UNITED STATES INTERNATIONAL TRADE COMMISSION

GREIGE POLYESTER/COTTON PRINTCLOTH FROM CHINA
Investigation No. 731-TA-101 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3184, April, 1999)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-101 (Review)

GREIGE POLYESTER/COTTON PRINTCLOTH FROM CHINA

DETERMINATION

On the basis of the record[1] 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 greige polyester/cotton printcloth 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 November 2, 1998 (63 F.R. 58763), and determined on February 4, 1999, that it would conduct an expedited review (64 F.R. 9175, February 24, 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] Vice Chairman Miller not participating; Commissioners Crawford and Askey dissenting.

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine[3] under section 751(c) of the Tariff Act of 1930, as amended ("the Act"), that revocation of the antidumping duty order covering greige polyester/cotton printcloth 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.

I. BACKGROUND

In September 1983, the Commission determined that an industry in the United States was being materially injured by reason of imports of greige polyester/cotton printcloth in chief value of cotton from China that were being sold at less than fair value.[4] That same month, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of greige polyester/cotton printcloth, other than the 80 x 80 type, from China.[5] On November 2, 1998, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on greige polyester/cotton printcloth from China would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.[6]

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 those responses deemed individually adequate, 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 information requested in a full review, and if not, whether other circumstances warrant a full review.[7] If responses from either group of interested parties are found to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review because inadequate responses from a group of parties indicate that they are not sufficiently willing to participate and provide information requested to justify a full review.

In this review, the Commission received one jointly filed response by a domestic trade association, the American Textile Manufacturers Institute (ATMI), and certain of its member companies. This response contained company-specific data from a substantial number of the domestic producers of greige polyester/cotton.[8] Together, the participating members of the ATMI account for *** of total U.S. production.[9] These producers also filed joint comments on adequacy, arguing that the review should be

---

[3] Commissioner Crawford and Commissioner Askey dissenting. See their dissenting views. They join in Sections I, II, and III.A-III.B of these views, except as otherwise noted.

[4] Greige Polyester/Cotton Printcloth from the People's Republic of China, Inv. No. 731-TA-101 (Final), USITC Pub. 1421, Sept. 1983 ("Original Determination").

[5] 48 Fed. Reg. 41614 (Sept. 16, 1983).

[6] 63 Fed. Reg. 58763 (Nov. 2, 1998).

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

[8] The member companies of the ATMI include: CMI Industries, Inc., Alice Manufacturing Co., Mayfair Mills, Inc., Greenwood Mills, Inc., Inman Mills, Inc., Spartan Mills, Inc., Mount Vernon Mills, Inc., and Hamrick Mills, Inc.

[9] ATMI Comments on Adequacy at 3.

expedited because no Chinese producer of greige polyester/cotton printcloth responded to the Commission's notice of institution.[10]

The Commission determined that the domestic producers' response to the Commission's notice of institution was adequate and that the domestic interested party group response was adequate.[11] The Commission also determined that the respondent interested party group response was inadequate because no foreign producers or U.S. importers of subject merchandise responded to the Commission's notice of institution. Pursuant to section 751(c)(3)(B) of the Act, the Commission voted to conduct an expedited review.[12]

On March 16, 1999, the members of the ATMI jointly filed comments pursuant to 19 C.F.R. § 207.62(d), urging the Commission to determine that revocation of the antidumping duty order on greige polyester/cotton printcloth would be likely to lead to continuation or 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."[13] 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."[14] In its final five-year review determination, Commerce defined the subject merchandise as "greige polyester cotton printcloth, other than 80 x 80 type . . . of chief weight cotton, unbleached and uncolored . . . currently classifiable under Harmonized Tariff Schedule (HTSUS) item 5210.11.6060."[15]

Greige polyester/cotton printcloth is a textile fabric that often is sold to converters for finishing according to the intended end use.[16] It can be used in a variety of apparel and household items.[17] Greige polyester/cotton is produced using yarn spun from polyester and cotton fibers, and it is one of the simplest fabrics to weave.[18]

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.[19] However, the definition has changed slightly from that of the original determination[20] in order to reflect the change in Commerce's scope since that time. Whereas the scope and the like product in the original investigation included greige polyester/cotton of

---

[10] 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).

[11] 64 Fed. Reg. 9175 (Feb. 24, 1999).

[12] 19 U.S.C. § 1675(c)(3)(B); see 64 Fed. Reg. 9175. Commissioner Koplan voted for a full review of this matter to better assess the likely impact of the textile trade agreement and to place the Commission in a better position to resolve any apparent discrepancies concerning the volume of subject imports.

[13] 19 U.S.C. § 1677(4)(A).

[14] 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. 249, 96th Cong., 1st Sess. 90-91 (1979).

[15] 64 Fed. Reg. 13399, 13399-400 (Mar. 18, 1999).

[16] Confidential Staff Report (C.R.) at I-5-I-6, Public Staff Report (P.R.) at I-5.

[17] C.R. at I-5, P.R. at I-5.

[18] C.R. at I-6, P.R. at I-5.

[19] C.R. at I-5, P.R. at I-4.

[20] Original Determination at 3-5.

chief *value* cotton, the current scope includes greige polyester/cotton of chief *weight* cotton. For purposes of this determination, we define the domestic like product as greige polyester/cotton of chief *weight* cotton. We believe that this change is appropriate because it is consistent with the current scope and because the Commission originally construed printcloth that was in chief *value* cotton to include printcloth that was in chief *weight* cotton.[21]

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."[22] 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 production-related activity is conducted in the United States.[23] Accordingly, we find that the domestic industry includes all domestic producers of greige polyester/cotton printcloth.

III. REVOCATION OF THE ORDER ON GREIGE POLYESTER/COTTON PRINTCLOTH IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME[24]

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."[25] The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order] ... and the elimination of its restraining effects on volumes and prices of imports."[26] Thus, the likelihood standard is prospective in nature.[27] The statute states that "the Commission shall consider that the effects of revocation

---

[21] Original Determination at 4-5.

[22] 19 U.S.C. § 1677(4)(A).

[23] 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).

[24] Commissioners Crawford and Askey determine that revocation of the antidumping duty order on greige polyester/cotton printcloth is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. However, they join the majority's discussions of the appropriate legal standard and the conditions of competition.

[25] 19 U.S.C. § 1675a(a).

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

[27] 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

(continued...)

... may not be imminent, but may manifest themselves only over a longer period of time."[28] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' timeframe applicable in a threat of injury analysis [in antidumping and countervailing duty investigations]."[29] [30]

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same 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 revoked.[31] [32]

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."[33] [34] As noted above, no respondent interested parties responded to the Commission's notice of

---

[27] (...continued)
likelihood of continuation or recurrence of material injury if the order is revoked." SAA at 884.

[28] 19 U.S.C. § 1675a(a)(5).

[29] 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.

[30] In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They 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, they 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, their 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.

[31] 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.

[32] 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 an affirmative duty absorption finding in this matter. 64 Fed. Reg. at 13401.

[33] 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. Id.

[34] Chairman Bragg and Commissioners Koplan and Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. "[T]he Commission balances all
(continued...)

institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the original investigation, limited information collected by Commission staff since the institution of this review, and information submitted by ATMI and its member companies.

For the reasons stated below, we determine[35] that revocation of the antidumping duty order on greige polyester/cotton printcloth from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry 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."[36]

In its original determination, the Commission took particular note of several conditions of competition. In particular, the Commission found that most printcloth was sold by forward contract, with delivery times ranging from 3 to 12 months. Because domestic producers recorded their sales at the time of shipment, revenues were not reflected in their financial statements for six to nine months. The Commission also found that spot sales, which occurred contemporaneously with contract sales, could lead the prices up or down for any forward contract sales. Further, the Commission noted that converters played a critical role in the printcloth market because they reduced their holdings when they expected reduced demand. Converters thereby could increase supply on the spot market for printcloth and drive prices down sharply. Finally, the Commission found that domestic producers would reduce price rather than curtail production when demand declined, so long as the price was above their variable cost of production.[37] Nothing in the record or facts available in this investigation indicates that these conditions of competition do not exist today.

The composition of the participants in the market appears generally the same today as in the original investigation. In 1982, there were eight domestic producers of greige polyester/cotton printcloth, and there are nine today.[38] At the time of the original investigation, only one known exporter of greige polyester/cotton existed in China. That same exporter remains the only Chinese exporter today.[39] As in the original investigation, there were negligible amounts of nonsubject[40] greige polyester/cotton printcloth imports from China in 1997.[41]

---

[34] (...continued)
record evidence and draws *reasonable* inferences in reaching its determinations." URAA SAA at 869 (emphasis added). Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information and the original determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." Id.

[35] Commissioners Crawford and Askey dissenting.

[36] 19 U.S.C. § 1675a(a)(4).

[37] Original Determination at 5-7.

[38] C.R. at I-7-I-8, P.R. at I-6.

[39] C.R. at I-13, P.R. at I-10.

[40] These nonsubject imports include greige polyester/cotton printcloth of the 80x80 type.

[41] C.R. & P.R. at Table I-3.

Since 1982, U.S. production of greige printcloth has increased 18.0 percent from 497.4 million square yards to 587.0 million square yards in 1997.[42] Meanwhile, U.S. imports of greige polyester/cotton printcloth from China, which were 64.8 million square yards in 1982, effectively ceased shortly after the antidumping duty order 1983. There were no known imports of subject Chinese greige polyester/cotton printcloth in 1997. While Chinese imports rose from 2.7 percent of apparent U.S. consumption in 1980 to 10.5 percent in 1981 and 12.4 percent in 1982, nonsubject imports from all other sources rose from 4.4 percent in 1980 to 14.6 percent in 1981, before declining to 7.8 percent in 1982. In 1997, imports from all other sources accounted for 9.0 percent of apparent consumption.[43]

Information in the record indicates other pertinent conditions of competition. Apparent consumption has continued to increase during the period since the order was imposed, although at a slower rate. Apparent U.S. consumption during the original 1980-82 investigation period grew by 22.6 percent, from 427 million square yards to 524 million square yards. During the period from 1982 to 1997, apparent consumption grew by 18 percent, from 524 million square yards to 618 million square yards.[44]

In its original investigation, the Commission determined that the domestic industry could not modernize and remain competitive because its adverse financial performance did not afford it sufficient funds for capital investment.[45] Since the time of the original investigation, domestic producers claim that they have made substantial investments in new technology and production methods.[46]

The record also suggests that the Chinese producers and the domestic industry produce the same types of printcloth and that they are of similar quality.[47] Based on this information, we conclude that there is moderate to high substitutability between the domestic like product and the subject imports. Given this substitutability, we further conclude that price is a significant factor in purchasing decisions.

Finally, a bilateral textile agreement between the United States and China sets a quota on greige polyester/cotton printcloth entering the United States from China.[48] At the time of the original investigation, the United States had negotiated a bilateral agreement under the provisions of section 204 of the Agricultural Act of 1956. The original bilateral agreement with China (covering 1980-82) provided no specific limits or consultation levels[49] for greige polyester/cotton printcloth in categories 315 and 320. The agreement was amended to provide a limit for 1982 of 167 million square yards for category 315 and the statistical suffix 92 portion of category 320, combined.[50] In August 1983, the United States and China signed a new bilateral agreement establishing a quota for category 315 of 118 million square yards and providing for phased growth to 171 million square yards by 1987.

In February 1997, the United States concluded a series of new agreements with China on textile and apparel trade. The quota level set for category 315 was 158.4 million square yards for 1997 and 162.3

---

[42] C.R. & P.R. at Table I-1.

[43] C.R. & P.R. at Table I-3.

[44] C.R. & P.R. at Table I-3.

[45] Original Determination at 11-12.

[46] Response of the ATMI and Certain Member Companies to the Notice of Institution of Five-Year Review ("ATMI Response") at 14.

[47] ATMI Response at 14; C.R. at I-15, P.R. at I-10.

[48] C.R. at I-10-I-11, P.R. at I-7-I-8.

[49] Designated consultation levels are predetermined export levels which can only be exceeded with agreement (after consultations) by the importing country.

[50] Category 315 and statistical suffix 92 of category 320 covered greige, bleached, or colored printcloth wholly of cotton and blends in chief value of cotton. Therefore, these categories cover subject and nonsubject imports. Total imports from China under these categories were 83 million square yards in 1980; 171 million square yards in 1981; and 143 million square yards in 1982. Imports of greige polyester/cotton printcloth rose from 14 percent of the total entering under these categories in 1980 to 36 percent in 1981 and 44 percent in 1982.

million square yards for 1998.[51] The quota level set for category 315 is 160.0 million square yards for 1999 and an estimated 161.2 million square yards in 2000.

Based on the record evidence, we find that these conditions of competition in the greige polyester/cotton printcloth market are not likely to change significantly in the reasonably foreseeable future. Accordingly, in this review, we find that current conditions in the greige polyester/cotton printcloth market provide us with a reasonable basis on which to assess the effects of revocation of the order in the reasonably foreseeable future.[52]

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.[53] 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.[54]

We conclude, based on the facts available,[55] 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 no subject imports are currently in the domestic market.[56] 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 record from the original investigation indicates that Chinese greige polyester/cotton printcloth producers had the ability and willingness to quickly establish a significant presence in the U.S. market. At the time of the original investigation, China produced greige polyester/cotton printcloth exclusively for the U.S. market.[57] Chinese greige polyester/cotton printcloth production rose from 22 million square yards in 1980 to 54 million square yards in 1981 and 1982, then fell to 30 million square yards in 1983.[58]

Currently, the record in this investigation suggests that the Chinese producers are able to produce large quantities of the subject merchandise. The domestic producers assert that China has a large production

---

[51] Merchandise charged against the 1997 quota amounted to 142.0 million square yards, or 89.6 percent of the quota, and merchandise charged against the 1998 quota amounted to 129.7 million square yards, or 79.9 percent of the quota. Imports of greige polyester/cotton imports classified in HTS statistical reporting number 5210.11.6060 amounted to 0.4 percent of the total charged against the quota in 1997 and 0.5 percent in 1998.

[52] In analyzing whether revocation of a finding or order would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time, Commissioner Crawford takes as her 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)(A)(iv).

[53] 19 U.S.C. § 1675a(a)(2).

[54] 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 existence of barriers in other countries.

[55] See 19 U.S.C. § 1677e(a).

[56] C.R. at I-13, P.R. at I-10.

[57] C.R. at I-13, P.R. at I-10.

[58] C.R. at I-13, P.R. at I-10.

capacity to produce the subject merchandise.[59] Moreover, China has the largest textile industry in the world and is the world's largest producer of the cotton and polyester staple fibers used to produce the subject merchandise.[60] The record suggests that Chinese producers could easily shift some of their textile production capacity to the production of greige polyester/cotton printcloth. In this regard, we note that, at the time of the original investigation, Chinese importers had shifted their exports to the U.S. towards greige polyester/cotton printcloth. More specifically, imports of Chinese greige polyester/cotton printcloth had gone from 14 percent of total imports allotted to printcloths under the textile agreement in 1980 to 36 percent in 1981 and 44 percent in 1982.[61] This suggests that Chinese producers have the ability to quickly export significant volumes of greige polyester/cotton to the United States notwithstanding the textile agreement provisions if the order is revoked.

Moreover, the textile agreement does not present any effective limit on the imports of subject merchandise. Although only 10 percent of the quota on printcloths remained unfilled at the end of 1997,[62] which represents 2.7 percent of apparent consumption that year, the record also indicates that Chinese importers can reallocate their production to devote a larger proportion of the quota to subject merchandise. As noted above, the importers engaged in such a shift in 1981 and 1982. We believe that the current restraint on imports of subject merchandise from China is a result of the order and that, based on their past conduct, Chinese importers would once again allocate an increased share of their permitted imports under the textile agreement to larger amounts of subject merchandise if the order were revoked.

Thus, based on the limited record in this review, we find that significant volumes of greige polyester/cotton printcloth from China are likely to be exported to the United States in the reasonably foreseeable future if the antidumping duty order is revoked. Consequently, we conclude that subject imports would increase to a significant level in the absence of the antidumping duty order and likely would regain significant U.S. market share absent the restraining effect of the order.[63]

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 would have a significant depressing or suppressing effect on the price of domestic like products.[64]

The record in this expedited review contains a limited amount of pricing data. In the original determination, the Commission found that subject imports from China exhibited significant margins of underselling from mid-1981 to the first quarter of 1983.[65] As we indicated above, the quality of Chinese printcloth reportedly is comparable to U.S. printcloth,[66] and price is an important, if not critical, criterion in

---

[59] ATMI Response at 8.

[60] C.R. at I-15, P.R. at I-12.

[61] C.R. at I-10 n.30, P.R. at I-8 n.30.

[62] C.R. at I-11 n.32, P.R. at I-8 n.32.

[63] Commissioner Hillman emphasizes that she reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

[64] 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.

[65] Original Determination at 17.

[66] C.R. at I-15, P.R. at I-10.

the purchasing decision for customers.[67] Given these considerations, it is likely that the Chinese producers would offer attractively low prices to U.S. purchasers in order to regain market share, as they did in the original investigation, if the antidumping duty order is revoked. Thus, we believe that prices for domestically produced greige polyester/cotton printcloth would likely decline to a significant degree in response to the likely significant volumes of substitutable subject imports offered at lower prices.[68]

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 significant price depression or suppression, in the reasonably foreseeable future.[69]

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.[70] 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.[71] As instructed by the statute, we have considered the extent to which any 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.[72]

In the original determination, the Commission found material injury to the domestic industry by reason of increased imports, both in absolute and relative terms, of greige polyester/cotton printcloth from China at less than fair value.[73] It found that the combined effect of the volumes and underselling of Chinese imports significantly contributed to the decline in domestic prices and to lost sales, as well as the to the resulting financial crisis of the domestic industry.[74]

---

[67] ATMI Response at 5.

[68] Chairman Bragg notes in this regard 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.

[69] Commissioner Hillman emphasizes that she reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

[70] 19 U.S.C. § 1675a(a)(4).

[71] 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce's expedited determination in its five-year review provided a likely margin of 22.4 percent for the greige polyester/cotton printcloth producers in China. 64 Fed. Reg. at 13401.

[72] 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.

[73] Original Determination at 14.

[74] Original Determination at 20.

Since the imposition of the antidumping duty order, the domestic industry has reported higher levels of production, domestic shipments, and unit values of greige polyester/cotton printcloth.[75] The domestic producers' market share was significantly higher in 1997 than in 1981 and 1982, the final two years of the prior investigation.[76] In 1997, there were no imports of subject Chinese merchandise.[77] The domestic industry replaced subject imports and regained domestic market share, as nonsubject imports did not appreciably increase their market share relative to 1982.[78] It is therefore apparent that the domestic industry benefitted from the exit of Chinese subject imports from the market.[79]

As discussed above, based on the limited record in this review, we conclude that if the order is revoked, the likely volume of subject imports would be significant and that these imports would have significant adverse price effects. Given the substitutable nature of the product, we find that a significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make and maintain 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.[80]

CONCLUSION

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

---

[75] C.R. at I-8, P.R. at I-6.

[76] C.R. & P.R. at Table I-3.

[77] C.R. & P.R. at Table I-3.

[78] C.R. & P.R. at Table I-3.

[79] C.R. & P.R. at Table I-3. Because the domestic producers' production, domestic shipments, and unit values of greige polyester/cotton printcloth have increased, we do not believe that the domestic industry is in a vulnerable state, as contemplated by the statute.

[80] Commissioner Hillman emphasizes that she reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

DISSENTING VIEWS OF COMMISSIONERS CAROL T. CRAWFORD AND THELMA J. ASKEY

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] In this review of the order on greige polyester/cotton printcloth from China, we find that material injury is not likely to continue or recur in a reasonably foreseeable time if the order is revoked.

We join our colleagues' discussion regarding the domestic like product, domestic industry, conditions of competition, and in their explanation of the relevant legal standard. As a preliminary matter, we note that the American Textile Manufacturers Institute (ATMI) and eight member companies accounting for approximately *** percent of the domestic industry filed a joint response to the Commission's notice of institution; no respondent interested parties chose to participate in the review. We therefore have a limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury in the reasonably foreseeable future.[2]

A. General Considerations

The statute directs the Commission to take into account several general considerations.[3] In accordance with the statute, we 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 domestic shipments of greige polyester/cotton printcloth have increased since imposition of the order. Similarly, domestic market share has improved since the order.[4] Although the domestic industry's performance has improved during the 15 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 in the reasonably foreseeable future. The available record in this review indicates that the domestic industry has dominated a mature 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. Based on the industry's current performance as reflected in the record, and bearing in mind the current quota system for

---

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

[2] Congress and the administration anticipated 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).

[3] 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 the Department of Commerce. Id. Commerce made no duty absorption finding in this case. 64 Fed. Reg. 13401 (March 18, 1999). The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). Commerce reported likely margins of 22.4 percent in the event of revocation for all Chinese manufacturers and exporters. 64 Fed. Reg. at 13401 (March 18, 1999).

[4] CR and PR at Table I-3.

greige polyester/cotton printcloth from China, we conclude that the domestic industry is not particularly vulnerable to material injury if the order is revoked.[5]

B. 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.[6] 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 of production facilities in the foreign country, which can be used to produce the subject merchandise, and are currently being used to produce other products.[7]

In February 1997, the United States and China signed a new series of bilateral agreements on textile and apparel trade, which included quotas on certain merchandise. The quota level set for Customs classification category 315, under which all greige printcloth imported from China falls, was 158.4 million square yards in 1997, and 162.3 million square yards in 1998. Total merchandise charged against the 1997 quota amounted to 142.0 million square yards, or 89.6 percent of the quota, and merchandise charged against the 1998 quota amounted to 129.7 million square yards, or 79.9 percent of the quota. None of the merchandise imported under the quota was subject merchandise. The quota level for 1999 is 160.0 million square yards, and is estimated to be 161.2 million square yards in 2000.

The quota under discussion is a "basket category" including 19 other fabrics. Bearing this in mind, it is possible that the category 315 quota could be completely filled by nonsubject imports, or merchandise outside the scope of the existing order. In such a case, there would be no room for subject imports under the quota, and there could be no increase in the likely volume of subject imports in the absence of the existing order. Yet, the facts suggest that there would presumably be some room under the quota for an increase in the volume of subject imports in the absence of the order. The key issue is: how much room will be available under the quota?

In 1997, only 10.4 percent of the quota was available to be filled by subject imports. In 1998, the quota was underutilized by roughly twice that figure, or 20.1 percent. Given the fact that the quota levels in 1999 and 2000 are not appreciably different from those of preceding years, future room under the quota for subject imports can reasonably be expected to range between 16.4 - 32.6 million square yards. Therefore, assuming subject imports use the full 32.6 million square yards available under future quotas, the increase in subject import volume would amount to only 5.3 percent of 1997 domestic consumption. We find that this is not a significant increase in the volume of subject imports in light of the fact that the domestic industry held 90.9 percent of the 1997 U.S. market.

This analysis assumes that the existing product mix of imported merchandise under the category 315 quota would continue at current levels. Arguably, the Chinese could choose to export less of the existing mix of merchandise under the quota, and more of the subject greige polyester/cotton printcloth. However, the facts clearly demonstrate that greige polyester/cotton printcloth is a low unit value product.[8] Although there

---

[5] Commissioner Crawford finds that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability of the industry.

[6] 19 U.S.C. § 1675a(a)(2).

[7] 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.

[8] CR and PR at Table I-1.

is no information on the record regarding unit values for the existing product mix in category 315, it is unlikely to be significantly higher in unit value than the subject merchandise. Thus, without the proper financial incentive to change production, it is reasonable to conclude that there would not be significantly more room available under the quota for the subject merchandise. This is especially true in light of the fact that China appears to have abandoned all production of greige polyester/cotton printcloth. During the period of the Commission's original investigation, China produced greige polyester/cotton printcloth exclusively for the U.S. market;[9] but, there have been no imports of subject merchandise from China since at least 1993.[10] Moreover, given the foreseeability requirement under the statute, it is entirely too speculative to accurately predict changes to the existing product mix under the applicable quota in the absence of facts that would allow a reasonable assessment of expected changes thereto.

Furthermore, the ATMI claims that China produces interchangeable products that are substitutable for greige polyester/cotton printcloth. These interchangeable products fall outside the scope of the current order and are classified under a separate quota category 314 for purposes of the textile agreement. The ATMI notes that the domestic industry offers a 64" 78 x 54 greige polyester/cotton printcloth for *** per yard while the Chinese offer an interchangeable 63" 82 x 50 printcloth for *** per yard. Domestic producers also offer a 48" 78 x 54 printcloth for *** per yard, while the Chinese offer an interchangeable 50" 82 x 50 printcloth for *** per yard.[11] If China wanted to increase exports to compete with the domestic greige polyester/cotton printcloth industry, then the record suggests that China currently has the capability to do so by increasing exports of interchangeable products and decreasing exports of other products in category 314. Yet, there is nothing on the record to suggest that China has chosen to change its existing product mix in category 314 notwithstanding the clear pricing advantage cited by the ATMI. Thus, there is nothing on the record to suggest that China has an interest in exporting greige polyester/cotton printcloth, or interchangeable products, into the United States.

We have also considered the effects of existing inventories of the subject merchandise, or likely increases in inventory. During the original investigation and again during the current expedited sunset review investigation, China had the largest textile industry in the world. Based on information obtained during the original period of investigation, China produced a greige polyester/cotton printcloth exclusively for the U.S. market.[12] Due to the cessation of subject imports from China since the imposition of the order 15 years ago, it is reasonable to conclude that China has abandoned production of this merchandise and does not have excess inventory of the subject merchandise. In addition, because the current quota limitation on category 315 products effectively restricts how many square yards of subject merchandise China could export if the order were revoked, any existing inventory is immaterial.

Because the domestic market is dominated by U.S. and nonsubject producers and China's exports of the subject merchandise are constrained by the current bilateral textile agreement, we find that revocation of the antidumping duty order is not likely to lead to a significant increase in the volume of subject imports such that the likely volume of subject imports would be significant.

---

[9] CR and PR at I-13.

[10] CR and PR at I-12.

[11] Response at 9-10.

[12] CR at I-13, PR at I-10

C. Price

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether imports are likely to be sold at a significantly lower price than the domestic like product, and (2) whether 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 product.[13]

The record in this review contains very limited pricing data. As previously stated, China is constrained in the amount of subject merchandise that it can export to the United States by operation of the existing textile agreement. In light of our conclusion that subject import volume cannot increase significantly in the face of this quota, we conclude that China could not export sufficient subject merchandise to have a significant price suppressing or depressing effect in the domestic market.

D. Impact

When considering the likely impact of subject imports, the Commission is 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.[14]

Subject imports are not likely to have a significant adverse impact on the domestic greige polyester/cotton printcloth industry if the order is revoked. There have been no imports of subject merchandise to the United States since at least 1993.[15] Moreover, the domestic industry accounts for nearly all domestic consumption, with nonsubject imports accounting for only 9.1 percent. We find that revocation would not likely have an adverse impact on the domestic industry because subject imports would have to increase significantly in order to have any adverse impact. In fact, under the existing quota on subject imports, we have determined above that subject imports would not be likely to increase to significant levels in the event of revocation. Furthermore, any increase in subject imports that would result from revocation would likely gain market share at least in part from nonsubject imports rather than exclusively at the expense of the domestic industry.

We therefore find that subject imports would not be likely to have a significant impact on domestic greige polyester/cotton printcloth producers' cash flow, inventories, employment, wages, growth, ability to raise capital, or investment within a reasonably foreseeable time in the event the order is revoked. In conjunction with our conclusions regarding likely volume and price effects, we find that revocation is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time. We therefore find that revocation is not likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

---

[13] 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.

[14] 19 U.S.C. § 1675a(a)(4).

[15] CR at I-12, PR at I-9

CONCLUSION

If the antidumping duty order is revoked, the volume of subject imports is not likely to be significant and the subject imports are not likely to have significant effects on domestic prices or a significant impact on the domestic industry. Therefore, we 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.