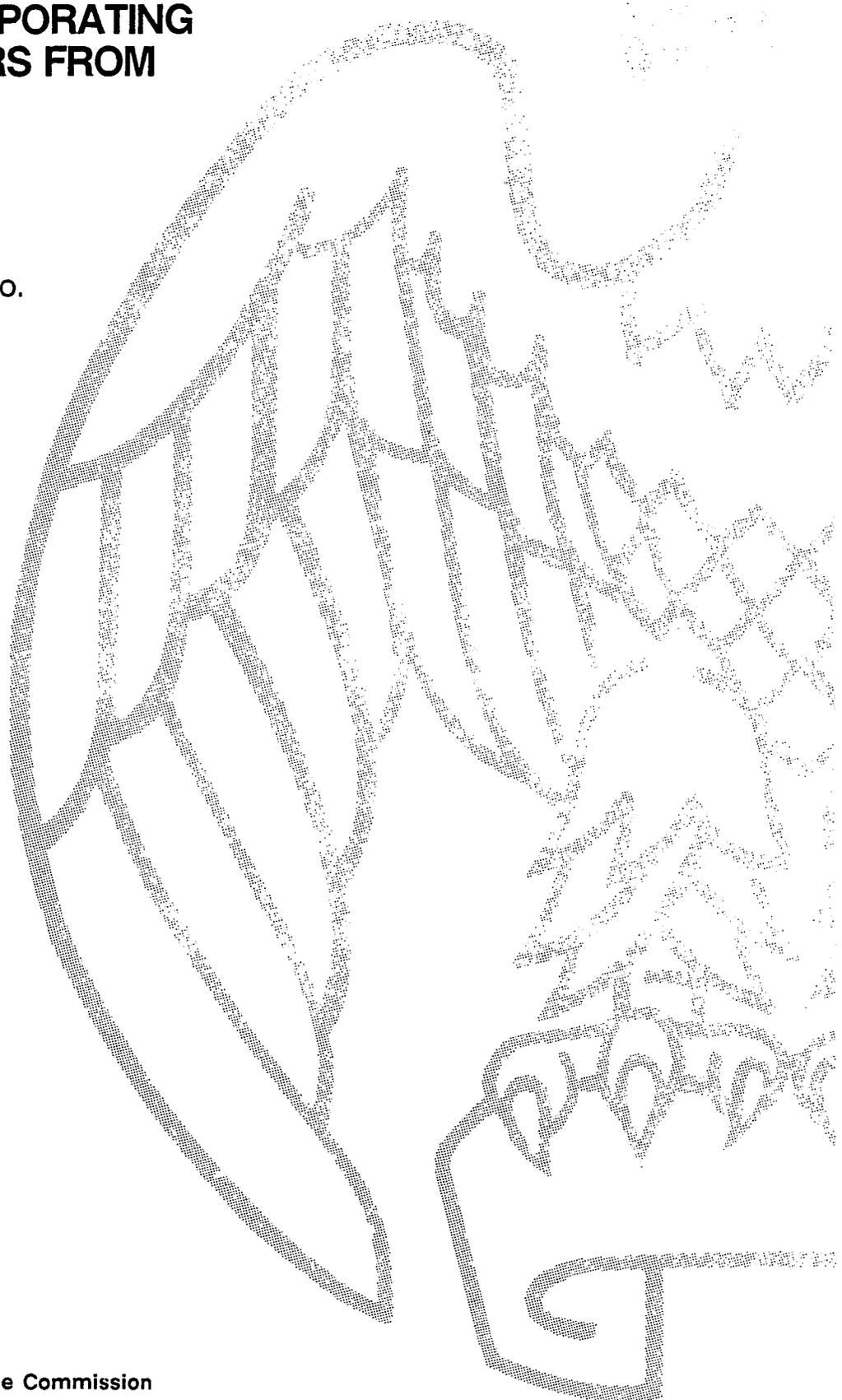


**TAPERED ROLLER BEARINGS AND
PARTS THEREOF AND CERTAIN
HOUSINGS INCORPORATING
TAPERED ROLLERS FROM
HUNGARY**

Views on Investigation No.
731-TA-341
(Final-Remand)

**USITC PUBLICATION 2245
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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Investigation No. 731-TA-341 (Final--Remand)

TAPERED ROLLER BEARINGS AND PARTS THEREOF,
AND CERTAIN HOUSINGS INCORPORATING TAPERED ROLLERS FROM HUNGARY

Remand Determination

Pursuant to the remand order dated July 26, 1989, of the United States Court of International Trade in Marsuda-Rodgers International v. United States, 13 CIT _____, 719 F. Supp. 1092 (1989), and the scheduling order entered on November 6, 1989, the Commission reports to the Court its unanimous determination that an industry in the United States is neither materially injured nor threatened with such injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Hungary of tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers, which the U.S. Department of Commerce has determined are being sold in the United States at less than fair value.

Background

On June 5, 1987, the Commission issued an affirmative final injury determination pursuant to 19 U.S.C. § 1673d(b)(1) (1982 and Supp. V 1987) in Inv. No. 731-TA-341 (Final), Tapered Roller Bearings and Parts Thereof and Certain Housings Incorporating Tapered Rollers from Hungary, with the majority basing its findings on a cumulative assessment of the volume and price effects of imports from Hungary, Italy, Japan, the People's Republic of China, Romania, and Yugoslavia (See 52 F.R. 22399, June 11, 1987). The report of the investigation was issued as USITC Publication 1983 in June 1987.

U.S. importer Marsuda-Rodgers International appealed that determination by initiating a civil action in the CIT pursuant to 19 U.S.C. § 1516a(a)(2) (1982 and Supp. V 1987). On July 26, 1989, the CIT issued a decision reversing the Commission's six-country cumulative analysis. The Court held that the Commission's decision to cumulate Hungarian imports with imports from other countries under investigation was not supported by substantial evidence on the record and was based on an erroneous interpretation of the import/domestic product competition requirement for cumulation under 19 U.S.C. § 1677(7)(c)(iv) (1984 and Supp. V 1987). The Court ordered a remand, instructing the Commission to make a new final injury determination based on the volume and price effects of Hungarian imports alone. See Marsuda-Rodgers International v. United States, 13 CIT at ____, 719 F. Supp. at 1101.

A scheduling order entered by the CIT on November 6, 1989, set a 45-day deadline for the Commission to report its new injury determination. Notice of the Commission's remand proceedings, giving parties to the original investigation an opportunity to file written comments with the Commission, was published on November 22, 1989 (54 F.R. 48329).

VIEWS OF THE COMMISSION

This investigation is before us on remand as a result of a decision by the U.S. Court of International Trade ("CIT") in an appeal filed by U.S. importer Marsuda-Rodgers International to contest the Commission's affirmative final injury determination in the original investigation. 1/ In a decision dated July 26, 1989, the CIT reversed the six-country cumulative analysis supporting the affirmative final injury determination in the original investigation and remanded the matter to the Commission for a new injury determination based on the volume and effect of Hungarian imports alone. 2/ We have determined on remand that an industry in the United States is neither materially injured nor threatened with such injury by reason of the imports of tapered roller bearings and parts thereof from Hungary which the U.S. Department of Commerce has determined are being sold in the United States at less than fair value ("LTFV"). 3/

The Domestic Industry and the Condition Thereof

Marsuda-Rodgers did not challenge on appeal and the CIT did not address the Commission's findings concerning the definition of the "like product," related parties, definition of the domestic industry, or the condition of

1/ See Tapered Roller Bearings and Parts Thereof and Certain Housings Incorporating Tapered Rollers from Hungary, the People's Republic of China, and Romania, Invs. Nos. 731-TA-341, 344, and 345 (Final), USITC Pub. 1983 (June 1987); 52 Fed. Reg. 22399 (June 11, 1987).

2/ See Marsuda-Rodgers International v. United States, 13 CIT ___, 719 F. Supp. 1092 (1989).

3/ The question of whether the establishment of a domestic industry is materially retarded by reason of the subject Hungarian imports was not an issue in either the original investigation or this remand proceeding.

the domestic industry. The Commission therefore has not reconsidered those issues. For purposes of this remand proceeding, Chairman Brunsdale and Commissioners Eckes, Lodwick, Rohr have relied on the findings they made on those issues in the original investigation. 4/ Commissioner Newquist, who did not participate in the original investigation, joins the original opinion of Commissioners Eckes, Lodwick, and Rohr on all the foregoing issues. Vice Chairman Cass, who also did not participate in the original investigation, does not adopt the original views of any Commissioner on those issues. 5/

Cumulation 6/

Despite petitioner Timken's arguments to the contrary, the Commission finds that the express directions in the CIT's remand decision preclude the Commission from cumulating Hungarian imports with imports from any other country for purposes of this remand proceeding. 7/

Causation

The CIT held in its remand decision that LTFV imports of tapered roller bearings from Hungary do not compete with the like product of the domestic industry. 8/ The Court noted that the domestic industry does not produce a

4/ See USTIC Pub. 1983, Views of Commissioner Eckes, Commissioner Lodwick, and Commissioner Rohr at 3-12 and the Dissenting Views of Vice Chairman Anne E. Brunsdale at 37-43.

5/ See the attached Additional Views of Vice Chairman Cass, infra.

6/ Chairman Brunsdale does not join in the remainder of this opinion. See her Concurring Views, infra.

7/ See Marsuda-Rodgers International v. United States, 13 CIT at ___, 719 F. Supp. at 1101.

8/ See generally 13 CIT at ___, 719 F. Supp. at 1098-1101.

low quality product and that there was no direct evidence of competition between the high quality domestic product and the low quality Hungarian imports. 9/ 10/

In light of the Court's decision that LTFV Hungarian imports do not compete with the like product we found in this investigation, we have no choice but to determine on remand that an industry in the United States is neither materially injured nor threatened with such injury by reason of those imports. 11/ 12/

9/ 13 CIT at ___, 719 F. Supp. at 1098 and 1099.

10/ Commissioner Eckes notes also that the Court reached its determination of no competition after reviewing the record and incorporating a material injury causation rationale into its application of the "reasonable overlap of sales" aspect of the evidentiary test for competition. See generally 13 CIT at ___, 719 F. Supp. at 1098-1101. Further, the Court cited causation-related considerations such as "value and volume of a minimal extent as an implied factor of competition," 13 CIT at ___, 719 F. Supp. at 1100, and the fact that the market share of dumped imports from Hungary and the other Communist countries has remained relatively stable during the period under investigation, see 13 CIT at ___, 719 F. Supp. at 1100. The Court noted also that the Hungarian imports are sold to the low-precision segments of the market where the domestic industry does not compete, except for the isolated sales of Timken's domestic product to customers whose needs could have been satisfied by the cheaper, low quality imports, but who chose to purchase the more expensive domestic product for non-price reasons. 13 CIT at ___, 719 F. Supp. at 1099. Finally, the Court noted that the Hungarian imports were not present in three of the four segments of the market where the domestic industry lost market share, and that Marsuda-Rodgers, the principal U.S. importer of Hungarian bearings during the period under investigation, did not import the product sold in the fourth market segment. 13 CIT at ___, 719 F. Supp. at 1100.

11/ The determination of Commissioners Eckes, Lodwick, and Rohr in this remand proceeding should not be construed as concurrence with the Court's ruling that there is no meaningful competition between the domestic like product and the dumped Hungarian imports, or that it was erroneous for those Commissioners to cumulate Hungarian imports with imports from five other countries in the original investigation, or that cumulation of Hungarian imports with imports from any other country (particularly those of comparable low quality) was properly precluded in the remand proceeding. Commissioners Eckes, Lodwick, and Rohr note, however, that the CIT denied the Commission's motion to have the July 26th decision on those issues

(continued...)

11/(...continued)

certified for discretionary review by the U.S. Court of Appeals for the Federal Circuit. See Marsuda-Rodgers International v. United States, 13 CIT ___, Slip Op. 89-150 (Oct. 24, 1989).

12/ Commissioner Newquist notes that while he considers the CIT's determination that Hungarian imports are not sold in competition with the domestically produced tapered roller bearings to be binding on the Commission and dispositive of this remand investigation, the record also shows that such imports have achieved only a low level of market penetration. Over the period of investigation, LTFV imports from Hungary never exceeded 1.4 percent of the market, by volume, or 0.4 percent of the market, by value. See Staff Memorandum INV-M-124 at 3 (Dec. 6, 1989).

CONCURRING VIEWS OF CHAIRMAN ANNE E. BRUNSDALE**Tapered Roller Bearings and Parts Thereof,
and Certain Housings Incorporating Tapered
Rollers, from Hungary**

Inv. No. 731-TA-341 (Final-Remand)

In the final phase of the original investigation, I dissented from the Commission's affirmative determination.¹ In reaching my conclusion that a domestic industry was neither materially injured nor threatened with material injury by reason of the subject imports, I found it appropriate to cumulate imports from Hungary with imports from China, Romania and Yugoslavia, but not with imports from Japan or Italy.² I reached that decision because the evidence on the record demonstrated conclusively that imports from the Communist countries did not compete in the domestic market with the imports from Italy and Japan.³

¹ Tapered Roller Bearings . . . from Hungary, the People's Republic of China, and Romania, 731-TA-341, 344, and 345 (Final), USITC Pub. 1983 (June 1987) at 37 (Dissenting Views of Vice Chairman Anne E. Brunsdale).

² Id., USITC Pub. 1983 at 43-53. The petition identified dumped imports from all six countries. The final Commission investigations of imports from Yugoslavia, Italy, and Japan were segregated from the investigations involving Hungary, China, and Romania because of scheduling constraints at the Department of Commerce. Thus, imports from Yugoslavia, Italy, and Japan were under investigation at the time of the Commission's final decision on the other imports.

³ Id., USITC Pub. 1983 at 46 ("Because the facts of these final investigations show that the imports from the Communist countries are not sufficiently competitive with imports from Japan and Italy, I agree with the respondents that their imports should not be cumulated with those from Japan or Italy") (footnote omitted).

On appeal, the Court of International Trade (CIT) essentially affirmed my views.⁴ The court reasoned, as did I, that fungibility of imports is the paramount concern when addressing the "competition" prerequisite to cumulation.⁵ In line with my views, the court also rejected the Commission plurality's conflation of the like-product and cumulation issues, and instead distinguished cumulation analysis from the like product inquiry by requiring a higher degree of substitutability in the former than in the latter.⁶

I am not certain, however, whether the CIT's order compels additional analysis on my part. The final two sentences of the CIT's order contain potentially conflicting instructions:

Therefore, the Court reverses the Commission's cumulative analysis and remands to the Commission to cumulate only those dumped TRBs [tapered roller bearings] which satisfy the 'reasonable overlap' test. Since the unfairly traded Hungarian TRBs do not 'compete' with their domestic counterparts, the Commission is directed to make traditional single country injury determination [sic] as to these imports.⁷

Thus, I am unclear whether I am still free to cumulate Hungarian imports with those from the other Communist countries that compete with each other in the domestic market, or must disaggregate the Hungarian imports because they do not compete

⁴ Marsuda-Rodgers International v. United States, 719 F. Supp. 1092 (Ct. of Int'l Trade 1989).

⁵ See Id. at 1097.

⁶ Id.

⁷ Id. at 1101.

with the domestic like product. I am inclined to think that the CIT intended the former course and, if so, I adopt my earlier views in their entirety.

If the CIT intended the latter course, I simply add the observation that a negative determination reached on the basis of improperly cumulated imports will perforce result in a negative determination when those imports are analyzed separately. In that event, I adopt my earlier views as a statement of my reasoning, with the caveat that any injury by reason of the dumped Hungarian imports -- which I found to be "trivial" even when considered cumulatively⁸ -- would be even more insignificant when assessed separately.

I therefore adhere to my previous negative determination in all respects.

⁸ USITC Pub. 1983 at 61.

ADDITIONAL VIEWS OF VICE CHAIRMAN CASS

Tapered Roller Bearings and Parts Thereof and Certain
Housings Incorporating Tapered Rollers from Hungary
Inv. No. 731-TA-341 (Final)
Remand

I concur with my colleagues that an industry in the United States is not materially injured or threatened with such injury by reason of tapered roller bearings ("TRBs") imported from Hungary and sold in the United States at less than fair value ("LTFV") and that, for the purposes of this remand, the Commission should adhere to its original finding of a single like product and domestic industry. I further concur that the Commission may not cumulate Hungarian imports with the imports from other countries that were subject to concurrent investigations, both because the decision rendered by the Court of International Trade ("CIT") in the appeal of our original determination precludes such cumulation and because I believe cumulation would be inappropriate in any event for the reasons discussed below.

Like Product and Domestic Industry

My approach to the definition of the appropriate like product and domestic industry in this investigation is informed by the fact that we are reviewing the impact of the Hungarian imports on the domestic industry at the direction of a specific remand order from the CIT. Marsuda-Rodgers, the importer and plaintiff before the CIT, did not contest, and the court did not review, the Commission's original finding that all TRBs constitute a single like product and that the producers of these constitute the domestic industry as to which the effects of LTFV imports appropriately are examined. The remand order therefore does not direct the Commission to revisit this issue.

We could, of course, make new findings in this remand with respect to like product and domestic industry in the context of our injury analysis if we found such determinations necessary properly to assess the issue specifically remanded by the court, to wit, the effect of LTFV TRBs from Hungary on a U.S. industry. The court concluded that the evidence of record showed that Hungarian TRBs were of low quality and that they did not "compete" with high quality TRBs within the meaning of the statutory provision on cumulation. This same record evidence informs our like product determination. Low quality TRBs arguably should not be considered "like" high quality TRBs under the Commission's traditional criteria because the evidence indicates that these different TRBs do not compete in the same markets for the same consumer dollars.¹

The difficulty in defining a separate domestic product like the low quality imports, however, is that the evidence of record also indicates that no domestic producer makes such a bearing. The Hungarian producer has suggested that the Commission find that no domestic like product exists,² but Title VII of the Tariff Act of 1930, which governs this proceeding, does not

¹ In defining a like product, the Commission has examined information about the following: (1) product characteristics and uses, (2) interchangeability of products, (3) channels of distribution, (4) customer or producer perceptions of the relevant articles, (5) the similarity (or disparity) of prices for imports and potential like domestic products, and (6) presence or absence of common manufacturing equipment, facilities, and production employees. See, e.g., Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1170 n.8 (citing use of comparative pricing data as a suitable factor in analyzing like product issues). These factors provide the Commission with information about the similarity or dissimilarity of the markets in which imports and arguably "like" domestic products compete. The last factor also indicates the degree to which production of arguably "unlike" products is actually integrated into a single industry.

² Comments of Magyar Gorduloscapagy Muvek to the Commission, dated November 27, 1989 at 9-11.

limit the Commission to examining the effects of LTFV imports on producers of so clearly comparable a product as low-quality TRBs. If no product is close enough to be "like" the imports, the law directs us to examine the effects of such imports on U.S. producers of the product most similar to the imports.³ In some contexts, it may be necessary to decide whether separate product categories should be recognized in the absence of comparable domestic production.⁴ Here, however, given that the Hungarian imports all are assimilable to a single product category (low-quality TRBs) and that domestic producers make TRBs that share various other characteristics, aside from quality, with the imports, the Commission properly would identify high-quality U.S.-made TRBs as the domestic product most similar to the imports. I therefore believe that the Commission is correct in maintaining its original like product and domestic industry definitions in this remand investigation.

Material Injury and Threat of Material Injury By Reason of Dumped Hungarian Imports

As I read Title VII of the Tariff Act of 1930, as amended, the Commission is required to assess the effects of dumped Hungarian TRBs on the domestic industry by comparing the current condition of the domestic industry to its probable condition had the subject imports not been unfairly traded in

³ The term "like product" is defined 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." 19 U.S.C. § 1677(10).

⁴ Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass) at 58-95 ("Digital Readout Systems")

the United States.⁵ We must then further determine whether any changes in the circumstances of the industry attributable to dumping constitute material injury.⁶

The statute suggests that we should address these questions by engaging in a three part examination of (i) the volume of the dumped imports, which entails not only an assessment of the absolute volume of such imports and the extent of their market penetration, but also an evaluation of the extent to which the volumes, and correlatively the prices, of the subject imports have been affected by the unfair trade practices; (ii) the effects of the unfairly traded imports on the prices, and concomitantly the sales, of the domestic like product; and (iii) the impact of these changes in the prices and sales of the domestic product on the domestic industry as reflected in employment and investment in that industry.

In this investigation both the absolute volume and the degree of market penetration achieved by TRB imports from Hungary are small. In 1986 the market share held by these imports was less than 2 percent.⁷ The 7.42 percent

⁵ I have routinely argued that a comparative analysis is required by the statute and applied such an analysis in my determinations. See, e.g., Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 (November 1989) (Dissenting Views of Vice Chairman Ronald A. Cass) at 147-241; New Steel Rails from Canada, Inv. Nos. 701-TA-297 and 731-TA-422 (Final), USITC Pub. 2217 (Sept. 1989) (Dissenting Views of Vice Chairman Cass) 125-159 ("New Steel Rails Final"); Digital Readout Systems at 98-108; 3.5" Microdisks and Media Therefor from Japan, Inv. No. 731-TA-389 (Preliminary), USITC Pub. 2076 (Views of Commissioner Cass).

⁶ See New Steel Rails from Canada, Inv. No. 701-TA-297 (Preliminary), USITC Pub. 2135 (November 1988) (Additional Views of Commissioner Cass) at 19-31.

⁷ Staff Report printed in Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers From Hungary, The People's Republic of China, and Romania, Inv. Nos. 731-TA-341, 344, 345 (Final), USITC Pub. 1983 (June 1987) ("Staff Report") at A-20, Table 4.

dumping margin found by Commerce for these imports also was relatively small. Usually we cannot presume that this margin represents the proportional decline in U.S. prices of the dumped products consequent to dumping. Among other information apposite to determining the resultant price differential is the proportion of sales in the home as opposed to the U.S. market.⁸ Because Commerce calculated the home market price of the Hungarian TRBs based on constructed value, as is its routine procedure for non-market-economy countries, this information cannot provide the same basis for inferring the extent to which the dumping margin is reflected in the U.S. price of these imports as in the usual case. Even if we assume that the U.S. price was reduced by the full amount of the dumping margin, however, the impact on the prices, and the corresponding sales volumes, of Hungarian TRBs sold in the U.S. appears to have been minimal.

The impact of the Hungarian TRBs on the prices and sales of the domestic like product also appears to have been extremely limited. The extent to which imports displace domestic production is dependent on the aggregate elasticity of demand for goods in the overall product category and the degree to which

⁸ See, e.g., Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (March 1989) (Additional Views of Commissioner Cass) at 58-60.

In reality, an estimate of the decrease in the price of the dumped product that is derived in this fashion will be somewhat overstated as it represents an approximate upper bound of that decrease. For a thorough explication of this subject, see R. Boltuck, Office of Economics, Assessing the Effects on the Domestic Industry of Price Dumping, USITC Memorandum EC-L-149 at 1, n. 1, 13, 19-21 (May 10, 1988). A more accurate statement of the effects of dumping on import prices also may require some adjustment to reflect the fact that dumping margins are calculated on an ex-factory, rather than a final sales price, basis. This adjustment almost inevitably will reflect a reduced effect from that calculated here.

consumers view the imports as close substitutes for the domestic product.⁹ In this investigation it is clear that U.S. purchasers requiring high quality TRBs do not view Hungarian TRBs as substitutes in any respect for domestic production, and conversely, that purchasers of the low quality imports do not purchase the more expensive domestic TRBs. This extremely low degree of substitutability between the subject imports and the domestic products indicates that Hungarian TRBs had very little, if any, impact on the prices and sales of U.S.-made TRBs.¹⁰

The data for the U.S. industry regarding employment and return on investment are somewhat mixed,¹¹ but in light of the absence of significant competition between the domestic and imported products, any indication that the domestic industry might have suffered injury by reason of dumped imports cannot be attributed to the imports from Hungary.

With respect to the threat of material injury by reason of dumped

⁹ Generally, imports have the greatest impact on domestic like product sales and revenues when they are available in significant volumes relative to the domestic product, when consumers are unwilling to purchase more of the category of goods to which imports and the like product belong even if the prices of these goods go down, and when, in addition, consumers view the imported and like products as close substitutes. In this situation a decrease in the price of the import will most likely result in direct substitution of the import for the domestic like product, rather than increased overall purchases of the product. When the import market share is significant, this substitution tends to have a downward effect on domestic prices, and unless domestic producers lower prices to meet import competition, on domestic sales volumes.

¹⁰ Note that in fact substitutability may be even more limited than the difference between high- and low-quality TRBs would suggest, given the variety of specific bearings covered by the investigation. Staff Report at A-3-10. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Inv. Nos 303-TA-19-20 and 731-TA-391-399 (Final), USITC Pub. 2185 (May 1989) (Concurring and Dissenting Views of Vice Chairman Ronald A. Cass) at 82-121 ("Antifriction Bearings")

¹¹ Staff Report at A-31-40.

imports, the record is devoid of evidence respecting the factors listed in Title VII for this inquiry that would give the Commission reason to believe that there is a threat of material injury from dumped TRBs from Hungary. I will not catalogue those factors here; on the present record, it should suffice to note that we lack evidence that imports of TRBs from Hungary are likely to increase; or, in light of the market niche occupied by these imports, that if such imports did increase that they would displace domestic production.

Cumulation of Hungarian TRBs With Other Imports

Finally, I believe a comment on cumulation is appropriate. Title VII directs the Commission to cumulate the volume and effect of imports from two or more countries when we analyze injury "if such imports compete with each other and with like products of the domestic industry in the United States market."¹² In its opinion reversing our original cumulation determination in the investigation of TRB imports from Hungary, the CIT focused on the meaning of the statutory directive that unfairly traded imports must compete with each other and the domestic like product before the impact of the unfair practices may be cumulatively assessed.¹³ Not only did the court find that the Commission's cumulation determination was unsupported by substantial evidence in the record, it found that the criteria the Commission used to evaluate competition were unreasonable in light of the purpose of the cumulation

¹² 19 U.S.C. § 1677(7)(C)(iv).

¹³ Marsuda-Rodgers International v. United States, 719 F. Supp. 1092 (Ct. Int'l. Trade 1989).

provision.¹⁴

As its point of departure for its explication of the competition requirement, the court compared the Commission's competition analysis to our like product analysis and found the two essentially the same. The court noted, however, that the purposes of the like product and cumulation provisions are different, and that "Congress would not have imposed on the Commission the additional requirement of competition if Congress intended to make all 'like' products under investigation subject to a cumulation analysis."¹⁵ Correctly, the court concluded that, for this requirement to be meaningful, competition for the purposes of cumulation must be more "vigorous" than competition for the purposes of defining like products.¹⁶ The court held that in order for the Commission's cumulation criteria to be judged reasonable, the evidence relied on by the Commission in deciding to cumulate would have to demonstrate such competition.¹⁷

As the court in this case read the "reasonable overlap" test set out in Fundicao Tupy S.A. v. United States, 678 F. Supp. 898 (1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988), competition for purposes of the cumulation provision is not shown simply because products have some similarities in design and general use. Rather, competition must be substantial and direct as evidenced by a reasonable overlap in the sales of each product to the same end-users.¹⁸ Such competition is evidenced by a reasonable, i.e., more than minimal, volume and

¹⁴ Id.

¹⁵ 719 F. Supp. 1097.

¹⁶ Id.

¹⁷ 719 F. Supp. at 1097-1098.

¹⁸ 719 F. Supp. at 1098.

value of sales to the same consumers in the same market segments. The court stated that "it is not sufficient to merely establish that [sic] few isolated sales go to the same customers...."¹⁹ Thus some overlapping sales, as there were in this investigation, between products that do not normally serve the same consumers for the same end uses do not suffice to demonstrate competition for the purposes of the Commission's cumulation analysis.

In holding that the Commission's cumulation analysis must focus on determining whether sales to the same end users in the same market segments are sufficient to reasonably warrant a finding of competition,²⁰ the court recognized that competition between products is not subject to binary computations; it is not a phenomenon that either does or does not exist. Rather, competition exists in different degrees between different products. At one end of the continuum, all products compete for a limited number of consumer dollars, and many of this array of products have no more in common than that. At the other end, the competing products are identical and consumers view them as perfect substitutes. For cumulation, the first sort of competition plainly cannot suffice. Even if something short of the latter is adequate, it cannot be as far from that as the Commission at times has found sufficient.

Moreover, the court correctly examined the extent to which the imports from each country compete both with the domestic product and with the products of each of the other countries subject to cumulation. If such competition is not present, by cumulating the Commission would not be aggregating the effects of unfairly traded imports, but rather attributing the effects of one

¹⁹ 719 F. Supp. at 1100.

²⁰ Id.

country's unfair trade practices to the imports of another. Such attribution is not consistent with our GATT obligations, nor I believe with the intent of the cumulation provision of the statute. Though GATT and Title VII allow us to aggregate the impact of unfairly traded imports from even very small producers, we must determine that such imports are actually part of the pattern of imports that are causing material injury to the domestic industry.²¹ Determining that the imports of each country compete with each other and the domestic like product ensures this without requiring that we separately examine the impact of these imports prior to cumulation.

Thus the court recognized that the cumulation provision of the statute approaches the question of competition between the domestic and imported products, and between imported products from two or more countries, from a different perspective than the like product provision. The cumulation provision directs the Commission to narrowly circumscribe the products that will be treated in a congruent fashion. In contrast, the Commission's like product analysis must allow the Commission to treat in a congruent fashion a broader section of the spectrum of competing products. This is necessary because the statutory definition of like product includes not only domestic products that are identical to the import, but also the domestic products that are most similar. In addition, the Commission must be able to identify workable like product categories that reflect some market reality in investigations encompassing a number of different imported and domestic products of the same general product type, among which product-category

²¹ 719 F. Supp. at 1100.

divisions may not be clear.²²

Under the statute, the like product definition must be broad enough to allow the Commission to proceed with an injury analysis even if the degree of competition between the imports and the domestic products is not extremely close. An understanding of the extent to which the domestic and imported products compete with each other in the markets for consumers, and to a lesser extent the markets for the factors of production, is important to defining relevant like products and domestic industries and also should inform our assessment of injury to the domestic industry as a result of the dumping or subsidization of the subject imports. For the purpose of defining like product, however, widely varying degrees of competition may characterize the relation between the imports and the domestic articles.

Conclusion

For the above reasons, I conclude that the domestic industry producing tapered roller bearings has not been materially injured or threatened with material injury by reason of LTFV imports of tapered roller bearings from Hungary.

²² Despite the flexibility of the Commission's like product analysis, or perhaps because of it, the Commission has always had difficulty achieving like product definitions that are both workable and reflective of real market conditions in cases involving numerous products of a single broad product type, even when certain of these products are highly specialized and thereby potentially differentiated from the others on the basis of the factors normally considered by the Commission. See Antifriction Bearings. In this context an understanding of the extent to which the domestic and imported products compete with each other is particularly important to defining the relevant like products and domestic industries.

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