

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-429 (Review)

**MECHANICAL TRANSFER PRESSES FROM JAPAN
(USITC Publication No. 3304 / May 2000)**

Determination

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines,² pursuant to section 751(c) of the Tariff Act of 1930 (the Act),³ that revocation of the antidumping duty order on mechanical transfer presses (MTPs)⁴ from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on June 1, 1999,⁵ and determined on September 3, 1999, that it would conduct a full review.⁶ Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Commissioner Thelma J. Askey dissenting.

³ 19 U.S.C. § 1675(c).

⁴ For purposes of this review, the term "mechanical transfer press" (MTP) refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

Commerce published in the Federal Register several Notices of Scope Rulings with respect to MTPs from Japan and determined that: (1) spare and replacement parts are outside the scope of the order (57 FR 19602, May 7, 1992); (2) a destack sheet feeder designed to be used with a mechanical transfer press is an accessory and, therefore, is not within the scope of the order (57 FR 32973, July 24, 1992); (3) the FMX cold-forging press is within the scope of the order (59 FR 8910, February 24, 1994); and (5) certain mechanical transfer press parts exported from Japan are outside the scope of the order (62 FR 9176, February 28, 1997).

Commerce's scope identifies the Harmonized Tariff Schedule of the United States (HTS) statistical reporting numbers for MTPs as 8462.99.0035, mechanical transfer presses, and 8466.94.5040, parts of mechanical transfer presses. However, these numbers were replaced by statistical reporting numbers 8462.99.8035, 8466.94.6040, and 8466.94.8040 on January 1, 1994. Subsequently, on July 1, 1997, statistical reporting numbers 8466.94.6040 and 8466.94.8040 were replaced by statistical reporting numbers 8466.94.6540 and 8466.94.8540. For a further explanation of these changes, see the U.S. Tariff Treatment section presented later in this report. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

⁵ 64 FR 29347, June 1, 1999.

⁶ 64 FR 50107, September 15, 1999.

Federal Register on November 15, 1999.⁷ The hearing was held in Washington, DC, on April 4, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

⁷ 64 FR 61938, November 15, 1999.

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VIEWS OF THE COMMISSION

Investigation No. 731-TA-429 (Review)

MECHANICAL TRANSFER PRESSES FROM JAPAN

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering mechanical transfer presses (“MTPs”) from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁸

I. BACKGROUND

In February 1990, the Commission determined that an industry in the United States was being materially injured by reason of imports of MTPs from Japan that were being sold at less than fair value.⁹ On February 16, 1990, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of MTPs from Japan.¹⁰

On June 1, 1999, the Commission instituted this review pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping duty order on MTPs would likely lead to continuation or recurrence of material injury.¹¹

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) – demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.¹² If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In this review, the Commission received a response to the notice of institution from one domestic producer of MTPs, Verson Division of Allied Products (“Verson”). The Commission also received a response from Japanese producer Komatsu Ltd. (“Komatsu”) and a joint response from Japanese

⁸ Commissioner Askey dissenting. *See* Dissenting Views of Commissioner Thelma J. Askey.

⁹ *Mechanical Transfer Presses from Japan*, Inv. No. 731-TA-429 (Final) USITC Pub. 2257 (February 1990) (“Original Determination”).

¹⁰ 55 Fed. Reg. 5642 (Feb. 16, 1990).

¹¹ 64 Fed. Reg. 15786 (Apr. 1, 1999).

¹² *See* 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

producers Hitachi Zosen Corporation and Hitachi Zosen Fukui Corporation (collectively “Hitachi”).¹³ On September 3, 1999, the Commission determined that both the domestic and respondent interested party group responses to its notice of institution were adequate.¹⁴ Pursuant to section 751(c)(5) of the Act,¹⁵ the Commission decided to conduct a full five-year review.¹⁶

On April 4, 2000, the Commission held a hearing in this review, at which representatives of Verson, Hitachi, and Komatsu appeared. Verson filed a brief in support of continuation of the order, and Hitachi and Komatsu filed briefs supporting revocation of the order.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”¹⁷ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹⁸ The Commission’s decision regarding the appropriate domestic like product(s) in an investigation or review is based on the facts, record, and legal parameters of the proceeding in question.¹⁹ In a section 751(c) review, the Commission must also take into account “its prior injury determinations.”²⁰

In its final five-year review determination for *Mechanical Transfer Presses From Japan*, Commerce defined the subject merchandise as:

mechanical transfer presses from Japan. The term “mechanical transfer press” refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these

¹³ During the subsequent proceedings Hitachi Zosen Corporation and Hitachi Zosen Fukui Corporation also filed a joint brief.

¹⁴ See *Explanation of Commission Determination on Adequacy in Mechanical Transfer Presses from Japan*. See also 64 Fed. Reg. 61938 (Nov. 15, 1999).

¹⁵ 19 U.S.C. § 1675(c)(5).

¹⁶ See *Explanation of Commission Determination on Adequacy in Mechanical Transfer Presses from Japan*. See also 64 Fed. Reg. 61938 (Nov. 15, 1999).

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ 19 U.S.C. § 1677(10). See *NEC Corp. v. Dep’t of Commerce*, 36 F. Supp. 2d 380, 383 (Ct Int’l Trade, 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct Int’l Trade, 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁹ See, e.g., *Citrosuco Paulista, S.A., v. United States*, 704 F. Supp. 1075, 1087-88 (CIT 1988) (while each original investigation is *sui generis*, and the Commission is not bound by prior like product determinations, the like product definition must be based on a rational basis discernible to the reviewing court).

²⁰ 19 U.S.C. § 1675a(a)(1)(a).

*machines. These presses may be assembled or unassembled.*²¹

MTPs are self-contained production lines used to fabricate a large volume of identical parts or a group of parts that are similar in shape, size, and thickness. MTPs are produced in response to specific customer orders and finished to customer specifications. Depending on the dies used in the press, MTPs can be used for stamping, drawing, extruding, shearing, punching, bending, folding, straightening, flattening, notching, forging, and hammering operations. MTPs may differ greatly in size -- from under 50 tons to over 2,000 tons -- all of which are included in the scope of the order. Large presses are most commonly used in the automotive manufacturing industry. Small presses are used to manufacture appliances and to forge parts such as crankshafts, connecting rods, knuckle joints, gears, and universal joints.²²

The major components of an MTP are the bed assembly, internal transfer feed and controls, column assembly, slide assembly, and crown assembly. The bed assembly contains the bolster, die cushion, and lower dies. Die changes allow for the production of different parts on the same MTP. Die changes typically take a half hour or more to accomplish.²³ The transfer feed, which moves the part from one location of the press to the next, is what distinguishes MTPs from other types of presses. The transfer mechanism may be mechanical or electronic and either dual-axial or tri-axial.²⁴

The starting point of the Commission's like product analysis in a five-year review is the like product definition in the Commission's original determination.²⁵ In the original investigation, the Commission defined the domestic like product as "all U.S. produced mechanical transfer presses."²⁶ In reaching this determination the Commission considered two domestic like product issues: (1) whether MTPs used to stamp auto body panels constituted a separate like product from other MTPs; and (2) whether MTPs with a capacity under 150 tons constituted a separate like product from those with a capacity of 150 tons or more. The Commission determined that neither of these two suggested delineations formed a clear dividing line supporting more than one like product.²⁷

²¹ 65 Fed. Reg. 25705 (May 3, 2000). As clarified by several scope orders issued since the original investigation, certain mechanical transfer press parts, including spare and replacement parts, are outside the scope of the order, and the FMX cold-forging press is within the scope of the order.

²² CR at I-16; PR at I-12-13 .

²³ CR at I-12; PR at I-10-11.

²⁴ CR at I-14; PR at I-11-12.

²⁵ In the like product analysis for an investigation, the Commission generally considers a number of factors, including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. See *The Timken Co. v. United States*, 913 F. Supp. 580, 584 (CIT 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); *Torrington*, 747 F. Supp. at 748-49.

²⁶ Original Determination, USITC Pub. 2257 at 6.

²⁷ Original Determination, USITC Pub. 2082 at 7, 12.

In this review, no party argued for any change in the original like product definition.²⁸ The product itself has not changed significantly since the original investigation, although there have been some technological advances, such as cross-bar technology, greater automation, and increased industry acceptance of electronic feed mechanisms.²⁹ Nor does any of the information collected in this review warrant a departure from that definition. Accordingly, we define the domestic like product in this five-year review as all domestically produced MTPs.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”³⁰ In accordance with our domestic like product determination, we determine that the domestic industry for this five-year review consists of all domestic producers of MTPs.³¹

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON MECHANICAL TRANSFER PRESSES WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard In a Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³² The Statement of Administrative Action to the URAA (“SAA”) states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation {of the order} . . . and the elimination of its restraining effects on volumes and prices of imports.”³³ Thus, the likelihood standard is prospective in

²⁸ Verson’s Posthearing Brief at 2-3; Hitachi’s Response to the Notice of Institution at 26-27. We note that Komatsu originally stated that it would be useful for the Commission to revisit its earlier like product determination but did not pursue that argument further. *See* CR at I-19-20; PR at I-14-15.

²⁹ CR at I-15.

³⁰ 19 U.S.C. § 1677(4)(A).

³¹ One U.S. producer of MTPs, Aida-DTC, is a wholly-owned subsidiary of a Japanese producer/exporter of MTPs that also imports MTPs from its parent. CR at I-25. However, the Japanese parent has been excluded from the scope of the antidumping duty order. CR and PR at Table I-7. Accordingly, the related party provision, 19 U.S.C. § 1677(4)(A), does not apply.

³² 19 U.S.C. § 1675a(a).

³³ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

nature.³⁴ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”³⁵ According to the SAA, a “ ‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis {in antidumping and countervailing duty investigations}.”^{36 37}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”³⁸ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{39 40}

We note that Section 776(a) of the Act authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the

³⁴ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued {sic} prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

³⁵ 19 U.S.C. § 1675a(a)(5).

³⁶ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

³⁷ In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

³⁸ 19 U.S.C. § 1675a(a)(1).

³⁹ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

⁴⁰ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption finding in this case. 65 Fed. Reg. at 25906 (May 4, 2000).

record evidence as a whole in making its determination.⁴¹ We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."⁴²

For the reasons stated below, we determine that revocation of the antidumping duty order on MTPs from Japan would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic MTP industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁴³ A number of conditions of competition are pertinent to our analysis.

During the original investigation there were eight domestic producers of MTPs, five of which no longer produce MTPs or are no longer in business. In addition to the three producers which remained in business, Verson, U.S. Baird, and Minster Machine Co., one other domestic producer, Aida-DTC, recently joined the industry.⁴⁴ During the original investigation, Verson was the largest domestic MTP producer, accounting for *** percent of the volume of domestic production.⁴⁵ Verson remains the largest domestic producer, and its dominance in the domestic industry has grown with the exit of Danly Machine, Niagara Machine, HZ Clearing, and CNB International. In 1999, Verson accounted for *** percent of U.S. MTP production (based on direct labor hours).⁴⁶ By value, virtually all of Verson's production focuses on large tonnage MTPs of at least 1,000 tons for the auto industry.⁴⁷

In the original investigation, the Commission found that MTPs are "big-ticket, made to order

⁴¹ 19 U.S.C. § 1675(c)(3)(B). Section 751(c)(3)(B) of the Act specifically provides that in an expedited five-year review the Commission is to issue "a final determination based on the facts available, in accordance with section 776." Section 776 of the Act, however, does not limit the use of facts available to an expedited review.

⁴² SAA at 869.

⁴³ 19 U.S.C. § 1675a(a)(4).

⁴⁴ CR at I-21, I-25; PR at I-16, I-19.

⁴⁵ Original Report at Table 1.

⁴⁶ CR and PR at III-1.

⁴⁷ CR at I-22, II-1; PR at I-17, II-1. A *** part of Verson's MTP production consists of manufacturing electronic transfer feeds for use in its own production of MTPs and as retrofits for previously installed MTPs. Verson also offers integrated systems that include apparatus to feed metal into the press and to sort or stack the finished part, and has also reentered the small-tonnage segment of the stamping equipment market. CR at I-22-23.

products with relatively low and irregular sales over time.”⁴⁸ That characterization remains true in this review.⁴⁹ As in the original investigation, each sale is financially important and even one lost sale can affect a producer’s ability to proceed with research, development, and production plans.⁵⁰ Further, the importance of winning even one competitive contract may have significant implications for future sales. Once a particular supplier has been selected, that supplier may have a competitive advantage with respect to design and costs and is therefore likely to be able to submit relatively low-priced bids for future contracts.⁵¹ In addition, the development of favorable relationships and the preference for compatible equipment may lead to a preferred-supplier relationship for future needs.⁵²

As in the original investigation, the demand for MTPs is driven by the automotive industry’s requirements. Although automotive manufacturers’ replacement of older tandem presses has abated since the original investigation, they have continued to demand large MTPs as they expand capacity for production of new vehicles.⁵³ The demand in the U.S. market is primarily from the “Big Three” automakers, Ford, GM, and DaimlerChrysler. *** accounted for the majority of the value of MTPs during the period of review.⁵⁴ Information in the record of this review indicates that demand may decline somewhat during the next several years due to completion of automotive manufacturers’ plant modernization programs and then increase in the following 5 to 8 years as the MTPs purchased in the mid-1980s approach the end of their useful life.⁵⁵ In addition to automakers, MTPs for automotive use are purchased by “Tier 1” automotive suppliers such as *** and ***.⁵⁶

In the original investigation, the Commission found that the domestic industry was “locked out of” or not invited to bid upon the sales of several mechanical transfer presses to Japanese-owned companies for use in their U.S. facilities.⁵⁷ The record in this review indicates that these Japanese “transplant” automobile manufacturers still favor Japanese suppliers, although there is evidence that at least some transplant manufacturers (**) have invited Verson to participate in its bidding process in recent years.⁵⁸

Purchases may be made by competitive bidding or by non-competitive bidding involving a single

⁴⁸ Original Determination at 13.

⁴⁹ Although the market for MTPs includes small and medium presses, the conditions in the market are driven by competition for sales of large MTPs, which, by value, dwarf sales of other MTPs. As such, the market for MTPs is characterized by a relatively small number of sales in any given year. *See, e.g.* CR and PR at Table V-1. Such sales are sporadic but involve merchandise of substantial value. The significance of the high value of each item is compounded by the fact that the infrequent contracts often cover the purchase of more than one MTP. During the period of review a total of 23 contracts involving 41 units were reported. CR at V-7.

⁵⁰ Transcript of Hearing (April 4, 2000) (“Tr.”) at 20.

⁵¹ CR at V-4, n.4; PR at V-3.

⁵² CR at V-4, n.4; PR at V-3, n.4.

⁵³ CR at II-2-5; PR at II-2-5.

⁵⁴ CR at II-2; PR at II-2. *See also* CR and PR at Table I-10.

⁵⁵ CR at II-3; PR at II-2.

⁵⁶ CR at I-27; PR at I-20. *See* CR and PR at Table I-9, Table V-1.

⁵⁷ Original Determination at 18-19.

⁵⁸ CR at II-8, n.19; PR at II-5. CR and PR at Table V-1.

pre-selected supplier, usually a supplier used in the past.⁵⁹ In non-competitive purchases, the contract negotiations occur solely between a purchaser and a manufacturer of an existing press in the purchaser's facilities. In comparison, competitive bidding typically occurs when a purchaser requires a new type of press (in terms of design or size) for a new job, such as a new or redesigned vehicle line. Although non-competitive sales were somewhat more frequent than competitive sales during the period of review, the value of competitive sales contracts were often higher than those of non-competitive contracts. Of the 23 reported contracts for MTPs in the U.S. market during the period of review, 10 contracts worth \$*** resulted from a competitive bid process and 13 contracts worth \$*** resulted from a non-competitive bid process.⁶⁰

Competitive sales of MTPs are made after extensive and highly competitive bid/negotiation procedures between the purchaser and two or more producers. Because precise specifications vary widely from project to project, each MTP is engineered to order and thus each request for quotation ("RFQ") describes a unique, custom-built product. In a typical bid process, the purchaser reviews the initial bids of participating manufacturers and may reject or ask for adjustments to unacceptable bids due to non-compliance with specifications or non-competitive bid prices. After a technical comparison of the competing bids is completed, the purchaser may begin negotiations with one or more manufacturers. Although the bidding and negotiating processes may be officially closed, the purchaser sometimes reveals the identities of competing firms or specific details of competing bids. The purchaser may attempt to lower the price by submitting a target price to the competing suppliers and then work with the suppliers to discover cost reduction ideas that help lower the final bids. The bidding/negotiating process generally takes several months as the purchaser determines which supplier offers the best value on the basis of price, reputation, specifications, and service-related aspects. Preparing a bid and participating in the bidding process often costs a manufacturer \$***.⁶¹ Given similarities among suppliers with regard to quality and reliability, the final price to the customer is frequently a significant consideration.⁶²

Negotiations conclude with the award of a sales contract, but manufacturing and delivery generally take 12 to 24 months after the contract is signed. Payment terms usually involve progressive payments, and include a down payment ranging up to 30 percent of the contract price, with 60-90 percent paid after production and acceptance at the manufacturer's plant, and 10-20 percent paid upon acceptance at the purchaser's plant.⁶³

Nonsubject imports have increased since the imposition of the original order, especially from Germany and Brazil. Nonsubject imports (including nonsubject imports from Japan) accounted for *** percent of total U.S. consumption in 1998 and *** percent of total U.S. consumption in 1999.⁶⁴

We do not expect the foregoing conditions of competition to change appreciably if the antidumping duty order is revoked. Accordingly, we find that current conditions in the U.S. MTP industry

⁵⁹ CR at IV-4; PR at IV-3.

⁶⁰ CR at V-8; PR at V-5-6.

⁶¹ Memorandum to Record, May 4, 2000.

⁶² CR at V-6; PR at V-5.

⁶³ *Id.*

⁶⁴ CR at I-3; PR at I-2. CR and PR at Table I-12.

provide us with a basis upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

We find that a “reasonably foreseeable time” is longer for this review than for other industries for two reasons relating to the fact that transfer presses are big-ticket items. First, purchases of transfer presses are sporadic. All major players purchase transfer presses on a recurring basis, although there may be intervals of several years between significant purchases. In this case, *** indicated an intention to purchase transfer presses before 2003. Second, given the long lead-time from contract award to delivery of the product (1-2 years), the full financial effects of winning or losing a sale or of getting a particular price for a sale may take time to be fully realized. The SAA admonishes the Commission to take into account factors that may only manifest themselves in the longer term.⁶⁵ Thus, we find that it may take a relatively long period for the full effects of dumped imports of Japanese transfer presses to be felt in the U.S. market. We note that Verson and Hitachi agree that a “reasonably foreseeable time” would be five years.⁶⁶

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.⁶⁷ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁶⁸

Given the nature of these products, which are highly specialized and can vary from under 500 tons to over 5,000 tons, the significance of MTP sales is better measured by value than by quantity. In addition, Commerce only collects value data for much of the subject merchandise.⁶⁹ For these reasons and consistent with the Commission’s analysis in the original determination, we relied primarily on the value of the subject imports when performing our analysis of the likely volume of subject imports.⁷⁰

During the original investigation, subject imports from Japan were valued at between \$*** and \$***.⁷¹ They accounted for between *** and *** percent of the value of apparent U.S. consumption

⁶⁵ SAA at 887.

⁶⁶ Tr. at 69, 155.

⁶⁷ 19 U.S.C. §1675a(a)(2).

⁶⁸ 19 U.S.C. § 1675(a)(2)(A)-(D).

⁶⁹ CR at I-7; PR at I-5-6.

⁷⁰ As in the original investigation, MTPs are custom-made to purchaser specifications on a contract basis and therefore inventories of MTPs do not exist. CR at II-5; PR at II-3. Original Determination at 13, n.52.

⁷¹ CR and PR at Table I-2; Original Confidential Report at Table 17.

during 1986-88.⁷² In the original determination, the Commission found that this volume was significant, both absolutely and relative to domestic production of MTPs.⁷³ Following the filing of the petition in 1989 and continuing after the entry of the antidumping duty order in 1990, the value of subject imports entering the United States was significantly reduced.⁷⁴ From 1989 until 1996, the annual volume of subject imports by value remained below \$***. In 1996, the value-based volume of subject imports began steadily rising, reaching a value of \$*** in 1996 and increasing to \$*** in 1998.⁷⁵ In 1998, subject imports accounted for *** percent of the value of apparent domestic consumption.⁷⁶ In 1999, the year this five-year review was instituted, the volume of subject imports by value declined to \$***, and accounted for *** percent of the value of apparent U.S. consumption.⁷⁷ Thus, even with the antidumping duty order in place, subject imports occupied a substantial presence in the U.S. market during the period of the review investigation. However, both the absolute value and the value-based market share of subject imports have remained well below the levels that they enjoyed during the period of the original investigation. We find that the lower volume levels during the review period as compared to the original investigation period are attributable in large measure to the deterrent effects of the antidumping duty order.

Several factors indicate that subject Japanese producers have the capacity and incentive to export even higher volumes of subject imports if the order is revoked. The capacity data provided in this review by Japanese producers indicate that Japanese capacity utilization declined from *** percent in 1998 to *** percent in 1999 and is projected to be *** percent in 2000 and *** percent in 2001.⁷⁸ Demand for MTPs in the U.S. market is expected to decline somewhat and then increase, while MTP demand in Japan has been stagnant and is expected to remain so.⁷⁹ We also note that Japanese producers produce other types of presses on the same equipment and machinery that they use to produce MTPs,⁸⁰ and may therefore be able to switch production from nonsubject presses to subject MTPs. Therefore, we conclude that the subject producers have the ability to increase their already significant value of shipments to the United States if the order were revoked.

***. As counsel for ***.⁸¹

The substantial market share that the subject imports attained prior to the imposition of the

⁷² Original Determination at 15.

⁷³ *Id.*

⁷⁴ CR and PR at Figure I-1.

⁷⁵ CR and PR at Figure I-1.

⁷⁶ CR and PR at Table I-11.

⁷⁷ CR and PR at Table I-11.

⁷⁸ CR and PR at Table IV-6 (as revised by Memorandum INV-X-106 (May 15, 2000)). We note that excess capacity (as measured by direct labor hours) is likely to be higher than reflected by the data provided. Ishikawajima-Harima Heavy Industries Co., Ltd. ("IHI"), one of the largest Japanese MTP producers, did not provide capacity or capacity utilization data. The addition of IHI's production capacity data would increase Japanese capacity and, unless IHI is operating at 100 percent capacity, would increase available Japanese capacity (as measured by direct labor hours).

⁷⁹ CR at II-8; PR at II-6. *See* also Table IV-6. Demand elsewhere in Asia may not be as stagnant as in Japan, but we do not find that this fact eliminates the strong incentive of Japanese producers to supply the U.S. market.

⁸⁰ CR at I-19; PR at I-14-15.

⁸¹ Tr. at 191, 195-198.

antidumping duty order on MTPs, their retention of a significant market share in the United States, and the Japanese producers' strong incentive to increase their sales to the Big Three automakers suggest that subject producers will likely increase shipments to the United States if the antidumping duty order is revoked. Consequently, based on the record in this review, we conclude that the likely volume of subject imports would be significant if the order is revoked.

D. Likely Price Effects

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁸²

In the original investigation, the Commission found that price was a significant factor in MTP purchases.⁸³ The Commission further found that subject imports significantly suppressed or depressed prices for the like product and captured sales based in part upon price, often by underselling the like product.⁸⁴

In this review, as in the original investigation, price is a very important element in the purchase decision, ranking as the most important or second most important factor by five out of eight U.S. purchasers.⁸⁵ The record further indicates that information about prices and bids is, in at least some instances, shared among purchasers and producers,⁸⁶ which would tend to heighten the significance of price competition in the market.

As the Commission noted in the original investigation, the customized nature of MTPs and the range of available sizes and capacities makes price comparisons somewhat difficult.⁸⁷ However, each RFQ contains precise specifications that must be met by all bidders in order to move past the initial bidding stage.⁸⁸ Thus, we find that the data on bids provide us with a basis to compare prices with regard to largely comparable products. U.S. producers, importers, and purchasers were requested to report details of bid transactions from MTPs contracted and/or delivered to U.S. purchasers during the period of January 1998 to December 1999. A total of 23 bid contracts were reported, involving 41 units valued at

⁸² 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

⁸³ Original Determination at 27-29.

⁸⁴ Original Determination at 28-31.

⁸⁵ CR and PR at Table II-1. An April 2, 1999, Wall Street Journal article, entitled “Buyer’s Market - General Motors Drives Some Hard Bargains With Asian Suppliers” profiled GM’s sourcing practices in Asia. The article stated that GM took advantage of the turmoil in the Asian economy to force price decreases on its suppliers, and that it was not the only purchaser to attempt to take advantage of the situation. *Wall Street Journal*, A1, A6 (April 2, 1999), reprinted as Exhibit 4 to Verson’s prehearing brief.

⁸⁶ One automobile industry representative stated that purchasers are aware of each others’ plans and budgets. Comments of ***, Memorandum to the Record, May 4, 2000. Another automobile industry representative stated that purchasers are very transparent with each other regarding their experiences with different suppliers. Staff Notes from Mary Pedersen regarding March 6, 2000, conversation with ***.

⁸⁷ Hitachi considers price comparisons to be “virtually impossible.” Hitachi’s Posthearing Brief at 11.

⁸⁸ CR at V-5; PR at V-3.

\$748.5 million (based on winning final bid values).⁸⁹ Of these contracts, 31.2 percent (based on value) was awarded to U.S. suppliers,⁹⁰ 44.6 percent was awarded to subject Japanese suppliers,⁹¹ and 24.2 percent was awarded to nonsubject suppliers.⁹² As noted above, 10 of the 23 bid contracts, accounting for over *** percent of the value of sales, were awarded based on bid competition. Of the competitive bids, the lowest bidder won *** percent of these contracts.⁹³ Even in those instances in which the lowest bidder was not awarded the contract, the final price was significantly lower than the initial bid, suggesting that pressure from other competitive bids often has price depressing effects. Notwithstanding the existence of the order, one or more subject Japanese producers consistently underbid the U.S. producer in the bids in which both the U.S. and Japanese producers participated.⁹⁴

During the period reviewed, nearly all the competitive bidding involving *** sales. ***.⁹⁵

We also recognize, as alleged by ***,⁹⁶ that there was little head-to-head price competition in our bid data between Japanese and U.S. producers for business at *** and ***, as these firms pursued preferred supplier relationships with *** and nonsubject *** suppliers. In this respect the current record differs from the record from the Commission's original investigation. Nevertheless, we find that the sheer size of *** relative to the rest of the transfer press purchasing market indicates that, based on *** purchases alone, a very large portion of the market is open to price competition between Japanese and U.S. producers. Moreover, a *** representative stated to the Commission that if dumping created a significant reduction in costs of purchases of subject MTPs it would be difficult for it to ignore the potential price opportunities and that other major U.S. auto companies may well react in the same way.⁹⁷ Similarly, *** indicated that the current prices of *** suppliers are not low enough to outweigh perceived weaknesses in supplier support, delivery time, and equipment compatibility, implying that lower prices could cause *** to purchase Japanese MTPs.⁹⁸ *** continues to rate Japanese producers on quality, reliability, and service, indicating continuing awareness of the Japanese product.⁹⁹ As explained below, we find that, upon revocation, Japanese prices are likely to decrease, increasing the likelihood that ***

⁸⁹ CR at V-6-7; PR at V-5-6. During the same time period four non-bid transactions were also reported, valued at a total of \$*** million. The reason for two of the non-bid transactions was compatibility with existing equipment, and the other two non-bid transactions were motivated by the availability of equipment from cancelled orders. In the original determination, the Commission found that evidence of the practice of single sourcing subsequent orders confirmed the importance of price in the large MTP market where a single sale can result in future purchases from the same supplier. Original Determination at 19.

⁹⁰ ***. *Id.*

⁹¹ ***. *Id.*

⁹² ***. *Id.*

⁹³ CR at V-8; PR at V-5-6.

⁹⁴ CR and PR at Table V-1.

⁹⁵ CR and PR at Table I-10.

⁹⁶ Tr. at 159-161.

⁹⁷ E-mail response of ***; CR at D-13.

⁹⁸ CR at II-12, n. 26; PR at II-8, n.26.

⁹⁹ CR at II-12, n. 26; PR at II-8, n.26.

would seek competitive bids from Japanese suppliers.¹⁰⁰ Finally, to the extent that *** recent request for a bid from Verson indicates greater competition in the transplant market, overall price competition in the U.S. market would increase further. In sum, we find that there will likely be sufficient head-to-head price competition between Japanese and U.S. suppliers in the U.S. market such that we would expect significant price effects caused by Japanese producers upon revocation of the antidumping duty order.¹⁰¹

We note that the largest Japanese transfer press producers are currently subject to a 0 percent duty deposit rate. However, the absence of current dumping may reflect the discipline of the order. Our analysis pertains to likely conditions upon revocation of the order. After conducting a full review, Commerce has determined that, upon revocation, Japanese producers would likely resume dumping at margins on the order of 14-15 percent. Thus, we find that revocation of the order will provide Japanese producers the flexibility to price their transfer presses at prices that are significantly lower than current prices.¹⁰²

For the foregoing reasons, we find that, in the event of revocation, the likely increased volumes of subject MTPs, particularly in bids and sales to the Big Three automakers, would likely be achieved through renewed underselling of the domestic like product by the subject imports, and would likely result in significant price depression and suppression.

E. Likely Impact

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.¹⁰³ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.¹⁰⁴ As instructed by the statute, we have considered the

¹⁰⁰ We note that *** currently utilizes a *** machine that was described as “very durable.” Memorandum to Record, April 4, 2000.

¹⁰¹ We reiterate the financial importance of each sale to the domestic producer. Tr. at 20.

¹⁰² Counsel for Hitachi has indicated that such margins would translate into no more than a 10 percent effect on prices of Japanese transfer presses in the U.S. market. Hitachi Posthearing Brief at 13. We note that a 10 percent price reduction would save an automaker millions of dollars on a large transfer press purchase.

¹⁰³ 19 U.S.C. § 1675a(a)(4).

¹⁰⁴ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year review investigations as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final full sunset review, Commerce found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following margins: 15.16 percent for Komatsu and 14.51 percent for all other producers, except for Aida Engineering, Ltd. Commerce revoked the order for Aida. 63 Fed. Reg. 37331, July 10, 1998.

extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the order is revoked.

In the original investigation, the Commission found that the domestic industry was materially injured, noting that there was significant excess capacity and low profit levels that translated into insubstantial estimated operating and net incomes.¹⁰⁵ Imposition of the antidumping duty order in 1990 had a positive effect on the domestic industry's performance, although there has been a reduction in the number of producers in the domestic industry. The order in part enabled Verson to pioneer and develop electronic transfer feed ("EFT") technology that is now widely accepted in the industry, as well as increase production and capacity utilization.¹⁰⁶ Domestic producers also increased market share, with U.S. producers' U.S. shipments comprising *** percent of the domestic market in 1999.¹⁰⁷

Nonetheless, the current condition of the domestic industry reveals several signs of weakness. We therefore find the domestic industry to be vulnerable. Verson is the only remaining producer of the large MTPs used in the automotive industry. In 1996-98, Verson sought and gained significant new orders with U.S. automakers. It subsequently had difficulties completing the large volume of orders, causing delivery delays which it acknowledges resulted in contract penalties and strained relations with some customers.¹⁰⁸ These difficulties, together with the costs of expanding its capacity in 1998, left Verson with *** in both 1998 and 1999.¹⁰⁹ Out of apparent concern over the viability of the company, *** insisted that Allied Products, parent of Verson, divest itself of its agricultural products division.¹¹⁰ On the positive side, Verson's balance sheet in the next few years will likely benefit from expected profits from the deliveries of transfer presses that are currently in production.¹¹¹ Moreover, Verson has apparently worked itself through its backlog, and its remaining production is on schedule.¹¹² Recently, the opposite problem has arisen; namely, ***.¹¹³

In sum, we find that the problems experienced by Verson relating to its production backlog and expansion costs are not likely to be a recurring factor in the reasonably foreseeable future. However, Verson has been left in a significantly weakened condition, which increases the likelihood that adverse effects from dumped Japanese imports will cause it to experience material injury.¹¹⁴ Moreover, the paucity of new orders heightens the significance of any sales lost to Japanese transfer presses upon revocation of the order.

¹⁰⁵ Original Determination at 14.

¹⁰⁶ CR and PR at Table III-1.

¹⁰⁷ CR and PR at Table I-2.

¹⁰⁸ CR at III-10; PR at III-6.

¹⁰⁹ CR and PR at Table III-5.

¹¹⁰ CR at III-12, n.29; PR at III-7, n.29.

¹¹¹ Verson's accounting system requires that it recognize losses on projects as soon as they are projected, but not to recognize profits until a project is largely completed. CR at III-8, III-10, and Table III-6.

¹¹² Verson's Prehearing Brief at 12-13.

¹¹³ CR at III-6, n.15; PR at III-3, n.15.

¹¹⁴ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

As discussed above, revocation of the antidumping duty order would likely lead to even more aggressive pricing in an already competitive market and significantly depress U.S. prices.¹¹⁵ An increase in subject imports is likely to cause a decrease in the volume of domestic shipments. In addition, the volume and price effects of the subject imports would have a significant adverse impact on the domestic industry and would likely cause the domestic industry to lose market share. Moreover, as discussed in the conditions of competition above, each sale is financially important and even one lost sale can affect a producer's ability to proceed with research, development, and production plans.

The likely price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. The reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital to fund and maintain necessary capital investments. In addition, we find it likely that revocation of the order will result in commensurate employment declines for the industry.¹¹⁶

Accordingly, based on the record in this review, we conclude that, if the antidumping duty order is revoked, subject imports from Japan would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on subject imports of MTPs from Japan would be likely to lead to continuation or recurrence of material injury to the U.S. MTP industry within a reasonably foreseeable time.

¹¹⁵ The U.S. market is an important one to all MTP producers and, if the order were revoked, subject producers could well take advantage of the opportunity to price aggressively in order to eliminate the one remaining domestic producer of the large MTPs used in the automotive industry.

¹¹⁶ Even with the order in place, Verson's employment figures dropped from *** in 1998 to *** in 2000. Memorandum to Record, May 4, 2000.

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DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Investigation No. 731-TA-429 (Review)

MECHANICAL TRANSFER PRESSES FROM JAPAN

Based on the record in this five-year review, I determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering mechanical transfer presses (“MTPs”) from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In February 1990, the Commission determined that an industry in the United States was being materially injured by reason of imports of MTPs from Japan that were being sold at less than fair value.¹ On February 16, 1990, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of MTPs from Japan.²

On June 1, 1999, the Commission instituted this review pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping duty order on MTPs would likely lead to continuation or recurrence of material injury.³

In this review, the Commission received a response to the notice of institution from one domestic producer of MTPs, Verson Division of Allied Products (“Verson”). The Commission also received responses from three Japanese producers, Komatsu Ltd. (“Komatsu”) and a joint response from Hitachi Zosen Corporation and Hitachi Zosen Fukui Corporation (collectively “Hitachi”).⁴ On September 3, 1999, the Commission determined that both the domestic and respondent interested party group responses to its notice of institution were adequate.⁵ Pursuant to section 751(c)(5) of the Act,⁶ the Commission decided to conduct a full five-year review.⁷

On April 4, 2000, the Commission held a hearing in this review, at which representatives of Verson, Hitachi and Komatsu appeared. Verson filed a brief in support of continuation of the order, and Hitachi and Komatsu filed briefs supporting revocation of the order.

¹ *Mechanical Transfer Presses from Japan*, Inv. No. 731-TA-429 (Final) USITC Pub. 2257 (Feb.1990) (“Original Determination”).

² 55 Fed. Reg. 5642 (Feb. 16, 1990).

³ 64 Fed. Reg. 15786 (Apr. 1, 1999).

⁴ Hitachi Zosen Corporation and Hitachi Zosen Fukui Corporation (collectively “Hitachi”) filed a joint response. During the subsequent proceedings they likewise filed a joint brief.

⁵ See *Explanation of Commission Determination on Adequacy in Mechanical Transfer Presses from Japan* . See also 64 Fed. Reg. 61938 (Nov. 15, 1999).

⁶ 19 U.S.C. § 1675(c)(5).

⁷ See *Explanation of Commission Determination on Adequacy in Mechanical Transfer Presses from Japan* . See also 64 Fed. Reg. 61938 (Nov. 15, 1999).

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”⁸ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”⁹ The Commission's decision regarding the appropriate domestic like product(s) in an investigation or review is based on the facts, record, and legal parameters of the proceeding in question.¹⁰ In a section 751(c) review, the Commission must also take into account “its prior injury determinations.”¹¹

In its final five-year review determination for *Mechanical Transfer Presses From Japan*, Commerce defined the subject merchandise as:

*mechanical transfer presses from Japan. The term “mechanical transfer press” refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.*¹²

MTPs are self-contained production lines used to fabricate a large volume of identical parts or a group of parts that are similar in shape, size and thickness. MTPs are produced in response to specific customer orders and finished to customer specifications. Depending on the dies used in the press, MTPs can be used for stamping, drawing, extruding, shearing, punching, bending, folding, straightening, flattening, notching, forging and hammering operations. MTPs may differ greatly in size: from under 50 tons to over 2,000 tons, all of which are included in the scope of the order. Large presses are most commonly used in the automotive manufacturing industry. Small presses are used to manufacture appliances and to forge parts such as crankshafts, connecting rods, knuckle joints, gears and universal joints.¹³

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10). See *NEC Corp. v. Dep’t of Commerce*, 36 F. Supp. 2d 380, 383 (Ct Int’l Trade, 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct Int’l Trade, 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁰ See, e.g., *Citrosuco Paulista, S.A., v. United States*, 704 F. Supp. 1075, 1087-88 (CIT 1988) (while each original investigation is *sui generis*, and the Commission is not bound by prior like product determinations, the like product definition must be based on a rational basis discernible to the reviewing court).

¹¹ 19 U.S.C. § 1675a(a)(1)(a).

¹² Final Results of Full Sunset Review: Mechanical Transfer Presses from Japan, 65 Fed. Reg. 25705 (May 3, 2000). As clarified by several scope orders issued since the original investigation, certain mechanical transfer parts, including spare and replacement parts are outside the scope of the order, and the FMX cold-forging press is within the scope of the order.

¹³ CR at I-16; PR at I-12-13.

The major components of an MTP are the bed assembly, internal transfer feed and controls, column assembly, slide assembly and crown assembly. The bed assembly contains the bolster, die cushion and lower dies. Die changes allow for the production of different parts on the same MTP. Die changes typically take a half hour or more to accomplish.¹⁴ The transfer feed, which moves the part from one part of the press to the next, is what distinguishes MTPs from other types of presses. The transfer mechanism may be mechanical or electronic and either dual-axial or tri-axial.¹⁵

The starting point of the Commission's domestic like product analysis in a five-year review is the like product definition in the Commission's original determination.¹⁶ In the original investigation, the Commission defined the like product as "all U.S. produced mechanical transfer presses."¹⁷ In this review, no party has argued for any change in the like product definition from the original investigation. Moreover, no information collected in this review warrants a departure from the original definition. Accordingly, I define the domestic like product in this five-year review as all domestically produced MTPs.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."¹⁸ In accordance with my domestic like product determination, I determine that the domestic industry for this five-year review consists of all domestic producers of MTPs.¹⁹

¹⁴ CR at I-12; PR at I-10.

¹⁵ CR at I-14; PR at I-11.

¹⁶ In the domestic like product analysis for an investigation, the Commission generally considers a number of factors, including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. *See The Timken Co. v. United States*, 913 F. Supp. 580, 584 (CIT 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. *See, e.g.,* S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); *Torrington*, 747 F. Supp. at 748-49.

¹⁷ Original Determination, USITC Pub. 2257 at 6.

¹⁸ 19 U.S.C. § 1677(4)(A).

¹⁹ One U.S. producer of MTPs, Aida-DTC, is a wholly-owned subsidiary of a Japanese producer/exporter of MTPs that also imports MTPs from its parent. CR at I-25. However, the Japanese parent has been excluded from the scope of the antidumping duty order. CR and PR at Table I-7. Accordingly, the related party provision, 19 U.S.C. § 1677(4)(A) does not apply.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON MECHANICAL TRANSFER PRESSES WOULD NOT BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard In a Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”²⁰ The Statement of Administrative Action to the URAA (“SAA”) states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation {of the order} . . . and the elimination of its restraining effects on volumes and prices of imports.”²¹ Thus, the likelihood standard is prospective in nature.²² The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”²³ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis {in antidumping and countervailing duty investigations}.”²⁴

Although the standard in five-year reviews is not the same as the standard applied in original antidumping duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”²⁵ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is

²⁰ 19 U.S.C. § 1675a(a).

²¹ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “{t}he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

²² While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued {sic} prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

²³ 19 U.S.C. § 1675a(a)(5).

²⁴ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

²⁵ 19 U.S.C. § 1675a(a)(1).

revoked.^{26 27}

I note that Section 776(a) of the Act authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.²⁸ I generally give credence to the facts supplied by the participating parties and certified by them as true, but I base my decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."²⁹

For the reasons stated below, I determine that revocation of the antidumping duty order on MTPs from Japan would not be likely to lead to continuation or recurrence of material injury to the domestic injury within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic MTP industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³⁰ A number of conditions of competition are pertinent to my analysis.

First, during the original investigation there were eight domestic producers of MTPs, five of which no longer produce MTPs. In addition to the three producers which have remained in business since the imposition of the order (Verson, U.S. Baird and Minster Machine Co.), one other domestic producer, Aida-DTC, recently joined the industry.³¹ During the original investigation, Verson was the largest domestic MTP producer, accounting for *** percent of the value of domestic shipments.³² Since imposition of the antidumping duty order, Verson has become the dominant domestic producer of MTPs,

²⁶ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

²⁷ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption finding in this case. 65 Fed. Reg. at 25906 (May 4, 2000).

²⁸ 19 U.S.C. § 1675(c)(3)(B). Section 751(c)(3)(B) of the Act specifically provides that in an expedited five-year review the Commission is to issue "a final determination based on the facts available, in accordance with section 776." Section 776 of the Act, however, does not limit the use of facts available to an expedited review.

²⁹ SAA at 869.

³⁰ 19 U.S.C. § 1675a(a)(4).

³¹ CR at I-21, I-25; PR at I-16, I-19.

³² Original Report at Table 1.

accounting for *** percent of U.S. production (based on direct labor hours) in 1999.³³ By value, virtually all of Verson's production focuses on large tonnage MTPs that are used by the auto industry.³⁴

Over the past 12 years, Verson's research and development efforts have enabled it to produce mechanical transfer presses with advanced technology features, such as an electronic transfer feed press, a programmable die change press, and a multimode mechanical transfer press that can operate in a tri-axial and cross-bar mode. These innovations have given Verson the ability to compete more closely with other producers, which is a significant change from the original investigation when Verson did not have the economies of scale to invest the amount of capital or the necessary technology to produce this type of machine.³⁵ In addition to these quality advancements, Verson, the largest domestic producer, is near completion of 150,000 square feet of production facilities, making it one of the largest mechanical transfer press facilities in the world.

Second, as in the original investigation, demand for MTPs is driven by the automotive industry's requirements. Demand for mechanical transfer presses in the U.S. market derives primarily from the "Big Three" automakers, Ford, GM and DaimlerChrysler.^{36 37} Although automotive manufacturer's replacement of older tandem presses has abated since the original investigation, they continue to demand large MTPs as they expand capacity for production of new vehicles.³⁸ The record indicates that demand may decline somewhat during the next several years due to completion of automotive manufacturers' plant modernization programs. Demand is expected to increase, however, over the next 5 to 8 years when mechanical transfer presses purchased in the mid-1980s approach the end of their useful life.³⁹ In addition to automakers, MTPs for automotive use are purchased by "Tier 1" automotive suppliers such as MascoTech and Tower Automotive.⁴⁰

In the original investigation the Commission found that the domestic industry was "locked out of" or not invited to bid upon the sales of several mechanical transfer presses to Japanese-owned companies for use in their U.S. facilities.⁴¹ While these Japanese-owned production facilities did not request bids from U.S. producers during the original investigation, the record in this review indicates that

³³ CR and PR at Table III-1.

³⁴ CR at I-22, II-1. A *** part of Verson's MTP production consists of manufacturing electronic transfer feeds for use in its own production of MTPs and as retrofits for previously installed MTPs. Verson also offers integrated systems with material handling capabilities and has also reentered the small-tonnage segment of the stamping equipment market. CR at I-22-23.

³⁵ CR at V-12-13; PR at V-8. In this regard, I note that Verson's production facility and product was accredited by ISO, an international quality standards organization, in 1999. In addition, Verson also meets the automotive industry standards for a QS-9000 rating, which is the highest quality rating given to producers of mechanical transfer presses. Moreover, Verson qualified for Ford Motor's Q1 program, which Ford deems as its highest quality standard.

³⁶ CR at II-2; PR at II-2. See also CR and PR at Table I-10.

³⁷ I also note that there is a reasonable level of demand from Japanese transplant automobile manufacturers.

³⁸ CR at II-2-5; PR at II-2-5.

³⁹ CR at II-3; PR at II-2.

⁴⁰ CR at I-27; PR at I-20. See CR and PR at Table I-9 and Table V-1.

⁴¹ Original Determination at 18-19.

U.S. producers are now invited to bid for contracts at some transplant manufacturers (***).^{42 43} In fact, ***.⁴⁴

Third, in the original investigation, the Commission found that MTPs are “big-ticket, made to order products with relatively low and irregular sales over time.”⁴⁵ That characterization remains true in this review.⁴⁶

Fourth, purchases of mechanical transfer presses are made through either a competitive bidding process or a non-competitive bidding.⁴⁷ In the case of non-competitive bids, contract negotiations occur solely between a purchaser and a manufacturer of an existing press in the purchaser’s facilities. In comparison, competitive bidding typically occurs when a purchaser requires a new type of press (in terms of design or size) for a new job, such as a new or redesigned vehicle line. Although non-competitive sales occur somewhat more frequently than competitive sales, the value of competitive sales contracts are generally significantly higher than those of non-competitive contracts. Of the 23 reported contracts for MTPs in the U.S. market during the period of review, 10 contracts worth \$*** resulted from a competitive bid process and 13 contracts worth \$*** resulted from a non-competitive bid process.⁴⁸

Competitive sales of MTPs are generally made after an extensive and highly competitive bid/negotiation procedures between a purchaser and two or more producers. Because precise specifications vary widely from project to project, each MTP is engineered to order and thus each request for quotation (“RFQ”) describes a unique, custom-built product. In a typical bid process, the purchaser reviews the initial bids of participating manufacturers and may reject or ask for adjustments to unacceptable bids due to non-compliance with specifications or non-competitive bid prices. After a technical comparison of the competing bids is completed, the purchaser may begin negotiations with one or more manufacturers. The bidding/negotiating process generally takes several months as the purchaser tries to decide which supplier offers the best value on the basis of reputation, specifications, service-related aspects and price. Preparing a bid and participating in the bidding process often costs a manufacturer \$***.⁴⁹

⁴² CR at II-3, n.8; PR at II-2, n.8. CR and PR at Table V-1.

⁴³ The record indicates that the “transplant” automobile manufactures still tend to prefer Japanese suppliers.

⁴⁴ CR at IV-7 and V-22; PR at IV-4-5.

⁴⁵ Original Determination at 13.

⁴⁶ Although the market for MTPs includes small and medium presses, the conditions in the market are driven by competition for sales of large MTPs, which, by value, dwarf sales of other MTPs. As such, the market for MTPs is characterized by a relatively small number of sales in any given year. *See, e.g.* CR and PR at Table V-1. Such sales are sporadic but involve merchandise of substantial value. The significance of the high value of each item is compounded by the fact that the infrequent contracts often cover the purchase of more than one MTP. During the period of review a total of 23 contract involving 41 units were reported. CR at V-7; PR at V-5.

⁴⁷ CR at IV-4; PR at IV-3.

⁴⁸ CR at V-8; PR at V-5-6.

⁴⁹ Memorandum to Record, May 4, 2000.

Once a particular supplier has been selected, that supplier has a competitive advantage compared to other suppliers because of its familiarity with the design and cost needs of the purchaser. The supplier is therefore likely to be able to submit relatively low-priced bids for future contracts.⁵⁰ Further, because quality and reliability are such important factors in a purchasing decision, purchasers maintain relationships with a small number of producers of mechanical transfer presses based largely on a proven track record of producing a quality product.⁵¹

Negotiations conclude with the award of a sales contract, but manufacturing and delivery generally take 12 to 24 months after the contract is signed. Payment terms usually involve progressive payments, and include a down payment of 0-30 percent of the contract price, with 60-90 percent paid after production and acceptance at the manufacturer's plant, and 10-20 percent paid upon acceptance at the purchaser's plant.⁵²

Finally, nonsubject imports have increased their presence in the market since the imposition of the original order, especially those from Germany and Brazil. The record of this review indicates that the German manufacturers produce mechanical transfer presses that are of a very high quality. Nonsubject imports (including nonsubject imports from Japan) accounted for *** percent of total U.S. consumption in 1998 and *** percent of total U.S. consumption in 1999.⁵³

Based on the record evidence, I find that these conditions of competition in the U.S. mechanical transfer press market are not likely to change significantly in the reasonably foreseeable future. Accordingly, I find that current conditions in the U.S. mechanical transfer press market provide me with a reasonable basis upon which to assess the likely effects of revocation of the antidumping duty order within a reasonably foreseeable time.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁵⁴ In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁵⁵

⁵⁰ CR at V-4, n.4; PR at V-3, n.4.

⁵¹ CR and PR at Table II-1. CR at II-10; PR at II-7.

⁵² *Id.*

⁵³ CR at I-3; PR at I-2. CR and PR at Table I-12.

⁵⁴ 19 U.S.C. § 1675a(a)(2).

⁵⁵ 19 U.S.C. § 1675a(a)(2)(A)-(D).

The Commission's original determination noted that the volume of subject imports from Japan was significant, both absolutely and relative to domestic production of mechanical transfer presses.⁵⁶ During the original period of investigation, the volume of imported mechanical transfer presses from Japan, as a percent of the value of apparent domestic consumption, accounted for between 72.8 percent and 85.1 percent.⁵⁷ The Commission found that, because Japanese imports accounted for such a large portion of apparent domestic consumption, the domestic industry was unable to achieve economies of scale in the production of mechanical transfer presses and thus lower its per-unit engineering and total costs.

Based on the record of this review, I find that the volume of the subject imports is not likely to be significant upon revocation of the order. I first note that the antidumping duty order appears to have had little or no restraining effect on the volume of subject imports. Since imposition of the order, the subject imports have been subject to a zero percent deposit rate during every administrative review except two, in which Commerce found a 0.87 percent and 3.50 percent deposit rate for Aida Engineering.⁵⁸ As a result, the subject Japanese imports have been able to retain a substantial share of the market, accounting for *** percent of domestic consumption in 1998 and *** percent of domestic consumption in 1999. This continued presence of the subject imports in the market, resulting from the *de minimis* margin rates now applicable to them, suggests that revocation of the order will have little effect on the subject Japanese producers' competitive role in this marketplace or their likely future impact on the industry.

When analyzing the likely volume of subject imports absent the antidumping duty order, I have also examined the specific bid information that the Commission obtained for mechanical transfer press sales during the period of review.⁵⁹ Given the consistent presence of the subject imports in the domestic market since imposition of the antidumping duty order, I believe that these sales are a probative indicator of the manner in which the subject imports will compete upon revocation of the order. My analysis of these bids strongly suggests that subject imports from Japan are unlikely to significantly increase their volumes upon revocation of the order. In particular, the record evidence concerning these bids establishes that domestic purchasers of MTPs will not shift significant volumes of purchases to the subject imports from the domestic merchandise in the reasonable foreseeable future, primarily because they prefer to source merchandise from their current suppliers or they may have quality concerns about the domestic merchandise.

In the case of the Big Three automobile manufacturers (who account for a majority of MTP purchases in the market), the record bid data indicates that they are unlikely to change their sourcing patterns significantly upon revocation of the order. For example, the record indicates that subject Japanese producers are not likely to compete with Verson, the largest domestic producer, for sales to *** in the reasonable foreseeable future. In this regard, ***.⁶⁰ Indeed, as evidence of this preferred supplier relationship, Verson received *** offered by *** during the period of review, all of which were *** and

⁵⁶ Original Determination at ____ (Confidential Version at 15).

⁵⁷ CR and PR at Table I-2.

⁵⁸ CR and PR at Table I-3. Aida Engineering is no longer a subject producer.

⁵⁹ The current record contains detailed purchasing information for sales to the Big Three automotive manufacturers, Toyota, and Tier 1 purchasers of mechanical transfer presses.

⁶⁰ *** Response to Producers' Questionnaire at 15.

required an electronic feed system.⁶¹ In fact, ***, a nonsubject *** producer, ***. Moreover, *** stated in their purchaser questionnaire response that revocation of the order will have ***.⁶² Given that this suggests that *** has established a *** from its existing suppliers, *** and ***, I find it unlikely that, even absent the order, *** will begin sourcing any of its demand from Japan.

Similarly, I find that it is unlikely that *** will change its sourcing patterns upon revocation of the order. The record indicates that, during the period of review, *** has used a *** as its *** and has not chosen to obtain or consider bids from the subject producers in Japan, despite their continued presence in the market.⁶³ In this regard, the record indicates that *** made *** MTP purchases during the period of review and that it awarded the bids for *** of those sales ***.⁶⁴ In the case of the *** bid, *** conducted the bidding ***. Given the preference of purchasers to source from their existing suppliers⁶⁵ and *** failure to seek bids from Japanese producers, I find it unlikely that *** will shift significant volumes of merchandise to the subject imports upon revocation of the order.

Third, I also find it unlikely that ***. The record indicates that price is generally a ***, that ***, and that it has generally chosen during the period of review ***.⁶⁶ Nonetheless, the record also indicates that, toward the end of the period of review, ***.⁶⁷ Moreover, *** also reported that it has *** because of ***.” Given *** product and its concerns about ***, I find it unlikely that revocation would cause *** to shift its existing sourcing patterns in a significant manner in the reasonable foreseeable future. Moreover, it is worth noting that ***,⁶⁸ which indicates that the subject imports could not possibly have a competitive effect on *** relationship with *** in the reasonably foreseeable future.

As for Tier 1 suppliers, the record clearly indicates that they ***. For example, *** purchased *** different MTPs during the period of review, all of which were *** from *** companies, *** and ***.⁶⁹ *** contracted for *** MTP that was awarded to ***, again on a sole source basis.⁷⁰ Moreover, *** and *** both contracted with *** to supply their facilities with mechanical transfer presses on a sole source basis. This information leads me to conclude that, by and large, Tier 1 purchasers have specific needs for certain MTP technology and generally rely on existing suppliers to fill their needs. Accordingly, I find that it is not likely that these Tier 1 suppliers will shift any significant additional volumes to the subject imports upon revocation of the order.

⁶¹ CR at V-17; PR at V-10.

⁶² CR at D-13; PR at D-5.

⁶³ CR at V-11; PR at V-7.

⁶⁴ *Id.*

⁶⁵ In this regard, I note that *** has stated that its prior experience with a supplier and its understanding of the supplier’s capabilities dictates which manufacturers it targets when it issues requests for proposals for MTPs. CR at V-5, n.6; PR at V-3, n.6.

⁶⁶ CR at V-12-13; PR at V-8-9. CR and PR at Table V-1.

⁶⁷ CR at II-11, n.25; PR at II-8, n.25.

⁶⁸ Staff notes of telephone conversation with ***.

⁶⁹ CR at V-20; PR at V-10.

⁷⁰ CR at V-21; PR at V-10.

As discussed in the conditions of competition, Verson was “locked out” of sales to the Japanese transplant automotive manufacturers during the original period of investigation. However, as Verson has expanded the types of mechanical transfer presses they offer, Japanese transplants have begun to look to Verson to supply certain needs. For example, in August 1996, Verson was invited to bid on a mechanical transfer press for ***. Although Verson was not awarded the contract, the fact that they were offered a chance to bid on the sale appears to be the beginning of a change in which the Japanese may begin sourcing some of their mechanical transfer presses from other than Japanese producers.

In assessing whether the volume of the subject imports is likely to be significant upon revocation of the order, I have also considered any likely capacity increases and unused capacity in Japan. The record indicates that the Japanese producers have generally been operating at reasonably high capacity levels during the period of review and are expected to continue to operate at reasonably high levels during 2000 and 2001.⁷¹ In particular, they operated at capacity utilization rates of *** percent and *** percent in 1998 and 1999, respectively, and are expected to operate at *** percent of capacity in 2000 and *** percent of capacity in 2001. The record also indicates that the Japanese industry’s overall capacity levels have been declining during the period, and that they are expected to decline significantly in 2001.⁷² Moreover, I note that the subject producers have shipped *** of their production to third country markets in 1999 and that they expect ***.⁷³ I therefore find that the capacity and capacity utilization levels of the Japanese industry do not support a finding that revocation of the order will cause a significant change in the volumes of the subject imports.⁷⁴

The record also shows that the Japanese industry’s potential for product shifting is limited in certain respects. Specifically, some Japanese MTP producers have specialized in the production of certain MTPs. For example, *** produces ***, while *** and *** specialize in large MTPs.⁷⁵ Therefore, certain producers ***. Since these firms lack the production experience, they also lack the necessary marketing experience and relationships with end users of these products. However, most of the direct labor and equipment used in the production of mechanical transfer presses is also used by Japanese manufacturers to produce other machinery. Japanese manufacturers of MTPs reported the ability to shift production between MTPs and tandem presses, tunnel boring equipment and other presses.⁷⁶

⁷¹ CR and PR at Table IV-6.

⁷² CR and PR at Table IV-6.

⁷³ CR at II-5, PR at II-4.

⁷⁴ CR at IV-7; PR at IV-4-5. Due to the nature of the mechanical transfer press industry, Japanese manufacturers do not maintain any inventory of the subject merchandise because they are custom-built machines designed to the specifications of the customer. Further, there are no reported antidumping duty orders in place against Japanese mechanical transfer press manufacturers except in the United States.

⁷⁵ CR at IV-8; PR at IV-6.

⁷⁶ CR at IV-8-9; PR at IV-6.

Given the foregoing, I find that the antidumping duty order has had only a limited effect in the reduction in shipments of subject merchandise to the United States. I also find that manufacturers in Japan would not, upon revocation of the order, significantly increase their exports to the U.S. market.⁷⁷

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.⁷⁸

During the original investigation, the Commission determined that the relative price between the subject imports and domestically produced mechanical transfer presses was significant in determining the winning bid.⁷⁹ Specifically, subject imports significantly suppressed and depressed prices for the like product and captured sales based in part upon price, often by underselling the like product. The Commission noted that bids were based on estimated production costs, anticipated profit, the technical specifications of the press in the RFQ, and knowledge of competitors' recent bids. The Commission cited the fact that 11 out of 24 contracts were awarded to the lowest bidder and of the remaining contracts, six went to the second lowest bidder.

I find that the subject imports are not likely to have a significant adverse impact on domestic prices upon revocation of the order. First, as I discussed above, the subject imports have continued to maintain a substantial presence in the market and are now subject to *de minimis* dumping rates. The continued substantial presence of the subject imports in the market, combined with the *de minimis* margin rates now applicable to them, suggests that the existence of the order has had little impact on the subject imports' price levels in this market and that revocation of the order will not change the existing pricing of the Japanese imports in an appreciable manner. Accordingly, I find that the record in this proceeding strongly suggests that revocation of the order will have no effect on the likely impact of the subject imports on domestic prices within the reasonably foreseeable future.

Second, the record of this review suggests that the MTP market is not a particularly price-sensitive market. Although the record indicates that bid price is an important factor in MTP sales, the record also indicates that other factors, such as quality, reliability and production lead times are more critical considerations in the MTP purchase decision.⁸⁰ In particular, purchasers frequently cited quality and reliability as the primary factor in their purchase decision, with price and lead time being considered

⁷⁷ See SAA at 890.

⁷⁸ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

⁷⁹ Original Determination at 16.

⁸⁰ CR at II-9; PR at II-6.

less important factors.⁸¹ Similarly, the large majority of purchasers reported that price was “never” or only “sometimes” a factor in the purchase decision. Moreover, the record further indicates that purchasers often make purchase decisions based on the identity of the supplier⁸² and that purchasers have a strong preference for purchasing a new MTP from their existing suppliers.⁸³ Accordingly, I find that the record indicates that purchasers will generally choose a supplier based on the suppliers’ reputation for quality and reliability and the purchasers’ familiarity and experience with their product, and not on the basis of price competition.

Although the record indicates that the domestic industry has become a significantly stronger and more important player in this market, the record also indicates that Verson, the dominant domestic producer, is still experiencing some quality and reliability issues. In this regard, the record indicates that *** rates them *** in terms of quality and reliability in their internal ranking system⁸⁴ and that ***.⁸⁵ Given these quality and reliability concerns, the record indicates to me that it is unlikely that decisions to source from subject and nonsubject producers will be made primarily on the basis of price when imports compete against the domestic industry. Accordingly, I find that this also indicates that it is unlikely that revocation of the order will have a significant impact on domestic prices in this market.

Moreover, the record also suggests that there is a limited amount of actual head-to-head price competition in the MTP market. For example, 13 of 23 total MTP sales in this marketplace were sole-sourced. These sales had a total value of approximately \$*** and represented nearly *** percent of all MTP bids during the period of review. Accordingly, for the third of the market represented by sole-source sales, there is no possibility of price competition between the subject and domestic merchandise. As for competitive bid situations, aside from bids involving ***, there is little head-to-head competition between the Japanese imports and the subject merchandise.⁸⁶ Given this, it is unlikely the subject imports will have a significant adverse price effect on most domestic merchandise upon revocation of the order.

In light of the foregoing, I find that revocation of the antidumping duty order likely would not lead to significant underselling by the subject producers, or to significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and

⁸¹ CR at II-9; PR at II-6.

⁸² CR at II-9-10; PR at II-6.

⁸³ CR at V-4; PR at V-4.

⁸⁴ CR at II-12, n.26; PR at II-8, n.26.

⁸⁵ CR at II-11, n.25; PR at II-8, n.25.

⁸⁶ Aside from *** bids, the available record bid evidence indicates that the domestic producers competed with the subject imports for only one sale. CR and PR at Table V-1; see also CR and PR at Table I-9.

(3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁸⁷ All

⁸⁷ 19 U.S.C. § 1675a(a)(4).

relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁸⁸ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁸⁹

In the original investigation, the Commission determined that the domestic industry producing mechanical transfer presses was materially injured by reason of LTFV imports of mechanical transfer presses from Japan that were underselling the domestic like product. The Commission noted that while apparent U.S. consumption remained relatively stable throughout the period 1986-88, the price underselling by subject imports resulted in both lower profitability for domestic producers on the volume of business they did obtain, and a lower volume of business, with consequent loss of scale economies and diminution of product development and research expertise.

During the original period of investigation, Japan was an important source of mechanical transfer presses for the U.S. market, accounting for over 70 percent of the domestic market. At the same time, the domestic industry was a relatively new entrant into the market for large mechanical transfer presses and accounted for a small share of the domestic market throughout the original period of investigation. As such, the industry did not have the advantage of established customers and the repeat business that is a characteristic of this market. The record of this review indicates that the industry has become a more significant and established producer in the market, now accounting for *** percent of domestic consumption in 1999. Accordingly, the industry is now in a position to -- and has -- taken advantage of purchasers preference to source from existing suppliers.

During the period of review, apparent U.S. consumption, by value, of mechanical transfer presses has fallen. U.S. consumption was \$*** million in 1988 while increasing to \$*** million in 1998 before falling to \$*** million in 1999. However, U.S. shipments, by value, have increased far more substantially, rising from \$*** in 1988 to \$*** by 1999.⁹⁰ Similarly, the reported market share held by manufacturers in the United States has almost quadrupled, rising from *** percent in 1988 to *** percent in 1999.⁹¹ In addition, the value of the domestic producers' export shipments has grown ***, from a high of \$*** in

⁸⁸ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887.

In its review of this order, Commerce found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the following margins: Komatsu at 15.16 percent; Aida Engineering revoked; and all others at 14.51 percent, 65 Fed. Reg. 25705 (May 3, 2000).

⁸⁹ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁹⁰ Table I-2, CR at I-3, PR at I-2.

⁹¹ Table I-2, CR at I-3, PR at I-2.

1987 to \$*** in 1998 and \$*** in 1999.⁹² The domestic industry reported employing *** more workers in 1999 than in 1988, equal to an increase in employment of *** percent. Further, Verson has invested a significant amount in research and development and made technological advances that provided it with the ability to realize the benefits of economies of scale and long-term relationships with purchasers. Finally, while substantial investments have contributed to increased capacity, sharply higher production means that capacity utilization rates have risen from *** percent in 1988 to *** percent in 1999. These are all signs of an increasingly strong industry that has become a significant player in the mechanical transfer press market.

Nonetheless, the industry has remained unprofitable. In 1986, Verson lost \$***, the equivalent of *** percent of net sales. In 1987 they lost an additional \$***, the equivalent of *** percent of net sales before showing a profit of \$*** in 1988, the equivalent of *** percent of net sales. During the period of review, Verson lost \$*** in 1998 and \$*** in 1999, the equivalent of *** and *** of net sales, respectively.⁹³

However, Allied Product Corporation, Verson's parent company, reported in its 1998 10-K that the overall negative gross margins and operating income were reportedly the result of increased ***.⁹⁴ In addition, Allied Product Corporation reported in 1999 that Verson's gross margins were ***. Further, the financial condition of the company during the period examined is the result of significant expansion in capacity.⁹⁵ Specifically, prior to 1998 and 1999 (the two-year period for which profit and loss data were requested), the company reported ***. However, in 1998 the Allied Products Corporation reported that the volume of business which Verson was attempting to handle in effect exceeded its capacity, despite the fact that its capacity was in the process of being substantially increased. Because of this over commitment, the shift to a higher volume resulted in increased overhead, while accompanying bottlenecks resulted in lower throughput and an inability to absorb the higher fixed costs and overhead associated with expansion. Further, Verson noted that bottlenecks in production and other related problems caused significant shipment delays. Those delays had a direct impact on the company's financial performance due to shipment delay penalties and reportedly could compromise their longer-term relationship with affected customers.⁹⁶

Given the record as a whole, and Verson's testimony that purchasers have "short memories" once the product is delivered and operational, I find that the current weakened state of the domestic industry is only temporary. In fact, the record indicates that the current financial condition of Verson is due to bottlenecking problems that arose from an over extension of production capacity and the ongoing capacity expansion. However, these are one time costs that will make Verson a stronger competitor for future sales. First, Verson obtained sales during the period of review that will give them an advantage in future contract negotiations. Secondly, this capacity expansion places Verson in a stronger competitive position vis-a-vis its competitors. Lastly, while Verson reported ***, their capital expenditures equaled \$*** in 1998, which includes the completion of capacity expansion, and \$*** in 1999. Based on the

⁹² Table III-2, CR at III-3, PR at III-2.

⁹³ Table I-2, CR at I-3, PR at I-2.

⁹⁴ Allied Product Corp's 1998 10-K, p. 15.

⁹⁵ CR at III-10; PR at III-5.

⁹⁶ *Id.*

foregoing, I conclude that the industry is not in a “weakened state,” as contemplated by the vulnerability criterion of the statute.⁹⁷

As discussed above, I do not find it likely that revocation of the order would result in a significant increase in the volume of subject imports. While I acknowledge that there may be a small increase in the volume of subject merchandise following revocation, I do not find it likely that a small increase in the volume of subject imports would depress or suppress the domestic industry’s prices significantly, or have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. Any marginal reduction in the industry’s production, shipments, sales, and revenue levels would not have a direct adverse impact on the industry’s profitability or its ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the record in this review, I conclude that, in the event of revocation of the order, subject imports likely would not have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, I determine that revocation of the antidumping duty order on mechanical transfer presses from Japan would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

⁹⁷ 19 U.S.C. § 1675a(a)(1)(C). *See* SAA at 885 (“The term ‘vulnerable’ relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury. . . .If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.”).