong export orientation, Commissioner Bragg finds that revocation of each of the orders at issue will lead to a likely discernible adverse impact to the domestic industry. CR & PR at Table I-2; CR & PR at Table IV-2; Taiwan Determination at 16. Accordingly, Commissioner Bragg cumulates subject imports from China and Taiwan.

<sup>26</sup> 19 U.S.C. § 1675a(a)(7).

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.<sup>27</sup> We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.<sup>28</sup> With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.<sup>29</sup>

In these reviews, the statutory requirement for cumulation that all reviews be initiated on the same day is satisfied as the Commission instituted both reviews on November 2, 1999.

The Commission generally has considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.<sup>30</sup> Only a “reasonable overlap” of competition is required.<sup>31</sup> In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.<sup>32</sup>

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<sup>27</sup> 19 U.S.C. § 1675a(a)(7).

<sup>28</sup> SAA, H.R. Rep. No. 103-316, vol. I (1994).

<sup>29</sup> For a discussion of the analytical framework of Chairman Koplan and Commissioners Miller and Hillman regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review) USITC Pub. 3274 (Feb. 2000). For a further discussion of Chairman Koplan’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 303-TA-13 (Review); 701-TA-249 (Review); and 731-TA-262, 263, and 265 (Review) USITC Pub. 3247 (Oct. 1999) (Views of Commissioner Stephen Koplan Regarding Cumulation).

<sup>30</sup> The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

<sup>31</sup> See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. See, e.g., Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 (Preliminary) and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 15 (Feb. 1999), aff’d sub nom. Ranchers-Cattleman Action Legal Foundation v. United States, 74 F. Supp.2d 1353 (CIT 1999); Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-761-762 (Final), USITC Pub. 3098 at 13-15 (Apr. 1998).

<sup>32</sup> See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission’s determination not  
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We do not find that either subject imports from China or from Taiwan are likely to have no discernible adverse impact on the domestic industry if either order were revoked. Subject imports from China and Taiwan have been present in the United States throughout 1997-99 and the first half of 2000.<sup>33</sup> Imports from China have increased rapidly and substantially, while imports from Taiwan have fluctuated moderately throughout the period examined in these reviews.<sup>34</sup> Given these facts and the high level of substitutability of the subject imports and domestic HSLWs,<sup>35</sup> we cannot conclude that there would be no discernible adverse impact on the domestic industry if either order were revoked.

## **B. Reasonable Overlap of Competition**

In the original investigations, those Commissioners who reached the issue found a reasonable overlap of competition between the subject imports and the domestic like product.<sup>36</sup> However, those Commissioners who conducted a threat analysis did not exercise their discretion to cumulate subject imports from China and Taiwan.<sup>37</sup>

The current record indicates that the subject imports and the domestic product are likely to be fungible. Chinese producers continue to export only carbon steel HSLWs to the United States.<sup>38</sup> Producers in Taiwan apparently are concentrating on stainless steel HSLWs,<sup>39</sup> although testimony at the hearing indicated that producers in Taiwan export carbon steel as well as stainless steel HSLWs, and that producers in Taiwan can switch production between carbon and stainless HSLWs.<sup>40</sup> Imports of HSLWs from Taiwan are currently at a low level relative to domestic output and to apparent U.S. consumption, and apparently include only a small volume of carbon steel HSLWs. Carbon steel HSLWs, however, constituted \*\*\* percent of subject imports from Taiwan in 1990, \*\*\* percent in 1991, and \*\*\* percent in 1992.<sup>41</sup> This suggests that the product mix of imports from Taiwan would likely consist of both carbon steel and stainless steel HSLWs if the order were removed.

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

to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

<sup>33</sup> CR & PR at Table I-2.

<sup>34</sup> CR & PR at Table I-2.

<sup>35</sup> CR at II-7, PR at II-5.

<sup>36</sup> Taiwan Determination at 24, 45 (concurring Views of Commissioner Brunsdale and Dissent of Commissioners Nuzum and Vice Chairman Watson); China Determination at I-13, I-17, I-19 (Views of Commissioner Brunsdale, Crawford and Dissent of Vice Chairman Watson).

<sup>37</sup> See Taiwan Determination at 13-14; China Determination at I-7 to I-8.

<sup>38</sup> INV-Q-088, June 4, 1993, at Table 16 (no stainless HSLWs from China); Tr. at 114 (“China does not supply stainless.”).

<sup>39</sup> CR at IV-6 n.6; PR at IV-4 n.6.

<sup>40</sup> Tr. at 12-13 (Mr. Hauner); Tr. at 33 (Mr. Harper).

<sup>41</sup> Compare INV-Q-088, June 4, 1993, Table C-1 with Table C-3.

Virtually all responding importers and producers indicated that subject imports from China and Taiwan are used interchangeably.<sup>42</sup> Purchaser responses also revealed that HSLWs from China and Taiwan are used in the same applications.<sup>43</sup> However, the record also indicates that stainless steel and carbon steel HSLWs are not substitutable for each other in all applications.<sup>44</sup>

The record also indicates that imported and domestically produced HSLWs generally are sold throughout the United States through the same channels of distribution.<sup>45</sup> Imports from both China and Taiwan were simultaneously present in the U.S. market during the original investigations and all of the review period.<sup>46</sup>

Consequently, we conclude that there would likely be a reasonable overlap of competition among subject imports from China and Taiwan and the domestic like product in the absence of the orders.

### C. Other Considerations

In determining whether to exercise our discretion to cumulate subject imports, we examine whether, upon revocation of the orders, subject imports from China and Taiwan likely would compete in the U.S. market under similar conditions of competition relative to each other and to the domestic like product. While subject imports from China and Taiwan have both maintained their presence in the market, imports of the subject merchandise from China have been much greater than those from Taiwan throughout the period examined (1997 through the first half of 2000).<sup>47</sup> Additionally, there appears to be far greater capacity for production of HSLWs in China than Taiwan.<sup>48</sup> During the original investigations and the current period of review, imports of Chinese HSLWs have been exclusively carbon steel<sup>49</sup> while the record indicates that producers in Taiwan concentrate on stainless steel HSLWs.<sup>50</sup> The different product mix of the subject imports is reflected by different unit values for imports from the two countries. Such distinctions also reflect different price levels even allowing for differences in product mix.<sup>51</sup> While producers in Taiwan can and do produce both types of HSLWs, there is no indication on the record that their exports to the United States will become predominantly carbon steel HSLWs. Based on the record in

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<sup>42</sup> CR at II-9, PR at II-6.

<sup>43</sup> CR at II-9, PR at II-6.

<sup>44</sup> Tr. at 113.

<sup>45</sup> CR at II-1 and V-2; PR at II-1 and V-1.

<sup>46</sup> CR & PR at Table I-2.

<sup>47</sup> CR & PR at Table I-2.

<sup>48</sup> The primary Chinese exporter, Zhejiang Wanxin Group (“ZWG”), reports capacity of \*\*\*. CR & PR at Table IV-2. Available information suggests that the industry in Taiwan is much smaller than that in China. See CR at IV-4, PR at IV-4; INV-Q-088, June 4, 1993, at I-49 to I-50.

<sup>49</sup> INV-Q-088, June 4, 1993, at Table 16 (no stainless HSLWs from China); Tr. at 114 (“China does not supply stainless.”).

<sup>50</sup> CR at IV-6 n.6, PR at IV-4 n.6.

<sup>51</sup> See CR & PR at Table I-2 (unit value of \$0.53 for imports from China and \$1.04 for imports from Taiwan in 1999). In 1992, the average unit value of U.S. shipments of carbon steel HSLWs from Taiwan was \*\*\* per pound, compared to \*\*\* for comparable product from China. The average unit value of U.S. shipments of stainless steel HSLWs from Taiwan was \*\*\* per pound. The average unit value of U.S. producers’ U.S. shipments of carbon steel HSLWs in 1992 was \*\*\*, while that for stainless steel HSLWs was \*\*\*. INV-Q-088, June 4, 1993, at Tables C-1, C-2, and C-3.

these reviews, we find that the industries in China and Taiwan are differently situated, and that subject imports from these two sources are likely to face significantly different conditions of competition in the U.S. market. Accordingly, we decline to exercise our discretion to cumulate the subject imports from China and Taiwan in these reviews.

#### **IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ORDERS ON IMPORTS FROM CHINA AND TAIWAN ARE REVOKED**<sup>52</sup>

##### **A. Legal Standard In A Five-Year Review**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>53</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>54</sup> Thus, the likelihood standard is prospective in nature.<sup>55</sup> The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>56</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”<sup>57 58</sup>

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<sup>52</sup> Commissioner Bragg joins the remainder of this opinion. Commissioner Bragg notes that the following individual country analysis of the volume and effect of subject imports from China and Taiwan supports affirmative determinations when the volume and effect of subject imports from these two countries are assessed cumulatively. Accordingly, Commissioner Bragg finds that, for the reasons stated below and based upon a cumulative analysis, see infra n.25, that revocation of the orders on subject imports from China and Taiwan would be likely to lead to the continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

<sup>53</sup> 19 U.S.C. § 1675a(a).

<sup>54</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

<sup>55</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>56</sup> 19 U.S.C. § 1675a(a)(5).

<sup>57</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term,  
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Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated.”<sup>59</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, and whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated.<sup>60 61</sup>

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.<sup>62</sup> We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept participating parties’ suggested interpretations of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”<sup>63</sup> In these reviews, not all respondent interested parties provided questionnaire responses. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the information collected by the Commission since the institution of these reviews, information submitted by the cooperating domestic producers, respondent parties, and other parties in these reviews, and information from the original investigations.

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<sup>57</sup> (...continued)

such as planned investment and the shifting of production facilities.” Id.

<sup>58</sup> In analyzing what constitutes a reasonably foreseeable time, Chairman Koplun examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>59</sup> 19 U.S.C. § 1675a(a)(1).

<sup>60</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>61</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings with respect to these reviews. CR at I-9, PR at I-6.

<sup>62</sup> 19 U.S.C. § 1675(e).

<sup>63</sup> SAA at 869.

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.<sup>64</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>65</sup>

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.<sup>66</sup>

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>67</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>68</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.<sup>69</sup>

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<sup>64</sup> 19 U.S.C. § 1675a(a)(2).

<sup>65</sup> 19 U.S.C. § 1675(a)(2)(A)-(D).

<sup>66</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>67</sup> 19 U.S.C. § 1675a(a)(4).

<sup>68</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its expedited review of the antidumping duty order regarding subject imports from China, Commerce found the likely margin of dumping to be 69.88 percent for ZWG (now known as Hangzhou Spring Washer) and 128.63 percent for all other producers. For producers in Taiwan, Commerce found the likely margins of dumping to be 31.93 percent for all producers. 65 Fed. Reg. 35605, 35606 (June 5, 2000).

<sup>69</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

For the reasons stated below, we determine that revocation of the antidumping duty orders on certain HSLWs from China and Taiwan would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

## **B. Conditions of Competition**

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>70</sup> The following conditions of competition are relevant to our determinations.

Overall demand for HSLWs depends in large part upon the demand for bolt and screw fastenings in agricultural, automotive, and industrial assemblies, and therefore is considered to be responsive to the overall strength of the U.S. economy. HSLWs account for a small portion of the total costs in their intended end uses. As a fastener, however, HSLWs face competition from other products, including adhesives, locknuts, tooth washers, and especially self-locking bolts, although substitution occurs only slowly over time.<sup>71</sup> The market for HSLWs is slightly larger than it was in the early 1990s.<sup>72</sup> Over the period of review, apparent consumption declined slightly from 1997 to 1999 (although it initially rose from 1997 to 1998). Consumption was higher in interim 2000 than in interim 1999, although parties have attributed at least some of this change to an abnormal short-term shortage of stainless steel HSLWs.<sup>73</sup>

Most HSLWs, regardless of their country of origin, are sold on a spot basis to distributors for inventory. The primary concern of these distributors appears to be quality, followed by availability and then price. Purchasers do appear to be sensitive to price, however, even if it is not the single most important aspect of their purchasing decision.<sup>74</sup>

Functionally, the domestic like product and imports of the subject merchandise can generally be used interchangeably. Stainless steel HSLWs, however, are preferred to carbon steel HSLWs in corrosive environments.<sup>75</sup> Stainless steel HSLWs are not generally substituted for carbon steel HSLWs because the former are more expensive.<sup>76</sup> While carbon steel HSLWs from China and Taiwan may be packaged together, stainless steel HSLWs are not packaged with carbon steel HSLWs.<sup>77</sup>

At the time of the original investigations, the U.S. industry had shrunk from seven firms (circa 1980) to four firms (circa 1990). Over the period examined in the original investigations, Shakeproof entered the HSLW market by purchasing first the Mellowes Co. (April 1991) and then its two largest

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<sup>70</sup> 19 U.S.C. § 1675a(a)(4).

<sup>71</sup> CR at II-6, PR at II-4

<sup>72</sup> CR at II-6-7, PR at II-4. See also CR & PR at Table I-2 (the three-year apparent U.S. consumption for 1997-99 is only \*\*\* percent higher than the three-year apparent consumption for 1990-92).

<sup>73</sup> See CR & PR at Table I-2; CR at III-5, PR at III-2 (quoting Shakeproof’s Questionnaire Response); Tr. at 57-58; AAFI’s Posthearing Brief, Response to Commissioners’ Questions, at 15.

<sup>74</sup> Seven purchasers indicated that the HSLWs from China, Taiwan, and the United States are used interchangeably, although the quality of Chinese HSLWs may be less consistent. Five of the seven reporting purchasers indicated that their purchasing decisions are “usually” based mainly on price. See CR at II-8 and n.14, PR at II-5 and II-6 n.14.

<sup>75</sup> Tr. at 113.

<sup>76</sup> See Tr. at 113.

<sup>77</sup> Tr. at 92, 113.

competitors, Beall (November 1991) and Crest (July 1992), leaving only Shakeproof and MW Industries, a tiny specialty producer.<sup>78</sup> Subsequently, in May 1993, a new firm, Marvec, began production of stainless steel HSLWs. Shakeproof, however, acquired this company in 1996/97.<sup>79</sup> While there is at present at least one independent source of domestically produced HSLWs (Wrought Washer of Milwaukee, which failed to provide a questionnaire response),<sup>80</sup> it is clear that the domestic industry is very highly concentrated.

During 1990-92, imports supplied \*\*\* percent of the U.S. market. During 1998-2000, imports supplied \*\*\* percent of the U.S. market, up from \*\*\* percent in 1997. As during the original investigations, China is the leading source of foreign HSLWs, although Russia now supplies substantial quantities as well.<sup>81</sup>

The foregoing conditions of competition provide the basis upon which we assess the likely effects of revocation within a reasonably foreseeable time.

### **C. Revocation of the Order on Subject Imports From China Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time**<sup>82</sup>

#### **1. Likely Volume of Subject Imports from China**

In the original investigations, the Commission found that the quantity of U.S. shipments of subject imports from China increased from 5.4 million pounds in 1990 to 6.7 million pounds in 1991 and to 7.1 million pounds in 1992.<sup>83</sup> Inventories of Chinese HSLWs in China were \*\*\* in 1990, \*\*\* in 1991 and \*\*\* in 1992,<sup>84</sup> while inventories in the United States increased from \*\*\* in 1990 to \*\*\* in 1991 and to \*\*\* in 1992.<sup>85</sup> Market penetration of the Chinese HSLWs was \*\*\* percent in 1990, \*\*\* percent in 1991, and \*\*\*

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<sup>78</sup> INV-Q-088, June 4, 1993, at I-17-19.

<sup>79</sup> INV-Q-088, June 4, 1993, at I-20 and CR at I-14 and n.10, PR at I-8 and I-8 n.10. Shakeproof purchased the assets of Marvec (characterized as a “failing business” with annual sales of about \*\*\*), adding the company’s inventory and order book, but scrapping its old, inefficient equipment and releasing its workers. Shakeproof Posthearing Brief at A-21.

<sup>80</sup> Wrought Washer was characterized by Shakeproof as a “small niche producer” but may account for as much as \*\*\* percent of U.S. production. CR at I-14 n.9, III-1, PR at I-8 n.9 and III-1. The fate of MW Industries is unknown.

<sup>81</sup> CR & PR at Table I-2; CR at IV-3, PR at IV-1.

<sup>82</sup> Commissioner Bragg concurs in the determination that revocation of the order on subject imports from China is likely to lead to the continuation or recurrence of material injury. She notes, however, that she cumulates subject imports from China and Taiwan for purposes of the analysis of whether revocation of the orders at issue is likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

<sup>83</sup> China Determination at I-10.

<sup>84</sup> INV-Q-088, June 4, 1993, at Table 14.

<sup>85</sup> INV-Q-088, June 4, 1993, at Table 13.

percent in 1992.<sup>86</sup> From 1990 to 1992, capacity in China was expanded from 23.6 million pounds to 36.8 million pounds; production rose by 79.7 percent.<sup>87</sup>

Since the imposition of the order on HSLWs from China, the volume of subject imports from China has fallen by several million pounds. However, subject imports from China were still 1.5 million pounds in 1997, 2.2 million pounds in 1998, and 2.9 million pounds in 1999.<sup>88</sup> Thus, while the market share of Chinese HSLWs in 1999, \*\*\* percent, is down from \*\*\* percent in 1992, subject imports have maintained a substantial and, in recent years, growing presence in the U.S. market. From 1997 to 1999, the market share of Chinese HSLWs more than doubled from \*\*\* percent.<sup>89</sup>

ZWG, the only current Chinese exporter,<sup>90</sup> was the only Chinese producer to provide information in these reviews and ZWG estimates that it accounted for \*\*\* percent of Chinese production of HSLWs in 1999.<sup>91</sup> While its capacity has declined since the original investigations, dropping from \*\*\* in 1992 to \*\*\* in 1999,<sup>92</sup> it still has substantial capacity compared to U.S. apparent consumption of \*\*\* in 1999.<sup>93</sup> Although in 1999, ZWG was operating at \*\*\* percent capacity, as recently as the first half of 2000, it operated at \*\*\* percent capacity. This indicates an ability of this producer to \*\*\* its level of production and operate at \*\*\* for sustained periods.<sup>94</sup>

Moreover, ZWG has maintained its export orientation over the past several years. In 1992, \*\*\* percent of ZWG's total shipments were exported and \*\*\* percent went to the United States.<sup>95</sup> 1999 data indicate that \*\*\* percent of ZWG's total shipments were exported and \*\*\* percent were destined for the United States.<sup>96</sup> Despite ZWG's claims that it cannot shift production of HSLWs between different markets because the production processes differ for HSLWs destined for each market,<sup>97</sup> it has demonstrated an ability to shift production of HSLWs destined for other export markets to the United States. In 1999,

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<sup>86</sup> CR & PR at Table I-2.

<sup>87</sup> China Determination at I-9.

<sup>88</sup> CR & PR at Table I-2.

<sup>89</sup> CR & PR at Table I-2. The rise in subject imports during this period coincides with the declining deposit rate for the subject imports produced by ZWG. During the period examined in these reviews, ZWG's deposit rate fell from 38.27 percent to zero, although the China-wide rate remained above 100 percent. CR at I-10, PR at I-5 to I-6. This suggests the order has had a disciplining effect on the level of subject imports from China. We find that, despite currently low deposit rates, the order still has some disciplining effect, given the potential for higher rates in future administrative reviews. This effect is further demonstrated by the noticeably lower, though still substantial, level of subject imports from China since the imposition of the order.

<sup>90</sup> CR at IV-4, PR at IV-3.

<sup>91</sup> CR at IV-7, PR at IV-4 (citing ZWG's questionnaire response).

<sup>92</sup> Compare CR & PR at Table IV-2 with INV-Q-088, June 4, 1993, at Table 14. However, during 1990 to 1992, it operated at very close to \*\*\* percent capacity. Id.

<sup>93</sup> CR & PR at Table I-2.

<sup>94</sup> If ZWG's unused capacity in 1999 resulted in additional production shipped to the United States, it would constitute over \*\*\* percent of U.S. consumption. See CR & PR at Table IV-2 & Table I-2.

<sup>95</sup> INV-Q-088, June 4, 1993, at Table 14.

<sup>96</sup> CR & PR at Table IV-2.

<sup>97</sup> CR at IV-6, PR at IV-4.

ZWG's shipments to third countries were \*\*\* percent lower than in 1997 while its shipments to the United States were \*\*\* percent higher.<sup>98</sup>

Moreover, ZWG is likely not to be the sole source of subject exports from China if the order were revoked. During the original investigations, ZWG was not the only exporter to the United States; ZWG itself stated that it accounted for more than \*\*\* percent, but not all, of the subject imports from China.<sup>99</sup> In the original investigation, ZWG stated that it accounted for \*\*\* percent of HSLW production in China; it now states that it accounts for \*\*\* percent.<sup>100</sup> There is some evidence of other capacity for production of HSLWs in China,<sup>101</sup> and it is relatively inexpensive to begin production of HSLWs or shift production from similar products to make HSLWs.<sup>102</sup>

We therefore conclude, based on the record in these reviews, that the likely volume and market share of subject imports from China likely would be significant within a reasonably foreseeable time if the order were revoked.

## 2. Likely Price Effects

During the original investigations, the Commission found that pricing data provided "mixed guidance" regarding the likelihood of price depression, but somewhat "clearer guidance" regarding the likelihood of price suppression, by the subject imports from China.<sup>103</sup> Prices reported by Shakeproof showed no clear trend, but tended to fluctuate within a narrow range. Prices for HSLWs from China fluctuated as well, decreasing moderately over the period examined in the original investigation (1990-92).<sup>104</sup> While subject imports from China were imported at average unit values lower than Shakeproof's prices for comparable products, distributor sales of HSLWs from China undersold the domestic product in \*\*\* of 48 producer/importer comparisons.<sup>105</sup>

The record indicates that price is an important factor in purchasing decisions, although perhaps not as important as quality and availability.<sup>106</sup> However, the record in these reviews indicates that the domestic like product and HSLWs from China are used interchangeably and are considered to be substitutable.<sup>107</sup> Thus, for any individual source of supply, increases in sales volume are likely to be achieved through lower prices.

Just as they did in the early 1990s, Shakeproof's reported prices during January 1997 - June 2000 fluctuated for the most part within a narrow range. Moreover, data reported by Shakeproof and by several of the largest HSLW importers in the United States continue to reflect higher domestic producer prices for

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<sup>98</sup> See CR & PR at Table IV-2.

<sup>99</sup> INV-Q-088, June 4, 1993, at I-47.

<sup>100</sup> INV-Q-088, June 4, 1993, at I-47; CR at IV-7 (citing questionnaire).

<sup>101</sup> See CR at IV-4, n.3, PR at IV-3, n.3.

<sup>102</sup> Shakeproof's Posthearing Brief, App. A, at 10-11.

<sup>103</sup> See China Determination at I-10.

<sup>104</sup> Tables 18-23, INV-Q-088, June 4, 1993, at I-65 to I-67.

<sup>105</sup> INV-Q-088, June 4, 1993, at I-75 and 77; Tables 18-23, INV-Q-088, June 4, 1993, at I-65 to I-67. These instances of underselling, however, increased noticeably over the period examined.

<sup>106</sup> CR at II-7, PR at II-5. Shakeproof stated that quality is generally addressed in the manufacturing process and pretty much assured, making price a prime factor in purchasing decisions. CR at II-7, n.13, PR at II-5 n.13; Tr. at 23.

<sup>107</sup> CR at II-7 and II-9, PR at II-5 and II-6.

available comparisons.<sup>108</sup> We observe, however, that a portion of Shakeproof's sales are to master distributors which also import HSLWs directly.<sup>109</sup> Thus, not all of the reported price comparisons are at the same level of trade.<sup>110</sup> Furthermore, Shakeproof's sales typically involved larger individual sale quantities of HSLWs<sup>111</sup> sold at a volume discount.<sup>112</sup> Pricing data collected from purchasers indicate underselling by the subject imports from China. These data, however, suffer from a limited number of observations and marked discrepancies in transaction volume.<sup>113</sup> Consequently, we give limited weight to the price comparison data in these reviews.

We have considered whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of the domestic like product. While price is considered to be one of several important purchasing considerations, and HSLWs from China and HSLWs produced in the United States are considered to be interchangeable, both the original record and the current record are ambiguous regarding the likelihood of significant price effects. Moreover, Shakeproof has demonstrated that it will "walk away" from sales rather than lower its prices to maintain market share, indicating that any negative effects from the revocation of the order on China are more likely to be volume-related than price-related.<sup>114</sup> Given the likelihood of a significant increase in the volume of subject imports from China if the order were revoked, however, Shakeproof will be under increasing pressure to adjust price levels in order to maintain output and sales volume.<sup>115</sup> Because Shakeproof will be limited in its ability to sustain overall profitability at significantly lower sales volumes, it will face progressively greater incentives to lower its prices or to forego price increases.

Consequently, on the basis of the record in these reviews, we find that revocation of the antidumping duty order on imports of HSLWs from China would be likely to lead to underselling by the subject imports of the domestic like product and would be likely to lead to price depression or suppression, within a reasonably foreseeable time.

### 3. Likely Impact

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<sup>108</sup> CR & PR at Tables V-1 to V-6. Shakeproof's carbon steel HSLW prices have remained fairly steady over the period examined in these reviews, while its stainless steel HSLW prices fell in 1999 as sales volumes increased dramatically. Id.

<sup>109</sup> A master distributor buys HSLWs in very large quantities for re-sale to smaller distributors. Tr. at 23

<sup>110</sup> CR at V-5, PR at V-4; Tr. at 18-20.

<sup>111</sup> Shakeproof's Posthearing Brief at 12.

<sup>112</sup> Tr. at 19; CR at V-4, PR at V-2.

<sup>113</sup> See CR & PR at V-7.

<sup>114</sup> Tr. at 17, 37. We also note the general stability of Shakeproof's prices during the period examined in the original investigation as well as in the period examined in these reviews, as well as stability between these two periods. This stability is all the more remarkable in light of substantial shifts in market share (1991 and 1998), substantial decreases in apparent U.S. consumption (1991 and 1999), and substantial increases in apparent U.S. consumption (1992, 1998, and 2000). CR & PR at Table I-2. Moreover, although we allow for changes in product mix over time, we observe that, while Shakeproof has experienced considerable shifts in its U.S. shipment volume over time, the average unit value of its U.S. shipments has exhibited little such volatility. CR & PR at Table I-2.

<sup>115</sup> As discussed earlier, the volume of subject imports from China reached \*\*\* percent of the U.S. market prior to the imposition of the orders and currently, with the orders in place, reached \*\*\* percent in 1999 and is continuing to rise.

In the original investigations, the Commission found that the domestic industry's performance was "mixed."<sup>116</sup> Production and capacity decreased between 1990 and 1992.<sup>117</sup> The industry's shipments and market share also declined from 1990 to 1992.<sup>118</sup> Yet, the industry remained profitable during the period; its operating income as a percentage of sales was \*\*\* percent in 1990, \*\*\* percent in 1991 and \*\*\* percent in 1992.<sup>119</sup>

The condition of the domestic industry has improved since the original investigations. The industry earned \*\*\* profits in the period reviewed.<sup>120</sup> As the subject imports from China declined after the order was imposed, the market share of the U.S. industry increased significantly.<sup>121</sup> Shakeproof is now the sole mass market supplier in the United States and supplies \*\*\* of the U.S. market.<sup>122</sup> The industry's cost structure has also improved and the industry is now operating at a much higher rate of capacity utilization.<sup>123</sup> Shakeproof indicates that it is a much more efficient producer<sup>124</sup> and this is evidenced by its productivity being \*\*\* percent higher in 1999 in comparison to 1992.<sup>125</sup> Accordingly, we find that the improvement in the state of the industry is related to the order and the resulting significant decline in the volume of HSLW imports from China.<sup>126</sup>

Although we do not find the domestic industry to be vulnerable in light of its profitability, we note that imports of HSLWs from China have increased between 1997 and 1999 while the domestic industry's market share fell.<sup>127 128</sup> Likewise, the domestic industry's capacity, production, U.S. shipments, total sales,

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<sup>116</sup> China Determination at I-6.

<sup>117</sup> China Determination at I-6; CR & PR at Table I-2.

<sup>118</sup> China Determination at I-6.

<sup>119</sup> CR & PR at Table I-2.

<sup>120</sup> The industry's ratio of operating income to sales was \*\*\* percent in 1997, \*\*\* percent in 1998 and \*\*\* percent in 1999. In the first six months of 2000, the ratio was \*\*\* percent as compared to \*\*\* in the first six months of 1999. CR & PR at Table III-5.

<sup>121</sup> See CR & PR at Table I-2.

<sup>122</sup> CR & PR at Table I-5.

<sup>123</sup> In 1992, the industry operated at \*\*\* percent capacity utilization. CR & PR at Table I-2. Its capacity utilization was \*\*\* percent in 1997, \*\*\* percent in 1998, and \*\*\* percent in 1999. CR & PR at Table III-1. During the period examined in these reviews, Shakeproof saw its capacity fall steadily, to levels well below those reported in the early 1990s. However, the firm's production levels are up (although declining in recent years) and it absorbed the capacity of yet another competitor in 1996/97. Shakeproof's reported capacity fell from \*\*\* in 1997 to \*\*\* in 1999, even though its capacity for the first half of 1999 was \*\*\*, or \*\*\* on an annualized basis. CR & PR at Table I-2.

<sup>124</sup> Tr. at 15.

<sup>125</sup> See CR & PR at Table I-2.

<sup>126</sup> See CR & PR at Table I-2.

<sup>127</sup> The domestic industry's market share in terms of quantity was \*\*\* percent in 1997, and it declined to \*\*\* percent in 1998 and \*\*\* percent in 1999. CR & PR at Table I-5. While nonsubject imports also generally increased over the period, they were lower in 1999 as compared to 1998, yet the domestic industry's market share still declined. See CR & PR at Table I-5.

<sup>128</sup> Commissioner Bragg finds that the domestic industry is currently in a weakened condition as contemplated by the vulnerability criterion of the statute. She notes that the record supports Shakeproof's contention that during the period reviewed the company reduced capital expenditures and costs (evidenced by a reduction of employees

(continued...)

capacity utilization, capital expenditures and employment all declined over the period reviewed.<sup>129</sup> While some of the industry's indicators improved in the first six months of 2000,<sup>130</sup> this reportedly resulted from \*\*\*.<sup>131</sup> Further erosion of the domestic industry's market share is likely to threaten the cost structure, efficiency and profitability of the industry.

As discussed above, revocation of the order likely would lead to a significant increase in the volume and market share of the subject imports from China. Given the very low rate of growth in demand and importance of price in purchasing decisions, the significant increase in subject imports from China is likely to cause a significant decline in the volume of the domestic producers' shipments as well as an impact on prices. We find that this likely would have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. This likely reduction in the industry's production, shipments, sales, market share, and revenues would result in erosion of the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the order will result in commensurate employment declines for the industry.

**D. Revocation of the Order on Subject Imports From Taiwan Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time<sup>132</sup> <sup>133</sup>**

**1. Likely Volume of Subject Imports from Taiwan**

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<sup>128</sup> (...continued)

and the temporary closure of Shakeproof's Milwaukee production facility, Shakeproof's December 22, 2000, Supplemental Submission) as well sacrificed sales in order to maintain prices for its product. CR & PR at Table III-4; Tr. at 17, 37.

<sup>129</sup> The domestic industry's capacity was \*\*\* in 1997, \*\*\* in 1998 and \*\*\* in 1999. CR & PR at Table III-1. Production was \*\*\* in 1997, \*\*\* in 1998, and \*\*\* in 1999. CR & PR at Table III-1. U.S. shipments were \*\*\* in 1997, \*\*\* in 1998, and \*\*\* in 1999. CR & PR at Table III-2. Total sales were \*\*\* in 1997, \*\*\* in 1998, and \*\*\* in 1999. CR & PR at Table III-5. Capacity utilization was \*\*\* percent in 1997, \*\*\* percent in 1998, and \*\*\* percent in 1999. CR & PR at Table III-1. Capital expenditures were \*\*\* in 1997, \*\*\* in 1998 and \*\*\* in 1999. CR & PR at Table III-7. The number of production and related workers fell from \*\*\* in 1997, to \*\*\* in 1998 and \*\*\* in 1999. CR & PR at Table III-4.

<sup>130</sup> The industry's production was \*\*\* in the first half of 2000 and \*\*\* in the first half of 1999. Capacity utilization was \*\*\* percent in the first half of 2000 and \*\*\* percent in the first half of 1999. CR & PR at Table II-1. U.S. shipments were \*\*\* in the first half of 2000 and only \*\*\* in the first half of 1999. CR & PR at Table III-2.

<sup>131</sup> See CR at III-5, PR at III-2 (quoting Shakeproof's Questionnaire Response); Tr. at 57-58; AAFI's Posthearing Brief, Response to Commissioners' Questions, at 15.

<sup>132</sup> Vice Chairman Deanna Tanner Okun and Commissioner Marcia E. Miller dissent with respect to imports from Taiwan and do not join the remainder of the opinion. See Dissenting Views of Vice Chairman Deanna Tanner Okun and Commissioner Marcia E. Miller.

<sup>133</sup> Commissioner Bragg concurs in the determination that revocation of the order on subject imports from Taiwan is likely to lead to the continuation or recurrence of material injury. She notes, however, that she cumulates subject imports from China and Taiwan for purposes of the analysis of whether revocation of the orders at issue is likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

During the original investigations, the Commission found that the volume and value of subject imports from Taiwan “increased dramatically between 1990 to 1992.”<sup>134</sup> The volume of U.S. shipments of subject imports from Taiwan rose from 388,000 pounds in 1990 to 629,000 pounds in 1991, and 735,000 pounds in 1992.<sup>135</sup> The Commission found sufficient unused capacity in Taiwan to supply the demand satisfied by imports from China before the imposition of the antidumping duty order on those imports.<sup>136</sup> The Commission observed that the largest producer in Taiwan, Likunog, was heavily export-oriented with the U.S. market being its primary market,<sup>137</sup> that it had the ability to significantly increase exports to the United States, and that it had exhibited a trend towards increased production and exports.<sup>138</sup> The Commission noted that it had rapidly increased its exports to a third country at the same time it increased its exports to the United States.<sup>139</sup> Additionally, the Commission noted that there was unreported capacity in Taiwan about which the Commission did not have specific information.<sup>140</sup> Consequently, the Commission concluded that it was likely that exporters in Taiwan would increase their shipments to the United States.<sup>141</sup>

In these reviews, the Commission received no information in response the notice of institution or to the questionnaires sent to seven companies believed to produce HSLWs in Taiwan. Therefore, the Commission’s information is limited with respect to the industry in Taiwan, as it was in the original investigation.

Despite the discipline of the order, subject imports were 31 percent greater in 1999 than 1997 in terms of quantity.<sup>142</sup> Given the strong export orientation of the industry in Taiwan,<sup>143</sup> it is likely that in the absence of the order, U.S. shipments of subject imports from Taiwan would rebound to a level similar to that in 1992, 735,000 pounds.<sup>144</sup> This level of imports would have constituted \*\*\* percent of U.S. consumption and 14 percent of all imports in 1999.<sup>145</sup> We acknowledge that information obtained from the American Institute in Taiwan suggested that the market for HSLWs in Taiwan is shrinking since the antidumping duty order was imposed.<sup>146</sup> However, this is not a basis for concluding that producers in Taiwan would not increase their exports to the United States in the absence of the order. To the contrary, it suggests that producers in Taiwan will become even more reliant on export sales. The industry’s

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<sup>134</sup> Taiwan Determination at 15.

<sup>135</sup> INV-Q-088, June 4, 1993 at Table 2. In terms of quantity, subject imports from Taiwan constituted \*\*\* percent of the market in 1990, \*\*\* percent in 1991, and \*\*\* percent in 1992. CR & PR at Table I-2.

<sup>136</sup> Taiwan Determination at 15-16.

<sup>137</sup> Taiwan Determination at 16.

<sup>138</sup> Taiwan Determination at 16.

<sup>139</sup> Taiwan Determination at 17.

<sup>140</sup> Taiwan Determination at 16. Likunog only accounted for \*\*\* percent of the carbon steel HSLWs exported to the United States from Taiwan in 1992 and \*\*\* percent in 1990. INV-Q-088, June 4, 1993, at I-50 n..83.

<sup>141</sup> Taiwan Determination at 16.

<sup>142</sup> See CR & PR at Table I-4. Subject imports from Taiwan were 289,000 pounds in 1997, 257,000 pounds in 1998, and 378,000 pounds in 1999. Id.

<sup>143</sup> The Commission’s limited data on the industry in Taiwan indicated that it exported \*\*\* during 1990-92. INV-Q-088, June 4, 1993, at Table 15. \*\*\* of its production was destined for the United States. Id.

<sup>144</sup> CR & PR at Table I-4.

<sup>145</sup> See CR & PR at Table I-2.

<sup>146</sup> CR & PR at IV-4.

concentration on export markets is evident, subject imports are increasing with the order in place, and producers in Taiwan demonstrated the ability to quickly increase exports to the United States during 1990-92.<sup>147</sup>

Particularly in a market in which demand is not growing, such a potential increase in imports would be significant. We therefore conclude, based on the record in these reviews, that the volume of subject imports from Taiwan likely would be significant within a reasonably foreseeable time if the order were revoked.<sup>148</sup>

## 2. Likely Price Effects

During the original investigations, the Commission found evidence that indicated that subject imports from Taiwan were priced lower than the domestic product.<sup>149</sup> However, the Commission did not find clear evidence of price suppression or depression as there were no clear trends in prices.<sup>150</sup> The Commission did not rely on much of the pricing data because the data were limited and domestic sales were much larger than those by importers.<sup>151</sup>

The record indicates that price is an important factor in purchasing decisions, although perhaps not as important as quality and availability.<sup>152</sup> However, the record in these reviews indicates that the domestic like product and HSLWs from Taiwan are used interchangeably and considered substitutable.<sup>153</sup> Thus, for any individual source of supply increases in sales volume are likely to be achieved through lower prices.

Subject imports from Taiwan are primarily stainless steel and prices for domestic products 3 and 6, the stainless steel HSLWs, trended downwards.<sup>154</sup> The limited price comparisons available in these reviews indicate overselling by subject imports. We observe, however, that a portion of Shakeproof's sales are to master distributors which also import HSLWs directly.<sup>155</sup> Thus, not all of the reported price comparisons are at the same level of trade.<sup>156</sup> Furthermore, Shakeproof's sales typically involved larger individual sale quantities of HSLWs<sup>157</sup> sold at a volume discount.<sup>158</sup> Pricing data collected from purchasers indicate underselling by the subject imports from Taiwan. These data, however, suffer from a limited

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<sup>147</sup> CR & PR at Table I-2.

<sup>148</sup> Commissioner Bragg infers that, upon revocation, Taiwan subject producers would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission's original determination.

<sup>149</sup> Taiwan Determination at 17.

<sup>150</sup> Taiwan Determination at 17.

<sup>151</sup> Taiwan Determination at 17.

<sup>152</sup> CR at II-7, PR at II-5. Shakeproof stated that quality is generally addressed in the manufacturing process and pretty much assured, making price a prime factor in purchasing decisions. CR at II-7, n.13, PR at II-5 n.13; Tr. at 23.

<sup>153</sup> CR at II-7 and II-9, PR at II-5 and II-6.

<sup>154</sup> CR & PR at Figs. V-5, V-8, V-11, and V-14.

<sup>155</sup> A master distributor buys HSLWs in very large quantities for re-sale to smaller distributors. Tr. at 23.

<sup>156</sup> CR at V-5, PR at V-4; Tr. at 18-20.

<sup>157</sup> Shakeproof's Posthearing Brief at 12.

<sup>158</sup> Tr. at 19; CR at V-4, PR at V-2.

number of observations and marked discrepancies in transaction volume.<sup>159</sup> Consequently, we give limited weight to the price comparison data in these reviews.

Given the likely significant volume of subject imports, the high level of substitutability between the subject imports and domestic like product, evidence in the original investigation of underselling, the importance of price in purchasing decisions, and the stagnant U.S. demand discussed above, we find that in the absence of the order, HSLWs from Taiwan would likely undersell the U.S. product in order to gain additional market share. Moreover, Shakeproof has demonstrated that it will “walk away” from sales rather than lower its prices to maintain market share, indicating that any negative effects from the revocation of the order on Taiwan are more likely to be volume-related than price-related.<sup>160</sup>

Given the likelihood of a significant increase in the volume of subject imports from Taiwan if the order were revoked, however, Shakeproof will be under increasing pressure to adjust price levels in order to maintain output and sales volume, especially since stainless steel product from Taiwan will be competing with Shakeproof’s higher-value products. Because Shakeproof will be limited in its ability to sustain overall profitability at significantly lower sales volumes, it will face progressively greater incentives to lower its prices or to forego price increases. Thus, on the basis of the record in this review, we find that revocation of the antidumping order on HSLWs from Taiwan would be likely to lead to price depression or suppression in the reasonably foreseeable future.<sup>161</sup>

### **3. Likely Impact**

We have already examined in detail in our China determination the domestic industry’s mixed performance in the original investigations and in the period reviewed. Revocation of the order likely would lead to a significant increase in the volume of the subject imports from Taiwan. Exporters in Taiwan are concentrating on stainless steel HSLWs,<sup>162</sup> as is the domestic industry. In the first half of 2000, Shakeproof became more reliant on the higher end stainless steel HSLWs as a source of revenue.<sup>163</sup> Moreover, the domestic industry’s carbon steel operations have been weak subsequent to this period.<sup>164</sup> The domestic industry’s increasing dependence on stainless HSLWs renders it more susceptible to injury caused by imports of stainless steel HSLWs from Taiwan.

With U.S. demand for HSLWs flat and price an important consideration in purchasing decisions, the significant increase in subject imports is likely to cause declines in the volume of the domestic producers’ shipments. We find that this likely would have a significant adverse impact on the production,

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<sup>159</sup> See CR & PR at V-7.

<sup>160</sup> Tr. at 17, 37. We also note the general stability of Shakeproof’s prices during the period examined in the original investigation as well as in the period examined in these reviews, as well as stability between these two periods. This stability is remarkable in light of substantial shifts in market share (1991 and 1998), substantial decreases in apparent U.S. consumption (1991 and 1999), and substantial increases in apparent U.S. consumption (1992, 1998, and 2000). CR & PR at Table I-2. Moreover, although we allow for changes in product mix over time, we observe that, while Shakeproof has experienced considerable shifts in its U.S. shipment volume over time, the average unit value of its U.S. shipments has exhibited little such volatility. CR & PR at Table I-2.

<sup>161</sup> Commissioner Bragg notes that although she agrees that the likely negative effects of revocation of the orders on China and Taiwan are more likely to be volume-related than price-related, she nonetheless infers that the likely significant volume of subject imports from China and Taiwan will have a likely significant adverse impact on domestic prices, as evidenced in the Commission’s original determinations.

<sup>162</sup> CR at IV-6 n.6, PR at IV-4 n.6.

<sup>163</sup> CR at III-7, PR at III-2 to III-3; Tr. at 58.

<sup>164</sup> CR at III-7, PR at III-3.

shipments, sales, market share, and revenues of the domestic industry. Given the domestic industry's increasing dependence on stainless steel HSLWs, this reduction in the industry's production, shipments, sales, market share, and revenues would result in erosion of the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the order will result in commensurate employment declines for the industry.

### **CONCLUSION**

For the foregoing reasons, we determine that revocation of the antidumping duty orders on certain HSLWs from China and Taiwan would be likely to lead to continuation or recurrence of material injury to the U.S. industry within a reasonably foreseeable time.

**DISSENTING VIEWS OF VICE CHAIRMAN DEANNA TANNER OKUN  
AND COMMISSIONER MARCIA E. MILLER**

**Inv. No. 731-TA-625 (Review) Helical Spring Lock Washers from Taiwan**

Based on the record in these five-year reviews, we determine that revocation of the antidumping duty order covering imports of helical spring lock washers (HSLWs) from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We determine, however, that revocation of the antidumping duty order covering imports of HSLWs from Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, we respectfully dissent from the Commission's determination with respect to subject imports from Taiwan. While we join the Commission's determinations with respect to background, legal standards, like product, the domestic industry, cumulation, conditions of competition, and imports of the subject merchandise from China, we write to explain why revocation of the antidumping duty order covering imports of HSLWs from Taiwan would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

In these reviews, the Commission majority has declined to exercise its discretion to cumulate the likely volume and effect of subject imports from China and Taiwan, finding that the industries in China and Taiwan are differently situated and that HSLW imports from these two sources face different competitive conditions in the U.S. market. Accordingly, at the outset, we emphasize factors that particularly influence our affirmative determination with respect to the subject imports from China and our negative determination with respect to the subject imports from Taiwan. First, the HSLW market in the United States requires carbon and carbon alloy, stainless steel, and other metal HSLWs for specific applications, but demand is heavily weighted toward carbon and carbon alloy steel HSLWs. China's HSLW exports are of carbon steel, while Taiwan's exports are chiefly stainless steel.<sup>1</sup> Second, the volume of subject imports from Taiwan is currently and was prior to the imposition of the order of a completely different order of magnitude than the volume of subject imports from China.<sup>2</sup> Third, the pricing practices leading to the sale of HSLWs from China and Taiwan are markedly different.<sup>3</sup>

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<sup>1</sup> CR at IV-6 n.6, PR at IV-6 n.6; CR at I-14, PR at I-8 (over \*\*\* of Shakeproof shipments in 1999 were of carbon/alloy steel); and CR at IV-7, PR at IV-5 (\*\*\* of ZWG's production of HSLWs in 1999 was of carbon/alloy steel).

<sup>2</sup> In 1992, subject import volume from China exceeded eight million pounds; subject import volume from Taiwan was less than one-tenth of that level. Table 16, INV-Q-088, June 4, 1993, at I-52. In the first half of 2000, subject import volume from China was more than 1.9 million pounds; subject import volume from Taiwan was less than one-tenth of that level. Table IV-1, CR at IV-2, PR at IV-2.

<sup>3</sup> See n.51 of the Views of the Commission comparing the average unit values of carbon steel HSLWs from Taiwan with those from China; note the greater frequency of underselling by HSLWs from China compared to HSLWs from Taiwan (Tables 18-23, INV-Q-088, June 4, 1993, at I-71-73; Tables V-1-6, CR at V-8-13, PR at V-5).

**A. Revocation of the Order on Subject Imports from Taiwan Is Not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time**

1. Conditions of Competition

We join in the majority's discussion of the conditions of competition that provide the basis upon which we assess the likely effects of revocation within a reasonably foreseeable time.

2. Likely Volume of Subject Imports from Taiwan

In the original investigations, the Commission found that the quantity of U.S. imports of HSLWs from Taiwan was 407,000 pounds in 1990, 710,000 pounds in 1991, and 780,000 pounds in 1992, while the quantity of U.S. shipments of HSLWs from Taiwan was 388,000 pounds in 1990, 629,000 pounds in 1991, and 735,000 pounds in 1992.<sup>4</sup> In 1992, HSLWs from Taiwan accounted for \*\*\* percent of apparent U.S. consumption, an increase of \*\*\* percentage points since 1990.<sup>5</sup> There were no reported inventories of HSLWs held in Taiwan, and U.S. importers held inventories of 104,000 pounds in 1990, 182,000 pounds in 1991, and 222,000 pounds in 1992.<sup>6</sup>

According to information provided by the American Institute in Taiwan (AIT) at the time of the original investigations, the HSLW industry in Taiwan peaked during 1985-86, with seven firms producing more than 500 metric tons per month. However, foreign buyers subsequently shifted import orders to China, which reportedly undersold HSLWs from Taiwan by 20 to 30 percent. By the early 1990s, only four firms reportedly manufactured HSLWs in Taiwan, three of which stopped producing in the second half of 1992. The remaining firm, Likunog, reportedly accounted for virtually all of the manufacture and export of stainless steel HSLWs and a small and declining share of the manufacture and export of carbon steel HSLWs in Taiwan. Likunog's total capacity remained stable throughout the period 1990-92, at a level of \*\*\* pounds, while its capacity utilization increased from \*\*\* percent in 1990 to \*\*\* percent in 1991 and to \*\*\* percent in 1992. Available capacity to manufacture HSLWs in Taiwan tended to be directed toward export markets, of which the United States was the primary market until 1992, when it was surpassed by Nigeria.<sup>7</sup>

Reliable information regarding the current HSLW industry in Taiwan is scarce. According to a spokesman for the Taiwan Screws Industry Association, there are "few" companies that produce or export spring washers, the market for which has been small and declining.<sup>8</sup> This characterization is consistent with the information developed in the original investigations. Parties, however, continue to dispute the precise size of the HSLW industry in Taiwan. Shakeproof has identified a multitude of companies in Taiwan that appear to be active in the HSLW trade, although the experiences of other market participants call into question whether these companies actually manufacture HSLWs in Taiwan, or are instead trading

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<sup>4</sup> Table 16, INV-Q-088, June 4, 1993, at I-52; Table 2, INV-Q-088, June 4, 1993, at I-15.

<sup>5</sup> Table 17, INV-Q-088, June 4, 1993, at I-56.

<sup>6</sup> Table 15 and Table 13, INV-Q-088, June 4, 1993, at I-50 and I-44.

<sup>7</sup> Data and information from the original HSLW investigations are drawn from INV-Q-088, June 4, 1993, at I-49-51.

<sup>8</sup> CR at IV-4, PR at IV-4.

companies or manufacturers of other fastener products. Secondary sources are unclear on this matter, noting that traders located in Asia often prefer to present themselves as manufacturers.<sup>9</sup>

During the period examined in the current reviews, the U.S. market share of HSLWs from Taiwan was \*\*\* percent in 1997, \*\*\* percent in 1998, and \*\*\* percent in 1999, moderately lower than the \*\*\* percent of the market held by HSLWs from Taiwan during 1990-92.<sup>10</sup> We have no primary data regarding the available HSLW capacity in Taiwan or current inventory levels in Taiwan. Accordingly, we rely on information collected in the original investigations with respect to production capacity, notwithstanding the previously-noted suggestion that the industry in Taiwan may be smaller than in the early 1990s. The record does not indicate that HSLWs from Taiwan face any barriers to trade in countries other than the United States. Finally, although Shakeproof argues that product shifting is likely, we note that HSLW producers do not appear to engage in product shifting to a significant degree.<sup>11</sup>

While the order appears to have had some restraining effect on the volume of subject imports from Taiwan, even were the volume to return to pre-order levels, the quantity of HSLWs from Taiwan is likely to remain relatively small. Available evidence indicates that Taiwan was and is a marginal source of supply to the U.S. market, especially for the large master distributors that compete with Shakeproof for high-volume sales of carbon steel HSLWs. Accordingly, based on the record in these reviews and the record in the original investigations, we find that the likely volume of subject imports from Taiwan would not be significant if the order is revoked, either in absolute terms or relative to production or consumption in the United States.

### 3. Likely Price Effects of the Subject Imports

During the original investigations, the Commission found little clear evidence of price effects by the subject imports from Taiwan.<sup>12</sup> Prices for HSLWs from Taiwan fluctuated, increasing moderately over the period examined in the original investigations (1990-92). Prices reported by Shakeproof showed no clear trend, but tended to fluctuate within a narrow range.<sup>13</sup> The Commission found that, while subject imports from Taiwan were imported at average unit values lower than Shakeproof's prices for comparable

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<sup>9</sup> CR at IV-3-4 and n.3, PR at IV-3-4 and n.3. *Compare* Posthearing Brief of Shakeproof at Appendix B with Posthearing Brief of AAFI at Exhibit 1 and Additional Factual Information filed by AAFI on December 15, 2000.

<sup>10</sup> Table I-2, CR at I-3, PR at I-3. HSLWs from Taiwan accounted for \*\*\* percent of apparent U.S. consumption in the first half of 2000. *Id.*

<sup>11</sup> Shakeproof, for example, reports that \*\*\*. CR at II-4, PR at II-3. Chinese manufacturer ZWG is reportedly unable to switch production between subject merchandise and other products. Prehearing Brief of AAFI at 9.

<sup>12</sup> *See* Views of Chairman Newquist and Commissioner Rohr at 17-18 (pricing data provide mixed guidance); Additional Views of Anne E. Brunsdale at 33 n.31 (structure of the industry complicates analysis; difficult to determine whether the effect (of cumulated imports) would be primarily in terms of quantity or in terms of price); and Dissenting Views of Vice Chairman Peter S. Watson and Commissioner Janet A. Nuzum at 47-51 (analysis of underselling is complicated by differing levels of trade; there is a preponderance of overselling by imports from Taiwan; lower ex-dock prices do not significantly affect domestic producers' prices; no evidence that the prices of HSLWs from Taiwan prevented domestic price increases, which otherwise would have occurred, to a significant degree).

<sup>13</sup> Tables 18-23, INV-Q-088, June 4, 1993, at I-65-67.

products, distributor sales of HSLWs from Taiwan undersold the domestic product in only \*\*\* of 49 producer/importer comparisons.<sup>14</sup>

The record indicates that price is an important factor in purchasing decisions, although perhaps not as important as quality and availability.<sup>15</sup> The record in these reviews also indicates that the domestic like product and HSLWs from Taiwan are used interchangeably and are considered to be substitutable.<sup>16</sup> Thus, for any individual source of supply, increases in sales volume are likely to be achieved through lower prices.

We find the evidence on the record of these reviews as to whether current subject imports from Taiwan are underselling the domestic like product to be inconclusive. Shakeproof's reported prices during January 1997 - June 2000 fluctuated for the most part within a narrow range, while the comparative price data reported by Shakeproof and by several of the largest HSLW importers in the United States reflect lower domestic producer prices for all five comparisons.<sup>17</sup> We observe, however, that a portion of Shakeproof's sales volume is to master distributors which also import HSLWs directly.<sup>18</sup> Thus, not all of the reported price comparisons are at the same level of trade. Furthermore, Shakeproof's sales typically involved larger individual sale quantities of HSLWs sold at a volume discount.<sup>19</sup> In contrast, pricing data collected from purchasers indicate some underselling by the subject imports from Taiwan. These data, however, are based on a limited number of observations (five) and reflect marked differences in transaction volumes.<sup>20</sup> On balance, we do not find that the record in the original investigations and in the present reviews indicates that there is likely to be significant underselling by imports from Taiwan if the order is revoked.

We have considered whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of the domestic like product. We do not find that the record supports such a finding. While price is considered to be one of several important purchasing considerations, and HSLWs from Taiwan and HSLWs produced in the United States are considered to be interchangeable, the record is inconclusive as to the degree of any likely price effects. Shakeproof has demonstrated that it will "walk away" from sales rather than lower its prices to maintain market share.<sup>21</sup> Further, we find that the volume of subject imports from Taiwan likely would not be significant if the order is revoked, and therefore likely would be too small to affect domestic prices significantly.

Consequently, on the basis of the record in these reviews, we find that revocation of the antidumping duty order on imports of HSLWs from Taiwan would not be likely to lead to significant

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<sup>14</sup> INV-Q-088, June 4, 1993, at I-77-78; Tables 18-23, INV-Q-088, June 4, 1993, at I-65-67.

<sup>15</sup> CR at II-7, PR at II-5. Shakeproof contends that quality is typically addressed in the manufacturing process and is generally assured, making price a prime factor in purchasing decisions. CR at II-7, n.13, PR at II-5 n.13; Tr. at 23.

<sup>16</sup> CR at II-7, II-9, PR at II-5-6.

<sup>17</sup> Tables V-1-6, CR at V-8-13, PR at V-5. Shakeproof's carbon steel HSLW prices have remained fairly steady over the period examined in these reviews, while its stainless steel HSLW prices fell in 1999 as sales volumes increased \*\*\*. *Id.*

<sup>18</sup> CR at V-5, PR at V-4; Tr. at 18-20. A master distributor buys HSLWs in very large quantities for re-sale to smaller distributors. Tr. at 23.

<sup>19</sup> Posthearing Brief of Shakeproof at 12; Tr. at 19; CR at V-4, PR at V-4.

<sup>20</sup> *See* CR at V-7, PR at V-6.

<sup>21</sup> Tr. at 17, 37.

underselling by the subject imports from Taiwan of the domestic like product, or have a significant depressing or suppressing effect on the price of the domestic like product, within a reasonably foreseeable time.

#### 4. Likely Impact of Subject Imports from Taiwan

During the period examined in the original investigations, the overall performance of the industry was mixed. Between 1990 and 1991, domestic shipment volumes decreased, both in quantity and value. However, between 1991 and 1992, the industry recovered much, though not all, of its lost volume. Overall, shipment quantities and values fell, while average unit values fluctuated within a narrow range. Production also fluctuated, although Shakeproof's capacity declined between 1990 and 1992, resulting in \*\*\* capacity utilization. Overall, the domestic industry maintained operating income margins of \*\*\* percent in 1990, \*\*\* percent in 1991, and \*\*\* percent in 1992, even though its share of the U.S. market fell from \*\*\* percent in 1990 to \*\*\* percent in 1991 and to \*\*\* percent in 1992.<sup>22</sup>

In contrast to the original investigations, the domestic industry held market shares of \*\*\* percent in 1997, \*\*\* percent in 1998, and \*\*\* percent in 1999.<sup>23</sup> Moreover, since the early 1990s, Shakeproof has improved its operating efficiencies. It has gained market share and increased sales volumes, thereby increasing its output and capacity utilization and lowering its per-unit operating costs, while prices have remained stable. As a result, its operating income margins have been consistently strong: \*\*\* percent in 1997, \*\*\* percent in 1998, \*\*\* percent in 1999, and \*\*\* percent during the first half of 2000.<sup>24</sup> We attribute these gains to the imposition of the antidumping duty order on China, which clearly has helped Shakeproof further consolidate its position in the U.S. HSLW market. We find, however, that the imposition of the antidumping duty order on the significantly smaller volume of higher-priced HSLWs from Taiwan has contributed little to the improvement in the state of the domestic industry.

Considering the domestic industry's overall performance and its position in the U.S. market, we do not find the domestic industry to be vulnerable. Although the domestic industry's net sales quantities and net sales revenues declined between 1997 and 1999, its financial position remained solid; moreover, its net sales quantities, sales values, and operating income ratios were higher in interim 2000, as compared to interim 1999.<sup>25</sup> As noted previously, imports from Taiwan are primarily stainless steel HSLWs, which represent only a small portion of the U.S. HSLW market, as opposed to carbon steel HSLWs, which constitute most of the market. Even in the face of increased demand for stainless steel HSLWs in the first half of 2000, imports from Taiwan remained at low levels, as they have throughout the period examined.<sup>26</sup>

We therefore find that, in the absence of significant volume or price effects, the likely impact on the domestic HSLW industry of subject imports from Taiwan will not be significant if the order is revoked.

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<sup>22</sup> Table I-2, CR at I-3-6, PR at I-3.

<sup>23</sup> Table I-2, CR at I-3-6, PR at I-3. Because of a substantial increase in apparent U.S. consumption in the first half of 2000, the domestic industry held \*\*\* percent of the U.S. market despite increasing shipment volumes by more than \*\*\* relative to the first half of 1999. *Id.*

<sup>24</sup> Table I-2, CR at I-3-6, PR at I-3.

<sup>25</sup> Table I-2, CR at I-3-6, PR at I-3. See the Commission's views with respect to China for a more detailed presentation of the overall condition of the domestic industry.

<sup>26</sup> CR at III-5, PR at III-2 (quoting Shakeproof's Questionnaire Response); Tr. at 57, 58; Posthearing Brief of AAFI, *Responses to Commission Questions* at 15.

**B. Conclusion**

Based on the record in these reviews, we conclude that revocation of the antidumping duty order on Taiwan is not likely to lead to continuation or recurrence of material injury to the U.S. helical spring lock washer industry within a reasonably foreseeable time.