

UNITED STATES INTERNATIONAL TRADE COMMISSION

**MELAMINE FROM JAPAN**

Investigation No. **AA1921-162 (Review)**

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. **3209, July 1999**)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

## Investigation No. AA1921-162 (Review)

### MELAMINE FROM JAPAN

#### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission 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 finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

#### BACKGROUND

The Commission instituted this review on August 3, 1998 (63 F.R. 41282) and determined on November 5, 1998 that it would conduct a full review (63 F.R.63747, November 16, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on January 13, 1999 (64 F.R. 2233). The hearing was held in Washington, DC, on May 20, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

<sup>2</sup> Vice Chairman Miller 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 finding covering melamine from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1</sup>

### I. BACKGROUND

In December 1976, the Commission determined that a domestic industry was being injured and was likely to be injured by reason of imports of melamine from Japan.<sup>2</sup> On February 2, 1977, the Department of Treasury published an antidumping finding on melamine from Japan.<sup>3</sup> On August 3, 1998, the Commission instituted a review pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the antidumping finding on melamine from Japan would likely lead to continuation or recurrence of material injury.<sup>4</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally 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.<sup>5</sup> If the Commission finds the responses from both groups of interested parties to be adequate, it will determine to conduct a full review.

In this review, the Commission received responses to the notice of institution from one of two domestic producers, Melamine Chemicals, Inc. (“MCI”), and from one importer, Taiyo America, Inc. (“Taiyo”), one of \*\*\* importers of the product from Japan in 1997 and 1998. No Japanese producers responded to the notice. On November 5, 1998, the Commission determined that both individual interested party responses to its notice of institution were adequate, that the domestic interested party group response was adequate, and that the respondent interested party group response was adequate.<sup>6</sup> Accordingly, the

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<sup>1</sup> Vice Chairman Miller and Commissioner Askey dissenting. They determine that revocation of the antidumping finding covering melamine from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Dissenting Views of Vice Chairman Marcia E. Miller and Commissioner Thelma J. Askey.

<sup>2</sup> Melamine in Crystal Form from Japan, Inv. No. AA1921-162, USITC Pub. 796 (Dec. 1976) (“Original Determination”).

<sup>3</sup> 42 Fed. Reg. 6366 (Feb. 2, 1977).

<sup>4</sup> 63 Fed. Reg. 41282 (Aug. 3, 1998).

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

<sup>6</sup> *See* 63 Fed. Reg. 63747 (Nov. 16, 1998).

Commission decided to conduct a full five-year review.<sup>7</sup> Only MCI filed a notice of appearance and participated in the proceeding as a party.

## 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.”<sup>8</sup> 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.”<sup>9</sup> In its final five-year review determination, Commerce defined the merchandise subject to the finding as “melamine, in crystal form, from Japan.”<sup>10</sup> On February 28, 1997, Commerce determined that melamine, in crystal form, with special physical characteristics (*i.e.*, 100 percent of the particles are smaller than 10 microns) was also within the scope of the finding.<sup>11</sup> Melamine is a fine, white crystalline powder that is used primarily to manufacture amino resins, the major end uses of which include surface coatings, laminates, molding compounds, paper treatment, adhesives, and textile-treatment applications in the automotive, appliance, dinnerware, furniture, fabric, and wood paneling industries.<sup>12</sup>

The starting point of our like product analysis in a five-year review is the like product definition in the Commission’s original determination. Because the Antidumping Act, 1921, did not contain a “like product” provision, the Commission did not make a like product determination *per se* in its original determination. Instead, it stated that “melamine, by and large, is a uniform end product” and that the “domestic industry” at issue consists “of the facilities devoted to the production of melamine in the United States.”<sup>13</sup> Thus, in the context of current statutory terminology, the Commission effectively treated all melamine, in crystal form, as a single domestic like product. We see no circumstances in this case that would warrant a different approach.

In its response to the notice of institution, Taiyo, an importer of Japanese melamine, argues that the Commission should consider the fine, particle-sized melamine that it imports for its specialty ink applications -- melamine crystal of a particle size of less than 10 microns -- to be a separate like product. MCI disputes Taiyo’s assertion and argues that the Commission should determine that there is one domestic like product comprising melamine in crystal form of all particle sizes, and we agree.

Regardless of particle size, the chemical composition of all melamine is similar.<sup>14</sup> While users prefer certain sizes for their specific processes,<sup>15</sup> it appears that there is significant interchangeability

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<sup>7</sup> *Id.* Commissioner Crawford concluded that the domestic and respondent group responses were inadequate and voted for an expedited review. Commissioner Hillman concluded that the domestic group response was adequate and that the respondent group response was inadequate, but found that other circumstances warranted a full review.

<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</sup> 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).

<sup>10</sup> 63 Fed. Reg. 67654, 67655 (Dec. 8, 1998).

<sup>11</sup> 63 Fed. Reg. at 67655.

<sup>12</sup> Confidential Staff Report (“CR”) at I-9, Public Staff Report (“PR”) at I-7.

<sup>13</sup> Original Determination at 3.

<sup>14</sup> CR at I-13, PR at I-9.

<sup>15</sup> See CR at I-13, PR at I-9.

among melamine of different particle sizes.<sup>16</sup> In addition, all melamine is produced on process specific equipment using the same employees and is sold through identical channels of distribution.<sup>17</sup> Should a smaller particle size be desired, customers may have the melamine ground, as grinding is a relatively minor operation and would be the last step in the production process.<sup>18</sup> Melamine ground to specific sizes may command a price premium,<sup>19</sup> although the quantification of such a premium is in dispute.<sup>20</sup> On the basis of similar chemical composition, the same channels of distribution, production facilities and employees, and significant interchangeability, we determine that the product most similar to melamine crystal of a particle size of less than 10 microns is all melamine in crystal form.<sup>21</sup>

Accordingly, we find that there is one domestic like product in this review, consisting of all melamine in crystal form and inclusive of all particle sizes.

## 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.”<sup>22</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.<sup>23</sup> Accordingly, based on the definition of the domestic like product as determined above, we find that for the purposes of this review the

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<sup>16</sup> MCI's Posthearing Brief at A-44.

<sup>17</sup> CR at I-13, PR at I-9. Before the melamine is ground, if necessary, domestic producers utilize high- and low-pressure processes to manufacture melamine and the equipment used is specific to that particular process. Thus, the manufacturing process and the equipment used are not exactly the same throughout the domestic industry, although all domestic producers use a low-pressure process and one also uses a high-pressure process. See CR at I-11 - I-12, PR at I-8 - I-9.

<sup>18</sup> MCI's Prehearing Brief at 9-10; MCI's Posthearing Brief at A-43; see CR at I-11, PR at I-8.

<sup>19</sup> CR at I-14, PR at I-10; see MCI's Posthearing Brief at Exh. P.

<sup>20</sup> MCI claims that prices \*\*\*. MCI's Posthearing Brief at A-45; see Tr. at 36-37.

<sup>21</sup> We note that the Commission “generally has not drawn lines based solely on size, and has looked for other points of distinction before finding separate like products.” Heavy Forged Handtools from the People's Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357, at 7-8 (Feb. 1991), citing Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea and Taiwan, Inv. Nos. 731-TA-488-450 (Preliminary), USITC Pub. 2234, at 4-5 (Nov. 1989). See also Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046 (Dec. 1987) (all color picture tubes are one like product regardless of size). With regard to Taiyo's imports of melamine crystal of a particle size of less than 10 microns, we note that while there is domestic production of melamine crystal of a particle size of greater than 10 microns, and there are imports of such melamine, there is no domestic production of melamine crystal of a particle size of less than 10 microns. See Tr. at 36. If there is no domestic production “like” the subject imports, the Commission must find the domestic product that is “most similar in characteristics and uses with” the imports. 19 U.S.C. § 1677(10). Accordingly, the product most similar to melamine crystal of a particle size of less than 10 microns is all melamine in crystal form. See Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia, Invs. Nos. 701-TA-384 & 731-TA-806-808 (Preliminary), USITC Pub. 3142, at 5 n.14 (Nov. 1998).

<sup>22</sup> 19 U.S.C. § 1677(4)(A).

<sup>23</sup> See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

domestic industry includes the two domestic producers of melamine in crystal form. These producers are MCI and American Melamine Industries (“AMEL”), which is a joint venture between Cytec Melamine, Inc. (“Cytec”) and DSM Melamine Americas, Inc. (“DSM”).

### **III. REVOCATION OF THE FINDING ON MELAMINE FROM JAPAN 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 finding unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the finding “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>24</sup> 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 finding] . . . and the elimination of its restraining effects on volumes and prices of imports.”<sup>25</sup> Thus, the likelihood standard is prospective in nature.<sup>26</sup> 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.”<sup>27</sup> 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 \*\*\*.”<sup>28 29</sup>

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<sup>24</sup> 19 U.S.C. § 1675a(a).

<sup>25</sup> 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.

<sup>26</sup> 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 [finding] is revoked.” SAA at 884.

<sup>27</sup> 19 U.S.C. § 1675a(a)(5).

<sup>28</sup> 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.*

<sup>29</sup> In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplun 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.

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 fundamental 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 [finding] is revoked.”<sup>30</sup> 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 finding under review, and whether the industry is vulnerable to material injury if the finding is revoked.<sup>31 32</sup>

The statute provides that when an interested party withholds information that has been requested by the Commission, the Commission may “use the facts otherwise available in reaching” its determination.<sup>33 34</sup> As noted above, no Japanese producers responded to the Commission’s notice of institution, nor did any respond to foreign producer questionnaires.<sup>35</sup> Accordingly, with respect to the foreign industry, we have relied on the facts available in this review, which consist primarily of the record in the original investigation, information collected by Commission staff since the institution of this review, including information obtained from SRI International,<sup>36</sup> and information provided by MCI.

For the reasons stated below, we determine that revocation of the antidumping finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury to the domestic melamine industry within a reasonably foreseeable time.

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<sup>30</sup> 19 U.S.C. § 1675a(a)(1).

<sup>31</sup> 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.

<sup>32</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce did not issue any duty absorption findings in this matter. *See* 63 Fed. Reg. at 67656.

<sup>33</sup> 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.*

<sup>34</sup> Chairman Bragg and Commissioner Koplan 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, although 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.*

<sup>35</sup> While Taiyo did respond to an importer questionnaire, it did not file briefs or participate in the hearing.

<sup>36</sup> *Chemical Economics Handbook*, “Melamine,” SRI International (Jan. 1996 & May 1999 draft) (“SRI CEH”).

## B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the finding 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.”<sup>37</sup> In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for melamine.

First, melamine is a commodity product, and U.S. and Japanese melamine are largely interchangeable; *i.e.*, there is a moderate to high degree of substitutability between U.S. and Japanese melamine.<sup>38</sup> While price is an important factor in the sale of melamine, quality and product availability may be equal, if not more important, considerations in purchasing decisions.<sup>39</sup> In the original investigation, all responding purchasers stated that the price of melamine was the controlling factor in their purchasing decisions.<sup>40</sup>

As was the case in the original investigation, the demand for melamine is primarily dependent upon the economic strength of the \*\*\*, which are the chief consumers of melamine.<sup>41</sup> As such, the market for melamine has grown significantly from the time of the original investigation until the present,<sup>42</sup> commensurate with overall economic growth.

In addition, as in the original investigation, there are few domestic and foreign producers.<sup>43</sup> The business cycle for melamine is affected by urea prices and capacity changes, as well as U.S. economic growth.<sup>44</sup> The industry is capital intensive and when investment in new capacity occurs, fixed costs increase and declines in profitability result due to increased operating costs and problems in ramping up the new capacity. When these problems are resolved and the new capacity has been in use for a suitable period of time (*i.e.*, “matures”), costs decline and profitability rises.<sup>45</sup>

We note that the quantity of non-subject imports of melamine is small but growing. Between 1997 and 1998, the market share of non-subject imports increased from \*\*\* percent to \*\*\* percent.<sup>46</sup> In contrast, the quantity of non-subject imports declined steadily from \*\*\* in 1973 to \*\*\* in 1975.<sup>47</sup>

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<sup>37</sup> 19 U.S.C. § 1675a(a)(4).

<sup>38</sup> The degree of substitution between domestic and imported melamine depends upon such factors as relative prices, quality (*e.g.*, purity), and conditions of sale (*e.g.*, price discounts/rebates, payment terms, and product support). CR at II-9, PR at II-6.

<sup>39</sup> CR at II-10 - II-11, PR at II-6 - II-7.

<sup>40</sup> Original Determination at 7-8.

<sup>41</sup> CR at II-6, PR at II-4; *see* Original Report at A-14 - A-15.

<sup>42</sup> Apparent U.S. consumption of melamine increased, in terms of quantity, from \*\*\* pounds in 1975 to \*\*\* pounds in 1998. In terms of value, apparent U.S. consumption increased from \*\*\* in 1975 to \*\*\* in 1998. U.S. production increased over the same period from \*\*\* pounds to \*\*\* pounds and the quantity of U.S. shipments increased from \*\*\* pounds to \*\*\* pounds. CR/PR at Table I-1.

<sup>43</sup> At the time of the original investigation, there were three domestic and three Japanese producers of melamine. Original Staff Report at A-9, A-32. There are currently two firms comprising the domestic industry and three Japanese producers. CR/PR at Table I-4.

<sup>44</sup> CR at II-3, PR at II-2.

<sup>45</sup> CR at II-3 n.7, D-3, D-5; PR at II-2 n.7, D-3, D-4; MCI’s Posthearing Brief at A-28.

<sup>46</sup> Non-subject imports increased from \*\*\* pounds in 1997 to \*\*\* pounds in 1998. The value of these imports increased from \*\*\* to \*\*\* during the same period. CR/PR at Table I-5. Non-subject imports’ share of the value of apparent consumption increased from \*\*\* percent in 1997 to \*\*\* percent in 1998. CR/PR at Table I-6.

<sup>47</sup> Original Report at Table 6.

U.S. producers reported that in 1998 \*\*\* of their melamine production went to end users and \*\*\* was for internal consumption/company transfers. During the original investigation, captive use/internal company transfers also accounted for approximately one-third of annual U.S. production.<sup>48</sup> We have considered captive consumption as a condition of competition in our analysis of whether the industry is likely to be materially injured by subject imports if the finding is revoked.<sup>49 50</sup> In this review, the significance of the amount of captive production is diminished because of the arms-length nature of MCI's transfers to related companies, which account for a significant portion of the domestic production that could potentially be considered as internally produced.<sup>51 52</sup>

Based on the record evidence, we find that these conditions of competition in the melamine market are not likely to change significantly in the reasonably foreseeable future. Accordingly, in this review, we find that current conditions in the melamine market provide us with a reasonable basis from which to assess the likely effects of revocation of the antidumping finding within a reasonably foreseeable time.<sup>53</sup>

### C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the finding 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.<sup>54</sup> 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

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<sup>48</sup> CR/PR at II-1 & n.1. MCI interprets "company transfers" to include arms-length sales to its related companies: Borden Chemical, Inc. and Sun Coast Industries. (Borden purchased MCI in 1997 and purchased Sun Coast in 1998. Sun Coast is now known as Plastics Manufacturing Co., Division of Borden Chemical, Inc.) MCI explains that it manufactures only one product -- melamine -- and does not internally consume any of it. Rather, it sells a portion of its production to these companies at \*\*\*. MCI's Posthearing Brief at A-15, A-27; Tr. at 42, 44. MCI shipped \*\*\* percent of its melamine to these companies in 1997 and \*\*\* percent in 1998. CR at III-A-3, PR at III-2. Cytec and DSM each have rights to half of the output of their joint venture AMEL, which is the only other domestic producer. See CR at I-15, PR at I-10. Cytec consumed internally \*\*\* percent of its AMEL-produced melamine in 1997 and \*\*\* percent in 1998. CR at III-A-3, PR at III-2.

<sup>49</sup> See generally Sebacic Acid from China, Inv. No. 731-TA-653 (Review), USITC Pub. 3189, at 7 n.26 (May 1999), in which we stated that the captive production provision is not applicable to five-year review investigations. We note that the determination in that case should have referred to 19 U.S.C. § 1677(7)(C)(iv).

<sup>50</sup> Commissioners Hillman and Koplán are reexamining whether or not the captive production provision applies to five-year reviews. They note that in neither Sebacic Acid nor in any other five-year review, including this one, has the Commission had the benefit of parties' arguments in favor of or against the application of the captive production provision to five-year reviews.

<sup>51</sup> We take no position on whether transfers to a related company (such as those by MCI) constitute internal transfers for the purpose of the captive production provision. While we are not applying the captive production provision to this review, we note that our conclusion would not differ even if we were to focus primarily on the merchant market for melamine.

<sup>52</sup> Commissioner Crawford does not join this sentence or the preceding footnote.

<sup>53</sup> 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 finding would be revoked in January 2000. 19 U.S.C. § 1675(c)(6)(A)(iv).

<sup>54</sup> 19 U.S.C. § 1675a(a)(2).

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.<sup>55</sup>

In the original investigation, the Commission found that subject imports had increased from 300,000 pounds (or 7.8 percent of total U.S. imports from all sources) in 1973 to 5.1 million pounds (or 80 percent of total U.S. imports from all sources) in 1975. The ratio of subject imports to U.S. consumption rose from less than one percent in 1973 to greater than six percent in 1975, which was the year in which at least four-fifths of such imports were sold at less than fair value.<sup>56</sup>

The volume of subject imports is currently at a very low level relative to total consumption.<sup>57</sup> However, our task in a five-year review investigation is to assess the likely volume upon revocation of the finding. Data derived from SRI International indicate that Japanese capacity utilization is high.<sup>58</sup> While this information viewed alone might support a finding of limited Japanese ability to increase exports to the United States, other information supports the conclusion that subject import volumes are likely to be significant if the finding is revoked.

Japanese producers export a substantial portion of their production<sup>59</sup> and have demonstrated the ability to shift large quantities of their exports to new target markets in a short period of time. \*\*\*.<sup>60</sup> Japan has also quickly redirected exports to Canada, South America, and other non-traditional export markets in 1998.<sup>61</sup> Furthermore, total Japanese exports are \*\*\*, as \*\*\*.<sup>62</sup>

Japanese producers have steadily and substantially increased their production of melamine since 1993.<sup>63</sup> By contrast, while \*\*\*.<sup>64</sup> As a result of the increase in production and recent decrease in demand, Japanese melamine inventories \*\*\*, reaching over \*\*\* metric tons in 1998, by far their highest level during the 1993 to 1998 period.<sup>65</sup> Taken together, the amount of Japanese melamine held in inventory and the increased shipments to Europe from 1997 to 1998, which are unlikely to be repeated because they arose from one-time severe production problems in Europe, represent an amount of melamine available for export to the United States equivalent to nearly \*\*\* percent of apparent U.S. consumption in 1998.<sup>66</sup>

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<sup>55</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>56</sup> Original Determination at 4-5.

<sup>57</sup> The ratio is less than \*\*\* percent for both 1997 and 1998. CR/PR at Table I-6.

<sup>58</sup> Japanese producers' capacity utilization was \*\*\* percent in 1997 and \*\*\* percent in 1998. CR/PR at Table IV-4.

<sup>59</sup> CR/PR at Table IV-4.

<sup>60</sup> MCI's Posthearing Brief at 9 & Exh. E; see CR at II-6, PR at II-4. European imports of Japanese melamine rose from \*\*\*. MCI's Posthearing Brief at A-22 & Exh. U; see CR/PR at Table I-6.

<sup>61</sup> MCI's Posthearing Brief at 9 & Exh. K. Canadian imports of Japanese melamine rose from \*\*\* metric tons in 1996 to \*\*\* metric tons in 1998 (over \*\*\*). MCI's Posthearing Brief at Exh. K. Japanese exports to non-traditional export markets increased from \*\*\* metric tons in 1996 to \*\*\* metric tons in 1998, or from \*\*\*. MCI's Prehearing Brief at Ex. E.

<sup>62</sup> CR/PR at Table IV-4.

<sup>63</sup> Japanese production has increased steadily from \*\*\* metric tons in 1993 to \*\*\* metric tons in 1998. CR/PR at Table IV-4.

<sup>64</sup> CR at II-9, PR at II-6.

<sup>65</sup> End-of-period inventories fell from \*\*\* metric tons in 1993 to \*\*\* metric tons in 1997, then grew to \*\*\* metric tons in 1998. CR/PR at Table IV-4.

<sup>66</sup> See CR/PR at Tables I-6, IV-4; MCI's Posthearing Brief at 9 & Exhs. E, U. Melamine producers have high fixed capital costs that create a strong incentive to operate at maximum capacity. See CR at D-6, PR at D-5.

Thus we view the 1998 increase in melamine inventories in Japan and the shipments to the European Union as

(continued...)

Additionally, we find that it is unlikely that other markets will readily absorb significantly increased Japanese shipments. Because of increased capacity in Korea, Indonesia, and China, the Japanese producers face growing competition in a number of their traditional Asian export markets.<sup>67</sup> Indonesia and Korea have added production capacity in recent years, and MCI submitted information indicating that China will add an additional \*\*\* of production capacity to be operational by the end of 1999.<sup>68</sup> Moreover, over the next five years the Japanese home market is projected to experience negative growth in real GDP followed by moderate expansion.<sup>69</sup> The average annual growth for Japanese home market consumption of melamine is projected to be \*\*\* percent from 1998 to 2003.<sup>70</sup>

Further information suggests that the Japanese producers have the ability and incentive to ship significant quantities of melamine to the United States market in a short period of time. Japanese producers currently have affiliated companies in the United States that are selling similar products,<sup>71</sup> allowing them to quickly redirect their exports to this market as they did in the European and Canadian markets.<sup>72</sup> Higher tariffs in the European Union and in certain South American and Asian countries relative to the United States, and the long-term stability of the U.S. market vis-à-vis certain Asian markets, make the U.S. market attractive.<sup>73</sup> Thus, Japanese producers will have an incentive to redirect exports to the United States if the finding is revoked. Indeed, MCI submitted sales call information indicating that Japanese producers have already made preparations to \*\*\* in the event the finding is revoked, such as \*\*\*.<sup>74</sup>

The Japanese producers' ability to shift melamine exports quickly to new regions, as explained above, indicates that they are well-equipped to shift such exports to the United States upon revocation of the finding without decreasing their shipments to other traditional markets. Japanese producers' behavior at the time of the original investigation, when subject imports increased significantly over the period of investigation,<sup>75</sup> suggests that they would pursue a similar strategy should the opportunity present itself.<sup>76</sup> Accordingly, we find that the current low market share of subject imports is a result of the restraining effects of the finding rather than the Japanese producers' unwillingness or lack of interest in shipping significant volumes to the United States. Moreover, it is unlikely that the European Union will again suffer

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<sup>66</sup> (...continued)

indicative of the kind of excess volume that will be produced annually in the foreseeable future, and that will be available for export to the United States.

<sup>67</sup> MCI's Posthearing Brief at 9; *see* CR at II-6, PR at II-4.

<sup>68</sup> MCI's Posthearing Brief at 9, A-23 & Exh. H. We find that other Chinese plants will likely displace at least some Japanese melamine currently sold in Southeast Asia. *See* SRI CEH at 57-59 (May 1999 draft).

<sup>69</sup> CR at II-9, PR at II-6; *see* MCI's Posthearing Brief at Exh. X.

<sup>70</sup> CR at II-9, PR at II-6.

<sup>71</sup> The three Japanese producers of melamine all have subsidiaries in the United States. MCI's Prehearing Brief at 12, A-7; *see* MCI's Final Comments at 3, Tr. at 20.

<sup>72</sup> Indeed, the stable nature of melamine crystals could enable the Japanese firms to store the product in their U.S. affiliates' warehouses. *See* Tr. at 27. In such an event, product availability and customer support for the Japanese merchandise would be equal to that of the U.S. product, leaving price as the sole factor affecting purchasing decisions. *See* CR at II-10, PR at II-6; MCI's Posthearing Brief at 10.

<sup>73</sup> MCI's Posthearing Brief at 9; MCI's Prehearing Brief at 22.

<sup>74</sup> MCI's Posthearing Brief at 2-3, A-1 & Exh. B; Tr. at 18.

<sup>75</sup> Subject imports increased from 0.3 million pounds in 1973 to 2.8 million pounds in 1974, and increased further to 5.1 million pounds in 1975. Original Report at Table 13.

<sup>76</sup> While Commissioner Crawford has considered the Commission's prior injury determination, she notes that the current record is particularly important in her analysis of the likely volume of subject imports in the absence of the existing finding.

the temporary shortages suffered in 1997 and 1998, further indicating that the Japanese will have to divert their domestic production increases elsewhere.

As described above, there is increased production capacity in Southeast Asia, diminishing Japan's ability to ship melamine to its traditional export markets, as well as \*\*\* in Japan. We do not expect that all these \*\*\* or the volume represented by the one-time shipments to Europe would be shipped to the United States. However, based upon the facts available in the current record, and in the absence of contrary evidence or argument, we find it likely that Japanese producers would ship substantial volumes of the subject merchandise should the finding be revoked, especially in view of the highly substitutable nature of this commodity product. Given the foregoing, we determine that subject import volumes are likely to be significant within a reasonably foreseeable time if the antidumping finding is revoked.<sup>77</sup>

#### D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping finding is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with 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 prices of domestic like products.<sup>78</sup>

In the original investigation, the Commission found that the subject imports significantly undersold the U.S. product in the latter part of the period of investigation by as much as \*\*\* percent.<sup>79</sup> It also found that there was price depression due to the subject imports.<sup>80</sup>

Recent price data collected by the Commission are mixed. Prices for U.S.-produced melamine were generally substantially higher at the end of 1998 than at the beginning of 1997;<sup>81</sup> however, MCI submitted information indicating that its prices have \*\*\* in 1999.<sup>82</sup> No price comparisons between Japanese and U.S. melamine in the U.S. market were possible.<sup>83</sup>

In the absence of more probative price data, we base our finding on price effects on other information. In particular, as indicated above, price is an important factor in purchasing decisions, and the domestic product is moderately to highly substitutable with the Japanese product. Moreover, we have found that a significant increase in the volume of subject imports from Japan is likely in the event the

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<sup>77</sup> Product shifting is not an option because the machinery used to produce melamine cannot be used to produce other chemicals. CR at II-4, PR at II-3; Tr. at 15.

<sup>78</sup> 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.

<sup>79</sup> Original Determination at 6.

<sup>80</sup> Original Determination at 6-7.

<sup>81</sup> See CR/PR at Tables V-1 - V-3, V-5.

<sup>82</sup> According to MCI, the price of melamine declined from \*\*\* per pound in March 1999 to \*\*\* per pound in May 1999. In addition, MCI argues, in view of the behavior of the Japanese in other non-traditional export markets, it is likely that if the finding is revoked they will offer melamine at a price approximating \*\*\* per pound in order to gain market share. MCI's Posthearing Brief at 11, A-30, A-31.

<sup>83</sup> CR at V-5 - V-6; PR at V-3 - V-4.

finding is revoked. Thus, we find it likely that the Japanese producers would offer attractively low prices to U.S. purchasers in order to regain market share if the finding is revoked.<sup>84 85</sup>

In light of our finding regarding the likely future volumes of imports, and in the absence of contrary information or argument, we find that it is likely that the subject imports would undersell the domestic merchandise significantly<sup>86</sup> and enter the United States at prices that would have significant depressing or suppressing effects on the prices for the domestic like product within a reasonably foreseeable time if the finding is revoked.

#### E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the finding 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.<sup>87</sup> 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.<sup>88</sup> 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 finding at issue and whether the industry is vulnerable to material injury if the finding is revoked.<sup>89</sup>

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<sup>84</sup> MCI submitted sales call information purporting to indicate that Japanese producers will aggressively price their product to obtain sales in the U.S. market in view of their behavior in export markets outside of Southeast Asia and Australia. In one instance, a Japanese producer recently \*\*\*. In another instance, a Japanese producer offered the product to a customer \*\*\*. MCI's Posthearing Brief at 3-4, A-1 - A-2 & Exhs. C-D. This information is consistent with a finding of likely underselling by Japanese producers in the U.S. market in the event of revocation.

<sup>85</sup> Commissioner Crawford determines that if the finding is revoked, subject imports will have a significant effect on domestic prices. The record demonstrates that the domestic and subject merchandise are substitutable. If the finding is revoked, it is likely that the volume of subject imports will increase significantly, and demand for the domestic product will decrease, shifting to subject imports. With this shift in demand away from the domestic product, MCI likely will be forced to choose between reducing its prices and/or decreasing its production. Because chemical industries must operate at higher capacity levels than other industries to achieve maximum efficiency, she finds that MCI likely will be forced to reduce its prices to compete with the subject imports.

<sup>86</sup> Commissioner Crawford does not base her finding on a likelihood of significant underselling.

<sup>87</sup> 19 U.S.C. § 1675a(a)(4).

<sup>88</sup> 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. In its final five-year review determination, Commerce published a dumping margin of 60 percent for Nissan Chemicals, Ltd. and an "all others" margin of 70.22 percent. 63 Fed. Reg. at 67656.

<sup>89</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the finding is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall

(continued...)

In the original determination, the Commission found that increased imports at less than fair value, both absolutely and relative to domestic consumption, caused material injury to the domestic industry. It also found declines in production and capacity utilization, as well as declines in employment, lost sales, and deterioration of the domestic industry's financial condition.<sup>90</sup>

Since imposition of the finding, domestic market share increased as subject imports exited the market. Japanese shipments of melamine were less than \*\*\* percent of consumption in both 1997 and 1998.<sup>91</sup> Non-subject imports gained only a small portion of the market share lost by subject imports<sup>92</sup> and do not appear to have adversely affected the ability of the domestic industry to improve its financial condition. The basic substitutability of the product has enabled the domestic industry to readily replace subject imports and regain domestic market share. Net sales have improved, as have gross profit and operating income.<sup>93</sup> With regard to capital expenditures, Cytec, MCI, and DSM all state that existing and/or future investment would be \*\*\* by revocation of the finding.<sup>94</sup>

The domestic industry has asserted that it is in a vulnerable state.<sup>95</sup> The evidence in the record indicates that domestic production, shipments, capacity utilization, employment, sales, and unit sales values have increased substantially since the period of the original investigation.<sup>96</sup> Furthermore, the domestic industry's operating income was substantial in 1998.<sup>97</sup> Accordingly, we do not find that the domestic industry is in a weakened state, as contemplated by the vulnerability criterion of the statute.<sup>98</sup> This view is tempered by the sharp rise in domestic inventories in 1998 and data submitted by MCI showing \*\*\* and further \*\*\* in 1999.<sup>99 100</sup>

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<sup>89</sup> (...continued)

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.

<sup>90</sup> Original Determination at 5-9.

<sup>91</sup> CR/PR at Table I-6.

<sup>92</sup> Non-subject imports increased, in terms of quantity, from \*\*\* percent of apparent U.S. consumption in 1975 to \*\*\* percent in 1998. CR/PR at Table I-1.

<sup>93</sup> The value of net sales increased from \*\*\* in 1975 to \*\*\* in 1998. Gross profit increased from \*\*\* in 1975 to \*\*\* in 1998. Over the same period, operating income climbed from \*\*\* to \*\*\*. CR/PR at Table I-1.

<sup>94</sup> CR at D-4 - D-6, PR at D-3 - D-5; *see* MCI's Posthearing Brief at A-33 - A-34. One producer has approved plans to invest approximately \$20 million to increase capacity to approximately 170 million pounds per year (to come on line in late 1999). The other producer plans to invest \$73 million to build a new plant with the capacity to manufacture 66 million pounds of melamine per year (operational in 2001). CR at II-4 n.11; PR at II-3 n.11. Revocation of the finding may \*\*\*. *See* CR at D-4, D-5; PR at D-3, D-4.

<sup>95</sup> MCI's Prehearing Brief at 29; MCI's Posthearing Brief at 12, A-20 - A-21.

<sup>96</sup> U.S. production rose from \*\*\* pounds in 1975 to \*\*\* pounds in 1998. The quantity of U.S. shipments increased from \*\*\* pounds in 1975 to \*\*\* pounds in 1998. Capacity utilization increased from \*\*\* percent in 1975 to \*\*\* percent in 1998. There were \*\*\* production and related workers in 1975 and \*\*\* in 1998. The value of net sales climbed from \*\*\* in 1975 to \*\*\* in 1998, while unit sales values rose from \*\*\* to \*\*\*. CR/PR at Table I-1.

<sup>97</sup> Operating income was \*\*\* in 1998. CR/PR at Table I-1.

<sup>98</sup> *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 [a finding] . . . .").

<sup>99</sup> MCI's inventories reached the equivalent of \*\*\* in April 1999. MCI's Prehearing Brief at 30. The industry normally maintains inventories equivalent to one month's production capacity. Tr. at 105; MCI's

(continued...)

Although we do not find the industry to be in a vulnerable condition at present, we find that the likely significant increase in the subject imports in the wake of the revocation of the finding would likely have an adverse impact on the domestic industry's output, sales, and revenue, especially in view of the substitutable nature of the product, as it is likely that increased volumes of subject imports will gain market share at the expense of the domestic industry.<sup>101</sup> The likely significant price effects will have a negative effect on industry revenue and profitability. Consequently, such imports will have direct adverse effects on the industry's profits; cash flow; the ability to raise capital;<sup>102</sup> the ability to make capital investments; employment;<sup>103</sup> and the ability to continue development of improved production methods and new and improved products<sup>104</sup> within a reasonably foreseeable time. Accordingly, and in the absence of contrary information or argument, we find that, if the antidumping finding is revoked, 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 finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury to the U.S. melamine industry within a reasonably foreseeable time.

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<sup>99</sup> (...continued)

Posthearing Brief at A-47. While the Commission did not gather data regarding end-of-period inventories in the original investigation, we note that U.S. producers' end-of-period inventories increased from \*\*\* pounds in 1997 to \*\*\* pounds in 1998. CR/PR at Table III-4.

<sup>100</sup> 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 finding is revoked.

<sup>101</sup> U.S. demand for melamine is predicted to grow by \*\*\* to \*\*\* percent per year from 1999 through 2004. CR at II-15, PR at II-10. This increase will be insufficient to absorb all or most of the likely increase in imports from Japan.

<sup>102</sup> See CR at D-5, D-6, PR at D-4 - D-5.

<sup>103</sup> Domestic producers claim that the industry would likely experience shutdowns of several months to exhaust its inventory if the finding is revoked, and estimate that wages and employment would drop to \*\*\* percent of present levels. CR at D-5, D-6, PR at D-4, D-5; MCI's Posthearing Brief at A-37.

<sup>104</sup> See CR at D-3, D-6; PR at D-3, D-5; MCI's Posthearing Brief at A-36.



## **DISSENTING VIEWS OF VICE CHAIRMAN MARCIA E. MILLER AND COMMISSIONER THELMA J. ASKEY**

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended, that revocation of the antidumping finding on melamine from Japan 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.

### **I. Background**

In December 1976, the Commission determined that the domestic melamine industry was injured by imports of melamine from Japan that the Department of Treasury had determined were being sold at less than fair value.<sup>105</sup> In February 1977, the Treasury Department issued an antidumping finding on melamine from Japan.<sup>106</sup> Pursuant to section 751(c) of the statute, the Commission instituted a five-year review in August 1998 to determine whether revocation of the antidumping finding would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.<sup>107</sup>

### **II. Legal Standard**

In five-year reviews, the Department of Commerce will revoke an antidumping finding unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the finding would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>108</sup> In making its determination, the Commission must consider the likely volume, price effects, and impact of subject imports on the domestic industry if the antidumping finding is revoked, taking into account (i) the Commission's prior injury determinations, including the volume, price effects, and impact of subject imports on the domestic industry at that time, (ii) whether any improvement in the state of the industry is related to the finding, and (iii) whether the industry is vulnerable to material injury if the finding is revoked.<sup>109</sup>

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<sup>105</sup> Melamine in Crystal Form from Japan, Inv. No. AA1921-162, USITC Pub. No. 796 (Dec. 1976) (“Original Determination”). The original affirmative determination resulted from a 3-3 vote of the Commission. The statute provides that an equally divided vote of the Commission constitutes an affirmative determination. 19 U.S.C. § 1330(d).

<sup>106</sup> 42 Fed. Reg. 6,366 (Feb. 2, 1977).

<sup>107</sup> 63 Fed. Reg. 41,282 (Aug. 3, 1998).

<sup>108</sup> 19 U.S.C. § 1675(d)(2).

<sup>109</sup> 19 U.S.C. § 1675a(a). The Commission must also take into account any duty absorption findings; Commerce has made none in this case. 63 Fed. Reg. 67,654, 67,656 (Dec. 8, 1998). In evaluating the likelihood of material injury in this review we have considered the Commission's analysis of the volume, price effects, and impact of subject imports on the domestic industry in the 1973-75 period of investigation. However, given the substantial lapse of time and significant changes in market conditions since 1975, we do not view the volume, price effects, and impact of subject imports during the original investigation as good predictors of the likely volume, price effects, and impact of subject imports in the reasonably foreseeable future if the finding is revoked. For the same reasons, it is difficult in this case to assess to what extent any improvement in the state of the industry is

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### III. Domestic Like Product and Domestic Industry

The statute defines the relevant industry to be considered in a five-year review 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.”<sup>110</sup> The “domestic like product,” in turn, is defined 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.”<sup>111</sup> The Department of Commerce has defined the merchandise subject to this antidumping finding as “melamine, in crystal form, from Japan.”<sup>112</sup>

The starting point of our like product analysis is the Commission’s original determination. Because of differences in the statute, the Commission did not make a like product finding *per se* in the original determination. However, the Commission effectively treated all melamine in crystal form as a single like product. We see no circumstances in this review that would warrant a different approach.<sup>113</sup> Accordingly, we find that there is one domestic like product in this review, consisting of all melamine in crystal form. Consistent with this finding, we define the domestic industry as the two U.S. producers of melamine in crystal form: Melamine Chemicals, Inc. (“MCI”) and American Melamine Industries (“AMEL”), which is a joint venture of Cytec Melamine, Inc. (“Cytec”) and DSM Melamine Americas, Inc. (“DSM”).

#### A. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry if an antidumping finding is revoked, the statute directs the Commission to evaluate all of the relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>114</sup> Discussed below are the conditions of competition that weigh significantly in our determination that revocation of the finding is not likely to lead to continuation or recurrence of material injury to the melamine industry within a reasonably foreseeable time.

The product subject to this investigation is crystalline melamine chiefly used to manufacture melamine formaldehyde resins. Melamine is used primarily to manufacture amino resins that are used in surface coatings, laminates, molding compounds, paper treatment, adhesives, and textile treatment applications. Surface coatings accounted for approximately 39 percent of U.S. melamine end use in 1997. Principal uses for surface-coating resins are in appliance finishes, automotive topcoats, and metal furniture finishes. Similarly, laminates accounted for approximately 35 percent of melamine use in 1997. Laminate

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<sup>109</sup> (...continued)

related to the antidumping finding.

<sup>110</sup> 19 U.S.C. § 1677(4)(A).

<sup>111</sup> 19 U.S.C. § 1677(10).

<sup>112</sup> 63 Fed. Reg. at 67,655.

<sup>113</sup> We note that Taiyo America, Inc., an importer of melamine from Japan, argued that very fine melamine (with a particle size of less than 10 microns) should be considered a separate like product. However, the domestic industry does not produce melamine with this particle size. CR at III-A-6, PR at III-3. Therefore, consistent with Commission practice, we do not consider melamine with particle sizes of less than 10 microns to be a separate like product. Instead, we must determine what is the most similar domestic product to the imported melamine, which we determine in this review to be melamine of larger particle sizes.

<sup>114</sup> 19 U.S.C. § 1675a(a)(4).

products include kitchen and bathroom counter tops, cabinets, doors, table tops, and partitions in commercial buildings.<sup>115</sup>

Melamine is used to produce a variety of products for use in the automotive, construction, and textile industries. Thus, the demand for melamine is derived from the demand in those industries.<sup>116</sup> Average annual growth in U.S. melamine consumption was \*\*\* percent for the period 1994-98.<sup>117</sup> U.S. apparent consumption of melamine over the period of investigation (“POI”) remained strong, at nearly \*\*\* million pounds in 1997 and \*\*\* million pounds in 1998.<sup>118</sup> U.S. melamine consumption is projected to grow \*\*\* percent per year through 2004, as compared to \*\*\* percent per year for worldwide growth.<sup>119</sup>

The melamine industry has producers located around the world, with five major producers accounting for approximately 60 percent of world capacity.<sup>120</sup> The domestic industry consists of two producers, MCI and AMEL, which, as noted above, is a 50-50 joint venture between Cytec and DSM. Under the joint venture agreement, Cytec and DSM each purchase \*\*\* percent of AMEL’s melamine production at cost and are precluded from discussing or exchanging information on prices, customers, and other competitive information.<sup>121</sup> Hence, there are three domestic suppliers. In 1998, MCI accounted for approximately \*\*\* percent of U.S. production and AMEL accounted for approximately \*\*\* percent of U.S. production.<sup>122</sup>

The domestic industry dominates the U.S. melamine market. The domestic producers’ market share was \*\*\* percent in 1997 and \*\*\* percent in 1998.<sup>123</sup> The remainder of the domestic market over the POI was accounted for by subject and non-subject imports, \*\*\* percent in 1997, and \*\*\* percent in 1998.<sup>124</sup> Capacity utilization was also high during the POI -- \*\*\* percent in 1997 and \*\*\* percent in 1998.<sup>125</sup> A significant amount of consumption is consumed internally by members of the domestic industry or sold to related entities. Overall, \*\*\* percent of total melamine shipments were consumed internally or sold to related entities in 1997 and \*\*\* percent was consumed internally or sold to related entities in 1998.<sup>126</sup>

## **B. Likely Volume of Subject Imports**

In evaluating the likely volume of imports of subject merchandise if the finding under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be

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<sup>115</sup> CR at I-9-10, PR at I-7-8.

<sup>116</sup> U.S. real GDP is projected to grow at an average annual rate of 2.3 percent over the next four years. Projections for growth over this period for the automotive and construction industries range from \*\*\* to \*\*\* percent. CR at II-15, PR at II-10.

<sup>117</sup> CR at II-6, PR at II-4.

<sup>118</sup> CR at I-4, PR at I-3.

<sup>119</sup> CR at II-9, PR at II-6. Questionnaire responses indicate that a majority of U.S. producers, importers, and purchasers of melamine expect \*\*\* demand growth for the next two to five years for the domestic melamine industry. CR at II-15, PR at II-10.

<sup>120</sup> CR at I-16, PR at I-11.

<sup>121</sup> CR at I-15-16, PR at I-10.

<sup>122</sup> CR at II-2, PR at II-1.

<sup>123</sup> CR at I-20, PR at I-13.

<sup>124</sup> CR at I-20, PR at I-13. Subject imports from Japan were \*\*\*, \*\*\* pounds in 1997, and \*\*\* pounds in 1998. CR at IV-1, PR at IV-1.

<sup>125</sup> CR at III-A-1, PR at III-1.

<sup>126</sup> CR at III-A-3, PR at III-2.

significant either in absolute terms or relative to production or consumption in the United States.<sup>127</sup> In so doing, 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.<sup>128</sup>

During the original period of investigation, imports from Japan increased from 300,000 pounds in 1973 to 5.1 million pounds in 1975. The market share of imports from Japan increased from less than one percent to over six percent during that time.<sup>129</sup> After the finding was imposed, imports from Japan largely ceased.<sup>130</sup> In 1997 and 1998, imports from Japan were at very low levels.<sup>131</sup> For the reasons discussed below, we think it is not likely that the volume of imports from Japan would be significant in the reasonably foreseeable future if the finding is revoked.

First, the Japanese producers are operating \*\*\*. In 1998, the Japanese producers operated at \*\*\* percent capacity utilization.<sup>132</sup> Indeed, since 1994, the Japanese industry has operated at \*\*\* capacity even in the face of increasing competition from new melamine production facilities that have come on stream in Asia in recent years.<sup>133</sup> Moreover, production capacity in Japan is \*\*\* within the reasonably foreseeable future.<sup>134</sup>

While operating \*\*\*, the Japanese industry has sold its melamine almost exclusively in markets outside the United States. In 1998, over \*\*\* percent of Japanese production was consumed in markets in Asia, Australia, and New Zealand.<sup>135</sup> Therefore, the Japanese producers would need to divert shipments from their traditional markets in order to export significant volumes to the U.S. market. MCI argues that the economic recession in Japan and other Asian markets has lowered demand in those traditional markets and provides the Japanese producers with a strong incentive to divert shipments to the United States.<sup>136</sup> However, demand is forecasted to \*\*\* in Japan’s traditional markets in Asia (\*\*\* percent) and Oceania (\*\*\* percent), as well as in Japan (\*\*\* percent).<sup>137</sup> Thus, we think it unlikely that Japanese producers would divert significant shipments from established customers and markets, particularly given these likely growth rates.

We recognize that inventories in Japan \*\*\* in 1998 than in 1997. In 1998, inventories in Japan were \*\*\* metric tons or approximately \*\*\* million pounds, which was approximately \*\*\* the 1997 level.<sup>138</sup>

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<sup>127</sup> 19 U.S.C. § 1675a(a)(2).

<sup>128</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>129</sup> Original Determination at 4-5.

<sup>130</sup> CR at IV-1, PR at IV-1.

<sup>131</sup> CR at IV-1, PR at IV-1.

<sup>132</sup> CR at IV-6, PR at IV-3.

<sup>133</sup> CR at IV-6, PR at IV-3. See MCI Prehearing Br. at 18 (discussing new melamine facilities in Indonesia and Korea).

<sup>134</sup> [\*\*\*]. Chemical Economics Handbook, “Melamine,” SRI International (Jan. 1996 & May 1999 draft) (“Chemical Economics Handbook”) at 49.

<sup>135</sup> Chemical Economics Handbook, at 49-50 and 56 \*\*\*.

<sup>136</sup> MCI Prehearing Br. at 19.

<sup>137</sup> Chemical Economics Handbook at 5 (projecting average annual growth rates through 2003).

<sup>138</sup> Chemical Economics Handbook at 49-50.

These inventories are within the normal range for the melamine industry, however.<sup>139</sup> Thus, the \*\*\* from 1997 reflects an \*\*\* from an \*\*\* of inventories resulting from very strong worldwide demand in 1997. While these inventories suggest that the Japanese producers would have some ability to increase shipments to the U.S. market, these inventories are not so large as to suggest to us the likelihood of significant volumes of imports from Japan in the reasonably foreseeable future, particularly given the Japanese industry's market orientation toward Asia and the likely continued growth in Asian markets.

The other factors we are required to consider do not suggest the likelihood of significant volumes of imports from Japan. There are no significant barriers to importation of melamine from Japan into other markets. In addition, facilities used to produce melamine cannot be used to produce other products.<sup>140</sup> Consequently, there appears to be no potential for product shifting.

In reaching our conclusion, we have considered MCI's arguments about the likely volume of imports. MCI hypothesizes that the Japanese producers have a \*\*\* – approximately \*\*\* metric tons – \*\*\*.<sup>141</sup> MCI derives this volume by adding Japanese inventories in 1998 (approximately \*\*\* metric tons), plus the amount of Japanese exports to Europe in 1998 (approximately \*\*\* metric tons), plus the planned capacity of a new melamine facility that is expected to open in China later in 1999 (approximately \*\*\* metric tons).<sup>142</sup> MCI argues that the volumes shipped to Europe in 1998 were due to high demand in Europe caused by production outages experienced by European producers that are unlikely to be repeated, and that the planned facility in China will displace Japanese product in its traditional Asian markets.<sup>143</sup>

We think it is highly speculative to conclude that all or a substantial portion of the \*\*\* metric tons of the planned Chinese facility will simply displace Japanese product in Asia. We note in this regard that current Chinese production is considered to be of \*\*\*.<sup>144</sup> Similarly, because current Japanese inventory levels are \*\*\* -- and melamine producers must maintain inventories to guard against unexpected production outages<sup>145</sup> – we think it is unlikely that the Japanese producers would deplete all or a substantial portion of their inventories to make sales in the United States.

While the ability to ship a relatively small volume to Europe in 1998 in response to unusual demand conditions and current Japanese inventories suggest some ability to begin shipments to the United States, we do not think it is likely that all or even most of this purported excess supply would be exported to the United States, in light of the Japanese producers' orientation toward other markets and the anticipated growth in those markets. We also note that to date neither the large, established melamine producers in Europe, nor the new producers in Asia have shown the ability to enter the U.S. market to any significant extent. This fact supports the conclusion that other factors, discussed below, make it unlikely that U.S. consumers would readily switch from established sources of supply.

In sum, if the finding were revoked, we think there would be some increase in imports of melamine from Japan into the U.S. market. However, given capacity constraints in Japan, the Japanese producers' orientation toward other markets, and competitive conditions in the U.S. market, we think the likely volume

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<sup>139</sup> See MCI Posthearing Br. at A-47 (indicating that the normal inventory level is one month of annual production capacity). With an annual production capacity level of \*\*\* metric tons, an inventory level of \*\*\* metric tons nearly equals one month's production capacity. CR at IV-6, PR at IV-3.

<sup>140</sup> CR at II-5, PR at II-3.

<sup>141</sup> MCI Posthearing Br. at A-18-19.

<sup>142</sup> MCI Posthearing Br. at A-22-24.

<sup>143</sup> *Id.*

<sup>144</sup> CR at II-12, PR at II-8.

<sup>145</sup> See Transcript of Hearing (hereafter "Tr.") (May 20, 1999) at 87-88 (discussing difficulties in maintaining constant production levels).

of imports from Japan would not be significant, particularly in light of our analysis of the likely price effects and impact of subject imports.

### C. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping finding is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with 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 prices of domestic like products.<sup>146</sup>

The original determination noted that Japanese melamine was priced substantially higher than domestic melamine in 1974, but by 1975 and early 1976 Japanese melamine was priced as much as 22 percent lower in some instances. The Commission concluded that this underselling contributed to a six percent decline in domestic prices of melamine.<sup>147</sup>

Prices for melamine were strong during the POI, especially in 1998. Average unit values rose by \*\*\* percent from \*\*\* per pound in 1997 to \*\*\* per pound in 1998.<sup>148</sup> Also, the weighted average prices reported by purchasers for products 1, 2, and 3 rose over the POI.<sup>149</sup> Prices of melamine for MCI appear to have declined in the first five months of 1999, but this decline has been only to mid-1997 levels.<sup>150</sup>

The record in this review indicates that while price is an important factor in purchasing decisions, it is not the principal purchasing criterion. Two-thirds of purchasers (10 of 15) indicated that purchasing decisions were either “sometimes” or “never” based mainly on price (as opposed to “always” or “usually”).<sup>151</sup> In fact, more purchasers cited “availability” and “quality” as their “Number 1” factor in their purchasing decisions.<sup>152</sup> Purchasers also indicated that country of origin of melamine was not very important (7 of 16 responded “never”). In contrast, \*\*\* percent of purchasers indicated that purchasing decisions were “always” or “usually” based on which firm produced the melamine.<sup>153</sup> In this regard, we note that a significant percentage of domestic production -- \*\*\* percent in 1998 -- is consumed internally or sold to related purchasers.<sup>154</sup>

The record suggests that the domestic industry has inherent advantages in the U.S. market due to its development of new efficient production processes coupled with lower transportation costs as compared to foreign competitors.<sup>155</sup> MCI testified that in 1989, it began using a new, more efficient technology that it invented and patented, and that it is in the process of building an additional plant using an even more

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<sup>146</sup> 19 U.S.C. § 1675a(a)(3).

<sup>147</sup> Original Determination at 6.

<sup>148</sup> CR at C-4, PR at C-3.

<sup>149</sup> CR at V-12, PR at V-5-6.

<sup>150</sup> MCI reported that its overall net selling price fell from \*\*\* per pound in January 1999 to \*\*\* per pound in May 1999. CR at V-6, PR at V-4.

<sup>151</sup> CR at II-10, PR at II-6.

<sup>152</sup> CR at II-11, PR at II-7.

<sup>153</sup> CR at II-10, PR at II-7.

<sup>154</sup> CR at III-A-3, PR at III-2.

<sup>155</sup> Importers reported that transport costs accounted for \*\*\* percent of the total cost of melamine, with an average cost of 8.9 percent. CR at V-1, PR at V-1. MCI estimated that the cost of shipping melamine to the United States from Japan is approximately \$\*\*\* per pound. MCI Prehearing Br. at 22-23.

efficient version of this technology.<sup>156</sup> MCI characterized this technology as the “lowest-cost production technology in the world” and one that is more efficient than the technology used by the Japanese producers.<sup>157</sup> This technology gives MCI a distinct cost advantage in the U.S. market.

Given the \*\*\* of subject imports, direct price comparisons in the U.S. market were not possible. However, MCI provided some anecdotal evidence regarding current Japanese pricing in third country markets such as Canada. We place less weight on this evidence given the absence of detailed information in the record regarding market conditions in third country markets. However, even this evidence does not persuade us that the Japanese producers would be aggressive price leaders having significant adverse price effects in the U.S. market. Instead, this evidence suggests that the Japanese producers would price competitively with other suppliers in the market. For example, MCI cites to a \*\*\*. The same salesman call report indicates, however, that \*\*\*, a major European producer, was \*\*\*.<sup>158</sup> Moreover, even MCI agrees with the characterization by a purchaser in \*\*\* that \*\*\*.<sup>159</sup>

We recognize that, as in most markets, an additional source of supply could lead to some downward pressure on domestic prices. However, given the attenuated role of price in purchasing decisions, the inherent advantages of the domestic industry, and the competitive nature of this market, we conclude that any underselling that may occur upon revocation of the finding is not likely to be significant, and the limited volumes of subject imports are not likely to enter the United States at prices that would have significant depressing or suppressing effects on prices for the domestic like product.

#### **D. Likely Impact of Subject Imports**

In evaluating the likely impact of imports of subject merchandise if the finding 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.<sup>160</sup> 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.<sup>161</sup> We have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping finding at issue and whether the industry is vulnerable to material injury if the finding is revoked.

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<sup>156</sup> Tr. at 14, 21, and 70.

<sup>157</sup> Tr. at 85 and 100.

<sup>158</sup> MCI Posthearing Brief at 3 and Exhibit C. See also id. at 2 (summarizing salesman call report characterizing Japanese offers as \*\*\* than recent MCI sales prices).

<sup>159</sup> MCI Final Comments at 6 (June 28, 1999).

<sup>160</sup> 19 U.S.C. § 1675a(a)(4).

<sup>161</sup> 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). On December 8, 1998, Commerce published in the *Federal Register* the results of its review and determined that revocation of the finding would lead to the continuation or recurrence of dumping. Commerce predicted margins of dumping of 60.0 percent for Nissan Chemicals, Ltd., and 70.22 percent for all other firms. 63 Fed. Reg. at 67,656.

The current condition of the U.S. market is substantially different than the prevailing condition in the 1973-75 period of investigation. Then, the melamine industry was suffering from the effects of a severe recession in the U.S. economy. For example, capacity utilization was only 51 percent in 1975. The Commission found that imports from Japan exacerbated an already injurious condition brought about by the economic recession.<sup>162</sup> In contrast, in 1997-98, the U.S. economy was booming and the domestic melamine industry posted very strong results. Operating income, for example, was \*\*\* percent in 1998.<sup>163</sup> Moreover, the domestic producers dominate the U.S. market, accounting for \*\*\* percent and \*\*\* percent of U.S. consumption in 1997 and 1998, respectively.<sup>164</sup>

MCI provided information indicating domestic prices and financial performance \*\*\* in early 1999.<sup>165</sup> As discussed above, however, these \*\*\* were only to levels that prevailed in 1997, when the industry was very profitable.

We also note that MCI developed and patented a highly efficient production technology in the early 1980s. One of MCI's facilities uses this technology and a more advanced version of this technology will be used in the new, state-of-the-art facility that MCI is building. The new facility is scheduled to open in 2001.<sup>166</sup> MCI's representative testified at the hearing that "we have by far a more efficient process than any of the processes being used in Japan."<sup>167</sup>

For these reasons, we do not consider the domestic industry to be vulnerable to material injury if the finding is revoked. Indeed, we consider this industry to be very strong. It is likely to remain strong, moreover, since U.S. and worldwide demand is expected to grow at an annual rate of \*\*\* percent and \*\*\* percent, respectively, through 2004.

In these circumstances, we conclude that subject imports would not likely have a significant impact on the domestic industry's operational and financial performance if the finding is revoked. While we anticipate that there would be some increase in the volume of imports from Japan and that these imports would have some effect on domestic prices, we think the domestic industry would readily withstand this increased competition without suffering material injury. This conclusion is supported by the fact that DSM and Cytec, which, through their joint venture, account for nearly \*\*\* percent of U.S. production, \*\*\* of the antidumping finding. Instead, these companies \*\*\* when asked whether they supported or opposed revocation.<sup>168</sup> This fact suggests that the \*\*\* of the domestic industry \*\*\* that revocation of the antidumping finding would be likely to lead to material injury.

## CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping finding on melamine from Japan would not be likely to lead to continuation or recurrence of material injury to the U.S. melamine industry within a reasonably foreseeable time.

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<sup>162</sup> Original Determination at 5-6.

<sup>163</sup> CR at III-B-5, PR at III-6.

<sup>164</sup> CR at I-20, PR at I-13.

<sup>165</sup> MCI Posthearing Br. at 12-15.

<sup>166</sup> CR at III-A-3, PR at III-1.

<sup>167</sup> Tr. at 100.

<sup>168</sup> CR at I-14, PR at I-10.