

UNITED STATES INTERNATIONAL TRADE COMMISSION

ANHYDROUS SODIUM METASILICATE FROM FRANCE

Investigation No. 731-TA-25 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3235, September 1999)

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ANHYDROUS SODIUM METASILICATE FROM FRANCE

DETERMINATION

On the basis of the record¹ 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 duty order on anhydrous sodium metasilicate from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

BACKGROUND

The Commission instituted this review on October 1, 1998 (63 F.R. 52748) and determined on January 7, 1999 that it would conduct a full review (64 F.R. 4892, February 1, 1999). 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 March 3, 1999 (64 F.R. 10315). The hearing was held in Washington, DC, on July 21, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

²Commissioner Askey dissented.

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 anhydrous sodium metasilicate from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³

I. BACKGROUND

In December 1980, the Commission determined that an industry in the United States was threatened with material injury by reason of imports of anhydrous sodium metasilicate from France that were being sold at less than fair value.⁴ On January 7, 1981, the Department of Commerce published an antidumping order covering the subject merchandise.⁵ The Commission instituted this five-year review on October 1, 1998.⁶

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, 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.⁷ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant a full review, it will determine to conduct a full review.

In the adequacy phase of this review, the Commission received two responses to its notice of institution, one from Occidental Chemical Corporation (“Oxychem”) and one from PQ Corporation (“PQ Corp.”), both of whom are U.S. producers of the subject merchandise. Because Oxychem’s submission was filed in an untimely fashion, the submission was returned to Oxychem and not incorporated in the record of this proceeding. Neither party filed comments on the adequacy of the responses to the notice of institution.

On January 7, 1999, the Commission determined that both the domestic and respondent interested party group responses to its notice of institution were inadequate. By a tie vote, however, the Commission found that other circumstances warranted proceeding to a full review.⁸ Accordingly, the Commission conducted a full review.

³ Commissioner Askey dissenting. See Dissenting Views of Commissioner Thelma J. Askey. However, she joins in Sections I, II, and IIIA-B of these views, except as otherwise noted.

⁴ Anhydrous Sodium Metasilicate from France, Inv. No. 731-TA-25, USITC Pub. 1118 (December 1980) (“Original Det.”).

⁵ 46 Fed. Reg. 1667 (Jan. 7, 1981).

⁶ 63 Fed. Reg. 52748 (Oct. 1, 1998).

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

⁸ Vice Chairman Miller and Commissioners Hillman and Koplan voted to conduct a full review. Chairman Bragg and Commissioners Askey and Crawford voted to conduct an expedited review. Anhydrous Sodium Metasilicate from France, 64 Fed. Reg. 4892 (Feb. 1, 1999); *see also* Statements of Chairman Lynn M. Bragg and Commissioner Stephen Koplan concerning this matter.

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.”⁹ 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.”¹⁰

In its final five-year review determination, the Department of Commerce (“Commerce”) defined the subject merchandise as:

anhydrous sodium metasilicate (“ASM”), a crystallized silicate (Na_2SiO_3) which is alkaline and readily soluble in water.¹¹

Commerce has determined that ASM mixed with either caustic soda beads or sodium triphosphate is within the scope of the order.¹²

ASM is a metasilicate product that is a subclass of the sodium silicate family of chemicals. ASM is primarily produced from soda ash or caustic soda and silica sand.¹³ Because of its alkalinity and silica content, ASM is primarily used as an additive in detergent and other cleaning products and is characterized by having superior cleansing capabilities.¹⁴ ASM is also used for soil stabilization, clay processing, paper mill operations, oil service cements, textile finishing operations, and manufacturing other chemicals.¹⁵

In the original investigation, the Commission determined that there was one like product, consisting of ASM.¹⁶ The domestic producer PQ Corp. -- the only party to participate in this proceeding -- has argued that the Commission should make the same domestic like product finding in this review. In our view, the additional information collected in this review does not warrant a departure from the Commission’s like

⁹ 19 U.S.C. § 1677(4)(A).

¹⁰ 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).

¹¹ Final Results of Expedited Sunset Review: Anhydrous Sodium Metasilicate from France, 64 Fed. Reg. 5631, 5631 (Feb. 4, 1999). ASM is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as items numbers 2839.11.00 and 2839.19.00.

¹² Id.

¹³ CR at I-8, PR at I-7.

¹⁴ CR at I-9, PR at I-7.

¹⁵ CR at I-9, PR at I-7.

¹⁶ Original Determination at 4 (“Original Det.”).

product definition in the original investigation.¹⁷ Accordingly, based on the facts available, we find that the domestic like product consists of all ASM, as defined within the scope of this review.

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.”¹⁸ 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.¹⁹ Given our finding with respect to the domestic like product, we find that the domestic industry includes all firms that produced ASM during the period of review: PQ Corp., OxyChem, and Crosfield Company (“Crosfield”).^{20 21}

¹⁷ Commissioner Crawford finds one domestic like product in this review, consisting of anhydrous sodium metasilicate (“ASM”) and sodium metasilicate pentahydrate (“SMP”), which are simply two forms of sodium metasilicate. The anhydrous and pentahydrate forms of sodium metasilicate share similar physical characteristics and end uses, are interchangeable to a certain degree, are sold through the same channels of distribution, and are manufactured on much of the same equipment, frequently with the same employees. The different techniques employed at the drying stage of production result in limited physical differences between the two products, reducing somewhat the overlap end uses and their interchangeability and increasing the price differential between ASM and SMP. However, these differences do not represent a clear dividing line between these two forms of sodium metasilicate. Accordingly, she includes ASM and SMP within the same domestic like product. See Separate Views of Commissioner Crawford.

¹⁸ 19 U.S.C. § 1677(4)(A).

¹⁹ 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).

²⁰ We note that Crosfield has an agreement with Rhodia, the sole French producer of ASM, under which ***. Accordingly, when defining the domestic industry in this review, we have considered whether Crosfield should be considered a related party and should therefore be excluded from the domestic industry pursuant to the related parties provision in section 771(4)(B) of the Act. 19 U.S.C. § 1677(4)(B). In this case, we do not find Crosfield is a related party by reason of this agreement. Although this arrangement might indicate in other circumstances that there is a “special relationship” between the subject and U.S. producer, see SAA at 858, this relationship does not currently involve the distribution and sale of subject merchandise by Crosfield in the United States. Accordingly, although the relationship might give Rhodia the ability to control the sale of Crosfield’s product, it does not give Rhodia control over Crosfield with respect to the sale of the subject merchandise. Moreover, even if we were to find that Crosfield is a related party, we would not find that appropriate circumstances exist to exclude it from the domestic industry. In this regard, we note that Crosfield accounted for a substantial portion of domestic ASM production in 1998 (***) percent), CR and PR at Table I-2, and that Crosfield did not import any subject merchandise during 1997 and 1998, CR at I-15, PR at I-12. We further note that the existence of the contractual relationship does not appear to have benefitted Crosfield’s operations in such a way as to skew the data for the industry as a whole. CR and PR at Table III-6. Accordingly, we believe that the record in this review indicates that Crosfield’s primary interest lies in domestic production.

²¹ Commissioner Crawford finds that the domestic industry consists of all firms that produced ASM

(continued...)

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON ANHYDROUS SODIUM METASILICATE FROM FRANCE WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME²²

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 the order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”²³ 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 antidumping duty order] . . . and the elimination of its restraining effects on volumes and prices of imports.”²⁴ Thus, the likelihood standard is prospective in nature.²⁵ 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.”²⁶ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally

²¹(...continued)

and/or SMP during the period of review: PQ Corp., OxyChem, Crosfield, and Chemical Products Co. She concurs in the conclusion that Crosfield’s primary interest lies in domestic production and in the finding that Crosfield is not a related party.

²² Commissioner Askey determines that revocation of the antidumping duty order on anhydrous sodium metasilicate from France would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. See Dissenting Views of Commissioner Thelma J. Askey. She otherwise joins in Section III.B below.

²³ 19 U.S.C. § 1675a(a).

²⁴ 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.

²⁵ 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.

²⁶ 19 U.S.C. § 1675a(a)(5).

will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{27 28}

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 order is revoked.”²⁹ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{30 31}

For the reasons stated below, we determine that revocation of the antidumping duty order on anhydrous sodium metasilicate from France would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.^{32 33}

²⁷ 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.*

²⁸ In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, their analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

²⁹ 19 U.S.C. § 1675a(a)(1).

³⁰ 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.

³¹ 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* 64 Fed. Reg. at 5631.

³² 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, 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
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B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an antidumping duty 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.”³⁴ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for ASM.

First, demand for ASM has continued to decline significantly since the period examined during the original investigation.³⁵ Apparent consumption of ASM declined from 194 million pounds in 1977 to 174 million pounds in 1979. Demand has declined significantly since 1979, with apparent consumption falling to *** million pounds in 1997 and consumption declining even further (to *** million pounds) in 1998.³⁶ ASM demand is in decline due to technology changes in end-use markets, replacement of ASM in some end uses by certain lower-cost substitutes, and ASM’s reclassification as a hazardous material in 1997.^{37 38} Demand in Europe for ASM has experienced similar significant declines as well.³⁹

Second, the domestic industry has become smaller since the period examined in the original investigation.⁴⁰ From 1977 to 1979, the industry consisted of four producers that produced ASM at six facilities.⁴¹ Currently, the industry consists of three firms that produce ASM at three facilities.⁴² The

³²(...continued)

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.

³³ Commissioner Askey determines that revocation of the antidumping duty order on anhydrous sodium metasilicate from France would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. See Dissenting Views of Commissioner Thelma J. Askey. She otherwise joins in Section III.B below.

³⁴ 19 U.S.C. § 1675a(a)(4).

³⁵ CR and PR at Table I-1.

³⁶ CR and PR at Table I-1.

³⁷ CR at II-1 & II-3, PR at II-1-2.

³⁸ Commissioner Crawford notes that apparent consumption of SMP has declined as well. Combined apparent consumption of the anhydrous and pentahydrate forms of sodium metasilicate decreased from 338 million pounds in 1977 to 305 million pounds in 1979 and from *** pounds in 1997 to *** pounds in 1998. Compare Original Staff Report at A-8 with Memorandum INV-W-196, Tables C-2 and C-3.

³⁹ CR at IV-3, PR at IV-2.

⁴⁰ CR at III-5, PR at III-4.

⁴¹ CR at I-13, PR at I-11.

⁴² CR at I-13-14, PR at I-11.

industry's capacity has declined to less than a third of its level during the first year of the period examined in the original investigation, yet producers still have excess capacity.^{43 44}

Third, since the period examined in the original investigation, the industry has changed in other ways as well. Unlike the original investigation, none of the current members of the industry ***.⁴⁵ In addition, export shipments have become a much more significant part of the industry's sales.^{46 47}

Fourth, as in the original investigation, Rhodia is one of three significant producers of ASM in Europe⁴⁸ and remains the sole French producer of ASM.⁴⁹ According to PQ Corp., the European market is also in a state of significant overcapacity.⁵⁰ Rhodia has exported no subject merchandise to the United States since 1985.⁵¹

Fifth, as discussed earlier, Rhodia's U.S. subsidiary has entered into an agreement with the domestic producer Crosfield under which Rhodia's subsidiary ***.⁵² As a result, Rhodia has an established sales network in the United States that could be used to market Rhodia's ASM. This agreement can be ***.⁵³

Sixth, although the domestic and subject merchandise are produced in different grades and forms, the subject imports and the domestic like product are viewed as interchangeable by producers and purchasers,⁵⁴ indicating that there is a moderately high level of substitutability between the domestic and subject merchandise.⁵⁵ In addition, the record also indicates that price is a significant factor in purchasing decisions for ASM.⁵⁶

Based on the record evidence, we find that these conditions of competition in the ASM market are not likely to change significantly in the reasonably foreseeable future. Accordingly, for purposes of this

⁴³ CR and PR at Table I-1.

⁴⁴ Commissioner Crawford notes that the number of U.S. companies producing ASM and/or SMP has declined from five to four, while the industry's existing capacity has decreased to less than one-half of its level in 1977. Compare Original Staff Report at tables 2 and 4, pp. A-12 and A-14, with Memorandum INV-W-196, Table C-3.

⁴⁵ CR at III-5 & III-7, PR at III-4. During the period examined during the original investigation, captive consumption accounted for more than ***. Id.

⁴⁶ CR at III-5 & III-7, PR at III-4 & III-6.

⁴⁷ Commissioner Crawford notes that, according to supplemental data provided by the domestic industry, captive consumption of SMP has ***, while export shipments have increased.

⁴⁸ Prehearing Brief of PQ Corp., dated July 9, 1999, at 2 ("PQ Brief").

⁴⁹ CR at IV-2, PR at IV-2.

⁵⁰ CR at IV-3, PR at IV-2.

⁵¹ CR at IV-2, PR at IV-2.

⁵² CR at IV-2-IV-3, PR at IV-2.

⁵³ CR at IV-3, PR at IV-2.

⁵⁴ CR at I-10 & II-5, PR at I-9 & II-2.

⁵⁵ Commissioner Crawford finds that, because the subject merchandise consists solely of ASM, which is not likely to be used in liquid laundry detergent (as is SMP), subject imports are likely to be moderate substitutes for domestically produced ASM and SMP and for nonsubject imports of ASM and SMP.

⁵⁶ CR and PR at Table II-1.

review, we find that these conditions provide us with a reasonable basis from which to assess the likely effects of revocation of the antidumping duty order within a reasonably foreseeable time.

C. Likely Volume of Subject Imports

In evaluating the likely volume of subject imports if the order under review is revoked, the Commission is directed to consider whether the likely volume would be significant either in absolute terms or relative to production or consumption in the United States.⁵⁷ 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.⁵⁸

In its original determination, the Commission concluded that the domestic industry producing ASM was threatened with material injury by reason of the subject imports from France.⁵⁹ As part of its affirmative threat analysis, the Commission assessed the volume trends of the subject imports and found that the subject imports had increased steadily from 1976 to 1980.⁶⁰ In particular, the Commission found that the volume of the subject imports had increased from 40,000 pounds in 1976 to 982,000 pounds in 1977, almost tripled to 2.66 million pounds in 1978, and then rose by more than 107 percent -- to 5.5 million pounds -- in 1979.⁶¹ The Commission further found that the subject imports had increased their share of the domestic ASM market from 0.8 percent in 1977 to 4.4 percent in 1979.⁶² The Commission also noted that the subject imports had taken an increasingly large share of the ASM market in the northeastern United States and concluded that this increased market penetration would prevail in other regions of the country.⁶³

In concluding that the subject imports threatened material injury to the domestic industry, the Commission also noted that Rhone Poulenc (Rhodia’s prior name) operated at 87 percent of its rated capacity in 1979 and could divert significant volumes of merchandise from third countries to the United States.⁶⁴ The Commission further found that Rhone Poulenc had an established sales network and a series of regional warehouses in the United States and that these would facilitate its ability to increase its presence in the United States market.⁶⁵

In this review, the record indicates that subject import volumes are likely to be significant if the order is revoked. First, imports of the subject merchandise from France increased significantly between 1977 and

⁵⁷ 19 U.S.C. § 1675a(a)(2).

⁵⁸ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁵⁹ Original Det. at 5.

⁶⁰ Original Det. at 5.

⁶¹ Original Det. at 6.

⁶² Original Det. at 8.

⁶³ Original Det. at 8.

⁶⁴ Original Det. at 7.

⁶⁵ Original Det. at 7.

1979, before the antidumping duty order was imposed, but have ceased since the order has been in place.⁶⁶ In our view, the cessation of imports since the order appears to reflect the remedial effects of the order.⁶⁷

Second, although there is a limited amount of data available with respect to the subject producer's capacity levels and capacity utilization rates, those data indicate that Rhodia has total metasilicates production capacity⁶⁸ of approximately *** pounds per year and that it is currently operating at very low capacity utilization rates.⁶⁹ Moreover, PQ Corp. reports that Rhodia's production capacity for ASM alone is *** pounds,⁷⁰ an amount that exceeds total U.S. apparent consumption of ASM in 1998.⁷¹ Accordingly, the record indicates that Rhodia has ample production capacity available to increase its shipments of ASM to the United States if the order were revoked.⁷²

Third, as discussed above, Rhodia has an established sales network in place in the U.S. market that it uses to market ***.⁷³ We believe that this sales network would be used to market Rhodia's ASM production in the United States if the order were revoked. Finally, given that transportation costs for the subject merchandise are estimated to account for a minimal share of the overall value of ASM,⁷⁴ it is clear that there would be few limitations imposed on Rhodia's resumption of significant export shipments to the United States if the order were revoked.⁷⁵ Accordingly, we find that it is likely that Rhodia would begin shipping significant volumes of merchandise to the United States if the order were revoked.⁷⁶

⁶⁶ CR at I-15, PR at I-12.

⁶⁷ 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.

⁶⁸ This metasilicates total includes both ASM and SMP production. CR at IV-3, PR at IV-2.

⁶⁹ Rhodia's capacity utilization rate for metasilicates production was reported to be only *** percent in 1997. Because Rhodia does not produce SMP in its French facilities, there is no potential for Rhodia to shift facilities producing non-subject merchandise to the production of ASM. CR at IV-2, PR at IV-2.

⁷⁰ CR and PR at IV-2, n. 6.

⁷¹ CR and PR at Table I-1.

⁷² Moreover, French metasilicate production declined by 22 million pounds in 1997, the most recent year for which information was provided. CR at IV-3, PR at IV-2. The reformulation of ASM out of Unilever's products, formerly the largest volume use in France, and a decline in French prices of 12-20 percent in local currency terms between 1995 and 1998 would provide an incentive for Rhodia to export to the United States. See PQ Response to Notice of Initiation, Scott Statement at 8. At the time of the filing of PQ Corp.'s response to the notice of initiation, Rhodia was selling ASM in France for \$0.20 - \$0.23 per pound (converted from metric tons to pounds at an exchange rate of 5.57 FF / 1 USD). See PQ Response to NOI / Scott Statement at 8. In 1998, the average unit value of U.S. shipments of ASM (f.o.b. plant) was \$*** per pound.

⁷³ See CR at I-14, PR at I-11.

⁷⁴Transportation costs are estimated to be less than 1 percent of the landed, duty paid value of the subject imports. CR at V-1, PR at V-1.

⁷⁵The record contains no information about the level of inventories for subject merchandise in Europe.

⁷⁶Although there are currently no third country antidumping duty orders against the subject merchandise in existence, PQ Corp. reported that tariffs averaging 10 percent ad valorem have been imposed
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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 with the domestic like product 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.⁷⁷

In the original investigation, the Commission found that the subject imports consistently undersold the domestic product and that the LTFV margins were nearly equal to the size of the underselling margins exhibited by the subject merchandise.⁷⁸ Moreover, the Commission noted that it had confirmed a significant number of lost sales and revenues allegations, and that price was the principal reason given by purchasers for switching to the subject merchandise.^{79 80}

The record in this review contains no evidence about the prices of the subject merchandise in the U.S. market because the subject imports have not entered the market since 1985.⁸¹ However, the record does indicate that there is a moderately high level of substitutability between the domestic and subject merchandise^{82 83} and that price is a critical factor in purchasing decisions for ASM.⁸⁴ Given this and Rhodia's under-utilized capacity, we find that it is highly likely that Rhodia would offer attractively low prices to U.S. purchasers to regain market share should the antidumping duty order be revoked. As domestic demand and capacity utilization rates continue to decline, we find that this increased competition from Rhodia would be likely to have significant depressing or suppressing effects on prices for the domestic like product. Accordingly, we find that revocation of the antidumping duty order would be likely to lead to significant price

⁷⁶(...continued)

on ASM in Latin America and East Asia. CR at II-1-II-2, PR at II-1. Given that U.S. tariffs on ASM are currently 1.1 percent ad valorem, CR at I-7, n. 7, PR at I-7, n.7, these relatively high rates in Latin America and East Asia make the United States a more appealing market than those markets, if the order were revoked.

⁷⁷ 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.

⁷⁸ Original Det. at 9.

⁷⁹ Original Det. at 9.

⁸⁰ Chairman Bragg infers that, in the event of revocation, Rhodia would revert to aggressive pricing practices with regard to ASM exports to the United States, as evidenced in the Commission's original investigation.

⁸¹ CR at I-15, PR at I-12.

⁸² CR at I-10 & II-5, PR at I-9 & II-4.

⁸³ Commissioner Crawford finds that, because the subject merchandise consists solely of ASM, which is not likely to be used in liquid laundry detergent (as is SMP), subject imports are likely to be moderate substitutes for domestically produced ASM and SMP and for nonsubject imports of ASM and SMP.

⁸⁴ CR at II-1, PR at II-1.

effects, including significant underselling by the subject imports of the domestic like product, as well as significant price depression or suppression, in the reasonably foreseeable future.⁸⁵

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.⁸⁶ 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.⁸⁷ 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 duty order is revoked.⁸⁸

In the original determination, the Commission found that the subject imports had exhibited adverse volume and price effects during the period examined.⁸⁹ Based on these adverse volume and price trends, as well as a number of confirmed lost sales and revenues allegations, the Commission concluded that the

⁸⁵ Commissioner Crawford notes Rhodia is already a participant in the sodium metasilicate market through its national distribution network to existing customers. In light of the fact that PQ Corp. officials described domestic prices as currently being at equilibrium, with price competition limited to smaller accounts (Hearing transcript at 88-89 and PQ Posthearing Brief at A-7), Commissioner Crawford finds that the price effects of the subject imports would not likely be significant.

⁸⁶ 19 U.S.C. § 1675a(a)(4).

⁸⁷ 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 determined that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Rhone-Poulenc (Rhodia)	60 percent
All others	60 percent.

64 Fed. Reg. 5631 (Feb. 4, 1999).

⁸⁸ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the antidumping duty 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.

⁸⁹ Original Det. at 6-9.

industry in the United States producing ASM was threatened with material injury by reason of the subject imports from France.⁹⁰

Generally, as we describe below, the domestic industry has experienced declining output, sales, and revenue since imposition of the order, primarily because demand for ASM has been in significant decline since that time. However, we believe that the industry has benefitted in significant respects from imposition of the antidumping duty order. As we noted above, there have been no subject imports since 1985, which we believe can be directly attributed to the order. The order has allowed the industry to remain somewhat profitable or to come close to breaking even⁹¹ during a period of significant decline in demand. If the order had not been issued, we believe that the industry's financial performance would have been significantly worse.⁹²

Nonetheless, the industry is not exhibiting robust financial performance. Consequently, we find that the industry remains vulnerable to the impact of the subject imports if the order were revoked. Its production, shipments, sales, and employment levels have declined significantly since the original period of investigation and declined further between 1997 and 1998.⁹³ In addition, the industry's capacity utilization rates have declined somewhat from the original period of investigation.^{94 95} Moreover, although the industry was profitable as recently as 1997, its operating income performance is now worse than it was during the period examined in the original investigation and deteriorated between 1997 and 1998.⁹⁶ We believe that these general declines in the industry's financial indicators are a result of the continuing and significant decline in demand for ASM in the U.S. market. Given that the record suggests this decline in demand will continue in

⁹⁰ Original Det. at 9.

⁹¹ Although the industry had an operating income (loss) ratio to net sales of *** percent in 1998, it had an operating income ratio of *** in 1997. CR and PR at Table I-1.

⁹² Commissioner Crawford notes that the U.S. industry's export prices are noticeably lower than its domestic prices. Thus, per unit revenues from domestic sales are higher than per unit revenues from export sales. CR and PR at Table III-3.

⁹³ The industry's production levels were 195.2 million pounds in 1977, 185.1 million pounds in 1978, and 165.2 million pounds in 1979. Its recent production levels were 86 million pounds in 1997 and 70.1 million pounds in 1998. CR and PR at Table I-1. The industry's U.S. shipments were 193 million pounds in 1977, 180.6 million pounds in 1978, and 169.2 million pounds in 1979. By comparison, its U.S. shipments were 72.5 million pounds in 1997 and 61.7 million pounds in 1998. CR and PR at Table I-1. The industry's net sales revenues were \$19.3 million in 1977, \$18.2 million in 1978, and \$19.6 million in 1979. By comparison, the industry's net sales revenues were \$17.3 million in 1997 and \$13.9 million in 1998. CR and PR at Table I-1. The number of workers employed by the industry was 152 in 1977 and 1978 and 105 in 1979. By comparison, the number of workers employed by the industry was 23 in 1997 and 1998. CR and PR at Table I-1.

⁹⁴The industry's capacity utilization rates were 65 percent in 1977, 64 percent in 1978 and 73 percent in 1979. CR and PR at Table I-1. By comparison, the industry's capacity utilization rates in 1997 and 1998 were 65 and 53 percent, respectively. Id. We note that this lower rate in 1998 was due, in part, to ***. CR and PR at III-1.

⁹⁵ Commissioner Crawford observes that production, capacity, shipments, sales, and employment trends in the broader sodium metasilicates industry have behaved in a similar fashion.

⁹⁶ The industry's operating income as a percentage of sales was 20.8 percent in 1977, 22.2 percent in 1978, and 18.8 percent in 1979. By comparison, its operating income (loss) as a percentage of sales was 9.8 percent in 1997 and (0.6) percent in 1998. CR and PR at Table I-1.

the reasonably foreseeable future,⁹⁷ we believe that the industry's financial condition will continue to deteriorate and that it is vulnerable to the likely impact of the subject imports if the order were revoked.^{98 99}

With these considerations in mind, we find that the subject imports are likely to have a significant adverse impact on the domestic industry producing ASM if the antidumping duty order is revoked. As we previously discussed, we have concluded that revocation of the antidumping duty order would be likely to lead to significant additional volumes of subject imports as well as significant adverse price effects from the subject imports. Given the highly substitutable nature of the subject and domestic product,¹⁰⁰ we find that the significant volume of low-priced subject imports, when combined with the expected adverse price effects of these imports, would have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry.¹⁰¹ This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the antidumping duty order is revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

⁹⁷ See CR at II-3, PR at II-2.

⁹⁸ In this regard, we note that the industry is no longer *** as part of its operations, as it was during the period examined in the original investigation. CR at III-7, PR at III-5. As a result, *** and can be expected to be competing directly with shipments of the subject imports, should the order be revoked. Because of the fact that more of the industry's shipments are potentially in direct competition with likely volumes of subject imports, we believe the industry is currently vulnerable to the possible adverse impact of the subject imports.

⁹⁹ 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 the domestic industry in this review is not particularly vulnerable to injury if the order is revoked. While declining demand has had an adverse impact on the output, sales, and revenue of the U.S. sodium metasilicate producers over time, the underlying cause of this decline -- a product that is out-of-step with the consumer and regulatory demands of the marketplace -- has been present since the Commission last examined ASM and SMP producers in 1980. See, e.g., Original Staff Report at A-9 (discussing declining consumption of sodium metasilicates due to partial replacement by less expensive sources of alkali). Further, Commissioner Crawford notes that more recent problems facing the industry are of a transitory nature (e.g., raw material costs, year-on-year export declines, and production difficulties experienced by PQ Corp. in 1998). Raw material costs *** in 1999. PQ Posthearing Brief at A-8. From 1997 to 1998, the total decline of exports was caused by a *** percent decline in exports by ***. CR at II-1-2, PR at II-1. In addition, PQ Corp.'s production levels fell by *** percent in 1998 as a result of now-resolved mechanical difficulties in its production line. CR at III-1-2, PR at III-1.

¹⁰⁰ Commissioner Crawford finds that, because the subject merchandise consists solely of ASM, which is not likely to be used in liquid laundry detergent (as is SMP), subject imports are likely to be moderate substitutes for domestically produced ASM and SMP and for nonsubject imports of ASM and SMP.

¹⁰¹ Commissioner Crawford finds that the price effects of the subject imports would not likely be significant. Nonetheless, for the reasons discussed above, she agrees that revocation of the order is likely to lead to a significant volume of imports of ASM from Rhodia, resulting in a significant adverse impact on the domestic industry's output, sales, and revenue.

For the foregoing reasons, we determine that revocation of the antidumping duty order on anhydrous sodium metasilicate from France would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

SEPARATE VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of the information contained in the record of this review, I find that the appropriate domestic like product consists of anhydrous sodium metasilicate (ASM) and sodium metasilicate pentahydrate (SMP). As noted in the determination and views of the Commission, I determine that revocation of the antidumping order concerning ASM from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. However, I present these separate views because I do not join my colleagues in finding a domestic like product consisting of only ASM and a domestic industry producing only ASM.

I. DOMESTIC LIKE PRODUCT

In making a determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”¹⁰² 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.”¹⁰³ In its final five-year review determination, the Department of Commerce (“Commerce”) defined the subject merchandise as

anhydrous sodium metasilicate (“ASM”), a crystallized silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding in other detergent formulations.¹⁰⁴

Commerce has determined that ASM mixed with caustic soda beads or with sodium triphosphate is within the scope of the order.¹⁰⁵

In the original investigation, the Commission determined that there was one like product, consisting of ASM.¹⁰⁶ The Commission noted that the four domestic producers of ASM also produced SMP, a product that has a similar chemical composition to ASM but contains five molecules of water. Without undertaking an extensive discussion of the issue, the Commission found that “ASM and SMP are different products and that the appropriate industry produces only ASM.”¹⁰⁷

For the purposes of this review, I find that there is one domestic like product consisting of the two primary representatives of the sodium metasilicate family: ASM and SMP. In making this finding, I note that the Commission considered this domestic like product issue in its original antidumping duty investigation

¹⁰²19 U.S.C. § 1677(4)(A).

¹⁰³19 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).

¹⁰⁴Final Result of Expedited Sunset Review: Anhydrous Sodium Metasilicate from France, 64 Fed. Reg. 5631, 5631 (Feb. 4, 1999). ASM is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as items numbers 2839.11.00 and 2839.19.00.

¹⁰⁵*Id.*

¹⁰⁶Original Determination at 4.

¹⁰⁷*Id.*

covering ASM from France. However, in the Notice of Final Rulemaking for sunset reviews, the Commission indicated that “the Commission may revisit its like product determination when there have been significant changes in the products at issue since the original investigation or when domestic like product definitions differed for individual orders within a group concerning similar products.”¹⁰⁸

Eighteen years have elapsed since the Commission made its original like product determination. In that time, domestic producers have ceased their once-considerable internal consumption of ASM and SMP, while unrelated customers have reformulated the products that require ASM and SMP.¹⁰⁹ In light of the intervening eighteen years since the Commission’s original determination and the significant changes in the frequency and intensity of use of the anhydrous and pentahydrate forms of sodium metasilicate, I find that the particular facts and circumstances of this review warrant reconsideration of the Commission’s original like product determination.

Physical Characteristics and Uses.

ASM and SMP share similar physical characteristics and end uses. ASM and SMP are the major commercial forms of sodium metasilicates within the subclass of sodium silicates.¹¹⁰ Both forms were developed “as rapidly dissolving, dustless, concentrated source(s) of alkali and silica.”¹¹¹ In particular, ASM and SMP share the same general chemical structure, with the exception of the fact that SMP contains five molecules of water.¹¹² These physical similarities allow ASM and SMP to be used for similar general end uses, primarily in industrial and institutional cleaning applications (*e.g.*, in medium- or heavy-duty hard-surface cleaners or in laundry and dishwasher detergent formulations) as well as for fabricated metals cleaning, paper de-inking, and maintenance washing of aircraft.¹¹³ Moreover, the record evidence suggests that ASM and SMP are substitutes for one another in industrial applications.^{114 115}

Interchangeability.

As indicated above, the record evidence suggests that ASM and SMP are interchangeable in industrial applications. Interchangeability between the anhydrous and pentahydrate forms of sodium metasilicate is enhanced by the fact that they share the two leading characteristics identified in Commerce’s

¹⁰⁸63 Fed. Reg. 30599, 30602 (June 5, 1998).

¹⁰⁹*Compare Original Report at A-9 with CR at III-7, PR at III-7, and tables C-1 and C-2, CR at C-6 and C-8.*

¹¹⁰CR at I-11, PR at 9.

¹¹¹PQ Posthearing Brief at ex. A, p. 14.

¹¹²CR at I-11, PR at 9.

¹¹³PQ Posthearing Brief at ex. A, p. 14.

¹¹⁴CR at I-11, PR at I-9.

¹¹⁵Not surprisingly, the presence of water molecules in SMP causes this form of sodium metasilicate to be more soluble than ASM, to have faster solution and surfactant absorption rates than ASM, and to remain stable at higher temperatures than ASM. It also has a lower bulk density than ASM and tends to cause less fabric damage than ASM. As a result of these properties, SMP is preferred over ASM in liquid detergent formulations and in cold-water washing formulations, while ASM is preferred in certain cleaning applications (*e.g.*, where caustic soda is present) or in certain specialty applications (*e.g.*, in oilfield cements). CR at I-11, PR at I-9.

scope of the subject merchandise: alkalinity and solubility. However, this level of interchangeability is moderated somewhat by purchasers' preference for SMP in liquid and cold-water washing formulations and for ASM when caustic soda is present or in certain specialty applications.

Channels of Distribution.

The record indicates that ASM and SMP are sold through the same channels of distribution.¹¹⁶

Common Manufacturing Facilities, Employees, and Methods.

ASM and SMP share the same feedstock and generally are produced by the same firms. Each of the firms producing sodium metasilicates combines silica sand with soda ash or caustic soda in continuously-operated, high-temperature furnaces.¹¹⁷ After the fusion process is complete, the product is dried. The drying process for ASM requires the product to be heated at high temperatures (700 degrees Fahrenheit), while SMP is dried using a process that cools the product down to moderate temperatures (70 degrees Fahrenheit).¹¹⁸ Therefore, only at the drying stage do domestic producers generally process ASM and SMP on separate production lines using separate employees.¹¹⁹ Moreover, the ASM drying line can be retrofitted with an air-conditioning unit to produce SMP, although it is considered uneconomical to retrofit the SMP drying line to produce ASM.¹²⁰

Producer and Customer Perceptions.

PQ Corp. filed affidavits from its technical employees indicating that ASM and SMP are considered to be different products with different physical characteristics and end uses.¹²¹ Nonetheless, marketing brochures submitted by PQ Corp. suggest that the company markets the products as having the same beneficial characteristics.¹²² Similarly, Crosfield markets its ASM and SMP together, as evidenced by ***.¹²³ Customers also appear to view the products as substitutes. Although performance requirements may in some instances dictate the use of ASM, customers can turn to substitute products (primarily pentahydrates generally and SMP specifically) for most applications.¹²⁴

¹¹⁶CR at I-13, PR at I-10; Tr. at 69.

¹¹⁷CR at I-8 and I-12, PR at I-7 and I-10.

¹¹⁸Tr. at 44-45.

¹¹⁹CR at I-12, PR at I-9. PQ even shares operations in its shipping and warehousing of the anhydrous and pentahydrate forms of sodium metasilicate. Tr. at 43.

¹²⁰Tr. at 44-45.

¹²¹PQ Posthearing Brief at Ex. B.

¹²²PQ Posthearing Brief at Ex. A, p. 14.

¹²³CR at I-14, PR at I-12.

¹²⁴CR at II-3, PR at II-2. Of the purchasers that responded to the Commission' questions regarding substitute products, 40 percent indicated that pentahydrates were viable substitutes for ASM, and an additional 40 percent identified SMP specifically.

Price.

ASM is sold for a higher price than SMP. SMP sells for \$0.15 per pound compared to \$0.20 per pound for ASM. However, I do not find it appropriate to place great weight on prices, in light of SMP's elevated water content. Pound-for-pound, the anhydrous form of sodium metasilicate contains more silicate than the pentahydrate form,¹²⁵ making per-pound pricing comparisons of limited utility.

Conclusion.

I find one domestic like product in this review, consisting of ASM and SMP. The anhydrous and pentahydrate forms of sodium metasilicate share similar physical characteristics and end uses, are interchangeable to a certain degree, are sold through the same channels of distribution, and are manufactured on much of the same equipment, frequently with the same employees. The different techniques employed at the drying stage of production result in limited physical differences between the two forms of sodium metasilicate, reducing somewhat the overlap in end uses and interchangeability and increasing the price differential between ASM and SMP. However, these differences do not represent a clear dividing line between the anhydrous and the pentahydrate forms of sodium metasilicate. Accordingly, I include ASM and SMP within the same domestic like product.

II. DOMESTIC INDUSTRY

Having found one like product consisting of both ASM and SMP, I find that the domestic industry consists of the U.S. producers of both ASM and SMP. In defining the domestic industry in this review, I have also considered whether any producers of the domestic like product should be excluded from the domestic industry pursuant to the related parties provision in section 771(4)(B) of the Act. As discussed in the majority opinion, one domestic producer, Crosfield Co., has a contractual agreement with Rhodia's U.S. subsidiary ***. Considering all of the available information in the record, I concur with my colleagues in their conclusion that Crosfield's primary interest lies in domestic production and in their finding that Crosfield is not a related party.

¹²⁵Tr. at 47.

DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Section 751(d) requires that Commerce revoke a countervailing duty or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹²⁶ In this review of the order on anhydrous sodium metasilicate from France, I find that material injury is not likely to continue or recur in a reasonably foreseeable time if the order is revoked.

I join my colleagues’ discussion regarding domestic like product, domestic industry, conditions of competition, and in their explanation of the relevant legal standard. As a preliminary matter, I note that one domestic producer representing approximately *** percent of the domestic industry responded to the Commission’s notice of institution; no respondent interested parties chose to participate in the review. The Commission therefore has a limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury in the reasonably foreseeable future.¹²⁷ In a case such as this, where only one domestic interested party participates in an investigation or review, that party has an advantage in terms of being able to present information to the Commission without rebuttal from the other side. However, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the data before it in terms of the statutory criteria.¹²⁸ The Commission cannot properly accept participating parties’ information and characterizations thereof without question and without evaluating other available information.^{129 130}

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

¹²⁷Congress and the administration anticipated that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission’s determination would be upheld unless it was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. See Genentech Inc. v. United States Int’l Trade Comm’n, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission’s decision on sanctions).

¹²⁸19 U.S.C. § 1675a(a).

¹²⁹See, e.g., Alberta Pork Producers’ Mktg. Bd. v. United States, 669 F. Supp. 445, 459 (Ct. Int’l Trade 1987) (“Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.”).

¹³⁰See supra, note 34 in the Majority Opinion, section I.A.

B. General Considerations

The statute directs us to take into account some general considerations.¹³¹ I therefore have taken into account the Commission's prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.¹³² In examining the current marketplace for anhydrous sodium metasilicate, I note that several facts point to the existence of a very different market than existed in 1980, at the end of the original period of investigation.

The Commission found that the domestic industry was threatened with material injury in its original determination. At that time, the market for ASM was contracting and subject imports entered the domestic market in increasing volumes. Subject imports increased their shipments to the domestic market from 982,000 pounds in 1977 to 5.5 million pounds in 1979.¹³³ Thus, by 1979, subject imports accounted for a total of 3.2 percent of the U.S. market and 100 percent of all imports. The U.S. ASM market has continued its contraction since 1977 and according to PQ's testimony, the decline in demand will continue, with no projected new uses for ASM.¹³⁴ U.S. production is approximately *** times smaller than it was in 1979, while domestic consumption is approximately *** times smaller.¹³⁵ By contrast, in 1998, U.S. producers controlled virtually the entire domestic market. Subject merchandise did not enter the domestic market in 1998, and one of the U.S. producers, ***, imported the only nonsubject merchandise from its Canadian subsidiary in order to cover production shortfalls due to fire damage at its facility. The decline in demand for ASM has been fostered by the increasing use of substitute products such as SMP, caustic soda and soda ash. In fact, in certain detergent formulations, liquid substitutes can replace ASM and are less labor and capital intensive.¹³⁶

Domestic consumption of anhydrous sodium metasilicate has waned during the many years the order has been in effect and it does not necessarily follow that revocation of the order will affect the domestic industry's condition. Indeed, the record here suggests that fundamental changes in the domestic marketplace itself since the order was imposed, including the significant decrease in total consumption and the increased availability of substitutable products, are perhaps more responsible for the industry's condition than the order. In fact, subject imports have not entered the market in 14 years, allowing the domestic industry to solidify its position in the U.S. market. Based on the industry's current performance and PQ's stated belief

¹³¹19 U.S.C. § 1675a(a)(1). We are also to take into account the Commission's prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. *Id.* Commerce has made no findings of duty absorption in this case. 64 Fed. Reg. 5636, 5637 (Feb. 4, 1999). The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). Commerce determined that the margin it would expect in the event of revocation for French producers that remain subject to the order to be 2.9 percent; the all others rate would also be 2.9 percent. 64 Fed. Reg. at 5638 (February 4, 1999).

¹³²19 U.S.C. § 1675a(a)(1)(A). According to the Statement of Administrative Action ("SAA") to the Uruguay Round Agreements Act, if pre-order conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury. H. R. Rep. No. 103-316, vol. 1 at 884 (1994).

¹³³CR at I-3, PR at I-3.

¹³⁴Transcript at 26-27.

¹³⁵CR at I-3, PR at I-3.

¹³⁶CR at II-3, PR at II-2.

that the ASM market will continue to be viable, I do not find a causal connection that imports from France will materially injure the domestic industry.

C. Volume

The Commission is to consider whether the likely volume of subject imports if the order under review is revoked would be significant either in absolute terms or relative to production or consumption in the United States.¹³⁷ In so doing, the Commission shall consider “all relevant economic factors,” including four enumerated in the statute: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise in countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.¹³⁸

Our focus in a sunset review is whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping duty order is revoked. Although the available data suggest that the antidumping duty order had a significant impact on the market penetration of subject imports immediately after its imposition, it does not appear likely that revocation would lead to any adverse effects on the domestic industry. Inland transportation costs, even without adding overseas freight cost, are high and have a dramatic influence on profit margins. The domestic industry testified that transportation costs are so high that if it is to cut prices on distant sales it will sell its product at a loss.¹³⁹ High transportation costs also would apply to French imports, in addition to overseas freight costs, and would be a serious impediment to any future shipments of ASM from France.

The statute first directs the Commission to consider what the effects of any likely increase in production capacity or unused capacity in the exporting country would be on the domestic industry. It is not reasonable to believe that Rhodia will increase production capacity given the current state of the industry. Further, all producers of ASM reportedly have excess capacity in their facilities due to the decline in demand for the product; thus, the mere fact of excess available capacity does not compel the conclusion that a producer is gearing up to produce and ship a larger amount of ASM.

PQ estimates that Rhodia has 90 million pounds of production capacity and is operating at 50 percent to 60 percent capacity utilization.¹⁴⁰ Although this would ordinarily be a large quantity of excess capacity, worldwide demand for ASM has fallen so significantly that capacity utilization by all firms will likely continue to decrease. Further, machines used in the production of ASM are easily converted to producing other chemicals in the metasilicate family. According to the ***,¹⁴¹ ***,¹⁴² This information suggests PQ may have overestimated how much capacity Rhodia devotes to the production of ASM, and

¹³⁷19 U.S.C. § 1675a(a)(2).

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

¹³⁹Transcript at 91.

¹⁴⁰Posthearing brief of PQ, Exhibit A at 2.

¹⁴¹***.

¹⁴²CR at II-2, PR at II-2.

therefore, what threat, if any, Rhodia poses to the domestic industry. Based on the foregoing information, one might expect a reasonable producer to scale back production and focus on their home market.

Demand for ASM has fallen because of increased availability of substitute products that are less costly, easier to handle, and less toxic. It would be illogical for a company, which knows the industry, to re-enter a market after a 14-year absence to again begin selling a product for which purchasers are continually finding substitutes. As noted in the majority's conditions of competition, Crosfield and Rhodia, Inc., Rhodia's American subsidiary, have entered into an agreement ***. Though we have few details on the exact nature of the relationship between the two companies, the ongoing relationship leads me to believe that the current agreement is and will continue to be beneficial to both companies. It therefore seems unlikely that Rhodia will begin importing large quantities of ASM and selling them in direct competition with Crosfield's product.

Second, the statute directs the Commission to consider the effects of existing inventories of the subject merchandise, or likely increases in inventory. Because Rhodia did not participate in the investigation, the Commission has no information on its existing inventory.

Third, the statute directs the Commission to consider the existence of barriers to the importation of the subject merchandise in countries other than the United States. According to domestic producers, the current barrier to the importation of ASM, for domestic and subject merchandise, is a 10 percent *ad valorem* tariff in several Latin American and East Asian countries.¹⁴³ In addition, in 1996, the Department of Transportation classified ASM as a hazardous material and thereby created a new barrier for any country, including France, to import ASM into the United States.¹⁴⁴

Because the domestic market is dominated by U.S. suppliers, and because Rhodia has no logical incentive to increase shipments of ASM to the United States, I find that revocation of the antidumping duty order is not likely to lead to a significant increase in the volume of subject imports such that the likely volume of subject imports would be significant.

D. Price

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether imports are likely to be sold at a significantly lower price than the domestic like product, and (2) whether imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.¹⁴⁵

The record in this review contains very limited pricing data. However, PQ stated that without foreign competition, the domestic industry does not compete on price for market share from its competitors because, "it's only reasonable to assume that the same thing would happen to me on the next bid."¹⁴⁶ Thus, the domestic producers seem to have effectively allocated the market among themselves, thereby providing themselves with price stability.

Further, a striking difference between the original investigation and the current sunset review is the export volume of the domestic industry. During the original investigation, the domestic industry exported

¹⁴³CR at II-1, PR at II-1.

¹⁴⁴Transcript at 30.

¹⁴⁵19 U.S.C. § 1675a(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation or termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

¹⁴⁶Transcript at 88.

between 0.1 and 0.3 percent of its sales, but it currently exports between 10 to 12 percent of its sales.¹⁴⁷ Domestic producers state they are in danger of losing export sales to low-cost producers from Latin America and East Asia, but do not mention Rhodia as a source of concern. Because *** percent of the domestic industry chose not to participate, the Commission does not have a direct answer as to whether U.S. producers compete with Rhodia for sales of ASM in third-country markets.¹⁴⁸ However, PQ's witness testified that purchasers of ASM will source on a global basis, leading me to believe that domestic producers do compete with Rhodia for third-country sales of ASM.¹⁴⁹ Thus, since apparently the domestic industry competes successfully against Rhodia in third-country markets, there is no reason to believe that Rhodia would undersell its product in the United States in order to capture U.S. market share. These limited data demonstrate that revocation of the antidumping duty order is not likely adversely to affect prices for the domestic like product in the reasonably foreseeable future.

E. Impact

When considering the likely impact of subject imports, the Commission is to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more enhanced version of the domestic like product.¹⁵⁰

Subject imports are not likely to have a significant adverse impact on the domestic anhydrous sodium metasilicate industry if the order is revoked. Subject imports have not entered the U.S. market since 1985, and the domestic industry accounts for essentially *** percent of apparent domestic consumption. In light of the domestic industry's strong position in the U.S. market and the lack of competition from foreign producers, I find that revocation would likely not have an adverse impact on the domestic industry. Subject imports would have to increase by an unrealistic degree in order to challenge the industry's position and cause material injury in the event of revocation.

Finally, even if one were to assume that subject imports may enter at prices that could perhaps adversely affect prices for the domestic like product (i.e., create some price competition where none now exists), I conclude that volume levels would be too minimal to enable subject imports to have a price suppressing or depressing effect. I therefore find that subject imports would not be likely to have a significant impact on domestic anhydrous sodium metasilicate producers' cash flow, inventories, employment, wages, growth, ability to raise capital, or investment. In conjunction with my conclusions regarding likely volume and price effects, I find that revocation is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments. I therefore find that revocation is not likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

III. CONCLUSION

¹⁴⁷CR at II-1, PR at II-1.

¹⁴⁸Transcript at 29.

¹⁴⁹Transcript at 35.

¹⁵⁰19 U.S.C. § 1675a(a)(4).

Subject imports are not likely to have adverse volume or price effects in the event of revocation, and are therefore not likely to have a negative impact on the domestic industry. Although the domestic industry faces many challenges due to declining demand, imports from France are not and will not be a cause of further harm. Thus, I find that material injury is not likely to continue or recur in the reasonably foreseeable future if the antidumping duty order is revoked.