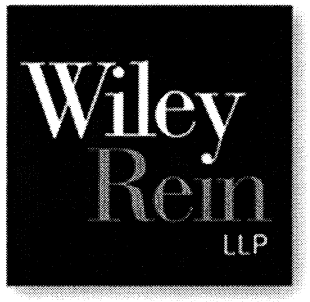

Legal Issues in IMTDCs from Canada and China for ITC Staff Conference

Dan Pickard, Wiley Rein LLP

November 18, 2015

Domestic Like Product

- The domestic like product definition should be coextensive with the scope.

- There should be one domestic like product that includes sheaves (including flywheels) and bushings.

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Semi-Finished Product Analysis

- Semi-finished products analysis consists of multiple factors:
  - (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses;
  - (2) whether there are perceived to be separate markets for the upstream and downstream articles;
  - (3) differences in the physical characteristics and functions of the upstream and downstream articles;
  - (4) differences in the costs or value of the vertically differentiated articles; and
  - (5) the significance and extent of the processes used to transform the upstream into the downstream articles

- Blanks of sheaves should be counted in the domestic like product.

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Products NOT Included in the Scope Should Be Excluded from the Domestic Like Product

- Sheaves under 4” in Diameter
- Steel Products (including sintered metal)
- Sprockets
- Gears

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Sufficiency of Domestic Production Operations

- Legal Standard: Overall nature of the firm's production-related activities in the United States, specifically–
  - (1) the source and extent of the firm's capital investment;
  - (2) the technical expertise involved in U.S. production activities;
  - (3) the value added to the product in the United States;
  - (4) employment levels;
  - (5) the quantities and types of parts sourced in the United States; and
  - (6) any other costs and activities in the United States directly leading to production of the domestic like product

  (*See, e.g.*, Diamond Sawblades and Parts Thereof from China and Korea, Inv. Nos. 731-TA-1092-1093 (Final), USITC Pub. 3862 (July 2006) at 8-11.)
- Our position is that if a product is just finished in the United States, then it is not manufactured in the United States.

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Country of Origin

- Where a product is cast determines its country of origin, even if the product is cast in the United States.
  - Example 1: If a product is cast in the United States but finished in Mexico, the country of origin is the United States.
  - Example 2: If a product is cast in China but finished in Canada, then the product is Chinese.

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Related Parties Provision

- The Act states that—
  - "If a producer of a domestic like product and an exporter or importer of the subject merchandise are related parties, or if a producer of the domestic like product is also an importer of the subject merchandise, the producer may, in appropriate circumstances, be excluded from the industry."

- Certain U.S. companies, including Baldor, Are Related to Subject Producers and Should Be Excluded from the Domestic Industry Definition Under the Related Parties Provision

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Cumulation

- Four Factors—
  - (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality-related questions;
  - (2) the presence of sales or offers to sell in the same geographic markets of imports from different countries and the domestic like product;
  - (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
  - (4) whether the imports are simultaneously present in the market.

- Imports from China and Canada should be cumulated for competing with each other and with domestic like products in the United States market.

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Conditions of Competition

- IMTDCs serve a variety of industries and end use markets
- The end use markets for IMTDCs are relatively mature
- Producer and importer questionnaires most frequently report that U.S. demand for IMTDCs fluctuated over the POI

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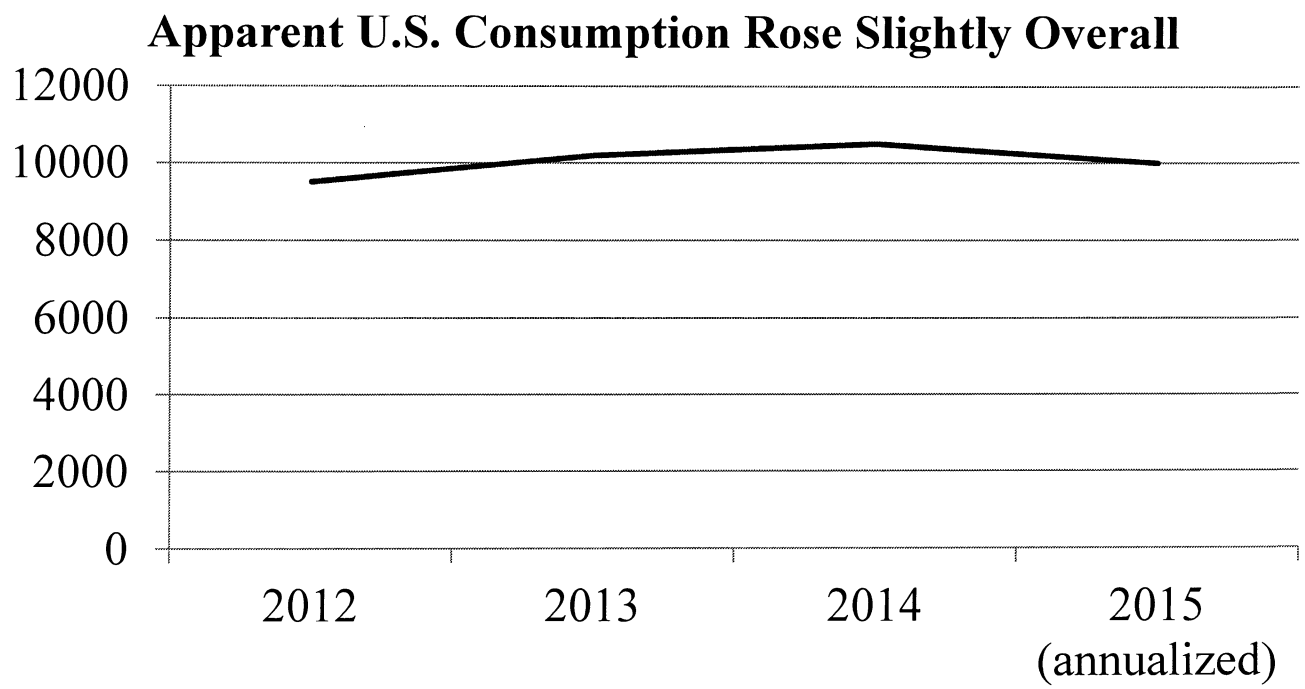
Conditions of Competition

DEMAND

Demand increased or remained flat during the period of investigation (POI).



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Conditions of Competition

SUPPLY

The domestic industry has massive excess capacity.

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Conditions of Competition

IMPORTANCE OF PRICE

Price is one of the most important factors in purchasing decisions.

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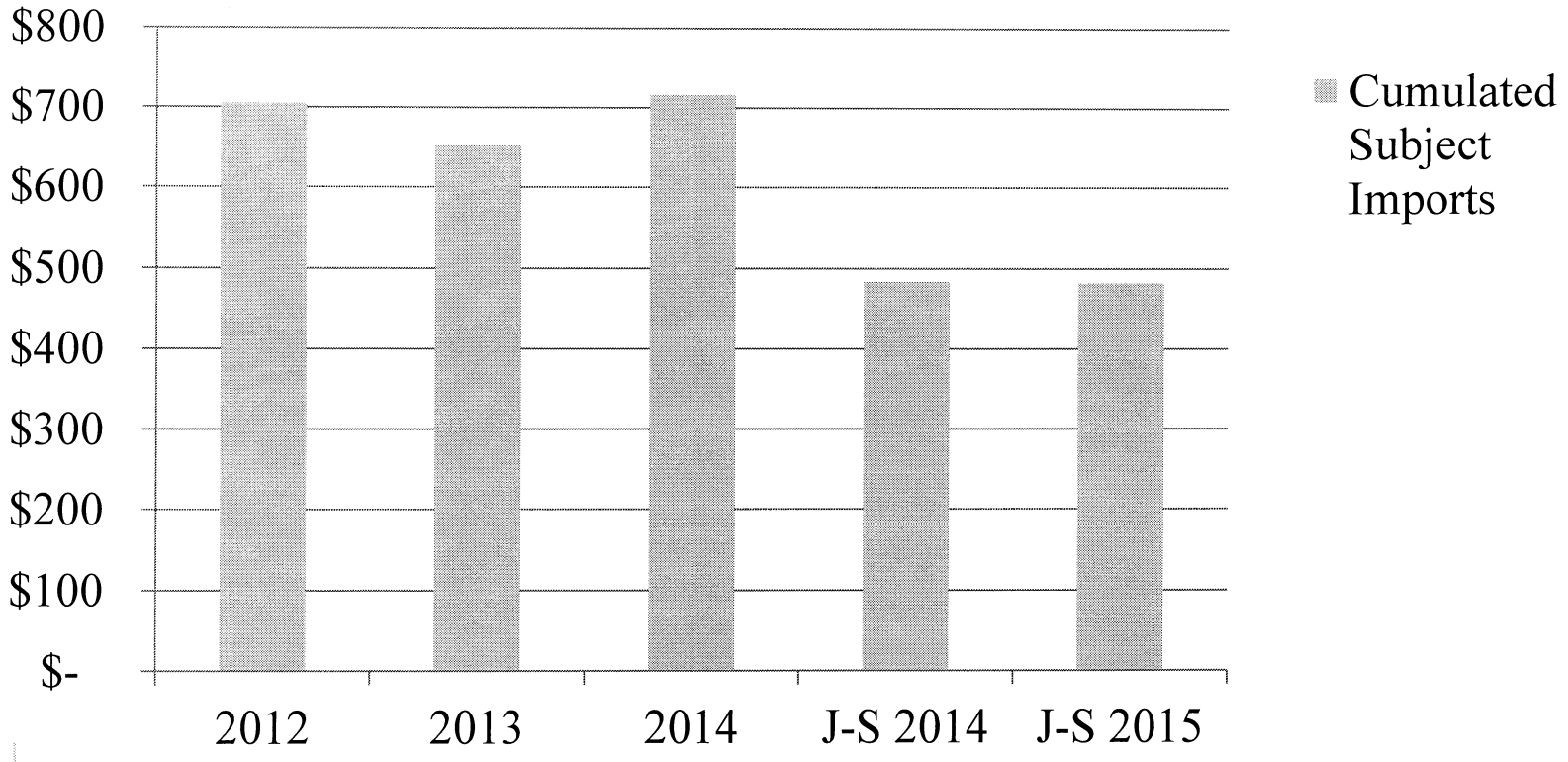
The Petition Documented the Significant Volume of Imports ($million)



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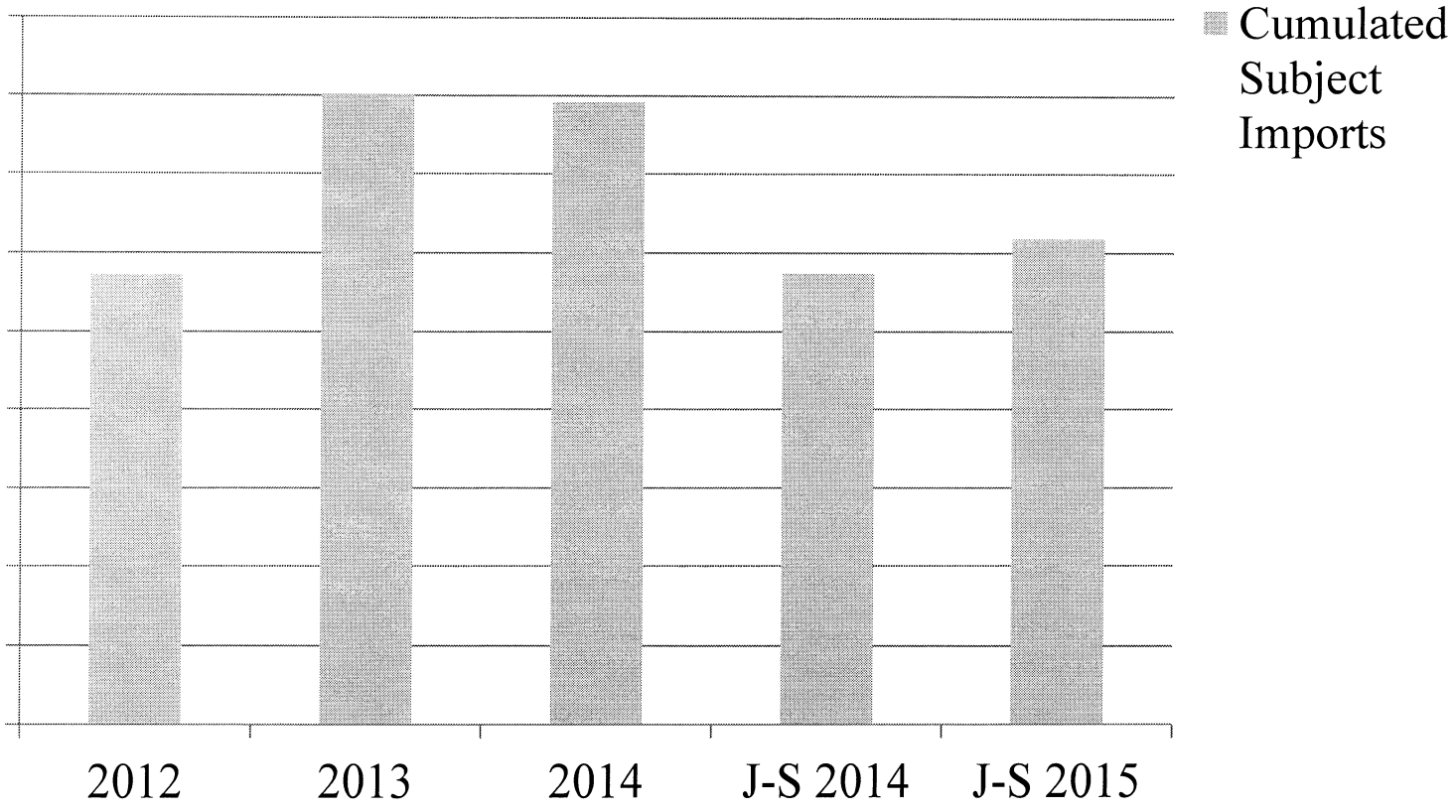
Questionnaire Data Confirm Increases in Subject Imports' Presence in the U.S. Market (Pieces)



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Price Effects

- Imports have had a negative impact on U.S. prices.
- Documented incidents of underselling.
- Documented price depression.

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Impact of Subject Imports

- Imports have had negative effects on financial health.
  - U.S. producers face a cost-price squeeze
  - Sharply lower subject import prices impede U.S. producers' efforts to cover rising costs
  - Over the period of investigation, profitability and return on investment have been eroded
  - Capital expenditures have fallen
  - Capital investments have been deferred

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Threat

- Imports from China and Korea threaten additional material injury to the Domestic Industry.
- Relevant Factors:
  - (1) Countervailable subsidies received by Chinese producers;
  - (2) Significant increase in volume of subject imports;
  - (3) Price depression and/or price suppression resulting from subject imports;
  - (4) Canada's and China's excess capacity for increased exports to the United States;
  - (5) Inventories of subject merchandise; and
  - (6) Potential for product-shifting.

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CONCLUSION