

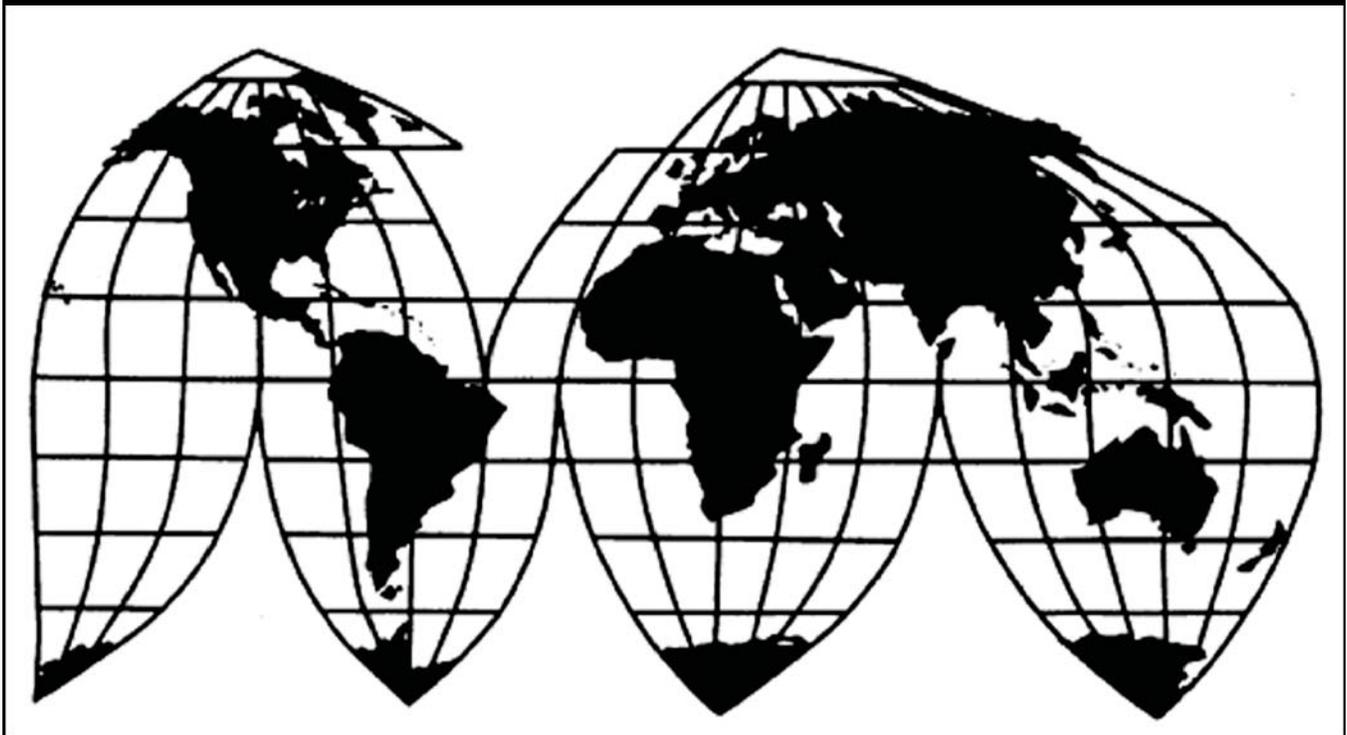
Certain Ball Bearings and Parts thereof from Japan and the United Kingdom

Investigation Nos 731-TA-394-A and 399-A (Second Review) (Third Remand)

Publication 4194

August 2010

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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VIEWS OF THE COMMISSION ON REMAND

On April 12, 2010, the U.S. Court of International Trade (per Judge Barzilay) issued an opinion in *NSK Corp. v. United States*, Slip Op. 10-38 (“*NSK IV*”), affirming-in-part and remanding-in-part the Commission’s affirmative determinations in *Certain Ball Bearings and Parts thereof from Japan and the United Kingdom*, Inv. Nos. 731-TA-394-A & 399-A (Second Review) (Second Remand), USITC Pub. 4131 (Jan. 2010).

In *NSK IV*, the Court affirmed the Commission’s vulnerability analysis.¹ However, the Court remanded the Commission’s findings on cumulation for the United Kingdom, concluding that the Commission had failed to “demonstrate that some incentive likely would draw a discernible amount of the subject United Kingdom goods specifically to the United States in the absence of the order.”² The Court further explained that it “does not believe that the existing record, taken as a whole, can support an affirmative discernible adverse impact finding.”³ It stated that the “Commission may reopen the record and obtain additional data on this issue in the next remand proceeding, if it so chooses.”⁴ Finally, the Court stated that the Commission’s analysis of likely impact and causation “nearly resembles the kind of substantial evidence needed for the court to sustain an agency determination.”⁵ Nevertheless, the Court directed the Commission on remand to address the issue of whether “non-subject imports may prevent the subject imports from achieving the requisite level of causation and, therefore, serve as an impenetrable barrier that precludes the agency from affirmatively finding injury in this sunset review.”⁶

¹ *NSK IV* at 10-11.

² *Id.* at 18.

³ *Id.* at 16.

⁴ *Id.*

⁵ *Id.* at 18.

⁶ *Id.* at 17.

In order to comply with the Court’s remand order and instructions, we determine that, under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), revocation of the antidumping duty order covering ball bearings (“BBs”) from the United Kingdom 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.^{7 8} We also determine that revocation of the antidumping duty order on imports of BBs 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.

I. BACKGROUND

A. The Commission’s Original Injury Determinations and Its Sunset Review Determinations

This appeal involves the second sunset reviews of the antidumping duty orders on ball bearings from France, Germany, Italy, Japan, Singapore, and the United Kingdom. These orders were issued in May 1989, after the Commission issued affirmative injury determinations for these countries.⁹ The Commission conducted its first sunset reviews of the orders in June 2000, issuing affirmative

⁷ Chairman Deanna Tanner Okun did not participate in these reviews during the original proceeding, and has not participated in these remand proceedings.

⁸ We continue to believe that the record supports our decision to cumulate subject imports from the United Kingdom with subject imports from the other four subject countries. However, pursuant to the Court’s remand instructions in *NSK IV*, we conclude that we are now compelled by the Court to determine that U.K. subject imports are not likely to have a discernible adverse impact upon revocation, and therefore may not cumulate U.K. subject imports with the other four subject countries. Thus, we conclude that we are compelled to find that revocation of the order on subject imports from the U.K. would not be likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time. *See below*, Parts III and IV.

⁹ *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany et al.*, Inv. Nos. 303-TA-19 & 20 and 731-TA-391-399 (Final), USITC Pub. 2185 (May 1989).

determinations for France, Germany, Italy, Japan, Singapore, and the United Kingdom.¹⁰

On June 1, 2005, the Commission instituted its second sunset reviews of the ball bearings orders.¹¹ On August 31, 2006, the Commission issued its final determinations in these reviews.¹² In its determinations, the Commission unanimously determined that revocation of the antidumping duty orders on ball bearings from France, Germany, Italy, Japan, and the United Kingdom would likely result in continuation or recurrence of material injury within a reasonably foreseeable time.¹³ The Commission determined that revocation of the antidumping duty order on ball bearings from Singapore would not likely result in continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁴

B. The Court of International Trade's Decision in *NSK I*

In September 2006, the Japanese and U.K. respondents appealed the Commission's affirmative determinations for ball bearings from Japan and the United Kingdom to the Court of International Trade. On September 9, 2008, the Court (per Judge Barzilay) issued its decision in *NSK Corp. et al. v. United States*, Court No. 06-334, Slip Op. 08-95 ("*NSK I*").¹⁵ In that decision, the Court affirmed the Commission's sunset determinations for Japan and the United Kingdom in part, and remanded them in part. Among other things, the Court affirmed the Commission's findings that there was a reasonable level of likely overlap of competition between the subject imports and the domestic industry, that the

¹⁰ *Certain Bearings from China et al.*, Inv. Nos. AA1921-143, 731-TA-341, 343-345, 391-397 & -399 (Review), USITC Pub. 3309 (June 2000).

¹¹ 70 Fed. Reg. 31531 (June 1, 2005).

¹² 71 Fed. Reg. 51850 (Aug. 31, 2006).

¹³ USITC Pub. 3876 at 36-37.

¹⁴ USITC Pub. 3876 at 1, 36-37.

¹⁵ *NSK Corp. v. United States*, 577 F. Supp. 2d 1322 (Ct. Int'l Trade 2008).

United States remained an attractive market for subject imports, that the volumes of the subject imports were likely to be significant upon revocation of the orders, and that the subject imports would likely have significant adverse price effects upon revocation.¹⁶

Nonetheless, the Court remanded the Commission's affirmative determination with instructions to address three issues. First, the Court specifically concluded that, under the Federal Circuit's decision in *Bratsk Aluminum Smelter v. United States* ("Bratsk"),¹⁷ the Commission should have performed a non-subject import analysis based on *Bratsk*.¹⁸ Since the Court found that the *Bratsk* triggering factors were satisfied, it specifically instructed the Commission to undertake an analysis based on the *Bratsk* decision.¹⁹

The Court also instructed the Commission to reconsider its vulnerability and impact findings in light of the domestic industry's "restructuring" activities during the period of review ("POR").²⁰ The Court directed the Commission to perform "a more thorough examination" of this issue, "given the amount of information that suggests global restructuring had the effect of depressing certain economic measures of industry performance relied upon {by the Commission} to cast the U.S. market as vulnerable."²¹ Third, the Court instructed the Commission to reconsider its discernible adverse impact analysis for the United Kingdom in light of the "significant rise in non-subject imports and large scale restructuring within the ball bearing industry."²² Accordingly, on October 8, 2008, the Commission

¹⁶ *NSK I* at 17-18, 23-38.

¹⁷ 444 F.3d 1369 (Fed. Cir. 2006)

¹⁸ *NSK I* at 7-14.

¹⁹ *NSK I* at 11.

²⁰ *NSK I* at 22.-23

²¹ *Id.* at 23.

²² *Id.* at 20.

instituted its remand proceedings for the sunset reviews for ball bearings from Japan and the United Kingdom.²³

C. The Commission's Remand Determination

The Commission issued its first remand determinations on May 4, 2009.²⁴ The Commission again unanimously decided to cumulate the subject imports from France, Germany, Italy, Japan, and the United Kingdom.²⁵ It also unanimously determined that revocation of the antidumping duty orders on ball bearings from the cumulated countries would likely result in continuation or recurrence of material injury within a reasonably foreseeable time.²⁶

In its remand determinations, the Commission addressed the three issues remanded by the Court. On *Bratsk*, the Commission found that non-subject imports did not replace subject imports during the POR, and that non-subject imports were not likely to replace subject imports upon revocation.²⁷ The Commission also found that, even with a significant volume of non-subject imports in the market, revocation of the ball bearings orders would result in significant price competition among the domestic,

²³ The Commission published its notice of initiation for the remand proceeding in the Federal Register at 73 Fed. Reg. 62317 (Oct. 14, 2008). The Commission reopened the record to obtain certain foreign production, capacity, and shipment information for non-subject imports in order to address the Court's *Bratsk* instructions on remand. In reopening the record, the Commission sent questionnaires to 76 foreign producers and 58 importers of non-subject ball bearings. The Commission did not reopen the record on any other issue. The Commission also permitted parties to comment on the Court's remand instructions and on the new information obtained on remand. The Commission prepared a supplemental staff report regarding the information gathered from non-subject producers in the remand proceeding. On March 23, 2009, comments on the remand were filed by petitioner Timken, the Japanese respondents JTEKT Corp. and Koyo Corp. of U.S.A., (collectively "JTEKT"), and the U.K. respondents NSK Corporation, NSK Ltd., and NSK Europe Ltd. (collectively "NSK").

²⁴ *Certain Ball Bearings and Parts thereof from Japan and the United Kingdom*, 731-TA-394A & 399A, (Second Review) (Remand), USITC Pub. 4082 (May 2009).

²⁵ USITC Pub. 4082 at 1-2.

²⁶ *Id.*

²⁷ *Id.* at 37-41.

subject and non-subject merchandise, and that this price competition among the domestic, subject and non-subject suppliers in the market would have a significant adverse effect on the prices and sales volumes of an already vulnerable domestic industry.²⁸

With respect to its determination to cumulate the imports from the United Kingdom, the Commission determined that U.K. subject imports would likely have a discernible adverse impact on the domestic industry upon revocation, notwithstanding the domestic industry's restructuring efforts and the sizeable presence of non-subject imports in the U.S. market.²⁹ Finally, the Commission again determined that the domestic industry was in a vulnerable condition, given that almost all of the indicia of the industry's condition fell during the period of review.³⁰ Accordingly, the Commission determined that revocation of the orders on the Japanese and U.K. subject imports would likely result in the continuation or recurrence of material injury to the domestic industry.

D. The Court's Decision in *NSK III*

On August 31, 2009, the Court issued its decision in *NSK Corp. v. United States*, Court No. 06-334, Slip Op. 09-91 ("*NSK III*").³¹ In *NSK III*, the Court remanded the same three issues that had previously been remanded for further explanation in *NSK I*. First, the Court observed that the Commission must examine whether "subject imports are more than a mere minimal or tangential factor in the material injury to the domestic industry that is likely to continue or recur in the absence of the

²⁸ *Id.* at 41-42.

²⁹ *Id.* at 21-26.

³⁰ *Id.* at 34-38.

³¹ *NSK Corp. v. U.S.*, 637 F. Supp. 2d 1311 (Ct. Int'l Trade 2009). In an interim decision, *NSK Corp. et al. v. United States*, Slip Op. 08-145 (Dec. 29, 2008) ("*NSK II*"), the Court examined the *Bratsk* and *Mittal* decisions in response to requests from the Commission and defendant-intervenor The Timken Company ("Timken") that it reconsider its instructions to require a *Bratsk*-style analysis, due to the issuance of the *Mittal* decision.

antidumping duty order,” given the significant presence of non-subject imports in the market.³² Second, the Court instructed the Commission to perform a more detailed assessment of the industry’s vulnerability, taking into account the industry’s restructuring efforts during the period.³³ Finally, as part of its cumulation analysis for the United Kingdom, the Court ordered the Commission to reconsider the impact of the industry’s restructuring efforts and of non-subject imports on this analysis.³⁴

E. The Commission’s Second Remand Determination

The Commission issued its second remand determinations on January 5, 2010.³⁵ The Commission issued a lengthy and detailed factual and legal analysis specifically addressing the Court’s remand instructions.³⁶ The Commission again unanimously decided to cumulate the subject imports from France, Germany, Italy, Japan, and the United Kingdom.³⁷ It also unanimously determined that revocation of the antidumping duty orders on ball bearings from the cumulated countries would likely result in continuation or recurrence of material injury within a reasonably foreseeable time.³⁸

In its second remand determinations, the Commission addressed the three issues remanded by the Court in *NSK III*. With respect to its determination to cumulate the imports from the United Kingdom,

³² *NSK III* at 29. The Court clarified that it did not intend to require the Commission to perform a particular replacement/likely replacement benefit analysis pursuant to *Bratsk* on remand. Instead, the Court indicated that *NSK I* “made clear that ‘the only duty imposed on the ITC is to ensure that the subject imports, and not non-subject imports or some other factor, would be substantially responsible for injury to the domestic industry.’” *NSK III* at 13.

³³ *NSK III* at 30.

³⁴ *Id.* at 30.

³⁵ *Ball Bearings from Japan and the United Kingdom*, Inv. Nos. 731-TA-394-A & 399-A, (Second Review) (Second Remand), USITC Pub. 4131 (Jan. 2010).

³⁶ The Commission’s second remand determination was 83 pages in length.

³⁷ USITC Pub. 4131 at 1-2.

³⁸ *Id.* at 1-2.

the Commission determined that subject imports from the United Kingdom would likely have a discernible adverse impact on the domestic industry upon revocation, notwithstanding the domestic industry's restructuring efforts and the sizeable presence of non-subject imports in the U.S. market.³⁹ Furthermore, the Commission again determined that the domestic industry was in a vulnerable condition, and that revocation of the orders on Japanese and U.K. subject imports would likely result in the continuation or recurrence of material injury to the domestic industry.⁴⁰

With respect to the non-subject import analysis, the Commission determined that revocation of the antidumping duty orders covering imports of the subject ball bearings from Japan and the United Kingdom, when cumulated with the other subject countries, would likely result in the recurrence or continuation of material injury to the domestic bearings industry.⁴¹ The Commission found that the subject imports remained well-suited to compete more aggressively on price with both the domestic and non-subject bearings, that the subject producers were export-oriented, and that subject producers possessed significant available capacity that was likely to be used to increase their exports to the United States.⁴² The Commission also found that producers in the subject countries were among the largest exporting countries in the world, that the U.S. market remained an attractive one for exporters, that subject imports were substitutable to a significant degree with both the domestic and non-subject bearings, and that they would therefore likely compete at more aggressive pricing levels upon revocation of the orders.⁴³ Accordingly, the Commission concluded that subject imports were likely to be more than

³⁹ *Id.* at 21-40.

⁴⁰ *Id.* at 40-54.

⁴¹ *Id.* at 54-83.

⁴² *Id.* at 71-76.

⁴³ *Id.* at 76-83.

a minimal or tangential factor with respect to the material injury to the domestic industry that is likely to continue or recur in the absence of the antidumping duty orders, notwithstanding the significant presence of non-subject imports in the U.S. market.⁴⁴

F. The Court's Decision in *NSK IV*

In *NSK IV*, the Court first affirmed the Commission's vulnerability finding. In so doing, the Court concluded that the Commission reasonably relied upon the significant declines in the domestic industry's capacity utilization rates, its productivity rates, and the on-going cost structure and profitability levels, along with declines in the industry's net sales revenue and market share during the period of review.⁴⁵

Nevertheless, the Court remanded the issue of U.K. cumulation, stating that the Commission had failed to "demonstrate that some incentive likely would draw a discernible amount of the subject United Kingdom goods specifically to the United States in the absence of the order."⁴⁶ The Court further explained that it "does not believe that the existing record, taken as a whole, can support an affirmative discernible adverse impact finding."⁴⁷ It stated that the "Commission may reopen the record and obtain additional data on this issue in the next remand proceeding, if it so chooses."⁴⁸

In remanding to the Commission on the issues of likely impact and causation, the Court concluded that "the facts of this case necessitate that the Commission confirm that subject imports likely will reach the requisite level of causation despite the significant presence of, and seemingly impenetrable

⁴⁴ *Id.* at 82-83.

⁴⁵ *NSK IV* at 10-11.

⁴⁶ *Id.* at 18.

⁴⁷ *Id.* at 16.

⁴⁸ *Id.*

barrier imposed by, non-subject imports in the United States market.”⁴⁹ The Court stated that “[n]on-subject imports have ‘become a significant and price-competitive factor’ in the United States ball bearings market,” and that they “may prevent the subject imports from achieving the requisite level of causation and, therefore, serve as an impenetrable barrier that precludes the agency from affirmatively finding injury in this sunset review.”^{50 51}

G. Current Remand Proceeding

On June 2, 2010, the Commission instituted this third remand proceeding for the sunset reviews for ball bearings from Japan and the United Kingdom.⁵² The Commission declined to reopen the record on remand because the existing record contained a complete data set with respect to the capacity, production, and shipment levels of the U.K. ball bearings industry as well as comprehensive information relating to other factors bearing on the discernible impact finding for the United Kingdom. Indeed, the record contained as complete a data set as the Commission typically obtains in five-year reviews, with no significant gaps or deficiencies. In fact, the Court did not identify any deficiencies with the record evidence or any specific data that the Commission might seek to collect on this issue on remand pertinent to the issue of cumulation.

⁴⁹ *Id.* at 17.

⁵⁰ *Id.* at 17.

⁵¹ The Court noted that it “appreciates the Commission’s continued vigor in resolving these issues and the diligence with which it has addressed these difficult questions thus far.” *NSK IV* at 17. The Court stated that “[i]ndeed, assuming that the {Commission} had correctly cumulated the subject imports, the Commission’s analysis of the two remaining issues nearly resembles the kind of substantial evidence needed for the court to sustain an agency determination.” *Id.* at 17-18. The Court cautioned that, “[w]hen it addresses these two issues on remand, the Commission should avoid the use of deficient price comparison data and certain conclusions that the court found unsupported by substantial evidence in the agency’s cumulation analysis of the *Second Remand Determination*.” *Id.* at 18.

⁵² The Commission published its notice of initiation for these remand proceedings in the Federal Register at 75 Fed. Reg. 30856 (June 2, 2010).

II. THE DOMESTIC LIKE PRODUCT AND THE DOMESTIC INDUSTRY

We reaffirm the Commission's prior findings concerning the domestic like product and the domestic industry in these reviews, which were not at issue in the litigation, and adopt them in their entirety here.⁵³ Accordingly, we again determine that the domestic like product includes all ball bearings, as defined within the scope of the order and that the industry consists of all domestic producers of ball bearings.⁵⁴

III. CUMULATION

In accordance with the Court's remand instructions, we have also reviewed the Commission's prior findings concerning the cumulation of the subject imports of ball bearings from the United Kingdom with the subject imports from France, Germany, Italy, and Japan. In its original and prior two remand determinations, the Commission unanimously determined that the subject imports from each of the five countries at issue, including the United Kingdom, were likely to have a discernible adverse impact on the industry if the orders were revoked.

As instructed by the Court, we have reconsidered the issue relating to the likely discernible adverse impact of the subject imports from the United Kingdom, taking into account the Court's remand instructions in *NSK IV*. We continue to maintain that the existing record supports our finding that subject imports of ball bearings from the United Kingdom are likely to have a discernible adverse impact on the domestic industry if the antidumping duty order were to be revoked.⁵⁵

⁵³ USITC Pub. No. 3876 at 5-13.

⁵⁴ USITC Pub. No. 3876 at 5-13.

⁵⁵ Domestic producer Timken continues to argue that U.K. subject imports are likely to have a discernible adverse impact on the domestic industry if the order is revoked. *See* Timken's Third Remand Comments at 1-2. We note, however, that Timken has not explained how the Commission can make such a finding on the existing record and in conformity with the Court's remand instructions.

Nevertheless, in light of the Court's remand instructions that the existing record taken as a whole cannot support an affirmative discernible adverse impact finding with respect to subject imports from the United Kingdom, we conclude that we are compelled in this third remand determination to find that subject imports from the United Kingdom would not likely have a discernible adverse impact upon revocation. Given that we have determined not to reopen the record because the record as a whole contained the full information necessary to address this issue, the Court's remand instructions give us no leeway on this matter, and we have no alternative but to comply with them. Since we now are constrained by the Court's remand instructions to find that subject imports from the United Kingdom are not likely to have a discernible adverse impact upon revocation, we are therefore also compelled to find that subject imports from the United Kingdom cannot be cumulated with subject imports from the other four subject countries under the statute.⁵⁶ We would not have made these findings in the absence of the Court's conclusion in *NSK IV* that the record taken as a whole cannot establish that subject imports from the United Kingdom would likely have a discernible adverse impact upon revocation. Nevertheless, we have made these findings in order to comply with the Court's remand instructions.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON BALL BEARINGS FROM THE UNITED KINGDOM IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed above, given that we are constrained by the Court's remand instructions to find that subject imports from the United Kingdom are not likely to have a discernible adverse impact upon revocation, we are therefore also compelled not to cumulate subject imports from the United Kingdom with subject imports from the other four subject countries. Moreover, the Court's statement that the

⁵⁶ Accordingly, in these remand views, to comply with the Court's instructions, we shall only cumulate imports of ball bearings from the remaining four subject countries (France, Germany, Italy, and Japan).

record, as it stands, cannot establish that subject imports from the United Kingdom would likely have a discernible adverse impact upon revocation necessarily compels us to determine that subject imports from the United Kingdom alone would not be likely to have significant volume and/or price effects if the order were revoked and that revocation of the order on subject U.K. imports would not be likely to lead to the continuation or recurrence of material injury in the event of revocation within a reasonably foreseeable time. Accordingly, we determine that revocation of the antidumping duty order on subject imports from the United Kingdom would not be likely to lead to continuation or recurrence of material injury to a domestic industry within a reasonably foreseeable time.

V. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON BALL BEARINGS FROM JAPAN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

We have again reviewed the record of this proceeding, the Court's remand instructions, and the comments of the parties relating to the Court's instructions. Having taken these steps, we determine that revocation of the order on BBs from Japan would likely result in the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We discuss our reasons for this determination below.

A. Conditions of Competition

We reaffirm the Commission's prior findings concerning conditions of competition in the United States market for ball bearings during the period of review. In its original determinations, the Commission found that the ball bearings market was not characterized by a regular and measurable business cycle and that the industry included a number of production facilities owned by large multinational firms.⁵⁷ The Commission also found that the industry had restructured and consolidated its

⁵⁷ USITC Pub. 3876 at 38-39.

operations since the first reviews; in particular, the record showed that some producers relocated facilities overseas, some closed production facilities or lines, and two producers added domestic production lines to produce more customized bearings.⁵⁸

The Commission further found that the capacity, production, shipment levels and market share of the domestic industry declined considerably during its second period of review.⁵⁹ Finally, the Commission found that the subject and domestic ball bearings were substitutable and that, while bearings are often described as “custom” or “standard” bearings, there was no clear dividing line between the two categories.⁶⁰ We adopt the Commission’s findings in their entirety here,⁶¹ except to the extent that we supplement and revise them in this opinion.

In *NSK I*, the Court affirmed several of the Commission’s findings relating to conditions of competition in the ball bearings market.⁶² In particular, the Court affirmed that the Commission reasonably analyzed the impact of subject imports on the industry as a whole, rather than on certain aspects of the industry’s operations. In doing so, the Court noted that it is “well-settled that the ITC bears no obligation to perform a market segmentation analysis.”⁶³

The Court also affirmed the Commission’s finding that there was a significant degree of substitutability between domestically produced bearings and subject imports.⁶⁴ In this regard, the Court noted that a “clear majority of respondent purchasers and importers reported that subject bearings were

⁵⁸ USITC Pub. 3876 at 39-40.

⁵⁹ USITC Pub. 3876 at 40.

⁶⁰ USITC Pub. 3876 at 41-42 & 46.

⁶¹ USITC Pub. 3876 at 38-42.

⁶² *NSK I* at 21-27.

⁶³ *Id.* at 23-25.

⁶⁴ *Id.* at 25.

interchangeable with the domestic like product.”⁶⁵ The Court also confirmed that the record established that the “United States remains an attractive market for subject producers of ball bearings,” that the record indicates “there is an incentive to shift available capacity to capture U.S. sales” as a result of the fact that “higher prices {are} available in the U.S. market as compared to other foreign markets,” and that “price is an essential factor in purchase decisions.”⁶⁶ The Court also agreed with the Commission’s finding that demand for ball bearings was not expected to increase significantly within the foreseeable future.⁶⁷

Finally, the Court confirmed that it was appropriate for the Commission to rely primarily on value-based measures when assessing the volumes of the subject imports, stating that the Commission prefers value-based measures for this purpose due to the “wide variety of ball bearings” within the scope of the review.⁶⁸ The Court stated that “case law confirms that the {Commission} may assign more weight to value versus quantity in administering reviews under the antidumping statutes.”⁶⁹

As discussed below, we have taken these conditions of competition, and others, into account when analyzing the issues before the Commission in this third remand determination.

B. Likely Volume of Cumulated Subject Imports

In its original determinations, the Commission found the volume of subject imports to be both increasing and significant.⁷⁰ We adopt the Commission’s prior findings on this issue, except to the extent

⁶⁵ *Id.* at 25 and 27.

⁶⁶ *Id.* at 32-33 and 34-35.

⁶⁷ *Id.* at 38.

⁶⁸ *NSK I* at 19 (citing *Am. Bearings Mfrs. Ass’n v. United States*, 28 CIT 1698, 1705; 350 F. Supp. 2d 1100, 1108-10 (2004)).

⁶⁹ *NSK I* at 19.

⁷⁰ USITC Pub. 2185 at 68-69.

we revise or supplement them in this opinion.

In the first reviews, the Commission found that the subject import volume was likely to be significant. While acknowledging that some factors might indicate that additional significant subject import volume was not likely upon revocation, the Commission found that a “relatively small increase in the volume of cumulated subject imports would be significant” within the reasonably foreseeable future if the orders were revoked.⁷¹ In finding that the volume of the subject imports was likely to be significant, the Commission emphasized that subject import volume measured by value was higher than in the original investigations, subject imports were entrenched in the highest volume portion of the market, and that members of the fragmented domestic ball bearings industry would import subject merchandise to complement their domestic production if the orders were revoked.⁷²

Despite the orders, we find that cumulated subject imports have maintained a significant presence in the U.S. market during the period examined in these reviews, although possessing somewhat lower market shares than in the first reviews and in the original investigations. Subject imports from France, Germany, Italy, and Japan accounted for 13.7 percent of U.S. consumption by value in 1998.⁷³ In 2000, cumulated subject imports from these four countries accounted for 12.5 percent of U.S. consumption by value; by 2005, cumulated subject imports from these four countries had grown (albeit slightly) to 12.7 percent of U.S. consumption by value.⁷⁴

⁷¹ USITC Pub. 3309 at 60.

⁷² USITC Pub. 3309 at 60-61.

⁷³ CR/PR at Table BB-I-1.

⁷⁴ By value, cumulated subject imports fell from 12.5 percent of U.S. BB consumption in 2000 to 12.0 percent in 2001 and 11.2 percent in 2002, and then increased during the next three years from 11.3 percent in 2003 to 12.4 percent in 2004 and 12.7 percent in 2005. CR at Staff Table 4 (attached to these remand views as Attachment 1).

Several factors indicate that subject producers from France, Germany, Italy, and Japan have the ability and incentive to increase exports to the United States to significant levels if the orders were revoked. Although subject producers' capacity and production have fallen during the review period, capacity utilization has risen,⁷⁵ and the cumulated subject producers have substantial excess capacity which could be easily directed at the U.S. market if the orders were revoked. Cumulated subject producers had *** BBs in excess capacity in 2000, *** excess capacity in 2001, *** BBs in excess capacity in 2002, *** BBs in excess capacity in 2003, *** BBs in excess capacity in 2004, and *** BBs in excess capacity in 2005.⁷⁶ In 2005, apparent U.S. consumption totaled *** million BBs, meaning that the subject countries' excess capacity alone could satisfy approximately *** percent of apparent U.S. consumption.⁷⁷ In other words, the subject producers had sufficient excess capacity to ship significant additional volume to the U.S. market upon revocation of the orders.

Moreover, we find that subject producers from the four cumulated countries generally have continued to ship to the United States in significant volumes despite the orders, especially in the latter part of the review period when cumulated subject imports increased by value. By value, cumulated subject imports fell from *** in 2000 to *** in 2001, *** in

⁷⁵ Subject producers' cumulated capacity dropped from *** BBs in 2000 to *** BBs in 2001, *** BBs in 2002, *** BBs in 2003, and *** BBs in 2004 and 2005. CR at Staff Table 5 (attached to these remand views as Attachment 2).

Subject producers' production fell from *** BBs in 2000 to *** BBs in 2001, *** BBs in 2002, 2003, and 2004, and *** BBs in 2005. CR at Staff Table 5.

Subject producers' capacity utilization increased irregularly during the review period, increasing from *** percent in 2000 to *** percent in 2001, dropping to *** percent in 2002, increasing to *** percent in 2003 and *** percent in 2004, and falling slightly to *** percent in 2005. CR at Staff Table 5.

⁷⁶ Derived from Staff Table 5.

⁷⁷ CR/PR at Table C-2.

2002, *** in 2003, and then increased to *** in 2004, and *** in 2005.⁷⁸ The ongoing and significant presence of subject imports in the U.S. market demonstrates the continued importance of the U.S. market to subject producers and further shows that subject imports already have distributors and customers in place for their products.

Furthermore, producers in France, Germany, Italy, and Japan are highly export-oriented, ranking among the largest BB exporters in the world. In terms of BB global exports, by value, *** ranked first, *** ranked second, *** ranked fourth, and *** ranked fifth in 2004.⁷⁹ By value, total exports for BB producers from these four cumulated countries increased irregularly from *** in 2000 to *** in 2005.⁸⁰ In fact, total exports from these four cumulated countries were almost as high as total commercial home market shipments throughout the period examined in these reviews.⁸¹ Since 2003, the value of both total commercial home market shipments and total exports for the cumulated countries have increased.⁸²

⁷⁸ Staff Table 4.

⁷⁹ In 2004, Japan exported \$*** BBs, Germany exported \$*** BBs, Italy exported \$*** BBs, and France exported \$*** BBs. CR/PR at Table BB-IV-11. We recognize that the data used to compile Table BB-IV-10 through Table BB-IV-17 represent imports and exports for HTS heading 8482.10 (ball bearings), which are not exactly comparable to the BB imports subject to the scope of the review.

⁸⁰ By value, total subject exports for BB producers dropped from \$*** in 2000 to \$*** in 2001 and 2002, and then increased from \$*** in 2003 to \$*** in 2004 and 2005. Staff Table 5.

⁸¹ In 2000, by value, total exports for cumulated subject producers were *** while home market shipments by subject producers in their home countries were ***. In 2001 and 2002, by value, total exports for cumulated subject producers were *** while home market shipments were ***. In 2003, by value, total exports for cumulated subject producers were *** while home market shipments were ***. In 2004, by value, total exports for cumulated subject producers were *** while home market shipments were ***. In 2005, by value, total exports for cumulated subject producers were *** while home market shipments were ***. Staff Table 5.

⁸² Staff Table 5.

Moreover, BB producers from the cumulated subject countries maintain a wide and diverse presence in markets throughout Europe, Asia, and the United States, and they have demonstrated the ability to shift exports relatively quickly from one market to another on an annual basis during the period examined in these reviews.⁸³ The United States is an especially attractive market for subject imports since U.S. prices for BBs generally are higher than in those markets outside the United States.⁸⁴ Moreover, the U.S. market is attractive due to its size; the United States is the second largest market in the world for BB imports.⁸⁵

Given the relatively weak demand for BBs over the period of review and the fact that demand is not projected to increase substantially within the reasonably foreseeable future, the export-orientation of the subject producers, their total exports, production capacity, current volumes in the U.S. market, the high degree of interchangeability between subject imports and the domestic like product,⁸⁶ and the

⁸³ We recognize that 15 foreign producers/exporters reported that shifting BB sales between the United States and alternative markets was “difficult” while three firms characterized the shift as “easy.” CR at BB-II-9. Nevertheless, the data collected by the Commission in these reviews demonstrate that BB producers from the cumulated countries are able to shift markets relatively easily. See, e.g., CR/PR at Tables BB-IV-12 to BB-IV-15 & BB-IV-17.

⁸⁴ CR/PR at BB-V-7.

⁸⁵ CR/PR at Table BB-IV-10. Throughout the period examined in these reviews, the United States ranked second only behind Germany in terms of the value of BB global imports. The United States had BB global imports valued at \$860.1 million in 2000, \$745.5 million in 2001, \$698.5 million in 2002, \$690.8 million in 2003, and \$781.3 million in 2004. CR/PR at Table BB-IV-10.

⁸⁶ In these second five-year reviews, more than 80 percent of purchasers found that the domestic like product and subject imports from France, Germany, Italy, and Japan were substitutable. In these reviews, *** out of *** responding purchasers and *** out of *** responding importers considered domestically produced BBs and subject imports from France, Germany, Italy, and Japan to be “always” or “frequently” interchangeable. CR/PR at Table BB-II-4. *** purchasers and *** importers found BBs from the four cumulated subject countries to be “always” interchangeable with U.S.-produced BBs, *** purchasers and *** importers found BBs from the various subject countries to be “frequently” interchangeable with U.S.-produced BBs, *** purchasers and *** importers found BBs from the various subject countries to be “sometimes” interchangeable with U.S.-produced BBs, and only *** purchasers and *** importers found BBs from the various subject countries to be “never” interchangeable with U.S.-produced BBs. CR/PR at Table BB-II-4.

incentive created by higher prices in the United States than in other markets, we conclude, based on the record of these reviews, that the volume of subject BB imports from France, Germany, Italy, and Japan, would likely be significant in the reasonably foreseeable future if the orders were revoked.⁸⁷

C. The Likely Price Effects of the Cumulated Subject Imports

In its original determinations, the Commission found evidence of underselling and found that subject imports were suppressing prices for the domestic like product.⁸⁸

In the first reviews, the Commission found that, in the event of revocation, subject imports would have significant price suppressing and price depressing effects within a reasonably foreseeable time.⁸⁹ The Commission reasoned that given the “combination of slackening demand and the high degree of substitutability between the domestic like product and subject imports, any increases in subject imports

⁸⁷ We note that, in *NSK I*, the Court held that the Commission reasonably found that the subject producers (which included U.K. subject producers) had sufficient excess capacity to increase their exports significantly to the United States upon revocation. The Court noted that the record showed that “the subject countries could potentially capture an additional *** percent of U.S. consumption by utilizing their excess capacity.” *NSK I* at 30. “Viewed in this context,” the Court agreed that “the subject producers do indeed possess a significant level of excess capacity.” *Id.* Furthermore, in *NSK I*, the Court confirmed that the United States “remains an attractive market for the subject producers’ ball bearings” because the United States is the “second largest destination for imported ball bearings.” *Id.* at 32-33. The Court also found that, “with higher prices available in the U.S. market as compared to other foreign markets, there is [an] incentive to shift available capacity to capture U.S. sales.” *Id.* at 33. Emphasizing that the subject producers are “among the world’s top exporters” and “have at their disposal a significant level of excess capacity,” the Court found that the Commission’s likely volume finding was reasonable. *Id.* We recognize that the Commission’s prior finding of likely significant volume, which the Court affirmed in *NSK I*, was based upon data relating to the five cumulated subject countries, including the United Kingdom. Nonetheless, the factors we rely on here are consistent with, and similar to, the findings affirmed by the Court in *NSK I*.

⁸⁸ USITC Pub. 2185 at 68-69. During the original period of investigation, the subject imports undersold the domestic like product in 69.4 percent of comparisons, at an average underselling margin of 35.8 percent. Derived from Second Remand Table A-1, Appendix A.

⁸⁹ USITC Pub. 3309 at 62.

were likely to result in price declines.”⁹⁰ The Commission also observed that the likelihood of significant price effects was heightened by the fragmented nature of the domestic BB industry, explaining that “[t]here are many suppliers able to meet purchasers’ non-price concerns, such as engineering support and customization, leaving price as the primary remaining area for competition.”⁹¹ The Commission explained that “[t]he limited pricing data collected in the course of these investigations do not give clear evidence of patterns of underselling or overselling, though the data do indicate that underselling occurred in more than half of the transactions covered.”⁹² The Commission further explained that “even modest additional volumes of subject imports would have significant price suppressing and depressing effects” within a reasonably foreseeable time “especially in light of conditions of competition existing in the domestic BB industry.”⁹³

Similarly, the limited pricing data collected in the current reviews do not give clear evidence of significant patterns of underselling or overselling with the orders in place.⁹⁴ Nevertheless, the record in these reviews indicates that price is an important factor in purchasing decisions for BBs.⁹⁵ Furthermore, more than 80 percent of purchasers found that the domestic like product and subject imports are

⁹⁰ *Id.*

⁹¹ *Id.* at 63.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ CR/PR at Table BB-V-2. Consistent with the Court’s instructions, we have not relied on this underselling data as a basis for finding that the cumulated subject imports are likely to have significant adverse effects on domestic prices upon revocation of the orders.

⁹⁵ In responses to the Commission’s questionnaires regarding the importance of price as a factor in purchasing decisions, 43 purchasers reported that price was very important, 6 purchasers reported that price was somewhat important, and none reported that price was not important. CR/PR at Table BB-II-2. Purchasers made comparisons on a number of factors regarding their importance in purchasing decisions. Although quality was identified by purchasers as the most important factor when selecting a bearing supplier, purchasers ranked price as the second most important factor. CR/PR at Table BB-II-1.

substitutable.⁹⁶ Therefore, if the orders were revoked, subject imports would likely be priced aggressively to gain market share, and would undersell the domestic like product by substantial margins, as they did in the original investigations, so as to significantly suppress domestic prices.⁹⁷ As noted above, the volume of subject imports is likely to increase significantly in the reasonably foreseeable future if the antidumping duty orders are revoked. At these likely volumes, the subject imports from the cumulated countries would be likely to have a significant effect on the prices of the domestic like product.

We find that the significant volumes of subject imports are likely to suppress the price increases necessary to compensate for the domestic industry's increasing costs. Over the period of review prices generally increased for domestic product, but not enough to offset the increases in cost of goods sold, as evidenced by the 5.1 percentage point increase in the ratio of cost of goods sold ("COGS") to net sales.⁹⁸ In the event of revocation, we find it likely that increasing volumes of subject imports would prevent domestic producers from recouping cost increases. Demand for BBs is relatively price inelastic, and the

⁹⁶ As discussed previously, in these second five-year reviews, more than 80 percent of purchasers found that the domestic like product and subject imports from France, Germany, Italy, and Japan were substitutable. In these reviews, *** out of *** responding purchasers and *** out of *** responding importers considered domestically produced BBs and subject imports from France, Germany, Italy, and Japan to be "always" or "frequently" interchangeable. CR/PR at Table BB-II-4. *** purchasers and *** importers found BBs from the four cumulated subject countries to be "always" interchangeable with U.S.-produced BBs; *** purchasers and *** importers found BBs from the various subject countries to be "frequently" interchangeable with U.S.-produced BBs; *** purchasers and *** importers found BBs from the various subject countries to be "sometimes" interchangeable with U.S.-produced BBs; and only *** purchasers and *** importers found BBs from the various subject countries to be "never" interchangeable with U.S.-produced BBs. CR/PR at Table BB-II-4.

⁹⁷ Our record reflects that U.S. prices are generally higher than in other markets. CR/PR at BB-V-7.

⁹⁸ CR/PR at Table C-2. Over the period of review, the price of steel bar, the primary raw material in BBs, increased from \$342 per ton in 2000 to \$617 per ton in 2005. CR/PR at BB-V-1.

U.S. market for BBs is characterized by a fair degree of price competition.⁹⁹ The domestic like product and subject imports are generally substitutable, and BBs represent a relatively small share of the cost of the downstream products in which they are ultimately used.¹⁰⁰ Given these conditions, we find that the likely significant volumes of subject imports would likely have significant price effects within a reasonably foreseeable time if the orders were revoked.

Accordingly, on the basis of the record in these reviews, including information collected in the original investigations and the earlier reviews, we find that revocation of the antidumping duty orders on BB imports from France, Germany, Italy, and Japan would be likely to lead to significant underselling by the subject imports and significant price depression or suppression within a reasonably foreseeable time.¹⁰¹

⁹⁹ USITC Pub. 3876 at 46-47.

¹⁰⁰ *Id.* at 47.

¹⁰¹ In *NSK I*, the Court questioned certain aspects of the Commission's underselling analysis, expressing its concern that the Commission's underselling analysis was "based on a relatively small sample of price comparisons" for the subject and domestic merchandise. *Id.* at 35. Nonetheless, the Court ultimately affirmed the Commission's findings that the subject imports were likely to significantly undersell the domestic like products and were likely to have significant adverse effects on domestic prices upon revocation of the orders. *Id.* at 33-38. The Court found that the Commission reasonably determined that, due to the high degree of substitutability between subject imports and the domestic like product, the "subject imports would likely be priced aggressively to gain market share, and would undersell the domestic like product by substantial margins so as to significantly suppress domestic prices." *Id.* at 37.

In *NSK I*, the Court also found that the Commission reasonably determined that "significant volumes of subject imports are likely to suppress the price increases necessary to compensate for the domestic industry's increasing costs." *Id.* at 37-38. The Court also concluded that the Commission reasonably found "there {was} a strong likelihood that competitive pricing will be a significant factor in purchasing decisions," given that "demand for ball bearings is not expected to increase dramatically within the foreseeable future." *Id.* at 34-35 & 37-38. The Court also found "that there {was} sufficient evidence to support the ITC's determination that price is an essential factor in purchase decisions," noting that price was reported to be the second most important factor after quality in the purchase decision and the large majority of purchasers reported that price was a "very important" factor in the purchase decision. *Id.* at 34-35. Given these considerations, the Court held that it was reasonable for the Commission to determine that "removal of the orders would likely lead to significant underselling and price suppression within the foreseeable future." *Id.* at 38.

We recognize that the Commission's finding of likely significant price effects, which the Court previously affirmed in *NSK I*, was based upon those effects from five cumulated subject countries including the United Kingdom. As discussed above, in these views, we have determined not to cumulate subject imports from the United Kingdom with those imports from the remaining four subject countries

D. The Likely Impact of the Cumulated Subject Imports on the Industry

1. The Court's Remand Instructions in NSK IV

In assessing likely impact and causation, which the Court characterized as the two remaining issues, the Court concluded that “the facts of this case necessitate that the Commission confirm that subject imports likely will reach the requisite level of causation despite the significant presence of, and seemingly impenetrable barrier imposed by, non-subject imports in the United States market.”¹⁰² The Court emphasized that “[n]on-subject imports have ‘become a significant and price-competitive factor’ in the United States ball bearings market, amply increased their market share in terms of value at the expense of domestic and subject ball bearings, and have undersold the domestic like product and subject imports in at least two-thirds of the possible price comparisons.”¹⁰³ The Court concluded that “[i]n view of these data, the non-subject imports may prevent the subject imports from achieving the requisite level of causation and, therefore, serve as an impenetrable barrier that precludes the agency from affirmatively finding injury in this sunset review.”¹⁰⁴ The Court noted, however, that because it “finds that the

(France, Germany, Italy, and Japan). Nevertheless, as explained above, the factors that we relied previously upon in our pricing analysis, which the Court sustained, remain present for the four cumulated subject countries including the high degree of substitutability between the domestic like product and subject merchandise, the importance of price in purchasing decisions, the finding that demand for ball bearings is not expected to increase dramatically within the foreseeable future, and the finding that likely significant volumes of subject imports are likely to suppress the price increases necessary to compensate for the domestic industry’s increasing costs.

¹⁰² *NSK IV* at 17.

¹⁰³ *Id.* at 17.

¹⁰⁴ *Id.*

{Commission} did not support its cumulation determination with substantial evidence, it cannot address the merits of these remaining issues.”¹⁰⁵

As noted above, the two remaining issues referenced by the Court are the issues of likely impact and causation. The Court characterized the question of likely impact as “whether the cumulated subject imports likely will have a significant adverse impact on the vulnerable domestic industry in the absence of the antidumping duty orders.”¹⁰⁶ The Court characterized the causation inquiry as requiring the Commission “to determine whether the cumulated subject imports constitute more than a minimal or tangential cause of injury to the domestic industry which will likely continue or recur in the absence of the antidumping duty orders.”¹⁰⁷

The Court noted that it “appreciates the Commission’s continued vigor in resolving these issues and the diligence with which it has addressed these difficult questions thus far.”¹⁰⁸ The Court stated that “[i]ndeed, assuming that the {Commission} had correctly cumulated the subject imports, the Commission’s analysis of the two remaining issues nearly resembles the kind of substantial evidence needed for the court to sustain an agency determination.”¹⁰⁹ The Court cautioned that, “[w]hen it

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* Consistent with its opinion, in its remand instructions, the Court directed the Commission to “decide whether the cumulated subject imports likely will have a significant adverse impact on the vulnerable domestic industry in the absence of the antidumping duty orders.” *Id.* at 19. The Court further directed the Commission to “determine whether the cumulated subject imports constitute more than a minimal or tangential cause of injury to the domestic industry that will likely continue or recur in the absence of the antidumping duty orders, given the significant presence of, and seemingly impenetrable barrier imposed by, non-subject imports in the United States market.” *Id.* The Court also ordered that “in completing its analysis of the causation and likely impact inquiries on remand, the Commission must address the court’s concerns expressed in *NSK III* over the agency’s redetermination of those issues.” *Id.*

¹⁰⁸ *NSK IV* at 17.

¹⁰⁹ *Id.* at 17-18.

addresses these two issues on remand, the Commission should avoid the use of deficient price comparison data and certain conclusions that the court found unsupported by substantial evidence in the agency's cumulation analysis of the *Second Remand Determination*.”¹¹⁰

2. *The Parties' Arguments*

Timken's Arguments. Domestic producer Timken argues that cumulated subject imports will likely have a significant adverse impact on the vulnerable domestic industry upon revocation.¹¹¹ As an initial matter, Timken asserts that non-subject imports have not operated as a “seemingly impenetrable barrier” to subject imports, especially given that the U.S. market share maintained by subject imports during the POR, even with orders in place, already is significant.¹¹²

In presenting its arguments on likely impact, Timken emphasizes that subject import volumes are likely to be significant if the orders were revoked. Timken notes that the Court sustained the Commission's finding of likely significant volume in *NSK I*.¹¹³ Timken asserts that, in the event of revocation, subject imports are “likely to be dumped at the same levels as during the original investigation,” as the Commerce Department has found.¹¹⁴ Moreover, Timken underscores that the domestic industry is vulnerable, with, for example, its operating income more than 10 times smaller at the end of the POR than compared to the original investigation.¹¹⁵ Thus, according to Timken, “if the orders are revoked, subject imports are likely to enter in significant volumes at much greater levels of dumping, which will put even more pressure on domestic producers' prices and, consequently, sales, revenues, and

¹¹⁰ *Id.* at 18.

¹¹¹ Timken's Third Remand Comments at 12-15.

¹¹² Timken's Third Remand Comments at 12-13.

¹¹³ Timken's Third Remand Comments at 13.

¹¹⁴ Timken's Third Remand Comments at 15.

¹¹⁵ Timken's Third Remand Comments at 14.

profits.”¹¹⁶

Respondents’ Arguments. Japanese respondent JTEKT argues that, in the event of revocation of the orders, “unrestrained subject imports will be unable to overcome non-subject imports and therefore cannot cause more than ‘minimal or tangential’ injury to the domestic industry.”¹¹⁷ First, JTEKT contends that “subject producers will be unable to reduce their prices sufficiently to overcome non-subject imports.”¹¹⁸ In this regard, JTEKT asserts that the “magnitude of non-subject import underselling is so large that it cannot be overcome by subject imports,” that “subject producers would have to sell below their variable costs of production to displace non-subject imports,” and that the “frequency of subject import underselling is not significant.”¹¹⁹ Second, JTEKT argues that the Commission improperly relied upon a comparison of the more aggressive volume and underselling patterns exhibited by subject imports during the original investigations prior to the imposition of the orders.¹²⁰ According to JTEKT, a “simple comparison of pre- and post-order subject import behavior does not demonstrate that subject imports will be able to compete effectively against non-subject imports.”¹²¹ Third, JTEKT contends that the “continued presence of subject imports in the U.S. market also does not demonstrate that subject imports will be able to compete effectively against non-subject imports.”¹²² JTEKT emphasizes that “[f]or all subject countries, exports to the U.S. market constituted only *** percent by quantity of subject producers’ total production,” and that “[s]uch a correlation is particularly tenuous in

¹¹⁶ Timken’s Third Remand Comments at 15.

¹¹⁷ JTEKT’s Third Remand Comments at 2.

¹¹⁸ JTEKT’s Third Remand Comments at 3.

¹¹⁹ JTEKT’s Third Remand Comments at 3-7.

¹²⁰ JTEKT’s Third Remand Comments at 8-10.

¹²¹ JTEKT’s Third Remand Comments at 8.

¹²² JTEKT’s Third Remand Comments at 10.

this proceeding in light of the long-term decline in the subject countries' production capacity that has occurred in tandem with the growth of non-subject capacity."¹²³

Finally, JTEKT argues that subject producers have no incentive to compete aggressively to displace non-subject imports in the U.S. market since, according to JTEKT, the "export-orientation of subject producers is focused on markets other than the United States," and that "subject producers have no reason to aggressively compete against their own U.S. production facilities."¹²⁴

In presenting its own arguments on likely impact, U.K. respondent NSK asserts that "as JTEKT's examination of the pricing data conclusively demonstrates, the level of underselling engaged in by non-subject imports effectively blocks subject imports from re-entering the U.S. market upon revocation of the antidumping duty orders, even as the level of underselling engaged in by subject imports is not significant."¹²⁵ NSK contends that, "as JTEKT also demonstrates, subject producers have little incentive to ship BBs to the United States because it would be nonsensical for them to sell at prices well below their variable production costs in an effort to compete against, and regain market share from, non-subject imports."¹²⁶ According to NSK, "subject producers also have little incentive to ship BBs to the United States because it would be nonsensical for them to compete aggressively against their own U.S. production facilities, which they purposefully positioned in the United States to be responsive to the demands of their U.S. customers."¹²⁷

¹²³ JTEKT's Third Remand Comments at 10-11.

¹²⁴ JTEKT's Third Remand Comments at 12-13.

¹²⁵ NSK's Third Remand Comments at 11.

¹²⁶ NSK's Third Remand Comments at 11.

¹²⁷ NSK's Third Remand Comments at 11-12.

3. *Analysis*

We have considered the Court's remand instructions and the relevant record evidence concerning the role of non-subject imports in the U.S. market as it relates to the issues of likely impact and causation. Having reviewed the record evidence on these issues in detail, we determine that revocation of the antidumping duty orders covering imports of the subject ball bearings from Japan when cumulated with the other subject countries (France, Germany, and Italy) will result in the likely recurrence or continuation of material injury to the domestic bearings industry. In doing so, we adopt and incorporate by reference our prior findings on these issues, except insofar as modified below.

Before specifically addressing the Court's remand instructions, we emphasize that it is a fundamental principle that the Commission does not weigh causes of injury when assessing whether the subject imports have caused, or are likely to cause, material injury to a domestic industry.¹²⁸ In this regard, the U.S. Court of International Trade and the Federal Circuit have consistently stated that the Commission need not determine that the subject imports are the sole, principal, or even major cause of material injury or likely injury to an industry.¹²⁹ Even if non-subject imports or some other factors are likely to cause material injury to the domestic industry upon revocation of an order, subject imports can

¹²⁸ *Statement of Administrative Action, Trade Agreements Act of 1979* ("SAA"), S. Rep. 96-249 at 74 (July 1979) ("Current law does not, nor will section 735, contemplate that the effects from less-than-fair value...imports be weighed against the effects associated with other factors...which may be contributing to overall injury to an industry."); *Taiwan Semiconductor Industry v. United States*, 23 CIT 410, 416, 59 F. Supp.2d 1324, 1330 (1999)(the "'by reason of standard' is consistent with a requirement not to weigh causes contributing to overall injury")

¹²⁹ *See, e.g., NSK III* at 7 (the Commission "need not determine that the subject merchandise is the 'sole or principal cause of injury.'") (quoting *NSK I*, 593 F. Supp. 2d at 1365); *Nippon Steel Corp. v. United States*, 345 F.3d 1379, 1381 (Fed. Cir. 2003) (the dumped imports "need not be the sole or principal cause of injury. As long as its effects are not merely incidental, tangential, or trivial, the foreign {like} product meets the causation requirement."); *Celanese Chems. Ltd., v. United States*, 31 CIT 279, 286 (2007) (there is no "need to show that the subject imports are the sole, or even the major, cause of injury")

also be a cause of such injury to the domestic industry, as long as they represent more than a minimal or tangential cause of the material injury that is likely to be suffered by the industry upon revocation.¹³⁰ As a result, if the record shows that subject imports are likely to be more than a minimal or tangential contributor to the injury that will likely continue or recur upon revocation, the Commission may issue an affirmative injury or likely injury finding, even if the non-subject imports or some other factor are likely also to be a significant cause of injury to the domestic industry upon revocation of the order.¹³¹

We are particularly mindful of these principles in these five-year reviews. Under the statute governing five-year reviews, our task is not to determine whether non-subject imports were a larger cause of material injury to the domestic industry than subject imports during the review period. Instead, our analysis is prospective in nature, and, as discussed above, if the record establishes that subject imports are likely to be more than a minimal or tangential contributor to the injury that will likely continue or recur upon revocation, the Commission may issue an affirmative injury or likely injury finding, regardless of whether the non-subject imports or some other factor are likely also to be a significant cause of injury to the domestic industry if the order were revoked.

As an initial matter, we again find that the domestic industry is in a vulnerable condition and is therefore susceptible to likely material injury from the cumulated subject imports from France, Germany,

¹³⁰ SAA at 885 (factors other than subject imports may be causing injury to the industry but “also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports. . . If the Commission finds that an industry is vulnerable to injury from subject imports, it may determine that injury is likely to continue or recur, even if other causes, as well as future imports, are likely to contribute to future injury”).

¹³¹ *Taiwan Semiconductor Industry v. United States*, 59 F. Supp. 2d at 1330-1331 (the Commission needs to establish that “the subject imports themselves made a material contribution to the overall injury” of the industry; the fact “that the injurious effects from other sources may be greater than the effect of the subject imports is not determinative {of the causation issue}, so long as the Commission reasonably finds that the subject imports contribution to the overall harm is material”).

Italy, and Japan, if the orders covering the cumulated subject imports are revoked. As we previously explained, there were substantial declines in nearly all domestic industry operational and financial performance indicators during the POR.¹³² As discussed above, in *NSK IV*, the Court affirmed the Commission’s vulnerability analysis in our second remand views.¹³³ We hereby adopt and incorporate that analysis in its entirety in these remand views.

Having again found the domestic industry to be vulnerable, we turn to the Court’s instruction for us to “decide whether the cumulated subject imports likely will have a significant adverse impact on the vulnerable domestic industry in the absence of the antidumping duty orders.”¹³⁴ Upon reviewing the Court’s instructions on this issue as well as the pertinent record evidence, we find that revocation of the orders will likely have a significant adverse impact on the vulnerable domestic ball bearings industry. Given our findings of the subject imports’ likely significant volume, likely significant underselling and likely significant price effects, the substitutability between domestic and subject bearings, and the domestic industry’s vulnerability, it necessarily follows that revocation of the orders would likely have a significant adverse impact on the domestic industry.

Next, we address the Court’s instruction for us to “determine whether the cumulated subject imports constitute more than a minimal or tangential cause of injury to the domestic industry that will likely continue or recur in the absence of the antidumping duty orders, given the significant presence of, and seemingly impenetrable barrier imposed by, non-subject imports in the United States market.”¹³⁵ Initially, under the statute, our obligation is to assess whether the subject imports are likely to have a

¹³² USITC Pub. 3876 at 47-48.

¹³³ *NSK IV* at 10-11.

¹³⁴ *NSK IV* at 19.

¹³⁵ *NSK IV* at 19.

significant impact on the domestic industry upon revocation, not whether the subject imports will take market share from the non-subject imports, or otherwise adversely affect the non-subject imports.¹³⁶ We perceive the Court to be instructing us to address a specific inquiry with respect to this statutory criterion. In particular, we understand the Court’s “seemingly impenetrable barrier” inquiry as a request that we address whether any impediment imposed by the significant presence of low-priced non-subject imports in the U.S. market will likely inhibit the subject imports from capturing additional market share from the domestic industry such that the subject imports are thereby precluded from having a likely significant adverse impact on the condition of the domestic industry if the orders were revoked. Based upon the totality of the record in these five-year reviews, we do not find this scenario to be likely for the reasons discussed below.

First of all, even with the price and volume disciplining effects of the antidumping duty orders in place, and notwithstanding the significant presence of low-priced non-subject imports in the U.S. market, the subject imports have maintained a significant presence in the U.S. market since the imposition of the orders and have continued to do so during the POR. As discussed above, despite the orders, the U.S. market share held by cumulated imports from France, Germany, Italy, and Japan ranged from 11.2 to 12.7 percent during the POR.¹³⁷ During the final three years of the POR (*i.e.*, 2003-2005), we note that subject imports increased (by value) by \$69.0 million dollars, or by 24.6 percent, notwithstanding the presence of non-subject imports in the U.S. market.¹³⁸ Upon revocation, the subject producers will have the ability to increase substantially their U.S. market penetration. In the final year of the POR (*i.e.*, 2005),

¹³⁶ 19 U.S.C. §1675a(a)(1), (2), (3) & (4).

¹³⁷ CR at Staff Table 4.

¹³⁸ By value, cumulated subject imports fell from *** in 2000 to *** in 2001, *** in 2002, and *** in 2003, and then increased to *** in 2004 and *** in 2005. Staff Table 4.

the subject producers' excess capacity alone could satisfy approximately *** percent of apparent U.S. consumption, meaning that subject producers possessed the ability to capture an additional *** percent of the U.S. BB market.¹³⁹

As we explained previously, in the event of revocation, the subject imports would likely revert to their more aggressive volume¹⁴⁰ and underselling¹⁴¹ strategies from the original investigations prior to the imposition of the orders, when subject imports captured as much as 19.1 percent of the U.S. market.¹⁴² Moreover, as we previously found, and as the Court affirmed in *NSK I*, the record shows that there is a high degree of substitutability between the domestic like product and subject merchandise, that price is an important factor in purchasing decisions, that demand for ball bearings is not expected to increase

¹³⁹ CR/PR at Table C-2.

¹⁴⁰ As discussed in our prior remand determination, we note that the orders have had some restraining effect on the volumes of the subject imports, as one would expect. *See* USITC Pub. 4131 at 70-71. For example, after the orders were put in place in 1989, the subject imports lost 6.4 percentage points of market share, with their market share level falling from 19.1 percent in 1987 to 13.7 percent in 1998 to 12.7 percent in 2005, for an overall decline of one-third of their market share since the orders were imposed. *Id.* Nevertheless, during the first and second period of reviews, subject imports from the four cumulated countries (*i.e.*, France, Germany, Italy, and Japan) have retained a significant share of the U.S. market, with their U.S. market share measured in value ranging from 13.6 to 13.7 percent during the first review, and ranging from 11.2 percent to 12.7 percent during the second review. CR/PR at Table BB-I-1.

¹⁴¹ As discussed in our prior remand determination, the orders also have had a restraining effect on the pricing practices of the subject imports. For example, during the original period of investigation, the cumulated subject imports from France, Germany, Italy, and Japan undersold the domestic product in 69.4 percent of all price comparisons, and had a simple average underselling margin of 35.8 percent. During the second period of review, however, the subject imports undersold the domestic producers in only 48.4 percent of the available price comparisons, and had an average underselling margin of 29.6 percent. Derived from Second Remand Table A-1, Appendix A & CR at Tables H-1 to H-19, Appendix H. Given these changes in the underselling patterns of the subject imports, we find that the orders had a restraining effect on the frequency and level of underselling by the subject imports during the period of review and that revocation of the orders will allow the subject imports to compete more aggressively on price.

¹⁴² CR/PR at Tables BB-I-1 & C-2.

dramatically within the foreseeable future, and that likely significant volumes of subject imports are likely to suppress the price increases necessary to compensate for the domestic industry's increasing costs.¹⁴³ Given that the domestic industry still supplies the majority of the U.S. market, the non-subject imports would not impair the subject imports' ability to gain significant market share at the expense of the domestic industry. In this respect, the cumulated subject imports will likely constitute more than a minimal or tangential cause of injury to the domestic industry.

Indeed, even if subject imports were unable to take any market share whatsoever away from non-subject imports upon revocation, the record nevertheless indicates that subject imports would likely be well-positioned to capture significant additional market share from the domestic industry if the orders were revoked. The record does not support the proposition that the domestic industry is assured some fixed share of the U.S. market. To the contrary, it indicates that the collective market share of imports (both subject and non-subject) has changed over time, and has grown significantly since the original investigations, whereas the domestic industry's market share has shrunk substantially during that time.¹⁴⁴ In other words, the subject imports will likely have an adverse impact on the domestic industry if they capture market share away and/or revenue from the industry upon revocation, even if subject imports are unable to take any market share and/or revenue away from non-subject imports.

We find that the subject imports will likely be well-positioned to compete more aggressively on volume with the domestic bearings in the market in order to recapture market share if the orders are revoked. First, as discussed earlier, the record shows the subject imports are highly substitutable with

¹⁴³ *NSK I* at 37-38.

¹⁴⁴ CR/PR at Table BB-I-1.

domestic bearings.¹⁴⁵ In particular, *** of *** responding purchasers, and *** of *** importers reported that the subject imports were “always” or “frequently” interchangeable with the domestic like product.¹⁴⁶ Moreover, as discussed above, subject imports have maintained a stable and significant presence in the U.S. market since imposition of the orders (ranging from 11.2 to 12.7 percent of the U.S. market during the POR), indicating not only that they retain a significant interest in the U.S. market, but also that they maintain significant marketing and sales operations that can be used to take advantage of the revocation of the orders. We also find that other evidence indicates that the subject imports are likely to ship significant additional volumes of bearings to the United States upon revocation of the orders. Notably, subject producers had substantial excess capacity throughout the second period of review, with available capacity of *** million bearings in 2005, the final year of the period,¹⁴⁷ which was approximately equivalent to *** percent of apparent U.S. consumption in 2005.¹⁴⁸ Given their continued significant interest in the U.S. market, and the fact that the U.S. market remains an attractive one for exporters as a result of its size and pricing levels, we find it likely that the subject producers will use their significant amounts of available capacity to increase significantly their exports to the United States upon revocation of the orders.¹⁴⁹

We also find that the subject imports will likely be well-positioned to compete more aggressively

¹⁴⁵ We note that the Court affirmed the Commission’s finding concerning the high degree of substitutability between the subject and domestic bearings in *NSK I*. *NSK I* at 25-27.

¹⁴⁶ CR/PR at Table BB-II-4.

¹⁴⁷ CR/PR at Tables BB-IV-4-BB-IV-7 & Table BB-IV-9.

¹⁴⁸ Apparent consumption in the U.S. market was 816.0 million ball bearings in 2005. CR/PR at Table C-2.

¹⁴⁹ In this regard, we note that the Court has already affirmed our finding that the subject imports are likely to ship significant volumes of bearings to the United States upon revocation of the orders. *NSK I* at 28-31.

on price with the domestic bearings in the market in order to recapture market share if the orders are revoked. As the Court stated in *NSK I*, the record establishes that price is an “essential factor in purchas{e} decisions” in the market¹⁵⁰ and that “demand is not expected to increase dramatically within the foreseeable future.”¹⁵¹ Thus, as the Court stated in *NSK I*, the record also establishes that “there is a strong likelihood that competitive pricing will be a significant factor in purchasing decisions.”¹⁵² Given these conditions of competition, it is likely that competitive pricing will be a significant factor for purchasers when they assess whether to purchase the subject or domestic bearings in the future. Accordingly, we find that these conditions indicate that subject imports would have a strong incentive to compete more aggressively on price against the domestic bearings, should the orders be revoked.

Moreover, the record indicates that the subject imports will be able to compete successfully on price with domestic bearings upon revocation of the orders.¹⁵³ For example, the majority of purchasers reported that the domestic bearings were generally priced higher than subject imports, meaning that subject imports were perceived by most industry participants as being priced lower than domestic bearings during the second period of review.¹⁵⁴ The record also indicates that, if the orders are revoked, the cumulated subject imports are likely to become more aggressive on price when competing with the domestic bearings. In this regard, during the original period of investigation, the subject imports

¹⁵⁰ *NSK I* at 24-25, 34-35 & 37-38; CR/PR at Table BB-II-1 & BB-II-5.

¹⁵¹ *NSK I* at 38; CR/PR at Table BB-II-1.

¹⁵² *NSK I* at 38; CR at BB-II-11 to BB-II-12. As the Court noted in *NSK I*, the “more substitutable a product, the more likely {it is that} price will play a significant role in purchasing” when purchasers are choosing between various suppliers. *NSK I* at 35.

¹⁵³ *NSK III* at 18.

¹⁵⁴ CR at BB-V-7. Pursuant to the Court’s remand instructions, we do not rely upon the price comparison data (e.g., CR/PR Tables BB-V-1 to BB-V-2) covering the POR in these second reviews. *NSK IV* at 18-19.

undersold the domestic like product in 69.4 percent of comparisons, at an average underselling margin of 35.8 percent.¹⁵⁵ We conclude that revocation of the orders is likely to result in the same more aggressive underselling patterns exhibited by the subject imports during the period of investigation.^{156 157}

¹⁵⁵ Derived from Second Remand Table A-1, Appendix A.

¹⁵⁶ As discussed above, JTEKT and NSK argue that subject producers will be unable to reduce their prices sufficiently to overcome non-subject imports. *See e.g.*, JTEKT’s Third Remand Comments at 3; NSK’s Third Remand Comments at 11. Moreover, JTEKT asserts that the “magnitude of non-subject import underselling is so large that it cannot be overcome by subject imports,” that “subject producers would have to sell below their variable costs of production to displace non-subject imports,” and that the “frequency of subject import underselling is not significant” compared to the underselling by non-subject imports. JTEKT’s Third Remand Comments at 3-7. Under the statute governing five-year reviews, however, the issue is not whether, in the event of revocation, the subject imports would likely have more significant price effects than non-subject imports. Rather, the issue is whether subject imports would be likely to have significant effects on prices for the domestic like product if the orders were revoked, which respondents’ arguments simply disregard. *See* 19 U.S.C. § 1675a(a)(3). As discussed above, the factors that we relied previously upon in our pricing analysis, which the Court sustained in *NSK I*, are again present for the four cumulated countries at issue, including the significant underselling and significant price effects by subject imports found by the Commission in the original investigations, the high degree of substitutability between the domestic like product and subject merchandise, the importance of price in purchasing decisions, the finding that demand for ball bearings is not expected to increase dramatically within the foreseeable future, and the finding that likely significant volumes of subject imports are likely to suppress the price increases necessary to compensate for the domestic industry’s increasing costs. Therefore, if the orders were revoked, subject imports from the four cumulated countries (France, Germany, Italy, and Japan) would likely be priced aggressively to gain market share, and would likely undersell the domestic like product by substantial margins so as to significantly suppress and/or depress domestic prices, regardless of whether non-subject imports also would likely have significant price effects on the domestic industry if the orders were revoked.

¹⁵⁷ As discussed above, JTEKT argues that the Commission improperly relied upon a comparison of the more aggressive volume and underselling patterns exhibited by subject imports during the original investigations prior to the imposition of the orders. According to JTEKT, a “simple comparison of pre- and post-order subject import behavior does not demonstrate that subject imports will be able to compete effectively against non-subject imports.” JTEKT Third Remand Comments at 8. Under the statute governing five-year reviews, however, the Commission is directed to examine the volume and pricing behavior by subject imports during the original investigation, when those imports were last unrestrained by the effects of the orders. *See* 19 U.S.C. § 1675a(a)(1)(a); *see also*, SAA at 884 (“[t]his consideration is important, because this period is the most recent time during which imports of subject merchandise competed in the U.S. market free of the discipline of an order. . . . If the Commission finds that pre-order . . . conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury.”). Moreover, as discussed above, the issue in five-year review is not whether subject imports will be able to “compete effectively against non-subject imports,” as JTEKT contends. Rather, the statutory inquiry that we are called upon to follow – and which we followed in these five-year reviews – is whether subject imports are likely to have a significant adverse impact on the domestic industry if the orders were revoked.

Notwithstanding JTEKT’s protestations to the contrary, as shown above, the Commission did not

In other words, once the orders are revoked and the subject imports resume a more aggressive pattern of underselling, it is likely that they will thereby take market share from the domestic industry, even though the non-subject imports are priced lower than the domestic bearings or the subject imports. This situation will force the domestic producers to yield market share to subject imports or reduce their prices in order to meet the prices of the subject imports and retain their market share. In either case, the subject imports are likely to be more than a minimal or tangential cause of the injury to the domestic industry because revocation of the order will result in the domestic industry losing significant additional amounts of market share or reducing their prices significantly to maintain their existing market share.¹⁵⁸

rely exclusively upon a comparison of the volume and pricing behavior by subject imports pre- and post-order in finding likely significant volume and price effects. In support of its finding of significant likely volume, as discussed above, the Commission relied upon myriad record evidence including the relatively weak demand for BBs over the period of review and the fact that demand is not projected to increase substantially within the reasonably foreseeable future; the export-orientation of the subject producers; the subject producers' total exports, production capacity, and current volumes in the U.S. market; the high degree of interchangeability between subject imports and the domestic like product; and the incentive created by higher prices in the United States than in other markets. In support of its finding of significant price effects, as discussed above, the Commission also relied upon myriad record evidence including the significant underselling and significant price effects by subject imports found by the Commission in the original investigations; the high degree of substitutability between the domestic like product and subject merchandise; the importance of price in purchasing decisions; the finding that demand for ball bearings is not expected to increase dramatically within the foreseeable future; and the finding that likely significant volumes of subject imports are likely to suppress the price increases necessary to compensate for the domestic industry's increasing costs.

¹⁵⁸ JTEKT and NSK argue that subject producers have no incentive to compete aggressively to displace non-subject imports in the U.S. market since, according to them, subject producers have no reason to aggressively compete against their own U.S. production facilities. *See e.g.*, JTEKT's Third Remand Comments at 12-13; NSK's Third Remand Comments at 11. We note, however, that prior decisions of the U.S. Court of International Trade have indicated that the mere existence of corporate affiliations between subject foreign producers and their U.S. affiliates does not necessarily establish that subject imports are not likely to have significant adverse effects on the domestic industry upon revocation. *See e.g.*, *Nucor Corp. v. U.S.*, 605 F.Supp.2d 1361 at 1378-1382 (CIT 2009); *Timken Corp. v. U.S.*, 310 F.Supp.2d 1327 at 1337-38 (CIT 2004). Moreover, notwithstanding the existing affiliations between certain subject producers and their related U.S. producers, the subject producers have, as a whole, maintained a significant presence in the U.S. market since the orders were first imposed, which indicates, in our view, they are not likely to be deterred from increasing their shipments to the U.S. market once the orders are revoked. In addition, even if a subject producer chose not to compete in the U.S. market in a manner that was directly in competition with its affiliated producer, the subject producer would not be precluded from competing in an aggressive manner with other non-affiliated producers in the market, or from seeking to obtain additional market share from those other non-affiliated producers.

VI. CONCLUSION

Accordingly, in order to comply with the Court's remand order and instructions in *NSK IV*, we determine that revocation of the antidumping duty order on imports of ball bearings from the United Kingdom 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. We also determine that revocation of the antidumping duty order on imports of ball bearings from Japan, when cumulated with the subject imports from France, Germany, and Italy, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

As a result, we find that the existence of these affiliations will not be likely to cause the subject producers to compete in a manner that would not have a significant adverse impact on the industry upon revocation of the orders.

APPENDIX A

FEDERAL REGISTER NOTICE

112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 25, 2010, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lighting products that infringe U.S. Patent No. D570,038, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lighting products by reason of infringement of U.S. Copyright Registration No. VA 1-399-618 or U.S. Copyright Registration No. VA 1-415-353, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(c) whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lighting products by reason of infringement of U.S. Trademark Registration Nos. 3,703,710; 3,703,711; 3,700,479; or 3,700,480, and whether an

industry in the United States exists as required by subsection (a)(2) of section 337; and

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Blumberg Industries, Inc. d/b/a Fine Art Lamps, 5770 Miami Lakes Drive East, Miami Lakes, Florida 33014.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Lights & More, Inc., 170 F.D. Roosevelt Avenue, San Juan, Puerto Rico 00918.

(c) The Commission investigative attorney, party to this investigation, is Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)-(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 26, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010-13212 Filed 6-1-10; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-394-A & 399-A (Second Review) (Third Remand)]

Ball Bearings From Japan and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission ("Commission") hereby gives notice of its third remand proceedings with respect to its affirmative determinations in the five-year reviews of the antidumping orders on ball bearings from Japan and the United Kingdom. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

DATES: *Effective Date:* March 27, 2010.

FOR FURTHER INFORMATION CONTACT: James McClure, Office of Investigations, telephone 202-205-3191, or David Goldfine, Office of General Counsel, telephone 202-708-5452, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—On April 12, 2010, the Court of International Trade (per Judge Barzily) issued an opinion in *NSK Corp. et al. v. United States*, Slip Op. 10-38 ("NSK IV"), affirming-in-part and remanding-in-part the Commission's affirmative determination in *Certain Bearings and Parts Thereof From Japan and the United Kingdom*, Inv. Nos. 731-TA-394-A & 399-A (Second Review) (Second Remand), USITC Pub. 4131 (Jan. 2010).

In *NSK IV*, the Court affirmed the Commission's vulnerability analysis, concluding that "the Commission has provided the rational connection missing from its previous determinations, and [therefore] the court sustains the agency's vulnerability finding." Slip Op. at 10–11. However, the Court remanded the issue of U.K. cumulation, concluding that the Commission had failed to "demonstrate that some incentive likely would draw a discernible amount of the subject United Kingdom goods specifically to the United States in the absence of the order." *Id.* at 18. The Court further explained that it "does not believe that the existing record, taken as a whole, can support an affirmative discernible adverse impact finding," and stated that the "Commission may reopen the record and obtain additional data on this issue in the next remand proceeding, if it so chooses." *Id.* at 16. Finally, on the issues of likely impact and causation, the Court stated that the Commission's analysis of the two remaining issues "nearly resembles the kind of substantial evidence needed for the court to sustain an agency determination." Slip Op. at 18. Nevertheless, the Court directed the Commission on remand to address the issue of whether "non-subject imports may prevent the subject imports from achieving the requisite level of causation and, therefore, serve as an impenetrable barrier that precludes the agency from affirmatively finding injury in this sunset review." *Id.* at 17.

Under the remand schedule ordered by the court, the Commission was required to file by May 12, 2010, a status report advising the Court as to whether it will reopen the record on the U.K. cumulation issue. The Court also directed the parties to file a joint scheduling order by May 12, 2010.

On May 12, 2010, the Commission filed the requested status report with the Court, advising the Court that it will not be reopening the record on the issue of the discernible adverse impact of the subject imports from the United Kingdom. On May 12, 2010, the parties also submitted a proposed joint scheduling order. Under the remand schedule ordered by the court, the Commission must file its third remand determination by August 25, 2010. The Court has directed the Plaintiffs, Plaintiff-Intervenors, and Defendant-Intervenors to file their comments on the remand by September 29, 2010.

Participation in the proceeding.—Only those persons who were interested parties to the reviews (*i.e.*, persons listed on the Commission Secretary's service list) and parties to the appeal may participate in the remand

proceeding. Such persons need not make any additional filings with the Commission to participate in the remand proceeding, unless they are adding new individuals to the list of persons entitled to receive business proprietary information under administrative protective order. Business proprietary information ("BPI") referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the reviews.

Written submissions.—The Commission is not re-opening the record in this remand proceeding. The Commission will permit the parties to file comments pertaining to the specific issues that are the subject of the Court's remand instructions. Comments should be limited to no more than fifteen (15) double-spaced and single-sided pages of textual material. No appendices or other attachments are allowed. The parties may not themselves submit any new factual information in their comments and may not address any issue other than those that are the subject of the Court's remand instructions. Any such comments must be filed with the Commission no later than June 15, 2010.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: May 27, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010-13217 Filed 6-1-10; 8:45 am]

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DEPARTMENT OF JUSTICE

[OMB Number 1105-0086]

Justice Management Division; Office of Attorney Recruitment and Management; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Applications for the Attorney Student Loan Repayment Program.

The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until August 2, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202-395-7285. Comments may also be submitted to the Department Clearance Officer, United States Department of Justice, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the