

UNITED STATES INTERNATIONAL TRADE COMMISSION

BARIUM CHLORIDE FROM CHINA
Investigation No. 731-TA-149 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3163, March 1999)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-149 (Review)

BARIUM CHLORIDE FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on October 1, 1998, (63 F.R. 52750) and determined on January 7, 1999, that it would conduct an expedited review (64 F.R. 3308, Jan. 21, 1999).

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

² Commissioner Crawford dissenting.

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering barium chloride from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

I. BACKGROUND

In October 1984, the Commission determined that an industry in the United States was being materially injured by reason of imports of barium chloride from China that were being sold at less than fair value.² On October 17, 1984, the Department of Commerce issued an antidumping duty order on imports of barium chloride from China.³ On October 1, 1998, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.⁴

In five-year reviews, the Commission first determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. Specifically, the Commission determines whether individual responses to the notice of institution are adequate and, based on individually adequate responses, whether the collective responses submitted by two groups of interested parties -- domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide the information requested in a full review, and if not, whether other circumstances warrant a full review.⁵

In this review, the Commission received one response to its notice of institution. The response was submitted by Chemical Products Corporation (“CPC”), the largest U.S. producer of barium chloride and the sole petitioner in the original investigation. CPC also filed comments on adequacy and argued that the review should be expedited because no Chinese producer of barium chloride responded to the Commission’s notice of institution.⁶

On January 7, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate. In this regard, it found that the only domestic respondent, CPC, accounted for the vast majority of domestic barium chloride production in 1997. The Commission also determined that the response from the respondent interested party group was inadequate, given that no

¹ Commissioner Crawford dissenting. Commissioner Crawford determined that revocation of the order in this review would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Dissenting Views of Commissioner Carol T. Crawford. She joins in Sections I, II, III.A and III.B of these views, except as otherwise noted.

² Barium Chloride from China, Inv. No. 731-TA-149 (Final), USITC Pub. 1584 (October 1984) (“Original Determination”). The staff report for this investigation is included in USITC Pub. 1584.

³ 49 Fed. Reg. 40635 (Oct. 17, 1984).

⁴ 63 Fed. Reg. 52750 (Oct. 1, 1998).

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

⁶ See 19 C.F.R. § 207.62(b) (authorizing, *inter alia*, all interested parties that have responded to the notice of institution to file comments with the Commission on whether the Commission should conduct an expedited review).

respondent interested parties responded to the notice of institution. Accordingly, pursuant to section 751(c)(3)(B) of the Act, the Commission voted to conduct an expedited review.⁷

On February 9, 1999, CPC filed comments (“CPC Comments”) pursuant to 19 C.F.R. § 207.62(d) urging the Commission to determine that revocation of the antidumping duty order on barium chloride would be likely to lead to recurrence of material injury within a reasonably foreseeable time.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”⁸ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”⁹ In its final five-year review determination, the Department of Commerce (“Commerce”) defined the imported product covered by the existing antidumping duty order as “barium chloride, a chemical compound having the formula $BaCl_2$ or $BaCl_2 \cdot 2H_2O$. . .”¹⁰

Barium chloride is produced in crystalline and anhydrous form. Crystalline barium chloride is used primarily as a cleansing agent in the production of certain chemicals and lubricating oil additives and as a raw or intermediate material in the production of molecular sieves, chemicals, pigments and paper coatings. The anhydrous form of barium chloride is used primarily as an ingredient in heat-treating salts and metal fluxes.¹¹

We find, based on the facts available, that the appropriate definition of the domestic like product in this expedited five-year review is the same as Commerce’s scope: all barium chloride, whether crystalline or anhydrous.¹²

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.”¹³ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate

⁷ 19 U.S.C. § 1675(c)(3)(B); *see* 63 Fed. Reg. 70157 (Dec. 18, 1998).

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10). *See Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Timken Co. v. United States*, 913 F. Supp. 580, 584 (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. 96-249, at 90-91 (1979).

¹⁰ 64 Fed. Reg. 5633 (February 4, 1999). Barium chloride is currently classified under Item 2827.38.00 of the Harmonized Tariff Schedule. *Id.*

¹¹ CR at I-5; PR at I-4.

¹² In its original determination, the Commission found that there was one like product, consisting of barium chloride, in both its crystalline and anhydrous forms. Original Determination at 4. In a brief footnote to the opinion, the Commission found that high purity barium chloride produced for laboratory use was not included in the like product, noting that it was produced “only in very small amounts and at a relatively high price” and that this form of barium chloride “does not compete for general industrial use with the petitioner’s or the imported product.” *Id.*, n.8. The Commission did not make a separate injury finding with respect to the high purity product and Commerce has not explicitly excluded this merchandise from the scope of the order. Thus, the scope of this review appears to include high purity barium chloride.

¹³ 19 U.S.C. § 1677(4)(A).

production-related activity is conducted in the United States.¹⁴ Accordingly, we find that the domestic industry includes all domestic producers of barium chloride.

III. REVOCATION OF THE ORDER ON BARIUM CHLORIDE IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME¹⁵

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless it makes a determination that dumping is likely to continue or recur and the Commission makes a determination that material injury would be likely to continue or recur if the order is revoked, as described in section 752(a).

Section 752(a) of the Act states that in a five-year review “the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”¹⁶ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) indicates that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”¹⁷ Thus, the likelihood standard is prospective in nature.¹⁸ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”¹⁹ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty determinations].”²⁰

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

¹⁴ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

¹⁵ Commissioner Crawford does not find that revocation of the antidumping duty order on barium chloride is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time but joins the majority’s discussion of the appropriate legal standard and conditions of competition in this market, except as otherwise noted.

¹⁶ 19 U.S.C. § 1675a(a).

¹⁷ URAA SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994).

¹⁸ 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 injury if the order is revoked.” SAA at 884.

¹⁹ 19 U.S.C. § 1675a(a)(5).

²⁰ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

revoked.^{21 22}

Section 751(c)(3) of the Act and the Commission's regulations provide that in an expedited five-year review the Commission may issue a final determination "based on the facts available, in accordance with section 776."²³ We have relied on the facts available in this review, which consist primarily of the record in the original investigation, information submitted by CPC, and limited public information collected by the Commission.

For the reasons stated below, we determine that revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.²⁴

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."²⁵ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. barium chloride market.

First, the limited record in this expedited review suggests that the domestic barium chloride market is a mature market that is in some decline.²⁶ This was also true during the Commission's original injury determination in 1984, where the Commission noted that the domestic market for barium chloride was "contracting due to the introduction of new products and industrial processes replacing those using [barium chloride]."²⁷ In its original determination, the Commission also noted that domestic consumption had declined significantly during the period of investigation.

Aggregate domestic consumption of barium chloride in 1997 was somewhat smaller than aggregate domestic consumption in 1981, the first year of the period of investigation in the original injury proceeding.²⁸ As in the original investigation, this general reduction in demand appears to have resulted from the introduction of new products that are substitutes for barium chloride and the introduction of industrial

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

²² Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings in this matter. 64 Fed. Reg. at 5633-35.

²³ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record, or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a).

²⁴ Commissioner Crawford determined that revocation of the order in this review would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Dissenting Views of Commissioner Carol T. Crawford.*

²⁵ 19 U.S.C. § 1675a(a)(4).

²⁶ Commissioner Crawford concurs that the domestic barium chloride market is a mature market, but she finds that the market is relatively stable and is not in decline. *See Dissenting Views of Commissioner Carol T. Crawford.*

²⁷ Original Determination at 4.

²⁸ Apparent consumption of barium chloride was approximately *** millions pounds in 1981 but was approximately *** million pounds in 1997. CR and PR at Table I-3. Apparent consumption of barium chloride was *** million and *** million pounds in 1982 and 1983, respectively, the last two years of the period. *Id.*

processes replacing those using barium chloride.²⁹ In this regard, the record in this review suggests that, since imposition of the order, barium chloride has been replaced by calcium chloride in certain pigment production processes, primarily because of environmental concerns. Moreover, since imposition of the order, gasoline producers have entirely discontinued production of leaded gasoline, a major use of barium chloride identified in the original investigation.³⁰

Second, as was also true in the original determination, CPC remains the only significant domestic producer of barium chloride, accounting for nearly all domestic production and the large majority of overall shipments of barium chloride.³¹

Third, the available evidence suggests that nonsubject imports presently account for a market share nearly equal to the level they held at the beginning of the original period of investigation. In 1997, nonsubject imports accounted for approximately *** percent of the U.S. market, only slightly less than the *** percent market share they held in 1981.^{32 33}

Finally, as in the original investigation, the available evidence suggests that barium chloride is a commodity product and that there is a relatively high degree of substitutability between imported and domestic barium chloride.³⁴ Accordingly, the available evidence suggests, as in the original investigation, that price is an important consideration in the purchasing decision for barium chloride.³⁵

Based on the record evidence, we find that these conditions of competition in the barium chloride market have prevailed since the original investigation and are not likely to change in the reasonably foreseeable future. Accordingly, in this review, we find that current conditions in the barium chloride market provide us with a reasonable basis on which to assess the effects of revocation of the order.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.³⁶ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.³⁷

As an initial matter, we note that our analysis is based largely on the record from the original investigation and information submitted by the domestic industry in this review. We note in this regard that

²⁹ CR at I-5; PR at I-4.

³⁰ CR at I-5; PR at I-4.

³¹ Original Determination at 5; CR at I-5; PR at I-4-5.

³² CR and PR at Table I-3.

³³ Commissioner Crawford does not join the remainder of this opinion. *See* Dissenting Views of Commissioner Carol T. Crawford.

³⁴ *See* Original Staff Report at A-4; CPC Response at 12.

³⁵ In this regard, the evidence in the original investigation indicated that barium chloride was sold principally on the basis of price and that all of the purchasers contacted in connection with the domestic industry’s lost sales allegations reported that price was the principal reason for selecting the Chinese product. Original Determination at 7.

³⁶ 19 U.S.C. § 1675a(a)(2).

³⁷ 19 U.S.C. § 1675a(a)(2)(A)-(D). The record contains little or no information pertaining to existing inventories of the subject merchandise or the potential for product shifting in China with respect to barium chloride.

the statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information.³⁸ Such adverse inferences may include selecting from any information placed on the record and information from the record of our original determination.^{39 40} As noted above, no respondent interested parties responded to the Commission's notice of institution. Accordingly, we believe that it is appropriate to rely in large part on the information submitted by the domestic industry.⁴¹

As discussed below, we conclude based on the facts available⁴² that subject import volume is likely to increase significantly and would be significant if the order is revoked. In making this finding, we recognize that the volume of subject imports is currently at a low level relative to total consumption.⁴³ In a five-year review, however, our focus is on whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping duty order is revoked.

The Commission found in its original investigation that imports from China increased significantly during the period of investigation, rising from 4 million pounds in 1981 to 5.3 million pounds in 1983.⁴⁴ The Commission further found that imports from China had greatly increased their market share during the period of investigation and that they more than doubled as a percentage of domestic shipments during the period of investigation.⁴⁵ Finally, the Commission noted that the level of imports dropped sharply after imposition of preliminary dumping duties by Commerce in December 1983 and that Chinese shipments to the European Community dropped sharply after the European Community made an affirmative dumping finding against them. Given that the current conditions of competition are similar to those in existence prior to imposition of the order, we believe that it is reasonable to infer that Chinese producers would resume exporting significant volumes of barium chloride to the United States if the order is revoked.⁴⁶

The record in this review shows that the amount of barium chloride imported from China declined consistently and significantly during the seven years after the order was imposed and that imports from China

³⁸ 19 U.S.C. § 1677e(b).

³⁹ *Id.*

⁴⁰ Commissioner Askey does not dispute that the statute authorizes the Commission to take adverse inferences in sunset reviews, but she wishes to emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. “[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations.” URAA SAA at 869. Practically speaking, when only one side has participated in a sunset review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. Commissioner Askey generally gives credence to the facts supplied by the participating parties and certified by them as true, but she bases her decision on the evidence as a whole, and does not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.” *Id.*

⁴¹ Chairman Bragg refers to her footnote *infra* (fn. 49) regarding the use of adverse inferences.

⁴² *See* 19 U.S.C. § 1677e(a).

⁴³ Imports of barium chloride from China subject to the antidumping duty order accounted for only *** percent of apparent U.S. consumption in 1997. CR and PR at Table I-3.

⁴⁴ Original Determination at 6.

⁴⁵ Original Determination at 6. The market share of the Chinese subject imports increased from *** percent in 1981 to *** percent in 1983. CR and PR at Table I-3.

⁴⁶ Chairman Bragg notes that the URAA SAA states that “[i]f the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury.” SAA at 884.

have remained at minimal levels since then.⁴⁷ Indeed, shortly after Commerce imposed significantly higher dumping duties on the subject imports in 1989, the level of imports from China dropped to zero. We believe that these historical trends further suggest that the order has imposed a level of discipline on subject imports of barium chloride and that removal of the order would result in the resumption of injurious volumes of imports by the Chinese producers.

Moreover, the available record evidence indicates that the Chinese producers have the ability to increase significantly their export levels to the United States within a reasonably foreseeable time. The limited record evidence indicates that the Chinese barium chloride industry has more than *** its production capacity since the original period of investigation, with capacity increasing from *** million pounds in 1983 to *** million pounds currently.⁴⁸ This capacity level was more than *** times the size of the U.S. barium chloride market in 1997 and suggests that these producers have ample ability to export significant volumes of barium chloride to the United States if the order is revoked.⁴⁹ Finally, given the relative health of the U.S. economy when compared to the Chinese and other Asian economies, the Chinese producers may have an additional incentive to ship significant amounts of barium chloride to the United States if the order is revoked.

For the foregoing reasons, we find that the likely volume of imports of the subject merchandise would be significant if the antidumping duty order is revoked.⁵⁰

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and if the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.⁵¹

⁴⁷ CR and PR at Figure I-1. Imports of barium chloride from China declined from a high of 5.3 million pounds in 1983 to no pounds in 1991. *Id.*; CPC Response at Attachment A. Imports from China have not exceeded 322 thousand pounds since 1991. *Id.*

⁴⁸ CR at I-9-11; PR at I-6-7.

⁴⁹ Chairman Bragg notes that, pursuant to statute, when relying upon facts available the Commission may take adverse inferences against parties that fail to respond adequately to the Commission's information request. 19 U.S.C. §§ 1675(c)(3)(B), 1677e(b). Chairman Bragg further notes that respondent parties failed to cooperate in this review; indeed, no Chinese producer or exporter, or U.S. importer, of barium chloride subject to the antidumping duty order provided any information in response to the Commission's notice of institution.

The record in the original investigation identified three plants in China that produced barium chloride for export to the United States, i.e., Zhang Jia Ba, Tangshan, and Tianjin. Production capacities were determined for Zhang Jia Ba and Tangshan, but not for Tianjin.

In the instant review, CPC identified seven additional plants producing barium chloride for export. While the record in this review contains capacity estimates for these seven newly identified plants, no such data was obtained for the three plants identified in the original investigation. According to CPC, these three plants continue to have substantial production capacities.

In the absence of such record information and based upon the failure of Zhang Jia Ba and Tangshan to respond to the notice of institution, Chairman Bragg infers that, at a minimum, these two plants continue to possess the respective production capacity determined for each plant in the original investigation.

⁵⁰ Vice Chairman Miller and Commissioner Hillman emphasize that this conclusion was reached in the absence of any contrary evidence or argument from respondent interested parties.

⁵¹ 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.

The record in this expedited review contains a limited amount of pricing data. In its original determination, the Commission found that the subject merchandise had substantially undersold the domestic product during every quarter of the period of investigation for which comparisons were available and that domestic prices had declined during the latter half of the period as a result of this underselling. The information available in this review indicates that the average customs unit values of the small volume of Chinese merchandise now in the market are roughly equal to the average customs unit values of the subject merchandise during the original period of investigation and that the prices of domestic merchandise were higher in 1997 than in the original investigation.⁵² Given that the current conditions of competition are similar to those in existence prior to imposition of the order and that there is no indication that the nature of the imported product has changed, we believe that it is reasonable to infer that Chinese producers would resume selling barium chloride in the United States at price-suppressing or depressing prices if the order is revoked.⁵³

The record in this expedited review indicates that barium chloride is a commodity product and that the subject merchandise and the domestic product have a relatively high level of substitutability. These facts suggest that price remains an important, if not critical, criterion in the purchasing decision for customers. Given the relatively high level of substitutability between the imported and domestic merchandise and the importance of price in the purchasing decision, it is likely that the Chinese producers would offer attractively low prices to U.S. purchasers in order to regain market share if the order is revoked. Thus, we believe that prices for domestically produced barium chloride would likely decline to a significant degree in response to the likely significant volumes of substitutable subject barium chloride offered at lower prices.

Accordingly, we find that revocation of the antidumping duty order would be likely to lead to significant price effects, including significant underselling by the subject imports of the domestic like product, as well as to significant price depression or suppression in the reasonably foreseeable future.⁵⁴

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁵⁵ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁵⁶ As instructed by the statute, we have considered the extent to which any

⁵² The average customs unit value for the subject merchandise in 1997 was 8.3 cents per pound, while the average customs unit value for the subject merchandise ranged between 7.5 and 8.8 cents during the original period of investigation. The average unit value for domestic shipments was *** cents per pound in 1997 and ranged between *** and *** cents per pound in the original period of investigation. Compare CR and PR at Table I-1 with CR and PR at Table I-2.

⁵³ Chairman Bragg notes that the URAA SAA states that “[i]f the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury.” SAA at 884.

⁵⁴ Vice Chairman Miller and Commissioner Hillman emphasize that this conclusion was reached in the absence of any contrary evidence or argument from respondent interested parties.

⁵⁵ 19 U.S.C. § 1675a(a)(4).

⁵⁶ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin
(continued...)”

improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁵⁷

In its original injury determination, the Commission found that the industry's condition had "deteriorated" during the period of investigation, that the industry had suffered significant production, shipments and sales declines throughout the period, and that the financial performance of the industry had not been "healthy" during any year of the period.⁵⁸ Moreover, the record of the investigation showed that the industry had suffered a significant loss of market share to the Chinese producers during that same period.⁵⁹

Since imposition of the order on the subject imports, the condition of the industry appears to have improved. The available information suggests that the industry is currently in a reasonably healthy financial condition. Indeed, CPC concedes that it is currently achieving a reasonable rate of return and contends only that injury would recur if the order is revoked.⁶⁰ The available record evidence indicates that, in 1997, domestic shipment levels, capacity use, sales revenues, and unit sales values all increased substantially since the period of investigation, although aggregate consumption declined somewhat during that period.⁶¹ Moreover, the domestic industry's market share significantly increased at the same time that the subject imports virtually exited the market.⁶² In fact, this increase appears to have been made almost entirely at the expense of the Chinese producers.⁶³ Consequently, in this mature market, any increase in the market share of the Chinese producers is likely to be largely at the expense of the domestic industry. Thus, the record suggests that the improvement in the condition of the industry resulted largely from the imposition of the order and the departure of the subject imports from the market.

CPC contends, however, that it is vulnerable to material injury by reason of the subject imports because of declining consumption of barium chloride (primarily due to greater environmental regulation), increased capacity in China, and decreased demand in Asian markets because of current economic conditions.⁶⁴ While relevant to the Commission's injury analysis, these factors do not suggest that the industry is currently in a "weakened state", as contemplated by the vulnerability criterion.⁶⁵ Accordingly, in this review, we do not find that the industry is vulnerable to material injury if the order is revoked.

⁵⁶ (...continued)

or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Commerce's expedited determination in its five-year review provided likely margins for one exporter of barium chloride to the U.S., SINOCEM. The likely margin for this company, as well as the "all others" margin, is 14.5 percent. 64 Fed. Reg. 5633, 5635 (Feb. 4, 1999).

⁵⁷ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

⁵⁸ Original Determination at 5-6.

⁵⁹ *See* CR and PR at Table I-3.

⁶⁰ CPC Response at 16.

⁶¹ CR and PR at Tables I-1 and I-3.

⁶² CR and PR at Table I-3. The industry's share of the market in 1981-83 never exceeded *** percent. In 1997, its share of the market was *** percent. *Id.*

⁶³ In this regard, as we noted above, the market share of nonsubject imports is currently at nearly the same level as it was at the beginning of the original period of investigation. CR and PR at Table I-3.

⁶⁴ CPC Response at 19-20.

⁶⁵ SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order . . .").

Nonetheless, we find that the subject imports would likely have a significant adverse impact on the domestic industry if the order is revoked and that material injury is likely to recur.⁶⁶ We have concluded that, if the order is revoked, it is likely that the subject imports would increase in volume to a significant level and would have significant price-suppressive or depressive effects. These findings, in turn, indicate that, if the order is revoked, the subject imports would have a significant adverse impact on the production, shipment, sales and revenue levels of the domestic industry. This reduction in the industry's production, shipments, sales and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make necessary capital investments. Accordingly, we conclude that, if the antidumping duty order is revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.⁶⁷

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order covering barium chloride from China would be likely to lead to continuation or recurrence of material injury to the domestic barium chloride industry within a reasonably foreseeable time.

⁶⁶ See SAA at 884 (“The Commission should not determine that there is no likelihood of continuation or recurrence of injury simply because the industry has recovered after imposition of an order . . .”).

⁶⁷ Vice Chairman Miller and Commissioner Hillman emphasize that this conclusion was reached in the absence of any contrary evidence or argument from respondent interested parties.

DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

Section 751(d) requires that Commerce revoke a countervailing duty or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur, and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.^{1 2} In this review of the antidumping duty order on barium chloride from China, I determine that revocation of the order would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³

I join my colleagues’ discussion regarding the domestic like product and domestic industry definitions, their explanation of the relevant legal standard, and their discussion of the relevant conditions of competition, except as otherwise noted. As a preliminary matter, I note that just one domestic producer accounting for nearly all domestic production and the large majority of overall shipments of barium chloride responded to the Commission’s notice of institution. No respondent interested parties chose to participate in this review.⁴ Because publicly available data on the barium chloride industry are scarce, most current data in this review were provided by the sole responding domestic producer, Chemical Products Corporation (“CPC”). These circumstances account for the Commission’s limited record in this review.⁵

A. Conditions of Competition

In making its determination, the statute directs the Commission to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁶ As previously noted, I join my colleagues’ discussion of the conditions of competition, except as otherwise noted.

CPC is the only “significant” domestic producer of barium chloride and accounts for nearly all domestic production. This was equally the case during the original period of investigation. In 1997, domestic production was approximately *** percent higher, at *** million pounds, than in 1983 at ***

¹ 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).

² In analyzing what constitutes a reasonably foreseeable time, the Commission should examine all the current and likely conditions of competition in the relevant industry. I define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, I consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, my analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

³ In analyzing whether revocation of an order would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time, I take as a starting point the date on which the revocation would actually take place. In this review, the order would be revoked in January 2000. 19 U.S.C. § 1675(c)(6)(iv).

⁴ See Confidential Report (“CR”) and Public Report (“PR”) at I-3. The Commission determined that the respondent interested party group response was inadequate because no response to the Commission’s notice of institution was received. 64 Fed. Reg. 3308, 3309 (Jan. 21, 1999).

⁵ The statute recognizes that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission’s determination would be upheld unless it was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. See Genentech Inc. v. United States Int’l Trade Comm’n, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission’s decision on sanctions).

⁶ 19 U.S.C. § 1675a(a)(4).

million pounds. On the other hand, subject imports of barium chloride from China have fallen from 5.3 million pounds in 1983, to 0.2 million pounds in 1997. In 1983, Chinese imports accounted for *** percent of apparent domestic consumption. In 1997, however, Chinese imports accounted for only *** percent of apparent domestic consumption, when the domestic industry accounted for a dominant *** percent share. At the same time, nonsubject imports have remained relatively stable. During the original period of investigation, nonsubject imports peaked at *** percent of apparent domestic consumption in 1981 and declined to *** percent in 1983. In 1997, nonsubject imports accounted for *** percent of apparent domestic consumption.⁷

The market for barium chloride is a mature market, and domestic demand for barium chloride has remained relatively stable. In 1997, apparent U.S. consumption was *** percent of the 1981 level, but was *** percent and *** percent larger than in 1982 and 1983, respectively. The industry has not developed any significant new uses for barium chloride, and increased environmental regulation has resulted in a discontinuation of barium chloride use in certain applications.

The demand for barium chloride appears to be relatively elastic. There is no information in the record regarding the cost of barium chloride as a percentage of downstream production. However, it is reasonable to conclude that it is not significant. As a chemical compound used primarily as a cleansing agent or as an intermediate ingredient in the production of other compounds and industrial materials, barium chloride most likely represents only a small portion of the cost of downstream products. CPC has provided no information to the contrary. This tends to suggest that barium chloride represents only a small portion of the cost of downstream products. Moreover, the record shows that calcium chloride has replaced barium chloride in certain applications and is a good substitute product for barium chloride. Therefore, I find that demand for barium chloride is relatively elastic.

While barium chloride appears to be a commodity product, the available evidence demonstrates that there is not a high degree of substitutability between imported and domestic barium chloride. The evidence available demonstrates that purchases of barium chloride are not necessarily made on the basis of price alone. CPC's own submission states that current prices of Chinese imports are "dramatically" lower than CPC's current list prices.⁸ Nonetheless, even at such "dramatically" lower prices, purchasers are not buying significant amounts of the Chinese subject imports. Therefore, I conclude that subject imports and domestic barium chloride are not good substitutes for each other.

B. General Considerations

The statute directs the Commission to take into account several general considerations.⁹ In accordance with the statute, I have taken into account the Commission's prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.

Based on the facts available in this review, the record indicates that the domestic industry has improved its position in the U.S. market since the issuance of the order. Both domestic production and shipments of barium chloride have increased since imposition of the order.¹⁰ Similarly, domestic market share has improved markedly since the order.¹¹ Although the domestic industry's performance has improved

⁷ CR and PR Table I-3.

⁸ CPC Response to Notice of Institution ("CPC Response") at 14-15.

⁹ 19 U.S.C. § 1675a(a)(1). The Commission is to consider its prior injury determinations, whether any improvement in the state of the industry is related to the order, whether the industry is vulnerable to material injury in the event of revocation, and whether any duty absorption finding is made by Commerce. *Id.* Commerce has made no findings of duty absorption in this case. *See* 64 Fed. Reg. 5633 (Feb. 4, 1999).

¹⁰ CR and PR at Table I-1.

¹¹ CR and PR at Table I-3.

during the fifteen years that the order has been in effect, it does not automatically or necessarily follow that revocation of the order will result in the continuation or recurrence of material injury.

I have also considered the fact that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability of the industry. The record indicates that the domestic industry has dominated a mature U.S. market for many years. Nonsubject imports have been relatively stable since the imposition of the order and have limited effects on the domestic industry's vulnerability. These facts together lead me to conclude that the domestic industry is not particularly vulnerable to material injury if the order is revoked.

C. Volume

The Commission is to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States if the order under review is revoked.¹² In so doing, the Commission shall consider "all relevant economic factors," including four enumerated in the statute: (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.¹³

In the absence of the antidumping duty order, CPC claims that there would be a significant increase in shipments of barium chloride to the United States, principally as a result of substantial available production capacity among Chinese producers of barium chloride. There is no information available regarding Chinese capacity utilization. However, the evidence available in the record supports a conclusion statement that Chinese capacity has increased since the imposition of the order.

CPC also asserts that the current Asian economic crisis and an aggressive Chinese export policy suggest that the U.S. market is prime target for the Chinese production capacity. However, CPC has not attempted to provide any evidence to support its assertion regarding the effects of the Asian economic crisis. Similarly, CPC's assertions regarding Chinese export policy are too vague to have probative value.

In 1997 CPC supplied *** percent of apparent domestic consumption while the subject imports of barium chloride captured a mere *** percent of the market. The market share was very small, even though the subject imports were selling at "dramatically" lower prices than barium chloride produced by CPC. At the same time, imports from all other sources accounted for the remaining *** percent and have remained relatively stable since the original investigation. This suggests that Chinese exporters have been either unable or unwilling to capture market share from nonsubject imports despite lower prices.

Our focus in a sunset review is whether subject import volume is likely to be significant in the reasonably foreseeable future, either in absolute terms or relative to production or consumption in the United States if the antidumping duty order is revoked. The available data suggest that the antidumping duty order has had an effect on the market penetration of Chinese imports of barium chloride. However, the failure of the subject imports to obtain a significant market share despite "dramatically" lower prices leads me to conclude that revocation would not be likely to lead to a significant increase in the volume of subject imports.

Based on the foregoing analysis, I find that revocation of the antidumping duty order is not likely to lead to a significant increase in the volume of subject imports in either absolute terms or relative to production or consumption in the United States.

D. Price

¹² 19 U.S.C. § 1675a(a)(2).

¹³ 19 U.S.C. § 1675(a)(2)(A)-(D). The SAA indicates that the statutory factors specified for analysis of volume, price, and impact are a combination of those used to determine both material injury by reason of subject imports and threat of material injury in original antidumping and countervailing duty investigations. *See* SAA at 886.

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and (2) whether imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.¹⁴

The record in this review contains little current pricing data.¹⁵ However, the evidence available does support a conclusion that price differences do not form the basis for purchasing decisions of barium chloride. CPC states that barium chloride is a standard commodity chemical product that essentially sells on the basis of price,¹⁶ and that Chinese producers would use an aggressive policy of lower prices to gain significant market share. The record indicates that customs unit values for Chinese barium chloride ranged from 5¢ to 8¢ per pound between 1994 and June 1998. In comparison, CPC states that its current list prices range from 34.5¢ to 43.85¢ per pound.¹⁷ However, the volume of subject imports have remained at extremely low levels, despite the fact that current prices of Chinese imports are “dramatically” lower than domestic prices. I find nothing in the record to justify a conclusion that revocation of the order would be likely to change these pricing relationships.

At current levels, imports of subject merchandise are too small to have discernible adverse price effects. As discussed, the subject imports and the domestic product are not good substitutes for each other. Therefore, revocation of the order is not likely to lead to a large shift in demand away from domestic barium chloride and towards the subject imports.

As discussed in the majority views, replacement chemicals that are cheaper and more environmentally-friendly than barium chloride have appeared on the U.S. market as substitute products. Notwithstanding competition from nonsubject imports and alternative substitute products for barium chloride, CPC has been able to maintain its price levels. This is likely the result of CPC’s dominant role in the domestic industry and the domestic industry’s dominant influence in the market. In light of these facts, and because I have already determined that subject imports are not likely to increase significantly, I determine that subject imports of barium chloride are not likely to have significant effects on domestic prices within a reasonably foreseeable time if the order is revoked.

¹⁴ 19 U.S.C. § 1675a(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 or 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.

¹⁵ CPC has not provided data for 1997. Instead, it provided a range of “current list prices.”

¹⁶ Response at 3, 12.

¹⁷ Response at 14. CPC states that it normally sells on the basis of list prices.

E. Impact

When considering the likely impact of subject imports, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including: (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.¹⁸

Subject imports are not likely to have a significant adverse impact on the domestic barium chloride industry if the order is revoked. As previously stated, subject imports account for only *** percent of apparent U.S. consumption even though their prices are “dramatically” lower than domestic prices. In light of the extremely small market share now held by Chinese imports of barium chloride, these subject imports would have to increase substantially in order to have any adverse effect on the domestic industry.

As discussed, I find that subject imports are not likely to increase to significant levels. Absent an increase in subject imports to a significant level, the subject imports would not be likely to have a significant effect on the domestic industry as measured by the statutory impact factors. Therefore, I find that revocation of the order is not likely to have a significant impact on the domestic industry within a reasonably foreseeable time.

III. CONCLUSION

If the antidumping duty order is revoked, the volume of subject imports is not likely to be significant, the subject imports are not likely to have significant effects on domestic prices or a significant impact on the domestic industry. Therefore, I determine that revocation of the order in this review would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

¹⁸ 19 U.S.C. § 1675a(a)(4).