

UNITED STATES INTERNATIONAL TRADE COMMISSION

SULFANILIC ACID FROM CHINA AND INDIA

Investigations Nos. 701-TA-318 (Review) and 731-TA-538 and 561 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION

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DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the countervailing duty and antidumping duty orders on sulfanilic acid from China and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on October 1, 1999 (64 F.R. 53412, October 1, 1999) and determined on January 7, 2000 that it would conduct expedited reviews (65 F.R. 2645, January 18, 2000). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on May 18, 2000. The views of the Commission are contained in USITC Publication 3301 (May 2000), entitled *Sulfanilic Acid From China and India: Investigations Nos. 701-TA-318 (Review) and 731-TA-538 and 561 (Review)*.

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

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering imports of sulfanilic acid from China and India and the countervailing duty order covering imports of sulfanilic acid from India 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

In August 1992, the Commission determined that an industry in the United States was threatened with material injury by reason of imports of sulfanilic acid from China that the Department of Commerce (“Commerce”) had determined to be sold at less than fair value (LTFV).¹ Subsequently, in February 1993, the Commission determined that an industry in the United States was threatened with material injury by reason of imports of sulfanilic acid from India that Commerce had determined to be subsidized and sold in the United States at LTFV.² On August 19, 1992, Commerce issued an antidumping duty order on imports of sulfanilic acid from China.³ On March 2, 1993, Commerce issued antidumping and countervailing duty orders on imports of sulfanilic acid from India.⁴

On October 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on sulfanilic acid from China and India and the countervailing duty order on sulfanilic acid from India would likely lead to continuation or recurrence of material injury.⁵

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) – demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁶ If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

¹ Sulfanilic Acid from China, Invs. No. 731-TA-538 (Final), USITC Pub. 2542 (Aug. 1992) (“Original Determination China”).

² Sulfanilic Acid from Hungary and India, Invs. Nos. 701-TA-318 and 731-TA-560-561(Final), USITC Pub. 2603 (Feb. 1993) (“Original Determination Hungary and India”). With respect to Hungary, the Commission made a negative determination in the final antidumping determination. *Id.* at 3-4; see also Sulfanilic Acid from the Republic of Hungary, Inv. No. 731-TA-560 (Remand), USITC Pub. 2835 (Nov. 1994).

³ 57 Fed. Reg. 37524 (Aug. 19, 1992).

⁴ 58 Fed. Reg. 12025 (Mar. 2, 1993).

⁵ 64 Fed. Reg. 53412 (Oct. 1, 1999).

⁶ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

The only response to the Notice of Institution in these reviews came from a domestic producer, Nation Ford Chemical Co. (“NFC”).⁷ No respondent interested party filed an adequate response.⁸

On January 7, 2000, the Commission determined that, with respect to each order under review, the domestic interested party group response to its notice of institution was adequate but that the respondent interested party group response was inadequate.⁹ Pursuant to section 751(c)(3)(B) of the Act,¹⁰ the Commission voted to expedite these reviews.¹¹

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”¹² The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹³ In a section 751(c) review, the Commission must also take into account “its prior injury determination.”¹⁴

In its final five-year review determinations, Commerce defined the subject merchandise as follows:

all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate). The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders. Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent

⁷ NFC’s Response to Notice of Institution (“Response”), Nov. 22, 1999. In the original investigations, NFC was known as R-M Industries, Inc., the petitioner that was found to be the sole domestic producer of sulfanilic acid.

⁸ Confidential Report (“CR”) (Apr. 17, 2000) at I-3; Public Report (“PR”) at I-3. The Commission received submissions from Kokan Synthetics & Chemicals Pvt. Ltd. (“Kokan”), a producer of sulfanilic acid in India, and from the Indian Embassy. Because neither Kokan nor the Indian Embassy provided the information requested by the notice of institution in its submission, each submission was deemed to be individually inadequate.

⁹ See Explanation of Commission Determination on Adequacy in Sulfanilic Acid from China and India, Invs. Nos. 701-TA-318, 731-TA-538 and 561 (Review).

¹⁰ 19 U.S.C. § 1675(c)(3)(B).

¹¹ 65 Fed. Reg. 2645 (Jan. 18, 2000).

¹² 19 U.S.C. § 1677(4)(A).

¹³ 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (CIT 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (CIT 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

¹⁴ 19 U.S.C. § 1675(a)(1)(a).

minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.¹⁵

In the original investigations, the Commission determined that the domestic like product was all sulfanilic acid, regardless of form or grade.¹⁶ NFC argues that the Commission should continue to define the domestic like product in the same fashion.¹⁷ There was no new information obtained during these five-year reviews that would suggest a reason for departing from the Commission's original definition of the domestic like product.¹⁸ Accordingly, we define the domestic like product as all sulfanilic acid, regardless of form or grade.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.”¹⁹ Given our definition of the domestic like product, we define the domestic industry to include all domestic producers of sulfanilic acid.

III. CUMULATION

A. Framework²⁰

Section 752(a) of the Act provides that:

¹⁵ 65 Fed. Reg. 6156-6157 (Feb. 8, 2000); 65 Fed. Reg. 6172 (Feb. 8, 2000).

¹⁶ The Commission considered whether all forms of sulfanilic acid, including technical grade sulfanilic acid, sodium sulfanilate, and refined grade sulfanilic acid, should be considered part of the like product. The Commission unanimously found a single like product consisting of all grades of sulfanilic acid, including technical grade sulfanilic acid, sodium sulfanilate, and refined grade sulfanilic acid. See Original Determination China at 6-7 and Original Determination Hungary and India at 7-8. The Commission stated that, “[t]he three forms of sulfanilic acid have similar physical characteristics, end uses, channels of distribution, and common manufacturing facilities and production employees. There is also evidence of sufficient interchangeability among the different forms of sulfanilic acid, especially between refined grade sulfanilic acid and sodium sulfanilate, for purposes of our like product definition.” Original Determination China at 6-7 and Original Determination Hungary and India at 7-8.

¹⁷ Response at 6.

¹⁸ See CR at I-6 through I-10; PR at I-5 through I-8.

¹⁹ 19 U.S.C. § 1677(4)(A).

²⁰ Chairman Bragg does not join Section III.A of this opinion. Chairman Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition in the event of revocation. For a complete statement of Chairman Bragg's analytical framework regarding cumulation in sunset reviews, see Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate From China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999); see also Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, found in Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Invs. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (April 2000).

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.²¹

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.²² We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.²³ With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.²⁴

The Commission has generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.²⁵ Only a “reasonable overlap” of competition is required.²⁶ In five-year reviews, the relevant inquiry is whether there would likely be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional factors, but also other significant conditions of competition that are likely to prevail if the orders under

²¹ 19 U.S.C. § 1675a(a)(7).

²² 19 U.S.C. § 1675a(a)(7).

²³ SAA, H.R. Rep. No. 103-316, Vol. I (1994).

²⁴ Commissioner Askey notes that the Act clearly states that the Commission is precluded from exercising its discretion to cumulate if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, the Commission must focus on whether the imports will impact the condition of the industry discernibly as a result of revocation, and not solely on whether there will be a small volume of imports after revocation, *i.e.*, by assessing their negligibility after revocation of the order. For a full discussion of her views on this issue, see Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

²⁵ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See, *e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

²⁶ See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.²⁷

In these reviews, the statutory requirement that all of the sulfanilic acid reviews be initiated on the same day is satisfied. We do not find the subject imports from either of the subject countries are likely to have no discernible adverse impact on the domestic industry if the orders are revoked.^{28 29}

B. Reasonable Overlap of Competition³⁰

The record of these reviews indicates that, as in the original investigations, there is a reasonable degree of fungibility between the subject imports produced in China and India as well as between the subject imports and the domestically produced forms of sulfanilic acid, notwithstanding the fact that there is limited interchangeability between technical grade sulfanilic acid and other grades of sulfanilic acid.³¹ We also find it likely that subject imports of sulfanilic acid and the domestic like product will be simultaneously present in the market, sold through the same channels of distribution, and sold in the same geographic markets,³² as was the case in the original investigations. In particular, subject imports from China have continued under these orders, suggesting their likely simultaneous presence in the same channels of U.S. market with domestic product if the orders were revoked.³³

Consequently, we find that there would likely be a reasonable overlap of competition between the subject imports from China and India and the domestic like product as well as between the subject imports from the two countries, if the antidumping and countervailing duty orders covering sulfanilic acid from these countries were revoked.

²⁷ See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int'l Trade 1992) (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

²⁸ No party has argued that subject imports from either China or India "are likely to have no discernible adverse impact" on the domestic industry and we see little basis in the record to make such a finding.

²⁹ For a discussion of Vice Chairman Miller's and Commissioner Hillman's and Commissioner Koplan's analytical framework regarding the application of the "no discernible adverse impact" provision, see Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Invs. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Commissioner Koplan's analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 303-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplan Regarding Cumulation).

³⁰ Chairman Bragg joins in the majority's analysis and finding of a likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product if the orders are revoked.

³¹ CR at I-9; PR at I-7 through I-8. A particular consumer often may have a preference in deciding which form of the chemical to purchase. However, there does appear to be a reasonable overlap between the different grades of sulfanilic acid as some firms were forced to purchase whatever grade was available in order to keep their plants operating during shortages. *Id.* We note that the domestic industry now produces refined grade sulfanilic acid, which is also produced in China and India. CR at I-11 through I-12; PR at I-9.

³² Original Determination China at 16.

³³ Original Determination China at 16, 21-24.

C. Other Considerations³⁴

As discussed above, we have also taken into account other significant conditions of competition that are likely to prevail if the orders under review were revoked in evaluating whether to exercise our discretion to cumulate imports. The limited record indicates that, if the orders are revoked, subject imports would likely compete in the U.S. market under similar conditions of competition. In this regard, we have considered the substantial capacity in each of the subject countries³⁵ and the export orientation of those foreign industries.³⁶

For these reasons, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from China and India.

IV. REVOCATION OF THE ANTIDUMPING AND COUNTERVAILING DUTY ORDERS ON SULFANILIC ACID FROM CHINA AND INDIA WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that subsidization and/or dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³⁷ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”³⁸ Thus, the likelihood standard is prospective in nature.³⁹ The statute provides that “the Commission shall consider that the effects of revocation . . . may not be

³⁴ Chairman Bragg does not join Section III.C of this opinion. Having found a likely reasonable overlap of competition, Chairman Bragg thus turns to the issue of discernible adverse impact. Chairman Bragg incorporates an assessment of significant conditions of competition, such as the substantial capacity in the subject countries and the export orientation of the foreign industries evident in these reviews, in her analysis of the likelihood of no discernible adverse impact if each of the orders under review is revoked. Chairman Bragg finds that revocation of each of the orders under review will likely result in a discernible adverse impact on the domestic industry. Accordingly, Chairman Bragg cumulates all subject imports in these grouped reviews.

³⁵ CR at I-26 through I-32; PR at I-19 through I-24; CR and PR at Table I-5.

³⁶ CR at I-26 through I-32; PR at I-19 through I-24.

³⁷ 19 U.S.C. § 1675a(a).

³⁸ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

³⁹ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

imminent, but may manifest themselves only over a longer period of time.”⁴⁰ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{41 42}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁴³ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{44 45}

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”⁴⁶ We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to

⁴⁰ 19 U.S.C. § 1675a(a)(5).

⁴¹ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” Id.

⁴² In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁴³ 19 U.S.C. § 1675a(a)(1).

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

⁴⁵ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings in connection with the orders under review.

⁴⁶ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. Id.

consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."⁴⁷ As noted above, no respondent interested party adequately responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the record in the Commission's original investigations on sulfanilic acid, the limited information collected by the Commission since the institution of these reviews, and the information submitted by the sole domestic producer.

For the reasons stated below, we determine that revocation of the antidumping duty orders on sulfanilic acid from China and India and the countervailing duty order on sulfanilic acid from India would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁴⁸

Since the original investigations, U.S. apparent consumption of sulfanilic acid has increased steadily,⁴⁹ rising from *** pounds in 1991 to *** pounds in 1998.⁵⁰ This increase occurred despite the lack of significant changes since the original investigations with respect to the end use of the product or user demand.⁵¹

Sulfanilic acid is sold in three grades: technical grade, sodium sulfanilate, and refined grade.⁵² Particularly within a specific grade, sulfanilic acid tends to be a commodity-type product; additionally, there appears to be a reasonable degree of interchangeability between sodium sulfanilate and the refined grade.⁵³ During the entire period examined in the original China investigation and during most of the period examined in the original India investigation, there was no domestic production of the refined grade product.⁵⁴ Domestic production of the refined grade product resumed in August 1992 after imposition of the order covering China.⁵⁵ In 1995, NFC installed new equipment allowing it to produce 2.8 million

⁴⁷ SAA at 869.

⁴⁸ 19 U.S.C. § 1675a(a)(4).

⁴⁹ CR at I-23 through I-26; PR at I-17 through I-19; CR and PR at Table I-3.

⁵⁰ CR and PR at Table I-3.

⁵¹ CR at I-8; PR at I-7; Response at 6.

⁵² CR at I-7; PR at I-6.

⁵³ CR at I-7 through I-10; PR at I-6 through I-8.

⁵⁴ CR at I-8 through I-9; PR at I-7.

⁵⁵ The China order was issued in August 1992 (57 Fed. Reg. 37524), and the order for India was issued in

(continued...)

pounds of refined sulfanilic acid annually.⁵⁶ Consequently, the domestic sulfanilic acid industry is currently able to produce the same range of products as the producers of the subject merchandise.

Substantial quantities of nonsubject imports are currently present in the U.S. market. During the original investigations, nonsubject imports accounted for between *** percent and *** percent of apparent U.S. consumption on an annual basis. During 1998, *** percent of U.S. apparent consumption was supplied by nonsubject imports.⁵⁷

Based on the record evidence, we find that these conditions of competition in the U.S. sulfanilic acid market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. sulfanilic acid market provide us with a sufficient basis upon which to assess the likely effects of revocation of the antidumping and countervailing duty orders within the reasonably foreseeable future.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁵⁸ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁵⁹

Prior to the issuance of antidumping and countervailing duty orders, the subject imports were able to capture a significant share of the U.S. market.⁶⁰ Following imposition of the orders, the volume of subject imports declined significantly. Specifically, subject imports from India fell precipitously after imposition of the antidumping and countervailing duty orders and India essentially ceased exporting to the United States after 1994.⁶¹ There was also a significant drop in subject imports from China immediately following imposition of the antidumping order.⁶² Subject imports from China fluctuated thereafter - 1994 imports exceeded the 1991 quantities, but they declined from 1994 to 1995 and declined sharply from 1995 to 1997. In 1997, Commerce published the results of an administrative review that established a zero deposit rate for one exporter of Chinese sulfanilic acid. Imports of sulfanilic acid from China then

⁵⁵ (...continued)
March 1993 (58 Fed. Reg. 12025).

⁵⁶ CR at I-11 through I-12; PR at I-9.

⁵⁷ CR and PR at Table I-3.

⁵⁸ 19 U.S.C. § 1675a(a)(2).

⁵⁹ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁶⁰ CR and PR at Table I-3.

⁶¹ CR and PR at Figure I-1. One Indian producer admitted that, “due to the very heavy countervailing and antidumping orders, the firm has not sold the subject product in the United States for the last five years.” CR at I-32; PR at I-22.

⁶² CR at I-17 through I-18; PR at I-15.

increased sharply from 1997 to 1998.⁶³ In 1998, cumulated subject imports - which were exclusively from China - were 1.0 million pounds and accounted for *** percent of apparent U.S. consumption.⁶⁴

There is limited information concerning the industries in the two subject countries because there were no adequate responses by foreign producers to the Commission's notice of institution. Consequently, there are no current data on capacity, production, or shipments of sulfanilic acid in either of the subject countries, and only limited data on exports.⁶⁵ During the original investigations the Commission found that sulfanilic acid was produced at four plants in China and three in India.⁶⁶ In the original investigations, the Commission found that available capacity for production and for export to the U.S. market had increased significantly.⁶⁷

The limited information in the record about the industries now producing sulfanilic acid in India and China indicates that available capacity has undergone further significant increases since the time of the original investigations. The number of manufacturers of subject merchandise in China has increased since 1992, and NFC indicates that the Chinese producer that was the largest at the time of the original investigation has since doubled its capacity.⁶⁸ Similarly, both the number of producers of subject merchandise and productive capacity in India have increased since the time of the original investigation.⁶⁹ Moreover, the available data indicate that the sulfanilic acid industries in both China and India are heavily export-oriented.⁷⁰

Based on the record in these reviews, it is likely that producers in the two subject countries would significantly increase exports to the U.S. market if the orders are revoked. We therefore conclude that, based on the record evidence, the volume of subject imports would likely increase to a significant level absent the restraining effects of the orders.

D. Likely Price Effects

In evaluating the likely price effects of subject imports if the antidumping and countervailing duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject

⁶³ CR at I-20 through I-21; PR at I-16.

⁶⁴ CR and PR at Table I-3.

⁶⁵ CR at I-26 through I-32; PR at I-19 through I-22.

⁶⁶ CR at I-26 through I-32; PR at I-19 through I-22. The Chinese exporter of sulfanilic acid, Sinochem Hebei provided the Commission in the original investigations with information on *** of its plants: ***, ***. The Commission identified three producers of refined sulfanilic acid in India: Jeevan Products, Kokan, and Perfect Pharmacists. ***. The U.S. consulate also obtained the name of five additional firms that produced technical grade sulfanilic acid in India; their products reportedly were not exported.

⁶⁷ Original Determination China at 20; Original Determination Hungary and India at 21 (Commissioners Rohr and Watson), 61 (Commissioners Newquist and Nuzum).

⁶⁸ CR at I-29 through I-30; PR at I-20.

⁶⁹ CR at I-31 through I-32; PR at I-21. The record in these reviews indicates that there are now 26 manufacturers of the subject merchandise in India, and that exports of sulfanilic acid from India in 1997 were over *** greater than the volume of such exports in 1991. CR at I-32; PR at I-21 through I-22.

⁷⁰ CR at I-30 and I-32; PR at I-20 through I-22.

imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.⁷¹

During 1991, the average unit value for both imports from China (\$***) and imports from India (\$***) were much lower than the U.S. average unit value of \$***.⁷² The Commission observed that the subject imports from each country were sold at price levels below those for the domestic like product.⁷³ In light of the apparent underselling, the Commission found that the subject imports would enter the United States at prices that would have a depressing or suppressing effect on prices for the domestic like product.⁷⁴

The record in these expedited reviews contains limited data regarding price levels for the U.S. market. In 1998, even with the antidumping duty order in place, the average unit value for the subject imports from China was *** percent less than the average unit value of the domestic like product. The average unit values of the subject imports were also lower than those for non-subject merchandise.⁷⁵

The limited information in the record regarding current pricing practices indicates that, if the orders were revoked, cumulated subject imports would likely undersell the domestic like product, as they did before the orders were imposed. Because the domestic industry produces the same range of sulfanilic acid products that would be imported from China and India, and sulfanilic acid of a particular grade is reasonably substitutable, regardless of its origin, the likely underselling, in conjunction with the likely significant subject import volumes, would likely suppress or depress prices in the U.S. market to a significant degree.⁷⁶

Consequently, based on the record in these reviews, we find that, given the reasonable degree of substitutability of sulfanilic acid, the incentive to maximize the use of available capacity, and the record evidence of current underselling even with the orders in place, it is likely that, if the orders were revoked, cumulated subject imports would again be likely to enter the United States at prices that would significantly depress or suppress U.S. prices. Thus, we find that revocation of the antidumping and countervailing duty orders would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

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

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

⁷² Compare CR and PR at Table I-1 with CR and PR at Table I-2.

⁷³ Original Determination China at 16, 21-22 (providing cumulated data for both China and India).

⁷⁴ Original Determination China at 21-22; Original Determination Hungary and India at 22 (Commissioners Rohr and Watson), 62-63 (Commissioners Newquist and Nuzum).

⁷⁵ CR and PR at Table I-1 and Table I-2. There were no subject imports from India in 1998.

⁷⁶ Chairman Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission’s original determinations.

(3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁷⁷ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁷⁸ As required by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping and countervailing duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.⁷⁹

In the original investigation on China, the Commission concluded that the domestic industry was vulnerable to the effects of unfair imports. It noted that operating income was insufficient to meet the needs for capital improvements, that capital expenditures had declined significantly, and that the domestic producer had been having difficulty financing its current obligations. It also observed that employment levels declined and the domestic industry had lost market share to the subject imports.⁸⁰

The orders had a positive effect on industry performance. The domestic producer increased its market share from *** percent in 1991 to *** percent in 1998 while the volume and market share of subject imports declined precipitously.⁸¹ The domestic industry was able to make investments that substantially increased capacity and improved technology,⁸² particularly with regard to the refined product. The

⁷⁷ 19 U.S.C. § 1675a(a)(4).

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

In the final results of its five-year review for China, Commerce published a likely dumping margin of 19.14 percent for Sinochem Hebei and 85.20 percent for all other Chinese manufacturers, producers, and exporters. In its final results of its five-year review for India, Commerce published a likely dumping margin of 114.80 percent for all manufacturers, producers, and exporters. Commerce further published a countervailable subsidy rate of 43.71 percent for India. 65 Fed. Reg. 18070 (Apr. 6, 2000).

The statute further provides that “if a countervailable subsidy is involved, the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(6). In the final results of the five-year review of the CVD investigation, Commerce identified four subsidy programs. These programs are: (1) Preferential Export Financing Through Packing Credits; (2) Preferential Post-Shipment Financing; (3) Import Tax Deduction for Exporters (Section 80HHC); and (4) Import Duty Exemptions Available Through Advance Licenses. 65 Fed. Reg. at 6173-6174. It also found that these programs do fall within the definition of an export subsidy under Article 3.1(a) of the WTO Subsidy Agreement. Id. at 6173.

⁷⁹ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the orders are revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁸⁰ CR and PR at Table I-3.

⁸¹ CR and PR at Table I-3 and Figure I-1.

⁸² Also in 1998, NFC acquired the production equipment of Zeneca (formerly known as ICI), a French firm that ceased production of sulfanilic acid. NFC then moved this equipment to its production site in Fort Mill, SC. By 1999, NFC’s plant was operational and NFC was able to retain about one third of Zeneca’s worldwide sulfanilic

(continued...)

domestic industry's capacity increased from *** pounds in 1991 to *** pounds in 1998 and capacity utilization increased from *** percent in 1991 to *** percent in 1998.⁸³ Domestic production *** from 1991 to 1998.⁸⁴ The domestic producer also reports increased profitability.⁸⁵ In light of the foregoing, we do not conclude that the domestic industry is currently in a vulnerable condition.⁸⁶

We find it likely that revocation of the orders would result in a significant increase in the volume of subject imports at prices significantly lower than those of the domestic like product, and that such increased volumes of subject imports would likely depress or suppress the industry's prices significantly. This would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the limited record in these reviews, we conclude that, if the antidumping and countervailing duty orders are revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping and countervailing duty orders on sulfanilic acid from China and India would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

⁸² (...continued)

acid business. According to an article in a chemical business magazine, NFC's production facility in South Carolina will become the world's largest sulfanilic acid production base. Comments at 9; Response at 7-8; CR at I-13 through I-14; PR at I-11.

⁸³ CR and PR at Table I-1.

⁸⁴ CR and PR at Table I-1.

⁸⁵ Response at 3.

⁸⁶ Based upon the limited record in these expedited reviews, Chairman Bragg determines that the domestic industry currently is not in a weakened condition as contemplated by the vulnerability criterion of the statute.