

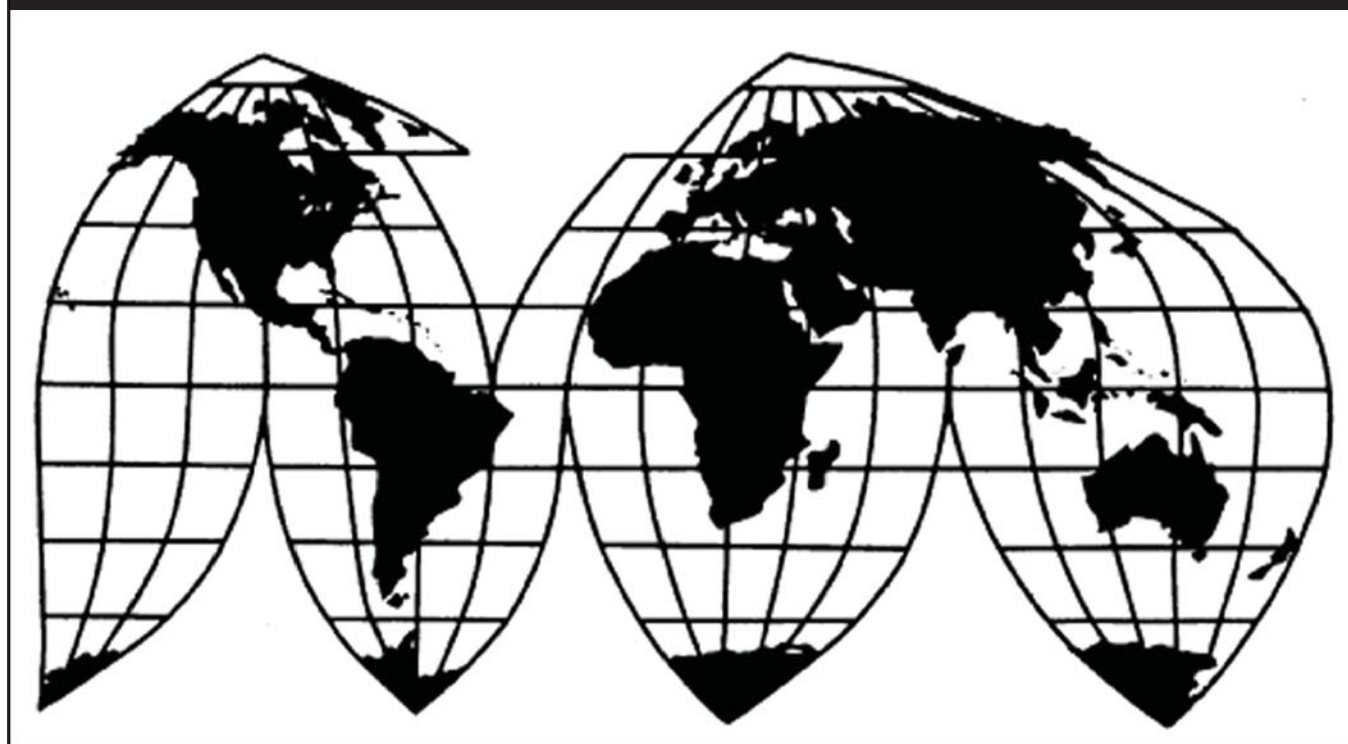
Multilayered Wood Flooring from China (Remand)

Investigation Nos. 701-TA-476 and 731-TA-1179

Publication 4430

October 2013

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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VIEWS OF THE COMMISSION ON REMAND

In November 2011, the Commission determined that an industry in the United States was materially injured by reason of imports of multilayered wood flooring (“MLWF”) from China that the U.S. Department of Commerce (“Commerce”) determined were sold in the United States at less than fair value and/or subsidized by the Government of China.¹

Six U.S. importers of the subject merchandise from China (“U.S. Importers”)² appealed the Commission’s affirmative determinations to the U.S. Court of International Trade (“CIT” or “Court”). The Court remanded four issues and affirmed all other aspects of the Commission’s determinations.³

On remand the Commission reopened the record, sent U.S. producer questionnaires to 20 possible U.S. hardwood plywood manufacturers, and provided for the submission of written

¹ These Remand Views refer to the confidential version of the Commission’s Views in the investigations underlying this appeal, identified as confidential administrative record list document (“CL”) 525. In the Commission’s Views four Commissioners (Chairman Williamson and Commissioners Aranoff, Pinkert, and Lane) made affirmative material injury determinations. Two Commissioners, Commissioners Pearson and Okun, made negative injury determinations but joined the domestic like product and domestic industry definitions.

² U.S. Importers are Swiff-Train Co.; Metropolitan Hardwood Floors, Inc; BR Custom Surface; Real Wood Floors, LLC; Galleher Corp.; and DPR International. Several other respondents participated in the underlying administrative proceedings but did not challenge the Commission’s final determinations or otherwise participate in the appeal: the China National Forest Products Industry Association, an association of MLWF producers from China; Lumber Liquidators Services, LLC, a leading retailer and importer of MLWF; Home Legend, LLC, an importer of subject merchandise from China; Anhui Boya Bamboo & Wood Product Co., Ltd., a producer of subject merchandise in China; Fine Furniture (Shanghai) Ltd., a manufacturer/exporter of MLWF from China; and J. Michael & Co. LLC, a U.S. importer of MLWF from China.

³ *Swiff-Train Co. et al. v. United States*, Slip Op. 13-38 at 2 (Ct. Int’l Trade Mar. 20, 2013) (remanding for the Commission to (1) analyze and reconsider “its decision not to investigate domestic producers of hardwood plywood used for flooring”; (2) “make findings on the issue of price suppression/depression”; (3) “re-evaluate whether the subject imports were the ‘but-for’ cause of material injury to the domestic industry”; and (4) explain “the impact the subject imports had on the domestic industry in light of {the} collapse of the housing market during the period of investigation.”).

comments.⁴ On July 12, 2013, U.S. Importers and the petitioner in the underlying proceedings, the Coalition for American Hardwood Parity (“CAHP”), each submitted written comments.⁵

After considering the Court’s opinion remanding this matter and the parties’ written comments, we determine based upon the record that an industry in the United States is materially injured by reason of subject MLWF imports from China.⁶ In reaching this conclusion, we adopt the Commission’s prior Views, including the discussions of the pertinent legal standards and its findings on the domestic like product, the domestic industry, cumulation, conditions of competition, volume, price effects, and impact, as further supplemented and/or explained in these Remand Views.

⁴ The Commission limited any written comments to the four remanded issues and any new information obtained during the remand proceedings, provided that the comments did not include new factual information. *Multilayered Wood Flooring from China*, 78 Fed. Reg. 30329 (May 22, 2013).

⁵ In a June 5, 2013, letter, U.S. Importers requested (1) an opportunity to comment on a draft U.S. producer questionnaire for hardwood plywood producers; (2) a hearing; (3) prehearing and posthearing briefs that included new facts; and (4) additional pages for any written submission. Public record list document (“PL”) 297. As discussed below, the Commission denied the first three requests and granted the fourth. PL298.

⁶ The Commission’s Remand Views (CL553) reflect the opinion of five Commissioners (Chairman Williamson and Commissioners Aranoff, Pinkert, Johanson, and Broadbent). Commissioner Pearson made negative determinations on remand but joins section I of these Remand Views, and except as otherwise noted therein, he joins sections I to IV.C.2 of the Commission’s prior Views. Commissioner Pearson notes that the sections of the Commission’s prior Views which he joins include section IV.A., the statement of the Commission’s applicable Legal Standards. Commissioner Pearson continues to adopt, in their entirety, the Dissenting Views of Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson. Commissioners Johanson and Broadbent were not members of the Commission at the time of the underlying investigations. Consequently, they made their determinations *de novo* by weighing all evidence and reaching their own conclusions. *Cf. Trent Tube Div. v. United States*, 752 F. Supp. 468, 469-72 & n.1 (Ct. Int’l Trade 1990), *aff’d* 975 F.2d 807 (Fed. Cir. 1992), *reh’g denied* (Aug. 7, 1992); *Mitsubishi Materials Corp. v. United States*, 918 F. Supp. 422, 425 (Ct. Int’l Trade 1996); *USX Corp. v. United States*, 698 F. Supp. 234 (Ct. Int’l Trade 1988).

I. Domestic Like Product/Domestic Industry Definition

A. Background on this Issue

The statute requires the Commission to determine whether the imported articles within the scope of an investigation have injured a “domestic industry,” which is defined as the “producers as a whole of a domestic like product”⁷ As a starting point, the statute defines the “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”⁸ Although the Commission accepts Commerce’s definition of the scope of the investigation, *i.e.*, the articles under investigation,⁹ the Commission defines the domestic like product by determining what U.S. products are “like” the imported articles included in Commerce’s scope.¹⁰

In the underlying investigations, Commerce defined the scope of the investigations as consisting of all MLWF, without regard to dimension, wood species, core composition, and face grade, whether or not the face of the product was smooth or distressed and regardless of whether the product had an interlocking mechanism.¹¹ The scope included all MLWF, both unfinished and prefinished products.¹² In the preliminary and final phases of the investigations,

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(10).

⁹ *See, e.g., Hosiden Corp. v. Advanced Display Mfrs. of Am.*, 85 F.3d 1561, 1567-69 (Fed. Cir. 1996).

¹⁰ *See Torrington Co. v. United States*, 14 CIT 648, 651-52, 747 F. Supp. 744, 749 (1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991); *Cleo Inc. v. United States*, 30 CIT 1380, 1383-89 (2006), *aff’d*, 501 F.3d 1291, 1294-98 (Fed. Cir. 2007).

¹¹ CL525 at 5-7 (citing, *inter alia*, 76 Fed. Reg. 64313 (Oct. 18, 2011) (scope of countervailing duty investigation); 76 Fed. Reg. 64318 (Oct. 18, 2011) (scope of antidumping duty investigation)).

¹² CL525 at 5-7 (citing, *inter alia*, 76 Fed. Reg. 64313; 76 Fed. Reg. 64318).

all six Commissioners defined the domestic like product to be coextensive with the scope,¹³ and they also defined the corresponding domestic industry to consist of U.S. MLWF producers.¹⁴ All six of the Commissioners rejected U.S. Importers' claim that the scope of the investigations included hardwood plywood for flooring and U.S. Importers' argument that the domestic industry might include producers of hardwood plywood for flooring.¹⁵

On appeal, U.S. Importers argued that the agency's investigations were inadequate because the Commission did not issue U.S. producer questionnaires to U.S. hardwood plywood manufacturers.¹⁶ U.S. Importers conceded that they had not asked the Commission to define the domestic like product broader than the scope or to collect data on a potentially broader domestic industry.¹⁷ Nonetheless, they argued that hardwood plywood manufacturers may have made certain products that "plainly and necessarily" were within the scope's definition of "unfinished" MLWF, *i.e.*, products they referred to as hardwood plywood for flooring.¹⁸

Although the Commission rejected U.S. Importers' argument that the scope of the MLWF investigations (and in turn the domestic like product and corresponding domestic

¹³ CL525 at 4-8 (citing, *inter alia*, 76 Fed. Reg. 64313; 76 Fed. Reg. 64318); *Multilayered Wood Flooring from China*, Inv. Nos. 701-TA-476 and 731-TA-1179 (Prelim.), USITC Pub. 4206 at 4-9 (Dec. 2010).

¹⁴ CL525 at 8-17; USITC Pub. 4206 at 10-16.

¹⁵ In reaching this conclusion, the Commissioners reviewed the plain language of Commerce's scope, Commerce's Issues and Decision memoranda concerning the scope coverage, and the parties' arguments (including petitioner CAHP's admission that plywood was not in the scope). CL525 at 8-9 n.22.

¹⁶ U.S. Importers' June 2012 CIT Brief at 3-8; U.S. Importers' September 2012 CIT Reply Brief at 1-8.

¹⁷ U.S. Importers' CIT Brief at 3; U.S. Importers' CIT Reply Brief at 1.

¹⁸ U.S. Importers' CIT Brief at 3-4; U.S. Importers' CIT Reply Brief at 1.

industry definitions) included hardwood plywood for flooring,¹⁹ the Court concluded that the scope might include hardwood plywood for flooring.²⁰ The Court based its finding, in part, on the belief that the Commission admitted that hardwood plywood for flooring was within the scope.²¹ Stating that the Commission distinguished “hardwood plywood used for flooring from unfinished MLWF by finding that MLWF requires the addition of a veneer to a core,”²² the Court concluded that hardwood plywood for flooring could fall within the scope’s definition of MLWF, since plywood is composed of plies of wood (veneers) and plywood “always has an outer veneer.”²³ Given this, the Court concluded that there was “no factual basis for the Commission to distinguish hardwood plywood used for flooring from unfinished MLWF by finding that MLWF requires the addition of a veneer to a core.”²⁴ Having thus found that the unfinished MLWF in the scope encompassed hardwood plywood for flooring, the Court determined that the Commission should have investigated whether hardwood plywood producers were part of

¹⁹ CL525 at 8-9 n.22. The statute vests Commerce with the authority to define the scope of the imported products under investigation and gives the Commission the authority to define the corresponding domestic like product made in the United States. In the rare circumstance in which Commerce has left an ambiguity concerning whether a given product is in or out of the scope, the Commission decides the issue for purposes of its injury analysis, while still deferring to the language and intent of Commerce’s rulings. Thus, even if the scope were ambiguous, the Commission’s conclusion that hardwood plywood for flooring was not in the scope was entitled to deference. 19 U.S.C. §§ 1677(4)(A), 1677(10), 1677(25); *USEC, Inc. v. United States*, 132 F. Supp.2d 1, 9, 25 CIT 49, 57 (2001), *reh’g denied*, 138 F. Supp. 2d 1335, 1338, 25 CIT 229, 231 (2001), *aff’d*, 34 Fed. Appx. 725 (2002) (unpublished); *Hosiden*, 85 F.3d at 1567-69; *Torrington*, 14 CIT at 651-52, 747 F. Supp. at 749, *aff’d*, 938 F.2d 1278, 1280 (Fed. Cir. 1991); *Cleo*, 30 CIT at 1383-89, *aff’d*, 501 F.3d at 1294-98.

²⁰ Slip Op. 13-38 at 2, 5-9, 19-20.

²¹ Slip Op. 13-38 at 8. The Commission, in fact, did not suggest that hardwood plywood for flooring met the scope definition of “unfinished MLWF.” The statements cited by the Court merely reflected the Commission’s finding that scope products were sometimes made from a plywood core. CL525 at 8-9 n.22; Commission’s August 2012 Brief at 4 n.3.

²² Slip Op. 13-38 at 8.

²³ Slip Op. 13-38 at 8.

²⁴ Slip Op. 13-38 at 8.

the domestic industry.²⁵ The Court instructed the Commission on remand to reopen the record to identify and evaluate whether domestic hardwood plywood manufacturers make product that is used for flooring and to make findings commensurate with any new record evidence collected on this issue.²⁶

B. Information Obtained on Remand and Parties' Written Comments

Accordingly, the Commission reopened the record on remand to obtain additional information on this issue. The Commission sent U.S. producer questionnaires to 20 U.S. firms that reportedly manufactured hardwood plywood. The questionnaire recipients included *all* firms identified by U.S. Importers as possible manufacturers of the hardwood plywood for flooring that U.S. Importers believed corresponded to unfinished MLWF in the scope of the

²⁵ Slip Op. 13-38 at 2, 5-9, 19-20. The Court noted that U.S. Importers “could have brought this particular argument to the Commission’s attention earlier” but concluded that “the issue of the overlap between hardwood plywood for flooring and unfinished MLWF was before the Commission at least as early as June 2011, well before its decision was announced.” *Id.* at 5, 9 (relying on U.S. Importers’ CIT Reply Brief at 5). The record makes clear, however, that U.S. Importers did not raise this issue until their October 4, 2011, prehearing brief (CL482/485). Non-parties to the proceedings wrote the “scope letters” referenced by the Court that asked the Commission to investigate U.S. hardwood plywood producers *if* Commerce were to modify the scope language to include plywood. PL116 (“If we were to rewrite this description {*i.e.*, the scope language} removing the word ‘flooring,’ it would meet the description of veneered plywood used for any application.”). Given these statements, these June 2011 letters do not stand for the proposition that the scope included hardwood plywood suitable for flooring. We note further that U.S. Importers’ counsel had notice that the Commission had not distributed questionnaires to any hardwood plywood manufacturers in the preliminary investigations and had characterized the collected U.S. industry data “as based on questionnaire responses of 11 firms that accounted for *nearly all known* U.S. production of MLWF.” USITC Pub. 4206 at 4 (emphasis added). In their June 15, 2011 comments on the draft final-phase questionnaires, U.S. Importers did not ask the Commission to send U.S. producer questionnaires to U.S. hardwood plywood manufacturers or ask for the collection of data on a broader domestic like product that included hardwood plywood for flooring. PL128. Indeed, they continued to argue even as late as their October 4, 2011 prehearing brief that the scope did *not* include hardwood plywood for flooring. CL482/485 at 3-4 (“We agree also with the interested parties, including Petitioners, that all plywood, including plywood panels or veneer sheets, are not a part of the scope.”)

²⁶ Slip Op. 13-38 at 9.

investigations.²⁷ The recipients also included additional possible manufacturers identified in the Commission's separate ongoing investigations of imports of hardwood plywood from China.²⁸ Eighteen of these firms submitted certified questionnaire responses reporting that they do not produce MLWF. Two firms did not submit questionnaires but reported in telephone conversations with the Commission's investigator that they do not produce MLWF.²⁹ Accordingly, the record shows that U.S. hardwood plywood manufacturers did not make MLWF products as defined in the scope during the January 2008 - June 2011 period of investigation ("POI").

In its July 12, 2013, Written Comments in the remand proceedings, Petitioner CAHP argued that the facts obtained on remand confirm that the Commission correctly identified the universe of MLWF producers in the underlying investigations.³⁰ For these reasons, CAHP urged the Commission on remand to use the same domestic industry definition as in the underlying determinations.³¹

U.S. Importers argued that the procedures used by the Commission to conduct its remand proceedings were inconsistent with its rules and practice.³² In their view, the

²⁷ U.S. Importers' Oct. 4, 2011 Prehearing Brief (CL482/485) at 1-9, Exh. 4 to 9 (naming possible hardwood plywood producers in case Commerce included plywood for flooring in the scope of the investigations); U.S. Importers' Oct. 19, 2011 Posthearing Brief (CL496/500) at 14-15 (naming possible hardwood plywood producers); *see also* U.S. Importers' CIT Brief at 4 (claiming that the Commission's failure to investigate these firms "as potential producers of like product is in error, resulting in an incomplete record and a failure to identify actual additional like product producers.").

²⁸ Memorandum INV-LL-057 (CL551) at Table III-1(a) (Aug. 5, 2013).

²⁹ Memorandum INV-LL-057 (CL551) at Table III-1(a).

³⁰ CAHP's Written Comments (CL549/550) at 2-3.

³¹ CAHP's Written Comments (CL549/550) at 3.

³² U.S. Importers' June 5, 2013 Letter (PL297) at 2-7; U.S. Importers' July 12, 2013 Written Comments (CL548) at 1-7. We note that U.S. Importers also argued that the 15 pages for written comments

questionnaire responses received during the remand proceedings confirm the deficiency of the Commission's investigative process on remand.³³

C. Analysis and Findings

We have considered the information submitted by U.S. Importers as well as the information collected on remand. During the underlying investigations, U.S. Importers submitted information to support their claim that certain firms may make unfinished MLWF corresponding to the product under investigation.³⁴ We do not find that the information previously submitted by U.S. Importers establishes that any of these firms manufacture MLWF, including unfinished MLWF or "hardwood plywood for flooring." Moreover, we note that, in the certified questionnaire responses that were submitted during these remand proceedings, hardwood plywood producers, including [], reported that they do not produce any MLWF products, whether finished, unfinished, pre-finished or otherwise.³⁵ In sum, the record does not show that any U.S. hardwood plywood producer manufactures MLWF.

With respect to arguments raised by U.S. Importers, we disagree that our investigative process on remand was deficient. In its remand order, the Court directed the Commission to reopen the record, issue questionnaires to U.S. hardwood plywood manufacturers, and permit

allowed under the Commission's notice for the remand proceedings (78 Fed. Reg. 30329 (May 22, 2013)) was inadequate, but had not specified how many additional pages they sought. U.S. Importers' June 5, 2013 Letter (PL297) at 7. In granting their request for additional pages, the Commission permitted written comments up to 20 pages inclusive of appendices or other such attachments. PL298.

³³ U.S. Importers' July 12, 2013 Written Comments (CL548) at 1-6.

³⁴ U.S. Importers' July 12, 2013 Letter (CL548) at 6 (*e.g.*, questioning [] reporting that it does not produce MLWF); U.S. Importers' Oct. 4, 2011 Prehearing Brief (CL482/485) at 1-9, Exh. 4 to 9; U.S. Importers' Oct. 19, 2011 Posthearing Brief (CL496/500) at 14-15; U.S. Importers' CIT Brief at 4.

³⁵ Memorandum INV-LL-057 (CL551) at Table III-1(a) (summarizing information collected during remand proceedings); *see also, e.g., Conn. Steel v. United States*, 30 CIT 1658, 1667-68, 462 F. Supp. 2d 1322, 1330-31 (2006) (upholding the Commission's reliance on certified questionnaire responses).

comments on facts the Commission obtained on remand from questionnaire responses.³⁶ The Commission complied with all three aspects of the order.³⁷

Moreover, the Commission followed its usual approach for remands, and U.S. Importers' contrary claims are based on regulations that expressly apply to original investigations, and not to investigations on remand.³⁸ For example, contrary to U.S. Importers' suggestion,³⁹ there was no need to hold a hearing on remand. Consistent with 19 C.F.R. § 207.24, the Commission had already conducted a hearing in the underlying investigations (in which U.S. Importers participated).⁴⁰ The Commission's rules do not require it to conduct hearings on remand, even in remand proceedings involving a reopened record, and it does not typically do so.⁴¹ The courts have repeatedly recognized that agencies have considerable

³⁶ Slip Op. 13-38 at 2, 5-9, 19-20.

³⁷ 78 Fed. Reg. 30329. Although U.S. Importers claim that the Commission "baldly denied" their requests, U.S. Importers' July 12, 2013 Written Comments (CL548) at 1 n.1, the Commission explained in its rejection letter that its decisions were based on a consideration of U.S. Importers' "letter, the schedule for these proceedings, and information on the record of these proceedings." PL298. For example, contemporaneous record information included certifications from many of the firms receiving questionnaires that they did not produce any MLWF, finished or unfinished. With respect to U.S. Importers' claim that the Commission did not give hardwood plywood producers that manufacture unfinished MLWF an opportunity to participate, U.S. Importers' June 5, 2013 Letter (PL297) at 3-5; U.S. Importers' July 12, 2013 Written Comments (CL548) at 1, 4, no such firm sought to participate, and the record indicates that no such firm exists:

³⁸ See, e.g., 19 C.F.R. §§ 207.24(a), 207.23, 207.25, 207.20(b).

³⁹ U.S. Importers' June 5, 2013 Letter (PL297) at 5-7; U.S. Importers' July 12, 2013 Written Comments (CL548) at 1.

⁴⁰ See, e.g., Transcript of Oct. 12, 2011, Hearing, PL263.

⁴¹ See, e.g., *Certain Light-weight Thermal Paper from Germany*, 76 Fed. Reg. 42137 (Jul. 18, 2011); *Certain Welded Large-diameter Line Pipe from Mexico*, 76 Fed. Reg. 9608 (Feb. 18, 2011); *Hot-Rolled Steel Products from Kazakhstan, Romania, and South Africa*, 74 Fed. Reg. 21821 (May 11, 2009); *Ball Bearings from Japan and the United Kingdom*, 74 Fed. Reg. 6173 (Feb. 5, 2009); *Ball Bearings from Japan and the United Kingdom*, 73 Fed. Reg. 62317 (Oct. 20, 2008); *Diamond Sawblades and Parts Thereof from China and Korea*, 73 Fed. Reg. 16910 (Mar. 31, 2008); *Carbon and Certain Steel Alloy Wire Rod from Egypt, South Africa, and Venezuela*, 72 Fed. Reg. 73881 (Dec. 28, 2007); *Certain Orange Juice from Brazil*, 72 Fed. Reg. 25778 (May 7, 2007) (all involving reopened records and no hearing on remand).

discretion to fashion their own procedures, including on remand, and this discretion includes the authority to set and enforce deadlines and to limit the submission of data and other materials, such as briefs and hearing testimony.⁴²

Additionally, U.S. importers claim that they should have had an opportunity to comment on a draft of the U.S. producer questionnaire that the Commission issued on remand,⁴³ suggesting that the existing questionnaire the Commission reused on remand “did not specifically address the very question recognized by the Court; whether the producers actually produced unfinished MLWF.”⁴⁴ We disagree. In compliance with the Court’s order, the Commission did what U.S. Importers had asked the Commission to do in the late stages of the underlying investigations – it investigated whether there were additional U.S. producers of the domestic like product by issuing a U.S. producer questionnaire to a number of hardwood

⁴² See, e.g., *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 543-44 (1978) (quoting *FCC v. Schreiber*, 381 U.S. 279, 290 (1965), in turn quoting *FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 143 (1940)); *Avesta AB v. United States*, 12 CIT 493, 511-515, 689 F. Supp. 1173, 1188-1191 (1988); *Nippon Steel Corp. v. United States*, 19 CIT 827, 828 (Ct. Int’l Trade 1995); *Metallwerken Nederland B.V. v. United States*, 744 F. Supp. 281, 288 (Ct. Int’l Trade 1990). As the Federal Circuit has made clear, even the Commission’s decision to “reopen” the evidentiary record, while clearly within its authority, is of course solely for the {Commission} itself to determine.” *Nippon Steel Corp. v. Int’l Trade Comm’n*, 345 F.3d 1379, 1382 (Fed. Cir. 2003).

⁴³ U.S. Importers’ July 12, 2013 Written Comments (CL548) at 2-6; U.S. Importers’ June 5, 2013 letter (PL297) at 2-3. In fact, U.S. Importers already had the chance to comment on the questionnaires, because as even they admit, what the Commission issued on remand “was a verbatim U.S. producer questionnaire from the initial investigation.” CL548 at 3. On remand, the Commission also issued the same instruction booklet used in the underlying investigations. PL284; EDIS 512060; EDIS 512066. Consistent with its practice and 19 C.F.R. § 207.20, the Commission already had allowed all interested parties to comment on the draft questionnaires, including the draft U.S. producer questionnaire. PL285. After having received a one-week extension of time to provide comments on the questionnaires, PL119, on June 15, 2011, U.S. Importers submitted comments in which they made no suggestion whatsoever regarding the domestic like product or domestic industry definitions. PL128. Accordingly, U.S. Importers were provided an opportunity to comment on the questionnaires, and they decided no explanation or context was necessary with respect to the Commission’s definitions.

⁴⁴ U.S. Importers’ July 12, 2013 Letter (CL548) at 3.

plywood producers that had not previously received a questionnaire and asked them to report data on any MLWF operations, including unfinished MLWF operations.⁴⁵

In addition, contrary to U.S. Importers' suggestion,⁴⁶ no further "elaboration, explanation or context" was needed to ensure that the questionnaire recipients reported production of unfinished MLWF. On remand, the Commission's questionnaire and instruction booklet specified that, by asking for data on MLWF operations, it expected the firms to report data on unfinished, prefinished, finished, and other MLWF products as defined in the instruction booklet; the instruction booklet, in turn, used Commerce's scope language defining the product under investigation.⁴⁷ There is no indication in the record that any firm receiving a U.S. producer questionnaire on remand misunderstood the Commission's inquiry.

For the foregoing reasons and because the information collected on remand reinforces the Commission's prior conclusion, we again define the domestic industry as U.S. MLWF producers. Having reopened the record on remand and reconsidered the issue as instructed, we do not include U.S. hardwood plywood producers in the domestic industry.⁴⁸

⁴⁵ U.S. Importers' Oct. 4, 2011 Prehearing Brief (CL482/485) at 1-9, Exh. 4 to 9; U.S. Importers' Oct. 19, 2011 Posthearing Brief (CL496/500) at 14-15; U.S. Importers' CIT Brief at 4.

⁴⁶ U.S. Importers' July 12, 2013 Written Comments (CL548) at 3.

⁴⁷ EDIS 512066 (instruction booklet) (defining "multilayered wood flooring"/MLWF for purposes of the questionnaires to be coextensive with the scope); EDIS 512060 (U.S. Producer questionnaire) (asking, *inter alia*, "Has your firm produced multilayered wood flooring (as defined in the instruction booklet) at any time between January 1, 2008 and June 2011?"); 76 Fed. Reg. at 64313-64318 and 76 Fed. Reg. at 64318-64325 (scope) (explaining that all MLWF "products are included within this definition regardless of the actual or nominal dimensions or form of the product," whether or not they are "manufactured with any interlocking or connecting mechanism," whether they are "unfinished" or "prefinished," and regardless of whether the face (or back) of the product "is smooth, wire-brushed, distressed in any number of methods, or hand-scraped").

⁴⁸ For the reasons discussed in our Views, CL525 at 9-14, we also conclude that U.S. Floors does not perform sufficient production-related activities to warrant inclusion in the domestic industry.

II. Price Effects

A. Background on Issue

In making its material injury determinations, the Commission considers the volume of subject imports and the effect of subject imports on prices in the U.S. market for the domestic like product.⁴⁹ In evaluating the effect of subject imports on prices, the Commission considers whether there has been “significant underselling” of the domestic like product by subject imports and whether the subject imports otherwise depress “prices to a significant degree or preven{t} price increases, which otherwise would have occurred, to a significant degree.”⁵⁰

In the underlying investigations, respondents asserted that there was attenuated competition between subject imports and the domestic like product. In its prior Views, the Commission rejected this argument, explaining that subject importers and the domestic industry supplied the U.S. market with the same types of products, market participants reported the products to be comparable, and both sources sold and tried to sell in the same channels of distribution, to the very same customers, and in the same geographic markets.⁵¹ Thus, the Commission found that subject imports and the domestic like product competed in the U.S. market primarily on price.⁵² It also found that subject imports maintained a significant volume, increased significantly relative to domestic production, and captured significant market

⁴⁹ 19 U.S.C. §§ 1677(7)(B)(i)(I) and (II).

⁵⁰ 19 U.S.C. § 1677(7)(C)(ii). Likewise, in evaluating the volume of subject merchandise, the Commission considers whether “the volume of imports of the merchandise, or any increase in the volume, either in absolute terms or relative to production or consumption in the United States, is significant.” 19 U.S.C. § 1677(7)(C)(i).

⁵¹ CL525 at 28-38.

⁵² CL525 at 34, 37-38.

share from the domestic industry by underselling at significant margins.⁵³ The Commission based its underselling analysis on both traditional (quarterly weighted-average) pricing data on eight specific pricing products⁵⁴ and supplemental pricing data collected after its hearing.⁵⁵ After reviewing the analysis of the Commission and the Dissenting Commissioners,⁵⁶ the Court affirmed the Commission's findings of a significant volume of subject imports⁵⁷ and significant underselling.⁵⁸

⁵³ CL525 at 34-45.

⁵⁴ The traditional pricing data accounted for 40 percent of the domestic industry's U.S. MLWF shipments and 14 percent of U.S. shipments of subject imports from China in 2010. Based on these data, subject imports undersold the domestic like product throughout the POI, in 60 of 110 (54.0 percent) possible comparisons at margins of 1.5 to 36.4 percent. In response to parties' comments on the draft final-phase questionnaires, the Commission had refined the pricing products to describe very specific product characteristics and features, including species. According to party arguments and the more complete record at the end of the investigations indicating that consumers valued attributes such as color, grain, and texture, the traditional pricing data did not necessarily present a full picture of competition, underselling, or other price effects in the U.S. market. Products made with faces of different species often competed with one another because different staining colors and techniques enabled a given species to have more than one appearance or look. Due to cross-species competition, low-priced MLWF imports from China of products with a face of a given species affected prices of more than just U.S.-produced MLWF products with a face of the same species. CL525 at 38-41 & n.190; Confidential Report (CL507) at Tables V-1 to V-10.

⁵⁵ To evaluate their arguments made during and after the hearing about competition in the U.S. market, the Commission also had solicited volume and value data from the parties concerning Asian birch and acacia, hand-scraped and non-hand-scraped products, and their top five MLWF products by species. CL525 at 24, 42. These data provided considerably greater coverage than the traditional pricing data. CL525 at 42-43 & n.193. While also recognizing the limitations of these data, the Commission concluded that the supplemental pricing data were consistent with other evidence showing significant adverse price effects by subject imports. CL525 at 41-44. The supplemental data showed nearly universal underselling by subject imports, both in comparisons of products with faces of the same species and in comparisons of products with faces of similar groupings of species. CL525 at 43.

⁵⁶ Slip Op. 13-38 at 4, 10-11. The Dissenting Commissioners found mixed underselling and overselling but did not find significant underselling absent significant price depression or suppression and because they found competition between the significant subject import volume and the domestic industry to be attenuated. CL526 at 15-18.

⁵⁷ Slip Op. 13-38 at 10.

⁵⁸ Slip Op. 13-38 at 11 (finding the Commission's "conclusion that there was significant underselling of subject merchandise is supported by substantial evidence on the record.").

With respect to price depression, in its final determinations, the Commission found “evidence that low-priced imports of MLWF from China have depressed prices of the domestic like product in the U.S. market.”⁵⁹ In its analysis, the Commission did not make a specific finding on price suppression. The Court remanded the Commission’s price effects analysis for the Commission to make “explicit findings on the effect of the subject imports on the price suppression and depression factors”⁶⁰ The Court also directed the agency to explain in its price effects analysis “those economic issues addressed by the Dissenting Views.”⁶¹

B. Parties’ Written Comments

In its Written Comments, Petitioner CAHP agrees with the Commission’s conclusion that subject imports primarily competed with the domestic like product based on price, given that there was a high degree of substitutability between the domestic like product and subject imports.⁶² CAHP argues that substantial record evidence shows that subject imports had significant adverse price effects on the domestic like product.⁶³ CAHP endorses the Commission’s finding that declines in domestic prices for hand-scraped MLWF products in the face of increasing demand demonstrated that price declines were not due to lower demand or the severe economic downturn but were instead responsive to low-priced imports from China.⁶⁴ It points to additional purchasers’ statements and hearing testimony as further

⁵⁹ CL525 at 44-45.

⁶⁰ Slip Op. 13-38 at 12; *see also id.* at 2 (remanding for the Commission to “make findings on the issue of price suppression/depression.”).

⁶¹ Slip Op. 13-38 at 12.

⁶² CAHP’s Written Comments (CL549/550) at 3-4.

⁶³ CAHP’s Written Comments (CL549/550) at 3-8.

⁶⁴ CAHP’s Written Comments (CL549/550) at 5.

support for the Commission's finding of adverse price effects.⁶⁵ CAHP asks the Commission on remand again to find significant adverse price effects by subject imports.⁶⁶

In their July 12, 2013 Written Comments on remand, U.S. Importers did not discuss the Court's remand of the agency's price effects analysis.

C. Analysis and Findings

Although U.S. Importers had not contested the Commission's price effects analysis in their briefs on appeal, the Court remanded the Commission's price effects analysis on the basis that the Commission had not made "an explicit finding of *significant* price depression (and no finding at all regarding price suppression)."⁶⁷ The Commission did not include an explicit finding of significant price depression or a finding of significant price suppression, because it found neither in reaching its affirmative determinations. We note that when the Commission finds there is significant underselling by subject imports, that underselling enabled subject imports to maintain and gain market share at the domestic industry's expense, and that a significant and significantly increasing volume of subject imports has adversely impacted the domestic industry,⁶⁸ the Commission is not required to find also that there is *significant* price depression or *significant* price suppression. Under the statutory language, a lack of price depression and/or price suppression does not preclude a finding of adverse price effects based on significant *underselling*, nor does it prevent the Commission from making an affirmative

⁶⁵ CAHP's Written Comments (CL549/550) at 5-8.

⁶⁶ CAHP's Written Comments (CL549/550) at 8.

⁶⁷ Slip Op. 13-38 at 11 (emphasis added).

⁶⁸ CL525 at 34-54.

determination, if the significant underselling enables subject imports to maintain a significant volume in the U.S. market and/or to increase significantly.⁶⁹

The Court has already affirmed the Commission's volume analysis and its finding of significant underselling by subject imports from China.⁷⁰ Consequently, under the statute and prior case law,⁷¹ the Commission respectfully submits that it was not necessary to make specific findings on price depression or price suppression, let alone findings of significant price depression and significant price suppression. Since the Court has, however, directed the Commission on remand to "make explicit findings on the effect of the subject imports on the

⁶⁹ No specific form of adverse price effects is required for affirmative determinations. 19 U.S.C. § 1677(7)(E)(ii) (stating that the presence or absence of any statutory factor under 19 U.S.C. §§ 1677(7)(C) or (D) is not decisive); 19 U.S.C. § 1677(7)(C)(ii) (simply asking the Commission to "consider" whether "there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and 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.") (subparagraph numbering omitted).

⁷⁰ Slip Op. 13-38 at 10, 11.

⁷¹ In *Grupo Industrial Camesa v. United States*, 85 F.3d 1577, 1582 (Fed. Cir. 1996), the Federal Circuit upheld the Commission's affirmative determination that was based on a finding that subject imports gained significant market share by underselling the domestic like product at significant margins. See, also, e.g., *Cleo*, 30 CIT at 1396 (upholding Commission's affirmative material injury determination based on findings of significant underselling and significant volume increases by subject imports that adversely impacted the domestic industry); *Sodium Nitrite from China et al.*, Inv. Nos. 701-TA-453 and 731-TA-1136 to 1137 (Final), USITC Pub. 4029 at 28 (Aug. 2008) (not finding significant price depression or suppression but finding significant underselling by subject imports that adversely impacted the domestic industry by taking away market share during a period of declining demand); *Small Diameter Graphite Electrodes from China*, Inv. No. 731-TA-1143 (Final), USITC Pub. 4062 at 16-19 (Feb. 2009) (not finding significant price depression or suppression but finding significant underselling by subject imports that led to lost sales for the domestic industry, increasing subject import market share, and declining U.S. shipments during a period of rising demand). Conversely, the courts have recognized that underselling is not required if the Commission finds significant price suppression or price depression, *Shandong TTCA Biochemistry Co., Ltd. v. United States*, 774 F. Supp.2d 1317, 1330 at n.22, and upheld affirmative determinations in such circumstances. See, e.g., *Companhia Paulista de Ferro-Ligas v. United States*, 20 CIT 473, 477-79 (1996); *Cemex, S.A. v. United States*, 16 CIT 251, 260-61, 790 F. Supp. 290, 297-99 (1992), *aff'd* 989 F.2d 1202 (Fed. Cir. 1993); *Florex v. United States*, 13 CIT 28, 40, 705 F. Supp. 582, 593-94 (1989).

price suppression and depression factors,”⁷² we address the issues of price depression and price suppression below and explain why the record evidence on price depression, while not “significant” within the meaning of the statute, supports the affirmative determination we have reached on other grounds.⁷³

With respect to price depression, the Court questioned the Commission’s finding that the domestic MLWF industry “faced competition from a large and growing volume of substitutable MLWF that was lower priced and that the domestic industry lowered its prices, including for hand-scraped products” because the finding depended “primarily on evidence from one of the 8 products reviewed.”⁷⁴ It is true that the Commission relied on trends in the traditional pricing data for pricing product 7, a hand-scraped MLWF product, to support its finding that low-priced subject imports of MLWF from China depressed prices of the domestic like product in the U.S. market.⁷⁵ As noted in the Commission’s prior Views, which we endorse and incorporate herein, there was “nearly universal underselling” of the domestic like product by subject imports for product 7.⁷⁶

The Commission’s overall price depression analysis, however, did not depend “primarily” on the traditional pricing data for one pricing product. In its prior Views, the Commission also based its finding of evidence of price depression on supplemental pricing data and other pertinent record evidence. Specifically, as the Commission stated, the “supplemental pricing data show that domestically produced MLWF faced competition from a large and

⁷² Slip Op. 13-38 at 12; *see also id.* at 2.

⁷³ CL525 at 44-45.

⁷⁴ Slip Op. 13-38 at 11 (quoting CL525 at 44); *see also id.* at 12.

⁷⁵ CL525 at 44-45 (citing Confidential report (CL507) at Table V-7).

⁷⁶ CL525 at 40; Confidential report (CL507) at Table V-7.

growing volume of substitutable MLWF that was lower priced and that the domestic industry lowered its prices, including for hand-scraped MLWF products.”⁷⁷ The price decline for hand-scraped products was noteworthy given that hand-scraped products are higher-value MLWF products that respondents argued – and the record showed – accounted for a growing share of the U.S. market.⁷⁸ Between 2008 and 2010, the supplemental pricing data also showed “overall declines in prices of the domestic like product for birch, hickory, maple, oak, red oak, and walnut as well as overall declines in prices of the domestic like product for birch products, hickory products, maple products, oak products, and walnut products.”⁷⁹

Furthermore, as the Commission also stated, “[e]vidence from purchasers’ questionnaires also indicates that domestic producers were forced to lower prices to compete with low-priced imports of MLWF from subject producers in China.”⁸⁰ In addition, purchasers’ confirmation of domestic producers’ lost revenue allegations further demonstrated that the domestic industry had to lower prices due to low-priced imports of MLWF from China.⁸¹ Based on these data, we find evidence that subject imports from China depressed domestic prices.

The Court also remanded the Commission’s price depression analysis so that the Commission could address certain “other factors {discussed by the Dissenting Commissioners}

⁷⁷ CL525 at 44 & n.202; supplemental pricing data (CL553).

⁷⁸ CL525 at 31, 40, 43-45 & nn.141, 149, 189, 203; *compare* Confidential report (CL507) at Table V-7 (hand-scraped products) *with* Tables V-1 to V-6 and V-8 (non-hand-scraped products); *see also* Confidential report (CL507) at VI-4 n.8.

⁷⁹ These data also showed lower prices in interim 2011 than in interim 2010 for birch, hickory, maple, oak, and walnut as well as for birch products, hickory products, maple products, oak products, and walnut products.” CL525 at 44 & n.202; supplemental pricing data (CL553).

⁸⁰ CL525 at 45 & n.204 (citing Confidential report (CL507) at V-26 to V-27 indicating that seven of eight responding purchasers named in lost sales and lost revenue allegations reported that U.S. producers reduced their prices to compete with prices of MLWF from China).

⁸¹ CL525 at 45 & n.205 (citing Confidential report (CL507) at V-27, V-29).

that may explain the price decline {that} were not addressed by the Commission.”⁸² The Dissenting Commissioners found that there was not significant price depression because domestic price declines were modest and occurred during a time of declining raw material costs for sawmill timber, and the largest decline was for a pricing product for which subject imports oversold the domestic industry (pricing product 5).⁸³

In analyzing the traditional pricing data, the Dissenting Commissioners found that “prices for all eight domestic products decreased from the first quarter of 2008 through mid-2011.”⁸⁴ We agree that prices for all eight domestic pricing products were lower in the final quarter of the POI than in the first quarter of the POI.⁸⁵

With respect to raw material costs, raw materials accounted for 45 to 47 percent of domestic producers’ MLWF total cost of goods sold during the POI, and the main raw material used to produce MLWF is sawtimber.⁸⁶ The Dissenting Commissioners concluded that any decline in domestic prices was enabled at least to some extent by a modest decline in oak

⁸² Slip Op. 13-38 at 12; *see also id.* at 10-12, 20. As a general matter, we note that the statute does not require the Commission to discuss issues addressed in concurring or dissenting opinions. *See* 19 U.S.C. §§ 1677(7), 1677(f)(i) (not identifying issues discussed in concurring or dissenting opinions as among those that the Commission “shall consider,” let alone “shall discuss” or “shall include” in its final determinations). Furthermore, it is not unusual for individual Commissioners to reach different conclusions after reviewing the same record. *Corus Group PLC v. Int’l Trade Comm’n*, 352 F.3d 1351, 1363 (Fed. Cir. 2003) (it is even “not necessary that separate opinions comprising a majority (or here a plurality), agreeing on a single result, adopt identical or even consistent reasoning in reaching that particular result.”); *Mittal Steel Roman v. United States*, Ct. No. 06-00173, 2008 WL 111025 (Ct. Int’l Trade Jan. 11, 2008). Indeed, the agency need not address all party arguments, unless they pertain to an important aspect of the problem. *See, e.g., Timken Co. v. United States*, 421 F.3d 1350, 1354-57 (Fed. Cir. 2005).

⁸³ Slip Op. 13-38 at 11-12 (referencing CL526 at 17-18).

⁸⁴ CL526 at 17.

⁸⁵ Confidential report (CL507) at Tables V-1 to V-8.

⁸⁶ Confidential report (CL507) at V-1.

sawtimber costs.⁸⁷ The cost of oak sawtimber, which is one of the species of products that may be used to manufacture the MLWF under investigation, fell by three percent over the POI, but the cost of hardwood sawtimber, the broader category of products used to make the MLWF under investigation actually rose by three percent over the POI.⁸⁸ Even assuming that the cost of a raw material that accounted for less than half of the cost to produce MLWF declined during the POI, we do not find that any decline in raw material costs explains the far greater 23.4 percent decline in domestic prices for pricing product 7, a hand-scraped product.⁸⁹ The fact that the domestic industry lowered its prices for this hand-scraped product, for which even respondents argued demand was increasing, demonstrates that these price declines were not due to lower demand, the severe economic downturn, or fluctuating raw material costs, but were instead in response to widespread underselling by subject imports from China.⁹⁰

Although the Dissenting Commissioners based their price depression analysis solely on the traditional quarterly pricing data, as discussed above, we have based our analysis also on the supplemental pricing data that reflected domestic price declines in the face of “nearly universal underselling both in comparisons of products with faces of the same species and in comparisons of products with faces of similar groupings of species” by subject imports and widespread underselling of domestically manufactured hand-scraped products by subject

⁸⁷ CL526 at 17.

⁸⁸ Confidential report (CL507) at V-1.

⁸⁹ Confidential report (CL507) at V-1, Table V-7; CL525 at 40, 44-45. According to the supplemental pricing data, prices of domestically manufactured MLWF and subject MLWF from China for all but oak and maple products also declined by greater than three percent between 2008 and 2010. Supplemental pricing data (CL553).

⁹⁰ CL525 at 45 (citing Report at Table V-7); *see also id.* at 31, 40, 43-44 & nn.141, 149, 189, 203; *compare* Confidential report (CL507) at Table V-7 (hand-scraped products) *with* Tables V-1 to V-6 and V-8 (non-hand-scraped products); *see also* Confidential report (CL507) at VI-4 n.8

imports.⁹¹ In addition, we base our finding on evidence of price declines in purchaser questionnaire responses and confirmed lost revenue allegations.⁹²

For these reasons, we find evidence that subject imports depressed prices of the domestic like product but we do not find “significant” price depression. This finding is consistent with and supports our finding that by significantly underselling the domestic like product, subject imports were able to maintain a significant volume and increased significantly relative to domestic production and consumption during the POI.⁹³

With respect to whether subject imports prevented price increases which otherwise would have occurred to a significant degree, we do not find price suppression. We thus agree with the Dissenting Commissioners’ finding on this statutory factor, which they were required to address because they were making negative determinations in these investigations. As discussed above, however, a lack of price *suppression* does not preclude a finding of adverse price effects based on significant *underselling*, nor does it prevent the Commission from ultimately making affirmative determinations, as warranted here.

III. The Domestic Industry was Materially Injured by Reason of Subject Imports of MLWF from China

A. Background on This Issue

In its Views in the underlying investigations, the Commission found a causal connection

⁹¹ CL525 at 43-44 & n.202; supplemental pricing data (CL553). The Dissenting Commissioners, in contrast, did not address the supplemental data, much less square these data with their pricing conclusions.

⁹² CL525 at 45 & nn.204-205; Confidential report (CL507) at V-26 to V-27, V-29; Petitioners’ Posthearing Brief (CL494/499) at Answers to Commission Question M.

⁹³ We note that we would make affirmative determinations in these investigations even without evidence of price depression.

between subject imports and the domestic industry's condition, explaining that subject imports competed with the domestic like product in the U.S. market primarily based on price, selling the same types of products in the same channels of distribution, to the same customers, and in the same geographic markets.⁹⁴ It found that subject imports maintained a significant volume, increased significantly relative to domestic production, and captured significant market share from the domestic industry by underselling at significant margins.⁹⁵ It also found "evidence that low-priced imports of MLWF from China have depressed prices of the domestic like product in the U.S. market."⁹⁶ Almost all of the domestic industry's performance indicators declined significantly from 2008 to 2009, and even those factors that appeared to improve somewhat between 2009 and 2010 remained at lower levels in 2010 than in 2008.⁹⁷ The Commission explained that the domestic industry's apparent recent financial improvements were driven in large part by [] partial abandonment of U.S. production capacity in favor of low-cost subject imports, significant cost-cutting measures, and asset impairments.⁹⁸ It also addressed the role of demand, substitute flooring products, and nonsubject imports in the U.S. market.⁹⁹

In remanding the case to the Commission, the Court found that the Commission cited "little evidence on the record that connects the subject imports to the condition of the

⁹⁴ CL525 at 18-54.

⁹⁵ CL525 at 34-45.

⁹⁶ CL525 at 44-45.

⁹⁷ CL525 at 46-54.

⁹⁸ CL525 at 47-54.

⁹⁹ CL525 at 18-54.

domestic industry.”¹⁰⁰ According to the Court, the Commission “needs to ensure that the subject imports, as compared to other economic factors affecting the domestic industry, were not {sic} a but-for cause of the injury,” and the statute requires “that the injury caused be not inconsequential, immaterial, or unimportant.”¹⁰¹ The Court found the Commission’s determinations to be “unsupported by substantial evidence because the Commission failed to adequately consider the effect that the severe disruption of the home building and remodeling industries had on the domestic like product industry.”¹⁰²

B. Parties’ Written Comments

In its Written Comments, CAHP argues that the Commission already provided a detailed explanation of the causal connection between subject imports and the domestic industry’s condition.¹⁰³ CAHP contends the statutory scheme and the Federal Circuit long have recognized that the existence of injury to a domestic industry caused by other factors does not compel a negative determination.¹⁰⁴ It argues that the Commission is “not required to isolate the effects of subject imports from other factors contributing to injury.”¹⁰⁵ CAHP acknowledges that changes in the domestic housing market affected the domestic industry during the POI, but it argues that any injury caused by these changes does not negate the fact that subject imports had more than an incidental, tangential, or trivial effect on the domestic industry’s condition.¹⁰⁶

¹⁰⁰ Slip Op. 13-38 at 17.

¹⁰¹ Slip Op. 13-38 at 17-18.

¹⁰² Slip Op. 13-38 at 15; *see also id.* at 2, 4, 12-15, 17-18, 19, 20.

¹⁰³ CAHP’s Written Comments (CL549/550) at 8-13.

¹⁰⁴ CAHP’s Written Comments (CL549/550) at 9.

¹⁰⁵ CAHP’s Written Comments (CL549/550) at 9 (citing *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States*, 180 F. Supp.2d 1360, 1375 (Ct. Int’l Trade 2002)).

¹⁰⁶ CAHP’s Written Comments (CL549/550) at 11.

CAHP argues that the Commission's finding that subject imports increased their share of the U.S. market at the domestic industry's expense even when the market as a whole was in decline is tangible and substantial evidence of subject imports' role vis-à-vis general market conditions.¹⁰⁷

In their Written Comments, U.S. Importers assert that the courts, and not the Commission, determine the legal causation standard.¹⁰⁸ Alternatively, they admit that the statute arguably "is silent as to the specific approach the Commission must use in making its injury analysis" and argue that the Commission's interpretation of "by reason of" is not based on a permissible construction of the statute.¹⁰⁹ U.S. Importers contend the Commission is required to apply what they describe as a "but for" causation standard,¹¹⁰ stating that the Commission must consider whether "the domestic industry would have been better off if the dumped goods had been absent from the market."¹¹¹ They argue that the Commission did not apply a "but-for" analysis in its final determinations¹¹² and that "the issue of whether the Commission used a 'but-for' causation standard in determining injury is not subject to review under the substantial evidence standard."¹¹³

C. Analysis and Findings

In remanding the case, the Court found that, "aside from citing to contemporaneous economic data, the Commission cites to little evidence on the record that connects the subject

¹⁰⁷ CAHP's Written Comments (CL549/550) at 8-13.

¹⁰⁸ U.S. Importers' July 12, 2013, Written Comments (CL548) at 10.

¹⁰⁹ U.S. Importers' July 12, 2013, Written Comments (CL548) at 7.

¹¹⁰ U.S. Importers' July 12, 2013, Written Comments (CL548) at 1, 6-20.

¹¹¹ U.S. Importers' July 12, 2013, Written Comments (CL548) at 7-8.

¹¹² U.S. Importers' July 12, 2013, Written Comments (CL548) at 1, 6-20.

¹¹³ U.S. Importers' July 12, 2013, Written Comments (CL548) at 7.

imports to the condition of the domestic industry.”¹¹⁴ While we agree that the Commission needs to demonstrate a sufficient causal, not merely temporal, nexus between subject imports and the domestic industry’s condition, we respectfully note that citing “contemporaneous economic data” from the factual record comports with the requirement for the Commission to make, and the courts to review, record-based decisions.¹¹⁵ To the extent that the Court believes that the Commission did not adequately explain the causal connection between subject imports and the domestic industry, we expand on our explanation of the causal nexus in detail below, demonstrating the linkage between the domestic industry’s condition and the significant underselling by and changes in the magnitude and trend of subject imports from China.¹¹⁶

¹¹⁴ Slip Op. 13-38 at 17.

¹¹⁵ The Commission’s final affirmative material injury determinations are “determinations on record” that are reviewable by the CIT on the basis of whether they are “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. §§ 1516a(a)(2) (“review of determinations on record”), 1516a(a)(2)(B)(i) (“reviewable determinations”), 1516a(b)(1)(B)(i) (substantial-evidence judicial review), 1516a(b)(2) (record for review).

¹¹⁶ Although the Court stated (Slip Op. 13-38 at 13 n.6) that the Commission “failed to make any findings with regard to the fifth statutory ‘impact’ factor: magnitude of the margin of dumping on the domestic industry,” the Commission did consider the margins provided by Commerce, referring to them twice in its Views, and explaining that it treated all data related to Zhejiang Yuhua Timber Co., Ltd. as involving nonsubject rather than subject MLWF, because this Chinese producer/exporter had received *de minimis* subsidies, and Commerce had determined that its products were not sold at less than fair value. CL525 at 23, 45 n.206. The antidumping duty margin is one of many non-dispositive factors that the Commission considers under the statute. 19 U.S.C. §§ 1677(7)(C), 1677(7)(E)(ii); *Asociacion de Productores de Salmon*, 180 F. Supp.2d at 1376 (“Nothing in the statutory scheme compels Commissioner Bragg to reach a certain conclusion concerning the dumping margins – the statute only compels Commissioner Bragg to consider such margins.”). Although the Dissenting Commissioners stated that Commerce’s antidumping duty margins were “unusually low for the Chinese industry as a whole” and found them to be consistent with the underselling margins of subject imports, antidumping duty and underselling margins reflect different types of price comparisons and are calculated using significantly different methodologies. For example, in these investigations involving imports from a non-market economy (“NME”), for each firm qualifying for a separate rate, Commerce compared the NME producer’s normal value of the subject merchandise (*e.g.*, the NME producer’s factors of production

As we found in our Views, subject producers in China sold the same types of products in the U.S. market as the domestic industry, and subject imports were sold in the same channels of distribution, to the same customers, and in the same geographic markets as the domestic like product.¹¹⁷ Consequently, subject imports from China and the domestic like product competed in the U.S. market primarily based on price.¹¹⁸

Based on traditional quarterly pricing data, subject imports of MLWF from China undersold the domestic like product throughout the POI, as discussed above.¹¹⁹ These data also showed widespread underselling of the domestic like product by subject imports for pricing products 4, 6, 7, and 8 (which accounted for a sizable share of the traditional pricing data reported by importers of subject MLWF from China) throughout the POI.¹²⁰ Furthermore, the supplemental pricing data, which provide considerably greater coverage than the traditional quarterly pricing data, showed nearly universal underselling of the domestic like product by subject imports from China throughout the POI, both in comparisons of products

valued in a surrogate market economy country) with the export price or constructed export price of the subject merchandise that the NME producer exported to the United States. 76 Fed. Reg. 30656-30667; 19 U.S.C. §§ 1677a, 1677b(c). In contrast, the Commission analyzed underselling by comparing the prices of the subject MLWF from China sold by U.S. importers to unrelated customers in the U.S. market with the prices of the domestically manufactured MLWF sold by domestic producers to unrelated customers in the U.S. market. Confidential report (CL507) at V-3, Tables V-1 to V-8; supplemental pricing data (CL553); 19 U.S.C. § 1677(7)(C)(ii)(I). Moreover, the Commission, unlike the Dissenting Commissioners, found significant underselling on this record, a finding already sustained by the Court. Slip Op. 13-38 at 11.

¹¹⁷ CL525 at 28-34, 35, 37-38, 44, 45.

¹¹⁸ CL525 at 34, 37-38.

¹¹⁹ CL525 at 38-40 (citing Confidential report (CL507) at Tables V-1 to V-10).

¹²⁰ CL525 at 40 (noting that subject imports from China undersold the domestic like product in 53 of 56 instances at margins that ranged from [] to [] percent for pricing product 4, [] to 36.4 percent for product 6, [] to [] percent for product 7, and 2.8 to 24.4 percent for product 8).

with faces of the same species and in comparisons of products with faces of similar groupings of species.¹²¹

Both the traditional pricing data for product 7 and the supplemental pricing data demonstrated consistent underselling of the domestic like product by subject imports of hand-scraped products from China.¹²² Indeed, according to the supplemental pricing data, imports of hand-scraped MLWF from subject producers in China were priced so low in the U.S. market that they undersold domestically produced non-hand-scraped MLWF throughout the POI,¹²³ even though hand-scraped products are a higher-value MLWF product.¹²⁴ For this reason and because respondents had argued – and our record showed – that hand-scraped products accounted for a sizable and growing share of the otherwise declining U.S. MLWF market during the POI,¹²⁵ such underselling for hand-scraped products is meaningful.

The record showed that these low-priced subject imports gained sales and market share directly at the domestic industry's expense. For example, although respondents argued that remodeling and replacement sales to "big box" stores such as Lowes and retailers such as Lumber Liquidators constituted a growing segment of the U.S. market, evidence showed not

¹²¹ CL525 at 42-43 (citing supplemental data (CL553)).

¹²² CL525 at 40, 43; Confidential report (CL507) at Table V-7; supplemental data (CL553).

¹²³ CL525 at 43 (citing supplemental data (CL553)).

¹²⁴ CL525 at 40 & n.189 (comparing Confidential report (CL507) at Table V-7 (hand-scraped) with Tables V-1 to V-6 and V-8 (non-hand-scraped products)); CL525 at 43 (noting that hand-scraped products had higher values than non-hand-scraped products for both domestically produced MLWF and MLWF imported from subject producers in China); supplemental data (CL553).

¹²⁵ CL525 at 31, 40 & nn.141, 149, 189 (noting, *inter alia*, that hand-scraped products accounted for about [] percent of the domestic industry's shipments in 2010 and that demand for hand-scraped products was important to domestic producers. Specifically, [

]) (citing Confidential report (CL507) at VI-4 n.8; supplemental data at responses to domestic producers' questions).

only that subject imports from China increased their sales to this segment at the domestic industry's expense but also that they were able to do so using lower prices.¹²⁶

Moreover, other record data demonstrated the same trends. For example, purchasers generally ranked products imported from China as superior in terms of price (*i.e.*, lower priced),¹²⁷ and they reported initially choosing or switching to imports from China based on price.¹²⁸ The record also showed that the domestic industry lowered prices to compete with low-priced subject imports from China¹²⁹ and that the domestic industry lost sales due to low-priced competition from subject imports from China.¹³⁰

We find that by underselling the domestic like product at significant margins while selling products that were highly substitutable for the domestic like product and competing in the same geographic markets and channels of distribution, subject imports were able to maintain a significant volume both in absolute terms and relative to consumption in the United States,¹³¹ increase significantly relative to domestic production,¹³² and capture significant

¹²⁶ Derived from Confidential report (CL507) at Table II-1, Table C-1 (adjusted to exclude U.S. Floors) (CL554); CL525 at 44 & n.200; Petitioners' Posthearing Brief (CL494/499) at Answers to Commission Question M (including affidavit from [

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¹²⁷ CL525 at 43 & n.197 (citing Confidential report (CL507) at Table II-9).

¹²⁸ CL525 at 43-44 & n.198; Confidential report (CL507) at V-26 (noting that seven of 10 responding purchasers named in lost sales and lost revenue allegations in the preliminary investigations reported switching purchases of MLWF from U.S. producers to suppliers of MLWF from China and that all seven reported that price was the reason for the shift).

¹²⁹ CL525 at 44 & n.199; Confidential report (CL507) at V-26.

¹³⁰ CL525 at 44 & n.201; Confidential report at V-27, V-29.

¹³¹ As we previously found, apparent U.S. consumption of MLWF in square feet declined substantially from [] in 2008 to [] in 2009 and improved somewhat at the end of the POI ([] in 2010, [] in interim 2010, and [] in interim 2011). By 2010, the volume of subject imports had almost completely recovered to its 2008 levels, whereas domestically produced MLWF and nonsubject imports remained substantially below their respective 2008 levels. In

market share from the domestic industry.¹³³ Subject imports continued to increase their U.S. market share regardless of whether apparent U.S. consumption was increasing or declining and by significantly underselling the domestic like product increased their share of the U.S. market mostly at the domestic industry's expense.¹³⁴ The Court has affirmed our volume analysis as well as our finding of significant underselling by subject imports.¹³⁵

In accordance with the Commission's prior Views, we also find "evidence that low-priced imports of MLWF from China have depressed prices of the domestic like product in the U.S. market."¹³⁶ As discussed above, the traditional quarterly pricing data show lower prices of the domestic like product at the end of the POI than in the first quarter of the POI.¹³⁷ The supplemental pricing data also show overall declines in the price of the domestic like product,

square feet, U.S. shipments of subject imports from China were [] in 2008, [] in 2009, [] in 2010, [] in interim 2010, and [] in interim 2011. In contrast, the domestic industry's U.S. shipments in square feet were [] in 2008, [] in 2009, [] in 2010, [] in interim 2010, and [] in interim 2011, and U.S. shipments of imports from non-subject sources were [] in 2008, [] in 2009, [] in 2010, [] in interim 2010, and [] in interim 2011. CL525 at 34-35, 36; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹³² We find that the large and increasing presence of subject imports in the U.S. market during the POI is apparent when imports of subject MLWF from China are considered relative to U.S. production. The ratio of subject imports to domestic production increased from [] percent in 2008 to [] percent in 2009 and [] percent in 2010. CL525 at 36-37; derived from Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹³³ Subject imports of MLWF from China maintained a significant share of the U.S. market and increased their market share significantly throughout the POI, notwithstanding a dramatic decline in apparent U.S. consumption between 2008 and 2009 and an overall decline in apparent U.S. consumption between 2008 and 2010. Subject imports' market share was [] percent in 2008, [] percent in 2009, [] percent in 2010, [] percent in interim 2010, and [] percent in interim 2011. CL525 at 35, 37; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹³⁴ CL525 at 35, 44, 45; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹³⁵ Slip Op. 13-38 at 10, 11.

¹³⁶ CL525 at 44-45.

¹³⁷ Confidential report (CL507) at Tables V-1 to V-8.

both in terms of species and groupings of species, and the existence of near universal underselling of the domestic like product by subject imports both in comparisons of products with faces of the same species and in comparisons of products with faces of similar groupings of species.¹³⁸

For hand-scraped products, both the quarterly traditional pricing data and the supplemental pricing data show nearly universal underselling of the domestic like product by subject imports and price declines in the domestic like product that exceed any decline during this period in the cost of raw materials used to manufacture MLWF.¹³⁹ The fact that the domestic industry lowered its prices for such hand-scraped products (for which even respondents argue demand was increasing) by more than any cost declines demonstrates that these price declines were not due to lower demand, the severe economic downturn, or fluctuating raw material costs, but were instead in response to the significant and significantly increasing volume of low-priced imports of MLWF from China.¹⁴⁰

As the Court recognizes,¹⁴¹ to support a finding that the domestic industry is materially injured by reason of subject imports, the statute requires that the injury caused be “not

¹³⁸ CL525 at 44 & n.202; supplemental pricing data (CL553).

¹³⁹ As the Commission further noted, imports of hand-scraped MLWF from subject producers in China were priced so low in the U.S. market that they undersold domestically produced non-hand-scraped MLWF throughout the POI. CL525 at 40, 43, 44-45, 48-49; supplemental data (CL553) at answers to question 2; Confidential report (CL507) at Table V-7.

¹⁴⁰ CL525 at 31, 40, 43-45 & nn.141, 149, 189, 203; Confidential report (CL507) at V-1, Table V-7; supplemental pricing data (CL553) at answers to question 2. Purchaser questionnaire responses and confirmed lost revenue allegations provide further support for our finding of evidence that subject imports depressed prices of the domestic like product. CL525 at 44-45 & nn.200, 204, 205; Confidential report (CL507) at V-26 to V-27, V-29.

¹⁴¹ Slip Op. 13-38 at 17-18; *see also* 19 U.S.C. § 1677(7)(A).

inconsequential, immaterial, or unimportant.”¹⁴² ¹⁴³ Almost all of the domestic industry’s performance indicators declined significantly from 2008 to 2009, and even those factors that

¹⁴² We understand our burden under *Mittal Steel Point Lisas Ltd. v. United States*, 542 F.3d 867 (Fed. Cir. 2008), is to identify substantial evidence in the record demonstrating the domestic industry is materially injured by reason of subject imports notwithstanding any record evidence of other factors that might also be having adverse effects on the industry at the same time. While the type of analysis posited by respondents might be one way to conduct such an inquiry, the Federal Circuit has been clear in holding that the Commission has discretion in choosing its methodology for assessing causation and need not follow any rigid formula, such as that proposed by respondents. As the Commission noted, CL525 at 19 n.81, the Federal Circuit, in addressing the causation standard of the statute, concluded that “[a]s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” *Nippon*, 345 F.3d at 1384. This was further ratified in *Mittal*, 542 F.3d at 873, where the Federal Circuit, quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred “by reason of” the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’”; see also *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1357 (Fed. Cir. 2006); *Taiwan Semiconductor Ind. Assoc. v. Int’l Trade Comm’n*, 266 F.3d 1339, 1345 (Fed. Cir. 2001). Congress has delegated this finding to the Commission because of the agency’s institutional expertise in resolving injury issues. CL525 at 22; *Mittal*, 542 F.3d at 873; *Nippon*, 458 F.3d at 1350 (citing *U.S. Steel Group v. United States*, 96 F.3d 1352, 1357 (Fed. Cir. 1996); S. Rep. 96-249 at 75 (“The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.”)). As the Federal Circuit also has made clear, since the statute does not define the phrase “by reason of,” the question of whether the injury to the domestic industry by subject imports satisfies the material injury threshold notwithstanding any injury from other factors falls within the Commission’s discretion and is reviewable under the substantial-evidence standard. CL525 at 22; *Mittal*, 542 F.3d at 873; *Nippon*, 458 F.3d at 1350 (citing *U.S. Steel*, 96 F.3d at 1357; S. Rep. 96-249 at 75). In *Mittal*, the Federal Circuit reaffirmed the Commission’s discretion and reiterated that “the Commission is not required to follow a single methodology for making that determination.” 542 F.3d at 872-73; see also *Angus Chemical Co. v. United States*, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“[T]he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), *affirming* 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996)); *U.S. Steel*, 18 CIT 1190, 1212, 873 F. Supp. 673, 694-95 (1994), *aff’d*, 96 F.3d 1352 (concluding that the statute did not compel the bifurcated analysis used by some Commissioners and that the statute also did not forbid the one-step analysis used by other Commissioners); *Gerald Metals, Inc. v. United States*, 22 CIT 1009, 1016-17, 1025-27, 27 F. Supp. 2d 1351, 1357, 1364-65 (1998), *aff’g* *Magnesium from Ukraine*, Inv. No. 731-TA-698 (Final) (Remand), USITC Pub. 3113 at 13 (June 1998) (upholding, after the Federal Circuit’s remand, Commissioner Crawford’s opinion in which she compared the state of the industry when imports were dumped with what the state of the industry would have been if the imports had not been dumped). Post-*Mittal*, the Commission has spelled out its detailed interpretation of the statutory causation standard in every opinion, and the courts have upheld the Commission’s application of the standard to the facts in its affirmative material injury determinations. See, e.g., *Shandong TTCA Biochemistry Co. v. United States*, 774 F. Supp.2d 1317 (Ct. Int’l Trade 2011), *affirming* *Citric Acid and Certain Citrate Salts from Canada and China*, Inv. Nos. 701-TA-456 and 731-TA-1151 to 1152, USITC Pub. 4076 at 15-18, 23-37 (May 2009).

appeared to improve somewhat between 2009 and 2010 remained at lower levels in 2010 than in 2008.¹⁴⁴ As subject imports maintained a significant and significantly increasing presence in the U.S. market throughout the POI by underselling the domestic like product at significant margins, the domestic industry progressively lost market share.¹⁴⁵ Faced with declining U.S. shipments and lower net sales,¹⁴⁶ the domestic industry reduced its overall production capacity,¹⁴⁷ produced less,¹⁴⁸ and operated at relatively low levels of capacity utilization.¹⁴⁹ The

¹⁴³ Commissioner Pinkert qualifies his concurrence with note 142 as follows. In investigations involving a commodity product and where price-competitive nonsubject imports are a significant factor in the U.S. market, the Federal Circuit, in *Bratsk*, 444 F.3d 1369, and *Mittal*, held that the Commission is *required* when considering present material injury to undertake a particular kind of analysis of nonsubject imports, albeit without reliance upon presumptions or rigid formulas. *Mittal* explains as follows:

What *Bratsk* held is that “where commodity products are at issue and fairly traded, price-competitive, nonsubject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether nonsubject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, *Bratsk* requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878. The Court, however, has already affirmed the Commission’s analysis of nonsubject imports. Slip Op. 13-38 at 18.

¹⁴⁴ CL525 at 46-54.

¹⁴⁵ CL525 at 34-54; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554) (showing that the domestic industry’s share of the U.S. market declined from [] percent in 2008 to [] percent in 2009, [] percent in 2010, and was [] percent in interim 2011).

¹⁴⁶ The domestic industry’s U.S. shipments in square feet were [] in 2008, [] in 2009, [] in 2010, [] in interim 2010, and [] in interim 2011. Its net sales in square feet were [] in 2008, [] in 2009, [] in 2010, [] in interim 2010, and [] in interim 2011. CL525 at 46-47; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁴⁷ The domestic industry’s capacity in square feet was [] in 2008, [] in 2009, [] in 2010, [] in interim 2010, and [] in interim 2011. CL525 at 47; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁴⁸ The domestic industry’s production in square feet was [] in 2008, [] in 2009, [] in 2010, [] in interim 2010, and [] in interim 2011. CL525 at 47; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

domestic industry initially reduced its end-of-period inventories, but its inventories were increasing by the end of the POI.¹⁵⁰ This is further evidence of material injury to the domestic industry by reason of subject imports from China because the domestic industry's only alternative was to decrease production further. The domestic industry's financial condition was poor over the POI. Its net sales value fell,¹⁵¹ which is consistent with our findings of lost sales and lower prices due to low-priced subject imports, and the domestic industry had operating losses [].¹⁵² Its return on investment was [], and its capital expenditures and research and development ("R&D") expenditures also declined throughout the POI.¹⁵³ Any modest improvement in the absolute or relative financial losses experienced by the domestic industry in 2010 or interim 2011 was not mirrored in the employment levels, which dropped consistently from 2008 through interim 2011.¹⁵⁴ Furthermore, as discussed

¹⁴⁹ The domestic industry's capacity utilization was [] percent in 2008, [] percent in 2009, [] percent in 2010, [] percent in interim 2010, and [] percent in interim 2011. CL525 at 47; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁵⁰ CL525 at 47 & n.213; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁵¹ The domestic industry's net sales value fell from \$[] in 2008 to \$[] in 2009 and \$[] in 2010, a decline of [] percent in this period, and was lower in interim 2011 (\$[]) than in interim 2010 (\$[]). CL525 at 47 & n.215 (citing Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554)).

¹⁵² The domestic industry's operating []. CL525 at 48 & n.216.

¹⁵³ The domestic industry's return on investment was [] in 2008, [] in 2009, and [] in 2010. Its capital expenditures were \$[] in 2008, \$[] in 2009, \$[] in 2010, \$[] in interim 2010, and \$[] in interim 2011. R&D expenditures were \$[] in 2008, \$[] in 2009, \$[] in 2010, \$[] in interim 2010, and \$[] in interim 2011. CL525 at 48; Confidential report (CL507) at Table VI-5; Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁵⁴ The average number of production related workers ("PRWs") declined [] percent between 2008 and 2010, from [] to [], and was [] in interim 2010 and [] in interim 2011. Wages paid declined [] percent from 2008 to 2010 (from \$[] to \$[]) and were \$[] in interim 2010 and \$[] in interim 2011. The industry's labor productivity

below, improvements in the domestic industry's performance indicators at the end of the POI were consistent with but did not keep pace with improvements in apparent U.S. consumption during this period.

Having considered the volume of subject imports, their effect on prices of the domestic like product, their impact on the domestic industry, and all relevant economic factors bearing on the statute of the domestic industry, within the context of the business cycle and relevant conditions of competition,¹⁵⁵ we find the domestic industry for the foregoing reasons to be materially injured by reason of subject imports of MLWF from China.

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry.¹⁵⁶ As the Commission's reviewing courts have recognized, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports, demonstrate that the unfairly traded imports are the "principal" cause of injury, or weigh injury from unfairly traded imports against other factors which may be contributing to overall injury to an industry.¹⁵⁷ In its Views, the

increased slightly over the period, rising from [] square feet per hour in 2008 to [] square feet per hour in 2009 and [] square feet per hour in 2010. CL525 at 47; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁵⁵ 19 U.S.C. §§ 1677(7)(A) to (C) and (E)(ii).

¹⁵⁶ CL525 at 19-22. Such factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. CL525 at 19.

¹⁵⁷ See *Nippon*, 345 F.3d at 1381 ("an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the 'dumping' need not be the sole or principal cause of injury."); URAA SAA at 851-52 ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports."); *Taiwan Semiconductor*, 266 F.3d at 1345 ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports." (emphasis in original)); *Asociacion de Productores de Salmon*, 180 F. Supp. 2d at 1375 (the Commission is not required to make "bright-line distinctions" between the

Commission also considered other factors that might have had an adverse effect on the domestic industry during the POI and addressed the role of nonsubject imports, substitute flooring products, and demand in the U.S. market during the POI.¹⁵⁸ The Court affirmed the Commission's analysis of nonsubject imports,¹⁵⁹ and it affirmed the Commission's analysis of substitute flooring products.¹⁶⁰

The Court, however, found the Commission's determinations to be "unsupported by substantial evidence because the Commission failed to adequately consider the effect that the severe disruption of the home building and remodeling industries had on the domestic like product industry."¹⁶¹ On remand, the Court instructed the Commission to address "the economic impact issues identified as affecting the domestic like product industry in the Dissenting Views."¹⁶² According to the Court, the Commission "needs to ensure that the

effects of subject imports and other causes or to "isolate the effects of subject imports from other factors contributing to injury."); *see also Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that "{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, *i.e.*, it is not an 'other causal factor,' then there is nothing to further examine regarding attribution to injury"), *citing Gerald Metals*, 132 F.3d at 722 (the statute "does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.").

¹⁵⁸ CL525 at 18-54.

¹⁵⁹ Slip Op. 13-38 at 18 (finding U.S. Importers' "replacement" argument to be "speculative and not well-suited to the facts of this case"). U.S. Importers made no arguments concerning nonsubject imports in their filings with the Commission during the remand proceedings.

¹⁶⁰ Although U.S. Importers continued to make arguments about substitute flooring products during the remand proceedings, U.S. Importers' July 12, 2013 Letter (CL548) at 11-20, the Court has already affirmed the Commission's analysis. Slip Op. 13-38 at 10 n.5 (noting that U.S. Importers had disputed "the Commission's refusal to find that the subject MLWF replaced non-MLWF products, but the court finds that the decision was supported by substantial evidence.").

¹⁶¹ Slip Op. 13-38 at 15.

¹⁶² Slip Op. 13-38 at 15. The Court pointed to the Dissenting Commissioners' conclusion that "record evidence failed to demonstrate that trends in the domestic industry's performance were by reason of the subject imports" and their findings of "correlations between the decline and recovery of the U.S.

subject imports, as compared to other economic factors affecting the domestic industry, were not {sic} a but-for cause of the injury.”¹⁶³

Before the agency, Respondents had argued that subject MLWF from China competed in different channels of distribution than domestically manufactured MLWF.¹⁶⁴ They argued that competition between subject imports and the domestic like product in the U.S. market was attenuated, because demand in the U.S. market was segmented between builders (which they argued were primarily served by the domestic industry) and the big box/home centers and independent retailers (which they argued were served by subject imports).¹⁶⁵ Basing their decision on attenuated competition between subject imports and the domestic like product, the Dissenting Commissioners concluded that any increased subject import market share was in a segment not significantly served by the domestic industry and that the domestic industry lost market share as demand in the segment mostly served by the domestic industry collapsed.¹⁶⁶

As in our prior Views, we reject respondents’ attenuated competition arguments as unsupported by the record.¹⁶⁷ Rather than attenuated competition, questionnaire data showed

housing market and the profitability of the domestic MLWF industry.” Slip Op. 13-38 at 13; *see also id.* at 2, 4, 12-15, 17-18, 19, 20.

¹⁶³ Slip Op. 13-38 at 17-18.

¹⁶⁴ CL525 at 31-34.

¹⁶⁵ Respondents had argued that subject imports primarily served the growing residential remodeling and replacement U.S. market segment through sales to large “big box” retailers like Lowe’s and Home Depot and specialty do-it-yourself retailers ranging from Lumber Liquidators to smaller local establishments – a segment they argued experienced more modest declines than the builder segment they argued the domestic industry served. CL525 at 31-32.

¹⁶⁶ Relying on “anecdotal evidence,” the Dissenting Commissioners found competition significantly attenuated. CL526 at 3-9, 11-14 & n.44. They acknowledged that subject imports had a significant U.S. market presence but concluded that any increased subject import market share was in a segment not really served by the domestic industry and that the domestic industry lost market share as demand in the segment mostly served by the domestic industry collapsed. CL526 at 11-12.

¹⁶⁷ CL525 at 28-34, 37-38.

substantial overlap among subject imports and the domestic like product in all channels of distribution (*i.e.*, to distributors, big box/home centers, builders, and other retailers).¹⁶⁸

Contrary to respondents' claims, the record not only showed that the domestic industry made sizable remodeling and replacement sales to big box/retailers, but also that its U.S. shipments to big box/retailers exceeded its U.S. shipments to builders.¹⁶⁹ The record also showed that U.S. importers increased their U.S. shipments of subject merchandise from China to big box/retailer purchasers at the domestic industry's expense and that they were able to do so using lower prices.¹⁷⁰ Additionally, the domestic industry's U.S. shipments to distributors, another important source of sales, did not recover nearly as well as subject imports' U.S.

¹⁶⁸ Confidential report (CL507) at Table II-1 (showing that as a share of total U.S. shipments the domestic industry's shipments to distributors ranged from 48.3 to 59.7 percent, its U.S. shipments to big box/home centers ranged from 14.4 to 19.3 percent, its U.S. shipments to builders ranged from 3.4 to 9.5 percent, and its U.S. shipments to other retailers ranged from 19.6 to 27.2 percent, whereas U.S. importers' U.S. shipments of MLWF from subject producers in China to distributors ranged from 41.2 to 47.1 percent, their U.S. shipments to big box/home centers ranged from 23.4 to 27.5 percent, their U.S. shipments to builders ranged from 1.0 to 3.4 percent, and their U.S. shipments to other retailers ranged from 27.2 to 33.2 percent); CL525 at 31-33 (also referencing other evidence that the Commission found to be consistent with questionnaire data regarding channels of distribution). Furthermore, as we also previously found, respondents' attenuated competition argument did not recognize that in this industry, channels of distribution were not clearly differentiated between those serving new home builders and those serving remodelers. For example, some sales to "distributors" were destined for the new home segment of the market either directly or through flooring contractors, whereas other sales to distributors were destined for remodelers. Some "big box/home centers" sell to remodelers but may also sell to builders, depending on the project's size. Some distributors sell to retailers. Some retailers sell to builders, and some producers sell directly to builders. CL525 at 32 & n.145 (citing Hearing Transcript (PL263) at 40 (Anderson), 51 (Dougan), 98-102 (Anderson, Holm, Finkell), 113, 118, 121 (Finkell), 151-53 (Natkin, Finkell), 195-97 (Natkin, Dougan), 214 (Train), 228-29 (Ervin), 299-300 (Train, Hubbard)).

¹⁶⁹ Derived from Confidential report (CL507) at Table II-1, Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁷⁰ Derived from Confidential report (CL507) at Table II-1, Table C-1 (adjusted to exclude U.S. Floors) (CL554); CL525 at 44 & n.200; Petitioners' Posthearing Brief (CL494/499) at Answers to Commission Question M (including affidavit from [

]).

shipments to distributors at the end of the POI.¹⁷¹ Finally, questionnaire data showed that the domestic industry actually shipped increasing volumes of MLWF to builders both over the entire POI and from one year to the next, refuting respondents' claim that a decline in builder demand explained the domestic industry's condition.¹⁷²

Before the agency, Respondents also had argued that subject MLWF from China differed from domestically produced MLWF in terms of species, plies, widths, interlocking technology, and hand-scraping features.¹⁷³ Contrary to respondents' assertions, the record also clearly showed substantial overlap among the products supplied to the U.S. market by the domestic industry and importers of subject merchandise in terms of species,¹⁷⁴ plies, widths, interlocking technology,¹⁷⁵ and hand-scraping features.¹⁷⁶

For example, respondents had argued that hand-scraped products accounted for growing sales in the U.S. market and that the domestic industry had limited ability to supply such products. Questionnaire data confirmed that hand-scraped products accounted for a

¹⁷¹ Derived from Confidential report (CL507) at Table II-1 and Table C-1 (adjusted to exclude U.S. Floors) (CL554). As the Dissenting Commissioners conceded, "the data collected through the Commission's questionnaires does not clearly show" the distinctions in channels of distribution underpinning respondents' attenuated competition arguments. CL526 at 12 n.44.

¹⁷² Derived from Confidential report (CL507) at Table II-1 and Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁷³ CL525 at 28-29.

¹⁷⁴ CL525 at 28-34. As the Commission found, the record showed substantial overlap in the species and baskets of species supplied to the U.S. market by the domestic industry and importers of subject merchandise from China; additionally, products made with faces of different species may be stained to attain the same color, and different species can and do compete with one another for sales in the U.S. market. CL525 at 29-30, 37-38.

¹⁷⁵ As the Commission found, the record did not support respondents' claims that MLWF imported from China was a higher-quality product than MLWF produced domestically due to features such as additional plies, different widths, or more advanced interlocking technology. CL525 at 30-31, 37-38.

¹⁷⁶ Contrary to respondents' claims, the Commission explained that the domestic industry also supplied the U.S. market with a substantial and growing volume of hand-scraped products produced by hand as well as by machine scraping and other methods of distressing the face ply. CL525 at 31 & n.141.

growing share of the U.S. market, but the record also showed that the domestic industry supplied a substantial and growing volume of such products and that subject imports increased their sales of hand-scraped products to a greater degree than the domestic industry over the POI.¹⁷⁷ As discussed above, record evidence (including the traditional quarterly pricing data for pricing product 7 and supplemental pricing data) showed that subject imports increased their sales of hand-scraped products by significantly underselling the domestic like product.¹⁷⁸ Indeed, even though hand-scraped products involve considerable additional processing and thus have higher value than non-hand-scraped products, imports of hand-scraped MLWF from subject producers in China were priced so low in the U.S. market that they undersold domestically produced non-hand-scraped MLWF throughout the POI.¹⁷⁹

Having rejected – for the reasons discussed above and in our prior Views – respondents’ arguments that demand in the U.S. market was attenuated by market segments or product types and features, in order to assess demand we also examined trends in apparent U.S. consumption for the entire U.S. market (compiled from reported U.S. shipments of the domestic like product, subject imports, and nonsubject imports to the entire U.S. market).¹⁸⁰

¹⁷⁷ Derived from supplemental data (CL553) at answers to question 2.

¹⁷⁸ CL525 at 31, 35, 37-38, 40, 43-45 (citing, *inter alia*, Confidential report (CL507) at Table V-7; supplemental data (CL553) at answers to question 2).

¹⁷⁹ CL525 at 43 & n.196 (citing supplemental data (CL553) at answers to question 2 showing that hand-scraped products imported from China were higher priced than non-hand-scraped products imported from China and that hand-scraped products made domestically were higher priced than non-hand-scraped products made domestically but that hand-scraped products imported from China were priced lower than non-hand-scraped products made in the United States).

¹⁸⁰ Apparent U.S. consumption of MLWF in square feet declined substantially from [] in 2008 to [] in 2009 and improved somewhat at the end of the POI ([] in 2010, [] in interim 2010, and [] in interim 2011). Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

Like the Dissenting Commissioners, we find that demand for MLWF is derived from demand by builders for new home construction and demand for residential remodeling and replacement projects, both of which accounted for the vast majority of sales, as well as a modest amount of demand for non-residential construction.¹⁸¹ Thus, demand for MLWF depends on housing starts, mortgage rates, disposable income, and remodeling activity.¹⁸² Although the Federal homebuyer tax credit did to some extent stimulate demand for MLWF until its expiration on April 30, 2010, questionnaire respondents generally reported decreased demand for MLWF during the POI, and many of them attributed this decline to the declining economy and housing market.¹⁸³ Consistent with these trends, apparent U.S. consumption declined overall during the POI.¹⁸⁴

As the Court recognized, the Dissenting Commissioners found that the domestic industry's performance "mirrored trends in apparent U.S. consumption," because the domestic industry performed worse earlier in the POI when the absolute volume of subject imports declined and performed better later in the POI when the absolute volume of subject imports increased.¹⁸⁵ The Dissenting Commissioners stated that they could not conclude that "subject imports ... were responsible for the lower-than-expected demand; instead, {they concluded} it was the recession, with its negative effects centered in the housing industry, that was

¹⁸¹ CL525 at 24; Confidential report (CL507) at II-6.

¹⁸² CL525 at 24-25 (citing Confidential report (CL507) at II-6; Conference Transcript (PL64) at 19 (Holm) and 63 (Dougan)).

¹⁸³ CL525 at 25.

¹⁸⁴ Apparent U.S. consumption, in square feet, decreased from [] in 2008 to [] in 2009, before increasing somewhat to [] in 2010, and was [] in interim 2010 and [] square feet in interim 2011. CL525 at 25-26.

¹⁸⁵ CL526 at 25; *see also* Slip Op. 13-38 at 13-14 (referencing CL526 at 23-26).

responsible for lower demand and therefore higher unit costs” and the domestic industry’s corresponding inability to recover SG&A expenses.¹⁸⁶

Demand over the POI: We closely examined the role of changing demand conditions during the POI, from the initial drop in demand between 2008 and 2009 to the somewhat improved but still lower demand at the end of the POI. Although the Dissenting Commissioners primarily focused on the absolute decline in subject import volume between 2008 and 2009 and the absolute increase in subject import volume between 2009 and 2010,¹⁸⁷ we recognize the significant volume of subject imports throughout the POI and subject imports’ significant increase relative to domestic production and consumption.¹⁸⁸ Based on the traditional and supplemental pricing data and other evidence,¹⁸⁹ we find that, throughout the POI, subject imports from China maintained a significant volume and increased significantly relative to domestic production and consumption by underselling at significant margins regardless of demand conditions.¹⁹⁰ We acknowledge that the domestic industry performed poorly throughout the POI during this time of overall declining demand.¹⁹¹ The declines in many of the domestic industry’s performance indicators over the POI, however, generally exceeded the 9.2

¹⁸⁶ CL526 at 24 (also referenced in Slip Op. 13-38 at 13-14).

¹⁸⁷ CL526 at 10-11, 23-24.

¹⁸⁸ CL525 at 34-37 (referencing volume evidence discussed above); Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁸⁹ The Dissenting Commissioners did not base their analysis on the supplemental pricing data. CL526 at 15-19.

¹⁹⁰ CL525 at 35-45 (referencing volume and pricing evidence discussed above).

¹⁹¹ CL525 at 46-54 (referencing performance indicia discussed above); Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

percent decline in demand.¹⁹² Moreover, the overall decline in subject imports' U.S. shipments was less than the decline in demand,¹⁹³ so subject imports not only maintained their share of the U.S. market but increased it significantly over the POI.¹⁹⁴ Thus, the domestic industry's loss of market share to unfairly traded subject imports from China that significantly undersold the domestic like product throughout the POI was not a function of demand.

Demand between 2008 and 2009: Although U.S. Importers suggest that the Commission should have ignored data for 2008,¹⁹⁵ we also examined the decline in demand between 2008 and 2009 and acknowledge that the domestic industry's poor condition in 2008 worsened in 2009.¹⁹⁶ The declines in the domestic industry's performance indicators between 2008 and

¹⁹² For example, between 2008 and 2010, the domestic industry's U.S. shipments declined [] percent, its production declined [] percent, its net sales quantities declined [] percent, and its net sales values declined [] percent. Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁹³ U.S. shipments of subject imports declined [] percent between 2008 and 2010. Confidential report at Table C-1 (adjusted to exclude U.S. Floors).

¹⁹⁴ CL525 at 35, 45, 48-49, 53-54.

¹⁹⁵ U.S. Importers argue that the Commission should have disregarded data for the first year of the period of investigation, because 2008 "was characterized by the dramatic collapse in housing starts that all parties acknowledge tanked the market for flooring generally in the United States." U.S. Importers' July 12, 2013, Written Comments (CL548) at 13. In the underlying agency proceedings, the domestic industry had asked us to look at a longer POI that also included 2007, whereas respondents had argued in favor of our normal practice. In the prior Views, the Commission rejected petitioner's request to exercise its discretion to consider a longer POI, because the usual reasons for such a departure from its normal practice – an industry's cyclical nature, a well-defined need to obtain a broader perspective of the market, or the need to disregard one year of the POI – did not exist. CL525 at 35-36 & nn.163-64. For the same reasons, we reject U.S. Importers' current request to consider a shorter POI and instead continue to find no basis to deviate from our normal practice of considering data for the three most recent calendar years, plus applicable interim periods. *Id.* at 35-36 & nn.163-64; *see also, e.g., Nucor Corp. v. United States*, 414 F.3d 1331, 1337 (Fed. Cir. 2005) (recognizing the Commission's discretion to select the appropriate POI and to assign particular weight to portions of the POI); *Sodium Hexametaphosphate from China*, Inv. No. 731-TA-1110 (Final), USITC Pub. 3984 at 8-9 (Mar. 2008).

¹⁹⁶ CL525 at 48-49; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

2009, however, generally exceeded the 15.7 percent decline in demand.¹⁹⁷ Moreover, the overall decline in subject imports' U.S. shipments was less than the decline in demand,¹⁹⁸ so during this period of declining demand, subject imports, which held a substantial share of the U.S. market from the beginning of the POI, significantly increased their share of the U.S. market.¹⁹⁹ The domestic industry's loss of market share to unfairly traded subject imports from China that significantly undersold the domestic like product between 2008 and 2009 clearly was not a function of demand.²⁰⁰ Thus, notwithstanding demand declines between 2008 and 2009 and an overall demand decline during the POI, we again find that subject MLWF imports from China "had a material impact on the domestic industry."²⁰¹

Demand in the latter portion of the POI: U.S. Importers argue that there is no causal connection between subject imports and the domestic industry's condition for the latter portion of the POI.²⁰² We disagree. Between 2009 and 2010 and in the interim periods, apparent U.S. consumption improved somewhat, but even those domestic industry

¹⁹⁷ For example, between 2008 and 2009, the domestic industry's U.S. shipments declined [] percent, its production declined [] percent, its net sales quantities declined [] percent, and its net sales values declined [] percent. Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁹⁸ U.S. shipments of subject imports from China declined [] percent between 2008 and 2009. Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

¹⁹⁹ CL525 at 35, 48-49; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

²⁰⁰ CL525 at 49.

²⁰¹ CL525 at 49.

²⁰² U.S. Importers concede that it is "conceivable that the U.S. industry would have performed even better but-for the increase in subject import shipment volume," but they argue that explanation only makes sense if "demand for MLWF increased to absorb the increased supply, resulting in unchanged pricing." U.S. Importers' July 12, 2013, Written Comments (CL548) at 15. Despite their assertion that there "is no record evidence supporting {the} conclusion" that "demand for MLWF increase{d} from 2009 onward," *id.* at 16, record data showed an increase in apparent U.S. consumption between 2009 and 2010 and higher apparent U.S. consumption in interim 2011 than in interim 2010. Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

performance factors that appeared to improve somewhat during this period of increasing demand remained at lower levels in 2010 than in 2008.²⁰³ Moreover, these apparent improvements in the domestic industry's indicators between 2009 and 2010 generally lagged behind the U.S. market's improvement during a time when subject imports continued to increase their share of the U.S. market and to significantly undersell the domestic like product.²⁰⁴ Finding that the domestic industry disproportionately bore the burden of economic downturns and did not share proportionately in market improvements, consistently [], and experienced steep declines in employment and wages,²⁰⁵ we again conclude that these facts dispel the notion that general market demand conditions explained fully the changes in indicators from 2009 to 2010.²⁰⁶

Moreover, the domestic industry's apparent recent financial improvements were driven in large part by [] partial abandonment of domestic production capacity in favor of low-cost subject imports, asset impairments, and significant cost-cutting of SG&A expenses while operating at low capacity utilization.²⁰⁷ Thus, as we previously found, the

²⁰³ CL525 at 46-54; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

²⁰⁴ For example, apparent U.S. consumption increased 7.8 percent between 2009 and 2010, but most of the ostensibly greater increase in the domestic industry's production (of [] percent) was either exported or inventoried, with the domestic industry's exports rising [] percent and inventories increasing [] percent compared to an increase in the domestic industry's U.S. shipments of only [] percent. The domestic industry's net sales quantity rose only [] percent, and its net sales value declined another [] percent. As we previously found, the domestic industry lost [] percentage points of market share between 2009 and 2010 and another [] percentage points between interim 2010 and interim 2011, while subject imports' U.S. shipment volumes increased 13.2 percent and 7.6 percent, respectively, at a faster pace than demand. CL525 at 47-54; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

²⁰⁵ CL525 at 47-54; Confidential report (CL507) at Table C-1 (adjusted to exclude U.S. Floors) (CL554).

²⁰⁶ CL525 at 49.

²⁰⁷ As the Commission explained, the apparent improvement in the domestic industry's losses between 2009 and 2010 was less due to enhanced sales related to a general economic recovery than it

“recent decline in the domestic industry’s financial losses” did not sever any causal connection between the domestic industry’s condition and subject imports, and we do not find that “the improvements in a few indicators of the domestic industry’s performance are inconsistent with a finding of material injury by reason of subject imports.”²⁰⁸

Thus, but for the unfairly traded subject MLWF imports from China in the U.S. market during the POI, the domestic industry would have been materially better off both during the housing market collapse and during the developing recovery that followed. On remand, we therefore reaffirm the conclusion that subject imports of MLWF from China had a significant adverse impact on the domestic industry during the POI.

Conclusion

For the above-stated reasons, we determine that the domestic industry producing MLWF is materially injured by reason of subject imports from China that Commerce found were sold in the U.S. market at less-than-fair value and/or subsidized by the Government of China.

was to the severe measures the domestic industry undertook to remain competitive in the face of significant volumes of low-priced subject imports into the U.S. market. For example, at the end of the POI, the domestic industry slashed SG&A expenses, decreased its unit cost of goods sold, undertook asset impairments, laid off workers, [

the financial data reflected the benefit but not the cost of []]. CL525 at 47-54. Additionally, []]. *Id.* at 50.
²⁰⁸ CL525 at 49-52.

Table III-1(a)

Multilayered wood flooring: possible U.S. hardwood plywood producers receiving MLWF U.S. producer questionnaires and their reported MLWF production (if any)¹

Firm	Identified by U.S. Importers as possible U.S. plywood manufacturers that might produce unfinished MLWF	Identified as possible U.S. plywood manufacturers during plywood investigations	Submitted questionnaire response during remand proceedings	Produce MLWF
<i>Besse Forest Products/ Wisconsin Veneer & Plywood, Inc.</i>	X	***	***	***
<i>Bradford Veneer & Panel Co.</i>	X	***	***	***
<i>Buffalo Veneer and Plywood Co.</i>		***	***	***
<i>Chesterfield Wood Products, Inc.</i>	X	***	***	***
<i>Columbia Forest Products</i>	X	***	***	***
<i>Commonwealth Plywood Co., Ltd.</i>	X	***	***	***
<i>Darlington Veneer Company, Inc.</i>	X	***	***	***
<i>FormWood Industries</i>	X	***	***	***
<i>Great Lakes Veneer/ Marion Plywood Corp.</i>	X	***	***	***
<i>Howell Plywood Corp.</i>		***	***	***
<i>Mt. Baker Products, Inc.</i>		***	***	***
<i>Murphy Plywood</i>	X	***	***	***
<i>Owl Hardwood Lumber & Plywood Inc.</i>		***	***	***
<i>Pittsburgh Forest Products, Inc.</i>		***	***	***
<i>Roseburg Forest Products Co.</i>	X	***	***	***
<i>S.J. Morse Company</i>	X	***	***	***
<i>States Industries LLC</i>	X	***	***	***
<i>The Wood Gallery, Inc.</i>		***	***	***
<i>Timber Products Company</i>	X	***	***	***
<i>Veneer One Inc.</i>	X	***	***	***

¹ *** confirmed in a telephone conversation that they do not produce MLWF.

Source: Compiled from data submitted in response to Commission questionnaires; list of Hardwood Plywood and Veneer Association's Hardwood Plywood Manufacturer Members submitted as Exhibit 4 to U.S. Importers' Oct. 4, 2011 Prehearing Brief ; U.S. Importers' Prehearing Brief at Exh. 5-9; U.S. Importers' Oct. 19, 2011 Posthearing Brief at 14-15.