

UNITED STATES INTERNATIONAL TRADE COMMISSION

ELECTROLUMINESCENT FLAT PANEL DISPLAYS FROM JAPAN

Investigation No. 731-TA-469 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3285, March 2000)

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DETERMINATION

On the basis of the record¹ developed in the subject five-year review, 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 order on electroluminescent flat panel displays from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

BACKGROUND

The Commission instituted this review on August 2, 1999 (64 F.R. 41951, August 2, 1999) and determined on November 4, 1999 that it would conduct an expedited review (64 F.R. 62688, November 17, 1999). The Commission transmitted its determination in this review to the Secretary of Commerce on March 27, 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)).

² Commissioners Askey and Okun dissenting. Vice Chairman Miller did not participate in this five-year review.

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering electroluminescent (“EL”) flat panel displays (“FPDs”) from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

I. BACKGROUND

In August 1991, the Commission determined that an industry in the United States was being materially injured by reason of imports of EL FPDs from Japan that were being sold at less than fair value (“LTFV”).² On September 4, 1991, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of EL FPDs from Japan.³ The Commission’s original final determination of August 1991 was appealed to the U.S. Court of International Trade (“CIT”). The CIT’s decision remanding the determination to the Commission was subsequently reversed by the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”).⁴ Consistent with the Federal Circuit’s decision, Commerce reinstated its original antidumping duty order, which it had revoked pursuant to a mandamus order entered following the CIT’s affirmance of the Commission’s remand determination.⁵ On August 2, 1999, the Commission instituted the instant review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on EL FPDs from Japan 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

¹ Commissioners Askey and Okun dissenting. See Dissenting Views of Commissioners Thelma J. Askey and Deanna Tanner Okun.

² Certain High Information Content Flat Panel Displays and Display Glass Thereof from Japan, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 (August 1991) (“Original Determination”). In the same investigation, the Commission also made an affirmative material injury determination with respect to LTFV imports of active matrix liquid crystal displays (“AMLCDs”), but, as discussed *infra*, subsequent to the affirmative injury determination, Commerce rescinded the antidumping duty order on those imports.

³ 56 Fed. Reg. 43741 (September 4, 1991).

⁴ See Confidential Report (“CR”), Memorandum INV-X-045 (February 29, 2000) at I-4, n.5, Public Report (“PR”) at I-3, n.5, for a summary of the appeal history for the investigation.

⁵ See Notice of Court Decision and Rescission of Revocation of Antidumping Order, 61 Fed. Reg. 39946 (July 31, 1996), rescinding action in Amendment of Notice of Court Decision and Revocation of Antidumping Order, 59 Fed. Reg. 43809 (August 25, 1994).

⁶ 64 Fed. Reg. 41951 (August 2, 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 this review, the Commission received a response to the notice of institution from Planar Systems, Inc. (“Planar”), the only known current domestic producer of EL FPDs.⁸ No foreign producer, exporter, or U.S. importer of EL FPDs filed a response.⁹

On November 4, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate but that the respondent interested party group response was inadequate.¹⁰ The Commission did not find any circumstances that would warrant conducting a full review, and pursuant to section 751(c)(3)(B) of the Act¹¹ voted to conduct an expedited review of this matter.¹²

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.”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

In its final five-year review determination, Commerce defined the subject merchandise, EL FPDs, as:

large area, matrix addressed displays, no greater than four inches in depth, with a pixel count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. EL FPDs incorporate a matrix of electrodes that, when activated, apply an electrical current to a solid compound of electroluminescent material (e.g., zinc sulfide) causing it to emit light. Included are monochromatic, limited color, and full color displays used to

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

⁸ Planar was one of six domestic producers of all types of high information content (“HIC”) FPDs and one of two producers of EL FPDs during the original investigation. CR at I-18, PR at I-13. In its Response to the Notice of Institution (“Planar’s Response”) Planar indicated that it was not aware of any other current domestic producers of EL FPDs. Planar’s Response at 2, 10.

⁹ Nor did any other person file a submission under Commission Rule 207.61(d).

¹⁰ See Explanation of Commission Determination on Adequacy in Electroluminescent Flat Panel Displays from Japan (November 1999).

¹¹ 19 U.S.C. § 1675(c)(3)(B).

¹² Commissioner Koplán dissented. He voted for a full review “because of significant like product issues.”

¹³ 19 U.S.C. § 1677(4)(A).

¹⁴ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

display text, graphics, and video. EL FPD glass, whether or not integrated with additional components, exclusively dedicated to and designed for use in EL FPDs, is defined as processed glass substrates that incorporate patterned row, column, or both types of electrodes, and also typically incorporate a material that reacts to a change in voltage (e.g., phosphor) and contact pads for interconnecting drive electronics.¹⁵

EL FPDs are a type of high information content (“HIC”) FPDs. In general, HIC FPDs show text, graphics, or video when integrated into end-user systems such as laptop computers, military instrumentation, and aerospace, medical, and office equipment.¹⁶ HIC FPDs are technologically sophisticated electronic displays that convert information received as electrical signals from an end-user system into visible images. They consist of display glass assemblies containing pixels and row and column electrodes and of associated electronic systems, which drive the electrodes on the display glass and interpret the incoming information-bearing signals.¹⁷

HIC FPDs are classified by the technology which is used to produce the display glass. The most common technologies at the time of the original investigation, and the ones for which the Commission collected data at that time, were EL displays, liquid crystal displays (“LCDs”), and gas plasma displays.¹⁸ EL displays and gas plasma displays are “emissive,” *i.e.*, their pixels produce and emit light when electronically activated, and therefore are visible without natural, ambient, or back-light.¹⁹

In the original final investigation, Commerce defined two separate classes or kinds of merchandise subject to its dumping findings: AMLCDs and EL FPDs.²⁰ Notwithstanding Commerce’s findings, the Commission performed one like product analysis, and found one like product consisting of all HIC FPDs.²¹ The Commission based this like product finding on the similarities in basic physical characteristics and general end uses, common channels of distribution, and overlap in production technologies. The respondents appealed the Commission’s determination to the CIT, which remanded the determination on the grounds that the Commission’s like product finding was not supported by substantial evidence.²² On remand, the Commission performed separate like product analyses for both classes or kinds of subject imports, *i.e.*, AMLCDs and EL FPDs, but found the corresponding like product for each of them to include

¹⁵ 65 Fed. Reg. 11979 (March 7, 2000). Also included in the scope is the display glass used in the FPDs. *See* 56 Fed. Reg. 32376 (July 16, 1991).

¹⁶ CR at I-7, PR at I-6.

¹⁷ CR at I-8, PR at I-7.

¹⁸ CR at I-8, PR at I-7.

¹⁹ CR at I-8-9, PR at I-7. LCDs are non-emissive and cannot be viewed in the dark.

²⁰ 56 Fed. Reg. 32376 (July 16, 1991). Commerce defined four separate classes or kinds of HIC FPDs covered by the petition: EL FPDs, AMLCDs, passive matrix LCDs (“PMLCDs”), and gas plasma displays. Commerce rescinded its initiation of the investigation with respect to PMLCDs since there was no domestic production of PMLCDs and the petitioners therefore lacked standing. 56 Fed. Reg. at 32382. In addition, Commerce made a final negative dumping determination with respect to gas plasma displays because of *de minimis* margins. 56 Fed. Reg. 32376, 32401.

²¹ Original Determination at 7.

²² Hosiden Corp. v. United States, 810 F.Supp. 322, 334 (Ct. Int’l Trade 1992).

all domestic HIC FPDs.²³ By an evenly split vote, the Commission found that an industry in the United States was injured by reason of subject imports of AMLCDs, but by a 4-2 vote, the Commission found that a domestic industry was not materially injured by reason of subject imports of EL FPDs. During a subsequent administrative review, Commerce found no margins on subject AMLCD imports and revoked the order on that product.²⁴ The Federal Circuit later reversed the remand of the original Commission determination, reinstating the Commission's original finding of one like product consisting of all HIC FPDs and of material injury to the industry producing HIC FPDs by reason of subject imports of HIC FPDs.²⁵

As described, only one of the four classes or kinds of merchandise originally defined by Commerce remains subject to an antidumping duty order. The order on that product, EL FPDs, is the subject of this five-year review investigation. The unusual facts of this case present the type of circumstances contemplated by the Notice of Final Rulemaking ("NOFR") preamble that could warrant reconsideration of the original like product.²⁶ In light of the now limited scope of any orders on HIC FPDs, we found it appropriate to consider whether the like product for this review should be limited to EL FPDs, corresponding to the only type of displays still subject to an antidumping duty order.

In the original determination, the Commission found that the domestic product, like all subject HIC FPDs, included the coextensive domestic grouping of all HIC FPDs.²⁷ However, the history of this case and the Commission's views on remand illustrate that even in the original investigation, the like product definition was not straightforward. When ordered on remand by the CIT to reexamine the like product findings in relation to each specific class or kind of merchandise, half of the Commission found that the like product corresponding to the imported EL FPDs was domestic EL FPDs, in light of differences in physical characteristics, end uses, technologies, producers, and production processes.²⁸ The other half of the Commission again defined the like product as consisting of all HIC FPDs, citing to overlaps in physical characteristic, end uses, and some production factors, as well as the "rapidly developing nature" of HIC FPD technology.²⁹ Thus, the Commission's examination of the like product question based on the same scope as the current scope of this five-year review resulted in an evenly-divided conclusion.

During the original investigation, industry experts predicted that the distinguishing characteristics among the various types of displays were likely to become more blurred with the movement toward higher

²³ Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, Inv. No. 731-TA-469 (Views on Remand), USITC Pub. No. 2610 (March 1993) at I-3. Three Commissioners (Chairman Newquist and Commissioners Rohr and Nuzum) defined the like products on remand as described above. The other three Commissioners (Vice Chairman Watson and Commissioners Brunsdale and Crawford) found narrower like products, defining them in both cases as coextensive with the scope of the particular class or kind of merchandise.

²⁴ 58 Fed. Reg. 34409, 34414 (June 25, 1993).

²⁵ Hosiden Corp. v. Advanced Display Mfrs. of America, 85 F.3d 1561, 1569-70 (Fed. Cir. 1996).

²⁶ 63 Fed. Reg. at 30602 (June 5, 1998). In the NOFR preamble, the Commission stated:
[i]n appropriate circumstances, the Commission may revisit its original domestic like product and domestic industry determinations in five-year reviews. For example, the Commission may revisit its like product determination when there have been significant changes in the product at issue since the original investigation or when domestic like product definitions differed for individual orders within a group concerning similar products. *Id.*

²⁷ Original Determination at 7-12.

²⁸ Remand Determination at II-7-8.

²⁹ Remand Determination at I-5-13.

performance display technologies and consequent converging appearance and power requirements.³⁰ However, the information in this expedited review suggests that this convergence has not entirely come to pass and that distinguishing technological attributes associated with various HIC FPDs continue to some degree to distinguish the displays.³¹ Although, now as in the original investigation, all HIC FPDs have the same general end use, most EL FPDs continue to be used for applications other than computers, due to their relatively high cost compared to competing technologies.³² Whereas LCDs are the preferred displays for use in laptops and notebooks,³³ Planar identifies its primary markets for EL FPDs as medical instrumentation, industrial process control and defense equipment, and transportation and communication systems.³⁴ In light of these differences in primary end uses as well as the continuing technological distinctions among various HIC FPDs, we have determined to limit the domestic like product in this five-year review to EL FPDs, co-extensive with the current scope.³⁵

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.”³⁶ In accordance with our domestic like product determination, we find one domestic industry, consisting of all domestic producers of EL FPDs. Planar is the only known current domestic producer of that product.³⁷

³⁰ CR at I-9, PR at I-8, *citing* Original Confidential Report at A-30.

³¹ CR at I-15, PR at I-11.

³² CR at I-16, PR at I-12.

³³ CR at I-15, I-17, PR at I-11-13. Planar states that AMLCDs may be in color but relatively expensive in comparison to cathode ray tubes (“CRTs”), whereas EL FPDs are usually monochrome yet relatively expensive, or may be in color but relatively more expensive than AMLCDs. Planar’s Response at 15.

³⁴ CR at I-16, PR at I-12.

³⁵ It appears that Planar agrees with this definition, although this is not explicitly clear from Planar’s Response. Planar quotes Commerce’s class or kind definition for EL FPDs, but erroneously labels Commerce’s definition as the Commission’s like product definition from the original determination. Planar’s Response at 16-17. *See* 56 Fed. Reg. at 32376-77 (July 16, 1991). Despite this discrepancy, Planar states that it agrees with “these definitions.” Planar’s Response at 17; Planar’s Comments at 3 n.4.

³⁶ 19 U.S.C. § 1677(4)(A).

³⁷ During the original investigation, there was one other domestic producer of EL FPDs in addition to Planar. CR at I-19, PR at I-13 ; Original Confidential Report at A-49-50. According to Planar, that producer, The Cherry Corp. (“Cherry”) has since left the industry. CR at I-19, PR at I-14; Planar’s Response at 2.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON ELECTROLUMINESCENT FLAT PANEL DISPLAYS FROM JAPAN 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 an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³⁸ 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.”³⁹ Thus, the likelihood standard is prospective in nature.⁴⁰ 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.”⁴¹ 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].”^{42 43}

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

³⁸ 19 U.S.C. § 1675a(a).

³⁹ 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.

⁴⁰ 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.

⁴¹ 19 U.S.C. § 1675a(a)(5).

⁴² 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.*

⁴³ 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.

of the subject merchandise on the industry if the order is revoked.”⁴⁴ 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.^{45 46}

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.”⁴⁷ We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but 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 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.”⁴⁸ As noted above, no respondent interested party responded to the Commission’s notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the records in the Commission’s original investigation as well as the remand investigation, limited information collected by the Commission since the institution of these reviews, and information submitted by Planar.

For the reasons stated below, we determine that revocation of the antidumping duty order on EL FPDs from Japan 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

⁴⁴ 19 U.S.C. § 1675a(a)(1).

⁴⁵ 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.

⁴⁶ 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 a duty absorption finding with respect to the order under review. *See* 65 Fed. Reg. 11979 (March 7, 2000).

⁴⁷ 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.*

⁴⁸ SAA at 869.

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.”⁴⁹

The demand for EL FPDs is derived from the demand for the products in which they are used, such as medical instrumentation, industrial process control and defense equipment, transportation and communication systems, and to a lesser but increasing degree, laptop computers.⁵⁰ As the demand for products that use EL FPDs has grown, so have the sales of EL FPDs. Even as unit values have declined by ***, the value of U.S. apparent consumption of EL FPDs has almost *** since 1990, the last year of the original determination.⁵¹

In the original determination, the Commission described the HIC FPD industry in general as an emerging industry for which growth and investment are especially important.⁵² The domestic EL FPD industry today, consisting of only one firm that has been producing EL FPDs for more than 10 years, is more mature by comparison to the original period of investigation. However, the market for the product continues to expand, as the industry continues to be on the cutting edge of technological advances, such as the development of improved color EL FPDs. Today, as during the original period of investigation, growth and investment are especially important in this industry. The ability to obtain or generate significant financing for increased capital investment and research and development is still an important condition of competition.

During the original investigation, the Commission found that price, while not the most important factor in most sales, was a significant factor.⁵³ There is no information in the record of this five-year review to suggest that this is not still true. Now, as during the original investigation, sales of EL FPDs are made pursuant to contracts.⁵⁴ Loss of a contract and the stream of future cash flow it provides is likely to hamper a company’s ability to make the investments in the capital expenditures and the research and development necessary to remain competitive. In turn, without these expenditures and corresponding technological advances, an EL FPD producer’s ability to secure future contracts will likely be diminished.

Based on the record evidence, we find that these conditions of competition in the domestic EL FPD 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 duty order within the reasonably foreseeable future.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.⁵⁵ 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

⁴⁹ 19 U.S.C. § 1675a(a)(4).

⁵⁰ CR at I-16, I-29, PR at I-12, I-19.

⁵¹ CR and PR at Tables I-2 and I-6.

⁵² Original Determination at 21.

⁵³ Original Determination at 23.

⁵⁴ CR at I-14, PR at I-11; Planar’s Response at 8.

⁵⁵ 19 U.S.C. §1675a(a)(2).

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.⁵⁶

During the original investigation, imports of subject EL FPDs rose from *** units valued at \$*** in 1988 to *** units valued at \$*** in 1989, and then returned in 1990 to *** units valued at \$***.⁵⁷ Although there are no import data available for the period immediately following the issuance of the Commission's original determination in 1991, the record in this investigation does contain such data for the period from 1994 through 1998.⁵⁸ In 1994, total imports of EL FPDs from Japan were valued at below \$6.0 million.⁵⁹ In April of that year, the CIT issued its affirmance of the Commission's negative remand determination on EL FPDs.⁶⁰ Consequently, Commerce revoked the antidumping duty order on those imports, effective February 21, 1991.⁶¹ During the two years following Commerce's revocation of the antidumping duty order, imports from Japan of EL FPDs increased rapidly and significantly, first rising to a value of approximately \$7.0 million in 1995 and then jumping to a value of more than \$11.0 million in 1996.⁶²

In May 1996, the Federal Circuit issued its order vacating the CIT's remand order, resulting in the reinstatement of the Commission's original affirmative determination on all subject HIC FPD imports from Japan.⁶³ Commerce then rescinded its revocation of the antidumping duty order on EL FPDs from Japan, reinstated liquidation of entries of those imports, and resumed the cash collection of deposits on EL FPDs from Japan as of July 31, 1996.⁶⁴ Following these actions, imports of EL FPDs from Japan dropped even further and faster than they had risen since 1994. From the high of more than \$11.0 million worth of subject imports in 1996, subject imports dropped to slightly above \$4.0 million in 1997, and then dropped further in 1998 to \$2.4 million.⁶⁵

This pattern demonstrates that there is a direct correlation between the existence of an antidumping duty order on EL FPDs from Japan and the level of those imports into the United States. It further strongly suggests that, as in 1994, producers and importers of EL FPDs from Japan would likely respond to revocation of the antidumping duty order with a significant increase in the volume of subject imports.

There is also evidence in the record of this review indicating that the Japanese producer, Sharp Corporation ("Sharp") has the production capacity available to produce EL FPDs for export to the United States. Sharp's capacity to produce EL FPDs increased in each year of the original investigation,

⁵⁶ 19 U.S.C. § 1675(a)(2)(A)-(D).

⁵⁷ CR and PR at Table I-3; Original Confidential Report at Table 35.

⁵⁸ CR and PR at Figure I-1.

⁵⁹ CR and PR at Figure I-1.

⁶⁰ Hosiden Corp. v. United States, 852 F. Supp. 1050 (Ct. Int'l Trade 1994), *vacated sub. nom.* Hosiden Corp. v. Advanced Display Mfrs. of America, 85 F.3d 1561 (Fed. Cir. 1996).

⁶¹ Amendment of Notice of Court Decision and Revocation of Antidumping Duty Order, 59 Fed. Reg. 43809 (August 1994).

⁶² CR and PR at Figure I-1.

⁶³ Hosiden Corp. v. Advanced Display Mfrs. of America, 85 F.3d 1561 (Fed. Cir. 1996).

⁶⁴ Notice of Court Decision and Reissuance of Revocation of Antidumping Duty Order, 61 Fed. Reg. 39946 (July 31, 1996).

⁶⁵ CR and PR at Figure I-1 and Table I-3.

expanding its overall capacity by *** percent from *** units in 1988 to *** units in 1990.⁶⁶ Although the record contains limited information about Sharp's current EL FPD production capacity and capacity utilization, the evidence indicates that Sharp continued to expand its capacity to produce EL FPDs after 1990. ***.⁶⁷

The record indicates that Sharp's worldwide sales of EL FPDs were valued at \$*** in 1998 and were projected to *** to \$*** in 1999.⁶⁸ Moreover, there is evidence in the record that Sharp was projected to export EL FPDs valued at \$*** to the United States in 1999, which would account for approximately *** percent of the U.S. EL FPD market in 1999.⁶⁹ In addition, Sharp already has in place a distribution system in the United States.⁷⁰ Thus, it appears that Sharp is well-positioned to increase its exports of EL FPDs to the United States.⁷¹

Based on the foregoing, we find it likely that the subject producer in Japan would, upon revocation of the order, increase exports to the U.S. market, and that the subject import volume would rise significantly if the discipline of the order was removed.⁷² Therefore, based on the record in this review, we conclude that, absent the restraining effect of the order, subject imports would likely increase to a significant level.

D. Likely Price Effects

In evaluating the likely price effects of subject imports if the order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁷³

In the original determination, the Commission found that subject imports, which included EL and other types of HIC FPDs, had an adverse effect on the prices of the products sold by the domestic HIC FPD producers.⁷⁴ In reaching this conclusion, the Commission relied, *inter alia*, on evidence of underselling by EL FPDs from Japan and of downward trends or flat trends of the prices for both LTFV

⁶⁶ CR and PR at Table 1-7.

⁶⁷ CR at I-35, PR at I-22.

⁶⁸ Planar's Response at Attachment 1.

⁶⁹ Planar's Response at 5-6 and Attachment 1. Planar relies on data obtained from the "Stanford Resources, Inc. { 'SRI' } EL Market Reports." These data were reported for the entire North America market, but, according to Planar, there are only "negligible" sales of EL FPDs in Mexico or Canada, and the data reported for the North American market therefore essentially reflect sales in the United States market. Planar's Response at Attachment 1.

⁷⁰ See Planar's Response at 6. Planar attached a copy of a page from Sharp's website, indicating that Sharp has facilities in Washington (state), California, Illinois, Tennessee, Florida, Georgia, and New Jersey. See Planar's Response at Attachment 2.

⁷¹ Planar's Response at 7.

⁷² See SAA at 890.

⁷³ 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.

⁷⁴ Original Determination at 24.

and domestic products, including EL FPDs.⁷⁵ The Commission found that the record thus indicated that subject imports depressed and suppressed domestic prices.⁷⁶

The Commission also noted that it would not expect to find many examples of lost sales and revenue because much of the competition in the HIC FPD market takes the form of negotiations for the development of specialized products.⁷⁷ Nevertheless, staff confirmed an instance during the original investigation in which *** reduced its sale price for an EL FPD to compete with Japanese producers.⁷⁸

The record in this expedited review contains limited recent price information and no recent data comparing prices of the domestic like product with those of the subject imports. Unit values for domestic EL FPDs have declined since the original investigation, reflecting increases in economies of scale and technological and production advances.⁷⁹ In fiscal 1999, the domestic EL FPD unit value was \$*** the 1990 domestic unit value of \$***.⁸⁰ However, even the 1999 average unit value for domestic EL FPDs was still *** than the 1990 unit value for EL FPDs from Japan.⁸¹ Given the advances in product development, we infer that, in the absence of the antidumping duty order, EL FPDs from Japan would enter the United States at unit values well below those at which they entered nine years ago, and therefore, well below domestic unit values.

Moreover, the evidence in the record indicates that the conditions of competition with respect to pricing for EL FPDs are substantially the same as they were at the time of the original investigation.⁸² Price remains a significant factor in purchasing decisions, and sales of EL FPDs continue to be made pursuant to contracts.⁸³ As discussed in the original determination, contract negotiations include an evaluation at an early stage at which a “target” price is discussed.⁸⁴ Absent the discipline of an antidumping duty order, Sharp is likely to increase its exports of EL FPDs into the U.S. market and attempt to regain its customer base by competing for contracts through low pricing. The reliance on target prices during contract negotiations increases the likelihood that the offer of low-priced LTFV product may have a depressing effect on domestic prices.

Based on the record in this review, we find that revocation of the antidumping duty order on EL FPDs from Japan 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

⁷⁵ Original Determination at 24; Original Confidential Report at Tables 39 and 44.

⁷⁶ Original Determination at 24.

⁷⁷ Original Determination at 25. As the Commission explained, domestic firms were often disqualified from these negotiations at an early stage, with the price of dumped imports often a factor leading to disqualification. Producers disqualified at this stage may therefore have had difficulty pointing to their disqualification as a “lost sale.” However, in each such instance, domestic producers lose not only a sale or revenue but also an opportunity to enhance their ability to win future contracts, by for example, developing productive capacity. *Id.*

⁷⁸ Original Confidential Report at A-194.

⁷⁹ CR at I-23, PR at I-16; CR and PR at Table I-2.

⁸⁰ CR and PR at Table I-2.

⁸¹ CR at I-35, PR at I-23; CR and PR at Table I-3.

⁸² Planar’s Response at 8.

⁸³ Planar’s Response at 8.

⁸⁴ Original Determination at 25.

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁸⁵ 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.⁸⁶ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁸⁷

In the original investigation, the Commission found that, in light of the business cycle and all pertinent conditions of competition, the domestic HIC FPD industry was experiencing material injury by reason of imports of LTFV HIC FPDs from Japan.⁸⁸ The Commission found that, notwithstanding increases in sales, production, and shipments, the industry's financial condition significantly worsened during the period of investigation.⁸⁹ Due to the presence of subject imports from Japan, the domestic industry was unable to raise capital and therefore lost investment opportunities.⁹⁰ As a result, the industry lacked the funding for capital investments and research and development that is essential for an emerging high technology product.⁹¹ Without substantial funding from internal or external sources, domestic producers lacked the capacity to achieve initial design wins and in some instances could not qualify as vendors for large customers who required large commercial quantities of displays.⁹² Consequently, domestic producers were caught in a cycle that denied them the opportunity to increase their production to a level that would result in economies of scale and increased expertise that would support development of an advanced version of the like product.⁹³

⁸⁵ 19 U.S.C. § 1675a(a)(4).

⁸⁶ 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 investigation. 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 review investigations 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 expedited five-year review of EL FPDs from Japan, Commerce found that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at margins of 7.02 for Sharp Corporation and for all others. 65 Fed. Reg. 11979 (March 7, 2000).

⁸⁷ 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.

⁸⁸ Original Determination at 22-23, 27.

⁸⁹ Original Determination at 20.

⁹⁰ Original Determination at 26.

⁹¹ Original Determination at 22-23, 26.

⁹² Original Determination at 26.

⁹³ Original Determination at 26.

Although the original determination discussed the entire HIC FPD industry, the key competition factors which the Commission found critical to its material industry determination applied then and still apply today to the EL FPD industry.⁹⁴ As in the original investigation, the industry's success lies in its ability to raise capital for investment and research and development. For example, as in the original investigation, the domestic EL FPD industry continues to actively pursue advanced versions of full color EL FPDs.⁹⁵

Based on the most recent data available, we also find that the domestic EL FPD industry is currently vulnerable to material injury if the antidumping duty order on EL FPDs from Japan is revoked. With respect to trade data, the industry's production of EL FPDs declined between fiscal 1998 and fiscal 1999, resulting in a reduction in capacity utilization from *** percent to *** percent, respectively. Consistent with the decreased production, domestic shipments declined from *** units to *** units.⁹⁶

The data for the past two years likewise show downward trends for employment and financial performance indicators. In fiscal 1998, Planar employed *** production related workers for *** hours, but employed only *** production related workers for *** hours in fiscal 1999.⁹⁷ Net sales value declined in the course of one year, from \$*** in fiscal 1998 to \$*** in fiscal 1999, as gross profits dropped from \$*** to \$***.⁹⁸ The industry's *** operating income of \$*** in fiscal 1998 *** in fiscal 1999.

Although the industry was able to maintain research and development funding at \$*** in fiscal 1998 and \$*** in fiscal 1999, the capital expenditures that are so critical to this industry declined by ***, from \$*** in fiscal 1998 to \$*** in fiscal 1999.⁹⁹ The record indicates that these downward trends in the industry's performance coincide with the 1999 entry of \$*** of EL FPDs from Japan reported by Planar.¹⁰⁰ As the Commission found in the original investigation, the EL FPD industry's survival requires substantial capital for investment and research and development. Any lost sales and market share can have significant adverse effects for the industry not just with respect to present sales, but also for the future viability of the industry. Thus, even small increases in the volume of subject imports (or offers for sale) can have a significant impact on the domestic industry's profitability.

As discussed above, revocation of the antidumping duty order would be likely to lead to significant increases in the volume of subject imports at prices that likely would cause lost sales and would therefore result in both market share declines and further erosion of the domestic industry's profitability. In turn, these declines would result in critical lost investment and the inability to make capital expenditures and fund research and development essential to product development and sales.

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

CONCLUSION

⁹⁴ For example, during the original investigation, Planar provided evidence of *** in its attempts to raise capital. CR at I-14, PR at I-10, *citing* Original Confidential Report at A-112.

⁹⁵ Original Determination at 22; CR at I-16, PR at I-12.

⁹⁶ Inventories *** between 1998 and 1999, but only by *** units. Export shipments *** from *** units to *** units. CR and PR at Table I-2.

⁹⁷ CR and PR at Table I-2.

⁹⁸ CR and PR at Table I-2.

⁹⁹ CR and PR at Table I-2.

¹⁰⁰ CR at I-26, PR at I-19.

For the foregoing reasons, we determine that revocation of the antidumping duty order on imports of EL FPDs from Japan would be likely to lead to continuation or recurrence of material injury to the domestic EL FPD industry within a reasonably foreseeable time.

**DISSENTING VIEWS OF COMMISSIONERS
THELMA J. ASKEY AND DEANNA TANNER OKUN**

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 order on certain high-information content (“HIC”) flat panel displays (“FPDs”) from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In August 1991, the Commission determined that an industry in the United States was being materially injured by reason of imports of HIC FPDs from Japan that were being sold at less than fair value (“LTFV”).² As a result, the Department of Commerce (“Commerce”) issued an antidumping duty order on the subject imports from Japan.³ Following an appeal to and remand from the Court of International Trade (“CIT”) and a subsequent reversal by the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) of the CIT’s remand order, the Commission’s original final determination of August 1991 was upheld.⁴ Consistent with the Federal Circuit’s decision, Commerce reinstated its original antidumping duty order, which it had revoked pursuant to a mandamus order issued by the CIT following the CIT’s affirmance of the Commission’s remand determination.⁵

On August 2, 1999, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on certain HIC FPDs from Japan would likely lead to continuation or recurrence of material injury.⁶ Planar Systems, Inc. (“Planar”), a domestic manufacturer of HIC FPDs, filed a Response to the Notice of Institution as well as comments on adequacy. Planar was one of six domestic producers of all types of high information content FPDs and one of two

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 Certain High Information Content Flat Panel Displays and Display Glass Thereof from Japan, Inv. No. 731-TA-469 (Final), USITC Pub. 2413 (August 1991) (“Original Determination”). Prior to the determination in the original investigation, Commerce determined that there were four separate classes or kinds of products, corresponding to electroluminescent (“EL”) FPDs, active matrix liquid crystal displays (“LCDs”), passive matrix LCDs, and gas plasma displays. In addition, Commerce eliminated passive matrix LCDs from the scope because there was no domestic production of passive matrix LCDs, and therefore, the petitioners lacked standing. At the same time, Commerce eliminated plasma displays because of *de minimis* antidumping margins. 56 FR 32376 (July 16, 1991).

³ 56 Fed. Reg. 43741 (September 4, 1991). However, in a subsequent administrative review, Commerce found no margins on subject active matrix LCDs and revoked the order on these imports. 58 FR 34409 (June 25, 1993).

⁴ See Confidential Report (“CR”) and Public Report (“PR”) at I-4, n.5, for a summary of the appeal history of this investigation.

⁵ See Notice of Court Decision and Rescission of Revocation of Antidumping Order, 61 Fed. Reg. 39946 (July 31, 1996), rescinding action in Amendment of Notice of Court Decision and Revocation of Antidumping Order, 59 Fed. Reg. 43809 (August 25, 1994).

⁶ 64 Fed. Reg. 41951 (August 2, 1999).

producers of electroluminescent FPDs during the original investigation.⁷ No respondent interested party filed a response.⁸

On November 4, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate but that the respondent interested party group response was inadequate.⁹ Pursuant to section 751(c)(3)(B) of the Act,¹⁰ the Commission voted to expedite review of this matter.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

The starting point for a five-year review investigation is similar to that for an original antidumping investigation: the Commission must define “the domestic like product” and the “industry.” Section 771(4)(A) of the Act defines the relevant industry as the “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 product.”¹¹ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹² In its final five-year review determination, Commerce defined the scope of the subject merchandise as:

large area, matrix addressed displays, no greater than four inches in depth, with a pixel count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. EL FPDs incorporate a matrix of electrodes that, when activated, apply an electrical current to a solid compound of electroluminescent material (e.g., zinc sulfide) causing it to emit light. Included are monochromatic, limited color, and full color displays used to display text, graphics, and video. EL FPD glass, whether or not integrated with additional components, exclusively dedicated to and designed for use in EL FPDs, is defined as processed glass substrates that incorporate patterned row, column, or both types of electrodes, and also typically incorporate a material that reacts to a change in voltage (e.g., phosphor) and contact pads for interconnecting drive electronics.¹³

⁷ CR at I-18; PR at I-13. In its Response to the Notice of Institution (“Planar’s Response”), Planar indicated that it is not aware of any other current manufacturers of EL FPDs. Planar’s Response at 2, 10.

⁸ Nor did any other person file a submission under Commission Rule 207.61(d).

⁹ See Explanation of Commission Determination on Adequacy in Electroluminescent Flat Panel Displays from Japan (November 1999).

¹⁰ 19 U.S.C. § 1675(c)(3)(B).

¹¹ 19 U.S.C. § 1677(4)(A). The definitions in 19 U.S.C. § 1677 are applicable to the entire subtitle containing the antidumping and countervailing duty laws, including 19 U.S.C. §§ 1675 and 1675a. See 19 U.S.C. § 1677.

¹² 19 U.S.C. § 1677(10).

¹³ 65 Fed. Reg. 11979 (March 7, 2000). Also included in the scope is the display glass used in the FPDs. Commerce found that the continued inclusion of display glass in the scope of the investigation was warranted,

(continued...)

High-information content FPDs (including EL FPDs, active matrix LCDs, passive matrix LCDs, and gas plasma displays), display text, graphics, or video when integrated into such end-user systems as laptop and portable computers; aerospace, medical, and office equipment; and instrumentation for the military.¹⁴ All HIC FPDs are large-area, matrix-addressed displays no greater than 4 inches in depth, with a pixel count of 120,000 or greater.¹⁵ The displays are technologically sophisticated electronic displays that convert information received as electrical signals from an end-user system into visible images.¹⁶ Broadly speaking, they consist of display glass (i.e., the display glass assembly which contains the pixels and row and column electrodes) and associated electronic systems (the drive and control electronics) which drive the electrodes on the display glass and interpret the incoming information-bearing signals.¹⁷ Although “display glass” is the primary and distinguishing component of HIC FPDs, the electronics comprise a significant portion of the cost of a display and determine some of its performance characteristics, including monochromatic color and extent of illumination.¹⁸

HIC FPDs are classified by the technology which is used to produce the display glass.¹⁹ The most common technologies at the time of the original investigation were EL displays, as well as LCDs and gas plasma displays.²⁰ Also, flat panel display technology can be more broadly categorized as emissive or non-emissive.²¹ EL displays and gas plasma displays use emissive technologies, while LCDs are non-emissive.²²

As noted earlier, Commerce defined four separate classes or kinds of merchandise subject to its LTFV findings. Notwithstanding Commerce’s findings, the Commission, in its original investigation, performed one like product analysis, and found one like product consisting of all HIC FPDs. The Commission based this like product finding on the similarities in basic physical characteristics and general end uses, common channels of distribution, and overlap in production methodologies.²³ Specifically, the original determination indicated the distinguishing characteristics among the various types of displays were likely to become more blurred with the movement toward higher performance display technologies and

¹³ (...continued)

given the apparent exclusive dedication of that subassembly and the fact that it represents the essential character of an FPD. *See* 56 FR 32376 (July 16, 1991). Commerce also made a series of scope rulings, some of which involved certain models of EL FPDs. *See* 57 FR 19602 (May 7, 1992), and 59 FR 8910 (February 24, 1994).

¹⁴ CR at I-7; PR at I-6.

¹⁵ CR at I-7; PR at I-6-I-7.

¹⁶ CR at I-7-I-8; PR at I-7.

¹⁷ CR at I-7-I-8; PR at I-7. The displays may be sold by display glass manufacturers without key components, generally the control electronics, or, less frequently, without the mechanical package. At the time of the original investigation, relatively small amounts of display glass without any electronics were sold separately by U.S. producers.

¹⁸ *Id.*

¹⁹ CR at I-8; PR at I-7.

²⁰ *Id.*

²¹ Non-emissive displays are those which do not emit light and cannot be viewed in the dark. In emissive displays, each pixel produces and emits light when electrically activated and is therefore visible without natural or ambient light or a backlight. Because emissive displays generate light, they typically consume more electricity than do non-emissive displays and thus require more power and are heavier. CR at I-8-I-9; PR at I-7.

²² CR at I-9; PR at I-7.

²³ Original Determination at 3-14.

consequent converging appearance and power requirements.²⁴ In addition, the Commission noted in its original determination that all HIC FPDs have the same general end use, *i.e.*, providing to an electronic end user system a continuous, visible display of text, images, and graphics.²⁵

The respondents in the original investigation appealed the Commission's determination to the CIT, which remanded the Commission's like product determination.²⁶ On remand, three Commissioners found the same like product (all HIC FPDs) and three Commission found active-matrix LCDs and EL displays to be separate like products.²⁷ The Commission further found that the domestic industry was materially injured by reason of subject imports of active-matrix LCDs, but that it was not materially injured by reason of subject imports of EL displays.²⁸ The Federal Circuit later reversed the remand of the original Commission determination, reinstating the Commission's original finding of one like product consisting of all HIC FPDs and of material injury to the industry producing HIC FPDs by reason of subject imports of HIC FPDs.²⁹

No information gathered in this review indicates that we should depart from the Commission's previous like product definition of all HIC FPDs, especially in light of the fact the Federal Circuit ultimately endorsed this finding. Accordingly, we find, as in the original investigation, a single like product consisting of all high-information content flat panel displays.

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."³⁰ In these five-year reviews, as in the original determinations, we determine the domestic industry consists of all producers of high-information content flat panel displays.

III. LEGAL STANDARD AND CONDITIONS OF COMPETITION

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping 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 continuation or recurrence of material injury within a reasonably foreseeable time."³¹ The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") states that "under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably

²⁴ *Id.*

²⁵ *Id.*

²⁶ Hosiden Corp. v. United States, 810 F.Supp. 322, 334 (Ct. Int'l Trade 1992).

²⁷ Certain High-Information Content Flat Panel Displays and Display Glass Therefor from Japan, Inv. No. 731-TA-469 (Views on Remand), USITC Pub. No. 2610 (March 1993) at II-4-II-8.

²⁸ *Id.* at II-15.

²⁹ Hosiden Corp. v. Advanced Display Mfrs. of America, 85 F.3d 1561, 1569-70 (Fed. Cir. 1996).

³⁰ 19 U.S.C. § 1677(4)(A).

³¹ 19 U.S.C. § 1675a(a).

foreseeable future of an important change in the status quo -- the revocation [of the finding] ... and the elimination of its restraining effects on volumes and prices of imports.”³² Thus, the likelihood standard is prospective in nature.³³ 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.”³⁴ 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.”³⁵

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.”³⁶ 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.^{37 38}

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.”³⁹ In

³² 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.

³³ 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.

³⁴ 19 U.S.C. § 1675a(a)(5).

³⁵ 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.

³⁶ 19 U.S.C. § 1675a(a)(1).

³⁷ 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.

³⁸ 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 a duty absorption finding with respect to the order under review. *See* 65 Fed. Reg. 11979 (March 7, 2000).

³⁹ 19 U.S.C. § 1675a(a)(4).

performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for high-information content flat panel displays.

In 1991, there were six firms producing HIC FPDs in the United States.⁴⁰ Two firms (Cherry and Planar⁴¹) produced EL FPDs, three firms (Electro Plasma, Photonics, and Plasmaco) produced plasma displays, and Optical Imaging Systems manufactured active-matrix LCDs.⁴² There was no U.S. production of passive-matrix LCDs.⁴³ Planar was the U.S. industry leader in the development of EL technology (using thin-film AC) and had introduced its first multi-color display.⁴⁴ Cherry also manufactured EL displays, but by using DC powder technology rather than AC thin-film technology.⁴⁵

Planar accounted for *** percent of 1990 production of HIC FPDs and for *** production of EL displays in that year.⁴⁶ It is believed to have accounted for *** of 1998 production of HIC FPDs.⁴⁷ Planar indicated in its Response that it is not aware of any other current U.S. manufacturers of EL displays.⁴⁸ The other U.S. EL producer at the time of the original investigation, Cherry, has since left the industry.⁴⁹ However, there reportedly are about a dozen firms that now produce other types of FPD technologies in the United States.⁵⁰ Also, Planar continues to operate its Finnish subsidiary.⁵¹

HIC FPDs are an important component in numerous types of electronic equipment including aircraft instrumentation, electronic publishing and composing equipment, laptop computers, machine-tool controllers, and medical-monitoring instruments.⁵² Thus, the demand for HIC FPDs is derived from the demand for a wide variety of products.⁵³ During the period reviewed in the original investigation, two striking technological trends increased demand for certain HIC FPDs.⁵⁴ First, the trend toward smaller-sized portable computers resulted in a search for the smallest and lightest components and, second, color

⁴⁰ CR at I-18; PR at I-13.

⁴¹ In 1991, Planar acquired Lohja's EL FPD manufacturing operations in Finland. The new firm, Planar International, Olarinluoma, Finland, at that time was *** percent owned by Planar. *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ CR at I-19; PR at I-14.

⁴⁷ *Id.*

⁴⁸ Planar's Response at 2. At the time of the original investigation, EL displays were the only type of HIC FPDs manufactured by Planar. Today, the firm has diversified its operations and also develops and markets passive matrix and active matrix LCDs (as well as producing CRTs for the military). CR at I-20; PR at I-14.

⁴⁹ CR at I-19; PR at I-14.

⁵⁰ These other technologies do not, however, include active matrix. Active-matrix LCDs continue to be manufactured in Japan, which currently holds 85 percent of the world market share of active-matrix LCDs. The remaining 15 percent are produced in Korea. However, IBM continues to manufacture LCDs in Japan through a joint venture with Toshiba Corp. Optical Imaging Systems, the one U.S. producer of active-matrix LCDs listed in the original investigation, closed in 1998 after "years of losses." CR at I-20, n. 62; PR at I-14, n.62.

⁵¹ CR at I-20; PR at I-14. Information on the exact nature of Planar's current operations in Finland is not available.

⁵² CR at I-29; PR at I-19.

⁵³ *Id.*

⁵⁴ *Id.*

technology was of increasing importance.⁵⁵ At that time, these trends resulted in increased purchases of LCD displays since LCDs tended to be lighter in weight than other HIC FPD technologies, consumed less power, and were more likely to be available in color.⁵⁶

According to DisplaySearch,⁵⁷ the demand for FPDs will continue to grow.⁵⁸ They project that due to the increasing requirement for “more content” (i.e., text, graphics, and video) in products, FPDs will surpass cathode ray tubes (CRTs)⁵⁹ by 2004 and that FPDs will account for 54 percent of the \$130 billion display market in 2005.⁶⁰ Reportedly, “FPDs will gain market share at the expense of CRTs due to a number of key advantages including improved portability, lighter weight, lower power requirement, high pixel densities, improved front of screen performance and narrowing cost difference. As FPD costs fall, new and larger markets will become available such as TVs and other consumer products. In addition, new ... display-based products will also boost demand.”⁶¹ Flat panel display producers hope to replace CRTs in computers, televisions, and other products such as portable medical monitors, gas pumps, and copy machine readers.⁶² However, the CRT is still the most common display type.⁶³ The record suggests that there will be an eventual decline in the use of CRTs because of the clearer pictures of HIC FPDs.⁶⁴ Although falling, the prices of HIC FPDs are still three times the cost of an equivalent CRT.⁶⁵

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ DisplaySearch is a leading display market research firm.

⁵⁸ CR at I-32; PR at I-20.

⁵⁹ CRTs are devices where an electron beam is directed onto a phosphorescent coating on a glass screen, causing the surface to phosphoresce or give off light. They are each composed of a thick-glass envelope, electron gun, and phosphor screen. Invented in 1897, the CRT is a mature device with low production costs. The specific end-use application dictates whether a CRT or flat panel technology is selected. At the time of the original investigation, industry observers were predicting that flat panel displays would replace the CRTs currently used in televisions and desktop computers. CR at I-7; PR at I-6.

⁶⁰ CR at I-33-I-34; PR at I-20.

⁶¹ CR at I-34; PR at I-20, *quoting* DisplaySearch.

⁶² CR at I-17; PR at I-12.

⁶³ *Id.*

⁶⁴ CR at I-17; PR at I-13. In addition, HIC FPDs are thinner, lighter, and consume less power than standard CRTs.

⁶⁵ *Id.*

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON CERTAIN HIGH-INFORMATION CONTENT FLAT PANEL DISPLAYS FROM JAPAN ARE NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the finding or order under review 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.⁶⁶ 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.⁶⁷

In performing our analysis, we have taken into account the Commission’s previous volume findings with respect to the subject imports from Japan. In the original determination, the Commission found that subject imports from Japan had increased *** from 1988 to 1990, from *** units in 1988 to *** units in 1990.⁶⁸ It further found that the U.S. market share held by subject imports from Japan rose from *** percent in 1988 to *** percent in 1990, by quantity, and from *** percent in 1988 to *** percent in 1990, by value.⁶⁹ In addition, we note that subject EL displays from Japan comprised a small and declining share of the U.S. market for HIC displays in the original investigation, falling from *** percent in 1988 to *** percent in 1990, by quantity, and from *** percent in 1988 to *** percent in 1990, by value.⁷⁰

The record in this review indicates that in 1998, subject imports from Japan held, by value, approximately *** percent of the U.S. market for EL displays with the domestic industry capturing the remaining *** percent.⁷¹ There is nothing in the record to suggest that the EL FPDs portion of the domestic HIC FPDs market is any larger today than it was during the original investigation. Consequently, we find that the likely volume of subject imports from Japan would again comprise less than one percent of the domestic HIC display market. We also note that there was one producer of the subject merchandise in Japan during the original investigation and that the record indicates that there continues to be the same producer today. While we acknowledge that the available data on capacity of this Japanese producer increased during the original period of investigation, the reported level of exports of the subject product to the United States was relatively stable during that time.⁷² With regard to product shifting, we note that HIC FPDs are generally made to order,⁷³ and thus, the ability for a supplier to sell product either from inventory or to divert shipments of product that is already produced from one market to another is likely to

⁶⁶ 19 U.S.C. § 1675a(a)(2).

⁶⁷ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁶⁸ Original Determination at 23, citing the original staff report at table 37.

⁶⁹ *Id.*

⁷⁰ Compare original staff report at table 37 with original staff report at table 38.

⁷¹ CR and PR at table I-6.

⁷² Original staff report at table 38.

⁷³ CR at I-9; PR at I-8.

be limited. Finally, we note that there are no known existing antidumping or countervailing duty orders in place for the subject merchandise from Japan in export markets other than the United States. The lack of existing orders indicates that there are not impediments to importation in third country markets that would give Japanese suppliers an incentive to shift sales to the United States.

Accordingly, based on the record of this review, we conclude that the volume of subject imports from Japan are not likely to reach significant levels within a reasonably foreseeable time if the antidumping duty order is revoked.

B. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty finding and order 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.⁷⁴

In performing our analysis, we have taken into account the Commission's previous price findings. In the original determination, the Commission found price, while not the most important factor, to be a significant factor.⁷⁵ The Commission indicated that the record showed instances of underselling and that prices of both domestic products and subject imports exhibited downward and flat trends.⁷⁶ Consequently, the Commission found that imports depressed and suppressed domestic prices.⁷⁷ Moreover, the Commission indicated that the presence of subject imports from Japan stifled the domestic industry's ability to raise capital with which to further invest in developing existing and new technologies.⁷⁸ The Commission found that "the inability to attract capital is particularly damaging to a producer of HIC flat panel displays ... [and that the] lack of funds severely constrains research and development efforts, which are critical to the domestic industry."⁷⁹

We note that sales of HIC FPDs are generally done on a contract basis.⁸⁰ In addition, non-price factors, such as the financial strength of the supplier, the past production experience of the supplier, the quality control and capacity of the firm, and the overall reliability of the firm were important considerations in the sales of HIC FPDs.⁸¹ We conclude that the existence and importance of these non-price factors make it unlikely that subject imports from Japan would have more than a minimal effect on the prices of the domestic like product.

⁷⁴ 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.

⁷⁵ Original Determination at 23.

⁷⁶ Original Determination at 24.

⁷⁷ *Id.* The Commission noted that price trends and comparison were difficult to make in this market. ***. Original staff report at table 39.

⁷⁸ Original Determination at 26.

⁷⁹ *Id.*

⁸⁰ CR at I-14; PR at I-11.

⁸¹ Economics Memo (INV-O-161, August 9, 1991) at 14-15.

Moreover, although there are no current pricing data for HIC FPDs, we note that the record indicates the domestic industry in fiscal year 1998, had net sales totaling \$***, resulting in a gross profit of \$***, and operating income of \$***.⁸² Similarly, in fiscal year 1999, the domestic industry had net sales totaling \$***, resulting in a gross profit of \$***, *** of \$***.⁸³ More telling, however, is that the domestic industry made \$*** and \$*** in capital expenditures in 1998 and 1999, respectively, and had R&D expenses that totaled over \$*** in both years, approximately *** times the level made during the original period of investigation.⁸⁴ This suggests that the domestic industry is able to price at such levels to generate sufficient revenue to fund capital development and R&D efforts, which were deemed critical to the domestic industry in the original determination.

Consequently, we find that it is unlikely that the subject imports from Japan will have significant adverse effects on domestic prices within the reasonably foreseeable future.⁸⁵ As we stated earlier, it is unlikely that the subject imports from Japan will increase their volume levels in a more than minimal fashion in the reasonably foreseeable future. Accordingly, we find that it is unlikely that these minimal import volumes will have a significant adverse impact on domestic prices if the antidumping order is revoked.

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.⁸⁶ 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.⁸⁷

As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁸⁸ The record indicates that the domestic industry is in

⁸² CR and PR at Table I-2.

⁸³ *Id.* We note, however, that SG&A expenses increased by \$*** in 1999.

⁸⁴ *Id.*

⁸⁵ The record in this expedited review does not contain current pricing data for the domestic like product or subject imports from Japan. CR at I-23; PR at I-16.

⁸⁶ 19 U.S.C. § 1675a(a)(4).

⁸⁷ 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. Commerce found that revocation of the antidumping order on the subject merchandise from Japan would likely lead to continuation or recurrence of dumping at margins of 7.02 percent for Sharp Corporation and for all others. 65 Fed. Reg. 11979 (March 7, 2000).

⁸⁸ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, (continued...)

much better condition today than it was during the original investigation. The record evidence in this review suggests that the performance of the domestic industry is strong. At the time of the original investigation, the domestic HIC FPD industry was characterized as a relatively new and emerging industry, which had low levels of sales and was experiencing financial losses.⁸⁹ Today, however, the domestic industry is reportedly considered more mature.⁹⁰

In particular, the record indicates that domestic producer Planar has *** expanded its capacity, and its production levels are over *** times what they were in 1990.⁹¹ In addition, the value of Planar's net sales has increased *** resulting in a *** gross profit and *** in fiscal year 1998 as compared to *** during 1988-90.⁹² ***.⁹³ Moreover, Planar's R&D expenditures have increased *** to \$*** in fiscal year 1998 and to \$*** in fiscal year 1999.⁹⁴ Finally, we note that in early 1991, Planar, acquired EL FPD manufacturing operations in Finland, suggesting that it is now a successful domestic producer. Accordingly, we do not find that the domestic industry is vulnerable to the likely future effects of the subject imports from Japan as contemplated by the Act.⁹⁵

As we determined above, we find that revocation of the antidumping duty order is not likely to result in significant volume or price effects by the subject imports from Japan. These findings, in turn, indicate that the subject imports from Japan are not likely to have a significant adverse impact on the domestic industry within the reasonably foreseeable future if the order is revoked. Accordingly, we conclude that revocation of the antidumping duty order on subject imports from Japan would not be likely to lead to significant declines in output, sales, market share, profits, productivity, or return on investments. Therefore, we find that revocation of the antidumping duty order on Japan is not likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

⁸⁸ (...continued)

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

⁸⁹ Original staff report at table 17; and CR at I-17; PR at I-15.

⁹⁰ CR at I-17; PR at I-12.

⁹¹ CR and PR at Table I-2.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ 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").

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on certain high-information content flat panel displays from Japan would not be likely to lead to continuation or recurrence of material injury to the U.S. high-information content flat panel display industry within a reasonably foreseeable time.