UNITED STATES INTERNATIONAL TRADE COMMISSION

FRESH AND CHILLED ATLANTIC SALMON FROM NORWAY
Investigations Nos. 701-TA-302 (Review) and 731-TA-454 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3282, February 2000)

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DETERMINATIONS

On the basis of the record[1] 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 countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway 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. 35680, July 1, 1999) and determined on October 1, 1999 that it would conduct expedited reviews (64 F.R. 55957, October 15, 1999). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on February 24, 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 countervailing and antidumping duty orders covering fresh and chilled Atlantic salmon from Norway 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 April 1991, the Commission determined that an industry in the United States was being materially injured by reason of imports of fresh and chilled Atlantic salmon from Norway that Commerce had determined to be subsidized and sold in the United States at less than fair value.[1] On April 12, 1991, Commerce issued antidumping and countervailing duty orders on imports of fresh and chilled Atlantic salmon from Norway.[2]

The Commission's final determination was appealed to the U.S. Court of International Trade. In an October 23, 1992 opinion, the Court reversed and remanded the determination.[3] The Commission issued a remand determination in which it again concluded that the domestic industry was experiencing present material injury by reason of the subject imports,[4] and the Court affirmed that determination on remand.[5] On July 1, 1999, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the countervailing and antidumping duty orders on fresh and chilled Atlantic salmon from Norway would likely lead to continuation or recurrence of material injury.[6]

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses 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

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[1] Fresh and Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Final), USITC Pub. 2371 (Apr. 1991) ("Original Determination").

[2] 56 Fed. Reg. 14920 (Apr. 12, 1991).

[3] The Commission's determination also was challenged before a GATT panel. The panel found that the Commission's decision was not inconsistent with the United States' obligations under the GATT or the 1979 Antidumping or Subsidies and Countervailing Measures Codes. GATT Committee on Antidumping Practices, United States -- Imposition of Antidumping Duties on Imports of Fresh and Chilled Atlantic Salmon from Norway: Report on the Panel Par. 555 (Nov. 30, 1992); GATT Committee on Subsidies and Countervailing Measures, United States -- Imposition of Countervailing Duties on Imports of Fresh and Chilled Atlantic Salmon from Norway: Report on the Panel Par. 321 (Dec. 4, 1992).

[4] Fresh and Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Remand), USITC Pub. 2589 (Dec. 1992) ("Remand Determination").

[5] Chr. Bjelland Seafoods A/S v. United States, 19 CIT 35 (Ct. Int'l Trade 1995).

[6] 64 Fed. Reg. 35680 (July 1, 1999).

information requested in a full review.[7] If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In these reviews, the Commission received one response to the notice of institution, with company specific data, on behalf of the Coalition for Fair Atlantic Salmon Trade and several of its members, namely: Atlantic Salmon of Maine; Connors Aquaculture, Inc.; DE Salmon, Inc.; Island Aquaculture Corp.; Maine Aqua Foods, Inc.; Maine Coast Nordic, Inc.; Treat's Island Fisheries; and Trumpet Island Salmon Farm (collectively, "FAST"). The domestic interested party also filed comments on adequacy with the Commission. No other responses to the notice of institution or comments on adequacy were received.[8]

On October 1, 1999, the Commission unanimously voted to conduct expedited reviews in the subject five-year reviews involving fresh and chilled Atlantic salmon.[9] In this regard, the Commission determined that the individual and group domestic interested party responses to its notice of institution were adequate.[10] Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group response was inadequate.[11] The Commission did not find any circumstances that would warrant conducting a full review. The Commission, therefore, determined to conduct an expedited review.[12]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c) of the Act, the Commission defines the "domestic like product" and the "industry."[13] 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."[14] Commerce defined fresh and chilled Atlantic salmon as:

> Atlantic salmon ("Salmo salar") marketed as specified herein; the order excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is whole or

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

[8] Notices of appearance, however, were filed on behalf of the Norwegian Federation of Fish and Aquaculture Industries and the Government of Norway.

[9] See Fresh and Chilled Atlantic Salmon from Norway, 64 Fed. Reg. 55957 (Oct. 15, 1999).

[10] See Fresh and Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 (Review) and 731-TA-454 (Review), Explanation of Commission Determination on Adequacy (Oct. 1999).

[11] Id.

[12] Id.

[13] 19 U.S.C. § 1677(4)(A).

[14] 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (CIT 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (CIT 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon.[15]

Fresh Atlantic salmon is intended exclusively for human consumption as a food product.[16] Salmon farming accounts for all commercial production of Atlantic salmon in the United States, and fresh Atlantic salmon is generally marketed by the producer as a fresh product.[17] The "fresh and chilled" salmon subject to these reviews is distinguished from frozen or otherwise further processed fish.[18] Both U.S. producers and importers sell whole Atlantic salmon in two major channels of distribution: the food service sector and the retail sector (consisting of retail fish markets and supermarkets).[19]

In the original investigations, the Commission defined the domestic like product as fresh and chilled Atlantic salmon, including salmon smolts.[20] No party has argued for a different like product than the one articulated in the original investigations.[21] We find that there is no evidence on the record in these five-year reviews that would suggest a reason for revisiting the Commission's original determination of the domestic like product. Accordingly, consistent with the original determination and Commerce's scope in these reviews, we define the domestic like product as fresh and chilled Atlantic salmon, including salmon smolts.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[22] In accordance with our domestic like product determination, we find the domestic industry to consist of all domestic producers of fresh and chilled Atlantic salmon, including salmon smolts.

No related party issues were discussed in the original determination. FAST, however, asserts that two current U.S. producers, Stolt Sea Farm and Pan Fish (which owns Cypress Island Farm and Northwest

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[15] 65 Fed. Reg. 5584-85 (Feb. 4, 2000); 65 Fed. Reg. 5854-55 (Feb. 7, 2000).

[16] Confidential Staff Report ("CR") at I-9, Public Staff Report ("PR") at I-7.

[17] CR at I-8-9, PR at I-7.

[18] CR at I-8, PR at I-7.

[19] CR at I-10, PR at I-8.

[20] Original Determination at 5, 10. Smolt are salmon in the post-larval stage, during which they migrate to salt-water. CR at I-8, PR at I-7.

[21] FAST, the only party to participate in these reviews, did not address the like product issue in any of its submissions.

[22] 19 U.S.C. § 1677(4)(A).

Sea Farms)[23] are related parties, as defined in section 771(4)(B) of the Act.[24] Both of these producers have imported subject merchandise since 1990.[25] Thus, they are related parties under the Act.

Given the limited information on the record of this expedited review regarding the related parties, there is no evidence that appropriate circumstances exist to exclude either of these producers from the domestic industry. Therefore, we include all producers of the domestic like product in the domestic industry.

III. REVOCATION OF THE COUNTERVAILING AND ANTIDUMPING DUTY ORDERS ON FRESH AND CHILLED ATLANTIC SALMON 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 or subsidization 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."[26] The Statement of Administrative Action ("SAA") states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation {of the order] . . . and the elimination of its restraining effects on volumes and prices of imports."[27] Thus, the likelihood standard is prospective in nature.[28] The statute states that "the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time."[29] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will

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[23] As of October 1, 1997, Pan Fish owned all shares of Cypress. Fresh Atlantic Salmon from Chile, Inv. No. 731-TA-768 (Final), USITC Pub. 3116 (July 1998) at III-1. There is no information on the record in the Chilean investigation or the record in the instant five-year reviews concerning the extent of Pan Fish's ownership of Northwest Sea Farms.

[24] 19 U.S.C. § 1677(4)(B); FAST's Response to the Notice of Institution ("Institution Notice Response") at 2, n.1; FAST's Supplemental Comments at 2.

[25] CR at I-15, PR at I-11-12.

[26] 19 U.S.C. § 1675a.

[27] 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.

[28] 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.

[29] 19 U.S.C. § 1675a(a)(5).

exceed the 'imminent' time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations]."[30] [31]

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."[32] 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.[33] [34]

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."[35] 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

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[30] SAA at 887. Among the factors that the Commission should consider in this regard are "the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities." Id.

[31] 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, 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.

[32] 19 U.S.C. § 1675a(a)(1).

[33] 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.

[34] Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce did not make any duty absorption finding in its expedited five-year review determination.

[35] 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.

facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."[36] 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[37] on fresh and chilled Atlantic salmon, limited information collected by the Commission since the institution of these reviews,[38] and information submitted by the domestic producers.

For the reasons stated below, we determine that revocation of the countervailing and antidumping duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury to the domestic injury 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."[39]

The current conditions of competition are similar to those existing at the time of the original investigations. Overall demand for fresh and chilled Atlantic salmon was increasing at the time of the original investigations and has continued to increase rapidly.[40] Thus, the current market is substantially larger than during the original investigation period. From 1987 to 1989, consumption of fresh Atlantic salmon almost *** from *** pounds in 1987 to 41.7 million pounds in 1989.[41] By 1998, apparent U.S. consumption had more than *** to *** pounds.[42] Demand for fresh Atlantic salmon is derived from the

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[36] SAA at 869 [emphasis added].

[37] The record after remand in the original investigations of fresh and chilled Atlantic salmon from Norway was the same as the record during the initial proceedings because no new information was collected on remand. Fresh and Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Remand) at 2-3.

[38] This information includes the data from the public staff report and the findings in the public views from the Commission's investigation in Fresh Atlantic Salmon from Chile, Inv. No. 731-TA-768 (Final), USITC Pub. 3116 (July 1998), and the Commission's views on remand in that investigation, USITC Pub. 3244 (Oct. 1999). We are mindful that both the scope and the like product definition in the Chilean determination differ from those in the instant reviews and adjust the weight given to data from that investigation accordingly. Nonetheless, such data provide useful insights into the likely consequences of revocation of the orders on the industry defined in these reviews.

[39] 19 U.S.C. § 1675a(a)(4).

[40] Remand Determination at 5; Original Determination at 12; CR at I-31, PR at I-23.

[41] CR & PR at Table I-6.

[42] Id.

demand for further processed and fresh retail Atlantic salmon products.[43] Due to the ease of using salmon fillets, new customer demand for salmon cuts has emerged,[44] adding to increased overall demand for salmon.[45] As a result, there has been a demand shift toward salmon cuts (which are excluded from the orders and not included in the domestic like product for these reviews). However, as at the time of the original investigations, whole salmon still accounts for a significant share of the domestic market.[46]

Since the original investigations, shipments of the domestic like product have increased significantly,[47] as have the domestic producers' production and production capacity for fresh Atlantic salmon.[48] The domestic industry has matured and is no longer a "young and emerging" industry, as it was during the original investigations.[49] However, the domestic industry continues to ship predominantly whole salmon to the market.[50] Despite the increasing market share of the domestic producers,[51] an overwhelming amount of the U.S. domestic market continues to be satisfied by imports, although most imports currently are from countries other than Norway.[52] Since issuance of the orders, the Norwegian product has been virtually eliminated from the U.S. market, dropping from 60.2 percent of apparent consumption in 1989 to *** percent in 1998.[53] Notably, however, Norway remains the largest producer of fresh Atlantic salmon in the world.[54]

Another important condition of competition for the fresh and chilled Atlantic salmon industry is the three year production cycle for salmon.[55] The supply of fresh Atlantic salmon, therefore, is largely fixed by

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[43] CR at I-29, PR at I-22.

[44] Fresh Atlantic salmon that is not sold as whole fish may be further processed into a variety of cut forms. The most common cut is the fillet, or lengthwise cut of a salmon. CR at I-11, PR at I-9.

[45] CR at I-31, PR at I-23.

[46] Id. As of 1997, whole salmon accounted for over 60 percent of the total domestic apparent consumption of all fresh Atlantic salmon. The market share for salmon cuts had increased from 17.0 percent of total apparent consumption in 1994 to 19.2 percent in 1995, 28.1 percent in 1996, and 38.3 percent in 1997. CR at I-31, PR at I-23.

[47] U.S. producers' shipments increased from 3.1 million pounds in 1989 to *** million pounds in 1998. CR & PR at Table I-2.

[48] Original Determination at 12; CR at I-15-18, PR at I-12-14.

[49] Original Determination at 12. Also, the domestic industry has been in the process of consolidating such that there are fewer firms producing the domestic like product today than at the time of the original investigation. CR at I-15 & n.49, PR at I-11 & n.49.

[50] Whole fresh Atlantic salmon accounted for 87 percent of the quantity of U.S. producers' domestic shipments of all fresh Atlantic salmon in 1997. CR at I-22, PR at I-16.

[51] The domestic industry held 7.5 percent of the domestic market in 1989 as compared to *** percent in 1998. CR at I-31, PR at I-23.

[52] The primary other sources of fresh Atlantic salmon during both 1987-89 and 1994-98 were Canada and Chile. CR & PR at Table I-5. The Commission recently imposed antidumping duties on Chilean fresh whole and cut Atlantic salmon. Fresh Atlantic Salmon from Chile, Inv. No. 731-TA-768, USITC Pub. 3116 (July 1998).

[53] CR & PR at Table I-6.

[54] CR at I-32, PR at I-25.

[55] Original Determination at 12; Remand Determination at 4; CR at I-9, PR at I-7.

production decisions made in previous years.[56] Moreover, as a result of this production cycle, producers must make substantial investments that do not yield returns for many years.[57]

Finally, salmon is a perishable product with a short shelf-life of about 10 to 14 days.[58] In addition, production constraints limit the flexibility that producers have in harvesting salmon.[59] For example, salmon must be harvested before they reach maturity because they undergo physical transformations at that time that leave them unsuitable for the market.[60] As a result, producers cannot readily keep inventories of this product.[61]

Based on the record evidence, we find that these conditions of competition in the U.S. fresh and chilled Atlantic salmon market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we have taken these conditions of competition into account in assessing the likely effects of revocation of the antidumping and countervailing duty orders on the domestic industry 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.[62] 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.[63]

In making its original determination, the Commission found that the domestic industry producing fresh and chilled Atlantic salmon was materially injured by subject imports from Norway. The Commission found that the domestic industry was contracting while subject imports from Norway increased by 50 percent, although the market penetration of these imports declined over the period of investigation.[64] On remand, the Commission again noted that subject imports rose sharply over the period of investigation.[65] The Commission recognized that in each year over the period of investigation, subject imports' market share substantially exceeded that of the domestic industry and any other nonsubject

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[56] Original Determination at 12; CR & PR at n.61.

[57] Remand Determination at 4; CR at I-23, PR at I-18.

[58] Remand Determination at 5; CR at I-8, I-10, PR at I-7-8.

[59] Remand Determination at 5, n.22.

[60] CR at I-10, PR at I-8.

[61] See § 752(a)(2)(B) of the Act, 19 U.S.C. § 1675a(a)(2)(B).

[62] 19 U.S.C. § 1675a(a)(2).

[63] 19 U.S.C. § 1675a(a)(2)(A)-(D).

[64] Original Determination at 16-17.

[65] Remand Determination at 9.

producer.[66] Notwithstanding the 1990 decrease in subject imports, the Commission found that the volume of subject imports was significant in that it was more than four times greater than U.S. producers' shipments.[67]

Since the imposition of the orders, there have been virtually no subject imports from Norway into the U.S. market.[68] From a peak of 25.1 million pounds in 1989, subject imports fell to 89,000 pounds in 1997.[69] In 1998, subject salmon imports rose to 151,000 pounds.[70] But even in 1998, subject imports only accounted for *** percent of total apparent domestic consumption.[71] We find that the orders currently in place have had a restraining effect on the volume of subject imports entering the U.S. market.

As in the original investigations, Norwegian salmon producers have significant unused capacity. In the years 1987 to 1989, subject producers increased their capacity from 280 million pounds to 390 million pounds and their capacity utilization peaked at 64.9 percent.[72] Norwegian producers' current production already is at extremely high levels. Production of salmon in Norway was 680 million pounds in 1998.[73] This amount is about *** times greater than total U.S. apparent consumption for fresh whole Atlantic salmon and *** times larger than U.S. producers' domestic shipments for that year.[74] Also, new government policies will allow Norwegian hatcheries to apply for permits to increase their production of "sea-ready" smolts by 150 percent annually.[75] As a result, Norwegian producers' capacity is expected to grow at an annual rate of 9 to 10 percent for the next several years.[76]

Moreover, Norwegian producers continue to be export-oriented. From 1987-1989, they exported a great majority of their harvests.[77] In 1990, four of the five largest markets for Norwegian salmon were in Europe, but Norwegian producers currently face price and volume restrictions in the European Union ("EU").[78] Despite the EU's restrictions on exports that have come about since the original investigation, Norwegian world-wide exports have doubled since 1989.[79] In light of its large and expanding production

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[66] Id.

[67] Id.

[68] CR & PR at Table I-6.

[69] Id.

[70] Id.

[71] Id.

[72] CR & PR at Table I-7.

[73] Id.

[74] CR & PR at Tables I-6 & I-7.

[75] CR at I-36, PR at I-26-27. Production levels and industry development for Norwegian salmon producers are controlled at the national level. CR at I-33, PR at I-26. Norway's large fishery sector contributes significantly to the Norwegian national economy and to export earnings. CR at I-33, PR at I-25.

[76] CR at I-34, PR at I-26.

[77] Id. Norwegian producers exported, on average, more than 85 percent of their salmon production each year prior to 1990. Id.

[78] CR & PR at n.113; CR at I-34, PR at I-26. The fifth largest market for Norwegian salmon in 1990 was the United States. CR at I-34, PR at I-26.

[79] CR at I-36, PR at I-28.

and production capacity and the restrictions on its exports to the EU, we find that the Norwegian producers would likely export significant volumes of fresh Atlantic salmon to the United States should these orders be revoked.[80]

Based on the foregoing, we find it likely that the subject producers in Norway would, upon revocation of the orders, increase exports to the U.S. market, and that the subject import volume would rise significantly if the discipline of the orders was removed.[81]

D. Likely Price Effects

In evaluating the likely price effects of subject imports if the 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.[82]

In the original investigations, the Commission found that prices in the U.S. market for fresh Atlantic salmon fell over the period of investigation and that the price in the United States tracked the price of Norwegian fresh Atlantic salmon.[83] The price declines, according to the Commission, stemmed in large part from the oversupply of salmon in the U.S. market.[84] The Commission found that the subject imports accounted for a large proportion of the increased imports in 1989 and, therefore, these imports played a role in the price declines over the period.[85] The Commission reached this conclusion despite evidence on the record that subject imports from Norway oversold the domestic like product over the period; the Commission noted that the large volume and falling prices of subject imports prevented domestic producers from pricing at sufficiently high levels to recover costs and meet cash flow needs.[86]

In the remand determination, the Commission again noted that, at the end of the original investigation period, average unit values of U.S. shipments were well below the levels recorded at the beginning of the period.[87] The Commission found that the domestic industry could not hold salmon in inventory and, thus, when Norway flooded the U.S. market with subject imports that were substitutable with the domestic like product, the U.S. producers were forced to sell their product at the reduced prices

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[80] There is no indication that product shifting is likely to be significant in these reviews. See § 752(a)(2)(D) of the Act, 19 U.S.C. § 1675a(a)(2)(D). Further, although Norwegian producers already ship salmon cuts to the U.S. market, there is no information on the record indicating that they will not resume exporting whole salmon to the U.S. market if the orders are revoked.

[81] See SAA at 890.

[82] 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.

[83] Original Determination at 18-19.

[84] Id. at 19.

[85] Id.

[86] Id. at 19-20.

[87] Remand Determination at 7, 16.

commanded by the market.[88] Consequently, the Commission determined that subject imports depressed and suppressed the price of the domestic like product.[89]

The evidence in the record regarding prices of subject imports in the U.S. market is limited, but the factors that the Commission found relevant in its original investigations have not changed. The Commission noted in its original investigations that the Norwegian producers have the ability to "[flood] the [domestic] market" with subject merchandise that is substitutable with the domestic like product.[90] This ability is even more pronounced today because of the previously noted increases in Norwegian production and production capacity since the time of the original investigations. While the landed duty-paid unit values for subject imports of fresh Atlantic salmon were higher than nonsubject imports and the domestic like product in 1998,[91] it is likely that the Norwegian producers not only would likely ship large volumes of subject imports to the U.S. market, but also would undersell the domestic product in order to regain the customer base in the U.S. market that they lost due to the orders. Thus, it is likely that increased quantities of Norwegian salmon again would suppress or depress domestic producers' prices to a significant degree if the orders were revoked.

Based on the record in these reviews, we find it likely that revocation of the countervailing and antidumping duty orders would lead to 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.[92] 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.[93] As instructed by the statute, we have considered the

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[88] Id. at 17.

[89] Id.

[90] Id.

[91] The unit value per pound of domestic whole Atlantic salmon in 1998 was $*** while that of nonsubject imports was $2.42 and subject Norwegian salmon was $2.52. CR & PR at Tables I-2 & I-5.

[92] 19 U.S.C. § 1675a(a)(4).

[93] Id. Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy" 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. Although the statute does not expressly define the "magnitude of the net countervailable subsidy" to be used by the Commission in five-year reviews, it states that "[t]he administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated." 19 U.S.C. § 1675a(b)(3). The statute further provides that Commerce "shall normally choose a net countervailable subsidy that

extent to which any improvement in the state of the domestic industry is related to the antidumping and countervailing duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.[94]

In the original determination, the Commission found that the domestic industry suffered material injury by reason of the significant volume of subject imports from Norway, whose presence, even at premium prices, depressed prices for the domestic like product. Specifically, the Commission found that lower prices for the domestic like product led to a leveling of juvenile salmon production and lower sales revenues, which contributed to substantial gross and operating losses for the domestic industry. This also exacerbated cash-flow problems by forcing the largest producer, Ocean Products, to "front-load" its sales in the early part of the 1989 to 90 selling season in order to generate sufficient revenues to continue operations. The Commission also found that the domestic industry experienced difficulties in raising capital.[95]

In the remand determination, the Commission concluded that the subject imports had actual and potential negative effects on the domestic industry's cash flow, growth, ability to raise capital, and investment. The Commission noted, *inter alia*, the liquidation and fire sale of the largest domestic producer, Ocean Products; specific problems that domestic producers had raising capital; and specific decisions by domestic producers to reduce the amount of their future production.[96]

While we note the domestic industry's claim that it is vulnerable,[97] the record contains limited data on the operating performance and financial condition of the industry, thus limiting a determination on vulnerability.[98] Therefore, in this review, we do not make a finding on vulnerability. However, as

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was determined under section 1671d of this title or subsection (a) or (b)(1) of section 1675 of this title." Id. In the final results of its expedited five-year review, Commerce published a dumping margin of 18.39 percent for Salmonar A/S; 24.61 percent for Sea Star International; 15.65 percent for Kinn Salmon A/S (formerly Skaarfish); 21.51 percent for Fremstad Group A/S; 31.81 percent for Domstein and Co.; 26.55 percent for Saga A/S; 19.96 percent for Chr. Bjelland; 31.81 percent for Hallvard Leroy A/S; and an all others rate of 23.80 percent. Commerce further published a countervailable subsidy rate of 2.27 percent. 65 Fed. Reg. 5584, 5587 (Feb. 4, 2000) (antidumping); 65 Fed. Reg. 5854, 5857 (Feb. 7, 2000) (countervailing duty).

The statute also requires the Commission to consider information about the nature of any countervailable subsidies and whether they are of the type described in Article 3 (subsidies contingent upon export or the use of domestic content) or Article 6.1 (subsidies deemed to cause "serious prejudice" to other WTO members) of the WTO Subsidies Agreement. 19 U.S.C. § 1675a(a)(6). In this case, Commerce identified 6 subsidy programs. It also found that these programs do not fall within the definition of an export subsidy under Article 3 and that it could not conclude if the net countervailable subsidy exceeded 5 percent and thus was inconsistent with Article 6.1. 65 Fed. Reg. at 5856.

[94] 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.

[95] Original Determination at 20-21.

[96] Remand Determination at 17-20.

[97] The unit value per pound of domestic whole Atlantic salmon in 1998 was $*** while that of nonsubject imports was $2.42 and subject Norwegian salmon was $2.52. CR & PR at Tables I-2 & I-5.

[98] Chairman Bragg finds that the domestic industry is vulnerable. This finding corresponds to her decision in Fresh Atlantic Salmon from Chile, where she found that domestic industry to be vulnerable as well.

described above, we find it likely that revocation of the orders would result in a significant increase in the volume of subject imports, and that these shipments would likely exert downward pressure on domestic prices. We find that these developments would have a significant adverse impact on the industry's production, shipment, sales, and revenue levels. This likely decline 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 this expedited review, we conclude that, if the countervailing and antidumping duty orders were revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

IV. CONCLUSION

For the foregoing reasons, we determine that revocation of the countervailing and antidumping duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.