

UNITED STATES INTERNATIONAL TRADE COMMISSION

**GRANULAR POLYTETRAFLUOROETHYLENE RESIN
FROM ITALY AND JAPAN**

Investigations Nos. 731-TA-385-386 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
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DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and 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.²

BACKGROUND

The Commission instituted these reviews on May 3, 1999 (64 F.R. 23677, May 3, 1999) and determined on August 5, 1999 that it would conduct expedited reviews (64 F.R. 44537, August 16, 1999). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on December 21, 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 Crawford and Askey dissenting.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering granular polytetrafluoroethylene (“PTFE”) resin from Italy and 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 August 1988, the Commission determined that an industry in the United States was being materially injured by reason of imports of granular PTFE resin from Italy and Japan that were being sold at less than fair value.⁴ That same month, Commerce issued antidumping duty orders on imports of granular PTFE resin from Italy and Japan.⁵ Subsequently, Commerce amended the scope of the order on Italy to cover wet raw polymer, an intermediate product exported from Italy to the United States.⁶

On May 3, 1999, the Commission instituted these reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on granular PTFE resin would likely lead to continuation or recurrence of material injury.⁷ The Commission received one response to the notice of institution from E.I. DuPont de Nemours & Company (“DuPont”), the major domestic producer of granular PTFE resin. No producer, exporter, or U.S. importer of either Italian or Japanese granular PTFE resin filed a response to the notice of institution.

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.⁸ 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.

On August 5, 1999, the Commission voted to conduct expedited reviews in the subject five-year reviews involving granular PTFE resin.⁹ In this regard, the Commission determined that the domestic interested party group response was adequate.¹⁰ Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group

³ Commissioners Crawford and Askey dissenting. They join Sections I, II, III. A., and IV. A.-B., of this opinion, except as otherwise noted. For a complete discussion of their analysis, see their separate views.

⁴ Granular Polytetrafluoroethylene Resin from Italy and Japan Invs. Nos.731-TA-385-386 (Final) USITC Pub. 2112 (August 1988) (“Original Determination”) at p. 2.

⁵ 53 Fed. Reg. 33163 (Aug. 30, 1988) (Italy) and 53 Fed. Reg. 32267 (Aug. 24, 1988) (Japan).

⁶ 58 Fed. Reg. 26100 (Apr. 30, 1993).

⁷ 64 Fed. Reg. 23677 (May 3, 1999).

⁸ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁹ 64 Fed. Reg. 44537 (Aug. 16, 1999).

¹⁰ See Explanation of the Commission Determination on Adequacy in Granular PTFE Resin from Italy and Japan, (August 16, 1999) (“Adequacy Explanation”).

response was inadequate.¹¹ The Commission did not find any circumstances that would warrant conducting a full review. The Commission, therefore, determined to conduct an expedited review.¹² Subsequently, Commerce extended the date for its final results in the expedited reviews from August 31, 1999, to November 29, 1999.¹³ On September 20, 1999, the Commission revised its schedule to conform with Commerce's new schedule.¹⁴

On December 2, 1999, DuPont filed comments pursuant to 19 C.F.R. § 207.62(d) arguing, as it had in its response to the notice of institution, that revocation of the antidumping duty orders on granular PTFE from the subject countries would likely lead to a recurrence of material injury to the domestic industry within a reasonably foreseeable time.¹⁵

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.”¹⁶ 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.”¹⁷ In its final five-year review determination, Commerce defined the subject merchandise as “granular polytetrafluoroethylene resin (“PTFE”), filled or unfilled. Also included in the scope is PTFE wet raw polymer exported from Italy.”¹⁸ Commerce indicated that PTFE dispersions in water, PTFE fine powders, and, additionally, reprocessed PTFE were excluded from the scope of the order. It further noted that the subject merchandise is classified under HTS subheading 3904.61.00.^{19 20 21}

¹¹ See Adequacy Explanation.

¹² See Adequacy Explanation.

¹³ 64 Fed. Reg. 48579 (Sept. 7, 1999)

¹⁴ 64 Fed. Reg. 52105 (Sept. 27, 1999).

¹⁵ DuPont Comments at 2; DuPont Response to the Notice of Institution (“DuPont Response”) at 3.

¹⁶ 19 U.S.C. § 1677(4)(A).

¹⁷ 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).

¹⁸ 64 Fed. Reg. 23596 (May 3, 1999)

¹⁹ Id.

²⁰ In the review concerning granular PTFE from Italy, Commerce’s current scope, with the inclusion of wet polymer, is slightly broader than the scope in the original investigation. In 1993, as a result of an affirmative circumvention determination, Commerce amended the scope of the order on Italy to cover wet raw polymer, an intermediate product exported from Italy to the United States. Commerce’s anti-circumvention inquiry concerned PTFE wet polymer manufactured by Montefluos in Italy and exported to a related U.S. firm (Ausimont), which used it to produce granular PTFE resin. Commerce determined, among other things, that the monomer production processes and suspension polymerization processes used to produce PTFE wet raw polymer “impart the basic physical characteristics that distinguish granular PTFE resin from other forms of PTFE resin” and that the post-treatment processes that then transform PTFE wet raw polymer into granular PTFE resin “do not fundamentally alter the nature of the product.” 58 Fed. Reg. 26100 (April 30, 1993).

In its original determination, the Commission defined the domestic like product to correspond to the scope as first defined by Commerce, all granular PTFE resin, both filled and unfilled. Original Determination at 13. The amendment of the scope by Commerce raises the possibility of two domestic like products, granular PTFE resin and wet raw polymer. However, no party has argued for such a definition. It appears that the two resins

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We find based on the facts available, that the appropriate definition of the domestic like product in this expedited review is granular PTFE resin, co-extensive with Commerce's scope, for the reasons stated in the Commission's original determination.

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."²² We define the domestic industry, as the Commission did in the original investigations, to include all domestic producers of granular PTFE resin.^{23 24}

C. Related Parties

We must further decide whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to section 771(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.²⁵

²⁰ (...continued)

share fundamental characteristics and that there is no domestic production of wet raw polymer for sale. We do not consider finding separate like products to be appropriate in this case. See e.g., Synthetic Indigo from China, Inv. No. 731-TA-851, USITC Pub. 3222 at 7 (August 1999) (Preliminary) ("indigo slurry," a crude form of indigo, not considered a separate domestic like product since there is no domestic production of "indigo slurry" for domestic sales).

²¹ We note that DuPont argued that the Commission should define the domestic like product as all granular PTFE resin, and no party advocated a contrary definition. DuPont Response at 3.

²² 19 U.S.C. § 1677(4)(A).

²³ In the original determination, the Commission included Ausimont as part of the domestic industry. Original Determination at 16-17. Since that time, Ausimont sold its integrated, granular PTFE resin plant and constructed a new PTFE finishing facility, producing finished grades of granular PTFE resin using ***. Confidential Staff Report (September 30, 1999) ("CR") at I-9-10; Public Version of Staff Report ("PR") at I-7. It is not clear whether Ausimont's finishing processes (as detailed in 58 Fed. Reg. 21600) constitute sufficient production-related activity to be included in the domestic industry. We note that Ausimont did not respond to the Commission's notice of institution and has not provided any data in this proceeding.

²⁴ Chairman Bragg determines that Commerce's analysis of Ausimont's finishing processes provides a sufficient basis from which to infer, for purposes of these reviews, that these finishing processes do not constitute sufficient production related activity to be included in the domestic industry. 58 Fed. Reg. 21600. Chairman Bragg, therefore, finds that Ausimont is not a domestic producer of the like product. Chairman Bragg notes that she would have reached the same conclusion of likely continuation or recurrence of material injury even if she had included Ausimont in the domestic industry.

²⁵ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 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

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In this review, a related party issue arises with respect to DuPont, the largest U.S. producer of the domestic like product and the sole responding party. DuPont is a participant in a joint venture in Japan that manufactures and exports granular PTFE resin.²⁶ DuPont owns *** of Mitsui DuPont Fluorochemicals (“MDF”) a Japanese producer of the granular PTFE resin.²⁷ Consequently, DuPont appears to fit the related party definition under the statute.²⁸

DuPont reports that it did not import any subject merchandise from either of the subject countries in 1998.²⁹ Further, it held a *** percent share of domestic shipments of unfilled granular PTFE resin in 1997.³⁰ According to DuPont, in 1998, it produced approximately *** of granular PTFE resin, which is roughly *** of granular PTFE production in the United States.³¹

Since the period covered by the original investigations, DuPont has made significant investments in fluoropolymers production, including PTFE. DuPont states that, with respect to its U.S.-based operations, it has made ***.³²

These facts indicate that DuPont is committed to its domestic production of granular PTFE resin, and that its primary interest lies in domestic production and not importation. We therefore find that appropriate circumstances do not exist to exclude DuPont from the domestic industry.³³

²⁵ (...continued)

order to enable it to continue production and compete in the U.S. market; and
(3) the position of the related producer vis-à-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 (Ct. Int’l Trade 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).

²⁶ DuPont Response at 10.

²⁷ DuPont Response at 10.

²⁸ The Commission addressed the same issue in the original determination and concluded that DuPont was a related party but that it should not be excluded from the domestic industry given that DuPont was a major domestic producer of granular PTFE resin and that its imports from Japan were negligible. Original Determination at 15.

²⁹ DuPont Response at 10.

³⁰ DuPont Response at 10.

³¹ DuPont Response at 10.

³² DuPont Supplemental Response at 3.

³³ The available facts indicate that two other domestic producers of granular PTFE resin, Daikin America, Inc., (“Daikin”) and ICI Americas, Inc., (“ICI”) fall within the definition of related party since both are partially owned by and import from producers in the subject countries. CR at I-4, I-8; PR at I-4, I-7. However, there is insufficient evidence in the record to determine whether they should be excluded from the domestic industry. Neither Daikin nor ICI responded to the notice of institution and neither has provided any data during this proceeding. The Commission did not exclude ICI from the industry in making its original determination. Original Determination at 15.

III. CUMULATION

A. Framework³⁴

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.³⁵

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market.

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry. We note that neither the statute nor the SAA provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.^{36 37}

³⁴ Chairman Bragg does not join this section of this opinion. Although Chairman Bragg agrees with the majority’s conclusion with respect to cumulation in these reviews, she does not join the majority’s analytical framework on this issue. See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate From China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999). In particular, Chairman Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining that there is likely to be a reasonable overlap of competition in the event of revocation.

³⁵ 19 U.S.C. § 1675a(a)(7).

³⁶ Vice Chairman Miller and Commissioners Hillman and Koplan note that the legislative history to the URAA provides guidance in the interpretation of this provision. The Senate Report on the URAA clarifies that “it is appropriate to preclude cumulation [in five-year reviews] where imports are likely to be negligible.” S. Rep. 103-412, at 51 (1994). The legislative history further explains that it is not appropriate “to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision” and, therefore, “the ‘no discernible adverse impact’ standard is appropriate in sunset reviews.” Thus, we understand the “no discernible adverse impact” provision to be largely a negligibility provision without the use of a strict numerical test of the sort now required by the statute in original antidumping and countervailing duty investigations. 19 U.S.C. § 1677(24). Indeed, before enactment of the URAA, cumulation was not required if the subject imports were “negligible and have no discernible adverse impact on the domestic industry.” 19 U.S.C. § 1677(7)(C)(v)(1994). Because of the similarity of the five-year provision with the pre-URAA test for negligibility, the Commission’s prior negligibility practice may provide some guidance in applying the “no discernible adverse impact” provision in five-year reviews.

³⁷ Commissioner Askey notes that the language of section 752(a)(7) of the Tariff Act of 1930 (the “Act”), as amended, clearly states that the Commission has the discretion to cumulate subject imports for purposes of its sunset analysis, as long as the statutory requirement of competition between the subject countries and the domestic like product is satisfied. Section 752(a)(7) also clearly states, however, that the Commission is precluded from exercising this discretion if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order. 19 U.S.C.) 1675a(a)(7). Thus, under this

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As stated above, in order to cumulate, the statute requires that subject imports would be likely to compete with each other and with the domestic like product. The Commission has generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.^{38 39 40} Only a “reasonable overlap” of competition is required.⁴¹ In five-year reviews, the relevant inquiry is whether there would likely be competition even if none currently exists.

Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.⁴²

³⁷ (...continued)

provision, the Commission must find that the subject imports from a country will have a "discernible adverse impact on the domestic industry" after revocation of the order before cumulating those imports with other subject imports. Accordingly, the Commission's task under this provision is a straightforward one. To determine whether the Commission is precluded from cumulating subject imports from a particular country, the Commission must focus on how significantly the imports will impact the condition of the industry as a result of revocation, and not simply on whether there will be a small volume of imports after revocation, i.e., by assessing their negligibility after revocation of the order. If the impact of the imports is not discernible, then the Commission is precluded from cumulating those imports with other subject imports. See Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

³⁸ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market.

³⁹ Commissioner Crawford notes that the Court of International Trade has recognized repeatedly that analyses of substitutability may vary under different provisions of the statute, based upon the requirements of the relevant statutory provision. E.g., U.S. Steel Group v. United States, 873 F. Supp. 673, 697 (Ct. Int’l Trade 1994); R-M Industries, Inc. v. United States, 848 F. Supp. 204, 210 n.9 (Ct. Int’l Trade 1994); BIC Corp. v. United States, 964 F. Supp. 391 (Ct. Int’l Trade 1997). Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute.

⁴⁰ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁴¹ See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

⁴² See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int’l Trade 1992) (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

Here, the statutory requirement that all of the granular PTFE resin reviews be initiated on the same day is satisfied.⁴³ For the reasons discussed below, we determine to cumulate imports from Italy and Japan.

B. Discussion

1. Reasonable Overlap of Competition⁴⁴

DuPont argues that all imports of all grades of granular PTFE resin from Italy and Japan compete with each other and with the domestic like product.⁴⁵ It, therefore, contends that there is a reasonable overlap of competition and that the Commission should exercise its discretion to cumulate subject imports from the subject countries.⁴⁶

The record indicates that domestically produced and imported granular PTFE resin are substitutable products. Granular PTFE resin is produced and sold in two forms in the United States, filled and unfilled, which are chemically identical.⁴⁷ As was true at the time of the original investigation, the majority of granular PTFE resin produced in the United States is of the unfilled type; the subject imports are in both filled and unfilled forms.⁴⁸ While the record of the original investigation indicated some quality differences between subject imports and domestically produced granular PTFE resin, and that different grades and formulas of granular PTFE resin were not fungible, domestic and imported product of the same grade or formula were found to be generally substitutable.⁴⁹ In addition, as the record indicates, the vast majority of granular PTFE resin, whether domestically produced or imported, can be molded directly into finished downstream products such as gaskets, seals, bearings, and insulated tape.⁵⁰

It is less clear whether “wet polymer” from Italy may be substitutable with the domestic like product and Japanese subject imports. However, Commerce found that, “wet polymer has the same basic physical characteristics that distinguish granular PTFE resin from other forms of PTFE resin” and that the post-treatment processes which then transform PTFE wet raw polymer into granular PTFE resin “do not fundamentally alter the nature of the product.”⁵¹ Moreover, finished granular PTFE resin, which is substitutable with both the domestic product and Japanese subject imports, would likely be imported from Italy.⁵² Accordingly, we find that the record shows that there would be a significant level of fungibility between U.S. produced granular PTFE resin and likely imports if the orders were revoked.

⁴³ Commissioners Crawford and Askey do not cumulate subject imports from Italy and Japan and do not adopt the majority’s conclusion as expressed in the following sentence; nor do Commissioners Crawford and Askey join in the majority’s discussion contained in section III. B. For a complete discussion of their analysis, see their separate views.

⁴⁴ Chairman Bragg joins in the Commission’s analysis finding a likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product.

⁴⁵ DuPont Response at 3.

⁴⁶ DuPont Response at 3.

⁴⁷ CR at I-6-7; PR at I-5-6.

⁴⁸ CR at I-6-7; PR at I-5-6.

⁴⁹ Original Determination at 23.

⁵⁰ CR at I-7; PR at I-5.

⁵¹ 58 Fed. Reg. 21600 (April 30, 1993).

⁵² CR at I-14, I-17; PR at I-11.

The record also indicates that the channels of distribution for domestic and imported granular PTFE would likely be similar and that the subject and domestic merchandise would likely be sold in the same or similar markets if the orders were revoked.⁵³

The other factors (simultaneous presence and sales or offers to sell in the same geographic market) are less easy to evaluate, given that, since the orders were imposed, imports of the subject merchandise from Japan have declined substantially and may be no longer present in the U.S. market. In the original investigations, respondents agreed that imported granular PTFE resin generally competed directly with the domestic product and that both were sold through similar channels of distribution to similar markets.⁵⁴ With respect to Italy, imports have continued under the order, further suggesting their likely presence in the U.S. market if the order were revoked.

Overall, we find that there would likely be a reasonable overlap of competition between subject imports from Italy and Japan and the domestic like product as well as among the subject imports from these countries, if the antidumping duty orders covering granular PTFE resin from these countries were revoked.

As discussed above, we have also taken into account other significant conditions of competition that are likely to prevail if the orders under review were revoked in evaluating whether to cumulate imports. The limited record indicates that, if the orders are revoked, subject imports would likely compete in the U.S. market under similar conditions of competition. In this regard, we have considered the substantial capacity in the subject countries,⁵⁵ the export orientation of the foreign industries,⁵⁶ and the demonstrated ability of exporters to shift sales from one market to another.⁵⁷

For these reasons, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from Italy and Japan in these reviews.⁵⁸

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON GRANULAR PTFE RESIN FROM ITALY AND JAPAN WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME⁵⁹

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping finding or 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 finding or order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁶⁰ The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -

⁵³ CR at I-9; PR at I-7.

⁵⁴ Original Determination at 23.

⁵⁵ CR at I-22-24; PR at I-17-19.

⁵⁶ CR at I-22, Table I-4; PR at I-17, Table I-4.

⁵⁷ CR at I-22, Table I-4; PR at I-17, Table I-4. See n. 94 infra.

⁵⁸ Chairman Bragg does not join this conclusion. Having found a reasonable overlap of competition, Chairman Bragg turns to the issue of no discernible adverse impact. Chairman Bragg finds that revocation of the orders at issue will lead to a likely discernible adverse impact. Accordingly, Chairman Bragg cumulates all subject imports.

⁵⁹ Commissioners Crawford and Askey dissenting. Commissioners Crawford and Askey join the majority in the discussion of the relevant legal standard and conditions of competition contained in sections IV. A.-B. For a complete discussion of their analysis, see their separate views.

⁶⁰ 19 U.S.C. § 1675a(a).

- the revocation [of the finding or order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁶¹ Thus, the likelihood standard is prospective in nature.⁶² 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.”⁶³ 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].”^{64 65}

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.”⁶⁶ 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.^{67 68}

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.”^{69 70} As noted above, no respondent interested parties that are producers, exporters, or

⁶¹ SAA at 883-84. 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.

⁶² 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.

⁶³ 19 U.S.C. § 1675a(a)(5).

⁶⁴ 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.*

⁶⁵ In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplman 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.

⁶⁶ 19 U.S.C. § 1675a(a)(1).

⁶⁷ 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.

⁶⁸ 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 has not issued any duty absorption findings in these matters.

⁶⁹ 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

(continued...)

U.S. importers of the subject merchandise responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the record in the original investigation, limited information collected by the Commission since the institution of these reviews, and information submitted by DuPont.

For the reasons stated below, we determine that revocation of the antidumping duty order on granular PTFE resin would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.⁷¹

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the Commission is directed to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁷² In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for granular PTFE resin.

Granular PTFE resin is produced and sold in two forms in the United States, filled and unfilled, which are chemically identical.⁷³ As discussed above, domestic and imported granular PTFE resin are generally substitutable within the same grades.⁷⁴

Apparent consumption of granular PTFE resin is largely derived from the demand for the products into which it is used to make.⁷⁵ As stated above, these products include gaskets, seals, and rings for the automotive industry; gaskets, linings, and packings for chemical applications; and insulators and tape for

⁶⁹ (...continued)

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 the original determination and any other information placed on the record. Id.

⁷⁰ Chairman Bragg, 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.

⁷¹ Vice Chairman Miller and Commissioner Hillman emphasize that they have reached an affirmative determination in the absence of contrary evidence or argument from respondent interested parties.

⁷² 19 U.S.C. § 1675a(a)(4).

⁷³ CR at I-7; PR at I-5.

⁷⁴ Original Determination at 23.

⁷⁵ CR at I-19; PR at I-15.

electrical applications.⁷⁶ The granular PTFE market is considered to be mature with relatively small growth in consumption anticipated in the future.⁷⁷

Apparent U.S. consumption of granular PTFE resin has risen approximately *** percent since the time of the original investigations.⁷⁸ The domestic industry's market share of *** percent in 1998 is *** to that reported during the period examined in the original investigations.⁷⁹ Italy's share of apparent consumption has increased slightly from *** to *** percent in 1985-1987 to *** percent in 1998.⁸⁰ Japanese share of apparent consumption in 1985-1987 ranged from *** percent to *** percent. In 1998, however, Japanese subject imports were believed to be no longer present in the U.S. market.⁸¹ The market share of imports from non-subject countries increased from *** percent in 1987 to *** percent in 1998.⁸²

During the time of the original investigations, there were five firms producing granular PTFE resin in the United States, DuPont (unfilled), ICI (filled and unfilled), Ausimont U.S.A, Inc. (filled and unfilled), Custom Compounding, Inc. (filled), and Whitford Polymers, Inc. (filled).⁸³ Since that time, the industry has undergone some restructuring. Currently, there are three domestic manufacturers of the unfilled granular PTFE resin, DuPont, ICI, and Daikin America.⁸⁴ Filled granular PTFE resin production for merchant market sale is dominated by Custom Compounding and ICI Fluoropolymers.⁸⁵ Compounders that convert unfilled PTFE resin to filled resin and then process the filled resin into downstream products include ***.⁸⁶

Granular PTFE resin production is technologically complex and capital intensive.⁸⁷ The high fixed costs associated with operating and maintaining a granular PTFE resin plant require manufacturers to sustain high capacity utilization rates to stay profitable.⁸⁸ U.S. capacity utilization, which decreased from 74.2 percent in 1985 to 64 percent in 1987, was over *** percent in 1998.⁸⁹

Based on the record evidence, we find that these conditions of competition in the U.S. granular PTFE resin market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. granular PTFE market provide us with a basis upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

C. Likely Volume of Cumulated Subject Imports

⁷⁶ CR at I-19; PR at I-15.

⁷⁷ CR at I-19; PR at I-15

⁷⁸ CR at I-19, Table I-3; PR at I-15, Table I-3.

⁷⁹ The domestic industry's market share was *** percent in 1985, *** percent in 1986, and *** percent in 1987. CR at I-14-15, Table I-3.

⁸⁰ CR at I-19; PR at I-15.

⁸¹ CR at I-19, Table I-3; PR at I-15, Table I-3.

⁸² CR at I-19-20, Table I-3; PR at I-15-16, Table I-3.

⁸³ CR at I-8-10; PR at I-7-8.

⁸⁴ CR at I-8-10; PR at I-7-8.

⁸⁵ CR at I-9-10; PR at I-7-9.

⁸⁶ CR at I-9-10; PR at I-7-9.

⁸⁷ CR at I-21; PR at I-15.

⁸⁸ DuPont Response at 8.

⁸⁹ CR at I-10, Table I-1; CR at I-8, table I-1.

In evaluating the likely volume of imports of subject merchandise if the orders under review are 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.⁹⁰ 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.⁹¹

During the period of the original investigation, subject imports increased sharply. Specifically, from 1985 to 1987, shipments of subject imports increased by 34 percent.⁹² U.S. market penetration by subject imports increased from *** percent in 1985 to *** percent in 1987, before falling from *** percent in January-March 1987 to *** percent in the corresponding period in 1988.⁹³

Several factors support the conclusion that subject import volume is likely to be significant if the orders are revoked. First, there is considerable granular PTFE capacity in the subject countries. In Japan, capacity to produce all PTFE resins was reported to be *** million pounds as of mid-1998, whereas Japanese consumption was estimated at only *** million pounds in 1997.⁹⁴ *** of the subject granular PTFE product was consumed in Japan during that time.⁹⁵ According to record evidence, demand for the granular PTFE resin has been *** in Japan since 1995.⁹⁶

Similarly, the capacity to produce granular PTFE resins in Italy was estimated to be *** million pounds in 1997, a 67 percent increase over reported capacity in 1987.⁹⁷ The capacity to produce all PTFE resin in Italy was *** million pounds in 1997, and Italian consumption of all PTFE resin, including imports into Italy, was *** million pounds in 1997.^{98 99 100}

Given the high fixed costs associated with granular PTFE resin production, there is an incentive to maximize utilization of available capacity. Thus, there is a significant incentive for the subject countries to increase exports to the relatively large U.S. market.¹⁰¹

⁹⁰ 19 U.S.C. § 1675a(a)(2).

⁹¹ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁹² Original Determination at 26.

⁹³ Original Determination at 26.

⁹⁴ CR at I-22-24; PR at I-17-19.

⁹⁵ CR at I-23-24; PR at I-17-19.

⁹⁶ CR at I-24; PR at I-18-19.

⁹⁷ CR at I-22-24; PR at I-17-19.

⁹⁸ CR at I-22; PR at I-17.

⁹⁹ DuPont estimates “overcapacity” in granular PTFE resin in Italy currently to be 7 million pounds and 8 million pounds in Japan. DuPont Response at 6.

¹⁰⁰ In this regard, we note DuPont’s assertion that a substantial amount of PTFE is imported into Italy for further processing and, thus, a substantial portion of the 9 million pounds consumed is not produced in Italy. If so, this would indicate that a greater portion of the *** pounds Italian capacity was not being used to satisfy domestic demand and therefore is potentially available for export. DuPont Supplemental Response at 4. The record indicates Italian capacity for all PTFE of 11 million pounds, consumption of 9 million pounds, and exports of *** pounds. These figures appear to support DuPont’s claim, because they do not reconcile unless a significant portion of consumption and/or export was accounted for by unfilled imports of granular PTFE resin into Italy.

¹⁰¹ It can be argued that producers of the subject merchandise (such as Montefluos, Daikin, and Asahi) would not have an incentive to export large volumes of low-priced imports to the United States because it could harm their

(continued...)

At the time of the original investigation, home shipments in both countries declined, while exports, including those to the United States, rose.¹⁰² Producers in both Italy and Japan still rely heavily on export shipments.¹⁰³ In 1997, total exports of all PTFE resins from Italy was *** pounds and total exports of all PTFE resins from Japan was *** pounds.

The past ability of the Italian and Japanese producers to easily divert granular PTFE resins shipments from their home markets to the United States, their export orientation, together with their apparent substantial capacity, indicate that they are likely to commence significant exports to the United States upon revocation of the antidumping duty orders.¹⁰⁴ Consequently, we conclude that cumulated subject imports would likely increase to a significant level and would regain significant U.S. market share if the orders are revoked.¹⁰⁵

D. Likely Price Effects of Cumulated Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty orders are 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.¹⁰⁶

In the original investigations, the Commission found that the subject imports consistently undersold the domestic market and had a growing adverse impact on prices in the domestic industry.¹⁰⁷ Given the general substitutability of subject imports with the domestic like product,¹⁰⁸ price appears to be an important factor in purchasing decisions. Thus, increased sales of subject imports would likely be achieved by means of aggressive pricing.¹⁰⁹

¹⁰¹ (...continued)

U.S. affiliates (Ausimont, Daikin Industries, and ICI, respectively). However, since granular PTFE resin is produced in several grades and is often formulated to customer specifications, Japanese and Italian producers could readily ship grades of subject merchandise that supplement, rather than compete with, granular PTFE resin produced by their U.S. affiliates. Indeed, these U.S. affiliates have established sales channels and relationships that would be exploited in the sale of LTFV imports.

¹⁰² In Italy, home market shipments of granular PTFE resin decreased from *** pounds in 1985 to *** pounds in 1987. At same time, exports to the United States increased from *** pounds in 1985 to *** pounds in 1987. Similarly, in Japan, home market shipments of all granular PTFE resin decreased from *** pounds in 1985 to *** pounds in 1987. Japanese subject imports to the United States increased from *** pounds in 1985 to *** pounds in 1987. CR at I-23, Table I-4; PR at 16, Table I-4.

¹⁰³ CR at I-23, Table I-4; PR at 16, Table I-4.

¹⁰⁴ CR at I-23, Table I-4; PR at 16, Table I-4.

¹⁰⁵ Chairman Bragg infers that, in the absence of the orders, Italian and Japanese producers would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission's original determinations. Based upon the record in this group review, Chairman Bragg finds that this historical emphasis will likely result in significant volumes of subject imports into the United States if the orders were revoked.

¹⁰⁶ 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.

¹⁰⁷ Original Determination at 27.

¹⁰⁸ Original Determination at 23.

¹⁰⁹ As a result, DuPont anticipates that selling prices would drop by approximately *** percent from the current (continued...)

There is little evidence in the record regarding prices of subject imports in the U.S. market, but that evidence indicates that the subject imports continue to undersell the domestic product. The 1997 and 1998 average landed duty values of imports from Italy are well below the average current selling prices of *** for the domestic like product as reported by DuPont.¹¹⁰ However, it is uncertain what percentage of the Italian imports were the intermediate wet raw polymer product, which may explain some of this price differential.

The limited information in the record regarding current pricing indicates that cumulated subject imports would likely undersell the domestic product and have significant adverse price effects, as they did before the imposition of the orders, if the orders were revoked. We find that, given the importance of price in purchasing decisions, the incentive to maximize the use of available capacity, and the evidence of continued underselling, even in face of the orders, it is likely that, should the orders be revoked, cumulated subject imports would enter the United States at prices that would significantly depress or suppress U.S. prices.¹¹¹

For the foregoing reasons, we find that revocation of the antidumping duty orders would be likely to lead to significant underselling by the cumulated subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Cumulated Subject Imports

In evaluating the likely impact of imports of subject merchandise if the orders are 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.¹¹² 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.¹¹³ 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 orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.¹¹⁴

¹⁰⁹ (...continued)
selling price of ***, if the orders were revoked. DuPont Response at 9.

¹¹⁰ DuPont Supplemental Response at 2.

¹¹¹ Chairman Bragg infers that, in the event of revocation, Italian and Japanese producers will revert to aggressive pricing practices with regard to exports to the United States, as evidenced in the Commission's original determinations.

¹¹² 19 U.S.C. § 1675a(a)(4).

¹¹³ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its final five-year determination, Commerce found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the following margins: Italy–Montefluos S.p.A./Ausimont U.S.A. and All Others at 46.46 percent; Japan–Daikin Industries at 103.00 percent, Asahi Fluoropolymers Co., Ltd. at 51.45 percent and All Others at 91.74 percent. Commerce Notice of Final Determinations at 4-5. 64 Fed. Reg. 67865 (Dec. 3, 1999).

¹¹⁴ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked,
(continued...)

In the original determination, the Commission found that the increasing volume of the lower-priced subject imports, and the significant market share accounted for by those imports, depressed prices and caused the U.S. industry to suffer growing financial losses despite increasing apparent consumption.¹¹⁵ During the original investigation, U.S. consumption of granular PTFE resin increased substantially, from 10.9 million pounds in 1985 to 13.7 million pounds in 1987.¹¹⁶ In contrast, U.S. domestic shipments increased from 8.0 million pounds in 1985 to 9.8 million pounds in 1987.¹¹⁷ Overall, domestic capacity utilization for granular PTFE resin production fell from 74 percent in 1985 to 64 percent in 1987.¹¹⁸ At the same time, income and loss data for granular PTFE resin operations showed declines,¹¹⁹ and the industry suffered growing operating losses during the period of investigation, with net income following a similar trend.¹²⁰

After imposition of the orders, subject imports decreased dramatically. DuPont states that since the orders were imposed, U.S. producers of granular PTFE resin have *** resulting in the creation of additional U.S. jobs.¹²¹ Moreover, DuPont indicates that following imposition of the orders, it has made ***.¹²²

As discussed above, revocation of the antidumping duty orders would lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic product and significantly depress U.S. prices. In addition, the volume and price effects of the cumulated subject imports would have a significant negative impact on the domestic industry and would likely cause the domestic industry to lose market share. Moreover, the loss in market share and subsequent decrease in capacity utilization would be particularly harmful in this capital intensive industry. High fixed costs make it especially important that domestic producers maximize capacity utilization.

The price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability 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 orders will result in employment declines for domestic firms.

Accordingly, based on the limited record in this review, we conclude that, if the antidumping duty orders were revoked, subject imports from Italy and Japan would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

¹¹⁴ (...continued)

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.

¹¹⁵ Original Determination at 29.

¹¹⁶ Original Determination at 18.

¹¹⁷ Original Determination at 18.

¹¹⁸ Original Determination at 19.

¹¹⁹ Total net sales for the domestic industry declined from \$58 million in 1985 to \$52 million in 1986, and increased slightly in 1987 to \$54 million. Original Determination at 22.

¹²⁰ Original Determination at 21-22.

¹²¹ DuPont Response at 8.

¹²² DuPont Supplemental Response at 2. We do not find that the domestic industry is currently in a weakened state, as contemplated by the vulnerability criterion of the statute. We note that DuPont did not argue that the industry is currently vulnerable to material injury if the orders were revoked.

For the foregoing reasons, we determine that revocation of the antidumping duty orders on imports of granular PTFE resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury to the U.S. granular PTFE resin industry within a reasonably foreseeable time.

ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

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.¹²³ In these reviews of the orders on granular polytetrafluoroethylene (PTFE) resin from Italy and Japan, I find that material injury is not likely to continue or recur within a reasonably foreseeable time if the orders are revoked.

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

Unlike the majority, I have determined not to cumulate subject imports from Italy and Japan in determining whether revocation of the existing antidumping duty orders would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time. A full discussion of my views on this issue is provided below.

I. CUMULATION

Although the Commission cumulatively assessed the volume, price and impact of the subject merchandise from Italy and Japan on the domestic industry in its original determinations, I have determined not to cumulate the subject imports in these reviews. As I have explained in prior opinions, the statutory framework presents four distinct, sequential analyses that are required when determining whether or not to cumulate subject imports from different countries, in addition to the requirement that the reviews are initiated on the same day.

First, the definitions of the subject merchandise under review (*i.e.*, the scopes of the findings or orders) must be the same for the subject imports to be eligible for cumulation.¹²⁴ In addition, the statute precludes cumulation if the Commission determines that subject imports from a country “are likely to have no discernible adverse impact on the domestic industry.”¹²⁵ Thus, it is necessary first to determine that the subject imports are eligible for cumulation and that the statute does not preclude cumulation before determining whether to exercise the discretion to cumulate. I note that in these reviews, the scopes of the orders cover the same merchandise.¹²⁶ I also note that these reviews were initiated on the same day. Moreover, I do not find that revocation of the orders covering subject imports of granular PTFE resin from Italy and Japan likely would have “no discernible adverse impact” on the domestic industry. Thus, I find

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

¹²⁴ See Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada, Inv. Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review), USITC Pub. 3238 (Sept. 1999) at 43.

¹²⁵ 19 U.S.C. § 1675a(a)(7).

¹²⁶ The scopes of the orders in these reviews appear to differ slightly in light of Commerce’s affirmative anti-circumvention determination in 1993 (58 Fed. Reg. 26100 (April 30, 1993)). However, the same basis for Commerce’s decision to expand the scope of the Italian order to cover “PTFE wet raw polymer” equally would apply to subject Japanese merchandise if “PTFE wet raw polymer” from that country were to be imported in an attempt to circumvent the existing order. Therefore, I find that the imports covered by these two orders include the same merchandise.

that the subject imports from Italy and Japan are eligible for cumulation with each other and are not statutorily prohibited from cumulation with each other.

Next, cumulation is only allowable if the subject imports “would be likely to compete with each other and with domestic like products in the United States market.”¹²⁷ Finally, the statute simply states that the Commission *may* cumulate if the competition requirement is met. However, the statute does not require cumulation under any enumerated circumstances, even if the competition requirement is met. Therefore, although competition is a condition precedent to cumulation, it is not necessarily a sufficient reason or the only factor to consider in deciding whether to exercise the discretion to cumulate. Furthermore, because cumulation is not required under any statutorily enumerated circumstances, there is no statutory or analytical presumption of cumulation. I concur with the majority in its conclusion that in the absence of the existing orders, there likely would be a reasonable overlap of competition between subject imports from Italy and Japan and the domestic like product, as well as between the subject imports from these countries. However, I have determined not to exercise my statutory discretion to cumulate these subject imports.

II. CONDITIONS OF COMPETITION

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

A. Supply Considerations

During the period covered by the original investigations, total domestic capacity for all granular PTFE resin increased from 14.9 million pounds in 1985 to 18.0 million pounds in 1987. Meanwhile, capacity utilization for total granular PTFE resin declined from 74.2 percent in 1985 to 64.0 percent in 1987. However, since the original investigations, domestic production of total granular PTFE resin has increased substantially from 11.6 million pounds in 1987 to *** million pounds in 1998.¹²⁸ E.I. Du Pont de Nemours & Co., Inc. (DuPont) reports that like other capital-intensive chemical industries, producers must operate at relatively high capacity utilization ratios to be profitable.¹²⁹ Given the relatively high percentage of underutilized domestic capacity for this type of an industry, the available facts indicate that the domestic industry’s ability to supply granular PTFE resin is relatively elastic.

There are only minimal data on the current record available for capacity, production, and shipments of granular PTFE resin for Italy and Japan. DuPont claims that there is excess global capacity to produce granular PTFE resin, particularly for Japanese and Italian manufacturers. It estimates that there is an annual “overcapacity” in granular PTFE resin production of 7 million pounds in Italy and 8 million pounds in Japan. Moreover, in conjunction with the need for manufacturers in this industry to produce at high capacity utilization rates, DuPont claims that the U.S. market is a prime target for increased imports of subject granular PTFE resin.¹³⁰

The available data collected by staff appear to confirm that there is a “large amount” of overcapacity in Japan.¹³¹ However, with respect to Italy, the available data are less clear. Between 1987

¹²⁷ 19 U.S.C. § 1675a(a)(7).

¹²⁸ CR and PR at Table I-1.

¹²⁹ Supplemental Response at 5.

¹³⁰ *Id.* at 6-7.

¹³¹ CR at I-24; PR at I-17.

and 1997, granular PTFE resin production capacity in Italy is reported to have grown by *** percent.¹³² There was a reported *** pounds of production capacity for all PTFE resin available in Italy in 1998.¹³³ This figure is only somewhat higher than the reported *** pounds of all PTFE resin consumed in Italy in 1997.¹³⁴

DuPont's estimate of current Italian production capacity suggests that subject "overcapacity" is about half the size of the entire domestic industry's production capacity. DuPont argues that of the *** pounds of Italian capacity available for granular PTFE resin production in 1997, it believes that the sole Italian manufacturer of subject merchandise devoted *** pounds of production to exports to the United States, *** pounds to shipments within Europe (including Italy), and *** pounds to shipments to other markets. The remainder of the available production capacity—approximately *** pounds—is excess capacity that DuPont claims is capable of being diverted to the U.S. market. In addition, DuPont claims that there are significant volumes of imports of granular PTFE resin that are imported into Italy and then compounded, otherwise reprocessed, or resold. DuPont argues that this source of supply—representing *** pounds annually—when considered in conjunction with the estimated overcapacity described above, brings total "overcapacity" in Italy to approximately 7 million pounds.¹³⁵

In light of the apparent underutilized production capacity available in Japan, the available facts demonstrate that the elasticity of supply in Japan likely falls somewhere between moderate and relatively high. Moreover, given the fact that there appears to be a larger excess production capacity in Japan and in consideration of the speculative nature of DuPont's estimate of Italian production capacity, it is also apparent that the elasticity of supply for Italy is lower than the range specified for Japan.

Nonsubject imports appear to be a significant factor in the domestic market. In 1998, nonsubject import market share was *** percent. By comparison, through the period covered by the original investigations, nonsubject imports accounted for less than *** percent of apparent domestic consumption.¹³⁶ However, there is little information available on the current record with respect to supply conditions concerning nonsubject imports.

B. Demand Considerations

Since the original investigations, overall demand for granular PTFE resin increased from a high of 13.7 million pounds in 1987, to *** pounds in 1998.¹³⁷ However, there is little current information on the record regarding present domestic demand conditions. In the original investigations, the Office of Economics reported that the domestic demand for granular PTFE resin ranged from moderately inelastic to slightly elastic.¹³⁸ Granular PTFE resin is a speciality chemical used for its unique properties. It is significantly more expensive than typical thermoplastics. Moreover, it must be further processed (*e.g.*, molded) to be commercially useful.¹³⁹ However, despite the fact that it is a high-performance product, the value of granular PTFE resin likely constitutes only a small portion of the value of most finished goods that

¹³² CR and PR at Table I-4.

¹³³ This figure apparently includes PTFE resins outside the scope of the order (merchandise other than "granular" PTFE resin).

¹³⁴ CR at I-23-24; PR at I-17.

¹³⁵ Supplemental Response at 4-6.

¹³⁶ CR and PR at Table I-3.

¹³⁷ *Id.*

¹³⁸ Original Economics Memo at 23-31.

¹³⁹ *Id.* at 23, n.6.

contain granular PTFE resin components.¹⁴⁰ This fact suggests that end use demand for granular PTFE resin likely would be unresponsive to small changes in its price.

In addition, where the end use requires the full range of granular PTFE resin properties, there are no direct substitutes for granular PTFE resin. Thus, potential alternative products for granular PTFE resin only serve in limited applications and may be more expensive in the long run. Moreover, where end use requirements are less demanding, the available information indicates that it is likely that more easily processed materials are already in use.¹⁴¹ Therefore, in light of the absence of viable substitute products and the comparatively small portion of value added to finished goods that is accounted for by granular PTFE resin, I find that the elasticity of demand for this product is relatively low.

C. Substitutability

The available data on the record regarding substitutability comes primarily from the original investigations. In those investigations, the Office of Economics reported a moderate elasticity of substitution between domestic and subject imports of granular PTFE resin, and that the elasticity of substitution for imports from Italy was slightly higher than that for Japan.¹⁴² In terms of the product itself, information collected in the original investigations suggests that granular PTFE resin available from various suppliers is moderately differentiated. This was principally due to perceived minor differences in the physical characteristics of various suppliers that are significant to processors of granular PTFE resin. However, for certain limited applications, some forms of granular PTFE resin apparently have no acceptable substitutes.¹⁴³ Moreover, although most applications appear to permit processors to utilize different sources of supply, the need to qualify granular PTFE resin for a particular use may present a short-term barrier to substitution. Overall, the qualification barriers for certain cost-sensitive applications and new products or applications utilizing granular PTFE resin appear to be relatively low. In the period originally investigated, qualifying a new product took anywhere from 2 days to 2 years. However, the average period was about 4 months.¹⁴⁴

In addition, information collected in the original investigations reveals that relationships with suppliers in this industry tend to be long-term in nature. Moreover, the costs incurred in switching suppliers and the lack of available technical support when switching suppliers appear to limit substitutability. Almost one-half of all purchasers in the original investigations reported that they could not easily switch between sources of supply.¹⁴⁵ Also, now as before, there are few worldwide suppliers of granular PTFE resin.¹⁴⁶ In particular, the market power of DuPont as the world's largest producer of granular PTFE resin¹⁴⁷ appears to contribute to a purchaser's willingness to maintain a relationship with this source in the expectation of long-term supply security. However, at the same time, multiple sourcing also appears to be a standard practice among granular PTFE resin processors. Several purchasers in the

¹⁴⁰ Id. at 24-25.

¹⁴¹ Id. at 25-26.

¹⁴² Id. at 17-23.

¹⁴³ For example, in the original investigations the facts suggested that there was no acceptable substitute for Daikan M-12, a form of granular PTFE resin used in the production of thin-skived tape. See Additional Views of Acting Chairman Anne E. Brunsdale and Commissioner Susan Liebler (Brunsdale/Liebler Views) at 37.

¹⁴⁴ Original Economics Memo at 19. Some qualifications could reportedly be done "over a weekend." Brunsdale/Liebler Views at 38 (citing the original transcript at 175).

¹⁴⁵ Original Economics Memo at 18.

¹⁴⁶ Id. at 19. See CR at I-21; PR at I-15. Production of granular PTFE resin is technologically complex and capital intensive. This has resulted in a very limited number of manufacturers on a worldwide basis. Id.

¹⁴⁷ CR at I-8; PR at I-7.

original investigations reported purchasing higher-priced material in order to maintain “multiple sources” or for purposes of maintaining “long-term supply.”¹⁴⁸ Additionally, although lead times and transportation costs do not appear to play a significant role in a purchaser’s source decisions,¹⁴⁹ consumer familiarity with DuPont’s trademark product, Teflon may also reduce the overall substitutability for this product. Some customers in the original investigations stated a preference for this product.¹⁵⁰

Although there is little information in the current record, some portion of domestic production of granular PTFE resin is apparently captively consumed.¹⁵¹ This, too, would tend to reduce the overall substitutability of the domestic like product for the subject merchandise. Finally, there is also little information on the record with respect to the substitutability of nonsubject imports between and among sources of supply. However, because such nonsubject merchandise appears to have replaced only subject imports in the wake of the imposition of the existing orders,¹⁵² I conclude that nonsubject merchandise is a moderate substitute for subject merchandise.

In sum, despite the presence of some product differentiation and certain market segments in which substitution is difficult or impossible (*e.g.*, customer requirements and qualification procedures, supplier relationships, lack of acceptable substitutes), there apparently is some range of uses over which substitution among sources of supply is relatively common. Overall, therefore, the information available indicates that domestic and imported granular PTFE resin likely are moderate substitutes for one another with respect to Italy. The information available also indicates that there is a somewhat lower level of substitutability between Japanese merchandise and domestic supply. In addition, because nonsubject and subject imports appear to be moderate substitutes for one another, it logically follows that the level of substitutability between nonsubject and domestic sources of granular PTFE resin supply is also moderate.

III. GENERAL CONSIDERATIONS

The statute directs us to take into account several general considerations.¹⁵³ I 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.¹⁵⁴ I have also considered whether any improvement in the state of the industry is related to the orders, and whether the industry is vulnerable to

¹⁴⁸ Original Economics Memo at 20.

¹⁴⁹ *Id.* at 20.

¹⁵⁰ *Id.* at 19, n.1. Evidence collected in the original investigations suggested that 25 percent of U.S.-market granular PTFE resin orders specified the use of Teflon. *See* Brunsdale/Liebeler Views at 37 (citing Daikan Posthearing Brief at 8).

¹⁵¹ *See* discussion accompanying CR and PR at Table I-1, n.1.

¹⁵² Domestic market share has remained relatively constant since imposition of the orders. Meanwhile, nonsubject market share has increased while subject market share has declined. *See* CR and PR at Table I-3.

¹⁵³ 19 U.S.C. § 1675a(a)(1). Commerce has not issued duty absorption findings, therefore they are not at issue in these reviews. *See* 64 Fed. Reg. 67865 (Dec. 3, 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 orders on Italy and Japan are revoked are as follows: for Italy, 46.46 percent for Montefluos S.p.A/Ausimont U.S.A. and “all others;” for Japan, 103.00 percent for Daikan Industries, 51.45 for Asahi Fluoropolymers Co., Ltd., and 91.74 percent for “all others.” 64 Fed. Reg. at 67865.

¹⁵⁴ 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).

material injury in the event of revocation.¹⁵⁵ My consideration of these factors supports the conclusion that revocation of the existing orders would not likely lead to a continuation or recurrence of material injury within a reasonably foreseeable time.

The record contains a limited amount of data concerning the state of the domestic industry following imposition of the orders. However, the available data indicates that the industry's condition has improved somewhat. During the period covered by the original investigations, certain financial indicators of the industry's health had improved (*e.g.*, production, capacity, and the quantity and value of U.S. shipments), while other indicators declined (*e.g.*, capacity utilization, and the unit value of U.S. shipments).¹⁵⁶ By way of contrast, the domestic industry's current capacity to produce granular PTFE resin, as well as its production and shipments levels, appears to have increased over that reported by the industry during the original 1985-87 investigations.¹⁵⁷ In addition, capacity utilization approached *** percent in 1997-98, a significant increase over the 64 percent figure reported in 1987.¹⁵⁸ Moreover, the industry's market share appears to have remained relatively stable since the period covered by the original investigations.¹⁵⁹ In light of these facts, and because the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability of the industry, I find that the domestic industry in this review is not particularly vulnerable to injury if the orders are revoked.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM JAPAN IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports

In the period covered by the original investigations, U.S. imports of all subject granular PTFE resin accounted for *** percent of the domestic market in 1985, before climbing to *** percent in 1987. At *** percent, Japan had nearly twice the market share of subject imports from Italy, which were *** percent in 1987.¹⁶⁰ However, as reported by DuPont, Japanese imports have declined precipitously to zero since the imposition of the antidumping duty order.

While there are few precise data on the current record, the available information reveals that Daikan America operates as a domestic subsidiary of Daikan Industries of Japan. In addition, both DuPont and ICI Americas maintain certain joint venture ownership interests in Japanese firms engaged in the production of subject merchandise from that country.¹⁶¹ These facts indicate that Japanese producers likely would have little incentive to reinstate export shipments of subject merchandise to the U.S. market since they already supply this market through a U.S.-based subsidiary or affiliated company. Moreover, as previously noted, subject merchandise from Japan is at best a moderate substitute for the domestic like product. This fact has also likely contributed to the disappearance from the market of subject Japanese imports.

¹⁵⁵ 19 U.S.C. § 1675a(a)(1)(B)-(C).

¹⁵⁶ CR at I-12 and Table I-1; PR at I-8 and Table I-1.

¹⁵⁷ The 1997 production capacity estimate shows an increase, while the 1998 production capacity estimate shows a slight decrease. *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Domestic market share was at *** percent in 1998. In the period covered by the original investigations, domestic market shares were 73.2 percent in 1985, 74.0 percent in 1986, and 71.5 percent in 1987. CR and PR at Table I-3.

¹⁶⁰ CR and PR at Table I-3.

¹⁶¹ CR at I-14; PR at I-11.

Although the available information regarding supply elasticity suggests that Japanese producers could supply an increase in the volume of subject imports in the U.S. market, such producers likely would not significantly increase such volume in the absence of the existing order. The available data indicate that the market shares held by the subject imports from Japan have declined precipitously, and then disappeared from the domestic market. Thus, it is likely that any increase in the volume of subject imports will not be large if the order is revoked. Therefore, in light of the likely lack of significant price effects and impact on the domestic industry, I find that the volume of the subject imports is not likely to be significant if the order is revoked.

B. Likely Price Effects of Subject Imports

As previously discussed, demand for granular PTFE resin is likely to be inelastic. Thus, lowering prices likely would not result in a significant increase in overall demand. I have found that the volume of the subject imports is not likely to be large if the order is revoked, and thus any increase in demand for the subject imports is not likely to be large either. Because the domestic like product and the subject imports are at best moderate substitutes for each other, revocation of the order is not likely to lead to a significant shift in demand away from the domestic like product. Rather, it is likely that demand will shift away from nonsubject and Italian imports, which currently hold together a market share of *** percent.¹⁶² 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, I find that revocation of the order likely would not have any significant suppressing or depressing effect on domestic prices.

C. Likely Impact of Subject Imports

As discussed above, revocation of the order is not likely to lead to a significant shift in demand away from the domestic product. Therefore, it is likely that the domestic industry's output and sales will not decrease significantly if the order is revoked. Consequently, I find that there likely would not be a significant impact on the domestic industry if the order is revoked.

D. Conclusion

Subject imports of granular PTFE resin from Japan likely would not have a significant effect on the domestic industry's prices, output and sales, and therefore its revenues, if the existing order is revoked. Therefore, I determine that material injury would not be likely to continue or recur within a reasonably foreseeable time if the antidumping duty order is revoked.

V. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM ITALY IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports

In the period covered by the original investigations, U.S. imports of all subject granular PTFE resin accounted for *** percent of the domestic market in 1985, before climbing to *** percent in 1987. At *** percent, Italy had about one-half of the market share of subject imports from Japan, which were ***

¹⁶² Nonsubject imports include those from Germany and "other sources." Thus, this figure represents the *** percent total import market share for nonsubject imports in 1998, and the *** percent market share for Italian imports in 1998. See CR and PR at Table I-3.

percent in 1987.¹⁶³ In comparison to subject Japanese imports and nonsubject merchandise, in the 11 years since imposition of the antidumping duty orders, imports of subject granular PTFE resin from Italy have increased somewhat. In the period covered by the original investigations, subject Italian merchandise accounted for a high of *** percent of the domestic market. By comparison, subject Italian merchandise accounted for *** percent of the market in 1998.¹⁶⁴

Commerce has conducted eight administrative reviews on subject imports from Italy produced by Ausimont, S.p.A. (Ausimont), the sole Italian producer of the subject merchandise. A large portion of those reviews resulted in relatively small margins for the company.¹⁶⁵ Therefore, even in the face of lower margins, the available facts indicate that the antidumping duty order appears to have had little effect on the volume of subject Italian merchandise exported from that country. This is not surprising in light of Ausimont's relationship to a U.S.-based affiliated company. Apparently, Ausimont primarily exports a semi-finished subject product to the United States for further processing through this affiliated company. This is the same product that was subject to Commerce's anti-circumvention order in 1993. However, aside from this semi-finished subject product, Ausimont has little incentive to significantly increase exports of "other" subject materials such as compounded, otherwise reprocessed, or resold materials—the same "other" subject material cited by DuPont in its attempt to explain Italian production "overcapacity." Thus, as is the case with Japanese producers of granular PTFE resin, Ausimont likely would have little incentive to significantly increase its export shipments of subject merchandise to the U.S. market in the absence of the existing order.

The available data indicate that the market shares held by subject imports from Italy have always been fairly stable and relatively small. Thus, it is likely that the volume of these subject imports will not be large if the order is revoked. Therefore, in light of the likely lack of significant price effects and impact on the domestic industry, I find that the volume of the subject imports is not likely to be significant if the order is revoked.

B. Likely Price Effects of Subject Imports

As previously discussed, demand for granular PTFE resin is likely to be inelastic. Thus, lowering prices likely would not result in a significant increase in overall demand. I have found that the volume of the subject imports is not likely to be large if the order is revoked, and thus any increase in demand for the subject imports is not likely to be large either. Because the domestic like product and the subject imports are only moderate substitutes for each other, revocation of the order is not likely to lead to a significant shift in demand away from the domestic like product. Rather, it is likely that demand will shift away from nonsubject imports, which currently hold a market share of *** percent.¹⁶⁶ 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, I find that revocation of the order likely would not have any significant suppressing or depressing effect on domestic prices.

C. Likely Impact of Subject Imports

As discussed above, revocation of the order is not likely to lead to a significant shift in demand away from the domestic product. Therefore, it is likely that the domestic industry's output and sales will

¹⁶³ CR and PR at Table I-3.

¹⁶⁴ *Id.*

¹⁶⁵ These margins ranged from 2.26 percent to 45.72 percent. However, a substantial portion of these margins were under 15.21 percent. *See* CR at I-4, n.7; PR at I-3-4, n.7.

¹⁶⁶ CR and PR at Table I-2.

not decrease significantly if the order is revoked. Consequently, I find that there likely would not be a significant impact on the domestic industry if the order is revoked.

D. Conclusion

Subject imports of granular PTFE resin from Italy likely would not have a significant effect on the domestic industry's prices, output and sales, and therefore its revenues, if the existing order is revoked. Therefore, I determine that material injury would not be likely to continue or recur within a reasonably foreseeable time if the antidumping duty order is revoked.

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DISSENTING VIEWS OF COMMISSIONER 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.¹⁶⁷ In this review of the antidumping duty orders on granular polytetrafluoroethylene (PTFE) resin from Italy and Japan, I find that revocation of the orders would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

I join my colleagues in their discussion of the domestic like product and the domestic industry and in their explanation of the relevant legal standard. I also join in their discussion of the relevant conditions of competition. However, I write separately to explain my views that revocation of the orders would not be likely to lead to a continuation and recurrence of material injury.

As a preliminary matter, I note that the largest domestic producer of granular PTFE resin, E.I. Du Pont de Nemours & Co., Inc. (DuPont), was the only interested party that responded to the Commission’s notice of institution. No respondent interested parties chose to participate in the review. I 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.¹⁶⁸ In a case such as this, where only one party participates in an investigation or review, that party has an advantage in terms 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.¹⁶⁹ The Commission cannot properly accept a participating party’s information and characterizations thereof without question and without evaluating other available information.¹⁷⁰

I. CUMULATION

As an initial matter, I find that the subject Japanese imports of granular PTFE resin are not likely to have a discernable adverse impact on the domestic industry if the order covering that merchandise is revoked, primarily because of the existence of significant corporate relationships between the three Japanese producers of subject merchandise and three significant members of the domestic industry. In this regard, I note that the domestic producer DuPont has owned a *** percent share of Mitsui DuPont Fluorochemicals since the period of the original investigation. In addition, a second major domestic producer, ICI, acquired a *** percent share of Asahi, another of the Japanese producers of subject merchandise. Finally, the third significant domestic producer of granular PTFE resin, Daikin America, is a Japanese subsidiary of Daikin Industries, the last of the three Japanese producers of granular PTFE

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

¹⁶⁸ 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).

¹⁶⁹ 19 U.S.C. § 1675a(a).

¹⁷⁰ 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.”).

resin.¹⁷¹ Thus, the only three Japanese producers of PTFE resin are closely related to the three major domestic producers of PTFE resin.

Given these relationships, I find that it is unlikely that the Japanese producers of granular PTFE resin will begin shipping more than minimal amounts of subject merchandise into the domestic market within the reasonably foreseeable future. I believe that significant shipments from the three Japanese producers are unlikely because those shipments would likely be in competition with the products produced by their related domestic producers. Moreover, because it is unlikely that the subject Japanese producers will be shipping more than minimal volumes to the United States within the reasonably foreseeable future, I find that it is also unlikely that the subject imports will have more than minimal price or other effects on the domestic industry within the reasonably foreseeable future. Accordingly, I find that the subject imports from Japan are not likely to have a discernible adverse impact on the domestic industry in the reasonably foreseeable future. Accordingly, I am precluded by the statute from cumulating the subject imports from Japan with those from Italy for purposes of performing my analysis in this review.

II. CONDITIONS OF COMPETITION

As previously noted, I concur in the Commission majority's discussion of the relevant conditions of competition. However, I believe that following conditions of competition are also relevant to my analysis of this market as well.

First, although there is a limited amount of record data with respect to the substitutability of the subject and domestic merchandise, the available evidence indicates that there is only a moderate level of substitutability between the subject imports from Italy and Japan and the domestic merchandise. For example, in the original investigation, the Commission's Office of Economics reported that there was only a moderate elasticity of substitution between domestic and subject imports of granular PTFE resin and that the elasticity of substitution for imports from Italy was slightly higher than that for Japan.¹⁷² The substitutability of the subject imports and the domestic merchandise is moderated by several factors, including the fact that some purchasers require particular categories of PTFE resin for certain end uses and the fact that there is a qualification process for some end uses of PTFE resin. In this regard, the limited record evidence indicates that some purchasers prefer and, indeed, require for their end use products the PTFE product marketed by DuPont under the brand name TEFLON. Substitutability of the subject merchandise is further limited by the preference of some purchasers for long-term relationships with certain their suppliers. Finally, although there is little information in the current record, some portion of domestic production of granular PTFE resin is apparently captively consumed.¹⁷³ The existence of significant levels of captive supply would further reduce the overall substitutability of the domestic like product for the subject merchandise.

Second, although there is also limited record information with respect to the substitutability of nonsubject imports and the subject and domestic merchandise, the non-subject merchandise appears to have replaced only subject imports in the wake of the imposition of the existing orders.¹⁷⁴ Accordingly, I find that it is reasonable to conclude that nonsubject merchandise is a moderate substitute for subject merchandise.

III. GENERAL CONSIDERATIONS

¹⁷¹ CR at I-14; PR at I-10.

¹⁷² *Id.* at 17-23.

¹⁷³ See discussion accompanying CR and PR at Table I-1, n.1.

¹⁷⁴ Domestic market share has remained relatively constant since imposition of the orders. Meanwhile, nonsubject market share has increased while subject market share has declined. See CR and PR at Table I-3.

The statute directs me to take into account several general considerations.¹⁷⁵ As directed by the statute, I 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.¹⁷⁶ In the original determination, the Commission majority found that the domestic industry was materially injured by reason of the cumulated subject imports from Italy and Japan.¹⁷⁷ The Commission majority found that, until interim 1988, there was an increasing volume of generally lower-priced LTFV imports from Japan and Italy during the period of investigation and an increasing and significant market share accounted for by the imports. Moreover, the majority found that there was evidence of price suppression and depression in the U.S. market because of the subject imports and that the subject imports had caused the deteriorating performance of the domestic industry.¹⁷⁸ Two other Commissioners found that the industry was materially injured by reason of the subject imports, relying on the significant volume of subject imports, the high dumping margins, and the fact that there was enough substitutability between the domestic and subject merchandise that the revenue lost to the subject imports rose to the level of material injury.¹⁷⁹ Finally, one Commissioner found that the industry was materially injured by reason of the subject imports because the LTFV sales by the subject producers had produced a significant adverse effect on domestic production and a smaller but more than *de minimis* adverse impact on domestic prices.¹⁸⁰

I have also considered whether any improvement in the state of the industry is related to the orders, and whether the industry is vulnerable to material injury in the event of revocation.¹⁸¹ The record contains a limited amount of data concerning the state of the domestic industry following imposition of the orders but that data indicates that the industry's condition has improved somewhat since the original investigation. During the period covered by the original investigations, certain financial indicators of the industry's health had improved (*e.g.*, production, capacity, and the quantity and value of U.S. shipments), while other indicators declined (*e.g.*, capacity utilization, and the unit value of U.S. shipments).¹⁸² By way of contrast, the domestic industry's production and shipment levels have increased significantly over that reported by the industry during the original 1985-87 investigations. In addition, capacity utilization approached *** percent in 1997-98, a significant increase over the 64 percent figure reported in 1987.¹⁸³ Moreover, the industry's market share appears to have remained relatively stable -- at *** percent in 1998 -- since the period covered by the original investigation.¹⁸⁴ Given these improvements in the industry's condition, I find that the domestic industry would not be vulnerable to material injury if the orders were revoked.

¹⁷⁵ 19 U.S.C. § 1675a(a)(1). Commerce has not issued duty absorption findings; thus, this is not an issue in this proceeding. See 64 Fed. Reg. 67865 (Dec. 3, 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 orders on Italy and Japan are revoked are as follows: for Italy, 46.46 percent for Montefluos S.p.A/Ausimont U.S.A. and "all others;" for Japan, 103.00 percent for Daikan Industries, 51.45 for Asahi Fluoropolymers Co., Ltd., and 91.74 percent for "all others." 64 Fed. Reg. at 67865.

¹⁷⁶ 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).

¹⁷⁷ Original Views at 3.

¹⁷⁸ Original Views at 25-29.

¹⁷⁹ Original Views at 45-46.

¹⁸⁰ Original Views at 90.

¹⁸¹ 19 U.S.C. § 1675a(a)(1)(B)-(C).

¹⁸² CR and PR at I-12 & Table I-1.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at Table I-3.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM JAPAN IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As described in section I above, I have found that the subject imports from Japan are not likely to have a discernible adverse impact on the domestic industry if the order covering Japan is revoked. Accordingly, I have not cumulated the subject imports from Japan with those from Italy for purposes of my analysis in this review. Moreover, for the same reasons that were described in section I above, I find that the subject imports are not likely to have significant volume, price or other effects on the domestic industry if the order were revoked. Accordingly, I determine that revocation of the antidumping order on granular PTFE resin from Japan is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

V. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM ITALY IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports

I find that the volume of the subject imports from Italy is not likely to be significant within a reasonably foreseeable time if the antidumping duty order is revoked. In coming to this conclusion, I first considered the available data concerning the subject Italian producer's capacity levels.¹⁸⁵ Although there is limited record evidence available with respect to the subject producer's capacity, the limited evidence indicates that the producer had a total capacity of approximately *** million pounds in 1998 and that this capacity level was somewhat less than total Italian consumption in 1997.¹⁸⁶ Accordingly, as the staff report indicates, the record data suggests that there is not a significant level of unused capacity in Italy that can be used to increase subject imports to the United States significantly.

Moreover, I note that post and pre-order volume trends for the Italian imports indicate that it is unlikely that the volume of the Italian imports will change significantly after revocation of the order. In this regard, I note that the available record from the original investigation indicates that the market share of the subject imports from Italy actually declined somewhat during the original period of investigation.¹⁸⁷ Thus, the data from the original investigation does not support a conclusion that the Italian imports are likely to increase their volumes or market share significantly upon revocation of the order. Moreover, as in the original investigation, the record of this investigation indicates that a substantial portion of the subject imports from Italy are being imported by the ***.¹⁸⁸ Given that this apparently substantial volume of subject Italian imports is being imported ***, this further diminishes the likelihood that the subject imports would be imported in such volumes as to cause material injury to the domestic industry upon revocation of the order. In addition, in light of the moderate substitutability of the domestic and subject merchandise and the higher substitutability levels of the non-subject and subject merchandise, I find that any volume changes that would occur upon revocation of the order would be more likely to come at the expense of the non-subject imports rather than the domestic merchandise.

¹⁸⁵ See CR and PR at Tables I-1 and I-4.

¹⁸⁶ CR at I-22-24; PR at I-17.

¹⁸⁷ The market share of the subject Italian producer declined from *** percent in 1985 to *** percent in 1987. CR and PR at Table I3.

¹⁸⁸ CR at I-14-17; PR at I-10-11.

Further, the record indicates that imports of subject granular PTFE resin from Italy have actually increased somewhat since imposition of the antidumping duty order.¹⁸⁹ Given this, I find that the antidumping duty order covering Italy appears to have had little effect on the volume of subject Italian imports exported by the subject Italian producer. Accordingly, I find further that it is unlikely that revocation will have a significant impact on the likely volumes of the subject Italian imports within the reasonably foreseeable future.

Finally, the record does not contain any information on the extent to which there are significant inventories of subject merchandise or to what extent the subject producers have the ability to engage in product shifting. The record does indicate that there are no antidumping orders in place against the subject imports from Italy.¹⁹⁰ Accordingly, the available record evidence indicates that there are no barriers to trade that indicate a likelihood of increased imports into the United States upon revocation of the order.

Accordingly, I find that the volume of the subject imports would not likely be significant within a reasonably foreseeable time if the order were revoked.

B. Likely Price Effects of Subject Imports

I also find that the record of this review indicates that it is unlikely that the subject imports from Italy will have a significant adverse impact on domestic prices within the reasonably foreseeable future if the order were revoked. I note that the record in this review contains no current pricing data and that the Commission found in its original investigation that the subject imports from Italy and Japan had price-suppressive and -depressive effects on domestic prices. Nonetheless, as I stated above, I find that it is unlikely that the subject Italian imports will enter the market in substantial volumes within the reasonably foreseeable future if the order were revoked. Given this, any possible volume change with respect to the Italian imports is likely to be too small to have a significant adverse impact on domestic prices. In addition, as I stated above, I find that the available data indicates that the domestic product and the subject imports are only moderate substitutes for each other. Accordingly, any minimal price impact of the subject imports will be moderated further by the somewhat limited substitutability of the domestic and subject merchandise.

Accordingly, I find that the subject imports from Italy would not be likely to have any significant suppressing or depressing effect on domestic prices within a reasonably foreseeable time if the order were revoked.

C. Likely Impact of Subject Imports

As discussed above, I find that the subject imports from Italy are not likely to have significant adverse volume or price effects on the domestic industry within the reasonably foreseeable future if the order were revoked. Accordingly, I also 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. Further, I find that revocation of the order 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.

Accordingly, I find that there is not likely to be a significant impact on the domestic industry if the order is revoked.

D. Conclusion

¹⁸⁹ CR and PR at Table I-3.

¹⁹⁰ CR at I-25; PR at I-19.

For the foregoing reasons, I determine that revocation of the antidumping duty order covering subject imports of PTFE Resin from Italy would not be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.