

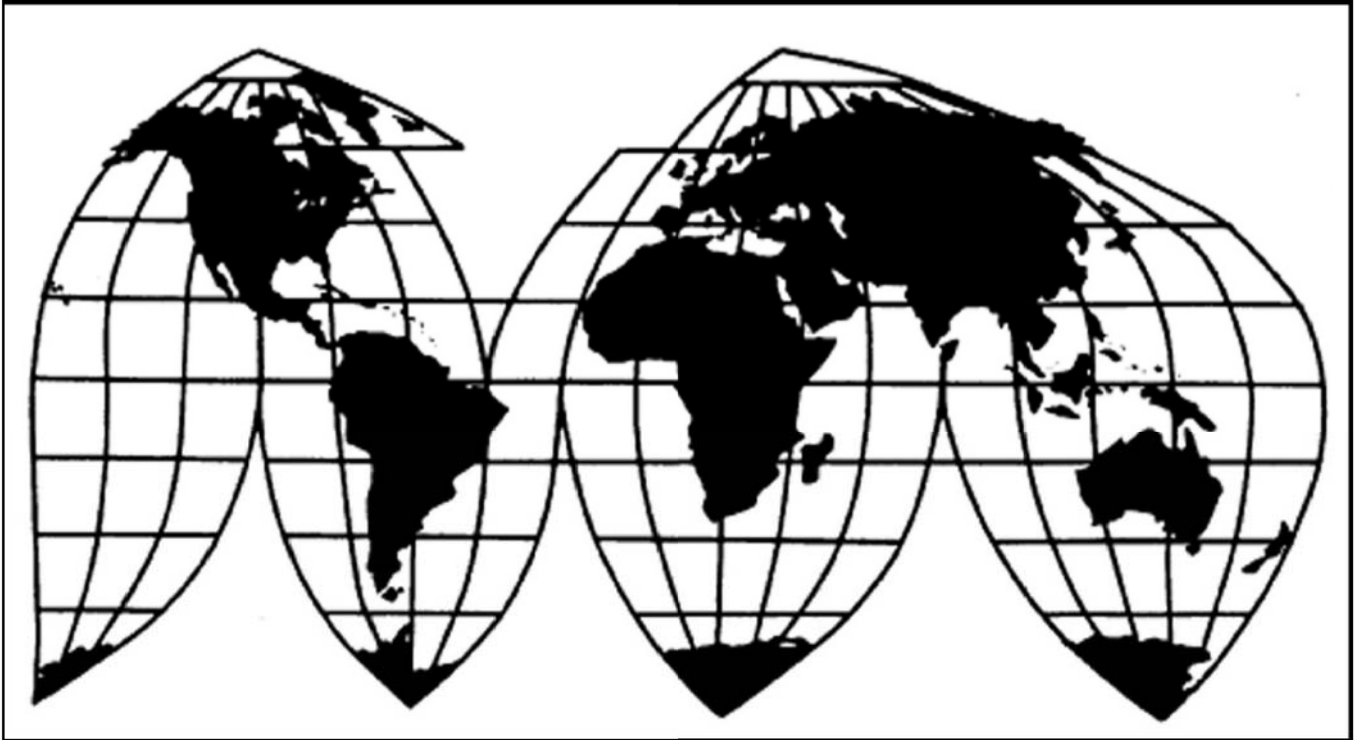
# **53-Foot Domestic Dry Containers from China**

Investigation Nos. 701-TA-514 and 731-TA-1250 (Preliminary)

**Publication 4474**

**June 2014**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted. Such deletions are indicated by asterisks.





## UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-514 and 731-TA-1250 (Preliminary)

53-FOOT DOMESTIC DRY CONTAINERS FROM CHINA

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports from China of 53-foot domestic dry containers, provided for in heading 8609.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (“LTFV”), and that are allegedly subsidized by the Government of China.<sup>2</sup>

### COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission’s rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission’s rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

### BACKGROUND

On April 23, 2014, petitions were filed with the Commission and Commerce by Stoughton Trailers, LLC, Stoughton, Wisconsin, alleging that the establishment of a domestic industry is materially retarded and that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of 53-foot domestic

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Commissioners Broadbent and Kieff dissenting.

dry containers from China. Accordingly, effective April 23, 2014, the Commission instituted countervailing duty Inv. No. 701-TA-514 and antidumping duty Inv. No. 731-TA-1250 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 29, 2014 (79 FR 24005). The conference was held in Washington, DC, on May 14, 2014, and all persons who requested the opportunity were permitted to appear in person or by counsel.

## Views of the Commission

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports of 53-foot domestic dry containers from China that are allegedly sold in the United States at less than fair value and are allegedly subsidized by the Government of China.<sup>1</sup>

### I. The Legal Standard for Preliminary Determinations

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>2</sup> In applying this standard, the Commission weighs the evidence before it and determines whether (1) the record as a whole contains clear and convincing evidence of no material injury or threat of such injury or that the establishment of an industry is not materially retarded by subject imports; and (2) no likelihood exists that evidence leading to a contrary result will arise in a final investigation.<sup>3</sup>

### II. Background

**Parties to the Investigations.** The petitions in these investigations were filed on April 23, 2014 by Stoughton Trailers, LLC (“Stoughton”) of Stoughton, Wisconsin, a U.S. firm that produced 53-foot domestic dry containers (herein “certain domestic containers”) during portions of the January 1, 2011 to March 31, 2014 period of investigation (“POI”).<sup>4</sup> Stoughton appeared at the staff conference and submitted a postconference brief.

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<sup>1</sup> Commissioners Broadbent and Kieff dissenting. They find no reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject imports from China. Commissioners Broadbent and Kieff join sections II through V.A.2 of these Views, except as otherwise noted. See Separate and Dissenting Views of Commissioners Broadbent and Kieff.

<sup>2</sup> 19 U.S.C. §§ 1671b(a), 1673b(a) (2000); see also *American Lamb Co. v. United States*, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); *Aristech Chem. Corp. v. United States*, 20 CIT 353, 354-55 (1996).

<sup>3</sup> *American Lamb*, 785 F.2d at 1001; see also *Texas Crushed Stone Co. v. United States*, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>4</sup> In this industry, the modifier “domestic” encompasses not only certain types of containers made in the United States but also in China that are designed to move dry goods using more than one mode of (intermodal) transportation, most commonly on a container chassis for on-the-road transportation and on a well car for rail transportation. Confidential Report, Memorandum INV-MM-053 (June 2, 2014), as modified by INV-MM-054 (June 5, 2014) and INV-MM-055 (June 5, 2014) (“CR”) at I-6 to I-8; Public Report, *53-Foot Domestic Dry Containers from China*, Inv. Nos. 701-TA-514 and 731-TA-1250 (Preliminary), USITC Pub. 4474 (June 2014) (“PR”) at I-5 to I-6.

Several respondent entities participated in the preliminary phase of these investigations. Interested parties that appeared through counsel, participated in the staff conference, and filed postconference submissions included foreign producer/exporter/importer China International Marine Containers (Group), Ltd. (“CIMC”) and foreign producer/exporter Singamas Management Services, Ltd. and its importer affiliate Singamas North America (collectively “Singamas”), as well as two importers of subject merchandise that are also purchasers of certain domestic containers (J.B. Hunt Transport, Inc. (“J.B. Hunt”), a leading provider of integrated transportation services and Hub City Terminals, Inc. (“Hub”), the owner and operator of the second largest non-rail fleet of certain domestic containers). Representatives from two purchasers of certain domestic containers, Norfolk Southern Corporation (“Norfolk Southern”), a railroad company, and Schneider National (“Schneider”), a leading provider of truckload and logistics and intermodal services, also participated in the staff conference.

**Data Coverage.** U.S. industry data are based on the questionnaire response of Stoughton, which accounted for all known U.S. production of certain domestic containers during the POI.<sup>5</sup> U.S. imports are based on the reported exports to the United States of certain domestic containers by the only two known producers in China (CIMC and Singamas).<sup>6</sup> With respect to traditional quarterly weighted-average pricing data, the sales data provided by Stoughton account for 100 percent of U.S. producers’ shipments of certain domestic containers. \*\*\* importers (the two foreign producers serving as importers of record and \*\*\* U.S. end users that were importers of record) provided usable pricing data, and their data accounted for \*\*\* of U.S. imports from China during the POI.<sup>7</sup> Additionally, the Commission received purchase cost data from \*\*\* U.S. purchasers/end users that were not importers.<sup>8</sup> The Commission

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<sup>5</sup> CR at I-5; PR at I-3 to I-4.

<sup>6</sup> CR at I-5; PR at I-4. The applicable HTS heading encompasses all containers and not just certain domestic containers. The Commission issued importer questionnaires to firms identified in the petitions and those firms that based on a review of data provided by U.S. Customs and Border Protection may have accounted for more than 0.2 percent of total imports under HTS heading 8609.00.00 during January 2011 to January 2014 (the period for which Customs data were available). Seven firms identifying themselves as importers of record of certain domestic containers submitted usable importer questionnaire responses; their imports were equivalent to \*\*\* of exports of certain domestic containers reported by the two responding producers of subject merchandise in China. CR at IV-1 & n.1; PR at IV-1 & n.1.

<sup>7</sup> CR at V-5; PR at V-3 (noting that these data do not include information reported by importer \*\*\* because it submitted data for a product of substantially different specifications). CIMC and Singamas submitted sales data, whereas other U.S. importers submitted purchase cost data. Sales price refers to the price for which goods are sold; purchase cost refers to the price paid by a purchaser, and these values often differ due to markups and other transaction costs. CR at V-4 & n.14; PR at V-3 & n.14. According to CIMC and Singamas, their reported sales price data are comparable to purchase cost data reported by their customers. CR at V-4 & n.14; PR at V-3 & n.14.

<sup>8</sup> CR at V-7; PR at V-4; CR/PR at Appendix D. The Commission also requested information regarding bids for the five highest-value purchases of certain domestic containers that were issued by end users to foreign producers and the U.S. manufacturer for delivery between January 1, 2013 through (Continued...)

received responses to its questionnaires from two foreign producers/exporters of subject merchandise (CIMC and Singamas), whose exports to the United States accounted for approximately all U.S. imports of certain domestic containers from China during the POI and whose production accounts for all known production of such merchandise in China.<sup>9</sup> Stoughton and respondents agreed that there are no known producers of certain domestic containers in nonsubject countries and thus no known U.S. imports from such countries.<sup>10</sup>

### III. Domestic Like Product

#### A. Legal Standard and Scope of Investigations

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury or that the establishment of a domestic industry is materially retarded by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>11</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>12</sup> In turn, the Tariff Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”<sup>13</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>14</sup> No single factor is

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(...Continued)

March 31, 2014. The Commission received usable information regarding \*\*\* bid events. CR at V-9 to V-11; PR at V-4.

<sup>9</sup> CR at VII-3; PR at VII-3.

<sup>10</sup> CR at VII-8; PR at VII-5; Petitions, Vol. I at 12; Confer. Tr. at 134-35 (Morgan, Delozier, Cerny, Drella, Dean).

<sup>11</sup> 19 U.S.C. § 1677(4)(A).

<sup>12</sup> 19 U.S.C. § 1677(4)(A).

<sup>13</sup> 19 U.S.C. § 1677(10).

<sup>14</sup> See, e.g., *Cleo Inc. v. United States*, 501 F.3d 1291, 1299 (Fed. Cir. 2007); *NEC Corp. v. Department of Commerce*, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See *Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>15</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>16</sup> Although the Commission must accept Commerce's determination as to the scope of the imported merchandise that is subsidized and/or sold at less than fair value,<sup>17</sup> the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>18</sup> The Commission may, where appropriate, include domestic articles in the domestic like product in addition to those described in the scope.<sup>19</sup>

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

closed (*i.e.*, not open top) van containers exceeding 14.63 meters (48 feet) but generally measuring 16.154 meters (53 feet) in exterior length, which are designed for the intermodal transport of goods other than bulk liquids within North America primarily by rail or by road vehicle, or by a combination of rail and road vehicle (domestic containers). The merchandise is known in the industry by varying terms including "53-foot containers," "53-foot dry containers," "53-foot domestic dry containers," "domestic dry containers," and "domestic containers." These terms all describe the same article with the same design and performance characteristics. Notwithstanding the particular terminology used to describe the merchandise, all merchandise that meets the definition set forth herein is included within the scope of this investigation.

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<sup>15</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>16</sup> See, e.g., *Nippon*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

<sup>17</sup> See, e.g., *USEC, Inc. v. United States*, 34 Fed. App'x 725, 730 (Fed. Cir. 2002) ("The ITC may not modify the class or kind of imported merchandise examined by Commerce."); *Algoma Steel Corp. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd*, 865 F.3d 240 (Fed. Cir.), *cert. denied*, 492 U.S. 919 (1989).

<sup>18</sup> *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); *Cleo*, 501 F.3d at 1298 n.1 ("Commerce's {scope} finding does not control the Commission's {like product} determination."); *Torrington*, 747 F. Supp. at 748-52 (affirming the Commission's determination defining six like products in investigations where Commerce found five classes or kinds).

<sup>19</sup> See, e.g., *Pure Magnesium from China and Israel*, Inv. Nos. 701-TA-403 and 731-TA-895-96 (Final), USITC Pub. 3467 at 8 n.34 (Nov. 2001); *Torrington*, 747 F. Supp. at 748-49 (holding that the Commission is not legally required to limit the domestic like product to the product advocated by the petitioner, co-extensive with the scope).

Domestic containers generally meet the characteristics for closed van containers for domestic intermodal service as described in the American Association of Railroads (AAR) Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers for Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 (AAR Specifications) for 53-foot and 53-foot high cube containers. The AAR Specifications generally define design, performance, and testing requirements for closed van containers, but are not dispositive for purposes of defining subject merchandise within this scope definition. Containers which may not fall precisely within the AAR Specifications or any successor equivalent specifications are included within the scope definition of the subject merchandise if they have the exterior dimensions referenced below, are suitable for use in intermodal transportation, are capable of and suitable for double-stacking in intermodal transportation, and otherwise meet the scope definition for the subject merchandise.

Domestic containers have the following actual exterior dimensions: an exterior length exceeding 14.63 meters (48 feet) but not exceeding 16.154 meters (53 feet); an exterior width of between 2.438 meters and 2.60 meters (between 8 feet and 8 feet 6 3/8 inches); and an exterior height of between 2.438 meters and 2.908 meters (between 8 feet and 9 feet 6 1/2 inches), all subject to tolerances as allowed by the AAR Specifications. In addition to two frames (one at either end of the container), the domestic containers within the scope definition have two stacking frames located equidistant from each end of the container, as required by the AAR Specifications. The stacking frames have four upper handling fittings and four bottom dual aperture handling fittings, placed at the respective corners of the stacking frames. Domestic containers also have two forward facing fittings at the front lower corners and two downward facing fittings at the rear lower corners of the container to facilitate chassis interface. All domestic containers as described herein are included within this scope definition, regardless of whether the merchandise enters the United States in a final, assembled condition, or as an unassembled kit or substantially complete domestic container which requires additional manipulation or processing after entry into the United States to be made ready for use as a domestic container.<sup>20</sup>

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<sup>20</sup> The scope specifically excludes the following items: (1) refrigerated containers; (2) trailers, where the cargo box and rear-wheeled chassis are of integrated construction, and the cargo box of the unit may not be separated from the chassis for further intermodal transport; (3) container chassis, whether or not imported with domestic containers, but the domestic containers remain subject merchandise, to the extent they meet the written description of the scope. As Commerce further explained, imports of the subject merchandise are provided for under subheading 8609.00.0000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Imports of the subject merchandise which meet the definition of and requirements for “instruments of international traffic” pursuant to 19 U.S.C. § 1322 and 19 C.F.R. § 10.41a may be classified under HTSUS heading 9803.00.50. 79 Fed. Reg. (Continued...)

Although the scope refers to two primary types of containers (53-foot domestic containers with a minimum interior height of 107 inches and 53-foot high cube domestic containers with a minimum interior height of 109 3/8 inches), the only reported sales during the POI consisted of 53-foot high cube domestic containers, because market participants view the shorter product that holds less cargo as obsolete.<sup>21</sup>

## B. Analysis

The questionnaires in these investigations sought information about similarities and differences between the group of containers described in the scope definition (certain domestic containers) and 53-foot trailers used to transport dry goods. Ultimately, the parties agreed for purposes of the preliminary determinations that the Commission should define the domestic like product to be certain domestic containers.<sup>22</sup> Based on the record, we define a single domestic like product consisting of certain domestic containers but not trailers for the reasons stated below.

*Physical Characteristics and Uses.* Certain domestic containers are weatherproof cargo boxes constructed from thin corrugated steel panels welded together.<sup>23</sup> Shippers use these containers primarily in intermodal surface transportation in North America, typically

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(...Continued)

28764 (May 19, 2014) (initiation of AD investigation); 79 Fed. Reg. 28679 (May 19, 2014) (initiation of CVD investigation); CR at I-6 to I-8; PR at I-5 to I-7.

<sup>21</sup> CR at V-5; PR at V-3; Confer. Tr. at 52-53 (Fenton), 147-48 (Drella), 148 (Cerny).

<sup>22</sup> Stoughton asks to define the domestic like product as certain domestic containers but not trailers due to differences in their physical characteristics, the limited use of trailers for certain domestic containers' primary purpose in intermodal transit due to trailers' inability to double-stack, Stoughton's production of the two products in entirely different locations, and their price differential. Petitions, Vol. I at 11, 20-25; Confer. Tr. at 34-37 (Hoades); Petitioner's Postconference Brief at 2-4. Respondents do not contest Stoughton's proposed domestic like product definition for purposes of the preliminary phase of these investigations. Confer. Tr. at 176-77 (Morgan, Heffner); CIMC/Singamas Postconference Brief at 16. Likewise, no party argues in favor of defining the domestic like product broader than the scope to include 20- and 40-foot containers. Whereas certain domestic containers are used in intermodal transportation within North America, International Standards Organization ("ISO") 20- and 40-foot containers travel back and forth in international maritime trade to transport goods by vessel. Unlike ISO containers, certain domestic containers have greater capacity and connect more efficiently with intermodal rail and chassis equipment. Market participants viewed ISO containers differently than certain domestic containers. No U.S. firm is reported as manufacturing domestic containers in lengths of other than 53 feet. Petitions, Vol. I at 5 n.5, 21, 22 n.29; Confer. Tr. at 189-93 (Drella, Delozier, Dean, Cerny); CIMC/Singamas Postconference Brief at 1-2. For these reasons, we do not include 20- and 40-foot containers in the domestic like product definition.

<sup>23</sup> Petitions, Vol. I at 7-8, 20-21; Confer. Tr. at 35-36 (Wahlin), 77 (Fenton); Petitioner's Postconference Brief, Exhibit 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams).



transporting them from a port, manufacturing facility, or distribution center to a rail yard where they are double-stacked on rail cars for use as containers on flat cars (“COFC”), placed on a chassis at the other end of the rail route, and unloaded at the final or interim destination.<sup>24</sup> Special design features permit top lifting and double stacking the containers on rail cars and mounting them on a separate chassis for road transportation.<sup>25</sup>

By comparison, trailers function as the rear portion of a motor vehicle and consist of a mostly mechanically assembled cargo box made from thin aluminum or even thinner galvanized steel or composite materials that is permanently integrated into an undercarriage to form a “monocoque” structure that carries itself.<sup>26</sup> Unlike the chassis that is used to carry certain domestic containers on the road, trailers’ integrated undercarriage typically includes additional features not found on certain domestic containers.<sup>27</sup> Lighter weight than containers, trailers are generally used in surface over-the-road and not intermodal transportation.<sup>28</sup> Cargo may be transported via trailer on flat car (“TOFC”), but without the stacking frames, fittings, and castings found on certain domestic containers, trailers cannot be double-stacked in rail cars, limiting cargo volumes and increasing costs.<sup>29</sup>

*Manufacturing Facilities, Production Processes, and Employees.* Of the approximately two dozen U.S. firms producing trailers, only Stoughton reported producing certain domestic

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<sup>24</sup> Petitions, Vol. I at 6, 20-21; Confer. Tr. at 19 (Wahlin).

<sup>25</sup> Petitions, Vol. I at 6-8, 20-21 & n.28; Confer. Tr. at 29, 32-33, 35-36 (Wahlin), 72, 77 (Fenton), 104 (Delozier), 122 (Dean); Petitioner’s Postconference Brief at Exhibit 44 (Differences of Std. Trailer vs. Chassis/ Container Combination and accompanying diagrams); Supplemental Trailer Questionnaires at Question I-4 (collectively referring to certain domestic containers’ four top upper stacking frame handling fittings and four bottom dual-aperture stacking frame handling fittings that facilitate top-lifting; intermediate stack frames providing support for a double-stacked configuration; a fore and aft tunnel recess in the containers’ bottom that fits over the raised “gooseneck” in the front of a chassis; two forward-facing and two rear downward-facing fittings at the corners to facilitate the chassis interface; and a steel-welded rear frame with aperture holes on the bottom plate to allow engagement to a chassis twist lock securement device).

<sup>26</sup> Petitions, Vol. I at 21 n.28; Confer. Tr. at 32 (Wahlin), 35-36 (Hoades), 77-78 (Fenton), 97 (Fenton); Petitioner’s Postconference Brief at Exhibit 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams).

<sup>27</sup> Confer. Tr. at 32 (Wahlin), 35 (Hoades), 77-78 (Fenton), 195 (Delozier); Petitioner’s Postconference Brief at Exhibit 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams); Supplemental Trailer Questionnaires at Question I-4 (collectively referring to, *inter alia*, running gear with wheels and tires, brakes, an electrical system, lights, skirts for wind deflection, a rear impact under-ride guard to prevent other vehicles from traveling underneath a trailer in case of impact, and a kingpin, which connects the trailer directly to the highway tractor).

<sup>28</sup> Petitions, Vol. I at 21 n.28, 22; Supplemental Trailer Questionnaires at Question I-4; Confer. Tr. at 138-42 (Dean, Delozier, Drella, Cerny).

<sup>29</sup> Using certain domestic containers limits the loading and unloading of cargo, which remains in the container throughout the intermodal move often until the ultimate destination where the cargo is finally off-loaded. Petitions, Vol. I at 21, 23; Confer. Tr. at 32-33 (Wahlin), 83-85 (Fenton), 104 (Delozier); J.B. Hunt’s Postconference Brief at 5; Supplemental Trailer Questionnaires at Question I-4.

containers.<sup>30</sup> Stoughton, the sole U.S. producer of certain domestic containers during the POI, produces trailers and certain domestic containers at separate sites.<sup>31</sup>

Stoughton constructs certain domestic containers primarily from carbon steel parts of varying strengths.<sup>32</sup> The predominant means of attaching the various steel members to one another is through the weld process.<sup>33</sup> In contrast, cargo boxes for trailers are primarily mechanically assembled (rather than welded) from different materials (aluminum, galvanized steel, or composites), the undercarriage for trailers is permanently affixed to the cargo box, and additional parts and processes are needed to provide finished trailers with features such as brakes, lights, and electrical systems not found on certain domestic containers.<sup>34</sup> Trailers do not undergo production processes associated with stacking frames and other features specific to certain domestic cargo containers.<sup>35</sup>

Since resuming operations in 2011, Stoughton has been able to use some of its employees that manufacture trailers for its certain domestic container facility, but those employees need additional welding, assembly, or industrial skill training.<sup>36</sup>

*Channels of Distribution.* Stoughton sells certain domestic containers directly to its customers, which are \*\*\*, but sells trailers both to a network of distributors and directly to customers.<sup>37</sup> U.S. producers of trailers reported shipping them \*\*\*.<sup>38</sup> Railroads, among the primary purchasers of certain domestic containers, typically do not purchase trailers, whereas trucking companies and leasing companies that lease back to carriers purchase both certain domestic containers and trailers.<sup>39</sup>

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<sup>30</sup> CR at I-19 & n.82; PR at I-14 n.82.

<sup>31</sup> Petitions, Vol. I at 23-24; Confer. Tr. at 25-26, 32 (Wahlin) (producing trailers in Stoughton and Brodhead, Wisconsin but containers in Evansville, Wisconsin); Supplemental Trailer Questionnaires at Question I-4.

<sup>32</sup> All or part of the subassemblies undergo weld finishing in a blast booth before entering a paint booth for exterior and interior painting. Stoughton installs wood flooring into the containers, installs lock rods in the doors, attaches door seals to the perimeter of the door panel assembly, and seals the door fasteners. Petitions, Vol. I at 7-8; Confer. Tr. at 36 (Hoades), 76-78 (Fenton).

<sup>33</sup> Petitions, Vol. I at 8; Petitioner's Postconference Brief at 9-10 at n.27 (noting that Stoughton uses some mechanical fasteners in its certain domestic containers).

<sup>34</sup> Like certain domestic containers, trailers have wood flooring and a rear door system consisting of door panels, seals, hinges, and lock rods. Petitions, Vol. I at 21 n.28; Confer. Tr. at 29, 32-33 (Wahlin), 35-36 (Hoades), 76-78, 97 (Fenton); Petitioner's Postconference Brief at Exhibit 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams); Supplemental Trailer Questionnaires at Question I-4.

<sup>35</sup> Petitions, Vol. I at 21, 23; Confer. Tr. at 32-33 (Wahlin), 83-84 (Fenton), 104 (Delozier); J.B. Hunt's Postconference Brief at 5; Supplemental Trailer Questionnaires at Question I-4.

<sup>36</sup> Petitions, Vol. I at 23; Confer. Tr. at 96-97 (Wahlin); Petitioner's Postconference Brief at Exhibit 16.

<sup>37</sup> Confer. Tr. at 36 (Hoades).

<sup>38</sup> CR at I-22; PR at I-16; Supplemental Trailer Questionnaires at Question I-4.

<sup>39</sup> Petitions, Vol. I at 23; Confer. Tr. at 59 (Wahlin); CR at II-3 to II-4; PR at II-2.

*Interchangeability.* Due to differences in their features, interchangeability among certain domestic containers and trailers is limited. Certain domestic containers require a separate chassis on either end of an intermodal move, whereas trailers have an integrated carriage that permits them to travel on the roads; likewise, certain domestic containers require well cars during rail transit whereas trailers use spine cars.<sup>40</sup> The parties agree that the choice between trailers and certain domestic containers depends on factors such as routes, availability of rail lines, distances, destinations, costs, delivery times, and availability of equipment.<sup>41</sup> Even when sold in overlapping channels of distribution, trailers and certain domestic containers may serve different purposes.<sup>42</sup> Certain domestic containers carry double the volume of cargo when they are double-stacked on rail cars, a feature unavailable from trailers.<sup>43</sup> The ability to reduce costs by double-stacking certain domestic containers is meaningful, given that at least 90 percent of U.S. rail routes accommodate double-stacked containers.<sup>44</sup> Consequently, shippers may use trailers for short- and medium-range over-the-road transportation but opt for certain domestic containers for longer intermodal routes.<sup>45</sup> For intermodal moves over long distances, with the longest portion of the movement typically on a rail car, certain domestic containers are increasingly preferred and are most commonly used to take advantage of lower rail freight costs and lower sensitivity to fuel cost spikes or shortages in truck drivers relative to over-the-road transportation by trailers.<sup>46</sup> Improved scheduling reliability for railroads also makes certain domestic containers increasingly more attractive.<sup>47</sup>

*Producer and Customer Perceptions.* As the only U.S. producer of certain domestic containers, Stoughton perceives clear distinctions between certain domestic containers and trailers and reports that it does not typically sell certain domestic containers to its trailer purchasers or vice versa.<sup>48</sup> The parties agree that most trailer purchasers use them for over-the-road short hauls and not for intermodal transportation, so market participants do not view trailers as substitutes for certain domestic containers.<sup>49</sup> Representatives of purchasers which

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<sup>40</sup> Petitions, Vol. I at 22; Confer. Tr. at 19 (Wahlin), 138-43 (Delozier, Drella, Cerny).

<sup>41</sup> Petitions, Vol. I at 22, 24, Exhibit I-9; J.B. Hunt's Postconference Brief at 4; Petitioner's Postconference Brief at Exhibit 34-36; CR at II-1; PR at II-1.

<sup>42</sup> Confer. Tr. at 194-95 (Drella, Delozier, Cerny); Petitions, Vol. I at 24, Exhibit I-6 to I-8; Confer. Tr. at 37 (Hoades); Petitioner's Postconference Brief at Exhibit 43.

<sup>43</sup> Petitions, Vol. I at 21, 23; Confer. Tr. at 33 (Wahlin), 35-36 (Hoades).

<sup>44</sup> Confer. Tr. at 182-83 (Drella), 183-84 (Cerny), 184 (Dean).

<sup>45</sup> Petitions, Vol. I at 21-23; Confer. Tr. at 120, 195-96 (Cerny).

<sup>46</sup> Petitions, Vol. I at 21-23; Confer. Tr. at 19, 33 (Wahlin), 35-36 (Hoades), 55 (Wahlin, Dougan), 120 (Cerny), 136-37 (Drella), 138 (Dean), 138-40 (Delozier), 141-42 (Cerny), 151 (Drella), 153 (Whitehead); Petitioner's Postconference Brief at Exhibits 34-36, 44; J.B. Hunt's Postconference Brief at 3-4; CIMC/Singamas' Postconference Brief at Exhibit 1 at 12-18; Supplemental Trailer Questionnaires at Question I-4; U.S. Importer Questionnaires at Question V-1; CR at II-1; PR at II-1.

<sup>47</sup> Confer. Tr. at 153 (Whitehead); J.B. Hunt's Postconference Brief at 4.

<sup>48</sup> Petitions, Vol. I at 24-25.

<sup>49</sup> Petitions, Vol. I at 24; Confer. Tr. at 138 (Dean), 138-39 (Delozier), 139-41 (Drella), 140-42 (Cerny), 195-96 (Cerny); J.B. Hunt's Postconference Brief at 3-4.

buy both trailers and certain domestic containers testified that they purchase them for different purposes and view their over-the-road trucking and intermodal divisions as separate lines of business.<sup>50</sup> The Intermodal Association of North America separately tracks monthly movements of domestic containers and trailers.<sup>51</sup>

*Price.* Stoughton argues that the substantial cost of the undercarriage causes trailers' base price to be thousands of dollars higher than certain domestic containers.<sup>52</sup> Stoughton's average unit values for certain domestic containers, which do not reflect the cost of any chassis, ranged from \$\*\*\* to \$\*\*\*, and average unit values reported by U.S. producers of 53-foot domestic dry trailers ranged from \$\*\*\* to \$\*\*\*.<sup>53</sup>

*Conclusion.* Differences in physical characteristics (including the inability to double-stack trailers) limit the interchangeability of certain domestic containers and trailers for the same uses, particularly for the rail portion of intermodal transportation. Despite some overlap in channels of distribution for sales to trucking and leasing firms, these firms, Stoughton, and other market participants view certain domestic containers and trailers as different products. Notwithstanding some overlap in production processes, employees, and raw materials, there are a number of differences in raw materials and production processes and no overlap in the manufacturing facilities used to produce certain domestic containers and trailers. Prices of trailers are also higher than certain domestic containers. For these reasons, we define the domestic like product as certain domestic containers, not including trailers.

#### **IV. Whether the Actual or Potential Domestic Industry is Established<sup>54</sup>**

##### **A. Defining the Actual or Potential Domestic Industry**

The domestic industry is defined as the domestic “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>55</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. Based on our definition of the domestic like product, we define the actual or potential domestic industry as all producers of certain domestic containers. Stoughton is the only firm known to have produced certain domestic containers in the United States during the POI.<sup>56</sup>

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<sup>50</sup> Confer. Tr. at 194-95 (Delozier, Drella, Cerny).

<sup>51</sup> Petitions, Vol. I at 24.

<sup>52</sup> Confer. Tr. at 37 (Hoades).

<sup>53</sup> CR at I-23; PR at I-16; Supplemental Trailer Questionnaires at Question I-4.

<sup>54</sup> We use the term “potential” because one of the issues in these investigations is whether the domestic industry is in fact established.

<sup>55</sup> 19 U.S.C. § 1677(4)(A).

<sup>56</sup> There are no related party issues in the preliminary phase of these investigations. CR at III-4; PR at III-2.

## B. Whether the Domestic Industry is Established

In its petitions and other submissions in these investigations, Stoughton primarily argued that the establishment of a domestic industry was materially retarded by reason of subject imports from China.<sup>57</sup> The concept of material retardation of the establishment of a domestic industry has surfaced only twice in Commission opinions since 1998,<sup>58</sup> and the issue has been posed in only approximately 17 cases in the Commission's history, mostly in the mid-to late 1980s and early 1990s.

Under the statute, the Commission determines whether there is a reasonable indication that "the establishment of an industry in the United States is materially retarded by reason of imports of the subject merchandise ... ." <sup>59</sup> The current language dates to the Trade Agreements Act of 1979. Neither the statute nor the legislative history provides much guidance on how the Commission should apply this provision.

Historically, the Commission has not limited application of the material retardation statute to domestic producers that have not yet engaged in U.S. production. If there is or was at least some domestic production,<sup>60</sup> which is the case in these investigations, then the

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<sup>57</sup> Petitions, Vol. I at 17-20; Petitioner's Postconference Brief at 15-21, Exhibits 15-16, 30-33.

<sup>58</sup> In *Laminated Woven Sacks from China*, Inv. Nos. 701-TA-450 and 731-TA-1122 (Preliminary), USITC Pub. 3942 (Aug. 2007), the Commission initially found a reasonable indication that the domestic industry was not established and that the establishment of a domestic industry was materially retarded by reason of subject imports from China. Based on the additional information available in the final phase of its investigations, the Commission ultimately found the domestic industry was established and that the domestic industry was materially injured by reason of subject imports from China. *Laminated Woven Sacks*, USITC Pub. 4025.

In *Butter Cookies in Tins from Denmark*, Inv. Nos. 701-TA-704 and 731-TA-780 (Preliminary), USITC Pub. 3092 (Mar. 1998), petitioners did not raise the material retardation issue, and it was not an issue for the Commission majority making negative preliminary determinations, given how they defined the domestic like product and thus the corresponding domestic industry. *Id.* at 5 (Commissioner Miller defining domestic like product as all cookies in tins); *id.* at 32 (Commissioner Crawford defining domestic like product as all cookies). In her dissenting opinion, however, Commissioner Bragg found a reasonable indication that the domestic industry producing butter cookies in tins was threatened with material injury by subject imports from Denmark and considered as a condition of competition the recent (1994) entry of two longstanding U.S. producers of cookies into high-volume production of butter cookies in tins.

<sup>59</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>60</sup> Where domestic firms had not yet undertaken production, the Commission looked for an indication that the producers had made a "substantial commitment" to commence production before examining whether the industry's establishment was materially retarded by subject imports. *See, e.g., Certain Commuter Airplanes from France and Italy*, Inv. Nos. 701-TA-174 & 175 (Preliminary), USITC Pub. 1269 at 8 (Jul. 1982) (domestic producers had not yet commenced production but had made a substantial commitment to do so); *Motorcycle Batteries from Taiwan*, Inv. No. 731-TA-42 (Final), USITC Pub. 1228 (Oct. 1981) (finding U.S. firms did not take substantial steps or make an affirmative commitment to produce 6-volt motorcycle batteries); *Thin Sheet Glass from Switzerland, Belgium, and the Federal Republic of Germany*, Inv. Nos. 731-TA-127 & 129 (Preliminary), USITC Pub. 1376 (May 1983)

(Continued...)

Commission has applied a two-step framework in which it first determines whether the domestic industry is established.<sup>61</sup> If the domestic industry is not yet established, then the Commission has determined in the framework's second step whether the establishment of a domestic industry is materially retarded by reason of subject imports. If the industry is established, then the Commission has instead examined whether the domestic industry is materially injured or threatened with material injury by reason of subject imports. As the Commission has previously recognized, under the statute, material retardation and material injury/threat thereof are mutually exclusive standards, meaning that if a domestic industry is established, it no longer qualifies as a "nascent" industry, and the analysis instead turns on the issues of material injury or threat thereof.<sup>62</sup>

In applying the first step of the framework to determine if a domestic industry is established, the Commission in previous investigations has examined several or all of the following criteria: (1) the length of domestic production operations; (2) the characteristics of domestic production; (3) the size of domestic operations; (4) whether the proposed domestic industry has reached a reasonable financial "break-even" point; and (5) whether the activity is more in the nature of introducing a new product line by an already established business.<sup>63</sup> The Commission has made this determination on a case-by-case basis according to the record of each investigation.<sup>64</sup>

Stoughton argues that it began production recently, produced limited quantities relative to the market as a whole, but could not reach production goals due to subject imports. For these reasons, Stoughton argues that the domestic industry is not yet established.<sup>65</sup>

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(...Continued)

(not finding efforts to date demonstrated a substantial commitment to commence production of high-quality thin sheet glass because Jeanette's marketing efforts were not very intensive, Jeanette had not purchased testing equipment that would have allowed it to differentiate between regular and high-quality glass, and Jeanette had problems qualifying its product), *aff'd*, *Jeanette Sheet Glass Corp. v. United States*, 607 F. Supp. 123, 131-32 (Ct. Int'l Trade 1985) (affirming "substantial commitment" test where domestic producers had not yet engaged in producing high-quality thin sheet glass).

<sup>61</sup> *But see Certain High Information Content Flat Panel Displays and Subassemblies Thereof from Japan*, Inv. No. 731-TA-469 (Preliminary), USITC Pub. 2311 at 3 n.2 (Sept. 1990) (because it found a reasonable indication of material injury, the Commission did not reach the material retardation issue).

<sup>62</sup> 19 U.S.C. §§ 1671b, 1673b; *see, e.g., Laminated Woven Sacks (Final)*, USITC Pub. 4025 at 19; *Fresh Chilled Atlantic Salmon from Norway*, Inv. Nos. 701-TA-302 and 731-TA-454 (Preliminary), USITC Pub. 2272 at 15 n.39 (Apr. 1990); *Pressure-Sensitive PVC Battery Covers from West Germany*, Inv. No. 731-TA-452 (Preliminary), USITC Pub. 2265 at 12 (Mar. 1990).

<sup>63</sup> *Laminated Woven Sacks (Final)*, USITC Pub. 4025 at 19 (applying this framework, but recognizing that these factors are not mandated by the statute).

<sup>64</sup> *See, e.g., Laminated Woven Sacks (Final)*, USITC Pub. 4025 at 20, 30 (indicating that the Commission accepted the framework applied in prior cases); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan*, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 at 18-19 (Aug. 1991).

<sup>65</sup> Petitions, Vol. I at 17-20; Petitioner's Postconference Brief at 19-20, Exhibits 15-16, 30-33.

Respondents accept Stoughton's characterization of the U.S. industry as not established for purposes of the preliminary phase of these investigations.<sup>66</sup>

We examine below the five factors the Commission has previously examined to ascertain whether a domestic industry is established. For purposes of these preliminary determinations, we considered for each of these factors evidence pertinent to the POI, because no party argued in favor of examining evidence pertinent to any earlier period.

## 1. The Length of Domestic Production Operations

The Commission has focused on when domestic producers began their U.S. production of the domestic like product. In general, where domestic producers had produced for fewer than two to three years, the Commission has found this favored finding a nascent domestic industry.<sup>67</sup> Where some or all of the domestic producers had produced for longer periods of time, then the Commission found this factor favored finding an established industry.<sup>68</sup>

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<sup>66</sup> J.B. Hunt's Postconference Brief at 13, 16, 27-28; CIMC/Singamas Postconference Brief at 16.

<sup>67</sup> See, e.g., *Benzyl Paraben from Japan*, Inv. No. 731-TA-462 (Final), USITC Pub. 2355 (Feb. 1991) (firm produced for 15 months, shut down, began again, shut down less than a year later, and then supplied customers out of inventory); *Certain Dried Salted Codfish from Canada*, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 at 6 (Jul. 1985), *aff'd*, *BMT Commodity Corp. v. United States*, 667 F. Supp. 880 (Ct. Int'l Trade 1987), *aff'd*, 852 F.2d 1285 (Fed. Cir.), *cert denied*, 1009 U.S. 1120 (1988) (suspended production after two years with intent to resume production); *Certain Copier Toner from Japan*, Inv. No. 731-TA-373 (Preliminary), USITC Pub. 1960 at 9-10 (Mar. 1987) (domestic production began about three years earlier). *But see Lime Oil from Peru*, Inv. No. 303-TA-16 (Preliminary), USITC Pub. 1723 at 8 n.19 (Jul. 1985) (finding established industry based on definition of domestic like product and industry as producers of both cold-pressed and distilled lime oil, but noting that, had it defined industry as distilled lime oil producers, it would have found the industry established, even though, *inter alia*, domestic distilled lime oil production began about two years earlier).

<sup>68</sup> See, e.g., *Laminated Woven Sacks (Final)*, USITC Pub. 4025 at 20-22 (one or more domestic producers had supplied the major types of products to the U.S. market long enough to weigh in favor of established industry); *Wheel Inserts from Taiwan*, Inv. No. 731-TA-271 (Preliminary), USITC Pub. 2824 (Oct. 1994) (steady production throughout the period of investigation by at least three producers and since the late 1980s by at least two U.S. producers); *Certain Gene Amplification Thermal Cyclers and Subassemblies Thereof from the United Kingdom*, Inv. No. 731-TA-485 (Final), USITC Pub. 2412 (Aug. 1991) (domestic production for more than three years); *Flat Panels*, USITC Pub. 2413 at 18-19 (domestic production began before the period of investigation); *Tungsten Ore Concentrates from the People's Republic of China*, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 at 18 n.49 (Mar. 1991) (continuous production over a long period of time); *Salmon*, USITC Pub. 2272 at 16-18 (domestic producers had been engaging in activities leading to production for a number of years, and some had recently produced the product); *PVC Battery Covers*, USITC Pub. 2265 at 12 (production began three to four years prior to investigation); *Fabric and Expanded Neoprene Laminate from Japan*, Inv. No. 731-TA-206 (Preliminary), USITC Pub. 1608 at 8 n.24 (Nov. 1984) (producing for several years).

Stoughton began producing certain domestic containers made of welded steel in 2011.<sup>69</sup> Because Stoughton has been producing such containers for a relatively limited period, this factor weighs in favor of finding the domestic industry is not established.

## 2. The Nature of Domestic Production

In examining the characteristics of domestic production, the Commission has asked whether domestic production has been “modest,” continuous, or more akin to start and stop.<sup>70</sup> In previous investigations, when domestic production was “modest” or domestic production began but halted and domestic producers were not producing at the time of the Commission’s vote, the Commission has concluded that it supported finding the domestic industry was not established.<sup>71</sup> Where domestic production was continuous or even continuous and growing, the Commission has concluded that it supported finding an established domestic industry.<sup>72</sup>

Stoughton produced \*\*\* units in 2011, \*\*\* units in 2012, \*\*\* units in the first quarter of 2013, and nothing since then.<sup>73</sup> Stoughton reported \*\*\*.<sup>74</sup> Such intermittent production operations favor finding the domestic industry is not established.

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<sup>69</sup> CR at III-3; PR at III-2.

<sup>70</sup> See, e.g., *Laminated Woven Sacks (Final)*, USITC Pub. 4025 at 24 (considering the specific circumstances of individual producers as well as the circumstances of domestic producers as a whole); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan*, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 at 18-19 (Aug. 1991) (conducting inquiry on an industry-wide basis).

<sup>71</sup> See, e.g., *Benzyl Paraben*, USITC Pub. 2355 at 9-10 (petitioner produced for 15 months, shut down production, resumed production but shut down less than a year later and supplied the U.S. market out of inventory); *Copier Toner*, USITC Pub. 1960 at 9 n.24 (domestic production was “modest”); *Codfish*, USITC Pub. 1711 at 4-5 & n.8, *aff’d*, BMT, 667 F. Supp. 880, *aff’d*, 852 F.2d 1285, *cert. denied*, 1009 U.S. 1120 (domestic producer began production in late 1982 but suspended operations in November 1984 with the intent to reopen the plant in summer 1985 pending conclusion of negotiations with the FDIC concerning certain loans from an eventually bankrupt bank and the receipt of additional financing from another source).

<sup>72</sup> See, e.g., *Laminated Woven Sacks (Final)*, USITC Pub. 4025 at 22-24 (domestic producers as a whole had been continuously supplying the U.S. market throughout the period of investigation and since mid-2003, even if some reported intermittent or suspended production operations); *Wheel Inserts*, USITC Pub. 2824 (Oct. 1994) (steady production throughout the period of investigation by at least three producers and since the late 1980s by at least two producers); *Gene Amplification Thermal Cyclers*, USITC Pub. 2412 (steady and substantial increases in domestic production capacity and production); *Flat Panels*, USITC Pub. 2413 at 18-19 (steady rather than start-up production); *Salmon*, USITC Pub. 2272 at 16-18 (substantial U.S. shipments); *PVC Battery Covers*, USITC Pub. 2265 at 12 (production was increasing).

<sup>73</sup> CR/PR at Table III-3.

<sup>74</sup> CR/PR at Table III-2; Confer. Tr. at 21 (Wahlin).



### 3. The Scale of Domestic Operations

The Commission has sometimes considered the scale of domestic operations, with larger operation levels generally supporting a finding that the domestic industry was established<sup>75</sup> and lower operation levels sometimes suggesting the domestic industry was not established.<sup>76</sup> In one instance, the Commission found the domestic industry was established where the domestic producers' market share was "relatively stable."<sup>77</sup> As the Commission has previously noted, depending on the facts, factors such as production as a share of the total market, shipments as a share of the total market, capacity compared to the total market, or even the share of the customer base to which domestic producers have made sales may yield different results. For example, domestic producers might be producing large quantities but shipping little, shipping little relative to the total market but shipping at least some volume to each of the major customers, or possessing large capacity relative to the total market but using little of it.<sup>78</sup>

Stoughton produced \*\*\* domestic containers in 2011, \*\*\* units in 2011, and \*\*\* units in 2013,<sup>79</sup> and it operated at a capacity utilization of \*\*\* percent in 2011, \*\*\* percent in 2012, and \*\*\* percent in 2013.<sup>80</sup> Based on U.S. shipments of \*\*\* units in 2011, \*\*\* units in 2012, and \*\*\* units in 2013,<sup>81</sup> Stoughton's share of apparent U.S. consumption was \*\*\* percent in 2011, \*\*\* percent in 2012, and \*\*\* percent in 2013.<sup>82</sup> Based on the relatively small scale of Stoughton's operations, this factor favors finding the domestic industry is not established.

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<sup>75</sup> See, e.g., *Gene Amplification Thermal Cyclers*, USITC Pub. 2412 (domestic industry established where, among other factors, the vast majority of the U.S. market was supplied by the domestic industry); *Certain All-Terrain Vehicles from Japan*, Inv. No. 731-TA-388 (Preliminary), USITC Pub. 2071 at A-15 (Mar. 1988) (industry established because, *inter alia*, domestic producers had achieved significant and increasing U.S. market share). *But see Benzyl Paraben from Japan*, USITC Pub. 2355 at 10 (industry not established even though firm had been increasing its market share, not finding market share to be particularly indicative of establishment given the small number of purchasers and findings on other factors).

<sup>76</sup> See, e.g., *Copier Toner*, USITC Pub. 1960 at 9 n.24 (not finding established industry where, *inter alia*, domestic production was small relative to the market as a whole). *But see Flat Panels*, USITC Pub. 2413 at 18-19 (finding established industry despite finding that domestic production accounted for "at least some" if only a "small" share of total U.S. market); *Salmon*, USITC Pub. 2272 at 17 (finding established industry despite low domestic market share).

<sup>77</sup> See, e.g., *Laminated Woven Sacks (Final)*, USITC Pub. 4025 at 25-26 (finding relative capacity to be relevant but not determinative and that this factor favored finding an established industry where domestic producers clearly increased production capacity, production, and U.S. shipments); *Wheel Inserts*, USITC Pub. 2824 (finding established industry where, *inter alia*, domestic producers had relatively stable U.S. market share).

<sup>78</sup> See, e.g., *Laminated Woven Sacks (Final)*, USITC Pub. 4025 at 24-25.

<sup>79</sup> Petitions, Vol. I at 3; Confer. Tr. at 20 (Wahlin); CR/PR at Table III-3.

<sup>80</sup> CR/PR at Table III-3.

<sup>81</sup> CR/PR at Table III-4.

<sup>82</sup> CR/PR at Table IV-3.

#### 4. Whether the Proposed Domestic Industry Has Reached a Reasonable Financial “Break-Even” Point

In deciding whether the proposed domestic industry is already established, the Commission has also examined whether the proposed domestic industry has reached a reasonable financial “break-even” point. In some previous cases, the Commission examined whether total revenues and total expenses are equal. Where possible, the Commission has calculated a break-even point by dividing total fixed costs and expenses by the unit contribution margin (which is equal to the unit sales price minus the unit variable cost).<sup>83</sup> In cases where domestic producers as a whole have not reached a reasonable break-even point, the Commission has generally found the domestic industry was not established.<sup>84</sup> Where it has found that domestic producers as a whole had reached a reasonable break-even point, the Commission has found this factor favored finding the domestic industry to be established.<sup>85</sup> In *Laminated Woven Sacks*, the Commission examined domestic producers’ plans, assumptions, and expectations when they undertook their operations, and it also conducted a break-even analysis on a retrospective basis using its standard break-even formula, the results of which were consistent with some of the prospective analyses that individual domestic producers had prepared.<sup>86</sup>

Based on the available information, Stoughton began considering resuming production of containers after being contacted by purchasers seeking a domestic supplier in 2009.<sup>87</sup> After receiving a substantial order for certain domestic containers, Stoughton began transforming its

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<sup>83</sup> See, e.g., *Benzyl Paraben*, USITC Pub. 2355 at 10.

<sup>84</sup> See, e.g., *Benzyl Paraben*, USITC Pub. 2355 at 10 (industry not established where, *inter alia*, firm did not reach reasonable break-even point during the latest period for which the Commission had data (interim 1990)); *Codfish*, USITC Pub. 1711 at 5, *aff’d*, *BMT*, 667 F. Supp. 880, *aff’d*, 852 F.2d 1285, *cert. denied*, 1009 U.S. 1120 (industry not established, company did not reach break-even point).

<sup>85</sup> See, e.g., *Wheel Inserts*, USITC Pub. 2824 (industry established where, *inter alia*, producers as a whole had passed the break-even point and reached profitability during the period of investigation; they were able to cover fixed and variable costs); *Gene Amplification Thermal Cyclers*, USITC Pub. 2412 (industry established where, *inter alia*, an overwhelming majority of domestic producers already had reached a break-even point); *Salmon*, USITC Pub. 2272 at 16-18 (industry established where, *inter alia*, by 1988 a portion of the domestic producers had achieved profitability and another firm showed improvement from 1987 to 1988, even though there were no sustained profits for producers as a whole). *But see, e.g., Flat Panels*, USITC Pub. 2413 at 18-19 (finding established industry without explicitly conducting a break-even analysis); *PVC Battery Covers*, USITC Pub. 2265 at 12 (finding established industry without explicitly conducting a break-even analysis).

<sup>86</sup> See, e.g., *Laminated Woven Sacks from China*, Invs. Nos. 701-TA-450 and 731-TA-1122 (Final), USITC Pub. 4025 at 26-27 (Jul. 2008) (finding this factor suggested that the domestic industry was not established where domestic producers had conducted market research, talked to prospective customers, set goals, and developed strategies for entering the market but as a whole experienced operating losses, albeit lower operating losses than reflected in the record of the preliminary phase of the investigations).

<sup>87</sup> CR at VI-4 to VI-5 & n.5; PR at VI-2; Petitions, Vol. I at 27; Confer. Tr. at 30 (Fenton).

production facility.<sup>88</sup> Regardless of whether Stoughton's projections were reasonable, a fact that the parties dispute,<sup>89</sup> the firm has not achieved a reasonable break-even point during the POI.<sup>90</sup> Thus, the available evidence regarding this factor appears to favor finding that the domestic industry is not established.

##### **5. Whether the Start-up Production Is More in the Nature of the Introduction of a New Product Line by an Already Established Business**

In assessing whether a proposed domestic industry is already established, the Commission has also examined whether the start-up production is more in the nature of the introduction of a new product line by an already established business. The Commission's examination of this factor has focused on whether the introduction of this product was aided by the domestic producers' other existing products. Where the Commission has found the start-up production to be akin to the introduction of a new product line by an already established business, it has generally found the domestic industry was established.<sup>91</sup> In some

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<sup>88</sup> Stoughton disassembled its prior production line and had to rebuild by adding new equipment and changing its production processes to reflect a new design and raw material changes; it also needed to provide new training to develop the skills needed to manufacture a "vastly different product." Confer. Tr. at 29-31, 79-80 (Fenton); Petitions, Vol. I at 27-33, Exhibit I-10 to I-12; Petitioner's Postconference Brief at Exhibits 15-16, 30-32; CR at III-3, III-9 to III-10, VI-5 to VI-6; PR at III-2, III-4 to III-5, VI-2.

<sup>89</sup> See, e.g., Petitioner's Postconference Brief at 30-33, Exhibits 15-16, 30-32; CIMC/Singamas Postconference Brief at 14-15, 18-19, Confer. Tr. at 178 (Morgan).

<sup>90</sup> CR at VI-4 to VI-5; PR at VI-2. Based on a standard break-even formula (total fixed costs divided by per-unit sales price minus per-unit variable costs), Stoughton's break-even volumes would be \*\*\*. CR at VI-5; PR at VI-2.

<sup>91</sup> See, e.g., *Wheel Inserts*, USITC Pub. 2824 (established industry where, *inter alia*, wheel inserts were produced as just one of several product lines of established firms); *Gene Amplification Thermal Cyclers*, USITC Pub. 2412 (established industry; this was a new product for some established firms but a new product made by some newly formed firms); *Battery PVC Covers*, USITC Pub. 2265 at 13 (finding pressure-sensitive battery covers were merely a new product line of an established firm that had been producing labels for 76 years); *Lime Oil*, USITC Pub. 1723 at 8 n.19 (noting in *dicta* that it would have found distilled lime oil to be an established industry because, *inter alia*, "unlike a new entrant, petitioner has been in the business of selling lime oil for years and could use existing customer contacts and distribution infrastructure in introducing distilled lime oil. Rather than establishing an industry, petitioner was introducing a new product line which has established a stable presence in the market."); *Neoprene Laminate*, USITC Pub. 1608 at 8 nn.24-26 (majority finding R-131 neoprene merely constituted a change in the product line of the established fabric and expanded neoprene laminate industry, but Commissioner Stern finding that "{w}hether or not the company embarking upon production of the new product is new or well-established, the statute requires the Commission to define the industry according to specific like products, not in the general business sense."). But see, e.g., *Benzyl Paraben*, USITC Pub. 2355 at 11 (even though petitioner was an established firm, its benzyl paraben operations did not appear to have derived a benefit from its other arguably "established" operations); *Copier Toner*, USITC Pub. 1960 at 9 n.24 (not discussing this factor but determining that the electrically resistive

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cases where, *inter alia*, the start-up production was entirely by new firms that did not already manufacture other products, the Commission has still found the domestic industry was established.<sup>92</sup> While this factor may not be dispositive on the issue of establishment, the Commission has found that it raises considerations that at least help to put the inquiry into context. For example, to the extent that domestic producers already possess some of the equipment, employees, expertise, distribution systems, customer bases, and/or other components needed to produce and distribute the products and are able to leverage these assets for purposes of their new operations, this factor would lend some support to a finding that the domestic industry is established.<sup>93</sup>

Founded in 1961, Stoughton began as a manufacturer of truck bodies, then expanded its production lines to include semitrailers, over-the-road vans, flatbed trailers, and chassis.<sup>94</sup> Stoughton appears to suggest that the firm benefitted from its prior containers operations and/or its operations on other products when it reports that purchasers began approaching Stoughton in 2009 in search of a U.S. supplier of certain domestic containers.<sup>95</sup> In contrast, the parties agree that Stoughton's prior production operations are relatively distant in time from and involved a different product (mechanically assembled aluminum containers) than its current operations.<sup>96</sup> Although the evidence is mixed on this issue, overall it appears to favor finding the domestic industry is established.

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monocomponent toner ("ERMT") industry was "nascent" even though the ERMT producers manufactured other toners as well); *Codfish*, USITC Pub. 1711, *aff'd*, BMT, 667 F. Supp. 880, *aff'd*, 852 1285, *cert. denied*, 1009 U.S. 1120 (even though petitioner was also producing other dried salted fish such as pollock or hake, that did not prevent finding the industry was not established).

<sup>92</sup> See, e.g., *Flat Panels*, USITC Pub. 2413 at 18-19 (finding established industry even though most domestic producers were dedicated to manufacturing this product).

<sup>93</sup> *Laminated Woven Sacks (Final)*, USITC Pub. 4025 at 28-29 (this factor favored finding established industry where at least for some domestic producers, there was some overlap in the production equipment and employees used to produce laminated woven sacks and other products, and at least some domestic producers were able to leverage, at least to some degree, their existing customer lists and distribution systems).

<sup>94</sup> Petitions, Vol. I at 2; Confer. Tr. at 16 (reporting current production of over-the-road vans, grain trailers, converter dollies, domestic dry containers, and chassis) (Wahlin).

<sup>95</sup> Confer. Tr. at 29-30 (Wahlin).

<sup>96</sup> Stoughton switched its container production design and process from an aluminum mechanically fastened method to a steel-welded construction method, disassembled its prior production line, had to rebuild by adding new equipment and changing its production processes to reflect a new design and raw material changes, and continued to make engineering improvements thereafter. Confer. Tr. at 28-32, 79-80, 95-97 (Fenton); Petitioners' Postconference Brief at Exhibits 15-16; CR at VI-5; PR at VI-3 (noting that Stoughton made \$\*\*\* in capital expenditures \*\*\*). Stoughton released many of the employees it previously engaged in manufacturing aluminum containers when it ceased producing that product in 2006. Since resuming operations in 2011, Stoughton has been able to use some of its employees that manufacture trailers for its certain domestic container facility, but those employees needed additional training in the welding, assembly, or industrial skills associated with "a

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## 6. Conclusion

The statute, legislative history, and case law provide little guidance regarding material retardation issues and factors the Commission should consider when analyzing the establishment of an industry. Focusing solely on events since 2011,<sup>97</sup> all but the fifth factor pertaining to “new product line of an existing business” favor finding that the domestic industry is not established, which is consistent with what the parties argued. Based on the current record, and absent any contrary argument, we find for purposes of these preliminary determinations that the domestic industry is not established, although we intend to revisit this issue in any final phase investigations.

## V. Whether There is a Reasonable Indication that the Establishment of a Domestic Industry Has Been Materially Retarded by Reason of Subject Imports<sup>98</sup>

In the preliminary phase of antidumping and countervailing duty investigations, the Commission determines whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of the imports under investigation.<sup>99</sup> In prior investigations where the Commission has determined that a domestic industry was not established, the Commission then has examined whether the establishment of the domestic industry was materially retarded by reason of subject imports.<sup>100</sup> The Commission

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vastly different product,” certain domestic containers. Confer. Tr. at 96-97 (Wahlin); Petitioner’s Postconference Brief at Exhibit 16.

<sup>97</sup> In any final phase investigations, we will also consider any party arguments concerning the relevance of production-related activities prior to 2011.

<sup>98</sup> Section 771(24) of the Tariff Act, which defines “negligibility,” provides that imports from a subject country that are less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petitions or self-initiation, as the case may be, shall be deemed negligible. 19 U.S.C. § 1677(24)(A)(i). There were no reported imports of certain domestic containers from nonsubject countries during the POI. CR at IV-1, VII-8; PR at IV-1, VII-5; CR/PR at Table IV-2; Confer. Tr. at 134-35 (Morgan, Delozier, Cerny, Drella, Dean); CIMC/Singamas Postconf. Brief at Exh. 1 at 11. Because imports from China accounted for 100 percent of total imports of certain domestic containers in the most recent period, CR at IV-6; PR at IV-3; CR/PR at Table IV-2, subject imports from China are not negligible.

<sup>99</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>100</sup> See, e.g., *Laminated Woven Sacks (Preliminary)*, USITC Pub. 3942 at 23-32 (in preliminary phase of investigations finding industry not yet established where several firms began producing relatively recently, domestic producers as a whole had not achieved break-even status based on a retrospective analysis, even though domestic production and shipments were relatively small but not insignificant, capacity was large relative to entire market, and there was some overlap in employees, production equipment, customers, and distribution systems between laminated woven sacks and other products); *Benzyl Paraben*, USITC Pub. 2355 at 9, 14 (industry not yet established where domestic

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has previously stated that, because each attempt to establish a new industry is inherently unique, it makes its determination of whether the establishment of an industry is materially retarded on a case-by-case basis.<sup>101</sup> The Commission has framed its inquiry as whether the industry's performance "reflects merely the normal start-up condition of a company entering an admittedly difficult market or, is the performance worse than what could reasonably be expected ... ." <sup>102</sup>

The factors that the Commission has examined in assessing whether the establishment of a domestic industry is materially retarded by reason of subject imports have included many of the same factors it considers in its material injury determinations: domestic production, shipments, capacity utilization, inventories, financial condition, employment, projected performance compared to actual performance, and other market conditions.<sup>103</sup>

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

The following conditions of competition inform our analysis of whether there is a reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject imports from China.

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producers had intermittent production) (affirmative material retardation case); *Copier Toner*, USITC Pub. 1960 at 9-10 (industry not yet established where domestic production was modest) (negative material retardation case); *Codfish*, USITC Pub. 1711 at 4, *aff'd*, *BMT*, 667 F. Supp. 880, *aff'd*, 852 F.2d 1285, *cert. denied*, 1009 U.S. 1120 (industry not yet established where domestic producers had ceased production) (affirmative material retardation case); *Commuter Airplanes*, USITC Pub. 1269 at 8 (domestic industry, which had not yet begun production, was not established) (negative material retardation case).

<sup>101</sup> See, e.g., *Laminated Woven Sacks (Preliminary)*, USITC Pub. 3942 at 32; *Codfish*, USITC Pub. 1711 at 4, *aff'd*, *BMT*, 667 F. Supp. 880, *aff'd*, 852 F.2d 1285, *cert. denied*, 1009 U.S. 1120.

<sup>102</sup> See, e.g., *Laminated Woven Sacks (Preliminary)*, USITC Pub. 3942 at 32; *Codfish*, USITC Pub. 1711 at 5, *aff'd*, *BMT*, 667 F. Supp. 880, *aff'd*, 852 F.2d 1285, *cert. denied*, 1009 U.S. 1120.

<sup>103</sup> See, e.g., *Laminated Woven Sacks (Preliminary)*, USITC Pub. 3942 at 32; *Benzyl Paraben*, USITC Pub. 2355 at 9, 14; *Copier Toner*, USITC Pub. 1960; *Codfish*, USITC Pub. 1711 at 4, *aff'd*, *BMT*, 667 F. Supp. 880, *aff'd*, 852 F.2d 1285, *cert. denied*, 1009 U.S. 1120; *Commuter Airplanes*, USITC Pub. 1269 at 8 (negative material retardation case) (finding any difficulties were not due to subject imports but rather to petitioner's failure to make sufficient marketing efforts such as providing detailed product specifications to prospective customers, who were unwilling to proceed with financing negotiations, let alone commit to purchase product).

Sometimes, the Commission has examined documents prepared by firms at their inception to gauge whether they had achieved a reasonable level of operations. See, e.g., *Copier Toner*, USITC Pub. 1960 at 9-10 (negative material retardation case) (finding better industry performance than what could be expected (increasing U.S. shipments, stable production, steady financial performance improvements, and signs of new entrants) and that the business plan for higher market share was unrealistic given the absence at the time of an extensive national distribution network); *Codfish*, USITC Pub. 1711 at 4, *aff'd*, *BMT*, 667 F. Supp. 880, *aff'd*, 852 F.2d 1285, *cert. denied*, 1009 U.S. 1120 (affirmative material retardation case) (looking at a market and feasibility study prepared at inception of operations).

## 1. Demand Conditions

The parties generally agree about demand conditions. In recent years, shippers of goods within North America have gravitated away from over-the-road transportation to intermodal transportation.<sup>104</sup> Intermodal movement of dry goods using certain domestic containers, where the longest portion of the movement occurs by rail, is increasingly favored over truck-only over-the-road transportation, because intermodal transportation is less sensitive to fuel cost spikes, traffic conditions, and driver shortages, and railroads have improved schedule reliability.<sup>105</sup> In turn, containers are favored over trailers for the rail portion of the transit to take advantage of the ability to double-stack the containers on the flat car.<sup>106</sup>

Demand for certain domestic containers is derived from the demand for intermodal shipping, which in turn is related to general economic activity, a transition from other forms of shipping to intermodal for efficiency reasons, the need to replace retired containers reaching their 15-year average useful life, and capital availability to purchase containers.<sup>107</sup> Questionnaire respondents reported some seasonality in purchasing behavior.<sup>108</sup>

Only a very few purchasers account for the overwhelming majority of purchases in this industry, and these firms are the end users of the certain domestic containers.<sup>109</sup> The four purchasers participating in the staff conference (J.B. Hunt, Hub Group, Schneider, and Norfolk Southern) estimated they account for about 70 percent of purchases in the U.S. market based on industry publications included in the petitions.<sup>110</sup>

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<sup>104</sup> J.B. Hunt's Postconference Brief at 3; Petitioner's Postconference Brief at Exhibit 34-38, 40-44; CR at II-9; PR at II-5 to II-6.

<sup>105</sup> J.B. Hunt's Postconference Brief at 3-4; Petitioner's Postconference Brief at Exhibit 34-38, 40-44; Confer. Tr. at 55 (Wahlin), 139, 151 (Drella); CR at II-1, II-9 to II-10; PR at II-1, II-6.

<sup>106</sup> Confer. Tr. at 104 (Delozier), 152-53 (Whitehead); Petitioner's Postconference Brief at Exhibit 34-38, 40-44. During the 1990s and early 2000s, respondents reported that railroads had some surplus capacity, so there was space for TOFCs, but as roads became more congested and railroads aggressively took action to modify their routes to permit double-stacked COFCs that could carry greater volumes of cargo in a higher but shorter space, trailers became less attractive compared to certain domestic containers. Confer. Tr. at 138-42, 182-85 (Dean, Delozier, Drella, Cerny).

<sup>107</sup> CR at II-2, II-10; PR at II-1, II-6.

<sup>108</sup> Stoughton reported that demand for certain domestic containers usually \*\*\* from March to October. \*\*\* responding importers reported that containers are generally ordered for arrival in the August to November timeframe corresponding with the peak shipping season. CR at II-10; PR at II-6.

<sup>109</sup> CIMC/Singamas Postconference Brief at 3, 12; CR at II-1; PR at II-1.

<sup>110</sup> Confer. Tr. at 102 (Morgan); CIMC/Singamas Postconference Brief at 3-4, 12-13 (citing Petitions, Vol. I at Exhibit I-13). The other leading purchasers are CSX Corporation ("CSX"); C.H. Robinson; Swift Transportation, Inc.; and Union Pacific Railroad ("UPRR"). Collectively, these eight purchasers reportedly account for almost 95 percent of purchases in the U.S. market. Confer. Tr. at 188-89 (Morgan, Cerny); Petitioner's Postconference Brief at Exhibit 37; CIMC/Singamas Postconference Brief at 12-13, Response to Staff Question 12; CR at II-1; PR at II-1.

Most firms reported that demand for certain domestic containers fluctuated during the POI.<sup>111</sup> Apparent U.S. consumption declined from \*\*\* units in 2011 to \*\*\* units in 2012 and then to \*\*\* units in 2013.<sup>112</sup> Although there was some pent-up demand that explained higher purchase volumes at the beginning of the POI, the parties projected demand for certain domestic containers would increase moderately.<sup>113</sup>

## 2. Supply Conditions

Except as noted, the parties also agree about many of the supply conditions.

Before 2005, the U.S. market for 53-foot intermodal dry goods containers was served primarily by mechanically assembled lightweight aluminum plate intermodal containers, predominantly supplied by U.S. producers.<sup>114</sup> U.S. producers Stoughton and Wabash National Corporation made some innovations to these products, with Wabash offering stackable containers<sup>115</sup> and both firms offering containers with a wider interior of more than 100 inches during 2004 to 2005.<sup>116</sup> In 2005, CIMC, Singamas, and Shanghai C & Jindo Container Co., Ltd. (“Jindo”) introduced into the U.S. market light-weight, fully welded steel containers made in China that complied with exterior-width restrictions, had greater interior widths due to thin but durable walls, and could withstand double-stacking on rail cars. According to respondents, these welded steel products imported from China provided a longer useful life with fewer leakage problems and resultant damage claims than the then-available mechanically assembled containers whose holes from bolts and rivets provided water entry points over time.<sup>117</sup>

Stoughton idled its aluminum containers manufacturing facility in 2006 and shuttered it in 2007 after finding its product was no longer competitive with the imported product from

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<sup>111</sup> CR at II-11; PR at II-7; CR/PR at Table II-1.

<sup>112</sup> Apparent U.S. consumption of \*\*\* units during the first quarter of (“interim”) 2014 exceeded the \*\*\* units during interim 2013. CR/PR at Table IV-3.

<sup>113</sup> Confer. Tr. at 50 (Wahlin), 123-24 (Dean), 135-37 (Drella), 137-38 (Delozier), 151 (Drella); Petitioner’s Postconference Brief at 22, Exhibit 34-38, 40-44; CIMC/Singamas Postconference Brief at 13, Response to Staff Question 12; CR at II-1; PR at II-1.

<sup>114</sup> Confer. Tr. at 104 (Delozier); J.B. Hunt’s Postconference Brief at 4 (noting predominance between 1993 and 1998 of U.S. manufacturers Stoughton, Pines Trailer Corporation, Monon Trailer Corporation, Great Dane Trailers, and Hyundai Translead).

<sup>115</sup> Between 2000 and 2004, Wabash sold mechanically assembled DuraPlate containers manufactured from two thin layers of steel plate that were bonded to a middle core of formed plastic to form a product that was heavier and smaller than the aluminum containers but that could be double-stacked on a rail well car. J.B. Hunt’s Postconference Brief at 5; Confer. Tr. at 92 (Wahlin) (noting that to his knowledge, Wabash was not involved in manufacturing containers for intermodal transport), 105 (Delozier). Hub also reported that in the early 2000s, it closely monitored Pacer Stacktrain’s efforts to develop a domestic light-weight steel container. Confer. Tr. at 112 (Cerny).

<sup>116</sup> Confer. Tr. at 181 (Cerny).

<sup>117</sup> J.B. Hunt’s Postconference Brief at 4-6; CIMC/Singamas Postconference Brief at 2-3; Confer. Tr. at 104-09 (Delozier), 112-116 (Cerny), 122-25 (Dean), 126-29 (Drella), 167-68 (Drella), 168 (Delozier).



China. Other U.S. firms also stopped manufacturing domestic containers at some point prior to 2009.<sup>118</sup>

In 2009, U.S. rail and truck carriers and lessees approached Stoughton in search of a U.S. source of domestic containers.<sup>119</sup> After reconfiguring its plant,<sup>120</sup> Stoughton began production of welded steel certain domestic containers in 2011, and it is the only U.S. firm that manufactured certain domestic containers during the POI.<sup>121</sup>

Another U.S. firm, American Intermodal Container Manufacturing (“AICM”), reportedly intends to enter the U.S. market with a fully welded certain domestic container and expects \*\*\*.<sup>122</sup> According to respondents, AICM intends to sell fully welded certain domestic containers in the United States, and some purchasers have already been in contact with AICM.<sup>123</sup>

The parties agree that there are only two foreign suppliers of certain domestic containers (CIMC and Singamas), both of which are based in China, and no producers in any nonsubject country.<sup>124</sup> The two producers, CIMC and Singamas, accounted for \*\*\* and \*\*\* percent of certain domestic containers production in China, respectively, during the POI.<sup>125</sup>

### 3. Substitutability/Quality Issues<sup>126</sup>

Purchasers expect certain domestic containers to have an average lifespan of about 15 years.<sup>127</sup> Whereas the parties agree that certain domestic containers made in the United States and China are used for the same general purpose of intermodal transportation of dry cargo, they disagree as to whether the products are substitutable.<sup>128</sup> The record suggests that

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<sup>118</sup> Petitions, Vol. I at 2-3; Confer. Tr. at 20 (Wahlin), 115 (Cerny). \*\*\*. Wabash supplemental trailer producer questionnaire response.

<sup>119</sup> Confer. Tr. at 20 (Wahlin).

<sup>120</sup> Confer. Tr. at 28-32, 79-80, 95-97 (Fenton); Petitioner’s Postconference Brief at Exhibit 15; CR at VI-5; PR at VI-2.

<sup>121</sup> Confer. Tr. at 8, 88-89 (Levin, Wahlin); Petitioner’s Postconference Brief at Exhibit 16.

<sup>122</sup> Staff telephone interview with \*\*\* (May 15, 2014); CR at III-4 to III-6; PR at III-2 to III-3; J.B. Hunt Postconference Brief at 11; Confer. Transcript at 88-89 (Wahlin, Levin), 110-11 (Delozier), 125 (Dean).

<sup>123</sup> J.B. Hunt Postconference Brief at 11; Confer. Tr. at 110-11 (Delozier), 125 (Dean). We intend to collect further information about AICM’s operations in any final phase of these investigations.

<sup>124</sup> CIMC/Singamas Postconference Brief at 12; CR at VII-8; PR at VII-5; Confer. Tr. at 11-12 (Morgan), 10 (Levin), 134-35 (Morgan, Delozier, Cerny, Drella, Dean), 207 (Morgan). The petitions identified a third potential producer of certain domestic containers in China, but Jindo reportedly did not produce domestic containers during the POI. CR at VII-3 n.3; PR at VII-3 n.3; Confer. Tr. at 11-12 (Morgan), 105 (Delozier).

<sup>125</sup> CR/PR at Table VII-1 (noting that the U.S. market accounted for \*\*\* percent of CIMC’s total shipments compared to \*\*\* percent for Singamas).

<sup>126</sup> Commissioners Broadbent and Kieff do not join this section or the remainder of these Views.

<sup>127</sup> Petitions, Vol. I at 7; Confer. Tr. at 110 (Delozier), 124 (Dean).

<sup>128</sup> Stoughton reported that certain domestic containers made in the United States and China are \*\*\* interchangeable, whereas \*\*\* U.S. importers reported that these products are \*\*\* (Continued...)

manufacturers in China and the United States produce certain domestic containers that meet the Association of American Railroads standards, but the parties disagree about the significance of product characteristics such as interior width dimensions and the method of assembly. These standards permit more than one interior dimension and do not specify the assembly method, such as whether the container must be fully welded or may be assembled using mechanical fasteners.<sup>129</sup>

During the POI, Stoughton produced and sold two generations of certain domestic containers, both of which have an interior width of 99 inches and several points of connection that are accomplished using mechanical fasteners.<sup>130</sup> Specifically, in 2011, Stoughton introduced its generation I certain domestic containers into the U.S. market after receiving a substantial order for 1,525 units of the product from Norfolk Southern.<sup>131</sup> Norfolk Southern reported ultimately reducing the order to 200 units after Stoughton was unable to deliver the required quantities on schedule and after Norfolk Southern discovered quality and design issues with the side panels of the containers.<sup>132</sup> Stoughton acknowledged that there were design issues with the initial production, and repaired the containers by adding reinforcing material.<sup>133</sup> In its generation II certain domestic containers, Stoughton made engineering improvements to the design in order to respond to issues associated with its generation I certain domestic containers.<sup>134</sup>

For its part, Stoughton argues that its products are virtually identical to certain domestic containers imported from China, and it reports that differences between the two products other than price are \*\*\* significant. Although Stoughton reports having the ability to manufacture a product that is acceptable to purchasers, it claims that the steeply discounted price of subject imports has deprived it of the opportunity to design, develop, and evolve a quality product capable of commercial-scale production.<sup>135</sup>

Responding purchasers assert that they would like to source certain domestic containers from a U.S. supplier, but they argue that various non-price reasons explain their preference for

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interchangeable and \*\*\* U.S. importer reported that they are “sometimes” interchangeable. CR at II-15; PR at II-9; CR/PR at Table II-2.

<sup>129</sup> *E.g.*, Confer. Tr. at 46, 53-54, 66-67, 70-71, 91-92 (Fenton), 113, 118 (Cerny), 129 (Drella).

<sup>130</sup> Confer. Tr. at 46-47 (Fenton); Petitioner’s Postconference Brief at 13-14.

<sup>131</sup> Confer. Tr. at 31 (Fenton), 123 (Dean).

<sup>132</sup> Confer. Tr. at 123-24 (Dean) (noting the final delivery consisted of 199 units of Stoughton’s generation I certain domestic containers and 1 unit of Stoughton’s generation II certain domestic containers).

<sup>133</sup> Confer. Tr. at 31 (Fenton), 124 (Dean).

<sup>134</sup> In 2012, Stoughton supplied one generation II certain domestic container to Norfolk Southern and \*\*\*. CR at III-8; PR at III-4; Confer. Tr. at 31-32 (Fenton), 123-24 (Dean).

<sup>135</sup> Confer. Tr. at 19, 22-23 (Wahlin); Petitioner’s Postconference Brief at 5-15; CR at II-14; PR at II-8; CR/PR at Table II-3.

imported certain domestic containers from China.<sup>136</sup> For example, purchasers state that they prefer the fully welded steel containers from the producers in China over Stoughton's product that continues to use some mechanical fasteners. Purchasers also argue that no U.S. producer meets their requirements for commercial quantities and timely delivery of a fully welded certain domestic container with an interior width greater than 100 inches and steel panels with a corrugation depth of 30 millimeters.<sup>137</sup> Moreover, they prefer the convenience of receiving containers at a port, such as Los Angeles, which is already in their network, instead of retrieving them from Stoughton's plant in Wisconsin. They further argue that purchasers of certain domestic containers benefit from lower shipping costs when their containers are loaded with third-party merchandise during transit from China to the United States, a non-price service that Stoughton does not offer.<sup>138</sup>

Due to the nature of the arguments in this proceeding, we discuss below the criteria respondents argue are important to purchasers and Stoughton's response to these arguments. We intend to examine these issues further in any final phase of these investigations.

#### **a. Methods of Fastening**

Respondents argue that purchasers require fully welded certain domestic containers that can withstand fifteen years of continuous compression tension associated with regular top lifting, loading, and unloading from the tractor chassis and rail cars while also bearing the load of other equipment sitting above and enduring the swaying, braking, and acceleration of the rail cars and tractor chassis. Based on their prior experience with mechanically fastened aluminum containers, respondents argue that any mechanical fasteners in containers that are lifted as many as nine times per month become loose over time, making mechanically assembled containers less durable and leaky as holes associated with riveting grow larger.<sup>139</sup> By

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<sup>136</sup> \*\*\* responding importers reported that differences other than price between certain domestic containers made in the United States and China were "always" significant, and they pointed to factors such as quality and design, availability of fully welded steel containers, safety and maintenance considerations, production capacity, service levels, ease of doing business, historical ability to adhere to commitments, and differences in specifications. \*\*\* U.S. importer reported that non-price factors are \*\*\* significant. CR at II-15 to II-16; PR at II-9; CR/PR at Table II-3.

<sup>137</sup> Confer. Tr. at 108, 110-11 (Delozier) (noting that the firm purchases most of its trailers domestically), 114 (Cerny), 122-23 (Dean), 129-30 (Drella); CIMC/Singamas Postconference Brief at 4, 11.

<sup>138</sup> CIMC/ Singamas Postconference Brief at 24, Exhibit 1; Confer. Tr. at 118-19 (Cerny), 154-56 (Dean, Hagen, Delozier, Drella), 169-70 (Dean), 172-73 (Drella), 179-80 (Dean). In any final phase investigations, we intend to seek further clarification about the practice of shipping the containers loaded with third-party merchandise and any effect on pricing.

<sup>139</sup> Water seepage damages the contents of the container, makes customers unhappy, creates claims for the container's owners, causes the container to be taken out of service for repairs, and shortens the container's useful life. Confer. Tr. at 105-07 (Delozier), 117-18, 121-22 (Cerny), 124-26 (Dean), 127 (Drella), 165-69 (Drella, Delozier, Cerny), 173-75 (Drella), 179-82 (Cerny, Dean); J.B. Hunt's Postconference Brief at 11-12, 16-18; CIMC/Singamas Postconference Brief at 2-3, 8-9, 17, Exhibit 1.

comparison, because rivets and bolts are not needed for fully welded containers,<sup>140</sup> respondents claim purchasers' overall leakage claims and associated costs have declined substantially after they transitioned from mechanically assembled aluminum containers to fully welded certain domestic containers imported from China, despite the fact that their overall container fleet has grown in this period.<sup>141</sup> Notwithstanding the alleged advantages of welding, respondents argue that Stoughton initially chose to introduce and continues to offer only containers that contain some mechanical fasteners, even though Stoughton asserts that it has the capability to produce a fully welded certain domestic container.<sup>142</sup>

Stoughton's representative testified that the firm "has not produced a product at this point that is fully welded. There are several points of connection that are accomplished by mechanical means rather than by welding."<sup>143</sup> Nonetheless, Stoughton considers its product to be a welded steel container, because it has reduced the number of mechanical fasteners \*\*\* compared to its prior aluminum containers. Stoughton argues that some purchasers "care more about this issue than others," but it amounts to a "perception" problem because none of the firms that stated at the conference that they required a fully welded container ever purchased (let alone field tested) Stoughton's new design.<sup>144</sup>

#### **b. Interior Width**

Respondents argue that purchasers want an interior width of 100 3/8 inches and that manufacturers in China have produced certain domestic containers that comply with regulations limiting the exterior width of certain domestic containers but that achieve a larger interior width using thinner walls. The advantage of the incremental space is that shippers can arrange one of two rows of pallets inside the container in a pinwheel fashion instead of in two uniform rows of 11 pallets, thereby fitting 25 instead of 22 pallets in the container and effectively giving the customer the cost savings of one free load every seventh container.<sup>145</sup> According to respondents, Stoughton's certain domestic containers have an interior width of 99 inches, which does not accommodate such pinwheeling.<sup>146</sup>

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<sup>140</sup> Respondents argue that repairing mechanically assembled fasteners involves replacing an entire panel, whereas repairing a welded container simply involves welding the damaged area. Confer. Tr. at 105-07 (Delozier), Slide 1 (illustrating mechanical fasteners versus welded seams), 117-18, 121-22 (Cerny), 124-26 (Dean), 127 (Drella), 165-69 (Drella, Delozier, Cerny), 173-75 (Drella), 179-82 (Cerny, Dean); J.B. Hunt's Postconference Brief at 11-12, 16-18; CIMC/Singamas Postconference Brief at 2-3, 8-9, 17, Exhibit 1.

<sup>141</sup> J.B. Hunt's Postconference Brief at 6-11; Confer. Tr. at 107-09 (Delozier); CIMC/Singamas Postconference Brief at 9-11.

<sup>142</sup> J.B. Hunt's Postconference Brief at 9; CIMC/Singamas Postconference Brief at 6-7, 10-11.

<sup>143</sup> Confer. Tr. at 46-47 (Fenton).

<sup>144</sup> Confer. Tr. at 70-71 (Fenton); Petitioner's Postconference Brief at 9-15, Exhibit 2-14.

<sup>145</sup> J.B. Hunt's Postconference Brief at 6, 12-13, 18, Exhibit 2 (showing pinwheeling configuration); Confer. Tr. at 107-08 (Delozier), 127-28 (Drella), Slide 4 (showing pinwheeling configuration); CIMC/Singamas Postconference Brief at 3, 18.

<sup>146</sup> Confer. Tr. at 107-08 (Delozier); CIMC/Singamas Postconference Brief at 18.

Stoughton agrees that the availability of greater-width containers is important to some customers.<sup>147</sup> Whereas Stoughton previously manufactured containers with a wider interior and has designed a wider-interior steel certain domestic container, it acknowledges that to date, it has not produced a welded steel certain domestic container with an interior width of over 100 inches.<sup>148</sup>

#### 4. Other

Raw materials account for approximately \*\*\* of the cost of goods sold (“COGS”) to manufacture certain domestic containers, with carbon steel accounting for the largest share of all costs (\*\*\* percent)<sup>149</sup> and wood flooring (\*\*\* percent), paint (\*\*\* percent), door assemblies (\*\*\* percent), and other components (\*\*\* percent), accounting for the balance.<sup>150</sup>

According to questionnaire respondents, transaction prices for certain domestic containers result from bid competition or direct quotations to end users. \*\*\* U.S. importers that are end users (\*\*\*) reported using a bidding process for \*\*\* of their purchases, whereas U.S. importer \*\*\* reported that it does not use a bidding process for its purchases. Of the \*\*\* end users that were not importers of record (\*\*\*), \*\*\* reported that they use a bid process for their purchases.<sup>151</sup> When issuing requests for quotations (“RFQs”), end users sometimes differentiate between loaded (*i.e.*, laden) and empty containers when purchasing from manufacturers in China.<sup>152</sup> Those \*\*\*.<sup>153</sup>

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<sup>147</sup> Confer. Tr. at 47 (Fenton).

<sup>148</sup> Confer. Tr. at 47, 66-69, 88 (Fenton).

<sup>149</sup> Rolled steel, steel I-beams, and steel castings are among the various steel forms used to manufacture certain domestic containers. CR at V-1; PR at V-1. Hot-rolled steel prices declined on average by 17 percent between January 1, 2011 and December 13, 2013 and increased by 4 percent in the first quarter of 2014. CR at V-1; PR at V-1; CR/PR at Figure V-1.

<sup>150</sup> CR at V-1; PR at V-1.

<sup>151</sup> CR at V-3; PR at V-2.

<sup>152</sup> In some instances, certain domestic containers are shipped from China loaded with unrelated goods, and the revenue from providing that service reportedly offsets the shipping costs of the containers for the importer. CR at V-3; PR at V-2.

<sup>153</sup> CR at V-9; PR at V-5.

**B. Reasonable Indication that the Establishment of a Domestic Industry is Materially Retarded by Reason of Subject Imports from China<sup>154</sup>**

Stoughton manufactured small quantities of certain domestic containers during the POI relative to both subject imports and the total U.S. market. Stoughton produced \*\*\* certain domestic containers in 2011, \*\*\* units in 2012, and \*\*\* units in 2013<sup>155</sup> and operated at a capacity utilization of \*\*\* percent in 2011, \*\*\* percent in 2012, and \*\*\* percent in 2013.<sup>156</sup> The firm reported \*\*\*.<sup>157</sup> Stoughton reports that its \*\*\* investment in the dedicated production facility in Evansville currently sits all but idle.<sup>158</sup> The firm's employment indicators during 2011 to 2013 are generally consistent with its limited production operations during the POI.<sup>159</sup>

Based on its U.S. shipments of \*\*\* units in 2011, \*\*\* units in 2012, and \*\*\* units in 2013,<sup>160</sup> Stoughton's share of apparent U.S. consumption was \*\*\* percent in 2011, \*\*\* percent in 2012, and \*\*\* percent in 2013.<sup>161</sup> Given the absence of any nonsubject imports, subject imports from China accounted for the vast majority of the U.S. market during this period.<sup>162</sup>

Between 2011 and 2013, available data suggest that Stoughton was able to cover \*\*\*.<sup>163</sup> Thus, as discussed above, Stoughton did not reach a break-even point during the POI.<sup>164</sup> Stoughton reported \*\*\* operating income in \*\*\*.<sup>165</sup> On a per-unit basis, Stoughton's gross and operating losses in 2012 were smaller than in 2011 as its per-unit revenue increased by \$\*\*\*

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<sup>154</sup> Commerce initiated an investigation based on an estimated antidumping duty margin of 84.07 percent for imports of certain domestic containers from China, and it initiated countervailing duty investigations of two preferential loan and interest programs; three programs involving the government provision of goods and services for less than adequate remuneration; two grant programs; and two tax benefit programs. 79 Fed. Reg. 28674 (May 19, 2014); 79 Fed. Reg. 28679; CR at I-5 to I-6; PR at I-4 to I-5.

<sup>155</sup> Petitions, Vol. I at 3; Confer. Tr. at 20 (Wahlin); CR/PR at Table III-3.

<sup>156</sup> CR/PR at Table III-3.

<sup>157</sup> CR/PR at Table III-2.

<sup>158</sup> Petitions, Vol. I at 3.

<sup>159</sup> The firm reported relatively low and overall declining levels of production related workers, total hours worked, and wages paid. Unit labor costs \*\*\*. CR/PR at Tables III-4, III-6; CR at III-10 to III-11; PR at III-4 to III-5 (noting Stoughton's explanation \*\*\* in interim 2014 than in interim 2013).

<sup>160</sup> CR/PR at Table III-4. Stoughton \*\*\* exports during the POI. CR/PR at Table III-4.

<sup>161</sup> CR/PR at Table IV-3.

<sup>162</sup> U.S. imports of certain domestic containers from China were \*\*\* units in 2011, \*\*\* units in 2012, \*\*\* units in 2013, \*\*\* units in interim 2013, and \*\*\* units in interim 2014. CR/PR at Table IV-3.

<sup>163</sup> Between 2011 and 2013, Stoughton's coverage of its fixed costs \*\*\*. CR at VI-4; PR at VI-2.

<sup>164</sup> Stoughton reported capital expenditures and research and development expenses \*\*\*. CR/PR at Table VI-2. As a consequence of subject imports from China, Stoughton reported \*\*\*, and it anticipated \*\*\*. CR at VI-7; PR at VI-3.

<sup>165</sup> Stoughton's operating \*\*\* were \$\*\*\* in 2011, \$\*\*\* in 2012, \$\*\*\* in 2013, and \$\*\*\* in interim 2013, and its operating \*\*\* as a share of net sales was \*\*\* percent in 2011, \*\*\* percent in 2012, \*\*\* percent in 2013, and \*\*\* percent in interim 2013. CR at VI-1; PR at VI-1; CR/PR at Table VI-1.

and its per-unit costs declined by \$\*\*\*, but in 2013, Stoughton's gross and operating losses were greater than in 2012 as its per-unit costs increased by \$\*\*\*, more than its per-unit revenue increase of \$\*\*\*.<sup>166</sup>

There are a limited number of purchasers of certain domestic containers, and they typically place orders for large quantities of the product one to two times per year, rather than on a monthly or other regular basis.<sup>167</sup> Stoughton reported selling \*\*\* of its product on the spot market and \*\*\* under short-term contracts, whereas U.S. importers/end users reported that \*\*\* percent of their purchases were through short-term contracts.<sup>168</sup>

The Commission collected quarterly data on the total quantity and value of certain domestic containers shipped to unrelated U.S. customers during the POI.<sup>169</sup> The small number of sales in this industry and the limited quantities sold by the domestic producer complicate price comparisons and the evaluation of pricing trends over time.<sup>170</sup> Available data suggest that prices of subject imports were lower than those of the domestic like product when there were overlapping shipments in the same quarter.<sup>171</sup> Moreover, overall subject import prices \*\*\* at the end than at the beginning of the POI, while Stoughton obtained a \*\*\* price for its sales later in the period than it had earlier in the POI.<sup>172</sup> The limited available bid data also suggest that \*\*\*.<sup>173</sup>

Based on these data, Stoughton argues that producers in China undersold the domestic like product in the U.S. market, used low prices to gain sales and revenue at its expense, prevented it from selling sufficient volumes of certain domestic containers at adequate prices to establish its operations, and lowered their prices over the course of the POI to keep out any U.S. competitors.<sup>174</sup> Stoughton cites to multiple conversations with purchasers where prices of certain domestic containers were discussed and where purchasers told Stoughton its containers were priced above the subject imports<sup>175</sup> and implied that this was influencing their purchasing

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<sup>166</sup> As noted above, raw material costs accounted for an average \*\*\* percent of Stoughton's total COGS, and its per-unit raw material costs \*\*\* between 2011 and 2012 and then \*\*\* between 2012 and 2013. CR at VI-3; PR at VI-1; CR/PR at Table VI-1.

<sup>167</sup> CR at V-4; PR at V-2.

<sup>168</sup> CR at V-4; PR at V-2.

<sup>169</sup> CR at V-4; PR at V-2. As indicated earlier, questionnaire respondents only reported pricing data for the high-cube pricing product. CR at V-5; PR at V-3; CR/PR at Table V-1, Figure V-2.

<sup>170</sup> During the POI, Stoughton \*\*\*, as discussed in further detail below. CR at III-7 to III-8; PR at III-4.

<sup>171</sup> CR/PR at Tables V-1 to V-2, Figure V-2.

<sup>172</sup> CR/PR at Tables V-1 to V-2, Figure V-2. Whereas the questionnaire response from \*\*\* suggests that price differentials between subject imports and the domestic like product, and not just non-price factors, did play a role in its purchasing behavior, \*\*\*).

<sup>173</sup> CR/PR at Tables V-4 to V-5. In any final phase of these investigations, we intend to seek bid data for the entire POI, given the limited number of transactions in this industry.

<sup>174</sup> Petitions, Vol. I at 26-31; Confer. Tr. at 21-22 (Wahlin); Petitioner's Postconference Brief at 23-31 (arguing that \*\*\*).

<sup>175</sup> Petitioner's Postconference Brief at 29-30.

decisions. In contrast, respondents question the validity of any pricing comparisons between certain domestic containers made in the United States and China because, unlike producers in China, Stoughton does not manufacture a product meeting purchasers' specifications, has experienced quality and delivery problems, is a new and unproven entrant to the U.S. market, and is incapable of supplying commercial quantities to meet purchasers' needs.<sup>176</sup> Respondents point to recent increases in the price of subject imports as evidence that any decline in prices of subject imports from China responded to other market forces and not competition with Stoughton.<sup>177</sup> We discuss these claims further below and conclude that there is a likelihood that evidence will arise in any final phase of these investigations that could affect our resolution of these competing arguments.

For example, we first examined the parties' claims regarding the implications of Stoughton's use of some mechanical fasteners instead of fully welding its certain domestic containers. Due to concerns about leakage, some purchasers reported having informed Stoughton that they would not accept certain domestic containers unless they were fully welded.<sup>178</sup> Norfolk Southern, which did ultimately obtain from Stoughton 199 units of its generation I certain domestic containers in 2011 and 2012 and 1 unit of its generation II certain domestic containers in 2012,<sup>179</sup> \*\*\*.<sup>180</sup> Stoughton suggests that the problems Norfolk Southern identified with Stoughton's generation I product related to side panel construction, not the use of mechanical fasteners.<sup>181</sup> Moreover, Stoughton argues that \*\*\*.<sup>182</sup> Whereas Stoughton reports that it has designed and is fully capable of manufacturing a fully welded container,<sup>183</sup> it suggests that there is "no inherent advantage" to fully welded products "from an engineering or performance perspective."<sup>184</sup> We intend to explore this issue further in any final phase investigations because the preceding passages suggest that the record on this issue, and notably the conflicting evidence regarding some purchasers' willingness to purchase non-fully welded certain domestic containers could be developed further. In any final phase investigations, we also intend to evaluate Stoughton's claim that it incorporated some

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<sup>176</sup> J.B. Hunt's Postconference Brief at 7-13, 15-28; CIMC/Singamas Postconference Brief at 13, 17-19, 21-28; Confer. Tr. at 109-10 (Delozier).

<sup>177</sup> Confer. Tr. at 109-10 (Delozier), 120 (Cerny), 127 (Drella); CIMC/Singamas Postconference Brief at 21-22.

<sup>178</sup> J.B. Hunt's Postconference Brief at 8, 12, 16-18, 20 (J.B. Hunt); Confer. Tr. at 125 (Dean) (Norfolk Southern), 206 (Morgan).

<sup>179</sup> Confer. Tr. at 123-24 (Dean).

<sup>180</sup> Petitioner's Postconference Brief at 12-13, Exhibits 12-13.

<sup>181</sup> Petitioner's Postconference Brief at 12.

<sup>182</sup> Petitioner's Postconference Brief at 9-15, Exhibit 2-14.

<sup>183</sup> Confer. Tr. at 46-47 (Fenton); Petitioner's Postconference Brief at 13-15, Exhibit 14.

<sup>184</sup> Stoughton's Postconference Brief at 14-15, Exhibit 14; Confer. Tr. at 69-71 (Fenton). \*\*\* CR at III-11; PR at III-5. \*\*\*.



mechanical assembly into its current products because low-priced subject imports forced it to “thrift” the design.<sup>185</sup>

With respect to purchasers’ claim that Stoughton has not produced certain domestic containers with a wider interior, Stoughton asserts that it has a design for a wider interior steel certain domestic container and previously manufactured a wider-interior aluminum container.<sup>186</sup> According to respondents, Stoughton has not demonstrated that it will actually be able to produce a container with an interior of a width that the market would accept.<sup>187</sup> The record also indicates, however, that \*\*\*.<sup>188</sup> Additionally, Stoughton claims that when it \*\*\*.<sup>189</sup> In any final phase of these investigations, we will issue purchaser questionnaires which will enable us to evaluate the importance of certain features, such as wider interiors, in purchasing decisions.

Given the limited number of transactions involved in this industry, in any final phase investigations we will ask industry participants to provide copies of their RFQs or other contemporaneous documentation concerning their purchase specifications during the POI. This will help us to evaluate the parties’ arguments regarding the substitutability of certain domestic containers manufactured in the United States and China and the extent to which purchasers expect certain domestic containers to meet or exceed the Association of American Railroads standards for features such as means of assembly and interior width.

We also intend to investigate the parties’ disagreements concerning other non-price factors, including quality, ability to supply commercial quantities, and timely delivery. The current record contains conflicting evidence about these issues. For example, J.B. Hunt reports that some of its concerns about buying from Stoughton are related to quality issues that arose with its purchases of other products (chassis),<sup>190</sup> whereas Norfolk Southern decided in 2011 to award Stoughton with what respondents characterize as a “rare,” “practically unheard of,” and “generous” order for a commercial quantity of 1,525 certain domestic containers based on its longstanding history with Stoughton for other products.<sup>191</sup>

Stoughton acknowledges that its generation I container had some side panel design issues, but argues that the firm worked to resolve them with Norfolk Southern through field and factory repairs.<sup>192</sup> Once these repairs occurred, Stoughton argues that there have been no

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<sup>185</sup> Stoughton’s Postconference Brief at 14-15, Exhibit 14 (showing cost savings); Confer. Tr. at 69-71 (explaining that there are other methods of leak-proofing containers, not just welding).

<sup>186</sup> Confer. Tr. at 47, 66-69, 88 (Fenton).

<sup>187</sup> J.B. Hunt’s Postconference Brief at 6, 12, 22-23; CIMC/Singamas Postconference Brief at 18.

<sup>188</sup> Petitioner’s Postconference Brief at 9-10, Exhibit 3.

<sup>189</sup> Petitioner’s Postconference Brief at 10, Exhibits 5-6.

<sup>190</sup> J.B. Hunt’s Postconference Brief at 9-10, 20; Confer. Tr. at 109 (Delozier).

<sup>191</sup> Confer. Tr. at 124 (Dean); CIMC/Singamas Postconference Brief at 5, 11.

<sup>192</sup> Specifically, Norfolk Southern initially discovered a “number of quality and design issues,” including “caulking on the side panels and the irregularities due to forming or stamping, causing the side panel to be distorted and difficult to fit and weld panels.” After Stoughton repaired “side panel failures” with its generation I containers, they weighed too much to be used as Norfolk Southern had intended. J.B. Hunt’s Postconference Brief at 7-8, 21; Confer. Tr. at 123-24 (Dean); CIMC/Singamas Postconference (Continued...)

further quality issues, because even if the products were too heavy for Norfolk Southern's intended program, the products were put into service elsewhere.<sup>193</sup> Stoughton argues that its generation II container addressed the design concerns with its generation I container, and notes that the Norfolk Southern witness testified that the firm has not had any problems with the single generation II container it obtained from Stoughton.<sup>194</sup> At the same time, the record contains \*\*\*.<sup>195</sup>

Industry witnesses reported current quality concerns with Stoughton's products beyond means of assembly.<sup>196</sup> Moreover, Hub \*\*\* suggests that Stoughton's product may have met AAR specifications but did not comport with Hub's expectations for a product with adequate strength comparable to the imported products Hub currently purchases.<sup>197</sup>

As support for their argument that Stoughton is unable to supply adequate quantities on a timely basis, respondents point to evidence that Norfolk Southern had to reduce its order of 1,525 certain domestic containers to 1,025 containers and then to 200 units once it became apparent that Stoughton would be unable to deliver the required quantities on time.<sup>198</sup> Norfolk Southern's order \*\*\*.<sup>199</sup> On the one hand, \*\*\*.<sup>200</sup> On the other hand, Norfolk Southern has not awarded Stoughton any purchases since then because it lacks "confidence in Stoughton's ability to produce and deliver per {Norfolk Southern's} requirements."<sup>201</sup> As noted above, however, \*\*\*.<sup>202</sup>

Respondents argue that other major purchasers (including at least J.B. Hunt, Hub Group, Schneider, and \*\*\*) took notice and lost interest in buying these products from Stoughton after hearing about the delivery and quality difficulties Norfolk Southern encountered with its order from Stoughton, encountering problems in their own dealings with Stoughton, or viewing

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(...Continued)

Brief at 5. In any final phase of these investigations, we intend to confirm whether the cost of any such repairs is reflected in our data.

<sup>193</sup> Petitioner's Postconference Brief at 6 & n.15.

<sup>194</sup> Petitioner's Postconference Brief at 6, 9; Confer. Tr. at 49 (Wahlin), 99-100 (Fenton), 125, 144 (Dean); *see also* \*\*\*).

<sup>195</sup> CR at II-14, III-8; PR at II-8, III-4; Petitioner's Postconference Brief at Exhibit 4 (attaching an e-mail from \*\*\*).

<sup>196</sup> Confer. Tr. at 109 (Delozier), 114, 116-18 (Cerny), 124-26, 169-70 (Dean), 128-30, 172-74 (Drella) (discussing, *inter alia*, corrugation and structural strength concerns); CIMC/Singamas Postconference Brief at 7-9; J.B. Hunt's Postconference Brief at 7-13, 20-21, 26.

<sup>197</sup> Confer. Tr. at 118 (Cerny); CIMC/Singamas Postconference Brief at Exhibit 1 at 20-71.

<sup>198</sup> J.B. Hunt's Postconference Brief at 7-8, 21; CIMC/Singamas Postconference Brief at 5, 11-12, 27; Confer. Tr. at 121-24 (Dean).

<sup>199</sup> *Compare, e.g.*, CR/PR at Table C-1.

<sup>200</sup> J.B. Hunt's Postconference Brief at 7 & n.27; Confer. Tr. at 124 (Dean).

<sup>201</sup> Confer. Tr. at 124 (Dean).

<sup>202</sup> CR/PR at Table V-5. The limited bid data available in the preliminary phase of these investigations also show that \*\*\*, the fact that purchasers invited Stoughton to bid at all seems to undermine some of their alleged concerns regarding non-price factors that prevented Stoughton from getting sales.

Stoughton's products at trade shows. Respondents argue that Stoughton continues to refuse to supply a product meeting the requirements of purchasers accounting for at least 70 percent of purchases in the U.S. market.<sup>203</sup> Stoughton argues that purchasers have been unwilling to give it the opportunity to compete for their business because of the widespread availability of low-priced subject imports, meaning that Stoughton has not had the opportunity to develop from a new entrant into a supplier of field-tested commercial quantities.<sup>204</sup>

As previously stated, in any final phase investigations, we will issue questionnaires to purchasers seeking to generate additional information about purchasers' decisions, which may aid in our evaluation of the conflicting evidence on the record. We will also seek information \*\*\*. Because this case is being evaluated under a material retardation framework, we will explore whether the reason for any inability by Stoughton to produce certain domestic containers in commercial quantities is by reason of subject imports, as Stoughton contends, or because of deficiencies in Stoughton's product and services, as respondents contend.

Thus, the record in the preliminary phase of these investigations shows that subject imports dominate the market and that low prices are a factor in purchasing decisions. Indeed, purchasers have told Stoughton on multiple occasions that its product is priced higher than subject imports'. Respondents have alleged multiple non-price factors that have affected Stoughton's ability to obtain commercial volumes of sales during the POI. With respect to at least some of these factors, however, the record contains evidence that contradicts, or at least does not comport with, respondents' statements during this proceeding. Consequently, we cannot conclude that the record as a whole in the preliminary phase of these investigations contains clear and convincing evidence that there is no reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject imports from China or that there is no likelihood that evidence will arise in any final phase of these investigations that would affect our resolution of these issues.

## **VI. Conclusion**

For the reasons stated above, we determine that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of subject imports of certain domestic containers from China that are allegedly sold in the United States at less than fair value and allegedly subsidized by the Government of China.

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<sup>203</sup> J.B. Hunt's Postconference Brief at 7-11, 16-26; CIMC/Singamas Postconference Brief at 3, 5-6, 11-12, 18.

<sup>204</sup> Petitioner's Postconference Brief at 5-15, Exhibits 1-16.



## **Separate and Dissenting Views of Commissioners Meredith M. Broadbent and F. Scott Kieff**

Based on the record in the preliminary phase of these investigations, we find that there is no reasonable indication that the establishment of a domestic industry is materially retarded by reason of imports of 53-foot domestic dry containers from China that are allegedly sold in the United States at less than fair value and are allegedly subsidized by the Government of China.

In reaching these determinations, we join and adopt sections II through V.A.2 of the Views of the Commission, defining the domestic like product as certain domestic containers and finding the domestic industry is not established.

### **I. The Legal Standard for Preliminary Determinations**

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>1</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury or that the establishment of an industry is not materially retarded by subject imports; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>2</sup>

The U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) has stated that the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations and that the “reasonable indication” standard requires more than a finding that there is a “possibility” of material injury.<sup>3</sup> It also has noted that, in a preliminary investigation, the “statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry.”<sup>4</sup> Moreover, the U.S. Court of International Trade (“CIT”) has reaffirmed that, in applying the reasonable indication “standard for making a preliminary

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<sup>1</sup> 19 U.S.C. §§ 1671b(a), 1673b(a); see also, e.g., Co-Steel Raritan, Inc. v. United States, 357 F.3d 1294 (Fed. Cir. 2004); Sensient Technologies Corp. v. United States, 28 CIT 1513 (2004); Committee for Fair Coke Trade v. United States, 28 CIT 1140 (2004); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int’l Trade 1999); Aristech Chem. Corp. v. United States, 20 CIT 353, 354-55 (1996); American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986).

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

<sup>3</sup> American Lamb, 785 F.2d at 1004.

<sup>4</sup> Texas Crushed Stone, 35 F. 3d at 1543.

determination regarding material injury or threat of material injury, the Commission may weigh all evidence before it and resolve conflicts in the evidence.”<sup>5</sup>

We do not see a likelihood that any evidence the Commission would obtain in any final phase of these investigations would change our determinations that there is no reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject imports from China.

## II. Substitutability/Quality Issues

In addition to the demand and supply conditions described in the Commission’s views, we discuss below additional conditions of competition that inform our analysis of whether there is a reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject imports from China.

Of the \*\*\* U.S. importers that responded to questions about the substitutability between the subject imports and the domestic like product, most, \*\*\*, stated they were never substitutable and the remaining minority, \*\*\*, said the products were sometimes substitutable if the purchaser’s minimum quality standards were met. Despite the assertion by the U.S. producer that the domestic like product and subject imports were always substitutable,<sup>6</sup> the record contains clear and convincing evidence that several distinctions between the subject imports and the domestic like product seriously inhibit substitutability. These distinctions include differences in overall approach to container construction, differences in interior width, and various overall container quality characteristics.

The subject imports from China are a fully welded container. The U.S.-produced container is a partially welded container that uses mechanical fasteners to attach the floor to the three sides and for the rear door frame.<sup>7</sup> Purchasers that participated in this proceeding, representing 70 percent of U.S. purchases,<sup>8</sup> uniformly indicated a preference, if not a requirement, for the fully welded container.<sup>9</sup> Mechanical fasteners reportedly become loose

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<sup>5</sup> Ranchers-Cattlemen, 74 F. Supp. 2d at 1368.

<sup>6</sup> CR at II-15, PR at II-9; CR/PR at Table II-2. The Commission received seven U.S. importer questionnaire responses. One firm, \*\*\*, did not provide responses to substitutability and/quality questions. Two of the responding U.S. importers are also Chinese foreign producers/exporters CIMC and Singamas. CR at I-3, PR at I-3.

<sup>7</sup> CR at II-12-13, PR at II-8; J.B. Hunt’s Postconference Brief at 6, 9; CIMC/Singamas Postconference Brief at 6-7, 10-11.

<sup>8</sup> Conference Tr. at 102 (Morgan); CIMC/Singamas Postconference Brief at 3-4, 12-13 (citing Petitions, Vol. 1 at Exhibit I-13). The four purchasers that provided testimony at the Staff Conference and/or provided postconference briefs were Hub, J.B. Hunt, Norfolk Southern, and Schneider.

<sup>9</sup> Conference Tr. at 125 (Dean) (Norfolk Southern reported that it informed Stoughton that it was not interested in buying mechanically fastened certain domestic containers, but that Stoughton has still not offered a fully welded container); J.B. Hunt’s Postconference Brief at 20 (J.B. Hunt reports that it repeatedly told Stoughton that it wanted a fully welded container); Conference Tr. at 118-19 (Cerny) (Hub described Stoughton’s reliance on a partial use of mechanical fastening as problematic); Conference Tr. at 129-30 (Drella) (Schneider referred to its requirements for a fully welded container).

and holes associated with riveting become wider as containers are lifted, moved, and compressed continuously over their 15 year expected lifespan. As leaks and holes begin to appear, water seepage damages the contents of the container, creates claims for the container's owners, causes the container to be taken out of service for repairs, and ultimately shortens the container's useful life. In contrast, the purchasers assert that the fully welded container does not require rivets and bolts, reducing the occurrence of water seepage and thus reducing cargo water damage and costs.<sup>10</sup> Although the petitioner did point out that it has a design for, and the capability to build, a fully welded steel domestic container, it has not built one that is fully welded.<sup>11</sup>

In addition to a fully welded steel construction, purchasers also indicated their preference or requirement for domestic containers with an interior width of more than 100 inches. The subject imports from China have interior widths of 100 3/8 inches, while the U.S.-produced container has an interior width of 99 inches.<sup>12</sup> While only slightly larger, the interior width of the Chinese containers allows for a pinwheel configuration of pallets that enables a total of 25 pallets instead of 22 pallets to be fitted into the cargo space. The purchasers, all of which are in the business of providing logistical solutions for moving freight, state that the ability to increase the number of pallets per container reduces costs for customers by allowing for a more efficient use of the container volume.<sup>13</sup> Again, although the petitioner stated it had the capability of building steel domestic containers with greater than 99 inch interior widths, it has not yet done so,<sup>14</sup> and therefore is not able to meet the baseline specifications of any purchaser that requires the larger interior width.

While not all purchasers specifically required both the wider interior widths and fully welded construction of Chinese containers throughout the period of investigation, all participating U.S. purchasers raised concerns with the overall quality and strength of the U.S.-produced domestic container. Purchasers found quality and design issues such as caulking on the side panels; irregularities due to forming or stamping that caused the side panel to be distorted; side panel and door weakness; and various issues relating to the quality of welds,

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<sup>10</sup> J.B. Hunt Postconference Brief at 6, 11-12, 16-17; CIMC/Singamas Postconference Brief at 6-7, 10-11; Conference Tr. at 105-06 (DeLozier), 117-18, 121-22 (Cerny), 124-26 (Dean), 127 (Drella), 165-69 (Drella, DeLozier, Cerny), 173-75 (Drella), 179-82 (Cerny, Dean).

<sup>11</sup> See Petitioner Postconference Brief at 14, Exhibit 14 (stating that Stoughton has been capable of producing a "100% Weld Design" product since 2011); Conference Tr. at 46-47 (Fenton) ("Stoughton has not produced a product at this point that is fully welded. There are several points of connection that are accomplished by mechanical means rather than by welded. The predominant means of connection are welds, but there are a portion that are not.").

<sup>12</sup> CIMC/Singamas Postconference Brief at 2, Conference Tr. 107 (DeLozier); Conference Tr. at 47 (Fenton).

<sup>13</sup> CR at II-13-14; PR at II-8; Conference Tr. at 108 (DeLozier); J.B. Hunt Postconference Brief at 6, 12, 18; CIMC/Singamas Postconference Brief at 3, 18. See Conference Tr. at 128 (Drella) ("Another way of thinking of this is with the addition of three more pallets in the 100-inch wide box, every seventh load is free for the customer").

<sup>14</sup> Conference Tr. at 47 (Fenton), 66-69 (Fenton), 88 (Fenton).

where used.<sup>15</sup> Petitioner argues that purchasers' perceptions of Stoughton's domestic containers were based on indirect evidence, such as purchasers' understandings of the experience of Norfolk Southern with the first generation model or past experiences with Stoughton's other products including aluminum domestic containers.<sup>16</sup> However, the record contains clear and convincing evidence provided by such U.S. purchasers that the reason why they did not buy Stoughton's merchandise was based in large part on their own direct experiences either inspecting or testing the domestic product.<sup>17</sup>

For the reasons discussed above, we find clear and convincing evidence in the record that the domestic like product and the subject imports have limited substitutability.

### III. No Reasonable Indication of Material Retardation

For the reasons discussed below, we find that there is no reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject imports of certain domestic containers from China.

The two established suppliers of domestic containers are the Chinese producers, CIMC and Singamas.<sup>18</sup> Together, these two firms accounted for almost all of U.S. market share in each year during the period of investigation. Subject imports accounted for \*\*\* percent of apparent U.S. consumption in 2011, \*\*\* percent in 2012, and \*\*\* percent in 2013.<sup>19</sup> As apparent U.S. consumption fell by \*\*\* percent over the period of investigation, subject imports declined from \*\*\* units in 2011 to \*\*\* units in 2013, or by \*\*\* percent.<sup>20</sup> Subject imports therefore constituted the virtual entirety of the U.S. market.

The remaining \*\*\* containers sold into the U.S. market during the period of investigation were sold by one domestic producer, Stoughton, equivalent to \*\*\* percent of apparent U.S. consumption in 2011, \*\*\* percent in 2012, and \*\*\* percent in 2013.<sup>21</sup> For the

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<sup>15</sup> Conference Tr. at 109 (Delozier), 118 (Cerny), and 123-124 (Dean).

<sup>16</sup> Conference Tr. at 202 (Levin); Petitioners Postconference Brief at 7.

<sup>17</sup> Conference Tr. at 109 (Delozier); Conference Tr. at 118 (Cerny); Conference Tr. at 128-30 (Drella). Petitioner further argues that Stoughton \*\*\*. Petitioner Postconference Brief at 10. \*\*\* Petitioner Postconference Brief, exh. 4; CR at II-14 n. 38, III-8 n. 26; PR at II-8 n. 38, III-4 n. 26. \*\*\*, Stoughton's experience with a very minor purchaser of domestic containers would not contradict the evidence already provided by purchasers representing a far greater share of the market stating that Stoughton's merchandise was generally not acceptable.

<sup>18</sup> CR at I-3, PR at I-3.

<sup>19</sup> CR/PR at Table C-1.

<sup>20</sup> CR/PR at Table C-1.

<sup>21</sup> CR/PR at Table C-1. We note that in addition to the domestic industry's small market share throughout the period of investigation, Stoughton produced \*\*\* containers in 2011, \*\*\* containers in 2012, and \*\*\* containers in 2013. Its capacity utilization was \*\*\* percent in 2011, \*\*\* percent in 2012, and \*\*\* percent in 2013. The number of production workers employed by the industry fell from \*\*\* in 2011 to \*\*\* in 2013, with hours worked falling by \*\*\* percent and wages paid falling by \*\*\* percent. Its net sales were \$\*\*\* in 2011, \$\*\*\* in 2012, and \$\*\*\* in 2013. It experienced operating margins of negative \*\*\* percent in 2011, negative \*\*\* percent in 2012, and negative \*\*\* percent in 2013. CR/PR at



reasons discussed below, we find that the record provides clear and convincing evidence that Stoughton was not able to establish itself within the U.S. market for several reasons unrelated to subject import competition from China.

In the preliminary phase of these investigations, the record already contains questionnaire data providing us with a representative picture of the U.S. market. The only U.S. firm that produced certain domestic containers submitted a questionnaire response, as did the two Chinese producers accounting for all exports to the United States and reported production in China. Importers accounting for a majority, approximately \*\*\*, of reported exports from China also submitted questionnaire data.<sup>22</sup> The Commission does not ordinarily issue questionnaires to purchasers in preliminary phase investigations and did not do so here. Nevertheless, the record in this preliminary phase contains evidence reported by purchasers accounting for 70 percent of U.S. purchases.<sup>23</sup> Therefore, we have a higher percentage of purchaser participation than the Commission receives in many final phase investigations, where the Commission does normally issue questionnaires to purchasers. We therefore also have a representative indication of how end users make purchasing decisions, because purchasers are also generally the end users of domestic containers.<sup>24</sup> All participating purchasers referred to multiple issues that precluded them from granting initial or additional business to Stoughton.

The experience of Norfolk Southern with Stoughton's merchandise is illustrative, as Norfolk Southern was the purchaser that gave Stoughton its first significant order which ultimately accounted for a significant portion, \*\*\*, of Stoughton's sales during the period of investigation. Norfolk Southern, which sought a reliable U.S. source of supply in order to alleviate a perceived supply shortage, ordered 1,525 containers from Stoughton in February 2011. However, Norfolk Southern had to reduce that volume to 1,025 containers after learning that Stoughton would be unable to deliver the containers in the required quantities. While inspecting production of the containers at Stoughton's facility, Norfolk Southern recognized a number of quality and design problems, and due to these issues and the initial delay, decided to further reduce the order volume to 200 containers.<sup>25</sup> After Norfolk Southern attempted to use the relatively few (compared to the much larger volume it initially ordered) products that it did ultimately purchase, it experienced side panel failures, requiring Stoughton to make repairs in

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Table C-1. Thus, the domestic industry performance and financial indicia reflect its inability to make sufficient sales during the period of investigation.

<sup>22</sup> CR at I-5 and V-5, PR at I-3-4 and V-3.

<sup>23</sup> Conference Tr. at 102 (Morgan); CIMC/Singamas Postconference Brief at 3-4, 12-13 (citing Petitions, Vol. 1 at Exhibit I-13). In addition, we have a response to a lost sales allegation provided by purchaser \*\*\* that provides additional context for how that firm made purchasing decisions. CR at V-15-16, PR at V-6.

<sup>24</sup> CR at II-1, PR at II-1. The Commission collected pricing data from both the U.S. producer and U.S. importers, and received usable information regarding \*\*\* bids that were issued by end users during the period of investigation. CR at V-5, 9-11, PR at V-3-4. Purchasers' testimony and briefs provided further explanation of the purchases that occurred during the period of investigation.

<sup>25</sup> Petitioner Postconference Brief at 9; J.B. Hunt Postconference Brief at 7, 21; CIMC/Singamas Postconference Brief at 5, 11-12, 27; Conference Tr. at 121-23 (Dean).

the field. Although these repairs were effective in fixing the side panels, they added reinforcing material that made the domestic containers too heavy for their intended use.<sup>26</sup>

Thus, Stoughton's sale to Norfolk Southern demonstrated that Stoughton was unable to provide sufficient quantities of containers in a timely fashion, and once delivered, its containers immediately needed to be repaired and were ultimately not able to be used for their intended purpose. This inaugural sale in the market led to a perception among the general population of purchasers that Stoughton was an unreliable supplier with a product that had shown immediate deficiencies in the field.<sup>27</sup> Acknowledging the sequence of events at Norfolk Southern, Petitioner states that Stoughton was successful at repairing the containers in the field and that it was able to improve upon this design within its second generation of containers based on this experience.<sup>28</sup> However, Stoughton's reaction to this initial experience does not mitigate evidence that its entry into the market drove a perception among purchasers that Stoughton was not a reliable supplier of a quality product.

Petitioner further argues that other purchasers' assertions with respect to quality are merely a perception issue based on one purchaser's experience with the first generation product, as well as other experiences which Petitioner does not consider to be indicative of its ability to provide an acceptable product.<sup>29</sup> But as explained in detail above, the perception accurately reflected the reality of the producer's own established track record. Such customer perceptions are significant non-price barriers that are the manufacturer's to overcome.

In addition to the market perception of Stoughton's product that was driven by the Norfolk Southern sale, all other participating purchasers indicated having specific concerns based on direct experiences with Stoughton's containers, for both the first and second generations of the product. For example, J.B. Hunt observed quality issues with a 2011 trade show prototype container produced by Stoughton. Considering these quality concerns, the partial use of mechanical fasteners, and the smaller interior width, J.B. Hunt decided that it did not make sense to pursue development efforts with Stoughton until it could redesign its product and give J.B. Hunt the desired quality and interior dimensions.<sup>30</sup> Similarly, Hub also found quality issues with the second generation container. At a trade show in 2012, Hub looked at the Stoughton container and despite some apparent welding quality issues, was still interested in a potential purchase. However, test results provided by Stoughton caused Hub to reconsider. Although the container met the AAR M-930 08 standard, Hub opted not to purchase the container because the sidewall and door design tested significantly weaker and therefore less safe and secure than Hub's existing standard containers.<sup>31</sup> Similarly, while

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<sup>26</sup> J.B. Hunt Postconference Brief at 7-8, 21; CIMC/Singamas Postconference Brief at 5; Conference Tr. at 123-124 (Dean).

<sup>27</sup> J.B. Hunt's Postconference Brief at 9; CIMC/Singamas Postconference Brief at 5, 11; Conference Tr. at 117 (Cerny) ("Hub was not interested in buying these first generation containers because of problems that the Norfolk Southern Railroad experienced with them").

<sup>28</sup> Petitioner Postconference Brief at 6; Conference Tr. at 49 (Wahlin).

<sup>29</sup> Conference Tr. at 202 (Levin); Petitioners Postconference Brief at 7.

<sup>30</sup> Conference Tr. at 109 (Delozier).

<sup>31</sup> Conference Tr. at 118 (Cerny).

Schneider testified that it considered testing Stoughton's first and second generation containers, it ultimately decided not to go through with these tests due to its own observations of quality issues with a prototype at a trade show and because Stoughton did not meet Schneider's requirement for fully welded domestic containers with interior width of over 100 inches.<sup>32</sup>

Petitioner argues that purchasers' statements regarding Stoughton's inability to produce an acceptable product are unwarranted given purchasers' "unwillingness to work with the domestic industry to evolve a product they wish to purchase."<sup>33</sup> Petitioner argues that it would require a greater volume of sales in order to "evolve a product acceptable and useful to purchasers of domestic containers."<sup>34</sup> For this reason, Petitioner acknowledges that because of earlier market entry, "the Chinese container producers are generations ahead,"<sup>35</sup> and states that it was unrealistic for purchasers to expect Stoughton to enter the market with a product identical to the Chinese domestic containers.<sup>36</sup> It is not reasonable to assume, however, that the market should have worked with Stoughton to develop its merchandise when the incumbent suppliers' merchandise was known to have higher quality and technical superiority.

Notwithstanding concerns over Stoughton's quality, several U.S. purchasers invited Stoughton to bid for their sales during the period of investigation. However, non-price factors either severely handicapped Stoughton's bidding chances or outright disqualified it. \*\*\*.<sup>37</sup> Norfolk Southern invited Stoughton to participate in its 2012 to 2014 bidding processes, but has not made any purchases from Stoughton because of a \*\*\*.<sup>38</sup> The fact that Stoughton, as one of three potential suppliers, was invited to bid for certain purchases does not indicate that its product was considered acceptable within the market, nor does it indicate that Stoughton was

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<sup>32</sup> J.B. Hunt's Postconference Brief at 10-11, 20; Conference Tr. at 128-30 (Drella).

<sup>33</sup> Petitioner Postconference Brief at 9.

<sup>34</sup> Petitioner Postconference Brief at 5. Petitioner frames its own ability to develop an acceptable product as requiring active and thorough participation of purchasers, including through the building of prototypes, field testing, and purchaser feedback.

<sup>35</sup> Petitioner Postconference Brief at 6.

<sup>36</sup> Petitioner Postconference Brief at 7. Petitioner further outlines the iterative developmental process that Chinese producers, particularly CIMC, went through in order to produce their superior product as evidence that the domestic industry should have been afforded that same opportunity by purchasers. Petitioner Postconference Brief at 8-9. To the extent that the Chinese producers were able to go through a sustained period of development supported by the business granted them by purchasers, they did so because they entered the domestic containers market with the best product available that quickly made competing container designs obsolete. The steel domestic containers that the Chinese introduced to the market were lighter weight and larger than the DuraPlate models produced by Wabash, and are fully welded, resulting in fewer leaks and reduced maintenance costs. CR at I-12 and I-16, PR at I-9 and I-13; J.B. Hunt Postconference Brief at 5-6. Evidence on the record does not indicate that Stoughton's entry into the market brought about a similar revolution to the market that would have encouraged purchasers to grant it business despite quality and technical concerns.

<sup>37</sup> CR at V-15-16, PR at V-6. Petitioner argues that \*\*\*. Petitioner Postconference Brief at 30-31. We note that \*\*\*.

<sup>38</sup> Conference Tr. at 124 (Dean); CR/PR at Table V-5.

unable to win these bids due to price. Purchasers' descriptions of their consideration of Stoughton's bids indicate the opposite: that Stoughton was ultimately considered to be too risky a supplier of a product with perceived and evident quality problems that could, at best, supply domestic containers only in small volumes.<sup>39</sup>

Purchasers indicated that price is important within the bidding process, but they also consider product quality, ease of doing business, historical ability to adhere to commitments, ability to meet delivery schedules, and baseline specifications.<sup>40</sup> Thus, although the price data on the record suggests that subject imports from China were priced lower than the small volumes of domestic like product sold or offered into the market,<sup>41</sup> the evidence provided by all purchasers indicates that each had individual concerns with the quality and/or technical specifications of Stoughton's product and its ability to supply required quantities in a timely fashion. We find that there is clear and convincing evidence providing a reasonable indication that it was not the prices of subject imports from China, but rather the extensive quality issues with Stoughton's products, that were the cause of the domestic industry's inability to gain sales over the period of investigation.

For the above reasons, we find that the record as a whole contains clear and convincing evidence that the establishment of a domestic industry is not materially retarded by reason of subject imports. In addition, based on the available information, we do not find a likelihood that evidence leading to a contrary result will arise in any final phase of these investigations.

#### **IV. Conclusion**

Accordingly, we find no reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject imports of certain domestic containers from China.

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<sup>39</sup> \*\*\*. CR/PR at Table V-5.

<sup>40</sup> CR/PR at Table V-3.

<sup>41</sup> CR at V-8, PR at V-4 (\*\*\*); CR/PR at Table V-4 and Table V-5 (\*\*\*).

# PART I: INTRODUCTION

## BACKGROUND

These investigations result from a petitions filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by Stoughton Trailers, LLC (“Stoughton”), Stoughton, Wisconsin, on April 23, 2014, alleging that the establishment of a domestic industry is materially retarded and that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and less-than-fair-value (“LTFV”) imports of 53-foot domestic dry containers (“certain domestic containers”) <sup>1</sup> from China. The following tabulation provides information relating to the background of these investigations.<sup>2 3</sup>

Effective date	Action
April 23, 2014	Petitions filed with Commerce and the Commission; institution of Commission investigations (79 FR 24005, April 29, 2014)
May 14, 2014	Commission’s conference
May 19, 2014	Commerce’s notice of initiation (79 FR 28674, 79 FR 28679)
June 6, 2014	Commission’s vote
June 9, 2014	Commission’s determinations
June 16, 2014	Commission’s views

## STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

### Statutory criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

*shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . .*

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<sup>1</sup> See the section entitled “The Subject Merchandise” in *Part I* of this report for a complete description of the merchandise subject to these investigations.

<sup>2</sup> Pertinent *Federal Register* notices are referenced in appendix A, and may be found at the Commission’s website ([www.usitc.gov](http://www.usitc.gov)).

<sup>3</sup> A list of witnesses appearing at the conference is presented in app. B of this report.

*may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.*

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

*In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.*

...

*In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether. . .(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.*

...

*In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to . . . (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

### **Organization of report**

*Part I* of this report presents information on the subject merchandise, alleged subsidy and dumping margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV* and *V* present the volume of subject imports and pricing of domestic and imported products, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information

obtained for use in the Commission’s consideration of the question of threat of material injury as well as information regarding nonsubject countries.

## MARKET SUMMARY

Certain domestic cargo containers generally are used for the intermodal transport of goods throughout North America via trucks and railcars. The sole U.S. producer of certain domestic containers is Stoughton, while the only two producers of certain domestic containers outside the United States are China International Marine Containers (Group), Ltd. (“CIMC”) and Singamas Management Services, Ltd. (“Singamas”) of China. The leading U.S. importers of certain domestic containers from China are CIMC, Hub City Terminals, Inc. (“Hub”), Singamas North America, Inc. (“Singamas North America”), and Union Pacific Railroad Company (“UPRR”). There were no reported imports from nonsubject countries from January 2011 through March 2014.<sup>4</sup> U.S. purchasers of certain domestic containers are firms that use certain domestic containers to transport goods in North America; leading purchasers include four firms which attended the staff conference: J.B. Hunt Transport, Inc. (“J.B. Hunt”), Hub, Schneider Enterprise Resources, LLC (“Schneider”), and Norfolk Southern Corp. (“Norfolk Southern”).<sup>5</sup>

Apparent U.S. consumption of certain domestic containers totaled approximately \*\*\* units valued at \$\*\*\* in 2013. Currently, only Stoughton is known to have produced limited quantities of certain domestic containers in the United States.<sup>6 7</sup> U.S. producer Stoughton’s U.S. shipments of certain domestic containers totaled \*\*\* units valued at \$\*\*\* in 2013, and accounted for \*\*\* percent of apparent U.S. consumption by quantity (\*\*\* percent by value). U.S. imports from China totaled \*\*\* units valued at \$\*\*\* in 2013 and accounted for \*\*\* percent of apparent U.S. consumption by quantity (\*\*\* percent by value). There were no reported imports from nonsubject countries from January 2011 through March 2014.

## SUMMARY DATA AND DATA SOURCES

A summary of data collected in these investigations is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on the questionnaire response of Stoughton

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<sup>4</sup> Conference transcript, p. 134 (Morgan), p. 134 (DeLozier), p. 134 (Cerny), p. 135 (Drella), p. 135 (Dean).

<sup>5</sup> These four firms represent approximately 70 percent of purchases in the U.S. market. Conference transcript, p. 12 (Morgan). The other leading purchasers (CSX, C.H. Robinson, Swift, and UPRR) would reportedly account for an additional 25 percent of purchases in the U.S. market. Conference transcript, p. 188 (Morgan and Cerny); Postconference brief of CIMC and Singamas, p. 13.

<sup>6</sup> Conference transcript, p. 21 (Wahlin).

<sup>7</sup> At the preliminary staff conference, a startup U.S. manufacturer, American Intermodal Container Manufacturing (“AICM”) was discussed. According to testimony, American Intermodal expects to release a prototype in June 2014. Conference transcript, p. 14 (Morgan) and p. 126 (Dean). For additional information please see *Part III*.

which accounted for all known U.S. production of certain domestic containers during the period of investigation. U.S. imports are based on the reported exports to the United States of certain domestic containers by the only two known producers in China (CIMC and Singamas).<sup>8</sup>

## PREVIOUS AND RELATED INVESTIGATIONS

There have been no previous antidumping or countervailing duty investigations on certain domestic containers.

## NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

### Alleged subsidies

On May 19, 2014, Commerce published a notice in the *Federal Register* of the initiation of its countervailing duty investigation on certain domestic containers from China.<sup>9</sup> Commerce identified the following government programs in China:

- A. Preferential Loans and Interest Rates
  - 1. Preferential Loans to SOEs
  - 2. Export Buyer's Credits and Export Seller's Credits from the China ExIm
- B. Government Provision of Goods and Services for Less than Adequate Remuneration
  - 1. Provision of Electricity for Less than Adequate Remuneration
  - 2. Provision of Hot-Rolled Sheet and Plate for Less than Adequate Remuneration
  - 3. Provision of Steel I-Beams for Less than Adequate Remuneration
- C. Grants
  - 1. "Famous Brands" Program
  - 2. Other Government Grants to CIMC
- D. Tax Benefit Programs
  - 1. Two Free/Three Half Program for Foreign Invested Enterprises (FIEs)
  - 2. Preferential Tax Programs for FIEs Recognized as HNTes

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<sup>8</sup> Conference transcript, pp. 11-12 (Morgan) and p. 104 (DeLozier) (stating that there are only two Chinese producers of certain domestic containers); Postconference brief CIMC and Singamas, p. 20. The petitions listed a third potential Chinese producer, Shanghai C & Jindo Container Co., Ltd. ("Jindo"). However, Jindo is no longer in business. Conference transcript pp. 11-12 (Morgan) and p. 17 (Wahlin).

<sup>9</sup> *53-Foot Domestic Dry Containers from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 79 FR 28679, May 19, 2014.



## Alleged sales at LTFV

On May 19, 2014, Commerce published a notice in the *Federal Register* of the initiation of its antidumping duty investigation on certain domestic containers from China.<sup>10</sup> Commerce has initiated an antidumping duty investigation based on an estimated antidumping margin of 84.07 percent for product from China.

## THE SUBJECT MERCHANDISE

### Commerce's scope

Commerce has defined the scope of these investigations as follows:<sup>11</sup>

*The merchandise subject to investigation is closed (i.e., not open top) van containers exceeding 14.63 meters (48 feet) but generally measuring 16.154 meters (53 feet) in exterior length, which are designed for the intermodal transport<sup>12</sup> of goods other than bulk liquids within North America primarily by rail or by road vehicle, or by a combination of rail and road vehicle (domestic containers). The merchandise is known in the industry by varying terms including "53-foot containers," "53-foot dry containers," "53-foot domestic dry containers," "domestic dry containers" and "domestic containers." These terms all describe the same article with the same design and performance characteristics. Notwithstanding the particular terminology used to describe the merchandise, all merchandise that meets the definition set forth herein is included within the scope of this investigation.*

*Domestic containers generally meet the characteristic for closed van containers for domestic intermodal service as described in the American Association of Railroads (AAR) Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers for Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 (AAR Specifications) for 53-foot and 53-foot high cube containers. The AAR Specifications generally define design, performance*

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<sup>10</sup> *53-Foot Domestic Dry Containers from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 79 FR 28674, May 19, 2014.

<sup>11</sup> *53-Foot Domestic Dry Containers from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 79 FR 28679, May 19, 2014 and *53-Foot Domestic Dry Containers from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 79 FR 28674, May 19, 2014.

<sup>12</sup> "Intermodal transport" refers to a movement of freight using more than one mode of transportation, most commonly on a container chassis for on-the-road transportation and on a rail car for rail transportation.

*and testing requirements for closed van containers, but are not dispositive for purposes of defining subject merchandise within this scope definition. Containers which may not fall precisely within the AAR Specifications or any successor equivalent specifications are included within the scope definition of the subject merchandise if they have the exterior dimensions referenced below, are suitable for use in intermodal transportation, are capable of and suitable for double-stacking<sup>13</sup> in intermodal transportation, and otherwise meet the scope definition for the subject merchandise.*

*Domestic containers have the following actual exterior dimensions: An exterior length exceeding 14.63 meters (48 feet) but not exceeding 16.154 meters (53 feet); an exterior width of between 2.438 meters and 2.60 meters (between 8 feet and 8 feet 6 3/8 inches); and an exterior height of between 2.438 meters and 2.908 meters (between 8 feet and 9 feet 6 1/2 inches), all subject to tolerances as allowed by the AAR Specifications. In addition to two frames (one at either end of the container), the domestic containers within the scope definition have two stacking frames located equidistant from each end of the container, as required by the AAR Specifications. The stacking frames have four upper handling fittings and four bottom dual aperture handling fittings, placed at the respective corners of the stacking frames. Domestic containers also have two forward facing fittings at the front lower corners and two downward facing fittings at the rear lower corners of the container to facilitate chassis interface.*

*All domestic containers as described herein are included within this scope definition, regardless of whether the merchandise enters the United States in a final, assembled condition, or as an unassembled kit or substantially complete domestic container which requires additional manipulation or processing after entry into the United States to be made ready for use as a domestic container.*

*The scope of this investigation excludes the following items: (1) Refrigerated containers; (2) trailers, where the cargo box and rear wheeled chassis are of integrated construction, and the cargo box of the unit may not be separated from the chassis for further intermodal transport; (3) container chassis, whether or not imported with domestic*

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<sup>13</sup> Double-stacking'' refers to two levels of intermodal containers on a rail car, one on top of the other.

*containers, but the domestic containers remain subject merchandise, to the extent they meet the written description of the scope.*

*Imports of the subject merchandise are provided for under subheading 8609.00.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Imports of the subject merchandise which meet the definition of and requirements for “instruments of international traffic” pursuant to 19 U.S.C. § 1322 and 19 C.F.R. § 10.41a may be classified under subheading 9803.00.50, HTSUS. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.*

### **Tariff treatment**

53-foot dry domestic containers are classified under HTS heading 8609.00.00. The heading has no statistical reporting numbers, so no separate data on the subject containers are available. HTS heading 8609 encompasses all containers (including containers for the transport of fluids) specially designed and equipped for carriage by one or more modes of transport. The current general rate of duty for this heading is free.

### **THE PRODUCT**

#### **Description and applications**

The product scope includes closed van containers exceeding 48 feet, but generally measuring 53 feet in length, which are designed to transport dry goods primarily by rail or by road vehicles, or by a combination of both modes.<sup>14</sup> Certain domestic containers are specifically designed for the movement of freight by multiple means of transportation throughout North America.<sup>15</sup> Certain domestic containers are closed on all sides, including the top, and accessed through lockable double doors at one end. The length is specified as 53 feet because this is the longest length allowed by U.S. states for use on highways and roads.<sup>16</sup> As a result, the domestic containers are only used in the North American intermodal freight market.<sup>17</sup> Domestic containers are “dry” because the containers are not designed or intended for carrying liquids or

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<sup>14</sup> Petition, p. 10.

<sup>15</sup> Petition, p. 4.

<sup>16</sup> U.S. states establish the maximum limit for the length of trailers in use on their roads. The Federal length limits are minimums that states must allow on national network of highways. Petition, exh. I-1. U.S. Department of Transportation, Federal Highway Administration, “Federal Size Regulations for Commercial Motor Vehicles,” FHWA-HOP-04-022, EDL 14012, October 2004.

<sup>17</sup> Petition, p. 4.

goods requiring refrigeration.<sup>18</sup> Domestic containers have various handlings and fittings so that the containers can be lifted and then mounted on various platforms for movement, such as a chassis,<sup>19</sup> a railroad well car, or a ship.<sup>20</sup> Figure I-1 presents a 53-foot domestic dry container.

**Figure I-1**

**Certain domestic containers: 53-foot domestic dry container**



Source: Petition, exh. I-13.

Certain domestic containers are primarily used for transport by road or rail. The subject product is either mounted on a chassis, to be towed by a truck on roads, or placed on a specially designed rail well car, an operation known as container-on-flatcar (COFC).<sup>21</sup> Some domestic containers are also used in limited maritime transport, including barges that carry freight to locations in the Caribbean.<sup>22</sup> At a transfer point, containers are lifted and mounted from the chassis onto the rail bed, or the reverse, and moved to their final destination.<sup>23</sup>

The American Association of Railroads (AAR) publishes Specification M-930 for “closed van containers for domestic intermodal service”<sup>24</sup> that establishes uniform baseline requirements for domestic containers so that they meet minimum safe standards for use and can be used interchangeably on road and rail transport equipment without compatibility problems. The Petitioner stated that domestic containers generally meet the AAR M-930

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<sup>18</sup> Petition, pp. 4-7.

<sup>19</sup> In the intermodal freight industry, the term chassis refers to a specific type of flat trailer designed to connect with and secure domestic containers. Conference transcript, p. 173 (Drella).

<sup>20</sup> Petition, p. 6; conference transcript, p. 87 (Fenton).

<sup>21</sup> Petition, exh. SAD-1.

<sup>22</sup> Conference transcript, p. 87 (Fenton).

<sup>23</sup> Petition, p. 6.

<sup>24</sup> Petition, exh. I-2. American Association of Railroads (AAR), “AAR Manual of Standards and Recommended Practices: Intermodal Equipment Manual,” Specification M-930, Adopted 1972, last revised 2013.

standards for closed van containers for domestic intermodal service.<sup>25</sup> AAR M-930 defines the requirements for exterior and interior dimensions; handling fittings; gooseneck tunnel dimensions; maximum gross weight ratings; special features; marking, identification, and coating; and design requirements for dynamic load factors and specific parts of the container.<sup>26</sup> AAR M-930 also defines tests that the container must pass for lifting, front wall strength, rear wall strength, side wall strength, roof strength, floor strength, racking, and weatherproofness.<sup>27</sup> AAR M-930 defines the performance criteria for a container, but not the material or assembly method.<sup>28</sup> Each purchaser may establish additional and unique requirements and specifications, therefore, certain domestic containers can vary by purchaser.<sup>29</sup>

Some domestic containers do not meet all of the AAR M-930 standards, and they may have been designed to couple only with a specifically configured chassis. These containers operate in private fleets that use equipment that may not be compatible with the equipment of other operators.<sup>30</sup>

Certain domestic containers typically are fabricated from corrugated carbon steel panels, as this is the material that best fulfills the performance requirements and is demanded by the intermodal freight industry, according to the Petitioner and Respondents.<sup>31</sup> Corrugated carbon steel offers better durability, weatherproofness, and structural integrity, resulting in a longer useful life and lower maintenance cost.<sup>32</sup> However, domestic containers can be made of any material of sufficient strength and durability to meet the AAR M-930 performance requirement; according to the Respondent, aluminum and Duraplate panels have been used in the past.<sup>33</sup>

Early domestic containers were based on designs for dry cargo trailer vans, which consisted of approximately 13 aluminum plates, mechanically fastened to form one panel. Such a domestic container required more than \*\*\*.<sup>34</sup> The respondents stated that they tested and then started using steel welded containers in 2005, and that welded steel containers proved to be more durable and more resistant to leakage than containers made from mechanically fastened aluminum plates.<sup>35</sup>

Following assembly, the container is treated with paint to prevent rust, corrosion, and damage.<sup>36</sup> The flooring in the interior of the container is solid wood, multilayered, or plywood

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<sup>25</sup> Petition, p. 10.

<sup>26</sup> Petition, exh. I-2, AAR M-930.

<sup>27</sup> AAR M-930.

<sup>28</sup> Conference transcript, pp. 161-162 (Drella).

<sup>29</sup> Conference transcript, p. 116 (Drella, DeLozier). Postconference brief of CIMC and Singamas, p. 2.

<sup>30</sup> Petition, p. 7 n. 7.

<sup>31</sup> Conference transcript, p. 46 (Fenton), p. 77 (Fenton), p. 107 (DeLozier), pp. 113-114 (Cerny), p. 127 (Drella), p. 180 (Dean); Petition, p. 7.

<sup>32</sup> Conference transcript, pp. 113-114 (Cerny), p. 127 (Drella).

<sup>33</sup> Conference transcript, p. 105 (DeLozier).

<sup>34</sup> Postconference brief of Stoughton, n. 27, p. 9.

<sup>35</sup> Postconference brief of J.B. Hunt, pp. 4-6.

<sup>36</sup> Conference transcript, pp. 164-165 (Drella).

flooring. Customers typically specify laminated oak flooring because in-service usage has demonstrated that this type of flooring can last the useful life of the container,<sup>37</sup> which is designed to be approximately 15 years.<sup>38</sup>

Certain domestic containers include specific design features to enable lifting, stacking, and securing during transport.<sup>39</sup> Handling fittings allow for the loading and unloading of the container from the rail car and chassis. Domestic containers are specifically designed to be stacked, through the installation of stacking frame handling fittings. The fittings, welded at the 40 foot positions onto the container, allow for the container to be lifted vertically.<sup>40</sup> A feature called a gooseneck tunnel allows for most of the container to have a greater interior height than it would have without the gooseneck tunnel; the portion of the container that rests on the gooseneck of the trailer, where the trailer hitcher attaches to the truck, has a slightly shorter interior height for the length of the gooseneck tunnel.<sup>41</sup> Forward facing and rear downward facing fittings interface with the trailer chassis and secure the container for transport by road.<sup>42</sup>

Respondents stated that the freight companies and railroads that use certain domestic containers prefer a larger size, known as high cube containers.<sup>43</sup> The key difference from the user's perspective is not the height, but the additional interior width that is possible with some high cube container designs. The high cube containers with an interior width of more than 100 inches allow for 25 pallets to be loaded into the container in a pinwheel formation instead of 22 pallets in straight rows in a standard container.<sup>44</sup> A high cube container has exterior dimensions of 53 feet in length, 8 feet 6 3/8 inches in width, and 9 feet 6 1/2 inches in height. Constructed from thinner walls, the high cube container's minimum interior dimensions are 52 feet 6 inches in length, 8 feet 3 inches in width, and 9 feet 1 3/8 inches in height.<sup>45</sup> The standard size container has exterior dimensions of approximately 53 feet in length, 8 feet 6 3/8 inches in width, and 9 feet 6 inches in height. On the interior, the standard container has a length of 52 feet 4 1/8 inches, a minimum interior width, at the narrowest point of the container between the stacking frame posts, of 8 feet 1 13/16 inches, and a height of 8 feet 8 5/16.<sup>46</sup> Respondents stated that Stoughton does not offer a container with an interior width of more than 100 inches.<sup>47</sup> Petitioner stated that it has produced containers with an interior width of 8 feet 3 inches (99 inch) and designed the containers so that it can move the walls out to meet

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<sup>37</sup> Postconference brief of CIMC and Singamas, pp. 10 -11.

<sup>38</sup> Petition, p. 7.

<sup>39</sup> AAR M-930, pp. 4-5.

<sup>40</sup> Petition, p. 6.

<sup>41</sup> Petition, pp. 6-7.

<sup>42</sup> AAR M-930, p. 5

<sup>43</sup> Conference transcript, pp. 147-148 (Drella), p. 148 (Cerny).

<sup>44</sup> Conference transcript, pp. 53-54 (Fenton), pp. 108 (DeLozier), p. 128 (Drella).

<sup>45</sup> AAR M-930, p. 6. Petition, p. 7.

<sup>46</sup> AAR M-930, p. 6. Petition, p. 7.

<sup>47</sup> Conference transcript, pp. 107-109 (DeLozier), pp. 127-128 (Drella).

specifications for containers of more than 100-inches inside width. Petitioner stated that it has not yet had the opportunity to build a container with a wider interior.<sup>48</sup>

### **Manufacturing processes**

The manufacturing process for certain domestic containers consists of three primary procedures, which can be completed a variety of ways, but typically follow a single process.<sup>49</sup>

- Creating subassemblies<sup>50</sup>
- Assembling all subassemblies to other members of the container<sup>51</sup>
- Finishing, including painting and installing flooring<sup>52</sup>

The product is made from multiple sheets of carbon steel which are shaped to add corrugation, as specified by the customer.<sup>53</sup> Cutting, bending, and forming of the steel panels and rails may be done inside the production facility, or by a vendor.<sup>54</sup> The sheets are attached to form the five panels for the container: the roof panel, floor panel, two side panels, and front panel. A rear wall with a door frame and doors affixed to swing hinges is also produced.<sup>55</sup> Stacking posts are attached to the frame, which provide the interfaces on the exterior for stacking containers and transferring weight. Cross-member beams are installed from side panel to side panel across the bottom of the container to support the flooring and evenly distribute the load to the container frame.<sup>56</sup>

The product can be produced using two attachment methods, either mechanical assembly or welding.<sup>57</sup> Mechanically fastened containers are assembled with sections of flat metal structure. Industrial machine presses punch and rivet the raw material.<sup>58</sup> The smaller sections are painted, and then assembled into the box. Steel-welded containers are assembled from sheets of corrugated steel, which are welded together into panels.<sup>59</sup> There are also hybrid attachment methods.

Currently, the predominant method of attaching the subassemblies of certain domestic containers is through welding.<sup>60</sup> The Petitioner stated that it welds all of the subassemblies, but

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<sup>48</sup> Conference transcript, p. 47, p. 88 (Fenton).

<sup>49</sup> Petition, p. 8; conference transcript, p. 28 (Fenton).

<sup>50</sup> Petition, p. 8.

<sup>51</sup> Petition, p. 8.

<sup>52</sup> Petition, p. 8.

<sup>53</sup> Conference transcript, pp. 169 – 171 (Dean).

<sup>54</sup> Conference transcript, p. 75 (Wahlin).

<sup>55</sup> Petition, p. 8.

<sup>56</sup> Conference transcript, p. 27 (Fenton).

<sup>57</sup> Petition, p. 8; conference transcript, p. 28-31 (Fenton).

<sup>58</sup> Conference transcript, p. 79 (Wahlin).

<sup>59</sup> Conference transcript, p. 80-81 (Wahlin).

<sup>60</sup> Petition, p. 8.; conference transcript, p. 180 (Dean), p. 27 (Fenton), p. 105 (DeLozier), p. 112 (Cerny).

uses mechanical fastening in four locations, at each of the corner posts \*\*\*.<sup>61</sup> The Petitioner stated that Chinese companies introduced a steel-welded construction process for certain domestic containers in the early 2000s.<sup>62</sup> Purchasers and importers of the subject product stated that they started purchasing such containers from Chinese producers in the mid 2000s.<sup>63</sup> Different perspectives on a fully welded and partially welded container are discussed in *Part II*.

Finishing involves installing the hardwood flooring, painting, installation of locks and security devices, and application of decals and markings.<sup>64</sup> The painting process includes preparation of the surfaces, painting, and curing.<sup>65</sup> Wood flooring is affixed to the cross-members on the floor of the container with self-tapping screws.<sup>66</sup> Finally, locks are installed, markings for the customer are applied, and, if the container meets AAR M-930 standards, a certification plate is affixed to the front end of the container.<sup>67</sup>

### DOMESTIC LIKE PRODUCT ISSUES

In addition to certain domestic containers, other means are used to transport dry goods. For example, whereas certain domestic containers are used in intermodal transportation within North America, International Standards Organization (“ISO”) 20- and 40-foot containers travel back and forth in international maritime trade to transport goods by vessel.<sup>68</sup> Unlike ISO containers, certain domestic containers have greater capacity and are more efficient to connect with intermodal rail and chassis equipment.<sup>69</sup> Market participants viewed ISO containers differently than certain domestic containers.<sup>70</sup> No U.S. firm reportedly manufactures domestic containers in lengths of other than 53 feet.<sup>71</sup>

Trailers are also used to transport dry goods. Over the years, some trailer manufacturers also produced containers. Between 1993 and 1998, Stoughton; Pines Trailer Corporation; Monon Trailer Corporation; Great Dane Trailers; and Hyundai Translead were the predominant U.S. manufacturers of aluminum plate intermodal containers.<sup>72</sup> Between 2004 and 2005, Stoughton and Wabash modified their containers to accommodate an interior width of more than 100 inches.<sup>73</sup> These light-weight aluminum containers with large interior space

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<sup>61</sup> Conference transcript, pp. 70-71 (Fenton).

<sup>62</sup> Petition, p. 2.

<sup>63</sup> Conference transcript, p. 105-107 (DeLozier), pp. 115, 117 (Cerny), p. 124 (Dean), p. 127 (Drella).

<sup>64</sup> Conference transcript, pp. 164-165 (Drella). AAR specifications, 4.7

<sup>65</sup> Conference transcript, pp. 80-81 (Wahlin).

<sup>66</sup> Petition, p. 8; Conference transcript, p. 26 (Fenton), p. 107 (DeLozier); Postconference brief of CIMC and Singamas, pp. 11-12.

<sup>67</sup> AAR M-930, p. 19.

<sup>68</sup> Petition, p. 5; Conference transcript, p.192-93 (Cerny).

<sup>69</sup> Petition, p. 21.

<sup>70</sup> Conference transcript, pp.189-93 (Drella, DeLozier, Dean, Cerny).

<sup>71</sup> Petition, pp. 5 n.5, 21, 22 n.29.

<sup>72</sup> Conference transcript, p.104 (DeLozier); Postconference brief of J.B. Hunt, p.4.

<sup>73</sup> Conference transcript, p.181 (Cerny).



rode as top containers on trains, could not be stacked on rail cars, and lacked a roof aperture to lock in a top box; being primarily assembled using mechanical fasteners such as bolts and rivets instead of welding, aluminum plate containers reportedly encountered water leakage and resultant damages to the cargo because over time holes from mechanical fasteners provided water entry points.<sup>74</sup> Between 2000 and 2004, Wabash National Corporation sold mechanically assembled DuraPlate containers manufactured in the United States from two thin layers of steel plate that were bonded to a middle core of formed plastic to form a product that was heavier and smaller than the aluminum containers but that could be double-stacked on a train well car instead of single-stacked on a spine car for rail transport.<sup>75</sup> After the 2005 introduction by CIMC, Singamas, and Shanghai C. & Jindo Container Co. Ltd. of lighter-weight, fully-welded steel containers made in China that complied with exterior-width restrictions but that had greater interior widths due to thin but durable walls with structural integrity that could withstand double-stacking on rail cars and reportedly provided a longer useful life with fewer leakage claims, the number of U.S. firms manufacturing containers fell.<sup>76</sup> Petitioner Stoughton idled its 53-foot domestic containers manufacturing facilities in 2006 after finding it was no longer competitively viable with the imported product from China.<sup>77</sup>

After reconfiguring its plant,<sup>78</sup> Stoughton resumed production of certain domestic containers in 2011, and it is the only current manufacturer of certain domestic containers in the United States.<sup>79</sup> Stoughton produces certain domestic containers in a separate location from its trailer manufacturing facilities.<sup>80</sup> Having lost many of the employees previously engaged in manufacturing certain domestic containers after it idled those facilities in 2006, since resuming operations in 2011, Stoughton has been able to use some of its employees that manufacture trailers for its certain domestic container facility, but those employees needed additional

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<sup>74</sup> Conference transcript, pp.104-07 (DeLozier), p. 122 (Dean); Postconference brief of J.B. Hunt, pp. 4-5.

<sup>75</sup> Postconference brief of J.B. Hunt, p.5; Conference transcript, p.20 (Wahlin), p. 84 (Fenton), p. 92 (Wahlin) (noting that to his knowledge, Wabash was not involved in manufacturing containers for intermodal transport), p. 105 (DeLozier). Hub also reported that in the early 2000s, it closely monitored Baser Stag Train's efforts to develop a domestic light-weight steel container. Conference transcript, p.112 (Cerny).

<sup>76</sup> Postconference brief of J.B. Hunt, pp. 5-6; Postconference brief of CIMC and Singamas, pp. 2-3; Conference transcript pp. 105-09 (DeLozier), pp. 112-116, 168 (Cerny), pp. 124-25 (Dean), pp. 126-29, 167-68 (Drella). \*\*\*. Wabash supplemental trailer producer questionnaire response.

<sup>77</sup> Conference transcript, p.20 (Wahlin).

<sup>78</sup> Conference transcript, pp.28-32, 79-80 (Wahlin); Postconference brief of Stoughton, exh. 15.

<sup>79</sup> Start-up firm AICM intends to produce fully welded certain domestic containers in the United States, and expects \*\*\*. Staff telephone interview with \*\*\*, May 15, 2014; Postconference brief of J.B. Hunt, p.11; Conference transcript, pp.88-89 (Wahlin, Levin), p. 125 (Dean).

<sup>80</sup> Petition, pp.23-24; Conference transcript, pp.20, 25-26, 32 (Wahlin) (reporting producing certain domestic containers in Evansville but producing trailers in Stoughton and Brodhead, Wisconsin). Stoughton produces chassis in a separate part of the Evansville, Wisconsin facility where it manufactures certain domestic containers. Conference transcript, p.25 (Wahlin).

training in the welding, assembly, or industrial skills associated with certain domestic containers.<sup>81</sup> Of the approximately two dozen firms reportedly producing trailers in the United States, none are believed to produce certain domestic containers.<sup>82</sup>

Today, certain domestic containers consist of cargo boxes constructed from thin corrugated steel welded together that can be mounted on a chassis or double-stacked in a rail car.<sup>83</sup> They have a steel-welded rear frame with aperture holes on the bottom plate to allow engagement to a chassis twist lock securement device.<sup>84</sup> Certain domestic containers have stacking frames along with upper and lower fittings and castings so that they can be double-stacked and top lifted on and off the chassis and rail equipment.<sup>85</sup> Like trailers, certain domestic containers have wood flooring and a rear door system consisting of door panels, seals, hinges, and lock rods.<sup>86</sup> In contrast, certain domestic containers do not connect directly to a highway tractor but have a fore and aft tunnel recess in the bottom of the container that fits over the raised “gooseneck” in the front of a chassis.<sup>87</sup> Trailers are the rear portion of a motor vehicle and consist of a mostly mechanically assembled cargo box made from thin aluminum or even thinner galvanized steel or composite materials that is permanently integrated into an undercarriage to form a “monocoque” structure that carries itself.<sup>88</sup> Unlike the chassis that is used to carry certain domestic containers, trailers’ integrated undercarriage includes running gear with wheels and tires, brakes, an electrical system, lights, a rear impact under ride guard to prevent other vehicles from traveling underneath a trailer in case of impact, and a kingpin, which connects the trailer directly to the highway tractor.<sup>89</sup> Cargo may be

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<sup>81</sup> Conference transcript, pp. 96-97 (Wahlin); Postconference brief of Stoughton, exh. 16.

<sup>82</sup> Other than Stoughton, none of the trailer manufacturers submitting responses to the supplemental trailer questionnaire reported producing certain domestic containers between January 2011 and March 2014.

<sup>83</sup> Petition, p.21 n.28; Conference transcript, pp.35-36 (Wahlin), p. 77 (Fenton), p. 122 (Dean); Postconference brief of Stoughton, exh. 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams).

<sup>84</sup> Conference transcript, p.29 (Wahlin); Postconference brief of Stoughton, exh. 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams).

<sup>85</sup> Conference transcript, pp.32-33 (Wahlin), p. 104 (Delozier) ; Postconference brief of Stoughton, exh. 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams).

<sup>86</sup> Conference transcript, p.29 (Wahlin), pp. 76-77 (Fenton); Postconference brief of Stoughton, exh. 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams).

<sup>87</sup> Conference transcript, p.29 (Wahlin), p. 72 (Fenton); Postconference brief of Stoughton, exh. 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams).

<sup>88</sup> Petition, p.21 n.28; Conference transcript, p.32 (Wahlin), pp.35-36 (Hoades), pp. 77-78, 97 (Fenton); Postconference brief of Stoughton, exh. 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams).

<sup>89</sup> Conference transcript, p.32 (Wahlin), p.35 (Hoades), pp. 77-78 (Fenton); Postconference brief of Stoughton, exh. 44 (Differences of Std. Trailer vs. Chassis/Container Combination and accompanying diagrams).

transported via trailer on flat car (“TOFC”), but without stacking frames, fittings, and castings, trailers cannot be double-stacked in rail cars, limiting cargo volumes and increasing costs.<sup>90</sup>

The choice between trailers and certain domestic containers depends on factors such as routes, availability of rail lines, distances, destinations, costs, delivery times, and availability of equipment.<sup>91</sup> Railroads, among the primary purchasers of certain domestic containers, typically do not purchase trailers, whereas trucking companies and leasing companies that lease back to carriers purchase both certain domestic containers and trailers.<sup>92</sup> But, even when sold in overlapping channels of distribution, trailers and certain domestic containers may serve different purposes.<sup>93</sup> Trucking companies may prefer trailers for short- and medium-range over-the-road transportation but use certain domestic containers for longer intermodal routes.<sup>94</sup> For intermodal moves over long distances, with the longest portion of the movement typically on a rail car, certain domestic containers are increasingly preferred and are most commonly used to take advantage of lower rail freight costs relative to over-the-road transportation by trailers.<sup>95</sup> Compared to using trailers, intermodal transport by certain domestic containers is less sensitive to spikes in fuel costs or shortages in truck drivers, and improved scheduling reliability for railroads also makes certain domestic containers increasingly more attractive.<sup>96</sup> The ability to send twice the volume of cargo by double-stacking certain domestic containers on rail cars is a feature unavailable for trailers.<sup>97</sup>

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<sup>90</sup> Petition, p.21, 23; Conference transcript, pp.32-33 (Wahlin), pp. 83-84 (Fenton) (explaining that when “piggybacking” a trailer on a flat car, the pop-up stanchion in a flat car connects to the trailer’s kingpin while the trailer’s running gear or tires sit behind it over a center section that prevents the structure from moving side-to-side), p. 104 (DeLozier); Postconference brief of J.B. Hunt, p.5.

<sup>91</sup> Petition, p.22, 24, exh. I-9; Postconference brief of J.B. Hunt, p.4; Postconference brief of Stoughton, exh. 34-36. Using certain domestic containers limits the loading and unloading of cargo, because, for example, the cargo contents remain in the certain domestic container while the container is lifted onto a container chassis attached to a truck tractor, moved to a rail yard, double-stacked onto a rail car, transported by rail, off-loaded onto a second container chassis, and transported to the ultimate destination where the cargo is finally off-loaded. Petition, p.21.

<sup>92</sup> Petition, p.23; Conference transcript, p.59 (Wahlin).

<sup>93</sup> Conference transcript, pp.194-95 (Drella, DeLozier, Cerny). The Intermodal Association of North America separately tracks monthly movements of certain domestic containers, trailers, and ISO containers. Petition, p.24, exh. I-6 to I-8; Conference transcript, p.37; Postconference brief of Stoughton, exh. 43.

<sup>94</sup> Petition, p. 23; Conference transcript, pp. 120, 195-96 (Cerny)

<sup>95</sup> Petition, p. 21, 23; Conference transcript, p. 33 (Wahlin), pp. 35-36 (Hoades), p. 120 (Cerny); Postconference brief of J.B. Hunt, p.3.

<sup>96</sup> Conference transcript, pp. 136-37 (Drella), p. 138 (Dean), pp. 138-39 (DeLozier), p. 151 (Drella), p. 153 (Whitehead); Postconference brief of Stoughton, exh. 34-36, 44; Postconference brief of J.B. Hunt, p. 4; Postconference brief of CIMC and Singamas, exh. 1 pp. 12-18. During the 1990s and early 2000s, respondents reported that railroads had some surplus capacity, so there was space for TOFCs, but as roads became more congested and railroads aggressively took action to modify their routes to permit double-stacked COFCs that could carry greater volumes of cargo in a higher but shorter space, trailers

*(continued...)*

Stoughton sells certain domestic containers directly to its customers but sells certain trailers to a network of distributors and directly to customers.<sup>98</sup> Stoughton reported shipping certain domestic containers \*\*\*, whereas U.S. producers of certain trailers reported shipping certain trailers \*\*\*.

According to Stoughton, customer preferences do not meaningfully impact the price of certain domestic containers, but customer preferences lead to great price variances among trailers.<sup>99</sup> Additionally, Stoughton argued that the substantial cost of the undercarriage causes the base price of trailers to be many thousands of dollars higher than certain domestic containers.<sup>100</sup> The average unit values reported by the U.S. producer of certain domestic containers ranged from \$\*\*\* to \$\*\*\* and average unit values reported by U.S. producers of certain trailers ranged from \$\*\*\* to \$\*\*\*.

Petitioner Stoughton asks the Commission to define the domestic like product to consist of the certain domestic containers described in the scope of the investigations, and argues that there are clear dividing lines between certain domestic containers and trailers.<sup>101</sup> For purposes of the preliminary investigations, respondents agree with Stoughton's proposed domestic like product.<sup>102</sup>

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(...continued)

became less attractive compared to certain domestic containers. Conference transcript, pp. 138-42, 182-85 (Dean, DeLozier, Drella, Cerny).

<sup>97</sup> Petition, p. 21, 23; Conference transcript, p. 33 (Wahlin), p. 35-36 (Hoades).

<sup>98</sup> Conferencetranscript, p. 36 (Hoades).

<sup>99</sup> Conference transcript, p. 37 (Hoades).

<sup>100</sup> Conference transcript, p. 37 (Hoades).

<sup>101</sup> Petition, pp.11, 20-25; Conference transcript, pp.34-37 (Hoades); Postconference brief of Stoughton, p. 2-4.

<sup>102</sup> Conference transcript, pp.176-77 (Morgan, Heffner); Postconference brief of CIMC and Singamas, p. 16.

## PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

### U.S. MARKET CHARACTERISTICS

The market for certain domestic containers has relatively few participants. On the supply side, there are two foreign manufacturers and the U.S. producer, Stoughton. One additional U.S. firm (AICM) is known to be in the planning stages of introducing and manufacturing certain domestic containers.<sup>1</sup> The two foreign producers are also U.S. importers of certain domestic containers. Fewer than one dozen firms purchase the majority of certain domestic containers; these firms are also the end users of the product.<sup>2</sup>

U.S. freight carriers and leasing companies engaged in intermodal shipping within the United States are the primary customers for, and end users of, for certain domestic containers. Intermodal transport containers generally, and certain domestic containers specifically, are used to transport goods across long overland distances, typically by a combination of rail and truck. The market for intermodal shipping has been expanding as railroads have upgraded routes to enable double-stacked containers to pass through tunnels and as logistics for handling and scheduling deliveries have improved. Higher fuel costs and limitations on drivers (including regulations affecting the number of hours they can drive without rest) have made the economics of intermodal shipping more attractive.

In general, the market for certain domestic containers is driven by the demand for intermodal shipping which is related to general economic activity and a transition taking place from other forms of shipping to intermodal due to the efficiencies discussed above.<sup>3</sup> Demand for certain domestic containers at any given time also reflects by purchasers' anticipated needs, the number of replacements that may be needed for containers reaching their 15-year useful life, and capital availability.<sup>4</sup>

Various estimates place the number of certain domestic containers currently in use in the United States between 200,000 and \*\*\*.<sup>5</sup> These estimates include containers that may be used for intermodal shipping between the United States and Canada and/or Mexico.<sup>6</sup> Data

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<sup>1</sup> Conference transcript, p. 14 (Morgan) and p. 126 (Dean).

<sup>2</sup> The four purchasers attending the conference – J.B. Hunt, Hub, Schneider, and Norfolk Southern – represent an estimated 70 percent of reported imports and domestic purchases. Conference transcript, p. 12 (Morgan). The other leading purchasers are CSX, C.H. Robinson, Swift, and Union Pacific. These eight purchasers reportedly account for almost 95 percent of purchases in the U.S. market. Conference transcript, p. 188 (Morgan and Cerny).

<sup>3</sup> Conference transcript, p. 50 (Wahlin) and pp. 136-137 (Drella).

<sup>4</sup> Conference transcript, pp. 135-136 (Drella).

<sup>5</sup> Conference transcript, p. 50 (Wahlin) and p.135 (Delozier); "Intermodal News Report" (LoadMatch and Drayage.com) reports 201,410 certain domestic containers in use in the United States as of February 4, 2014. Petition Exhibit I-13. \*\*\*.

<sup>6</sup> \*\*\* of intermodal loadings both originate and terminate between U.S. destinations. Postconference brief of CIMC and Singamas, exh. 1, p. 9.

submitted by the U.S. and foreign producers indicate that apparent U.S. consumption was \*\*\* units in 2011, \*\*\* units in 2012, and \*\*\* units in 2013.<sup>7</sup>

From 2011 through 2013, the Petitioner was the only U.S. manufacturer and produced a total of \*\*\* containers.<sup>8</sup> There is currently no U.S. production of certain domestic containers and there has been only limited U.S. production since January 1, 2011. Accordingly, a substantial portion of certain domestic containers currently in use in the United States were imported from China.

## CHANNELS OF DISTRIBUTION

The U.S. market is largely supplied by imports from China with only very limited production in the United States since January 1, 2011. \*\*\* sales by Stoughton and the two foreign producers since January 1, 2011 were directly to end users. For \*\*\* of reported imports, the two foreign producers also served as importers of record for U.S. purchasers/end users, although, in some cases, the U.S. end user was the importer of record. Domestically produced certain domestic containers are sold on an f.o.b. basis at Evansville, Wisconsin. Imported certain domestic containers are delivered to a port of entry from which the end user will arrange inland transportation.

End users are railroad, trucking, and logistics companies that purchase certain domestic containers to serve intermodal routes that are typically long-haul.<sup>9</sup> Large trucking companies will purchase chassis in addition to containers and sometimes in greater quantities since chassis are needed at both ends of an intermodal route.<sup>10</sup> Railroads use well cars designed to carry certain domestic containers, often in a double stacked configuration. According to LoadMatch and Drayage.com, approximately one-third of the domestic containers in use are managed by railroads with the balance managed by trucking and third-party logistics companies.<sup>11</sup> \*\*\* estimates that U.S. and Canadian railroads own \*\*\* percent of the domestic container fleet, private large fleets own \*\*\* percent, and other types of entities own \*\*\* percent.<sup>12</sup>

## GEOGRAPHIC DISTRIBUTION

Stoughton reported selling certain domestic containers to \*\*\*. One hundred percent of sales were \*\*\*. All imported certain containers are delivered to a port and inland transport is managed by the end user.

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<sup>7</sup> Apparent U.S. consumption is the number of containers added to the fleet each year. Table IV-3.

<sup>8</sup> Stoughton has not produced any certain domestic containers since the first quarter of 2013. Conference transcript, p. 42 (Levin).

<sup>9</sup> Other types of trailers or containers are employed in drayage or short-haul freight routes. Petition, p. 23.

<sup>10</sup> Petition, p. 23.

<sup>11</sup> "Intermodal News Report." LoadMatch and Drayage.com. Petition, exh. I-13.

<sup>12</sup> Postconference brief of CIMC and Singamas, \*\*\*.

## SUPPLY AND DEMAND CONSIDERATIONS

### U.S. supply

#### **Domestic production**

Based on available information, Stoughton has the ability to respond to changes in demand with moderate to large changes in the quantity of shipments to the U.S. market. The main contributing factor to this degree of responsiveness of supply is the availability of unused capacity, offset by \*\*\* inventories, no shared capacity, and \*\*\* alternate markets for certain domestic containers.

The sole U.S. production facility is located in Evansville, Wisconsin. Stoughton reported its 2013 capacity as \*\*\* containers and indicated it could \*\*\*.<sup>13</sup> There are \*\*\* inventories of the product and alternative products are not produced on shared equipment.

Respondents and U.S. purchasers expressed concerns about Stoughton's product quality, capacity to meet orders, and ability to deliver required quantities in a timely manner.<sup>14</sup> \*\*\* had ordered \*\*\* containers from Stoughton in 2011, but due to \*\*\*.<sup>15</sup> Part V further discusses end user supply concerns in bidding and lost sales allegations.

#### **Industry capacity**

Domestic capacity utilization \*\*\*. This \*\*\* level of capacity utilization suggests that the U.S. producer may have \*\*\* capacity to increase production of certain domestic containers in response to an increase in prices.

#### **Alternative markets**

As certain domestic containers are primarily used in the United States, there are limited alternative markets (i.e., Canada and Mexico). Stoughton has \*\*\* to shift shipments between the U.S. market and other markets in response to price changes.

#### **Inventory levels**

Stoughton's history of production and shipments (\*\*\*) suggests it has limited ability to use inventories as a means of increasing shipments of certain domestic containers to the U.S. market. Stoughton's inventory was \*\*\*.

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<sup>13</sup> Petition, Vol. 1, p. 33.

<sup>14</sup> Conference transcript, p. 114 (Cerny), p. 123 (Dean), pp. 128-129 (Drella), and pp. 208-209 (Morgan).

<sup>15</sup> \*\*\* questionnaire at III-16 and \*\*\*.

### ***Production alternatives***

Stoughton responded that its production \*\*\*.<sup>16</sup>

### ***Supply constraints***

Stoughton states that this is a nascent industry and its ability to supply the U.S. market is constrained by its lack of sales. It asserts that introducing certain domestic containers into the U.S. market necessitates pre-production discussions, building of prototypes, field testing, feedback on quality and performance, and successive improvements in design and production. It states that sales in excess of the \*\*\* containers it has sold are necessary to develop a product acceptable to purchasers.<sup>17</sup>

### ***Subject imports from China***

Based on available information, producers of certain domestic containers from China have the ability to respond to changes in demand with relatively \*\*\* changes in the quantity of shipments to the U.S. market. The main contributing factors to this degree of responsiveness of supply are the availability of unused capacity and the ability to switch from alternate products to certain domestic containers.

### ***Industry capacity***

Chinese producers' reported capacity to produce certain domestic containers \*\*\* from \*\*\* containers in 2011 to \*\*\* containers in 2013. The \*\*\* in capacity for certain domestic containers is attributable to \*\*\*.<sup>18</sup> Capacity utilization for subject product decreased from \*\*\* percent to \*\*\* percent for certain domestic containers.<sup>19</sup>

### ***Alternative markets***

\*\*\* Chinese shipments were to the U.S. market. Chinese producers' exports to other markets \*\*\* of total shipments from January 1, 2011 to March 31, 2014.<sup>20</sup> The lack of large alternative markets for certain domestic containers indicates that Chinese producers are unlikely to have an ability to shift shipments between markets in response to a change in demand or price.

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<sup>16</sup> \*\*\*.

<sup>17</sup> Postconference brief of Stoughton, p. 5.

<sup>18</sup> Overall Chinese capacity to produce \*\*\*. Overall capacity utilization during that time period \*\*\* from \*\*\* percent to \*\*\* percent.

<sup>19</sup> See table VII-2 and table VII-3.

<sup>20</sup> The other export markets for Chinese producers are Canada and Mexico. Postconference brief of CIMC and Singamas, exh. 1, p. 9-10.



### ***Inventory levels***

Chinese producers' inventories as a ratio to total shipments \*\*\*. Because there is an element of seasonality to container shipments, interim ratios are not directly comparable to annual ratios. However, the quantity of inventories held by Chinese producers was at its \*\*\* reported level at the end of the first quarter of 2014.

### ***Production alternatives***

Chinese producers reported that they produce \*\*\* on the same equipment used to produce certain domestic containers. Overall, Chinese producers manufacture \*\*\*.

### ***Supply constraints***

Chinese producers reported that the level of demand for various container \*\*\*. Other factors reported as \*\*\*.

### ***Nonsubject imports***

There are no reported nonsubject imports of certain domestic containers.

## **U.S. demand**

Based on available information, the overall demand for certain domestic containers is likely to experience little change in response to changes in price. The main contributing factor is the lack of substitute products. The cost of certain domestic containers represents a small share of intermodal shipping revenues.<sup>21</sup>

### **End uses**

U.S. demand for certain domestic containers depends on the general level of U.S. economic activity and demand for intermodal shipping by freight carriers. Data published by the Association of American Railroads (AAR) show two indicative demand trends: an overall increase in U.S. rail intermodal traffic since the 1990s and the steady displacement of trailers

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<sup>21</sup> Intermodal shipping accounts for approximately 22 percent of revenue for major U.S. railroads. In 2012, railroad freight revenue totaled nearly \$68 billion. See American Association of Railroads (AAR), "Rail Intermodal Keeps America Moving," Postconference brief of Stoughton, exh. 34, p. 1 and AAR, "Class I Railroad Statistics," available at: <https://www.aar.org/StatisticsAndPublications/Documents/AAR-Stats-2013-07-09.pdf> (accessed May 24, 2014). Respondents to Commission questionnaires generally viewed the product end use as the container itself.

used for intermodal transport in favor of containers.<sup>22</sup> According to data from the Intermodal Association of North America (“IANA”), annual loadings for intermodal shipments rose steadily through 2006, decreased during the recession from 2007 through 2009, and increased thereafter. Intermodal shipments increased each successive year from 2011 to 2013, and were higher in the first quarter of 2014.<sup>23</sup>

The use of intermodal shipping in the United States has been increasing at a rate exceeding the rate of increase of GDP.<sup>24</sup> Factors contributing to growth in intermodal shipping demand include: improved logistics services, higher fuel costs (intermodal is more energy efficient than trucking), truck driver shortages, and increased international trade. About half of U.S. rail intermodal traffic is related to international trade.<sup>25</sup> For long distances, intermodal shipping is less expensive because of double stacking and a reduced number of handlings.<sup>26</sup>

In any given year, the demand for certain domestic containers is a function of several factors including anticipated intermodal shipping demand, the need for replacement of retired containers, and capital availability of the major carriers that purchase containers. Purchases of containers tend to be made in large blocks and may not correlate with the short-term trend in shipping volume.

### **Business cycles**

Stoughton reported that demand for certain domestic containers usually \*\*\* from March to October. \*\*\* responding importers noted that containers are generally ordered so that they arrive in the August-November time frame to correspond with the peak shipping season. One importer also noted that the age of the container fleet and the need for replacements can affect demand cycles. Another importer indicated that the market is not subject to business cycles or other distinctive conditions of competition.

### **Apparent consumption**

Overall, apparent U.S. consumption of certain domestic containers \*\*\* from 2011 to 2013, from \*\*\* containers to \*\*\* containers. U.S. consumption for this product is defined by the gross number of containers added to the domestic fleet annually. The total number of certain domestic containers in use in the United States reportedly increased during 2011-13 and was higher in the first quarter of 2014. However, apparent consumption of certain domestic containers in any given year varies depending on the need for replacement of aging containers and purchasers’ anticipated shipping requirements, among other reasons. Post-

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<sup>22</sup> AAR, “Rail Intermodal Keeps America Moving,” November 2013. Postconference brief of Stoughton, exh. 33, p. 1 and Intermodal Association of North America, “Total Intermodal Loads” graph, Postconference brief of Stoughton, exh. 35.

<sup>23</sup> IANA, Postconference brief of Stoughton, exh. 40 and exh. 43.

<sup>24</sup> Conference transcript, p. 50 (Wahlin), pp. 122-123 (Dean) and p. 136 (Drella).

<sup>25</sup> AAR, pp. 4-5. Conference transcript, p. 55 (Wahlin).

<sup>26</sup> Postconference brief of Stoughton, exh. 44 and exh. 36, Hatch, p. 7.

recession pent-up demand may explain higher demand for certain domestic containers in 2011 compared with more recent levels.<sup>27</sup>

### Demand trends

Most firms reported a fluctuation in U.S. demand for certain domestic containers since 2011 (table II-1). Demand outside the United States denotes smaller markets in Mexico and Canada.<sup>28</sup>

Table II-1

**Certain domestic containers: Firms' responses regarding U.S. demand, by number of responding firms**

\* \* \* \* \*

### Substitute products

Substitutes for certain domestic containers are limited. Stoughton and \*\*\* responding importers responded that there are no substitutes for certain domestic containers. One importer listed a 48-foot container and another importer listed a truck trailer. Trailers or 48-foot containers may be used for intermodal transport, but trailers cannot be double-stacked on rail cars and smaller containers are no longer the industry standard.<sup>29</sup> The Petitioner and Respondents testifying at the conference stated that there are no comparable substitutes for certain domestic containers.<sup>30</sup>

### Cost share

Certain domestic containers account for a small share of the cost of intermodal shipping, but 100 percent of the cost when the container is viewed as the end-use itself, as indicated by \*\*\*.

## SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported certain domestic containers depends upon such factors as relative prices, quality (*e.g.*, grade standards, reliability of supply, defect rates, etc.), and conditions of sale (*e.g.*, price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that there is a moderate degree of substitutability between domestically produced certain domestic containers and certain domestic containers imported from China.

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<sup>27</sup> Conference transcript, pp. 135-136 (Drella) and pp. 203-204 (Dougan).

<sup>28</sup> \*\*\* questionnaire response. Conference transcript, p. 190 (Drella).

<sup>29</sup> Conference transcript, p. 147 (Drella).

<sup>30</sup> Conference transcript, p. 138 (Dean), pp. 139-140 (Cerny and Drella), and p. 200 (Levin).

According to Respondents, there are non-price factors that explain why the Chinese product is preferred in the U.S. market. Respondents assert that the product produced by Stoughton is different from the product from China because it is not fully welded.<sup>31</sup> They stated that the interior dimensions of Stoughton's certain domestic containers are narrower than the imported product.<sup>32</sup> One witness at the conference also cited quality issues and the inability to deliver in a timely manner as reasons why Stoughton's product is not established in the marketplace.<sup>33</sup>

Stoughton has produced two "generations" of designs for its certain domestic containers. Both generations of the Stoughton design use mechanical fastening for the rear door frame and floor assemblies. Respondents assert that experience with mechanical fasteners indicate that they become loose over time and lead to water leakage.<sup>34</sup>

\*\*\*.<sup>35</sup> Stoughton asserts that its quality will meet or exceed that of the Chinese competition.<sup>36</sup>

Petitioner concedes that there were design issues with Generation 1 of Stoughton's certain domestic containers, but that Generation 2 containers resolved those issues and have been in service without any reported problems.<sup>37</sup> \*\*\* of the containers sold by Stoughton \*\*\* since January 2011 were delivered to \*\*\* which has not reported any problems to Stoughton.<sup>38</sup> Because of low prices for Chinese imports, Stoughton asserts that it has not had sufficient opportunities to sell its containers, receive feedback from the field, and make design improvements.<sup>39</sup>

### Lead times

Certain domestic containers are primarily sold on a produced-to-order basis. Stoughton and U.S. importers that are also foreign producers reported that \*\*\* percent of domestic containers are produced-to-order. Stoughton reported lead times of \*\*\*. Importers that are also foreign producers reported lead times ranging from \*\*\*.

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<sup>31</sup> Postconference brief of CIMC and Singamas, pp. 6-9.

<sup>32</sup> Conference transcript, pp. 123-124 (Dean), pp. 107-108 (Delozier), and p. 128 (Drella). Respondents contend that Stoughton's certain domestic containers have an interior width of 99 inches while the interior width of Chinese imports is 100 3/8 inches. The additional width allows for a pinwheel configuration of pallets that enables a total of 25 pallets instead of 22 pallets to be fitted into the cargo space. Postconference brief of J.B. Hunt, p. 12.

<sup>33</sup> Conference transcript, p. 123 (Dean).

<sup>34</sup> Postconference brief of CIMC and Singamas, pp. 7-8, 10. The experience described by Respondents was with aluminum containers, not steel domestic containers.

<sup>35</sup> The compliance documentation that was reviewed shows \*\*\*. Postconference brief of CIMC and Singamas, exh. 1, p. 19.

<sup>36</sup> Conference transcript, p. 88 (Wahlin).

<sup>37</sup> Postconference brief of Stoughton, p. 6.

<sup>38</sup> Postconference brief of Stoughton, p. 10 and exh. 4.\*\*\*.

<sup>39</sup> Conference transcript, pp. 201-202 (Levin) and postconference brief of Stoughton, pp. 8-9, 13.

## Comparison of U.S.-produced and imported certain domestic containers

As shown in table II-2, Stoughton indicated that U.S.-produced certain domestic containers are \*\*\* interchangeable with the Chinese product. \*\*\* U.S. importers indicated that U.S.-produced domestic containers are “never” interchangeable and \*\*\* indicated that they are “sometimes” interchangeable. Factors cited by responding importers that are also end users varied. \*\*\* importers cited quality, including the not fully-welded design. \*\*\* importer noted that no current U.S. manufacturer has experience producing to its specifications. \*\*\* importer stated that both U.S. and Chinese containers can \*\*\* be used for the same application provided they are able to meet purchasers’ minimum quality standards.

### Table II-2

**Certain domestic containers: Interchangeability between certain domestic containers produced in the United States and in China**

\* \* \* \* \*

As presented in table II-3, Stoughton reported that differences other than price were \*\*\* significant in sales of certain domestic containers produced in the United States and China, while most importers found that differences other than price were “always” significant. The factors other than price reported by importers included: quality and design, availability of fully-welded steel containers, safety and maintenance considerations, production capacity, service levels, ease of doing business, historical ability to adhere to commitments, and differences in specifications.

### Table II-3

**Certain domestic containers: Significance of differences other than price between certain domestic containers produced in the United States and in China**

\* \* \* \* \*



## PART III: U.S. PRODUCER’S PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the subsidies and dumping margins was presented in *Part I* of this report and information on the volume and pricing of imports of the subject merchandise is presented in *Part IV* and *Part V*. Information on the other factors specified is presented in this section and/or *Part VI* and (except as noted) is based on the questionnaire response of Stoughton that accounted for all known U.S. production of certain domestic containers.

### U.S. PRODUCER

The Commission issued a U.S. producer questionnaire to Stoughton based on information contained in the petition, and an additional firm (Wabash National Corporation (“Wabash”)) based on staff research of the industry.<sup>1</sup> Stoughton provided useable data on its production operations. Staff believes that this response represents all current U.S. production of certain domestic containers.

Table III-1 lists the sole U.S. producer of certain domestic containers, its production location, position on the petition, total production, and share of total production.

**Table III-1**  
**Certain domestic containers: U.S. producer of certain domestic containers, its position on the petition, production location, production, and share of reported production, January 2011-March 2014**

\* \* \* \* \*

Table III-2 presents information on Stoughton’s changes in operations since 2011. Stoughton has produced certain domestic containers intermittently during 2011-13; it has not produced certain domestic containers in 2014.<sup>2</sup>

**Table III-2**  
**Certain domestic containers: U.S. producer’s changes in operations, since 2011**

\* \* \* \* \*

Stoughton was founded in 1961 as a manufacturer of truck bodies and semitrailers at its production facility in Stoughton, Wisconsin. In 1993, plant 7 was added in Evansville, Wisconsin

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<sup>1</sup> *Wabash Exits Domestic Container Market*, April 1, 2006. Wabash submitted a supplemental trailer producer questionnaire response which reported that it \*\*\*.

<sup>2</sup> Conference transcript, pp. 21, 96-97 (Wahlin).

to manufacture domestic containers. In 1998, plant 7 expanded from 240,000 square feet to 300,000 square feet. Plant 7 produced certain domestic containers utilizing a mechanical process to assemble aluminum containers.<sup>3</sup> In the early 2000's, Chinese manufacturers introduced a steel-welded construction process. Stoughton found its mechanical-assembly process was no longer competitively viable and produced its last mechanically assembled container in 2006.<sup>4</sup> In 2007, Stoughton shut down plant 7.<sup>5</sup> In 2009, Stoughton received inquiries from rail and truck carriers and leasers that were interested in securing a U.S. manufacturer of certain domestic containers.<sup>6</sup> In 2009, Stoughton began converting plant 7 from a mechanically assembled production line to a steel-welded production line.<sup>7</sup> In 2011, Stoughton re-opened plant 7 with the intention of increasing production capacity to commercially competitive levels (approximately \*\*\* certain domestic containers) over the next several years.<sup>8</sup> However, Stoughton reports that it has not produced more than nominal volumes. Moreover, Stoughton has not produced a certain domestic container for commercial sale since the first quarter of 2013.<sup>9</sup>

Stoughton's certain domestic container has several points of connection that are accomplished by mechanical means.<sup>10</sup> Additionally, whereas the certain domestic containers produced by Stoughton to date have an interior width of 99 inches, Stoughton reports that it has designed a certain domestic container with an interior width of 100 ½ inches.<sup>11</sup>

Stoughton is not related to any foreign producer of certain domestic containers nor is it related to any U.S. importer of certain domestic containers. In addition, Stoughton does not directly import certain domestic containers nor does it purchase certain domestic containers from U.S. importers.

### **PROSPECTIVE U.S. PRODUCER**

AICM is a startup U.S. company that intends to produce a fully welded certain domestic container.<sup>12 13</sup> J.B. Hunt and Norfolk Southern stated that they had discussed certain domestic

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<sup>3</sup> Stoughton's production of aluminum mechanically fastened domestic containers utilized \*\*\*. Today Stoughton's welded steel certain domestic container utilizes \*\*\*. Postconference brief of Stoughton, pp. 9-10 n. 27.

<sup>4</sup> Petition, pp. 2-3 and conference transcript, pp. 20 (Wahlin), 29 (Fenton).

<sup>5</sup> Petition, p. 3.

<sup>6</sup> Conference transcript, p. 20 (Wahlin).

<sup>7</sup> Conference transcript, pp. 29-30 (Fenton).

<sup>8</sup> Petition, p. 3 and conference transcript, p. 20 (Wahlin).

<sup>9</sup> Conference transcript, p. 21 (Wahlin).

<sup>10</sup> Stoughton reported that \*\*\*. Stoughton reported that \*\*\*. Postconference brief of Stoughton, exh. 14.

<sup>11</sup> Conference transcript, pp. 46-47 (Fenton).

<sup>12</sup> Conference transcript, p. 14 (Morgan).

<sup>13</sup> \*\*\*. \*\*\*, p. 7.



containers with AICM and would welcome a U.S. source of supply that met their quality specifications.<sup>14</sup>

AICM has \*\*\*.<sup>15</sup>

\*\*\*.<sup>16</sup> \*\*\*.<sup>17</sup>

AICM expects a \*\*\*.<sup>18</sup> \*\*\*.<sup>19</sup> <sup>20</sup>

### U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Table III-3 and figure III-1 present Stoughton's production, capacity, and capacity utilization. Stoughton has produced at relatively low levels since January 2011, and has not produced any certain domestic containers since the first quarter of 2013.<sup>21</sup>

**Table III-3**

**Certain domestic containers: U.S. producer's production, capacity, and capacity utilization, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

**Figure III-1**

**Certain domestic containers: U.S. producer's production, capacity, and capacity utilization, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

### U.S. PRODUCER'S U.S. SHIPMENTS AND EXPORTS

Table III-4 presents Stoughton's commercial U.S. shipments, export shipments, and total shipments. Stoughton has not had a commercial sale since the first quarter of 2013.<sup>22</sup> In 2011, Stoughton was awarded a contract to supply Norfolk Southern with 1,525 certain domestic containers. It did not meet the contract delivery terms and the order was reduced to 1,025 certain domestic containers.<sup>23</sup> Norfolk Southern subsequently observed caulking on the side panels and irregularities due to forming or stamping (causing the side panel to be distorted and

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<sup>14</sup> Conference transcript, pp. 108, 110 (DeLozier) and 125-126 (Dean).

<sup>15</sup> \*\*\* , pp. 8, 11.

<sup>16</sup> \*\*\* . \*\*\* , p. 10.

<sup>17</sup> \*\*\* , pp. 8, 13.

<sup>18</sup> Staff telephone interview with \*\*\* , May 15, 2014. \*\*\* . \*\*\* , pp. 8, 11.

<sup>19</sup> \*\*\* , pp. 7-8.

<sup>20</sup> \*\*\* . \*\*\* , May 15, 2014.

<sup>21</sup> Conference transcript, p. 21 (Wahlin).

<sup>22</sup> Conference transcript, p. 21 (Wahlin).

<sup>23</sup> Conference transcript, p. 123 (Dean).

difficult to fit and weld panels), and reduced its order to 199 Generation 1 certain domestic containers and one Generation 2 certain domestic container.<sup>24</sup> In 2012, Stoughton sold \*\*\*.<sup>25</sup>

**Table III-4**

**Certain domestic containers: U.S. producer's U.S. shipments, exports shipments, and total shipments, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

**U.S. PRODUCER INVENTORIES**

Table III-5 presents Stoughton's end-of-period inventories and the ratio of these inventories to Stoughton's production, U.S. shipments, and total shipments over January 2011-March 2014.

**Table III-5**

**Certain domestic containers: U.S. producer's inventories, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

**U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY**

Table III-6 presents Stoughton's employment-related data during January 2011-March 2014. Particular skills and training are needed to weld certain domestic containers which Stoughton has provided to its employees who have produced certain domestic containers. Nonetheless, Stoughton has been able to move employees from its other manufacturing facilities to plant 7 when there have been orders for certain domestic containers.<sup>26 27</sup>

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<sup>24</sup> Conference transcript, pp. 123-124 (Dean).

<sup>25</sup> Postconference brief of Stoughton, p. 10. \*\*\*. Postconference brief of Stoughton, exh. 4.

<sup>26</sup> Conference transcript, pp. 96-97 (Wahlin).

<sup>27</sup> Most of the employees that worked on the mechanically assembled certain domestic containers produced at Stoughton from 1993-2007 lost their jobs when the facility was closed in 2007. A few employees were transitioned into Stoughton's trailer operations. Conference transcript, p. 96 (Wahlin). When Stoughton introduced its steel welded container, most of its former production related workers were no longer available. For the employees that were available, the steel welded container was a vastly different product (and plant) requiring new training and development. Although some skill sets appeared similar (weld, industrial paint, etc.) it was a very different environment (welding of thinner steel materials, new robotic/tracking weld systems, new material handling systems, very different profiles for industrial painting). Postconference brief of Stoughton, exh. 16.

**Table III-6**

**Certain domestic containers: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

Stoughton has not produced a certain domestic container since first quarter 2013; however, its \*\*\*. Staff questioned the \*\*\*:

- \*\*\*.
- \*\*\*.
- \*\*\*.
- \*\*\*.<sup>28</sup>

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<sup>28</sup> Stoughton's U.S. producer questionnaire response, revised question II-7, May 23, 2014.



## PART IV: U.S. IMPORTS, APPARENT U.S. CONSUMPTION, AND MARKET SHARES

### U.S. IMPORTERS

The Commission issued importer questionnaires to 62 firms potentially importing certain domestic containers, as well as to all U.S. producers of certain domestic containers.<sup>1</sup> Usable questionnaire responses were received from seven companies identifying themselves as importers of record of certain domestic containers, representing \*\*\* percent of U.S. imports from China for January 2011-March 2014 (compared to Chinese producers' reported exports to the United States). Such imports enter the United States under HTS heading 8609.00.00, a "basket" category that encompasses all containers and not just certain domestic containers.<sup>2 3</sup> In light of the U.S. importer data coverage, unless otherwise noted, U.S. import data presented throughout this report are based on the reported exports to the United States of certain domestic containers by the only two known producers in China (CIMC and Singamas).<sup>4</sup> There were no reported imports from nonsubject countries from January 2011 through March 2014.<sup>5</sup> Table IV-1 lists all responding U.S. importers of certain domestic containers from China, their locations, and their shares of U.S. imports during January 2011-March 2014.

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<sup>1</sup> The Commission issued questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by U.S. Customs and Border Protection ("Customs"), may have accounted for more than 0.2 percent of total imports under HTS heading 8609.00.00 in January 2011-January 2014.

<sup>2</sup> CIMC and Singamas reported that it depends on the customer whether their firms act as the importer of record. This will vary from customer to customer and may even vary for the same customer. For example, \*\*\* identified themselves as exclusively consignees and not importers of record, while \*\*\* and reported substantially smaller volumes than suggested by Chinese producers' questionnaire responses. Additionally, whether the container arrives full or empty may determine which firm is the importer of record. Conference transcript, pp. 131-132 (Yeung), pp. 132-133 (Hagen).

<sup>3</sup> U.S. importers and U.S. purchasers receive payment for use of their certain domestic container when the container is shipped from China containing third party merchandise. Postconference brief of CIMC and Singamas, exh. 1 p. 9.

<sup>4</sup> Conference transcript, pp. 11-12 (Morgan), p. 134 (Morgan), p. 104 (DeLozier) (stating that there are only two Chinese producers of certain domestic containers). Postconference brief of CIMC and Singamas, pp. 20-21 n. 51. The petition listed a third potential Chinese producer, Shanghai C & Jindo Container Co., Ltd. ("Jindo"). However, Jindo is no longer in business. Conference transcript, pp. 11-12 (Morgan) and p. 17 (Wahlin).

<sup>5</sup> Conference transcript, p. 134 (Morgan), p. 134 (DeLozier), p. 134 (Cerny), p. 135 (Drella), p. 135 (Dean).

**Table IV-1**  
**Certain domestic containers: Responding U.S. importers by source, January 2011-March 2014**

Firm	Headquarters	Imports from China (share in percent)
A123 Systems LLC	Westborough , MA	***
China International Marine Containers (Group), Ltd.	Shenzhen, China	***
Crowley Liner Services, Inc. <sup>1</sup>	Jacksonville, FL	***
Hub City Terminals, Inc.	Oak Brook, IL	***
J.B. Hunt Transport, Inc.	Lowell, AR	***
Singamas North America, Inc	San Ramon, CA	***
Union Pacific Railroad Company	Omaha, NE	***
Total		100.0

<sup>1</sup> The certain domestic containers \*\*\*. Email from \*\*\*, May 19, 2014.

Source: Compiled from data submitted in response to Commission importer questionnaires.

### U.S. IMPORTS

Table IV-2 presents data for U.S. imports of certain domestic containers from China and all other sources. Imports from China decreased from 2011 to 2013. During 2008-10, firms reportedly limited capital expenditures, contributing to pent-up demand. In 2011, the economy improved and firms were able to replace older containers. Thus, the spike in imports from China in 2011 has been characterized as an anomaly based on pent-up demand. Imports of certain domestic containers from China are expected to increase at a modest rate.<sup>6</sup>

**Table IV-2**  
**Certain domestic containers: U.S. imports by source, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

Figure IV-1 presents data for U.S. import quantities and average unit values.

**Figure IV-1**  
**Certain domestic containers: U.S. import quantities and average unit values, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

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<sup>6</sup> Conference transcript, pp. 135-137 (Drella), p. 137 (DeLozier).

## NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.<sup>7</sup> Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation.<sup>8</sup> Imports from China accounted for 100.0 percent of total imports of certain domestic containers by quantity during April 2013-March 2014.

### APPARENT U.S. CONSUMPTION AND U.S. MARKET SHARES

Table IV-3 presents data on apparent U.S. consumption and U.S. market shares for certain domestic containers.

**Table IV-3**  
**Certain domestic containers: U.S. shipments of domestic product, U.S. imports, apparent U.S. consumption, and U.S. market shares, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

Figure IV-2 presents data on apparent U.S. consumption.

**Figure IV-2**  
**Certain domestic containers: U.S. apparent consumption, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

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<sup>7</sup> Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

<sup>8</sup> Section 771(24) of the Act (19 U.S.C § 1677(24)).





## PART V: PRICING DATA

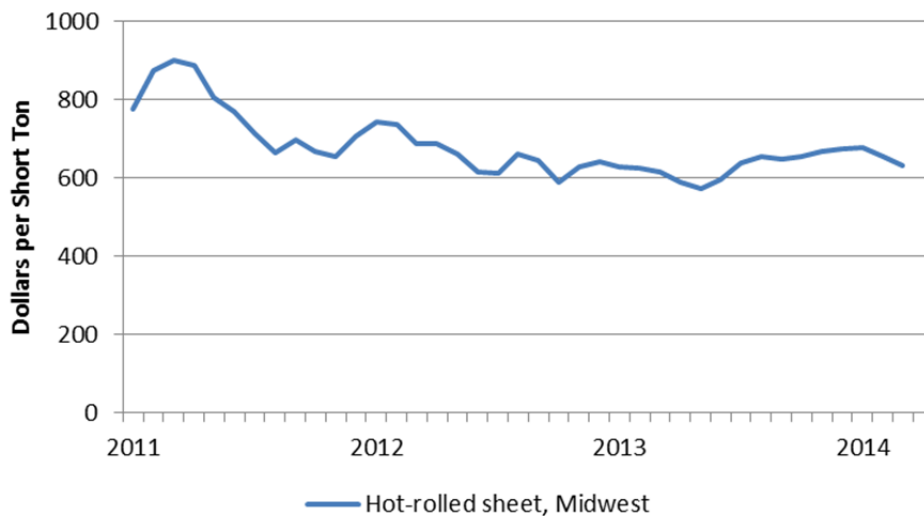
### FACTORS AFFECTING PRICES

#### Raw material costs

Raw materials represent approximately \*\*\* of COGS in the manufacture of certain domestic containers.<sup>1</sup> Carbon steel in the form of rolled steel, steel I-beams, and steel castings is the major raw material used and accounts for the majority of raw material costs (\*\*\*). Domestic containers also typically have a floor of wood planks or other wood materials.<sup>2</sup> Flooring material accounts for the next largest share of raw material costs (\*\*\*), followed by paint (\*\*\*), door assemblies (\*\*\*), and other components (\*\*\*).<sup>3</sup>

Figure V-1 shows the trend in hot-rolled steel prices from January 1, 2011 through March 31, 2014. U.S. domestic steel prices declined on average by 17 percent during 2011-13 before increasing by 4 percent during the first quarter of 2014.<sup>4</sup> Foreign producers stated that selling prices for certain domestic containers generally track or fluctuate with steel prices.<sup>5</sup>

**Figure V-1**  
**Certain domestic containers: Average hot-rolled steel sheet prices (Midwest), monthly, January 2011-March 2014**



Source: American Metal Market.

<sup>1</sup> Stoughton's raw material costs as a share of COGS since 2011 ranged from \*\*\*.

<sup>2</sup> Conference transcript, p. 27 (Fenton).

<sup>3</sup> Postconference brief of Stoughton, exh. 44.

<sup>4</sup> The monthly average price of hot-rolled steel (Midwest) was \$760/ton in 2011, \$659/ton in 2012, \$631/ton in 2013, and \$655/ton during the first quarter of 2014. American Metal Market.

<sup>5</sup> \*\*\* Foreign producer questionnaires.

## Transportation costs to the U.S. market

Stoughton quotes prices on an f.o.b. basis from its Evansville, Wisconsin manufacturing plant. Inland transportation costs represent approximately \*\*\* percent of delivered cost to the customer. All of Stoughton's shipments of certain domestic containers since January 2011 were shipped \*\*\*. Importers arrange for shipping to a port of entry and containers are transferred inland to the initial location where they are put into service. Importers are one of two types: they are either the foreign producer arranging for importation into the United States for the end-user, or they are the end user serving as the importer of record.

An issue was raised by parties related to the role of laden versus empty containers on the price paid by importers.<sup>6</sup> In some cases, certain domestic containers are shipped from China loaded with unrelated goods. The revenue from providing that service offsets the shipping costs of the containers for the importer.<sup>7</sup> End users sometimes differentiate loaded (i.e., laden) and empty containers in their Requests for Quotations (RFQs) to Chinese producers.<sup>8</sup>

## PRICING PRACTICES

### Pricing methods

Transaction prices for certain domestic containers are determined through bid competition or quoted directly to an end-user. \*\*\* of the U.S. producer's sales of \*\*\* containers during 2011-13 were successfully bid in response to a RFQ and \*\*\* were spot sales. U.S. importer, \*\*\* reported not undertaking a bidding process. \*\*\* U.S. importers that are end users report using a bidding process for \*\*\* of their purchases.<sup>9</sup> The Commission also received completed questionnaires from \*\*\* end users that were not importers of record.<sup>10</sup> \*\*\* reported that they use a bid process for purchases. The two foreign producers that are also importers \*\*\* through a bid process. Further information is provided in the *Questionnaire bid data* following the discussion on price data.

Stoughton reported selling \*\*\* of its product in the spot market and \*\*\* under short-term contracts. U.S. importers/end users reported that \*\*\* percent of their purchases were through short-term contracts. Orders for large quantities of containers are placed one to two times per year by the major end users rather than on a monthly or other regular basis.<sup>11</sup> Firms reporting RFQs each placed only \*\*\* during the January 1, 2013 to March 31, 2014 period.

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<sup>6</sup> Postconference brief of CIMC and Singamas, exh. 1, p. 9. Revised data were submitted to reflect imported prices of empty containers at the port of entry.

<sup>7</sup> Conference transcript, p. 155 (Yeung and Hagen).

<sup>8</sup> \*\*\* importer questionnaire response, at III-2d.

<sup>9</sup> \*\*\*.

<sup>10</sup> \*\*\*. \*\*\*.

<sup>11</sup> Conference transcript, p. 56 (Dogan) and p. 60 (Wahlin).

## PRICE DATA

The Commission requested the U.S. producer and importers of certain domestic containers to provide quarterly data for the total quantity and value of containers shipped to unrelated U.S. customers from January 2011-March 2014. The Commission normally requests pricing data on sales from U.S. producers and importers. However, in this case, because importers are a combination of foreign producers and U.S. end users, importers affiliated with Chinese producers<sup>12</sup> supplied sales data while other U.S. importers<sup>13</sup> provided purchase cost data.<sup>14</sup> The products for which price data were requested<sup>15</sup> are as follows:

**Product 1.**-- 53-foot dry domestic containers suitable for intermodal transport, as described and specified in American Association of Railroads Specification M-930 (Adopted: 1972; Last Revised: 2013) applicable to closed van containers for domestic intermodal service.

**Product 2.**-- 53-foot high cube dry domestic containers suitable for intermodal transport, as described and specified in American Association of Railroads Specification M-930 (Adopted: 1972; Last Revised: 2013), applicable to closed van containers for domestic intermodal service.

All data submitted were for Product 2, "high-cube" domestic containers. Product 1, which describes a product of moderately smaller dimensions, is no longer sold.<sup>16</sup> Stoughton and \*\*\* importers that include both the two foreign producers serving as importers of record and \*\*\* U.S. end users that were importers of record provided usable pricing data for the requested products.<sup>17</sup> Pricing data reported by the \*\*\* firms accounted for \*\*\* percent of U.S. producers' shipments of product and \*\*\* percent of U.S. imports from China during January 2011-March 2014.<sup>18</sup> In addition, \*\*\* U.S. purchasers/end users that were not importers submitted purchase cost data that are presented in Appendix D.<sup>19</sup>

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<sup>12</sup> \*\*\*.

<sup>13</sup> \*\*\*.

<sup>14</sup> Sales price refer to the price for which goods are sold; purchase cost refers to the price paid by a purchaser. They are usually different because of markups and other transactions costs. Staff has confirmed with CIMC and Singamas that the sales data reported for their U.S. imports are comparable to purchase cost data reported by purchasers. Staff telephone interview \*\*\*, May 29, 2014. \*\*\*.

<sup>15</sup> Petitioner identified these two pricing products in the petition.

<sup>16</sup> Conference transcript, p. 148 (Drella and Cerny).

<sup>17</sup> U.S. importer \*\*\*.

<sup>18</sup> \*\*\*.

<sup>19</sup> \*\*\*.

Price and quantity data for Product 2 are presented in table V-1 and figure V-2. There were no reported imports of certain domestic containers from nonsubject countries since January 1, 2011.

**Table V-1**  
**Certain domestic containers: Weighted-average f.o.b. prices and quantities of domestic and imported product 2, by quarters, January 2011- March 2014**

\* \* \* \* \*

**Figure V-2**  
**Certain domestic containers: Weighted-average prices and quantities of domestic and imported product, by quarters, January 2011- March 2014**

\* \* \* \* \*

**Price trends and comparisons**

Prices for products imported from China generally \*\*\* during 2011 through 2013 and \*\*\* during the first quarter of 2014. The quantity of containers sold by Stoughton was \*\*\* and \*\*, making price trends difficult to compare. Stoughton reported prices accounted for \*\*. In the \*\* quarters in which Stoughton sold the subject product, purchases from China were at a price of between \*\* percent and \*\* percent lower than U.S. sales prices, with the smallest differences in the earliest comparisons and the largest differences in the most recent comparisons. As shown in table V-2, the price of imports from China decreased by \*\* from January 1, 2011 to March 31, 2014. The first quarter of 2013 was \*\*. The unit price Stoughton obtained was \*\* than during \*\*.

**Table V-2**  
**Certain domestic containers: Summary of weighted-average f.o.b. prices for product 2 from the United States and China**

\* \* \* \* \*

## Questionnaire bid data

A portion of U.S. imports and purchases were subject to a bidding process. The Commission requested information regarding bids that were issued by end users to foreign producers and the U.S. manufacturer. Table V-3 presents explanations of the bidding process of firms reporting that information. \*\*\*.<sup>20</sup>

**Table V-3**  
**Certain domestic containers: U.S. end users' explanations of bidding process**

\* \* \* \* \*

U.S. end users were also asked to provide bid data for the five highest-value purchases of certain domestic containers for delivery between January 1, 2013 and March 31, 2014. Information was requested about the type of product, the number of units, the bidders, the initial bidding price, the final bid price, and the winning bid.<sup>21</sup> Tables V-4 and V-5 present the bid data submitted by importer/end users<sup>22</sup> and purchaser/end users<sup>23</sup> that issued RFQs for purchases of "high-cube" containers described in the Commission questionnaire as Product 2. \*\*\*.

The bidding processes for most of the firms reporting bid data were similar although time-frames for submitting and selecting final bids varied from one week to one month. Most firms indicated that they negotiate with one or more of the bidders before arriving at the final selection and bid price. Of the \*\*\* bid events reported during the period January 1, 2013 to March 31, 2014, Stoughton was asked for a bid in \*\*\* and submitted proposals for \*\*\*.<sup>24</sup> In each instance, \*\*\*. \*\*\*.

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<sup>20</sup> \*\*\* importer questionnaire responses, at III-2f.

<sup>21</sup> All bid and price data submitted to the Commission were for "Product 2."

<sup>22</sup> \*\*\*.

<sup>23</sup> \*\*\*.

<sup>24</sup> U.S. importer \*\*\* RFQs are not counted since they were for containers with substantially different specifications. \*\*\*. See footnote, table V-4.

**Table V-4**

**Certain domestic containers: Bid events by U.S. importer/end users for Product 2 from January 1, 2013 to March 31, 2014**

\* \* \* \* \*

**Table V-5**

**Certain domestic containers: Bid events by U.S. purchaser/end users for Product 2 from January 1, 2013 to March 31, 2014**

\* \* \* \* \*

### **LOST SALES AND LOST REVENUE**

The Commission requested the U.S. producer of certain domestic containers to report any instances of lost sales or revenue they experienced due to competition from imports of certain domestic containers from China since January 2011. Stoughton alleged \*\*\* instances of lost sales to imported certain domestic containers from China.

Staff contacted the \*\*\* purchasers cited in the allegations and received responses from \*\*\*.<sup>25</sup> The Commission did not receive responses to \*\*\* allegations involving bids in response to specific customer RFQs from \*\*\*. These \*\*\*. The \*\*\* allegations for which information was received did not involve price quotes for specific order requests. \*\*\*. A summary of the information obtained on the \*\*\* allegations is provided in table V-6 and is discussed below.

**Table V-6**

**Certain domestic containers: U.S. producer's lost sales allegations**

\* \* \* \* \*

\*\*\* disagreed with the allegation that Stoughton lost \*\*\* sales from \*\*\*. \*\*\* reported that the quantity of the potential purchase was \*\*\* containers. \*\*\* stated: "\*\*\* requests bids that include the cost of delivering containers to a point on its network. The rejected quote identified in column 4 does not include delivery costs."<sup>26</sup> The quote with delivery was \*\*\*. \*\*\* based its decision to award the bid to another producer "based on several factors, one of which was price." \*\*\* provided additional information as follows: "\*\*\*\*".

The Commission received \*\*\* responses to Stoughton's \*\*\* allegations that purchasers wanted to see more of its product in the marketplace before considering an order. \*\*\*.

\*\*\* with the allegation. \*\*\* submitted the following comment: "\*\*\*\*".

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<sup>25</sup> \*\*\*

<sup>26</sup> \*\*\*

End users responding to the lost sales allegations also were asked whether they shifted their purchases of product from the U.S. producer to suppliers of certain domestic containers from China since January 2011. \*\*\* of the responding end users indicated that they did not shift purchases from the U.S. producer to Chinese suppliers. In addition, they were asked whether U.S. producers reduced their prices in order to compete with suppliers of product from China. \*\*\*. \*\*\*.





## PART VI: FINANCIAL EXPERIENCE OF THE U.S. PRODUCER

### INTRODUCTION

The sole U.S. producer, Stoughton, provided usable financial data on its operations on certain domestic containers. These data are believed to account for all U.S. production of certain domestic containers from January 2011 to March 2014. \*\*\*.

Stoughton's current production of certain domestic containers began in 2011, and involved the transformation of its existing production site from a mechanically assembled production system to a steel welded production system.<sup>1</sup> From 1993 to 2006, Stoughton produced mechanically assembled certain domestic containers from aluminum panels; however, Stoughton ceased production and idled the plant after producers in China introduced certain domestic containers made using a steel-welded construction process.<sup>2 3</sup>

### OPERATIONS ON CERTAIN DOMESTIC CONTAINERS

Income-and-loss data for the U.S. producer are presented in table VI-1. Operating income was \*\*\*. The reported aggregate net sales quantity and value \*\*\* from 2011-12, then \*\*\* from 2012-13 to levels below those reported for 2011.

Despite the overall decline in net sales from 2011-13, on a per-unit basis net sales \*\*\* during this time. The per-unit net sales value \*\*\* from 2011-12, then \*\*\* from 2012-13. During these same time frames, the per-unit cost of goods sold ("COGS") \*\*\*. Thus, on a per-unit basis, gross and operating losses in 2012 were smaller than in 2011 as per-unit revenue increased and costs declined. In 2013, gross and operating losses were greater than in 2012 as per-unit costs increased more than per-unit revenue. Similar trends in gross and operating income occurred when the data are examined as a ratio to net sales.

Per-unit raw material costs \*\*\* from 2011-12, then \*\*\* from 2012-13. Raw materials accounted for an average \*\*\* percent of total COGS for the reporting period. According to Stoughton, the principal raw materials and their approximate percentages of total raw material costs are: \*\*\*.<sup>4</sup>

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<sup>1</sup> Conference transcript, p. 30 (Fenton).

<sup>2</sup> Conference transcript, p. 20 (Wahlin).

<sup>3</sup> As previously mentioned in this report, the U.S. firm AICM, \*\*\*, has stated its intent to begin production of certain domestic containers \*\*\*. Conference transcript, p. 14 (Morgan), p. 126 (Dean); Staff telephone interview with \*\*\*, May 15, 2014.

<sup>4</sup> \*\*\*. See also postconference brief of Stoughton, exhibit 44.

**Table VI-1**

**Certain domestic containers: Results of operations of U.S. producer Stoughton, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

Direct labor and other factory costs accounted for an average \*\*\* percent, respectively, of total COGS from 2011-13. Per-unit direct labor \*\*\* from 2011-12, then \*\*\* from 2012-13. Per-unit other factory costs \*\*\* from 2011-12, then \*\*\* from 2012-13 as volume declined.<sup>5 6</sup>

U.S. producer Stoughton was asked to provide the percentages of variable costs and fixed costs for its reported COGS and SG&A expenses for 2011, 2012, and 2013. This information, along with the firm's profit-and-loss data, was used to calculate the breakeven point (the sales quantity necessary to achieve a zero operating profit for certain domestic containers operations) for those periods.

Variable costs were estimated to account for \*\*\* percent of total operating costs in 2011, \*\*\* percent in 2012, and \*\*\* percent in 2013, which suggests that during that time Stoughton was able to cover \*\*\*. From 2011-13, the coverage of fixed costs \*\*\*. For example, in 2013, \*\*\*.

Based on a standard breakeven formula (total fixed costs divided by per-unit sales price minus per-unit variable costs),<sup>7</sup> breakeven volumes would be \*\*\*. As the spread between per-unit revenue and per-unit variable costs increases (*i.e.*, higher per-unit prices and/or lower per-unit variable costs), the breakeven point for a given level of fixed costs will decline. Conversely, as the spread between per-unit revenue and per-unit variable costs declines (*i.e.*, lower per-unit prices and/or higher per-unit variable costs), the breakeven point for a given level of fixed costs will increase.

**Capital expenditures, research and development expenses, and total assets**

The responding firm's aggregate data on capital expenditures, research and development ("R&D") expenses, and total assets are shown in table VI-2. Aggregate capital expenditures and R&D expenses \*\*\*. According to Stoughton, \*\*\*.<sup>8</sup>

The \*\*\* in total assets from 2011-13 reflect \*\*\*.<sup>9</sup>

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<sup>5</sup> \*\*\*. Postconference brief of Stoughton, pp. 34-36, exhibits 30-31, and email from Jeffrey Levin of Levin Trade Law, May 28, 2014.

<sup>6</sup> \*\*\*. Postconference brief of Stoughton, p. 37, exhibit 33.

<sup>7</sup> *Cost Accounting, A Managerial Emphasis*, Charles T. Horngren, Srikant M. Datar, George Foster, Prentice Hall, 2003, pp. 64-65.

<sup>8</sup> Email from \*\*\*, May 16, 2014. *See also* conference transcript, pp. 30-32 (Fenton), pp. 79-81 (Wahlin).

<sup>9</sup> Email from \*\*\*, May 21, 2014.

**Table VI-2**

**Certain domestic containers: Capital expenditures, R&D expenses, and total assets of U.S. producer Stoughton, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

**Capital and investment**

The Commission requested the U.S. producer of certain domestic containers to describe any current or anticipated negative effects of imports of certain domestic containers from China on its growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. Responses by the U.S. producer Stoughton follow.

**Effects of imports:**

\*\*\*.

**Anticipated effects of imports:**

\*\*\*<sup>10</sup>.

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<sup>10</sup> \*\*\*.



## PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that—

*In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors<sup>1</sup>--*

- (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,*
- (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,*
- (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,*
- (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,*
- (V) inventories of the subject merchandise,*

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<sup>1</sup> Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider {these factors} . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

- (VI) *the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,*
- (VII) *in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),*
- (VIII) *the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and*
- (IX) *any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).<sup>2</sup>*

Information on the nature of the alleged subsidies was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in *Parts IV and V*; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in *Part VI*. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries.

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<sup>2</sup> Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

## THE INDUSTRY IN CHINA

The Commission issued foreign producers' questionnaires to two firms believed to produce and export certain domestic containers from China.<sup>3</sup> Useable responses to the Commission's questionnaire were received from both firms: CIMC and Singamas. These firms' exports to the United States accounted for approximately all U.S. imports of certain domestic containers from China during January 2011-March 2014. According to estimates requested of the responding Chinese producers, the production of certain domestic containers in China reported in this Part of the report accounts for all known production of certain domestic containers in China. Table VII- 1 presents information on each foreign producers' production, exports, and total shipments.

**Table VII-1**  
**Certain domestic containers: Data for producers in China, January 2011-March 2014**

\* \* \* \* \*

CIMC is dedicated to manufacturing and supplying containers, trailers, tank equipment and airport facilities.<sup>4</sup> CIMC is the largest container manufacturer in the world.<sup>5</sup> CIMC estimated that it accounted for approximately \*\*\* percent of certain domestic containers production in China.

Singamas is one of the world's leading container manufacturers and a major logistics operator in the Asian-Pacific region.<sup>6</sup> Singamas estimated that it accounted for approximately \*\*\* percent of certain domestic containers production in China.

Table VII- 2 presents information on the certain domestic container operations of the only two known producers and exporters in China. Certain domestic containers are only used within North America.<sup>7</sup> CIMC reported \*\*\*. Singamas reported \*\*\*. Reported capacity fluctuates throughout January 2011-March 2014 because \*\*\* CIMC and Singamas \*\*\*.

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<sup>3</sup> These firms were identified through a review of information submitted in the petition and contained in proprietary Customs records. As previously stated, the petition listed a third potential Chinese producer, Shanghai C & Jindo Container Co., Ltd. ("Jindo"), but according to testimony there are only two producers in China of certain domestic containers. Conference transcript, pp. 11-12 (Morgan) and p. 104 (DeLozier).

<sup>4</sup> <http://www.cimc.com/en/about/company/BusinessOverview/>, retrieved May 23, 2014.

<sup>5</sup> Conference transcript, p. 17 (Wahlin).

<sup>6</sup> [http://www.singamas.com/main/company\\_profile.asp](http://www.singamas.com/main/company_profile.asp), retrieved May 23, 2014.

<sup>7</sup> Conference transcript, p. 14 (Morgan); Postconference brief of Stoughton, p. 45.

**Table VII-2**  
**Certain domestic containers: Data for producers in China, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

Table VII-3 presents information on Chinese producers' overall production, capacity, and capacity utilization. The \*\*\*. During 2011-13, Singamas reported that it \*\*\*. During 2011-13, CIMC reported that \*\*\*.<sup>8</sup>

**Table VII-3**  
**Certain domestic containers: Chinese producers' overall capacity, production, and capacity utilization, 2011-13, January-March 2013, and January-March 2014**

\* \* \* \* \*

### **U.S. INVENTORIES OF IMPORTED MERCHANDISE**

\*\*\*. \*\*\* are end users of certain domestic containers. Certain domestic containers are immediately put into use, but during slow periods some U.S. purchasers of certain domestic containers may store them.<sup>9</sup> However, the stored certain domestic containers are owned by U.S. purchasers for their use and thus are not considered unsold U.S. imports of certain domestic containers.

### **U.S. IMPORTERS' OUTSTANDING ORDERS**

The Commission requested importers to report whether they imported or arranged for the importation of certain domestic containers from China after March 31, 2014. \*\*\* reported that \*\*\* arranged such shipments. Table VII-4 presents U.S. import shipments of certain domestic containers arranged for importation after March 31, 2014.

**Table VII-4**  
**Certain domestic containers: U.S. importers' current orders arranged for delivery after March 31, 2014**

\* \* \* \* \*

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<sup>8</sup> Email from \*\*\*, May 28, 2014

<sup>9</sup> Conference transcript, p. 153 (Whitehead),



## **ANTIDUMPING OR COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS**

There have been no antidumping duty, countervailing duty, or safeguard investigations on certain domestic containers in any other country.

## **INFORMATION ON NONSUBJECT COUNTRIES**

There are no known imports of certain domestic containers from any nonsubject countries.<sup>10</sup> Staff believes there is no production of certain domestic containers in any nonsubject country.<sup>11</sup>

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<sup>10</sup> Conference transcript, p. 134 (Morgan), p. 134 (DeLozier), p. 134 (Cerny), p. 135 (Drella), p. 135 (Dean).

<sup>11</sup> Postconference brief of CIMC and Singamas, exh. 1, p. 11 (\*\*\*)



**APPENDIX A**

***FEDERAL REGISTER NOTICES***



The Commission makes available notices relevant to its investigations and reviews on its website, [www.usitc.gov](http://www.usitc.gov). In addition, the following tabulation presents, in chronological order, *Federal Register* notices issued by the Commission and Commerce during the current proceeding.

Citation	Title	Link
79 FR 24005, April 29, 2014	<i>53-Foot Domestic Dry Containers From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations</i>	<a href="http://www.gpo.gov/fdsys/pkg/FR-2014-04-29/pdf/2014-09691.pdf">http://www.gpo.gov/fdsys/pkg/FR-2014-04-29/pdf/2014-09691.pdf</a>
79 FR 28674, May 19, 2014	<i>53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Antidumping Duty Investigation</i>	<a href="http://www.gpo.gov/fdsys/pkg/FR-2014-05-19/pdf/2014-11519.pdf">http://www.gpo.gov/fdsys/pkg/FR-2014-05-19/pdf/2014-11519.pdf</a>
79 FR 28679, May 19, 2014	<i>53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Countervailing Duty Investigation</i>	<a href="http://www.gpo.gov/fdsys/pkg/FR-2014-05-19/pdf/2014-11527.pdf">http://www.gpo.gov/fdsys/pkg/FR-2014-05-19/pdf/2014-11527.pdf</a>



**APPENDIX B**

**LIST OF CONFERENCE WITNESSES**





## CALENDAR OF PUBLIC PRELIMINARY CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's preliminary conference:

**Subject:** 53-Foot Domestic Dry Containers from China  
**Inv. Nos.:** 701-TA-514 and 731-TA-1250 (Preliminary)  
**Date and Time:** May 14, 2014 - 9:30 am

Sessions were held in connection with these preliminary investigations in Court Room B (room 111), 500 E Street, S.W., Washington, DC.

### **OPENING REMARKS:**

Petitioner (**Jeffrey S. Levin**, Levin Trade Law, P.C.)  
Respondents (**Frank H. Morgan**, White & Case LLP)

### **In Support of the Imposition of Antidumping and Countervailing Duty Orders:**

Levin Trade Law, P.C.  
Bethesda, MD  
on behalf of

*and*

Hodes, Keating & Pilon  
Chicago, IL  
on behalf of

Stoughton Trailers, LLC

**Robert ("Bob") Wahlin**, President, Stoughton Trailers, LLC

**Gary L. Fenton**, Vice President, Engineering, Stoughton Trailers, LLC

**In Support of the Imposition of  
Antidumping and Countervailing Duty Orders (continued):**

**James Dougan**, Senior Economist, Economic  
Consulting Services, LLC

**Jeffrey S. Levin** )  
 ) – OF COUNSEL  
**Michael Hodes** )

**In Opposition to the Imposition of  
Antidumping and Countervailing Duty Orders:**

Drinker Biddle & Reath LLP  
Washington, DC  
on behalf of

J.B. Hunt Transport, Inc.

**Kent DeLozier**, Director of Maintenance, J.B. Hunt  
Transport, Inc.

**Mark Whitehead**, Senior Vice President, Risk Management  
& Claims, J.B. Hunt Transport, Inc.

**Douglas J. Heffner** )  
 ) – OF COUNSEL  
**Richard P. Ferrin** )

White & Case LLP  
Washington, DC  
on behalf of

China International Marine Containers (Group), Ltd.  
CIMC USA  
Singamas Management Services, Ltd.  
Singamas North America, Inc.

**Daniel Drella**, Director of Intermodal Equipment and  
Maintenance, Schneider National, Inc.

**O.H. Buzz Hagen**, CEO, CIMC Intermodal Equipment

**Johnny Yeung**, Sales Director, Singamas

**In Opposition to the Imposition of  
Antidumping and Countervailing Duty Orders (continued):**

**Keir Whitson**, Senior Advisor, White & Case LLP

**Frank H. Morgan** ) – OF COUNSEL

Mayer Brown LLP  
Washington, DC  
on behalf of

Hub Group, Inc.

**Douglas Beck**, Assistant General Counsel, Hub  
Group, Inc.

**Jakub Cerny**, Vice President, Fleet Services,  
Hub Group, Inc.

**Charlie Green**, Industry Engineering Expert,  
G-P Moves Freight, LLC

**Matthew J. McConkey** )  
 ) – OF COUNSEL  
**Margaret-Rose Sales** )

**NON-PARTY APPEARANCE:**

Norfolk Southern Corporation  
Norfolk, VA

**Paul Dean**, Director of Intermodal Equipment and Maintenance,  
Norfolk Southern Corporation

**REBUTTAL/CLOSING REMARKS:**

Petitioner (**Jeffrey S. Levin**, Levin Trade Law, P.C., **Michael Hodes**, Hodes, Keating  
& Pilon *and* **James Dougan**, Economic Consulting Services, LLC)  
Respondents (**Frank H. Morgan**, White & Case LLP *and* **Douglas J. Heffner**,  
Drinker Biddle & Reath LLP)



**APPENDIX C**  
**SUMMARY DATA**



All responses in appendix C contain information that would reveal confidential operations and therefore have been deleted from this report.





**APPENDIX D**

**PURCHASER/END USER PRICE DATA**



**Table D-1**  
**Certain domestic containers: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 reported by purchaser/end users (non-importers), by quarters, January 2011-March 2014**

\* \* \* \* \*

