UNITED STATES INTERNATIONAL TRADE COMMISSION

PNEUMATIC DIRECTIONAL CONTROL VALVES FROM JAPAN
Investigation No. 731-TA-988 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION
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DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of pneumatic directional control valves, provided for in subheading 8481.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

BACKGROUND

On January 14, 2002, a petition was filed with the Commission and the U.S. Department of Commerce by the Pneumatics Group, a trade association of pneumatic directional control valve producers and wholesalers consisting of Festo Corp. of Hauppage, NY; IMI Norgren, Inc., of Littleton, CO; Numatics, Inc., of Highland, MI; and Parker Hannifin Corp. of Cleveland, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of pneumatic directional control valves from Japan. Accordingly, effective January 14, 2002, the Commission instituted antidumping duty investigation No. 731-TA-988 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 23, 2002 (67 FR 3230). The conference was held in Washington, DC, on February 4, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Commissioner Lynn M. Bragg dissenting.

VIEWS OF THE COMMISSION

PNEUMATIC DIRECTIONAL CONTROL VALVES FROM JAPAN

Investigation No. 731-TA-988 (Preliminary)

Based on the record in this investigation, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of pneumatic directional control valves from Japan that are allegedly sold in the United States at less than fair value ("LTFV"). [1]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

The Court of Appeals for the Federal Circuit has stated that the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations and that the "reasonable indication" standard requires more than a finding that there is a "possibility" of material injury.[4] It also has noted that, in a preliminary investigation, the "[t]he statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry."[5] Moreover, the CIT recently has reaffirmed that in applying the reasonable indication "standard for making a preliminary determination regarding material injury or threat of material injury, the Commission may weigh all evidence before it and resolve conflicts in the evidence."[6]

As we discuss below, we find that the record of this preliminary investigation contains clear and convincing evidence that the domestic industry producing pneumatic directional control valves is neither materially injured nor threatened with material injury by reason of the subject imports. Although we recognize that we might obtain additional evidence in a final investigation relating to the domestic industry's condition, the nature of competition between the subject merchandise and domestically produced pneumatic directional control valves, and purchasers' perceptions about the nature of that competition, we see no likelihood that any evidence we obtain in a final investigation would change our findings that there is

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[1] Commissioner Lynn M. Bragg finds that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of pneumatic directional control valves from Japan. See Dissenting Views of Commissioner Lynn M. Bragg.

[2] 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int'l Trade 1999).

[3] American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[4] American Lamb, 785 F.2d at 1004.

[5] Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[6] R-CALF, 74 F. Supp.2d at 1368 (Ct. Int'l Trade 1999).

a limited level of direct competition between the subject imports and the domestic like product and that the domestic PDCV industry has been impacted in a minimal manner, at most, by the subject imports during the period.

II. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[7] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[8] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[9]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[10] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[11] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[12] Although the Commission must accept Commerce's determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[13]

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of this investigation as:

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[7] 19 U.S.C. § 1677(4)(A).

[8] 19 U.S.C. § 1677(4)(A).

[9] 19 U.S.C. § 1677(10).

[10] See, e.g., NEC Corp. v. Dep't of Commerce and U.S. Int'l Trade Comm'n, 36 F. Supp. 2d 380 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[11] See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[12] Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

[13] Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

> all pneumatic directional control valves, whether assembled or unassembled, regardless of size, configuration, intended or actual use, method of actuation, and materials employed in construction . . . The subject merchandise thus includes, but is not necessarily limited to, manual, mechanical, air-operated, and solenoid type pneumatic directional control valves.[14]

Commerce specifically excluded from the scope of investigation aerospace-type pneumatic fluid power valves. These valves are defined as pneumatic fluid power valves that have been certified for use in airframes, aircraft engines, or other aerospace applications pursuant to standards established or required by the Federal Aviation Administration or Department of Defense in the United States, or by counterparts of these agencies in other countries.[15]

Pneumatic directional control valves ("PDCVs") are mechanical devices that regulate the direction of air flow in pneumatic systems through a series of channels in the body of the valve.[16] The channels contained in the body of the valve are opened and shut by valve elements, which are moved by manual, solenoid, mechanical, electrical or other means. The movement of the valve elements in the PDCV permits, prevents or regulates the flow of air through the different passages in the valve.[17]

PDCVs are manufactured from a variety of materials, including stainless steel, aluminum, bronze, iron, magnesium, and plastic.[18] Generally, there are four basic classes of PDCVs, each of which is characterized by a specific number of ports and internal positions.[19] Each type of PDCV regulates the flow of air through it in a different manner, thus allowing a designer of a pneumatic system to select the appropriate type of PDCV for a particular part of the system.

PDCVs are used in a wide range of applications. They are used most often in the production of equipment for automated production lines.[20] They also are used in automotive applications (for products like air brake systems), electrical applications (for products like automated medical and semiconductor equipment), portable medical devices, large-scale food processing equipment, and packaging equipment.[21]

PDCVs are sold in the U.S. market as individual valves or as components of valve assemblies, valve panels, or pneumatic systems.[22] Valve assemblies are produced by combining a number of individual valves with other components (such as manifolds, serial interface controllers, fittings, pipes and

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[14] Notice of Initiation of Antidumping Duty Investigation: Pneumatic Directional Contol Valves, 67 Fed. Reg. 6485, 6486 (Feb. 12, 2002).

[15] Id.

[16] Confidential Staff Report ("CR") at I-3, Public Staff Report ("PR") at I-2.

[17] CR at I-3, PR at I-2-3.

[18] Id.

[19] CR at I-4, PR at I-3. The four classes of PDCVs include two-way PDCVs (which contain two ports and two internal positions), three-way PDCVs (which contain three ports and three internal positions), four-way PDCVs (which contain four ports and three internal positions), and five-way PDCVs (which contain five ports and two internal positions). Id.

[20] CR at I-4, PR at I-3.

[21] CR at I-4, PR at I-3.

[22] See, e.g., Transcript of Staff Conference ("Tr."), Feb. 4, 2002, at 77-78 (testimony of Mr. Lasch); SMC Postconference Brief at 12-15 & Ex. 6.

rails, and other accessories) to form a more complex valve product.[23] Valve panels are produced by combining a number of valve assemblies into a more complex pneumatic system.[24]

C. Domestic Like Product

Parties' Arguments. Both petitioners and the Japanese respondent SMC agree that the Commission should find one domestic like product in this proceeding[25] and that the definition of the domestic like product should be coextensive with the definition of the products covered by the scope of this investigation.[26] However, the two parties disagree with respect to the range of products covered by the scope.

At the staff conference in this investigation, counsel for the Japanese respondent SMC argued that the scope of the investigation covers individual PDCVs but not "valve assemblies" and "valve panels."[27] Counsel for petitioners appeared to agree with this position at the staff conference.[28] However, petitioners argued for the first time in their post-conference brief that the scope of the investigation covers both individual PDCVs and downstream products incorporating PDCVs, such as valve assemblies and valve panels. According to petitioners, there is no real difference between "single valves" and "valve assemblies."[29]

Analysis. We decline to define the domestic like product more broadly than the scope of investigation.[30] In assessing what domestic products are like the merchandise subject to this investigation, we have referred to the language of the scope of the investigation. By its plain language, the scope specifically covers only "pneumatic directional control valves, whether assembled or unassembled, regardless of size, configuration, intended or actual use, method of actuation, and materials employed in construction . . ." The scope also specifically states that the "subject merchandise thus includes, but is not necessarily limited to, manual, mechanical, air-operated, and solenoid type pneumatic directional control valves."[31] Accordingly, it is clear that the scope language specifically includes in its coverage only

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[23] Tr. at 77–78 (testimony of Mr. Lasch).

[24] Tr. at 77-78 (testimony of Mr. Lasch).

[25] We note that Makita USA, Inc., an importer of Japanese merchandise, argued at the staff conference that the pneumatic valves used in Makita's pneumatic nailers should be excluded from the investigation or found to be a separate domestic like product. Tr. at 100-101. Although Makita appeared at the staff conference, it did not provide a definition of the types of pneumatic valves encompassed by its request or file a postconference brief in the investigation. We do not find the record supports Makita's argument that these products are part of a separate domestic like product. Moreover, we note that the Commission consistently has rejected arguments that it should "exclude" a product from the scope of a Title VII investigation. Silicomanganese from India, Kazakhstan and Venezuela, Inv. Nos. 731-TA-929-31 (Preliminary), USITC Pub. 3407 at 4-5, n. 15 (May 2001).

[26] Petitioners' Postconference Brief at 5-9; SMC Postconference Brief at 4-5; Tr. at 116 (testimony of Mr. Porter).

[27] See, e.g., Tr. at 119 (testimony of Mr. Porter).

[28] See Tr. at 137-138 (testimony of Mr. Sandstrom)

[29] Petitioners' Postconference Brief at 7.

[30] We interpret petitioners' comments as suggesting that the Commission expand the scope of investigation. It is not, however, within the Commission's authority to expand the scope adopted by Commerce. See, e.g., Mitsubishi Elec. Corp. v. United States, 898 F.2d 1577, 1582 (Fed. Cir. 1990); Sandvik Steel Co. v. United States, 164 F.3d 595, 600 (Fed. Cir. 1998).

[31] Notice of Initiation of Antidumping Duty Investigation: Pneumatic Directional Contol Valves, 67 Fed. Reg. 6485, 6486 (Feb. 12, 2002).

individual PDCVs, whether or not imported in assembled form, and the components of PDCVs that are used to move the valve element in the PDCV. The scope language does not, however, include any language indicating that it covers downstream products that incorporate individual PDCVs with other elements or accessories, as petitioners argue.[32]

Further, neither the language of the petition nor the testimony presented by petitioners at the staff conference supports the arguments made by petitioners in their postconference brief. For example, the petition characterizes a PDCV only as "a body with internal flow passages that are opened or closed by a movable part in order to permit or prevent air flow between them, thereby directing air flow to specific parts of the pneumatic system."[33] In addition, the petition specifically states that all individual PDCVs are covered by its scope, independent of their type of valve element, flow coefficient, or method of operation.[34] However, the petition does not state that it includes within its coverage non-PDCV components, such as serial interface controllers or fittings, or downstream products incorporating PDCVs.[35] Instead, the petition and the testimony of industry witnesses at the staff conference[36] both indicate that the scope, as drafted by petitioners and adopted by Commerce, covers only individual PDCVs, and not more complex downstream products.

Indeed, in response to SMC's arguments about the distinction between valves and downstream products such as valve assemblies, counsel for petitioners stated that:

> We have great concern about product definition here. You now understand why we were talking about the scope and the like product as we were. There seems to be this idea that, if you bring in a valve and bury it in an assembly, suddenly it does no longer exist for purposes of this investigation. That is not the case, obviously. First of all, every one of our producers sells assemblies to customers. They don't just sell valves . . . . This Commission must look at the product we are talking about. Valves are sold individually. <u>They may be sold and often [are] sold as part of assemblies. But we must focus on valves, and we must make sure that the pricing information and other information that is requested to that product focus on that product . . . That is the like product here. That is the product that must be focused on</u>.[37]

Accordingly, we find that there is one domestic like product in this proceeding, consisting of all PDCVs as defined in the scope of the investigation. First, the record indicates that all PDCVs share the

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[32] Petitioners' Postconference Brief at 3 & 7-8. While the scope does cover PDCVs "whether assembled or unassembled," this language is generally used in antidumping investigations to address situations in which a covered product may be imported in an unassembled form. In this case, the record evidence indicates that individual PDCVs are comprised of a number of components and may be imported in unassembled form. In their postconference brief, petitioners also appear to argue that downstream products, like valve assemblies, are covered by the scope because the scope states that PDCVs are covered "regardless of . . . configuration . . ." <u>See</u> Petitioners' Postconference Brief at 7-8. However, it is clear that this language was initially intended to indicate that all individual PDCVs were covered by the scope, independent of the form or structure of the PDCV's internal channels, ports, or its methods of operation. <u>See generally</u> Petition at 7-12; see also Tr. at 15-17 (Shellenbarger)(indicating that PDCVs are covered, among other things, irrespective of their "internal" structure). We thus draw a distinction between "assembled" PDCVs – i.e., PDCV components that have been put together – which are included within the scope, and "valve assemblies" – downstream products composed of PDCVs and non-PDCV components -- that are not included in the scope.

[33] Petition at 8.

[34] Petition at 10.

[35] Petition at 7-12.

[36] Tr. at 14-17 (testimony of Mr. Shellenbarger).

[37] Tr. at 137-138 (testimony of Mr. Sandstrom) (emphasis added).

same broad physical characteristics. Although there are clearly physical differences between the various types and categories of PDCVs,[38] all PDCVs are characterized by having a valve body with several internal channels that permit or prevent the passage of air and a valve element that alternately connects a cylinder port on the valve body to either a supply or exhaust port and thereby changes the flow of air in the valve.[39] In addition, all PDCVs have a mechanical, electrical, or manual element that opens or closes the valve elements in the valve body.[40] These basic characteristics distinguish PDCVs from other forms of valves used in pneumatic and hydraulic systems.[41] Moreover, all PDCVs have the same general end use in that they are used to regulate the flow and direction of air in pneumatic systems through the use of these channels in the valve body.[42] Because of these shared physical characteristics, the record indicates that producers and customers perceive all PDCVs to be part of a broad continuum of products in the same product category.[43]

The record also indicates that PDCVs are produced using common machinery and equipment. Most PDCVs are produced on dedicated customized production lines that are designed specifically to produce particular types of PDCVs.[44] Although production lines generally are used to produce a particular PDCV, they can be re-tooled and reconfigured to produce PDCVs with different specifications.[45] Finally, domestically produced PDCVs generally are sold in similar channels of distribution, with more than *** percent of domestic PDCVs being sold to distributors, and the remainder being sold to end users.[46]

There are distinctions between PDCVs with respect to their interchangeability and pricing. Because of the wide range of specifications and types for PDCVs, the price of individual PDCVs can vary widely, with individual valves costing from $2 to $300 per valve.[47] Similarly, because of the wide variety of forms and configurations of PDCVs, there is a limited level of substitutability amongst types and categories of PDCVs.[48] Nonetheless, these differences in pricing and substitutability are to be expected from a product category that has a broad continuum of product sizes and types.

In sum, although there is a wide range of product types and classes of PDCVs and there are pricing and substitutability distinctions among those categories, the record shows that all domestic PDCVs share the same general physical characteristics and end uses, are produced in common production facilities, and

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[38] For example, PDCVs can range in size from three quarters of an inch to ten inches and may have significantly different internal channel configurations. CR at I-4, PR at I-3. Moreover, PDCVs are differentiated from one another by the number of ports in the valve, the number of switching positions, their normal position, and their method of operation. CR at I-4, PR at I-3.

[39] CR at I-3, PR at I-2-3.

[40] CR at I-3, PR at I-2-3.

[41] Petition at 11. Valves operating at greater than 150 pounds per square inch ("psi") are generally fluid hydraulic valves. It is recognized in the industry that pneumatic systems, driven by compressed air, can operate only at up to 150 psi. CR at I-4, PR at I-2-3.

[42] CR at I-3, PR at I-3.

[43] Tr. at 56 (testimony of Mr. Dodds).

[44] CR at I-4-5, PR at I-3-4.

[45] CR at I-5, PR at I-3-4.

[46] CR at I-6, PR at I-4.

[47] CR at I-6, PR at I-4.

[48] CR at I-5 & II-5-6, PR at I-4 & II-3-4.

are sold in similar channels of trade. Accordingly, we find that the domestic like product consists of all individual, non-aerospace PDCVs, consistent with Commerce's scope.[49]

III. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Domestic Industry

Section 771(4) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product."[50] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.[51] Based on our finding that there is one domestic like product in this investigation consisting of all PDCVs, we determine that there is a single domestic industry consisting of all domestic producers of PDCVs.

B. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[52] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[53]

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[49] In this regard, we note that the record indicates that the parties agree that there are significant distinctions between aerospace PDCVs and other forms of PDCVs. SMC Postconference Brief at 4, n. 1. Accordingly, we find that the domestic like product does not include these products.

[50] 19 U.S.C. § 1677(4)(A).

[51] See, e.g., DRAMs From Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Inv. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 and n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain ("OCTG"), Invs. Nos. 701-TA-363-364 (Final) and Invs. Nos. 731-TA-711-717 (Final), USITC Pub. 2911, at I-15 (Aug. 1995) (not including threaders in the casing and tubing industry because of "limited levels of capital investment, lower levels of expertise, and lower levels of employment").

[52] 19 U.S.C. § 1677(4)(B).

[53] Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d

Five domestic producers of PCDVs reported that they imported subject merchandise during the period of investigation and are therefore related parties. The companies are *** and SMC Corp. of America.[54] *** of these five producers, *** and SMC Corp. of America, are affiliated with Japanese producers of PCDVs.[55]

Petitioners and SMC both agree that SMC Corp. of America should be excluded from the industry as a related party.[56] In addition, SMC argues that *** should be excluded from the domestic industry because it imports substantial volumes of merchandise from Japan.[57] For the reasons set forth below, we find that appropriate circumstances exist to exclude only SMC Corp. of America from the industry as a related party.

SMC Corp. of America ("SMC America"). SMC America is a *** subsidiary of SMC, the dominant producer of PDCVs in Japan.[58] SMC America was the *** of the domestic producers who reported trade data for PDCVs in 2000, accounting for only *** percent, by value, of total reported domestic shipments in that year.[59] SMC America opposes the petition.[60] Throughout the period of investigation, SMC America imported a *** volume of subject merchandise than it shipped from domestic production and its total imports equaled more than *** times the size of its total domestic shipments during each year of the period of investigation.[61] Accordingly, we find that SMC America's interests lie primarily in importation and not in domestic production. Moreover, although SMC America's operating returns fluctuated during the period, the company's operating income ratio was *** than the industry average in 1999 and interim 2000, while in full year 2000 and interim 2001, it was *** the industry average.[62] Given the foregoing, we find that appropriate circumstances exist to exclude SMC America from the industry.

*** *** was the *** largest U.S. producer of PDCVs in 2000, accounting for *** percent of reported domestic shipments in that year.[63] *** supports the petition in this proceeding.[64] Although *** imported a growing volume of subject imports, with its ratio of imports to domestic shipments growing from *** percent in 1998 to *** percent in 1999 and then to *** percent in 2000,[65] the bulk of its U.S. shipments consisted of domestically produced merchandise, indicating that its primary interest remains in domestic production.[66] Finally, *** operating income ratio was *** that of the industry average during the

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809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

[54] CR and PR at Table III-5.

[55] CR and PR at Table III-1, nn. 7 & 9.

[56] Petitioners' Postconference Brief at 9-10; SMC Postconference Brief at 4.

[57] SMC Postconference Brief at 4.

[58] CR and PR at Table III-1, n. 9.

[59] CR and PR at Table III-1.

[60] CR and PR at Table III-1.

[61] CR and PR at Table III-5.

[62] CR and PR at Table VI-2.

[63] CR and PR at Table III-1.

[64] CR and PR at Table III-1.

[65] CR and PR at Table III-5. However, the ratio of its subject imports to domestic shipments decreased to *** percent in interim 2001.

[66] CR and PR at Table III-5.

first three years of the period of investigation, indicating that *** did not benefit substantially from its importation of subject merchandise.[67] Given the foregoing, we find that appropriate circumstances do not exist to exclude *** from the industry.

*** *** was the *** largest responding producer of PDCVs in 2000, accounting for *** percent of reported domestic shipments in 2000.[68] *** supports the petition. [69] *** imported a relatively small volume of subject merchandise during the period, with its total imports never exceeding more than *** percent of its total domestic shipments during the period of investigation,[70] indicating that the company's primary interests lie in domestic production rather than importation. Finally, *** operating income ratio was *** than the industry average during the three full years of the period of investigation, indicating that it has not benefitted from its importation significantly.[71] Given the foregoing, we find that appropriate circumstances do not exist to exclude *** from the industry.

*** *** was the *** largest responding producer of PDCVs in 2000, accounting for *** percent of reported domestic shipments.[72] ***.[73] *** imported a relatively small volume of subject merchandise during the period, with its total imports never exceeding more than *** percent of its total domestic shipments during the period of investigation.[74] Accordingly, we find that ***'s interests lie primarily in domestic production and not in importation. Finally, *** operating income ratio was *** than the industry average during the three full years of the period of investigation, indicating that it has not benefitted from its importation significantly.[75] Given the foregoing, we find that appropriate circumstances do not exist to exclude *** from the industry.

*** *** was the *** largest responding domestic producer of PDCVs in 2000, accounting for *** percent of reported domestic shipments.[76] ***.[77] It is related to ***, a *** of PDCVs.[78] *** imported and purchased a relatively small amount of subject merchandise during the period, with its total imports never exceeding more than *** percent of its total domestic shipments during the period of investigation.[79] Accordingly, we find that *** interests lie primarily in domestic production and not in importation. Finally, although *** operating income ratio was *** than the industry average throughout the period of investigation, [80] the relatively low level of its imports compared to domestic production does not suggest that its financial performance was significantly enhanced by imports. Given the foregoing, we find that appropriate circumstances do not exist to exclude *** from the industry.

IV. NO REASONABLE INDICATION OF MATERIAL INJURY

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[67] CR and PR at Table VI-2.

[68] CR and PR at Table III-1.

[69] CR and PR at Table III-1.

[70] CR and PR at Table III-5.

[71] CR and PR at Table VI-2.

[72] CR and PR at Table III-1.

[73] CR and PR at Table III-1.

[74] CR and PR at Table III-5.

[75] CR and PR at Table VI-2.

[76] CR and PR at Table III-1.

[77] CR and PR at Table III-1.

[78] CR and PR at Table III-1.

[79] CR and PR at Table III-5.

[80] CR and PR at Table VI-2.

BY REASON OF ALLEGEDLY LTFV IMPORTS

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[81] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[82] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[83] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[84] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[85]

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports of PDCVs from Japan that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition[86]

When performing our analysis in this investigation, we took into account the following conditions of competition:

First, demand for PDCVs generally increased throughout the three full years of the period of investigation but declined significantly in interim 2001, when the overall U.S. economy went into recession. In value terms,[87] apparent consumption of PDCVs grew by *** percent from 1998 to 2000, increasing from $*** million in 1998 to $*** million in 1999 and then to $*** million in 2000.[88] However, as the overall

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[81] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[82] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[83] 19 U.S.C. § 1677(7)(A).

[84] 19 U.S.C. § 1677(7)(C)(iii).

[85] 19 U.S.C. § 1677(7)(C)(iii).

[86] As an initial matter, we note that the domestic industry captively consumes some PDCVs to produce downstream products, such as valve assemblies and pneumatic systems. See, e.g., Tr. at 137 (testimony of Mr. Sandstrom); CR at III-4, PR at III-3. Accordingly, we have considered whether the captive production provision of the statute, 19 U.S.C. §1677(7)(C)(4), applies in this investigation, and find that it does not. The threshold provision of the captive production provision has not been met because internal shipments and related party transfers by the domestic industry accounted for less than *** percent of total domestic production for each year during the period of investigation, as well as interim 2001. CR at III-4, PR at 3. We find that this level of shipments does not constitute a significant amount of production for purposes of the captive production provision.

[87] When analyzing volume and market share trends in this market, we have relied primarily on aggregate value data for PDCVs, rather than aggregate quantity data. We have relied on value data for such analysis because of the wide variety of PDCV product types and sizes covered by the scope of investigation. Both petitioners and Japanese respondents agree with this use of value-based data. Tr. at 38-39 (Sandstrom); SMC Postconference Brief at p. 24, n. 46.

[88] CR and PR at Table IV-7 & C-1. In quantity terms, apparent consumption of PDCVs increased by *** percent from 1998 to 2000, as consumption grew from *** million units in 1998 to *** million units in 2000. Id.

economy declined in 2001, apparent consumption of PDCVs declined as well, falling from $*** million in interim 2000 to $*** million in interim 2001.[89]

Second, the domestic PDCV industry is relatively diffuse, with the record indicating that there are at least 30 domestic producers of PDCVs.[90] Nonetheless, three domestic producers (***, ***, and ***) were responsible for the bulk of reported domestic shipments of PDCVs in 2000, accounting for *** percent of reported U.S. shipments by domestic producers of PDCVs in 2000.[91] The domestic industry's capacity increased from 17.7 million units in 1998 to 18.0 million units in 2000.[92] Its capacity was 15.0 million units in interim 2001 as compared to 14.0 million units in interim 2000.[93] The industry's capacity utilization remained stable from 1998 to 2000, ranging between 73.1 percent and 72.0 percent, but fell to 54.9 percent in interim 2001.[94]

Third, domestic PDCVs generally are sold at a different level of trade than the subject imports. The large majority of domestically produced PDCVs are sold to distributors,[95] who often use these PDCVs to design and produce downstream pneumatic components and systems for end users.[96] The majority of subject PDCVs, on the other hand, are sold to distributors, generally after being internally consumed by the importer in the production of downstream products, such as valve assemblies and valve panels.[97] In particular, the largest importer of subject merchandise, SMC America,[98] internally consumes the majority of its imports of PDCVs, by quantity, in the production of downstream pneumatic system products.[99] Given that the bulk of domestic and subject merchandise enter the pneumatic systems markets at different levels of trade, we find that there is a limited level of direct competition between subject and domestic PDCVs in the PDCV market.

Fourth, there is a moderate to limited degree of substitutability between the domestic and subject merchandise.[100] There are as many as 100,000 individual types of PDCVs in the market.[101] Moreover, the domestic and subject producers of PDCVs manufacture the large majority of their PDCVs according to their own proprietary specifications.[102] Nonetheless, PDCVs are generally sold to the end user as part of

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[89] CR and PR at Table IV-7 & C-1. In quantity terms, apparent consumption of PDCVs declined from *** million units in interim 2000 to *** million units in 2001. Id.

[90] CR and PR at III-1; see also ***.

[91] CR and PR at Table III-; ***.

[92] CR and PR at Table C-2.

[93] CR and PR at Table C-2.

[94] CR and PR at Table C-2.

[95] CR and PR at II-1. Sales of PDCVs to distributors accounted for *** percent of domestic shipments in 2000, while sales of PDCVs to end users accounted for the remaining *** percent of domestic shipments in that year. Id.

[96] See, e.g., CR at I-6 & II-1; PR at I-4 and II-1.

[97] CR at I-6 & II-1-2, PR at I-4 & II-1.

[98] SMC America imported approximately *** percent of all subject imports of PDCVs in 2000. CR at IV-3, n. 3, PR at IV-3, n. 3.

[99] SMC reported that it consumed approximately *** percent of its imports in the production of downstream products in 2000. SMC Postconference Brief at 14; see also CR and PR at Table IV-3.

[100] CR at I-5 & II-6, PR at I-4 & II-4.

[101] CR at I-5, PR at I-4.

[102] CR at I-5, PR at I-4. Accordingly, although comparable PDCVs may share the same basic structure and characteristics, individual PDCVs may have different performance characteristics (such as the ability to draw a lower electrical current) that make them preferable to a particular customer. See, e.g., CR at II-7, PR at II-5; SMC

an overall pneumatic system[103] and there is some level of substitutability between domestic and subject PDCVs at the design stage of a pneumatic system sale. At this stage, a pneumatic system designer and the end user have the ability to choose a particular PDCV to perform a function in a pneumatic system from a variety of domestic and imported PDCVs that have similar functions and configurations.[104] However, once a particular PDCV is chosen and designed into a pneumatic system, it becomes difficult or impossible to replace the valve with that of another producer.[105]

Fifth, there is a trend in the PDCV market toward a greater degree of integrated production and sales operations by domestic and foreign suppliers of PDCVs.[106] Increasingly, PDCV producers and suppliers, such as SMC and SMC America, have been moving toward a marketing strategy for direct sales of PDCVs to end users as part of an overall pneumatic system sale.[107] This strategy, which offers end users an integrated design, service and components package, is gaining popularity in the PDCV and pneumatic systems markets.

Finally, there is a relatively substantial volume of non-subject imports in the market. Non-subject imports accounted for between *** percent and *** percent of the total value of apparent domestic consumption throughout the period of investigation.[108]

B. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[109]

During the three full years of the period of investigation, the volume of subject imports of PDCVs increased at a consistent and sustained rate as apparent consumption increased. In terms of value,[110] the absolute volume of subject imports increased by *** percent between 1998 and 2000, growing from $*** million in 1998 to $*** million in 1999 and then to $*** million in 2000.[111] The U.S. market share held by subject imports followed similar trends, increasing from *** percent in 1998 to *** percent in 1999, and then increasing further to *** percent in 2000.[112]

Postconference Brief at 18-21.

[103] CR and PR at II-1.

[104] CR at II-5, PR at II-4.

[105] CR at II-5, PR at II-3-4.

[106] See, e.g., Tr. at 71, 73 & 75 (testimony of Mr. Smith); ***.

[107] See, e.g., Tr. at 71, 73 & 75 (testimony of Mr. Smith); ***.

[108] CR and PR at Table IV-7 and C-1.

[109] 19 U.S.C. § 1677(7)(C)(i).

[110] As previously stated, we have relied primarily on value data, rather than quantity data, to assess volume and market share trends in this market because of the significant size and price variations between the large number of PDCV types and configurations.

[111] CR and PR at Table IV-4 & Table C-1. We relied primarily on the staff's calculations of market share, set forth in the staff report, to perform our assessment of market share trends in this investigation. However, in this investigation, we also have examined Commerce's Census data regarding U.S. producers' domestic shipments in assessing market shares. We note that use of the Census data results in the same general volume and market share trends as those calculated by the staff in the staff report. See, e.g., CR at IV-9, n. 4, PR at IV-3, n. 4; see also Petition at Ex. 10.

[112] CR and PR at Table IV-7 & Table C-1.

In interim 2001, however, the volume of the subject imports fell substantially, declining from $*** million in interim 2000 to $*** million in interim 2001.[113] At the same time, along with a sharp drop in apparent consumption, the market share of subject imports fell from *** percent in interim 2000 to *** percent in interim 2001.[114]

We find that the volume of subject imports, and the increase in that volume, both in absolute terms and relative to domestic consumption, is significant. However, these significant volumes must be viewed in the context of the attenuated competition between the subject imports and domestic merchandise. First, although the volume and market share of the subject imports increased during the three full years of the period of investigation, the majority of this increase consisted of merchandise that was internally consumed by SMC America in the production of downstream products.[115] These downstream products do not compete directly with the PDCVs produced by the domestic industry, which are sold mainly to distributors for incorporation into downstream products that are sold to end users as part of a pneumatic system sale.[116] In this regard, we note that, although the industry's share of the overall PDCV market declined by nearly *** percentage points between 1998 and 2000,[117] the industry's market share in the commercial market for PDCVs (which reflects actual commercial shipments of PDCVs) remained essentially stable between 1998 and 2000, ranging between *** percent in 1998 and *** percent in 2000.[118] Likewise, the commercial market share of subject imports, measured by value, grew substantially less than in the overall market, increasing from *** percent in 1998 to *** percent in 2000, and then declining to *** percent in interim 2001.[119]

Second, the domestic industry accounted for a substantial and growing volume of subject imports during the period of investigation. In 2000, the record indicates that three domestic producers imported approximately *** percent of all subject imports of PDCVs[120] and did so primarily to supply to their customers types of PDCVs they do not manufacture.[121] Given that SMC America accounted for *** of the remaining imports in 2000[122] and internally consumed the majority of those imports in the production of downstream products that were sold at a different level of trade than the domestic like product, it cannot be said that the increases in subject import volumes are having an adverse impact on the domestic industry.

C. Price Effects of the Subject Imports

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

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[113] CR and PR at Table IV-4 & Table C-1.

[114] CR and PR at Table IV-7 & Table C-1

[115] The record indicates that, of the $*** million increase in U.S. shipments of subject imports from Japan between 1998 and 2000, approximately $*** million or *** percent, was internally consumed by importers. CR and PR at Table IV-3.

[116] CR at I-6 & II-1, PR at I-4 & II-1.

[117] CR and PR at Table IV-7 & C-1 (as adjusted to exclude SMC America data).

[118] CR and PR at Table IV-9 (as adjusted to exclude SMC America data).

[119] CR and PR at Table IV-9. The increases in subject import volumes in the commercial market have occurred primarily at the expense of the non-subject imports. Id.

[120] CR at IV-3, n. 3 and Table IV-2, PR at IV-2, n. 3, & Table IV-2.

[121] See CR at VII-3, PR at VII-1-2; Importers' Questionnaire Responses of ***, *** and *** at p.4.

[122] SMC America accounted for *** percent of all imports in 2000. CR at IV-3, n. 3, PR at IV-2, n.3.

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[123]

We find that the record evidence indicates that, despite the existence of underselling, the subject imports have not had a significant adverse impact on domestic prices. As an initial matter, we note that there is a moderate to limited degree of competition between the subject imports and the domestic merchandise that occurs mainly at the design stage of a pneumatic system sale. As discussed previously, the domestic and subject suppliers of PDCVs produce the large majority of their PDCVs to their proprietary specifications and designs.[124] As a result, even when a domestic and subject PDCV have the same basic characteristics (sharing, for example, the same basic internal channel configuration, valve element, method of valve movement, and port configuration), the two products may have significant design differences that will lead a customer to prefer one PDCV over another.[125] We find that the significant differences in design and performance of the subject and domestic merchandise lessen the substitutability of these products and limit the ability of the subject imports to have an adverse impact on domestic prices.[126]

During this investigation, we obtained price comparison data for six PDCV products that were recommended by counsel for petitioners.[127] The price comparison data for these six products indicate that there has been a mixed pattern of underselling by imports, with subject imports underselling the domestic merchandise in 75 of 133 possible price comparison, or 56.4 percent of comparisons.[128] We find that this pattern of underselling by subject imports during the period of investigation is, on balance, significant.

However, we find that there is no indication the subject imports have suppressed or depressed domestic prices to a significant degree. The record shows that prices for the domestic product have not generally exhibited a downward trend during the period of investigation.[129] Although domestic prices

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[123] 19 U.S.C. § 1677(7)(C)(ii).

[124] CR at I-5, PR at I-4.

[125] See, e.g., Tr. at 73-77 (testimony of Mr. Smith); SMC Postconference Brief at 18-21. For example, the record indicates that SMC manufactures categories of PDCVs that draw significantly less energy or are significantly smaller than comparable domestically produced PDCVs. Tr. at 74-75 (testimony of Mr. Smith).

[126] CR at II-5, PR at II-4. The limited level of substitutability between similar products in this market can be seen by examining the prices reported by individual domestic producers in response to our questionnaires. Those data indicate that, for a number of these products, there is a wide differential between the unit prices reported for a narrow category of products by individual domestic producers. For example, for distributor sales of comparison product number 4, three domestic producers (***) reported pricing data. *** reported quarterly average unit values for this product ranging between $***. *** reported quarterly AUVs ranging between $***, and *** reported AUVs ranging between $***. See Responses of Domestic Producers to Section IV.A of the Domestic Producers' Questionnaire. Although petitioner contends that these pricing ranges indicate that the domestic producers misreported the data, we conclude that they indicate that similar products produced by domestic and subject producers have quality and other differences that significantly limit their substitutability.

[127] CR at V-3-V-4, PR at V-3.

[128] CR at V-17 & Tables V-1-V-6, PR at V-7 & Tables V-1-V-6. For sales to distributors, the pricing data show underselling in 47 of 71 comparisons. For sales to end users, the pricing data show underselling in 28 of 62 comparisons. Id.

[129] The pricing data for the comparison products shows that domestic prices were generally stable or increasing from the first quarter of 1998 through the last quarter of 2000. CR and PR at Tables V-1-V-6 & Figures V-2-V-7.

fluctuated during the period, the pricing data do not show that those domestic prices fell in response to subject import price movements or that domestic price increases were prevented by lower subject import prices.[130]

Our finding of a lack of significant adverse price effects by reason of the subject imports is consistent with the conditions of competition in which the industry operates. As we discussed above in conditions of competition, the majority of the subject merchandise imported by SMC America is used in the production of downstream pneumatic sub-assemblies that are then sold by SMC America to end users of pneumatic systems.[131] Domestic producers of PDCVs, on the other hand, sell the bulk of their PDCVs to distributors who package these PDCVs into downstream products.[132] In other words, the record indicates that most of the subject imports are not sold in direct, head-to-head price competition with the domestic like product. Indeed, the record indicates that many of the lost sales alleged by petitioners consist of sales that were lost by distributors, not the domestic producers, at the downstream product level.[133]

In sum, we find that, while the record indicates that subject imports have undersold the domestic merchandise during the period of investigation, subject imports have not depressed or suppressed domestic prices to a significant degree. Accordingly, we find that the subject imports have not had significant adverse effects on domestic prices during the period of investigation.

Moreover, although we are mindful of the product mix issues presented by the use of average unit values, we note that the domestic industry's reported aggregate average unit values remained essentially stable through the first three years of the period, despite the substantial increases in import volumes during that period. The average unit values of the industry's U.S. shipments declined slightly between 1998 and 1999, dropping from $26.89 to $26.16, but then increased to $26.95 in 2000. CR and PR at C-2. Although domestic AUVs declined to $24.28 in interim 2001 and there were declines in the pricing of certain comparison products in 2001, these declines occurred during the substantial drop in demand that occurred as a result of the overall recession in the U.S. economy and at the same time as a decline in subject import volume and market share.

[130] CR and PR at Tables V-1-V-6 & Figures V-2-V-7. For example, the record evidence shows that, for sales of product 2 to distributors, subject PDCV imports consistently undersold the domestic merchandise throughout the period at margins ranging from *** percent to *** percent. CR and PR at Table V-2 and Figure V-3. Nonetheless, the reported prices for the domestic product generally remained stable throughout the period of investigation. Id. Similarly, for sales of product number 6 to distributors, prices of the domestically produced merchandise generally rose during the period, despite the fact that the subject imports again consistently undersold the domestic merchandise at substantial margins throughout the period of investigation. CR and PR at Table V-6 and Figure V-7.

[131] CR and PR at II-1.

[132] CR and PR at II-1.

[133] CR and PR at II-1.

D. Impact of the Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[134] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[135] [136]

We find that the subject imports of PDCVs have not had a significant impact on the condition of the domestic PDCV industry. Although the volume and market share of the subject imports increased substantially during the first three years of the period of investigation, the record does not indicate that these increases had any significant impact on the condition of the industry during this period. This lack of impact is consistent with the fact that a substantial volume of imports is captively consumed by SMC America and does not directly compete with domestically produced PDCVs.

Despite the increases in subject import volumes during the period from 1998 to 2000, the domestic industry's production levels actually grew slightly, from 12.92 million units in 1998 to 12.96 million units in 2000.[137] Similarly, the industry's domestic shipments increased slightly, growing from $307.1 million and 11.4 million units in 1998 to $311.1 million and 11.5 million units in 2000, while its net sales revenues increased from $339.5 million in 1998 to $343.5 million in 2000.[138] Moreover, despite a slight increase in capacity during this period, the industry's capacity utilization rates remained essentially stable, at 73.1 percent in 1998, 72.4 percent in 1999, and 72 percent in 2000.[139] The industry's inventory levels improved during this period, declining in absolute terms from 2.0 million units in 1998 to 1.8 million units in 2000 and as a percentage of shipments, falling from 15.7 percent in 1998 to 14.0 percent in 2000. [140]

The domestic industry's financial performance was robust as well. The industry's operating income ratio ranged between 15.9 percent and 12.6 percent from 1998 to 2000.[141] In sum, despite a substantial increase in subject import volumes and market share, the record indicates that the increase in subject import volumes had little adverse impact on the financial condition or production operations of the domestic industry.[142]

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[134] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

[135] 19 U.S.C. § 1677(7)(C)(iii).

[136] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce announced estimated dumping margins for the subject merchandise from Japan ranging from 9.28 to 107.46 percent. 67 Fed. Reg. at 6487 (Feb. 12, 2001).

[137] CR and PR at Table C-2.

[138] CR and PR at Table C-2.

[139] CR and PR at Table C-2.

[140] CR and PR at Table C-2.

[141] CR and PR at Table C-2.

[142] We recognize that several industry employment indicators, including the number of production-related workers employed, hours worked and wages paid, fell during the period of investigation. CR and PR at Table C-2. However, the industry's hourly wages and productivity levels both increased. Id. Moreover, any declines in the

We recognize that the industry lost nearly *** percentage points of market share from 1998 until 2000.[143] However, as discussed above in our analysis of the volume of subject imports, virtually all of this apparent market share loss was due to a large increase in the volume of subject imports that were internally consumed in the production of downstream products. From 1998 to 2000, the market share of the domestic industry in the commercial market remained essentially stable, ranging between *** percent in 1998 and *** percent in 2000. [144]

Although the industry experienced some declines in its production and sales levels and its overall financial condition in interim 2001, we attribute these declines to the overall downturn in the U.S. economy and the concurrent significant decline in demand for PDCVs. Moreover, these production and sales declines occurred when the volume and market share of the subject imports declined significantly, with the volume of the subject imports declining by *** percent and the market share of subject imports declining by *** percentage points between interim 2000 and interim 2001.[145] Indeed, at the staff conference, witnesses for the industry testified that interim 2001 was an aberrational year for the industry that should not be taken as an indication of its current competitive condition.[146]

As discussed above, we do not find that the subject imports had any adverse effects on domestic prices during the period of investigation. U.S. prices fluctuated over the period but there is no evidence that domestic prices were depressed or suppressed.[147]

In light of the limited direct competition between subject imports and the domestic like product, our finding that subject imports have not suppressed or depressed domestic prices to a significant degree, the robust condition of the domestic industry between 1998 and 2000, and the lack of correlation between import trends and any declines in the condition of the industry in interim 2001, we find no reasonable indication that subject imports are having a material adverse impact on the domestic industry. Accordingly, we find that there is no reasonable indication that the domestic industry is materially injured by reason of the allegedly LTFV imports of PDCVs from Japan.

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industry's employment indicators do not outweigh the stability or improvements in other indicators of the industry's condition.

[143] CR and PR at Tables IV-7 & C-1 (as adjusted to exclude SMC America data). As noted above, we relied primarily on the staff's market share calculations when assessing market shares. However, we also considered the Department of Commerce's Census data regarding U.S. producers' domestic shipments. These data show that the industry lost a smaller share of the market (*** percentage points) from 1998 to 2000 than does the staff's market share calculations. CR at IV-9, n. 4, PR at IV-3, n. 4.

[144] CR and PR at Tables IV-9 & C-1-2 (as adjusted to exclude SMC America data). The increases in subject import volumes in the commercial market have occurred primarily at the expense of the non-subject imports. Id.

[145] CR and PR at Table C-1.

[146] Tr. at 65 (testimony of Mr. Dodds & Mr. Buda).

[147] The fact that the industry's cost of goods sold and SG&A expenses increased from 1998 to 2000 more than its net sales revenues explains the minor drop in the industry's profitability from 1998 to 2000, but there is no evidence that subject imports had any effect on the price levels of the industry or contributed to this small decline in profitability.

V. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV SUBJECT IMPORTS FROM JAPAN

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[148] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."[149] In making our determination, we have considered all factors that are relevant to this investigation.[150] Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of PDCVs from Japan that are allegedly sold in the United States at less than fair value.

As an initial matter, we find that the domestic industry is not vulnerable to a threat of material injury by reason of the subject imports from Japan. As discussed above, the industry's profitability remained robust during the period of investigation, with the industry enjoying operating income ratios of more than 12.5 percent during each of the three full years of the period of investigation.[151] In addition, the domestic industry's production, shipment and sales levels all remained essentially stable during the period from 1998 to 2000,[152] despite an increase in subject import volume and market share. Although the industry's production, shipment, and sales levels declined in interim 2001, these declines were directly related to demand declines that occurred in interim 2001. We note, moreover, that these declines did not limit the industry's ability to operate at a robust level of profit in interim 2001,[153] and that the industry itself characterizes 2001 as an aberrational year.[154]

We find that the rate of increase in the volume and market share of the subject imports does not indicate a likelihood of substantially increased imports. Although the volume and market share of PDCVs from Japan to the United States increased substantially from 1998 to 2000,[155] the increased import volumes had little direct impact on the domestic industry, and there is no evidence that conditions of competition would change in such a way that any increases in the imminent future would have an adverse impact on the domestic industry. Moreover, the volume and market share of the subject imports declined in interim 2001.[156] Accordingly, the most recent trends in subject import volumes do not indicate that it is likely that there will be substantially increased imports of subject merchandise in the imminent future.

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[148] 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

[149] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

[150] 19 U.S.C. § 1677(7)(F)(i). Factors I (regarding countervailable subsidies) and VII (regarding raw and processed agricultural products) are inapplicable to this antidumping investigation.

[151] CR and PR at Table C-2. The industry's operating income levels were between 12.6 percent and 15.9 percent between 1998 and 2000, and remained at a robust 9.1 percent in interim 2001. Id.

[152] CR and PR at Table C-2.

[153] CR and PR at Table C-2.

[154] Tr. at 65 (testimony of Mr. Dodds & Mr. Buda).

[155] CR and PR at Tables IV-4 & C-1.

[156] CR and PR at Table IV-2.

We also find that there is no indication that unused production capacity or any imminent increases in production capacity in Japan will lead to substantially increased imports in the imminent future. While the record indicates that the subject producers of PDCVs increased their capacity by *** percent between 1998 and 2000 and are projected to increase their capacity further in 2002 and 2003,[157] we do not find that these capacity increases will result in substantially increased imports to the U.S. market. First, the subject producers operated at increasingly high capacity utilization levels during the period of investigation, with their capacity utilization levels growing from *** percent in 1998 to *** percent in 1999 and then to *** percent in 2000.[158] Second, Japanese home market and third-country market shipments rose each year during the period of investigation and have consistently accounted for the bulk of Japanese producers' shipments,[159] indicating that the majority of the capacity increases in Japan will likely be directed to the subject producers' home and third country markets. Finally, although the Japanese industry's capacity utilization rates fell in interim 2001 as compared with interim 2000,[160] subject imports fell substantially as well in interim 2001, indicating that there is a lack of correlation between capacity utilization declines and increased subject imports. Accordingly, we find that it is unlikely that any imminent increases in subject producer capacity will cause a substantial increase in the volume of imports directed to the United States in the imminent future.[161]

Further, the ratios of Japanese producers' home inventories to production and shipments both declined during the period of investigation.[162] The ratio of importers' inventories to imports and U.S. shipments also declined during the period of investigation.[163] Although these ratios increased in interim 2001 as compared to interim 2000, the increases coincided with a decline in exports to the United States during the same period.[164] Accordingly, we find that inventory levels do not indicate a likelihood of increased imports in the imminent future.[165]

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[157] Aggregate production capacity in Japan increased from *** million units in 1998 to *** million units in 2000. CR and PR at Table VII-1. ***. CR at VII-3, PR at VII-1.

[158] CR and PR at Table VII-1. Capacity utilization declined in the interim period but still reflected an increase from 1998 levels (*** percent). CR and PR at Table VII-1.

[159] CR and PR at Table VII-1.

[160] CR and PR at Table VII-1. We also note that, although the increased capacity levels of the subject producers of PDCVs arguably led to an increase in subject imports during the period from 1998 to 2000, those increases did not have a significant adverse impact on the production and shipment levels or financial operations of the domestic industry.

[161] Moreover, there are no pending antidumping or countervailing duty orders or investigations elsewhere in the world that might encourage shifts in traditional market patterns. CR at VII-6, PR at VII-3.

[162] CR and PR at Table VII-1 (from *** percent in 1998 to *** percent in 2000 and from *** percent in 1998 to *** percent in 2000, respectively).

[163] CR and PR at Table VII-2 (from *** percent in 1998 to *** percent in 2000 and from *** percent in 1998 to *** percent, respectively).

[164] For Japanese producers, the ratios of inventories to production and inventories to total shipments increased in the interim period to *** percent and *** percent, respectively. For U.S. importers, the ratios of inventories to imports and inventories to U.S. shipments of imports increased to *** and *** percent, respectively. See CR and PR at Tables VII-1 and VII-2. The inventory-to-production and inventory-to-shipment ratios reported by Japanese producers are in the same general range as those reported by the domestic producers. See CR and PR at Tables III-7 and VII-2.

[165] We also find no reasonable indication of likely product shifting in Japan. The record contains no evidence that equipment in Japan used in the production of other products is likely to be directed to the production of subject imports. Indeed, only *** of pneumatic directional control valves in Japan reported producing any other products

We also find it unlikely that subject imports will enter the U.S. market at prices likely to suppress or depress domestic prices to any significant degree. As discussed above, the record evidence indicates that subject import prices have had no significant adverse effects on domestic prices. We see nothing in the record that indicates that conditions of competition in the industry will change so significantly in the imminent future that domestic prices will likely be adversely affected to a significant degree by subject import prices.

We also find that subject imports are not likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts. Although the industry's capital expenditures declined by 22.9 percent between 1998 and 2000, they have remained at strong levels throughout the period of investigation.[166] Moreover, capital expenditures actually increased by 27.3 percent between 1999 and 2000, when the volume and market share of subject imports increased to their highest levels of the period.[167] Although the domestic producers' research and development expenses declined somewhat between interim periods, the industry's research and development expenses increased by *** percent overall between 1998 and 2000, even though the volume and market share of subject imports were increasing.[168]

Finally, there is no evidence of any other demonstrable adverse trends that indicate a probability that the subject imports will materially injure the domestic industry.[169] On the contrary, trends in the industry's financial performance have been positive, and support our finding that the industry is not threatened with material injury by reason of the subject imports. Accordingly, we find no reasonable indication that the domestic industry producing PDCVs is threatened with material injury by reason of subject imports from Japan.

CONCLUSION

For the reasons stated above, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of pneumatic directional control valves from Japan that are allegedly sold in the United States at less than fair value.

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on the same equipment and machinery used to produce pneumatic directional control valves. CR at II-4, PR at II-3. While a Japanese producer might be able to shift its production from pneumatic directional control valves to downstream products that incorporate pneumatic directional control valves, the record contains no evidence that any such shift is imminent.

[166] CR and PR at Table C-2.

[167] CR and PR at Tables C-2, Tables IV-4 & IV-7.

[168] CR and PR at Table VI-3 (adjusted to exclude data for SMC America).

[169] 19 U.S.C. § 1677(7)(F)(I)(IX).

DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG

Based upon the limited record in the preliminary phase of this investigation, I find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of pneumatic directional control valves ("valves") from Japan, that are allegedly sold in the United States at less than fair value ("LTFV").

I. The Legal Standard for Preliminary Determinations

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

In this context, based upon the limited record at this stage of the proceedings and the fundamental issues raised and unanswered by the preliminary record, I am unable to affirmatively state that in the context of a threat of material injury analysis there is no likelihood that contrary evidence will arise in any final phase investigation that would support an affirmative determination. Accordingly, I render an affirmative preliminary threat determination.

Importantly, I find that there are considerable record deficiencies regarding several critical outcome determinative issues which, in my view, cannot be resolved at this stage of the proceedings, and require that this investigation be continued to the final phase.[3] A fundamental issue I find to be critical to the injury analysis in this investigation, concerns the different marketing strategies of domestic and subject producers that frame competition in the U.S. market. Specifically, domestic producers and nonsubject producers market and sell individual valves, but Japanese producers market and sell valves incorporated into assembly systems.[4] In order to appropriately understand the market competition and evaluate the significance of these different marketing strategies, the investigation record needs more complete and credible information from the industry and market participants.[5]

Furthermore, this lack of certitude concerning the market competition and the deficiencies of marketing strategy information also point to additional important data problems that warrant continuing this investigation. For instance, although both parties seemingly agree that the Commission should find one

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[1] 19 U.S.C.§ 1671b(a) and 1673(a); see also American Lamb Co. v. United States, 758 F.2d 994, 1001-1004 (Fed. Cir. 1986); Maverick Tube Corp. v. United States, 687 F. Supp. 1659, 1673 (Ct. Int'l Trade 1988); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

[2] American Lamb, 785 F.2d at 1001.

[3] I am unaware of record evidence or information which suggests that Petitioners did not comply with Commission rules regarding their petition and its contents, as well as follow-up Staff requests for information.

[4] Confidential Report ("CR") at I-6; Public Report ("PR") at I-4 and CR at II-7-8; PR at II-5.

[5] I note that Petitioners' Annex I, which discussed market information confirmed by ***, raised several unanswered questions about competition in the U.S. market and the operation of different marketing strategies, and thus, further underscores the need to seek additional information to appropriately understand and evaluate this fundamental issue. Petitioners' Post-conference Brief, at 18-19 & Annex I; ***.

like product,[6] based on the limited record at this phase, there is uncertainty regarding the range of products covered by the scope; that is, whether the scope covers only individual pneumatic directional control valves and not those imported pneumatic directional control valves that are incorporated in multiple valve assembly systems and other valve panel accessories.[7] In turn, the practical effect of this coverage issue raises further questions regarding the definition of the domestic like product, how imports compete with domestic like product in the U.S. market place, as well as the accuracy and completeness of volume and pricing data for subject imports, all fundamental issues for any Commission determination.

In particular, I note that both domestic production data and import data have coverage inadequacies. It is unknown whether our investigation has captured all valves incorporated into assemblies; for subject imports, this could be a sizable number given that the majority of subject imports are imported into the U.S. market as pneumatic valve assembly systems.[8] Second, I note coverage questions exist regarding pricing data. Specifically, there are price data for only about *** percent coverage of substantially all subject import volume.[9] Thus, there is only a qualified and limited basis for direct price comparisons. A final phase investigation would provide the needed opportunity to address these issues, in part through the collection of purchasers' perceptions, more detailed volume and pricing requests in questionnaires, and parties' comments on these issues.

In light of Commission precedent and judicial standards, the quality and depth of the record data do not support a negative preliminary determination. Accordingly, I am satisfied that the importance of each of these unresolved issues and the apparent limited factual record at this stage of the proceedings, underscore the need for the Commission to hear directly from industry participants, and therefore develop a more reliable and informative factual record in a final proceeding.

II Domestic Like Product and Industry

A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[10] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[11] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[12]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in

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[6] Petitioners' Postconference Brief at 5-9; SMC Postconference Brief at 4-5; Transcript of Staff Conference ("Tr") at 116.

[7] Petitioners' Postconference Brief at 3 & 7-8; Tr. at 15-17 (Mr. Shellenbarger) & 61-62 (Mr. Rees & Mr. Shellenbarger), 137-138 (Mr. Sandstrom).

[8] CR at I-6; PR at I-4; CR/PR at IV-1 n.2.

[9] CR at V-4; PR at V-3.

[10] 19 U.S.C. § 1677(4)(A).

[11] 19 U.S.C. § 1677(4)(A).

[12] 19 U.S.C. § 1677(10).

characteristics and uses" on a case-by-case basis.[13] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[14] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[15] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[16]

B. Product Description

Commerce's notice of initiation defines the imported merchandise within the scope of this investigation to include:

> all pneumatic directional control valves, whether assembled or unassembled, regardless of size, configuration, intended or actual use, method of actuation, and material(s) employed in construction, other than aerospace-type fluid power valves.... The subject merchandise thus includes, but is not necessarily limited to, manual, mechanical, air-operated, and solenoid type pneumatic directional control valves.[17]

C. Domestic Like Product

The scope of this investigation defines the subject imports as pneumatic directional control valves, and both parties seemingly agree that the Commission should find one domestic like product.[18] However, this investigation presents an important unanswered question regarding the range of products covered by the scope, which the Commission is obliged to investigate thoroughly, i.e., whether the scope covers only individual pneumatic directional control valves and not those in multiple valves assemblies and other panel accessories. Respondents contend that the scope of the investigation does not cover pneumatic directional

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

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

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

[16] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[17] Notice of Initiation of Antidumping Duty Investigation: Pneumatic Directional Control Valves, 67 Fed. Reg 6485, 6486 (Feb. 12, 2002).

[18] Petitioners' Postconference Brief at 5-9; SMC Postconference Brief at 4-5; Tr. at 116.

control valves incorporated into valve assemblies and valve panels, which is how the vast majority of subject imports enter the U.S. market.[19] However, petitioners contend that individual pneumatic directional control valves even in complex valve assemblies are within the scope.[20] Similar to respondents' understanding of the scope, the import and domestic volume data obtained in this investigation are evidently limited to individual valves only and do not include valves contained or incorporated within multiple valve assemblies or panel accessories.[21] Thus, in light of questions regarding like product, the value of these data is similarly debatable.

For purposes of my preliminary determination, I note that the limited record indicates that all domestic pneumatic directional control valves are produced using common manufacturing processes and facilities, are sold in similar channels of distribution, and share similar general physical characteristics and end uses.[22] Accordingly, coextensive with the definition of the scope of this investigation, I find that the domestic like product consists of all pneumatic directional control valves, to include all individual pneumatic valves, whether assembled or unassembled.

D. Domestic Industry and Related Parties

In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[23] Based on my definition of the domestic like product, I define the domestic industry to include all domestic producers of pneumatic directional control valves as defined in Commerce's scope.

Next, the Commission must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[24] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[25]

The record indicates that five U.S. producers[26] imported subject merchandise from Japan and are therefore related parties, while *** of these five producers[27] are affiliated with Japanese producers of subject imports. All parties agree, and the record confirms, that SMC of America, which is a wholly-owned Japanese subsidiary of SMC (the primary foreign producer in this investigation), should be excluded from the domestic industry given its small domestic production and its large volume of imported subject

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[19] See, e.g.,Tr. at 119 (Mr. Porter).

[20] Petitioners' Postconference Brief at 7-8.

[21] CR/PR at Tables III-3-4, n.2 at IV-1 & Table D-1. In particular, I note the unreconciled differences between Commission data compiled from data submitted in response to Commission questionnaires and official trade data.

[22] I also note that there is a large variety of product types and classes with significant pricing and substitutability distinctions, as discussed further in the following Conditions of Competition section.

[23] United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir.1996).

[24] 19 U.S.C. § 1677(4)(A).

[25] Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987).

[26] ***.

[27] ***.

merchandise (***).[28] Respondents contend *** should also be excluded due to the sizable amount of subject merchandise imported relative to its U.S. shipments.[29] However, the record indicates that *** do not gain a financial advantage by importing subject merchandise from Japan, and each domestic producer imported or purchased only a relatively small amount of subject imports during the period of investigation.[30] Accordingly, I find that appropriate circumstances exist to exclude SMC of America from the domestic industry, but that appropriate circumstances do not exist to exclude ***.

III. Reasonable Indication of Threat of Material Injury by Reason of LTFV Imports from Japan

A. Conditions of Competition

There are four noteworthy conditions of competition in this investigation. First, as discussed above, domestic products and imported products are apparently marketed differently. Domestic producers and nonsubject producers primarily market and sell individual pneumatic directional control valves, while Japanese producers market and sell valves incorporated into assembly systems. Again, the Commission's understanding of this element of competition in this market is critical to this preliminary determination. In addition to providing an unique condition for competition in the U.S. market, this distinction affects the like product issue, as well as the completeness and reliability of the injury analysis due to deficiencies regarding the import volume data and the price data.[31]

Second, U.S. producers reported internal shipments and transfers to related firms that accounted for less than *** percent of U.S. shipments in all reporting periods, which I do not find to be a significant level according to the captive production provision.[32] However, I note the internal shipments and transfers to related firms as a condition of competition, especially considering that *** SMC's U.S. shipments are internal shipments.[33]

Third, the U.S. market has a large product variation, up to 100,000 types of products, with limited substitutability.[34] The vast product variation is especially notable given the specialization and unique engineering required for particular valve assembly systems.[35] Fourth, nonsubject imports represented a larger share of the U.S. market in 1998 and 1999 than did subject imports, but accounted for a lower market share than subject imports in 2000 and interim 2001.[36]

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[28] Petitioners' Postconference Brief at 9-10; SMC Postconference Brief at 4; CR/PR at Tables III-1, III-5 & VI-2.

[29] SMC Postconference Brief at 4.

[30] CR/PR at Tables III-1, III-5 & VI-2.

[31] Given the apparent importance of nonsubject imports in this market, information regarding marketing of these imports is similarly essential in reaching conclusions regarding conditions of competition and the impact of subject imports.

[32] CR/PR at III-4; 19 U.S.C. § 1677(7)(C)(iv).

[33] SAA at 853; PR/CR at Table VII-1.

[34] CR/PR at I-5.

[35] CR/PR at I-5.

[36] PR/CR at Table C-1.

B. Threat of Material Injury Analysis

Based on the best available information and the important deficiencies that are replete in the record of this investigation, I determine that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports from Japan.

The record indicates that subject imports increased both volume and U.S. market share over the period of investigation. In particular, when apparent U.S. consumption increased *** percent between 1998 and 2000, from *** units in 1998, to *** units in 1999, and to *** units in 2000, the volume of subject imports grew exponentially faster from 1998 to 2000, by *** percent.[37] Subject imports' share of apparent U.S. consumption steadily increased from *** percent in 1998, to *** percent in 1999, and to *** percent in 2000.[38] As subject imports captured increasing U.S. market share, domestic producers' share of demand declined from *** percent in 1998, to *** in 1999, and to *** percent in 2000.[39] The volume data thus indicate that Japanese producers have the ability and the incentive, even during stronger economic cycles, to increase imports of subject merchandise into the U.S. market, and thereby imminently threaten the domestic industry with material injury.

The limited record also indicates that Japanese producers' inventories of subject merchandise increased throughout the period of investigation.[40] Importers' inventory of subject imports also increased throughout the investigation period; such current inventories represent approximately *** percent of apparent U.S. consumption and *** percent of domestic production in 2000.[41] Japanese subject producers' production is primarily export-oriented, with a substantial share of Japanese exports to other markets that are available to be shifted to the U.S. market.[42] Importantly, I note that the projected data for 2002 are not comparable to the data for 1998-2000, indicating another weakness in the record.[43]

Given the uninformative coverage of pricing data (*** percent coverage of subject imports and *** percent coverage of domestic products), it is not meaningful that available pricing data demonstrate no apparent trend during the period of investigation and price comparisons are mixed. However, based on the best available pricing data on the record, I did find that underselling is evident (25/27 comparisons) when comparing subject import price with domestic price for two comparable products at the distribution level.[44] I also find that if the trend of increasing subject imports continues, as indicated, there will be an oversupply in the U.S. market, resulting in measurable price declines in the imminent future.

The record also presents an inconclusive picture regarding domestic industry performance. In particular, the domestic industry's performance showed a mixed picture -- that is, at the same time that the U.S. market share of subject import increased, domestic producers' performance indicia were mixed; production, quantity of U.S. shipments, and net sales marginally increased. However, after the domestic industry experienced three years of persistently increasing volumes of subject import that consistently

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[37] CR/PR at Table C-1.

[38] Id.

[39] Id.

[40] CR/PR at Table VII-1.

[41] CR/PR at Tables C-1 & 2.

[42] CR/PR at Table VII-1.

[43] CR/PR at Table VII-1 n.1.

[44] I note that product 2 and product 5 represent the largest volume of price comparisons. Imported product 2 undersold the domestic like product in sales to distributors in 15 out of 15 quarters. Similarly, imported product 5 undersold the domestic like product in sales to distributors in 10 out of 12 quarters. Given that the majority of domestic sales are to distributors, I find that the distributor level of sale price data most probative of all price data.

captured U.S. market share from domestic producers, domestic producers' operating income margins declined over the entire period of investigation, from 15.8 percent in 1998 to 9.0 percent in interim 2001.[45] The industry's number of production workers and hours worked decreased over the investigation period;[46] and eventually, three out of twelve domestic producers operated with losses in interim 2001.[47] I find therefore that the deterioration of the domestic industry's performance trends during the most recent period, which coincided with an upward trend in the volume of subject imports, indicates imminent difficulties, and accordingly supports a preliminary affirmative finding of a reasonable indication of the threat of material injury by reason of subject imports.

IV. Conclusion

Based upon the foregoing analysis, I determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of pneumatic directional control valves from Japan that are allegedly sold in the United States at less than fair value.

[45] CR/PR at Table C-2 (data excluding SMC of America).

[46] CR/PR at Table C-2.

[47] CR/PR at Table VI-2.