

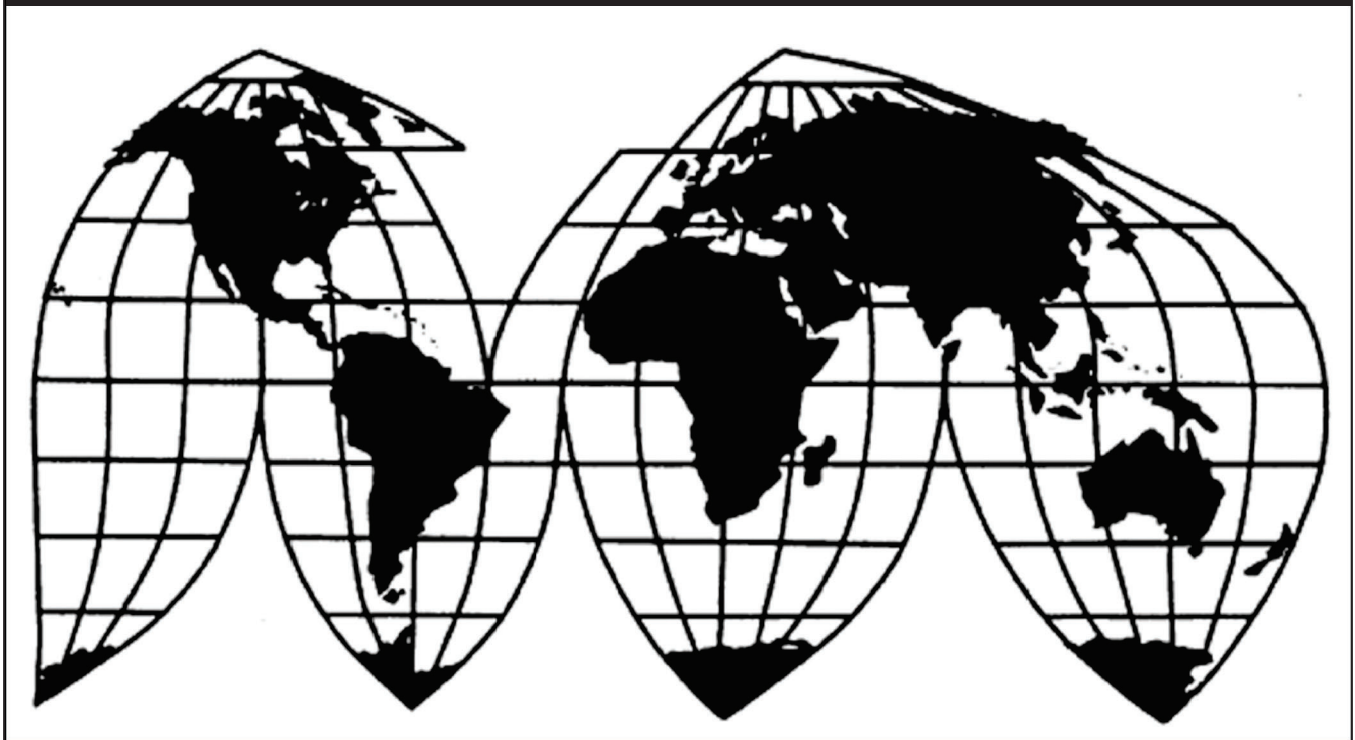
# Truck and Bus Tires from China

Investigation Nos. 701-TA-556 and 731-TA-1311 (Final) (Remand)

Publication 4877

April 2019

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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## Views of the Commission on Remand

By decision and order dated November 1, 2018, the U.S. Court of International Trade remanded the Commission's determination in *Truck and Bus Tires from China*, Inv. Nos. 701-TA-556 and 731-TA-1311 (Final), USITC Pub. 4673 (March 2017).<sup>1</sup> Upon consideration of the Court's remand instructions and the parties' comments, and based on the record in these remand proceedings, we determine that an industry in the United States is materially injured by reason of subject imports of truck and bus tires ("TBTs") from China that are sold in the United States at less than fair value and subsidized by the government of China.<sup>2 3</sup>

### I. Background

#### A. The Commission's Original Determinations

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("USW" or "Petitioner"), which represents workers engaged in domestic production of truck and bus tires, filed the petition in these investigations on January 29, 2016.<sup>4</sup> USW participated at the hearing and submitted prehearing and posthearing briefs.

The following respondents appeared at the hearing accompanied by counsel and submitted joint prehearing and posthearing briefs: Guizhou Tyre Co., Ltd., Guizhou Tyre Import and Export Co., Ltd., GTC North America, Inc., Aeolus Tyre Co., Ltd., Tyres International, Sub-Committee of Tire Producers of the China Chamber of Commerce Metals, Minerals & Chemical Importers, and the China Rubber Industry Association, which are producers/exporters of subject merchandise (collectively, "Chinese Respondents"). The Institute of International Container Lessors, Ltd. ("IICL"), an entity consisting of purchasers and importers of subject merchandise, also appeared at the hearing and submitted prehearing and posthearing briefs. The China Manufacturers Alliance LLC ("CMA"), an importer of subject merchandise, submitted prehearing and posthearing briefs, but did not appear at the hearing.

U.S. industry data are based on the questionnaire responses of seven producers, which accounted for virtually all domestic production of truck and bus tires in 2015.<sup>5</sup> U.S. import data

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<sup>1</sup> *United Steel, Paper and Forestry, Rubber, Mfg., Energy, Allied Indus. and Serv. Workers Int'l Union v. United States*, Slip Op. 18-151 (Ct. Int'l Trade Nov. 1, 2018) ("Slip Op. 18-151").

<sup>2</sup> Chairman Johanson and Commissioner Broadbent determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of the subject imports. See Dissenting Views of Chairman David S. Johanson and Commissioner Meredith M. Broadbent on Remand.

<sup>3</sup> Commissioner Kearns was not a member of the Commission at the time of the original determinations. He made his determination in these remand proceedings *de novo* by weighing all of the evidence in the record and reaching his own independent conclusion.

<sup>4</sup> Confidential Report ("CR") at I-1, Public Report ("PR"), USITC Pub. 4673 at I-1.

<sup>5</sup> CR at I-5, PR at I-4. The seven U.S. producers are: Bridgestone Americas Tire Operations, LLC ("Bridgestone"), Continental Tire the Americas, LLC ("Continental"), The Goodyear Tire & Rubber Company ("Goodyear"), Michelin North America, Inc. ("Michelin"), Specialty Tires of America ("STA"),

are based on official Commerce import statistics and questionnaire responses from 41 firms representing \*\*\* percent of U.S. imports from China in 2015 under HTS statistical reporting numbers 4011.20.1015 and 4011.20.5020.<sup>6</sup> The Commission received responses to its questionnaires from 39 Chinese producers of subject merchandise, accounting for 77.8 percent of production of truck and bus tires in China in 2015, and whose exports to the United States were equivalent to 84.7 percent of subject imports in 2015.<sup>7</sup>

In February 2017, the Commission determined that an industry in the United States was not materially injured or threatened with material injury by reason of TBTs imported from China. In the Commission's original determinations, three Commissioners reached negative determinations (then-Vice Chairman Johanson and Commissioners Broadbent and Kieff) while two Commissioners reached affirmative present material injury determinations (then-Chairman Schmidlein and Commissioner Williamson).<sup>8</sup>

## **B. The Court of International Trade's Remand Order**

Petitioner appealed the Commission's negative determination to the U.S. Court of International Trade. The Court upheld the challenged aspects of the Commission's determination regarding conditions of competition and impact, but remanded a certain aspect of the Commission's analysis of price effects.<sup>9</sup> The Court also remanded certain aspects of the Commission's negative threat determination pertaining to its analysis of countervailable subsidies and likely price effects.<sup>10</sup>

## **C. The Current Remand Proceedings**

Following the Court's remand order, the Commission instituted these remand proceedings.<sup>11</sup> In light of the nature of the issues remanded, the Commission determined not to reopen the record.<sup>12</sup> In the Commission's notice of remand procedures, the Commission invited interested parties to file remand comments limited to ten pages and pertaining only to the issues which the Court remanded.<sup>13</sup> USW submitted remand comments on behalf of the domestic industry. The Chinese Respondents also filed remand comments.

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Sumitomo Rubber Industries, Ltd. ("Sumitomo"), and Yokohama Tire Corporation ("Yokohama"). CR/PR at Table III-1.

<sup>6</sup> CR at I-5, PR at I-4.

<sup>7</sup> CR at I-5, PR at I-4. The coverage for Chinese production of truck and bus tires in 2015 is based upon estimates provided by 37 firms that provided the pertinent information in their responses to the Commission's questionnaires. *Id.*

<sup>8</sup> *Truck and Bus Tires from China*, Inv. Nos. 701-TA-556 and 731-TA-1311 (Final), USITC Pub. 4673 (March 2017).

<sup>9</sup> Slip Op. 18-151 at 7-14.

<sup>10</sup> Slip Op. 18-151 at 14-18.

<sup>11</sup> 83 Fed. Reg. 61674 (Nov. 30, 2018).

<sup>12</sup> See 83 Fed. Reg. 61674 (Nov. 30, 2018).

<sup>13</sup> 83 Fed. Reg. 61674 (Nov. 30, 2018).

USW argues that the Commission should revisit its finding that underselling by subject imports was mitigated because domestic price declines were the result of cost declines and because of quality differences and capacity restraints.<sup>14</sup> Consequently, USW urges the Commission to reexamine its price effects finding and find that subject imports significantly depressed prices for the domestic like product. As to the Court's remand concerning the Commission's threat determination, USW points to record evidence indicating that export subsidies amounted to 11.01 percent for all companies.<sup>15</sup> USW also asks the Commission to reconsider its threat determination in light of other evidence relevant to the likely effect of the subsidies, including that the Chinese industry had massive excessive {excess?} capacity, was export oriented throughout the period of investigation, and that the United States was the largest export market for Chinese subject producers in 2015.<sup>16</sup>

The Chinese Respondents argue that the Commission should reaffirm its finding that subject imports did not have significant price effects.<sup>17</sup> They further assert that the record evidence does not show a correlation between underselling by subject imports and the domestic industry's condition, which remained strong throughout the period of investigation.<sup>18</sup> As to the threat issues remanded by the Court, the Chinese Respondents argue that taking into account export subsidies would not change the Commission's analysis that likely significant volumes of subject imports would not likely have significant price effects nor likely have a significant impact.<sup>19</sup>

## **II. Domestic Like Product**

### **A. In General**

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of subject merchandise, the Commission first defines the "domestic like product" and the "industry."<sup>20</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended ("The Tariff Act"), defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."<sup>21</sup> In turn, the Tariff Act defines "domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."<sup>22</sup>

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

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<sup>14</sup> USW's Remand Comments at 2, 4-9.

<sup>15</sup> USW's Remand Comments at 9-10 & n.54.

<sup>16</sup> USW's Remand Comments at 10.

<sup>17</sup> Chinese Respondents' Remand Comments at 4-8.

<sup>18</sup> Chinese Respondents' Remand Comments at 8.

<sup>19</sup> Chinese Respondents' Remand Comments at 9-10.

<sup>20</sup> 19 U.S.C. § 1677(4)(A).

<sup>21</sup> 19 U.S.C. § 1677(4)(A).

<sup>22</sup> 19 U.S.C. § 1677(10).

“most similar in characteristic and uses” on a case by case basis.<sup>23</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>24</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>25</sup> Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise that is subsidized or sold at less than fair value,<sup>26</sup> the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>27</sup>

## **B. Product Description**

In its final determinations, Commerce defined the imported merchandise within the scope of these investigations as follows:

Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by this investigation may be tube-type, tubeless, radial, or non-radial.

Subject tires have, at the time of importation, the symbol “DOT” on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes

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<sup>23</sup> See, e.g., *Cleo Inc. v. United States*, 501 F.3d 1291, 1299 (Fed. Cir. 2007); *NEC Corp. v. Department of Commerce*, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors, including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See *Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>24</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>25</sup> *Nippon*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>26</sup> See, e.g., *USEC, Inc. v. United States*, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); *Algoma Steel Corp. v. United States*, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), *aff’d*, 865 F.3d 240 (Fed. Cir.), *cert. denied*, 492 U.S. 919 (1989).

<sup>27</sup> *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); *Cleo*, 501 F.3d at 1298 n.1 (“Commerce’s {scope} finding does not control the Commission’s {like product} determination.”); *Torrington*, 747 F. Supp. at 748-52 (affirming the Commission’s determination defining six like products in investigations in which Commerce found five classes or kinds).



in their tire size designation, which also appear on the sidewall of the tire:

- TR – Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires;
- MH – Identifies tires for mobile homes; and
- HC – Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a “TR,” “MH,” or “HC” suffix in their size designations are covered by this investigation regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the “Truck-Bus” section of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, e.g., a wheel, rim, axle parts, bolts, nuts, etc. Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope of this investigation are the following types of tires: (1) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; and (2) non-pneumatic tires, such as solid rubber tires.<sup>28</sup>

Truck and bus tires covered by the scope of these investigations are new pneumatic tires of rubber certified by the U.S. Department of Transportation (“DOT”) for on-road or highway use.<sup>29</sup> They are used on a wide range of types and sizes of vehicles designed to

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<sup>28</sup> Truck and Bus Tires from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, In Part, 82 Fed. Reg. 8606 (January 27, 2017), and accompanying Issues and Decision Memorandum at Appendix I (“Commerce Final CVD Determination”); Truck and Bus Tires from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 82 Fed. Reg. 8599, 8600 (January 27, 2017), and accompanying Issues and Decision Memorandum at Appendix I (“Commerce Final AD Determination”).

<sup>29</sup> CR at I-10, PR at I-8.

transport heavy cargo and passengers on roads and highways.<sup>30</sup> They are designed to be mounted on heavier commercial vehicles compared to the lighter on-road tires found on consumer passenger vehicles and commercial light trucks.<sup>31</sup> They also support the higher load bearing requirements of heavier commercial vehicle platforms, and are generally heavier, stronger, and larger.<sup>32</sup> Truck and bus tires are produced in a large variety of types and sizes found on a wide range of commercial vehicles, from local delivery and municipal service trucks and buses in urban/regional settings, for example, to the large 18-wheel tractor-trailer rigs and passenger buses found in long-haul higher speed use on U.S. highways and interstate systems.<sup>33</sup>

### C. Arguments of the Parties

In the preliminary determinations, the Commission defined a single domestic like product consisting of all truck and bus tires within the scope.<sup>34</sup> Petitioner argues that the Commission should again define one domestic like product as it did in the preliminary determinations.<sup>35</sup> Respondent IICL argues that the Commission should define two domestic like products: (1) all bias ply tube tires, and (2) all other truck and bus tires.<sup>36</sup>

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<sup>30</sup> CR at I-3, PR at I-3.

<sup>31</sup> CR at I-10, PR at I-8; *Compare Certain Passenger Vehicle and Light Truck Tires from China*, Inv. Nos. 701-TA-522 and 731-TA-1258 (Final), USITC Pub. 4545 at I-11-23 (Aug. 2015).

<sup>32</sup> CR at I-10, PR at I-8.

<sup>33</sup> CR at I-10, PR at I-8.

<sup>34</sup> In the preliminary phase of these investigations, respondents argued that that the Commission should find truck and bus tube tires with a bias ply design and a nominal section width of 10.00 inches and a rim diameter of 20 inches (“10 X 20 bias ply tube tires”) to be a separate domestic like product. However, the Commission found that 10 X 20 bias ply tube tires did not constitute a separate domestic like product since the record did not establish a clear dividing line between 10 X 20 bias ply tube tires and all other truck and bus tires that were within the scope of the investigations. *Truck and Bus Tires from China*, Inv. Nos. 701-TA-556 and 731-TA-1311 (Preliminary), USITC Pub. 4601 at 4-13 (March 2016). It found that all truck and bus tires, including 10 X 20 bias ply tube tires, share the same physical characteristics insofar as they are produced from the same raw materials and have the same basic components and features. *Id.* at 11. In terms of use, it found that all truck and bus tires must be capable of supporting vehicles with a gross vehicle weight rating (“GVWR”) of more than 10,000 pounds and they are subject to Federal Motor Vehicle Safety regulations for such tires. *Id.* It observed that, although there appeared to be limited interchangeability between 10 X 20 bias ply tube tires used for intermodal marine chassis and all other truck and bus tires, the record indicated that at least some intermodal marine chassis used other radial tires. *Id.* It also found that the limited information on manufacturing facilities and processes, producer and customer perceptions, and price did not support a finding of a clear dividing line between 10 X 20 bias ply tube tires and other types of in-scope truck and bus tires. *Id.* at 11-12. Accordingly, it defined a single domestic like product consisting of all truck tires that were within the scope of the investigations. *Id.* at 12.

<sup>35</sup> Petitioner’s Prehearing Br. at 8-11.

<sup>36</sup> IICL’s Posthearing Br. at 8-12. For the purposes of this opinion, “bias ply tube tires” refers to truck and bus tires with tubes and a bias ply design. “Bias ply tubeless tires” refers to truck and bus tires without tubes and with a bias ply design. “Radial tires” refers to truck and bus tires with a radial design.

As we explain below, while the record of the final phase of these investigations with respect to the domestic like product factors is more extensive than that in the preliminary phase, it supports the same conclusion that there is no clear dividing line between the articles within the scope. Based on the record, we define a single domestic like product consisting of all truck and bus tires that is coextensive with the scope of the investigations.

#### **D. Domestic Like Product Analysis**

*Physical Characteristics and Uses.* All truck and bus tires are produced largely from the same basic raw materials (*e.g.*, natural and synthetic rubber, carbon black, oils) and have the same general components (*e.g.*, inner liner, sidewall beads, body ply, belt package, and tread).<sup>37</sup> All truck and bus tires generally are made to similar specifications, including size.<sup>38</sup> Bias ply tube tires and radial tires have some distinct physical characteristics inasmuch as radial tires generally are tubeless, have steel cords, and are mounted on one-piece rims, while bias ply tube tires generally have tubes and nylon cords and are mounted on two-piece rims.<sup>39</sup> Nevertheless, the information available in the record indicates that radial tires sometimes are tubed and mounted on two-piece rims.<sup>40</sup> The record further indicates that the only known domestic producer of bias ply tube tires, STA, reports that all bias ply tube and radial tires are \*\*\* in terms of physical characteristics.<sup>41</sup>

All truck and bus tires have the same general use insofar as they are mounted on the wheels of trucks and buses, although most trucks and buses in the United States use radial tires.<sup>42</sup> Under the applicable federal regulations, all truck and bus tires must be capable of supporting vehicles with a GVWR of 10,000 pounds or more and are required to have a

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As discussed below, virtually all domestic production of truck and bus tires during the POI consisted of radial tires, with the remainder consisting solely of bias ply tube tires. There was no domestic production of bias ply tubeless tires during the POI. CR/PR at Table III-7. Accordingly, our analysis of the domestic like product issue in the final phase of these investigations focuses on examining whether there is a clear dividing line between domestically produced bias ply tube tires and domestically produced radial tires.

IICL's most recent proposal represents an evolution in their proposed definition because, in their prehearing briefs and at the hearing in the final phase of these investigations, respondents argued, as they did previously in the preliminary phase, that the Commission should define 10 X 20 bias ply tube tires as a separate domestic like product. IICL's Prehearing Br. at 9-21; Chinese Respondents' Prehearing Br. at 16-18; Hearing Tr. at 178-81 (Jackson). As is further explained below, the record in the final phase of these investigations is not materially different from the record in the preliminary phase concerning the lack of a clear dividing line between 10 X 20 bias ply tube tires and all other truck and bus tires within the scope of these investigations. *See e.g.*, CR at I-10-35, PR at I-8-26; Email of \*\*\* (Jan. 31, 2017) (EDIS Docs. 602307 and 603075).

<sup>37</sup> CR/PR at Figures I-2 and I-3; Hearing Tr. at 135 (Chamblee); Petition at I-4 and Exh. I-4.

<sup>38</sup> CR at I-21, PR at I-15-16.

<sup>39</sup> CR at I-12, I-17, PR at I-9, I-12; Hearing Tr. at 178-81 (Jackson).

<sup>40</sup> CR at I-12-13 & nn.25, 26, PR at I-9-10 & nn. 25, 26; Hearing Tr. at 181 (Jackson); Email of \*\*\* (Feb. 7, 2017) (EDIS Doc. 603073).

<sup>41</sup> Email of \*\*\* (Jan. 31, 2017) (EDIS Docs. 602307 and 603075).

<sup>42</sup> CR at I-15-16, PR at I-11-12; Hearing Tr. at 133 (Stewart) and 135 (Chamblee).

minimum tread depth in order to be driven on highways.<sup>43</sup> STA reports that all bias ply tube and radial tires are \*\*\* in terms of use.<sup>44</sup>

The fact that bias ply tube tires of a particular specification (*i.e.*, 10 X 20 bias ply tube tires) generally are used on intermodal marine chassis does not distinguish all bias ply tube tires from radial tires in terms of use. The record indicates that intermodal marine chassis sometimes use either tubeless bias ply tires or radial tires, although they are typically not used together or with 10 X 20 bias ply tube tires on the same chassis.<sup>45</sup> STA also reports that 10 X 20 bias ply tube tires are \*\*\*.<sup>46</sup>

*Manufacturing Facilities, Production Processes, and Employees.* The production processes for all truck and bus tires, including bias ply tube and radial tires, share fundamental similarities insofar as they involve compounding and mixing rubber, constructing tire components, curing (vulcanization), and finishing and inspection.<sup>47</sup> The record indicates that virtually all domestic producers manufacture only radial tires and use the same production lines, equipment, and employees for the different types of radial tires that they produce.<sup>48</sup> STA, the only domestic producer of bias ply tires, produces many different types of bias ply tube tires described by the scope definition at its facilities, although it did not produce bias ply tubeless or radial tires during the period of investigation.<sup>49</sup> STA reports that that bias ply tube and radial tires \*\*\* at the same manufacturing facility.<sup>50</sup>

*Channels of Distribution.* During the January 2013-September 2016 period of investigation (“POI”), a slight majority of all domestically produced truck and bus tires were sold into the aftermarket channel, with the remaining sold to original equipment manufacturers (“OEMs”).<sup>51</sup> STA reports that it sells approximately \*\*\* percent of the bias ply tube tires that it produces to \*\*\*.<sup>52</sup> There is other information in the record indicating that bias ply tube tires and radial tires are both sold into the aftermarket.<sup>53</sup>

*Interchangeability.* The record in the final phase of these investigations indicates that there is limited interchangeability between bias ply tube tires and radial tires. Although the responses of U.S. producers were mixed, most U.S. importers and purchasers reported that all bias ply tube tires were “sometimes” or “never” interchangeable with radial tires.<sup>54</sup> As they generally must satisfy certain standards, all truck and bus tires must be specific sizes and able to

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<sup>43</sup> CR at I-11, I-14, I-20, PR at I-8, I-10, I-14-15.

<sup>44</sup> Email of \*\*\* (Jan. 31, 2017) (EDIS Docs. 602307 and 603075).

<sup>45</sup> Petitioner’s Posthearing Br., Answers to Commissioner Williamson Question #1 at 2 & Exh 3; IICL’s Prehearing Br. at 7-8; Hearing Tr. at 77 (Drake).

<sup>46</sup> Email of \*\*\* (Feb. 6, 2017) (EDIS Doc. 603073).

<sup>47</sup> CR at I-23-28, PR at I-17-21; Hearing Tr. at 54 (Drake).

<sup>48</sup> CR at I-14-15, PR at I-11; Petitioner’s Posthearing Br., Answers to Commissioner Williamson Question #1 at 3.

<sup>49</sup> STA’s U.S. Producer Questionnaire at II-7.

<sup>50</sup> Email of \*\*\* (Feb. 6, 2017) (EDIS Doc. 603073).

<sup>51</sup> CR/PR at Table II-1.

<sup>52</sup> Email of \*\*\* (Feb. 6, 2017) (EDIS Doc. 603073).

<sup>53</sup> *See, e.g.*, Petitioner’s Posthearing Br., Answers to Commissioner Williamson Question #1 at 3.

<sup>54</sup> CR/PR at Table II-16.

carry requisite loads in order to transport a particular truck or bus.<sup>55</sup> As discussed above, bias ply tube tires typically are mounted on two-piece rims, while radial tires usually are mounted on one-piece rims. Information in the record indicates that, since they use different rims, bias ply tube tires and radial tires generally are not used on the same intermodal marine chassis.<sup>56</sup>

On the other hand, the record indicates that there is some degree of interchangeability for all truck and bus tires, including between all bias ply tube tires and radial tires. There is information in the record indicating that bias ply tube and radial tires of the same or similar sizes or specifications can be used interchangeably for some of the same applications.<sup>57</sup> Although they generally are not used simultaneously with 10 X 20 bias ply tube tires on the same intermodal chassis, intermodal marine chassis sometimes use radial tires.<sup>58</sup> For example, in January 2014, IICL member Direct ChassisLink announced that it was launching a program to replace bias ply tube tires with radial tires on more than 20,000 chassis and plans eventually to convert its entire fleet to radial tires.<sup>59</sup>

*Producer and Customer Perceptions.* Petitioner asserts that producers and customers perceive all truck and bus tires as similar products with the same basic physical properties and function, *i.e.*, to be mounted on trucks and buses.<sup>60</sup> Respondent IICL contends that producers and customers perceive bias ply tube tires as a distinct product from radial tires, with radial tires preferable for long-haul, on-road use and bias ply tube tires preferable for intermodal marine chassis operating in more harsh environmental conditions.<sup>61</sup> As discussed above, however, one of IICL's own members announced plans to convert its entire chassis fleet from bias ply tube tires to radial tires thereby suggesting that at least some purchasers do not perceive bias ply tube and radial tires as entirely distinct products.<sup>62</sup> STA did not report on the relative customer and producer perceptions between bias ply tube and radial tires.<sup>63</sup>

*Price.* Average unit values ("AUVs") for domestically produced radial tires ranged from \*\*\* percent to \*\*\* percent higher than the AUVs for domestically produced bias ply tube tires in 2013 and 2014.<sup>64</sup> AUVs for domestically produced bias ply tube tires and domestically

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<sup>55</sup> CR at I-11, I-21, PR at I-8-9.

<sup>56</sup> IICL's Prehearing Br. at 13-14.

<sup>57</sup> Email of \*\*\* (Feb. 6, 2017) (EDIS Doc. 603073).

<sup>58</sup> Hearing Tr. at 77 (Drake); Petitioner's Posthearing Br., Answers to Commissioner Williamson Question #1 at 2-3. Another IICL member, TRAC, advertised refurbished chassis with radial tires. *Id.*

<sup>59</sup> Petitioner's Posthearing Br. at Exh. 3.

<sup>60</sup> Hearing Tr. at 54 (Drake); Petitioner's Posthearing Br., Answers to Commissioner Williamson Question #1 at 4.

<sup>61</sup> IICL's Prehearing Br. at 18-19 & Exh. 6.

<sup>62</sup> Petitioner's Posthearing Br. at Exh. 3.

<sup>63</sup> Email of \*\*\* (Jan. 31, 2017) (EDIS Docs. 602307 and 603075); Email of \*\*\* (Feb. 6, 2017) (EDIS Doc. 603073).

<sup>64</sup> CR/PR at Table III-7. AUVs for U.S. producers' commercial U.S. shipments of radial tires were \$\*\*\* per tire in 2013 and \$\*\*\* per tire in 2014. *Id.* U.S. producers' commercial U.S. shipments of bias ply tube tires were \$\*\*\* per tire in 2013 and \$\*\*\* per tire in 2014. *Id.* The record does not contain pricing data for bias ply tube tires.

produced radial tires were virtually identical in 2015 and January-September (“interim”) 2015.<sup>65</sup> AUVs for domestically produced bias ply tube tires were \*\*\* percent higher than AUVs for domestically produced radial tires in interim 2016.<sup>66</sup> STA reports that bias ply tube tires are \*\*\* to radial tires in terms of price, although it observes that radial tires generally are priced higher than bias ply tube tires.<sup>67</sup>

*Conclusion.* Based on the record in the final phase of these investigations, we do not define bias ply tube tires to be a separate domestic like product. In our view, the record does not indicate that there is a clear dividing line between bias ply tube tires and the radial tires that are also within the scope of these investigations.

All truck and bus tires, including all bias ply tube tires and radial tires, share the same physical characteristics insofar as they generally are produced from the same raw materials and have the same basic components and features. All truck and bus tires have the same general use insofar as they are mounted on the wheels of trucks and buses, and must be capable of supporting vehicles with a GVWR of more than 10,000 pounds subject to federal motor vehicle safety regulations for such tires. As discussed above, the production and manufacturing processes for all bias ply tube tires and radial tires share fundamental similarities. Nevertheless, we acknowledge that STA, the sole domestic producer of bias ply tube tires, did not produce radial tires during the POI, although it reported that it could produce bias ply tube tires and radial tires at the same facility. AUVs for both domestically produced bias ply tube tires and radial tires were virtually identical in the last full year of the POI (2015) and were within reasonably close range throughout the POI. There is information in the record indicating that bias ply tube tires and radial tires were both sold in the aftermarket sector of the market for truck and bus tires, although bias ply tube tires were concentrated in sales to \*\*\*. As discussed above, the available information in the record concerning interchangeability and customer and producer perceptions is mixed. Nevertheless, the limited interchangeability between bias ply tube tires and radial tires is in our view insufficient to show a clear dividing line between these products, particularly given that interchangeability between other types of bus and truck tires may also be limited.<sup>68</sup> We therefore define a single domestic like product consisting of all truck and bus tires coextensive with the scope of these investigations.

### III. Domestic Industry

The statute defines the relevant industry as the “producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes

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<sup>65</sup> CR/PR at Table III-7. AUVs for U.S. producers’ commercial U.S. shipments of radial tires were \$\*\*\* per tire in 2015 and interim 2015. *Id.* U.S. producers’ commercial U.S. shipments of bias ply tube tires were \$\*\*\* per tire in 2015 and interim 2015. *Id.*

<sup>66</sup> CR/PR at Table III-7. AUVs for U.S. producers’ commercial U.S. shipments of radial tires were \$\*\*\* in interim 2016. *Id.* U.S. producers’ commercial U.S. shipments of bias ply tube tires were \$\*\*\* per tire in interim 2016. *Id.*

<sup>67</sup> Email of \*\*\* (Jan. 31, 2017) (EDIS Docs. 602307 and 603075).

<sup>68</sup> *See, e.g.* Petition at Exh. I-6 and CR/PR at II-1 (distinctions in use among steer, drive, and trailer tires); CR at I-10, PR at I-8 (noting various size and design configurations).

a major proportion of the total domestic production of the product.”<sup>69</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

#### **A. Retreaders**

In the preliminary determinations, the Commission found that retreaded truck and bus tires, which were outside the scope of the investigations, should not be included within the domestic like product.<sup>70</sup> It found that the record generally indicated that there were clear dividing lines between new and retreaded truck and bus tires, particularly given clear distinctions between them in terms of manufacturing processes, facilities, and employees, and price, and also due to distinctions between them in terms of use and channels of distribution and somewhat limited interchangeability.<sup>71</sup> Given these considerations, and taking into account that no party had advocated for a contrary result, the Commission did not include retreaded tires in the domestic like product.<sup>72</sup>

In the final phase of these investigations, both petitioner and respondents agree that the domestic like product should not include retreaded truck and bus tires, which also were not within Commerce’s scope in these investigations.<sup>73</sup> While the Commission collected financial data pertaining to U.S. truck and bus tire producers’ retreading operations,<sup>74</sup> it did not collect any additional data concerning the domestic like product factors with respect to retreaded truck and bus tires in the final phase of these investigations. Because the parties agree that the domestic like product should not include retreaded truck and bus tires and there is not any new evidence in the final phase of these investigations that warrants departing from the analysis on this issue in the preliminary determinations, we again do not include retreaded truck and bus tires in the domestic like product and domestic industry.

#### **B. Related Parties**

These investigations raise only one other domestic industry issue: whether appropriate circumstances exist to exclude any domestic producers from the domestic industry pursuant to the related parties provision of the statute. This provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.<sup>75</sup>

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<sup>69</sup> 19 U.S.C. § 1677(4)(A).

<sup>70</sup> USITC Pub. 4061 at 12-13.

<sup>71</sup> USITC Pub. 4061 at 12-13.

<sup>72</sup> USITC Pub. 4061 at 13.

<sup>73</sup> See, e.g., Petitioner’s Prehearing Br. at 10-11; Hearing Tr. at 218 (Marshak).

<sup>74</sup> See e.g., CR/PR at Table VI-5.

<sup>75</sup> See *Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993); *Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d mem.*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987).

Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each investigation.<sup>76</sup>

In our preliminary determinations, we found that three firms (\*\*\*) were related parties, but that appropriate circumstances did not exist to exclude any of them from the domestic industry since each firm's ratio of imports to domestic production was small and the primary interest of each firm was domestic production.<sup>77</sup> Accordingly, the Commission defined the U.S. industry to encompass all domestic producers of truck and bus tires.<sup>78</sup>

In the final phase of these investigations, four domestic producers – \*\*\* – are related parties because they imported subject merchandise during the POI. Neither petitioner nor respondent briefed the issue of related parties. We discuss below for each of these producers whether appropriate circumstances exist to exclude it from the domestic industry.

\*\*\*. \*\*\* is a related party by virtue of the fact that it \*\*\*.<sup>79</sup> \*\*\* was responsible for \*\*\* percent of U.S. production of truck and bus tires in 2015.<sup>80</sup> As such, it was the \*\*\* domestic producer.<sup>81</sup> \*\*\* on the petition.<sup>82</sup>

\*\*\* imported very small quantities of subject merchandise from China during the POI.<sup>83</sup> As a ratio of U.S. production, its subject imports were less than \*\*\* percent during each year or interim period of the POI.<sup>84</sup>

\*\*\* ratio of operating income to net sales was \*\*\* than the industry average throughout the POI.<sup>85</sup> Because its subject imports were minimal throughout the POI, it appears that \*\*\* principal interest lies in domestic production. In view of these factors and because no

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<sup>76</sup> The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the following:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation (whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market);
- (3) whether inclusion or exclusion of the related party will skew the data for the rest of the industry;
- (4) the ratio of import shipments to U.S. production for the importing producer; and
- (5) whether the primary interest of the importing producer lies in domestic production or importation. *Changzhou Trina Solar Energy v. USITC*, 100 F. Supp. 3d 1314, 1329 (Ct. Int'l Trade 2015); see also *Torrington*, 790 F. Supp. at 1168.

<sup>77</sup> USITC Pub. 4061 at 14.

<sup>78</sup> USITC Pub. 4061 at 14.

<sup>79</sup> See \*\*\* U.S. Producer Questionnaire. \*\*\* has two affiliated companies in China which produce truck and bus tires, \*\*\* CR/PR at Table III-2. Neither of \*\*\* corporate affiliates, however, exported subject merchandise to the United States during the POI. See Foreign Producers'/Exporters' Questionnaire Response of \*\*\* at Part II-10.

<sup>80</sup> CR/PR at Table III-1.

<sup>81</sup> CR/PR at Table III-1.

<sup>82</sup> CR/PR at Table III-1.

<sup>83</sup> \*\*\* subject imports were \*\*\*. See \*\*\* Email dated 12/21/16 (EDIS Doc. 601654).

<sup>84</sup> *Derived from* \*\*\* Email dated 12/21/16 (EDIS Doc. 601654) and CR/PR at Table III-9.

<sup>85</sup> CR/PR at Table VI-3.



party has argued for \*\*\* exclusion from the domestic industry, we do not find that circumstances are appropriate for its exclusion.

\*\*\*. \*\*\* is a related party because \*\*\*.<sup>86</sup> \*\*\* also qualifies as a related party by virtue of the fact that it \*\*\*.<sup>87</sup>

\*\*\* was responsible for \*\*\* percent of U.S. production of truck and bus tires in 2015.<sup>88</sup> As such, it was the \*\*\* largest domestic producer.<sup>89</sup> \*\*\* on the petition.<sup>90</sup> As a ratio of U.S. production, its subject imports were \*\*\* percent in 2013, \*\*\* percent in 2014, \*\*\* percent in 2015, \*\*\* percent in interim 2015, and \*\*\* percent in interim 2016.<sup>91</sup> \*\*\* Chinese affiliate exported minimal amounts of subject merchandise to the United States during the POI.<sup>92</sup> \*\*\* ratio of operating income to net sales was \*\*\* than the industry average for most of the POI.<sup>93</sup>

Because \*\*\* subject imports and the exports of \*\*\* Chinese affiliate both were minimal throughout the POI, it appears that \*\*\* principal interest lies in domestic like production. In view of these factors and because no party has argued for \*\*\* exclusion from the domestic industry, we do not find that circumstances are appropriate for its exclusion.

\*\*\*. \*\*\* is a related party because it \*\*\*.<sup>94</sup> \*\*\* was responsible for \*\*\* percent of U.S. production of truck and bus tires in 2015.<sup>95</sup> As such, it was \*\*\* largest domestic producer.<sup>96</sup> \*\*\* on the petition.<sup>97</sup>

\*\*\* imported small quantities of subject merchandise from China in 2015 and interim 2016.<sup>98</sup> As a ratio of U.S. production, its subject imports were \*\*\* percent in 2013, \*\*\* percent in 2014, \*\*\* percent in 2015, \*\*\* percent in interim 2015, and \*\*\* percent in interim 2016.<sup>99</sup> Michelin's ratio of operating income to net sales was \*\*\* than the industry average throughout the POI.<sup>100</sup>

Because \*\*\* subject imports were small throughout the POI, it appears that \*\*\* principal interest lies in domestic like production. In view of these factors and because no party has argued for \*\*\* exclusion from the domestic industry, we do not find that circumstances are appropriate for its exclusion.

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

<sup>87</sup> CR/PR at Table III-9.

<sup>88</sup> CR/PR at Table III-1.

<sup>89</sup> CR/PR at Table III-1.

<sup>90</sup> CR/PR at Table III-1.

<sup>91</sup> CR/PR at Table III-9.

<sup>92</sup> See Foreign Producers'/Exporters' Questionnaire Response of Goodyear Dalian Tire Company Limited at Part II-10.

<sup>93</sup> CR/PR at Table VI-3.

<sup>94</sup> CR/PR at Table III-9.

<sup>95</sup> CR/PR at Table III-1.

<sup>96</sup> CR/PR at Table III-1.

<sup>97</sup> CR/PR at Table III-1.

<sup>98</sup> CR/PR at Table III-9.

<sup>99</sup> CR/PR at Table III-9.

<sup>100</sup> CR/PR at Table VI-3.

\*\*\*. \*\*\* is a related party because it \*\*\*.<sup>101</sup> \*\*\* was responsible for less than \*\*\* percent of U.S. production of truck and bus tires in 2015.<sup>102</sup> As such, along with another firm, it was the smallest domestic producer.<sup>103</sup> \*\*\* the petition.<sup>104</sup>

\*\*\* imported modest quantities of subject merchandise from China in 2015 and interim 2016.<sup>105</sup> As a start-up operation, \*\*\* did not commence domestic production until the latter half of 2015; its production was \*\*\* in 2015 and more substantial in interim 2016.<sup>106</sup> Its ratio of subject imports to domestic production, although high, was lower in interim 2016 than in 2015.<sup>107</sup> Yokohama made major investments in its U.S. operations.<sup>108</sup> Its capital expenditures were \*\*\* in interim 2015 and \$\*\*\* in interim 2016, which were the highest reported by any domestic producer and were higher than total capital expenditures for all other domestic producers combined during 2015.<sup>109</sup> Further, no party advocated its exclusion from the domestic industry. Given these considerations, we find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry.

For the reasons stated above and in light of our domestic like product definition, we define the domestic industry as consisting of all domestic producers of truck and bus tires.

#### **IV. Material Injury by Reason of Subject Imports<sup>110</sup>**

##### **A. Legal Standards**

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or

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<sup>101</sup> CR/PR at Table III-9.

<sup>102</sup> CR/PR at Table III-1.

<sup>103</sup> CR/PR at Table III-1.

<sup>104</sup> CR/PR at Table III-1.

<sup>105</sup> \*\*\* subject imports were \*\*\* tires in 2015 and \*\*\* tires in interim 2016. CR/PR at Table III-9.

<sup>106</sup> Yokohama's domestic production was \*\*\* tires in 2015 and \*\*\* tires in interim 2016. CR/PR at Table III-9; CR at III-4, PR at III-2.

<sup>107</sup> \*\*\* ratio of subject imports to domestic production was \*\*\* percent in 2015, \*\*\* percent in interim 2015, and \*\*\* percent in interim 2016. CR/PR at Table III-9.

<sup>108</sup> \*\*\* operating income margin was \*\*\* percent in interim 2016, the only period in which it engaged in sufficient domestic production to have a reported operating income. CR/PR at Table VI-3.

<sup>109</sup> CR/PR at Table VI-7a.

<sup>110</sup> Pursuant to section 771(24) of the Tariff Act, imports from a subject country of merchandise corresponding to a domestic like product that account for less than 3 percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible. 19 U.S.C. §§ 1671b(a), 1673b(a), 1677(24)(A)(i), 1677(24)(B); *see also* 15 C.F.R. § 2013.1 (developing countries for purposes of 19 U.S.C. § 1677(36)). In the most recent 12-month period preceding the filing of the petition for which are available in the record, January through December 2015, the volume of subject imports from China accounted for 61.8 percent of total U.S. imports of truck and bus tires. CR at IV-13, PR at IV-9. Consequently, subject imports from China are not negligible.

threatened with material injury by reason of the imports under investigation.<sup>111</sup> In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>112</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>113</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>114</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>115</sup>

Although the statute requires the Commission to determine whether the domestic industry is “materially injured or threatened with material injury by reason of” unfairly traded imports,<sup>116</sup> it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.<sup>117</sup> In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.<sup>118</sup>

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might

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<sup>111</sup> 19 U.S.C. §§ 1671d(b), 1673d(b). The Trade Preferences Extension Act of 2015, Pub. L. 114-27, amended the provision of the Tariff Act pertaining to Commission determinations of material injury and threat of material injury by reason of subject imports in certain respects. We have applied these amendments in this investigation.

<sup>112</sup> 19 U.S.C. § 1677(7)(B). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

<sup>113</sup> 19 U.S.C. § 1677(7)(A).

<sup>114</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>115</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>116</sup> 19 U.S.C. §§ 1671d(a), 1673d(a).

<sup>117</sup> *Angus Chemical Co. v. United States*, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), *aff’g*, 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

<sup>118</sup> The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” *Nippon Steel Corp. v. USITC*, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in *Mittal Steel Point Lisas Ltd. v. United States*, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” *See also Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1357 (Fed. Cir. 2006); *Taiwan Semiconductor Industry Ass’n v. USITC*, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.<sup>119</sup> In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.<sup>120</sup> Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as non-subject imports, which may be contributing to overall injury to an industry.<sup>121</sup> It is clear that the existence of injury caused by other factors does not compel a negative determination.<sup>122</sup>

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way”

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<sup>119</sup> Uruguay Round Agreements Act Statement of Administrative Action (SAA), H.R. Rep. 103-316, vol. 1 at 851-52 (1994) (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); *accord* *Mittal Steel*, 542 F.3d at 877.

<sup>120</sup> SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); *Taiwan Semiconductor Industry Ass’n*, 266 F.3d at 1345 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports ... . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States*, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); *see also* *Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, *i.e.*, it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), *citing* *Gerald Metals*, 132 F.3d at 722 (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

<sup>121</sup> S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

<sup>122</sup> *See* *Nippon Steel Corp.*, 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure{s} that it is not attributing injury from other sources to the subject imports.”<sup>123</sup> Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”<sup>124</sup>

The Federal Circuit’s decisions in *Gerald Metals*, *Bratsk*, and *Mittal Steel* all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit’s guidance in *Bratsk* as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive non-subject imports.<sup>125</sup> The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the *Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago* determination that underlies the *Mittal Steel* litigation.

*Mittal Steel* clarifies that the Commission’s interpretation of *Bratsk* was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have “evidence in the record” to “show that the harm occurred ‘by reason of’ the LTFV imports,” and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.<sup>126</sup> Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to *Bratsk*.

The progression of *Gerald Metals*, *Bratsk*, and *Mittal Steel* clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.<sup>127</sup>

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<sup>123</sup> *Mittal Steel*, 542 F.3d at 877-78; see also *id.* at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination ... {and has} broad discretion with respect to its choice of methodology.”) citing *United States Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75. In its decision in *Swift-Train v. United States*, 792 F.3d 1355 (Fed. Cir. 2015), the Federal Circuit affirmed the Commission’s causation analysis as comports with the Court’s guidance in *Mittal*.

<sup>124</sup> *Nucor Corp. v. United States*, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also *Mittal Steel*, 542 F.3d at 879 (“*Bratsk* did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

<sup>125</sup> *Mittal Steel*, 542 F.3d at 875-79.

<sup>126</sup> *Mittal Steel*, 542 F.3d at 873 (quoting from *Gerald Metals*, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission’s alternative interpretation of *Bratsk* as a reminder to conduct a non-attribution analysis).

<sup>127</sup> To that end, after the Federal Circuit issued its decision in *Bratsk*, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission’s causation analysis, these requests typically seek information on

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard.<sup>128</sup> Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.<sup>129</sup>

## **B. Conditions of Competition and the Business Cycle**

The following conditions of competition inform our analysis of whether the domestic industry is materially injured or threatened with material injury by reason of subject imports of truck and bus tires from China.

### **1. Demand Conditions**

Truck and bus tires are sold both for use on new vehicles in the OEM market and as replacement tires for vehicles in the aftermarket.<sup>130</sup> Demand for truck and bus tires in the OEM sector is driven by U.S. heavy truck sales, which increased between 2013 and 2015 and then declined in interim 2016.<sup>131</sup> Demand for truck and bus tires in the aftermarket sector is driven by truck tonnage, which increased steadily throughout the POI.<sup>132</sup> During the POI, sales of both the domestic like product and nonsubject imports were made predominantly in the aftermarket, although each also had substantial sales to OEMs, while subject imports' sales were concentrated overwhelmingly in the aftermarket.<sup>133</sup>

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capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of non-subject imports.

<sup>128</sup> We provide in our discussion below a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

<sup>129</sup> *Mittal Steel*, 542 F.3d at 873; *Nippon Steel Corp.*, 458 F.3d at 1350, citing *U.S. Steel Group*, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

<sup>130</sup> CR at I-10, II-1, PR at I-8.

<sup>131</sup> CR/PR at Figure II-2; CR at II-10, PR at II-6-7.

<sup>132</sup> CR/PR at Figure II-2; CR at II-10, PR at II-6-7.

<sup>133</sup> U.S. producers' commercial U.S. shipments were \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in 2013, \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in 2014, \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in 2015, \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in interim 2015, and \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in interim 2016. CR/PR at Table II-1. U.S. importers' commercial U.S. shipments of subject imports were \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in 2013, \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in 2014, \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in 2015 and interim 2015, and \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in interim 2016. *Id.* U.S. importers' commercial U.S. shipments of nonsubject imports were \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in 2013, \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in 2014, \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in 2015 and interim 2015, and \*\*\* percent to OEMs and \*\*\* percent to the aftermarket in interim 2016. *Id.*

\*\*\* U.S. producers reported an increase in U.S. demand for truck and bus tires during the POI.<sup>134</sup> Responses by U.S. importers were mixed, but a majority reported that demand had either increased or fluctuated.<sup>135</sup> In their questionnaire responses, U.S. purchasers were evenly divided between no change and decreased demand, and no purchasers reported either demand increases or fluctuations.<sup>136</sup> Apparent U.S. consumption of truck and bus tires increased from 21.9 million tires in 2013 to 25.3 million tires in 2014, and then to 26.5 million tires in 2015.<sup>137</sup> Apparent U.S. consumption was lower in interim 2016, at \*\*\* tires, than in interim 2015, at 19.8 million tires.<sup>138</sup>

## 2. Supply Conditions

Domestic producers' U.S. shipments, subject imports, and imports from nonsubject sources all supplied the U.S. market over the POI. The domestic industry had the largest share of the U.S. market during the POI, although its share steadily declined. The domestic industry's market share declined from 53.3 percent in 2013 to 48.0 percent in 2014 and 45.6 percent in 2015.<sup>139</sup> The domestic industry's market share was higher in interim 2016, at 47.7 percent, than in interim 2015, at 45.4 percent.<sup>140</sup> In 2015, the four largest domestic producers of truck and bus tires were Bridgestone, which accounted for \*\*\* percent of domestic production, followed by Goodyear (\*\*\*) percent), Continental (\*\*\*), and Michelin (\*\*\*) percent).<sup>141</sup>

During the POI, there were several important changes in the composition of the domestic industry. Goodyear dissolved its joint venture with Japanese producer Sumitomo Rubber Industries on October 1, 2015 by selling its 75 percent ownership interest in Goodyear Dunlop Tires North America, Ltd. ("GDTNA") with production facilities located in Buffalo, New York.<sup>142</sup> Sumitomo continued to operate this facility throughout the remainder of the POI.<sup>143</sup> \*\*\*.<sup>144</sup> Yokohama commenced domestic production of truck and bus tires at a new facility in West Point, Mississippi, in late 2015. Although Yokohama's production in 2015 and interim 2016 was very small, this plant is projected to reach its full capacity of 1 million tires in 2018.<sup>145</sup>

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<sup>134</sup> CR/PR at Table II-3.

<sup>135</sup> CR/PR at Table II-3.

<sup>136</sup> CR/PR at Table II-3.

<sup>137</sup> CR/PR at Table IV-9.

<sup>138</sup> CR/BP at Table IV-9. In interim 2016, the decline in OEM consumption of truck and bus tires was counteracted to some extent by an increase in consumption of aftermarket truck and bus tires. CR/PR at Figure II-2.

<sup>139</sup> CR/PR at Table IV-9.

<sup>140</sup> CR/PR at Table IV-9.

<sup>141</sup> CR/PR at Table III-1.

<sup>142</sup> CR at III-5, PR at III-2.

<sup>143</sup> CR at III-5, PR at III-2.

<sup>144</sup> CR at III-5, PR at III-2.

<sup>145</sup> CR/PR at Table III-1, III-2, III-3, and III-4; CR at III-4, PR at III-2.

Finally, in February 2016, domestic producer Continental announced plans to construct a truck and bus tire plant in Mississippi, commencing production by the end of 2019.<sup>146</sup>

Subject imports were the second largest source of supply for the U.S market during the POI. Subject imports' share of apparent U.S. consumption increased from 28.7 percent in 2013 to 33.2 percent in 2014 and 33.6 percent in 2015.<sup>147</sup> Subject imports' market share, however, was \*\*\* percentage points lower in interim 2016, at \*\*\* percent, than in interim 2015, at 33.9 percent.<sup>148</sup>

Nonsubject imports had a smaller presence in the U.S. market than either the domestic industry or subject imports throughout the POI. Nonsubject imports' share of apparent U.S. consumption increased from 18.0 percent in 2013 to 18.7 percent in 2014 and 20.8 percent in 2015.<sup>149</sup> Nonsubject imports' share of apparent U.S. consumption was higher in interim 2016, at \*\*\* percent, than in interim 2015, at 20.7 percent.<sup>150</sup> Each of the domestic producers, other than \*\*\*, is a multinational company, and five domestic producers imported truck and bus tires from nonsubject sources; these five firms together accounted for \*\*\* percent of nonsubject imports over the POI.<sup>151</sup> The largest sources of nonsubject imports were Canada, Japan, and Thailand.<sup>152</sup>

### 3. Substitutability and Other Conditions

We find that there is a moderate to high degree of substitutability between the domestic like product and subject truck and bus tires. Five of six domestic producers and a substantial majority of importers and purchasers indicated that U.S. and subject Chinese tires are always or frequently interchangeable.<sup>153</sup> The vast majority of purchasers indicated that truck and bus tires from China and the United States always or usually met minimum quality specifications.<sup>154 155</sup>

The degree of substitutability between domestic and imported truck and bus tires depends on factors including relative prices, quality (e.g., grade standards, reliability of supply, defect rates, etc.), and conditions of sale (e.g., price/discounts/rebates, lead times, payment terms, and product services.).<sup>156</sup> The domestic industry reported selling all of its tires from

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<sup>146</sup> See, e.g., CR at III-5, PR at III-2; Petitioner's Posthearing Br., Answer to Commissioner Broadbent Question #2 at 1-2, Exh. 1.

<sup>147</sup> CR/PR at Table IV-9.

<sup>148</sup> CR/PR at Table IV-9.

<sup>149</sup> CR/PR at Table IV-9.

<sup>150</sup> CR/PR at Table IV-9.

<sup>151</sup> Derived from CR/PR at Tables III-9 and IV-2.

<sup>152</sup> CR/PR at Table IV-5.

<sup>153</sup> CR/PR at Table II-15.

<sup>154</sup> CR, PR at Table II-17.

<sup>155</sup> One of six producers and a majority of importers and purchasers indicated that differences other than price between U.S. and Chinese truck and bus tires were always or frequently significant. CR, PR at Table II-18. However as discussed in greater detail below in our finding on price effects, we find that the record shows that price is an important factor in purchase decisions.

<sup>156</sup> CR at II-13; PR at II-9.



inventories, while subject importers reported selling 53.6 percent produced to order, 24.0 percent from U.S. inventory, and 22.3 percent from foreign inventory.<sup>157</sup> Availability and delivery times were ranked as very important for a large number of purchasers. Both domestic producers and subject U.S. importers reported similar average number of days for lead times, whether produced to order or sold from U.S. inventory.<sup>158</sup>

Truck and bus tires are subject to certain federal safety regulations administered principally by the U.S. Department of Transportation, National Highway Safety Administration, and the Federal Motor Carrier Safety Administration.<sup>159</sup> These regulations include the type of equipment on which the tire is used, the tire type and size, the speed and load carrying ply ratings, and sidewall marking standards.<sup>160</sup> A plurality of purchasers reported that U.S. produced truck and bus tires are frequently interchangeable with the subject imports from China.<sup>161</sup>

Truck and bus tires are sold into OEM and aftermarket segments and although at different concentrations, the domestic tires and subject imports from China compete in both segments. U.S. producers shipped \*\*\* percent of their tires to the OEM segment in 2015 and \*\*\* percent of their tires to the aftermarket, down from \*\*\* percent in 2013. Aftermarket shipments for subject imports from China accounted for \*\*\* percent of total subject import shipments in 2015.<sup>162</sup>

Petitioners argue that the domestic and subject imported truck and bus tires compete not only in the same channels of distribution but that they compete as well across the market, whether examining tiers, brands, or the services and guarantees sold with the tires. Respondents disagree and take the position that the domestic and subject imported tires are not substitutable.

Truck and bus tires are generally considered to be categorized and sold by tiers reflecting levels of product quality, although no agreed definition for these tiers exists.<sup>163</sup> Half of responding producers and nearly all importers and purchasers reported that tires are sold in tiers. U.S. producers self-reported that their tires are sold in each of the three tiers,<sup>164</sup> with \*\*\* percent sold as tier 1 (highest quality), \*\*\* percent as tier 2, and \*\*\* percent as tier 3. Subject importers reported selling \*\*\* percent as tier 2 and \*\*\* percent as tier 3; tier 1 tires were \*\*\* for the subject imports.<sup>165</sup> Thus nearly all subject imports were sold in tiers 2 and 3 along with

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<sup>157</sup> CR/PR at Table II-4.

<sup>158</sup> CR/PR at Tables II-4 and II-7.

<sup>159</sup> CR at 1-20; PR at I-14-15.

<sup>160</sup> CR/PR at Table I-3; CR at I-20-22; PR at I-15-16.

<sup>161</sup> CR/PR at Table II-15.

<sup>162</sup> CR/PR at Table II-1.

<sup>163</sup> Petitioners' Prehearing Brief at 35.

<sup>164</sup> Producer, Importer, and Purchaser questionnaires asked, "Is the U.S. truck and bus tires market divided into categories (e.g., Best/Better/Good; Tier 1/Tier 2/Tier 3; Flagship/Secondary/Mass-market)?" And if 'yes' they were asked to describe each category and identify the producers and brands that belong in each category in the table below.

<sup>165</sup> CR/PR at Table II-13.

a majority of U.S.-made tires.<sup>166</sup> Moreover, eleven of 15 purchasers reported that competition exists between different tiers and eight purchasers reported that they shifted purchases between the tiers since 2013.<sup>167</sup>

While responses by producers, importers and purchasers as to whether prices in any one tier influenced prices in other tiers were mixed, there was general support for the view that price and quantities can be influenced by price changes in different tiers. Twelve of 15 purchasers reported that their customers compare prices between truck and bus tires in different tiers when making purchasing decisions.<sup>168</sup> A number of larger producers and importers report that price changes in one tier affect other tiers including both adjacent and nonadjacent tiers.<sup>169</sup> One purchaser reported that decreases in prices for tier 2 tires have caused national account fleets to shift more purchases to that tier from tier 1 tires.<sup>170</sup>

Private label tires are described by two of four producers and the majority of importers and purchasers as somewhat competitive with name brand tires, largely because they are sold at lower prices.<sup>171</sup> U.S. producers and nearly all importers reported selling branded and private label tires with the same specifications at the same prices. Importers and purchasers reported in large part that branding influences the price customers are willing to pay, thus linking brand with perceived quality and service. That said, many of the companies responding to this question said that branding was a more significant factor in tiers 1 and 2 where name recognition plays a role.<sup>172</sup>

Respondents argued that domestic producers offer benefits not provided by importers that limit the substitutability of domestic and subject imported tires. Benefits identified by respondents included national distribution and service networks, manufacturers' warranties, retreading operations, and leasing operations.<sup>173</sup> We do not find that the record supports this claim. While the data is mixed, overall they do not show that domestic tires are significantly more likely to be covered by warranties or guaranties.<sup>174</sup> While some purchasers considered domestic tires superior with respect to factors such as delivery time, retreading, and technical

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<sup>166</sup> Petitioner provided information indicating that major U.S. producers introduced or expanded their product line of Tier 2 and 3 tires during the period of investigation. Petitioner's Prehearing Brief at 41-42.

<sup>167</sup> CR at II-24-25; PR at II-16-17.

<sup>168</sup> CR at II-27; PR at II-17. \*\*\*

<sup>169</sup> CR/PR at Table II-13 and CR at II-27; PR at II-17. Three of four producers, 13 of 35 importers, and 6 of 15 purchasers who responded indicated that prices in one tier affect prices in another tier.

<sup>170</sup> CR at II-27; PR at II-17.

<sup>171</sup> CR at II-28; PR at II-18.

<sup>172</sup> CR at II-27-28; PR at II-17-18.

<sup>173</sup> Respondents' Prehearing Brief at 30-31.

<sup>174</sup> Producers estimated that \*\*\* percent of 2015 U.S. commercial shipments were sold with warranties or guaranties and importers estimated that 50.8 percent of subject import shipments carried these benefits. Purchasers reported that 49.4 percent of U.S.-produced truck and bus tires, 93.1 percent of Chinese-produced truck and bus tires, and 39.4 percent of nonsubject tires, were covered by warranties and guaranties. CR at II-20; PR at II-14 and Tables II-10, II-11a and II-11b. Three of 6 reporting producers offer warranties on casings and 4 of 6 offered warranties on retreads, while 18 of 37 subject importers offered warranties on casing and 10 of 37 offered retread warranties. CR at II-23; PR at II-15.

support/service, fewer purchasers considered these factors to be very important to purchasing decisions as compared to price.<sup>175</sup>

For the reasons discussed below, we find that a significant volume of subject imports from China has undersold the domestic like product, significantly depressed U.S. prices, and caused material injury to the domestic industry producing truck and bus tires during the period of investigation.

### C. Volume

Section 771(7)(C)(i) of the Tariff Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>176</sup> Subject import volume rose 41.9 percent from 6.3 million tires in 2013 to 8.9 million tires in 2015.<sup>177</sup> The 41.9 percent increase over 2013-2015 is almost twice the 21.3 percent increase in apparent U.S. consumption of truck and bus tires over that same period.<sup>178</sup> The most significant increase by the subject imports, 34.2 percent, occurred in 2014 in tandem with the most significant annual increase in apparent U.S. consumption, 16 percent. This significant increase in subject import volume allowed the Chinese subject imports to take market share directly from domestic producers, with the largest gain also coming in 2014, when the subject imports captured an additional 4.5 percent of the U.S. market.<sup>179</sup> Subject imports gained market share over the period as a whole as well, rising from 28.7 percent in 2013 to 33.2 percent in 2014 and 33.6 percent in 2015.<sup>180</sup> Subject import volume also increased significantly relative to domestic production.<sup>181 182</sup>

Respondents agree that the volume of subject imports increased but argue that because of domestic industry supply constraints the increase did not have an adverse volume effect during the investigation period. They state that subject imports filled demand that domestic tires could not meet.<sup>183</sup> While the U.S. industry operated at increasing capacity utilization levels during the period, it maintained available capacity in each of the years, operating at \*\*\*

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<sup>175</sup> CR/PR at Tables II-7, II-14.

<sup>176</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>177</sup> CR at Table C-1.

<sup>178</sup> CR at Table C-1.

<sup>179</sup> CR at Table IV-9.

<sup>180</sup> CR at Table C-1.

<sup>181</sup> The ratio of subject imports to U.S. produced truck and bus tires increased from \*\*\* percent in 2013, to \*\*\* percent in 2014, and to \*\*\* percent in 2015. CR at Table IV-2.

<sup>182</sup> Subject imports were 6.7 million tires in interim 2015 and 6.4 million tires in interim 2016. The market share of subject imports was 33.9 percent in interim 2015 and \*\*\* percent in interim 2016. CR/PR at Table IV-9. Although the volume and market share of subject imports were still significant in interim 2016, we give less weight to data for this period given that the declines were likely the result of the filing of the petition in January 2016 and the imposition of the requirement for cash deposits following Commerce’s preliminary CVD determination in July 2016.

<sup>183</sup> Respondents’ Prehearing Brief at p. 35

percent capacity utilization in 2013, \*\*\* percent in 2014, and \*\*\* percent in 2015.<sup>184</sup> The domestic industry also maintained higher inventory levels during the period from which demand could have been supplied.<sup>185</sup> Respondents' argument as to supply constraints drawing in subject imports is also undercut by data showing that only 2 of 14 purchasers who reported shifting to the subject imports stated that availability was the reason for the shift. Eleven of the 14 purchasers reported that the subject imports were lower priced and nine reported shifting because of the lower prices for the Chinese tires.<sup>186</sup>

Further, the subject imports were concentrated in the aftermarket segment of the truck and bus tire market, the segment that accounted for the majority of total shipments during the period of investigation. Subject import shipments to the aftermarket totaled \*\*\* percent of their total U.S. commercial shipments in 2015, an increase from \*\*\* percent in 2013; the domestic industry was less concentrated in that segment, but still shipped a substantial portion of its total U.S. commercial shipments to the aftermarket, 58.8 percent in 2015.<sup>187</sup> By volume, the aftermarket grew nearly 25 percent from \*\*\* tires to \*\*\* million tires during 2013-2015. The volume of subject imports in this segment increased \*\*\* percent from \*\*\* million tires to \*\*\* million tires. In contrast, the domestic industry reported only a very small increase in shipment volumes to the aftermarket in 2015, \*\*\* million tires, compared to 2013, \*\*\* million tires, an increase of only 1.4 percent. Subject imports captured an increasing share of the U.S. aftermarket segment, increasing from \*\*\* percent in 2013 to \*\*\* percent of that segment in 2015; conversely, the domestic industry saw its share decline in the growing market from \*\*\* percent in 2013 to \*\*\* percent in 2015.<sup>188</sup> Thus, the domestic industry lost significant market share to the subject imports from China not only in the total market for truck and bus tires, but also in the aftermarket segment, further supporting our conclusion as to the volume effects of the subject imports on the domestic industry as a whole.

In light of the foregoing, we find the volume and increase in volume of subject imports to be significant in absolute terms and relative to domestic production and consumption.

## **E. Price Effects of the Subject Imports**

Section 771(7)(C)(ii) of the Tariff Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether

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<sup>184</sup> We note that no short supply provision exists in the statute. As the Commission has previously found, the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports. *See, e.g., Frozen Warmwater Shrimp from China, Ecuador, India, Malaysia, and Vietnam*, Inv. Nos. 701-TA-491-93, 495, and 497 (Final), USITC Pub. 4429 at 104 (October 2013.)

<sup>185</sup> CR/PR at Table III-8.

<sup>186</sup> CR/PR at Table V-10. We also note that purchasers reported supply constraints for both domestic and subject imported truck and bus tires. CR at II-6-9; PR at II-4-6. Hearing Tr. At 194 (Pearson).

<sup>187</sup> CR/PR at Table II-1.

<sup>188</sup> Derived from U.S. Producers' Questionnaires at Question II-8 and U.S. Importer Questionnaires at Question II-6.

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>189</sup>

As explained in the discussion of conditions of competition, the record indicates that there is a moderate to high degree of substitutability between subject imports and domestically produced truck and bus tires. Most producers, importers and purchasers reported that US and Chinese tires are always or frequently interchangeable. Along with quality, price was reported as an important factor in purchasing decisions.<sup>190</sup>

The Commission collected price data for four different truck and bus tires and for each product it collected separate price data for shipments to OEMs and to the aftermarket.<sup>191</sup> In total, the Chinese subject tires undersold the domestic tires in 79 of 85 comparisons. In the aftermarket, the segment with the most significant growth over the investigation period and where the subject imports are concentrated, the Chinese truck and bus tires undersold the domestic tires in all 60 quarterly comparisons. These quarterly data totaled 2.5 million tires. In the OEM market, the subject imports undersold the domestic like product in 19 of 25 comparisons. While the total volume of the Chinese tires that oversold the domestic tires in the OEM market was nearly equivalent to the volume undersold in that segment, 31,667 tires versus 31,507 tires, 5 of the 6 instances of overselling and 75 percent of the volume of overselling occurred in 2016 following the filing of the petitions.<sup>192</sup> Thus, the underselling was concentrated in the period before the petitions were filed and occurred when imports were most rapidly gaining market share.

Margins of underselling are also probative in these comparisons. Margins of underselling were quite high throughout the period in the aftermarket segment where most

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<sup>189</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>190</sup> CR/PR at Tables II-7 and II-15. Five of 6 producers, 24 of 34 U.S. importers, and 11 of 15 purchasers reported that U.S. and Chinese truck and bus tires are always or frequently interchangeable. Sixteen of 20 purchasers responding to questionnaires replied that price was a “very important” purchase factor.

<sup>191</sup> Pricing data obtained from questionnaires accounted for approximately 25.4 percent of the domestic industry’s commercial shipments of truck and bus tires in 2015 and 13.6 percent of U.S. commercial shipments of truck and bus tires from China in 2015. CR at V-6; PR at V-4.

Product 1.--Truck and bus tire, tires designated for drive application (excluding allposition/all-purpose tires), size 11R22.5, 16 ply rating, load range of H, speed rating L (75 mph).

Product 2.-- Truck and bus tire, tires designated for drive application (excluding allposition/all-purpose tires), size 11R24.5, 16 ply rating, load range of H, speed rating L (75 mph).

Product 3.-- Truck and bus tire, tires designated for drive application (excluding allposition/all-purpose tires), size 295/75R22.5, 14 ply rating, load range of G, speed rating L (75 mph).

Product 4.-- Truck and bus tire, tires designated for drive application (excluding allposition/all-purpose tires), size 285/75R24.5, 14 ply rating, load range of G, speed rating L (75 mph).

<sup>192</sup> CR/PR at Tables V-3-V-6 and Table V-8.

head to head competition occurred, ranging from 11.0 to 50.2 percent and averaging 38.5 percent. Not only were these price differences substantial, they increased over the investigation period, and peaked in 2015 for each of the four products for which data were collected.<sup>193</sup> Thus, we find underselling by the subject imports to be significant.

The adverse impact of the subject Chinese imports can also be seen in an analysis of the price trends over the period for which price data were collected and which support our finding of price depression. Subject imports led the fall of U.S. prices throughout the POI even as consumption increased substantially during the investigation period.<sup>194</sup> Domestic price decreases ranged from 9.1 to 25.8 percent, while price ranges for the Chinese tires fell by even larger amounts of 17.1 to 29.8 percent.<sup>195</sup> The comparisons in relative price declines of subject imports and domestic tires shows even starker results when viewed by market segment. For each of the four products, the price declines for domestic aftermarket sales, where the most direct competition occurred, exceeded the declines in the OEM segment prices, often by a considerable amount:<sup>196</sup>

	OEM Change	Aftermarket Change
Product 1	-\$44.28	-\$82.02
Product 2	-\$75.16	-\$95.19
Product 3	-\$39.82	-\$74.91
Product 4	-\$***	-\$95.27

The differences between the high and low prices within each segment were also more significant for the aftermarket sales.<sup>197</sup> As noted in the tabulation above, U.S. producer sales prices particularly in the aftermarket, fell by more than the \$39 fall in unit COGS over the investigation period.

We recognize that raw material costs declined over the investigation period and do not disagree with respondents that some degree of the price declines evidenced in the record may be tied to these lower costs.<sup>198</sup> The prices of natural rubber and synthetic rubber, which together account for about 51.2 percent of the cost of manufacture of a tire, declined by 55.6 and 40.3 percent, respectively. The ratio of raw materials to COGS declined from 62.1 percent in 2013 to 56.4 percent in 2015, largely driven by these declines. Comparing the price declines in the tabulation above to the industry's trend in unit COGS, the price declines for both OEM

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<sup>193</sup> CR/PR at Tables V-3-V-6 and Table V-8. From the first quarter of 2013 to the fourth quarter of 2015, the margin of underselling for Product 1 increased from 31.2 percent to 45.2 percent, for Product 2 it increased from 28.6 percent to 46.2 percent, for Product 3 it increased from 29.2 percent to 48.2 percent, and for Product 4 it increased from 31.6 percent to 49.1 percent. CR at V-24; PR at 16.

<sup>194</sup> CR at V-19; PR at V-15; and Table V-7.

<sup>195</sup> CR/PR at Tables V-3-V-6. Petitioners argue also that the AUVs for the Chinese tires across the four products fell more than twice as quickly as domestic prices, contributing to the price pressure in the market. Petitioners' Prehearing Brief at pp. 54-55.

<sup>196</sup> CR/PR at Tables V-3-V-6 (comparison of change from Q1 2013 to Q3 2016).

<sup>197</sup> CR/PR at Table V-7.

<sup>198</sup> Respondents Prehearing Brief at p. 49.

and aftermarket products were greater than the 16.8 percent/\$39 decline in unit COGS during 2013-2015.<sup>199</sup>

Moreover, any downward price pressure caused by falling raw material costs would have been offset by upward pricing pressure resulting from rising demand. As noted above, apparent U.S. consumption of truck and bus tires increased by 21.3 percent from 2013 to 2015.

Purchaser responses confirm that price effects of subject imports. Fourteen of 18 responding purchasers reported that they had purchased imported truck and bus tires from China during the period instead of U.S.-produced truck and bus tires.<sup>200</sup> Eleven of these purchasers reported that subject import prices were lower than those of the U.S.-produced product, and nine of these purchasers reported that price was a primary reason for purchasing imported product rather than U.S.-produced product.<sup>201</sup> In addition, of 19 responding purchasers, five reported that U.S. producers had reduced prices in order to compete with lower-priced imports from China.<sup>202</sup>

We find significant underselling and price depression as evidenced by the increased volume and market share of the subject imports at high and increasing margins of underselling during a period of increased consumption. In light of record evidence that the domestic and subject imports are moderately to highly substitutable and competed directly for sales in both the OEM and aftermarkets, we find that with the significant volume of subject imports that undersold the domestic tires, the falling subject import prices in the market led the fall in domestic tire prices over the investigation period.

## **F. Impact of the Subject Imports**

Section 771(7)(C)(iii) of the Tariff Act provides that in examining the impact of subject imports, the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”<sup>203</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”

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<sup>199</sup> CR/PR at Table C-1. The percentage decline for prices for Products 1 – 4 for the domestic industry for aftermarket sales also exceeded the 16.8 percent unit COGS decline for each of the four products (ranging from 21.5 to 25.8 percent). OEM prices declined by 9.1 to 20.9 percent. CR/PR at Table V-7.

<sup>200</sup> CR at Table V-10.

<sup>201</sup> CR at Table V-10.

<sup>202</sup> CR at V-24; PR at V-17.

<sup>203</sup> 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”).

The domestic tire industry has shown a number of positive performance indicators during the period although many of these indicators lagged the strong apparent U.S. consumption growth experienced during 2013-2015. While the U.S. market grew overall by 21.3 percent, the domestic industry's share of the market fell by 7.7 percentage points, from 53.3 percent to 45.6 percent and its shipments only grew by 3.9 percent. At the same time, subject imports grew by 41.9 percent and their market share increased by 4.9 percentage points from 28.7 percent in 2013 to 33.6 percent in 2015.<sup>204</sup>

Capacity utilization improved over the same period, from \*\*\* percent in 2013 to \*\*\* percent in 2015 as U.S. production increased by \*\*\* percent. However, domestic shipments grew by only 3.9 percent – in a market where overall consumption grew by 21.3 percent.<sup>205</sup> U.S. shipment unit values fell by 8.4 percent while the COGS to sales ratio fell by 5.7 percent. Respondents argue that the domestic industry was operating at a capacity level that could not be increased and thus subject imports were filling a gap in demand in the U.S. market, but the capacity utilization numbers and the comparatively larger decline in shipment unit values compared to the COGS ratio do not support this conclusion.

During the investigation period, the industry's capacity contracted slightly and was \*\*\* percent lower in 2015 than in 2013. The domestic industry argues that it had more than sufficient capacity to meet the demand lost to subject imports.<sup>206</sup> It points to data showing that only one producer operated at 100 percent capacity, suggesting that others could have produced more absent the subject import competition. Petitioners argue additionally that had domestic producers not had to postpone planned capacity expenditures at three plants, capacity would have increased by an additional 1.2 million tires.<sup>207</sup> Further, domestic inventories were higher in 2015 compared to 2013, growing from 16.8 percent to 20.5 percent of shipments, an increase of over 600,000 tires, adding to available supply to meet the growing demand in the U.S. market.<sup>208</sup>

Capital expenditures over the period totaled \$148.8 million in 2013, \$309.9 million in 2014, and \$310.3 million in 2015. About \*\*\* percent of these expenditures were tied to Yokohama's new facility in West Point, MS.<sup>209</sup> This plant began production in October 2015. However, it had little impact over the period on overall capacity to produce as it was not expected to reach full capacity until 2018.<sup>210</sup> Absent the new Yokohama facility, other domestic

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<sup>204</sup> CR/PR at Table C-1. Interim 2016 data show that the U.S. industry regained a small amount of market share, \*\*\* percent, after the petitions were filed.

<sup>205</sup> Export shipments grew by 8.2 percent but accounted for less than 15 percent of total shipments and were generally steady over the period. CR/PR at Table C-1.

<sup>206</sup> Petitioners' Final Comments, p. 5.

<sup>207</sup> \*\*\* CR/PR at Table III-4. United Steel Workers' witnesses testified at the Commission hearing that production curtailments continued into 2016 at several plants and included reduced work weeks, fewer production shifts, overtime reductions, and idled equipment. Petitioners' Prehearing Brief at p. 62. Continental has also announced its intention to begin construction of a plant in Mississippi in 2018, with the original start of production delayed by 3 years. CR at III\_5, Table VI-10a; PR at III-2, Table VI-10a.

<sup>208</sup> CR/PR at Table III-8.

<sup>209</sup> CR/PR at Table VI-7a.

<sup>210</sup> CR at III-4; PR at III-2. CR/PR at Table III-4.



producers' capital expenditures totaled \$\*\*\* million in 2013, \$\*\*\* million in 2014, and \$\*\*\* million in 2015. Witnesses testified that much of this investment was \*\*\*<sup>211</sup>

The US industry was profitable and profits grew over the period, but the overall increase was modest considering the significant increase in demand over the investigation period and the opportunity to benefit from lower costs. Net sales value decreased however, by \*\*\* percent, from \$4.3 billion in 2013 and 2014 to \$4.1 billion in 2015. Gross profits increased by 14 percent from \$1.2 billion to \$1.4 billion. Operating income increased over the period, from \$666 million in 2013 to \$783 million in 2015, or by 17.6 percent. Operating returns improved from 15.5 percent in 2013 to 19.3 percent in 2015, or by 3.8 percentage points; net returns, improved from 13.6 to 17.0 percent over those three years, or by 3.4 percentage points.<sup>212</sup>

Respondents argue that the financial results show that the domestic industry is not materially injured, and point to the financial performance, decreasing raw material costs as an explanation for lower prices, supply constraints for the domestic industry, and attenuated competition between the domestic and subject imported tires.<sup>213</sup> We disagree.

We find that subject imports had a significant adverse impact on the domestic industry. The industry lost substantial market share to the subject imports in a period of strong demand. The subject tires undersold the domestic product by significant and increasing margins of underselling and depressed prices, preventing the domestic industry from increasing its revenues commensurate with growing demand. Although profitable, due to the increasing presence of low-priced subject imports from China the industry lost revenues that it would otherwise have obtained, had unused capacity, and postponed investments that would have expanded capacity rather than simply maintained current equipment and current capacity levels. Lower shipments than what otherwise would have occurred also impacted the ability of the industry to expand employment opportunities in a period of increased demand.

In our analysis of the impact of subject imports on the domestic industry, we have taken into account whether there are other factors that may have had an adverse impact on the domestic industry during the investigation period to assure that we are not attributing injury from other factors to the subject imports. Respondents argue that nonsubject imports, particularly those imported by the U.S. producers, were necessary to supply the growing U.S. market. They point to statements by the domestic producers that they imported from foreign affiliates or from nonsubject sources to meet capacity constraints or fill product line gaps.<sup>214</sup> Record evidence shows that during 2013-2015, nonsubject import market share increased by 2.8 percentage points, whereas the market share of subject imports increased by 4.9 percentage points. Further, nonsubject import average unit values were between the U.S. and subject Chinese prices and generally were closer to the U.S. values than the values for the Chinese tires.<sup>215</sup> Furthermore, as the pricing data in Appendix D show, nonsubject imports

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<sup>211</sup> Petitioners' Posthearing Brief at Response to Commission Johanson Question 1 and Final Comments at p. 11.

<sup>212</sup> CR/PR at Table C-1.

<sup>213</sup> Respondents' Prehearing Brief at pp. 69-72.

<sup>214</sup> Respondents' Prehearing Brief at p. 37.

<sup>215</sup> CR/PR at C-1

always oversold subject imports and during the latter part of the investigation period were priced at levels similar to the domestic tires.

We also do not find that attenuated competition explains the ability of the subject imports to have gained market share. Tier and brand premiums cannot explain price underselling in instances in which the subject and Chinese tires overlap. The record shows that both domestic and Chinese tires competed directly and to a significant degree in tiers 2 and 3, the tiers which accounted for a large portion of total shipments over the investigation period. The record also contains evidence that the domestic and subject imported tires are marketed side by side and both domestic and subject imports are sold with warranties and other services.<sup>216</sup>

In sum, we find that the significant volume of subject imports, at prices that undersold the domestic like product and depressed domestic prices, adversely impacted the domestic industry. We consequently determine that the domestic industry is materially injured by reason of subject imports.

## **V. Critical Circumstances**

In its final antidumping duty determination regarding subject imports from China, the Department of Commerce (Commerce) found that critical circumstances exist with respect to all producers in China. In its final countervailing duty determination, Commerce found that critical circumstances exist with regard to imports from China from Guizhou Tyre Co., Ltd. and its cross-owned trading company, Guizhou Tyre Import and Export Co., but not for Double Coin. Commerce also found that critical circumstances also exist with respect to imports of truck and bus tires from China for all other companies.<sup>217</sup>

Because we have determined that the domestic industry is materially injured by reason of subject imports from China, we must also consider "whether the imports subject to the affirmative {Commerce critical circumstances} determination . . . are likely to undermine seriously the remedial effect of the antidumping {and/or countervailing duty} order{s} to be issued."<sup>218</sup> The SAA provides that the Commission is to determine "whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order" and specifically "whether the surge in imports prior to the suspension of liquidation, rather than the failure to provide retroactive relief, is likely to seriously undermine the remedial effect of the order."<sup>219</sup>

The statute provides that, in making this determination, the Commission shall consider, among other factors it considers relevant,

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and

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<sup>216</sup> CR/PR at Tables II-11-a-b.

<sup>217</sup> 82 Fed. Reg. 8599 and 8606 (January 27, 2017).

<sup>218</sup> 19 U.S.C. §§ 1671d(b)(4)(A)(ii), 1673d(b)(4)(A)(ii).

<sup>219</sup> SAA at 877.

(III) any other circumstances indicating that the remedial effect of the {order} will be seriously undermined.<sup>220</sup>

In considering the timing and volume of subject imports, the Commission's practice is to consider import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding those firms for which Commerce has made an affirmative critical circumstances determination.<sup>221</sup>

Petitioners argue that several factors favor an affirmative critical circumstances determination.<sup>222</sup> First, they emphasize that Commerce has made affirmative critical circumstances determinations in both its preliminary and final antidumping and countervailing duty determinations on truck and bus tires from China.<sup>223</sup> Second, they maintain that subject imports are subject to Commerce's affirmative critical circumstances findings increased rapidly in the six months after the petition was filed compared to the six months before the petition was filed.<sup>224</sup> Further, they argue that there was a rapid increase in inventories of subject merchandise in the six months before and after the petition was filed.<sup>225</sup>

Respondents argue that several factors favor a negative critical circumstances determination.<sup>226</sup> First, they emphasize that the Commission rarely makes affirmative critical circumstances determinations.<sup>227</sup> Second, they claim that subject imports increased only modestly for the six-month period after the petition was filed compared with the six-month period before the petition was filed, which is far short of the magnitude necessary to "seriously undermine" the remedial effect of an order.<sup>228</sup> Third, they observe that the small increase in subject imports after the petition was filed did not lead to a significant increase in U.S. importers' end-of-period inventories of subject merchandise from China that otherwise would not be quickly depleted.<sup>229</sup>

Consistent with Commission practice, in these investigations we have considered data for the five months prior to and including the month in which the petition was filed (January 2016) and data for the five months following that month.<sup>230</sup> Based on a comparison of subject imports over the five-month periods before and after the January 2016 petition filings, we do not find a massive increase in subject imports warranting an affirmative critical circumstances

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<sup>220</sup> 19 U.S.C. §§ 1671d(b)(4)(A)(ii), 1673d(b)(4)(A)(ii).

<sup>221</sup> See *Lined Paper School Supplies from China, India, and Indonesia*, Inv. Nos. 701-TA-442-43, 731-TA-1095-97, USITC Pub. 3884 at 46-48 (Sept. 2006); *Carbazole Violet Pigment from China and India*, Inv. Nos. 701-TA-437 and 731-TA-1060-61 (Final), USITC Pub. 3744 at 26 (Dec. 2004); *Certain Frozen Fish Fillets from Vietnam*, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 at 20-22 (Aug. 2003).

<sup>222</sup> Petitioners' Prehearing Brief at 12-15.

<sup>223</sup> Petitioners' Prehearing Brief at 12-13.

<sup>224</sup> Petitioners' Prehearing Brief at 14.

<sup>225</sup> Petitioners' Prehearing Brief at 14.

<sup>226</sup> CMA's Prehearing Brief at 2-13; CMA's Posthearing Brief at 1-7; Respondents' Prehearing Brief at 101-106.

<sup>227</sup> CMA's Prehearing Brief at 2-3.

<sup>228</sup> CMA's Brief at 10-12.

<sup>229</sup> CMA's Brief at 12-13. CMA also argued that the Commission should give little or no weight to Commerce's finding of critical circumstances because it was wrong.

<sup>230</sup> CR/PR at Table IV-6.

determination. For purposes of our analysis for the antidumping duty critical circumstances determination, in the five months prior to the filing of the petition (September 2015 – January 2016), the volume of subject imports from China was \*\*\* million tires, and in the five months after the petition was filed (February 2016-June 2016) this volume was \*\*\* million tires.<sup>231</sup> Thus, subject imports from China increased by \*\*\* percent in the five months following the filing of the petition.

We do not find that these post-petition U.S. imports of truck and bus tires from China would undermine the remedial effect of the antidumping duty order that Commerce will issue. As discussed above, apparent U.S. consumption increased over the investigation period, thus the increase in subject imports occurred during a period of increasing demand. U.S importers' end-of-period inventories of subject merchandise from China in July 2016 totaled \*\*\* tires, higher than \*\*\* in January 2016 when the petition was filed. Having considered the domestic industry's condition, the adverse price effects of subject imports during the investigation period, and the moderate-to-high degree of substitutability between the subject imports from China and the domestic like product, in light of the increase in apparent U.S. consumption during this period, we note that the increase in subject imports is significant, but do not find evidence of a massive increase that would warrant retroactive application of suspension of liquidation – and imposition of duties – for a 90-day period. We do not find that the subject imports that entered the U.S. market after the petition filings would seriously undermine the remedial effect of the antidumping duty order that Commerce would issue. We determine that critical circumstances do not exist with respect to those imports from China of truck and bus tires subject to affirmative critical circumstances determinations in Commerce's final antidumping duty determination.

For purposes of our analysis for the countervailing duty critical circumstances determination, in the five months prior to the filing of the petition (September 2015 – January 2016), the volume of subject imports from China was \*\*\* million tires, and in the five months after the petition was filed (February 2016-June 2016) this volume was \*\*\* million tires, an increase of \*\*\* percent.<sup>232</sup> We do not find that these post-petition U.S. imports of truck and bus tires from China would undermine the remedial effect of the countervailing duty order that Commerce will issue. As discussed above, apparent U.S. consumption increased over the investigation period, thus the increase in subject imports occurred during a period of increasing demand. U.S importers' end-of-period inventories of subject merchandise from China in July 2016 totaled \*\*\* tires, higher than \*\*\* in January 2016 when the petition was filed.<sup>233</sup> Having considered the domestic industry's condition, the adverse price effects of subject imports during the investigation period, and the moderate-to-high degree of substitutability between the subject imports from China and the domestic like product, in light of the increase in apparent U.S. consumption during this period, we note that the increase in subject imports is significant, but do not find evidence of a massive increase that would warrant retroactive application of suspension of liquidation – and imposition of duties – for a 90-day period. We do not find that the subject imports that entered the U.S. market after the petition filings would

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<sup>231</sup> CR/PR at Table IV-6.

<sup>232</sup> CR/PR at Table IV-7.

<sup>233</sup> \*\*\*

seriously undermine the remedial effect of the countervailing antidumping duty order that Commerce would issue. We determine that critical circumstances do not exist with respect to those imports from China of truck and bus tires subject to affirmative critical circumstances determinations in Commerce's final countervailing duty order.

Thus, we conclude that the imports subject to Commerce's critical circumstances determination are not likely to undermine seriously the remedial effect of the orders, if they were to be issued.

## **VI. Conclusion**

For the foregoing reasons, we find that the domestic industry producing truck and bus in the United States is materially injured by reason of subject imports from China. We further find that critical circumstances do not exist with respect to subject imports from China that are covered by Commerce's affirmative critical circumstances determinations.



## **Dissenting Views of Chairman David S. Johanson and Commissioner Meredith M. Broadbent on Remand**

By decision and order dated November 1, 2018, the U.S. Court of International Trade remanded the Commission's determination in *Truck and Bus Tires from China*, Inv. Nos. 701-TA-556 and 731-TA-1311 (Final), USITC Pub. 4673 (March 2017) (hereafter, "Original Determination, USITC Pub. 4673").<sup>1</sup> Upon consideration of the Court's remand instructions and the parties' comments, and based on the record in these remand proceedings, we again determine that an industry in the United States is not materially injured nor threatened with material injury by reason of subject imports of truck and bus tires ("TBTs") from China that are sold in the United States at less than fair value and subsidized by the government of China.<sup>2</sup> We respond below to the Court's specific instructions and do not address the correctness of the remand.

### **I. Domestic Like Product and Domestic Industry**

We reaffirm the Commission's prior findings concerning the definition of a single domestic like product.<sup>3</sup> We also adopt here the Commission's prior findings concerning the definition of the domestic industry, including the Commission's related party analysis.<sup>4</sup>

### **II. Conditions of Competition**

We reaffirm the Commission's prior findings concerning conditions of competition in the U.S. market for TBTs,<sup>5</sup> which were affirmed by the Court.<sup>6</sup>

### **III. No Material Injury By Reason Of Subject Imports from China**

We have reviewed the record of these remand proceedings, the Court's remand instructions, and the comments of the parties relating to the Court's instructions. We again determine on remand that the domestic industry is not materially injured by reason of subject imports from China. In reaching this determination, we adopt the discussion of no present material injury by reason of subject imports contained in the original views of the Commission,<sup>7</sup> subject to the modifications below in accordance with the Court's remand instructions.

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<sup>1</sup> See *United Steel, Paper and Forestry, Rubber, Mfg., Energy, Allied Indus. and Serv. Workers Int'l Union v. United States*, Slip Op. 18-151 (Ct. Int'l Trade Nov. 1, 2018) ("Slip Op. 18-151").

<sup>2</sup> We join the Background discussion provided in Section I of the Majority's Remand Views.

<sup>3</sup> Original Determination, USITC Pub. 4673 at 8-11.

<sup>4</sup> Original Determination, USITC Pub. 4673 at 12-15. Plaintiff United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") did not challenge the Commission's domestic like product or domestic industry definitions on appeal.

<sup>5</sup> Original Determination, USITC Pub. 4673 at 20-26.

<sup>6</sup> Slip Op. 18-151 at 7-10.

<sup>7</sup> Original Determination, USITC Pub. 4673 at 26-36.

## **A. Volume**

We reaffirm the Commission's prior findings that the volume and the increase in volume of subject imports was significant in both absolute terms and relative to consumption.<sup>8</sup> These findings were not challenged in the litigation.

## **B. Price Effects**

We reaffirm the Commission's prior findings that, despite significant underselling, subject imports did not have significant price effects<sup>9</sup> and adopt them here, subject to the modifications and exceptions we have stated below in accordance with the Court's remand instructions.

In remanding the Commission's analysis of price effects, the Court focused on one aspect of the Commission's analysis. Specifically, the Court declined to sustain the Commission's finding that the significance of the pervasive underselling by the subject imports was mitigated by three factors.<sup>10</sup> In reaching this conclusion, the Court did not object to the Commission's discussion of two of three mitigating factors, but questioned the third factor — the lack of price depression and price suppression.<sup>11</sup> The Court expressed concern that the Commission "mentioned {this factor} briefly in one sentence," "failed to give further details, did not reference any statistics, and neglected to explain how its observation supported its conclusion with regard to underselling."<sup>12</sup> The Court explained that, "{b}y merely relying on its finding for price suppression and price depression, the Commission conflated the two-pronged analysis mandated by the statute" for analyzing underselling and price effects separately.<sup>13</sup> The Court consequently concluded that the Commission's "final determination regarding price effects was not supported by substantial evidence," and instructed the Commission to "reconsider its findings in accordance with this opinion."<sup>14</sup>

For purposes of our remand examination, we no longer find that the significance of the underselling was mitigated because subject imports did not cause significant price depression or price suppression. We continue to find that the significance of underselling was mitigated based on the other two factors discussed in our original views, which the Court did not question.<sup>15</sup> Accordingly, without relying upon the lone factor that the Court could not sustain, we again find that subject imports did not have significant price effects for the other reasons previously explained in our original views.

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<sup>8</sup> Original Determination, USITC Pub. 4673 at 26. On appeal, USW did not challenge the Commission's volume findings in the original determination.

<sup>9</sup> Original Determination, USITC Pub. 4673 at 26-30.

<sup>10</sup> Slip Op. 18-151 at 10-11.

<sup>11</sup> Slip Op. 18-151 at 10-11.

<sup>12</sup> Slip Op. 18-151 at 11.

<sup>13</sup> Slip Op. 18-151 at 10-11.

<sup>14</sup> Slip Op. 18-151 at 11-12.

<sup>15</sup> Original Determination, USITC Pub. 4673 at 29-30.



### C. Impact

We reaffirm our prior findings that subject imports did not have a significant impact on the domestic industry.<sup>16</sup> These were affirmed by the Court.<sup>17</sup>

## IV. No Threat of Material Injury By Reason Of Subject Imports From China

We have reviewed the record of these remand proceedings, the Court's remand instructions, and the comments of the parties relating to the Court's instructions. We again determine on remand that the domestic industry is not threatened with material injury by reason of subject imports from China. In reaching this determination, we adopt the discussion of no threat of material injury contained in the original views of the Commission,<sup>18</sup> subject to the modifications and exceptions below in accordance with the Court's remand instructions.

### A. Likely Volume

As we explained in footnote 233 of our original views, several of the statutory threat factors address our consideration of likely volumes of subject imports.<sup>19</sup> One of these (Factor I), which we are statutorily directed to examine in a countervailing duty investigation, is "such information as may be presented to {the Commission} by the {Department of Commerce} as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the WTO Subsidies and Countervailing Measures Agreement ("WTO SCM Agreement") and whether imports of the subject merchandise are likely to increase."<sup>20</sup> In our original determination, we examined this subsidies-specific factor as well as the other threat factors related to volume, and acknowledged that subject imports will likely continue to enter the U.S. market in significant and potentially rising volumes, depending on the nature of apparent U.S. consumption trends.<sup>21</sup> On remand, we have reevaluated Factor I, in accordance with the Court's remand instructions.

In our original analysis of the likely volume of subject imports, we included the following discussion in footnote 237, concerning our consideration of Factor I:

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<sup>16</sup> Original Determination, USITC Pub. 4673 at 30-36.

<sup>17</sup> Slip Op. 18-151 at 12-14.

<sup>18</sup> Original Determination, USITC Pub. 4673 at 36-41.

<sup>19</sup> See Original Determination, USITC Pub. 4673 at 36-39 & n.233.

<sup>20</sup> 19 U.S.C. § 1677(7)(F)(i)(I). The other volume-related threat factors include consideration of: (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports; (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports; (V) inventories of the subject merchandise; (VI) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products. 19 U.S.C. § 1677(F)(i)(II), (III), (V), (VI).

<sup>21</sup> Original Determination, USITC Pub. 4673 at 36-39.

We also considered the ‘nature of the subsidy’ in the countervailing duty investigation in our threat analysis. See 19 U.S.C. § 1677(7)(F)(i)(I). In its final affirmative countervailing duty determination, Commerce found subsidization at rates ranging from 38.61 percent to 65.46 percent for eight named exporters and a subsidy rate of 52.04 percent for all others. *Commerce Final CVD Determination*, 82 Fed. Reg. at 8607. Commerce also found 15 programs to be countervailable: (1) Government Policy Lending; (2) Export Seller’s Credits from State-Owned Banks; (3) Export Buyer’s Credits from State-Owned Banks; (4) Provision of Carbon Black for LTAR; (5) Provision of Nylon Cord for LTAR; (6) Provision of Natural Rubber for LTAR; (7) Provision of Synthetic Rubber and Butadiene for LTAR (8) Provision of Electricity for LTAR; (9) Provision of Land-Use Rights to Truck and Bus Tire Producers for LTAR; (10) Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR; (11) Provision of Land-Use Rights to SOEs for LTAR; (12) Income Tax Reductions for High- and New- Technology Enterprises; (13) Enterprise Income Tax Law, Research and Development Program; (14) Value Added Tax (VAT) Exemptions for Imported Equipment; and (15) State Key Technology Renovation Fund Program. Issues and Decision Memorandum, Appendix X, as adopted by *Commerce Final CVD Determination*, 82 Fed. Reg. at 8608. We acknowledge Commerce’s findings that there were several countervailable subsidy programs benefitting truck and bus tire producers in China. We have considered the nature of these programs, none of which Commerce found to be an export subsidy described in Article 3 or 6.1 of the WTO SCM Agreement, in conjunction with the other factors pertaining to likely subject import volume and price effects in ascertaining whether imports of the subject merchandise are likely to increase, and any effects likely to be caused by the countervailable subsidies.<sup>22</sup>

The Court remanded this aspect of our original determination for reconsideration in light of a “clear discrepancy” between statements made in the Department of Commerce’s (“Commerce’s”) Issues and Decision Memorandum and the Commission’s findings.<sup>23</sup> Specifically, Commerce, in its Issues and Decision Memorandum found “evidence of countervailable subsidies contingent upon export that are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures.”<sup>24</sup> The Court stated that “two of the countervailable subsidy programs identified by Commerce are clearly export-related as evidenced by their names: ‘Export Seller’s Credits from State-Owned Banks’ and ‘Export Buyer’s Credits from State-Owned Banks.’”<sup>25</sup> The Court instructed the Commission on remand “to reconsider its finding on the nature of export subsidies consistent with {the Court’s} opinion.”<sup>26</sup>

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<sup>22</sup> Original Determination, USITC Pub. 4673 at 38-39, n.237.

<sup>23</sup> Slip Op. 18-151 at 17.

<sup>24</sup> Slip Op. 18-151 at 16-17.

<sup>25</sup> Slip Op. 18-151 at 17.

<sup>26</sup> Slip Op. 18-151 at 17.

On remand, we again have considered the nature of the programs that Commerce found to be countervailable, and adopt the Court’s statement that Commerce found certain of the subsidies in question to be export subsidies. Taken together with the other relevant likely volume factors, we again find that the likely volume of subject imports will be significant for the reasons previously explained in our original views. In the original determination, we examined a variety of factors in finding that subject imports will likely continue to enter the U.S. market in “significant and potentially rising volumes.”<sup>27</sup> On remand, we have included in this consideration that Commerce found some of the countervailed subsidies to be export subsidies. This fact further supports our finding of likely significant volumes.

### **B. Likely Price Effects**

We reaffirm the Commission’s prior findings that subject imports would be unlikely to have significant price effects in the imminent future,<sup>28</sup> subject to the modifications and exceptions we have stated below in accordance with the Court’s remand instructions.

In remanding the Commission’s analysis of likely price effects, the Court noted USW’s argument “that the Commission’s negative threat determination with respect to price effects is unreasonable because it is premised on the Commission’s present price effects finding.”<sup>29</sup> The Court explained that, consistent with its direction that the Commission reconsider its analysis of price effects for present material injury, the Court was also instructing the Commission on remand “to reconsider the negative threat determination on this basis as well.”<sup>30</sup>

As discussed above, we have modified our analysis of price effects for present material injury by relying on the two factors mitigating the significance of underselling that the Court did not question. Consequently, notwithstanding this modification, we again found that the subject imports did not currently have significant price effects. In light of this, we again find that subject imports would be unlikely to have significant price effects in the imminent future for the reasons previously explained in the original views of the Commission.

### **C. Likely Impact**

Because our reconsideration of likely volume and likely price effects does not call into question our examination of likely impact, we continue to adopt our previous likely impact analysis. Accordingly, we reaffirm the Commission’s prior finding that subject imports are not likely to have a significant impact on the domestic industry in the imminent future.<sup>31</sup>

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<sup>27</sup> Original Determination, USITC Pub. 4673 at 39. In the original determination, we found that trends in subject import volume and market penetration tended to mirror trends in apparent U.S. consumption. *Id.* at 37-38.

<sup>28</sup> Original Determination, USITC Pub. 4673 at 39-40.

<sup>29</sup> Slip Op. 18-151 at 17.

<sup>30</sup> Slip Op. 18-151 at 17-18.

<sup>31</sup> Original Determination, USITC Pub. 4673 at 40.

## **V. Conclusion**

For the above reasons, we determine on remand that an industry is not materially injured or threatened with material injury by reason of TBTs from China that are sold in the United States at less than fair value or are subsidized by the government of China.

