

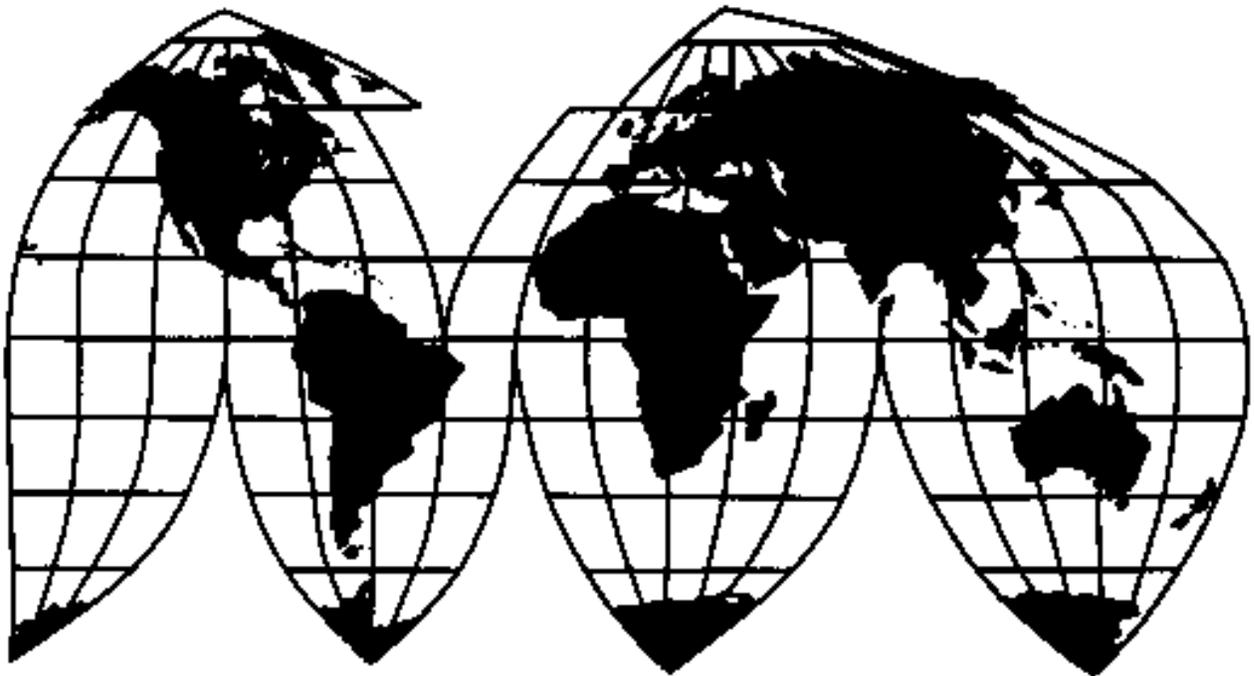
Cotton Shop Towels From Bangladesh, China, and Pakistan

Investigations Nos. 701-TA-202 (Review) and
731-TA-103 and 514 (Review)

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-202 (Review) and 731-TA-103 and 514 (Review)

**COTTON SHOP TOWELS FROM BANGLADESH,
CHINA, AND PAKISTAN**

DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the existing antidumping duty orders on cotton shop towels from Bangladesh and China, and the existing countervailing duty order on cotton shop towels from Pakistan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on January 4, 1999 (64 F.R. 371) and determined on April 8, 1999, that it would conduct full reviews (64 F.R. 19195, April 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on June 28, 1999 (64 F.R. 34679). The hearing was held in Washington, DC, on November 18, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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 Commissioner Askey dissenting with regard to Bangladesh and Pakistan. Vice Chairman Marcia E. Miller and Commissioner Deanna Tanner Okun not participating.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews,¹ we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering cotton shop towels from Bangladesh and China and the countervailing duty order covering cotton shop towels from Pakistan 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 3}

I. BACKGROUND

In September 1983, the Commission determined that an industry in the United States was materially injured by reason of less than fair value (LTFV) imports of cotton shop towels from China.⁴ On October 4, 1983, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of cotton shop towels from China.⁵ In February 1984, the Commission determined that an industry in the United States was materially injured by reason of subsidized imports of cotton shop towels from Pakistan.⁶ On March 9, 1984, Commerce issued a countervailing duty order on imports of cotton shop towels from Pakistan.⁷ In March 1992, the Commission determined that an industry in the United States was materially injured by reason of LTFV imports of cotton shop towels from Bangladesh.⁸ Commerce issued an antidumping duty order on imports of cotton shop towels from Bangladesh on March 20, 1992.⁹

On January 4, 1999, the Commission instituted five-year reviews, pursuant to section 751(c) of the Act, concerning the countervailing duty and antidumping duty orders on cotton shop towels from Bangladesh, China, and Pakistan.¹⁰

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 Vice Chairman Miller and Commissioner Okun did not participate in these determinations.

³ Commissioner Askey concurring with respect to the subject imports from China and dissenting with respect to the subject imports from Bangladesh and Pakistan. Commissioner Askey determines that the subject imports from Pakistan would not be likely to have a discernible adverse impact on the domestic industry if the order were to be revoked. She also exercises her discretion not to cumulate the subject imports from Bangladesh and China. She determines that revocation of the orders covering subject imports from Bangladesh and Pakistan would not be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time. For a full discussion of her views with respect to Bangladesh and Pakistan, see Dissenting Views of Commissioner Thelma J. Askey. Commissioner Askey does join in the sections I, II, III.A, IV.A-B and VI of the Commission’s opinion, which discuss the background of these reviews, the domestic like product and industry, the cumulation framework for sunset reviews, the legal standard for sunset reviews, conditions of competition in this market, and the likelihood of recurrence or continuation of material injury with respect to China.

⁴ Cotton Shop Towels from the People’s Republic of China, Inv. No. 731-TA-103 (Final), USITC Pub. 1431 (Sept. 1993).

⁵ 48 Fed. Reg. 45277.

⁶ Cotton Shop Towels from Pakistan, Inv. No. 701-TA-202 (Final), USITC Pub. 1490 (Feb. 1984).

⁷ 49 Fed. Reg. 8974.

⁸ Shop Towels from Bangladesh, Inv. No. 731-TA-514 (Final), USITC Pub. 2487 (Mar. 1992).

⁹ 57 Fed. Reg. 9688.

¹⁰ In addition to the subject reviews, the Commission simultaneously instituted on January 4, 1999, a review of a suspended countervailing duty investigation on imports of cotton shop towels from Peru (Inv. No. 701-TA-E

(continued...)

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 of interested parties 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.¹¹ 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. The Commission received responses to the notice of institution on behalf of Milliken & Company (“Milliken”), a domestic producer of the domestic like product, and Comité Textil-Sociedad Nacional de Industrias, a national association of Peruvian textile producers. The Commission received no responses to the notices of institution from any other respondent parties in the China, Pakistan, or Bangladesh reviews.

On April 8, 1999, the Commission determined that full reviews should proceed to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. The Commission determined, with regard to each review, that the domestic interested party group response was adequate but the respondent interested party group responses were inadequate.^{12 13} Nonetheless, the Commission determined to conduct a full review with respect to Peru based on the response of the Comité Textil-Sociedad Nacional de Industrias, even though it is not an interested party under the statute. The Commission further determined to conduct full reviews with respect to all the grouped orders on cotton shop towels to promote administrative efficiency in light of its decision to conduct a full review with respect to cotton shop towels from Peru.¹⁴

On November 18, 1999, the Commission held a hearing in these reviews, at which representatives of Milliken participated. Milliken also filed a prehearing brief, a posthearing brief, and final comments opposing revocation of the orders. No other party appeared at the hearing or filed briefs or final comments.

¹⁰ (...continued)

(Review)). On November 30, 1999, the Department of Commerce published in the *Federal Register* its negative final determination of the likelihood of continuation or recurrence of a countervailable subsidy in connection with cotton shop towels from Peru. Accordingly, the Commission terminated its review of cotton shop towels from Peru.

¹¹ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

¹² The Commission’s statement on the adequacy of the responses to its notice of institution is presented in CR and PR Appendix B and is available at the Commission’s web site. The Commissioners’ votes on whether to conduct expedited or full reviews may also be found at the Commission’s web site (<http://www.usitc.gov>).

¹³ Commissioner Askey dissenting with respect to the Peruvian association response.

¹⁴ *Id.* Chairman Bragg, Vice Chairman Miller, and Commissioner Crawford dissenting. As previously noted, the Commission proceedings with respect to Peru are now terminated in light of the results of the five year review at Commerce.

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.”¹⁵ 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.”¹⁶ Commerce has defined the scope of these reviews as follows:

Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100-percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedules of the United States (HTSUS).¹⁷

Shop towels are square or rectangular pieces of all-cotton or cotton-blend osnaburg fabric.¹⁸ Shop towels are generally used for wiping grease, oil, and other substances in manufacturing, industrial, or automotive facilities. Shop towels require high absorbency, tear, and stretch resistance, and the ability to withstand numerous washings at high water temperatures.¹⁹ A majority of the shop towels sold domestically are in the greige state,²⁰ although many are dyed and/or printed with a company’s name or logo for advertising or identification purposes.²¹

In each of the original investigations, the Commission defined the domestic like product as all shop towels.²² The Commission has expressly explained that this definition includes shop towels whether cotton or a cotton blend,²³ whether of domestic or imported fabric,²⁴ and whether greige, dyed, treated with soil-release features, or imprinted with customer names or logos.²⁵ The product has not changed since the original determinations.²⁶ No party has argued for a different like product definition in these reviews, and there is no information that indicates a need to revisit the Commission’s original determinations of the

¹⁵ 19 U.S.C. § 1677(4)(A).

¹⁶ 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).

¹⁷ Final Results of Expedited Sunset Review, 64 Fed. Reg. 42656 (China), 64 Fed. Reg. 42658 (Bangladesh) (Aug. 5, 1999). Commerce described the scope in the final results of the Pakistan review as “cotton shop towels,” and identified the tariff item number at the eight-digit level, HTSUS 6307.10.20. 64 Fed. Reg. 42672, 42673 (Aug. 5, 1999).

¹⁸ CR at I-9, PR at I-8.

¹⁹ CR at I-10, PR at I-8.

²⁰ Shop towels in a “greige” state have not been bleached, dyed, or printed, or received any type of dry- or wet-finishing operations.

²¹ CR at I-10, PR at I-8.

²² USITC Pub. 1431 at 3-5; USITC Pub. 1490 at 3-4; USITC Pub. 2487 at 5-9.

²³ USITC Pub. 1431 at 3-4; USITC Pub. 1490 at 3; USITC Pub. 2487 at 9.

²⁴ USITC Pub. 2487 at 9.

²⁵ USITC Pub. 1431 at 4-5; USITC Pub. 1490 at 3-4.

²⁶ *E.g.*, Milliken Prehearing Brief at 9-10.

domestic like product.²⁷ Therefore, for the reasons outlined in the Commission's original determinations, we define the domestic like product as all shop towels.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”²⁸ There are three domestic producers of the like product, Milliken & Company, Kleen-Tex Industries, and Blue Ridge Textiles.²⁹ In these five-year reviews, as in the original determinations, we determine that the domestic industry consists of all producers of the domestic like product.

III. CUMULATION

A. Framework³⁰

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.³¹

²⁷ Indeed, all indications are to the contrary. *See, e.g.*, CR at I-9 - I-14, PR at I-8 - I-10.

²⁸ 19 U.S.C. § 1677(4)(A).

²⁹ CR at I-20, PR at I-15.

³⁰ Chairman Bragg does not join section III.A of the opinion. For a complete statement of Chairman Bragg's analytical framework regarding cumulation in sunset reviews, 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 there is likely to be a reasonable overlap of competition in the event of revocation. In this review, having found a reasonable overlap of competition among subject imports and between subject imports and the domestic like product, Chairman Bragg turns to the issue of no discernible adverse impact for each subject country. Chairman Bragg determines that, in the event of revocation, subject imports from all three subject countries are likely to have a discernible adverse impact on the domestic industry. She therefore cumulates subject imports from Bangladesh, Pakistan, and China. Chairman Bragg concurs with the Commission's analysis of the likely volume, price, and impact of subject imports from each subject country in the event of revocation, as well as the Commission's determination that revocation of the orders at issue would lead to the continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. She notes that the cumulative impact of the Commission's analysis with respect to Bangladesh, Pakistan, and China warrants an affirmative determination for each country.

³¹ 19 U.S.C. § 1675a(a)(7).

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.³² We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“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.^{33 34} With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.³⁵

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.^{36 37} Only a “reasonable overlap” of competition is required.³⁸ In five-year reviews, the relevant

³² 19 U.S.C. § 1675a(a)(7).

³³ SAA, H.R. Rep. No. 103-316, Vol. I (1994).

³⁴ Commissioners Hillman and Koplun 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 review 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.

³⁵ Commissioner Askey notes that the language of section 752(a)(7) of the Act gives the Commission discretion to cumulate subject imports for purposes of its sunset analysis, as long as the statutory requirement of likely competition between the subject countries and the domestic like product is satisfied. Section 752(a)(7) 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 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 likely to be discernible, then the Commission is precluded from cumulating those imports with other subject imports. For a full discussion of her views on this issue, see Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Reviews), USITC Pub. 3245 (Oct. 1999).

³⁶ 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

(continued...)

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 competition 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.^{39 40}

Here, the statutory requirement that all three reviews be initiated on the same day is satisfied.⁴¹ For the reasons discussed below we determine to exercise our discretion to cumulate subject imports from Bangladesh and Pakistan, but not those from China, for purposes of our analysis of whether material injury is likely to continue or recur if the orders were revoked.⁴²

B. Discussion⁴³

The record indicates that domestically produced shop towels and the subject merchandise are generally fungible. We find domestic shop towels are interchangeable with subject imports and there are no significant differences in product characteristics between those produced in the United States and those

³⁶ (...continued)

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.

³⁷ See e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

³⁸ 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)).

³⁹ See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1172 (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); Metallwerken 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).

⁴⁰ Commissioner Askey does not join section III.B of the Commission's opinion. Commissioner Askey determines that the subject imports from Pakistan would not be likely to have a discernible adverse impact on the domestic industry if the order were to be revoked and accordingly has not cumulated those imports with the subject imports from Bangladesh and China for her analysis. In addition, she has exercised her discretion not to cumulate the subject imports from Bangladesh with those from China. For a full discussion of her views with respect to cumulation of the subject imports from Bangladesh, Pakistan and China, see Dissenting Views of Commissioner Thelma J. Askey.

⁴¹ Commissioner Askey does not join in the remainder of this section.

⁴² No party has argued that subject imports from either Bangladesh, China or Pakistan "are likely to have no discernible adverse impact" and we see no basis in the record to make such a finding. We note that the current volume of subject imports from Bangladesh and Pakistan and their consequent impact already exceed levels that would have no discernible adverse impact, and subject imports from China are likely to exceed such levels under order revocation.

⁴³ Chairman Bragg points out that although she does not join the Commission's analytical framework for cumulation or its decision not to cumulate subject imports from China with subject imports from Bangladesh and Pakistan, she nonetheless joins the Commission's finding of a reasonable overlap of competition among subject imports and among subject imports and the domestic like product.

produced in the subject countries.⁴⁴ Additionally, “[t]he record indicates that cotton shop towels are sold by U.S. producers and importers in all areas of the United States, although individual producers, importers, and distributors geographically limit sales to some extent.”⁴⁵ With regard to channels of distribution, the subject imports and the domestic like product largely are sold either directly or through distributors to laundry services that rent the towels to industrial and commercial users and clean them.⁴⁶ Although the domestic like product, unlike the subject imports, is not sold through retail channels,⁴⁷ at least in part owing to domestic producers’ inability to compete in that channel on the basis of price,⁴⁸ we find, on the whole, common or similar channels of distribution for imports from the subject countries and the domestic like product. The record also indicates simultaneous presence of the merchandise in the U.S. market.⁴⁹ Moreover, there is no evidence in the current record that suggests that the subject imports would not likely compete with each other and the domestic like product if the orders were removed. For these reasons, we find a reasonable overlap of competition.⁵⁰

However, our cumulation analysis in a five-year review encompasses more than an examination of whether there would likely be a reasonable overlap of competition of the products in the U.S. market. To aid us in our decision whether to exercise our discretion to cumulate, we have also examined the overall similarities in the conditions of competition that would prevail if the orders are revoked. Textile quotas on the volume of shop towel imports from each of the subject countries represent a significant condition of competition in these reviews. We find that the conditions of competition would be significantly different for subject imports from China as compared with those from Bangladesh and Pakistan. Accordingly, on

⁴⁴ Milliken states that the domestic product is fully interchangeable with subject imports and there are no differences in product characteristics between those produced in the United States and those produced in the subject countries. CR at I-13 - I-14, PR at I-10. An importer also stated that there are no significant differences between imported and U.S.-made shop towels. CR at I-14, PR at I-10. *Cf.* CR at II-9 - II-10, PR at II-7 - II-8 (some indication in questionnaires of differences between domestic like product and imports).

⁴⁵ CR at I-13, PR at I-10. *See also* CR and PR at II-1 (The geographic market served by two producers and three importers of shop towels is the continental United States. One importer distributes its towels in the eastern half of the United States and another importer distributes them in the Atlanta/Charleston area and Los Angeles); CR at I-23, PR at I-16 (responses to the Commission’s purchaser questionnaire indicate that subject country shop towels “are distributed throughout the United States.”).

⁴⁶ CR at I-12, II-1; PR at I-9, II-1.

⁴⁷ The majority of the domestically produced shop towels are sold directly to industrial laundries and linen supply services that rent to and clean the towels for industrial end users, and the remaining small amount is sold to distributors. Importers of the subject merchandise, on the other hand, sell to retailers as well as to distributors and industrial laundries. CR and PR at II-1.

⁴⁸ CR and PR at II-1, n.1; Hearing Tr. at 14-16; Milliken Posthearing Brief, Part II (Answers to Commission Questions) at 2.

⁴⁹ *E.g.*, CR and PR at Tables V-1, V-2. Although the volume of subject imports from China is currently very small, limiting the ability to analyze the various competition factors on a current basis, the relevant inquiry is whether the Chinese merchandise would likely compete if the order were removed. In this regard it is important to note the significant presence of shop towels from China in the early 1980s, before the original antidumping duty proceedings were initiated (CR and PR at Table I-1), and the absence of information on the record to indicate that imports from China would not compete with the other subject imports and the U.S. product if the order were revoked.

⁵⁰ Chairman Bragg does not join the remainder of this section. She finds that subject imports from all three countries are likely to have a discernible adverse impact on the domestic industry in the event of revocation. Accordingly, Chairman Bragg cumulates subject imports from Bangladesh, Pakistan, and China.

the basis of the preceding discussion, we exercise our discretion to cumulate only the subject imports from Bangladesh and Pakistan.

We do not exercise our discretion to cumulate the subject imports from China with the subject imports from Bangladesh and Pakistan because the likely rate of increase in the volume of subject imports from China would be significantly different from the likely rates of increase in the volume of subject imports from Bangladesh and Pakistan.⁵¹ If the orders were revoked, the volume of subject imports from China would likely increase sharply given the restraining effect of the order and the significant unused quota allocation, whereas subject imports from Bangladesh and Pakistan would likely continue to increase steadily in accordance with their quota growth rates. We exercise our discretion to cumulate subject imports from Bangladesh and Pakistan because, in addition to the overlap in competition between those imports and the domestic like product, both countries have high quota fill rates, and related quota and import growth rates.

Subject imports from China, in contrast, were virtually nil (5,000 towels) in 1998, and only 599,000 towels, or 0.3 percent of total shop towel imports, in the first half of 1999.⁵² We view this limited presence of Chinese shop towels in the U.S. market as reflecting the remedial effects of the antidumping duty order. Indeed, subject imports from China totaled 94.3 million towels in 1981, the last full year prior to initiation of the original investigation.⁵³ There is no record information indicating any likely limitation on China's resumption of significant export shipments to the United States if the order were revoked, other than volume limits imposed under the United States-China Bilateral Textile Agreement. Quotas for China are estimated in terms of number of towels at 29 million shop towels annually in 1998 and 1999.⁵⁴ Quotas on U.S. imports of subject cotton shop towels from both Bangladesh and Pakistan were 100 percent filled in 1998, while the quota relative to China on cotton shop towels was only 1.1 percent filled in 1998, and 5.2 percent filled in the first ten months of 1999.⁵⁵ Whereas the likely increase in subject imports from

⁵¹ For a further discussion of the quota agreements, see Conditions of Competition, *infra*.

⁵² CR and PR at Table IV-1.

⁵³ CR and PR at Table I-1.

⁵⁴ Under the current United States-China Bilateral Textile Agreement, the combined quotas for sub-categories 369-S (cotton shop towels) and 863-S (silk and other vegetable fiber shop towels) are estimated to total 29.0 million shop towels in 1998, 29.1 million shop towels in 1999, 29.2 million shop towels in 2000, the final year of the period covered by the current agreement, and 29.3 million towels in 2001. The 2000 and 2001 quota totals are based on separate totals within the 369-S sub-category and the 863-S sub-category as follows: in 2000, 20.50 million under sub-category 369-S, and 8.70 million under sub-category 863-S; in 2001, 20.54 million towels under sub-category 369-S and 8.75 million under sub-category 863-S. The quota for 2001 is estimated assuming a new agreement is negotiated with China that includes the same annual growth rates as in the current agreement (0.2 percent for sub-category 369-S and 0.5 percent for sub-category 863-S). Moreover, quota levels for shop towels in sub-category 369-S are stated in kilograms in the Bilateral Textile Agreement, whereas the quotas for sub-category 863-S are stated in number of towels. The Commission, therefore, estimated the number of towels in sub-category 369-S by assuming a weight of 0.03 kilogram per towel, which is the average weight per towel for current (*e.g.*, January to July 1999) imports from both Bangladesh and Pakistan. This conversion factor was selected based on the assumption that China would quickly fill its quota with basic shop towels competitive with and similar in weight to towels from Bangladesh and Pakistan. If China were to accede to the WTO, its quotas could differ somewhat, but probably not significantly, from the estimates here. See, *e.g.*, CR and PR at Figure I-1.

⁵⁵ Subject imports from Pakistan totaled 25.5 million towels, or 7.7 percent of total shop towel imports, in 1998, and 11.9 million towels in the first half of 1999, 5.3 percent of total shop towel imports in that period, compared with 13.4 million towels, or 8.6 percent of total imports, in the first half of 1998. CR and PR at Table IV-1. The quota for Pakistan is estimated at 29.5 million towels in 2000 and 32.5 million towels in 2001. Subject

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Bangladesh and Pakistan will be subject to a 10.15 percent annual increase in the quotas in 1999, 2000, and 2001, the unfilled portion of China's quota alone will permit it to greatly increase exports to the United States from current low levels to the quota levels of 20.5 million annually in 2000 and 2001 for cotton shop towels and 29.2 million and 29.3 million, respectively, for all shop towels.⁵⁶ We find that China would be able, and likely, to fill all or a significant part of the currently unfilled portion of its quota in the relatively short term.⁵⁷ Thus, the conditions of competition would be significantly different for subject imports from China as contrasted with those from Bangladesh and Pakistan if the respective antidumping duty orders and countervailing duty order were revoked. We consequently find that it is not appropriate to assess cumulatively the likely volume and effects of subject imports from China with those of subject imports from Bangladesh and Pakistan. Accordingly, we have exercised our discretion to cumulate subject imports from Bangladesh and Pakistan for purposes of determining whether revocation of the respective orders is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time, but have not exercised our discretion to cumulate subject imports from China with those from Bangladesh and Pakistan.

IV. LEGAL STANDARD AND CONDITIONS OF COMPETITION⁵⁸

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the order "would be likely to lead to

⁵⁵ (...continued)

imports from Bangladesh totaled 60.3 million units in 1998, 18.1 percent of total shop towel imports, and 42.3 million units in the first half of 1999, representing 18.6 percent of total subject imports, compared with 32.9 million towels, or 21 percent of shop towel imports, in the first half of 1998. *Id.* The quota for Bangladesh is estimated at 71.7 million towels in 2000 and 78.9 million towels in 2001.

⁵⁶ The imminent potential for increased imports from China is virtually limited to the unfilled quota quantities. The annual increase in the quota for China will be very slight compared with the quota growth rates for Bangladesh and Pakistan.

⁵⁷ This finding has several bases. As discussed in part IV.B of these Views (Conditions of Competition), *infra*, shop towel production in all the subject countries is labor intensive, requiring minimal capital expenditure and rendering entry into and exit from the sector relatively easy. Indeed, past fluctuations in levels of Chinese exports to the United States from one year to the next demonstrate China's historic ability to quickly expand and contract exports to the United States. For instance, U.S. imports of shop towels from China increased from 45.5 million towels in 1980 to 94.3 million towels in 1981. CR and PR at Table I-1. China more than tripled its exports to the United States from 15.3 million towels in 1988 to 46.9 million towels in 1989, then dropped to 16.1 million towels in 1990. CR and PR at Table I-1. Moreover, China Customs data show a strong export orientation, with China's 1998 exports of miscellaneous textile articles, including dish towels and cotton shop towels, to all countries totaling 235 million towels, only 16.5 million of which the Chinese data identifies as exports to the United States. CR at IV-6, PR at IV-4. Accordingly, there is substantial production and production capacity that could be directed to the United States if the antidumping duty order on China were revoked.

⁵⁸ Commissioner Askey joins sections IV.A and IV.B of this opinion.

continuation or recurrence of material injury within a reasonably foreseeable time.”⁵⁹ 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 -- the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁶⁰ Thus, the likelihood standard is prospective in nature.⁶¹ The statute provides 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.”⁶² 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.”^{63 64}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁶⁵ 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

⁵⁹ 19 U.S.C. § 1675a(a).

⁶⁰ SAA, H.R. Rep. No. 103-316, Vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁶¹ 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.

⁶² 19 U.S.C. § 1675a(a)(5).

⁶³ 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.” SAA at 887.

⁶⁴ In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “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, he considers 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, his 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.

⁶⁵ 19 U.S.C. § 1675a(a)(1).

revoked.^{66 67}

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁶⁸ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for shop towels.

First, shop towels are used by a wide range of industrial and commercial establishments.⁶⁹ As a result, aggregate demand for shop towels is derived in large part from consumption of the goods produced by shop towel purchasers and generally follows overall business cycles in the U.S. economy.⁷⁰ Demand for shop towels has been strong in recent years, with U.S. consumption rising from 387 million shop towels in 1990 to 499 million shop towels in 1998.⁷¹ U.S. apparent consumption from 1997 to 1998 alone increased by 68 million shop towels or by 15.9 percent.⁷²

Second, subject imports and the domestic like product are substitutable, there being no significant differences in product characteristics between those produced in the United States and those produced in the subject countries.^{73 74}

Third, the number of domestic firms producing cotton shop towels declined after the antidumping duty and countervailing duty orders were issued.⁷⁵ In 1992, when the Commission issued its final

⁶⁶ 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.

⁶⁷ 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 determinations in either the Bangladesh or China review.

⁶⁸ 19 U.S.C. § 1675a(a)(4).

⁶⁹ CR at I-12, PR at I-9 - I-10.

⁷⁰ CR at II-6, PR at II-5.

⁷¹ CR at II-6, PR at II-5; CR and PR at Tables I-3 and D-1.

⁷² *Id.*

⁷³ CR at I-13 - I-14, PR at I-10; CR at I-14, PR at I-10; *cf.* CR at II-9 - II-10, PR at II-7 - II-8.

⁷⁴ We note that the subject imports are almost entirely all cotton, whereas the domestic like product generally includes a small amount of other fabrics along with cotton. Commerce statistics show some imports recently from China under the non-cotton statistical subheading, HTSUS 6307.10.2015. “Although shop towels can be produced from other woven fabrics, it is not economically feasible to replace the wholly or predominantly cotton osnaburg fabric with a different construction. Cotton waste has the combined advantages of being both inexpensive and absorbent.” CR at I-13, PR at I-10. Nonetheless, the subject merchandise includes not only shop towels of cotton or a cotton blend, but also those of other vegetable fibers (*e.g.*, ramie, linen) and silk. See Commerce definition of scope and HTSUS item numbers cited therein, *supra*; like product definition (“all shop towels”), *supra*; and discussion of quotas, *infra*.

⁷⁵ CR at I-20 - I-21, PR at I-15.

determination in Shop Towels from Bangladesh, the most recent of the three shop towel investigations, there were 12 domestic producers of shop towels, as compared with three in 1998.⁷⁶

Fourth, barriers to entry into and exit from this industry in the subject countries appear to be relatively low. According to the petitioner, shop towel production in Bangladesh, China, and Pakistan is labor intensive, and the only necessary equipment for production of shop towels is a loom.⁷⁷ Accordingly, the limited record data indicate that existing and potential producers can quickly expand or reduce production, and enter or exit the market with negligible capital investment.⁷⁸

Fifth, nonsubject shop towel imports have grown in the U.S. market since the original determinations, both in absolute terms and as a share of apparent consumption.⁷⁹ In 1980, 41.5 million shop towels, or 16.5 percent of apparent consumption, were imported from nonsubject countries. In 1990, 106.2 million shop towels, or 27.4 percent of apparent consumption, were imported from nonsubject countries. Nonsubject imports totaled 192.2 million towels in 1997 and 246.4 million towels in 1998, 44.7 percent and 49.4 percent, respectively, of U.S. apparent consumption.⁸⁰ Nonsubject imports increased further in the first six months of 1999 to 172.2 million towels, or 56.6 percent of apparent consumption, compared with 110.3 million towels, or 46.2 percent of apparent consumption in the first six months of 1998.⁸¹

Sixth, subject import quantities are limited by quota arrangements. The United States currently has quotas on imports of textiles and apparel from Bangladesh, China, and Pakistan, as it did at the time of the original investigations. In the current bilateral textile agreement with China, there are specific limits on imports of cotton shop towels (subcategory 369-S) and shop towels made of other textile fibers (primarily a blend of cotton and ramie) (subcategory 863-S) from China. China's specific limit for cotton shop towels (subcategory 369-S) was only 1.1 percent filled in 1998 and was 5.2 percent filled as of October 1999. China did not fill any of its quota on imported shop towels classified in subcategory 863-S in 1998 as there were no imports. China filled 2.7 percent of the quota on subcategory 863-S as of October 1999.⁸²

Pakistan filled nearly 95 percent of its quota on cotton shop towels in 1983, 100 percent in 1998, and 64 percent as of October 1999.⁸³ Currently, there is a specific limit on imports of cotton shop towels from Bangladesh, which was 100 percent filled in 1998 and 87 percent filled as of October 1999. There are no quotas on imports of shop towels of fabrics other than cotton, sub-category 863-S, from either Bangladesh or Pakistan.⁸⁴

Quotas on shop towel imports from Bangladesh and Pakistan will increase by 10.15 percent to 71.7 million shop towels in 2000 and 78.9 million shop towels in 2001 for Bangladesh, and to 29.5 million

⁷⁶ USITC Pub. 2487 at I-15, I-20.

⁷⁷ CR at IV-4, PR at IV-3; CR at I-12, PR at I-9 (a sewing machine is used to hem the fabric).

⁷⁸ CR at IV-4, PR at IV-3.

⁷⁹ CR at I-20, PR at I-14 - I-15; CR and PR at Tables I-2, I-3.

⁸⁰ CR and PR at Table I-1.

⁸¹ CR and PR at Table I-1.

⁸² CR at I-16 - I-17, PR at I-12 - I-13.

⁸³ CR at I-17, PR at I-13. The Pakistani producers report that "[c]urrently, we are restricted in the U.S. market until the textile quota limit for shop towels is lifted in 5 years. At that time we will consider plans to expand capacity, subject to our competitiveness in the U.S. market vis-a-vis our competitors." CR at IV-8, PR at IV-5.

⁸⁴ CR at I-17 - I-18, PR at I-13.

towels in 2000 and 32.5 million towels in 2001 for Pakistan.⁸⁵ Due to its extremely low base quota growth rate of 0.2 percent, China's annual quota levels will remain relatively low.^{86 87}

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

V. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SHOP TOWELS FROM BANGLADESH AND THE COUNTERVAILING DUTY ORDER ON SHOP TOWELS FROM PAKISTAN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME⁸⁸

A. Likely Volume of Subject Imports from Bangladesh and Pakistan⁸⁹

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the statute directs the Commission 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)

⁸⁵ CR at I-16, PR at I-12; CR at I-15 - I-19, PR at I-11 - I-13; CR and PR at Figure I-1; *see also* note 55, *supra*. Although the quota on shop towel imports from Pakistan is growing at the same rate as the quota on shop towels from Bangladesh, the growth rate is applied with reference to base year (*i.e.*, 1994) quota levels. Thus, for instance, the quota for Pakistan in 2000 is an estimated 29.5 million towels while the quota for Bangladesh in 2000 is estimated at 71.7 million towels. As explained elsewhere in these views, the Commission converted the quotas, which are negotiated in kilograms, into estimated numbers of towels using the prior average per-towel weight of 0.03 kilograms, as derived from current U.S. imports data.

⁸⁶ CR at I-18 - I-19, PR at I-13 - I-14; *see also* note 54, *supra*. The China quota for category 863-S, which is stated in the agreement on a towel basis rather than a weight basis, is estimated at 8,748,455 towels in 2001 (assuming new agreement with China that continues current rate of increase of China quota).

⁸⁷ Commissioner Askey does not join section V of this opinion. She concurs in the Commission's determination that revocation of the order covering the subject imports from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time and joins section VI of this opinion. She determines, however, that revocation of the orders covering subject imports from Bangladesh and Pakistan would not be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time. For a full discussion of her views with respect to Bangladesh and Pakistan, see Dissenting Views of Commissioner Thelma J. Askey.

⁸⁸ As noted earlier, Chairman Bragg joins the Commission's likely volume, price, and impact discussion for Bangladesh and Pakistan.

⁸⁹ This discussion is limited to imports of cotton shop towels. It should be noted however that, although there have not been imports from Bangladesh and Pakistan of shop towels that are not mainly cotton, there are no quantity limitations on such imports, which are within the scope of the orders.

⁹⁰ 19 U.S.C. § 1675a(a)(2).

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

In the original determination concerning Pakistan, the Commission concluded that a domestic industry was materially injured by reason of imports of shop towels that were subsidized by the Government of Pakistan.⁹² The Commission found that imports of shop towels from Pakistan had increased from 1.7 percent of apparent consumption in 1980 to 13.4 percent in the first nine months of 1983.⁹³ In the original determination concerning Bangladesh, the Commission concluded that a domestic industry was materially injured by reason of imports of shop towels from Bangladesh that were sold at less than fair value.⁹⁴ The Commission found that the Bangladeshi share of the U.S. market had increased from 0.5 percent in 1988 to 9.7 percent in the first nine months of 1991.⁹⁵

Subject imports from Bangladesh and Pakistan together increased from 83.6 million towels in 1997, to 85.8 million towels in 1998; they totaled 54.2 million towels in the first six months of 1999, compared with 46.3 million towels in the first six months of 1998.⁹⁶ Both Bangladesh and Pakistan filled 100 percent of their quota on shop towels in 1998.⁹⁷ The quota for Bangladesh is estimated at 71.7 million towels in 2000 and 78.9 million towels in 2001, and the quota for Pakistan is estimated at 29.5 million towels in 2000 and 32.5 million towels in 2001.⁹⁸ This represents quota totals for these two subject countries of 101.2 million towels in 2000 and 111.5 million towels in 2001.⁹⁹ Subject imports from Bangladesh and Pakistan can be expected to enter the U.S. market in significant volumes and continue to fill their quota levels as those quotas increase for each of those countries by 10.15 percent annually in 2000 and 2001.¹⁰⁰ Levels of unused production capacity in Bangladesh and Pakistan indicate that they will have no difficulty filling new annual quota levels.¹⁰¹ The ease of entry into the labor intensive production of

⁹¹ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁹² USITC Pub. 1490 at 9.

⁹³ *Id.* at 7-8, A-24 (4.3 million shop towels from Pakistan in 1980, 6.1 million in 1981, 6.6 million in 1982, and 21.9 million in the first nine months of 1993, compared with 4.2 million in the comparable period in 1982).

⁹⁴ USITC Pub. 2487 at 5.

⁹⁵ *Id.* at 16, I-39, I-15 (1.8 million shop towels from Bangladesh in 1988, 4.4 million in 1989, 28.0 million in 1990, and 25.0 million in the first nine months of 1991, compared with 22.2 million in the comparable period in 1990).

⁹⁶ CR and PR at Table I-1.

⁹⁷ CR at I-17, PR at I-13.

⁹⁸ See discussion in preceding notes concerning the methodology for converting quotas in kilograms into an estimated number of towels.

⁹⁹ These quantities would represent 20 percent and 22 percent, respectively, of total apparent consumption at levels equivalent to 1998 apparent consumption. See CR and PR at Tables I-2, I-3.

¹⁰⁰ CR at I-16, PR at I-12.

¹⁰¹ The Pakistani industry utilized only 69.2 percent of its shop towel production capacity in 1998, although capacity utilization in Pakistan reportedly increased to 77.2 percent in the first six months of 1999, compared with 66.0 percent in the first six months of 1998. CR and PR at Table IV-3. Pakistan's inventory levels (CR and PR at Table IV-3) will also facilitate filling expanded quota levels. Inventories of U.S. importers of shop towels from Pakistan (CR at IV-2, PR at IV-1) permit a market impact in excess of quota levels. With respect to Bangladesh, production capacity for fifteen known producers was reported by the U.S. Embassy in Dhaka to be 3.1 million kilograms in 1998, while production in Bangladesh was only 1.6 million kilograms. CR at IV-6 - IV-7, PR and IV-4. The industry in Bangladesh reportedly intends to fully utilize its U.S. quota for shop towels in 1999 and

(continued...)

shop towels in those countries further assures production ability in excess of current or planned production capacity levels in the two subject countries. Moreover, the United States is currently the only export market for shop towels produced in Bangladesh, and shop towel production in Pakistan is solely for export,¹⁰² evidencing the likely destination of any additional production. Accordingly, we find that the likely volume of subject imports from Bangladesh and Pakistan into the United States upon revocation of the order would be significant, increasing to the maximum levels permitted by quotas in the reasonably foreseeable future.

B. Likely Price Effects of Subject Imports from Bangladesh and Pakistan

In evaluating the likely price effects of subject imports if the antidumping duty and countervailing 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 the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.¹⁰³

Purchasers of cotton shop towels consider price to be one of the most important factors in purchasing decisions.¹⁰⁴ In the original Pakistan determination, the Commission found underselling by the Pakistani product in every quarter from January 1981 to September 1983, by margins ranging from 25 to 38 percent.¹⁰⁵ The Commission also found that domestic prices fell 5.3 percent during January-September 1983, after having increased 5.1 percent from January-March 1981 to October-December 1982, and explained that the majority of laundries that had shifted purchases from domestic shop towels to those from Pakistan had based the decision on the lower price of the Pakistani product.¹⁰⁶

In the original Bangladesh determination, price comparisons indicated underselling by the Bangladeshi towels that was “substantial both in degree and scope.”¹⁰⁷ Specifically, based on producer and importer questionnaire responses, the Commission found underselling in all instances of sales of all-cotton 18 x 18 inch towels to laundry services and to distributors and, based on purchaser questionnaire responses, found underselling in 39 of 44 comparisons of sales of 18 x 18 inch and 18 x 30 inch all cotton

¹⁰¹ (...continued)

2000. CR at IV-6, PR at IV-4. The Bangladeshi shop towel trade association explained that production capacity in Bangladesh in 1999 and 2000 will be two times the volume of actual production, as it was in 1998. CR at IV-7, PR at IV-4. Current inventories of U.S. importers of shop towels from Bangladesh (CR and PR at Table IV-2) permit a market impact by Bangladeshi merchandise in excess of any further imports under quotas in the reasonably foreseeable future.

¹⁰² CR at IV-7 - IV-8, PR at IV-4 - IV-5.

¹⁰³ 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.

¹⁰⁴ CR and PR at Table II-1.

¹⁰⁵ USITC Pub. 1490 at 8 and A-28 (Table 15).

¹⁰⁶ *Id.* at 8, A-29.

¹⁰⁷ USITC Pub. 2487 at 18.

towels.¹⁰⁸ Margins of underselling were as high as 20 percent.¹⁰⁹ Moreover, although recent price comparison data obtained in these five-year reviews, for the period January 1997 to June 1999, are somewhat limited, those data indicate *** shop towels from Bangladesh and Pakistan.¹¹⁰

Accordingly, we find that the likely volume of imports from Bangladesh and Pakistan following revocation of the antidumping duty order and countervailing duty order would be likely to have a significant adverse effect on domestic prices for shop towels. We note that the Commission has previously determined that quota limits on the volume of subject imports do not preclude adverse price effects.¹¹¹ Accordingly, we conclude that the Bangladeshi and Pakistani subject merchandise is likely to enter the United States at prices that would significantly undersell domestic shop towels and have a significant depressing or suppressing effect on prices for the domestic like product.

C. Likely Impact of Subject Imports from Bangladesh and Pakistan

In evaluating the likely impact of imports of subject merchandise if the antidumping duty and countervailing duty 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

¹⁰⁸ *Id.* 18-19.

¹⁰⁹ *Id.* at I-43, I-44, I-46, I-47, I-48.

¹¹⁰ Although the domestic like product is a blend of cotton and other fabrics, and the Bangladeshi and Pakistani products are all cotton, there is no basis on the record to conclude that differences in cotton content significantly affect purchasers' decisions to purchase the subject imports or the domestic like product. To the contrary, we find that the domestic like product and the subject imported shop towels are essentially fungible. See discussion at IV. B (Conditions of Competition), *supra*. Accordingly, we find probative in this regard the comparison data obtained in these reviews on sales to industrial laundries and linen supply services of unbleached, uncolored, 18 x 18 inch shop towels (blended domestic towels and all-cotton Bangladeshi and Pakistani towels) from January 1997 to June 1999. CR and PR at Table V-1. Those comparisons show *** the Bangladeshi and Pakistani product ***.

¹¹¹ See USITC Pub. 2487 at 20 (“quotas and bilateral agreements pursuant to the Multifiber Arrangement do not control the prices at which the subject shop towels are sold in the United States, and therefore do not prevent the possibility of import price effects on the domestic industry”).

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. Section 752(a)(6) of the Act requires the Commission in five-year reviews concerning countervailing duty orders to consider “information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(a)(6). Section 752(a)(6) of the Act also states that “the Commission may consider
(continued...)

statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order and countervailing duty order at issue and whether the industry is vulnerable to material injury if those orders are revoked.¹¹⁴

We find that the domestic industry producing shop towels is vulnerable to material injury if the orders are revoked because of its *** operating income, declining market share, low capacity utilization, and declining number of production and related workers. Although the domestic industry's net sales increased from *** million towels in 1997 to *** million towels in 1998, average selling prices fell faster than the decline in the average cost of goods sold (COGS), resulting in a lower unit gross profit, insufficient to absorb decreasing unit selling, general, and administrative (SG&A) expenses.¹¹⁵ This resulted in operating income of *** in 1997 and *** in 1998.¹¹⁶ Although the industry's performance improved in the interim 1999 period, an operating income of *** compared with *** in the comparable period in 1998, the industry remains ***.¹¹⁷

U.S. producers' shipments as a share of total apparent consumption declined on a quantity basis from 35.9 percent in 1997 to 33.4 percent in 1998, then declined further to 25.4 percent of apparent consumption in the first six months of 1999, compared with 34.4 percent in the comparable period of 1998.^{118 119}

In the period reviewed, domestic producers' production and capacity utilization levels declined, inventories increased, and the number of production and related workers declined. Specifically, U.S. producers' total production of shop towels declined from 164.6 million towels in 1997 to 159.0 million towels in 1998. Domestic capacity utilization also declined from 49.4 percent in 1997 to 39.3 percent in

¹¹³ (...continued)

... the magnitude of the net countervailable subsidy" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). See also SAA at 890. In its final five-year review determination regarding shop towels from Bangladesh, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order for Bangladesh were revoked ranges from 2.72 to 42.31 percent. 64 Fed. Reg. at 42660. Commerce determined that the magnitude of the countervailing duty margin that is likely to prevail if the countervailing duty order for Pakistan were revoked is 5.17 percent, and that the programs benefiting Pakistani shop towels fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. 64 Fed. Reg. at 42675.

¹¹⁴ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

¹¹⁵ CR at III-4 - III-8, PR at III-4; CR and PR at Table III-5.

¹¹⁶ CR and PR at Table III-5. Capital expenditures relating to shop towels also decreased between 1997 and 1998, and decreased further in interim 1999 compared with interim 1998. CR and PR at Table III-8.

¹¹⁷ CR and PR at Table III-5.

¹¹⁸ CR and PR at Table I-3. The decline in market share is in part attributable to increasing imports from nonsubject countries.

¹¹⁹ We note that nonsubject imports have played an increasingly important role in the growing U.S. shop towel market, accounting for 16.5 percent of U.S. consumption of 251 million towels in 1980, 27.4 percent of U.S. consumption of 387 million towels in 1990, and 49.4 percent of U.S. consumption of 499 million towels in 1998. CR and PR at Table I-1.

1998.¹²⁰ U.S. producers' inventories increased from *** towels at the end of 1997 to *** towels at the end of 1998, and *** towels at the end of the 1999 interim period, compared with *** at the end of the 1998 interim period.¹²¹ The number of U.S. production and related workers producing shop towels declined from 172 workers in 1997 to 145 workers in 1998, and declined further in the interim period to 138 workers, compared with 155 workers in the comparable period in 1998.¹²²

Given the generally substitutable nature of the subject merchandise and the domestic like product, we find that the significant volume of low-priced subject imports, when combined with the likely adverse price effects of these imports, would have a significant adverse impact on the production, shipments, sales, and revenue levels of the vulnerable domestic industry. This reduction in the industry's production, sales, and revenue levels would have a further direct adverse impact on the industry's profitability and employment levels as well as its ability to make and maintain necessary capital investments. Accordingly, we conclude that, if the orders were revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

D. Conclusion

For the reasons stated above, we determine that revocation of the antidumping duty order on shop towels from Bangladesh and the countervailing duty order on shop towels from Pakistan would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.

VI. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SHOP TOWELS FROM CHINA IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME ^{123 124}

A. Likely Volume of Subject Imports from China

In the original determination concerning China, the Commission concluded that a domestic industry was materially injured by reason of imports of cotton shop towels from China that were being sold at less than fair value.¹²⁵ The Commission found that imports of shop towels from China had increased as a share of apparent domestic consumption from 18.1 percent in 1980 to 34.5 percent in 1981 to 38.3 percent in 1982, and increased in the interim period of 1983 to 33.3 percent, compared with 31.1 percent in the 1982

¹²⁰ CR and PR at Table III-1. A portion of the 1997-1998 decrease in capacity utilization is attributable to U.S. producers' increase in capacity from 333.3 million towels in 1997 to 404.8 million towels in 1998. Capacity utilization decreased somewhat further in the 1999 interim period compared with the comparable period in 1998. *Id.*

¹²¹ CR and PR at Table III-3.

¹²² CR and PR at Table III-4.

¹²³ As noted earlier, Chairman Bragg cumulates subject imports from all three countries. She again notes that the cumulative effect of the subject imports from Bangladesh, Pakistan, and China, in the event of revocation, warrants an affirmative determination for each subject country.

¹²⁴ Commissioner Askey determines that revocation of the antidumping order covering imports of shop towels from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. She joins in section VI of this opinion.

¹²⁵ USITC Pub. 1431 at 3.

interim period.¹²⁶ Subject imports from China totaled 94.3 million towels in 1981, the last full year prior to initiation of the original investigation.¹²⁷

In 1997, there were no imports of the subject merchandise from China.¹²⁸ In 1998, imports from China totaled 5,000 towels, then increased to 599,000, or 0.3 percent of total shop towel imports in the first six months of 1999, compared with zero imports from China in the interim period in 1998.¹²⁹ Quotas for the subject merchandise from China are estimated at 29.0 million towels in 1998 and 29.1 million towels in 1999.¹³⁰ The quota limiting U.S. shop towel imports from China was only 1.1 percent filled in 1998, the 1999 quota was only 5.2 percent filled in the first ten months of 1999.¹³¹ We view this recent limited presence in the U.S. market and the significant unfilled quota for shop towels from China as reflecting the remedial effects of the antidumping duty order.

We find that the unfilled portion of China's quota permits Chinese producers to increase imports into the United States significantly.¹³² We also find that China would be able in the short term to fill all or a significant part of the currently unfilled portion of its quota, which will be an estimated 29.2 million towels in 2000 and 29.3 million towels in 2001.¹³³

There is no record information indicating any likely limitations, apart from the quota, on China's resumption of significant export shipments to the United States if the order were revoked. As already noted, shop towel production in China is labor intensive, requiring minimal capital expenditure and rendering entry into and exit from the sector relatively easy. Indeed, past fluctuations in levels of Chinese exports to the United States from one year to the next demonstrate China's historic ability to quickly expand and contract exports to the United States. For instance, U.S. imports of shop towels from China more than doubled from 45.5 million towels in 1980 to 94.3 million towels in 1981.¹³⁴ These imports more than tripled from 15.3 million towels in 1988 to 46.9 million towels in 1989, then dropped to 16.1 million towels in 1990.¹³⁵ Moreover, these historic data demonstrate that China is able to build its capacity to export to the United States at least to the level of 94 million towels annually, the pre-antidumping-duty

¹²⁶ *Id.* at 7-8. In absolute terms, subject imports from China increased in the original investigation period from 45.5 million towels in 1980 to 94.3 million in 1981, and then declined to 83.0 million towels in 1982 and to 31.0 million towels in the interim period of 1983, compared with 33.5 million towels in the corresponding period of 1982.

¹²⁷ *Id.* at 7 and A-1.

¹²⁸ CR and PR at Table VI-1.

¹²⁹ CR and PR at Table VI-1.

¹³⁰ This represents a conversion of the annual quota on a weight basis into the quantity-of-towel equivalent, as discussed in note 54, *supra*, and includes both cotton and other fabric categories. Quotas on Chinese cotton towels, sub-category 369-S only, are estimated to be 20.50 million in 2000 and 20.54 million in 2001.

¹³¹ CR at I-17, PR at I-12. These quota fills are on the basis of kilograms and reflect the cotton category only. China's quota for the other towels, category 863-S, was only 2.7 percent filled as of October 31, 1999, by imports from China of 240,000 towels under HTSUS 6307.10.2015.

¹³² The imminent potential for increased imports from China is virtually limited to the unfilled quota quantities. Unlike the quotas for shop towels from Bangladesh and Pakistan, the annual increase in the quota for China will be small.

¹³³ This represents a conversion of the annual quota on a weight basis into the quantity-of-towel equivalent, as discussed in note 54, *supra*, and, for 2001, assumes an extension of the United States-China textile agreement with the same annual quota growth rates.

¹³⁴ CR and PR at Table I-1.

¹³⁵ CR and PR at Table I-1.

level in 1981,¹³⁶ indicating that China could easily meet the quota levels in 1999, 2000, and 2001, in excess of 29 million towels in each year.¹³⁷ Moreover, Chinese customs data show that China's exports to the world of miscellaneous textile articles, including dish towels and cotton shop towels, totaled 235 million towels, only 16.5 million of which the Chinese data identify as exports to the United States.¹³⁸

Accordingly, there is substantial production and production capacity that could be directed to the United States if the antidumping duty order were revoked.

Accordingly, we find that imports of Chinese shop towels into the United States would be likely to increase significantly in the reasonably foreseeable future if the antidumping duty order were revoked.

B. Likely Price Effects of Subject Imports from China

In the original investigation, the Commission found that the Chinese product undersold domestic producers by large margins in every quarter of the period investigated.¹³⁹ The Commission confirmed that the majority of the 12 purchasers that shifted their purchases to the Chinese product during 1981 and 1982 noted that lower prices were an important factor in their shift.¹⁴⁰

There are no current price comparison data on imports from China. We note, however, that purchasers consider price to be one of the most important factors in purchasing decisions.¹⁴¹ Thus, we find it likely that Chinese producers would offer attractively low prices to U.S. purchasers in order to regain market share if the antidumping duty order were revoked.¹⁴²

Accordingly, we find that the likely volume of imports from China resulting from revocation of the antidumping duty order would likely have a significant adverse effect on domestic prices for shop towels. Accordingly, we conclude that the Chinese subject merchandise is likely to enter the United States at prices that would significantly undersell domestic shop towels and have a significant depressing or suppressing effect on prices for the domestic like product.

C. Likely Impact of Subject Imports from China

The first step in our analysis of the likely impact of subject imports if the antidumping order were revoked, is to determine whether the domestic industry is in a vulnerable state.¹⁴³ Based on the record in

¹³⁶ CR and PR at Table I-1.

¹³⁷ Chairman Bragg infers that, in the absence of the order, Chinese producers would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission's original determination. Based upon the record in this review, Chairman Bragg finds that this historical emphasis will likely result in significant volumes of subject imports from China into the United States.

¹³⁸ CR at IV-6, PR at IV-4.

¹³⁹ USITC Pub. 1431 at 8.

¹⁴⁰ *Id.* at 9.

¹⁴¹ CR and PR at Table II-1.

¹⁴² Chairman Bragg infers that, in the event of revocation, Chinese producers will revert to aggressive pricing practices with regard to exports to the United States, as evidenced in the Commission's original determination.

¹⁴³ 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

(continued...)

these proceedings as discussed in the previous section on Bangladesh and Pakistan, we find that the domestic industry is in a vulnerable state.¹⁴⁴

We also found, above, that revocation of the antidumping duty order is likely to lead to significant volumes of subject imports from China and to significant adverse price effects. Given the generally substitutable nature of the subject merchandise and domestic like product, we find that the likely significant volume of low-priced subject imports, when combined with the expected adverse price effects of these imports, would have a significant adverse impact on the production, shipments, sales, and revenue levels of the vulnerable domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the order were revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

D. Conclusion

For the reasons stated above, we determine that revocation of the antidumping duty order on shop towels from China would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on shop towels from Bangladesh and China and the countervailing duty order on shop towels from Pakistan would be likely to lead to continuation or recurrence of material injury to the U.S. shop towel industry within a reasonably foreseeable time.¹⁴⁵

¹⁴³ (...continued)

as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding shop towels from China, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order were revoked ranges from 30.1 percent to 37.2 percent. 64 Fed. Reg. 42658.

¹⁴⁴ *See* Section V, *supra*.

¹⁴⁵ Commissioner Askey dissenting with respect to Bangladesh and Pakistan.

**DISSENTING VIEWS OF
COMMISSIONER THELMA J. ASKEY**

Section 751(d) of the Tariff Act of 1930, as amended, requires that the Department of Commerce revoke a countervailing duty order or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹ Based on the record in these reviews, I concur in the Commission’s determination that revocation of the antidumping duty order covering shop towels from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I determine that revocation of the antidumping duty order covering shop towels from Bangladesh and the countervailing duty order covering shop towels from Pakistan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Except as otherwise noted, I join in the Commission’s findings with respect to the domestic like product and the domestic industry, the legal standards governing the Commission’s cumulation and causation analysis in sunset reviews, conditions of competition in this marketplace, and the likelihood of recurrence or continuation of material injury by reason of the subject imports from China. However, unlike my colleagues, I have determined that the subject imports from Pakistan are not likely to have a discernible adverse impact on the domestic industry within a reasonably foreseeable time if the order covering Pakistan is revoked. I have, therefore, not cumulated the subject imports from Pakistan with the other subject imports for purposes of my analysis. I have further determined to exercise my discretion not to cumulate the subject imports from Bangladesh and China. I also determine that revocation of the orders covering subject imports from Bangladesh and Pakistan would not be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time. I discuss the reasons for these determinations below.

As a preliminary matter, I note that only one party entered an appearance and filed briefs in this proceeding: the domestic producer, Milliken and Company. Milliken is one of three domestic producers of shop towels and accounted for *** percent of domestic production in 1998.² None of the respondent parties entered appearances or filed briefs in this proceeding. The Commission received only limited questionnaire responses from the Pakistani producers and no responses from Bangladeshi and Chinese producers.

Given the level of responses in this review, the Commission has a somewhat limited record to review in determining whether revocation of the orders will likely lead to continuation or recurrence of material injury in the reasonably foreseeable future. In a case such as this, where only one domestic interested party (and no respondent producers, exporters, or importers) has fully participated in the review, that party has an advantage in terms of being able to present information to the Commission without rebuttal from the other side. Nonetheless, 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 information and evidence before it in terms of the statutory criteria.³ The Commission cannot properly accept

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

² CR at I-21, PR at I-15. Blue Ridge, the *** producer of cotton shop towels in 1998, submitted a questionnaire response but did not file an entry of appearance or submit briefs in this proceeding. *Id.* The third domestic producer, Kleen-Tex, accounted for *** percent of domestic production in 1998 but ***. CR at I-20, n. 34, PR at I-15, n. 34.

³ 19 U.S.C. § 1675a(a).

participating parties' information and characterizations thereof without question and without evaluating other available information and evidence.⁴

I. CUMULATION

A. *General*

In sunset reviews, the Commission has the discretion to cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews were initiated on the same day if those imports would be likely to compete with each other and with the domestic like product within a reasonably foreseeable time if the orders are revoked.⁵ 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.⁶ 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 and the discretionary nature of the cumulation decision, the Commission has examined other significant conditions of competition that are likely to prevail if the orders under review are revoked when deciding whether to cumulate in sunset reviews.

Although cumulation is discretionary in sunset reviews, the statute clearly and unambiguously states that 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 upon revocation of an order.⁷ Accordingly, the Commission must conclude that the subject imports from a country will have a “discernible adverse impact on the domestic industry” after revocation of the order before cumulating the volume and effect of those imports with those of other subject imports. Accordingly, to determine whether I am precluded from cumulating the subject imports in my analysis, I focus on how discernibly the imports will impact the condition of the industry as a result of revocation, and not simply on whether there will be a small -- i.e., negligible -- volume of imports after revocation.⁸

In this case, the reviews of the orders for the three subject countries were initiated on the same day. Thus, I first consider whether the subject imports from each of Pakistan, Bangladesh, or China are likely to have a “discernible adverse impact” on the domestic industry if the orders covering each country were to be

⁴ See, e.g., Alberta Pork Producers' Mktg. Bd. v. United States, 669 F. Supp. 445, 459 (Ct. Int'l Trade 1987) (“Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.”).

⁵ 19 U.S.C §1675a(a)(7).

⁶ 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.

⁷ Section 752(a)(7) of the Act, 19 U.S.C. 1675a(a)(7).

⁸ For a more complete discussion of my views on this matter, see my Additional Views in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245, at 31 (October 1999).

revoked. If I find that imports from any one of these countries are not likely to have a discernible adverse impact on the domestic industry if the order is revoked, then I am precluded from cumulating the imports from that country with those of any other subject country. If I find that they are likely to have a discernible adverse impact on the industry upon revocation of the order, I must then consider whether it is appropriate to exercise my discretion to cumulate the subject countries.

B. The Subject Imports from Pakistan Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within the Reasonably Foreseeable Future If the Order is Revoked

I determine that the subject imports from Pakistan are not likely to have a discernible adverse impact on the domestic industry if the countervailing duty order covering Pakistan is revoked. The subject imports of shop towels from Pakistan are currently limited by a quota arrangement with the United States. Under that quota arrangement, the quota applicable to Pakistan is scheduled to increase by 10.15 percent in 2000 and by an additional 10.15 percent in 2001. Despite the existence of the countervailing duty order, Pakistan appears to have filled (or come close to filling) its quota level for each year for which we have information. For example, in 1998, Pakistan was permitted to import approximately 25.5 million cotton shop towels and filled 100 percent of that quota. Similarly, the quota level applicable to Pakistan increased by an additional 10.15 percent for 1999 yet Pakistan filled nearly 64 percent of the quota as of October 1999.⁹ Finally, the record indicates that Pakistan has filled its quota levels under prior quota arrangements as well.¹⁰ Given Pakistan's consistent history of completely filling its quotas, I find that Pakistan will be likely to fill all or nearly all of the quota increases that are scheduled to occur in 2000 and 2001.

Nonetheless, although the quota for the subject imports for 2000 and 2001 are equal to 29.5 million and 32.5 million shop towels respectively, the scheduled quota increases for those years will only allow Pakistan to increase its imports over 1998 levels by 2.72 million shop towels in 2000 and by an additional 3 million shop towels in 2001. The additional volumes of shop towel imports from Pakistan that will enter the United States in these years as a result of these quota increases represent 0.5 percent and 1.1 percent, respectively, of total apparent consumption in 1998. Given that demand can be expected to grow at least moderately in 2000 and 2001, and given that the domestic industry now occupies only a relatively small share of the market,¹¹ these very small additional volumes from Pakistan are not likely to have any discernible adverse volume or price effects on the domestic industry, even though there is a reasonable degree of substitutability between imported and domestic shop towels.¹² In addition, I would add that the likely subsidy rate for Pakistan is a relatively small 5.17 percent. The small size of this subsidy rate, when considered in conjunction with the likely very small levels of additional volumes that will result from revocation of the order, indicate that revocation of the order on Pakistan will not have any discernible adverse price impact on the domestic industry.

⁹ CR at I-17, PR at I-13.

¹⁰ Pakistan filled its quota in 1982 and requested two quota increases in 1983. CR at I-17, PR at I-12.

¹¹ The domestic industry's market share was 33.4 percent in 1998 and 25.4 percent in interim 1999. CR and PR at Table I-1.

¹² Because the non-subject imports occupy more than half of the market currently, CR and PR at Table I-1, and because they are reasonably substitutable with the subject imports from Pakistan, it can be expected the bulk of the likely additional sales of the subject imports from Pakistan will be made at the expense of the non-subject producers rather than the domestic industry.

Accordingly, I find that any likely increase in the volume of the subject imports from Pakistan will be very small in the reasonably foreseeable future. Furthermore, any minimal potential price impact on the domestic industry is diluted by the significant presence of non-subject imports in the U.S. market, which would compete directly with the subject imports and the domestic industry, and by the small size of the likely margins for Pakistan. Consequently, I find that the subject imports from Pakistan are not likely to have a discernible adverse impact on the domestic industry if the order is revoked. I have, therefore, not cumulated the subject imports from Pakistan with the subject imports from Bangladesh and China for purposes of my analysis in this review.

C. The Subject Imports from Bangladesh Are Likely to Have A Discernible Adverse Impact on the Domestic Industry Within the Reasonably Foreseeable Future If the Order is Revoked

I determine, however, that the subject imports from Bangladesh are likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering Bangladesh is revoked. Like Pakistan, the subject imports from Bangladesh are currently limited by a quota arrangement with the United States, which is scheduled to increase by 10.15 percent in 2000 and by an additional 10.15 percent in 2001. Moreover, like Pakistan, the record indicates that Bangladesh filled its 1998 quota level completely and that it was clearly on track to fill its 1999 quota as well.¹³ Given this, I find that Bangladesh, like Pakistan, is likely to fill all of the quota increases that occur in 2000 and 2001.

Bangladesh's current quota levels are substantially larger than Pakistan's quota levels, however. In 1999, the quota for Bangladesh allowed Bangladesh to import 65 million shop towels, which was more than twice the size of Pakistan's quota levels. As a result, the likely increases in import volumes that can be expected from Bangladesh in 2000 and 2001 because of the quota increases are significantly larger than those from Pakistan. In particular, the likely volume increases from Bangladesh will equal approximately 6.6 million shop towels in 2000 and 13.9 million shop towels in 2001. The additional volumes of shop towel imports from Bangladesh that will enter the United States as a result of these quota increases represent 1.3 percent and 2.8 percent, respectively, of total apparent consumption in 1998. Although demand will be likely to continue to grow at a moderate rate in 2000 and 2001 and although the impact of these imports on the industry will be mitigated by the fact that the domestic industry now occupies only a relatively small share of the market,¹⁴ these additional volumes are large enough for me to conclude that they will have at least a discernible (although not material) adverse volume and price impact on the domestic industry in this market.

In reaching this conclusion, I have paid particular attention to the fact that one of the subject producers in Bangladesh has a significant dumping margin and that the pricing comparison data indicate the Bangladeshi imports have been priced lower than those from Pakistan on a significant number of occasions.¹⁵ In light of the fact that there will also likely be an increase in the volume of subject imports from Bangladesh in the reasonably foreseeable future, I find that these factors indicate that the subject imports from Bangladesh will have a discernible adverse price and volume impact on the industry as a result of revocation of the order.¹⁶

¹³ Bangladesh filled 87 percent of its 1999 quota by October 1999.

¹⁴ CR and PR at Table I-1.

¹⁵ CR and PR at Tables V-1 & V-2.

¹⁶ While the issue is somewhat close for Bangladesh, I note that the record clearly does not warrant a finding
(continued...)

D. Exercise of Discretion Not to Cumulate the Subject Imports from Bangladesh and China

Although I find that the subject imports from Bangladesh or China are likely to have a discernible adverse impact on the domestic industry as a result of revocation of the order, I have chosen not to exercise my discretion to cumulate the subject imports from Bangladesh and China for purposes of my analysis in this review. As an initial matter, I note that the record does indicate that the domestically produced shop towels and the subject merchandise from Bangladesh and China are likely to be reasonably interchangeable, to be sold throughout the United States in similar channels of distribution, and to be simultaneously present in the market upon revocation of the orders.

However, I also examine other significant conditions of competition in the market when assessing whether it would be appropriate to exercise my discretion to cumulate in sunset reviews. The quota arrangements covering shop towels imports from Bangladesh and China are a significant condition of competition in these reviews. In this regard, the record indicates that the likely increases in the volume of subject imports from China under these quotas would be significantly higher than those for Bangladesh. If the orders are revoked, the volume of subject imports from China would likely increase sharply, given the restraining effect of the order and the significant unused quota allocation, whereas subject imports from Bangladesh would likely continue to increase steadily in accordance with its quota growth rates. Accordingly, the subject imports from these two countries would be likely to exhibit significantly different volume trends in the reasonably foreseeable future. In addition, the likely margins found for China are significantly higher than those found for most Bangladeshi producers in this review, which suggests that the Chinese producers may be more aggressive in their pricing practices upon revocation of the order than the Bangladeshi producers. Accordingly, I exercise my discretion not to cumulate the subject imports from Bangladesh and China.

¹⁶ (...continued)

of no discernible adverse impact for China. China is currently subject to a quota arrangement (like Bangladesh and Pakistan) but it has exported only minimal levels of shop towels to the United States under that quota. Because the current quotas applicable to China's imports of shop towels allow China to import slightly more than 29 million shop towels in 2000 and 2001, which is equivalent to 5.8 percent of apparent domestic consumption, I believe that it is likely that these additional volumes from China would be likely to have at least a discernible adverse impact on the domestic industry given the conditions of competition in this market. Moreover, the Chinese producers are subject to very significant dumping margins, which suggests that they would compete in an aggressive fashion with respect to price in this market if the orders were revoked.

II. REVOCATION OF THE COUNTERVAILING DUTY ORDER ON SHOP TOWELS FROM PAKISTAN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed in detail above, I determined that the subject imports from Pakistan are not likely to have a discernible adverse impact on the domestic industry if the countervailing duty order covering these imports were revoked. Accordingly, I have not cumulated the subject imports from Pakistan with the other subject imports for purposes of my sunset analysis. For the same reasons that are discussed above, I find that the subject imports from Pakistan are not likely to have significant volume or price impact on the condition of the domestic industry after revocation of the order covering Pakistan. Accordingly, I find that revocation of the order on the subject imports from Pakistan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SHOP TOWELS FROM BANGLADESH IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports from Bangladesh

In evaluating the likely volume of imports of subject merchandise if an antidumping order is revoked, the statute directs the Commission 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.¹⁷ 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.¹⁸

In the original determination concerning Bangladesh, the Commission found that the domestic industry was materially injured by reason of imports of shop towels from Bangladesh that were sold at less than fair value.¹⁹ The Commission found that the Bangladeshi share of the U.S. market had increased from 0.5 percent in 1988 to 9.7 percent in the first nine months of 1991.²⁰ Accordingly, the Commission found that the volume of the subject imports from Bangladesh was significant.

Although an antidumping order is currently in place against the Bangladeshi imports, imports from Bangladesh have maintained a substantial and continuing presence in the U.S. market. Total imports of shop towels from Bangladesh were 57.9 million towels in 1997, 60.3 million towels in 1998 and 42.3

¹⁷ 19 U.S.C. § 1675a(a)(2).

¹⁸ 19 U.S.C. § 1675a(a)(2)(A)-(D).

¹⁹ USITC Pub. 2487 at 5.

²⁰ USITC Pub. 2487 at 16, I-39, I-15 (1.8 million shop towels from Bangladesh in 1988, 4.4 million in 1989, 28.0 million in 1990, and 25 million in the first nine months of 1991, compared with 22.2 million in the comparable period in 1990).

million towels in the first six months of 1998.²¹ In addition, the market share of the Bangladeshi imports has remained at or around the 13 percent level throughout the same period. Although these volumes are substantial, I do not find that the current volume levels indicates that there will be a significant adverse volume effect on the industry if the order covering Bangladesh were to be revoked.

The Bangladeshi producers currently have significant levels of unused capacity that could be used to increase the shipments of merchandise to the United States in the absence of a quota. However, their ability to increase the exports to the United States is severely hampered by the existence of the current quota arrangements, which limit the Bangladeshi producers to making additional shipments of approximately 6.6 million shop towels in 2000 and 13.9 million shop towels in 2001. As I discussed previously, it is clear that Bangladesh will likely utilize the quota increase fully in both 2000 and 2001. However, even if the Bangladeshi producers filled the increases in both 2000 and 2001, the additional volumes likely to enter the United States under these quota limitations represent only 1.3 percent and 2.8 percent, respectively, of total apparent consumption in 1998. This volume increase, while it may be at a level that begins to result in a discernible impact on the industry, is clearly not at a level which would have a material impact on the industry, especially given that the record indicates that there is only a moderate degree of substitutability between the domestic and subject merchandise.

In this regard, I note that demand can be expected to continue to grow at a moderate rate in 2000 and 2001. This growth in demand will significantly mitigate the already small adverse impact that the subject Bangladeshi imports are likely to have on domestic prices. Moreover, the impact of any additional volumes of imports from Bangladesh will be further minimized by the fact that the domestic industry now occupies only a relatively small share of the market,²² while non-subject imports occupy the majority of the market. Accordingly, any volume and market share increases will more directly impact the volume and market share levels of non-subject imports than those of the domestic industry. In my mind, these two conditions of competition in the market minimize the significance of any Bangladeshi volume increases likely to result from revocation of the order.

Accordingly, I find that the likely volume of subject imports from Bangladesh would not be significant upon revocation of the order. This finding is consistent with the economic analysis of the Commission's Office of Economics, which indicated that revocation of the orders subject to this review would have only a minimal impact on domestic output in either a low demand growth or high demand growth scenario.²³

B. Likely Price Effects of Subject Imports from Bangladesh

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the

²¹ CR and PR at Table I-1.

²² The domestic industry's market share was 33.4 percent in 1998 and 25.4 percent in interim 1999. CR and PR at Table I-1.

²³ CR at II-16; PR at II-11. The staff found that revocation of the order for all three countries subject to this review would be likely to reduce current domestic output by *** percent in a low-growth scenario and by only *** percent in a high growth scenario. Id.

United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.²⁴

In the original Bangladesh determination, the Commission found that the subject imports from Bangladesh had substantially undersold the domestic merchandise.²⁵ More particularly, the Commission found underselling in all instances of sales of all-cotton 18 x 18 inch towels to laundry services and to distributors, and found underselling in 39 of 44 comparisons of sales of 18 x 18 inch and 18 x 30 inch all cotton towels to laundry services and distributors.²⁶ Accordingly, the Commission found that the subject imports had significant price effects on domestic prices.

Nonetheless, I find that it is unlikely that the subject imports from Bangladesh will have a significant adverse impact on domestic prices within the reasonably foreseeable future if the order were revoked. The price comparison data obtained in these five-year reviews is very limited and of limited probative value. Because the industry did not produce all cotton shop towels in significant volumes until 1999 and because all of the subject imports consist of all cotton shop towels, the Commission was only able to obtain comparable price comparisons between the subject and domestic merchandise for the first half of 1999.²⁷ This limited data indicates, however, that the Bangladeshi producers have significantly oversold the domestic producers during the time period for which valid comparisons are available.

Moreover, because of the limited probative value of the price comparison data obtained by the Commission staff, I have also examined average unit values for the Bangladeshi producers in comparison to domestic values. Although the average unit values for the Bangladeshi are significantly lower than the average unit values of the domestic industry's domestic shipments, I believe that this reflects, in part, the difference in pricing between the domestic industry's cotton blend towels and the all cotton imports of the Bangladeshi producers. Moreover, although the subject imports from Bangladesh exhibited significant levels of underselling on an average unit basis, the average unit prices of Bangladeshi imports declined at a much less significant rate during 1997 and 1998 than the average unit values of the domestic product.²⁸ Finally, as I indicate above in my discussion of the likely volume effects of the imports from Bangladesh, I find that the minimal additional volumes that are likely to enter the United States as a result of revocation will have only a minimal impact on domestic prices.

Accordingly, I find that the subject imports from Bangladesh would not be likely to have a significant adverse effect on domestic prices within a reasonably foreseeable time if the order were revoked. This finding is consistent with the economic analysis of the Commission's Office of Economics, which indicated that revocation of the orders subject to this review would have only a minimal impact on domestic prices in either a low demand growth or high demand growth scenario.²⁹

²⁴ 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.

²⁵ USITC Pub. 2487 at 18.

²⁶ USITC Pub. 2487 at 18-19.

²⁷ The record suggests to me that it is not appropriate to rely on comparisons between all cotton shop towels and cotton blend shop towels because cotton blend towels are a more valuable towel due to their higher durability and washability when compared to all cotton towels.

²⁸ CR and PR at Table I-1.

²⁹ CR at II-16; PR at II-11. The staff found that revocation of the order for all three countries subject to this review would be likely to reduce current domestic prices by *** percent in a low-growth scenario and by ***

(continued...)

C. *Likely Impact of Subject Imports*

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.³⁰ 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.³¹

As instructed by the statute, I have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if those orders are revoked.³² Generally, the domestic industry's financial condition has deteriorated somewhat since the original period of investigation. The industry's market share has declined since the original period and the industry now has a relatively small share of the domestic market.³³ In addition, the industry's significant financial indicators, such as its net sales, production levels, and profitability levels, have been in decline or have remained low since the original period of investigation.³⁴

Nonetheless, although the industry is now in a somewhat weakened condition, the record indicates that the small additional volumes of shop towels from Bangladesh that are likely to enter the market upon revocation of the order will have not have a material adverse impact on the industry. As I discussed above, the record of this review indicates that the subject imports from Bangladesh 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,

²⁹ (...continued)

percent in a high growth scenario. *Id.*

³⁰ 19 U.S.C. § 1675a(a)(4).

³¹ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding shop towels from Bangladesh, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order on Bangladesh were revoked ranges from 2.72 to 42.31 percent (64 Fed. Reg. at 42660).

³² The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

³³ CR and PR at Table I-1.

³⁴ CR and PR at Table I-1.

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 covering the subject imports from Bangladesh is revoked. This finding is consistent with the economic analysis of the Commission's Office of Economics, which indicates that revocation of the orders subject to this review would have only a minimal impact on domestic revenues in either a low demand growth or high demand growth scenario.³⁵

IV. CONCLUSION

For the reasons stated above, I determine that revocation of the antidumping duty order on shop towels from Bangladesh and the countervailing duty order on shop towels from Pakistan would not be likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.

³⁵ CR at II-16; PR at II-11. The staff found that revocation of the order for all three countries subject to this review would be likely to reduce current domestic output by *** percent in a low-growth scenario and by *** percent in a high growth scenario. Id.