

UNITED STATES INTERNATIONAL TRADE COMMISSION

BARBED WIRE AND BARBLESS WIRE STRAND FROM ARGENTINA

Investigation No. 731-TA-208 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3187, May 1999)

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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 barbed wire & barbless wire strand from Argentina 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 December 2, 1998 (63 F.R. 66563) and determined on March 5, 1999 that it would conduct an expedited review (64 F.R. 12351, March 12, 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 Chairman Bragg, Commissioner Crawford, and Commissioner Askey 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 barbed wire and barbless wire strand from Argentina 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 March 1985, the Commission determined that an industry in the United States was being injured by reason of imports of barbed wire and barbless wire strand from Argentina that were being sold at less than fair value.² On November 13, 1985, Commerce issued an antidumping duty order on imports of barbed wire and barbless wire strand from Argentina.³

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁴ If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In this review, the Commission received a response, containing company-specific information, from three domestic producers, Keystone Steel & Wire Company (“Keystone”), Davis Wire Corporation (“Davis”) and Oklahoma Steel and Wire Company (“Oklahoma Wire”). The participating producers account for approximately *** percent of domestic production of barbed wire and barbless wire strand.⁵ These producers also filed joint comments on adequacy, arguing that the review should be expedited because no respondent interested party responded to the Commission’s notice of institution.⁶

The Commission determined that the domestic interested party group response to the Commission’s notice of institution was adequate.⁷ 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.⁸

In their responses to the notice of institution, Keystone, Davis and Oklahoma Wire argued that revocation of the antidumping duty order would be likely to lead to continuance or recurrence of material

¹ Chairman Bragg and Commissioners Crawford and Askey determine that revocation of the order in this case 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 their dissenting views. They join Sections I, II and III. A & B of these views except as otherwise noted.

² Barbed Wire and Barbless Wire Strand From Argentina, USITC Pub. 1770, Oct. 1985.

³ 50 Fed. Reg. 46808 (Nov. 13, 1985).

⁴ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁵ Confidential Report (“CR”) at I-7; Public Report (“PR”) at I-6.

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).

⁷ CR at Appendix B; PR at Appendix B. See also 64 Fed. Reg. 12351 (March 21, 1999).

⁸ 19 U.S.C. § 1675(c)(3)(B); see 64 Fed. Reg. 12351 (March 21, 1999).

injury within a reasonably foreseeable time. No party filed comments subsequent to the Commission's decision to conduct an expedited review.⁹

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.”¹⁰ 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.”¹¹ In its final five-year review determination, Commerce defined the subject merchandise as “barbed wire and barbless fencing wire from Argentina, which is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7313.00.00.”¹²

Barbed wire and barbless wire strand are galvanized steel products used in various fencing applications.¹³ Barbed wire is primarily used for agricultural applications. Small amounts are also used in industrial and government security applications.¹⁴ Barbless wire is similar to barbed wire but without barbs, and is typically used in applications in which barbs would cause harm to certain livestock, such as show horses.¹⁵

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 and unchanged from the Commission's original determination.¹⁶

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.”¹⁷ In this investigation, we find that the domestic industry includes all domestic producers of barbed wire and barbless wire strand.

III. REVOCATION OF THE ORDER ON BARBED WIRE AND BARBLESS WIRE STRAND IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME¹⁸

A. Legal Standard

⁹ 19 C.F.R. § 207.62(d).

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 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).

¹² 50 Fed. Reg. 46808 (Nov. 13, 1985).

¹³ CR at I-5; PR at I-4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Original Determination at 5.

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ Chairman Bragg and Commissioners Crawford and Askey determine that revocation of the order is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. However, they join in the majority's discussion of the relevant legal standard and the conditions of competition in sections III. A & B of these views.

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2), the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”¹⁹ 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.”²⁰ Thus, the likelihood standard is prospective in nature.²¹ 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.”²² According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”²³

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.²⁵ ²⁶

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

¹⁹ 19 U.S.C. § 1675a(a).

²⁰ URAA SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994).

²¹ 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.

²² 19 U.S.C. § 1675a(a)(5).

²³ 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.*

²⁴ 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.

²⁵ 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.

²⁶ 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). Because there have been no administrative reviews of the order, Commerce has “not had the opportunity to address the issue of duty absorption.” 64 Fed. Reg. 16899, 16901 (April 7, 1999).

section 776.”²⁷ ²⁸ As noted above, no respondent interested parties responded to the Commission’s notice of 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 Keystone, Oklahoma Wire and Davis.

For the reasons stated below, we determine that revocation of the antidumping duty order on barbed wire and barbless wire strand would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.²⁹

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.”³⁰ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for barbed wire and barbless wire strand.

At the time of the original investigation, there were nine firms producing barbed wire and barbless wire strand in the United States. By February 1999, the number of the firms known to produce barbed wire and barbless wire strand had fallen to five. The domestic producers include four firms from the original investigation, Bekaert Steel & Wire Co. (AR), Davis, Keystone, and Oklahoma Wire, plus Burley Corporation of North America (TX), the only known producer to have entered the market since the original investigation.³¹

U.S. consumption of barbed wire in 1997 was at approximately the same level as in the original investigation.³² In 1997, the U.S. industry’s production and market share were higher than during the original

²⁷ 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.*

²⁸ Chairman Bragg and Commissioner 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 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. 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.*

²⁹ Chairman Bragg and Commissioners Crawford and Askey determine that revocation of the order is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. See their dissenting views.

³⁰ 19 U.S.C. § 1675a(a)(4).

³¹ *Id.*

³² CR at Table I-3; PR at Table I-3.

investigation.³³ Conversely, subject imports exited the market by 1986 and imports from nonsubject sources were lower in 1997 than during the original investigation.³⁴

The domestic market for barbed wire and barbless wire strand appears to be a mature one. Technology and production methods are essentially unchanged.³⁵ Moreover, the end uses and applications for barbed wire and barbless wire remain essentially the same, *e.g.*, for ranching and general agricultural applications.³⁶

In the original determination, the Commission described barbed wire and barbless wire strand as a standardized product and listed no notable differences between the domestic product and subject imports.³⁷ The domestic producers assert that the barbed wire and barbless wire strand market is “highly price sensitive.”³⁸ Thus, in the absence of contrary evidence or argument, we find that domestic and subject imported barbed wire and barbless wire strand are largely substitutable products and that price appears to be an important consideration in purchasing barbed wire and barbless wire strand.

Based on the record evidence, we find that these conditions of competition in the barbed wire market are not likely to change significantly in the reasonably foreseeable future. Accordingly, in this review, we find that current conditions in the barbed wire and barbless wire strand market provide us with a reasonable basis from which to assess the effects of revocation of the order within the reasonably foreseeable future.³⁹

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.⁴⁰ 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.⁴¹

We conclude, based on the facts available, 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.⁴² In a five-year review, however, our focus is on

³³ The U.S. produced 82,000 short tons of barbed wire and barbless wire strand in 1997 compared with 71,609 short tons in 1982, 78,276 short tons in 1983, and 62,966 short tons in 1984. CR at Table I-1; PR at Table I-1. Chairman Bragg and Commissioners Crawford and Askey note that the U.S. producers’ share of the U.S. market was 82.3 percent in 1997 compared with 80.5 percent in 1982, 73.4 percent in 1983 and 69.8 percent in 1984. CR at Table I-3; PR at Table I-3.

³⁴ Chairman Bragg and Commissioners Crawford and Askey note that imports from Argentina and nonsubject sources accounted for a total of 19.5 percent of the U.S. market in 1982, 26.6 percent in 1983 and 30.2 percent in 1984. CR at Table I-3; PR at Table I-3. They further note that there were no subject imports from Argentina in 1997, and that non-subject imports accounted for no more than 17.7 percent of U.S. market share in 1997. CR at Table I-3; PR at Table I-3.

³⁵ CR at I-5, I-6; PR at I-4, I-5.

³⁶ *Id.*

³⁷ Original Determination, at 4.

³⁸ Response, Att. A, B, C at p.3.

³⁹ Chairman Bragg and Commissioners Crawford and Askey make negative determinations and thus do not join the remainder of this opinion. *See* their dissenting views.

⁴⁰ 19 U.S.C. § 1675a(a)(2).

⁴¹ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁴² The record shows that no imports of barbed wire from Argentina have entered the U.S. since 1987. CR at Table I-3; PR at Table I-3.

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 the Argentine barbed wire and barbless wire strand industry had the ability and willingness to quickly establish a significant presence in the U.S. market. Imports of barbed wire and barbless wire strand from Argentina increased substantially during the period of investigation, both in terms of volume and market share. Between 1982 and 1984, imports increased from 506 tons to 3,739 tons-- more than a 600 percent increase.⁴³ At the same time, subject import market penetration increased from 0.5 percent of the U.S. market in 1982 to 4.0 percent in 1984.⁴⁴

During the original investigation, Argentine production showed a significant shift from domestic shipments to exports. Domestic Argentine shipments fell from *** percent of total shipments in 1982, to less than *** percent in 1983 and 1984.⁴⁵ During 1982-1984, the United States constituted Argentina's largest export market for barbed wire and barbless wire strand, accounting for *** percent of such exports.⁴⁶ The record shows that this increase was capped by the imposition of the antidumping duty order.⁴⁷

At the time of the original investigation, Acindar Industria Argentina de Aceros, S.A. ("Acindar") was the sole exporter of these products from Argentina and nearly the sole domestic supplier to the Argentine market.⁴⁸ Argentina's capacity to produce barbed wire and barbless wire strand remained constant at *** short tons during 1982-1984, but its production increased in 1983 and then decreased to a volume *** over the 1982 level.⁴⁹

There are no data available for current capacity, production or shipments of barbed wire and barbless wire strand in Argentina. However, the record contains some evidence that Argentina continues to produce and export barbed wire.⁵⁰ Based on the facts available, we infer that, at a minimum, the industry in Argentina continues to have the production capacity identified in the original investigation. Moreover, given Acindar's total wiremaking capacity, its capacity to produce the subject merchandise is potentially much greater.⁵¹ This suggests that the Argentine industry has the ability to increase production to produce subject merchandise and to export significant volumes of barbed wire to the United States if the order is revoked.

Because of the similarity in the conditions of competition prevailing today and those existing prior to the imposition of the order, and in the absence of contrary evidence or argument, we find that it is likely that Argentine producers would resume shipping significant volumes to the U.S. market in the absence of the antidumping duty order.⁵² Indeed, the record demonstrates that the surge in imports ceased as a result of the restraining effect of the antidumping duty order.⁵³ 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.

⁴³ Original Determination, at 8.

⁴⁴ *Id.*

⁴⁵ CR at I-11; PR at I-8.

⁴⁶ CR at I-11, I-12; PR at I-8.

⁴⁷ CR at Figure I-1; PR at Figure I-1.

⁴⁸ CR at I-11; PR at I-8.

⁴⁹ *Id.*

⁵⁰ In 1996, the last year for which data was available, Argentina exported *** short tons of barbed wire and barbless wire strand, valued at \$***. CR at I-13; PR at I-9.

⁵¹ Acindar's wire and rope business unit has an annual capacity of 198,414 shorts tons, which includes a variety of wire and wire products, of which a small portion currently is barbed wire and barbless wire strand. CR at I-13, n. 31; PR at I-9, n. 31.

⁵² SAA at 884 ("If 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.").

⁵³ CR at Figure I-1; PR at Figure I-1.

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 whether 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.⁵⁴

The record in this expedited review contains a limited amount of pricing data. The domestic producers report that prices have remained stable over the last decade.⁵⁵ In the original determination, the Commission found that subject imports from Argentina exhibited significant margins of underselling during 1982-1984.⁵⁶ Moreover, the average unit value of imports from Argentina declined substantially from \$580 per ton in 1982 to \$395 per ton in 1984.⁵⁷

We found above that the subject merchandise and the domestic like product are substitutable products for which price is an important, if not critical, criterion in the purchasing decision for customers. In the absence of contrary evidence or argument, we find that it is likely that the Argentine 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 barbed wire and barbless wire strand would likely decline to a significant degree in response to the likely significant volumes of substitutable subject imports 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 significant price depression and suppression, in the reasonably foreseeable future.

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.⁵⁸ 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.⁵⁹ As instructed by the statute, we have considered the extent to which any

⁵⁴ 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.

⁵⁵ Response at Att. A, p. 8.

⁵⁶ Original Determination, at 8.

⁵⁷ *Id.* at 9.

⁵⁸ 19 U.S.C. § 1675a(a)(4).

⁵⁹ 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 for one specific barbed wire and barbless wire strand producer, Acindar. The likely margin for this company, as well as “all others” margin, is 69.02 percent. 64 Fed. Reg. 16899, 16901 (April 7, 1999).

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.⁶⁰

In the original determination the Commission found material injury to the domestic industry by reason of imports of barbed wire and barbless wire strand sold at less than fair value, which had increased both in absolute terms and relative to domestic consumption.⁶¹ It found declines in production and in shipments and market share, as well as declines in capacity utilization and deterioration of the domestic industry's financial condition.⁶²

Since imposition of the antidumping duty order, the domestic industry's market share increased as subject imports exited the market.⁶³ As noted above, the domestic industry, rather than nonsubject imports, gained that market share lost by the subject imports following the imposition of the antidumping order.⁶⁴ The basic substitutability of the product has enabled the domestic industry to readily replace subject imports and regain domestic market share. Demand is unlikely to be increased by product development or new technology. Thus it is likely that any future increase in the market share of subject imports would be largely at the expense of the domestic industry.⁶⁵

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, and in the absence of contrary evidence or argument, we find that a significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales and revenue levels would have a direct adverse impact on the industry's profitability 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.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order covering barbed wire and barbless wire strand from Argentina would be likely to lead to continuation or recurrence of material injury to the domestic barbed wire and barbless wire strand industry within a reasonably foreseeable time.

⁶⁰ 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.

⁶¹ Original Determination at 9.

⁶² Original Determination at 5-7.

⁶³ CR at I-10; PR at I-7.

⁶⁴ *Infra*, p. 9.

⁶⁵ The domestic producers have not asserted that their industry is in a vulnerable state. Because the domestic producers' share of the U.S. market has increased and they assert that prices have been stable throughout the past decade, we do not find that the domestic industry is in a weakened state, as contemplated by the vulnerability criterion of the statute. *See* 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...").

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG AND COMMISSIONERS CAROL T. CRAWFORD AND THELMA J. ASKEY

Section 751(d) requires that Commerce revoke an antidumping or countervailing duty order in a five-year (“sunset”) review unless Commerce determines that, in the event of revocation, 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 antidumping duty order on barbed wire and barbless wire strand from Argentina, we find that material injury is not likely to continue or recur within a reasonably foreseeable time if the order is revoked.²

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 three U.S. producers responded to the Commission’s notice of institution, accounting for approximately *** percent of domestic production, and 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 within the reasonably foreseeable future.³

A. General Considerations

The statute directs the Commission to take into account several general considerations.⁴ 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 market share of barbed wire and barbless wire strand have increased since imposition of the order.⁵ Although the domestic industry’s market share has improved during the twelve 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 within the reasonably foreseeable future. The record in this review indicates that the domestic industry has dominated a mature market for many years. Nonsubject imports have decreased since imposition of the order but remain a significant portion of the market, accounting for 17.7 percent of the U.S. market in 1997. Based on the industry’s current performance as reflected in the record, we conclude that the domestic industry is not vulnerable to material injury if the order

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

² 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, Commissioner Crawford takes as her starting point the date on which the revocation would actually take place. In this review, the finding would be revoked in January 2000. 19 U.S.C. § 1675(c)(6)(iv).

³ 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). Chairman Bragg concurs that Congress and the administration anticipated the record in expedited sunset reviews would be more limited than in full reviews.

⁴ 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. at 16901 (April 7, 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 69.02 percent in the event of revocation for all Argentine manufacturers and exporters. 64 Fed. Reg. at 16901 (April 7, 1999).

⁵ CR at Table I-1 and I-3; PR at Table I-1 and I-3.

is revoked.

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

During the original period of investigation (“POI”), imports of barbed wire and barbless wire strand from Argentina increased from 506 short tons in 1982 to 3,739 short tons in 1984, accounting for an increase in domestic market share from 0.5 percent to 4.0 percent, respectively. The record indicates that the domestic industry appeared to rebound in 1985, with Argentine exports decreasing 61 percent and domestic employment increasing by 27 percent compared to the same period in 1984. As stated above, since imposition of the order the U.S. industry increased market share in part from the cessation of imports from Argentina as well as diminished nonsubject imports. We find that even if subject imports were to increase to pre-order levels, the resulting levels would be negligible. Moreover, a certain amount of market share would likely be captured from nonsubject imports, further mitigating any injury to the domestic industry.

Since imposition of the antidumping duty order the manufacturing technology for barbed wire and barbless wire strand has not changed, reflecting the fact that it is a mature industry. The record indicates that estimated 1997 U.S. production of the domestic like product is 82,000 short tons, an increase of approximately 23.2 percent since the last full year of information available during the POI. This indicates that the domestic industry has been able to adjust production to meet demand and remain profitable. We conclude that the domestic industry will be able to adjust to imports of the subject merchandise without adversely affecting its profitability if the order is revoked.

The record indicates, and we agree, that there are few, if any, barriers to importation of the subject merchandise into the United States or any other country. Prior to 1984, no barriers existed on the importation of barbed wire and barbless wire strand. The most Argentina ever exported to the United States was 3,814 short tons in 1983, while nonsubject imports totaled 25,458 short tons in the same year.

No data are available regarding the current capacity, production, or shipments of the subject merchandise in Argentina. According to public information available from Acindar, the sole producer of the subject merchandise in Argentina, Acindar produces approximately 56 different products at its wire and wire rope facility. We are unable accurately to predict Acindar’s existing production mix based on the limited information available on the record. However, even if Acindar has both the capacity and the desire to increase production of the subject merchandise for export to the United States in the event of revocation, we determine that the volume of such imports would not be significant.

In sum, because the domestic market is dominated by U.S. and nonsubject producers, we find that revocation of the antidumping duty order is not likely to lead to a significant increase in the volume of subject imports within the reasonably foreseeable future.

C. Price

⁶ 19 U.S.C. § 1675a(a)(2).

⁷ 19 U.S.C. § 1675(a)(2)(A)-(D). The Statement of Administrative Action to the Uruguay Round Agreements Act (“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 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 the domestic like product.⁸

The record in this review contains very limited pricing data. Even if subject imports were to enter the United States at prices which undersold the domestic like product following revocation of the order, we conclude that those volume levels would be too minimal to have any discernible impact on prices in the U.S. market. Thus, we determine that imports of barbed wire and barbless wire strand from Argentina are not likely to have a price suppressing or depressing effect within a reasonably foreseeable time in the event of revocation.

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.⁹

Subject imports are not likely to have a significant adverse impact on the domestic barbed wire and barbless wire strand industry if the order is revoked. First, domestic respondents have not demonstrated that the U.S. industry is vulnerable to injury if the order is revoked.¹⁰ Second, the domestic industry accounted for 82.3 percent of domestic consumption in 1997, with nonsubject imports accounting for 17.7 percent. We find that revocation would not likely have a significant adverse impact on the domestic industry because subject imports would have to increase significantly over pre-order levels in order to have such an impact; as discussed, we find that this is not likely to occur. Furthermore, any increase in subject imports that would result from revocation would likely come partly at the expense of 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 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, or productivity, 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.

⁸ 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.

⁹ 19 U.S.C. § 1675a(a)(4).

¹⁰ Commissioner Crawford finds that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability of the industry. She finds that the domestic industry in this review is not particularly vulnerable to injury if the order is revoked.

CONCLUSION

We find that 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 the barbed wire and barbed wire strand industry in the United States within a reasonably foreseeable time.