UNITED STATES INTERNATIONAL TRADE COMMISSION

DRAFTING MACHINES FROM JAPAN
Investigation No. 731-TA-432 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3252, November 1999)

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DRAFTING MACHINES FROM JAPAN

DETERMINATION

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on drafting machines 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.

BACKGROUND

The Commission instituted this review on June 1, 1999 (64 F.R. 29339) and determined on September 3, 1999, that it would conduct an expedited review (64 F.R. 50105, September 15, 1999).

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

[2] Commissioners Carol T. Crawford and Thelma J. Askey dissenting.

VIEWS OF THE COMMISSION

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

I. BACKGROUND

In December 1989, the Commission determined that an industry in the United States was being materially injured by reason of imports of drafting machines from Japan that were being sold at less than fair value.[4] On December 29, 1989, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of drafting machines from Japan.[5] The Commission instituted this five-year review on June 1, 1999.[6]

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) – demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.[7] If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In this review, Vemco Drafting Products Corporation ("Vemco"), a domestic manufacturer that claims to be the sole U.S. producer of drafting machines, filed a response to the notice of institution.[8] No foreign producer, U.S. importer, or other interested party responded to the Commission's notice of institution.

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[3] Commissioners Crawford and Askey dissenting. Commissioners Crawford and Askey determine that revocation of the antidumping duty order covering drafting machines 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 Additional and Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. They join in sections I - III.B. of these views except as otherwise noted.

[4] Drafting Machines from Japan, Inv. No. 731-TA-432 (Final), USITC Pub. 2247 (Dec. 1989) ("Original Determination").

[5] 54 Fed. Reg. 53671 (Dec. 29, 1989).

[6] 64 Fed. Reg. 29339 (June 1, 1999).

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

[8] Vemco is the successor corporation to the petitioner in the original investigation. According to information submitted by Vemco, it accounts for 100 percent of U.S. drafting machine production. Letter from Vemco Drafting Products Corp. to Int'l Trade Comm'n at 2 (July 21, 1999) ("Vemco Response").

On September 3, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate but that the respondent interested party group response was inadequate.[9] Pursuant to section 751(c)(3)(B) of the Act,[10] the Commission voted to conduct an expedited review of this antidumping duty order.

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."[11] 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."[12] In its final five-year review determination, Commerce defined the subject merchandise as:

> Drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. The term "drafting machine" refers to "track" or "elbow-type" drafting machines used by designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be read and set and lines to be drawn. The machine is generally clamped to the board. Also included within the scope are parts of drafting machines. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps, and scales are not subject to this order. This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") item numbers 9017.10.00.and 9017.90.00. The merchandise was previously classified under the Tariff Schedule of the United States ("TSUSA") under item 710.8025. The HTS numbers are provided for convenience and for Customs purposes only. The written description remains dispositive.[13]

In its original determination, the Commission defined the domestic like product as drafting machines and drafting machine parts.[14] None of the additional information collected in this review

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[9] See Explanation of Commission Determination on Adequacy in Drafting Machines from Japan (Sept. 9, 1999). See also 64 Fed. Reg. 50105 (Sept. 15, 1999). The Commission's determinations as to the adequacy of the respondent interested party group and the domestic interested party group were unanimous.

[10] 19 U.S.C. § 1675(c)(3)(B).

[11] 19 U.S.C. § 1677(4)(A).

[12] 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 (CIT 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (CIT 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

[13] 64 Fed. Reg. 53996 (Oct. 5, 1999).

[14] Original Determination at 9.

warrants a departure from that definition. Accordingly, based on the facts available, we define the domestic like product as drafting machines and drafting machine parts.

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."[15] In defining the domestic industry in this review, we need not consider 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[16] because Vemco apparently is the only domestic producer. In the original investigation, Vemco accounted for approximately 100 percent of U.S. production of drafting machines. Today Vemco is the only known producer of drafting machines.

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[15] 19 U.S.C. § 1677(4)(A).

[16] 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case. See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

> (1) the percentage of domestic production attributable to the importing producer;
> (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
> (3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (CIT 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

III. REVOCATION OF THE ORDER ON DRAFTING MACHINES IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME[17]

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[18] The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports."[19] Thus, the likelihood standard is prospective in nature.[20] 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."[21] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations]."[22] [23]

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[17] Commissioners Crawford and Askey dissenting. They join in sections III. A. & B., except as otherwise noted.

[18] 19 U.S.C. § 1675a(a).

[19] 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.

[20] 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 [sic] 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.

[21] 19 U.S.C. § 1675a(a)(5).

[22] 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.

[23] 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.

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."[24] It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.[25] [26]

Section 751(c)(3) of the Act and the Commission's regulations provide that in an expedited five-year review the Commission may issue a final determination "based on the facts available, in accordance with section 776."[27] [28] As noted above, no respondent interested parties responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the original investigation, limited information collected by the Commission since the institution of this review, and information submitted by Vemco.

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[24] 19 U.S.C. § 1675a(a)(1).

[25] 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

[26] Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce stated in its expedited five-year review determination that it has not issued any duty absorption finding in this case. 64 Fed. Reg. 53996, 53997 (Oct. 5, 1999).

[27] 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. Id.

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

For the reasons stated below, we determine that revocation of the antidumping duty order on drafting machines from Japan would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.[29]

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[30]

First, at the time of the original investigation, many purchasers were beginning to buy computer-aided design ("CAD") systems in place of drafting machines, resulting in a marked decrease in apparent domestic consumption during the original investigation period.[31] This process continued after the imposition of the antidumping duty order. Apparent domestic consumption of drafting machines has fallen since then and continues to fall at the present time.[32]

Second, at the time of the original investigation, Vemco's predecessor was the sole U.S. producer of drafting machines, and Mutoh Industries Ltd. ("Mutoh"), a Japanese producer, was the only other significant supplier of drafting machines to the U.S. market.[33] After imposition of the antidumping duty order, imports of nonsubject German drafting machines entered the U.S. market in increased quantities and ultimately replaced subject imports, but ceased in the mid-1990s.[34] Currently, Vemco remains the sole producer of drafting machines in the United States, facing no competition from other providers of drafting machines.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.[35] 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)

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[29] Commissioners Crawford and Askey determine that revocation of the antidumping duty order covering drafting machines 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 Commissioners Carol T. Crawford and Thelma J. Askey.

[30] 19 U.S.C. § 1675a(a)(4).

[31] Final Report to the Commission at A-46 (Dec. 12, 1989) ("Original Staff Report").

[32] Vemco Response at 11.

[33] The Original Staff Report states that other nonsubject merchandise accounted for "an extremely small quantity" of drafting machine imports into the United States, and that Mutoh accounted for essentially all of the imports of the subject merchandise. Original Staff Report at A-37, n. 31, A-39.

[34] Affidavit of Paul McManigal, Vemco Response, Att. 1.

[35] 19 U.S.C. § 1675a(a)(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.[36]

Mutoh is now the largest manufacturer of drafting machines and drafting machine parts in the world,[37] with approximately *** times more productive capacity than Vemco.[38] The information on the record indicates that Mutoh's production of drafting machines was approximately 20 times Vemco's production in 1998.[39] Yet, Mutoh's total sales of drafting equipment have decreased since the imposition of the order, including a 20 percent drop in sales revenue in 1998 alone, which indicates the existence of excess capacity and changing demand.[40] The 1998 reduction in sales alone would leave Mutoh sufficient idle productive capacity to satisfy 100 percent of the U.S. demand for drafting machines.[41] Thus, Mutoh has the ability to increase sales to the United States without decreasing sales to other markets.[42] In addition, although Mutoh's U.S. subsidiary has stopped selling drafting machines in the United States, it has continued to supply other graphics materials to the U.S. market.[43] This established customer base and distribution system would facilitate Mutoh's ability to increase sales of subject merchandise in the United States if the order were revoked.

The antidumping duty order had a significant restraining effect on subject imports. Mutoh completely ceased its exports of drafting machines to the United States upon issuance of the antidumping duty order, dropping from a sizable share of the U.S. market to essentially nothing over a relatively short period.[44] The record does not indicate any other sizable changes in the conditions of competition during this period. Therefore, we conclude that the order was primarily responsible for the reduction in Mutoh's shipments of subject merchandise to the United States.

Based on the foregoing, we find it likely that Mutoh would, upon revocation of the order, increase exports to the U.S. market, and that the import volume would rise significantly if the discipline of the order

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[36] 19 U.S.C. § 1675a(a)(2)(A)-(D).

[37] Vemco Response at 4.

[38] See CR & PR, Tables I-1 & I-4.

[39] Id.

[40] Vemco Response at 4-5. There is no indication that Mutoh reduced its overall capacity during this period.

[41] Vemco Response at 4-5.

[42] Thus, given Mutoh's total production capacity, even a shift in shipments that is relatively small from Mutoh's perspective would be enough to satisfy 100 percent of U.S. demand.

[43] Vemco Response at 5.

[44] Vemco Response at 4, n. 4.

were removed.[45] Consequently, and in the absence of contrary information or argument,[46] we conclude that, absent the restraining effect of the order, subject imports would likely increase to a significant level and would regain some or all of the sizable U.S. market share held during the original investigation period.

D. Likely Price Effects

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 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.[47]

The record in this expedited review contains a limited amount of pricing data for the U.S. market. In the original determination, the Commission found that subject imports were highly competitive with Vemco's drafting machines, and were traded through the same channels of distribution.[48] In addition, subject imports undersold the domestic merchandise in slightly more than half of the comparisons, with underselling highest for the products that were most fully comparable.[49] Nothing on the record suggests that Mutoh has changed its selling practices in the past decade. Furthermore, purchasers indicated that price was one of the most important considerations in their purchasing decisions.[50] [51]

The relatively low operating profit margins reported by Vemco indicate that its sales of drafting machines are already under pressure from sales of CAD systems. Since the original record showed a close correlation between the changes in prices charged by Mutoh and Vemco, low prices for subject imports would likely depress the prices Vemco could demand for its U.S. sales.

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. However, the record does indicate that there is a moderately high level of substitutability between the domestic and subject

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[45] See SAA at 890. The record in this five-year review does not contain information about the current levels of inventories maintained by Japanese producers.

[46] Chairman Bragg bases her conclusion on the entirety of the record in this review. She does not base her conclusion on the absence of argument to the contrary.

[47] 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.

[48] Original Determination at 17, n.51.

[49] Id. at 18.

[50] Id.

[51] Chairman Bragg infers that, in the event of revocation, Mutoh will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original investigation.

merchandise[52] and that price is an important factor in purchasing decisions for drafting machines.[53] Given this and Mutoh's underutilized capacity, we find that it is highly likely that Mutoh 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 Mutoh would be likely to have significant depressing or suppressing effects on prices for the domestic like product.

For the foregoing reasons, and in the absence of contrary information or argument,[54] we find that revocation of the antidumping duty order would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

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.[55] 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.[56] As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.[57]

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[52] CR at I-6 - I-7 & PR at I-5 - I-6.

[53] Original Determination at 18-19.

[54] Chairman Bragg bases her conclusion on the entirety of the record in this review; she does not base her conclusion on the absence of argument to the contrary.

[55] 19 U.S.C. § 1675a(a)(4).

[56] 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. Under that provision of the statute, Commerce found that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at margins of 54.21 percent for all Chinese manufacturers and exporters. 64 Fed. Reg. 32481, 32483 (June 17, 1999).

[57] The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

In the original determination, the Commission found that the domestic industry suffered material injury by reason of a significant volume of LTFV imports of drafting machines that were underselling the domestic like product.[58] Specifically, the Commission found that subject imports had prevented the domestic industry from increasing prices to cover increases in its unit costs.[59] These conditions had an adverse effect on the domestic industry in the form of a reduction in profitability, production levels, capacity utilization, and shipment volumes over the period of investigation.[60]

The order had an apparently significant effect on industry performance. Vemco registered a *** percent operating loss in 1988, which improved to a *** percent operating profit in 1989 and *** percent in 1990 after subject imports left the marketplace in response to issuance of the order.[61] Although Vemco's sales volume declined along with apparent domestic consumption, the unit value of its sales grew to become approximately *** percent higher in 1998 than at the end of the investigation period.[62] Profitability of *** percent in 1998 is somewhat lower than in 1989, but remains much higher than during the original investigation period. These data show that in the absence of subject imports, Vemco was able to keep pace with, and even exceed, increases in its cost of production. Since competition from CAD systems has been ongoing and other conditions of competition apparently remain unchanged, we conclude, absent other information, that these improvements in the domestic industry were in large measure a result of the antidumping duty order.

The domestic producer argues that it is vulnerable to material injury given its low level of profitability. We note that the industry has substantial unused capacity, but reported a modest operating income in 1998. Based on the limited record, we conclude that the industry is not currently in a "weakened state," as contemplated by the vulnerability criterion of the statue.[63]

Specifically, we find it likely that revocation would result in a significant increase in the volume of subject imports at prices significantly lower than Vemco currently receives from U.S. customers. Such shipments would likely depress Vemco's prices significantly, and have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the order will result in employment declines for Vemco. Accordingly, based on the limited record in this review, and in the absence of contrary information or argument,[64] we conclude

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[58] Original Determination at 17.

[59] Original Determination at 16-17.

[60] Original Determination at 10, 17-19.

[61] Vemco Response at 8.

[62] CR & PR, Table I-1.

[63] SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury. . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order. . . .").

[64] Chairman Bragg bases her conclusion on the entirety of the record in this review; she does not base her conclusion on the absence of argument to the contrary.

that, if the antidumping duty order were 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 duty order on drafting machines from Japan would be likely to lead to continuation or recurrence of material injury to the domestic drafting machine industry within a reasonably foreseeable time.

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

Section 751(d) requires that the Department of Commerce ("Commerce") revoke a countervailing duty or an antidumping duty order in a five-year ("sunset") review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.[1] In this review of the order on drafting machines and parts thereof from Japan, we find that material injury is not likely to continue or recur within a reasonably foreseeable time if the order is revoked.

We join our colleagues in their discussion regarding the domestic like product and the domestic industry, and in their explanation of the relevant legal standard. We also join in their discussion of the relevant conditions of competition. However, we add further observations regarding such conditions of competition below.

As a preliminary matter, we note that the sole domestic producer, Vemco Drafting Products Corporation ("Vemco"), is the only interested party that responded to the Commission's notice of institution. No respondent interested parties chose to participate in the review. We therefore have a limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.[2] In a case such as this, where only one party participates in an investigation or review, that party has an advantage in terms of of its ability 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.[3] The Commission cannot properly accept a participating party's information and characterizations thereof without question and without evaluating other available information.[4]

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

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

[3] 19 U.S.C. § 1675a(a).

[4] See, 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.").

A. Conditions of Competition

As previously noted, we join the majority in the discussion of the relevant conditions of competition. However, discussed below are additional conditions of competition that weigh significantly in our analysis of the subject review.

In examining the current marketplace for drafting machines, we note that the record in this review indicates that the market is very different than it was during the original period of investigation. Demand for drafting machines has declined precipitously since the Commission made its original determination. Apparent U.S. consumption decreased more than *** times in the decade since the original order went into effect, falling from just over *** units in 1988[5] to approximately *** units in 1998.[6] Moreover, according to Vemco, demand for drafting machines will continue to decrease in the foreseeable future.[7] This decrease in demand is likely related to the presence of certain computer-aided design ("CAD") systems in the market. As recognized by the parties in the original investigation, CAD systems have had an impact on the drafting machine market.[8] At that time, witnesses testified that many consumers had switched to CAD systems because it was a more efficient system that offered more capabilities than mechanical drafting machines.[9]

In addition, since the original period of investigation, the domestic industry continues to be consolidated in one manufacturer. The domestic industry has also greatly decreased its total production capacity since that time. Prior to the original investigation, between 1979 and 1985, three of the four domestic producers of drafting machines ceased production altogether.[10] This left Vemco as the only remaining domestic producer of drafting machines. By 1988, four of the five U.S. firms importing Japanese drafting machines had ceased importing such subject merchandise.[11] Since the original investigation, Vemco has significantly decreased its capacity from *** units in 1988 to *** units in 1998.[12]

Vemco identifies Mutoh Industries, Ltd. ("Mutoh") as the only known subject foreign producer[13] and the largest manufacturer of drafting machines in the world.[14] While specific data concerning Mutoh's capacity, production, and shipments are not publicly available, Vemco estimates that Mutoh's current production and sales of drafting machines is about 20 times greater than Vemco's production. Moreover,

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[5] Original Staff Report at A-15, Table 1.

[6] See CR/PR at Table I-1. U.S. shipments of drafting machines were *** units in 1998. Id. Therefore, while consumption data are not available, this figure provides a reasonable proxy for U.S. consumption since there are no subject imports and no apparent nonsubject imports. See CR/PR at Table I-2.

[7] Vemco's Response at 7.

[8] See Original Staff Report at A-46-47.

[9] Original Transcript at 119-121, 124-125 and 127-128.

[10] Original Staff Report at A-16.

[11] Id. at A-17.

[12] CR/PR at Table I-1.

[13] Vemco's Response at 9.

[14] Id. at 4.

Vemco argues that Mutoh's general decline in total net sales of a product category including drafting machines is evidence of Mutoh's current low rate of capacity utilization.[15] Vemco also reports that a U.S. subsidiary of Mutoh ceased importing from Japan shortly after the imposition of duties and began importing from an alternative source of drafting machines in Germany. However, the subsidiary has not imported any drafting machines to the United States for at least the past five years.[16]

B. General Considerations

The statute directs us to take into account several general considerations.[17] We have taken into account the Commission's prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.[18] We have also considered whether any improvement in the state of the industry is related to the order, and whether the industry is vulnerable to material injury in the event of revocation.[19] However, our consideration of these factors does not have any effect on our determination.

Imposition of the order appears to have had an immediate effect on subject imports. Japanese imports fell from *** units in 1988 to zero units in 1998.[20] However, apparent consumption for drafting machines was falling throughout the original period of investigation and market conditions have continued to deteriorate since the imposition of the antidumping duty order. Moreover, the significant amount of time -- 11 years -- that has elapsed since the order was imposed counsels against attributing current market conditions to the existence of the order.

Vemco argues that it is vulnerable to injury if the order is revoked. However, we do not find that the record reflects such vulnerability.[21] Vemco reports that its operating income as a percentage of net sales improved to *** percent in 1998 from a low of *** percent in 1988.[22] More importantly, however, because subject and nonsubject imports are completely absent from the domestic market, Vemco is the sole producer of drafting machines and has a captive domestic market.

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[15] Id. at 4 and Attachment 1.

[16] Id.

[17] 19 U.S.C. § 1675a(a)(1). Commerce has not issued a duty absorption finding, therefore it is not an issue in this review. See 64 Fed. Reg. 53996 (Oct. 5, 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). The margins of dumping that Commerce found likely to prevail if the existing order on Japan is revoked is 90.87 for Mutoh Industries, Ltd. and all other manufacturers/exporters. 64 Fed. Reg. at 53998.

[18] 19 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. I, at 884 (1994).

[19] 19 U.S.C. § 1675a(a)(1)(B)-(C).

[20] CR/PR at Table I-2.

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

[22] CR/PR at Table I-1.

C. Volume

In the original investigation, U.S. imports of drafting machines from Japan fell approximately *** percent, from *** units in 1986 to *** units in 1988.[23] In terms of U.S. market share, subject imports of drafting machines accounted for *** percent of the domestic market in 1986, before dropping to *** percent in 1988.[24] As previously stated, there were no imports of subject merchandise in 1998. Therefore, the data indicate that the market share held by subject imports from Japan has declined precipitously to zero.

Our focus in a sunset review is whether subject import volume is likely to be significant within a reasonably foreseeable time if the antidumping duty order is revoked. We find that it is likely that the volume of the subject imports will not be significant if the order is revoked. Additionally, although the available data suggest that the existing antidumping duty order in this review has affected the market penetration of subject imports, we find that current U.S. producer market share is not likely to be adversely affected if the order is revoked.

We have considered Vemco's estimate of Mutoh's current production volume, which would imply that the sole Japanese producer's current capacity is *** times greater than that of the domestic industry.[25] We find this to be unlikely. Prior to and through the original period of investigation, three of the four domestic manufacturers of drafting machines ceased production. Furthermore, three of the four U.S. importers of the subject merchandise ceased importing drafting machines from Japan before imposition of the order. Mutoh's U.S. subsidiary, the sole remaining U.S. importer of subject drafting machines, ceased its U.S. imports of such subject merchandise over five years ago. In addition, since the imposition of the order, domestic consumption and capacity have declined dramatically. Given the apparent increasing shift in demand towards substitute products (*e.g.*, CAD systems) and the continuing sharp decline in domestic consumption of drafting machines, we find it unlikely that Japan would not have decreased its production capacity in accordance with current market conditions.

Moreover, regardless of the true production capabilities of Mutoh, we find that it is unlikely that subject merchandise would reenter the domestic market in any significant level of volume upon revocation of the existing antidumping duty order. The available facts of this review support the conclusion that the sole remaining Japanese producer is not interested in participating in the U.S. market. We note that during the original period of investigation Mutoh did not participate in Commerce's investigation. Furthermore, Mutoh has not requested an administrative review from Commerce since the issuance of the antidumping duty order and did not participate in this current review.[26] Moreover, the fact that nonsubject imports have not been a factor in the U.S. market for over five years indicates that other manufacturers are similarly disinterested in exporting drafting machines to the United States. This information leads us to conclude that Mutoh has abandoned the dwindling U.S. market for drafting machines and is likely to remain absent from the market if the order is revoked.

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[23] Id. at Table I-2.

[24] Id. at Table I-3.

[25] See id. at Table I-1.

[26] See CR at I-4 n.7; PR at I-3 n.7.

In sum, we find that revocation of the antidumping duty order is not likely to lead to a significant increase in the volume of subject imports within a reasonably foreseeable time.

D. Price

The record in this review contains no current pricing data. However, even if subject imports were to enter the United States following revocation of the order, we conclude that such volume would be too small to have any effect on domestic prices. We have already found that the volume of the subject imports is not likely to be significant if the order is revoked, and thus any increase in demand for the subject imports is not likely to be significant either. There are no nonsubject imports in the domestic market. Thus, absent a significant shift in demand away from the domestic product, revocation of the order is not likely to have any effect on domestic prices. Consequently, we find that revocation of the order would not be likely to have any significant suppressing or depressing effect on domestic prices within a reasonably foreseeable time.

E. Impact

As discussed above, revocation of the order is not likely to lead to a significant shift in demand away from the domestic like product. Therefore, we find that subject imports would not be likely to have a significant impact on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, or investment within a reasonably foreseeable time in the event the order is revoked. In conjunction with our conclusion regarding likely volume and price effects, we find that revocation is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time. Consequently, we find that there likely would not be a significant impact on the domestic industry if the order is revoked.

F. Conclusion

In conclusion, we determine that subject imports of drafting machines from Japan are not likely to have significant volume or price effects if the existing order is revoked, and are therefore not likely to have a significant impact on the domestic industry. Consequently, we determine that material injury would not be likely to continue or recur within a reasonably foreseeable time if the antidumping duty order is revoked.