

UNITED STATES INTERNATIONAL TRADE COMMISSION

SODIUM THIOSULFATE FROM CHINA, GERMANY,
AND THE UNITED KINGDOM

Investigations Nos. 731-TA-466, 465, and 468 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3279, February 2000)

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SODIUM THIOSULFATE FROM CHINA, GERMANY, AND THE UNITED KINGDOM

DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty orders on sodium thiosulfate from China, Germany, and the United Kingdom 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 July 1, 1999 (64 F.R. 35687, July 1, 1999) and determined on October 1, 1999 that it would conduct expedited reviews (64 F.R. 55959, October 15, 1999). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on February 17, 2000.

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

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering imports of sodium thiosulfate from China, Germany, and the United Kingdom 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. BACKGROUND

In February 1991, the Commission determined that an industry in the United States was being materially injured by reason of imports of sodium thiosulfate from China, Germany, and the United Kingdom that were being sold at less than fair value (“LTFV”).¹ The Department of Commerce issued antidumping duty orders in February 1991 on imports of sodium thiosulfate from China, Germany, and the United Kingdom.²

On July 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on sodium thiosulfate from China, Germany, and the United Kingdom would likely lead to continuation or recurrence of material injury.³

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.⁴ 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 only response to the Notice of Institution came from a domestic producer, Calabrian Corporation.⁵ No respondent interested party filed a response.⁶

On October 1, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate but that the respondent interested party group response was

¹ Sodium Thiosulfate from the Federal Republic of Germany, the People’s Republic of China, and the United Kingdom, Invs. Nos. 731-TA-465, 466, and 468 (Final), USITC Pub. 2358 (Feb. 1991) (“Original Determinations”).

² 56 Fed. Reg. 6623 (Feb. 19, 1991).

³ 64 Fed. Reg. 35687 (July 1, 1999).

⁴ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁵ Calabrian Response to Notice of Institution, Aug. 20, 1999 (“Calabrian’s Response”).

⁶ Nor did any other person file a submission under Commission Rule 207.61(d).

inadequate.⁷ Pursuant to section 751(c)(3)(B) of the Act,⁸ the Commission voted to expedite these reviews.⁹

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.”¹⁰ 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.”¹¹ In its final five-year review determination, Commerce defined the subject merchandise as follows:

The merchandise covered by the antidumping duty orders includes all grades of sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial waste water, from the United Kingdom, Germany, and the People’s Republic of China (“PRC”). The chemical composition of sodium thiosulfate is Na₂S₂O₃. Currently, subject merchandise is classifiable under item number 2832.30.1000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The above HTSUS subheading is provided for convenience and customs purposes. The written description remains dispositive.

There have been no scope rulings for the above orders on imports of sodium thiosulfate from the subject countries.¹²

Sodium thiosulfate (Na₂S₂O₃) is a reducing agent that is used to dechlorinate water and as a fixing agent in photography.¹³ While it is sold in solid and liquid form, domestic producers typically sell it as a solid.¹⁴ In 1998, about *** percent of sodium thiosulfate was used for water treatment.¹⁵

⁷ See Explanation of Commission Determination on Adequacy in Sodium Thiosulfate from the China, Germany, and the United Kingdom, Invs. Nos. 731-TA-465, 466, and 468 (Final). See also 64 Fed. Reg. 55959 (Oct. 1, 1999).

⁸ 19 U.S.C. § 1675(c)(3)(B).

⁹ On October 1, 1999, the Commission established a schedule for the conduct of the expedited five-year reviews. 64 Fed. Reg. 55959 (Oct. 15, 1999). Subsequently, the Department of Commerce extended the date for its final results in the expedited reviews, from October 29, 1999 to January 27, 2000. 64 Fed. Reg. 62167 (Nov. 16, 1999). The Commission, therefore, revised its schedule to conform with Commerce’s new schedule.

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 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).

¹² 64 Fed. Reg. 73516 (Dec. 30, 1999).

¹³ Confidential Staff Report (Jan. 20, 2000) at I-6 (“CR”), Public Staff Report (Jan. 20, 2000) at I-5 (“PR”).

¹⁴ Id.

¹⁵ Id.

In the original investigations, the Commission determined that the domestic like product was all sodium thiosulfate, regardless of form or grade.¹⁶ Calabrian argues that the Commission should continue to define the domestic like product in the same fashion.¹⁷ There is no new information obtained during these five-year reviews that would suggest a reason for departing from the Commission's original definition of the domestic like product.¹⁸ Accordingly, we define the domestic like product as all sodium thiosulfate, regardless of form or grade.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."¹⁹

In the original determinations concerning China, Germany, and the United Kingdom, the Commission defined the domestic industry as all producers of sodium thiosulfate.²⁰ Calabrian states that the Commission should define the domestic industry as it did in the original investigations.²¹ There is no new information obtained during these five-year reviews that would suggest a reason for departing from the Commission's original definition of the domestic industry.²² Given our definition of the domestic like product, we define the domestic industry to include all domestic producers of sodium thiosulfate.

III. CUMULATION

A. Framework²³

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

¹⁶ Original Determinations at 5-6.

¹⁷ Calabrian Response at 6; Comments of Calabrian Corporation, Jan. 27, 2000, at 2 ("Calabrian's Comments").

¹⁸ See CR at I-6 to I-7, PR at I-5 to I-6.

¹⁹ 19 U.S.C. § 1677(4)(A).

²⁰ Original Determinations at 5-7.

²¹ Calabrian's Response at 6.

²² See CR at I-6 to I-7, PR at I-5 to I-6.

²³ Chairman Bragg does not join Section III.A of this 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, Invs. 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 a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.²⁴

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.²⁵ 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.²⁶ 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.²⁷

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.²⁸ Only a “reasonable overlap” of competition is required.²⁹ In five-year reviews, the relevant inquiry is whether there would likely be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.³⁰

²⁴ 19 U.S.C. § 1675a(a)(7).

²⁵ *Id.*

²⁶ SAA, H.R. Rep. No. 103-316, Vol. I (1994).

²⁷ Commissioner Askey notes that the Act clearly states that the Commission is *precluded* from exercising its discretion to cumulate 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, the Commission must focus on whether the imports will impact the condition of the industry discernibly 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. 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, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

²⁸ 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. *See, e.g., Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

²⁹ *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).

³⁰ *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1172 (Ct. Int’l Trade 1992) (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends

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Here, the statutory requirement that all of the sodium thiosulfate reviews be initiated on the same day is satisfied. For the reasons discussed below, we determine to cumulate imports from China, Germany, and the United Kingdom.^{31 32}

B. Reasonable Overlap of Competition³³

The Commission concluded in the original investigations that domestically produced sodium thiosulfate and the subject merchandise were fungible³⁴ as most purchasers in the original investigations indicated that the subject imports were of comparable quality to the domestic product.³⁵ In the original investigations, subject imports of sodium thiosulfate and the domestic product were simultaneously present in the market, sold through the same channels of distribution, and sold nationwide.³⁶ The available evidence in the current record suggests that subject merchandise and domestically produced sodium thiosulfate remain fungible and that the subject imports would compete with each other and the domestic like product if the orders were revoked. Consequently, we find that there would likely be an overlap of competition between the subject imports and the domestic like product as well as among the subject imports from the three countries.

C. Other Considerations³⁷

³⁰ (...continued)

among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

³¹ No party has argued that subject imports from either China, Germany, or the United Kingdom “are likely to have no discernible adverse impact” on the domestic industry and we see no basis in the record to make such a finding. For a discussion of Vice Chairman Miller’s and Commissioner Hillman’s and Commissioner Koplan’s analytical framework regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Invs. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Commissioner Koplan’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 303-TA-13 (Review), 701-TA-249 (Review), and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplan Regarding Cumulation).

³² Commissioners Askey and Okun note that the market for sodium thiosulfate is price sensitive and sodium thiosulfate is a commodity-like product. Accordingly, they find that if the orders are revoked, even small increases in the volumes from each of the subject countries would have a discernible adverse impact on the domestic industry.

³³ Chairman Bragg joins in the majority’s analysis and finding of a likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product if the orders are revoked.

³⁴ Original Determinations at 11.

³⁵ CR at I-7, PR at I-6.

³⁶ CR at I-7 to I-8, PR at I-6.

³⁷ Chairman Bragg does not join Section III.C of this opinion. Having found a likely reasonable overlap of competition, Chairman Bragg thus turns to the issue of discernible adverse impact. Chairman Bragg incorporates an assessment of significant conditions of competition, such as the substantial capacity in the subject countries and the export orientation of the foreign industries evident in these reviews, in her analysis of the likelihood of no

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As discussed above, we have also taken into account other significant conditions of competition that are likely to prevail if the orders under review were revoked in evaluating whether to cumulate imports. In this regard, we have considered the substantial capacity in the subject countries and the export orientation of the foreign industries.³⁸ No evidence in the record suggests that any of the industries in the subject countries has undergone any significant change since the original investigations,³⁹ and if the orders were revoked, we would expect competitive conditions to be similar to the conditions in existence prior to imposition of the orders. For these reasons, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from all three countries in these reviews.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON SODIUM THIOSULFATE WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁴⁰ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁴¹ Thus, the likelihood standard is prospective in nature.⁴² 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.”⁴³ 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].”^{44 45}

³⁷ (...continued)

discernible adverse impact if each of the orders under review is revoked. Chairman Bragg finds that revocation of each of the orders under review will likely result in a discernible adverse impact on the domestic industry. Accordingly, Chairman Bragg cumulates all subject imports in these grouped reviews.

³⁸ CR at I-20, PR at I-16.

³⁹ CR at I-18 to I-20, PR at I-16.

⁴⁰ 19 U.S.C. § 1675a(a).

⁴¹ 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.

⁴² While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁴³ 19 U.S.C. § 1675a(a)(5).

⁴⁴ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or
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Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁴⁶ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{47 48}

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”⁴⁹ We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating

⁴⁴ (...continued)

differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” Id.

⁴⁵ In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplán 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, this 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.

⁴⁶ 19 U.S.C. § 1675a(a)(1).

⁴⁷ Id. 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.

⁴⁸ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce stated in its expedited five-year review determination that it has not issued any duty absorption finding in this case. 64 Fed. Reg. 73013 (Dec. 29, 1999).

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

parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”⁵⁰ As noted above, no respondent interested party responded to the Commission’s notice of institution. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the record in the Commission’s original investigations on sodium thiosulfate, limited information collected by the Commission since the institution of these reviews, and information submitted by a domestic producer.

For the reasons stated below, we determine that revocation of the antidumping duty orders on sodium thiosulfate from China, Germany, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵¹

Available information does not suggest any significant changes in the conditions of competition since the original investigations. Sodium thiosulfate is a commodity product that is highly substitutable with the domestic product.⁵² In addition, the record in the original investigations indicated that there were no viable substitutes for sodium thiosulfate for its uses in water dechlorination, oil field services, and photographic services, and it also accounts for a relatively small share of the total cost of these services.⁵³ Thus, overall demand for sodium thiosulfate is fairly unresponsive to changes in price; that is, demand is inelastic.⁵⁴ Consequently, the sodium thiosulfate market is price sensitive.⁵⁵ In a price sensitive market, small volumes can have a relatively large impact on price.

Since the original investigations, U.S. consumption of sodium thiosulfate has increased steadily, as have U.S. prices.⁵⁶ U.S. production is estimated to have increased from *** pounds to *** pounds from 1989 to 1998.⁵⁷ Since the imposition of the antidumping duty orders in 1991, domestically produced sodium thiosulfate has mostly replaced the subject imports in the U.S. market. Domestic producers accounted for *** percent of the market in the first 9 months of 1990 and *** percent in 1998.⁵⁸ Nonsubject imports were responsible for only *** percent of the market in the first 9 months of 1990 and

⁵⁰ SAA at 869.

⁵¹ 19 U.S.C. § 1675a(a)(4).

⁵² Calabrian’s Comments at 4; CR at I-7, PR at I-6; Original Determinations at 17.

⁵³ Original Determinations at 16-17.

⁵⁴ *Id.*

⁵⁵ CR at I-17, PR at I-14; Original Determinations at 16-17.

⁵⁶ CR at I-11 to I-12, PR at I-9.

⁵⁷ CR at Table I-1, PR at Table I-1. We rely on *** information for 1998 because it appears to be more accurate than calculations based upon numbers in Calabrian’s Response. See CR at I-10 to I-11, PR at I-7.

⁵⁸ CR at Table I-4, PR at Table I-4.

*** percent in 1998.⁵⁹ Thus, the market share of the nonsubject imports increased only modestly following the imposition of antidumping duties.

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

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁶⁰ 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.⁶¹

Prior to the antidumping duty orders, the subject imports were able to capture a significant share of the U.S. market;⁶² however, following imposition of the antidumping duty orders, the volume of subject imports declined significantly. Specifically, subject imports from the U.K. fell precipitously after imposition of the antidumping duty orders.⁶³ Subject imports from Germany began falling in 1989 before the antidumping duty order was in place and continued to fall through 1991 when the order issued.⁶⁴ Imports from China initially rose in 1991 after the order issued, then fell in 1992 and fell more sharply after Commerce’s administrative review of the margin increased the margin from 27.57 percent to 148.42 percent in 1993.⁶⁵ Prior to the orders in 1990, the market penetration for cumulated subject imports from China, Germany, and the U.K. was *** percent, but in 1998, subject imports accounted for only *** percent of U.S. apparent consumption.⁶⁶ The record does not indicate any other substantial changes in the conditions of competition during this period. Therefore, we conclude that the orders were primarily responsible for the reduction in exports of subject merchandise to the United States.

There is limited information concerning the industries in the three subject countries because no foreign producers responded to the Commission’s notice of institution. Consequently, there are no current data on capacity, production, or shipments of sodium thiosulfate in any of those countries, and limited data

⁵⁹ *Id.*

⁶⁰ 19 U.S.C. § 1675a(a)(2).

⁶¹ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁶² Original Determinations at 16.

⁶³ CR at Figure I-1, PR at Figure I-1.

⁶⁴ *Id.*

⁶⁵ *Id.*; CR at I-4 n.9, PR at I-4 n.9.

⁶⁶ CR at Table I-4, PR at Table I-4.

on exports.⁶⁷ There are five producers of sodium thiosulfate in Germany and one in the U.K.⁶⁸ There are 14 producers in China.⁶⁹ During the original investigations, one of these Chinese producers, SFMW, was reported to have a production capacity of ***, an amount equal to approximately *** of the apparent consumption in the United States in 1998.⁷⁰ Similarly, during the original investigations, the producer in the U.K., William Blythe & Co., Ltd., had annual capacity of *** pounds.⁷¹ The record thus reflects historical substantial available capacity to increase exports to the U.S. market.⁷² Based on the limited information in the record, we find that these firms would be able to increase exports to pre-order levels if the antidumping duty orders are revoked.⁷³

Based on the foregoing, we find it likely that producers in the three subject countries would significantly increase exports to the U.S. market if the orders were revoked.^{74 75} Consequently, based on the facts available, we conclude that, absent the restraining effect of the orders, subject imports would likely increase to a significant level.

D. Likely Price Effects

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.⁷⁶

The record in these expedited reviews contains limited pricing data for the U.S. market. During the original investigations, the Commission found that the subject imports “easily substituted for the domestic

⁶⁷ CR at I-18, PR at I-16.

⁶⁸ CR at I-20, PR at I-16.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ CR at Table I-5, PR at Table I-5. At the time of the initial investigations, William Blythe & Co., Ltd., exported about *** of its production and operated at under *** percent capacity utilization. Id. No more current information suggests that its export orientation has changed.

⁷² Chairman Bragg infers that, at a minimum, the current production capacities of SFMW and William Blythe & Co., Ltd., remain at the levels evidenced during the original investigations.

⁷³ Chairman Bragg infers that, at a minimum, these firms will increase exports of subject merchandise to the United States to pre-order levels in the event of revocation. See infra n.75. Chairman Bragg further notes that the SAA states that “[i]f the Commission finds that the pre-order conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury.” SAA at 884.

⁷⁴ See SAA at 890. See also SAA at 884 (stating that if the Commission finds that pre-order conditions are likely to recur, it is reasonable to find a likelihood of continuation or recurrence of material injury).

⁷⁵ Chairman Bragg infers that, upon revocation, subject producers would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission’s original determinations. Based upon the record in these reviews, Chairman Bragg finds that this historical emphasis will likely result in significant volumes of subject imports into the United States if the orders are revoked.

⁷⁶ 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.

product.” The Commission also found that there are no close substitutes for sodium thiosulfate, indicating that demand was price inelastic, i.e., demand did not vary much with changes in prices.⁷⁷ Consequently, the market for sodium thiosulfate was found to be price sensitive.⁷⁸ In the context of these competitive conditions, the Commission found indications of significant adverse price effects due to the subject imports.⁷⁹ The Commission found underselling by the subject imports to be significant as the subject imports undersold the domestic product by margins up to 30 percent, and there was uncontested evidence of price depression for one form of sodium thiosulfate.⁸⁰ In 1998, notwithstanding imposition of the antidumping duty orders, the average unit value for the subject imports was *** of the average unit value of the domestic product.⁸¹

Consequently, based on the facts available, we find it likely that, absent the antidumping duty orders, competitive conditions would return to those prevailing prior to imposition of the orders.⁸² We find that, given the fungible nature of sodium thiosulfate, the incentive to maximize the use of available capacity, and the record evidence of likely underselling, even in face of the orders, it is likely that, if the orders were revoked, cumulated subject imports would again be likely to enter the United States at prices that would significantly depress or suppress U.S. prices. Thus, we find that revocation of the antidumping duty orders would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the 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.⁸³ 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.⁸⁴ As required by the statute, we have considered the extent

⁷⁷ Original Determinations at 16.

⁷⁸ Id.

⁷⁹ Original Determinations at 15.

⁸⁰ Id.

⁸¹ Compare CR at Table I-2 with CR at Table I-3, PR at Table I-2 with PR at Table I-3. While the average unit values may be at different levels of trade and are not necessarily sales prices, we find this disparity significant.

⁸² Chairman Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission’s original determinations; as a result, Chairman Bragg finds that subject imports will have significant negative price effects in the U.S. market if the orders are revoked. Chairman Bragg notes in this regard that the SAA states that “[i]f the Commission finds that the pre-order conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury.” SAA at 884.

⁸³ 19 U.S.C. § 1675a(a)(4).

⁸⁴ Id. Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of
(continued...)

to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.⁸⁵

In the original investigations, the Commission found that the domestic industry suffered material injury by reason of a significant increase in the volume of LTFV imports of sodium thiosulfate that were underselling the domestic like product and capturing a significant share of the U.S. market.⁸⁶ The domestic industry's production and shipments declined during the original period of investigation.⁸⁷ The Commission also noted significant underutilization of capacity and a decline in the number of production workers.⁸⁸ The Commission described the domestic industry's financial performance as "dismal" with the industry unable to recoup a reasonable return on its investment.⁸⁹

The orders had a positive effect on industry performance. As already noted, domestic producers increased their market share from *** percent in the first 9 months of 1990 to *** percent in 1998 while the volume of subject imports declined precipitously.⁹⁰ Domestic production increased *** percent from 1989 to 1998⁹¹ while prices of the domestic producers' shipments stabilized or increased.⁹² The domestic industry's capacity utilization also rose from *** percent in 1989 to somewhat under *** percent in 1998.⁹³

⁸⁴ (...continued)

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 determinations, Commerce assigned likely margins for all manufacturers in China at 148.42 percent. The likely margins for all producers in Germany is 100.40 percent and 50.13 percent for producers in the United Kingdom. 64 Fed. Reg. 73515, 73518 (Dec. 30, 1999).

⁸⁵ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the orders are 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.

⁸⁶ Original Determinations at 15-16.

⁸⁷ Original Determinations at 7.

⁸⁸ Original Determinations at 8.

⁸⁹ 64 Fed. Reg. 73516 (Dec. 30, 1999).

⁹⁰ CR at Table I-4, PR at Table I-4.

⁹¹ CR at I-11, PR at I-7. This is based upon *** data, which, as noted, we found to be more reliable.

⁹² CR at I-11, PR at I-9.

⁹³ CR at I-11, PR at I-7 to I-8.

Furthermore, a fourth domestic firm has begun production of sodium thiosulfate since the original investigations.^{94 95 96}

We find it likely that revocation of the orders would result in a significant increase in the volume of subject imports at prices significantly lower than those of the domestic product. Given that the market is price sensitive, even small volumes of the subject imports will have a significant adverse impact on the domestic industry. Hence, such increased imports would likely depress the industry's prices significantly, and have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the limited record in these reviews, we conclude that, if the antidumping duty orders are revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on sodium thiosulfate from China, Germany, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

⁹⁴ CR at I-8, PR at I-7.

⁹⁵ The limited information in these reviews does not permit a determination on whether the domestic industry is vulnerable to injury if the orders are revoked. 19 U.S.C. § 1675a(a)(1)(C). See SAA at 885 (“The term ‘vulnerable’ relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury. . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.”).

⁹⁶ Based upon the limited record in these grouped reviews, Chairman Bragg does not find that the domestic industry is in a “weakened state,” as contemplated by the vulnerability criterion of the statute. 19 U.S.C. § 1675a(a)(1)(C).

