

UNITED STATES INTERNATIONAL TRADE COMMISSION

INTERNAL COMBUSTION INDUSTRIAL FORKLIFT TRUCKS FROM JAPAN

Investigation No. 731-TA-377 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION

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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,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on internal combustion industrial forklift trucks 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.

BACKGROUND

The Commission instituted this review on April 1, 1999 (64 F.R. 15786) and determined on July 2, 1999, that it would conduct a full review (64 F.R. 38475, July 16, 1999). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on August 27, 1999 (64 F.R. 46952). The hearing, scheduled to be held in Washington, DC, on January 25, 2000, was cancelled as a result of a Federal Government closure in Washington, DC due to inclement weather on January 25 and 26, 2000. On January 28, 2000, the schedule was revised (65 FR 5660, February 4, 2000) and all persons who requested the opportunity to be heard at the original hearing were permitted to submit written testimony to the Commission in lieu of the public hearing.

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 Chairman Lynn M. Bragg, Commissioner Thelma J. Askey, and Commissioner Deanna Tanner Okun dissenting.

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 internal combustion industrial forklift trucks 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 May 1988, the Commission determined that an industry in the United States was being materially injured by reason of imports of internal combustion industrial forklift trucks from Japan that were being sold at less than fair value.² On June 7, 1988, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of internal combustion industrial forklift trucks from Japan.³ On April 1, 1999, the Commission instituted this review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on internal combustion industrial forklift trucks would be likely to lead to continuation or recurrence of material injury.⁴

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties - domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) - demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁵ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In this review, the Commission received individual responses to the notice of institution from three domestic producers of forklift trucks, Clark Material Handling Company (“Clark”), NACCO Materials Handling Group, Inc (“NACCO”), and TCM Manufacturing USA, Inc. (“TCM USA”).⁶ Four Japanese

¹ Chairman Bragg, Commissioner Askey, and Commissioner Okun dissenting. Chairman Bragg and Commissioners Askey and Okun determine that revocation of the antidumping duty order covering internal combustion industrial forklift trucks 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. See Dissenting Views of Chairman Lynn M. Bragg and Commissioners Thelma J. Askey and Deanna Tanner Okun.

² Internal Combustion Engine Forklift Trucks from Japan, Inv. No. 731-TA-377 (Final) USITC Pub. 2082 at 1 (May 1988) (“Original Determination”).

³ 53 Fed. Reg. 20882 (June 7, 1988).

⁴ 64 Fed. Reg. 15786 (April 1, 1999).

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

⁶ In 1993, NACCO, already the parent corporation of domestic forklift producer Yale, acquired Hyster Company, the petitioner in the original investigation. Confidential Report (“CR”) at I-23; Public Report (“PR”) at (continued...)

producers, Komatsu Forklift Co., Ltd. (“Komatsu”), Mitsubishi Heavy Industries, Ltd. (“Mitsubishi Heavy”), Toyo Umpanki Co., Ltd. (“TCM”), and Toyota Motor Corporation (“Toyota”), and one U.S. importer of forklift trucks, Toyota Motor Sales, U.S.A., Inc. (“Toyota USA”) filed a response to the notice of institution.⁷

On July 2, 1999, the Commission determined that both the domestic and respondent interested party group responses to its notice of institution were adequate.⁸ Pursuant to 19 U.S.C. § 1675(c)(5), the Commission decided to conduct a full review.

Notwithstanding their earlier representations to the Commission, Komatsu, Mitsubishi Heavy, and Toyota did not participate further in this review, *i.e.*, did not respond to the Commission’s questionnaires or file any other papers in this proceeding. Other Japanese producers, domestic producers, importers, and purchasers responded to the Commission’s questionnaires.⁹ In lieu of a hearing in this review, domestic producers NACCO and Clark provided the Commission with written testimony and the Commission forwarded them written questions for written response with their posthearing briefs. Only domestic producers NACCO and Clark filed any briefs/comments in this review; their comments were in support of continuation of the antidumping duty order under review.¹⁰

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.”¹¹ 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 subject merchandise as

⁶ (...continued)

I-16. TCM USA is a subsidiary of Japanese producer TCM. CR at I-25; PR at I-17.

⁷ The Japanese producers were estimated to account for approximately *** of the quantity of total Japanese production of subject merchandise. INV-W-135 at 2, n.6 (June 23, 1999).

⁸ See Explanation of Commission Determinations on Adequacy in Internal Combustion Industrial Forklift Trucks from Japan. See also 64 Fed. Reg. 38475 (July 16, 1999).

⁹ The U.S. production and importing subsidiaries of the three non-responding Japanese producers also did not initially respond to the Commission’s questionnaires until the Commission issued administrative subpoenas to compel their responses.

¹⁰ At the adequacy stage, Clark and NACCO supported the Commission conducting a full review, Komatsu supported an expedited review, and the others did not comment. In response to the notice of institution, Clark and NACCO alleged that material injury would continue or recur if the orders were revoked, and Komatsu, Toyota, TCM and TCM USA contended that it would not.

¹¹ 19 U.S.C. § 1677(4)(A).

¹² 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).

internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 [sic] pounds, from Japan. The products covered are described as follows: assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order.¹³

Forklift trucks are self-propelled work trucks with platforms that can be raised and lowered for insertion under a load to be lifted or transported.¹⁴ These trucks are used for general materials handling, and stacking and retrieving. Forklift trucks typically are powered by internal combustion engines using gasoline, diesel or liquefied petroleum gas (“LPG”), or by an electric motor. Internal combustion engine trucks, which are the subject merchandise, normally are used in outdoor and/or well-ventilated indoor operations when continuous operation is important or when ramps or other heavy-duty applications are involved. There is a variety of basic types of operator-riding forklift trucks, including counterbalanced, narrow aisle, sideloader, orderpicker, and turret. The majority of internal combustion forklift trucks are rider trucks of the counterbalanced lift type, powered by LPG engines, with a lifting capacity of 2,000-15,000 pounds.¹⁵ There are two basic fabrication processes involved in the production of internal combustion forklift trucks before assembly -- the production of the frame and the production of the mast. Forklift trucks are finished with customer-specified options.

In the original investigation, the Commission defined the domestic like product as industrial, operator-riding internal combustion engine forklift trucks with a weight-lift capacity of between 2,000 and 15,000 pounds (inclusive), with a U.S.-produced frame.¹⁶ In reaching this definition, the Commission considered two domestic like product issues: (1) whether forklift trucks with a weight lift capacity greater than 15,000 pounds should be included in the definition; and (2) whether forklift trucks powered by other than an internal combustion engine, particularly electric powered trucks, should be included in the definition. The Commission determined in the original investigation that neither the forklift trucks with lifting capacities greater than 15,000 pounds nor those with electric powertrains should be included in the definition.¹⁷

In the original investigation, the Commission also considered an issue concerning both the definition of the domestic like product and the domestic industry: whether domestic production of forklift

¹³ 64 Fed. Reg. 42662 (Aug. 5, 1999).

¹⁴ See CR at I-14 - I-18; PR at I-10 - I-12.

¹⁵ Lifting capacities for internal combustion forklift trucks range from 2,000 through 120,000 pounds. CR at I-15; PR at I-10.

¹⁶ Original Determination, USITC Pub. 2082 at 17.

¹⁷ The Commission “determined not to include forklift trucks with lifting capacities greater than 15,000 pounds because the end uses and applications of such trucks and the manufacturing processes by which they are produced are different from those of the standard-lift IC’s.” Original Determination, USITC Pub. 2082 at 5-6. The Commission determined not to include electric forklift trucks in its definition because the evidence “suggests that in the three key respects . . . physical characteristics, applications and end uses, and production processes-- there are more than ‘minor differences’ between Class 1 and Class 2 electric forklifts, and Class 4 and Class 5 IC forklifts.” *Id.* at 9.

trucks should be defined on the basis of a U.S.-produced frame or a certain minimum level of U.S. value added.¹⁸ The Commission decided “to define domestic production of the like product as an IC forklift with a U.S.-produced frame. . . . [because the] frame approach most fully incorporates consideration of such practical indicia of U.S. production activity as the level of research and development expenses (including design and engineering expenses), capital investment in plant and equipment, and labor activity related to the production of standard-lift IC’s.”¹⁹ The Commission also found that “no standard-lift IC with a U.S.-produced frame contains less than 35 percent U.S. value added, the minimum threshold proposed. . . . [and that for] several of the largest U.S. producers . . . the share of U.S. value added for standard-lift IC’s with a U.S.-produced frame was significantly greater than 50 percent.”²⁰

In this review, no party has urged any change in the domestic like product definition.²¹ The record indicates that the product itself has remained essentially unchanged since the original investigation.²² While there have been some changes to the frame production process and the minimum levels of domestic value-added by domestic producers of forklift trucks since the original investigation,²³ we find that the evidence on the record of this five year review does not suggest a reason for revisiting the Commission’s original determination of the domestic like product. Accordingly, we define the domestic like product to be industrial, operator-riding internal combustion engine forklift trucks with a weight-lift capacity of between 2,000 and 15,000 pounds (inclusive), with a U.S.-produced frame (“forklift trucks”).

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.”²⁴ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant

¹⁸ Original Determination, USITC Pub. 2082 at 9-17.

¹⁹ Original Determination, USITC Pub. 2082 at 15-16.

²⁰ Original Determination, USITC Pub. 2082 at 16-17. The evidence in the original investigation indicates that “the frame accounts for only 10 to 15 percent of the cost of a forklift truck.” *Id.* at 12.

²¹ NACCO’s Prehearing Brief at 9-11; NACCO’s Posthearing Brief, Exhibit 1 at 33-34. Clark states that it has no comment on the issues. Clark’s Response to the Notice of Institution at 7 (May 21, 1999). According to NACCO, the frame is the essence of a forklift truck since the “frame establishes the lift capacity, the engine type and size, the tire type of the forklift truck and allows a reasonable method to establish U.S. production.” NACCO’s Posthearing Brief, Exhibit 1 at 33. NACCO adds that “[w]hile the precise reasons relied upon by the Commission for relying on the frame to determine the like product have changed, the location of the frame production still provides the most useful and appropriate method for making the like product determination.” NACCO’s Prehearing Brief at 11.

²² CR at I-20, II-2, II-5, and II-8; PR at I-13, II-2, II-3, and II-5; NACCO’s Posthearing Brief, Exhibit 1 at 11.

²³ CR at I-11-13 and Table I-5; PR at I-8 - I-9 and Table I-5.

²⁴ 19 U.S.C. § 1677(4)(A).

market, provided that adequate production-related activity is conducted in the United States.²⁵

Seven firms account for nearly all of U.S. production of the domestic like product, internal combustion forklifts trucks, with U.S. produced frames.²⁶ Five of the seven major U.S. producers are U.S. subsidiaries or joint ventures of Japanese producers.^{27 28} For the reasons discussed below and consistent with our domestic like product determination, we find one domestic industry, consisting of all domestic producers of internal combustion industrial forklift trucks with a weight-lift capacity of between 2,000 and 15,000 pounds (inclusive), with a U.S.-produced frame, but exclude certain producers as related parties.

In defining the domestic industry in this review, we have considered whether the U.S. subsidiaries of Japanese forklift truck producers should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry for the purposes of an injury determination producers that are related to an exporter or importer of the subject merchandise, or which are themselves importers.²⁹ Exclusion of a such a producer is within the Commission's discretion based upon the facts presented in each case.³⁰

²⁵ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

²⁶ CR at I-20 and Table I-6. A small number of low volume niche producers account for the remainder of the domestic production. The Commission received useable data from the seven major U.S. producers and one niche producer, Drexel Industries, LLC ("Drexel"). Id.

²⁷ The five U.S. subsidiaries are: Toyota Industrial Equipment Manufacturing, Inc. ("Toyota Industrial"); Mitsubishi Caterpillar Forklift America, Inc. ("Mitsubishi Caterpillar"); Nissan Forklift Corp. North America ("Nissan Forklift"); TCM Manufacturing USA, Inc. ("TCM USA"); and Komatsu Forklift USA, Inc. ("Komatsu USA"). CR at I-25-27; PR at I-17 and I-18.

²⁸ NACCO argues that these U.S. subsidiaries of the Japanese producers do not qualify as domestic producers using the six-factor test used by the Commission to decide whether a firm is a "domestic producer" and charges that these operations "are predominantly assembly operations." NACCO's Posthearing Brief, Exhibit 1 at 19, 33-34; NACCO's Prehearing Brief at 11-14.

In determining whether a firm's operations involve sufficient U.S. production-related activity to qualify as domestic production of the like product, the Commission often has analyzed the overall nature and extent of a firm's production-related activity in the United States. See, e.g., Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Inv. Nos. 701-TA-387-391 and 731-TA-816-821 (Final), USITC Pub. 3273 at 8-9 (Jan. 2000). The U.S. subsidiaries of the Japanese producers have made substantial investments in the United States for the production of forklift trucks, ranging from an estimated ***. INV-X-057 at Table III-10; CR at I-25-27; PR at I-17, I-18, and Table III-10. ***. Each firm to varying degrees uses a substantial percentage of domestic components and adds domestic value comparable to the other U.S. producers in the production of their models with the highest volume of sales. CR/PR at Tables I-5, ***. Employment levels for production and related workers at Mitsubishi Caterpillar and Toyota Industrial are *** of forklift trucks in 1998. CR/PR at Tables I-4 and I-6, and Questionnaire responses. Moreover, unlike NACCO, none of these subsidiaries undertakes substantial research and development in the United States. NACCO's Posthearing Brief, Exhibit 1 at 18; INV-X-057 at III-16 and Table III-10; PR at III-8 and Table III-10. On balance, however, we find that these firms fall within the range of domestic production-related activities that the Commission has considered adequate to qualify as a domestic producer and define Mitsubishi Caterpillar, Toyota Industrial, Nissan Forklift, Komatsu USA, and TCM USA as domestic producers.

²⁹ 19 U.S.C. § 1677(4)(B).

³⁰ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without (continued...)

In this review, five U.S. producers of the domestic like product are related parties because they are wholly or majority owned by Japanese producers/exporters of the subject merchandise.³¹ Domestic producer NACCO contends that the Japanese-owned subsidiaries should be excluded from the domestic industry.³² For the reasons stated below, we find that appropriate circumstances exist to exclude Mitsubishi Caterpillar, Toyota Industrial, Nissan Forklift, Komatsu USA, and TCM USA from the domestic industry under the related parties provision.

Under the likelihood standard in five year reviews, the Commission considers the likely impact of revocation of the order and the elimination of its restraining effects on imports.³³ Thus, the Commission is to look at the likelihood that imports will occur in the reasonably foreseeable future and not only at the current import levels. With the exception of Komatsu USA, each of the U.S. manufacturing subsidiaries of the Japanese producers was established after the imposition of the antidumping duty order apparently to participate in the U.S. market without incurring antidumping duties.³⁴ As discussed below, while imports from Japan of forklift trucks decreased significantly since imposition of the order, we conclude it is likely that significant imports would resume if the order was revoked. Specifically, in the circumstances of this

³⁰ (...continued)

opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). 19 U.S.C. § 1677(4)(B). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and
- (3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand, Inv. Nos. 731-TA-308-310 and 520-521 (Review), USITC Pub. 3263 at 5-7 (Dec. 1999); Stainless Steel Plate from Sweden, Inv. No. AA1921-114 (Review), USITC Pub. 3204 at 10 (July 1999); Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada, Inv. Nos. 104-TAA-7, AA1921-198-200, and 731-TA-3 (Review), USITC Pub. 3238 at 14 (Sept. 1999). See also S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979).

³¹ The following U.S. production facilities are related to Japanese producers (U.S. subsidiary/Japanese producer): 1) Nissan Forklift/Nissan; 2) Mitsubishi Caterpillar/Mitsubishi Heavy; 3) TCM USA/TCM; 4) Toyota Industrial/Toyota; and 5) Komatsu USA/Komatsu. CR at I-25 - I-27; PR at I-17 and I-18.

³² NACCO contends that the Japanese-owned subsidiaries should be excluded from the domestic industry because their primary interest lies in avoiding the imposition of the antidumping duties and not in domestic production, and their inclusion will severely skew the analysis of the impact of revocation since they are "insulated from injury by virtue of Japanese parentage." NACCO's Prehearing Brief at 14-17; NACCO's Posthearing Brief, Exhibit 1 at 31-34.

³³ SAA at 884.

³⁴ Komatsu USA established its manufacturing operation in Georgia during the second half of 1987 and thus prior to the 1988 order. CR at I-20, n.18; PR at I-14, n.18.

case, we conclude that the Japanese producers, free from the restraining effects of the order, would be likely to rationalize their U.S. and Japanese production operations, and supply the U.S. market by both importation and U.S. production, or importation alone. As discussed below, the nature of these U.S. manufacturing facilities -- essentially assembly operations producing a range of models -- makes such a rationalization feasible and, given other circumstances in this review, we conclude such a restructuring is likely. In doing so, the Japanese producers would be likely to rationalize their U.S. production and importation from Japan so as not to compete with the types of subject forklift trucks produced by their related U.S. subsidiaries. Therefore, the impact of revocation of the order would be very different for the U.S. subsidiaries of the Japanese producers than for the other non-related domestic producers that would have to compete with, rather than be shielded from, the subject imports.

Thus, based on the particular facts of this case, we find it appropriate to exclude these related U.S. subsidiaries, Mitsubishi Caterpillar, Toyota Industrial, Nissan Forklift, Komatsu USA, and TCM USA, from the domestic industry because they would be largely shielded from import competition and the impact of revocation of the order.³⁵ Accordingly, we define the domestic industry as the domestic producers of the domestic like product, such as NACCO, Clark, and Drexel, that are not subsidiaries of the Japanese producers.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON INTERNAL COMBUSTION INDUSTRIAL FORKLIFT TRUCKS FROM JAPAN WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³⁶ 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.”³⁷ Thus, the likelihood standard is prospective in nature.³⁸ The statute states that “the

³⁵ The legislative history states regarding original investigations that if the “foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry.” S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979).

³⁶ 19 U.S.C. § 1675a(a).

³⁷ 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.

³⁸ 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.

(continued...)

Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”³⁹ 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].”^{40 41}

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.”⁴² 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.^{43 44}

For the reasons stated below, we determine that revocation of the antidumping duty order on forklift trucks 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

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs

³⁸ (...continued)

market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

³⁹ 19 U.S.C. § 1675a(a)(5).

⁴⁰ 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.

⁴¹ 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.

⁴² 19 U.S.C. § 1675a(a)(1).

⁴³ 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.

⁴⁴ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings with respect to this antidumping duty order. See 64 Fed. Reg. 42662, 42664 (Aug. 5, 1999); CR/PR at Appendix A.

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.”⁴⁵

First, demand for internal combustion industrial forklift trucks has been strong since the end of the original investigation.⁴⁶ During the 1990s, demand for internal combustion industrial forklift trucks, which is not seasonal, has tracked the growth in the U.S. economy.⁴⁷ The strong U.S. economy is a principal driving factor in the continued strong demand for forklift trucks, which is expected to remain strong as long as the economy does well.⁴⁸

Second, the composition of the domestic industry has changed significantly since the original investigation and the imposition of the antidumping duty order on imports from Japan in 1988. Of the eight domestic producers during the original investigation, only two remain in the industry today.⁴⁹ More significantly, five Japanese producers/exporters have established U.S. forklift truck manufacturing operations, have virtually ceased importation, and are serving the U.S. market through domestic production rather than through importation. Four out of the five U.S. manufacturing subsidiaries were established subsequent to the imposition of the antidumping duty order.⁵⁰

Third, the record in this review demonstrates that the U.S. forklift truck market is highly competitive and, consequently, profit margins in this industry are modest.⁵¹

Fourth, internal combustion industrial forklift trucks have remained essentially unchanged since the original investigation.⁵² These forklift trucks are differentiated by type of tire (cushion or pneumatic), type of engine (gasoline, LPG, or diesel), lift capacity, and front-end equipment.⁵³ U.S. producers manufacture standard forklift trucks on assembly lines and customize each order to provide whichever combination of the wide variety of features available that their customers desire.⁵⁴

Finally, nonsubject imports have continued to account for a significant share of the U.S. market as they did during the original investigation. In 1998, nonsubject imports accounted for 21.9 percent of total apparent domestic consumption.⁵⁵ Nonsubject imports share of the U.S. market in interim period (January-

⁴⁵ 19 U.S.C. § 1675a(a)(4).

⁴⁶ CR/PR at Table I-1.

⁴⁷ CR at II-7; PR at II-4.

⁴⁸ CR at II-9; PR at II-5 - II-6. NACCO indicates that it “expects demand to continue to grow, but at a rate substantially less than in the last 10 years. . . . project[ing] the growth rate of IC forklifts to be about 2 to 3 percent per year.” NACCO’s Posthearing Brief, Exhibit 1 at 8.

⁴⁹ CR at II-1 and 2; PR at II-1. The two original producers were Clark and Hyster, which is a part of NACCO. Through a series of acquisitions and mergers, domestic producers Hyster and Yale are a single entity NACCO. CR at I-23; PR at I-16. NACCO’s Prehearing Brief at 2; NACCO’s Posthearing Brief, Exhibit 1 at 1.

⁵⁰ Komatsu USA established its manufacturing operation in the second half of 1987 and thus prior to the 1988 order. CR at I-20, n.18; PR at I-14, n.18.

⁵¹ INV-X-057/PR at Table III-7; NACCO’s Prehearing Brief at 2 and 29.

⁵² CR/PR at II-2.

⁵³ CR/PR at II-1.

⁵⁴ CR at I-17; PR at I-12.

⁵⁵ CR/PR at Table I-1.

September) 1999 was 29.1 percent of total U.S. apparent consumption.⁵⁶

Based on the record evidence, we find that these conditions of competition in the U.S. forklift truck 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 in 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.⁵⁷ 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.⁵⁸

The statute provides that when an interested party withholds information that has been requested by the Commission, the Commission may “use the facts otherwise available in reaching” its determination.⁵⁹ As noted above, three Japanese forklift truck producers -- Toyota, Mitsubishi Heavy, and Komatsu -- responded to the Commission’s notice of institution and indicated a willingness to participate in a full review. However, subsequent to the Commission’s decision to conduct a full review, these three Japanese producers, which account for an estimated *** of Japanese production of forklift trucks in 1998,⁶⁰ declined to participate further and did not respond to the Commission’s questionnaire.⁶¹ Thus, of the six Japanese producers, only three, TCM, Nissan Motor, and Sumitomo-NACCO, submitted data to the Commission by responding to the Commission’s foreign producer questionnaire.⁶² The three responding Japanese producers are estimated to account for approximately *** of Japanese production of forklift

⁵⁶ CR/PR at Table I-1.

⁵⁷ 19 U.S.C. § 1675a(a)(2).

⁵⁸ 19 U.S.C. § 1675(a)(2)(A)-(D).

⁵⁹ 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 the record of the original determination and from any other information placed on the record. *Id.*

⁶⁰ Calculated from responses to the Notice of Institution and Foreign Producer Questionnaires.

⁶¹ Moreover, their U.S. subsidiaries -- Toyota Industrial, Mitsubishi Caterpillar, and Komatsu USA -- also declined to respond to the Commission’s domestic producer questionnaire until the Commission issued subpoenas to compel their responses.

⁶² There are six primary Japanese producers which account for virtually all Japanese production of subject forklift trucks, with a small number of low volume producers completing the industry.

trucks in 1998.⁶³ In this review, the facts available to the Commission regarding the three non-responding Japanese producers include the record from the original investigation and additional information contained in the staff report gathered from public sources, from the parties, and from these Japanese producers in response to the notice of institution. In analyzing the likely volume and price effects of subject imports if the order is revoked, we have relied on the facts available in this review. Pursuant to our statutory authority, we have taken adverse inferences against the three non-cooperating Japanese producers in selecting from among the facts available.

During the period of the original investigation, U.S. imports of forklift trucks from Japan increased in both volume and value during each year of the period of investigation.⁶⁴ Moreover, U.S. market penetration by subject imports from Japan “was clearly significant throughout,” accounting for “51.3 percent of U.S. apparent consumption in 1985, dropping to 49.6 percent in 1986, then rising to 51.4 percent in 1987.”⁶⁵ Since imposition of the antidumping duty order in 1988, imports from Japan of subject forklift trucks have virtually ceased.⁶⁶ From a peak of 23,730 forklift trucks in 1987, shipments of subject imports have fallen to an estimated 18 forklift trucks in 1998.⁶⁷

Several factors support the conclusion that subject import volume is likely to be significant if the order is revoked. First, the Japanese producers have substantial unused capacity in Japan. We have relied on the production capacity and capacity utilization information provided by U.S. producer NACCO, which is based on Japanese Industry Vehicle Association (“JIVA”) statistics, for the non-responding Japanese forklift truck producers, and the information provided in the foreign producer questionnaire responses for the responding Japanese producers.⁶⁸ Subject Japanese capacity to produce forklift trucks was 114,036 trucks in 1998.⁶⁹ Overall Japanese capacity utilization rates were approximately 77 percent in 1998.⁷⁰ Of the six Japanese producers, the three responding Japanese producers reported a total excess capacity of

⁶³ Calculated from responses to the Notice of Institution and Foreign Producer Questionnaires.

⁶⁴ Original Determination, USITC Pub. 2082 at 25; see also CR/PR at Table I-1.

⁶⁵ Original Determination, USITC Pub. 2082 at 25-26; see also CR/PR at Table I-1.

⁶⁶ CR/PR at Tables I-1 and IV-2.

⁶⁷ CR/PR at Table I-1.

⁶⁸ We take an adverse inference against Komatsu, Toyota, and Mitsubishi Heavy in selecting from the facts otherwise available and rely upon the Japanese production capacity figures provided by U.S. producer NACCO. See 19 U.S.C. § 1677e(b). We find that Komatsu, Toyota, and Mitsubishi Heavy have failed to cooperate to the best of their ability, despite informing the Commission of their willingness to participate at the adequacy stage of this review, and that the unrefuted evidence provided by the U.S. producer that is contrary to these Japanese producers’ interests is credible, particularly given NACCO’s extensive participation in the Japanese market through its affiliation with its joint venture in Japan that produces forklift trucks and its knowledge of the competitive conditions in that market. CR at I-23 and IV-6; PR at I-16 and IV-5.

⁶⁹ Calculated from NACCO Prehearing Brief at 34 and foreign producer questionnaire responses. This capacity level is significantly greater than the capacity level of 89,147 trucks at the end of the original investigation. Original Determination, USITC Pub. 2082 -- Staff Report at Table 22.

⁷⁰ Calculated from NACCO Prehearing Brief at 34 and foreign producer questionnaire responses. This capacity utilization rate is significantly less than the capacity utilization rate of 97.5 percent in 1987 when the Japanese industry was exporting a substantial portion of its production to the United States. Original Determination, USITC Pub. 2082 -- Staff Report at Table 22.

3,292 trucks in 1998, and an average capacity utilization rate of 87.4 percent.⁷¹ In addition, the facts available for the three non-responding Japanese producers show a total excess capacity of 22,993 trucks in 1998, and an average capacity utilization rate of 73.9 percent.⁷² Moreover, the excess capacity in Japan of approximately 26,300 trucks is particularly significant relative to apparent U.S. consumption of 85,747 trucks, and the domestic industry's U.S. shipments of *** in 1998.⁷³

Second, responding Japanese producers have inventories as a share of their total shipments ranging from 5.4 percent to 6.7 percent over the period of this review.⁷⁴ In the absence of specific information from the non-responding Japanese producers, we infer that these producers have at least comparable inventory levels. These inventory levels are relatively high for an industry that typically sells a customized product and thus produces in response to orders.⁷⁵ By comparison, inventories for the U.S. producers as a share of their total shipments ranged from *** over the period of review.⁷⁶

There is a significant incentive for the Japanese producers with substantial excess capacity and inventories to increase exports to the large U.S. market if the order is revoked. The United States is the largest market in the world for forklift trucks accounting for 34.2 percent of total world shipments in 1998.⁷⁷ The economic growth and strong demand for forklift trucks in the U.S. market provide a strong incentive to the export-oriented Japanese producers to once again commence exporting significant volumes to the U.S. market. Similar to the original investigation, Japanese forklift truck producers still are dependent on exports for more than half of their shipments; export shipments accounted for 53.7 percent of the responding Japanese producers' total shipments in 1998.⁷⁸ However, the destination of those exports has changed significantly since the original investigation when almost half of the Japanese exports were shipped to the U.S. market. Since the imposition of the antidumping duty order, exports to the United States have virtually ceased and exports to markets other than the United States have absorbed the prior U.S. share, increasing from 28.4 percent of total Japanese shipments of forklift trucks in 1987 to 53.7 percent for reporting Japanese producers in 1998.⁷⁹ Moreover, home market shipments declined in absolute terms and as a share of reporting Japanese producers' total shipments from 14,290 trucks, or 53.4 percent,

⁷¹ CR/PR at Table IV-4. The 1998 capacity utilization rates for the three responding Japanese producers were: *** for Nissan; *** for TCM; and *** for Sumitomo-NACCO. Calculated from foreign producer questionnaire responses for 1998.

⁷² The 1998 capacity utilization rates for the three non-responding Japanese producers were: 73.6 percent for Toyota; 76.1 percent for Komatsu; and 70.3 percent for Mitsubishi. Calculated from NACCO's Prehearing Brief at 34.

⁷³ CR/PR at Tables I-1 and C-2.

⁷⁴ CR/PR at Table IV-4.

⁷⁵ CR at II-5; PR at II-3.

⁷⁶ CR/PR at Table C-2.

⁷⁷ NACCO's Prehearing Brief at 31.

⁷⁸ Original Determination, USITC Pub. 2082 -- Staff Report at Table 21 and CR/PR at Table IV-4. This percentage is based on information provided by the three responding Japanese producers. In the absence of specific information from the non-responding Japanese producers, we infer that their export shipments account for at least as great a share of their total shipments as the responding producers.

⁷⁹ Original Determination, USITC Pub. 2082 -- Staff Report at Table 21 and CR/PR at Table IV-4.

in 1997 to 10,700 trucks, or 46.3 percent, in 1998.⁸⁰ Without the discipline of the antidumping duty order, Japanese producers would have an incentive to re-direct the substantial excess capacity of forklift trucks in Japan, as well as their substantial exports to third countries, to the U.S. market.

Finally, as discussed above, apparently in response to the imposition of the antidumping duty order, the Japanese forklift truck producers ceased exporting to the United States and established U.S. production subsidiaries. We do not believe that these U.S. subsidiaries would impede the resumption and increase of subject imports to a significant level if the discipline of the antidumping duty order is removed. In fact, free of the restraining effects of the order, these global entities would have the flexibility to supply the U.S. market through a combination of production and importation. Moreover, the established customer base and distribution system would facilitate the Japanese producers' ability to increase sales of imported subject merchandise if the order was revoked.

The facts available regarding the activities of the U.S. subsidiaries indicate that these facilities are essentially assembly operations producing a range of models using domestically-manufactured frames. While the size and nature of these subsidiaries varies among the different companies, they are all characterized by low employment levels relative to their domestic producer counterparts. For example, U.S. subsidiaries Mitsubishi Caterpillar and Toyota Industrial, ***,⁸¹ Moreover, most of the U.S. subsidiaries have a greater dependence than the domestic industry on foreign components and conduct little or no research and development in the United States.⁸² In addition, some of the U.S. subsidiaries have ***,⁸³ Under these circumstances, rationalization of production, including repatriation of productive facilities, is both feasible and likely.

The varied size and nature of the Japanese producers' operations in the United States suggests that there would be a range of responses to revocation of the antidumping duty order.⁸⁴ These responses are likely to vary from complete repatriation of production, where U.S. production is halted and all production

⁸⁰ CR/PR at Table IV-4. Interim period data shows a further decline in the quantity of trucks shipped to the home market in 1999 compared with 1998. Id.

⁸¹ Questionnaire responses.

⁸² INV-X-057 at Table I-5, and III-16; PR at Table I-5, and III-8; NACCO's Posthearing Brief, Exhibit 1 at 18.

⁸³ INV-X-057 at Table III-7 and CR at I-25 - I-27; PR at Table III-7, and I-17 and I-18. See also NACCO's Prehearing Brief at 36-38 and 41-42.

⁸⁴ According to NACCO,

[o]n the one side are Komatsu and TMU [TCM] that have *** located in the United States. With revocation, it is likely that these Japanese producers would return all assembly to Japan and maintain their U.S. facilities simply as depot operations. On the other extreme is Toyota with a larger investment in the United States. It is unlikely that Toyota would relocate all its production of the subject merchandise to Japan. Instead, Toyota is more likely to rationalize its operations, such that assembly of its smaller lift capacity IC cushion and electric trucks would remain in the United States, while all IC pneumatic trucks and trucks with larger lift capacity would be imported from Japan. . . . The behavior of MCFA [Mitsubishi Caterpillar] would likely follow a similar pattern, with a rationalization of production of the Mitsubishi brand in Japan. Finally, the future of Nissan's U.S. operations is questionable given its parent company's poor financial status.

NACCO's Posthearing Brief, Exhibit 1 at 19.

returned to Japan with the U.S. market completely supplied by imports from Japan,⁸⁵ to rationalization of the U.S. and Japanese production operations to avoid duplication and improve production economies of scale. In rationalizing their global production, these Japanese producers would produce different models at different facilities, rather than all models at the U.S. operation, and supply the U.S. market through a combination of U.S. production and importation.⁸⁶

In sum, the facts available indicate that the Japanese producers have the ability and incentive to increase exports to the United States, notwithstanding their U.S. operations. Moreover, the facts available indicate that the likely increase in imports from Japan would be directed so as to shield any production at the U.S. subsidiaries from competition with subject imports and more directly impact the domestic industry.

For the foregoing reasons, we find that the volume of subject imports would likely increase to a significant level within a reasonably foreseeable time if the antidumping duty order is revoked.

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 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 price of domestic like products.⁸⁷

In the original determination, the Commission found that prices of subject imports had adversely affected prices of domestic forklift trucks. The evidence showed that in 18 out of 20 price comparisons involving U.S.-produced subject forklifts rejected in favor of Japanese trucks, the price of the purchased Japanese truck was lower than the price of the rejected U.S. truck, with margins of underselling ranging from 0.3 to 21.8 percent.⁸⁸ The Commission concluded that there was a consistent pattern of price underselling by subject imports.⁸⁹ The Commission also found that subject imports had a significant price suppressing effect on the prices of forklift trucks in the United States based on evidence that domestic producers' net unit values for forklift trucks either fell or remained flat during the original investigation.⁹⁰

As the Commission found in the original investigation, the customized nature of the forklift truck

⁸⁵ In that scenario, the Japanese producers/exporters are likely to use their U.S. subsidiary facilities as service depots. NACCO's Posthearing Brief at 6-7, and Exhibit 1 at 16.

⁸⁶ NACCO and Clark allege that the Japanese producers of forklift trucks have substantial unused production capacity, which is sufficient to nearly supply their entire U.S. subsidiary's U.S. shipments without adding capacity in Japan. Thus, according to NACCO and Clark, the excess capacity and unemployment in Japan would lead the Japanese transplants to cease most production operations in the United States and return production of complete and incomplete forklift trucks for the U.S. market to Japan. NACCO's Prehearing Brief at 35-43; Clark's Prehearing Brief at 6, 8-9; NACCO's Posthearing Brief at 3-14 (addresses each of the subsidiaries' prospects), and Exhibit 1 at 15-27.

⁸⁷ 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.

⁸⁸ Original Determination, USITC Pub. 2082 at 26.

⁸⁹ Original Determination, USITC Pub. 2082 at 26.

⁹⁰ Original Determination, USITC Pub. 2082 at 27-28.

makes price comparisons of limited value and thus the U.S. pricing data reflect average unit values rather than prices.⁹¹ While domestic unit values for forklift trucks generally have increased since the original investigation, these values have remained relatively constant during the period of this review.⁹² For example, pricing data provided for Products 1 and 3, which involved the largest number of U.S. sales, were either constant or declining slightly over the period of this review. Unit values for sales to dealers of Product 1 (cushion tires, 3,000 pound basic lift capacity, LPG system) ranged from a high of \$13,922.02 in the second quarter of 1997 to a low of \$13,200.16 in the fourth quarter of 1997. The unit value fluctuated within a narrow 5 percent range over the period of the review with no apparent trend.⁹³ Unit values for sales to dealers of Product 3 (cushion tires, 5,000 pound basic lift capacity, LPG system) ranged from a high of \$16,465.86 in the fourth quarter of 1997 to a low of \$15,692.576 in the first quarter of 1999. Unit values fluctuated more in 1999 for Product 3 and also declined relative to the prior time periods.⁹⁴

The record in this review contains no evidence about the prices of the subject merchandise in the U.S. market because the subject imports have virtually ceased to enter the market subsequent to imposition of the order. However, the record does indicate that there is a high degree of substitutability between forklift trucks produced in the United States and those produced in Japan, if the Japanese product were to enter the U.S. market in commercial quantities.⁹⁵ Price is an important determinant in purchasing decisions in the forklift truck industry.⁹⁶ The presence of numerous forklift truck producers, as well as nonsubject imports, provides strong price competition in the U.S. forklift truck market overall and particularly regarding pricing within comparative models.⁹⁷

Based on the facts available, we infer that the Japanese producers would revert to the pricing behavior evidenced during the original investigation and would undersell the domestic like product. Moreover, in rationalizing their U.S. and Japanese production operations, these Japanese entities would achieve production efficiencies and economies of scale which would enable them to price the models exported to the United States more aggressively than the current prices offered by their U.S. subsidiaries, while at the same time largely shielding their subsidiaries from adverse price effects. With market prices already low and remaining flat during the period of review, this additional supply of low-priced product would be likely to have significant adverse price effects. For the foregoing reasons, we find that revocation of the antidumping duty order would be likely to lead to significant underselling by the subject imports of

⁹¹ CR at V-4; PR at V-3.

⁹² See CR/PR at Tables V-1 - V-6 and Figures V-2 and V-3. See also NACCO's Prehearing Brief at 29; NACCO's Posthearing Brief, Exhibit 1 at 14.

⁹³ CR at V-5 and Table V-1; PR at V-4 and Table V-1.

⁹⁴ CR at V-5 and Table V-3; PR at V-6 and Table V-3.

⁹⁵ CR at II-10; PR at II-6. In response to the Commission's questionnaire, four out of five domestic producers and four purchasers indicated that Japanese-produced and U.S.-produced forklift trucks could be used interchangeably. CR at II-11; PR at II-7.

⁹⁶ CR at II-10; PR at II-6 and II-7; NACCO's Posthearing Brief at 14; NACCO's Prehearing Brief at 27.

⁹⁷ NACCO's Posthearing Brief, Exhibit 3 ("Toyota rising in forklift market," Gannet News Service, 1998) at 2 ("The increase in competition is driving profit margins down fast.") There is some evidence in the record that the price paid by end-users barely meets costs and that forklift truck dealers, thus, make their profits from parts sales and service contracts. *Id.* at 1 ("[b]ecause profits on forklift sales are slimmer than car and truck sales, even Toyota struggles to make money, relying on parts sales and service to keep dealers in business.")

the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact

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.⁹⁸ 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.⁹⁹ 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.¹⁰⁰

In the original investigation, the Commission found that the domestic industry had been materially injured by reason of the significant and increasing volume of forklift trucks from Japan, the high import penetration throughout the period of investigation, the consistent pattern of price undercutting by those imports, and the continuing and increasing operating losses of the domestic industry.¹⁰¹ The Commission found that domestic net unit values for the period of investigation either fell or remained level suggesting that price suppression was occurring.¹⁰² The Commission also considered that domestic producer prices were declining and operating losses increasing at a time when U.S. apparent consumption was increasing.¹⁰³

As discussed above, we have considered the impact that revocation of the order would have on the

⁹⁸ 19 U.S.C. § 1675a(a)(4).

⁹⁹ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its expedited review of this order, Commerce found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the following margins: Toyota Motor Corp. at 47.79 percent; Nissan Motor Corp. at 51.33 percent; Komatsu Forklift Co., Ltd. at 47.50 percent; Sumitomo-Yale Co., Ltd. at 51.33 percent; Toyo Umpaki Co., Ltd. at 51.33 percent; Sanki Industrial Co. at 13.65 percent; Kasagi Forklift, Inc. at 56.81 percent; and All Others at 39.45 percent. 64 Fed. Reg. at 42665 (Aug. 5, 1999).

¹⁰⁰ 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.

¹⁰¹ Original Determination, USITC Pub. 2082 at 28-29.

¹⁰² Original Determination, USITC Pub. 2082 at 28.

¹⁰³ Original Determination, USITC Pub. 2082 at 28.

domestic industry defined to exclude the related U.S. subsidiaries of Japanese producers since these subsidiaries would be largely shielded from the effects of renewed subject imports. The order appears to have had some beneficial effect on the domestic industry's performance. Since imposition of the order, the domestic industry has experienced marginal to moderate improvement in its financial performance. However, while domestic shipments in absolute terms have increased since the original investigation, the increases for these shipments during the period of review have not been at the same rate as the substantial increases in apparent consumption.¹⁰⁴ The domestic industry's share of apparent consumption was ***.¹⁰⁵ While subject imports disappeared from the market after imposition of the antidumping duty order, their share of the market was absorbed by the U.S. subsidiaries of the Japanese producers.¹⁰⁶ Despite the strong demand for forklift trucks, this industry has experienced low profitability during 1997 to 1999.¹⁰⁷ Moreover, in the most recent period when demand declined slightly, the domestic industry experienced *** declines in sales, financial performance, and market share.¹⁰⁸ Given the weak and declining financial performance of the domestic industry, we conclude that the domestic industry is in a weakened state and currently is vulnerable to material injury if the order is revoked.^{109 110}

As described above, we find that revocation of the order would likely result in a significant increase in the volume of subject imports, and that these aggressively priced shipments would likely undersell the domestic product and significantly depress or suppress the domestic industry's prices. We find that these developments would likely have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry, particularly given its vulnerable condition. This reduction in the industry's production, shipments, sales, market share, and revenues would result in further erosion of the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the 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

¹⁰⁴ For example, U.S. shipments by the domestic industry *** by value from 1997 to 1998. These shipments, however, *** in interim period 1999 compared with interim period 1998. CR/PR at Table C-2. Meanwhile, apparent U.S. consumption increased by 23.2 percent by quantity and 25.6 percent by value from 1997 to 1998. Apparent U.S. consumption, however, was 3.1 percent by quantity and 9.3 percent by value lower in interim period 1999 compared with interim period 1998. CR/PR at Table C-1.

¹⁰⁵ Calculated from CR/PR at Tables I-1 and C-2. This compares to the domestic industry's market share of *** in 1985. CR/PR at Table I-1.

¹⁰⁶ Compare CR/PR at Table I-1 to Table C-2. NACCO contends that "Japanese-brand IC trucks have ***. NACCO's Prehearing Brief at 2.

¹⁰⁷ The domestic industry's operating margin as a share of net sales was *** in interim period 1999. CR/PR at Table C-2.

¹⁰⁸ The domestic industry's U.S. shipments by quantity were *** in interim period 1999 compared with interim period 1998. CR/PR at Table C-2. The domestic industry's share of apparent U.S. consumption was *** in interim period 1999. Compare CR/PR at Tables C-1 and C-2.

¹⁰⁹ 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. . . .").

¹¹⁰ NACCO charges that the industry's "dismal financial performance despite healthy demand for IC forklifts in the United States highlights the extremely competitive nature of this industry and its clear vulnerability to material injury if unfairly traded imports from Japan were to resume." NACCO's Prehearing Brief at 21-22.

domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on imports of forklift trucks from Japan would be likely to lead to continuation or recurrence of material injury to the U.S. forklift truck industry within a reasonably foreseeable time.

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG AND COMMISSIONERS THELMA J. ASKEY AND DEANNA TANNER OKUN

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 internal combustion industrial forklift trucks (“forklift trucks”) 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 May 1988, the Commission determined that an industry in the United States was materially injured by reason of imports of forklift trucks from Japan that were sold at less than fair value.¹ In June 1988, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of forklift trucks from Japan.² The Commission instituted this five-year review on April 1, 1999.³

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁴ If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In this review, the Commission received individual responses to the notice of institution from three domestic producers of forklift trucks, Clark Material Handling Company (“Clark”), NACCO Materials Handling Group, Inc. (“NACCO”), and TCM Manufacturing USA, Inc. (“TCM USA”). Four Japanese manufacturers, Komatsu Forklift Co., Ltd. (“Komatsu”), Mitsubishi Heavy Industries, Ltd. (“MHI”), Toyo Umpanki Co., Ltd. (“TCM”), and Toyota Motor Corporation (“Toyota”), and one U.S. importer of forklift trucks, Toyota Motor Sales, U.S.A., Inc. (“Toyota USA”), filed responses to the notice of institution.

On July 2, 1999, the Commission determined that both the domestic and respondent interested party group responses to its notice of institution were adequate. Pursuant to 19 U.S.C. § 1675(c)(5), the Commission decided to conduct a full review of this matter.

Three of the four Japanese producers that entered appearances and responded to the notice of institution did not participate further in this review. However, other Japanese manufacturers, domestic producers, importers, and purchasers responded to the Commission’s questionnaires. Only domestic producers NACCO and Clark filed any briefs and/or comments in this review.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

¹ Internal Combustion Engine Forklift Trucks from Japan, Inv. No. 731-TA-377 (Final), USITC Pub. 2082 at 1 (May 1988) (“Original Determination”).

² 53 Fed. Reg. 20882 (June 7, 1988).

³ 64 Fed. Reg. 15786 (April 1, 1999).

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

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”⁵ 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.”⁶ In its final five-year review determination, Commerce defined the subject merchandise as:

internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 [sic] pounds, from Japan. The products covered are described as follows: assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order.⁷

Forklift trucks are self-propelled work trucks with platforms that can be raised and lowered for insertion under a load to be lifted or transported. Forklift trucks are produced in a variety of basic types, including counterbalanced, narrow aisle, sideloader, orderpicker, and turret. There are two basic fabrication processes involved in the production of internal combustion forklifts before assembly -- the production of the frame and the production of the mast. The final product is normally finished with customer-specified options.⁸

In its original determination, the Commission defined the domestic like product as forklift trucks with a weight-lift capacity of between 2,000 and 15,000 pounds and with a U.S.-produced frame.⁹ None of the additional information collected in this review warrants a departure from that definition.¹⁰ Moreover, NACCO and Clark indicated in their submissions to the Commission that they agree with the Commission’s original domestic like product determination. Accordingly, based on the record evidence, we

⁵ 19 U.S.C. § 1675(4)(A).

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

⁷ 64 Fed. Reg. 42662 (August 5, 1999).

⁸ Confidential Report (“CR”) at I-14-17, Public Report (“PR”) at I-10-12.

⁹ Original Determination at 17.

¹⁰ While the record provides some indication that the distinctions between internal-combustion and electric forklift trucks have narrowed somewhat in the past decade, the two classes continue to be distinguishable on the basis of distinct physical characteristics, separate production facilities, and different uses. CR at I-18-I-20 and II-5, PR at I-12-13 and II-3. For the same reasons, including the pronounced differences in production methods and facilities, heavy-lift and industrial forklift trucks remain highly distinguishable. CR at I-17-20, PR at I-12-13.

define the domestic like product as internal combustion industrial forklift trucks with a weight-lift capacity of between 2,000 and 15,000 pounds and with a U.S.-produced frame.

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.”¹¹ Given our finding with respect to the domestic like product, we find that the domestic industry includes the following firms that produced forklift trucks in the United States during the period of review: NACCO, Clark, Drexel, Toyota Industrial, Mitsubishi Caterpillar, Nissan Forklift, and TCM USA. However, we exclude an additional firm, Komatsu USA, from the domestic industry because it produced forklift trucks ***. Our evaluation of Komatsu’s status was complicated by its failure to provide detailed information regarding its operations. However, the *** employment levels reported by Komatsu USA and its inability to ***, convince us that Komatsu USA should not be considered a domestic producer. Moreover, Komatsu USA ***, and thus, accounted for the equivalent of only *** of domestic production in 1998.¹²

C. Related Parties

We must further decide whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to section 771(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.¹³

¹¹ 16 U.S.C. § 1677(4)(A).

¹² U.S. production is limited to forklift trucks produced from U.S.-origin frames. “Forklift trucks” include “less than complete” forklift trucks (including, inter alia, a frame by itself). Therefore, the limited quantity of forklift trucks nominally produced by Komatsu USA is ***. See CR at III-5 and n.3, PR at III-2 and n.3; Komatsu’s Response to the Notice of Institution at 5.

¹³ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producer vis-à-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic

(continued...)

In this review, a related party issue arises with respect to U.S. forklift truck producers Toyota Industrial, Mitsubishi Caterpillar, Nissan Forklift, and TCM USA. Each of these producers is wholly or majority owned by, and thus directly controlled by, Japanese manufacturers and/or exporters of the subject merchandise.¹⁴ As a result of their corporate relationship with subject manufacturers and/or exporters, Toyota Industrial, Mitsubishi Caterpillar, Nissan Forklift, and TCM USA, each meets the statutory definition of a related party. We therefore turn to the issue of whether appropriate circumstances exist to exclude any of these related party domestic producers from the domestic industry.

With the exception of minimal imports in ***, the four related party producers did not import, nor did their Japanese parent corporations export, the subject merchandise into the United States during the period of review.¹⁵ Indeed, with regard to Nissan Forklift and TCM USA, ***.¹⁶

The record also indicates that three of the U.S. producers with Japanese parent corporations (Toyota Industrial, ***, and ***) have made substantial investments in their U.S. operations. Toyota Industrial's U.S. investments exceed \$100 million, ***'s U.S. investments exceed ***, and ***'s U.S. investments exceed ***.¹⁷ As a result of these significant investments, Toyota Industrial accounted for *** of 1998 domestic production and *** for *** percent of 1998 domestic production; therefore, the exclusion of either of these producers from the domestic industry would skew the industry data.¹⁸

While TCM USA's investments in the United States, at ***, as noted above, TCM USA ***, nor has its Japanese parent corporation exported, ***.¹⁹ In addition, in 1998, *** percent of TCM USA's total costs for production of its model with the highest sales volume were attributed to products sourced domestically, including such major components as the ***.²⁰

Based upon these findings, we determine that these producers' primary interests lie in domestic production. Moreover, the record does not indicate that the related U.S. producers have been, or are likely to be, insulated from the impact of the subject imports. Accordingly, we determine that appropriate circumstances do not exist to exclude any of these four related party producers from the domestic industry.

III. REVOCATION OF THE ORDER ON INTERNAL COMBUSTION INDUSTRIAL FORKLIFT TRUCKS FROM JAPAN IS NOT LIKELY TO LEAD TO CONTINUATION

¹³ (...continued)
production or importation. *See, e.g., Sebacic Acid from the People's Republic of China*, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7-8 (July 1994).

¹⁴ The Commission previously has decided that "control does not exist, absent evidence to the contrary, if the ownership interest is less than that necessary, in and of itself, to establish control." Certain Structural Steel Beams from Germany, Japan, Korea, and Spain, Inv. Nos. 701-TA-401 and 731-TA-852-855 (Preliminary), USITC Pub. 3225 at 8, n.40 (Sept. 1999); *see also Engineered Process Gas Turbo-Compressor Systems from Japan*, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 at 8 (July 1996).

¹⁵ CR at I-25-27 (as revised), PR at I-17-18.

¹⁶ CR at I-26 and IV-5, PR at I-18 and IV-4.

¹⁷ CR I-26 and III-17 (as revised), PR at I-17-18 and III-10; and ***'s questionnaire response.

¹⁸ Table I-6, CR at I-21, PR at I-14.

¹⁹ CR at I-26, PR at I-17; Table I-6, CR at I-21, PR at I-14.

²⁰ Table I-5, CR at I-13, PR at I-9; Table E-5, CR at E-7, PR at E-3.

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.”²¹ 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.”²² Thus, the likelihood standard is prospective in nature.²³ 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.”²⁴ 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].”²⁵

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.”²⁶ It directs the Commission to take into

²¹ 19 U.S.C. § 1675a(a).

²² 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.

²³ 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.

²⁴ 19 U.S.C. § 1675a(a)(5).

²⁵ 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.*

²⁶ 19 U.S.C. § 1675a(a)(1).

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.^{27 28}

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."²⁹ Section 776 of the Act, however, does not limit the use of facts available to an expedited review but generally authorizes the Commission to "use the facts otherwise available" in reaching a determination. 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."³⁰ In performing our analysis regarding the likelihood of continuation or recurrence of material injury in this review, we have relied on the facts available, which consist primarily of the record in the Commission's original investigation, information collected by the Commission since the institution of this review, information submitted by responding parties, and information obtained from Toyota Industrial, Mitsubishi Caterpillar, and Komatsu USA in response to Commission-issued subpoenas.

For the reasons stated below, we determine that revocation of the antidumping duty order on forklift trucks from Japan would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

²⁷ 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.

²⁸ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings for the merchandise subject to this review.

²⁹ 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.*

³⁰ SAA at 869.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the Commission is directed to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³¹ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for forklift trucks.

Overall U.S. demand for forklift trucks tends to track the performance of the general economy, and has increased significantly since the late 1980s. Indeed, apparent U.S. consumption of forklift trucks has increased from 46,152 units in 1987 to 85,747 units in 1998. While this reflects, in part, the general economic expansion in the United States over this period, changes in corporate purchasing strategies also have contributed to higher turnover and heightened demand for forklift trucks.³² Moreover, purchasers are unlikely to replace the forklift trucks that are the subject of this review with other vehicles. There are no large-scale substitutes for internal combustion industrial forklift trucks.³³

The ability of the domestic industry to supply the U.S. market has more than matched the significant increase in demand for forklift trucks. The record in the original investigation identified eight U.S. producers of forklift trucks. While the composition and structure of the domestic industry has changed over time, the domestic industry still consists of at least eight U.S. firms manufacturing forklift trucks, although only two of the original producers remain.³⁴ Subsequent to (or contemporaneous with, in the case of Komatsu) the original investigation and the issuance of the order in 1988, five Japanese importers established production facilities in the United States and now serve the U.S. market through domestic production or assembly operations rather than through imports of forklift trucks from Japan. Three of these companies, as noted above, have made substantial investments in domestic production. Overall, U.S. companies with Japanese parent corporations accounted for about *** of U.S. production in 1998.³⁵

Largely as a result of the Japanese producers’ investments in U.S. production, and the corresponding increase in domestic capacity, the reported market share held by domestic forklift truck producers has risen from *** percent in 1987 to 78.1 percent in 1998.³⁶ The record also indicates a

³¹ 19 U.S.C. § 1675a(a)(4).

³² Specifically, cost management considerations favor reducing the age of forklift fleets in order to reduce maintenance costs. Moreover, purchasers have placed increased emphasis on leasing forklift trucks, effectively shortening new equipment life cycles. CR at II-7 and II-9, PR at II-4-5 and II-6.

³³ Specially-equipped construction and farm tractors can, in limited instances, be substitutes for forklift trucks. Also, over time declining operating costs and increased durability have increased the attractiveness of electric forklift trucks. However, most producers indicate that it would take a significant change in price to induce their customers to shift to electric forklift trucks. CR at II-7-8, PR at II-5. Posthearing Brief of NACCO, exh. 1 at 11.

³⁴ CR at II-1-2, PR at II-1.

³⁵ CR at II-2, PR at II-1-2; Table I-6, CR at I-21, PR at I-14.

³⁶ Table I-1, CR at I-2, PR at I-2. U.S. producers’ capacity in 1998 was reported as 95,330 units with production of 74,611 units. CR at II-2, PR at II-2. These figures show a ***-percent increase in capacity and ***-percent increase in production between 1987 and 1998. CR at II-2, PR at I-2.

substantial increase in domestic capacity utilization from the time of the original investigation, rising from 47.3 percent in 1987 to 78.3 percent in 1998.³⁷

As U.S. forklift truck demand, and the domestic industry's ability to meet that demand, has grown, so too has the average unit value of domestic shipments, increasing from *** in 1987 to \$17,924 in 1998.³⁸ And while we recognize that comparing unit values over time may be of limited value due to differences in product mix, the fact that the product has remained essentially unchanged since the original investigation underscores the probative value of average unit value comparisons in this review.

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

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 imports would be significant either in absolute terms or relative to production or consumption in the United States.³⁹ 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.⁴⁰

The Commission's original determination noted that the volume of subject imports from Japan increased in both value and unit terms, albeit modestly, during each year of the period of investigation. During that period, U.S. shipments of imported forklift trucks from Japan increased from 22,191 units in 1985 to 23,730 units in 1987. Further, the Commission found that the market share of imports from Japan was significant throughout and even increased slightly during the period of investigation. The Commission noted that imports from Japan accounted for 51.3 percent of apparent U.S. consumption in 1985, 49.6 percent in 1986, and 51.4 percent in 1987.⁴¹

During the original period of investigation, Japan was an important source of imported forklift trucks for the U.S. market, at a time when U.S. demand exceeded U.S. capacity by more than *** percent.⁴² During that period, U.S. producers themselves accounted for a large share of U.S. imports of forklift trucks from Japan and *** imports of forklift trucks from countries other than Japan. Only *** of eight active

³⁷ Table I-1, CR at I-3, PR at I-3. Indeed, domestic producers can now supply the domestic market in full, and have expanded into transnational alliances that allow them to penetrate the critical European and Asian markets.

³⁸ Table I-1, CR at I-3, PR at I-3.

³⁹ 19 U.S.C. § 1675a(a)(2).

⁴⁰ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁴¹ Original Determination at 25-26.

⁴² In 1987, U.S. producers had sufficient capacity to produce only *** forklift trucks. Apparent U.S. consumption in 1987 was 46,152 forklift trucks. Table I-1, CR at I-2-3, PR at I-2-3.

U.S. producers in 1987 *did not* import forklift trucks. Indeed, in 1987, Yale Materials Handling Corp. (now part of the corporate structure of domestic interested party NACCO) was ***.⁴³

The antidumping duty order had a significant restraining effect on subject imports. Subject imports from Japan fell precipitously after imposition of the order.⁴⁴ Over time, the quantity of reported U.S. shipments of forklift trucks manufactured in the United States has increased from *** units in 1987 to 66,963 units by 1998. U.S. shipments of imports from nonsubject countries have increased somewhat between 1987 and 1998, rising from *** units to 18,766 units, while U.S. shipments of Japanese imports have tumbled from 23,730 units to only 18 units.⁴⁵ Similarly, the reported market share held by forklift trucks manufactured in the United States has risen from *** percent in 1987 to 78.1 percent in 1998.⁴⁶

As noted in our earlier discussion, the record indicates a substantial change in the conditions of competition since the time of the original investigation, namely the sizeable investment in productive facilities in the United States by the major Japanese manufacturers of forklift trucks. Therefore, although we conclude that the antidumping duty order contributed significantly to the reduction in shipments of subject merchandise to the United States, we do not view this change in the market as one that is likely to be reversed within a reasonable foreseeable time if the order is revoked.

Based on the responses of the three reporting Japanese manufacturers, capacity utilization has fallen from 96.5 percent in 1997 to 87.4 percent in 1998 and 80.7 percent in the first three quarters of 1999.⁴⁷ Although Nissan, TCM, and NACCO-Sumitomo have limited amounts of available capacity, none of these companies could come close to ***.

As discussed previously, not all of the Japanese manufacturers provided the Commission with complete data for their forklift truck operations in Japan. Accordingly, we have considered data provided by the domestic interested parties for the capacity utilization rates of Toyota, MHI, and Komatsu. The capacity utilization rates of each of these manufacturers approximate those of ***.⁴⁸

As we previously noted, the level of investment in U.S. production facilities by several of the U.S. producers with Japanese corporate parents is significant. In light of the substantial and continuing investment in U.S. facilities by at least three U.S. producers with Japanese corporate parents (Toyota, ***, and ***) over the past decade, substantial repatriation by these companies is most unlikely. Moreover,

⁴³ *Original Confidential Report* at A-13, 14, and 17, Original Determination at A-9 and A-11; *See also Original Confidential Report* at A-69, Original Determination at A-48.

⁴⁴ Japanese manufacturers TCM, and Nissan Motor Co. have not exported the subject merchandise to the United States since ***; Sumitomo-NACCO has not exported the subject merchandise to the United States since ***; and MHI and Toyota ***. CR at IV-5-7, PR at IV-4-6; Toyota Response to Notice of Institution at 4; June 3, 1999 letter from counsel for MHI. Komatsu ***. Komatsu Response to Notice of Institution at 8.

⁴⁵ Table I-1, CR at I-2-3, PR at I-2-3.

⁴⁶ Table I-1, CR at I-2, PR at I-2. The market share of nonsubject imports decreased between 1987 and 1998, falling from *** to 21.9 percent. During January-September 1999, the share of U.S.-manufactured forklift trucks fell to 70.9 percent of the market, while nonsubject imports rose to 29.1 percent. This shift reflects in large part U.S. producer and domestic interested party NACCO's decision to ***. *See* Table I-8, CR at I-30, PR at I-20 and Table III-7, CR at III-11, PR at III-7. Also, U.S. producer and domestic interested party Clark ***. CR at I-25, PR at I-17.

⁴⁷ Table IV-4, CR at IV-9, PR at IV-7.

⁴⁸ *See* Posthearing Brief of NACCO at 8. While we take into account the fact that overall capacity data are not limited to the subject merchandise, it is reasonable to assume that the capacity utilization rates are applicable for production of the subject merchandise.

even rationalization of production between the Japanese and the U.S. manufacturing facilities would be unlikely to result in a significant *net* shift in the volumes of forklift trucks produced in the United States.⁴⁹

The Nissan and TCM operations in Japan, both of which have low antidumping duty margins, ***.⁵⁰ MHI has established a significant manufacturing presence in the United States, and now has *** available capacity in Japan than ***.⁵¹ Likewise, while Toyota's Japanese operations ***, Toyota has maintained a significant U.S. presence. Only Komatsu combines ***, a minimal U.S. presence, and high antidumping duty margins. However, Komatsu's establishment in the United States, though modest in terms of its manufacturing activities, is the oldest of all the transplants; it is the only transplant that pre-dates the antidumping duty order; and it is already dependent upon ***).⁵²

Thus, wholesale relocation to Japan or even a substantial shift in operations at the expense of U.S. manufacturing or assembly appears unlikely. As they have in Europe, Japanese brand forklift trucks are likely to maintain their U.S. market presence through host market manufacturing.⁵³

The Japanese industry's potential for product shifting also is limited by dedicated assembly lines.⁵⁴ Japanese manufacturers have only modest existing inventories (peaking at 6.7 percent of total shipments in 1997).⁵⁵ Finally, Japanese manufacturers dominate their home market and have a number of viable export markets.⁵⁶ Although reported export quantities have declined during the period 1997-99, there are no reported antidumping duty orders in place against Japanese forklift trucks except in the United States.⁵⁷

⁴⁹ Among the firms with Japanese corporate parents, those U.S. producers with the most significant capital investment in U.S. operations -- *** -- produce electric forklift trucks as well as internal combustion forklift trucks in the United States, even though the former category of forklift truck is not subject to any U.S. import restraint. *See* questionnaire responses of ***. We believe that this is an additional indication of these firms' commitment to the production of forklift trucks in the United States.

We have also considered, but found unlikely, the prospect that the capability of these firms to produce electric forklift trucks in the United States might contribute to a significant shift in production (in the form of product line rationalization) if the antidumping duty order were to be revoked. As noted in the Commission Report, despite certain similarities in the production processes, electric and internal combustion forklift trucks are not produced on the same assembly lines or with the same production crews by any of the major U.S. or Japanese producers. CR at I-18, PR at I-12. Further, we have considered the extent to which firms with U.S. and Japanese operations might shift between heavy-lift and industrial forklift trucks. We do not find a significant shift in production to be likely, given that heavy-lift forklift trucks are not built on assembly lines at all, but are produced individually in bays to accommodate the customized nature of these vehicles. CR at I-17-18, PR at I-12.

⁵⁰ Neither manufacturer/exporter has had a margin of greater than 7.39 percent since Commerce's first administrative review of the antidumping duty order. Table I-2, CR at I-7, PR at I-6. Nevertheless, neither company has exported forklift trucks to the United States ***.

⁵¹ *See* Posthearing Brief of NACCO at 8.

⁵² Because most of Komatsu USA's forklift trucks are manufactured from ***.

⁵³ *See* Posthearing Brief of NACCO at exh. 1, p. 7.

⁵⁴ *See* CR at I-17, 18; PR at I-12.

⁵⁵ Table IV-4, CR at IV-9, PR at IV-7.

⁵⁶ *See* Posthearing Brief of NACCO, exh. 1 at 7 (Japanese manufacturers account for 99.8 percent of forklift truck shipments in Japan). Exports as a share of total shipments rose from 46.6 percent in 1997 to 53.7 percent in 1998 and 53.4 percent in the first three quarters of 1999. Table IV-4, CR at IV-9, PR at IV-7.

⁵⁷ Table IV-4, CR at IV-9, PR at IV-7.

Based on the foregoing, we find it likely that manufacturers in Japan would not, upon revocation of the order, increase exports to the U.S. market, and that the subject import volume would not rise significantly if the antidumping duty order was removed.⁵⁸ Consequently, we conclude that, absent the order, subject imports likely would not increase to a significant level, nor regain a significant share of the U.S. market.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the order under review is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.⁵⁹

During the original investigation, three Commissioners emphasized increases in volume and market share (from already significant levels), a consistent pattern of price undercutting, and generally declining average unit values of U.S.-produced forklift truck models.⁶⁰ The three remaining Commissioners focused on the very low capacity utilization of the domestic industry, the high dumping margins and large market shares of the subject merchandise, and the (at least) moderate substitutability between the domestic like product and the subject merchandise, concluding that “but for” the dumped imports, the domestic industry could have increased production, sales, and (to some extent) prices.⁶¹

Because all of the Japanese manufacturers have U.S. affiliates engaged in forklift truck operations, but in little or no importation, the record in this review contains pricing data for the U.S. market that is limited to the prices of U.S. producers. Pricing data for individual models of U.S.-produced forklift trucks indicate that, in many instances, prices remained stable or, in some instances, declined somewhat between 1997 and 1999.⁶² As the domestic interested parties acknowledge, the U.S. market as presently structured is competitive.⁶³ Accordingly, the limited domestic price declines occurred with virtually no competition in the U.S. market from Japanese imports, and with limited competition from nonsubject imports.

The information in the record suggests that, while price is an important factor for purchasers, competition also is based on a number of other factors, including dealer relationships, availability, quality, service capability, after market support, and customer preference. The first three factors (dealer

⁵⁸ See SAA at 890.

⁵⁹ 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.

⁶⁰ Original Determination at 25-29.

⁶¹ Original Determination at 41-51, 85-95, and 129-144.

⁶² Tables V-1 through V-6, CR at V-7 through V-12, PR at V-4 through V-8.

⁶³ NACCO argued that one must differentiate between the pre-order competitive environment dominated by Japanese imports and the post-order competitive environment, in which Japanese transplants must operate under the same cost structure as other U.S. producers. Posthearing Brief of NACCO, exh. 1 at 14. If cost structures were the central issue, this exercise would be more like a case study on comparative advantage rather than one of past and allegedly future unfair trade.

relationships, availability, and quality) are frequently considered to be more important than price.⁶⁴ Moreover, some customers appear to have strong preferences for U.S.-produced forklift trucks, based on the role of “Buy American” policies. Two of ten reporting purchasers bought forklift trucks wholly or primarily in accordance with “Buy American” policies, while a third indicated that one-quarter of its purchases were based on “Buy American” policies.⁶⁵

Given the substantial presence of producers in the U.S. market that are affiliated with Japanese manufacturers, we find it unlikely that, absent the order, competitive conditions would return to those prevailing prior to imposition of the order. Moreover, consistent with our finding that it is unlikely that there will be significant volumes of forklift trucks absent the order, we find it unlikely that imports will have any significant price effects on the domestic market if the order is revoked. There is simply no incentive for Japanese producers to revert to widespread price undercutting or to engage in aggressive pricing practices with regard to exports to the U.S. market if the order is revoked. Thus, we find that revocation of the antidumping duty order likely would not lead to significant underselling by the subject imports of the domestic like product, or to significant price depression or suppression, within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order under review 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.⁶⁶ 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.⁶⁷ 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

⁶⁴ CR at II-10, PR at II-6-7.

⁶⁵ CR at II-10-11, PR at II-7. NACCO noted that formal “Buy American” policies have never been prevalent in the market, but that informal policies were frequently implemented against purchasing Japanese products. Initially, these policies extended to the U.S. producers with Japanese corporate parents but, according to NACCO, this sentiment has declined. Posthearing Brief of NACCO, exh. 1 at 12.

⁶⁶ 19 U.S.C. § 1675a(a)(4).

⁶⁷ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887.

In its review of this order, Commerce found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the following margins: Toyota Motor Corp. at 47.79 percent; Nissan Motor Corp. at 51.33 percent; Komatsu Forklift Co., Ltd. at 47.50 percent; Sumitomo-Yale Co., Ltd. at 51.33 percent; TCM Corp. at 51.33 percent; Sanki Industrial Co. at 13.65 percent; Kasagi Forklift, Inc. at 56.81 percent; and all others at 39.45 percent. 64 Fed. Reg. at 42665 (Aug. 5, 1999).

antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁶⁸

In the original investigation, the Commission determined that the domestic industry producing forklift trucks was materially injured by reason of a significant volume of LTFV imports of forklift trucks that were underselling the domestic like product. The Commission noted that while apparent U.S. consumption rose throughout the period 1985-87, general trade indicators (production, U.S. shipments, and employment) fell between 1985 and 1986, then fell more sharply between 1986 and 1987. Weak financial performance (falling sales and rising operating losses) indicated that the domestic industry was in a “poor condition.”⁶⁹

Apparent U.S. consumption of forklift trucks has increased over the past decade, rising from 46,152 units in 1987 to 85,747 units in 1998. The quantity of U.S. shipments of forklift trucks manufactured in the United States has increased far more substantially, however, rising from *** units in 1987 to 66,963 units by 1998.⁷⁰ Similarly, the reported market share held by forklift trucks manufactured in the United States has more than ***, rising from *** percent in 1987 to 78.1 percent in 1998.⁷¹

The domestic industry reported employing approximately *** more workers in 1998 than in 1987. Worker productivity has risen at an even faster rate than hourly wages, resulting in lower unit labor costs. While substantial investments have contributed to increased capacity, sharply higher production means that capacity utilization rates have risen from 47.3 percent in 1987 to 78.3 percent in 1998. In 1987, U.S. firms manufacturing forklift trucks lost \$*** million, the equivalent of *** percent of net sales. In 1998, U.S. firms manufacturing forklift trucks earned \$62.1 million, the equivalent of 4.7 percent of net sales.⁷²

NACCO argues that the domestic industry is in a “weakened state,” citing dismal financial performance and the cash flow problems of NACCO and Clark, as well as only slightly better performance among the transplant companies.⁷³ NACCO also contends that it lacks sufficient financial resources to support its R&D requirements, and thus remains vulnerable to material injury.⁷⁴

⁶⁸ 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.

⁶⁹ Original Determination at 21-22.

⁷⁰ Table I-1, CR at I-2-3, PR at I-2-3. In addition, both the volume and value of the domestic producers’ export shipments have grown substantially. Export shipments increased from *** units in 1987 to 6,841 units in 1998, while the average unit value of these shipments increased from *** in 1987 to \$19,189 in 1998. *Id.*

⁷¹ Table I-1, CR at I-2, PR at I-2.

⁷² Table I-1, CR at I-2-3, PR at I-2-3. Even during the period January-September 1999, the U.S. manufacturers of forklift trucks reported operating income of \$8.4 million, equivalent to 1.0 percent of net sales. *Id.*

⁷³ Prehearing Brief of NACCO at 18 and 21-23.

⁷⁴ Posthearing Brief of NACCO, exh. 1 at 5. NACCO did not directly address the question regarding whether diversification of sourcing (*i.e.*, ***) and investment (joint ventures in Japan and China) make it less vulnerable to material injury. It did note that, to survive in the global market, a company must have a presence in each of the three main forklift markets: the United States, Europe, and Japan. Posthearing Brief of NACCO, exh. 1 at 26.

The record indicates that U.S. manufacturers' operating income levels have been at least moderate throughout the period examined in this review. As a ratio to net sales, operating income was 2.8 percent in 1997, reached 4.7 percent in 1998, and was 1.0 percent in the first three quarters of 1999.⁷⁵ While cash flow has fluctuated widely in recent years, R&D and capital expenditures were higher in the first three quarters of 1999 than in the first three quarters of 1998.⁷⁶

Based on the foregoing, we conclude that the industry is not in a "weakened state," as contemplated by the vulnerability criterion of the statute.⁷⁷

We do not find it likely that revocation of the order would result in a significant increase in the volume of subject imports. While we acknowledge that there may be a small increase in the volume of subject merchandise in the event of revocation, we do not find it likely that a small increase in the volume of subject imports would depress or suppress the domestic industry's prices significantly, or have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. Any marginal reduction in the industry's production, shipments, sales, and revenue levels would not have a direct adverse impact on the industry's profitability or its ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the record in this review, we conclude that, in the event of revocation of the order, subject imports likely would not have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on internal combustion industrial forklift trucks from Japan would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

⁷⁵ The lower operating income in 1999 reflects a sharp increase in per-unit costs of goods sold. *See* Table III-6, CR at III-10, PR at III-7. It is unclear to what extent the higher unit COGS can be attributed to NACCO's decision to ***.

⁷⁶ Table III-5, CR at III-8, PR at III-6, and Table III-10, CR at III-17, PR at III-10.

⁷⁷ 19 U.S.C. § 1675a(a)(1)(C). *See* SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury. . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.").