

UNITED STATES INTERNATIONAL TRADE COMMISSION

SEBACIC ACID FROM CHINA
Investigation No. 731-TA-653 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3189, May 1999)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-653 (Review)

SEBACIC ACID FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission unanimously determines, 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 sebacic acid 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 December 2, 1998 (63 F.R. 66567) and determined on March 5, 1999 that it would conduct an expedited review (64 F.R. 12353, 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)).

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 sebacic acid 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 July 1994, the Commission determined that an industry in the United States was threatened with material injury by reason of imports of sebacic acid from China that were being sold at less than fair value (“LTFV”).¹ That same month, Commerce issued an antidumping duty order on imports of sebacic acid from China.²

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses 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.³ 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, Union Camp, the sole domestic producer of sebacic acid, filed a response to the notice of institution.⁴ No foreign producer, domestic importer, or other interested party filed a response to the notice of institution.

The Commission determined that the domestic interested party group response to the Commission’s notice of institution was adequate.⁵ The Commission further 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.⁶

On April 14, 1999, Union Camp filed comments pursuant to 19 C.F.R. § 207.62(d), urging the Commission to determine that revocation of the antidumping duty order on sebacic acid would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

¹ Sebacic Acid from the People’s Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793 (July 1994) (Original Determination), *aff’d*, Dastech Int’l v. United States Int’l Trade Comm’n, 963 F. Supp. 1220 (Ct. Int’l Trade 1997). Vice Chairman Nuzum, Commissioner Newquist and Commissioner Bragg determined that an industry in the United States was threatened with material injury by reason of subject imports. Commissioner Crawford concurred in the affirmative determination, but found that a domestic industry was materially injured by reason of the subject imports. Chairman Watson and Commissioner Rohr dissented.

² 59 Fed. Reg. 35909 (July 14, 1994).

³ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁴ Union Camp did not file comments on adequacy. The Commission’s rules do not require interested parties or other parties to reviews to file comments on adequacy. See Rule 207.62(b).

⁵ See Explanation of Commission Determinations on Adequacy, Confidential Report (“CR”) at Appendix B, Public Report (“PR”) at Appendix B. See also 64 Fed. Reg. 12353 (March 12, 1999).

⁶ 19 U.S.C. § 1675(c)(3)(B); see 64 Fed. Reg. 12353 (March 12, 1999).

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.”⁷ 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.”⁸ In its final five-year review determination, Commerce defined the subject merchandise as:

all grades of sebacic acid, a dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$, which include, but are not limited to, CP Grade (500 ppm maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.⁹

Sebacic acid is a white, waxy compound derived from castor oil. It has a high melting point and is used principally to make polymers and esters. For example, it is polymerized to make nylon 6/10, which in turn is fabricated into products such as toothbrush bristles, fishing lines, and paper machine felts. Sebacic acid esters are used in plastic additives and plasticizers (which soften stiff plastics and resins) and in formulated products such as coatings, lubricants, and corrosion inhibitors.¹⁰

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, *i.e.*, sebacic acid.¹¹

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.”¹² In this investigation, we find that the domestic industry includes all domestic producers of sebacic acid.¹³

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 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).

⁹ 64 Fed. Reg. 16910, 16911 (April 7, 1999).

¹⁰ CR at I-5, PR at I-5 and Original Staff Report (June 17, 1994), USITC Pub. 3175 at II-3-5.

¹¹ Original Determination, USITC Pub. 3175 at I-7.

¹² 19 U.S.C. § 1677(4)(A).

¹³ During the period of the original investigation, Union Camp imported sebacic acid from China. See Original Determination, USITC Pub. 2793 at I-7. In the original determination, the Commission found that appropriate circumstances did not exist to exclude Union Camp from the industry under the related party provision, 19 U.S.C. § 16774(B), because Union Camp was responsible for all domestic production, functioned principally as a producer rather than an importer of sebacic acid, and did not market imported sebacic acid. USITC Pub. 2793 at I-8. In its response to the notice of institution, Union Camp stated that it no longer imports sebacic acid. Response at 8. Thus, we decline to exclude Union Camp from the industry under the related party provision.

III. REVOCATION OF THE ORDER ON SEBACIC ACID IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke 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.”¹⁴ 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.”¹⁵ Thus, the likelihood standard is prospective in nature.¹⁶ 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.”¹⁷ 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].”¹⁸

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

¹⁴ 19 U.S.C. § 1675a(a).

¹⁵ SAA, H.R. Rep. No. 103-316, Vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry.)” SAA at 883.

¹⁶ 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.

¹⁷ 19 U.S.C. § 1675a(a)(5).

¹⁸ 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.*

¹⁹ In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplán 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.

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.^{20 21}

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."^{22 23} 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 Union Camp.

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

B. Conditions of Competition

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

²⁰ 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.

²¹ 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). To date, Commerce has not issued any duty absorption findings in this case. 64 Fed. Reg. 16910, 16912 (April 7, 1999).

²² 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.*

²³ 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 record evidence and draws reasonable inferences in reaching its determinations." 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.*

²⁴ Vice Chairman Miller and Commissioner Hillman emphasize that they have reached this conclusion in the absence of contrary evidence or argument from respondent interested parties.

²⁵ 19 U.S.C. § 1675a(a)(4).

Apparent U.S. consumption of sebacic acid remained within a steady range during and since the original investigation.²⁶ Union Camp's open market shipments and market share have *** since 1993.²⁷ Conversely, the 1997 volume and market share of subject imports were *** their 1993 volume and market share.²⁸ Both the largest percentage increase in domestic shipments and the deepest decline in subject imports occurred from 1993 to 1994, immediately after the antidumping order was issued.²⁹ In 1997, Union Camp's shipments and market share were higher than during the original investigation (1991-1993), notwithstanding an increase in nonsubject imports.³⁰

The available evidence suggests that Union Camp's capacity to produce sebacic acid has not changed since 1993. Union Camp indicated that it replaced its sebacic acid cookers, but has ***.³¹ In 1997, Union Camp produced *** pounds of sebacic acid, bringing its production *** capacity of *** pounds, whereas in 1993, it was operating at only *** percent of its capacity to produce sebacic acid.³²

The domestic market for sebacic acid appears to be mature. While Union Camp states that it has improved its production methods to produce sebacic acid with a greater C-10 content and lower ash content, the available technology is essentially unchanged from the original investigation.³³ Moreover, the end uses and applications for sebacic acid remain essentially the same, *e.g.* for making polymers and esters.³⁴

²⁶ We note that the captive production provision, 19 U.S.C. § 1671(7)(C)(iv), is not applicable to five-year reviews. However, it is within the Commission's discretion to consider the impact of captive consumption in its analysis of whether the industry is likely to be materially injured by subject imports if the orders are revoked. *See generally* Titanium Sponge from Japan, Kazakhstan, Russia, and Ukraine, Inv. Nos. 751-TA-17-20, USITC Pub. 3119 at 15 n. 82 (Aug. 1998); Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, The Republic of Korea, Mexico, The Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Inv. Nos. 701-TA-319-332, 334, 336-342, 344, 347-353, Inv. Nos. 731-TA-573-579, 581-592, 594-597, 599-609, 612-619 (Final) (Steel), USITC Pub. 2664 at 22-23 (Aug. 1993), *aff'd*, 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). In the original investigation, the Commission examined all domestic consumption of sebacic acid, including Union Camp's internal consumption. Original Determination, USITC Pub. 2793 at I-9 & n. 35. However, because the subject imports of sebacic acid did not affect the open-market and captive consumption the same way, the Commission focused its analysis on the open-market segment of the industry in evaluating material injury and threat. *Id.*

In this expedited review, we have no information on current levels of captive consumption. We have relied on the facts available, which reflect open market data. Apparent U.S. open market consumption was *** pounds in 1991, *** pounds in 1992, *** pounds in 1993, and *** pounds in 1997. Table I-3, CR at I-16, PR at I-12.

²⁷ The domestic producer's open-market shipments were *** pounds in 1991, *** pounds in 1992, *** pounds in 1993, and *** pounds in 1997. These shipments accounted for *** percent of domestic open-market consumption in 1991, *** percent in 1992, *** percent in 1993, and *** percent in 1997. Table I-3, CR at I-16, PR at I-12.

²⁸ The volume of subject imports was 4.4 million pounds in 1991, 5.2 million pounds in 1992, 5.0 million pounds in 1993, and 2.4 million pounds in 1997. Relative to consumption, subject imports accounted for *** percent of the market in 1991, *** percent in 1992, *** percent in 1993, and *** percent in 1997. Table I-3, CR at I-16, PR at I-12.

²⁹ Union Camp's open-market shipments increased from *** pounds in 1993 to *** pounds in 1994, and then were *** pounds in 1995, *** pounds in 1996, and *** pounds in 1997. Union Camp's Response to Notice of Institution at Exhibit 5. The volume of subject imports decreased by approximately 75 percent from 1993 to 1994, continued to decrease approximately another 10 percent in 1995, and have since risen to just under half of their 1993 volume. Figure I-1, CR at I-11, PR at I-9.

³⁰ *See* Table I-2, CR at I-12, PR at I-10. There were 53 thousand pounds of nonsubject imports in 1991, 474 thousand pounds in 1992, 232 thousand pounds in 1993, and 1.0 million pounds in 1997. *Id.*

³¹ Union Camp's Response to Notice of Institution at 10; CR at I-7; PR at I-5.

³² Memorandum OINV R-104 (June 17, 1994) ("Original Staff Report"), confidential version at I-21, USITC Pub. 2793 at II-14.

³³ *See* CR at I-7, PR at I-5.

³⁴ CR at I-5-6, PR at I-4-5.

In the original determination, the Commission found that subject imports from China were increasingly substitutable with domestic sebacic acid.³⁵ Purchasers indicated that quality and price were the most important factors in purchasing decisions.³⁶ In terms of quality, the Commission noted that end users had found the Chinese product increasingly more acceptable and were undertaking the testing necessary to allow use of the imported sebacic acid for those uses with which the domestic product directly competed.³⁷ Given the evidence before us, we find that domestic and subject imported sebacic acid are substitutable and that price continues to be an important purchasing consideration.

Since 1962, the U.S. Defense Logistics Agency has maintained a stockpile of sebacic acid for civilian and military applications.³⁸ Although the Defense Logistics Agency did not purchase or sell any sebacic acid during 1991-1993, it has sold small increments of the stockpile each year since 1993. For the period from October 1, 1998, through September 30, 1999, that agency proposes to sell 400,000 pounds of sebacic acid. In light of the confined nature and limited extent of these sales, we do not find them to be a significant competitive factor in the U.S. market.

Based on the record evidence, we find that these conditions of competition in the sebacic acid market are not likely to change significantly in the reasonably foreseeable future. Accordingly, in this review, we find that current conditions in the sebacic acid market provide us with a reasonable basis from which to assess the likely 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

The record from the original investigation indicates that the Chinese sebacic acid industry had the ability and willingness to establish quickly a significant presence in the U.S. market. The market penetration of imports into the United States of sebacic acid from China increased rapidly from *** percent of apparent U.S. consumption in 1992 to *** percent of the U.S. market in 1993.⁴² From 1991 to 1993, imports from

³⁵ Original Determination, USITC Pub. 2793 at I-14. *See also* Original Determination, USITC Pub. 2793 at I-19-20 (Additional Views of Commissioner Carol T. Crawford) (finding “relatively high substitutability” between domestic like product and LTFV imports).

³⁶ Original Confidential Report at I-49, USITC Pub. 2793 at II-29.

³⁷ *Id.*

³⁸ CR at I-9, PR at I-7; Original Confidential Report at I-18-19, USITC Pub. 2793 at II-13.

³⁹ 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).

⁴⁰ 19 U.S.C. § 1675a(a)(2).

⁴¹ 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 with respect to importation of sebacic acid. Addressing the potential for product shifting, we note that the Commission in its original determination found that sebacic acid facilities are dedicated to the production of sebacic acid. Original Determination, USITC Pub. 2793 at I-13, n. 77. There is no contrary evidence in the record of this review. Thus product shifting is not an issue.

⁴² Original Determination, Confidential Version at I-12, USITC Pub. 2793 at I-14, *citing* Original Confidential Report at I-45, Table 15. By value, the subject imports increased from *** percent in 1992 to *** percent in 1993. Original
(continued...)

China accounted for between 91.6 and 98.8 percent of the quantity of U.S. imports of sebacic acid.^{43 44} Capacity to produce sebacic acid in China increased each year from 1991 to 1993 and was projected to increase again in 1994.⁴⁵ Capacity utilization had dropped to a period low of 84.9 percent in 1993.⁴⁶ Underutilized Chinese capacity of 15.1 percent represented *** percent of apparent U.S. consumption in 1993.⁴⁷ Chinese production was oriented towards exports, which accounted for more than three-fourths of all production.⁴⁸

The volume of sebacic acid imported from China declined sharply after the order was imposed.⁴⁹ Between 1995 and 1997, the level of imports from China began rising again, but has remained well below the 1991-1993 levels.

Several factors support the conclusion that subject import volume is likely to be significant if the order is revoked. First, the post-1995 increase in the volume of Chinese sebacic acid imports followed Commerce's lowering of the margins for some producers as a result of administrative reviews.⁵⁰ Based on this evidence, it is reasonable to infer that there has been, and will likely be, a direct correlation between the volume of subject imports and the elimination of antidumping duties. In this regard, we note that the current conditions of competition are similar to those in existence prior to issuance of the order.⁵¹ We find it likely in these circumstances that the exporters who have ceased or reduced shipping sebacic acid to the United States upon issuance of the order would reenter the U.S. market and that the import volume would rise significantly if the discipline of the order were removed.⁵²

Second, the information available in the record indicates that Chinese capacity to produce sebacic acid has nearly doubled since the period of the original investigation. The size of the sebacic acid industry in China appears to have grown from 14 producers in 1993 to 18 producers in 1998.⁵³ Union Camp also presented documented evidence about the current and projected capacity of three Chinese sebacic acid producers.⁵⁴ These data, which indicate a current capacity of 26.8 million pounds and a projected capacity of at least 30.8 million pounds for just the three firms identified, exceed by over 10 percent the sebacic acid capacity of 23.6 million pounds reported for all Chinese sebacic acid producers in 1993.⁵⁵ If this capacity is added to the capacity of the three largest Chinese producers in 1993, the capacity of these six producers alone would equal approximately *** pounds, as compared to the total 23.6 million pound capacity for all Chinese producers in

⁴² (...continued)

Confidential Report at I-45, Table 15.

⁴³ See Table I-3, CR at I-16, PR at I-12. See also Original Confidential Report at I-44, Table 14, USITC Pub. 2793 at II-26.

⁴⁴ Given that the current conditions of competition are similar to those in existence prior to issuance of the order and based on the available evidence, Chairman Bragg infers that Chinese producers would resume exporting significant volumes of sebacic acid to the United States if the order is revoked. In this regard she notes that, during the original investigation, Chinese production was oriented towards exports, which accounted for more than three-fourths of all production. Original Confidential Report at I-40, Table 13, USITC Pub. 2793 at II-24, Table 13.

⁴⁵ Original Determination, USITC Pub. 2793 at I-13 and II-24, Table 13.

⁴⁶ *Id.*

⁴⁷ *Id.* and Original Confidential Report at I-13, Table 1.

⁴⁸ Original Confidential Report at I-40, Table 13, USITC Pub. 2793 at II-24, Table 13.

⁴⁹ Figure 1, CR at I-11, PR at I-9.

⁵⁰ See CR at I-3, n. 5, PR at I-3, n. 5.

⁵¹ Chairman Bragg notes in this regard that the 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.

⁵² See SAA at 890.

⁵³ CR at I-15 & n. 43, PR at I-12 & n. 43.

⁵⁴ See CR at I-15-17 & n. 43 and Table I-4, PR at I-12-13 & n. 43 and table I-4; Union Camp's Response to Notice of Institution at 6, 10 (n. 10) and Exhibits 8 and 9. This evidence included data obtained from Chinese producers' Internet home pages.

⁵⁵ Table I-4, n. 1, CR at I-17, PR at I-13.

1993.⁵⁶ While we do not have precise information, it is reasonable to infer that the current capacity exceeds this *** pounds since it appears that there are 12 other producers in China.⁵⁷

Third, the Chinese industry has continued to be export-oriented. The producers have expressed a continued focus on export markets, with two substantial producers specifically listing the United States (or “America”), among their markets for sebacic acid.⁵⁸ We find that the increased production capacity and emphasis on export markets is evidence of the Chinese producers’ willingness and ability to export significant volumes of sebacic acid to the U.S. market in the absence of the order.

Thus, based on the record in this review, we find that significant volumes of sebacic acid from China are likely to be exported to the United States within the reasonably foreseeable future if the antidumping duty order is revoked. Consequently, we conclude that subject imports would likely increase to a significant level, and would regain significant U.S. market share, absent the restraining effect of the order.

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.⁵⁹

The record in this expedited review contains a limited amount of pricing data for the U.S. market. In the original determination, the Commission found that sebacic acid imports from China consistently undersold the domestic like product, and that prices and unit values for the Chinese product declined during 1991-93.⁶⁰

As we have found, 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. Based on the record evidence, we find it likely that the Chinese producers would offer attractively low prices to U.S. purchasers in order to regain market share if the antidumping duty order is revoked.

During the original investigation, the average unit value of the subject imports declined from \$1.25 per pound in 1991 to \$0.90 per pound in 1993.⁶¹ By 1995, the year after issuance of the order, the average unit value for Chinese sebacic acid sold in the U.S. market rose to \$1.22 per pound.⁶² Since then, the average unit value for Chinese sebacic acid has remained higher than the average unit value for Chinese sebacic acid imported during the period of the original investigation.⁶³ Further, World Trade Atlas data provided by Union

⁵⁶ *Id.* We note that during the period of the original investigation, Chinese production capacity increased each year and was projected to increase further. See Original Confidential Report at I-40-41 and Table 13, USITC Pub. 2793 at II-23-24.

⁵⁷ CR at I-15, n. 43, PR at I-12, n. 43. Union Camp also stated that at least an additional 6.6 million pounds of sebacic acid capacity exists in the province of Henan, which is a province not represented by any of the Chinese producers that have been subject to Commerce’s administrative reviews. Union Camp’s Response to Notice of Institution at 6.

⁵⁸ Union Camp’s Response to Notice of Institution at Exhibits 8 and 9.

⁵⁹ 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.

⁶⁰ Original Determination, USITC Pub. 2793 at I-12, I-14-15.

⁶¹ Table I-2, CR at I-12, PR at I-10. By contrast, the average unit value of Union Camp’s shipments (combined open-market and captive) were at or above *** per pound for each of the years 1991 through 1993. Original Confidential Report at I-23, Table 4.

⁶² Union Camp’s Response to Notice of Institution, Exhibit 7 (from the World Trade Atlas).

⁶³ The World Trade Atlas information provided by Union Camp indicates that the average unit value for Chinese sebacic acid sold in the United States was \$1.09, \$1.07 and \$1.06 per pound, respectively for 1996, 1997 and the first nine months of 1998. Union Camp’s Response to Notice of Institution, Exhibit 7. However, based on official import statistics, Commission staff calculated average unit values of \$1.21 and \$1.28, respectively for 1997 and 1998. Table I-2, CR at I-12, PR at I-10. In this expedited review, we are unable to ascertain exactly how the World Trade Atlas data were calculated or to otherwise reconcile the data. However, under both calculations, 1997 and 1998 data show average
(continued...)

Camp show that virtually all average unit values for Chinese sebacic acid exports to Europe and Canada from 1996 through at least the first half of 1998 were below the average unit value for Chinese sebacic acid exports to the United States during comparable time frames.^{64 65}

Accordingly, we find that revocation of the antidumping duty order would be likely to lead to significant price effects,⁶⁶ 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.⁶⁷ 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.⁶⁸ 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.⁶⁹

In the original determination, the Commission found that the domestic industry was threatened with material injury by reason of increasing volumes of low priced LTFV imports of sebacic acid that were gaining an increasing share of the market in which the domestic product directly competed.⁷⁰ While the Commission

⁶³ (...continued)

unit values for Chinese sebacic acid sold in the U.S. market above those for the Chinese product that existed in the U.S. market during 1991-1993 and, as noted *infra*, above the average unit values for Chinese sebacic acid sold in other markets in 1997 and 1998.

⁶⁴ Union Camp's Response to Notice of Institution at Exhibit 7. We note that Union Camp also reported that its current selling price in European markets is *** per pound compared to the Chinese selling price of \$1.23 per pound, based on information obtained from its European customers. Union Camp's Response to Notice of Institution at 4.

⁶⁵ Commissioners Crawford and Koplan note that, as in the original investigation, the domestic producer, if faced with competition from significant volumes of LTFV imports from China in this mature market, would likely be forced to sacrifice sales volume in order to maintain prices at a profitable level, or sell its product at lower prices, or some combination of the two.

⁶⁶ Commissioner Crawford does not base her finding on a likelihood of significant underselling.

⁶⁷ 19 U.S.C. § 1675a(a)(4).

⁶⁸ 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 covered four named Chinese producers and exporters, and "all other" manufacturers and exporters of sebacic acid from China. Commerce found that revocation of the antidumping duty order would likely lead to margins of dumping ranging from 82.66 percent to 141.97 percent for the four named companies, and margins of 243.40 percent for all others. 64 Fed. Reg. 16910, 16913 (April 7, 1999).

⁶⁹ 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.

⁷⁰ Original Determination, USITC Pub. 2793 at I-14-15. Commissioner Crawford found that the subject imports had a significant impact on the domestic industry's production, sales, and revenues. She therefore found that the domestic industry would have been materially better off had the subject imports not been dumped. Consequently, she determined

(continued...)

found that the domestic industry was not yet experiencing material injury by reason of the LTFV imports, it noted that end users in the United States had begun to find the Chinese product more acceptable for uses for which the domestic product had been purchased in the past and that end users had undertaken testing and production process modifications to enable them to use Chinese sebacic acid.⁷¹ The Commission found that, as purchasers became more receptive to using Chinese sebacic acid, imports of this product as a substitute for the domestic product were likely to increase, and the large price differential between the domestic and Chinese product added to the likelihood that this increase would occur. Given the likelihood for an increase of substitutable imports of sebacic acid from China, the Commission found that the market penetration of subject imports was likely to increase to an injurious level.

After imposition of the antidumping duty order, the domestic industry's market share increased as subject imports exited the market.⁷² High-valued non-subject imports also gained some of the market share lost by subject imports, but do not appear to have adversely affected the ability of the domestic industry to improve its production and sales.⁷³ The basic substitutability of the product has enabled the domestic industry to readily replace subject imports and regain domestic market share. Apparent consumption is relatively confined within a steady range, and 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.⁷⁴ As in the original investigation, the domestic producer, if faced with competition from significant volumes of LTFV imports of sebacic acid from China in this mature market, would likely be forced to sacrifice sales volume in order to maintain prices at a profitable level, sell its product at lower prices, or some combination of the two.

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 its ability to compete directly with the domestic product for the same end uses, 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, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

⁷⁰ (...continued)

that the domestic industry was materially injured by reason of subject imports. Original Determination, USITC Pub. 2793 at I-17-22 (Additional Views of Commissioner Carol T. Crawford).

⁷¹ Original Determination, USITC Pub. 2793 at I-14.

⁷² See Union Camp's Response to Notice of Institution at Exhibit 5.

⁷³ See Tables I-1, I-2, and I-3, CR at I-9, I-12, and I-16, PR at I-7, I-10, and I-12.

⁷⁴ Union Camp has not asserted that the domestic industry is in a vulnerable state. The available record evidence indicates that domestic shipments, capacity utilization, sales and unit sales values have increased since the period of the original investigation. See Table I-1, CR at I-9, PR at I-7. Accordingly, 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. . .").

CONCLUSION

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