

defined. As indicated above, the only forgings Koyo ever reported were the machined forgings it reported during the LTFV investigation. Until the matter was brought to the Department's attention in the context of the current scope clarification request, we did not directly address the specific issue of whether the imports subject to this scope proceeding were sufficiently advanced to constitute unfinished parts for purposes of this antidumping duty order.

With respect to the language of the order, the TSUS numbers listed in the scope of the order are not controlling. Only the Department has the authority to define the scope of the order; importers and Customs officials who determine how to classify imports do not determine the scope. This is in accordance with standard Department practice that Tariff Schedule numbers appearing in the scope of an order are only for convenience and Customs purposes, and are not dispositive. Furthermore, Timken is correct in pointing out that the TSUS number Koyo used to classify its forgings at the time of the order is irrelevant, since the forgings may not have been properly classified even at that time.

In conclusion, neither the language of the investigation nor the language of the order provides guidance as to whether forgings are included within the scope.

3. The ITC's Determination

Timken argues that the ITC indicated it considered forgings to be included because it found a single like product consisting of TRBs and all parts, both finished and unfinished, despite the extensive arguments of respondents to find unfinished parts a distinct like product: "we decline to adopt the respondents' proposed like product definitions." (Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers, from Japan, Inv. No. 731-TA-343 (Final), USITC Pub 2020, September 1987, p.6). In its report, the ITC rejected Koyo's request to consider the following groups as discrete like products:

1. "Precursor materials" (i.e., unfinished forged rings) and "finished bulk parts" (i.e., rollers and cages) of tapered roller bearings;
2. Unfinished tapered roller bearing components (i.e., unfinished outer rings and inner rings);
3. Finished tapered roller bearings. (Id., p. 5) Furthermore, Timken argues, the ITC defined TRB parts in its questionnaire as those "that have been shaped sufficiently so they may only be used in the manufacture of tapered

roller bearings", which, Timken submits, applies to Koyo's forgings.

Koyo argues that the ITC's finding of one like product does not imply that the ITC considered precursor materials (a term which Koyo submits describes, among other things, rings cut from tube steel) to be unfinished parts. Koyo also points out that, in its ruling, the ITC defined unfinished parts as having been green-machined. Although Timken argues that this description concerns a tube-based production process and not forgings, Koyo claims that this description of the production process supports the conclusion that the like product determination does not equate forgings with unfinished parts. Furthermore, Koyo disputes the Department's contention that the ITC's description of the production process (in which green-machining marks the first stage of producing a TRB) applies only to tube steel, stating that both forgings and TRB rings manufactured from tubes must undergo the same green-machining process. Finally, Koyo notes that the U.S. Court of International Trade (CIT) has held that the ITC's like-product determination has only minimal relevance in a scope review (*American NTN Bearing Manufacturing Corporation v. United States*, 14 CIT 320, 325 (1990) (NTN)).

The Department's Position

The Commission did not explicitly address Koyo's and other respondents' arguments that forgings and other precursor materials should be defined as a distinct like product. However, the ITC's finding of a single like product does not specifically exclude forgings from the range of products under consideration by the Department and by the ITC in its injury determination.

The staff report contained in the ITC's final determination is also ambiguous with respect to the point at which input materials become unfinished parts. Although this report describes green-machining as the first stage in the TRB production process, this discussion seems to deal with the process of producing TRBs from tubes (the predominant process used by Timken), rather than the forging process employed by Koyo. This is evidenced by the footnote on page A-8 of the ITC's determination, which points out that a "hot roll ring forming" forging process may be used as an alternative to green-machining.

The Department disagrees with Koyo that the ITC's discussion of the TRB production process amounts to a bright line definition of green-machining as the point of demarcation between inputs and unfinished parts regardless of the

production process involved. Indeed, much of the formation process attributed solely to green machining in the fabrication of TRBs from tube, including imparting the characteristic taper, is achieved through the forging process when TRBs are manufactured using the forgings at issue here.

The definition of unfinished parts in the ITC's questionnaire clearly applies to the forgings at issue here, which are formed close enough in shape to the finished parts to be considered dedicated to use.

In summary, although the ITC's determination does not offer a clear indication that forgings are within the scope of the order, the Commission's injury determination did not specifically exclude forgings, and therefore does not foreclose the possibility that forgings may be within the scope of the order.

4. Previous Scope Determinations

In examining the definition of unfinished TRB parts, we also considered previous TRB scope determinations. Koyo argues that the Department's 1989 ruling that green-machined rings that have not been heat treated are within the scope of the order implies that anything that has not been green-machined is outside the scope of the order. Koyo claims that this applies to forgings as well as to rings manufactured from tube steel. Koyo points out that the 1989 "green rings" scope ruling made no distinction between different production processes, although the Department was aware, according to Koyo, of the forging production process. Koyo cites several examples of references to forgings on the record of the 1989 scope determination. Koyo also points out that Timken uses the forging process itself, and therefore was very much aware of what forgings are, as well as the fact that Koyo imported forgings. Koyo suggests that if it believed the determination applied to forgings, Timken would have argued at the time of the 1989 ruling that more information on Koyo's forgings was necessary. Koyo argues that the Department may not now reverse its position that green-machining represents the first stage in the TRB production process, because to do so would be to expand the scope of the order *ex post facto*.

Koyo further asserts that the Department's 1981 scope ruling in the context of the 1976 finding on tapered roller bearings, four inches and under in outer diameter, clearly defined unfinished parts of TRBs as those that have been rough-machined. Koyo argues that the Department must adhere to this