UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 751-TA-17-20

TITANIUM SPONGE FROM JAPAN, KAZAKHSTAN, RUSSIA, AND UKRAINE

DETERMINATION

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. § 1675(b)) (the Act), that revocation of the orders covering titanium sponge imports from Japan, Kazakhstan, Russia, and Ukraine is not likely to lead to continuation or recurrence of material injury to an industry in the United States. Titanium sponge is provided for in subheading 8108.10.50 of the Harmonized Tariff Schedule of the United States.

BACKGROUND

The Commission instituted these investigations effective March 23, 1998, following receipt of a request to review its affirmative determination in investigation No. AA1921-51, as it applied to imports from Russia.[2] This request was filed with the Commission on December 9, 1997, by counsel on behalf of TMC Trading International, Ltd., an Irish trading company involved in the distribution of titanium sponge from Russia, and TMC USA, Inc., its U.S. affiliate. Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of March 23, 1998 (63 FR 13873). The hearing was held in Washington, DC, on June 8, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] The Commission also instituted, on its own initiative, review investigations covering imports of titanium sponge from Japan, Kazakhstan, and Ukraine.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine, under section 751(b) of the Tariff Act of 1930, as amended ("the Act"), that revocation of the antidumping duty orders concerning titanium sponge from Japan, Kazakhstan, Russia, and Ukraine is not likely to lead to continuation or recurrence of material injury to an industry in the United States.[1]

I. BACKGROUND

Imports of titanium sponge from Japan, Kazakhstan, Russia, and Ukraine currently are subject to antidumping duty orders. The orders against Kazakhstan, Russia, and Ukraine originated in 1968 when the U.S. Tariff Commission "determined that an industry in the United States is being injured by reason of the importation of titanium sponge from the U.S.S.R, sold at less than fair value. . . ."[2] The Department of the Treasury issued an antidumping finding covering these imports.[3] The order against Japan was issued in 1984 when the Commission determined that an industry in the United States was threatened with material injury by reason of LTFV imports of titanium sponge from Japan.[4] Subsequently, Commerce issued an antidumping duty order covering imports from Japan.[5]

On December 9, 1997, the Commission received a request for a changed circumstances review of the affirmative determination with respect to imports of titanium sponge from Russia.[6] Because the alleged changed circumstances predominantly related to the domestic industry and not to imports from Russia, the Commission also considered self-initiating reviews of the additional outstanding orders on Japan,

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[1] Chairman Bragg notes that the result obtained in these review investigations should not be deemed as a preview of her determinations in upcoming five year review investigations. She does not agree with suggestions that there is a relationship between recent Commission review investigations and forthcoming five year review investigations.

[2] Titanium Sponge from the U.S.S.R., Inv. No. AA1921-51, TC Pub. 255 at 2 (July 1968).

[3] The Department of Treasury's responsibilities regarding antidumping investigations were transferred to the Department of Commerce ("Commerce") in 1980. In 1992, Commerce, in response to the division of the former Soviet Union, changed the original antidumping finding against the U.S.S.R. to 15 separate antidumping duty orders covering the independent states. Commerce subsequently revoked all of these orders except those on imports from Kazakhstan, Russia, and Ukraine.

[4] Titanium Sponge from Japan and the United Kingdom, Invs. Nos. 731-TA-161 and 162 (Final) , USITC Pub. 1600 (November 1984). The Commission made a negative determination with respect to imports of titanium sponge from the United Kingdom.

[5] Commerce has revoked the antidumping duty orders with respect to all but one Japanese producer/importer, Toho Titanium Co., Ltd. ("Toho"). CR/PR at Table I-1.

[6] The request was filed on behalf of TMC Trading International Ltd. and TMC USA, Inc. (collectively "TMC") a distributor and an importer of titanium sponge from Russia. The request alleged seven changed circumstances: (1) the U.S. industry, which no longer is in its early formative stages as it was in 1968, has become established and internationally competitive; (2) the U.S. industry has chosen to focus most of its investment capital away from titanium sponge capacity towards titanium melt and fabricating capacity; (3) the cessation of titanium sponge production by the original petitioner; (4) the redirection of demand for titanium sponge away from military-aerospace applications toward commercial-aerospace and new applications, which lessens cyclical volatility in demand; (5) evidence that demand for titanium sponge is expected to remain strong for at least the next two to three years, and possibly as long as five years; (6) significant declines in titanium sponge capacity in the republics of the former Soviet Union generally, and particularly in Russia, which is the republic covered by the order in question; and (7) evidence of no dumping in 1997 based on receipt of zero dumping margins for specific trading companies importing titanium sponge from Russia. See 62 Fed. Reg. 68300 (Dec. 31, 1997).

Kazakhstan, and Ukraine.[7] On March 9, 1998, the Commission determined that there were sufficient changed circumstances to warrant review of the antidumping duty orders covering titanium sponge from Japan, Kazakhstan, Russia, and Ukraine and instituted these reviews.[8]

II. DOMESTIC INDUSTRY

A. Domestic Like Product and Domestic Industry

In making its determination under section 751(b), the Commission defines "the domestic like product"[9] and the "industry."[10] [11] The imported product covered by the existing antidumping duty orders consists of unwrought titanium sponge. Consistent with the Commission determinations in both the 1968 and 1984 investigations,[12] we define the domestic like product as titanium sponge and the domestic industry as the domestic producers of titanium sponge. No party has argued for a different like product definition.

There are three domestic firms producing titanium sponge, Timet, Oregon Metallurgical Corporation ("Oremet"), and the Alta Group. Two of these firms, Timet and Oremet, accounted for about *** of U.S. production of titanium sponge during 1997.[13] Timet and Oremet are integrated producers of titanium sponge and downstream titanium mill products.

B. Related Parties

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[7] 19 C.F.R. § 207.45(c).

[8] 63 Fed. Reg. 13874 (March 23, 1998). In response to its request soliciting comments on whether there were sufficient changed circumstances to warrant review of the antidumping duty orders on titanium sponge, the Commission received nine submissions: eight submissions in support of the request; and one submission in opposition to the request. Comments in support of the request were received from: RMI Titanium Company ("RMI"), formerly a domestic producer of titanium sponge which closed its sponge operation in 1992 and now purchases titanium sponge for "downstream" titanium production; Aerospace Industries Association ("AIA"); TMC, the original requester; producers/importers of Japanese, Kazakh, and Ukrainian titanium sponge; and the Governments of Russia and Ukraine. Comments in opposition to the request were received from Titanium Metals Corporation ("Timet"), one of two major U.S. producers of titanium sponge.

[9] 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." 19 U.S.C. § 1677(10). In review investigations, the articles "subject to investigation" are those subject to Commerce antidumping duty orders.

[10] 19 U.S.C. § 1677(4)(A). Section 771(4)(A) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product." Id.

[11] See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[12] In the 1968 investigation regarding the U.S.S.R., the Commission opinion did not include a separate definition of like product, but did conclude that "the sponge-producing facilities of these two producers may be characterized as the sponge industry in the United States." Titanium Sponge from the U.S.S.R., TC Pub. 255 at 5 and 16. In the 1984 determination regarding Japan, the Commission first adopted its preliminary determination that "domestically produced titanium sponge is like the imported product" and then defined the domestic industry as "the U.S. producers of titanium sponge." Titanium Sponge from Japan and the United Kingdom, USITC Pub. 1600 at 3 and 4.

[13] In 1997, Timet accounted for *** percent of reported U.S. production of titanium, while Oremet accounted for *** percent. CR/PR at III-1. The third domestic producer, Alta Group, accounting for *** of domestic titanium sponge production did not respond to the Commission's questionnaire.

In defining the domestic industry in these reviews, we further determine whether any producers of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act.[14] Applying the provision involves two steps. First, the Commission must determine whether a domestic producer is either related to the exporters or importers of the subject merchandise, or is itself an importer of the subject merchandise.[15] Second, the Commission may exclude such a producer from the domestic industry if "appropriate circumstances" exist.[16] Exclusion is within the Commission's discretion based upon the facts presented in each case.[17]

In these reviews, both Timet and Oremet imported titanium sponge from subject countries during the period of investigation. Both Timet and Oremet also are related to firms that import titanium sponge from subject countries.[18] Accordingly, the Commission may exclude Timet and Oremet from the domestic industry if appropriate circumstances exist.

The domestic producers argued that they should not be excluded from the industry, but agreed that their importation of subject merchandise could be treated as a condition of competition.[19] The parties supporting review of the orders have not argued for the exclusion of Timet or Oremet.

We do not find that appropriate circumstances exist to exclude either Timet or Oremet from the domestic industry. Despite increases in subject imports in both relative and absolute terms, Timet remains predominantly a domestic producer.[20] [21] Timet's ratio of subject imports (imports and purchases of imports)

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[14] 19 U.S.C. § 1677(4)(B).

[15] Parties are considered to be related if one party directly or indirectly controls another party, or if both are controlled by a third party. Direct or indirect control exists when "the party is legally or operationally in a position to exercise restraint or direction over the other party." 19 U.S.C. § 1677(4)(B).

[16] 19 U.S.C. § 1677(4)(B). Factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a domestic producer include the percentage of domestic production attributable to the importing producer; the reason the U.S. producer has decided to import the product subject to investigation; whether inclusion or exclusion of the domestic producer will skew the data for the rest of the industry; the ratio of import shipments to U.S. production for such producers; and whether the primary interests of the producers lie in domestic production or in importation. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). See also, Stainless Steel Round Wire from Canada, India, Japan, Korea, Spain, and Taiwan, Invs. Nos. 731-TA-781-786 (Preliminary), USITC Pub. 3111 at 5, n.20 (June 1998).

[17] Torrington v. United States, 790 F. Supp. at 1168 (Ct. Int'l Trade 1992); Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987).

[18] In March 1998, Oremet and two importers of subject merchandise, Teledyne Allvac ("Allvac") and Teledyne Wah Chang ("Wah Chang"), became wholly-owned subsidiaries of Allegheny Teledyne Industries, Inc. CR at III-I; PR at III-I. Allvac and Wah Chang are producers of downstream titanium mill products.

Timet wholly owns an importer of subject merchandise, Titanium Hearth Technologies, Inc. ("THT"). CR at I-8, III-2, n. 4, and IV-1; PR at I-6, III-1, n.4, and IV-1.

[19] Timet Posthearing Brief, Attachment G at 6.

[20] Timet imported subject merchandise or purchased subject imports as follows: *** in 1996 and *** in 1997. Timet and its affiliate importer, THT, reported no subject imports or purchases of subject imports in 1995. CR/PR at Table III-1. Its total U.S. production was *** of titanium sponge in 1995, *** in 1996 and *** in 1997. Id. at Tables III-1 and III-2.

[21] Certain imports of titanium sponge entered temporarily free of duty under bond ("TIB"). For a discussion of the TIB process and the Commission's determination that imports entered under TIB are not subject imports, see section V.B.6., infra.

Timet's imports under TIB from subject countries declined in both absolute and relative terms throughout the period of investigation. Timet's imports under TIB from subject countries were: *** of titanium sponge in 1995, *** in 1996 and *** in 1997. CR/PR at Tables III-1.

to domestic production increased from ***.[22] Likewise, Oremet is predominantly a domestic producer. Oremet's ratio of subject imports to domestic production was small and declined from *** percent in 1995 to *** percent in 1997.[23] [24] Accordingly, we determine not to exclude Timet or Oremet from the domestic industry.[25] [26]

III. CUMULATION

A. Framework and Parties' Arguments

Section 752(a)(7) of the Act provides that:

> 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

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[22] Calculated from CR/PR at Tables III-1 and III-2. Timet's TIB imports from subject countries as a share of its domestic production was: *** in 1997. Calculated from CR/PR at Tables III-1 and III-2.

[23] Calculated from CR/PR at Tables III-1 and III-2. Oremet imported subject merchandise as follows: *** in 1997. These ratios do not include subject imports by Oremet's affiliate importers, Allvac and Wah Chang; these importers became related to Oremet in March 1998. Subject imports by its related affiliates increased in both relative and absolute terms. When subject imports by Allvac and Wah Chang are included, the ratio of subject imports to Oremet's domestic production increased from *** in 1997. Total imported subject merchandise by Oremet, Allvac, and Wah Chang was: *** in 1997. Oremet's total U.S. production was *** of titanium sponge in 1995, *** in 1996 and *** in 1997. Neither Oremet, Allvac, nor Wah Chang reported purchases of subject imports throughout the period of investigation. Id. at Tables III-1 and III-2.

[24] Oremet's TIB imports from subject countries increased in both absolute and relative terms throughout the period of investigation. Oremet's imports under TIB from subject countries were: *** of titanium sponge in 1995, *** in 1996 and *** in 1997. CR/PR at Table III-1. Oremet's TIB imports from subject countries as a share of its domestic production was: *** in 1997. Calculated from Id. at Tables III-1 and III-2. Imports under TIB from subject countries by Oremet, Allvac, and Wah Chang combined were: *** of titanium sponge in 1995, *** in 1996 and *** in 1997. Id. at Table III-1. These total TIB imports from subject countries as a share of Oremet's domestic production was: *** in 1997. Calculated from Id. at Tables III-1 and III-2.

[25] The Commission's decision is consistent with past practice. See Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793 at I-8 (July 1994)("Sebacic Acid") (Commission determined that because Union Camp was responsible for all domestic production, functioned principally as a producer rather than an importer, and did not market the subject imports but rather used them for production of a downstream product, appropriate circumstances did not exist to exclude Union Camp from the industry as a related party.). See also Nitromethane from the People's Republic of China, Inv. No. 731-TA-650 (Final), USITC Pub. 2773 at I-7-8 (May 1994); Tungsten Ore from the People's Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 at 16 (March 1991)("Tungsten Ore- Preliminary"); Electrolytic Manganese Dioxide from Greece, Ireland, and Japan, Invs. Nos. 731-TA-406-408 (Preliminary), USITC Pub.2097 at 7-10 (July 1988); Frozen Concentrated Orange Juice from Brazil, Inv. No. 751-TA-10, USITC Pub. 1623 at 11, n.16 (December 1984).

[26] Commissioner Crawford concurs in the conclusion not to exclude any producer from the domestic industry, particularly in light of the determination that revocation of the orders is not likely to lead to continuation or recurrence of material injury. However, she believes that the facts of these investigations could support exclusion of one or both of the two principal producers. Specifically, only an extremely small amount of domestic production, *** percent in 1997, is sold in the merchant market and thus competes directly with the subject imports. In addition, in 1997 the two principal producers and their related firms imported and purchased *** percent of subject imports. Calculated from CR/PR at Tables III-1 and IV-1. In Commissioner Crawford's view, these facts could constitute "appropriate circumstances" contemplated by the statute.

> 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.[27]

Thus, cumulation is discretionary in changed circumstances reviews, and the Commission may exercise its discretion to cumulate, if the criteria of same day initiation[28] and likely competition between imports and domestic like product are met.

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

(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;[29]

(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.[30]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.[31] Only a "reasonable overlap" of competition is required.[32] Further, because of the prospective nature of Commission determinations in changed circumstances reviews, the relevant inquiry is whether there would likely be competition even if none currently exists.

In a review investigation, however, the Commission "shall not cumulatively assess the volume and effect 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."[33] Neither the statute nor the Statement of Administrative Action to the Uruguay Round Agreements Act ("SAA")[34] provides further guidance on what factors the Commission is to consider in determining that imports "are likely to have no discernible adverse impact."[35] Prior to the URAA, cumulation was not required if the subject imports were "negligible," and had

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[27] 19 U.S.C. § 1675a(a)(7).

[28] This criterion is met since all four changed circumstances review investigations were initiated on the same day, March 23, 1998.

[29] Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. See Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan and Spain, Invs. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

[30] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tup, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[31] See e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[32] 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).

[33] 19 U.S.C. § 1675a(a)(7).

[34] H. Doc. No. 316, 103d Cong., 2d Sess., vol. 1 (1994).

[35] Chairman Bragg and Vice Chairman Miller note that the Senate Report concerning the URAA explained that "it is appropriate to preclude cumulation where imports are likely to be negligible" but found it not appropriate to adopt a strict numerical test "because of the extraordinary difficulty of projecting import volumes into the future with precision."

"no discernible adverse impact on the domestic industry."[36] Our prior practice provides some guidance in this regard, but we are mindful of the different focus for the review analysis on whether imports are "likely" to have no discernible adverse impact.[37] For these reviews, our discernible adverse impact analysis is focused on imports and competition among products that is likely to occur within a reasonably foreseeable time.

The domestic producers of titanium sponge assert that the Commission should cumulate imports from all subject countries because there is virtually a complete overlap between imports and the domestic like product.[38] The parties supporting review of the orders contend that the Commission should not cumulatively assess the volume and effect of the imports, arguing that there is no competitive overlap primarily because imports from the subject countries are not fungible with each other or the domestic product.[39]

We have determined not to cumulate potential imports from Ukraine since such imports are likely to have no discernible adverse impact on the domestic industry. We have determined to cumulatively assess the volume and effect of subject imports from Japan, Kazakhstan, and Russia for purposes of these changed circumstances reviews.[40] [41]

B. No Discernible Adverse Impact Analysis

S. Rep. 412, 103d Cong., 2d Sess. 51 (1994).

[36] 19 U.S.C. § 1677(7)(c)(v) (1994).

[37] The pre-URAA provision regarding treatment of negligible imports also did not include numerical criteria. Rather the pre-URAA statute directed the Commission to "evaluate all relevant economic factors regarding imports" including whether: the volume and market share of imports were negligible; sales transactions were isolated and sporadic; and the domestic market is price sensitive. 19 U.S.C. § 1677(7)(c)(v)(1994). See Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Invs. Nos. 701-TA-319-332, 334, 446-342, 344, and 347-353 (Final) and Invs. Nos. 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 at 28 (Aug. 1993)("Flat-Rolled Carbon Steel").

[38] Oremet's Posthearing Brief at 15 and Exhibit 7 (Response to Commissioner Crawford's cumulation question); Oremet's Prehearing Brief at 48-50; Timet Posthearing Brief, Attachment G at 3.

[39] Japanese producer Toho asserted that the Japanese product does not compete with and is of a significantly different quality than that from the former Soviet Union and that Toho operates in a completely different economic environment than its Russian, Kazakh, and Ukrainian counterparts. Toho Prehearing Brief at 14 and 15; Toho Posthearing Brief at 3-7. The Kazakh producer contended that the imports from the subject countries are not fungible with each other or the domestic product, Ukrainian sponge is not present in the market and that imports utilize different channels of distribution. Specialty Metals/UKTMP Posthearing Brief at 8 and 9; Specialty Metals/UKTMP Prehearing Brief at 7-11. The Ukrainian producer and the Government of Ukraine contended that Ukrainian imports have no discernible adverse impact on the domestic industry because they are non-existent and thus the Commission should separately assess titanium sponge from Ukraine. Zaporozhie's Posthearing Brief at 6 and 7; Government of Ukraine ("Ukraine") Prehearing Brief at 19-23; Ukraine Posthearing Brief at 4-11. The Russian producer contended that there is no reasonable overlap between Japanese sponge, and Kazakh and Russian sponge; the lack of open-market sales by either Timet or Oremet and no imports from Ukraine mean there is no competitive overlap. RMI/Avisma's Posthearing Brief, Answers to Commission Questions at 2-4; RMI/Avisma's Prehearing Brief at 28 and 29.

[40] Chairman Bragg notes that had she cumulated potential imports from Ukraine, she would have nonetheless found that revocation of the orders covering imports (or potential imports) from all countries would not be likely to lead to continuation or recurrence of material injury to the domestic industry producing the like product within a reasonably foreseeable time. See "No Discernible Adverse Impact Analysis," infra.

[41] Commissioner Crawford has declined to exercise her discretion to cumulate the subject imports from all four countries, and thus does not join the remainder of this discussion. See Views of Commissioner Carol T. Crawford.

As previously stated, the Commission may not cumulate imports of titanium sponge from subject countries that are likely to have no discernible adverse impact on the domestic industry. This issue is of particular relevance to consideration of imports from Ukraine.[42] While there have been *** of titanium sponge from Ukraine during the period of investigation,[43] this fact does not dispose of the issue. Rather, we consider whether any such future imports are likely to have a discernible adverse impact on the domestic industry within a reasonably foreseeable time. The sole Ukraine producer ***.[44] The new capacity, which is estimated to be about one-third of that prior to the start of the shutdown, is expected to service markets in Russia, Europe, and Japan.[45] This producer's production in 1998 is projected to be ***.[46] At the Commission's hearing, the producer's representative indicated that "at this time, we are not contemplating exports to the United States."[47] Prior to its shutdown in 1995, the shipments from the Ukraine producer were nearly *** to the U.S. market.[48]

We find little likelihood of significant Ukraine production within the reasonably foreseeable future and, given the evidence regarding the Ukrainian producer's likely markets, little likelihood that a significant amount of any Ukrainian production would be exported to the U.S. market.[49] Thus, we conclude that imports of titanium sponge from Ukraine are likely to have no discernible adverse impact on the domestic industry.

C. Reasonable Overlap of Competition Analysis

While we have determined, as discussed below, that imports under TIB are not subject imports, we have considered the extent and competitive effects of such imports as a relevant economic factor in our cumulation analysis. In particular, we have considered such imports as an indicator of the ability of exporters in the subject countries to supply merchandise to the U.S. market in the future.

We find a sufficient degree of fungibility among imports from Japan, Kazakhstan, and Russia, and with the domestic like product. U.S. and Japanese titanium sponge are similar products, ranging from

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[42] As discussed below, while there have been no subject imports of titanium sponge from Kazakhstan during the period of investigation, there have been sizeable and continuous imports of titanium sponge under TIB. In the absence of the antidumping duty order, we believe that much of the import volume currently entered under TIB would be entered for consumption. Accordingly, we do not find that the likely imports from Kazakhstan meet the "no discernible adverse impact" test.

[43] CR/PR at Table D-1. In 1997, *** from Ukraine. Id.

[44] CR at VII-9; PR at VII-2. According to Zaporozhie, *** Id.

[45] The Ukraine producer's titanium sponge capacity was about 18,000 metric tons per year prior to January 1995. The new equipment to be installed in 1998 is estimated to have a capacity of 6,250 metric tons. Tr. at 163 and 164; CR at VII-9 and n. 12; PR at VII-2 and n. 10. Zaporozhie testified that it has received requests from past customers for almost four times the mill's current capacity. Zaporozhie's Posthearing Brief at 4 and 5. Moreover, we have considered the statement by the Ukraine producer that it would be willing to sell in the United States if an offer was received, but found no evidence of significant future imports. Tr. at 169 and 170, and CR/PR at Table D-1.

[46] CR/PR at Table VII-4.

[47] Tr. at 169-170.

[48] CR/PR at Table VII-4; CR at VII-9; PR at VII-3. Ukrainian producer Zaporozhie noted that, *** Id. At the Commission hearing, the Ukrainian producer indicated that its titanium sponge is of a "much lesser quality than Russian product . . . [and] [o]nly a small fraction of the total rehabilitated capacity would be corresponding to some grades of Russian company." Tr. at 171.

[49] It is estimated that it takes 3-4 years to build a titanium sponge plant and that refurbishment of moth-balled capacity is very expensive and would take more than one year to complete. CR at II-8 and II-12; PR at II-4; see also Zaporozhie's Posthearing Brief at 7.

standard grades through high-purity grades.[50] Producers in both countries have been approved by U.S. purchasers.[51] Kazakh and Russian titanium sponge primarily is produced in standard grade, with some production of premium grade, but not of high-purity grades.[52] Thus, imports of titanium sponge from Kazakhstan and Russia generally are substitutable in standard and some premium grades with imports from Japan or domestic product, but do not appear to be substitutable in higher-purity applications.[53] There also is evidence that the imports under TIB from Japan, Kazakhstan, and Russia, which could be considered as likely future imports, have some fungibility with each other and with the domestic like product.[54]

Overall, the record shows the presence of sales or offers to sell in the same geographical markets of subject imports from Japan and Russia, and domestic product.[55] Moreover, imports under TIB from Japan, Kazakhstan, and Russia are marketed and sold in the same geographical markets as each other and the domestic product.[56]

The record shows that the primary channel of distribution for both domestically-produced titanium sponge and the imported product generally is directly to the end-users, producers of titanium metal products.[57]

Import statistics and questionnaire responses indicate that subject imports of titanium sponge from Japan and Russia have been, and continue to be, simultaneously present in the U.S. market throughout the period of investigation.[58] Imports from Kazakhstan have entered the United States under TIB throughout the period of investigation.[59]

Based on the evidence in the record of the general fungibility among the subject and TIB imports and the domestic like product, nationwide sales, similar channels of distribution, and the simultaneous presence of imports from Japan, Kazakhstan, and Russia in the U.S. market, we find a reasonable overlap of competition among such imports and the domestic like product. Therefore, we find that such imports would likely compete with each other and with the domestic like product in the U.S. market. Consequently, we cumulatively assess the likely volume and effect of imports from Japan, Kazakhstan, and Russia for purposes of these changed circumstances reviews.

V. REVOCATION OF THE ORDERS ON TITANIUM SPONGE IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY

A. Legal Standard

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[50] CR at II-21; PR at II-11. During the period of investigation, Toho, the Japanese producer subject to the antidumping duty order, exported primarily premium grade titanium sponge to the United States. Id. at n. 63. However, as Toho noted *** of all of Toho's titanium sponge shipments to the United States in 1997 were of standard or low-grade sponge. Toho Posthearing Brief at 3-7.

[51] CR at II-21; PR at II-11. Certification generally is required for purchases of titanium sponge. Domestically produced and imported titanium sponge largely overlap in their ability to meet U.S. downstream industry requirements for sponge purity and other chemical characteristics.

[52] CR at II-21; PR at II-11.

[53] CR at II-21; PR at II-11.

[54] CR at II-21 to II-23; PR at II-11.

[55] CR at I-8 and I-9; PR at I-6. Over 30 companies throughout the United States purchase or internally transfer titanium sponge to produce titanium mill products and castings. Id. at I-7.

[56] CR at I-8 and I-9; PR at I-6.

[57] CR at II-6 and II-7; PR at II-4. The channel of distribution for about *** CR at II-6; PR at II-3.

[58] CR/PR at Table D-1.

[59] CR/PR at Table D-1.

Section 751(b) of the Act, as amended by the Uruguay Round Agreements Act of 1994 ("URAA"),[60] requires the Commission to conduct a review of an affirmative antidumping or countervailing duty determination whenever it receives a request that "shows changed circumstances sufficient to warrant a review."[61] In the URAA, Congress established a substantive standard -- section 752 of the Act -- to be applied by the Commission in conducting changed circumstances reviews. These reviews represent the first opportunity for the Commission to apply the new standard. The legislative history indicates that the new standard "is consistent with Commission practice" regarding changed circumstances reviews.[62] Under prior law, it was well established that a review investigation does not begin on a clean slate as though it were an original investigation.[63] Moreover, as under pre-existing law, the requesting party continues to bear the burden of persuasion as to whether changed circumstances exist to warrant revocation of an order.[64] [65]

In conducting a changed circumstances review, section 752(a) provides that "the Commission shall determine whether revocation of an order . . . would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time." In making this determination, 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" taking 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.[66]

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[60] P.L. 103-465 (Dec. 8, 1994).

[61] 19 U.S.C. § 1675(b)(1).

[62] SAA at 878.

[63] Matsushita Elec. Indus. Co. v. United States, 750 F.2d 927, 932 (Fed. Cir. 1984); see also H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 182 (1984) ("a section 751 review does not begin from an entirely neutral starting point"). Congress intended that the Commission's original determination be afforded deference so that such determinations would not be in a constant state of flux. Avesta AB v. United States, 689 F. Supp. 1173, 1180 (Ct. Int'l Trade 1988) (Avesta I) (the "underlying finding of injury . . . is entitled to deference and should not be disturbed lightly").

[64] SAA at 878; 19 U.S.C. § 1675(b)(3). See also Avesta I, 689 F. Supp. at 1180, 1181; Avesta AB v. United States, 724 F. Supp. 974, 978 (Ct. Int'l Trade 1988) (Avesta II), aff'd, 914 F.2d 233 (Fed. Cir. 1990), cert. denied, 111 S.Ct. 1308 (1991); A Hirsh, Inc. v. United States, 729 F. Supp. 1360, 1363 (Ct. Int'l Trade 1990) (Hirsh I), aff'd following remand, 737 F. Supp. 1186, 1187 (Ct. Int'l Trade 1990) (Hirsh II).

[65] Chairman Bragg notes that the Federal Circuit has held that, for the purposes of a section 751 review, the ITC must begin its analysis of imports subject to an order with the presumption "that dumping will resume if the antidumping duty order is revoked or canceled . . . . based on the bifurcated nature of the administration of the antidumping laws wherein" Commerce determines whether dumping is taking place and issues or revokes the order, and the ITC determines whether the U.S. industry will be injured by reason of such imports. American Permac, Inc. v. United States, 831 F.2d 269, 274 (Fed. Cir. 1987), citing, Matsushita Electric Industrial Co., Ltd. v. United States, 569 F. Supp. 853, 856 (Ct. Int'l Trade 1983) While this Federal Circuit decision is pre-URAA, Congress indicated that the substantive standard in the URAA "is consistent with Commission practice" regarding changed circumstances reviews. SAA at 878.

[66] 19 U.S.C. § 1675a(a)(1). The statute states in relevant part:

> (1) In general
> In a review conducted under section 1675(b) or (c) of this title, the Commission shall determine whether revocation of an order . . . would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked . . . . The Commission shall take into account -
> (A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued . . .

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.[67] While the Commission must consider all factors, no one factor is necessarily dispositive.[68]

Although the standard in a changed circumstances review is not the same as the standard applied in original Title VII investigations, it contains some of the same elements.[69] The Commission's determination in a review investigation differs from that in original title VII investigations in that it is prospective in nature. Under the likelihood standard, the Commission engages "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."[70] The Commission "shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time."[71]

For the reasons stated below, we determine that revocation of the orders would not be likely to lead to continuation or recurrence of material injury to the domestic titanium sponge industry within a reasonably foreseeable time.[72] [73] [74]

(B) whether any improvement in the state of the industry is related to the order . . .
(C) whether the industry is vulnerable to material injury if the order is revoked . . . .

Id. See also SAA at 884 and 885. Three of the four general factors in the statute are relevant to a changed circumstances review, with the fourth factor regarding duty absorption findings only applicable to five-year reviews under section 751(c).

[67] 19 U.S.C. § 1675a(a)(5).

[68] SAA at 886.

[69] 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 prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material if the order is revoked." SAA at 884.

[70] SAA at 884.

[71] 19 U.S.C. § 1675a(a)(5). Congressional intent indicates that the "reasonably foreseeable time" will vary from case-to-case, but normally will exceed the "imminent" timeframe applicable in evaluating threat of material injury in original investigations. SAA at 887. The SAA directs the Commission to consider 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. In these reviews, we have also considered the existence of detailed industry forecasts for titanium demand.

[72] The statute, 19 U.S.C. § 1675a(a)(6), indicates that "the Commission may consider the magnitude of the margin of dumping" in making its determination of the likely continuation or recurrence of injury in a changed circumstances review investigation. The statute defines that "magnitude of the margin of dumping" to be used by the Commission in changed circumstances review investigations as "the most recent dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title, if any, or under section 1673b(b) or 1673d(a) of this title." 19 U.S.C. § 1677(35)(C)(iii). See also SAA at 887.

The original antidumping duty margin for imports of titanium sponge from the former U.S.S.R. was *** and for Japanese producer/importer, Toho Titanium Co., Ltd. (Toho), the original margin was 34.25 percent. Confidential Report to Tariff Commission in Inv. No. AA-1921-51 at 2 and USITC Pub. 1600 at A-7. The outstanding country-wide antidumping duty orders for imports of titanium sponge from Kazakhstan, Russia, and Ukraine in the most recent administrative reviews each have margins of 83.96 percent. Three importers of Russian subject imports have obtained lower margins through administrative reviews: Cometals, 28.31 percent; Interlink, 0 percent; and TMC, 0 percent. Commerce subsequently revoked the antidumping duty order with respect to all but one Japanese producer/importer,

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."[75] Given the 14 to 30 years since the Commission's original determinations regarding titanium sponge, there have been many changes affecting the titanium sponge industry, and a number of conditions of competition pertinent to these investigations warrant discussion.

1. Worldwide and Domestic Capacity for Titanium Sponge Production

Global titanium sponge production capacity has declined significantly over the last decade. Commerce has reported that plant closures in Japan, Britain, Ukraine, and the United States have resulted in reductions in world titanium sponge capacity of 25 percent since 1991.[76] While there were modest increases in production capacity in 1996 and 1997, worldwide capacity to produce titanium was estimated by both the domestic industry and those seeking to revoke the orders to be between 99,500 to *** in 1997.[77]

Domestic sponge production capacity declined sharply with the closure of RMI's sponge facility in 1992, and no domestic producer has increased capacity by a comparable amount.[78] With RMI's exit from

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Toho, which has received a zero dumping margin in its last three administrative reviews the most recent of which covers 1991. CR/PR at Table I-1.

[73] Chairman Bragg notes that in original or "underlying" antidumping investigations, she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 at 33 (June 1996). In the context of a changed circumstances review, Chairman Bragg does not expect the magnitude of the margin of dumping to be any more or less probative or helpful than in an original investigation.

[74] As noted above, the Commission may consider dumping margins in making its determinations in a changed circumstances review. The statute allows the Commission to choose among different margins, including the most recent dumping margin determined by Commerce. In Commissioner Crawford's view, the statute and the SAA therefore allow the Commission to consider the margins calculated by Commerce in the most recent administrative review, which is consistent with Commission practice in prior changed circumstances reviews. See 19 U.S.C. § 1675a(a)(6), 19 U.S.C. § 1677(35)(C)(iii), and SAA at 850, 851 and 878.

[75] 19 U.S.C. § 1675a(4).

[76] U.S. Industry & Trade Outlook, '98, U.S. Department of Commerce, at 14-13 to 14-16. Worldwide plant closures include: ***. CR at II-1; PR at II-1.

[77] CR at II-2; PR at II-1. Based on Commission questionnaire responses, total worldwide production capacity is estimated to have been *** in 1997. See TMC Prehearing Brief at 42. In September 1997, Timet provided to the Commerce Department an estimate of world titanium sponge capacity that totaled 99,500 metric tons. Id. at 43 and Attachment 10 (Timet Document).

[78] RMI's facility had about 11,000 metric tons of titanium sponge production capacity. Tr. at 113; CR/PR at II-1. Thus, with RMI's exit, domestic capacity for titanium sponge declined from about ***. Calculated from capacity reported for Timet's MRAL facility prior to its shutdown in 1994, *** and Oremet's reported capacity, ***. See also TMC's Prehearing Brief at Attachment 3.

titanium sponge production, the domestic industry decreased from three to two principal producers.[79] While Timet opened its new *** facility in 1993, it halted production at its *** facility in 1994; this resulted in a further reduction in overall domestic capacity, which totaled ***. Timet gradually returned about *** to operational capacity in 1996 and 1997.[80] Thus, domestic sponge capacity has declined by over *** from about *** in 1997.[81]

2. Captive Consumption and Limited Open Market Sales

Another significant condition of competition is that there are virtually no open market sales by the domestic producers.[82] The two primary U.S. producers of titanium sponge are integrated titanium mill products producers that captively consume almost all of the sponge they produce. In 1997, Oremet *** of its total shipments.[83] In addition, *** were shipped to RMI under a toll agreement.[84] Thus, *** of Oremet's total shipments are open-market or commercial shipments.[85] Similarly, in 1997 Timet *** of its total shipments of titanium sponge, while the majority of its other shipments, or ***.[86] Thus, *** of Timet's total shipments of titanium sponge are open-market shipments.[87] For these two producers, *** of their combined total shipments in 1997 were open-market shipments.[88] Moreover, in contrast to the situation found in prior titanium sponge investigations, the record reflects that the domestic industry has increased titanium sponge production to meet some internal needs and not demonstrated an interest in competing in the merchant market in a significant way despite the existence of the antidumping orders.[89] In fact, the domestic producers meet

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[79] While a third U.S. producer began titanium sponge production in *** metallurgical grade. CR/PR at III-1.

[80] CR/PR at II-1 and Table III-2. Moreover, while domestic production capacity increased by *** from its low point of *** in 1995 to *** in 1997, domestic industry production during that period increased by ***, resulting in an increase in capacity utilization ***. CR/PR at Table III-2; CR at II-8; PR at II-4.

[81] CR/PR at II-1 and Table III-2.

[82] We note that the captive production provision, 19 U.S.C. § 1671(7)(C)(iv), is not applicable to a changed circumstances review. However, it is within the Commission's discretion to consider the impact of captive consumption in its analysis of whether the industry is likely to be materially injured by subject imports if the orders are revoked. See generally, Flat-Rolled Carbon Steel, USITC Pub. 2664 at 15, 17, 22 and 23 (August 1993), aff'd, U.S. Steel Group v. United States, 873 F. Supp 673 (Ct. Int'l Trade 1994).

[83] CR/PR at Table III-3.

[84] CR/PR at Table III-3; CR at III-7 and III-8; PR at III-2. ***. Id.

[85] CR/PR at Table III-3.

[86] CR/PR at Table III-3; CR at II-4 and III-8; PR at II-2 and III-2. *** as part of an agreement for UTSC's investment in Timet's sponge production facility in 1992. Id.

[87] CR/PR at Table III-3.

[88] Calculated from CR/PR at Table III-3.

[89] In the 1968 determination, the Tariff Commission found that:

> the two major domestic sponge producers . . . now have sponge capacity in excess of their captive needs for sponge. It is clear from the record that the industry wants to sell sponge, is able to sell sponge, and plans to produce and sell sponge to all mill operators . . . .

some of their internal needs with a significant amount of imported titanium sponge, both TIB imports and non-TIB imports from the subject countries, as well as from non-subject countries.

3. Changes in Composition of Demand for Titanium Sponge

U.S. demand for titanium sponge, an intermediate product, is derived from demand for the downstream titanium metal products produced from sponge. Thus, increasing demand for titanium mill products is expected to translate into an increased derived demand for titanium sponge. The largest component of this downstream demand is civilian aerospace consumption of titanium metal products. Non-aerospace applications for titanium metal include oil and gas production equipment, pollution control equipment, architectural finishes, auto parts, consumer goods (e.g., golf clubs, eyeglass frames, and bicycles), medical products (e.g., implants), computer applications, and non-aerospace military uses (e.g., tank armor).[90]

The composition of demand for titanium mill products has shifted significantly from the military aerospace segment to the commercial aerospace and non-aerospace segments since the prior titanium sponge investigations.[91] In 1968, the military aerospace segment accounted for about 75 percent of total demand, and the commercial aerospace segment accounted for 15 percent, and thus aerospace applications accounted for 90 percent of total demand. In 1996, the total aerospace share was approximately 60 percent, with 15 percent held by the military aerospace segment and 45 percent held by the commercial aerospace segment.[92] The non-aerospace segment has shifted from 10 percent in 1968 to 40 percent in 1996.

This shift in the composition of demand for titanium products thus indicates greater stability in the titanium sponge market, which historically has been erratic.[93] Therefore, we find that the diversification in the uses of titanium is likely to diminish the cyclical patterns for demand experienced by the industry in the past.

4. Apparent Strong Demand for Titanium Sponge

Apparent U.S. consumption, excluding TIB imports, more than doubled from 1995 to 1997.[94] The current rise in U.S. and worldwide demand follows a downturn in the late 1980's and early 1990's that appears to have leveled off in 1992, with recovery beginning in 1993.[95]

TC Pub. 255 at 6. The significance of open market sales was highlighted by the Commission in its l984 affirmative threat determination regarding imports of titanium sponge from Japan. In that investigation, there were four integrated producers and one non-integrated producer of sponge, and commercial sales accounted for almost 8 percent of total U.S. production annually. USITC Pub. 1600 at 4, aff'd, Philipp Brothers, Inc. v. United States, 640 F. Supp. 1340, 1345 and 1346 (Ct. Int'l Trade 1986).

[90] CR at II-17, PR at II-8.

[91] TC Pub. 255 at 2; USITC Pub. 1600 at 5.

[92] CR at II-3; PR at II-2. These percentages are based on USGS reports for 1996; percentages for 1997 have not been reported.

[93] TC Pub. 255 at 6 ("the erratic demand for titanium components for aerospace vehicles . . . has been the dominant factor affecting the ability of the domestic titanium sponge industry to meet the consumption needs. . . ."); USITC Pub. 1600 at 8 (Commission found that the titanium sponge industry was "plagued by a recurring pattern of sharp supply and demand shifts and . . . had to rely on demand projections (for both military and commercial markets) which have tended to be unreliable because of . . . the speculative nature of aerospace and defense demand.")

[94] CR/PR at Table IV-1. U.S. apparent consumption, excluding TIB imports, was *** from 1995 to 1997. U.S. apparent consumption, including TIB imports, was *** from 1995 to 1997. Id. at Table D-3.

[95] CR at II-1 and II-2; PR at II-1.

The parties agree that demand for titanium mill products and, thus, demand for titanium sponge, increased substantially in the 1995-97 period. The parties disagree over when, or even if, there will be a significant downturn in demand.[96] Timet and Oremet contend that the 1995-97 period represented a peak in the business cycle for the titanium sponge industry, and that the industry is on the verge of another cyclical trough in demand.[97]

We find that demand is likely to remain strong in the foreseeable future. The forecast for titanium metal demand submitted by the Boeing Company, which was prepared by Boeing in conjunction with Timet and other members of the titanium industry, shows titanium consumption increasing from 17 million pounds in 1997 to 28 million pounds in 1999 and 2000 and then declining to 25 million pounds in 2002.[98] Boeing's forecast for strong demand is supported by a recent speech by the President of Timet, Andrew Dixey, in which he predicted that overall world demand for titanium mill products would increase by 17 percent from 60,000 metric tons in 1997 to 70,000 metric tons in 2004. Mr. Dixey also predicted that worldwide titanium usage in new applications would increase from 5,000 metric tons in 1997 to 10,000 metric tons in 2004.[99] We note that other knowledgeable sources also anticipate continued strong demand for titanium metal and, therefore, for titanium sponge.[100]

5. Long-term arrangements

In the last several years there has been a substantial increase in long-term titanium sponge and metal supply contracts. These long-term arrangements -- typically 5-10 years in duration -- are intended to ameliorate the cyclical swings in demand that the industry has experienced in the past.[101] Timet has contracts

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[96] RMI/Avisma's Posthearing Brief at 6-8; TMC's Posthearing Brief at 3-7; Zaporozhie's Posthearing Brief at 2 and 3; Toho's Prehearing Brief at 5-7.

[97] Timet's Posthearing Brief at 6-12; Oremet's Posthearing Brief at 7-11; Tr. at 40-41.

[98] Boeing Prehearing Brief at 6 and Hearing Charts. Boeing reportedly accounts for 80 percent of domestic consumption of aerospace-grade titanium and is the largest single purchaser of titanium products. Id.; see also Boeing Posthearing Brief at 5-12.

[99] American Metal Market at 7 (June 10, 1998), "Once unpredictable, titanium seen on steady course," reporting on the speech of Andrew R. Dixey, President and Chief Operating Officer of Timet, included in UKTMP's Posthearing Brief at Exhibit 3. Dixey reportedly indicated that new demand is appearing in at least five major areas: automotive, sporting goods, computer, medical, and armor/weapons and that new applications include such products as exhaust systems and engine parts, bicycles, skis, racquets, computer hard drives, prosthetics, dental implants and M-1 tank body armor. Id. Timet also provided estimates of increasing demand for titanium sponge through the year 2000 in its submission to the Commerce Department in September 1997 as included in TMC's Prehearing Brief at Attachment 14.

[100] CR at II-6; PR at II-3 and staff telephone and interview notes regarding conversations with ***. Although domestic sponge producers argued that demand has softened in the last 3-6 months and is about to decline substantially, other record evidence does not support these arguments. A recent Boeing press release indicates that although Boeing is planning to reduce production of its 747 and 777 models in 1999, it intends to produce larger numbers of smaller aircraft, which use greater amounts of titanium. In support of their arguments, domestic sponge producers cite forecasts of aircraft production rather than titanium usage which, therefore, do not take into account the higher percentages of titanium used in newer models or account for titanium used in refurbishing existing aircraft. In any event, these forecasts project that through 2001 commercial aircraft production will remain higher than it was in 1997. We also note that the inability of the Defense Logistics Agency to sell sponge from the government stockpile appears to reflect the poor quality of the sponge rather than a softening of the market, and recent layoffs at Oremet appear to reflect that company's consolidation of its operations with Allvac.

[101] While long-term contracts were used in the past, it appears that the number and duration of such agreements has increased. TMC's Posthearing Brief at 9 and 10; UKTMP's Posthearing Brief, Attachment A at 2-4; Toho Posthearing Brief at 13 and 14;. For example, about 40 percent of RMI's sales reportedly now are covered by long-term contracts

for most of its sponge needs and mill products for the next 10 years. As discussed above, it is obliged to "sell" to ***.[102] Timet has additional 5-10-year agreements to supply Boeing and Wyman-Gordon with titanium products or sponge. On the supply side, Timet has concluded a long-term contract (1998-2007) to purchase up to ***[103] Most of Oremet's non-captive sponge production is not sold in the open market but is produced under a long-term toll agreement for RMI. Boeing, the world's largest single buyer of titanium products, has entered long-term agreements with RMI and Timet to supply 85 percent of its demand for titanium metal products over the next five to ten years.[104] In addition, Boeing has entered an agreement with VSMPO, the Russian producer of downstream titanium products, to supply it with the remaining 15 percent of its titanium products;[105] Avisma supplies VSMPO with its titanium sponge.

The trend toward long-term supply agreements between integrated titanium producers and end users is intended and is likely to provide stability for domestic titanium sponge producers in the foreseeable future.

6. Imports Entered Temporarily Free of Duty Under Bond ("TIB")

Another condition of competition in these investigations is that imports of titanium sponge, particularly from Kazakhstan and Russia, entered temporarily free of duty under bond ("TIB").[106] [107] TIB

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compared to only 20 percent in the past. RMI's Posthearing Brief at Attachment 2 and Answers to Commission Questions at 1 and 2. We note that these long-term contracts usually have minimum supply levels and some may have pricing formulas which may lessen their apparent reliability. For example, Timet contended that its long-term contract to supply Boeing is a requirements contract with a minimum quantity of titanium mill products that is only about one-third of the quantity to be shipped in 1998; thus, the long term contract does not guarantee that titanium sponge shipments will not fall. However, the existence of such agreements to purchase sponge does afford a greater protection from market fluctuations than no contracts at all. Compare Timet's Posthearing Brief at 13 and 14; Oremet's Posthearing Brief at Exhibit 7.

[102] CR at II-4; PR at II-2.

[103] CR at II-4, VII-5, n. 10; PR at II-2, VII-2, n.10; Tr. at 116. UKTMP's current sales to the United States are sold ***.

[104] Timet has contracted to be Boeing's "principal supplier" of titanium products throughout the term of the agreement with guaranteed minimum sales of 3,000 metric tons per year. The Boeing agreement is for five years and can be extended for another five years. Tr. at 86 and TMC's Prehearing Brief at 39; CR at II-4; PR at II-2.

[105] Tr. at 86.

[106] TIB is a procedure whereby merchandise may be temporarily entered into the U.S. customs territory free of duty by posting a bond. TIB procedures are authorized pursuant to 19 U.S.C. § 1623(a). The bond required for such entries is an amount equal to double the estimated duties had all the articles covered by the entry been entered under an ordinary consumption entry. 19 C.F.R. §§ 10.39(d)(1). Under the terms of the bond, the importer agrees to export or destroy the merchandise within a specified time (usually a year) or pay liquidated damages, generally equal to twice the normal duty. Titanium Metals Corp. v. United States, 19 CIT __, Slip Op. 95-153 at 5 (Aug. 30, 1995)(citing C.S.D. 93-21, 27 Cust. Bull. & Decs. 448, 450 (1992)(Customs' practice is to include estimated antidumping or countervailing duties in the amount of the temporary importation bond). The TIB entries of imports of titanium sponge during the period of investigation qualified for duty free treatment under the TIB procedures because they were destined for further processing into downstream products that were required to be exported within one year. See Harmonized Tariff Schedule of the United States, USITC Pub. 2690, Ch. 98, Subch. XIII, U.S. Notes at 98-39 (1998); 19 C.F.R. §§ 10.31-10.40.

[107] Questionnaire responses indicate that total imports of titanium sponge from Kazakhstan and Russia under TIB were: *** CR/PR at Table D-1. TIB imports from Kazakhstan were: *** There were *** non-TIB subject imports from Kazakhstan during the period of investigation. TIB imports from Russia were: *** Non-TIB subject imports from Russia were: *** Id. We note that there also were TIB imports from Japan during the period of investigation, but

imports are not covered by the outstanding antidumping duty orders, and thus are not subject imports for purposes of the Commission's determinations.[108]

While we conclude that TIB imports are not subject imports, we have considered the extent and competitive effects of TIB entries as a condition of competition and as a relevant economic factor under 19 U.S.C. § 1675a(a)(4), as discussed below. In particular, we considered TIB imports as a partial indicator of the likely increase in the volume of titanium sponge that would be exported to the U.S. market within the reasonably foreseeable future if the orders are revoked. Moreover, we also note that about *** of the TIB imports from Russia and Kazakhstan have been purchased during the period of investigation by the two domestic producers of titanium sponge and their affiliated companies.[109]

C. Likely Cumulated Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether such imports would be significant either in absolute terms or relative to production or consumption in the United States.[110] In doing so, the Commission must consider "all relevant economic factors," including four discrete 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 in 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.[111]

Cumulated subject imports of titanium sponge from Japan and Russia increased in absolute terms from 1995 to 1997, with substantial fluctuations between years,[112] and increased to a lesser degree relative to consumption[113] due to substantial increases in U.S. apparent consumption for the same period.[114] We note

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these imports were produced by a Japanese producer, Sumitomo Sitix, which is not subject to the antidumping duty order against Japan.

[108] Commerce has determined that only entries for consumption are considered merchandise subject to an antidumping duty order. In Titanium Metals Corp. v. United States, 19 CIT __, Slip Op. 95-153 at 6 (Aug. 30, 1995), reprinted in 29 Cust. Bull. & Dec. 91 (Sept. 27, 1995)(the court held that "the statutory language is clear that the assessment of antidumping/countervailing duties is restricted to merchandise 'entered, or withdrawn from warehouse, for consumption.'") Since TIB imports are not entered for consumption, they are not subject imports. The CIT has upheld this determination, which was recently reaffirmed by Commerce in the context of a 751 annual review determination involving titanium sponge. Titanium Sponge From Ukraine; Final Results of Antidumping Duty Administrative Review, 61 Fed. Reg. 6350 (Feb. 20, 1996). See also Clad Steel Plate From Japan, Inv. No. 731-TA-739 (Final), USITC Pub. 2972 at 14 and 15, notes 79-81 (June 1996).

[109] Commissioner Crawford does not cumulate imports of titanium sponge from the subject countries and, thus, she does not join the remainder of this opinion. See Views of Commissioner Carol T. Crawford, infra.

[110] 19 U.S.C. § 1675a(a)(2).

[111] 19 U.S.C. § 1675(a)(2)(A)-(D).

[112] Nearly all empirical data pertaining to both the domestic industry and the subject imports in this investigation are confidential. The quantity of cumulated subject imports declined from *** in 1995 to *** in 1996 and increased to *** in 1997. The value of these imports declined from *** in 1995 to *** in 1996 and then increased to *** in 1997. CR/PR at Table IV-1.

[113] Measured by quantity, subject import market penetration (with TIB imports excluded from apparent consumption) was *** in 1995, *** in 1996, and *** in 1997. CR/PR at Table IV-2.

[114] U.S. apparent consumption, excluding TIB imports, increased from *** in 1997. CR/PR at Table IV-2.

that the two domestic titanium sponge producers imported or purchased almost *** of the subject imports in 1997.[115]

While we have determined that imports under TIB are not subject imports, we have considered, as a relevant economic factor pursuant to 19 U.S.C. § 1675a(a)(4), such imports as an indicator of the ability of exporters in subject countries to supply merchandise to the U.S. market.[116] In contrast to subject imports, cumulated TIB imports from subject sources in Japan, Kazakhstan, and Russia have declined steadily from 1995 to 1997.[117] Moreover, total cumulated imports of titanium sponge from subject sources (i.e., combined cumulated subject imports and TIB imports from subject sources) in absolute terms have had a stable presence in the U.S. market relative to the substantial increases in demand and the significant increases in domestic shipments in recent years.[118] Consequently, the U.S. market share of total cumulated imports of titanium sponge from subject sources has declined.[119] Moreover, while the domestic industry's market share by quantity and value also declined during this period, the market share of imports of titanium sponge that are from non-subject sources (e.g., certain imports from Japan not subject to an order) increased sharply.[120]

For the reasons discussed below, we anticipate that the volume of imports of titanium sponge is unlikely to increase substantially from present levels (i.e., combined cumulated subject imports and TIB imports from subject sources) if the order is revoked. We conclude that the likely volume of imports would not be significant.[121] [122] We note in this regard that domestic titanium sponge producers will continue to account for a significant share of the imports of titanium sponge due to long-term arrangements to import or purchase titanium sponge from subject sources.

Our examination of the factors specified in 19 U.S.C. § 1675a(a)(2) indicates that, even if subject producers in Japan, Kazakhstan, and Russia wished to increase their exports to the United States, they would have limited ability to do so. Combined titanium sponge production capacity for subject producers in these three countries has increased only modestly during the period examined. Between 1995 and 1997, the

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[115] In 1997, Timet and Oremet imported non-TIB subject imports and purchased from subject sources a total of *** of total subject imports. Calculated from CR/PR at Tables III-1 and IV-1.

[116] For example, we note that TIB imports from Russia have declined from 1996 to 1997 as importers of Russian titanium sponge have obtained dumping margins of zero and subject (non-TIB) imports from Russia increased. However, we note that it is not necessarily the case that all TIB imports would shift to imports for consumption if the orders are revoked, since some imports of Japanese producer Sumitomo's product currently enter under TIB even though imports from this producer are not subject to an order. See CR/PR at Table D-1.

[117] Cumulated TIB imports of titanium sponge from subject sources were *** in 1997. The value of these imports was *** in 1995, *** in 1996, and *** in 1997. CR/PR at Table D-1.

[118] Total cumulated imports of titanium sponge from subject sources were *** in 1997 for a *** increase from 1995 to 1997. CR/PR at Table D-2. Total U.S. apparent consumption was *** increase from 1995 to 1997. Id. In addition, U.S. producers' shipments of titanium sponge increased from *** in 1997, for an increase of ***. Id.

[119] Measured by quantity, market penetration by imports of subject merchandise was *** in 1997. CR/PR at Table D-3. Measured by value, market penetration by imports of subject merchandise was *** in 1997. Id.

[120] CR/PR at Table D-3. Measured by quantity, the domestic producers' market penetration (with TIB imports included in apparent consumption) was *** in 1995, *** in 1996, and *** in 1997. Measured by quantity, the market penetration for imports from non-subject sources (including TIB imports) was *** in 1995, *** in 1996, and *** in 1997. Id.

[121] Chairman Bragg notes that in her analysis, whether a particular volume of imports is “significant” will generally be a function of a variety of factors, unique to each investigation. With regard to the instant investigations, Chairman Bragg finds that the volume effects, if any, of revocation of the orders will not lead to the continuation or recurrence of material injury to the domestic industry in a reasonably foreseeable time.

[122] In making this finding in these reviews, Vice Chairman Miller has taken into account the domestic producers' strong operating performance at the current level of titanium sponge imports and the conditions of competition for this industry.

increase in capacity was only *** percent.[123] Combined capacity utilization was high in 1997 and is projected to be higher in 1998, reaching *** percent in 1997, and is projected to be *** percent in 1998.[124] These figures indicate that important constraints exist on the ability of subject producers to increase exports to the United States by increasing production.[125] [126]

Additionally, there is no indication of any recent buildup in inventory levels of imports of subject merchandise which would indicate a likelihood of significantly increased imports. Since 1995, relative levels of inventories of titanium sponge in Japan, Kazakhstan, and Russia of subject merchandise declined or have remained generally stable, and inventory levels of the subject merchandise in the United States have increased modestly in absolute terms and declined on a relative basis.[127]

The record also indicates that subject producers from Japan, Kazakhstan, and Russia export primarily to markets other than the United States and that worldwide demand is strong.[128] The existence of such significant home and third-country export markets indicates few practical barriers to the importation of titanium sponge from subject producers into countries other than the United States. It also indicates no disproportionate reliance on exports to the United States market. Additionally, the presence of significant and increasing volumes of non-subject imports, particularly from a Japanese exporter not subject to an order, are likely to limit any increase of imports of titanium sponge from subject sources.

Finally, the record does not support a conclusion that revocation of the antidumping duty orders would lead titanium sponge producers to shift production equipment used for other products to production of titanium sponge. The record indicates that production equipment can not be shifted between use for production of titanium sponge and other products.[129]

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[123] Calculated from CR/PR at Tables VII-1, VII-2, and VII-3. Combined production capacity for subject sources was *** in 1998. Id. The subject Japanese producer accounted for *** in production capacity in 1997. CR/PR at Table VII-1.

[124] Calculated from CR/PR at Tables VII-1, VII-2, and VII-3. Production capacity utilization varied but increased during the period of investigation for all subject producers. Japanese subject capacity utilization was *** in 1998. CR/PR at Table VII-1. Kazakh subject capacity utilization was *** in 1998. CR/PR at Table VII-2. Russian subject capacity utilization was *** in 1998. CR/PR at Table VII-3.

[125] RMI/Avisma reported that Avisma is producing titanium sponge at very close to its practical limit. RMI/Avisma's Posthearing Brief at 11-14. Toho contended that it is not in a position to significantly increase its volume of imports to the U.S. market because it has operated at *** for three years and, thus, poses no threat to the U.S. industry. Toho's Prehearing Brief at 9 and 10.

[126] The domestic producers argue, based on a U.S. Geological Survey, that Avisma and UKTMP have each understated their capacity by approximately 10,000 metric tons. However, the USGS estimates are based on a costly and time-consuming (over one year) refurbishment of moth-balled facilities and “extreme” operating conditions, which are not commercially feasible for any length of time. CR at II-13; PR at II-6 and II -7.

[127] The ratio of inventories of subject titanium sponge in Japan to shipments by the subject Japanese producer decreased from *** percent in 1995 to *** percent in 1997, and is projected to decline to *** percent in 1998. CR/PR at Table VII-1. The ratio of inventories of subject titanium sponge in Kazakhstan to shipments by the Kazakh producer decreased from *** percent in 1995 to *** percent in 1997, and is projected to increase to *** percent in 1998. CR/PR at Table VII-2. The ratio of inventories of subject titanium sponge in Russia to shipments by the Russian producer decreased from *** percent in 1995 to *** percent in 1997, and is projected to decrease to *** percent in 1998. CR/PR at Table VII-3. Cumulated inventories of subject merchandise in the United States increased from *** in 1997. The ratio of inventories of subject merchandise to total imports increased from *** percent in 1997. CR/PR at Table VII-5.

[128] CR/PR at Tables VII-1 to VII-3.

[129] Commission questionnaires responses from ***.

In sum, if the antidumping duty orders on titanium sponge from Japan, Kazakhstan, and Russia are revoked, we conclude that the likely volume of imports would not be substantially greater than current volumes (including TIB import volumes). For the reasons discussed above, we find that the likely volume of titanium sponge imports would not be significant.[130]

D. Likely Price Effects of Subject Imports from Japan, Kazakhstan, and Russia

In evaluating the likely price effects of subject imports, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and if the subject imports are likely to enter the United States at prices that would otherwise have a significant depressing or suppressing effect on the price of domestic like products.[131]

As discussed above, the domestic industry sold only about *** of its total production from 1995 to 1997 on the open market.[132] Thus, any changes in prices of imported product would appear to be able to have little direct effect on the prices of the domestic like product or, more importantly, impact on the domestic industry. Moreover, this market condition is not likely to change, since the domestic industry has expressed no plans to increase its open market sales by expanding production capacity or captively consuming less, even with the antidumping duty orders in place.[133]

We have analyzed the pricing data gathered by the Commission in these reviews in an effort to evaluate likely future pricing practices if the orders are revoked. It is difficult, however, to draw any firm conclusions about current market pricing. The price comparisons that are possible between the limited open market sales of domestically-produced titanium sponge and importers' sales of subject titanium sponge from Japan and Russia are not conclusive because of differences in product grades/quality or sales terms. The pricing information for titanium sponge in these investigations does not distinguish between grades or quality of sponge or between contract or spot sales. Thus, price trends and price comparisons were considered with caution.[134]

We think it is unlikely that import pricing would decrease significantly if the orders are revoked. First, the record indicates that aggregate U.S. demand for titanium sponge ranges from relatively inelastic to

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[130] Chairman Bragg reiterates her views as expressed in footnote 121. She additionally notes that in the prior investigations, in contrast to these reviews, imports of subject merchandise were increasing at a greater rate than U.S. apparent consumption throughout the investigation for the 1968 case and in the latest period of the investigation in the 1984 case. TC Pub. 255 at 4 and USITC Pub. 1600 at 5 and 8, and A-11 and A-36.

[131] 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.

[132] CR at V-8, n.15; PR at V-5, n.15.

[133] 19 U.S.C. § 1675a(a)(1). In fact, the domestic industry's open market sales as a share of their production have declined with the orders in place.

[134] CR/PR at Tables V-I to V-4; CR at V-6, n. 10; PR at V-4, n. 10. In any event, the domestic producers have not argued that titanium sponge imports currently are having significant price effects. Instead, they argue that in the absence of the orders, import prices would decrease significantly. In support of their conclusion, they argue that in the last trough in the business cycle, 1991-1992, the former Soviet producers were selling sponge in the U.S. market under TIB for approximately $1-2 per pound. Timet's Posthearing Brief at 11; Timet's Prehearing Brief at 13-17; Oremet's Posthearing Brief at 12; Oremet's Prehearing Brief at 35-40; Tr. at 27-28. Compare TMC's Prehearing Brief at 52-58; TMC's Posthearing Brief at 9-11; RMI/Avisma's Prehearing Brief at 26-27; UKTMP's Posthearing Brief at 14-15; and Toho's Prehearing Brief at 10-12.

somewhat elastic in the short run to changes in price.[135] That is, modest reductions in the price of titanium sponge would be unlikely to stimulate significant additional demand for the product. Second, demand in the U.S. market currently exceeds, and is projected to continue to exceed for the reasonably foreseeable future, the domestic supply of titanium sponge, as discussed above. The constraints on significant increases in import volumes discussed above also would militate against price declines for the titanium sponge imports. Thus, it is not likely that import prices in a market of short supply would decline. Third, a substantial amount of titanium sponge imports will enter the U.S. market under long-term contracts, which suggests that prices are not likely to decrease significantly.

We therefore conclude that if the orders are revoked, titanium sponge imports from Japan, Kazakhstan, and Russia are not likely to have significant price effects on the domestic industry.

E. Likely Impact of Cumulated Subject Imports

In evaluating the likely impact of imports of subject merchandise, the Commission is directed to consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more enhanced version of the domestic like product.[136] These factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive for the industry.[137]

As instructed by the statute, in evaluating the likely impact of subject imports, we have considered the current state of the domestic titanium sponge industry, and whether the industry is vulnerable to material injury. We have also considered the extent to which any improvement in the state of the industry is related to the antidumping duty orders at issue.

The record does not support the conclusion that the domestic industry is vulnerable to material injury. Virtually all domestic industry performance indicators increased from 1995 to 1997. Production steadily increased from 1995 to 1997.[138] Capacity utilization followed a similar pattern.[139] Employment

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[135] See CR at II-25, PR at II-13. While titanium scrap may be substituted for sponge in the production of ingot, generally, the stricter the requirements for purity in the end use product, such as aircraft engine parts, the less scrap metal may be substituted for sponge. CR at II-20; PR at II-10. On average, titanium sponge represents a very small percentage of the price of the final product; however, sponge represents a greater percentage in several emerging applications, such as golf clubs. CR at II-19; PR at II-9 and II-10. The price elasticity of demand tends to be smaller the fewer the substitutes for titanium sponge and the downstream titanium mill products, and the more limited the share of titanium in the final product. Id.

[136] 19 U.S.C. § 1675a(a)(4).

[137] 19 U.S.C. § 1675a(a)(4).

[138] Domestic production increased from *** in 1997, for an increase of *** for the same period. CR/PR at Table III-2.

[139] Capacity utilization was *** in 1997. CR/PR at Table III-2.

steadily increased from 1995 to 1997.[140] The domestic producers' titanium products operations ***.[141] Inventory as a share of shipments steadily declined during the period of investigation.[142] [143]

As discussed earlier, the domestic producers argue that the titanium industry is about to experience a sharp decline in the business cycle. Moreover, they assert that in the absence of the orders, the volume of titanium sponge imports would increase, and the prices for such imports would decline, significantly. They argue that if prices were to drop below their costs of production on a sustained basis then they would have no choice but to reduce their domestic production of sponge (which, in turn, would lead to declines in all other major economic factors the Commission must consider) in order to remain competitive in their downstream titanium metal operations.[144]

We do not think the domestic industry is likely to face the "make or buy" dilemma in the reasonably foreseeable future. As discussed above, we think that demand is likely to remain strong. Indeed, all forecasts offered by parties indicated that demand for titanium products is likely to be higher in 2001 than 1997 when the domestic producers could not supply their own needs let alone provide sponge for merchant market sales. The Boeing forecast projects stronger demand through 2002. Thus, we see little likelihood that the domestic producers would replace their domestic production with imports in the reasonably foreseeable future. Rather, we think it is likely that imports will continue to satisfy demand that cannot be met by the domestic producers.

For the foregoing reasons, we find that the domestic titanium sponge industry is not vulnerable to material injury if the orders are revoked. We also conclude that titanium sponge imports are not likely to have a significant adverse impact on the domestic industry if the orders are revoked.

F. Ukraine

As discussed above with regard to the cumulation of Ukraine imports with other subject imports, there have been *** of titanium sponge from Ukraine during the period of investigation. Moreover, the evidence indicates that significant imports from Ukraine of titanium sponge are not likely within a reasonably foreseeable time. Consequently, any imports from Ukraine of titanium sponge are not likely to have significant price effects or a significant adverse impact on the domestic industry within the reasonably

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[140] Employment of production workers increased from *** in 1997. CR/PR at Table III-5.

[141] The domestic producers' overall titanium products operations *** in 1997. *** in 1997. Moreover, cost of good sold as a share of net sales *** in 1997. CR/PR at Table VI-5.

The domestic producers of titanium sponge, which also are integrated titanium products producers, do not keep separate profitability data for their titanium sponge operations. While data was calculated for separate titanium sponge operations for the domestic industry, due to the limited number of open market sales of titanium sponge by these producers and the diversity of price, the results of operations only for titanium sponge may not be a reliable indicator of profitability. CR at VI-4 and VI-7; PR at VI-2. We note that the data regarding titanium sponge operations *** than 1995. CR/PR at Table VI-2.

[142] The U.S. producers' end-of- period inventories as a share of their total shipments declined from *** in 1997. CR/PR at Table III-4.

[143] Based on the record, Chairman Bragg finds that the industry has increasingly insulated itself from market forces by both focusing on supplying internal demands and relying more on long-term contracts.

[144] Citing the Commission's determination in Tungsten Ore, both domestic producers charged that if titanium sponge "becomes available at prices below domestic production costs, [it] would place the domestic sponge producers in a 'make or buy' dilemma" where they would have little choice but to reduce their own sponge production and import the cheaper foreign product to ensure the competitiveness of its downstream operations. Oremet's Posthearing Brief, Exhibit 7, Response to Chairman Miller's question regarding Tungsten Ore case at 2; Oremet's Prehearing Brief at 30; Timet's Posthearing Brief at 4 and 5; Tr. at 23, 36, and 58.

foreseeable future. Thus, we determine that revocation of the antidumping duty order against Ukraine would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on titanium sponge from Japan, Kazakhstan, Russia, and Ukraine would not be likely to lead to continuation or recurrence of material injury to the domestic titanium sponge industry within a reasonably foreseeable time.

VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information in the record, I determine that revocation of the antidumping duty orders concerning titanium sponge from Japan, Kazakhstan, Russia, and Ukraine is not likely to lead to continuation or recurrence of material injury to an industry in the United States. I join my colleagues in finding a single like product, in the definition of the domestic industry, and in the discussion of the conditions of competition in the U.S. market. However, I do not concur in my colleagues' decision to cumulate the subject imports from all four countries.

The statute provides that cumulation in this changed circumstances review is within the Commission's discretion.[1] Because the facts and antidumping margins differ among the respective orders, I decline to exercise my discretion to cumulate the subject imports from the four countries.[2]

The statute requires the Commission to determine "whether revocation of an order . . . would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[3] In making its determination, the statute directs the Commission to consider the likely volume, price effect, and impact of the subject imports on the domestic industry if an order is revoked.[4] I have considered and taken into account all of the factors required by the statute in reaching my determination. My analysis with respect to the subject imports from each country follows.

I. REVOCATION OF THE ORDER ON TITANIUM SPONGE FROM JAPAN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Volume of the Subject Imports

The volume of subject imports of titanium sponge from Japan[5] increased from *** metric tons in 1995 to *** metric tons in 1996 and then to *** metric tons in 1997. The value of subject imports from Japan was *** in 1995, *** in 1996, and nearly *** in 1997.[6] The market share on the basis of quantity increased from *** percent in 1995 to *** percent in 1996 and to *** percent in 1997. By value, the market share of subject imports from Japan increased from *** percent in 1995 to *** percent in 1996, and to ***

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[1] 19 U.S.C. § 1675a(a)(7).

[2] Even though cumulation is discretionary, the statute requires that the subject imports must be likely to "compete with each other and with domestic like products" for the Commission to cumulate. Id. Less than *** percent of domestic production is sold in the open market, and thus there is virtually no competition between the domestic product and the imports. Consequently, even if the facts in these cases were different and could support a decision to cumulate, the competition requirement in the statute would preclude cumulation.

[3] 19 U.S.C. § 1675a(a).

[4] 19 U.S.C. § 1675a(a)(1); The legislative history indicates that "the Commission will engage in a counter-factual analysis: it must decide the likely impact in the foreseeable future of an important change in the status quo – the revocation [of the order] . . . ." SAA at 884.

[5] Only one Japanese producer of titanium sponge, Toho, remains subject to the order.

[6] Table IV-1.

percent in 1997.[7] Nonsubject imports from Japan[8] are a major presence in the market, holding a market share of *** percent by quantity and *** percent by value in 1997.[9]

While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of their price effects and impact. Based on the market share of the subject imports from Japan, the conditions of competition in the U.S. market, and the lack of significant price effects or impact on the domestic industry as discussed below, I find that the likely volume of subject imports of titanium sponge from Japan would not be significant if the order is revoked.

B. Price Effects of the Subject Imports

To determine the effect of subject imports on domestic prices, I evaluate whether domestic prices would be likely to decrease if the order is revoked. In doing so, I first evaluate the likely effect of revocation on the prices for subject imports.

Since 1991, subject imports from Japan have been subject to an antidumping margin of 0.00 percent.[10] If the order is revoked, it seems likely that prices for subject imports would not change, because they have been subject to a zero margin for the last six years. Furthermore, given the current and projected strong demand for titanium sponge, it does not seem likely that there is any commercial incentive to reduce prices of subject imports. Therefore, I find that prices for subject imports are not likely to decrease significantly if the order is revoked. Absent a reduction in prices, there would be no shift in demand toward the subject imports from Japan, and thus no shift in demand away from the domestic product if the order is revoked. Since there likely would be no shift in demand away from the domestic product if the order is revoked, revocation of the order would have no effect on domestic prices.[11] Consequently, I find that the subject imports are not likely to have significant effects on domestic prices if the order is revoked.

C. Impact of the Subject Imports

To assess the likely impact of the subject imports on the domestic industry, I consider all of the relevant economic factors.[12] I evaluate the effect on domestic prices, sales, and overall revenues that is likely to occur if an order is revoked. Understanding the impact of revocation on the domestic industry's prices, sales, and overall revenues is critical, because the impact on the other industry indicators (e.g. employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues. These factors

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[7] Table IV-2.

[8] Id. Sumitomo Sitix ("Sumitomo")was the only supplier of nonsubject imports from Japan between 1995 and 1997. Sumitomo was subject to the original 1984 antidumping dumping order until 1992, when the order was revoked with respect to it. Since that time, Sumitomo's imports have been nonsubject imports.

[9] Tables IV-1 and IV-2. Nonsubject imports from countries other than Japan are also present in the market, but not in significant amounts. Id.

[10] Table I-1. This margin is based on the Department of Commerce's most recent administrative review. Toho, the sole remaining Japanese producer subject to the antidumping order, has had zero margins in its last three administrative reviews conducted from November 1988 through October 31, 1991. Japan Posthearing Brief at 1.

[11] As discussed previously, less than *** percent of domestic production is sold in the open market, and thus there is virtually no competition between the domestic product and the subject imports. Therefore, changes in the prices for subject imports are not likely to have any effect on domestic prices. In fact, prices for the domestic product do not exist in any commercially meaningful sense, and therefore, it is not possible for subject imports to have any significant effects on domestic prices.

[12] 19 U.S.C. § 1675a(a)(4).

together either encompass or reflect the volume and price effects of the subject imports, and so I gauge the impact of the revocation of the order through these effects.

As discussed above, revocation of the order is not likely to lead to a shift in demand toward the subject imports from Japan. Therefore, revocation of the order would not cause a shift in demand away from the domestic product. Absent a shift in demand away from the domestic product, there likely would be no effect on the domestic industry's output, sales, and overall revenues. Consequently, revocation of the order is not likely to have a significant impact on the domestic industry.

D. Conclusion

Based on the foregoing analysis, I find that revocation of the order is not likely to have significant effects on domestic prices or a significant impact on the domestic industry. Consequently, I determine that revocation of the order on titanium sponge from Japan is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

II. REVOCATION OF THE ORDER ON TITANIUM SPONGE FROM RUSSIA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Volume of the Subject Imports

The volume of subject imports of titanium sponge from Russia decreased from *** metric tons in 1995 to *** metric tons in 1996 and then increased to *** metric tons in 1997. The value of subject imports from Russia was *** in 1995, *** in 1996, and *** in 1997.[13] Their market share on the basis of quantity decreased from *** percent in 1995 to *** percent in 1996 and then increased to *** percent in 1997. By value, the market share of subject imports from Russia decreased from *** percent in 1995 to *** percent in 1996, and then increased to *** percent in 1997.[14]

While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of their price effects and impact. Based on the market share of the subject imports from Russia, the conditions of competition in the U.S. market, and the lack of significant price effects or impact on the domestic industry as discussed below, I find that the likely volume of subject imports of titanium sponge from Russia would not be significant if the order is revoked.

B. Price Effects of the Subject Imports

To determine the effect of subject imports on domestic prices, I evaluate whether domestic prices would be likely to decrease if the order is revoked. In doing so, I first evaluate the likely effect of revocation on the prices for subject imports.

There is only one titanium sponge producer in Russia, and the country-wide antidumping margin for the subject imports is 83.96 percent. However, two importers have received zero antidumping margins in the most recent administrative review completed by the Department of Commerce,[15] and over 99 percent[16] of

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[13] Table IV-1.

[14] Table IV-2.

[15] Table I-1.

[16] Table D-1 and questionnaire responses.

subject imports from Russia currently enter the market at zero antidumping margins.[17] If the order is revoked, it seems likely that prices for subject imports would not change, because they are subject to a zero antidumping margin. Furthermore, given the current and projected strong demand for titanium sponge, it does not seem likely that there is any commercial incentive to reduce prices of subject imports. Therefore, I find that prices for subject imports are not likely to decrease significantly if the order is revoked. Absent a reduction in prices, there would be no shift in demand toward the subject imports from Russia, and thus no shift in demand away from the domestic product if the order is revoked.

The unique facts of this case further demonstrate that there likely would be no shift in demand away from the domestic product if the order is revoked. The domestic industry is a substantial consumer of Russian titanium sponge. Titanium sponge from Russia is imported both as TIB imports and as non-TIB imports. As discussed previously, TIB imports are not "subject imports," and thus no antidumping duties are imposed on these imports, while non-TIB imports are subject imports. In 1995 TIB imports from Russia were *** metric tons while non-TIB subject imports were *** metric tons. In 1997, when non-TIB subject imports were entering at zero antidumping margins, the relationship was basically reversed: there were *** metric tons of TIB imports and *** metric tons of non-TIB imports.[18]

In 1997, the domestic industry consumed *** of the TIB imports from Russia and either imported or purchased *** percent of the non-TIB subject imports from Russia.[19] In other words, the domestic industry has been consuming a significant majority of the titanium sponge imported from Russia, without paying antidumping duties, while the order has been in place. Thus, revoking the order is not likely to alter the status quo with respect to the majority of titanium sponge imported from Russia. That is, the domestic industry is in the same position to consume titanium sponge from Russia with the order in place as with the order revoked. Therefore, any shift in demand away from the domestic product would have to occur as a result of a shift in demand toward the remaining subject imports from Russia that are not consumed by the domestic industry. As discussed above, the zero margins and lack of commercial incentive to reduce prices for subject imports indicate that demand is not likely to shift toward these subject imports and away from the domestic product if the order is revoked.[20] Since there likely would be no shift in demand away from the domestic product if the order is revoked, revocation of the order would have no effect on domestic prices.[21] Consequently, I find that the subject imports are not likely to have significant effects on domestic prices if the order is revoked.

C. Impact of the Subject Imports

To assess the likely impact of the subject imports on the domestic industry, I consider all of the relevant economic factors.[22] I evaluate the effect on domestic prices, sales, and overall revenues that is likely

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[17] The facts in this case are analytically the same as in the determination reviewed by the Court of Appeals for the Federal Circuit in Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

[18] Table D-1.

[19] Calculated from Table IV-1 and questionnaire responses.

[20] In addition, RMI's *** indicates that demand for these imports is not likely to be affected significantly by the revocation of the order. RMI and Russian Posthearing Brief at 4 and 12.

[21] As discussed previously, less than *** percent of domestic production is sold in the open market, and thus there is virtually no competition between the domestic product and the subject imports. Therefore, changes in the prices for subject imports are not likely to have any effect on domestic prices. In fact, prices for the domestic product do not exist in any commercially meaningful sense, and therefore, it is not possible for subject imports to have any significant effects on domestic prices.

[22] 19 U.S.C. § 1675a(a)(4).

to occur if an order is revoked. Understanding the impact of revocation on the domestic industry's prices, sales, and overall revenues is critical, because the impact on the other industry indicators (e.g. employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues. These factors together either encompass or reflect the volume and price effects of the subject imports, and so I gauge the impact of the revocation of the order through these effects.

As discussed above, revocation of the order is not likely to lead to a shift in demand toward subject imports from Russia. Therefore, revocation of the order would not cause a shift in demand away from the domestic product. Absent a shift in demand away from the domestic product, there likely would be no effect on the domestic industry's output, sales, and overall revenues. Consequently, revocation of the order is not likely to have a significant impact on the domestic industry.

D. Conclusion

Based on the foregoing analysis, I find that revocation of the order is not likely to have significant effects on domestic prices or a significant impact on the domestic industry. Consequently, I determine that revocation of the order on titanium sponge from Russia is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

III. REVOCATION OF THE ORDER ON TITANIUM SPONGE FROM KAZAKHSTAN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Volume of the Subject Imports

All imports of titanium sponge from Kazakhstan are TIB imports, and thus there were no subject imports from Kazakhstan from 1995 to 1997. If the order is revoked, it is possible that TIB imports could enter as "subject imports," and thus I have considered their volume in my analysis. The volume of TIB imports, which are nonsubject imports, of titanium sponge from Kazakhstan increased from *** metric tons in 1995 to *** metric tons in 1996 and then decreased to *** metric tons in 1997. The value of TIB imports from Kazakhstan was *** in 1995, *** in 1996, and *** in 1997.[23]

While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of their price effects and impact. Based on the conditions of competition in the U.S. market and the lack of significant price effects or impact on the domestic industry as discussed below, I find that the likely volume of subject imports of titanium sponge from Kazakhstan would not be significant if the order is revoked.

B. Price Effects of the Subject Imports

To determine the effect of subject imports on domestic prices, I evaluate whether domestic prices would be likely to decrease if the order is revoked. In doing so, I first evaluate the likely effect of revocation on the prices for subject imports.

[23] Table D-1.

The country-wide antidumping margin for subject imports from Kazakhstan is 83.96 percent based on Commerce's most recent administrative review.[24] As discussed above, no subject imports entered the market from 1995 to 1997. It is possible that some of the TIB imports from Kazakhstan might enter as "subject imports" if the order is revoked. Even so, the subject imports are not likely to have significant effects on domestic prices.

Demand for imports of titanium sponge from Kazakhstan is driven by the domestic industry. The domestic industry consumed *** of the TIB imports from Kazakhstan, without paying antidumping duties, while the order has been in place.[25] Thus, revoking the order will not alter the status quo, that is, the domestic industry is in the same position to consume titanium sponge from Kazakhstan with the order in place as with the order revoked. Furthermore, one domestic producer has entered into a contract from 1998 to 2007 to purchase up to 10,000 metric tons[26] per year from the sole producer in Kazakhstan. There is no evidence that revoking the order is likely to affect this long term contract. For these reasons, the demand for titanium sponge from Kazakhstan likely will not be affected by the revocation of the order, and thus prices for titanium sponge from Kazakhstan are not likely to decrease significantly if the order is revoked. Consequently, I find that prices for subject imports are not likely to decrease significantly if the order is revoked. Absent a reduction in prices, there would be no shift in demand toward the subject imports from Kazakhstan, and thus no shift in demand away from the domestic product if the order is revoked. Since there likely would be no shift in demand away from the domestic product if the order is revoked, revocation of the order would have no effect on domestic prices.[27] Consequently, I find that the subject imports are not likely to have significant effects on domestic prices if the order is revoked.

C. Impact of the Subject Imports

To assess the likely impact of the subject imports on the domestic industry, I consider all of the relevant economic factors.[28] I evaluate the effect on domestic prices, sales, and overall revenues that is likely to occur if an order is revoked. Understanding the impact of revocation on the domestic industry's prices, sales, and overall revenues is critical, because the impact on the other industry indicators (e.g. employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues. These factors together either encompass or reflect the volume and price effects of the subject imports, and so I gauge the impact of the revocation of the order through these effects.

As discussed above, revocation of the order is not likely to lead to a shift in demand toward subject imports from Kazakhstan. Therefore, revocation of the order would not cause a shift in demand away from the domestic product. Absent a shift in demand away from the domestic product, there likely would be no effect on the domestic industry's output, sales, and overall revenues. Consequently, revocation of the order is not likely to have a significant impact on the domestic industry.

D. Conclusion

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[24] Table I-1.

[25] CR at VII-5, n.10; PR at VII-2, n.8.

[26] Tr. at 116 and TMC Prehearing Brief at 39.

[27] As discussed previously, less than *** percent of domestic production is sold in the open market, and thus there is virtually no competition between the domestic product and the subject imports. Therefore, changes in the prices for subject imports are not likely to have any effect on domestic prices. In fact, prices for the domestic product do not exist in any commercially meaningful sense, and therefore, it is not possible for subject imports to have any significant effects on domestic prices.

[28] 19 U.S.C. § 1675a(a)(4).

Based on the foregoing analysis, I find that revocation of the order is not likely to have significant effects on domestic prices or a significant impact on the domestic industry. Consequently, I determine that revocation of the order on titanium sponge from Kazakhstan is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

IV. REVOCATION OF THE ORDER ON TITANIUM SPONGE FROM UKRAINE IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Volume of the Subject Imports

From 1995 to 1997, there have been virtually no imports of titanium sponge from Ukraine.[29] No imports are projected in 1998.[30] Based on the lack of past and projected subject imports, the conditions of competition in the market, and the lack of significant price effects or impact on the domestic industry as discussed below, I find that the volume of subject imports from Ukraine would not be significant if the order is revoked.

B. Price Effects of the Subject Imports

To determine the effect of subject imports on domestic prices, I evaluate whether domestic prices would be likely to decrease if the order is revoked.

The country-wide dumping margin for subject imports from Ukraine is 83.96 percent based on Commerce's most recent administrative review.[31] The sole producer in Ukraine had no production capacity in 1996 or 1997, and thus no production in those years. Production capacity and production are both projected to be only *** metric tons in 1998.[32] Over time, the Ukrainian producer plans to attain the capacity to produce *** metric tons and has already received requests from non-U.S. purchasers for four times its ultimate capacity.[33] Therefore, it is not likely that a significant volume of subject imports, if any, is likely to enter the U.S. market if the order is revoked, and thus a significant shift in demand toward subject imports from Ukraine is not likely. Consequently, it is not likely that there will be a shift in demand away from the domestic product if the order is revoked. Since there likely would be no shift in demand away from the domestic product if the order is revoked, revocation of the order would have no effect on domestic prices.[34] Consequently, I find that any future subject imports would not be likely to have significant effects on domestic prices if the order is revoked.

C. Impact of the Subject Imports

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[29] Tables IV-1 and D-1. There has been only a minuscule amount, less than *** metric tons, of TIB imports of titanium sponge from Ukraine.

[30] Table VII-4.

[31] Table I-1.

[32] Table VII-4.

[33] CR at VII-9; PR at VII-2; Tr. at 167.

[34] As discussed previously, less than *** percent of domestic production is sold in the open market, and thus there is virtually no competition between the domestic product and the subject imports. Therefore, changes in the prices for subject imports are not likely to have any effect on domestic prices. In fact, prices for the domestic product do not exist in any commercially meaningful sense, and therefore, it is not possible for subject imports to have any significant effects on domestic prices.

To assess the likely impact of the subject imports on the domestic industry, I consider all of the relevant economic factors.[35] I evaluate the effect on domestic prices, sales, and overall revenues that is likely to occur if an order is revoked. Understanding the impact of revocation on the domestic industry's prices, sales, and overall revenues is critical, because the impact on the other industry indicators (e.g. employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues. These factors together either encompass or reflect the volume and price effects of the subject imports, and so I gauge the impact of the revocation of the order through these effects.

As discussed above, revocation of the order is not likely to lead to a shift in demand toward subject imports from Ukraine. Therefore, revocation of the order would not cause a shift in demand away from the domestic product. Absent a shift in demand away from the domestic product, there likely would be no effect on the domestic industry's output, sales, and overall revenues. Consequently, revocation of the order is not likely to have a significant impact on the domestic industry.

D. Conclusion

Based on the foregoing analysis, I find that revocation of the order is not likely to have significant effects on domestic prices or a significant impact on the domestic industry. Consequently, I determine that revocation of the order on titanium sponge from Ukraine is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

[35] 19 U.S.C. § 1675a(a)(4).