TUBELESS STEEL DISC WHEELS FROM BRAZIL

Determination on Reconsideration of the Commission in Investigation No. 731-TA-335 (Final—Court Remand), Together With the Information Obtained in the Remand Proceeding

USITC PUBLICATION 2448

NOVEMBER 1991

1977
T77

tes International Trade Commission
on, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

Anne E. Brunsdale, Acting Chairman

Seeley G. Lodwick

David B. Rohr

Don E. Newquist

Charles Ervin,
Director of Operations

Staff assigned:

Diane J. Mazur, Investigator
Robert Hahne, Economist
Wayne Herrington, Attorney

Robert Eninger, Supervisory Investigator

Address all communications to
Kenneth R. Mason, Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

CONTENTS

Page

CONTENTS

CONTENTS

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-335 (Court remand)

Tubeless Steel Disc Wheels from Brazil

Determination on reconsideration

Pursuant to the Order dated June 29, 1989, of the United States Court of International Trade (the Court) in the case of Borlem S.A. v. United States, 718 F. Supp. 41 (CIT 1989), the Commission hereby reports to the Court its unanimous determination that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by imports from Brazil of tubeless steel disc wheels that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

In 1987, the Commission made a determination in investigation No. 731-TA-335 (Final) that an industry in the United States was threatened with material injury by reason of LTFV imports from Brazil of tubeless steel disc wheels, provided for in item 692.32 of the former Tariff Schedules of the United States Annotated (TSUS), that had been found by Commerce to be sold in the United States at LTFV. Thereafter, in response to a remand of the Court (Borlem S.A. Empreedimentos Industriais v. United States, 12 CIT 563, Slip Op. 88-77 (June 15, 1988)), Commerce, on September 8, 1988, amended its original affirmative LTFV determination to exclude from the scope of its affirmative determination imports of the subject product from a significant Brazilian manufacturer/exporter, FNV - Veiculos E Equipamentos S.A (FNV).

On March 10, 1989, in the course of proceedings seeking judicial review of the Commission's final determination, the Court granted Borlem's motion to allow the Commission to make a finding as to whether it should reconsider its determination in view of the Commerce amendment and, if it found reconsideration to be appropriate, to make a new determination. In April 1989, the Commission reported to the Court its determination that the Commission should not reconsider its final affirmative threat of material injury determination.

Subsequently in June 1989, the Court again remanded the Commission's final affirmative determination to the Commission for additional proceedings. The Court's remand order was stayed until the Court's resolution of The Budd Company v. United States, Court No. 88-09-00725, an action which sought review of the amended Commerce final determination referred to above. On September 5, 1991, the Court affirmed Commerce's amended final determination. Pursuant to the 1989 Court order, the Commission reopened the record in the subject investigation and sought additional information to permit reconsideration.

VIEWS OF THE COMMISSION

In this remand investigation, we determine that an industry in the United States is not threatened with material injury by reason of less than fair value (LTFV) imports from Brazil of tubeless steel disc wheels (TSDW or tubeless SDW).[1] This investigation revealed that the level of LTFV imports from Brazil has always been low. While imports from Brazil increased from 1984 to 1985, when the domestic industry was unable to meet the rapid increase in domestic demand during that period, they have subsequently declined to near 1984 levels. Further, while there have been instances of underselling by Brazilian imports, there is little evidence connecting these with lost sales or lost revenues for the domestic industry or with the suppression or depression of domestic prices.

I. Introduction

We have conducted this remand investigation pursuant to the June 29, 1989, order of the Court of International Trade (CIT) in Borlem S.A. v. United States.[2] In that order, the court remanded our original final affirmative threat determination[3] in light of

---

[1] 19 U.S.C. § 1673d(b). Material retardation of an industry in the United States was not an issue in this investigation and will not be discussed further.

[2] 718 F. Supp. 41 (CIT 1989), aff'd, 913 F.2d 933 (Fed. Cir. 1990).

[3] Tubeless Steel Disc Wheels from Brazil, Inv. No. 731-TA-335 (Final), USITC Publication 1971 (1987). Then-Chairman Liebeler (continued...)

an amended Commerce Department determination removing a foreign producer, FNV Veiculos E Equipamentos, S.A. (FNV), from coverage by the original Commerce final determination and antidumping order. The complex procedural history of this case preceding the issuance of the court's order is recounted in its opinion.

The CIT's remand order was stayed until its resolution of The Budd Company v. United States[4], an action which sought review of the amended Commerce final determination. On September 5, 1991, the CIT affirmed Commerce. The Commission issued its notice of remand proceedings on September 24, 1991.[5] The Commission reopened the record to consider new factual material relating to the impact of the exclusion of imports of tubeless steel wheels from FNV.

II. Like Product and Domestic Industry

In determining whether a U.S. industry is materially injured or is threatened with material injury by reason of the subject imports, the Commission must, as a threshold matter in a Title VII investigation, define the relevant domestic industry. Section 771(4)(A) of the Tariff Act of 1930 defines the domestic

[3](...continued)
dissented from the Commission's original final determination. Herein, the Commission's original 1987 final determination and report will be referred to as the "1987 Determination and Report." The present determination and report will be referred to as the "Remand Determination and Report."

[4] Court No. 88-09-00725.

[5] 56 Fed. Reg. 49904 (October 2, 1991).

industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the the total domestic production of that product." [6] The "like product" is defined as "[a] product that is like, or in the absence of like, most similar in characteristics and uses with the articles subject to an investigation. . . ." [7]

In our 1987 Determination and Report, we defined the like product and the domestic industry as follows:

> Accordingly, the like product consists of steel disc wheels for tubeless tires, designed to be mounted with pneumatic tires, in which the wheel has a rim diameter of 22.5 inches or greater, suitable for use on class 6, 7, and 8 trucks, including tractors, and on semi-trailers and buses. The domestic industry consists of petitioner (the Wheel and Brake Division of the Budd Co.), Accuride Corp., and Motor Wheel. [8]

We have neither been ordered nor requested to reconsider this definition of the like product and domestic industry in this remand proceeding. We find no reason to change this definition and we readopt it.[9]

---

[6] 19 U.S.C. § 1677(4)(A).

[7] 19 U.S.C. § 1677(10).

[8] 1987 Determination and Report, supra n.3, at 6.

[9] Although the Commission's original final determination was rendered prior to Commissioner Newquist's appointment to the Commission, he too adopts the Commission's original views regarding like product and domestic industry.

III. Condition of the Domestic Industry [10] [11]

Apparent domestic consumption of tubeless SDW fluctuated significantly during the 1983-86 period, jumping a sharp 66.4 percent from 1983 to 1984 and then declining somewhat in 1985 and 1986 (9.2 percent and 4.3 percent, respectively). [12] As we noted both in our 1986 preliminary and 1987 final determinations, the surge in demand in 1984 was at least partly due to extraordinary circumstances.

> Demand for tubeless SDW was limited throughout 1983. This was largely attributable to the sluggish domestic economy and to anticipated government regulations affecting the maximum allowable length of semi-trailers which encouraged trailer manufacturers to postpone purchases of trailers and trailer components, including wheels.
>
> Once the regulations were enacted, the certainty they provided, along with the strength of the economic recovery, released "pent-up" demand for SDW. [13]

Domestic production and shipments also increased strongly

---

[10] In examining the condition of the domestic industry, we consider, among other factors, domestic consumption, U.S. production, sales, market penetration, employment, and profitability. 19 U.S.C. § 1677(7)(c)(iii).

[11] In this investigation, the data generally cover calendar years 1983-86. The Commission also has data regarding the Brazilian industry for the period Jan.-Feb. 1987 and estimates for calendar year 1987. Remand Determination and Report at Table 19. With regard to the financial data, the Commission has data for fiscal years 1983-86 and for the interim fiscal years ending Dec. 31, 1985, and Dec. 31, 1986. 1987 Determination and Report at Tables 13-16.

[12] 1987 Determination and Report at Tables 6-7.

[13] Id. at 7.

during 1984 in response to the demand surge. [14] Use of domestic capacity [15] increased from 76.1 percent in 1983 to 106.1 percent in 1984.[16] Nonetheless, apparent consumption increased to a level greater than the domestic industry's capacity to produce. As we noted in 1987, the domestic industry responded by delaying deliveries or placing customers on "allocation programs" in 1984 and early 1985. Allocation preferences were given to original equipment manufacturers (OEMs) over aftermarket distributors. In the final investigation, numerous purchasers attested to difficulties in obtaining the tubeless SDWs they required from U.S. manufacturers during 1984 and 1985. [17] We confirmed that several purchasers and distributors sought additional sources of tubeless steel wheels, found them in Brazil, and began importing. The first imports reached the United States at the end of 1984.[18]

Consumption declined from 1984 to 1985 and from 1985 to 1986

---

[14] Id. at Tables 6-7.

[15] By "capacity" we mean maximum production using the customary number of shifts and producing the customary product. Production at more than 100 percent of capacity may be achieved by, for example, additional shifts or postponing routine maintenance.

[16] 1987 Determination and Report at Table 7.

[17] Id. at A-16-A-17.

[18] Id. at A-57.

(9.2 percent and 4.3 percent, respectively). [19] [20] Similarly, domestic production fell from 1.5 million tubeless SDW in 1984 to 1.2 million in 1985 (19.2 percent) and then to 1.1 million in 1986 (an additional 9.4 percent). [21] Shipments declined from 1.5 million tubeless SDW in 1984 to 1.2 million in 1985 (23.6 percent) and declined further to 1.1 million in 1986 (an additional 7.9 percent). [22]

Domestic producers' capacity, however, increased from 1.3 million in 1983 to 1.7 million in 1986, an increase of 28.5 percent. [23] Thus, capacity utilization, which reached 106.1 percent in 1984, fell to 85.8 percent in 1985 and 66.1 percent in 1986. [24]

The number of production and related workers producing tubeless SDW, their hours worked, and their total compensation declined from 1984 to 1986, although to levels still exceeding those recorded in 1983. [25] Gross profit and net operating income

---

[19] Id. at A-18. See also id. at Table 6. These trends are similar to those for factory sales of trucks and buses. Id. at Table 5.

[20] Because of the imports of tubeless SDW from Canada by two of the domestic producers during the course of the investigation, the specific levels of apparent domestic consumption are confidential.

[21] 1987 Determination and Report at Table 7.

[22] Id. at Tables 6 and 8.

[23] Id. at Table 7.

[24] Id.

[25] Id. at Table 12.

declined after 1984, but still exceeded 1983 levels in 1986. Net income before taxes declined and became a net loss in 1986, though not as great a loss as in 1983. Operating income as a percent of net sales was 5.3 percent in 1984, decreased to 4.6 percent in 1985, and 0.5 percent in 1986, though avoiding the operating loss in 1983. [26] From the foregoing, it appears that the domestic industry's performance over the period of investigation peaked in 1984. Thereafter, various performance indicators declined, although to levels still exceeding those reported for 1983.

The record with respect to the condition of the domestic industry has not changed. We readopt our earlier conclusion that the domestic industry is vulnerable to injury from LTFV imports from Brazil.[27]

IV. Threat of Material Injury by Reason of LTFV Imports from Brazil[28]

The statute directs us to determine whether a U.S. industry

---

[26] Id. at Tables 15-16.

[27] Acting Chairman Brunsdale does not reach a separate legal conclusion concerning the presence of material injury, or vulnerability to future dumping, based on this information. While she does not believe an independent determination is either required by the statute or helpful, she finds the discussion of the condition of the domestic industry to be useful in determining whether any threatened injury caused by the dumped imports would be material.

[28] Many of the data regarding the Brazilian industry are confidential and, therefore, can be discussed only in general terms.

is threatened with material injury "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."[29] We must consider several factors:

(1) if a subsidy is involved, information that the Commission has available to it as to the nature of the subsidy;

(2) the ability and likelihood of the foreign producers to increase the level of exports to the United States due to increased production capacity or unused capacity;

(3) any rapid increase in penetration of the U.S. market by imports and the likelihood that the penetration will increase to injurious levels;

(4) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise;

(5) any substantial increase in inventories of the merchandise in the United States;

(6) underutilized capacity for producing the merchandise in the exporting country;

(7) any other demonstrable adverse trends that indicate the probability that importation of the merchandise will be the cause of material injury;

(8) the potential for product shifting.[30]

Because the threat posed by the dumped imports must be real and imminent, our determination may not be made on the basis of mere

---

[29] 19 U.S.C. § 1677(7)(F)(ii).

[30] 19 U.S.C. § 1677(7)(F). The 1988 Act added two new threat provisions, but the statute does not require that these be applied to this pre-1988 Act case.

conjecture or supposition. [31] In this remand investigation, the removal from consideration of imports from a leading Brazilian producer substantially altered the Commission's original conclusions drawn from analysis of the foregoing factors.

In assessing the threat of material injury in this investigation, we considered, among other factors, the volume and trend of imports from Brazil, increases in productive capacity and unused productive capacity in Brazil, Brazil's export and domestic markets, and the pricing of Brazil's exports. [32]

Imports from Brazil first entered the U.S. market in 1984, increased in 1985, and then declined to near 1984 levels in 1986.[33] If export data are used, the decline would be below 1984 levels.[34] The share of apparent domestic consumption accounted for by LTFV imports has always been small.[35] While that share increased in 1985, it decreased in 1986 to a level not far above that of 1984, which, as noted, was itself a fairly small percentage share.

In terms of market segments, the subject imports' share of apparent consumption in the OEM market (by far the largest market) was very small in 1984, rose somewhat in 1985, and then

---

[31] 19 U.S.C. § 1677(7)(F)(ii).

[32] 19 U.S.C. 1677(7)(F)(i).

[33] Remand Determination and Report at Table 22.

[34] _Id._ at Table 19.

[35] _Id._ at Table 22.

fell back to 1984 levels in 1986.[36] In the manufacturer's service dealer market (the smallest market), the imports held a significant, though not large, share in 1984, but this share decreased in 1985 and markedly declined in 1986 to about half the 1984 level.[37] In the distributor market (a significant market, but several times smaller than the largest market), the imports again held a significant, but not large, share in 1984, which rose in 1985, but decreased to near 1984 levels in 1986.[38]

Brazil established capacity to produce tubeless SDW in 1984 in order to supply the U.S. market, and Brazilian capacity thereafter increased steadily over the period of investigation. Capacity utilization increased substantially in 1985, but decreased sharply to 1984 levels in 1986.[39]

The share of Brazilian respondents' output exported to the United States declined steadily over the period of investigation. Brazilian home market sales were at a low level in 1984, but increased rapidly in 1985 and again in 1986.[40] Exports to the United States were significant in 1984 and though nearly doubling in 1985, fell by more than half, to below 1984 levels in 1986.[41]

---

[36] Id. at Table 23.

[37] Id. at Table 23.

[38] Id. at Table 23.

[39] Id. at Table 19.

[40] Id. at Table 19.

[41] Id. at Table 19.

Exports to third countries were at a low level in 1984, increased to a significant level in 1985, then dropped in 1986, though still nearly three times 1984 levels.[42] The share of Brazilian shipments taken by home market sales, though small in 1984, increased substantially in 1985, and then nearly tripled in 1986.[43] At the same time the share taken by exports to the United States declined throughout the period, until it reached somewhat more than half the level it was at in 1984.[44] Exports to third countries were a small portion of shipments in 1984, increased to a significant level in 1985, but then declined by half in 1986, though still nearly twice that of 1984 levels.[45]

While not dispositive, the very low market penetration and declining import levels are important indicators of the absence of threat. [46]

While it appears that there will be substantial excess productive capacity available in Brazil to generate exports to the United States and that the United States remains the primary market for Brazilian production, we conclude that exports to the United States will not increase significantly in absolute terms or relative to apparent domestic consumption so as to threaten

---

[42] Id. at Table 19.

[43] Id. at Table 19.

[44] Id. at Table 19.

[45] Id. at Table 19.

[46] See, e.g., Steel Wire Rope from Canada, USITC Pub. 2409, Inv. No. 731-TA-524 (August 1991)(Preliminary).

material injury to the domestic industry.[47]

We have considered the price effects of the LTFV imports from Brazil. In accordance with the statute, we examined the pricing history of the imports from Brazil and assessed the likelihood that in the foreseeable future the imports will be at price suppressing or price depressing levels.

The price data gathered by the Commission show that the imports from Brazil undersold domestic tubeless SDW for predominant sizes of tubeless SDW in both the OEMs market [48] and the distributor market. [49] The margins of underselling were variable, and some were significant. However, the Commission was able to confirm very few lost sales/lost revenues allegations. Moreover, in several instances, purchasers had

---

[47] Acting Chairman Brunsdale does not join the remainder of this section. In her view, three key facts preclude a finding that LTFV exports from Brazil threaten to cause material injury to a domestic industry. First, there is the tiny share, both in quantity and value, of the market currently held by the Brazilian firms still found to be selling at LTFV. Even if all of these firms' unused capacity were devoted to exports to the United States, that share would still be at a level that would be very small. Remand Determination and Report A-2. Second, the share of fairly-traded TSDWs in the United States has hovered at substantially more than one-third of the domestic market. Much of any effect the LTFV exports from Brazil might have would thus not fall on the domestic industry at all. Finally, the dumping margin for the remaining subject imports was recalculated on review and reduced to only 10.84 percent. This makes it even less likely that the LTFV imports would ever pose any kind of threat to the domestic industry, much less a real and imminent one.

[48] Report Determination and Report at Tables 24-25 and 28-29.

[49] Id. at Tables 26-27 and 30-33.

purchased the subject imports because of the unavailability of the domestic product.

As discussed above, while the condition of the domestic industry indicates a vulnerability to LTFV imports (as well as any other adverse turns in the economy), the level of LTFV imports from Brazil over the period of investigation was never large and, in that segment of the market most important to domestic producers, has always been very small. While imports from Brazil increased from 1984 to 1985, this was a period when the domestic industry was unable to meet the rapid increase in domestic demand. In 1986, LTFV imports declined to near-1984 levels. While there was some evidence of underselling by the subject imports, there was little to connect any such underselling with lost sales or lost revenues by the domestic industry. In view of these considerations, we find that the domestic industry is not threatened with imminent material injury by reason of the subject LTFV imports from Brazil.

INFORMATION OBTAINED IN THE REMAND PROCEEDING

INTRODUCTION

In Borlem S.A. v United States, 718 F. Supp. 41 (CIT 1989), the Court of International Trade (the Court) remanded the Commission's final affirmative threat determination in the subject investigation to the Commission for additional proceedings. The Court's remand order was stayed until the Court's resolution of The Budd Company v. United States, Court No. 88-09-00725, an action which sought review of an amended Department of Commerce (Commerce) final determination that excluded from the scope of its affirmative less than fair value (LTFV) determination imports from a significant Brazilian manufacturer/exporter. On September 5, 1991, the Court affirmed Commerce's amended final determination, and the Commission established its schedule for remand proceedings to reconsider its affirmative threat determination and reopen the record to seek additional information (56 F.R. 49904, Oct. 2, 1991).[1]

BACKGROUND

In 1987, the Commission made a determination in investigation No. 731-TA-335 (Final) that an industry in the United States was threatened with material injury by reason of (LTFV) imports from Brazil of tubeless steel disc wheels,[2] provided for in item 692.32 of the former Tariff Schedules of the United States Annotated (TSUS), that had been found by Commerce to be sold in the United States at LTFV. Thereafter, in response to the Court's remand (Borlem S.A. Empreedimentos Industriais v. United States, 12 CIT 563, Slip Op. 88-77 (June 15, 1988)), Commerce, on September 8, 1988, amended its original affirmative LTFV determination to exclude from the scope of its determination imports of the subject product from a significant Brazilian manufacturer/exporter.

On March 10, 1989, in the course of proceedings seeking judicial review of the Commission's final determination, the Court granted Borlem's motion to allow the Commission to make a finding as to whether it should reconsider its determination in view of the Commerce amendment and, if it found reconsideration to be appropriate, to make a new determination. In April 1989, the Commission reported to the Court its determination that the Commission should not reconsider its final affirmative threat of material injury determination.

Subsequently in 1989, the Court again remanded the Commission's final affirmative determination to the Commission for additional proceedings. The Court's remand order was stayed until the Court's resolution of The Budd Company v. United States.

---

[1] A copy of the Commission's Federal Register notice is presented in app. A.

[2] Such wheels are designed to be mounted with pneumatic tires, have a rim diameter of 22.5 inches or greater, and are suitable for use on class 6, 7, and 8 trucks, including tractors, and for use on semi-trailers and buses.

REPORT FORMAT

This report is designed for use in conjunction with the Commission's report entitled Tubeless Steel Disc Wheels from Brazil (USITC Publication 1971, April 1987), and provides information relating to the exclusion of imports of tubeless steel wheels from a significant Brazilian manufacturer/ exporter. Other information relevant to this remand with respect to the product, the U.S. market, and consideration of material injury is presented in the aforementioned report.

In reopening the record for this proceeding, the Commission directed that no new factual material would be sought or accepted other than that relating to the impact of the exclusion of imports of tubeless steel disc wheels from the Brazilian supplier, FNV. As such, this report presents revised data and analysis for 1983-86, the original period of investigation, for selected sections of the 1987 report which were affected by the exclusion.[3]

THE NATURE AND EXTENT OF SALES AT LTFV

In 1987 Commerce issued its final determination that tubeless steel disc wheels from Brazil are being, or are likely to be, sold in the United States at LTFV (52 F.R. 8947, March 20, 1987, as amended by 52 F.R. 19903, May 28, 1987). Respondents Borlem S.A.-Empreedimentos Industriais (Borlem) and FNV-Veiculos E Equipamentos S.A. (FNV), challenged Commerce's determination and, subsequently, the Court directed Commerce to recalculate its antidumping margin and to publish its remand determination.[4] On remand, Commerce's use of constructed value was adjusted to take into account the effect of Brazil's hyperinflation. Weighted-average dumping margins (in percent ad valorem) as found by Commerce in its final and remand determinations are as follows:

Manufacturer/exporter	Final margin	Remand margin
Borlem.............	15.25	10.84
FNV................	11.71	De minimis
All others.........	13.48[1]	10.84

[1] Weighted-average based on sales by Borlem and FNV.

[3] Table numbers correspond to those used for parallel information in the original report.

[4] A copy of Commerce's Federal Register notice (53 F.R. 34566, Sept. 7, 1988) is presented in app. B.

THE PRODUCT

Description and Uses

Wheel Sizes

Data on shipments of tubeless steel disc wheels by size were reported by U.S. producers and importers of the subject product from Brazil, and are presented in table 2. From 1983 to 1984, both U.S. producers and importers were responding to an increase in demand for heavy-duty (class 8) trucks that require 24.5-inch wheels, with this size wheel accounting for approximately *** percent of U.S. producers' shipments and *** percent of U.S. importers' shipments. From 1984 to 1986, as demand for medium-duty (class 6 and 7) trucks increased and that for heavy trucks decreased, producers and importers of the subject wheels from Brazil shipped greater proportions of the appropriate 22.5-inch wheel--from *** percent to *** percent for U.S. producers, and from *** percent to *** percent for U.S. importers of LTFV product from Brazil.

Table 2
Tubeless steel disc wheels: U.S. producers' domestic shipments and shipments of imports from Brazil, by wheel sizes, 1983-86

* * * * * * *

THE U.S. MARKET

Channels of Distribution

Tubeless steel disc wheels are sold to the larger original-equipment manufacturers (OEMs) that produce trucks and semi-trailers, to manufacturers' service dealers (the OEMs' service and parts operations), and to distributors that sell to small OEMs and to the aftermarket. U.S. producers sell tubeless steel disc wheels at all of these levels, whereas LTFV imports from Brazil were concentrated largely in the manufacturers' service dealer and distributor markets, but were also sold to smaller OEMs (table 4).

Table 4
Tubeless steel disc wheels: Shares of U.S. producers' shipments and shipments of imports from Brazil, by types of customers, 1983-86

* * * * * * *

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY

U.S. Inventories of Tubeless Steel Disc Wheels from Brazil

Imports of LTFV tubeless steel disc wheels from Brazil did not begin entering the United States until late in 1984. *** firms, which accounted for *** percent of the subject LTFV imports from Brazil in 1986, reported inventories totaling *** units at yearend 1984, *** units at yearend 1985, and *** units at yearend 1986. As a percentage of shipments by the importing firms, LTFV inventories averaged *** percent in 1984, *** percent in 1985, and *** percent in 1986.

Capacity of Producers in Brazil to Generate Exports

Information in this section of the report was received during the original investigation from counsels for the two Brazilian producers that exported tubeless steel disc wheels at LTFV to the United States during the period of investigation; Borlem and Rockwell do Brasil Fumagalli, S.A. (Fumagalli).

Capacity to produce tubeless steel disc wheels by the Brazilian producers of LTFV product increased from *** units in 1984 to *** units in 1985, or by *** percent, as Borlem expanded capacity (table 19). Capacity increased further by *** percent to *** units in 1986, as Fumagalli entered the market.[5] Borlem completed further expansion plans for tubeless steel disc wheels in 1987, so that Brazilian capacity was projected to amount to *** units, or an increase of *** percent from 1986 capacity levels.

Table 19
Tubeless steel disc wheels: Brazilian capacity, production, and shipments, 1983-87, January-May and June December of 1985 and 1986, and January-February of 1986 and 1987

* * * * * * *

Production of LTFV tubeless steel disc wheels increased from *** units in 1984 to *** units in 1985, decreased to *** units in 1986, and was projected to increase to *** units in 1987, due principally to anticipated increases in home market sales and exports to third countries. Capacity utilization increased from *** percent in 1984 to *** percent in 1985,

[5] Counsel for Borlem argues during this remand proceeding that capacity and production data for Fumagalli should not be included in the Commission's analysis of Brazilian capacity to generate exports, because ***. (See Oct. 9, 1991, remand brief of Willkie Farr & Gallagher, pp. 12 and 13, fn 36.)

decreased to *** percent in 1986, and was projected to increase to *** percent in 1987.

Home Market Shipments and Brazilian Demand

The market for tubeless steel disc wheels in Brazil was non-existent in 1983, as Brazilian class 6, 7, and 8 trucks are known to use tube-type wheels. In 1984, Brazilian wheel producers began to manufacture tubeless steel disc wheels for Brazilian producers of export vehicles. Sales of tubeless steel disc wheels in Brazil increased *** from *** units in 1984 to *** units in 1985, rose by *** percent to *** units in 1986, and were projected to increase by *** percent to *** units in 1987;[6] home market sales accounted for *** percent of total shipments in 1984, rose to *** percent in 1985, continued to rise to *** percent in 1986, and were projected to increase further to *** percent in 1987.

Exports to the United States

There were no exports of tubeless steel disc wheels to the United States in 1983. Exports of the subject LTFV wheels to the United States began in 1984, increased from *** units to *** units in 1985, or by *** percent, then decreased by *** percent to *** units in 1986. Exports to the United States were projected by Borlem to *** by *** percent to *** units in 1987, as Brazilian home market demand was projected to increase.[7] Exports to the United States of LTFV product, as a share of total Brazilian shipments, *** from *** percent in 1984 to *** percent in 1985, and *** to *** percent in 1986. Exports to the United States were projected to decline to *** percent of total Brazilian shipments in 1987, as home market sales and exports to third countries were expected to increase.

Exports to Third Countries

Exports of Brazilian LTFV tubeless steel disc wheels to third countries increased from *** percent of total Brazilian shipments in 1984 to *** percent in 1986. *** has been the principal market for third country exports, accounting for *** percent of such exports in 1984 and 1985, and *** percent in 1986. Third-country exports were projected to increase to *** percent of total Brazilian shipments in 1987, in response to anticipated requirements in ***.[8]

---

[6] Petitioner estimated that trucks exported from Brazil to the United States in 1987 would account for 60,000 tubeless steel disc wheels; *** (Petitioner's prehearing brief, p. 32).

[7] ***.

[8] ***.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN THE LTFV IMPORTS AND THE ALLEGED INJURY

U.S. Imports

There were no reported imports of tubeless steel disc wheels from Brazil in 1983 (table 21). U.S. imports of the subject LTFV wheels from Brazil increased from *** units valued at $*** million in 1984 to *** units valued at $*** million in 1985, or a *** increase in quantity and value. Imports of LTFV wheels from Brazil decreased to *** units valued at $*** million in 1986, or by approximately *** percent in quantity and *** percent in value. The unit value of U.S. imports of LTFV tubeless steel disc wheels from Brazil was $*** in 1984, decreased to $*** in 1985, and increased to $*** in 1986.

Table 21
Tubeless steel disc wheels: U.S. imports for consumption, by sources, 1983-86

* * * * * * *

U.S. Market Penetration

Market penetration by imports from all sources increased annually from *** percent of consumption in 1983 to *** percent of consumption in 1986. Market penetration of LTFV imports from Brazil, which first entered the United States in late 1984, increased from *** percent of U.S. consumption in 1984 to *** percent in 1985, and then decreased to *** percent in 1986 (table 22).

Table 22
Tubeless steel disc wheels: Apparent U.S. consumption and shares of apparent consumption, 1983-86

* * * * * * *

In terms of market segments, shipments of LTFV imports of tubeless steel disc wheels from Brazil to manufacturers' service dealers gained a significant *** percent of that market upon entry in 1984, but declined to *** percent in 1985, and decreased to *** percent in 1986 (table 23). Shipments of the subject LTFV imports to distributors achieved *** percent of that market in 1984, *** to *** percent in 1985, and then declined to *** percent in 1986.

Table 23
Tubeless steel disc wheels: Shares of apparent consumption by market types, 1983-86

* * * * * * *

PRICES

Price Data

Usable price data were received from each of the five firms known to have imported tubeless steel disc wheels from Borlem in Brazil during the reporting period October-December 1984 to January-March 1986.[9] Most of these data reflect sales to distributors. Usable price data were received from 20 purchasers of LTFV product, including 7 OEMs, 4 importers/distributors, 1 distributor that is a subsidiary of one of the U.S. producers, and 8 independent distributors.

Sales Price Trends

Price data for U.S. producers' sales to OEMs generally indicate periods of steady prices, interrupted by price adjustments. Prices for LTFV Brazilian wheels were only reported for three quarters of 1986, when they were below those of domestic suppliers.

For sales to distributors, selling prices reported by all three domestic producers were nearly uniform. Differences of under *** per wheel were reported since mid-1985. Comparing the prices charged by importers of LTFV Brazilian wheels, wide variations were found. Some sales of Brazilian wheels in 1984 were at prices comparable to, or above, those of domestic suppliers. However, other sales, such as those conducted by ***, were at prices considerably below those quoted by domestic suppliers.

Some of the variation among observed f.o.b. prices may be attributable to differences in transportation costs and various non-price factors of competition between wheel suppliers. Because of differences in suppliers' pricing patterns and the relatively small number of U.S. producers, where relevant, the pricing patterns of individual suppliers are discussed in the context of each market segment.

---

[9] Prior to July 1985, Brazilian wheels supplied by Borlem were imported by five distributors: Prudential Supply, Southwest Wheel, Maintenance Management, Sam Brown Co., and Century Wheel and Rim. In July 1985, Prudential Supply became the sole importer of Borlem wheels. ***.

Sales to OEMs

Producers' prices and importer prices (***) were reported for their quarterly sales to their two largest OEM customers, and weighted-average prices for domestic and imported Brazilian wheels are shown in tables 24 and 25. Sales of LTFV Brazilian wheels to OEMs, all in 1986, were made by ***. Pricing data for 22.5-inch wheels were reported only for the fourth quarter of 1986, while pricing data for 24.5-inch wheels were reported for the first and second quarters of 1986. The f.o.b. prices of LTFV Brazilian wheels to OEMs were *** to *** below those reported for comparable U.S. products in these periods.

Sales to distributors

Producers' prices and importer prices (***) were reported on their largest quarterly sales to distributors, and weighted-average prices for domestic and imported LTFV Brazilian wheels are shown in tables 26 and 27. Prices for sales of LTFV Brazilian disc wheels to distributors were first reported in the third quarter of 1984, by the importers/distributors classified under ***.[10] These importers reported charging their customers prices of *** for 22.5-inch wheels, and *** for 24.5-inch wheels. These prices were above the prices charged by domestic wheel manufacturers. However, in general, the importers/distributors maintained prices that corresponded to the prevailing market level until they ceased direct importation in mid-1985. In contrast, *** sold its LTFV Brazilian wheels considerably below the prevailing market price. In January-March 1985, for example, ***'s price for 22.5-inch wheels was $***, in contrast with an average of $*** charged by domestic manufacturers. Using ***'s price for comparison, the price difference exceeded $*** per wheel. *** eventually raised its prices to as high as $*** at a time when domestic producers were also asking about $*** per 22.5-inch wheel. With respect to the 24.5-inch wheel, a very similar pattern in importer pricing is observed.

---

[10] ***.

Table 24
Tubeless steel disc wheels sold to OEMs: Domestic producers' and LTFV Brazilian importers' f.o.b. selling prices for sales to their two largest OEM customers of 22.5" x 8.25" wheels,[1] and margins of underselling, by suppliers and by quarters, October 1983 to December 1986

Per wheel

Period	Producers' prices				Importers' prices			Margin of underselling	
	Budd	Accu-ride	Motor Wheel	U.S. average	Pruden-tial	Others	Brazil	Amount	Percent
1983:									
Oct.-Dec	***	***	***	$54.29	***	***	***	-	-
1984:									
Jan.-Mar	***	***	***	53.72	***	***	***	-	-
Apr.-Jun	***	***	***	53.59	***	***	***	-	-
Jul.-Sept	***	***	***	54.21	***	***	***	-	-
Oct.-Dec	***	***	***	54.25	***	***	***	-	-
1985:									
Jan.-Mar	***	***	***	56.24	***	***	***	-	-
Apr.-Jun	***	***	***	56.51	***	***	***	-	-
Jul.-Sept	***	***	***	55.81	***	***	***	-	-
Oct.-Dec.	***	***	***	55.80	***	***	***	-	-
1986:									
Jan.-Mar	***	***	***	54.64	***	***	***	-	-
Apr.-Jun	***	***	***	***	***	***	***	***	***
Jul.-Sept	***	***	***	***	***	***	***	***	***
Oct.-Dec	***	***	***	***	***	***	***	***	***

[1] The full specification is tubeless steel disc wheels in size 22.5" x 8.25", with a 10-hole bolt circle of 11-1/4" (285.75mm).
[2] No data reported.
[3] All other known importers of LTFV Brazilian tubeless steel disc wheels, namely Maintenance Management Inc., Southwest Wheel, Century Wheel and Rim, and Sam Brown Co., ceased direct importation after June 1985.

Note: If pricing data from *** were included above, prices in the "others" category would be *** and *** for the first and second quarters of 1985, respectively, with corresponding margins of *** of *** and *** percent.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission

Table 25
Tubeless steel disc wheels sold to OEMs: Domestic producers' and LTFV Brazilian importers' f.o.b. selling prices for sales to their two largest OEM customers of 24.5" x 8.25" wheels,[1] and margins of underselling, by suppliers and by quarters, October 1983 to December 1986

Per wheel

Period	Producers' prices				Importers' prices			Margin of underselling	
	Budd	Accu-ride	Motor Wheel	U.S. average	Pruden-tial	Others	Brazil	Amount	Percent
1983:									
Oct.-Dec	***	***	***	$53.72	***	***	***	-	-
1984:									
Jan.-Mar	***	***	***	54.03	***	***	***	-	-
Apr.-Jun	***	***	***	54.14	***	***	***	-	-
Jul.-Sept	***	***	***	54.30	***	***	***	-	-
Oct.-Dec	***	***	***	54.97	***	***	***	-	-
1985:									
Jan.-Mar	***	***	***	57.46	***	***	***	-	-
Apr.-Jun	***	***	***	57.36	***	***	***	-	-
Jul.-Sept	***	***	***	57.12	***	***	***	-	-
Oct.-Dec.	***	***	***	57.17	***	***	***	-	-
1986:									
Jan.-Mar	***	***	***	***	***	***	***	***	***
Apr.-Jun	***	***	***	***	***	***	***	***	***
Jul.-Sept	***	***	***	***	***	***	***	***	***
Oct.-Dec	***	***	***	***	***	***	***	***	***

[1] The full specification is tubeless steel disc wheels in size 24.5" x 8.25", with a 10-hole bolt circle of 11-1/4" (285.75mm).

[2] No data reported.

[3] All other known importers of LTFV Brazilian tubeless steel disc wheels, namely Maintenance Management Inc., Southwest Wheel, Century Wheel and Rim, and Sam Brown Co., ceased direct importation after June 1985.

Note: If pricing data from *** were included above, prices in the "others" category would be *** and *** for the first and second quarters of 1985, respectively, with corresponding margins of *** of *** and *** percent.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 26
Tubeless steel disc wheels sold to distributors: Domestic producers' and LTFV Brazilian importers' f.o.b. selling prices for their largest single quarterly sales of size 22.5" x 8.25" wheels, and margins of under/overselling, by suppliers and by quarters, October 1983 to December 1986

* * * * * * *

Table 27
Tubeless steel disc wheels sold to distributors: Domestic producers' and LTFV Brazilian importers' f.o.b. prices on their largest single quarterly sales of size 24.5" x 8.25" wheels, and margins of under/overselling, by suppliers and by quarters, October 1983 to December 1986

* * * * * * *

Purchase Price Trends

Comparisons of purchase prices reveal that, except for the price series on purchases of 22.5-inch Brazilian wheels by distributors, prices paid by purchasers for domestic and imported LTFV Brazilian wheels generally declined during 1985-86. Reported prices of U.S.-produced wheels also varied considerably by source of supply and by market segment. Some of the variation among observed prices may be attributable to differences in transportation costs and various non-price factors of competition among wheel suppliers. Because of differences in prices paid for wheels from different domestic producers, where relevant, patterns in purchase prices from individual suppliers are discussed in the context of each market segment.

OEM purchases

Quarterly prices (delivered basis) reported by OEMs for tubeless steel disc wheels during 1985-86, and weighted-average prices for domestic and imported Brazilian wheels, are shown in tables 28 and 29. In general, purchase prices were steady throughout 1985, declined sharply in the first quarter of 1986, and fell somewhat further during the course of 1986. The average price paid by OEMs on purchases of 22.5-inch wheels from U.S. producers was $*** in the first quarter of 1985, dropped from $*** in the last quarter of 1985 to $*** during the first quarter of 1986, and declined further to $*** by year-end 1986. For the larger 24.5-inch wheels, the average price paid by OEMs for purchases from U.S. producers was $*** during January-March 1985 and $*** during the last quarter of 1985. However, during the next period, average purchase price fell sharply to $***, and it declined further to $*** by the end of 1986.

Table 28
Tubeless steel disc wheel purchases by OEMs: Delivered purchase prices from domestic producers and LTFV Brazilian importers of 22.5" x 8.25" wheels, and margins of underselling, by suppliers and by quarters, January 1985 to December 1986

* * * * * * *

Table 29
Tubeless steel disc wheel purchases by OEMs: Delivered purchase prices from domestic producers and LTFV Brazilian importers of 24.5" x 8.25" wheels, and margins of underselling, by suppliers and by quarters, January 1985 to December 1986

* * * * * * *

Data on prices paid by OEMs for LTFV Brazilian wheels purchased from importers are disaggregated into purchases from ***. Purchase prices for Brazilian 22.5-inch wheels were reported only for the last quarter of 1986, while purchase price data for Brazilian 24.5-inch wheels were reported only for the first three quarters of 1986. For these periods, average delivered prices of 22.5-inch and 24.5-inch Brazilian wheels to OEMs were $*** to $*** below those for domestically produced wheels.

Distributor purchases

Quarterly prices (delivered basis) paid by distributors to U.S. producers and LTFV importers during 1985-86 for tubeless steel disc wheels, and weighted-average prices for domestic and imported LTFV Brazilian wheels are shown in tables 30 and 31. In general, a comparison of purchase prices in the fourth quarter of 1986 with the first quarter of 1985 shows declines from each supplier and for each wheel type. The patterns of price decline were very different for the two wheel types, however. Prices paid by distributors for 22.5-inch wheels held steady, and even increased, during 1985. Averaging across the three domestic suppliers, distributors paid $*** in the first quarter of 1985 and $*** by the fourth quarter. Weighted-average purchase prices then declined to $*** during January-March 1986 before stabilizing at about $*** for the year overall.

Table 30
Tubeless steel disc wheel purchases by distributors: Delivered purchase prices from domestic producers and LTFV Brazilian importers of size 22.5" x 8.25" wheels, and margins of underselling, by suppliers and by quarters, January 1985 to December 1986

* * * * * * *

Table 31
Tubeless steel disc wheel purchases by distributors: Delivered purchase prices from domestic producers and LTFV Brazilian importers of size 24.5" x 8.25" wheels, and margins of underselling, by suppliers and by quarters, January 1985 to December 1986

* * * * * * *

In the case of 24.5-inch wheels, prices paid by distributors declined steadily over the 2-year period. The weighted-average price paid to the three domestic producers was $*** in the first quarter of 1985. By the end of the year, this price had fallen to $***. A further decline to $*** followed during the first quarter of 1986. At the end of 1986, the price paid for a domestically produced 24.5-inch wheel, on a delivered basis, was $*** per wheel.[11] Data on prices paid by distributors for LTFV Brazilian wheels purchased from importers was disaggregated into those from ***. Weighted-average purchase prices for both sizes of Brazilian wheels were reported in each of the 8 quarters spanning 1985-86. Overall, purchase prices for both wheel sizes increased slightly over the reporting period. Weighted-average prices paid by distributors for the 22.5-inch imported wheel increased during 1985, from $*** to $*** by year-end 1985. However, by the end of 1986 the price had fallen back to $***. A similar pattern of prices can be discerned for the larger wheel size. For both wheel types, purchasers reported paying roughly $*** per wheel more from ***. Over the 2-year period, LTFV Brazilian wheels were available to distributors for $*** per wheel below the price of domestically produced wheels on a delivered basis.

Prices of Japanese wheels

Based on conversations with several distributors, it appeared that, during January-June 1986, surplus Japanese wheels were the lowest-priced

[11] The absence of any reported purchases of *** wheels by distributors during the last half of 1985 may reduce the usefulness of the series of average prices paid for domestic wheels, however.

wheels available. Questionnaire data were received and are presented in tables 32 and 33.

Table 32
Tubeless steel disc wheel sales to distributors: F.o.b. weighted-average sales prices from domestic producers and importers of sizes 22.5" x 8.25" and 24.5" x 8.25" wheels, by countries of supply and by quarters, January 1985 to December 1986

* * * * * * *

Table 33
Tubeless steel disc wheel purchases by distributors: F.o.b. weighted-average purchase prices from domestic producers and importers of sizes 22.5" x 8.25" and 24.5" x 8.25" wheels, by countries of supply and by quarters, January 1985 to December 1986

* * * * * * *

Sales Price Comparisons

The reported selling price data for producers' and importers' quarterly sales during October 1983-December 1986 resulted in 23 f.o.b. price comparisons between weighted-average f.o.b. prices of U.S.-produced and imported LTFV Brazilian tubeless steel disc wheels. Because these price comparisons are made on an f.o.b. basis, the relative prices accurately reflect differences in the average net returns received by producers and importers. However, depending on a purchaser's location, the actual differences in the average final delivered prices for U.S.-produced versus imported LTFV wheels could be more or less than the producers' and importers' price data indicate.

OEM price comparisons

Price data provided 3 f.o.b. price comparisons on sales to OEMs during 1985-86 (see tables 24 and 25). All of these comparisons showed the imported LTFV Brazilian wheels selling at lower prices than the U.S. product, all from data pertaining to 1986. The one direct comparison available for 22.5-inch wheels show the Brazilian wheels selling at prices *** percent below those of the domestic product during the last quarter of 1986. The two available price comparisons for 24.5-inch wheels show the Brazilian wheels selling at *** percent and *** percent below the price of U.S.-produced wheels during the first two quarters of 1986, respectively.

Distributor price comparisons

Eighteen of the 20 quarterly price comparisons on sales to distributors showed LTFV Brazilian wheels selling at lower prices than those of the U.S. product (see tables 26 and 27). Beginning with the fourth quarter of 1984, imports of Brazilian wheels were sold at prices lower than those of U.S. producers of the 22.5-inch wheels by $*** to $*** per wheel, or by *** to *** percent. Similarly, beginning in fourth quarter of 1984, prices of the 24.5-inch Brazilian wheels were lower than prices of the U.S. wheels by margins ranging from $*** to $***, or by *** percent.

Purchase Price Comparisons

The reported purchase price data for OEMs and distributors' quarterly purchases during January 1985-December 1986 resulted in 20 delivered price comparisons between weighted-average prices of U.S.-produced and imported LTFV Brazilian tubeless steel disc wheels. Because these price comparisons are made on a delivered basis, the relative prices accurately reflect differences in the average delivered prices paid by OEMs and distributors. However, depending on the location of the purchasers, the actual differences in the prices received by producers and importers for U.S.-produced versus imported wheels could be more or less than the purchasers' price data indicate.

OEM price comparisons

Price data provided 4 delivered price comparisons on purchases by OEMs during 1985-86 (see tables 28 and 29). All of these comparisons showed the imported LTFV Brazilian wheels to have been sold at lower prices than the U.S. product. The one comparison available for 22.5-inch wheels shows the Brazilian wheels selling at a price *** percent below that of the U.S. product during the fourth quarter of 1986. The three price comparisons available for 24.5-inch wheels show the Brazilian wheels selling at *** percent beneath the price of U.S.-produced wheels during the first three quarters of 1986.

Distributor price comparisons

All 16 of the quarterly price comparisons for purchases by distributors showed LTFV Brazilian wheels selling at lower prices than those of the U.S. product (see tables 30 and 31). Imports of 22.5-inch Brazilian wheels were sold at prices lower than those of U.S. producers by $*** to $*** per wheel, or by *** percent. Prices of the 24.5-inch Brazilian wheels were lower than prices of the U.S. wheels by margins ranging from $*** to $***, or by *** percent to *** percent.

Transportation Costs

Up to seven firms have been engaged in direct importation of LTFV Brazilian wheels over the period of the investigation. Following a reorganization in mid-1985, this number has declined to three, only one of which is understood to be currently active. ***. Although *** has maintained a warehouse, on large orders where long lead times are not a problem, importers usually arrange direct factory shipments of disc wheels to ports nearest each respective customer.

Producers and importers usually sell tubeless steel disc wheels on an f.o.b. basis, so that purchasers absorb U.S. inland transportation costs. With respect to imported wheels, ocean freight is paid for by foreign producers, and importers incur customs duties, if any. Based on responses to purchasers questionnaires, table 34 presents data on freight costs incurred on purchases of U.S., LTFV Brazilian, and Japanese disc wheels by all firms during the period 1985-86. These data indicate that inland freight charges on shipments of U.S.-produced wheels can range up to $*** per wheel, compared with a maximum of $*** for LTFV Brazilian wheels and $*** for Japanese wheels. On a weighted-average basis, transport charges on U.S.-produced wheels averaged $*** per wheel, compared with $*** for shipments of LTFV Brazilian wheels, and $*** for shipments of Japanese wheels. When expressed as a proportion of price, freight charges averaged about *** percent of delivered price, regardless of whether the wheels were of U.S., Brazilian, or Japanese origin.

Table 34
Transportation costs for tubeless steel disc wheels: Inland freight paid by purchasers on shipments from domestic producers and from importers during 1985-86; weighted-average freight costs per wheel, and average freight charges as a proportion of delivered price

* * * * * * *

Purchasers situated near coastal ports were determined to have particularly strong incentives to purchase imported wheels from the foreign factory, based on considerations of transportation costs. These imports typically incurred inland freight charges below $*** per wheel.[12] The same customers would most likely pay $*** per wheel in transport costs for truckload purchases from U.S. producers.

---

[12] A spokesman from one LTFV Brazilian importer stated that U.S. inland transportation costs paid by purchasers on direct shipments from the factory averaged approximately *** percent, whereas such costs for imported wheels bought f.o.b. ***'s warehouse averaged *** percent. Some customers waited approximately 6 months for a direct shipment from the Brazilian factory to save on U.S. inland transportation costs.

LOST SALES AND LOST REVENUES

The principal U.S. producers of tubeless steel disc wheels, Budd, Motor Wheel, and Accuride, all indicated in their questionnaire responses that they believe that they have lost sales and have lost revenues from price reductions because of lower priced LTFV imports of the subject product from Brazil. Only *** provided specific allegations of lost sales or lost revenues. *** stated in its questionnaire response that "most, if not all, sales lost to imported tubeless steel disc wheels were in the independent aftermarket channel of distribution."

*** cited 17 purchasers in 13 allegations of lost sales and 4 allegations of revenues lost in price reductions to avoid losing sales to imported LTFV Brazilian wheels. The lost sales allegations cover the period ***, and involve *** wheels or $*** in sales revenue.[13] Many of these allegations appear to involve annual contracts. The lost revenue allegations cover the period *** and involved $*** in sales revenue lost on a sale of *** wheels. In one lost revenue allegation, the accepted quotation for U.S.-produced wheels was higher than the alleged quotation for the imported Brazilian wheels. The Commission staff was able to contact 13 of the 17 purchasers cited; a summary of their responses appears below.

Purchaser 1

*** alleged that it lost a *** sale of *** wheels to ***, because the distributor purchased Brazilian wheels *** instead. A spokesman for the distributor reported that, from mid-1984 to sometime in early 1985, *** experienced severe problems obtaining tubeless steel disc wheels from all of its U.S. suppliers--Motor Wheel, Firestone (Accuride), and Budd Co.--because of an increase in the demand for wheels. The distributor was unable to buy any wheels from ***. The purchaser believes that *** were selling only to OEM customers during this entire period. *** put this purchaser on an allocation program that was less than *** percent of *** purchasing needs at the time, but was unable to meet the agreed upon allocation. For example, the purchasing agent for the company estimated that, in late 1984, *** needed approximately *** wheels per month. *** promised them *** wheels per month, but delivered only *** wheels. Thus, *** began purchasing Brazilian wheels in mid-1984, and has since purchased Brazilian wheels produced by ***. The lead time for Brazilian wheels during mid-1984 was reportedly as much as 9 to 10 months.

The purchaser reported that the major factors pertinent to the company's procuring decisions are, in order of importance, price, availability, and ease of purchase. This purchaser stated that, currently, it is "nowhere near as advantageous" to purchase Brazilian wheels because U.S.-produced wheels have become price competitive. When demand for tubeless steel disc wheels began to recede in mid-1985, prices of U.S.-produced wheels began to fall as well. A

[13] The total units involved in ***'s alleged lost sales are *** percent of total imports from Brazil for the years 1984-85.

particular *** wheel that was selling for $*** (f.o.b. factory) in 1984 is now $*** and compares favorably with a Borlem wheel selling at $*** (f.o.b. *** warehouse). To buy Brazilian wheels from a U.S. importer today, the distributor must provide an irrevocable letter of credit 90 to 120 days (current lead-time) before the wheels arrive. As of June 1986, *** had not purchased any Brazilian wheels in 1986, although it is still carrying Brazilian wheels in its inventory. *** has purchased U.S.-produced wheels from all of its U.S. suppliers in 1986.

Purchaser 2

*** cited *** in lost revenue allegations involving approximately *** 22.5- and 24.5-inch LTFV Brazilian wheels purchased in ***. In its allegation, *** reported that the price reductions were approximately $*** per wheel. *** purchases U.S.-produced wheels from Budd, Firestone (Accuride), and Motor Wheel. The spokesman stated that, in ***, *** would have been soliciting bids for its 1986 purchases, and that prices from his U.S. suppliers have declined during 1983-86. However, the purchasing agent stated that *** has never pressured suppliers for price reductions because of lower prices of Brazilian wheels as Brazilian wheels are not approved for use on their ***. Apparently, their engineers have not approved them for use because of some unfavorable test data. This purchaser said that U.S. producers compete with each other on the basis of price and service, and stated that there is no real difference in the U.S. producers from a quality standpoint. Timely delivery is reportedly an important part of service considerations. This OEM reported no difficulties obtaining wheels during 1984, even though it was a "record year" for the ***. The purchasing agent cited 1979 as the last year that was as good as 1984 for the ***.

Purchaser 3

*** alleged that it had to reduce its prices by $*** per wheel for approximately *** 22.5- and 24.5-inch wheels sold to ***, because of price competition from LTFV Brazilian wheels. A spokesman for the manufacturer stated that *** purchases U.S.-produced wheels from Firestone (Accuride), Goodyear (Motor Wheel), and Budd. The purchasing agent is on instructions from the head of the purchasing department not to buy Brazilian wheels but is unsure of the reasons for those instructions. The spokesman stated that *** has never pressured its U.S. suppliers to reduce their prices because of Brazilian wheels. In ***, *** received price reductions both from *** of approximately $*** per wheel because these producers were competing with each other for ***'s business.

Purchaser 4

*** alleged that it lost a sale of *** tubeless steel disc wheels to ***, because this purchaser bought lower priced Brazilian wheels instead. In its allegation, *** stated that its *** price quote was $*** per wheel, and that it believed the Brazilian wheels were selling for $*** per wheel. A spokesman for *** stated that they first ordered Brazilian wheels in late 1984 because U.S.-produced wheels were unavailable from any of the three major suppliers. ***'s spokesman stated that all three U.S. producers had *** on allocation programs for a period of approximately 1½ years, but even so, shipments of U.S.-produced wheels were often 3 months late during this period. The first order of Brazilian wheels from *** were higher priced than U.S. wheels and did not arrive until ***. The spokesman estimated that the Brazilian wheels were priced at $*** per wheel, compared with $*** per wheel from ***. *** later stated that *** is their third source of supply because *** has always been higher priced than other U.S. producers, and that *** traditionally have had the lowest prices among U.S. producers.

The major factors important in ***'s purchasing decisions are, in descending order, quality, availability/delivery, and price. Transportation costs were later cited as also playing a role in purchasing decisions. Regarding availability/delivery, the crucial factor is reportedly when the wheels will be available for shipment, i.e., lead time. The spokesman stated that the quality of U.S.-produced and Brazilian wheels was the same in terms of meeting standard specifications and percentage of returns. However, the purchaser also stated that *** would not buy Brazilian *** wheels if they were higher priced than U.S.-produced wheels because Brazilian wheels are approximately 6 pounds heavier. Heavier wheels are undesirable for manufacturing purposes because they increase the weight of ***'s finished product considerably. A weight difference of 6 pounds multiplied by eight wheels per trailer increases the weight of ***'s by 48 pounds. Fleets prefer to purchase lighter *** for fuel economy and maximum payload. The spokesman said there was a slight (1 to 3 pounds per wheel) difference between the weight of U.S. producers' wheels, but that *** is developing a lighter wheel that will have a 5 pound per wheel advantage over wheels produced by the other U.S. producers and a 12 pound advantage over Brazilian wheels from ***.

's spokesman reported that it currently purchases U.S.-produced and Brazilian wheels, and that, as of ***, Brazilian wheels were priced at $ to $*** per wheel, and U.S.-produced wheels were priced at $*** to $*** per wheel. Asked about Japanese wheels, ***'s spokesman replied that he heard that *** Japanese wheels are currently sitting on the west coast selling for $*** or less per wheel. Because these wheels have been involved in a recall, purchasers are reluctant to buy them, however, the spokesman added.

Purchaser 5

*** was cited by *** in lost revenue allegations involving a $*** price reduction on a contract for *** 22.5- and 24.5-inch wheels negotiated in ***. *** has never purchased Brazilian wheels and purchases U.S.-produced wheels from Firestone (Accuride), Motor Wheel, and Budd. Asked about a *** price reduction of approximately $*** per wheel, the spokesman replied, "Are you talking about ***?" The spokesman stated that he has two *** proposals pending from *** standard wheels supplier for the coming year. Asked about ***, the purchaser replied that *** for nonstandard/option wheels when a customer requests them. The purchaser stated that all three U.S. producers were reducing their prices to *** currently on some sizes of tubeless steel disc wheels, even though *** has never pressured its suppliers about lower priced Brazilian wheels. The particular tubeless steel disc wheels experiencing decreases vary among producers.

Quality, availability, and price were mentioned as the major factors affecting purchasing decisions. ***'s spokesman stated that, although wheel supplies were tight a couple of years ago, they were able to purchase all they needed by relying on their secondary U.S. suppliers. As an OEM, *** prefers suppliers who can provide just-in-time delivery. The spokesman stated that *** considers just-in-time delivery and quality first, and "all that being equal, you then look at price." Asked about Japanese wheels, the spokesman stated that they may have been a factor a couple of years ago when Japanese wheels were lower priced than U.S.-produced wheels. However, he stated his belief that Japanese wheels are not price competitive today.

Purchaser 6

*** in lost revenue allegations involving price reductions of $*** per wheel on approximately *** 22.5- and 24.5-inch wheels purchased in ***. The head of purchasing for *** reported that the company has never purchased Brazilian wheels. Regarding price reductions during the period cited in the allegation, the spokesman would only state that they have received price reductions on U.S.-produced wheels but not because of price competition from Brazilian wheels. *** reportedly has put pressure on its standard wheel suppliers to keep their prices low so that *** can compete in the market for its finished product. Demand for *** in 1986, according to the company's spokesman, is much lower than demand in 1984.

Purchaser 7

*** in a lost sales allegation involving *** truckloads (***) in a contract sale dated ***. *** purchased no Brazilian wheels during 1985, although it did purchase *** wheels *** in 1986 in test purchases. ***.

Purchaser 8

*** it lost a contract sale for *** wheels to *** to a competitor selling LTFV Brazilian wheels. ***, speaking for the company, indicated that *** has generally preferred to buy domestically produced wheels, although it did buy *** Brazilian wheels *** during 1985 when ***'s wheels were unavailable. He added that *** has purchased *** of Brazilian wheels since the domestic supply problem ended, out of consideration for ***'s help during the shortage. However, generally speaking, *** has returned to purchasing U.S.-produced wheels, having placed its most recent order for the *** product.

Purchaser 9

*** alleged that it lost a sale of *** wheels to ***. *** indicated that *** purchased at most *** Brazilian wheels from *** since 1985. In the ***. ***'s decision to buy foreign-made wheels was not made because of price, but rather availability of supply. *** indicated that his company avoided foreign-made products because of any number of possible complications that can be encountered in the importation process.

Purchaser 10

*** alleged that in *** it lost a sale of *** wheels to ***. *** recalled a *** at which time *** advised him to get out of selling tubeless steel disc wheels because of the likelihood of future supply problems. In *** went to Sao Paulo for a trade show, and established a relationship with representatives of LTFV Brazilian producers. *** contends that before imports arrived, there was no competition among domestic producers.

Purchaser 11

*** alleged that it lost a sale of *** 24.5-inch wheels to *** to a competitor supplying Brazilian wheels. *** indicated that in *** it bought *** wheels through ***, but he doesn't know the origin of the wheels. To the best of his recollection, *** has made no large purchases of the Brazilian product. However, *** claims that Brazilian and the newer Japanese wheels are as good as the U.S. wheels. *** discontinued purchasing wheels from ***. *** had been his only reason for buying from *** in the past, because of the attention *** gave to his clients' needs.

Purchaser 12

*** alleged that it lost a sale of *** wheels to ***. *** indicated that it has only once purchased Brazilian wheels; a ***. ***. *** indicated that *** may have lost business, but it was because domestic suppliers were unable to satisfy ***'s orders fully and were keeping prices above the foreign competition, spurring customers to buy elsewhere. *** resisted purchasing imported wheels, and prefers to buy domestic wheels because liability insurance coverage held by agents sponsoring foreign wheels may be inadequate, in spite of apparent comparability of product warranty terms.

Purchaser 13

*** alleged that it lost a sale of *** wheels to ***. *** indicated that, although he does business with ***, he did buy *** of Brazilian wheels during 1986. However, he indicated that most of his business is not in wheels, but in demountable rims. He sells an estimated 10 rims for every wheel.

APPENDIX A

COMMISSION'S FEDERAL REGISTER NOTICE

[Investigation No. 731-TA-335 (Court remand)]

Tubeless Steel Disc Wheels From Brazil

AGENCY: United States International Trade Commission.

ACTION: Schedule for remand proceedings.

SUMMARY: The Commission hereby gives notice of its remand proceedings ordered by the Court of International Trade with respect to the Commission's final antidumping duty investigation No. 731-TA-335 (Final), Tubeless Steel Disc Wheels from Brazil.

EFFECTIVE DATE: September 5, 1991.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-2810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

In 1987, the Commission made a determination in investigation No. 731-TA-335 (Final) that an industry in the United States was threatened with material injury by reason of less than fair value (LTFV) imports from Brazil of tubeless steel disc wheels, provided for in item 692.32 of the former Tariff Schedules of the United States Annotated (TSUS), that had been found by the Department of Commerce (Commerce) to be sold in the United States at LTFV. Thereafter, in response to a remand of the United States Court of International Trade (*Borlem S.A. Empreedimentos Industriais* versus *United States*, 12 CIT 563, Slip Op. 88-77 (June 15, 1988)), Commerce, on September 8, 1988, amended its original affirmative LTFV determination to exclude from the scope of its affirmative determination imports of the subject product from a significant Brazilian manufacturer/exporter, FNV—Veiculos E Equipamentos S.A. (FNV).

On March 10, 1989, in the course of proceedings seeking judicial review of the Commission's final determination, the Court of International Trade (the Court) granted Borlem's motion to allow the Commission to make a finding as to whether it should reconsider its determination in view of the Commerce amendment and, if it found reconsideration to be appropriate, to make a new determination. In April 1989, the Commission reported to the Court its determination that the Commission should not reconsider its final affirmative threat of material injury determination.

Subsequently in 1989, the Court again remanded the Commission's final affirmative determination to the Commission for additional proceedings. The Court's remand order was stayed until the Court's resolution of *The Budd Company* versus *United States*, Court No. 88-09-00725, an action which sought review of the amended Commerce final determination referred to above. On September 5, 1991, the Court affirmed Commerce's amended final determination. Pursuant to the 1989 Court order, the Commission will reopen the record in the subject investigation to seek additional information to permit reconsideration.

Participation in the Proceedings

Only those persons who were interested parties and parties to the original proceeding (*i.e.*, persons listed on the Commission Secretary's service list) may participate in this remand determination. Pursuant § 201.11(d) of the Commission's rules, (19 CFR 11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who were interested parties and parties to the Commission's initial determination.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules (19 CFR 201.16(c) and 207.3)), each document filed by a party to the remand investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Written submissions

All legal arguments, economic analyses, and factual material relevant to the remand proceedings should be included in briefs, limited to twenty pages in length, in accordance with Commission rule § 207.24 (19 CFR 207.94) and must be submitted no later than close of business October 9, 1991. No new factual material may be submitted to the Commission other than that relating to the impact of the exclusion of imports of tubeless steel wheels from the Brazilian supplier, FNV.

All written submissions must conform with the provisions of § 201.8 of the Commission's rules. Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules.

Authority: These proceedings are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: September 24, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-23694 Filed 10-1-91; 8:45 am]

BILLING CODE 7020-02-M

APPENDIX B

COMMERCE'S FEDERAL REGISTER NOTICE

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-606]

Amended Final Determination of Sales at Less than Fair Value and Amended Antidumping Duty Order; Tubeless Steel Disc Wheels From Brazil

ACTION: Notice.

SUMMARY: The Commerce Department, pursuant to a remand of the United States Court of International Trade, amends its final affirmative antidumping duty determination and order on tubeless steel disc wheels from Brazil to recalculate the antidumping margin and to correct certain clerical, calculation, and transcription errors.

EFFECTIVE DATE: September 7, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, (202) 377-5288, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On June 15, 1988, the United States Court of International Trade at the Department's request remanded, in part, the *Final Affirmative Antidumping Duty Determination and Order on Tubeless Steel Disc Wheels from Brazil*, 52 FR 8947 (Mar. 20, 1987), as amended, 52 FR 19903 (May 28, 1987). The Court remanded this determination and order with instructions to recalculate the antidumping duty margin and to correct all clerical, calculation and transcription errors. *Borlem, S.A. Empreedimentos Industrias v. United States*, No. 87-08-00692, slip op. 88-77 (June 15, 1988).

Circumstances of Sale Adjustment

In this investigation, in order to capture the effects of Brazil's hyperinflation, we constructed foreign market value for six different one-month periods by using replacement costs for the month of shipment. We then converted the foreign market value into United States currency using the exchange rate in effect for the date of sale in accordance with § 353.56(a)(1) of our regulations.

While the above actions are consistent with the Act and our regulations, they have, in combination, led to an anomalous result that distorts economic reality and violates the basic purpose of the Act. To remedy this situation, the Department has made a circumstance of sale adjustment to reflect fully the effect of the devaluation of the Brazilian currency during the period of investigation.

The unique circumstances of this investigation are fully documented in the *Final Determination of Sales at Less Than Fair Value: Tubeless Steel Disc Wheels from Brazil*, 52 FR 8947 (1987). The pertinent facts, however, are repeated here to enable all parties to understand fully the reasons for the Department's determination to make a circumstance of sale adjustment.

In this investigation, we properly used constructed value as the basis for calculating foreign market value for FNV and for some sales of Borlem. There were either no sales of such or similar merchandise in the home market or to third countries, or there were insufficient sales above the cost of production for certain months. Our usual methodology dictates that we calculate a single constructed value for the period of investigation, but when a country's economy is hyperinflationary, as is Brazil's, we calculate foreign market value on a monthly basis. *E.g., Frozen Concentrated Orange Juice from Brazil*, 52 FR 8324, 8327 (1987); *Fuel Ethanol from Brazil*, 51 FR 5572, 5573 (1986); *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*, 49 FR 48588, 48590 (1984). Foreign market value constructed for six different one-month periods thus allows us to account for, in part, the dramatic changes that occur to price and cost variables because of inflation over the six-month period of investigation.

We also calculate constructed value under our usual methodology by using a company's historic costs. However, when a country's economy experiences hyperinflation, we use replacement costs. *E.g., Paint Filters and Strainers from Brazil*, 52 FR 19181, 19184 (1987); *Iron Construction Castings from Brazil*, 51 FR 9477, 9483 (1986); *Oil Country Tubular Goods from Argentina*, 50 FR 12595, 12596 (1985). This practice allows the Department to view costs and prices contemporaneously in order to avoid distortions caused by hyperinflation and achieve a fairer comparison. Foreign market value thus was calculated, in part, by using replacement value for raw materials based on actual purchases in a month, or, if actual purchases were not made, on the price list provided by respondents. 52 FR 8947, 8948.

Once we calculated individual constructed values based on replacement costs for each of the six months of the period of investigation, the next step was to compare these foreign market values to individual U.S. sales. In this investigation, Commerce verified that there were long time periods between the reported dates of sale and the reported dates of shipment for the tubeless steel disc wheels. As explained below, this lag time between date of sale and date of shipment in conjunction with Brazil's hyperinflation gave rise to the problem which we now, through a circumstance of sale adjustment, seek to remedy.

Section 773(e)(1)(A) of the Act directs that foreign market value shall be constructed as of the date of exportation. 19 U.S.C. 1677b(e)(1)(A). Thus, in this investigation, Commerce properly calculated monthly constructed values based on replacement costs for the month of shipment. At the same time, however, § 353.56(a)(1) of our regulations requires that currency conversions for "purchase price" transactions be made using the exchange rate in effect on the date of the U.S. sale. Thus, in this investigation, we applied the exchange rate that existed on an earlier date of sale to convert constructed value, calculated in the month of shipment, to dollars.

When the date of sale and the date of shipment occur in the same month, use of the date of sale exchange rate to convert foreign market value to dollars makes sense notwithstanding Brazil's hyperinflation. In this instance, foreign market value and the U.S. price are being compared at the same point in time. When date of sale occurs in a month preceding the date of shipment, however, application of the earlier date of sale exchange rate results in a non-contemporaneous comparison. In effect, the comparison suffers because all the nominal increases in cost between date of sale and date of shipment due to hyperinflation are accounted for by the method in which we constructed foreign market value while the decreased value of the currency in which those costs are expressed is not. The circumstance of sale adjustment defined below eliminates the artificial distortion of value caused by the rapid depreciation of Brazil's currency and thus more accurately provides a measure of whether dumping is occurring. We consider this adjustment as being applicable only in cases where the foreign market value is based upon monthly constructed values because of hyperinflation during the period of investigation and the date of sale occurs in a calendar month preceding the date of exportation.

The formula for this circumstance of sale adjustment is as follows:

$$\text{Adjustment} = ((e(0) \times e(1)^{-1}) - 1) \times CV(1)$$

where:

e(0) = cruzeiro/dollar exchange rate date of sale

e(1) = cruzeiro/dollar exchange rate date of shipment
CV(1) = constructed value in the month of shipment as expressed in cruzeiros

As demonstrated by the special rules under § 353.56(b) of our regulations, the Department has long recognized that the special circumstances of a particular case may require us to compensate for the otherwise strict rules for currency conversion found under § 353.56(a) to arrive at a fair comparison. As explained above, we find such special circumstances in this case. Although § 353.56(b) addresses situations other than the one present here, the same concern to achieve a fair comparison which caused § 353.56(b) to be promulgated, compels us to make a circumstance of sale adjustment pursuant to section 773(a)(4)(B) of the Act in order to arrive at a fair comparison.

Correction of Clerical, Calculation, and Transcription Errors

The Department also pursuant to this remand corrected the following clerical, calculation, and transcription errors:

(1) Errors were made when information from Borlem, S.A., Empreedimentos Industriais' (Borlem) verified response was transcribed to determine Borem's net U.S. price as regards the following sales: (a) Product 2705XY, sale date 12/13/85, deduction for ocean freight; (b) product 2705XJ, sale date 12/31/85, deduction for port charge; (c) product 2835XY, sale date 12/4/85, deduction for inland freight and port charge; (d) product 2835XJ, sale date 12/31/85, deduction for port charge; (e) product 2705Z, sale date 2/18/86, deduction for port charge; and (f) product 2835Z, sale date 2/18/86, deduction for port charge. These transcription errors led to calculation errors in determining Borlem's net U.S. price for the specific sales.

(2) Errors were made in totaling Borlem's net U.S. price for the January 29, 198, sale of product 2835XY and the February 27, 1986, sale of product 2835RY.

(3) Invoice dates were used rather than bill-of-lading dates to represent the date of shipment for the calculation of Borlem's antidumping duty margins.

(4) FNV Veiculos E Equipamentos, S.A.'s (FNV), December 1985 G&A ratio was used for the entire period of investigation rather than three separate G&A ratios for the periods December 1985, January–February 1986, and March–May 1986.

Interested Party Comments

Comment 1

Petitioner argues that Commerce's circumstance of sale adjustment is heretofore unknown and contrary to the plain language and history of the antidumping statute. Specifically, the statute limits circumstance of sale adjustments to directly related selling expenses and foreign market value only. The equation by which the Department performs the circumstance of sale adjustment in this case reveals that the date of sale exchange rate is the item being adjusted; therefore, such an adjustment is contrary to law.

Respondents argue that petitioner's assertion that the circumstance of sale provision of section 773(a)(4)(B) is limited to "directly related selling expenses and foreign market value" is not supported by the statute or Commerce regulations. That is, the specific statutory provision refers to "other differences in circumstances of sale," not to other differences in selling expenses, and allows adjustments for any differences in circumstances of sale which affect price comparability. Also, general Department practice does not limit adjustments to selling expenses but reflects a variety of factors in determining price comparability. Finally, § 353.56(b) of the Department's regulations recognizes that exchange rate fluctuations can affect price comparability. That Commerce did not anticipate the facts of this investigation when it drafted its regulations does not negate the necessity for applying the logic and philosophy inherent in this regulation to the remand determination.

DOC Position

We disagree with petitioner that the circumstances of sale adjustment is contrary to the language and history of the Act. Section 773(a)(4)(B) permits an adjustment to foreign market value for "other circumstances of sale" without limiting the adjustment to directly related selling expenses. Similarly, § 353.15(a) of our regulations permit an adjustment for "bona fide differences in the circumstances of sales compared."

While petitioner is correct that the Department typically uses circumstances of sale adjustments to adjust for different selling expenses incurred in the two markets, we are not precluded from using this provision to achieve a result that reflects economic reality and is consistent with the basic purpose of the Act. In this regard, in order to fairly compare foreign market value and United States price on an equivalent basis, "[b]oth values are subject to adjustment in an attempt to reconstruct the price at a specific, 'common' point in the chain of commerce." *Smith-Corona Group v. United States*, 713 F.2d 1568, 1571–72 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984).

Lacking a circumstance of sale adjustment, Commerce's original final determination failed to achieve this goal. Specifically, the circumstances under which Commerce constructed foreign market value failed to adjust for, and thus reconstruct, a reference point whereby these values are being compared with the U.S. price at the same point in time, as explained above in the Supplemental Information section of this notice. *See generally Southwest Florida Winter Vegetable Growers Association v. United States*, 584 F. Supp. 10 (1984) (Commerce took account of differences in ripeness of the merchandise and time of day of sale, a concept similar to the rapid devaluation resulting from a hyperinflationary economy, in order to achieve a fair comparison).

Finally, as also explained under our Supplemental Information section, our regulations have long recognized that special circumstances may require us to compensate where a strict application of our currency rules leads to an incorrect result. Application of a circumstance of sale adjustment in these special situations achieves the correct and fair result.

Comment 2

In its arguments before the Court, petitioner opposed the proposition that Commerce possessed inherent authority to disregard regulations requiring use of the exchange rate in effect on the date of sale. According to petitioner, the Department agreed with this viewpoint and concluded that its original calculation of foreign market value was proper. The remand determination, however, adjusts the exchange rate dictated by 19 CFR 353.56(a) to "net-out" the effects of devaluation, whereas the regulation requires that the date of sale exchange rate be used without modification. This remand determination, then, is in direct contravention with § 353.56(a) and the position advanced by the Department before the U.S. Court of International Trade.

DOC Position

This remand determination is consistent with § 353.56(a) of our regulations and the position advanced by the Department before the U.S. Court of International Trade. First, Commerce argued before the Court that we properly calculated constructed value in accordance with 19 U.S.C. 1677b(e)(1)(A) by using the replacement costs for the month of shipment. As shown in our section on Supplemental Information, we continue to maintain that this method is an accurate calculation of constructed value. Second, Commerce argued before the Court that our decision to use an exchange rate in effect as of the date of sale (or purchase) was in accordance with 19 CFR 353.56(a)(1). We continue to apply this section of our regulations in this remand determination for purposes of currency conversion.

Commerce, however, also argued before the Court that the above methdologies produced a result which did not reflect a fair comparison of the foreign market value with the U.S. price. Consequently, Commerce requested the Court to remand the investigation to us because, as we stated on page 19 of our brief, "Commerce did not adjust the constructed values to account for inflation occurring between the date of sale and the date of shipment." Defendent's Memorandum Concerning Plaintiff's Motion for Judgment Upon the Agency Record (March 14, 1988).

> The rampant inflation in Brazil had the effect of depreciating the value of the Brazilian currency in relation to United States currency during the time period between the date of sale and the date of shipment of the merchandise. Consequently, Brazilian cruzeiros were worth less per dollar at the date of shipment than they were at the date of sale. Since Commerce calculated constructed values as of the date of shipment, it should have made some adjustment to these values to reflect the additional amount of cruzeiros required to purchase dollars as a consequence of the inflation which occurred after the date of sale. After making an appropriate adjustment, Commerce could have then converted the constructed value from Brazilian currency to United States currency as of the date of sale in accordance with 19 CFR 353.56(a)(1).

Id. 20.

The methodology set forth in this remand determination allows us to make the necessary adjustment to foreign market value in a manner that is in accordance with law. As such, it is consistent with the position advanced by the Department before the U.S. Court of International Trade and § 353.56(a) of our regulations.

Comment 3

Petitioner suggests that Commerce could achieve a fair result if it used a value 30 days preceding the date of export shipment, rather than the value in the month of shipment, to calculate constructed value. That is, the standard production period for tubeless steel disc wheels is 30 days. The statute requires that foreign market value be ascertained as of a date preceding the date of export by a sufficient period to permit production of the exported merchandise in the ordinary course of business. Thus, Commerce should recalculate foreign market value using a 30-day lag, and, to the extent that the margins were artificial because a statutory lag period was not included, that artificiality will have been addressed. The suggested methodology would be consistent with the statute and reduce the time period between the date of sale to the United States and the date on which constructed value was determined.

DOC Position

The methodology suggested by petitioner appears to be subject to the same fault that was present in the Department's original final determination. The circumstances in which foreign market value would be constructed under petitioner's methodology would fail to adjust for, and thus reconstruct, a reference point whereby these values are being compared with the U.S. price at the same point in time. Specifically, it would fail to adjust fully for the hyperinflation that occurred during the long time periods between the reported dates of sale and the reported dates of shipment for tubeless disc wheels.

Comment 4

Petitioner states that the Department's remand determination ignores the fact that respondents have absolute control over both the date of sale and the date of shipment. It is within respondents' power to control both dates, and Commerce has no authority to alter those dates or render them irrelevant.

Respondents consider petitioner's comment irrelevant for the following reasons: Both the date of sale and the date of shipment are established and have been used by Commerce in the context of this investigation. The implication that the Department, through its methodology, has altered these dates is wrong. Commerce's remand determination has recognized the effect of these dates on the return to the manufacturer/exporter and has attempted to make a fair comparison in light of this effect.

DOC Position

We disagree with petitioner's statement that respondents have absolute contol over dates of sale and shipment for two reasons: First, in order for a sale to occur, both the seller and buyer must reach an agreement. In this respect, shipment date will frequently be one of the terms of the sales agreement.

Second, even if we assume a seller's alleged control of these dates, such control has no impact upon the circumstance of sale adjustment we have made in this case. The adjustment merely reflects the interrelationship of domestic inflation in Brazil and the depreciation of its currency against the dollar. That is, a seller's decision to delay shipping the product may lead to a larger adjustment being made to foreign market value, but because costs are continuing to increase, the foreign market value calculated would counterbalance the increased adjustment since it would be higher as well.

Comment 5

Respondents state that Commerce's remand determination stops short of granting them a full fair comparison between United States price and foreign market value by creating arbitrary criteria to qualify for the circumstance of sale adjustment. The normal practice of the Department is to make all currency conversions based on the quarterly exchange rate in effect at the time of purchase unless there has been a five percent variance from the quarterly rate, in which case the daily rate is used. Commerce has never applied different exchange rates based on whether or not the United States price is compared with a foreign market value in the same or a different month. There is also no basis to distinguish between application of the adjustment to transactions which were sold and shipped in the same month and those which were sold and shipped in different months.

Petitioner argues that respondents' request for further refinement of the Department's methodology should be rejected because the cost data relied upon are average monthly data which also ignore daily changes induced by inflation. That is, the cruzado is not devalued because respondents experience inflation; rather, devaluation is caused by inflation generally in Brazil. Since Commerce is measuring only the average effect on inflation month by month, it is appropriate to measure inflation based devaluation on an equivalent basis.

DOC Position

We agree with petitioner that the further refinement sought by respondents is inappropriate because it would necessitate calculation of "daily" foreign market values.

Comment 6

Respondents assert that Commerce's application of the circumstance of sale adjustment only when the date of sale and the date of shipment occur in different months is not supported by the facts on record. While the replacement costs within any given month seldom vary significantly prior to the implementation of the Cruzado plan at the end of February 1986, currency devaluations took place on almost a daily basis. Where the return to the manufacturer/exporter may be as much as 15 percent higher if the shipment is on the last day of the month as opposed to the first day of the month, to draw a line between the sale and shipment at the end of a month is at best arbitrary.

DOC Position

We typically calculate monthly foreign market values in hyperinflationary cases to compensate for the distortions that would arise from using a single, six-month average foreign market value. We recognize that price and cost variation within a single month may introduce similar distortions but on a smaller scale. We have determined that price/cost variations within one month are not so great as to warrant calculating foreign market value on a daily basis. See also our response to Comment 5.

Comment 7

Respondents argue that when Commerce decided to use replacement costs in the month of shipment as the basis for constructed value, rather than actual costs, we also should have used either replacement costs on the date of purchase and applied § 353.56(a)(1) of our regulations or disregarded § 353.56(a)(1) and applied the exchange rate on the date of shipment. Any other methodology results in a serious distortion of the price-to-cost and price-to-constructed value comparisons because it only reflects the inflation of costs and not the fact that the currency devaluation offsets the effects of the cost of inflation. The return to the manufacturer/exporter is not adversely affected between sale and shipment even when replacements costs are used if the devaluation is equal to or exceeds inflation.

Petitioner argues that the antidumping statute is not designed to evaluate the comparative rate of return on home market and U.S. sales. Rather, the statute is designed to compare prices at equivalent levels of trade to determine whether imported merchandise is being sold at a lower price than is charged in home or third country markets. The constructed value provision of the Act expects Commerce to determine the cost of the exported merchandise plus profit and then compare that value with the U.S. price as of the date the price was set. The statute does not require this comparison to occur on a single day. Rather, the statute requires that the selling price of the merchandise be compared with its costs irrespective of when price is set in relation to when costs are incurred.

DOC Position

We disagree with respondents for the following reasons: First, as explained in our response to Comment 2, Commerce calculates constructed value, in part, by adding the cost of materials and of fabrication as of the date of exportation of the merchandise. 19 U.S.C. 1677b(e)(1)(A). Therefore, Commerce is required by statute to determine constructed value at the date of shipment and cannot, as respondents suggest, ignore the Act and calculate replacement costs as of the date of sale (purchase).

Second, our regulations require that any necessary conversion of a foreign currency into its equivalent in United States currency shall be made as of the date of purchase or agreement to purchase if the purchase price is an element of the comparison. 19 CFR 353.56(a)(1). The only instance in which we could disregard this regulation is where it conflicts with the underlying statute. *See Red Raspberries from Canada; Final Determination of Sales at Less Than Fair Value*, 50 FR 19768, 19771 (1985), *sustained*, *Washington Red Raspberries Commission v. United States*, 657 F. Supp. 537, 544–45 (CIT 1987). That is not the case here. Therefore, Commerce is required by regulation to use the exchange rate in effect as of the date of sale.

We also disagree with petitioner's concluding remark that the statute requires a comparison of price and cost regardless of when prices are set relative to when costs are incurred. Our practice of calculating monthly foreign market values in hyperinflationary economies, to which petitioner does not object, is an example of making comparisons on a relatively contemporaneous basis. Our use of replacement costs to measure foreign market values in hyperinflationary economies, to which petitioner does not object, is also an example of making comparisons on a relatively contemporaneous basis.

Amendment to Final Determination and Antidumping Duty Order

The final determination and antidumping duty order on tubeless disc wheels from Brazil are hereby amended to incorporate the above changes. The results of this amended determination are as follows:

Manufacturer/producer/exporter	Margin percentage
Borlem, S.A. Empreedimentos Industriais	10.84
FNV Veiculos E Equipamentos, S.A. (*de minimis*)	0.04
All others	10.84

Suspension of Liquidation—Borlem, All Others

In accordance with sections 736 and 751 of the Act, the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties for Borlem and all other manufacturers, producers, and exporters, on or after the date of the publication of this notice, equal to the amount by which the foreign market value of their merchandise exceeds the United States price for entries of tubeless steel disc wheels from Brazil.

Termination of Suspension of Liquidation—FNV

The Department considers any rate less than 0.5 percent to be *de minimis*. 19 CFR 353.24. In accordance with section 735(c)(2)(A) of the Act, we are directing the United States Customs Service to terminate the suspension of liquidation for all entries of tubeless steel disc wheels from Brazil by FNV that were entered, or withdrawn from warehouse, for consumption on or after April 29, 1987. All estimated antidumping duties deposited should be refunded.

Jan W. Mares,

Assistant Secretary for Import Administration.

August 31, 1988.

[FR Doc. 88-20272 Filed 9-6-88; 8:45 am]

BILLING CODE 3510-DS-M