

UNITED STATES INTERNATIONAL TRADE COMMISSION

**PEDESTAL ACTUATORS FROM CHINA**

Investigation No. TA-421-1

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3557, November 2002)

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

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**PEDESTAL ACTUATORS**

**DETERMINATION**

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,<sup>1</sup> that pedestal actuators<sup>2</sup> from the People’s Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products.<sup>3</sup>

**PROPOSALS WITH RESPECT TO REMEDY<sup>4</sup>**

**Vice Chairman Jennifer A. Hillman and Commissioner Marcia E. Miller** propose that the President impose a quantitative restriction for a three-year period on imports of the subject pedestal actuators from China, in the amount of 5,626 units in the first year; 6,470 units in the second year; and 7,440 units in the third year.

**Commissioner Stephen Koplan** proposes that the President impose a quantitative restriction on pedestal actuators imported into the United States from China in the amount of 4,425 units in the first year; 4,514 units in the second year; and 4,604 units in the third year.

The Commissioners find that the respective actions that they propose are necessary to remedy the market disruption found to exist.

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<sup>1</sup> 19 U.S.C. § 2451(b)(1).

<sup>2</sup> For purposes of this investigation, pedestal actuators consist of electromechanical linear actuators, imported with or without motors, or as part of scooter subassemblies, all the foregoing used for lifting and lowering, or for pushing or pulling. The products under investigation include any subassembly of pedestal actuator parts and components. Pedestal actuators are powered by fractional horsepower DC or AC motors, which drive a ball bearing screw or acme screw through a gear reducer to convert rotary to linear motion. The products are designed for flat or base mounting, have telescoping members, with bearings or bearing surfaces, and rigidly support the load and provide anti-rotation. Pedestal actuators are provided for in subheadings 8483.40.50 and 8483.40.80 and in heading 8501 of the Harmonized Tariff System of the United States.

<sup>3</sup> Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg make a negative determination.

<sup>4</sup> Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg, having made negative determinations regarding market disruption, were not eligible to vote on remedy.

## **BACKGROUND**

Following receipt of a petition filed on August 19, 2002 on behalf of Motion Systems Corporation, the Commission instituted investigation No. TA-421-1, *Pedestal Actuators From China*, under section 421 of the Trade Act of 1974 to determine whether pedestal actuators from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's website ([www.usitc.gov](http://www.usitc.gov)) and by publishing the notice in the *Federal Register* of August 26, 2002 (67 FR 54822). The hearing was held on October 1, 2002 in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination to the President and U.S. Trade Representative on October 18, 2002; it transmitted its remedy proposals to the President and U.S. Trade Representative on November 7, 2002. The views of the Commission are contained in USITC Publication 3557 (November 2002), entitled *Pedestal Actuators from China: Investigation No. TA-421-1*.

# VIEWS OF THE COMMISSION ON MARKET DISRUPTION

## I. INTRODUCTION

### 1. Determination

Pursuant to section 421(b)(1) of the Trade Act of 1974 (19 U.S.C. § 2451(b)(1)) and on the basis of the information in this investigation, the Commission determines that pedestal actuators from the People's Republic of China (China) are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of pedestal actuators.<sup>5</sup>

### 2. Background and scope of investigation

The Commission instituted this investigation effective August 19, 2002, following receipt of a petition filed by Motion Systems Corporation, a domestic producer of pedestal actuators. The petition alleged that pedestal actuators from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. Section 421 was added to the Trade Act of 1974 in 2000,<sup>6</sup> and this is the first investigation that the Commission has conducted under this provision.

The imported pedestal actuators from China that are the subject of this investigation consist of:

electromechanical linear actuators, imported with or without motors, or as part of scooter subassemblies, all the foregoing used for lifting and lowering, or for pushing or pulling. The products under investigation include any subassembly of pedestal actuator parts and components. Pedestal actuators are powered by fractional horsepower DC or AC motors, which drive a ball bearing screw or acme screw through a gear reducer to convert rotary to linear motion. The products are designed for flat or base mounting, have telescoping members, with bearing or bearing surfaces, and rigidly support the load and provide anti-rotation.<sup>7</sup>

The imported and domestic pedestal actuators covered by this investigation are used principally in mobility scooters for the purpose of raising or lowering the seat. Such scooters typically are used by persons who are mobility impaired. The pedestal actuator includes the device that goes up and down, the motor that powers that movement, and the mount that is attached to the body of the scooter. The pedestal actuator is designed to both raise and lower the seat and to keep the seat stable, particularly when in an elevated position. The user of the scooter activates the pedestal actuator by pressing a button on the scooter's handle bar.<sup>8</sup>

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<sup>5</sup> Vice Chairman Hillman and Commissioners Miller and Koplan reached an affirmative determination, and Chairman Okun and Commissioner Bragg reached a negative determination. Chairman Okun joins the discussion regarding background, statutory framework, domestic industry (and like or directly competitive article), and rapidly increasing imports.

<sup>6</sup> Section 421 was added to the Trade Act by the U.S.-China Relations Act of 2000, P.L. 106-286 (2000).

<sup>7</sup> Confidential Report (CR) at I-1, n. 2; Public Report (PR) at I-1, n. 2.

<sup>8</sup> CR at I-2-6; PR at I-2-5.

### 3. Statutory framework

The determination that the Commission must make is set out in section 421(b)(1)<sup>9</sup> of the Trade Act, which states in part that the Commission, upon the filing of a petition or receipt of a request or resolution, shall promptly conduct an investigation –

to determine whether products of the People’s Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

This standard is satisfied if the following conditions are met –

- (1) there is market disruption or the threat of market disruption to domestic producers of the like or directly competitive products; and
- (2) imports from China are in such increased quantities or under such conditions as to cause or threaten to cause such market disruption.

The term “market disruption” is defined in section 421(c)(1)<sup>10</sup> to exist –

whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

Thus, in order to determine that market disruption exists, the Commission must find that each of three conditions is satisfied –

- (1) imports of the subject product from China are increasing rapidly, either absolutely or relatively;
- (2) the domestic industry is materially injured, or threatened with material injury; and
- (3) such rapidly increasing imports are a significant cause of the material injury or the threat of material injury.

Section 421(c)(2) further states that the term “significant cause” refers “to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.”<sup>11</sup>

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<sup>9</sup> 19 U.S.C. § 2451(b)(1).

<sup>10</sup> 19 U.S.C. § 2451(c)(1).

<sup>11</sup> 19 U.S.C. § 2451(c)(2).

Section 421(d)<sup>12</sup> provides that the Commission, in determining whether market disruption exists, “shall consider objective factors, including –

- (1) the volume of imports of the product which is the subject of the investigation;
- (2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and
- (3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.”

Section 421(d) further provides that the presence or absence of any of these three factors “is not necessarily dispositive of whether market disruption exists.”

## **II. WHETHER MARKET DISRUPTION EXISTS**

### **1. Domestic industry**

Section 421(c), like other safeguard provisions such as section 202 of the Trade Act of 1974,<sup>13</sup> defines the domestic industry in terms of the producers of “like or directly competitive” products. In making determinations under section 202 of the Trade Act, the Commission follows a two-step practice of first determining what constitutes the product like or directly competitive with the imports subject to the investigation, and then identifying who produces it (the domestic industry). In the absence of instruction to the contrary in either section 421 or its legislative history, we find it appropriate to follow this practice in this investigation.

#### **a. Like or directly competitive domestic article**

##### *(i) The statutory framework and Commission practice*

The term “like or directly competitive” is defined in the legislative history of what is now section 202 of the Trade Act as follows –

The words “like” and “directly competitive”, as used previously and in this bill are not to be regarded as synonymous or explanatory of each other, but rather to distinguish between “like” articles and articles which, although not “like,” are nevertheless “directly competitive.” In such context, “like” articles are those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which made, appearance, quality, texture, etc.), and “directly competitive” articles are those which, although not substantially identical in their inherent or

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<sup>12</sup> 19 U.S.C. § 2451(d).

<sup>13</sup> 19 U.S.C. § 2252.

intrinsic characteristics, are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor.<sup>14</sup>

When assessing what constitutes the like or directly competitive product in section 202 safeguard cases, the Commission traditionally has considered such factors as (1) the physical properties of the article, (2) its customs treatment, (3) its manufacturing process (i.e., where and how it is made), (4) its uses, and (5) the marketing channels through which the product is sold.<sup>15</sup> The Commission has considered the decision regarding like or directly competitive product to be a factual determination.<sup>16</sup> In deciding what constitutes the like or directly competitive product, the Commission has looked for clear dividing lines among possible products and disregarded minor variations.<sup>17</sup>

Under section 202, if the Commission found that there is domestic production of a like product, it has not found it necessary to look further and determine whether there are also domestic producers of directly competitive products.<sup>18</sup> The Commission has found that the domestic product need not be identical to the imported product in all respects, so long as it is “substantially identical.”<sup>19</sup> However, the Commission has found a domestic product to be a separate and distinct product and not like or directly competitive with the imported product when it had different physical properties, was produced by a different process, or had different applications.<sup>20</sup>

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<sup>14</sup> H.R. Rep. No. 571, 93rd Cong., 1st Sess. 45 (1973); S. Rep. No. 1298, 93rd Cong., 2d Sess., at 121-122 (1974).

<sup>15</sup> See, e.g., *Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 (Dec. 2000) at I-5-6; *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 (Dec. 1999) at I-10; *Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 (March 1998) at I-9. These factors are similar, but not identical, to those considered by the Commission when making its domestic like product determination in title VII investigations. In title VII cases, the Commission generally considers a number of factors, including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See, e.g., *Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand*, Inv. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 (March 2000) at 3, n.6.

<sup>16</sup> See, e.g., *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 (Dec. 1999) at I-10; *Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand*, Inv. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 (March 2000) at 3.

<sup>17</sup> *Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 (Dec. 2000) at I-6; *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 (Dec. 1999) at I-10.

<sup>18</sup> See, e.g., *Lamb Meat*, Inv. No. TA-201-68, USITC Pub. 3176 (April 1999) at I-10; and *Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 (March 1998) at I-9.

<sup>19</sup> *Crabmeat from Swimming Crabs*, Inv. No. TA-201-71, USITC Pub. 3349 (August 2000) at I-7.

<sup>20</sup> See, e.g., *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 (Dec. 1999) at I-11-12. In a limited number of instances under section 202 when the facts so warranted, the Commission has defined the domestic product more broadly than the imported product identified in the notice of investigation. See, e.g., *Fresh Winter Tomatoes*, Inv. No. TA-201-64 (Provisional Relief Phase), USITC Pub. 2881 (Apr. 1995) at I-7, 13 (producers of cherry tomatoes part of domestic industry even though imports of cherry tomatoes were not part of scope of investigation); but compare, *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-20170, USITC Pub. 3261 (Dec. 1999) at I-11-12 (finding that standard pipe and oil country tubular goods are distinct products with different applications and not “like” imported line pipe even though made on the same production equipment used

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(ii) *Arguments of the parties*

In the instant case, the petitioner argues that the like product should be limited to electromechanical pedestal actuators, and the respondent argues that it should include all electromechanical linear actuators, including pedestal actuators.

Petitioner Motion Systems asserts that domestically produced pedestal linear actuators – and not all linear actuators – are like or directly competitive with pedestal linear actuators imported from China. Petitioner states that the domestic and imported pedestal actuators “share common inherent or intrinsic physical characteristics, including flat or base mounting, bearing support of the extension tube, offset load capability, anti-rotation provided by the extension tube, and compression load capability, all in a compact self-contained unit with minimal retracted height.” Petitioner states that the “vast majority” of other linear actuators, by contrast, do not feature any of these characteristics, and that no linear actuator includes all of them.<sup>21</sup> Petitioner also asserts that domestic and imported pedestal actuators are “directly interchangeable,” but that other linear actuators would have to be modified to be used in a mobility scooter. Petitioner also asserts that the production processes of pedestal and non-pedestal actuators are different, and refers to the off-site fabricating work performed by Moran Power Dynamics, Inc. (Moran) in a tolling operation, in which Moran creates the body of the pedestal actuator and installs certain components.<sup>22</sup> Petitioner asserts that marketing channels are different for pedestal actuators, in that domestically produced pedestal actuators are sold directly to mobility scooter manufacturers and other original equipment manufacturer (OEM) customers, while other linear actuators are sold both to OEM customers and through distributors from stock.<sup>23</sup> Petitioner notes that pedestal actuators enter under various HTS numbers depending on motor size and other attributes, and that each HTS number includes products in addition to pedestal actuators,<sup>24</sup> but it does not claim that customs treatment here is of any help in identifying the like product.

Respondent CCL Industrial Motor Ltd. (CIM), a producer of pedestal actuators in China, asserts that “dozens” of domestic companies produce a wide range of electromechanical linear actuators that are either like or directly competitive with the subject imports.<sup>25</sup> Respondent asserts that there is no distinct domestic pedestal actuator industry, and that the term “pedestal actuator” is not accepted industry terminology but merely petitioner’s “contrivance to describe its two models of linear actuators.”<sup>26</sup> Respondent asserts that all electromechanical linear actuators perform the same basic function -- the conversion of rotational to linear motion to move a load -- in the same basic way: via an electric motor, gear chain, and lead screw and nut.<sup>27</sup> Respondent states that “many” electromechanical linear actuators, together with petitioner’s two pedestal models, share the same basic components as the subject imported

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<sup>20</sup> (...continued)  
to manufacture line pipe).

<sup>21</sup> Petitioner’s Posthearing Brief at 20-21.

<sup>22</sup> Petitioner’s Posthearing Brief at 21-22.

<sup>23</sup> Petitioner’s Posthearing Brief at 22.

<sup>24</sup> Petitioner’s Posthearing Brief at 22-23.

<sup>25</sup> Respondent’s Posthearing Brief at 1.

<sup>26</sup> Respondent’s Posthearing Brief at 1.

<sup>27</sup> Respondent’s Prehearing Brief at 12.

product, such as a ball screw and a bearing and a thrust bearing and a mounting plate,<sup>28</sup> and that none of the physical characteristics cited by petitioner to distinguish its product, including flat or base mounting, is unique to petitioner's product.<sup>29</sup> Respondent also asserts that the information in the investigation shows that various types of linear actuators are produced using the same production processes, facilities, equipment, and employees, and notes that the petitioner itself produced a wide variety of other linear actuators.<sup>30</sup> Respondent further asserts that all electromechanical linear actuators are customized for particular end-use applications, and thus are marketed directly to end-users. It argues therefore that the channels of distribution for linear actuators produced by the other domestic manufacturers do not differ in any way from those produced and sold by petitioner.<sup>31</sup>

(iii) *Analysis*

We begin our like or directly competitive product analysis with the imported product or products described in our notice of investigation. That notice describes the imported product as follows:

For purposes of this investigation, pedestal actuators consist of electromechanical linear actuators, imported with or without motors, or as part of scooter subassemblies, all the foregoing used for lifting and lowering, or for pushing or pulling. The products under investigation include any subassembly of pedestal actuator parts and components. Pedestal actuators are powered by fractional horsepower DC or AC motors, which drive a ball bearing screw or acme screw through a gear reducer to convert rotary to linear motion. The products are designed for flat or base mounting, have telescoping members, with bearing or bearing surfaces, and rigidly support the load and provide anti-rotation. Pedestal actuators are provided for in subheadings 8483.40.50 and 8483.40.80 and in heading 8501 of the HTS.<sup>32</sup>

In making our like product finding, we find it appropriate to apply the factors the Commission traditionally has applied in section 202 investigations (i.e., physical properties, customs treatment, production processes and facilities, uses, and marketing channels) to determine what constitutes the like or directly competitive domestic article and whether there are clear dividing lines between the domestic like or directly competitive products.

*Physical properties.* We find that domestic pedestal actuators have the same physical properties as the imported pedestal actuators, but other types of domestically produced linear actuators do not. We find that the imported and domestic pedestal actuators share common inherent or intrinsic physical characteristics, including flat or base mounting, bearing support of the extension tube, offset load capability, anti-rotation provided by the extension tube, and compression load capability.<sup>33</sup> We note that

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<sup>28</sup> Respondent's Posthearing Brief at 10, citing in part testimony of Mr. Flowers, Tr. at 231.

<sup>29</sup> Respondent's Posthearing Brief at 13.

<sup>30</sup> Respondent's Posthearing Brief at 19-21.

<sup>31</sup> Respondent's Posthearing Brief at 21-23.

<sup>32</sup> Reproduced in the CR and PR at appendix A.

<sup>33</sup> CR at I-2-6; PR at I-2-5. We find the different domestic models of pedestal actuators that embody these

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petitioner alleges that the imported pedestal actuators from China are virtually identical to those produced at its plant and in fact were copied from its 85872 model product line, and that petitioner is pursuing various trademark infringement and other claims in a court action.<sup>34</sup> None of the parties argues that domestic pedestal actuators are not like the imported pedestal actuators.

We find, however, that linear actuators as a whole do not have the same or substantially identical physical properties as the imported pedestal actuators that are the subject of this investigation. While other linear actuators may share some or many of the same physical properties as the imported pedestal actuators, they lack one or more key physical properties of pedestal actuators, such as the pedestal flat mount, bearing support of the extension tube, anti-rotational capability, offset load capability, or compression load capability.<sup>35</sup> These differences are reflected in the configuration of the pedestal actuator where the outer tube is securely welded to a metal plate and the inner telescoping tube (to which the screw mechanism is attached) is rigidly supported inside the outer tube with bearing surfaces.<sup>36</sup> Pedestal and other linear actuators also may differ in other significant ways, such as in terms of maximum load capabilities (as rated in pounds of linear thrust or lift load) and type of application (commercial or industrial).<sup>37</sup> For example, currently available pedestal actuators are designed to lift 500 pounds or the maximum anticipated weight of a person and chair seat, while some industrial actuators can generate up to 10,000 pounds of force for use in such areas as oil refineries.<sup>38</sup> Industrial actuators typically are manufactured to tighter tolerances for added precision in movement than those for commercial applications, and frequently run with a much higher duty cycle (on-time vs. off-time).<sup>39</sup>

*Production processes and facilities.* We also find that the information in the record shows that pedestal and other linear actuators are largely made by different processes and in different facilities. While certain components of pedestal and other linear actuators, such as the linear actuator drive, can be and are made in the same plant and on the same equipment, considerable additional specialized fabricating and assembly work must be performed to produce a pedestal actuator. In the case of the petitioner, which accounts for most of the domestic production of pedestal actuators, this additional specialized work is performed in a different facility, involves different workers and skills, and accounts for a substantial part of the value and labor of a finished pedestal actuator.<sup>40</sup> While several responding firms indicated that there are similarities in the machinery and worker skills necessary to produce pedestal and other linear actuators, they also indicate that they do not produce pedestal actuators. Two of the firms indicate that additional

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<sup>33</sup> (...continued)

properties, such as petitioner's 85272 and 85872 models, and various versions thereof, to share common inherent or intrinsic physical properties, despite minor differences in design, materials, and capabilities. See descriptions in the CR at I-5-6; PR at I-3-5.

<sup>34</sup> CR at I-6-7; PR at I-5.

<sup>35</sup> CR at I-17-20; PR at I-13-15.

<sup>36</sup> CR at I-3; PR at I-3.

<sup>37</sup> CR at I-9-10; PR at I-6.

<sup>38</sup> CR at I-9; PR at I-6.

<sup>39</sup> CR at I-10; PR at I-7.

<sup>40</sup> CR at I-22; PR at I-16.

tooling or worker training would be required, and a third firm characterizes the additional steps required as adding substantially to the cost.<sup>41</sup>

*Uses.* The information in the record shows that the imported and domestic pedestal actuators are used for the same purpose, but imported pedestal actuators and non-pedestal domestic linear actuators primarily are used for different purposes.<sup>42</sup> Imported and domestic pedestal actuators are used primarily in conjunction with raising and lowering seats, while most other linear actuators are used in a variety of commercial and industrial applications, ranging from fitness and office equipment to use in refineries. While pedestal actuators and (supported) non-pedestal actuators can both be used, from a purely technical standpoint, for the purpose of raising a seat, such interchangeability appears to exist in only a few instances.<sup>43</sup> Most firms responding to the Commission's questionnaire stated that pedestal actuators do not compete for sales with other linear actuators.<sup>44</sup>

*Marketing channels.* The information in the record shows that imported and domestic pedestal actuators are produced to order for sales to OEM customers, mainly scooter manufacturers, and thus are sold through the same channels of distribution. However, the information in the record is mixed as to whether pedestal actuators and other linear actuators are sold through the same channels of distribution. Questionnaire responses from reporting firms indicate that the great majority of their linear actuators are shipped to end users, with small amounts maintained in inventory.<sup>45</sup> However, the vast majority of non-pedestal actuators are sold to users other than scooter manufacturers.

*Customs treatment.* We find the information in the record with respect to customs treatment to be of little assistance in addressing the like product issue because pedestal actuators and other linear actuators are not separately provided for in the Harmonized Tariff Schedule, but instead enter under larger basket categories. Customs treatment depends upon whether the actuator is imported with a motor, and if with a motor, the type and rating of the motor. For those without motors, treatment depends upon whether the actuator contains ball bearing screws.<sup>46</sup>

In view of the above, we find that the imported and domestic pedestal actuators are like each other. In addition, in view of the differences in physical properties, manufacturing processes and facilities, and uses for pedestal and other types of linear actuators, we find that there is a clear dividing line between pedestal actuators and other types of linear actuators, and that only domestic pedestal actuators are like the imported pedestal actuators that are the subject of this investigation.

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<sup>41</sup> CR at I-23; PR at I-17.

<sup>42</sup> About 95 percent of the pedestal actuators manufactured by the petitioner are used in scooter seat applications. CR at I-6; PR at I-3.

<sup>43</sup> CR at I-20-21; PR at I-15, referencing use of both pedestal and non-pedestal actuators by \*\*\* in powered seat lifts.

<sup>44</sup> CR at I-25; PR at I-18.

<sup>45</sup> CR at I-25; PR at I-18. The petitioner asserts that a "large percentage, if not the majority" of linear actuators are built as stock units and sold through distributors. *Id.*

<sup>46</sup> CR at I-8-9; PR at I-5-6.

**b. The domestic industry**

Neither section 421 nor its legislative history defines the term “domestic industry.” However, the term is defined in other statutory authorities, and wording in the legislative history of section 421 suggests that the Commission should look to the definition in section 202 of the Trade Act.<sup>47</sup> Section 202(c)(6)(A)(i) of the Trade Act defines the term “domestic industry” to mean –

with respect to an article, the domestic producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article.<sup>48</sup>

In recent investigations under section 202 of the Trade Act of 1974, if the Commission found domestic production of a like product, it found the domestic industry to consist of the domestic firms and workers producing that product. We find that practice instructive here. The record identifies three domestic firms that produce pedestal actuators, Motion Systems, Amigo Mobility, and Moran. Motion Systems, the petitioner, produces and sells pedestal actuators on the open market. Amigo’s \*\*\* production of pedestal actuators is used internally.<sup>49</sup>

Moran performs certain fabricating and assembly work on a toll basis for Motion Systems. The record shows that Moran’s operations add significant value, particularly labor value, to the pedestal actuators produced by Motion Systems, and that a significant portion \*\*\* of the work force employed in the production of pedestal actuators is at Moran. Motion Systems \*\*\*. The finished assembly is then tested, marked, and packaged for shipment.<sup>50</sup> Petitioner states that the work at Moran requires highly skilled workers who perform critical welding and assembly operations.<sup>51</sup> A significant portion, \*\*\*, of the labor value of Motion Systems’ two pedestal actuator products is performed by Moran,<sup>52</sup> and in 2001, \*\*\* of the \*\*\* production and related workers employed in the production of pedestal actuators worked for Moran.<sup>53</sup> The conversion or processing fee paid to Moran was significant throughout the period examined.<sup>54 55</sup>

Accordingly, we find that the domestic industry consists of the operations of Motion Systems, Moran, and Amigo Mobility that are engaged in the production of pedestal actuators.

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<sup>47</sup> The House Report states that the section 421 safeguard would provide relief to domestic industries when imports cause or threaten to cause market disruption “to the domestic producers as a whole of like or directly competitive products.” H.R. Rep. No. 106-632, 106<sup>th</sup> Cong., 2d Sess. (2000) at 16.

<sup>48</sup> 19 U.S.C. § 2252(c)(6)(A)(i).

<sup>49</sup> CR at I-28; PR at I-20.

<sup>50</sup> CR at I-8; PR at I-5.

<sup>51</sup> Petitioner’s Posthearing Brief at 22.

<sup>52</sup> CR at I-24; PR at I-16.

<sup>53</sup> CR at I-41; PR at I-26.

<sup>54</sup> The fee accounted for roughly \*\*\* percent of the value of Motion Systems’ commercial shipments of pedestal actuators until interim 2002, when the share climbed to \*\*\* percent. CR at I-37; PR at I-25.

<sup>55</sup> No party has argued that Moran, as a toller, should not be included in the domestic industry producing pedestal actuators.

## 2. Rapidly increasing imports

**Statutory framework.** The first of the three statutory criteria for finding whether market disruption exists concerns whether imports of the subject product from China “are increasing rapidly, either absolutely or relatively.” Thus, under the statute the increase must be occurring “rapidly,” but the word “or” indicates that the test is met if the rapid increase is in either absolute or relative terms. The use of the word “are” suggests that the rapid increase should be relatively recent or continuing, as opposed to in the distant past. Section 421 does not otherwise define “rapidly increasing” or the timing or circumstances of the increase.

**Finding.** We find that imports of pedestal actuators from China are increasing rapidly in both absolute and relative terms. In absolute terms, imports from China were zero during 1997-2000, and then rose to \*\*\* units in 2001; imports from China in interim (January-June) 2002 were \*\*\* units, as compared to zero in the same period of 2001.

The ratio of imports from China relative to domestic production was zero percent during 1997-2000, and then rose to \*\*\* percent in 2001; the ratio was \*\*\* percent in interim 2002 as compared to zero percent in the same period of 2001. The ratio of imports from China relative to U.S. domestic consumption was zero during 1997-2000 and then rose to \*\*\* percent of U.S. domestic consumption in 2001.<sup>56</sup> The ratio was \*\*\* percent in interim 2002, as compared to zero percent in the same period of 2001.<sup>57</sup>

These data show that the increase in imports of pedestal actuators from China has been rapid in both absolute and relative terms and that the increase was greatest and sharpest at the end of the period examined. Based on these data, we find that the first criterion is met.<sup>58</sup>

## 3. The domestic industry is materially injured

**Statutory framework.** The second criterion concerns whether the domestic industry is materially injured or threatened with material injury. The criterion is expressed in the disjunctive, and is satisfied if we find either material injury or the threat of material injury.

Neither section 421 nor its legislative history defines the terms “material injury” or “threat,” identifies economic factors to be considered, or cross-references any definitions, factors, or Commission practice under other statutory authorities to which the Commission might look for instruction. However, the term “material injury” appears in both section 406 of the Trade Act of 1974<sup>59</sup> and Title VII of the Tariff Act of 1930. Title VII of the Tariff Act defines “material injury” to mean “harm which is not inconsequential, immaterial, or unimportant.”<sup>60</sup> Section 406 does not define “material injury,” but its legislative history contrasts the term with “serious” injury used in section 201 –

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<sup>56</sup> Staff memorandum Inv-Z-176.

<sup>57</sup> CR and PR at table C-1.

<sup>58</sup> Chairman Okun does not join in the remainder of these views. *See* Dissenting Views of Chairman Deanna Tanner Okun.

<sup>59</sup> Section 406 of the Trade Act of 1974 (19 U.S.C. § 2436) provides a remedy in the case of market disruption from Communist countries. China previously has been regarded as a Communist country. The legislative history of section 421 states that section 406 will no longer apply to imports from China.

<sup>60</sup> Section 771(7)(A); 19 U.S.C. § 1677(7)(A).

the market disruption test is intended to be more easily met than the serious injury tests in section 201. . . . the term ‘material injury’ in section 406 is intended to represent a lesser degree of injury than the term ‘serious injury’ standard employed in section 201.<sup>61</sup>

In the absence of express direction in section 421, we find that “material injury” in section 421 represents a lesser degree of injury than “serious” injury under section 202 of the Trade Act.

We also find it appropriate to consider all relevant economic factors that have a bearing on the state of the industry. We consider the three broad factors in section 202(c)(1)(A) relating to idling of productive facilities, inability of firms to operate at a reasonable level of profitability, and unemployment or underemployment. We also consider other relevant economic factors, such as production, sales, inventories, capacity and capacity utilization, market share, employment, wages, productivity, profits, cash flow, capital expenditures, and research and development expenditures.<sup>62</sup> We do not view any single factor as necessarily dispositive, and consider all relevant factors within the context of the relevant business cycle and conditions of competition that are distinctive to the affected industry.

**Finding.** For the reasons set forth below, we find that the domestic industry is materially injured.

– *Overview of the domestic industry*

As indicated above, the domestic industry consists of two domestic producers of pedestal actuators, Mobility Systems and Amigo Mobility, and also the operations of Moran, which performs significant fabrication and assembly work on the pedestal actuators produced and sold by Motion Systems. Motion Systems is the predominant domestic producer. Motion Systems produces its pedestal actuators to order for sales to OEM end users, while the pedestal actuators produced by Amigo Mobility are used internally to produce downstream products; neither firm manufactures for inventory.<sup>63</sup> The primary use of pedestal actuators is to raise and lower the seats of mobility scooters, and overall demand for these scooters is reported to be rising in the United States.<sup>64</sup> In \*\*\* 2001, Electric Mobility, a domestic OEM manufacturer of mobility scooters and power chairs that until that year had been buying from Motion Systems, began purchasing pedestal actuators produced in China by CIM; Electric Mobility is CIM’s only customer for the subject product, and all of CIM’s pedestal actuator production is shipped to Electric Mobility.<sup>65</sup> Thus, while demand for the industry’s product is growing, since \*\*\* 2001 Motion Systems, the principal domestic producer, has lost its \*\*\* customer to CIM, a producer in China.

– *Analysis of factors*

For the most part, the indicators relating to the condition of the domestic industry remained steady or were improving during the period 1997 to 2000 and into 2001, and the industry was healthy. The indicators first showed a decline in 2001, although the industry remained at a relatively healthy level in

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<sup>61</sup> Trade Act of 1974, Senate Report No. 93-1298, 93<sup>rd</sup> Cong., 2<sup>nd</sup> Sess., at 212, *reprinted in* 1974 U.S.C.A.A.N. 7186, 7343-44.

<sup>62</sup> *See, e.g.*, section 202(c)(1)(B) of the Trade Act (19 U.S.C. § 2252(c)(1)(B)).

<sup>63</sup> CR at I-24-25; PR at I-18.

<sup>64</sup> CR at I-33, I-58; PR at I-22-23, I-33-34.

<sup>65</sup> CR at I-31, I-48; PR at I-22, I-29.

2001 based on full-year data. However, the indicators deteriorated sharply in the first half of 2002 as compared to the same period of 2001. Virtually all of the indicators of the industry's health (production, sales, capacity utilization, market share, employment, hours worked, worker productivity, operating income, cash flow, and capital expenditures) were lower in 2001 than in 2000, and were sharply lower in the first half of 2002 as compared to the same period of 2001.

Industry production increased each year during the period 1997-2000, and was at its highest level during the period examined in 2000.<sup>66</sup> Industry production then fell in 2001, by \*\*\* percent. Production in January-June 2002 was sharply lower than in the same period of 2001 – only a fraction (slightly over \*\*\* of the level in the same interim period in 2001.<sup>67</sup> Since pedestal actuators are produced to order, unit sales were comparable to production and followed the same upward and then downward trend as production, and were sharply down in interim 2002 as compared to the same period of 2001.<sup>68</sup> Domestic capacity remained stable during the period investigated.<sup>69</sup> However, capacity utilization, which had risen steadily from 1997 through 2000 to \*\*\* percent, fell sharply in 2001 to \*\*\* percent, and the rate in January-June 2002 (\*\*\* percent) was only a fraction (less than \*\*\*) of the rate in the same period of 2001 (\*\*\* percent).<sup>70</sup> The share of the domestic market held by domestic producers fluctuated during 1997-2000, ranging between \*\*\* percent and \*\*\* percent. However, the market share held by domestic producers fell sharply in 2001 to its lowest full year level of the period examined (\*\*\* percent), and the market share held by domestic producers in January-June 2002 (\*\*\* percent) was only a small portion of the share held in the same period of 2001 (\*\*\* percent).<sup>71</sup>

Industry employment, as measured in terms of production and related workers, rose between 1997 and 2000, when it reached its highest level. The number of production and related workers fell in 2001 by \*\*\* percent from the 2000 level; the level in January-June 2002 was \*\*\* percent below the level in the same interim period of 2001.<sup>72</sup> Hours worked by production and related workers followed a similar trend, rising through 2000 and then falling in 2001; hours worked were sharply lower in January-June 2002 than in the same interim period of 2001.<sup>73</sup> Worker productivity rose through 1999, then declined marginally in 2000 and declined sharply in 2001; productivity was sharply lower in January-June 2002 than in the same period of 2001.<sup>74</sup>

Operating income reported for pedestal actuator operations rose irregularly from 1997 to 2000, and reached its highest level of the period examined in 2000. It then declined by about \*\*\* percent in 2001 from the 2000 level. As measured on a full-year basis, the industry remained relatively profitable in 2001, with operating income of \$\*\*\* and an operating margin of \*\*\* percent, as compared to operating income of

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<sup>66</sup> CR and PR at table C-1. The data in the report include production and shipment data for Amigo Mobility, but not financial or employment related data. Amigo accounted for a \*\*\* part, about \*\*\* percent, of domestic production in 2001, and its production was captively consumed.

<sup>67</sup> CR and PR at table C-1.

<sup>68</sup> CR and PR at table 11. We also considered inventory levels. These levels remained at a constant zero during the period examined. The domestic industry does not maintain inventories because pedestal actuators are produced to order. CR at I-38; PR at I-26.

<sup>69</sup> CR and PR at table 7.

<sup>70</sup> CR and PR at table 7.

<sup>71</sup> CR and PR at table 15.

<sup>72</sup> CR and PR at table 10.

<sup>73</sup> CR and PR at table 10.

<sup>74</sup> CR and PR at table 10.

\$\$\$ and an operating margin of \*\*\* percent in 2000. However, in January-June 2002, the industry operated at a \*\*\* of \$\$\$ and an operating margin of \*\*\* percent, as compared to a \*\*\* of \$\$\$ and an operating margin of \*\*\* percent in the same period of 2001.<sup>75</sup> Industry cash flow followed a similar trend, rising irregularly during 1997-2000 and reaching its highest level in 2000 before falling in 2001; cash flow in January-June 2002 was \*\*\* and was sharply below the level for the same period of 2001.<sup>76</sup> Capital expenditures fluctuated from year to year during the period investigated and were highest in 2000 at \$\$\$; capital expenditures fell sharply in 2001 to \$\$\$ and were \$\$\$ in January-June 2002 as compared to \$\$\$ in the same period of 2001.<sup>77</sup> R&D expenditures, in contrast, were much more stable, and rose through 2000 before declining by a small amount in 2001; R&D expenditures were slightly higher in January-June 2002 (\$\$\$) than in the same period of 2001 (\$\$\$).<sup>78</sup> In view of the sharp decline in domestic industry production, sales, capacity utilization, market share, employment, hours worked, worker productivity, operating income, cash flow, and capital expenditures, we find that the domestic industry is materially injured and the second criterion is met.

#### 4. Rapidly increasing imports from China are a significant cause of material injury

**Statutory framework.** The third criterion concerns whether the rapidly increasing imports from China are a “significant cause” of material injury to the domestic industry.

As noted above, the term “significant cause” is defined in section 421(c)(2) to mean “a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.”<sup>79</sup> Section 406 uses the same causation test and definition.<sup>80</sup> The legislative history of section 406 describes the causation test as follows –

Under this standard, the imports subject to investigation need not be the leading or most important cause of injury or more important (or even equal to) any other cause, so long as a direct and significant causal link exists. Thus, if the ITC finds that there are several causes of the material injury, it should seek to determine whether the imports subject to investigation are a significant

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<sup>75</sup> CR and PR at table 11.

<sup>76</sup> CR and PR at table 11.

<sup>77</sup> CR and PR at table 13.

<sup>78</sup> CR and PR at table 13. In the course of the investigation, Commission staff conducted a verification of the financial information provided by Motion Systems. As part of the verification process, staff examined costs and allocations relating to company product lines, including \*\*\*. Staff found the firm’s allocation methodology to be reasonable and consistent over the period for which data were provided. \*\*\*. Motion Systems included within selling, general, and administrative (SG&A) expenses a \*\*\*. We examined these expenses to determine their impact on Motion Systems’ condition and the domestic industry’s condition. In general, we do not view it as our role to second-guess company decisions regarding \*\*\*. In any event, we note that \*\*\*. Even if \*\*\* were to have been included within SG&A over the period, the industry’s operating profits would nevertheless have shown a \*\*\* decline. Moreover, the other main domestic producer, Moran, which was unaffected by Motion Systems’ \*\*\*, operated at a \*\*\* in interim 2002, largely due to the substantial loss of business as compared to interim 2001. Accordingly, we are satisfied that the financial data reported by the domestic industry are consistent with a finding of material injury.

<sup>79</sup> 19 U.S.C. § 2451(c)(2).

<sup>80</sup> Section 406(e)(2)(B)(ii), 19 U.S.C. § 2436(e)(2)(B)(ii).

contributing cause of the injury or are such a subordinate, subsidiary or unimportant cause as to eliminate a direct and significant causal relationship. . . .<sup>81</sup>

Section 421(d) includes a list of three factors that the Commission is required to consider in determining whether market disruption exists and that relate to the Commission's causation analysis –

- (1) the volume of imports of the product which is the subject of the investigation;
- (2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and
- (3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.<sup>82</sup>

Section 421(d) makes clear that the presence or absence of any of these factors is not necessarily dispositive of whether market disruption exists. The three factors are similar to a list of factors in section 406(e)(2)(C) of the Trade Act<sup>83</sup> and parallel the criteria in Title VII of the Tariff Act that the Commission must consider in determining whether a domestic industry is injured by reason of dumped imports.<sup>84</sup>

**Arguments of the parties.** The petitioner asserts that increased imports of pedestal actuators from China are a significant cause and the only cause of material injury to the domestic industry. Petitioner asserts that import penetration is higher in this case than in most of the section 406 investigations in which the Commission found the causation test to be met.<sup>85</sup> Petitioner asserts that the loss in its market share corresponds exactly to the gain in market share by the imports from China, and that it lost sales to the imports due to the vast difference in price between its product and that of the imports from China. Petitioner asserts that domestic prices were suppressed as low-priced imports were increasing.<sup>86</sup> Petitioner disputes claims made by the respondent about problems with the quality of its product, and asserts that Electric Mobility's motivation for switching to imports from China was "most importantly, if not exclusively, price."<sup>87</sup>

Respondent asserts that Electric Mobility switched suppliers due to problems with the pedestal actuators supplied by petitioner, and that the decision to switch suppliers was made before it selected CIM, the Chinese producer, as its new supplier. Respondent states that Electric Mobility experienced many problems with the pedestal actuators supplied by petitioner, including problems with quality, delivery, lead times, and failure to provide a volume discount, and that petitioner failed to address such problems.

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<sup>81</sup> Omnibus Trade and Competitiveness Act of 1988, House Conf. Report No. 100-576, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess., *reprinted in* 1988 U.S.C.A.A.N. 1547, 1724.

<sup>82</sup> 19 U.S.C. § 2451(d).

<sup>83</sup> 19 U.S.C. § 2451(e)(2)(C). The fourth factor in the section 406 list is omitted.

<sup>84</sup> Section 771(7)(B)(i) of the Tariff Act of 1930, 19 U.S.C. § 1677(7)(B)(i). However, they do not include any of the more specific factors that the Commission must consider in order to assess causation under title VII.

<sup>85</sup> Petitioner's Posthearing Brief, at 52-54.

<sup>86</sup> Petitioner's Posthearing Brief, at 56-57.

<sup>87</sup> Petitioner's Posthearing Brief, at 58.

Respondent states that this was the reason why Electric Mobility decided to switch suppliers.<sup>88</sup> Respondent contends that CIM, in contrast, has proven responsive in addressing any problems with respect to its product.<sup>89</sup>

**Finding.** We find that imports of pedestal actuators from China are increasing rapidly so as to be a significant cause of material injury to the domestic pedestal actuator industry.

We first considered information relevant to the three statutory factors that relate to our causation analysis – the volume of imports, the effect of imports on prices, and the effect of imports on the domestic industry. As the data cited earlier in these views show, pedestal actuators were first imported from China in \*\*\* 2001,<sup>90</sup> and the volume of imports became significant immediately thereafter. Import volume totaled \*\*\* units in 2001, and all entered in the second half of the year. Import volume in the first six months of 2002 rose to \*\*\* units, substantially more than the total for all of 2001.<sup>91</sup>

The amount of this increase takes on added significance when measured in terms of share of domestic consumption. Imports of pedestal actuators from China, which were zero percent of domestic consumption during the period 1997-2000, accounted for \*\*\* percent of domestic consumption in 2001, and \*\*\* percent in January-June 2002, nearly \*\*\* of the domestic market, as compared to zero percent in the same period of 2001.<sup>92</sup>

The increase in market share of imports from China mirrors directly a decline in the market share held by domestic pedestal actuators. Between 1997 and 2000, domestic market share fluctuated between \*\*\* percent and \*\*\* percent. However, in 2001, as subject imports gained over \*\*\* percent of the market, domestic market share fell to \*\*\* percent. Between interim 2001 and interim 2002, domestic market share fell from \*\*\* percent to only \*\*\* percent, while subject import share rose from 0 percent to \*\*\* percent.<sup>93</sup> Thus, the volume of the imports from China increased rapidly during the latter part of the period examined, displacing domestic pedestal actuators from a significant share of the domestic market in 2001 and interim 2002.

With regard to the effect of imports on domestic prices, the Commission gathered pricing data on two products, one of which was produced by both Motion Systems (the firm's 85872 model) and CIM, principally for sale to Electric Mobility. In the one calendar quarter in which both the imported and domestic product were sold in the domestic market (July-September 2001) and in which they competed, the imported product was sold at less than \*\*\* percent of the price of the domestic model (\$\*\*\* for the imported model vs. \$\*\*\* for the domestic model).<sup>94</sup> There were no reported sales of this domestic model thereafter, as Motion Systems' sales of this model to Electric Mobility were supplanted by the low-priced

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<sup>88</sup> Respondent's Posthearing Brief, at 28-29.

<sup>89</sup> Respondent's Posthearing Brief, at 40.

<sup>90</sup> CR at I-34; PR at I-23.

<sup>91</sup> CR at I-34; PR at I-23.

<sup>92</sup> CR and PR at table 15. We note that these market share figures may be understated in that they are based on apparent U.S. consumption that includes non-subject imports. While these non-subject imports meet the technical definition of pedestal actuators found in the petition, they are not used in mobility scooters or wheelchairs and do not compete directly with either the domestic product or the imports from China. CR at I-34-35; PR at I-23-24.

<sup>93</sup> CR and PR at table C-1.

<sup>94</sup> CR and PR at table 16.

imports from China.<sup>95</sup> The domestic price of the other pedestal actuator product, for which there were no imports from China, fluctuated but rose overall during the period examined.<sup>96</sup> Thus, the record shows that the significant underselling by imports from China negatively affected the domestic industry by taking away a significant volume of domestic sales.<sup>97</sup>

The rapidly increasing imports have had a significant adverse effect on the domestic industry. The data show that the imports from China have displaced the domestic product virtually on a one-for-one basis<sup>98</sup> since Electric Mobility switched from Motion Systems to CIM as its source. The change in the industry's condition coincided with the surge in imports from China. As the data above show, the industry was healthy through most of the period examined. Its health began to change only in 2001 when the imports from China began to enter, and by January-June 2002, when imports had captured nearly \*\*\* of the domestic market, the industry's condition had sharply deteriorated and it was materially injured. As stated above, virtually all of the indicators of the industry's health (production, sales, capacity utilization, market share, employment, hours worked, worker productivity, operating income, cash flow, and capital expenditures) rose through the first part of the period examined and reached their best levels in 2000, began to decline in 2001, and fell sharply in the first half of 2002 as compared to the same period of 2001.<sup>99</sup>

We examined whether factors other than the surge in low priced imports from China may have contributed to the decline in the domestic industry's condition. We examined the arguments raised by respondent as well as other possible causes. As explained below, there is no information in the record that supports a finding that any of these other possible causes contributed in a significant way to the deterioration of the condition of the domestic industry after imports entered the market. Hence, we have found that the rapidly increasing imports are a significant cause of the material injury.

We considered respondent's claim that Electric Mobility switched from Motion Systems to CIM primarily because of quality problems (mainly oil leaks), and also lengthy lead times and poor volume discount policy. We note initially that the fact that a purchaser found the imports from China to be superior to domestic product in quality, delivery, or volume discount policy does not lead to the conclusion that a negative determination is warranted. We must examine whether the increased imports from China were a significant cause of injury.

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<sup>95</sup> CR and PR at table 16. Motion Systems had earlier, in February 2001, \*\*\*. CR at I-56; PR at I-32.

<sup>96</sup> CR and PR at figure D-2.

<sup>97</sup> Motion Systems alleged that the imports from China suppressed domestic prices and that it has not increased its prices on any pedestal actuators since the imports began to enter the U.S. market. However, such a trend is difficult to discern from the pricing data collected. There is no pricing data for the 85872 model after the calendar quarter in which imports from China entered the market. When Motion Systems lost sales of the 85872 model to imports, its sales of the higher priced 85272 model represented a larger portion of its total sales, and its unit sales values therefore increased toward the end of the period examined. CR and PR at table C-1.

<sup>98</sup> CR and PR at table 6.

<sup>99</sup> In particular, during the period examined, industry production and shipments peaked in 2000, the year before the imports began, and then both indicators fell by \*\*\* percent in 2001, and in January-June 2002 were only \*\*\* the level of the same period in 2001; domestic capacity utilization, which had risen through 2000 to \*\*\* percent, fell to \*\*\* percent in 2001, and was \*\*\* percent in January-June 2002 as compared to \*\*\* percent in the same period of 2001; domestic employment reached its highest level of the period examined in 2000, and then fell by \*\*\* percent in 2001, and the employment level in January-June 2002 was \*\*\* percent below the level of the same period of 2001; industry operating income rose irregularly during 1997-2000, and then declined in 2001 by about \*\*\* from the 2000 level; the industry operated at a \*\*\* in January-June 2002 as opposed to a \*\*\* in January-June 2001. CR at I-36-45; PR at I-I-24-28.

We have, however, examined the record information as to other possible causes of injury, including whether the alleged failings of the domestic industry were such that it would have been injured even in the absence of an increase in imports from China. We examined CIM's claim that Electric Mobility decided to drop Motion Systems in late 1999, before deciding to purchase from CIM. A representative of Electric Mobility testified that Electric Mobility sought bids for pedestal actuators from nine companies, many of them U.S. companies, and obtained three informal quotes in 2000 (from CIM, \*\*\*). However, we find that the record does not indicate that Electric Mobility would have bought from another company in lieu of the Chinese source. Of the three companies that provided informal quotes, the record indicates that Electric Mobility followed up only on the CIM quote and tested only the CIM product.<sup>100</sup> Moreover, the record does not show that \*\*\* have any history of supplying pedestal actuators of the type Motion Systems produced. Electric Mobility submitted no internal documents indicating a decision to drop Motion Systems prior to selecting CIM. The information in the Commission's record indicates that the first time Motion Systems heard of Electric Mobility's decision to switch suppliers was in February 2001, two months after Electric Mobility placed its first order with CIM.<sup>101</sup>

The Commission requested both petitioner and respondent to provide contemporaneous documentation regarding the issue of oil or grease leaks by Motion Systems' pedestal actuators supplied to Electric Mobility.<sup>102</sup> While the record indicates that Electric Mobility officials were aware of instances in which the Motion Systems product leaked oil or grease, it does not establish that Electric Mobility considered it to be a problem of such magnitude as to lead it to drop Motion Systems as a supplier.<sup>103</sup> Electric Mobility provided no contemporaneous internal company documents, letters or e-mail correspondence with Motion Systems, or notes of phone conversations, suggesting that this had been

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<sup>100</sup> Indeed, the fax containing \*\*\* informal quote is dated January 2001, a month *after* Electric Mobility indicates it placed its first order with CIM. *See* Respondent's Posthearing Brief at Exh. 1H.

<sup>101</sup> Moreover, had Electric Mobility chosen a domestic company other than Motion Systems, the domestic industry (as then reconstituted) would have retained that business.

<sup>102</sup> Tr. at 90-91, 94, 176, 179, 187.

<sup>103</sup> CIM submitted records of Electric Mobility purporting to show that 24 units had been returned to Electric Mobility by customers for oil/grease leaks from 1998 to 2001, and two examples where Electric Mobility replaced carpets because of oil leakage. Respondent's Posthearing Brief at Exh. 2. We note that it is not clear from the documents alone that these leaks involved the pedestal actuator, and note that the two carpet incidents occurred in 2000 and 2001, respectively, after Electric Mobility indicates that it decided to drop Motion Systems (*see* Tr. at 169). CIM included affidavits of Electric Mobility company officials stating that they saw 500 examples of leaks every year, had raised the issue with Motion Systems "many times", and Motion Systems did nothing about it. Respondent's Posthearing Brief at Exh. 1B, 1D. However, the documents submitted to the Commission showing units Electric Mobility sent back to Motion Systems only showed 3 units returned for oil leaks. Respondent's Posthearing Brief at Exh. 1H.

Electric Mobility submitted documents purporting to show 536 units returned to Motion Systems overall between 1998 and 2001. Respondent's Posthearing Brief at Exh. 1 (we note that the attached debit memos cover only 317 units). Motion Systems indicates that its records show only 169 warranty returns between 1998 and 2002. Petitioner's Final Comments at 8. Between 1998 and 2001, Motion Systems supplied 38,265 pedestal actuators to Electric Mobility. EC-Z-055 at Table 1. If the number of returns to Motion Systems were 536, the rate of return would be 1.4 percent. EC-Z-055 at Table 1. The Commission requested an Electric Mobility official to provide data on how the rate of returned pedestal actuators compared to the rate of returns of other inputs purchased by Electric Mobility. Tr. at 185-86. However, the company never provided this information.

considered a significant problem for Electric Mobility.<sup>104</sup> This may be because Electric Mobility ameliorated any problem by placing an adhesive back covering on the actuator.<sup>105</sup> Indeed, Electric Mobility continued to use Motion Systems as its sole supplier of pedestal actuators until it switched to CIM in 2001.

The same reasoning applicable to the alleged oil leak problem applies to Electric Mobility's other allegations regarding Motion Systems, such as lengthy lead times and inadequate volume discount policies. With regard to lead times, we note that an Electric Mobility official wrote a letter to Motion Systems in December 1999 (about the time Electric Mobility claims to have decided to drop Motion Systems) thanking the company for accommodating Electric Mobility's "accelerated schedules" and looking forward to a "continuing successful relationship."<sup>106</sup> In any event, the record does not indicate that any alleged problems, including oil leaks, lead times, and volume discount policy, were so severe as to cause Electric Mobility not to purchase from Motion Systems.

Finally, the record contains no evidence of other factors that have contributed to the downturn in the industry's condition and explain the material injury. We examined demand for pedestal actuators in terms of their use in mobility scooters. Demand for pedestal actuators for use in such scooters has been increasing in recent years, and this increase is projected by petitioner to continue in the foreseeable future at a rate of \*\*\* percent per year. While domestic consumption of pedestal actuators declined slightly (by about \*\*\* percent) in 2001 from the 2000 level, domestic consumption in 2001 remained well above the levels in 1997, 1998, and 1999. Moreover, domestic consumption was higher in the first half of 2002 than in the same period of 2001,<sup>107</sup> suggesting a continuation of the trend evident between 1997 and 2000. Significantly, the material injury to the domestic industry occurred in the context of generally rising demand for pedestal actuators.<sup>108</sup>

We also examined whether imports from countries other than China may have contributed to the industry's condition. There are significant imports of a type of pedestal actuator, known as a column actuator, produced by firms in \*\*\* that fall within the description of pedestal actuator in this investigation. This type of pedestal actuator is reportedly not produced domestically and is not used in mobility scooters because of its length.<sup>109</sup> Thus, imports of this type of pedestal actuator from \*\*\* have not contributed in any way to the material injury being experienced by the domestic industry.

For the reasons stated above, we find that rapidly increasing imports of pedestal actuators from China are a significant cause of material injury to the domestic pedestal actuator industry, and find that market disruption exists.

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<sup>104</sup> This absence of documentation by Electric Mobility supports Motion Systems' assertion that, in company files, "there is no record of written correspondence from, or face-to-face or telephone discussions with, Electric Mobility of oil leakage as a significant problem." Petitioner's Posthearing Brief at 59. Motion Systems indicated that its records showed 5 units returned for oil leaks, only 2 of which occurred prior to the time (late 1999) that Electric Mobility claims it decided to drop Motion Systems. Petitioner's Posthearing Brief at 59-60.

<sup>105</sup> Respondent's Posthearing Brief at Exh. 1C, Petitioner's Posthearing Brief at Exh. 9.

<sup>106</sup> Petitioner's Posthearing Brief at Exh. 11.

<sup>107</sup> CR and PR at table 6.

<sup>108</sup> CR at I-33; PR at I-22.

<sup>109</sup> CR at I-28 (n. 74), I-31-36; PR at I-20 (n. 74), I-21-24. Staff conversation with \*\*\* Oct. 10, 2002, and \*\*\* Oct. 8, 2002.

### III. CONCLUSION

As explained above, we find that market disruption exists in that rapidly increasing imports from China are a significant cause of material injury to the domestic industry producing pedestal actuators. We find, as explained above, that the subject pedestal actuator imports from China are “in such increased quantities” as to cause market disruption to domestic producers.<sup>110</sup> The rapid increase in such imports began in 2001 and continued at an accelerating pace through the first half of 2002. The volume of such imports was of such magnitude as to capture nearly \*\*\* of the domestic market in the first half of 2002. It coincided with the downturn in indicators of the domestic industry’s condition during 2001 and the first half of 2002. Moreover, the increase in imports from China and decline in production and sales for the domestic industry show an almost one-for-one displacement of the domestically produced pedestal actuators.

We therefore make an affirmative determination that pedestal actuators from China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of pedestal actuators.

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<sup>110</sup> For purposes of this determination we consider the “domestic producers” to be the domestic industry as defined earlier in these views.

## VIEWS OF THE COMMISSION ON REMEDY

### Remedy Proposal

For the reasons set forth below, we propose the following action to remedy the market disruption we find to exist –

We propose that the President impose a quantitative restriction for a three-year period on imports of the subject pedestal actuators from China, in the amount of 5,626 units in the first year, 6,470 units in the second year, and 7,440 units in the third year.<sup>111</sup>

We find that this action is the relief that will remedy the market disruption we have found to exist.

### Statutory Framework

Section 421(f) of the Trade Act of 1974 (19 U.S.C. § 2451(f)) provides that the Commission, upon making an affirmative determination, “shall propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption.” It provides that only those Commissioners who agreed in the affirmative determination are eligible to vote on remedy. Neither the statute nor its legislative history provides any further guidance or instruction on remedy.

Section 421(f) thus authorizes the Commission to propose as a remedy any import restriction. The Commission’s proposed remedy could take the form of increased duties, a tariff-rate quota, a quantitative restriction, or other import restriction.<sup>112</sup>

Section 421(g)(2)(D)<sup>113</sup> requires that the Commission’s report to the President and the U.S. Trade Representative include a description of–

- (i) the short- and long-term effects that implementation of the action recommended . . . is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and
- (ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where production facilities of such industry are located, and on other domestic industries.

### Conditions of Competition

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<sup>111</sup> Commissioner Koplan proposes that the President impose a quantitative restriction (quota) for a three-year period on imports of the subject pedestal actuators from China, in the amount of 4,425 units in the first year of the quota, 4,514 units in the second year, and 4,604 units in the third year. As discussed below, he finds that this action, which is based on the market share of subject pedestal actuators imported in calendar year 2001, with allowance for reasonable growth of 2 percent per year based on projected increased demand, will remedy the market disruption he has found to exist.

<sup>112</sup> 19 U.S.C. § 2481.

<sup>113</sup> 19 U.S.C. § 2451(g)(2)(D).

In evaluating the various remedy options, we considered the conditions of competition in the domestic market and likely developments affecting such conditions during the next several years.

### **Demand Conditions**

The principal end use for pedestal actuators is in the seat lift assembly for mobility scooters. Petitioner has provided a market analysis detailing the U.S. apparent consumption of scooters during 1998-2001, and forecasting consumption through 2008.<sup>114</sup> Respondents have provided information concerning consumption of scooters and power wheelchairs for 1999-2001 and forecast consumption through 2003.<sup>115</sup> Both parties agree that demand is likely to rise in the next several years, but differ on the rate of increase.

Apparent consumption of pedestal actuators, excluding non-subject imports of column actuators, increased substantially from 1997 through 2000 and declined slightly in 2001. The average increase in apparent consumption of pedestal actuators for the period 1997-2001 was substantially higher than the growth in U.S. apparent consumption of mobility scooters and power wheelchairs.<sup>116</sup>

### **Domestic Supply Conditions**

The current domestic pedestal actuator industry is composed of two producers, Amigo Mobility and Motion Systems and its tollor, Moran Power Dynamics, Inc. (Moran). Motion Systems is by far the larger producer and the only one to sell to the OEM market; Amigo produces pedestal actuators for captive consumption for use in the mobility scooters the firm produces and sells. Motion Systems \*\*\* since 1997, but that capacity utilization had increased during 1997 to 2000, before declining in 2001. Capacity utilization in interim 2002 was substantially lower than in interim 2001 as Electric Mobility, Motion Systems' \*\*\* customer, began purchasing subject imports in the second half of 2001. Domestic capacity to produce pedestal actuators (\*\*\*) is \*\*\* than current U.S. apparent consumption (\*\*\*) units in 2001,<sup>117</sup> excluding non-subject imports of column actuators) plus growth rates forecast through 2005.

Although the U.S. pedestal actuator market is highly concentrated, several domestic producers in addition to the petitioner have reported the ability to supply pedestal actuators. For example, \*\*\*.<sup>118</sup>  
\*\*\*<sup>119</sup> \*\*\*<sup>120</sup>

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<sup>114</sup> Petitioner's Posthearing Brief at Exh. 7.

<sup>115</sup> Respondent's Posthearing Brief at Exh. 6.

<sup>116</sup> All of the reported sales of pedestal actuators by domestic producers and importers of the subject product were to original equipment manufacturers (OEMs). Producers, importers, and purchasers generally agree that there are no close substitutes for pedestal actuators.

<sup>117</sup> CR and PR at table 6, CR and PR at table 7.

<sup>118</sup> Staff conversation with \*\*\*, Oct. 3, 2002, CR at I-30; PR at I-21.

<sup>119</sup> Remedy memorandum, n. 84. Letter dated Oct. 21, 2002, from \*\*\* to the Commission.

<sup>120</sup> Staff conversation with \*\*\*, Oct. 17, 2002, remedy memorandum.

## Import Supply Conditions

The only known Chinese producer of pedestal actuators for the U.S. market is CIM, and the only known U.S. purchaser of the subject product is Electric Mobility. CIM is principally a producer of electric motors. Sales of pedestal actuators accounted for \*\*\* percent of CIM's total sales in its last fiscal year, while sales of \*\*\*. Utilization of capacity devoted to the production of pedestal actuators is \*\*\*. CIM, which did not manufacture any pedestal actuators prior to 2001, increased its production capacity by \*\*\* percent from \*\*\* units in 2001 to \*\*\* units in 2002, and is projected to increase its capacity by an additional \*\*\* percent in 2003.<sup>121</sup> The pedestal actuator produced by CIM is interchangeable with the model that Motion Systems formerly sold to Electric Mobility (Motion Systems' model 85872), in that it can be physically used in the same application without modifications. The delivery time is reportedly shorter for subject imports, and CIM has agreed to keep a stock of motors in inventory for Electric Mobility.

Mobility scooters that compete with those produced domestically are imported from Korea, Taiwan, and China. Presumably some of these scooters incorporate pedestal actuators in seat lift assemblies. \*\*\*.<sup>122</sup>

## Proposed Relief

As indicated above, the statute authorizes the Commission to "propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption." We find that a quantitative restriction on imports of the subject pedestal actuators from China, in the amount and for the duration proposed, is necessary to remedy the market disruption we find to exist.<sup>123</sup>

In determining what remedy to propose, we take into account the submissions of the parties. Petitioner asked that the Commission propose a quota (1) "blocking all imports of counterfeit or confusingly similar and/or defective Chinese pedestal actuators," and (2) allowing up to 10 percent market consumption of any non-counterfeit or confusingly similar pedestal actuators from China "which directly compete with domestically-produced pedestal actuators."<sup>124</sup> However, in its post-hearing brief filed on October 7, 2002, petitioner asked for a quota on imports from China in an amount equal to 10 percent of market consumption for a period of 3 years,<sup>125</sup> which would amount to a quota level of about \*\*\* units per year.

Respondent, on the other hand, asserts that no remedy, however fashioned, will result in a resumption of sales by petitioner to Electric Mobility. Respondent asserts that Electric Mobility changed suppliers because of quality, delivery, and lead time problems with petitioner, has dropped petitioner as a supplier "for good," and has a variety of other options for pedestal actuators. Respondent states that petitioner's remedy proposals all suffer from the same false premise that it will regain Electric Mobility as

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<sup>121</sup> CR at I-48; PR at I-29.

<sup>122</sup> Respondent's Posthearing Brief at Exh. 1-H.

<sup>123</sup> Commissioner Koplan does not agree that the quota level recommended by Vice Chairman Hillman and Commissioner Miller will be sufficient to remedy the market disruption that exists.

<sup>124</sup> Petitioner's Submission of Oct. 21, 2002, at 1.

<sup>125</sup> Petitioner's Posthearing Brief at 67.

a customer.<sup>126</sup> However, respondent states that if the Commission proposes a remedy in the form of a quota, such quota should allow entry of at least \*\*\* units in the first year and be increased by \*\*\* percent in each of the following two years; and any tariff remedy should be limited to the price difference between imports from China and the price at which Electric Mobility is able to obtain substitute supply.<sup>127</sup>

We considered the several types of remedy that we are authorized to propose, including a simple tariff increase, a tariff-rate quota, and a quantitative restriction. We do not find that a simple tariff increase is appropriate in this case. We note that there is only one producer of the subject imports and one dominant U.S. purchaser, that current imports from China are essentially custom products, and that the price differential between the imported and domestic product is extremely large. This combination of facts suggests that if the remedy is in the form of a tariff, the tariff increase will need to be very large.<sup>128</sup>

Given the substantial difference in price, we find that a quantitative restriction is the most appropriate remedy in this case. In setting the quota level, we take as a starting point the level of imports entered during calendar year 2001. Although we recognize that the rapid increase in the subject imports from China began in the second half of 2001 and that many indicators of the domestic industry's health began to decline that year, we base the quota amount on full year 2001 imports because the indicators show that the domestic industry was relatively healthy on a full year basis.<sup>129</sup> We propose that the quota remain in effect for a three year period, which is the period of time requested by petitioner. We find that this period should provide sufficient time to remedy the market disruption.<sup>130</sup>

From this 2001 base, we propose increasing the quota level by 15 percent per year to account for growth in demand and to provide for gradual liberalization of the import relief. With respect to demand, both parties submitted information on estimated near-term growth in the domestic market for end-use products. Petitioner's information indicated 2-5 percent growth for mobility scooters, and respondent's information indicated 5-7 percent growth for mobility scooters and power wheelchairs.<sup>131</sup> We note that these estimates concern growth in the scooter market and do not take into account any likely increases in the share of scooters that employ pedestal actuators. Both parties agree that pedestal actuators are

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<sup>126</sup> Respondent's Submission of Oct. 21, 2002, at 1-5.

<sup>127</sup> Respondent's Submission of Oct. 21, 2002, at 12-14.

<sup>128</sup> July-September 2001 was the only quarter in which the same pedestal actuator model was sold by both the domestic and Chinese producers. Equalizing the price of the Chinese (\$\*\*\* per unit) and the domestic product (\$\*\*\* per unit) in that quarter would have required a tariff of over \*\*\* percent *ad valorem*. CR and PR at table 16.

<sup>129</sup> We note that the quota amount we are proposing is below the amount that would have entered in 2001 if the quantity of imports that entered in the second half had entered at the same rate during all of 2001.

<sup>130</sup> Commissioner Koplan does not join the two following paragraphs. He disagrees with the level of growth in demand that is likely to have occurred since 2001 as projected by Vice Chairman Hillman and Commissioner Miller. He notes that demand for pedestal actuators is derived from the overall demand for mobility scooters. While respondent estimates worldwide growth in demand to be 5 percent annually, market reports provided by petitioner project the U.S. market to grow at an annual rate of 1.8 percent for the 2001-2008 period. He also notes that not all mobility scooters include pedestal actuators and as such his future demand estimates for pedestal actuators may be on the high side. CR at I-33; PR at I-22-23. Finally, it also appears that downstream scooter manufacturers are reducing their purchases of pedestal actuators as purchases of complete mobility scooters from China and Taiwan are increasing. This moderate level of growth in demand at 2 percent per year is also consistent with responding purchasers who report mixed changes for equipment incorporating pedestal actuators. CR at I-58; PR at I-33-34.

<sup>131</sup> Petitioner's Posthearing Brief at Exh. 7; Respondent's Posthearing Brief at Exh. 6.

currently used on only a minority of scooters in the U.S. market.<sup>132</sup> Between 1997-2001, apparent consumption of pedestal actuators grew at an annual rate of \*\*\* percent, likely reflecting greater use of pedestal actuators on scooters. Thus, we believe it is appropriate to increase the quota by an amount greater than the estimates of likely growth in the downstream markets that were provided by the parties.

In addition, we believe that the annual quota levels should take into account the fact that the remedy is temporary in nature. Although not required by section 421, we are proposing to reduce the degree of protection over the three-year period, thus encouraging the domestic industry to take the necessary steps to adjust to import competition once the relief terminates. Thus, we recommend quota levels of 5,626 units for the first year of relief, 6,470 units for the second year, and 7,440 units for the third year.

In making our decision, we also considered petitioner's request for a prohibition on imports of "counterfeit or confusingly similar and/or defective" Chinese pedestal actuators. We did not include such a prohibition in our proposal. We have not made a finding with respect to whether any of the subject imports are counterfeit, confusingly similar, or defective, nor does section 421 authorize us to do so. Moreover, even if we could have made such a finding, section 421 would authorize us to propose only the action that is necessary to prevent or remedy market disruption, not to eliminate other practices alleged by petitioner.

We also recognized the possibility that Electric Mobility will not resume purchasing from Motion Systems despite import relief. As we note above, Motion Systems is not the only domestic firm that appears to be capable of producing pedestal actuators. Should Electric Mobility turn to another domestic firm for the pedestal actuators it needs, this would benefit the domestic industry. We also recognize that Electric Mobility could purchase from a foreign supplier not covered by a section 421 remedy action, although it is not clear whether other foreign suppliers make a product that could be used in a mobility scooter. Nevertheless, our obligation under the statute is to propose an action to remedy market disruption. We believe that the quota we are proposing is the action that will stand the best chance of remedying the market disruption we find to exist.<sup>133 134</sup>

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<sup>132</sup> Tr. at 217.

<sup>133</sup> Commissioner Koplan does not join this sentence.

<sup>134</sup> Commissioner Koplan notes that certain additional assistance, over and above the quota remedy that he proposes, may be available to firms and workers in the domestic industry under the trade adjustment assistance programs administered by the U.S. Departments of Labor and Commerce (*see* 19 U.S.C. 2271 et seq.). Such assistance may provide additional help to firms and workers in the industry in modernizing plant and equipment, retraining workers, and making other adjustments both during the period the quota is in effect and after it terminates. He urges the President to direct the Secretaries of Labor and Commerce to provide expedited consideration to any petitions filed under those programs by firms and workers in the domestic pedestal actuator industry.

## Short and Long-Term Effects

### Short- and Long-Term Effects of the Recommended Remedy<sup>135</sup>

We believe that the quota proposed will address the market disruption found to exist in the domestic pedestal actuator industry. The remedy is intended to restore domestic sales and profitability to reasonable levels comparable to those experienced in calendar year 2001.<sup>136</sup>

Based on available data, we assume that domestic purchasers of pedestal actuators other than Electric Mobility will be unaffected by the remedy. Beyond the amounts permitted by the quota, which represents approximately \*\*\* of its needs, purchaser Electric Mobility will be faced with the choice of purchasing pedestal actuators from a domestic supplier or a non-subject importer. As described above, potential domestic suppliers are not limited to Motion Systems and its toller, Moran. \*\*\*.

If Electric Mobility purchases its pedestal actuators over the quota amount from Motion Systems, the first year of relief should permit Motion Systems and its toller Moran to operate at reasonably profitable levels. The relief also would allow Motion Systems to complete planned capital improvements to \*\*\*.<sup>137</sup> Similarly, if Electric Mobility were to source its pedestal actuators above the quota level from another domestic supplier, the period of relief would provide sufficient time for the new supplier to complete any facilities upgrades and worker training, and make the production and other start-up adjustments necessary to produce a product that meets the needs of Electric Mobility.<sup>138</sup>

It is not possible to predict market effects with precision following the initial year of relief. However, both parties have forecast increased domestic production of mobility scooters, and increased consumption of pedestal actuators as a result. If the share of such end-use products that incorporate pedestal actuators also increases, overall U.S. apparent consumption of pedestal actuators would increase at a faster rate. All of the sales lost to subject imports have been sales of the \*\*\* 85872 model actuator. In years two and three of the relief, the share of domestic producer's sales accounted for by this model is expected to decline, as the quota level is increased. As the share of sales accounted for by this model declines, \*\*\*.<sup>139</sup>

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<sup>135</sup> Commissioner Koplan believes that the lower quota level he proposes is necessary to remedy the market disruption he finds to exist. He notes that U.S. imports of pedestal actuators from China totaled \*\*\* units during the last 11 months of the period examined (August 2001 - June 2002). Prior to that time there were no reported imports of the subject product. CR at I-34; PR at I-23. During this same period, U.S. production capacity was \*\*\* units evidencing that the petitioner was capable of meeting domestic consumption without supplemental subject imports. CR and PR at table 7. He agrees that the remedy should have as its goal the restoration of domestic sales and profitability to reasonable levels comparable to those that existed in calendar year 2001. He believes his proposed quota (see notes 1 and 20 above) achieves this in the first year of relief. His proposed quota increases by 2 percent in both year two and year three to account for his estimated increase in domestic demand. With respect to the remainder of the section, he joins his colleagues in those aspects which are consistent with his stated views.

<sup>136</sup> See staff memoranda EC-Z-055 and EC-Z-057.

<sup>137</sup> Response to the Commission questionnaire at 25.

<sup>138</sup> We assume that were another domestic producer to supply pedestal actuators, its price would be approximately the same as that of Motion Systems.

<sup>139</sup> Petitioner's Posthearing Brief at Exh. 12.

The quantitative restriction proposed will also ensure that the domestic industry does not lose additional sales of pedestal actuators. The record indicates that CIM has been in contact with other U.S. scooter manufacturers offering to supply pedestal actuators.<sup>140</sup>

The proposed relief would allow a significant level of subject imports at the current low rate of duty. The level \*\*\* and lessens the impact on domestic purchasers of pedestal actuators. While the remedy will likely result in increased costs to purchasers of pedestal actuators, it will have a much smaller impact on sales of end-use products that incorporate pedestal actuators because pedestal actuators account for a small share of the cost of the power seat option, and an even smaller share of the total cost of a mobility scooter.<sup>141</sup>

### **Short and Long-Term Effects of Not Taking the Recommended Action**

In the absence of appropriate relief, we are convinced that the recent \*\*\* experienced by the domestic industry will continue. In particular, the volume of sales lost to subject imports will not be regained in the foreseeable future. The domestic industry will be prohibited from implementing proposed investments, thereby causing it to be less viable and less able to compete with imports. Potential new domestic entrants will be unwilling to enter the pedestal actuator market.<sup>142</sup> If the current domestic producers were to lose another major OEM customer to subject imports, the volume of sales would likely fall below that necessary to continue production.<sup>143</sup> This would lead to \*\*\*.

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<sup>140</sup> Petitioner's Posthearing Brief at Exh. 1, 2. A CIM representative testified at the Commission's hearing that the company is "popular" with U.S. scooter manufacturers, and that these companies "most probably will come to us" to supply pedestal actuators. Tr. at 204.

<sup>141</sup> Petitioner's Posthearing Brief at Exh. 12, and Petitioner's Submission of Oct. 21, 2002, at 6.

<sup>142</sup> In its response to the Commission's questionnaire, \*\*\* reported that it had abandoned a program to develop and market pedestal actuators due to the presence of subject imports. Another domestic firm, \*\*\*, indicated that it had developed prototypes of pedestal actuators and \*\*\*. CR at I-30; PR at I-21.

<sup>143</sup> Tr. at 18 (Mr. Wolf).

## DISSENTING VIEWS OF CHAIRMAN DEANNA TANNER OKUN

### I. INTRODUCTION

#### A. Determination

Pursuant to section 421(b)(1) of the Trade Act of 1974,<sup>144</sup> I make a negative determination in this investigation. Specifically, based on the record, I determine that pedestal actuators from the People's Republic of China are not being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of pedestal actuators.

I join with my colleagues in the discussions regarding background, statutory framework, domestic industry, including like or directly competitive domestic article, and rapidly increasing imports.

#### B. Summary

Upon review, I find that the record before the Commission does not indicate that Chinese imports are a significant cause of market disruption because the domestic industry is neither materially injured nor threatened with material injury. A careful examination of the costs and allocations relating to petitioner Motion Systems' \*\*\* uncovers an unusual circumstance in how the company classified these items. Under the statute I have an obligation to determine whether this industry is materially injured. In every Commission investigation, I review carefully the industry's financial information to evaluate whether there are any performance indicators that might raise questions as to why a company's financial condition is improving or declining (*e.g.*, raw material costs or other factory costs). The Commission, however, typically does not closely examine how \*\*\* may affect the financial condition of an industry because we do not see very many industries of this size, dominated by a small, privately held \*\*\*. While I am normally reluctant to question how a company reports its financial data as long as the methodology that it adopts appears to be reasonable, I must do so here because otherwise I simply would have no basis to judge material injury based on the allocation methodology provided by the petitioner, a methodology that has no formal significance outside the Commission's investigation.

Under the circumstances of this case, there is no method of allocating \*\*\* that could be definitively shown to be more reasonable than another. The selected allocation, however, may drive one's injury analysis, and a different allocation could show that the domestic industry is either materially injured because it would be operating at a significant loss or remains very profitable. The petitioner, the party asking for relief, has the obligation to show that its allocation methodology is a reasonable approach, and it failed to do so. As an alternative approach to dealing with the ambiguity of the \*\*\* issue, I disregarded the \*\*\* altogether and focused on the trend in sales revenue, gross profitability, and operating profitability without the \*\*\*. By these measures, the industry remains quite healthy. Moreover, I found it relevant that this is an industry that experienced exceptional growth in demand and most performance factors, including profitability, during the period examined. While the domestic industry's production, employment, and profitability declined in the first half of 2002, they returned to the levels observed at the beginning of the period examined on an annualized basis. Finally, much of the decline in employment has been through "attrition," and several employees still remain active and employed, but have been shifted to produce other

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<sup>144</sup> 19 U.S.C. § 2451(b)(1).

products. I, therefore, find that the domestic industry is neither in a state of material injury, nor threatened with material injury.

### **C. Statutory Framework**

Before proceeding to a discussion of my analysis, I offer the following general observations concerning the statutory framework. This is the Commission's first investigation under section 421 and thus it provides the Commission with an opportunity to begin to establish a legal framework for this provision. Congress added section 421 to the Trade Act of 1974 by the U.S.-China Relations Act of 2000. Section 421 implements a transitional bilateral safeguard provision in the U.S.-China agreement relating to China's accession to the World Trade Organization. The safeguard provision in the agreement is similar in many respects to those in the 1989 U.S.-China trade agreement and in U.S. trade agreements with other Communist and former Communist countries, which are reflected in U.S. implementing language in section 406 of the Trade Act.<sup>145</sup> Congress enacted section 421 to replace section 406 for market disruption investigations involving Chinese products.<sup>146</sup>

While section 421 is very similar to section 406 in structure, it is not identical. For example, Congress did not define several terms in the statute, nor did it establish the legal framework that the Commission should adopt in evaluating the evidence (*i.e.*, choosing between the Commission's approach under its safeguards provisions or under Title VII). Therefore, where ambiguity exists in section 421, it is my view that Congress intended the Commission to use section 406 as guidance and thereby to adopt its safeguards approach unless section 421 explicitly directs the Commission to use a different one.<sup>147 148</sup>

## **II. MARKET DISRUPTION DOES NOT EXIST**

The term "market disruption" is defined in section 421(c)(1) to exist –

whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.<sup>149</sup>

Thus, to determine whether market disruption exists, the Commission must find that each of three conditions is satisfied –

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<sup>145</sup> Section 406 of the Trade Act of 1974 (19 U.S.C. § 2436) provides a remedy in the case of market disruption from Communist countries. Past market disruption cases involving China were instituted under this section.

<sup>146</sup> U.S.-China Relations Act of 2000, House Report No. 106-632, 106<sup>th</sup> Cong., 2<sup>nd</sup> Sess., *reprinted in* 2000 U.S.C.A.A.N. 727, 735.

<sup>147</sup> U.S.-China Relations Act of 2000, House Report No. 106-632, 106<sup>th</sup> Cong., 2<sup>nd</sup> Sess., *reprinted in* 2000 U.S.C.A.A.N. 727, 735-6 ("Procedures are modeled after Section 406, with certain modifications to conform to language of the bilateral trade agreement").

<sup>148</sup> I note that Title VII applies to unfairly traded imports while sections 201 and 421 apply to imports generally, without regard as to whether they are fairly traded or not. As a result, different analytical approaches are appropriate. Therefore, I do not find reliance on the Title VII approach to be either useful or appropriate.

<sup>149</sup> 19 U.S.C. § 2451(c)(1).

- (1) imports of the subject product from China are increasing rapidly, either absolutely or relatively;
- (2) the domestic industry is materially injured, or threatened with material injury; and
- (3) such rapidly increasing imports are a significant cause of the material injury or the threat of material injury.

Section 421(c)(2) further states that the term “significant cause” refers “to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.”<sup>150</sup>

Section 421(d) provides that the Commission, in determining whether market disruption exists, “shall consider objective factors, including –

- (1) the volume of imports of the product which is the subject of the investigation;
- (2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and
- (3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.”<sup>151</sup>

Section 421(d) further provides that the presence or absence of any of these three factors “is not necessarily dispositive of whether market disruption exists.”

As explained in the views of the Commission, I join with my colleagues in finding that imports of pedestal actuators from China are increasing rapidly, thereby satisfying the first criterion. As to the second criterion, however, I find that the domestic industry is neither materially injured nor threatened with material injury. Therefore, I find that market disruption does not exist.

#### **A. The Domestic Industry Is Not Materially Injured**

**Statutory framework:** The second of the three statutory criteria requires the Commission to find that the domestic industry is materially injured or threatened with material injury. The criterion is expressed in the disjunctive, and is satisfied if I find either material injury or the threat of material injury.

Neither section 421 nor its legislative history defines the terms “material injury” or “threat,” identifies economic factors to be considered, or cross-references any definitions, factors, or Commission practice under other statutory authorities to which the Commission might look for instruction.<sup>152</sup> Section 406 does not define “material injury,” but its legislative history contrasts the term with “serious” injury used in section 201–

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<sup>150</sup> 19 U.S.C. § 2451(c)(2).

<sup>151</sup> 19 U.S.C. § 2451(d).

<sup>152</sup> Title VII of the Tariff Act defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.” Section 771(7)(A); 19 U.S.C. § 1677(7)(A).

the market disruption test is intended to be more easily met than the serious injury tests in section 201. . . . the term ‘material injury’ in section 406 is intended to represent a lesser degree of injury than the term ‘serious injury’ standard employed in section 201.<sup>153</sup>

In the absence of express direction in section 421, I find that “material injury” in section 421 represents a lesser degree of injury than “serious” injury under section 202 of the Trade Act.

As section 421 does not provide specific instruction with respect to the economic factors to be considered, I find it appropriate to consider all relevant economic factors that have a bearing on the state of the industry. I consider the three broad factors in section 202(c)(1)(A) relating to idling of productive facilities, inability of firms to operate at a reasonable level of profitability, and unemployment or underemployment.<sup>154</sup> I also consider other relevant economic factors, such as production, sales, inventories, capacity and capacity utilization, market share, employment, wages, productivity, profits, cash flow, capital expenditures, and research and development expenditures.<sup>155</sup> I do not view any single factor as necessarily dispositive, and consider all relevant factors within the context of the relevant business cycle and conditions of competition that are distinctive to the affected industry.<sup>156</sup> The unique facts of this case and the relevant conditions of competition in the industry, as described below, require closer scrutiny of the industry’s profitability.

**Arguments of the Parties:** Petitioner argues that prior to the entry of imports from China into the U.S. market, the domestic industry had experienced several years of growth in terms of production, shipments, sales, employment, and profit. It states that many indicators declined in 2001 and then accelerated in their decline in the first half of 2002 as the imports from China directly replaced the domestic industry’s product.<sup>157</sup> Petitioner also contends that Motion Systems’ expenses associated with its \*\*\* are reasonable and guided by the legal requirements of a \*\*\*.<sup>158</sup> Therefore, it states that respondent’s arguments as to the relevance of this issue are without merit.

Respondent CCL Industrial Motor Ltd. (CIM), a Chinese producer of pedestal actuators, argues that domestic industry has suffered no injury as the petitioner has been and continues to be profitable (focusing on Motion Systems’ allocation of the \*\*\*).<sup>159</sup> It contends that petitioner has experienced declines in production and sales of only one product line because petitioner lost a single customer and has not found another customer.<sup>160</sup> Respondent also argues that the petitioner states that the only negative effects of imports has been the \*\*\*.<sup>161</sup>

**Finding:** For the reasons set forth below, I find that the domestic industry is not materially injured.

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<sup>153</sup> Trade Act of 1974, Senate Report No. 93-1298, 93<sup>rd</sup> Cong., 2<sup>nd</sup> Sess., at 212, *reprinted in* 1974 U.S.C.A.A.N. 7186, 7343-44.

<sup>154</sup> Under section 406, the Commission has considered these three broad factors. *See, e.g., Honey from China*, Inv. No. TA-406-13, USITC Pub. 2715 at I-10 - I-11.

<sup>155</sup> *See, e.g.,* section 202(c)(1)(B) of the Trade Act (19 U.S.C. § 2252(c)(1)(B)).

<sup>156</sup> *See* section 202(c)(2)(A) of the Trade Act (19 U.S.C. § 2252(c)(2)(A)).

<sup>157</sup> Petitioner’s Posthearing Brief at 42-45.

<sup>158</sup> Petitioner’s Posthearing Brief at 47, n. 96.

<sup>159</sup> Respondent’s Posthearing Brief at 47-50.

<sup>160</sup> Respondent’s Posthearing Brief at 45-46.

<sup>161</sup> Respondent’s Prehearing Brief at 32-33.

## Overview of the Domestic Industry and Conditions of Competition

The domestic industry is small, consisting of two domestic producers of pedestal actuators, Motion Systems and Amigo Mobility, and also the operations of Moran Power Dynamics (Moran), a toll producer that performs significant fabrication and assembly work on the pedestal actuators produced and sold by Motion Systems. Motion Systems produces its pedestal actuators to order for sales to OEM end users, while the pedestal actuators produced by Amigo Mobility are used internally to produce downstream products. Neither firm manufactures for inventory.<sup>162</sup> The primary use of pedestal actuators is to raise and lower the seats in mobility scooters, and overall demand for these scooters is reported to be rising in the United States.<sup>163</sup> In \*\*\* 2001, Electric Mobility, a domestic OEM manufacturer of mobility scooters and power chairs that until that year had been buying from Motion Systems, began purchasing pedestal actuators produced in China by CIM. Electric Mobility is CIM's only customer for the subject product, and all of CIM's pedestal actuator production is shipped to Electric Mobility.<sup>164</sup> Thus, while the demand for the industry's product is growing, Motion Systems lost its \*\*\* customer to CIM in 2001.

Motion Systems, the industry's predominant domestic producer (comprising \*\*\* percent of domestic production),<sup>165</sup> is a small, privately held corporation. It operates as a \*\*\*.<sup>166</sup> Accordingly, Motion Systems includes within selling, general, and administrative (SG&A) expenses a \*\*\*. As the domestic industry producing pedestal actuators is very small and Motion Systems dominates the industry, its production and financial indicators drive the industry trends.

## Analysis of Factors

*Idling or Closing of Facilities:* The domestic industry closed no productive facilities during the period examined. Domestic capacity remained unchanged.<sup>167</sup> Annual industry production increased significantly over the period (\*\*\*), and was at its highest level during the period examined in 2000.<sup>168</sup> Production then declined in 2001, by \*\*\* percent, and declined again in first half 2002 compared to the same period in 2001 (\*\*\*).<sup>169</sup> Likewise, capacity utilization increased on an annual basis significantly over the period (\*\*\*), but decreased in 2001 (\*\*\*), and over the interim periods (\*\*\*).<sup>170</sup> Production and capacity utilization fell in the last half of 2001 and the first half of 2002, while apparent U.S. consumption

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<sup>162</sup> CR at I-24-25; PR at I-18.

<sup>163</sup> CR at I-33, I-58; PR at I-22-23, I-33-34.

<sup>164</sup> CR at I-31, I-48; PR at I-22, I-29.

<sup>165</sup> CR and PR at table 5. As a toll producer for Motion Systems, the conversion or processing fee paid to Moran ranged from \*\*\* percent to \*\*\* percent of the value of Motion System's commercial shipments of pedestal actuators. CR at I-37; PR at I-25

<sup>166</sup> CR at I-45, n. 112; PR at I-28, n. 112.

<sup>167</sup> CR and PR at table 7.

<sup>168</sup> CR and PR at table C-1. The data in the report include production and shipment data for Amigo Mobility, but not financial or employment related data. Amigo accounted for a \*\*\* part (\*\*\* percent) of domestic production in 2001. CR and PR at table 5.

<sup>169</sup> CR and PR at table C-1. As pedestal actuators are produced to order, unit sales followed the same trends. CR at I-43. I also considered inventory levels, which did not exist during the period examined because the domestic industry does not maintain inventories. CR at I-38; PR at I-26.

<sup>170</sup> CR at I-36; PR at I-26.

slowed significantly from its earlier gains. It had increased \*\*\* percent over the period with \*\*\* increases each year until 2001 when apparent U.S. consumption then declined by \*\*\* percent. It increased by \*\*\* percent from interim 2001 to interim 2002.<sup>171 172</sup> While both the domestic industry's production and capacity utilization declined in the first half of 2002, they returned to the levels observed at the beginning of the period examined on an annualized basis.<sup>173</sup>

*Unemployment or Underemployment:* Industry employment, as measured in terms of production and related workers, fluctuated over the period, increasing \*\*\* percent from 1997 to 2001 before declining \*\*\* percent between interim periods.<sup>174</sup> Hours worked by production and related workers followed a similar trend.<sup>175</sup> Worker productivity rose through 1999, declined \*\*\* in 2000 and declined \*\*\* in 2001; productivity was lower in January-June 2002 than in the same period of 2001.<sup>176</sup> While employment has declined in the industry, the only reduction in employment at Motion Systems has been through "attrition."<sup>177</sup> I note that most, if not all, of Motion Systems' employees still remained active and employed, but have been shifted to produce other linear actuators.<sup>178</sup>

*Reasonable Level of Profitability:* Operating income was positive in every full year, peaking in 2000; and increased \*\*\* percent over the period.<sup>179</sup> The industry reported \*\*\* in the first half of 2002. Operating income as a ratio to net sales fluctuated over the period, but peaked in 1998 at \*\*\* percent.<sup>180</sup> Operating income margins in the first half of 2002 declined to \*\*\* percent.

These raw data, however, tell only part of the story. In every Commission investigation, I review carefully the industry's financial information to evaluate whether there are any performance indicators that might raise questions as to why a company's financial condition is improving or declining. Typically, this may include examining the reason behind increasing raw material costs or other factory costs. While the Commission normally does not closely examine how \*\*\* may affect the financial condition of an industry,

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<sup>171</sup> CR and PR at table 6. Table 6 presents apparent U.S. consumption of "pedestal actuators" (*i.e.*, those produced domestically by Amigo Mobility and Motion Systems and in China by CIM).

<sup>172</sup> The share of the domestic market held by domestic producers fluctuated during 1997-2001, ranging between \*\*\* percent and \*\*\* percent. The market share held by domestic producers fell in first half 2002 (\*\*\* percent) compared to the same period of 2001 (\*\*\* percent). CR and PR at table 15. These market shares are calculated based on U.S. shipments of domestic product, U.S. import shipments of subject product and nonsubject imports of column actuators from \*\*\* that meet the definition of pedestal actuators.

<sup>173</sup> CR and PR at table 7.

<sup>174</sup> CR and PR at table 10.

<sup>175</sup> CR and PR at table 10.

<sup>176</sup> CR and PR at table 10.

<sup>177</sup> Transcript of Hearing ("Hearing Tr.") at 16.

<sup>178</sup> It is unclear whether the same holds true for Moran. I note, however, that while the majority of Moran's production operations are for pedestal actuator fabrication for Motion Systems, it also provides other welding and machining services for Motion Systems. CR at I-28, n. 76; PR at I-20, n. 76.

<sup>179</sup> CR and PR at table 11.

<sup>180</sup> Operating income as a ratio to net sales was \*\*\* percent in 1997, \*\*\* percent in 1998, \*\*\* percent in 1999, \*\*\* percent in 2000, \*\*\* percent in 2001, \*\*\* percent in interim 2001, and \*\*\* percent in interim 2002. CR and PR at table 11.

we do not typically see an industry of this size, dominated by a small, privately held \*\*\*. A careful examination of the costs and allocations relating to Motion Systems' product lines, specifically the \*\*\* allocations, however, uncovers an unusual circumstance in how the company classified its \*\*\*.

I recognize that a company generally has the right to \*\*\*, and it also has a responsibility to maximize shareholder returns. Under the statute, however, I have an obligation to determine whether an industry is materially injured and I must examine all of the industry's financial information. Motion Systems, the industry's predominate domestic producer, is a small, privately held corporation. For federal income tax purposes Motion Systems operates as a \*\*\*.<sup>181</sup> It includes within selling, general, and administrative (SG&A) expenses a \*\*\*.<sup>182</sup> The aforementioned operating income figures include the expense of the \*\*\* allocated between pedestal actuators and other linear actuators. This figure represents only about \*\*\*. The remaining sum of more than \*\*\*.<sup>183</sup> Under these unique circumstances, I am obligated to more closely review this company's decisions concerning its \*\*\* before assessing whether the industry is materially injured.

In the course of the investigation, Commission staff conducted a verification of the financial information provided by Motion Systems. While staff found the firm's allocation methodology between pedestal actuators and other linear actuators was reasonable and consistent over the period for which data were provided, Motion Systems' financial statements are not audited and the company stated that \*\*\* figure has no formal significance outside the Commission's investigation.<sup>184</sup> Indeed, in response to questions concerning this issue, Motion Systems stated that while \*\*\*.<sup>185</sup>

\*\*\*.<sup>186</sup> \*\*\*.<sup>187</sup> The purpose of \*\*\*.<sup>188</sup> In the present situation, however, the company reported \*\*\*.<sup>189</sup> <sup>190</sup> In addition, Motion System \*\*\*.<sup>191</sup> Finally, as the law attempts to ensure that \*\*\*. Based on the fact that \*\*\*\*.

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<sup>181</sup> CR at I-45, n. 112; PR at I-28, n. 112.

<sup>182</sup> The allocation of overall establishment SG&A to pedestal actuator operations (ranging from \*\*\* percent to \*\*\* percent of overall establishment revenue during the period examined) and other linear actuator operations (ranging from \*\*\* percent to \*\*\* percent of overall establishment revenue) was on the basis of relative cost of goods sold. CR at I-45.

<sup>183</sup> CR at I-45, n. 112.

<sup>184</sup> Verification Report at 5.

<sup>185</sup> Petitioner's Posthearing Brief at 47, n. 96 (emphasis added).

<sup>186</sup> \*\*\*.

<sup>187</sup> \*\*\*.

<sup>188</sup> \*\*\*.

<sup>189</sup> The Commission does not request to examine tax returns for corporations because companies normally provide audited financial statements. In this situation, the Commission has no means to verify this information because Motion Systems does not have audited financial statements and the Commission did not examine the company's tax returns. I note that it is not unusual for a company this size not to have its financial statements audited. If, however, this situation ever arises again, I would urge the Commission to request to the company's tax returns as a possible means to verify information. While the Commission did not possess this information here, I do not think that it was necessary because Motion Systems itself stated that the \*\*\* figure had no formal significance outside the Commission's investigation. Verification Report at 5.

<sup>190</sup> While the \*\*\* appears unusual, I note that it is presumed that this classification/characterization has some utility for tax and/or other purposes.

<sup>191</sup> I am not, however, suggesting that \*\*\*.

There simply is no way to ensure that the approach the company took to classify \*\*\* of the possible \*\*\* as \*\*\* is reasonable. If the company had allocated most of the more than \*\*\* to \*\*\*, the industry would be losing significant amounts of money. If, on the other hand, the company had allocated only \*\*\* to \*\*\*, the industry would \*\*\* in interim 2002 with an operating margin of \*\*\*. Significantly, while the industry has reported an operating \*\*\* in the first half of 2002, Motion Systems' \*\*\*.<sup>192</sup>

I note that I am not judging the reasonableness of a \*\*\*. Related party transactions are always problematic in terms of valuation. That is why GAAP requires related party transactions to be disclosed so the person reviewing the financial statements can make their own conclusion or adjustment as necessary; and the manner in which Motion Systems reported the information was disclosed to all parties. Under the circumstances of this case, however, there is no method that could be definitively shown to be more reasonable than another.

For the most part, the indicators relating to the condition of the domestic industry fluctuated throughout the period, but remained relatively steady.<sup>193</sup> The industry was healthy.<sup>194</sup> Because of the unusual circumstances behind Motion Systems' decision concerning its \*\*\*, I have trouble assessing whether the domestic industry is materially injured. I have no means to determine whether these allocations are reasonable. As noted above, if the company had allocated the money differently between \*\*\* and \*\*\*, the results would differ significantly. While staff and the Commission normally are reluctant to question how a company reports its financial data as long as the methodology that it adopts appears to be reasonable, I simply have no basis to judge material injury based on the allocation methodology provided by the petitioner. Significantly, the outcome of the case depends on how the company allocated this money. The petitioner, the party asking for relief, has the obligation to show that its allocation methodology is a reasonable approach, and it failed to do so. As an alternative approach to dealing with the ambiguity of the \*\*\* issue, if one simply ignored the \*\*\* altogether and focused on the trend in sales revenue, gross profitability, and operating profitability minus the \*\*\*, the industry remains quite healthy.<sup>195</sup> I, therefore, find that the domestic industry is not in a state of material injury.<sup>196</sup>

## **B. The Question of Causation**

### **Statutory framework:**

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<sup>192</sup> In addition, I note that the overall establishment annual \*\*\* was approximately \*\*\* and \*\*\* for 1997 and 2001, respectively. According to Motion Systems' financial statements, "\*\*\*\*." Verification Report at 5.

<sup>193</sup> While the domestic industry's operating income declined in the first half of 2002, it returned to the levels observed at the beginning of the period examined on an annualized basis. CR at I-45, n. 112; PR at I-28, n. 112 (operating income margin without the \*\*\*).

<sup>194</sup> In addition, Amigo failed to provide any financial data even though it \*\*\*. CR at I-42 (n. 104), PR at I-27 (n. 104); Petition at 9. While Amigo was not a large part of the industry, its financial data would not be so small as to be insignificant. I infer only that those with the greatest interest in providing data were the companies most adversely affected by the imports from China. Therefore, I assume that the industry's financial condition is no worse than the staff report data, and if anything, it could be better. Moreover, while I make my determination based on the data in the report, I note that Moran reported its financial information on a \*\*\*. It is possible that such recording of expenses and receipts has skewed the data for the industry because Motion Systems reported its data differently.

<sup>195</sup> CR and PR at table 11; CR and PR at table 12; CR at I-45 (n. 112), PR at I-28 (n. 112).

<sup>196</sup> Any injury from imports from China would be felt by Moran as it is a toll producer \*\*\*. The Commission, however, must examine the industry as a whole, and as such, Motion Systems' results dominate.

The third criterion requires the Commission to find that the subject imports from China are increasing rapidly so as to be a “significant cause” of material injury or threat to the domestic industry. The term “significant cause” is defined in section 421(c)(2) to mean “a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.”<sup>197</sup> Section 406 uses the same causation test and definition.<sup>198</sup> The legislative history of section 406 describes the causation test as follows –

Under this standard, the imports subject to investigation need not be the leading or most important cause of injury or more important (or even equal to) any other cause, so long as a direct and significant causal link exists. Thus, if the ITC finds that there are several causes of the material injury, it should seek to determine whether the imports subject to investigation are a significant contributing cause of the injury or are such a subordinate, subsidiary or unimportant cause as to eliminate a direct and significant causal relationship.  
. . .<sup>199</sup>

Section 421(d) includes a list of three factors that the Commission is required to consider in determining whether market disruption exists and that relate to the Commission’s causation analysis –

- (1) the volume of imports of the product which is the subject of the investigation;
- (2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and
- (3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.<sup>200</sup>

The presence or absence of any of these factors is not necessarily dispositive of whether market disruption exists. The three factors are similar to a list of factors in section 406(e)(2)(C) of the Trade Act<sup>201</sup> and parallel the criteria in Title VII of the Tariff Act that the Commission must consider in determining whether a domestic industry is injured by reason of dumped imports.<sup>202</sup>

**Arguments of the Parties:** Petitioner asserts that increased imports of pedestal actuators from China are a significant cause, indeed, the only cause, of material injury to the domestic industry. Petitioner argues that the loss in its market share corresponds exactly to the gain in market share by the imports from China, and that it lost sales to the imports due to the vast difference in price between its product and that of the imports from China. Petitioner disputes claims made by the respondent about problems with the quality

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<sup>197</sup> 19 U.S.C. § 2451(c)(2)

<sup>198</sup> Section 406(e)(2)(B)(ii), 19 U.S.C. § 2436(e)(2)(B)(ii).

<sup>199</sup> Omnibus Trade and Competitiveness Act of 1988, House Conf. Report No. 100-576, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess., reprinted in 1988 U.S.C.A.A.N. 1547, 1724.

<sup>200</sup> 19 U.S.C. § 2451(d).

<sup>201</sup> 19 U.S.C. § 2451(e)(2)(C). The fourth factor in the section 406 list is omitted.

<sup>202</sup> Section 771(7)(B)(i) of the Tariff Act of 1930, 19 U.S.C. § 1677(7)(B)(i). However, they do not include any of the more specific factors that the Commission must consider in order to assess causation under title VII.

of its product, and asserts that Electric Mobility’s motivation for switching to imports from China was “most importantly, if not exclusively, price.”<sup>203</sup>

Respondent asserts that Electric Mobility switched suppliers due to problems with the pedestal actuators supplied by petitioner, and that the decision to switch suppliers was made before it selected CIM as its new supplier. Respondent states that Electric Mobility experienced many problems with the pedestal actuators supplied by petitioner, including problems with quality, delivery, lead times and failure to provide a volume discount.

**Finding:** For the reasons set forth above, it is not necessary to address causation because the industry is not materially injured. I note, however, that the evidence submitted by the parties as to the cause of any alleged material injury is mixed at best. I would have to accept one party’s arguments/evidence over conflicting evidence submitted by the other party.

### **C. The Domestic Industry Is Not Threatened with Material Injury**

**Statutory framework:** As noted above, neither section 421 nor its legislative history defines the term “threat” of material injury, identifies economic factors to be considered, or cross-references any definitions, factors, or Commission practice under other statutory authorities to which the Commission might look for instruction. Moreover, section 406 did not define the term “threat” of material injury either. In past section 406 investigations in which the Commission or some Commissioners have addressed threat, the Commission applied the threat standard of section 201 in determining whether rapidly increasing imports are a significant cause of threat of material injury to the domestic industry.<sup>204</sup> Section 202 of the Trade Act was amended in 1994 to add a definition, which defines “threat of serious injury” to mean “serious injury that is clearly imminent.”<sup>205</sup> In the absence of any other guidance, I find the definitions in section 202 instructive in evaluating threat here.

In addressing the “threat of serious injury” in section 201 investigations, the Commission is to consider “all economic factors which it considers relevant, including (but not limited to)”:

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,

(ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,

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<sup>203</sup> Petitioner’s Posthearing Brief at 58.

<sup>204</sup> See, e.g., Honey from China, Inv. No. TA-406-13, USITC Pub. 2715 at I-18 - I-20; Ammonium Paratungstate and Tungstic Acid from China, USITC Pub. 1982 at 43 (Views of Chairman Liebeler and Vice Chairman Brunsdale); Ferrosilicon from the Union of Soviet Socialist Republics, Inv. No. TA-406-10, USITC Pub. 1484 (Feb. 1984) at 16; Canned Mushrooms from the People’s Republic of China, Inv. No. TA-406-9, USITC Pub. 1293 (Sept. 1982) at 29 (Views of Chairman Eckes and Commissioner Stern).

<sup>205</sup> 19 U.S.C. § 2252(c)(6)(D).

(iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets.<sup>206</sup>

**Arguments of Petitioner:** Petitioner argues that the industry is threatened with material injury because Motion Systems cannot generate adequate capital to finance additional investment in production facilities. Specifically, \*\*\*. Petitioner also argues that \*\*\*. In addition, petitioner argues that the Chinese manufacturer intends only to \*\*\* and it has projected increases in capacity and production that \*\*\*. Thus, petitioner argues that the Chinese producer plans to supply other U.S. customers.

**Finding:** For the reasons set forth below, I find that the domestic industry is not threatened with material injury.

As noted above, the domestic industry has experienced a decline in its sales, market share, production, profits, wages, productivity, and employment. These declines, however, are recent and the result of Motion Systems losing a single customer. Motion Systems does not maintain inventories as it produces to order. While CIM maintains an inventory of pedestal actuators,<sup>207</sup> it is done at the request of its single customer, Electric Mobility.<sup>208</sup> Moreover, the true size of CIM's inventories is unclear as its reported inventories include "product that is in transit."<sup>209</sup>

The domestic industry has experienced largely fluctuating capital expenditures.<sup>210</sup> While, the industry reported \*\*\* capital expenditures in the first half of 2002, one cannot determine that it has been unable to maintain existing levels of investment. Moreover, the industry has had fairly consistent expenditures for research and development that have continued into the first half of 2002.<sup>211</sup>

Imports from China do not threaten the domestic industry with material injury for three reasons. Consistent with my finding that the industry is not materially injured, based on the fact that the \*\*\*. Under the circumstances of this case, there is no method of allocating \*\*\* that could be definitively shown to be more reasonable than another. As such, I see no reason why that \*\*\*. At the very least, if a significant portion of the \*\*\*, there is no reason why the \*\*\*.<sup>212</sup>

I also do not find that the Chinese producer, CIM, is likely to gain additional customers from Motion Systems in the imminent future. While petitioner has provided some evidence (post-facto statements), that respondent has attempted to sell pedestal actuators to other U.S. customers (last year), CIM has not succeeded. As those customers have not switched in the past year, it would take some time for them to test CIM's pedestal actuators and to switch.

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<sup>206</sup> 19 U.S.C. § 2252(c)(1)(B).

<sup>207</sup> CR and PR at table 14.

<sup>208</sup> Hearing Tr. at 170. All of CIM's pedestal actuator production is shipped to its customer in the United States. This production, however, represents only \*\*\* percent of CIM's total sales in its most recent fiscal year. CR at I-46; PR at I-29.

<sup>209</sup> CR and PR at table 14 (n. 2).

<sup>210</sup> The amount of capital expenditures peaked significantly in 2000 with the purchase of \*\*\*. CR at I-46; PR at I-28.

<sup>211</sup> CR and PR at table 13.

<sup>212</sup> Indeed, at the end of 2001, the shareholder \*\*\*. Verification Report at 5, n. 6.

Finally, the primary use of pedestal actuators is to raise and lower the seats in mobility scooters. Overall demand for these scooters is reported to be rising in the United States.<sup>213</sup> Thus, while petitioner has lost one of its \*\*\* customers, there may be opportunities for it to capture other customers in the downstream market that continues to expand. Therefore, I find that the domestic industry is not in threatened with material injury.<sup>214</sup>

**Conclusion:** As explained above, because I find that market disruption, or the threat of market disruption, does not exist, I determine that the statutory standard has not been met. I therefore make a negative determination that pedestal actuators from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of pedestal actuators.

### III. VIEWS REGARDING REMEDY

Section 421(f) provides that the Commission, upon making an affirmative determination “shall propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption.”<sup>215</sup> The statute provides that only those Commissioners who agreed in the affirmative determination are eligible to vote on remedy, and that other Commissioners may provide their views on remedy.

My determination that there neither is market injury nor a threat of material injury to the domestic industry is based on the fact that Motion Systems’ \*\*\*. Under the circumstances of this case, there is no method of allocating \*\*\* that could be definitively shown to be more reasonable than another, but this allocation may drive one’s injury analysis. Although I do not find that the domestic industry is materially injured, if such injury existed, it is based solely on the loss of a single customer. Any remedy, therefore, would have to ensure that the customer purchased at least a minimum number of units from its former supplier. It is an understatement to say that the relationship between Motion Systems and Electric Mobility is acrimonious.<sup>216</sup>

Based on the facts of this record, I see no means to remedy this situation. First, because the relationship between the two companies has deteriorated, I do not think that equalizing the price through a tariff would translate into sales to the domestic producer. Second, I do not think that the trade laws are meant to force a company to purchase from the domestic industry, and in this case from a single domestic supplier. Petitioner attempts to accomplish just that by advocating the imposition of a quota, thereby forcing its former customer to purchase from it once more. Alternatively, petitioner might not even succeed in that goal if Electric Mobility could switch to other producers, specifically to other foreign producers, which would not remedy the market disruption. While the other producers that had provided pedestal actuator price quotes to Electric Mobility have never produced the product, neither had CIM prior to 2001. If CIM could produce the product, one could assume that another foreign supplier could do the same. Finally, if the purpose of the remedy is to provide time and resources for the domestic industry to find new

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<sup>213</sup> CR at I-33, I-58; PR at I-22-23, I-33-34.

<sup>214</sup> As noted above under present material injury, it is not necessary to address causation because the industry is not threatened with material injury.

<sup>215</sup> 19 U.S.C. § 2451(f).

<sup>216</sup> *See, e.g.*, Hearing Tr. at 165-170 (“Motion Systems rejected our effort to work cooperatively with them.” When asked whether Electric Mobility would again purchase from Motion Systems if relief were imposed, an Electric Mobility executive said “No.”)

markets or other customers for its pedestal actuators, the goal likely would not be reached as it is likely that Electric Mobility will attempt to find another supplier. Moreover, based on my analysis of material injury, the domestic industry possesses the resources to explore new markets.

Accordingly, I do not recommend that the President grant any relief.

## DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG

### *Pedestal Actuators from China* *Inv. No. TA-421-1*

Pursuant to section 421(b)(1) of the Trade Act of 1974 (“Trade Act”),<sup>217</sup> and based upon the record in this investigation, I determine that pedestal actuators from the People’s Republic of China (“China”) are not being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of pedestal actuators. I therefore dissent from the affirmative determination rendered by the Commission majority, and I provide my separate views below.

#### I. ANALYTICAL FRAMEWORK

In an investigation conducted pursuant to section 421 of the Trade Act, the Commission must determine whether imports from China are entering the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. Market disruption is defined to exist “whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.”<sup>218</sup> The term “significant cause” refers to a cause which contributes significantly to the material injury of the domestic industry (or threat thereof), but need not be equal to or greater than any other cause.<sup>219</sup> In determining whether market disruption exists, the Commission is directed to consider objective factors, including: (1) the volume of imports subject to investigation; (2) the effect of subject imports on prices in the United States for like or directly competitive articles; and (3) the effect of subject imports on the domestic industry producing like or directly competitive articles.<sup>220</sup> Section 421 does not set forth any additional specific criteria with respect to the determination of whether a threat of market disruption exists.

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<sup>217</sup> 19 U.S.C. § 2451(b)(1).

<sup>218</sup> 19 U.S.C. § 2451(c)(1).

<sup>219</sup> 19 U.S.C. § 2451(c)(2). The causation standard under section 421 is thus distinguished from the higher standard applicable in investigations conducted pursuant to section 201 of the Trade Act, in which subject imports must be found to be a “substantial cause” of serious injury (or threat thereof) to the domestic industry before import relief is warranted; the term “substantial cause” is defined as “a cause which is important and not less than any other cause.” 19 U.S.C. § 2252(b)(1)(B). In contrast, the causation standard under section 421 is not distinguished by any lower bound, and the definition of the term “significant cause” appears more akin to the causation standard applicable in antidumping and countervailing duty (“AD/CVD”) investigations, in which the imposition of duties is premised upon a Commission determination of material injury to the domestic industry (or threat thereof) by reason of subject imports that have been found to have significant volume and significant negative price effects on the U.S. market, as well as a significant adverse impact on the domestic industry.

<sup>220</sup> 19 U.S.C. § 2451(d). The statute further provides that the presence or absence of any of the three enumerated factors is not necessarily dispositive of whether market disruption exists. *See id.*

This is the first Commission investigation arising under section 421, which was added to the Trade Act by the U.S.-China Relations Act of 2000.<sup>221</sup> Consequently, my initial focus is to develop an analytical framework for answering the questions posed by the statute. With the benefit of input from the parties, I have done so for purposes of this investigation of first impression; however, I am mindful that this initial framework cannot anticipate all of the issues that may arise under section 421, nor do I intend to foreclose the possibility of additional development and/or modification to such framework as the Commission gains experience in administering section 421 in subsequent investigations. I therefore invite parties to comment on the merits of this framework in any future investigations conducted pursuant to section 421.<sup>222</sup>

*Domestic Like Product.* I begin with a comparison of section 421 and the global safeguard provision under section 201 of the Trade Act. Although there are some similarities between section 421 and section 201, there is also a fundamental difference in the nature of the inquiry and the purpose of relief under each of the provisions that, in my view, carries a significant implication for the analysis in this investigation. Specifically, under section 421 the President may impose import relief to prevent or remedy market disruption,<sup>223</sup> which the statute defines narrowly as material injury to the domestic industry due to rapidly increasing imports from China. In contrast, under section 201 the President may impose global import relief in order to facilitate efforts by the domestic industry to make a positive adjustment to import competition.<sup>224</sup> I have found in a previous 201 investigation that the broader focus of section 201 on the productive resources of the domestic industry, and any interrelations between those productive resources, may favor a broad like product definition.<sup>225</sup> That important aspect of section 201 is not present in section 421.<sup>226</sup> In addition, section 421 specifically directs the Commission to consider the effect of subject imports on prices in the U.S. market (similar to antidumping or countervailing duty investigations), whereas section 201 does not incorporate such an express requirement.<sup>227</sup> In my view, the express obligation to consider price effects further points to a narrow definition of like product in the context of section 421, because pricing comparisons and the assessment of price effects are likely to be more readily achieved when the like product is defined narrowly, as opposed to a broad range of products. For the foregoing reasons, I adopt a narrow approach to the definition of like product in the context of a 421 investigation, similar to my approach in

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<sup>221</sup> Prior to the U.S.-China Relations Act of 2000, imports from China would have been subject to section 406 of the Trade Act, which addresses market disruption by reason of imports from a Communist country. The legislative history of section 421 indicates that section 406 will no longer be applicable to imports from China. Although the “procedures” of section 421 are modeled after those of section 406, there is no indication that a particular analysis is intended or required under section 421. See H.R. Rep. No. 106-632, at 16 (2000), *reprinted in* 2000 U.S.C.A.A.N. 727, 735.

<sup>222</sup> See also *infra* n.17.

<sup>223</sup> 19 U.S.C. § 2451(k)(1).

<sup>224</sup> 19 U.S.C. § 2251(a).

<sup>225</sup> See *Separate Views on Injury of Commissioner Lynn M. Bragg in Steel*, Inv. No. TA-201-73, USITC Pub. 3479 at 270-272 (December 2001).

<sup>226</sup> I note that during the hearing I posed the question of whether import relief under section 421 is directed to the productive resources of the domestic industry, and in response counsel for the Petitioner replied that as a legal matter, it is not. Hearing Tr. at 108.

<sup>227</sup> Compare 19 U.S.C. § 2451(d) with 19 U.S.C. § 2252(c).

antidumping or countervailing duty (“AD/CVD”) investigations.<sup>228</sup> I also reiterate my view that, upon identifying the domestic product(s) “like” the imported merchandise under investigation, I am not required to proceed further in an effort to seek out additional products that may be “directly competitive.”<sup>229</sup>

*Domestic Industry.* Section 421(a) refers to market disruption to the domestic producers of a like or directly competitive product, whereas section 421(c) defines market disruption in terms of material injury to a domestic industry. I view the terms “domestic producers of a like or directly competitive product” and “domestic industry” as being synonymous. Neither section 421 nor its legislative history define the term “domestic industry.” Consistent with other aspects of the framework I adopt in this investigation, I choose to draw from the AD/CVD context in approaching this issue and I define the 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>230</sup>

*Increased Imports.* Section 421(a) also states that the President shall impose import relief if a product of China is being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption. Section 421(c) further states that market disruption exists whenever subject imports from China are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof. In my view, there are instructive parallels between the two provisions. Thus, the prerequisite that subject imports be “in such increased quantities” may be satisfied if there is a rapid increase in the absolute volume of imports. Similarly, the prerequisite that subject imports enter the United States “under such conditions” may be satisfied if there is a rapid increase in the relative presence of imports in the U.S. market; for example, the absolute volume of subject imports may be constant (or even declining), and yet as measured against either apparent U.S. consumption or production by the domestic industry there may be a rapid increase in the share of the U.S. market captured by subject imports, or subject imports may constitute a rapidly increasing percentage of U.S. production. Therefore, if subject imports from China are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury or threat thereof, then such imports necessarily are in such increased quantities or under such conditions as to cause or threaten market disruption such that import relief may be warranted.

*Market Disruption.* A recommendation for import relief under section 421 is premised upon a finding of market disruption, and market disruption is defined by statute in terms of material injury to a domestic industry, with the added instruction that the Commission shall consider the volume of subject imports, the price effect of subject imports, and the effect of subject imports on the domestic industry. The foregoing factors are virtually identical to the statutory criteria for analyzing present material injury in AD/CVD investigations, and do not correspond as directly to the criteria set forth for analyzing serious

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<sup>228</sup> I am therefore guided by the traditional criteria evaluated by the Commission in AD/CVD investigations for purposes of defining the domestic like product in a 421 investigation, *i.e.* (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; and (5) common manufacturing facilities, production processes, and production employees. *See, e.g., Nippon Steel Corp. v. United States*, 19 CIT 450, 455 n.4 (1995).

<sup>229</sup> *See, e.g., Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 at I-7 to I-8 (March 1998).

<sup>230</sup> *See* 19 U.S.C. § 1677(4)(A). In defining the domestic industry I include producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.

injury in section 201 investigations.<sup>231</sup> Accordingly, in evaluating the price effect of subject imports pursuant to section 421, I examine the record for evidence of significant underselling as well as significant price suppression or depression,<sup>232</sup> similarly, in evaluating the effect of subject imports on the domestic industry pursuant to section 421, I evaluate the record in light of the impact criteria set forth in the statute for AD/CVD investigations.<sup>233</sup>

*Threat of Market Disruption.* A recommendation for import relief under section 421 may also be based upon a determination of threat of market disruption. Given the statutory definition of market disruption, I find that a determination of threat of market disruption corresponds to a determination that subject imports are a significant cause of threat of material injury to the domestic industry, and does not constitute a separate factual inquiry. Neither section 421 nor its legislative history define the term “threat of material injury.” Consistent with other aspects of the framework I adopt in this investigation, I choose to draw from the AD/CVD context in approaching this issue; accordingly, in evaluating the threat of material injury pursuant to section 421, I evaluate the record in light of the applicable threat criteria identified in the statute for AD/CVD investigations.<sup>234</sup>

*Conclusion.* In sum, for purposes of this first investigation pursuant to section 421, I structure my analytical framework around a unitary analysis of whether rapidly increasing subject imports from China (either in absolute or relative terms) are a significant cause of material injury or threat thereof to the domestic industry. In applying this framework, my analysis is informed by certain of the criteria set forth by statute for evaluating material injury and threat of material injury in the context of AD/CVD investigations. As noted, I remain open to further development and/or modification to this analytical framework in future investigations conducted pursuant to section 421.

## **(1) NO MARKET DISRUPTION BY REASON OF IMPORTS FROM CHINA**

### **1. Domestic Like Product.**

The Commission’s notice of investigation described the subject product imported from China as follows:

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<sup>231</sup> Compare 19 U.S.C. § 1677(7) with 19 U.S.C. § 2252(c)(1)(A).

<sup>232</sup> See 19 U.S.C. § 1677(7)(C)(ii).

<sup>233</sup> See 19 U.S.C. § 1677(7)(C)(iii). I note that with respect to allegations of material injury in the petition, the Commission’s interim regulations for 421 investigations are patterned after the regulations for 201 investigations (as are the regulations for 406 investigations). Compare 19 C.F.R. §§ 206.43 and 206.44 with 19 C.F.R. § 206.14. Upon review, I believe there may be an open question as to whether it is more appropriate to pattern the Commission’s regulations for 421 investigations after the regulations for AD/CVD investigations. See 19 C.F.R. § 207.11. I invite public comment on this issue, which need not be limited to the context of future 421 investigations.

<sup>234</sup> See 19 U.S.C. § 1677(7)(F). I also note that with respect to allegations of threat of material injury in the petition, the Commission’s interim regulations for 421 investigations are patterned after the regulations for 201 investigations, and I invite public comment on whether it is more appropriate to pattern the Commission’s regulations for 421 investigations after the regulations for AD/CVD investigations. See *supra* n.17.

For purposes of this investigation, pedestal actuators consist of electromechanical linear actuators, imported with or without motors, or as part of scooter subassemblies, all the foregoing used for lifting and lowering, or for pushing or pulling. The products under investigation include any subassembly of pedestal actuator parts and components. Pedestal actuators are powered by fractional horsepower DC or AC motors, which drive a ball bearing screw or acme screw through a gear reducer to convert rotary to linear motion. The products are designed for flat or base mounting, have telescoping members, with bearing or bearing surfaces, and rigidly support the load and provide anti-rotation. Pedestal actuators are provided for in subheadings 8483.40.50 and 8483.40.80 and in heading 8501 of the HTS.

Domestically produced electromechanical pedestal linear actuators (“pedestal actuators”) are substantially identical to the subject imports, sharing the same characteristics and uses, and both are sold directly to OEM manufacturers. The sole U.S. purchaser of the imported product began using subject imports in lieu of the domestic product in 2001, and thus the two are at least technically interchangeable (as discussed below, that purchaser identified quality issues with respect to pedestal actuators produced by one U.S. producer which serve to limit the commercial interchangeability of the two for that purchaser).

In contrast, other types of linear actuators are not used in lieu of pedestal actuators and do not share the same characteristics as they lack one or more of the key physical characteristics of pedestal actuators—*i.e.* the pedestal flat mount, bearing support of the extension tube, anti-rotational capability, offset load capability, or compression load capability.<sup>235</sup> Other types of linear actuators also differ in terms of uses; for example, currently available pedestal actuators are designed to lift 500 pounds, while some industrial actuators can generate up to 10,000 pounds of force for use in such areas as oil refineries.<sup>236</sup> Although certain components of pedestal actuators, such as the linear actuator drive, are made on the same equipment used to produce other linear actuators, considerable additional specialized fabricating and assembly work must be performed to produce a pedestal actuator; specifically in the case of the petitioner, this additional work is performed in a different facility and involves different workers and skills. Two other firms indicated that additional tooling or worker training would be required in order for them to produce pedestal actuators.<sup>237</sup>

Based upon all the foregoing, I find that domestically produced pedestal actuators are like the subject imported pedestal actuators, but that a clear dividing line exists between pedestal actuators and other types of linear actuators based upon differences in physical characteristics and uses, differences in manufacturing facilities and production processes, and differences in customer and producer perceptions of the products.

## 2. Domestic Industry.

I define the domestic industry as the producers as a whole of the domestic like product. Consequently, I find that the domestic industry in this investigation is comprised of three firms—*i.e.* Motion Systems (the petitioner), Moran (a toll manufacturer for Motion Systems), and Amigo Mobility (a vertically

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<sup>235</sup> CR at I-17-20; PR at I-13-15.

<sup>236</sup> CR at I-9; PR at I-6.

<sup>237</sup> CR and PR at table 3.

integrated producer of mobility scooters that captively consumes \*\*\* percent of its production of pedestal actuators).<sup>238</sup>

3. Conditions of competition.

Pedestal actuators are used primarily in mobility scooters and power chairs for the purpose of raising or lowering the seat;<sup>239</sup> such scooters typically are used by persons who are mobility impaired. Pedestal actuators are designed for this application to keep the seat stable, particularly when in an elevated position. Prior to the second half of 2001, Motion Systems supplied pedestal actuators to Electric Mobility for use in the production of mobility scooters. In 2001, Electric Mobility terminated Motion Systems as a supplier due to documented longstanding dissatisfaction with the quality and timeliness of shipments of pedestal actuators from Motion Systems, as well as the inability of Motion Systems to obtain component inputs at lower cost. The decision to change supplier was made in late 1999, whereupon Electric Mobility began searching for an alternate source of pedestal actuators.<sup>240</sup> Electric Mobility approached at least nine suppliers, including CCL Industrial Motor Ltd. (“CIM”) which has production facilities in China. Electric Mobility had a preexisting relationship with CIM as a supplier dating to 1998, and Electric Mobility approached CIM in early 2000 to inquire whether CIM could produce pedestal actuators. In response to a request for bid, Electric Mobility heard from three firms, one of which was CIM; in each case, the bid price was much lower than the price charged by Motion Systems. Based upon Electric Mobility’s experience with the quality and timeliness of shipments of other products from CIM, the firm placed an order for pedestal actuators with CIM in mid-December 2000; the first units were delivered in July 2001.<sup>241</sup>

4. Pedestal actuators from China are not a significant cause of material injury to the domestic industry.

Before detailing my analysis, I wish to summarize the record evidence in this investigation, which in my view demonstrates that a single purchaser of domestically produced pedestal actuators sought an alternate source of supply because of longstanding dissatisfaction with the quality and timeliness of shipments by the petitioner, as well as the inability of Motion Systems to obtain component inputs at lower cost; as a result, that purchaser requested that one of its existing suppliers, located in China, attempt to

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<sup>238</sup> CR at I-28; PR at I-20. With respect to the toll producer, I note that a significant portion (*i.e.* over \*\*\* percent) of the labor value of Motion Systems’ two pedestal actuator products is accounted for by Moran, and in 2001, \*\*\* of the \*\*\* production and related workers employed in the production of pedestal actuators worked for Moran. CR at I-24 and table 10; PR at I-16 and table 10.

<sup>239</sup> Motion Systems also sells pedestal actuators for use in wheel chairs, dental equipment, food handling or processing equipment, hospital incubators, aircraft production jiggling, and ergonomic casino chairs. CR at I-28, n. 75; PR at I-20, n. 75.

<sup>240</sup> The record indicates that \*\*\* domestic producers have in the past manufactured prototypes of pedestal actuators, and that there have been imports into the United States from \*\*\* of actuators meeting the definition of pedestal actuators; pedestal actuators may also be available from \*\*\*. *See* CR at I-29, I-33; PR at I-21, I-22-23.

<sup>241</sup> *See generally* Hearing Tr. at 165-170 (Flowers). Motion Systems has filed a civil suit for trademark property rights in the U.S. District Court for the Eastern District of New York, naming CIM and its related firms as defendants; specified in the suit are both subject imports and other nonsubject imported linear actuators. CR at I-6 to I-7; PR at I-5. *See also* Respondent’s Posthearing Brief at Exhibits 1-5.

produce a more acceptable form of pedestal actuator. It is solely in the context of this business decision to seek a more acceptable source of supply that subject imports began entering the U.S. market in 2001. This is not a situation in which subject producers in China targeted the U.S. market with rapidly increasing imports in order to capture sales from domestic producers; instead, this investigation presents the limited circumstance of one supplier in China responding to a specific request from a preexisting customer. Thus, any injury experienced by the domestic industry in this case is directly attributable to a single purchaser's perception of the sustained inadequacy of an existing source of supply.<sup>242</sup>

#### ***Volume of Imports–***

The volume of subject imports increased from zero units during the period 1997-2000, and then increased to \*\*\* units in 2001; during interim (*i.e.* January through June) 2002, subject import volume stood at \*\*\* units, compared to zero units during interim 2001. These data demonstrate a rapid absolute increase in the volume of subject imports. However, purchases by Electric Mobility account for all subject imports to date and the subject producer is supplying pedestal actuators solely at Electric Mobility's request and not as the result of a targeting of the U.S. market for pedestal actuators. Electric Mobility chose to source pedestal actuators from the subject producer in China after longstanding dissatisfaction with the quality and timeliness of shipments from the petitioner, as well as inadequate customer support. Electric Mobility selected the subject producer only after approaching at least eight other potential suppliers, and the subject producer has not sold pedestal actuators to any other purchaser in the U.S. market. Based upon all the foregoing, I do not find the volume of subject imports to be significant.

#### ***Price Effect of Imports–***

Pricing data on the record indicate that the average price of subject imports of pedestal actuators from China was less than \*\*\* percent of the average price of a comparable pedestal actuator produced by Motion Systems.<sup>243</sup> However, I do not find underselling to be significant because the record does not indicate that the pricing of subject imports resulted in price suppression or price depression with respect to any other sales by Motion Systems in the U.S. market, nor has Motion Systems lost any other sales to subject imports. Again, purchases by Electric Mobility account for all subject imports to date and the subject producer is supplying pedestal actuators solely at Electric Mobility's request and not as the result of a targeting of the U.S. market for pedestal actuators. Electric Mobility chose to source pedestal actuators from the subject producer in China after longstanding dissatisfaction with the quality and timeliness of shipments from the petitioner, as well as inadequate customer support. Electric Mobility selected the subject producer only after approaching at least eight other potential suppliers, and the subject producer has not sold pedestal actuators to any other purchaser in the U.S. market. Based upon all the foregoing, and in particular the absence of any price suppression or depression, I do not find that subject imports have had a significant negative effect on prices in the U.S. market for pedestal actuators.

#### ***Effect of Imports on the Domestic Industry–***

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<sup>242</sup> Thus, the absence of a sufficient causal nexus between subject imports and any injury sustained by the domestic industry is evident, in my view, regardless of whether the analysis is based upon a Title VII framework or a 201 framework.

<sup>243</sup> CR at I-65; PR at I-37-38.

In examining the effect of subject imports on the domestic industry, I consider all relevant economic factors that bear on the state of the industry in the United States, including output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive, and I consider all relevant factors within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

The loss of Electric Mobility as a customer has had an effect on the domestic industry,<sup>244</sup> which is not surprising given that sales to Electric Mobility accounted for over \*\*\* percent of the total value of pedestal actuator sales by Motion Systems in 2000.<sup>245</sup> The record indicates that from 2000 to 2001, production by the domestic industry declined by \*\*\* percent and capacity utilization declined from \*\*\* percent in 2000 to \*\*\* percent in 2001, while the quantity of U.S. shipments declined by \*\*\* percent over this period; as a result, the profitability of the domestic industry deteriorated, with operating margins declining from an apparent \*\*\* percent in 2000 to an apparent \*\*\* percent in 2001.<sup>246</sup> A comparison of interim data indicates that such declines have extended through the first half of 2002; specifically, between interim 2001 and interim 2002, production by the domestic industry declined by \*\*\* percent and capacity utilization declined from \*\*\* percent in interim 2001 to \*\*\* percent in interim 2002, while the quantity of U.S. shipments declined by \*\*\* percent over this period; as a result, the domestic industry's operating margins declined from an apparent \*\*\* percent in interim 2001 to an apparent \*\*\* percent in interim 2002.<sup>247</sup>

Nonetheless, purchases by Electric Mobility account for all subject imports to date and the subject producer is supplying pedestal actuators solely at Electric Mobility's request and not as the result of a targeting of the U.S. market for pedestal actuators. Electric Mobility chose to source pedestal actuators from the subject producer in China after longstanding dissatisfaction with the quality and timeliness of shipments from the petitioner, as well as inadequate customer support. Electric Mobility selected the subject producer only after approaching at least eight other potential suppliers, and the subject producer has not sold pedestal actuators to any other purchaser in the U.S. market. Based upon all the foregoing, I do not find that subject imports have had a significant adverse effect on the domestic industry producing pedestal actuators.

### ***Conclusion—***

For the foregoing reasons, I find that subject imports are not a significant cause of material injury to the domestic industry producing pedestal actuators; consequently, I determine that subject imports are not being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic industry.

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<sup>244</sup> I note, however, that Amigo Mobility (*i.e.* the third U.S. producer) did not provide the Commission with financial data regarding its pedestal actuator operations, and thus the effect of the loss of Electric Mobility on the domestic industry as whole is likely to be overstated on this record, particularly since Amigo Mobility captively consumes \*\*\* percent of its production of pedestal actuators. CR at I-42, n. 104; PR at I-27, n. 104. *See also* *infra* n.30.

<sup>245</sup> *See* Purchaser Questionnaire Response for Electric Mobility *and* Producer Questionnaire Response for Motion Systems.

<sup>246</sup> Measurement of the domestic industry's operating margins in this investigation may be skewed by \*\*\*. CR at I-45, n. 112; PR at I-28, n. 112.

<sup>247</sup> CR and PR at table C-1.

### III. NO THREAT OF MARKET DISRUPTION BY REASON OF IMPORTS FROM CHINA

As noted, in evaluating the threat of material injury pursuant to section 421, I choose to evaluate the record in light of the applicable threat criteria identified in the statute for AD/CVD investigations.<sup>248</sup>

1. Pedestal actuators from China are not a significant cause of threat of material injury to the domestic industry.

Based upon the conditions of competition evident in this investigation, I find that subject imports do not threaten imminent material injury to the domestic industry. Although the volume of subject imports is likely to increase in response to projections of increased purchases by Electric Mobility, subject imports are likely to have no effect on the volume or prices of shipments by the domestic industry to any other purchasers. Again, purchases by Electric Mobility account for all subject imports to date and the subject producer is supplying pedestal actuators solely at Electric Mobility's request and not as the result of a targeting of the U.S. market for pedestal actuators. Electric Mobility chose to source pedestal actuators from the subject producer in China after longstanding dissatisfaction with the quality and timeliness of shipments from the petitioner, as well as inadequate customer support. Electric Mobility selected the subject producer only after approaching at least eight other potential suppliers, and the subject producer has not sold pedestal actuators to any other purchaser in the U.S. market; indeed, at the Commission hearing I posed the question of whether the subject producer intended either to grow the U.S. market for pedestal actuators or to capture additional sales from the domestic industry, and in response a representative of the subject producer testified that the subject producer sought only to be responsive to specific customer requests.<sup>249</sup> In that context, the growth of imports in the imminent future will be determined solely by the demand for mobility scooters sold by Electric Mobility. Based upon all the foregoing, and in particular the manner in which subject imports entered the U.S. market for pedestal actuators as well as the market limitation on future growth of import levels, I am satisfied that subject imports do not pose an imminent threat of material injury to the domestic industry.

#### *Conclusion–*

For the foregoing reasons, I find that subject imports are not a significant cause of threat of material injury to the domestic industry producing pedestal actuators; consequently, I determine that subject imports are not being imported into the United States in such increased quantities or under such conditions as to threaten to cause market disruption to the domestic industry.

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<sup>248</sup> See 19 U.S.C. § 1677(7)(F). I note that factor (I) regarding the nature of a countervailable subsidy is not relevant to an investigation conducted pursuant to section 421.

<sup>249</sup> Hearing Tr. at 194 (Lam); see also Hearing Tr. at 200-202 (Cheng) and 202-203 (Lam).

#### **IV. REMEDY**

Pursuant to section 421(f), only those members of the Commission who render an affirmative determination of market disruption (or threat thereof) are eligible to vote on the proposed action to prevent or remedy market disruption; however, members of the Commission that do not render an affirmative determination may still submit separate views regarding what action, if any, should be taken to prevent or remedy market disruption.<sup>250</sup> I therefore offer the following observation; specifically, I believe that the appropriateness of any remedy should be evaluated in the context of repeated representations by Electric Mobility that if a remedy is imposed that restricts subject imports from China, the firm will likely turn to another of the potential foreign and domestic sources of supply and will not resume purchasing pedestal actuators from Motion Systems (because quality issues and perceptions of inadequate customer support were the principal reasons why Electric Mobility terminated Motion Systems as a supplier in the first place).<sup>251</sup> Thus, it is not clear that any remedy in this case will result in additional sales for Motion Systems, but instead may serve only to disrupt the production efforts of Electric Mobility.

#### **V. CONCLUSION**

For the foregoing reasons, I determine that pedestal actuators from the People's Republic of China are not being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of pedestal actuators. I therefore dissent from the affirmative determination rendered by the Commission majority in this investigation.

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<sup>250</sup> 19 U.S.C. § 2451(f).

<sup>251</sup> *See, e.g.,* Hearing Tr. at 170; Respondent's Final Comments on Remedy at 5.

