

UNITED STATES INTERNATIONAL TRADE COMMISSION

SPARKLERS FROM CHINA Investigation No. 731-TA-864 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION (USITC Publication No. 3317, July 2000)

DETERMINATION

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

BACKGROUND

The Commission instituted this review on July 1, 1999 (64 F.R. 35689) and determined on October 1, 1999 that it would conduct a full review (64 F.R. 55960, October 15, 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 February 16, 2000 (65 F.R. 7892). The hearing was held in Washington, DC, on May 11, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

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 sparklers from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

On June 10, 1991, the Commission determined that an industry in the United States was being materially injured by reason of imports of sparklers from China that were being sold at less than fair value.¹ On June 18, 1991, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of sparklers from China.²

On July 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 sparklers from China would be likely to lead to continuation or recurrence of material injury.³

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally 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 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 responses to the notice of institution from two domestic producers of sparklers, Elkton Sparkler Company (“Elkton”) of North East, Maryland, and Diamond Sparkler Company (“Diamond”) of Youngstown, Ohio. With respect to respondent interested parties, Elkton’s response also stated that Elkton ***.⁵ No other foreign producer, exporter, or U.S. importer filed a response.⁶

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

¹ Sparklers from China, Inv. No. 731-TA-429 (Final), USITC Pub. 2387 (June 1990) (“Original Determination”).

² 56 Fed. Reg. 27946 (June 18, 1991).

³ 64 Fed. Reg. 35689 (July 1, 1999).

⁴ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 11, 1998).

⁵ Elkton’s Response to Notice of Institution (“Elkton’s Response”) (August 20, 1999) at 2.

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

inadequate.⁷ Notwithstanding the inadequate respondent interested party group response, the Commission determined to exercise its discretion to conduct a full review pursuant to section 751(c)(3) of the Act, based upon the information received from the parties regarding structural changes taking place in the U.S. industry.⁸

On May 11, 2000, the Commission held a hearing in this review, at which representatives of Elkton and Diamond appeared. Diamond filed briefs in support of continuation of the order, and Elkton filed briefs advocating revocation of the order.

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.”⁹ 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.”¹⁰ The Commission's decision regarding the appropriate domestic like product(s) in an investigation or review is based on the facts, record, and legal parameters of the proceeding in question.¹¹ In a section 751(c) review, the Commission must also take into account “its prior injury determinations.”¹²

In its final five-year review determination for Sparklers from China, Commerce defined the subject merchandise as “fireworks each comprising a cut-to-length wire, one end of which is coated with a

⁷ The Commission explained that no respondent interested party other than Elkton, which accounted for only ***, filed a response. Explanation of Commission Determination on Adequacy in Sparklers from China (“Adequacy Explanation”) (October 1, 1999).

⁸ See Adequacy Explanation. See also 64 Fed. Reg. 55960 (October 15, 1999). See generally 63 Fed. Reg. 30599, 30604 (June 5, 1998) (preamble to the Commission’s Notice of Final Rulemaking concerning five-year reviews). Chairman Bragg and Commissioner Crawford dissented from the decision to conduct a full review and determined that the Commission should conduct an expedited review.

⁹ 19 U.S.C. § 1677(4)(A).

¹⁰ 19 U.S.C. § 1677(10). See NEC Corp. v. Dep’t 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).

¹¹ See, e.g., Citrosuco Paulista, S.A., v. United States, 704 F. Supp. 1075, 1087-88 (CIT 1988) (while each original investigation is *sui generis*, and the Commission is not bound by prior like product determinations, the like product definition must be based on a rational basis discernible to the reviewing court).

¹² 19 U.S.C. § 1675a(a)(1)(a).

chemical mix that emits bright sparks while burning.”¹³ When lit, sparklers may give off any of a variety of colors, including gold, red, green, or blue.¹⁴ Sparklers vary in length and come in five standard sizes, the smallest (No. 8) being approximately 7 1/4 inches long and the longest (No. 36) being up to 33 inches long.¹⁵

In the original investigation, the Commission determined that the domestic like product consisted of all domestically produced sparklers.¹⁶ The Commission found that all sparklers regardless of color and size shared the same end uses, channels of distribution, manufacturing facilities, and production employees.¹⁷ In this review, no party has argued for a different domestic like product definition, and there is no new information obtained during this five-year review that would suggest a reason for departing from the Commission’s original definition of the domestic like product. Accordingly, we define the domestic like product as all domestically produced sparklers.

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.”¹⁸ In accordance with our domestic like product determination, we determine that the domestic industry for this five-year review consists of all domestic producers of sparklers.

During the original investigation, there were three domestic producers of sparklers, two of whom were still producing through 1998. One of those two, Diamond, continues to produce sparklers. The other, Elkton, ceased domestic production in June 1999. Prior to its cessation of domestic production, Elkton was the *** of the two U.S. producers, and accounted for *** of U.S. shipments of sparklers. In this review, Elkton provided financial data for both years covered by the questionnaire – 1998 and 1999. We therefore considered Elkton’s data in our evaluation of the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue. Because Elkton has ceased U.S. production and has turned its interests wholly to importation, we focused our prospective analysis of the likely effects of revocation of the order on the only remaining producer, Diamond.

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), which allows the Commission, if

¹³ 65 Fed. Reg. 5312, 5313 (February 3, 2000). Commerce reiterated its 1995 scope ruling that Fritz Companies, Inc.’s 14 inch Morning Glories are outside the scope of the order. *See* 60 Fed. Reg. 36782 (July 18, 1995).

¹⁴ Confidential Report (“CR”), Memorandum OINV-X-126 (June 9, 2000) at I-10; Public Report (“PR”) at I-6; Tr. at 89-90.

¹⁵ CR at I-10; PR at I-5.

¹⁶ *See Original Determination* at 3-6.

¹⁷ *Original Determination* at 5-6.

¹⁸ 19 U.S.C. § 1677(4)(A).

appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.¹⁹

During and since the original investigation, domestic producer Diamond has met the definition of a "related party" by virtue of *** B.J. Alan, an ***.²⁰ Diamond accounted for approximately *** percent of U.S. production in 1999. Since June 1999, Diamond has accounted for all U.S. production, due to Elkton's cessation of domestic production. Diamond states that B.J. Alan has *** in order to keep B.J. Alan's prices as low as possible to compete with the subject imports, and to keep a greater number of Diamond's domestic workers employed.²¹ In 1999, Diamond's ratio of production to B.J. Alan's imports was ***. Thus, as in the original investigation, the information in the record of this review indicates that Diamond's interests lie primarily in domestic production.²² We therefore find that appropriate

¹⁹ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 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 (CIT 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., Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

²⁰ CR at III-1, n.2; PR at III-1, n.2. See 19 U.S.C. § 1677(4)(B)(ii)(II). Diamond typically ***. CR at III-4; PR at III-2.

²¹ Diamond's Prehearing Brief (May 2, 2000) at 4-5. Diamond workers ***.

²² Indeed, while Diamond accounted for a substantial portion of domestic production during the original investigation, at present it accounts for all domestic production, and excluding it would leave no domestic producer in the industry. See Torrington Co. v. United States, 790 F. Supp. at 1168 (upholding as reasonable the Commission's determination that excluding related parties that account for significant shares of the domestic industry could present a distorted view of the industry). See also Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793 (July 1994) at I-8 (finding that appropriate circumstances did not exist to exclude the sole domestic producer from the domestic industry).

circumstances do not exist to exclude Diamond from the domestic industry.²³

We also considered whether we should exclude Elkton's data for 1998 and 1999 on related party grounds. Following its cessation of domestic sparkler production, Elkton began importing subject sparklers from China.²⁴ However, because ***, and is no longer a domestic producer, Elkton is not a related party under the statute.²⁵

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

²³ See 19 U.S.C. § 1677(4)(B)(i). This is the same conclusion the Commission reached in the original investigation. See Original Determination at 8-9.

²⁴ Transcript of Hearing ("Tr.") (May 11, 2000) at 90-92.

²⁵ We note that at the time of the Commission's adequacy determination, the limited record evidence indicated that Elkton accounted for ***. However, the more complete record in this full sunset review indicates that ***. Elkton's Importer Questionnaire at 6.

²⁶ 19 U.S.C. § 1675a(a).

²⁷ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry)." SAA at 883.

²⁸ While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked." SAA at 884.

²⁹ 19 U.S.C. § 1675a(a)(5).

exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{30 31}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”³² It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{33 34}

We note that Section 776(a) of the Act 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.³⁵ We generally give credence to the facts supplied

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

³¹ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

³² 19 U.S.C. § 1675a(a)(1).

³³ 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.

³⁴ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued a duty absorption finding in this case. *See* 65 Fed. Reg. 5312 (February 3, 2000).

³⁵ 19 U.S.C. § 1675(c)(3)(B). Section 751(c)(3)(B) of the Act specifically provides that in an expedited five-year review the Commission is to issue “a final determination based on the facts available, in accordance with section 776.” Section 776 of the Act, however, does not limit the use of facts available to an expedited review.

by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."³⁶

For the reasons stated below, we determine that revocation of the antidumping duty order on sparklers from China 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 sparklers industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³⁷ A number of conditions of competition are pertinent to our analysis, some of which are unchanged from the original investigation and others that have developed since that time.

As it was at the time of the original investigation, demand for sparklers is seasonal, with the vast majority of sparklers sold to wholesalers and retailers in the spring for consumption during the Fourth of July holiday.³⁸ Conditions such as safety concerns and weather conditions (*e.g.*, drought) can affect demand.³⁹ Sales of assortment packages, which include sparklers and other fireworks, account for a significant percentage of all sparkler sales, but individual sales of packages of sparklers are also common.⁴⁰ The record indicates that the market for sparklers is mature, with no new uses developed since the original investigation or likely to develop in the reasonably foreseeable future.

The data collected in the original and review investigations indicate that the apparent consumption of sparklers, by quantity, declined approximately *** percent between the original period of investigation and the period of the review investigation, and declined by an additional *** percent between 1998 and 1999.⁴¹ Diamond asserts that the data may understate consumption because they do not include sparklers that are sold as a part of assortment packages. There is some evidence to support the assertion that our data may understate consumption somewhat. Specifically, while Elkton stated that the reported data accurately reflected a drop in consumption due to the banning of sparklers in California, that ban would not account for the magnitude of the decline shown in the data. Also, no purchasers noted the kind of significant decline in consumption that our data appear to indicate.

³⁶ SAA at 869.

³⁷ 19 U.S.C. § 1675a(a)(4).

³⁸ CR at I-9, II-5; PR at I-5, II-3.

³⁹ CR at I-9; PR at I-9. The demand for sparklers is influenced by the level of consumer spending on all fireworks and other devices for celebrations. *Id.*

⁴⁰ CR at II-1; PR at II-1.

⁴¹ CR and PR at Table I-1; CR at II-5; PR at II-3.

The domestic industry has shrunk since the original investigation. During the original investigation, there were three U.S. producers of sparklers. By 1998, two U.S. companies produced sparklers, and as of the end of June 1999, only one producer, Diamond, has continued to produce sparklers in the United States. As noted, Diamond is *** by B.J. Alan, an importer ***. Diamond's sparklers are sold exclusively through B.J. Alan to wholesalers.⁴² The other U.S. producer, Elkton, began importing *** sparklers shortly after it ceased U.S. production.⁴³

The evidence in this review record indicates that purchasers view quality and price as the two most important considerations in purchasing decisions.⁴⁴ While most purchasers perceive the quality of U.S. and Chinese sparklers to be comparable, a majority of purchasers reported that Chinese sparklers are priced lower than the domestic like product.⁴⁵

Nonsubject imports have increased since the imposition of the original order. During 1990, the last year of the original investigation, nonsubject imports accounted for *** percent by quantity and *** percent by value of apparent consumption.⁴⁶ Their quantity-based market share increased from *** percent in 1998 to *** percent in 1999.⁴⁷ By value, nonsubject imports' market share ***, from *** percent in 1998 to *** percent in 1999.⁴⁸

We do not expect the foregoing conditions of competition to change appreciably if the antidumping duty order is revoked. Accordingly, we find that current conditions in the U.S. sparklers industry provide us with a basis upon which to assess the likely effects of revocation of the antidumping duty order within the reasonably foreseeable future.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.⁴⁹ 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

⁴² CR at II-1; PR at II-1.

⁴³ Tr. at 90-92.

⁴⁴ CR at II-6-7; PR at II-4.

⁴⁵ CR and PR at Table II-2; CR at II-9-11; PR at II-5-7.

⁴⁶ CR and PR at Table I-1.

⁴⁷ CR and PR at Table I-1.

⁴⁸ CR and PR at Table I-1.

⁴⁹ 19 U.S.C. §1675a(a)(2).

produce the subject merchandise, are currently being used to produce other products.⁵⁰

During the original investigation, subject imports from China increased their market share from *** percent in 1988 to *** percent in 1990 of the quantity of apparent U.S. consumption.⁵¹ At the same time, they increased their market share by value from *** percent in 1988 to *** percent in 1990.⁵² In the original determination, the Commission found that this volume was significant, both absolutely and relative to domestic production of sparklers.⁵³

There is limited information on the record in this review concerning the current status of the sparklers industry in China because there were no responses by foreign producers or exporters to the Commission's data request. During the review period, subject imports accounted for *** percent of the quantity and *** percent of the value of 1998 apparent U.S. consumption, and *** percent of the quantity and *** percent of the value of 1999 apparent U.S. consumption.⁵⁴ Thus, even with the antidumping duty order in place, subject imports occupied a substantial presence in the U.S. market during the period of the review investigation. Both the quantity and the value-based market share of subject imports have, however, remained well below the levels that they held during the period of the original investigation. We find that the lower volume levels during the review period as compared to the original investigation period are attributable in large measure to the effects of the antidumping duty order.

Several factors indicate that subject Chinese producers have the capacity and incentive to export even higher volumes of subject imports to the United States if the order is revoked. Shipments of Chinese sparklers to the United States grew from 145 million sparklers in 1988 to over *** million sparklers in 1989.⁵⁵ This rapid increase in imports during the original investigation demonstrates an ability by Chinese exporters to rapidly increase shipments to the United States if the order is revoked. The United States is likely to be an attractive market for increasing volumes of Chinese sparklers, and the available information indicates that the sparkler industry in China continues to be export-oriented.⁵⁶ ***.⁵⁷ Nothing in the record indicates that Chinese capacity has declined since the original investigation, and the United States is still a significant export market for China, as demonstrated by the continued significant level of exports to the United States. Moreover, it would not be technically difficult for the Chinese to shift from production of other fireworks to sparkler production.⁵⁸

The substantial market share that the subject imports attained prior to the imposition of the antidumping duty order on sparklers, their retention of a significant but smaller market share in the United

⁵⁰ 19 U.S.C. § 1675(a)(2)(A)-(D).

⁵¹ CR and PR at Table I-1.

⁵² CR and PR at Table I-1.

⁵³ Original Determination at 12-13.

⁵⁴ CR and PR at Table I-1.

⁵⁵ CR and PR at Table I-3.

⁵⁶ Diamond's Posthearing Brief at 4.

⁵⁷ *** Elkton's Document Submission Per Request of Chairman Koplán (May 31, 2000) at Attachment 2.

⁵⁸ Tr. at 138.

States, their likely significant capacity levels, as well as ***, all suggest that subject producers will likely increase shipments to the United States if the antidumping duty order is revoked.⁵⁹ Consequently, based on the record in this review, we conclude that the likely volume of subject imports would be significant if the order is revoked.

⁵⁹ Commissioner Bragg infers that, upon revocation, subject producers would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission's original determination. Based upon the record in this review, Commissioner Bragg finds that the historical emphasis will likely result in significant volumes of subject imports into the United States if the 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 prices for the domestic like product.⁶⁰

In the original investigation, the Commission found that there was an overall decline in the average unit prices of subject sparklers.⁶¹ This decline was attributable to the increasing market share of the Chinese sparklers that were concentrated at the lower end of the range for size.⁶²

In this review, we find, as the Commission did in the original investigation, that price is a key element in purchasing decisions. Price ranks as the most important or second most important factor by the large majority of U.S. purchasers of sparklers.⁶³

Even with the order in effect, the subject merchandise still undersells the domestic like product.⁶⁴ The pricing information collected on product 1, which accounts for the highest volume of the subject imports, shows underselling of the U.S. product.⁶⁵ Price data on other products, for which Chinese volume was lower, were mixed.⁶⁶ Given the importance of price as a factor in purchasing decisions and the comparable quality of Chinese sparklers, it is likely the subject imports from China would increasingly undersell the domestic like product in order to increase exports to the United States at prices that would likely have a significant depressing or suppressing effect on prices for the domestic like product.⁶⁷

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

⁶⁰ 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.

⁶¹ Original Determination at 13-14.

⁶² Original Determination at 14.

⁶³ CR and PR at Table II-1.

⁶⁴ Diamond’s Response at 7; Elkton’s Posthearing Brief at 4.

⁶⁵ CR and PR at Table V-1.

⁶⁶ We note that the average unit value (“AUV”) of domestic shipments increased from 1998 to 1999, while the subject imports’ AUV decreased by nearly ***. CR and PR at Table I-3.

⁶⁷ Elkton conceded that the wholesale price of sparklers will decrease. Tr. at 93. Elkton stated that retail prices would not be affected if the order is lifted. We find, however, that it is likely that a significant reduction in wholesale prices would inevitably affect prices at the retail level.

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.⁶⁸ 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.⁶⁹ 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.

In the original investigation, the Commission noted the decline in U.S. production, shipments, employment, and market share while also noting that U.S. consumption of sparklers by quantity was increasing, and financial indicators were deteriorating. The Commission found that the domestic industry was materially injured by reason of the unfairly traded imports. The subject imports had a detrimental impact on the domestic industry resulting in losses in sales volumes, production, and capacity. The Commission also found that operating income, profitability, and employment suffered and the domestic industry lost market share to the subject imports.⁷⁰

In the current review, domestic producers have increased their market share since the 1988-90 period, with U.S. shipments comprising *** percent of the domestic market in 1999.⁷¹ However, in 1999, the industry lost the producer that accounted for *** of domestic capacity and production. Moreover, while the financial performance of the remaining producer, Diamond, was ***, Diamond's sales declined significantly from 1998 to 1999.⁷² The record, therefore, indicates that the domestic industry is in a vulnerable condition.

As discussed above, revocation of the antidumping duty order would likely lead to an increase in subject imports selling at even lower prices in a market that is already experiencing a decline in demand. The volume and price effects of the subject imports would likely cause a decline in both the volume of domestic shipments and prices of the domestic like product.

⁶⁸ 19 U.S.C. § 1675a(a)(4).

⁶⁹ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year review investigations as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final expedited sunset review, Commerce found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following margins: 41.75 percent for Gaungxi Native Produce Import & Export Corp. and Benai Fireworks and Firecracker Branch; and 93.54 percent for Hunan Provincial Firecrackers & Fireworks Import Export (Holding) Co., Jiangxi Native Produce Import & Export Corp., Guangzhou Fireworks Co., and all others. 56 Fed. Reg. 5312 (February 3, 2000).

⁷⁰ Original Determination at 11-14.

⁷¹ CR and PR at Table I-1.

⁷² Diamond's Posthearing Brief at 1.

Such price and volume declines would likely have a significant adverse impact on the production, shipment, sales, market share, and revenue levels of the domestic industry. The reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability.⁷³

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

⁷³ Even with the order in place, employment in the industry dropped from *** production related workers in 1998 to *** production related workers in 1999. CR and PR at Table III-4. Diamond stated that if the order is revoked, it would be forced to stop producing sparklers in the United States. Diamond's Posthearing Brief at 1.

CONCLUSION

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