

UNITED STATES INTERNATIONAL TRADE COMMISSION

INDUSTRIAL NITROCELLULOSE FROM BRAZIL, CHINA, FRANCE, GERMANY,
JAPAN, KOREA, THE UNITED KINGDOM, AND YUGOSLAVIA
Investigations Nos. 731-TA-96 and 439-445 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3342, AUGUST 2000)

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INDUSTRIAL NITROCELLULOSE FROM BRAZIL, CHINA, FRANCE, GERMANY,
JAPAN, KOREA, THE UNITED KINGDOM, AND YUGOSLAVIA

DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on industrial nitrocellulose from Brazil,² China, France, Germany, Japan, Korea,³ and the United Kingdom would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines that revocation of the antidumping duty order on industrial nitrocellulose from Yugoslavia 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.

BACKGROUND

The Commission instituted these reviews on June 1, 1999 (64 F.R. 29344) and determined on September 3, 1999 that it would conduct full reviews (64 F.R. 50107, September 15, 1999). Notice of the scheduling of the Commission's reviews 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 October 25, 1999 (64 F.R. 57483).⁴ The hearing was held in Washington, DC, on June 8, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 24, 2000. The views of the Commission are contained in USITC Publication 3342 (August 2000, entitled *Industrial Nitrocellulose from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia: Investigations Nos. 731-TA-96 and 439-445 (Review)*).

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 Commissioner Thelma J. Askey dissenting.

³ Commissioner Thelma J. Askey dissenting.

⁴ The Commission subsequently revised its schedule, publishing its notice in the *Federal Register* on February 7, 2000 (65 FR 5889). The Commission later revised the schedule again, publishing the second revised notice on June 26, 2000 (65 FR 39426).

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering industrial nitrocellulose (“INC”) from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time;⁵ and that revocation of the antidumping duty order covering INC from Yugoslavia 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 July 1983, the Commission determined that an industry in the United States was materially injured by reason of imports from France of INC that the Department of Commerce (“Commerce”) had determined were being sold in the United States at less than fair value (“LTFV”). In June 1990, the Commission determined that an industry in the United States was materially injured by reason of LTFV imports of INC from Brazil, China, Germany, Japan, Korea, and the United Kingdom. In October 1990, the Commission determined that an industry in the United States was materially injured by reason of LTFV imports of INC from Yugoslavia. Commerce imposed antidumping duty orders on INC imports from the subject countries on the following dates: August 10, 1983 for France; July 10, 1990 for Brazil, China, Germany, Japan, Korea, and the United Kingdom; and October 16, 1990 for Yugoslavia.⁶

On June 1, 1999, the Commission instituted these reviews pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping duty orders on INC from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia would likely lead to continuation or recurrence of material injury to a domestic industry within a reasonably foreseeable time.⁷ The Commission received responses to the notice of institution by the deadline of July 21, 1999 from the following interested parties: Hercules, Inc. (“Hercules”), the sole domestic producer of INC at the time; Bergerac, N.C., a French producer and exporter of INC; SNPE North America LLC and TEVCO, Inc., U.S. affiliates of Bergerac and importers of INC; Wolff Walsrode AG, Chemical Division, a German producer and exporter of INC; Bayer Corporation, a U.S. importer of INC; Nobel Enterprises, a United Kingdom producer and exporter of INC; and ICI Americas Inc., a U.S. importer of INC. The Commission did not receive responses from any respondent interested parties in the reviews concerning Brazil, China, Japan, Korea, and Yugoslavia.

⁵ Commissioner Askey dissenting with respect to Brazil and Korea. Commissioner Askey writes separately to discuss her views but joins in Sections I, II, III.A, and IV.A of this opinion. See Concurring and Dissenting Views of Commissioner Thelma J. Askey.

⁶ See 64 Fed. Reg. 29344, 29345 (June 1, 1999).

⁷ 64 Fed. Reg. 29344 (June 1, 1999).

On September 3, 1999, the Commission determined that both the domestic and respondent interested party group responses to its notice of institution for the reviews concerning France, Germany, and the United Kingdom were adequate.⁸ Pursuant to 19 U.S.C. § 1675(c)(5), the Commission decided to conduct full reviews with regard to France, Germany, and the United Kingdom. Because no respondent interested parties responded for the reviews concerning Brazil, China, Japan, Korea, or Yugoslavia, the Commission determined that the respondent interested party group responses for these reviews were inadequate. However, the Commission decided to conduct full reviews of the orders covering INC from Brazil, China, Japan, Korea, and Yugoslavia to promote administrative efficiency in light of the Commission's decision to conduct full reviews with respect to France, Germany, and the United Kingdom.⁹

Hercules and Green Tree Chemical Technologies, Inc. ("Green Tree"), the successor-in-interest to the INC business of Hercules, filed briefs and appeared at the hearing on behalf of the domestic industry and in opposition to revocation of the orders. Respondents representing the INC industries in France, Germany, and the United Kingdom filed briefs and appeared at the hearing in support of revocation of the orders. Asahi Chemical Co. Ltd. of Japan, a Japanese producer of INC, responded to the Commission's questionnaire but is not a party to these reviews. No foreign producers of INC in Brazil, China, Korea, or Yugoslavia appeared as parties to these reviews or responded to the Commission's questionnaires.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines "the domestic like product" and the "industry."¹⁰ The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."¹¹

In its final expedited sunset reviews for all the subject countries, Commerce defined the scope of the subject merchandise as follows:

⁸ See Explanation of Commission Determination on Adequacy in Industrial Nitrocellulose From Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia. Confidential Report ("CR")/Public Report ("PR") at Appendix A. See also 64 Fed. Reg. 50107 (Sept. 15, 1999).

⁹ Commissioner Crawford dissented and determined that the Commission should conduct expedited reviews of the orders covering Brazil, China, Japan, Korea, and Yugoslavia. See Explanation of Commission Determination on Adequacy in Industrial Nitrocellulose From Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia. CR/PR at Appendix A.

¹⁰ 19 U.S.C. § 1677(4)(A).

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

The product covered by this order is industrial nitrocellulose (“nitrocellulose”). . . Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent. Industrial nitrocellulose is currently classifiable under Harmonized Tariff Schedule (“HTS”) item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.¹²

The Commission in its original determinations defined the domestic like product, consistent with Commerce’s scope definition, as all industrial nitrocellulose.¹³ In the 1990 investigations, the Commission considered various like product arguments raised by the respondents and determined that it was appropriate to include all grades of industrial nitrocellulose in the like product; that plasticized industrial nitrocellulose should be included in the like product; that the type of wetting agent used did not constitute a basis for creating separate like products; and that it was appropriate not to include explosive nitrocellulose in the like product definition.¹⁴

There is no evidence in the record of these reviews that suggests the Commission should revisit the definition of the like product.¹⁵ We find, consistent with the Commission’s findings in the original investigations and with Commerce’s scope definition, a single domestic like product consisting of all industrial nitrocellulose.

B. Domestic Industry

¹² See 64 Fed. Reg. 57859, 57860 (Oct. 27, 1999).

¹³ See Industrial Nitrocellulose from Brazil, Japan, The People’s Republic of China, The Republic of Korea, the United Kingdom and West Germany, Inv. Nos. 731-TA-439 through 444 (Final), USITC Pub. 2295 at 8 (June 1990); Industrial Nitrocellulose from Yugoslavia, Inv. No. 731-TA-445 (Final), USITC Pub. 2324 at 4 (Oct. 1990). In the 1983 determination on France, the Commission similarly defined the domestic like product as “all soluble industrial nitrocellulose.” Nitrocellulose from France, Inv. No. 731-TA-96 (Final), USITC Pub. 1409 at 4 (July 1983). However, given that all INC is produced using a “soluble process,” the word “soluble” in the definition was superfluous.

¹⁴ USITC Pub. 2295 at 5-7.

¹⁵ Wolff Walsrode AG, a German producer and exporter of INC, and Bayer Corporation, a U.S. importer of INC, stated in their joint response to the notice of institution that they “challenge the ITC’s definition of like product” but did not offer an alternative definition, or pursue any like product arguments at the hearing or in their prehearing or posthearing briefs. See Response of Wolff Walsrode A.G. and Bayer Corporation to Notice of Institution at 9 (July 21, 1999). No other party to these reviews has raised a like product issue. The participating respondents, representing the INC industries in France, Germany, and the United Kingdom, argue that certain types of INC, such as plasticized INC from Germany and cuboid INC from the United Kingdom, provide a basis for not cumulating subject imports from these countries, but they do not argue that these types of INC are separate like products. Respondents’ Joint Prehearing Brief at 8 (May 30, 2000).

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.”¹⁶ 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 market, provided that adequate production-related activity is conducted in the United States.¹⁷ The Commission bases its analysis on a firm’s production-related activities in the United States.¹⁸

Consistent with our domestic like product determination, we find one domestic industry, consisting of all domestic producers of industrial nitrocellulose. We note that during the period of these reviews there have been two successive domestic producers of INC, Hercules and Green Tree. Hercules, which responded to the notice of institution, ceased production of INC on May 15, 2000, pursuant to its announcement in December 1999 that it would phase out INC production at its Parlin, New Jersey facility and that it planned to transfer its INC business to Green Tree. On June 16, 2000, Green Tree acquired, and became the successor-in-interest to, Hercules’ INC business.¹⁹ Green Tree began production of INC at the Parlin, New Jersey facility on June 17, 2000.²⁰

The record is thus clear that, notwithstanding intermittent interruptions in production,²¹ industrial nitrocellulose has been produced in the United States throughout the period of these reviews, first by Hercules and then by Green Tree.²² Both Hercules and Green Tree qualify as

¹⁶ 19 U.S.C. § 1677(4)(A).

¹⁷ See, e.g., Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 at 8-9 (July 1999); Manganese Sulfate from the People’s Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (Nov. 1995) (the Commission stated it has generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry). See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (CIT 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

¹⁸ The Commission typically considers six factors: (1) the extent and source of a firm’s capital investment; (2) the technical expertise involved in U.S. production activity; (3) the value added to the product in the United States; (4) employment levels; (5) the quantities and types of parts sourced in the United States; and (6) any other costs and activities in the United States leading to production of the like product. See 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).

¹⁹ Hercules stated it intends to focus its Parlin manufacturing operations solely on hydroxyethylcellulose, a water-based solvent used for applications similar to those of INC. CR at III-10, PR at II-4.

²⁰ Posthearing Brief of Hercules and Green Tree at 1, 3-4 (June 19, 2000); Letter to Donna Koehnke from Miller Thomson Wickens & Lebow LLP, on behalf of Hercules and Green Tree (July 14, 2000).

²¹ Besides the cessation of INC production from May 15, 2000 through June 16, 2000, when Hercules’ assets were transferred to Green Tree, Hercules experienced an accident at its plant in May 1999 that ***. CR at II-2, PR at II-1. Repairs are expected to be completed ***. CR at III-2, III-4, PR at III-1-2.

²² Green Tree’s acquisition of Hercules’ assets and its resumption of INC production moot respondents’ arguments that the U.S. INC industry ceased to exist and that the Commission is thereby precluded from finding continuation or recurrence of material injury. See Respondents’ Joint Prehearing Brief at 5-6. The respondents raised these arguments at the hearing and in their prehearing and posthearing briefs, but did not reiterate them in

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producers of the domestic like product under the statutory definition of the “industry,”²³ and each has qualified as an “interested party” in that each produced INC during the review period prior to the record closing.^{24 25}

C. Related Parties

In defining the domestic industry in these reviews, we have considered whether any U.S. producers of INC 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 a foreign producer, exporter, or importer of the subject merchandise, or which are themselves importers.²⁶ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.²⁷

²² (...continued)

their final comments, which recognized Green Tree as the “new producer.” Respondents’ Joint Final Comments at 2 (Aug. 8, 2000).

²³ 19 U.S.C. § 1677(4)(A).

²⁴ 19 U.S.C. § 1677(9)(C).

²⁵ Green Tree reported its initial production of INC at approximately 2.0 million pounds per month (Posthearing Brief of Hercules and Green Tree at Attachment 3), in line with Hercules’ production and sales rates in the second quarter of 2000 when it transferred its INC business to Green Tree. CR/PR at Table III-2, Table III-4 (showing Hercules’ production at *** pounds for the period April-June 2000 and its U.S. sales at *** pounds for the same period). While this rate is down somewhat from Hercules’ production rate of approximately 3.0 million pounds per month at the beginning of 2000 (Posthearing Brief of Hercules and Green Tree at Attachment 3; CR/PR at Table III-2), Green Tree’s initial production rate nevertheless appears to represent more than *** percent of U.S. apparent consumption, which, on an annual basis, was *** million pounds in 1999. CR/PR at Table C-1. Moreover, both Hercules and Green Tree produce for commercial sale, in response to customer orders. Posthearing Brief of Hercules and Green Tree at 3-4. The Commission has found domestic production and a domestic industry to exist even where domestic production was quite limited during the period of investigation, but was produced for commercial sale. See Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Inv. Nos. 701-TA-376, 377, and 379, Inv. Nos. 731-TA-788-793 (Final), USITC Pub. 3188 at 5, 8 (May 1999) (Commission majority found domestic production of cold-rolled stainless steel coiled plate, given that production, although “quite limited,” was for commercial sale, in response to customers’ orders, and occurred during every year of the investigation period).

²⁶ 19 U.S.C. § 1677(4)(B).

²⁷ 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). 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

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The existence or exclusion of related parties was not an issue in the original INC investigations, and no party has raised it as an issue in these reviews. The record indicates that neither Hercules nor Green Tree is affiliated with any foreign producers, exporters, or importers of INC. However, when Hercules experienced a temporary supply disruption as a result of a plant accident in May 1999, it imported INC from *** to meet the requirements of its contract customers. Data for the first nine months of 1999 indicate that Hercules imported *** from *** during the period.²⁸ These imports represent *** percent of Hercules' total INC production of *** during the same period.²⁹

Hercules' importation of subject merchandise during a brief portion of the review period brings it within the related parties provision, but appropriate circumstances do not exist to exclude Hercules as a related party. Hercules clearly imported in response to an emergency and to complement, not displace, its U.S. production.³⁰ The small percentage of imports relative to overall production confirms that its primary interest was in U.S. production, not imports, and that it imported only to meet its established customers' needs when its own supply was disrupted due to a plant accident. In addition, Hercules, at the time it imported INC from ***, represented all U.S. production of INC, and its data are therefore essential to the Commission's determination.³¹ We therefore find that appropriate circumstances do not exist to exclude Hercules under the related parties provision.

III. CUMULATION³²

²⁷ (...continued)

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., 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).

²⁸ See CR at I-25, PR at I-19; Hercules' Response to Commission Questionnaire.

²⁹ Hercules' Response to Commission Questionnaire.

³⁰ Chairman Koplan and Commissioners Miller and Hillman do not find that Hercules benefitted significantly from its subject imports such that its inclusion in the domestic industry would affect our assessment of the industry's vulnerability or of the likelihood of material injury.

³¹ See Torrington Co. v. United States, 790 F. Supp. at 1168 (Court upholds 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).

³² Commissioner Bragg does not join in Section III of this opinion. Commissioner Bragg provides a separate analysis of cumulation in these reviews. See Separate Views of Commissioner Lynn M. Bragg Regarding Cumulation. For a complete statement of Commissioner Bragg's analytical framework regarding cumulation in sunset reviews, see Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found

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A. Framework

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.³³

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.³⁴ We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.³⁵ With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.^{36 37}

³² (...continued)

in Potassium Permanganate From China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999); see also Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, found in Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (April 2000).

Commissioner Askey joins only in Section III.A of this section. See Concurring and Dissenting Views of Commissioner Thelma J. Askey.

³³ 19 U.S.C. § 1675a(a)(7).

³⁴ 19 U.S.C. § 1675a(a)(7).

³⁵ SAA, H.R. Rep. No. 103-316, vol. I (1994).

³⁶ For a discussion of the analytical framework of Chairman Koplán and Commissioners Miller and Hillman regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Chairman Koplán’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplán Regarding Cumulation).

³⁷ Commissioner Askey notes that the Act clearly states that the Commission is precluded from exercising its discretion to cumulate if the imports from a country subject to review are likely to have “no discernible adverse

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The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.³⁸ Only a “reasonable overlap” of competition is required.³⁹ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.⁴⁰

In these reviews, the statutory requirement for cumulation that all reviews be initiated on the same day is satisfied. For the reasons discussed below, we do not cumulate subject imports from Yugoslavia on the basis of no discernible adverse impact, but find that subject imports from all the other subject countries would be likely to compete with each other and with the domestic like product and exercise our discretion to cumulate imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom.⁴¹

³⁷ (...continued)

impact on the domestic industry” upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, the Commission must focus on whether the imports will impact the condition of the industry discernibly as a result of revocation, and not solely on whether there will be a small volume of imports after revocation, *i.e.*, by assessing their negligibility after revocation of the order. For a full discussion of her views on this issue, see Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

³⁸ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. *See, e.g., Wieland Werke, AG v. United States*, 718 F. Supp. 50 (CIT 1989).

³⁹ *See Mukand Ltd. v. United States*, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996)). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. *See, e.g., Live Cattle from Canada and Mexico*, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 15 (Feb. 1999), *aff’d sub nom, Ranchers-Cattleman Action Legal Foundation v. United States*, 74 F. Supp.2d 1353 (CIT 1999); SRAMs from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-761-762 (Final), USITC Pub. 3098 at 13-15 (Apr. 1998).

⁴⁰ *See, e.g., Torrington Co. v. United States*, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

⁴¹ Commissioner Askey does not join this statement. She finds that the subject imports from Brazil and Korea are not likely to have a discernible adverse impact on the domestic industry. Accordingly, she does not cumulate

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B. Likelihood of No Discernible Adverse Impact

We find that subject imports of INC from Yugoslavia would be likely to have no discernible adverse impact on the domestic industry if the order is revoked and, therefore, do not cumulate subject imports from Yugoslavia with subject imports from any of the other subject countries.

There were no INC imports from Yugoslavia during the review period.⁴² Milan Blagojevic was the only known INC producer in Yugoslavia during the original investigation.⁴³ The record of these reviews indicates that the Yugoslav producer's facilities were destroyed or severely damaged as a result of military action and that the United States has continuing sanctions against imports from Serbia.⁴⁴ We note that the domestic industry urged the Commission not to cumulate imports from Yugoslavia with those from any other subject country, on the ground that imports from Yugoslavia likely would have no discernible adverse impact in view of the destruction of the Milan Blagojevic facility.⁴⁵ We find, given the destruction of the only known INC production facility in Yugoslavia and the lack of any indication in the record of these reviews that Yugoslav INC production and exports to the United States are likely to resume in the reasonably foreseeable future, that INC imports from Yugoslavia would be likely to have no discernible adverse impact on the domestic industry.

Although the participating respondents on behalf of the INC industries in France, Germany, and the United Kingdom urged the Commission to find that imports from these countries would be likely to have no discernible adverse impact,⁴⁶ we find that the no discernible adverse impact exception to cumulation does not apply to any subject country except Yugoslavia. Unlike Yugoslavia, each of the other subject countries currently produces INC, has some available excess capacity, and exported INC to the United States during at least a portion of the review period.

Subject imports from the three countries actively participating in these reviews -- France, Germany, and the United Kingdom -- have remained in the U.S. market since the orders were imposed, at levels comparable to those of the original investigations. Their U.S. market shares, moreover, are higher than those of the original investigations: U.S. shipments of imports from France represented *** percent of U.S. apparent consumption in 1999, as compared to *** percent in 1982; for Germany, *** percent of U.S. apparent consumption in 1999, as compared to *** percent in 1989; and for the United Kingdom, *** percent of U.S. apparent consumption in

⁴¹ (...continued)
them with the other subject imports. See Concurring and Dissenting Views of Commissioner Thelma J. Askey.

⁴² CR/PR at Table IV-1, Table IV-2.

⁴³ CR at IV-16, PR at IV-7.

⁴⁴ CR at IV-16, PR at IV-7; Response to Notice of Institution of Nobel Enterprises and ICI Americas, Inc. at 8 (July 21, 1999); Prehearing Brief of Hercules and Green Tree at 11, n.7 (May 30, 2000).

⁴⁵ Prehearing Brief of Hercules and Green Tree at 11, n.7.

⁴⁶ Respondents' Joint Prehearing Brief at 11-14.

1999, as compared to *** percent in 1989.⁴⁷ The quantity of imports from each of these countries was higher in 1999 than in 1997,⁴⁸ and there were significant volumes of imports from each of these countries during the first half of 2000.⁴⁹ Producers in each country have some excess capacity, and all are export-oriented.⁵⁰

INC imports from Brazil were *** pounds in 1997, as compared to *** pounds in 1989, but Brazil's market share in 1997 was higher than during the original investigation.⁵¹ U.S. shipments of imports from Brazil represented *** percent of U.S. apparent consumption in 1997, as compared to *** percent in 1989.⁵² Although imports from Brazil dropped sharply in 1998 and 1999, apparently due to ***, the record indicates that the Brazilian producer has ***, has resumed exports to the United States, and exports substantial quantities to Colombia and other markets.⁵³

While the level of subject imports from Japan has decreased since the original investigation, the record indicates that Japanese producers have substantial unused capacity that they could divert to the U.S. market if the order was revoked.⁵⁴ We likewise find, absent contrary evidence on the record, that, without the restraining effects of the orders, producers in China and Korea have the capacity to increase their exports of INC to the United States above current levels.⁵⁵

Based on the available information regarding the capacity, production, and export levels of the industries in all the subject countries except Yugoslavia, we therefore find a likelihood of a

⁴⁷ CR/PR at Table I-1, Table I-2, Table C-1.

⁴⁸ CR/PR at Table IV-1.

⁴⁹ CR/PR at Table IV-2.

⁵⁰ CR/PR at Table IV-5, Table IV-6, Table IV-8.

⁵¹ CR/PR at Table I-2.

⁵² CR/PR at Table I-2.

⁵³ Prehearing Brief of Hercules and Green Tree at 18-19; Posthearing Brief of Hercules and Green Tree at 5-6; Hearing Tr. at 140.

⁵⁴ The capacity utilization of Asahi, which reportedly represented *** of Japanese INC production in 1998 and was the only Japanese producer to respond to the Commission's questionnaire (CR at IV-12, PR at IV-6), was at *** percent in 1998 and *** percent in the first three quarters of 1999. CR/PR at Table IV-7. Asahi, moreover, indicated in its questionnaire response the ***. CR at IV-12, PR at IV-6.

⁵⁵ In 1988, at the time of the original investigation, China's production capacity was estimated at *** pounds, and its capacity utilization at *** percent. Original CR at a-46. Imports from China at the time of the original investigation ranged from *** pounds to *** pounds, and U.S. shipments of imports from China represented between *** percent and *** percent of U.S. apparent consumption. CR/PR at Table I-2. We note that, although two Chinese INC producers cannot export INC to the United States pursuant to a joint venture agreement involving the French producer Bergerac, these two Chinese producers reportedly account for only 35 percent of current INC production in China. Respondents' Joint Posthearing Brief at Attachment C.

At the time of the original investigation, the production capacity of Miwon, one of two known Korean producers, was *** pounds and its capacity utilization was *** percent. Original CR at a-46-47, Table 17. The last INC imports to the United States from Korea, reportedly from Miwon Commercial Company, were in 1997, at *** pounds, as compared to *** pounds in 1989. CR/PR at Table I-2, Table IV-1, Table IV-2.

discernible adverse impact on the domestic industry if the orders on any of these seven countries were revoked.

C. Reasonable Overlap of Competition and Other Considerations

In determining whether to exercise our discretion to cumulate subject imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom, we examined whether, upon revocation of the orders, subject imports from these countries would likely compete in the U.S. market under similar conditions of competition with each other and with the domestic like product.

We first considered the likelihood of a reasonable overlap of competition among the products from each of these countries and the United States. In this regard, the domestic industry urged the Commission to cumulate imports from all subject countries, except Yugoslavia, based on the traditional four competition factors: fungibility, geographic overlap, simultaneous market presence, and channels of distribution.⁵⁶ The actively participating respondents, on behalf of the INC industries in France, Germany, and the United Kingdom, argued that certain INC products, such as plasticized INC from Germany and cuboid product from the United Kingdom, are not interchangeable with INC from other sources. They urged the Commission not to cumulate imports from the subject countries not participating in these reviews with those from Germany, France, and the United Kingdom given that imports from the non-participating countries are not simultaneously present in the U.S. market and the Commission lacks knowledge as to the channels of distribution they would use.⁵⁷

In the original 1990 investigations, the Commission cumulated subject imports from all the subject countries, based on a reasonable overlap of competition.⁵⁸ With respect to fungibility, the record of these reviews indicates a relatively high degree of substitutability between U.S.-produced and imported INC.⁵⁹ Purchasers, who listed price and quality as the most important factors in purchasing decisions, generally view INC from various countries as interchangeable and, with respect to any specific requirements they might have, find the subject imports to be similar.⁶⁰ Some quality differences among subject imports, however, were reported. While imports from Brazil, France, Germany, Japan, and the United Kingdom were found to be comparable with each other and with the U.S. product, imports from China and Korea were reportedly of inferior quality and could not be used interchangeably with the domestic product for certain applications.⁶¹ The record also indicates, however, that for most applications price is a more important consideration than quality and that lower quality INC can be used by itself or

⁵⁶ Prehearing Brief of Hercules and Green Tree at 5-9.

⁵⁷ Respondents' Joint Prehearing Brief at 8-9.

⁵⁸ USITC Pub. 2295 at 14; USITC Pub. 2324 at 8.

⁵⁹ CR at II-9, PR at II-6.

⁶⁰ CR at II-6-7, II-9, PR at II-4-6.

⁶¹ CR at II-9, PR at II-6.

blended with higher quality INC.⁶² The Commission in the original investigations found all the subject imports and the domestic product to be essentially fungible, despite some reported quality differences.⁶³

About *** percent of the German producer Wolff's shipments to the United States are reportedly of plasticized nitrocellulose, which is not interchangeable with the domestic like product because it is not damped with alcohol.⁶⁴ Most German INC, however, is alcohol wet and thus fully interchangeable with the domestic like product and with other subject imports.⁶⁵ In addition, the United Kingdom exports a cuboid form of INC to the United States, but cuboid INC is a type of alcohol wet INC and is considered widely interchangeable with other forms of the product.⁶⁶

The record indicates that imported and domestically produced INC are generally sold in the same channels of distribution throughout the United States, but that imports from all subject countries were not present in the U.S. market during all of the review period. As noted previously, there were relatively small volumes of imports from China, only in 1998 and 1999, and from Korea, only in 1997,⁶⁷ although this may be due to the effect of the orders. Imports from all the subject countries were simultaneously present in the U.S. market throughout the original investigation period.⁶⁸

We determine, based on the record of these reviews, that there likely would be a reasonable degree of fungibility between U.S. production and subject imports if the orders were revoked. U.S.-produced INC is generally interchangeable with INC imported from the subject countries. While imports from China and Korea have been reported to be of inferior quality for certain applications, low-quality INC reportedly can be used by itself or blended with higher quality INC for most applications. The special types of INC imported from certain countries -- i.e., "plasticized" INC from Germany and "cuboid" INC from the United Kingdom -- do not preclude a finding of a likely reasonable overlap of competition. The record, including information from the original investigations, indicates that subject imports and the domestic product would likely move in the same channels of distribution and be sold simultaneously in the same or similar geographic markets if the orders were revoked.

We find on balance that, if the orders were revoked, subject imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom would be likely to compete with each other and with the domestic like product and that other conditions of competition do not warrant

⁶² Prehearing Brief of Hercules and Green Tree at 6-7.

⁶³ USITC Pub. 2295 at 13; USITC Pub. 2324 at 8.

⁶⁴ CR at I-24, PR at I-19; Posthearing Brief of Hercules and Green Tree at 21-22.

⁶⁵ Posthearing Brief of Hercules and Green Tree at 21-22.

⁶⁶ CR at I-24, PR at I-19.

⁶⁷ CR/PR at Table IV-1, Table IV-2.

⁶⁸ CR/PR at Table I-2.

a contrary conclusion.⁶⁹ We therefore exercise our discretion to cumulate subject imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom in these reviews.

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDERS ARE REVOKED⁷⁰

A. Legal Standard In A Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order or terminate a suspended investigation 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 or termination of a suspended investigation “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁷¹ 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 or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”⁷² Thus, the likelihood standard is prospective in nature.⁷³ The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”⁷⁴ According to the SAA, a “‘reasonably foreseeable time’ will vary from

⁶⁹ Chairman Koplan notes that the producers in China, Japan, and Korea are all restrained to a significant degree by the respective antidumping duty orders. The existing orders have effectively eliminated subject imports from those countries. In contrast, subject imports from France, Germany, the United Kingdom, and Brazil (prior to the explosion at Quimica), have entered the U.S. market in significant quantities under the respective antidumping duty orders. Nevertheless, because the conditions of competition overall would not likely be significantly different for imports from any of the subject countries if the respective orders were revoked, Chairman Koplan finds that it is appropriate to assess cumulatively the likely volume and price effects of imports from all subject countries, except Yugoslavia.

⁷⁰ Commissioner Bragg joins the remaining sections of these views.

Commissioner Askey joins only in Section IV.A of this section. See Concurring and Dissenting Views of Commissioner Thelma J. Askey.

⁷¹ 19 U.S.C. § 1675a(a).

⁷² 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). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

⁷³ 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.

⁷⁴ 19 U.S.C. § 1675a(a)(5).

case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{75 76}

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 or the suspended investigation is terminated.”⁷⁷ 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 or the suspension agreement under review, and whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated.^{78 79}

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.⁸⁰ 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

⁷⁵ 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.

⁷⁶ 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 or termination. 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.

⁷⁷ 19 U.S.C. § 1675a(a)(1).

⁷⁸ 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.

⁷⁹ 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 these reviews. See 64 Fed. Reg. 57843, 57844 (Oct. 27, 1999).

⁸⁰ See 19 U.S.C. § 1677e.

and by drawing reasonable inferences from the evidence it finds most persuasive.”⁸¹ In this case, a number of respondent interested parties did not provide questionnaire responses and/or participate in these reviews. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the information collected by the Commission since the institution of these reviews, information submitted by the domestic producers, respondent parties and other parties in these reviews, and information from the original investigations.

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.⁸² 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.⁸³

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.⁸⁴

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

⁸¹ SAA at 869.

⁸² 19 U.S.C. § 1675a(a)(2).

⁸³ 19 U.S.C. § 1675(a)(2)(A)-(D).

⁸⁴ 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.

⁸⁵ 19 U.S.C. § 1675a(a)(4).

⁸⁶ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 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

(continued...)

in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the order is revoked.⁸⁷

For the reasons stated below, we determine that revocation of the antidumping duty orders on INC from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time; and that revocation of the antidumping duty order on INC from Yugoslavia would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.⁸⁸

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁸⁹

The following conditions of competition in the INC industry are relevant to our determinations.

U.S. apparent consumption of INC fell by *** percent from 1987 to 1999, primarily because of environmental considerations and the decreased use of INC in applications such as car repair paints and cellophane.⁹⁰ In the United States, INC, which requires the use of organic solvents such as acetone (considered a toxic air pollutant by the Environmental Protection Agency and the Occupational Safety and Health Administration), is being gradually replaced by water-based products and by advancements in modern-day polymer technologies.⁹¹ Nevertheless, substitutes for INC do not exist in all applications. Water-based resins, for example, lack the fast

⁸⁶ (...continued)

as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce found the following sunset margins in its expedited reviews of the antidumping duty orders on INC: Brazil, 61.25 percent; China, 78.40 percent; France -- Bergerac, 13.35 percent and all others, 1.38 percent; Germany, 3.84 percent; Japan, 66.00 percent; Korea, 66.30 percent; United Kingdom, 11.13 percent; and Yugoslavia, 10.81 percent. See 64 Fed. Reg. 57843, 57845, 57847, 57851, 57852, 57854, 57857, 57859 (Oct. 27, 1999).

⁸⁷ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁸⁸ Commissioner Askey does not join this statement. See her Concurring and Dissenting Views.

⁸⁹ 19 U.S.C. § 1675a(a)(4).

⁹⁰ CR at I-26, II-5, PR at I-20, II-3.

⁹¹ CR at I-19-20, PR at I-14, I-16.

drying and binding properties of INC.⁹² Demand for INC in Europe, like the United States, is expected to remain stagnant or decline in the reasonably foreseeable future.⁹³

INC is a commodity product, for which price is one of the most important purchase factors, along with quality and availability.⁹⁴ The record indicates a relatively high degree of substitutability between U.S.-produced INC and the imported product.⁹⁵ While purchasers noted some quality differences with respect to INC from China and Korea,⁹⁶ for most applications price appears to be a more important consideration than quality and lower quality INC can be blended with higher quality INC.⁹⁷

INC sales are usually based on annual contracts, but spot market sales are also prevalent. The domestic industry indicated that contract sales were *** percent of its business and the remainder were in the spot market. Importers indicated that contract sales were *** to *** percent of their sales, with the remainder in the spot market.⁹⁸

The domestic INC industry has been comprised of a single producer since 1978, before any of the orders were imposed.⁹⁹ Hercules, the sole U.S. producer when these reviews were instituted, experienced a shortfall in production as a result of a plant accident in May 1999. Hercules transferred its INC business to Green Tree during the pendency of these reviews. Hercules ceased INC production on May 15, 2000, immediately before the transfer of its INC assets, and Green Tree resumed production on June 17, 2000, the day after the transfer. When domestic supply was uncertain, due to Hercules' plant accident in May 1999 and then its December 1999 announcement that it was selling its INC business, some customers turned to imports, particularly sourced from France and Germany, to meet their needs.¹⁰⁰ As discussed earlier, Hercules itself imported INC from *** after its plant accident to meet its customers' requirements.¹⁰¹ The projected business plan of Green Tree, the new, sole domestic producer, calls for streamlining administrative, labor, and other costs and recapturing those customers lost to foreign suppliers.¹⁰²

The record indicates that customers may prefer a domestic supply source, although purchasers also stated that they do not want to risk losing their foreign supply sources and that

⁹² CR at II-5, PR at II-3.

⁹³ CR at I-26, II-5-6, PR at I-20, II-3-4.

⁹⁴ CR at II-7, PR at II-4-5.

⁹⁵ CR at II-9, PR at II-6.

⁹⁶ CR at II-9, PR at II-6.

⁹⁷ Prehearing Brief of Hercules and Green Tree at 6-7.

⁹⁸ CR at V-11, PR at V-6.

⁹⁹ CR at I-25, PR at I-19.

¹⁰⁰ CR at II-1, n.1, PR at II-1, n.1; Respondents' Joint Prehearing Brief at 13.

¹⁰¹ CR at II-1, n.1, PR at II-1, n.1.

¹⁰² Posthearing Brief of Hercules and Green Tree at 4.

the quality, price, and service provided by Green Tree would have to equal or exceed that provided by Hercules for Green Tree to retain or secure their business.¹⁰³

Nonsubject imports' U.S. market share has increased since the original investigations, from *** percent in 1987, *** percent in 1988, and *** percent in 1989, to *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹⁰⁴ Imports overall also gained U.S. market share, from *** percent in 1989 to *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹⁰⁵

As imports captured more of the U.S. market, the U.S. producer's U.S. market share has declined since the original investigations: from *** to *** percent in the 1980-82 period, to *** to *** percent in the 1987-89 period, to *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹⁰⁶ Domestic production increased by *** percent from 1997 to 1998 but decreased by *** percent from 1998 to 1999.¹⁰⁷

The domestic industry decreased its INC exports by *** percent from 1998 to 1999. Occupational and safety regulations in Europe and tariff and nontariff barriers to INC importation in several countries are said to limit the ability of the U.S. industry to shift any excess production capacity to foreign markets.¹⁰⁸

INC producers generally do not make other products using the equipment and employees used to produce INC, and product shifting therefore is unlikely.¹⁰⁹

We find that the foregoing conditions of competition provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

C. Revocation of the Antidumping Duty Orders on Imports of INC From Brazil, China, France, Germany, Japan, Korea, and the United Kingdom Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

1. Likely Volume of Subject Imports

In the original investigation on France, the Commission found that the trends in the volume of subject imports, coupled with other factors, indicated that the domestic industry was materially injured.¹¹⁰ In the original investigations on INC from all the other subject countries, the Commission found that both market penetration and the absolute volume of the cumulated subject

¹⁰³ CR at II-8, PR at II-5.

¹⁰⁴ CR/PR at Table I-2, Table C-1 (1987 to 1989 data include imports from France as nonsubject).

¹⁰⁵ CR/PR at Table I-2, Table C-1.

¹⁰⁶ CR/PR at Table I-1, Table I-2, Table C-1.

¹⁰⁷ CR at II-1, PR at II-1.

¹⁰⁸ CR at II-2, PR at II-1.

¹⁰⁹ See CR at IV-8, IV-10, IV-12, IV-14, PR at IV-5-7.

¹¹⁰ USITC Pub. 1409 at 6.

imports increased significantly during the period of investigation, noting that the subject imports' U.S. market share doubled from 1986 to 1989.¹¹¹

We find that, absent the restraining effects of the orders, imports from the cumulated subject countries would likely surpass current levels and enter the U.S. market in significantly increased volumes. Even with the restraining effects of the orders, cumulated subject imports captured *** percent of U.S. market share in 1999, as compared to *** percent for nonsubject imports and *** percent for U.S. production.¹¹²

With respect to the subject producers not participating in these reviews, we find that the duties have had a restraining effect on their exports to the United States and that evidence of production and excess capacity levels in these countries indicates that imports could return to or surpass pre-order levels should the orders be revoked

U.S. shipments of imports from Brazil represented *** percent of U.S. market share in 1997, higher than during any period of the original investigation.¹¹³ The record indicates that the decrease in imports from Brazil in 1998 was due to an explosion at the plant of Nitro Quimica, the only known Brazilian producer; imports from Brazil then rose somewhat in 1999.¹¹⁴ The record indicates that Nitro Quimica has begun to recover from its accident. The domestic industry estimates, based on market reports, that Nitro Quimica's pre-accident INC capacity of approximately ***.¹¹⁵ Nitro Quimica has resumed exports to the United States, has approached Lilly, one of the largest U.S. customers, and is currently exporting substantial quantities to Colombia and possibly other markets.¹¹⁶

At the time of the original investigations, U.S. shipments of INC imports from China represented between *** percent and *** percent of U.S. market share.¹¹⁷ China's production capacity was estimated at *** pounds, and Chinese producers, with capacity utilization at *** percent, had some excess capacity.¹¹⁸ Thus, while China's exports to the United States have decreased since the original investigations,¹¹⁹ its exports presumably could return to pre-order levels in the event of revocation.¹²⁰ Korea likewise appears to have the capacity to resume

¹¹¹ USITC Pub. 2295 at 19.

¹¹² CR/PR at Table C-1.

¹¹³ CR/PR at Table I-2.

¹¹⁴ CR/PR at Table IV-1.

¹¹⁵ Prehearing Brief of Hercules and Green Tree at 18, n.12.

¹¹⁶ Prehearing Brief of Hercules and Green Tree at 18-19; Posthearing Brief of Hercules and Green Tree at 5-6; Hearing Tr. at 140. We note that an importer of INC from Brazil that responded to the Commission's questionnaire reported that *** (CR at IV-1, PR at IV-1), but do not find this evidence persuasive, given the increase in Brazilian imports to the United States from 1998 to 1999 (CR/PR at Table IV-1) and Lilly's testimony that the Nitro Quimica plant has resumed production, has two operating production lines, and has solicited Lilly for business. Hearing Tr. at 140.

¹¹⁷ CR/PR at Table I-2.

¹¹⁸ Original CR at a-46.

¹¹⁹ CR/PR at Table I-2, Table IV-1.

¹²⁰ We note that, while INC produced by two Chinese producers, Xinxiang T.N.C. Chemical Corp. Ltd. and

(continued...)

substantial shipments of INC to the United States absent the orders.¹²¹ The production capacity of Miwon, one of two known Korean producers, was estimated at *** pounds and its capacity utilization at *** percent at the time of the original investigations.¹²²

The Japanese producer Asahi, who responded to the Commission's questionnaire, represented *** percent of Japanese INC production in 1998. Its capacity utilization rates of *** percent in 1998 and *** percent in the first three quarters of 1999 indicate significant excess capacity.¹²³ Japanese imports represented between *** percent and *** percent of U.S. market share during the original investigation.¹²⁴ Although Japanese exports to the United States have decreased since the orders were imposed,¹²⁵ Asahi indicated in its questionnaire response the ***.¹²⁶

Despite the orders, producers in France, Germany, and the United Kingdom have been able to maintain exports to the United States at or near the levels of the original investigations. Their current market shares are at or above those of the original investigations, and together accounted for over *** percent of U.S. market share in 1999.¹²⁷ The U.S. market share held by these three countries increased from 1997 to 1999, as the domestic industry's U.S. market share decreased from *** percent in 1997 to *** percent in 1999.¹²⁸ During the first six months of 2000, the U.S. industry's domestic commercial shipments were *** wet pounds,¹²⁹ while imports from these three countries totaled *** wet pounds.¹³⁰

Producers in France, Germany, and the United Kingdom claim that they are operating at full capacity and have no additional supply available for the U.S. market.¹³¹ Although capacity utilization rates in France, Germany, and the United Kingdom have been relatively high, the record indicates some available unused capacity in each country.¹³² In addition, producers in all three countries are export-oriented, with *** percent of their total shipments going to exports

¹²⁰ (...continued)

Shanghai T.N.C. Chemical Corp., reportedly cannot be sold in the United States pursuant to an agreement with Bergerac, a French INC producer, these two Chinese producers reportedly account for only 35 percent of INC production in China. Respondents' Joint Posthearing Brief at Attachment C.

¹²¹ The market share of subject imports from Korea has declined since the original investigations. Korea represented *** percent of U.S. market share in 1989, as compared to *** percent in 1997. CR/PR at Table I-2.

¹²² Original CR at a-46-47, Table 17.

¹²³ CR/PR at Table IV-7.

¹²⁴ CR/PR at Table I-2.

¹²⁵ CR/PR at Table I-2, Table IV-1.

¹²⁶ CR at IV-12, PR at IV-6.

¹²⁷ CR/PR at Table I-1, Table I-2, Table C-1.

¹²⁸ CR/PR at Table C-1.

¹²⁹ CR/PR at Table III-4.

¹³⁰ CR/PR at Table IV-2.

¹³¹ See Respondents' Joint Posthearing Brief at 10-12.

¹³² CR/PR at Table IV-5, Table IV-6, Table IV-8.

during each year of the review period.¹³³ Producers in France and Germany were able to supply Hercules' customers' needs when Hercules' production was curtailed or shut down.¹³⁴ The record thus indicates that, even when French and German subject producers are reported to be operating at full capacity, they have the capability to divert additional volumes to the United States to meet customers' needs and would be able to do so if the orders are lifted.¹³⁵ The European producers further indicated that demand in their countries is expected to remain stagnant or decline in the reasonably foreseeable future.¹³⁶ Prices in the United States are higher than those in a significant number of other countries, making the United States an attractive market.¹³⁷

The record indicates that all the subject country producers face tariff and non-tariff barriers to INC importation into certain third-country markets. Participating foreign producers reported the existence of tariff and nontariff barriers to INC importation in Brazil, India, Mexico, Venezuela, Thailand, China, and Indonesia.¹³⁸

Consequently, based on the record in these reviews, we conclude that the volume of cumulated subject imports, which even with the orders has been substantial, likely would increase significantly within a reasonably foreseeable time if the antidumping duty orders are revoked.

2. Likely Price Effects

In the original investigation on France, the Commission found that, given the price sensitive nature of INC, the margins of underselling were commercially significant and that the subject imports suppressed domestic prices and caused lost sales.¹³⁹ In the original investigations on the other subject countries, the Commission found significant underselling by the cumulated subject imports which resulted in lost sales and lost revenue to the domestic producer.¹⁴⁰

We find that the increased volumes of INC imports from the cumulated subject countries that would be likely to enter the United States if the antidumping duty orders were revoked likely would have significant negative price effects for the U.S. product.

As discussed above, INC is a commodity product for which price is an important purchase factor, and there is a relatively high degree of substitutability between subject imports and the domestic product.¹⁴¹

¹³³ CR/PR at Table IV-5, Table IV-6, Table IV-8.

¹³⁴ CR at II-1, n.1, PR at II-1, n.1; Respondents' Joint Prehearing Brief at 13.

¹³⁵ CR at II-3, PR at II-2.

¹³⁶ CR at II-6, PR at II-4.

¹³⁷ See Prehearing Brief of Hercules and Green Tree at 15, 33-36.

¹³⁸ CR at IV-10, IV-12, PR at IV-5-6.

¹³⁹ USITC Pub. 1409 at 6-7.

¹⁴⁰ USITC Pub. 2295 at 20-21.

¹⁴¹ CR at II-7, II-9, PR at II-4-6.

The pricing data collected in these reviews show consistent underselling by the subject imports at significant margins of underselling,¹⁴² even with the orders in place, particularly for imports from the participating respondent countries.¹⁴³ The pricing data also show a consistent decline in U.S. prices from 1997 through the end of 1999 for most product types. While domestic prices for most products rose somewhat during the first six months of 2000, so generally did the prices of subject imports, which during most of the period also continued to undersell the domestic like product.¹⁴⁴ We attribute the overall rise in prices during the first half of 2000 to the temporary uncertainty in the market created by Hercules' supply disruptions, due to its announcement that it intended to sell its INC business and the lingering effects of its plant accident. We note that the participating respondents' margins of underselling remained significant even during this period of uncertainty in the market.¹⁴⁵

In particular, the pricing behavior of the European producers in the U.S. market during the review period reflects their ability to undersell the domestic product even in the presence of duties and indicates their ability to market aggressively should the orders be revoked.

We find that without the discipline of the antidumping duty orders, there is a substantial likelihood that INC from the cumulated subject countries would not only continue to undersell the U.S. product, but would be priced even more aggressively in the U.S. market in order to gain additional market share, given stagnant U.S. demand and the price sensitive nature of the product. The additional volumes of low-priced subject country imports that are likely to enter the U.S. market absent the orders would likely exacerbate the domestic price depression and suppression already being caused by subject imports.

For the foregoing reasons, we find that revocation of the antidumping duty orders on INC from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom would be likely to lead to significant underselling of the domestic like product by the subject imports, as well as significant price depression and suppression, within a reasonably foreseeable time.

3. Likely Impact

¹⁴² The participating respondents argue that the underselling shown in the Commission's report is overstated in that the prices reported by the domestic industry were *** than certain transaction-specific prices reported by customers and perhaps did not take into account ***. Respondents' Joint Posthearing Brief at 9. The Commission's price comparisons are based on quantity and value data provided by the U.S. producer and importers of INC. Despite respondents' argument, the data provided are comparable in that the values are "f.o.b. U.S. point of shipment, net of all discounts and rebates." CR at V-12, n.2, PR at V-7, n.2. In addition, respondents' price comparisons reveal some, although fewer, instances of underselling by subject imports. Respondents' Joint Posthearing Brief at 8, Attachment D. Given the price-sensitive nature of the INC market, we find that any current underselling by subject imports would only be exacerbated were the antidumping duty orders removed.

¹⁴³ CR/PR at Table V-12, V-37-40. We note that there were no price comparisons for Japan, only one price comparison for Korea, and only three price comparisons for China. *Id.* Data from the original investigations show some underselling by imports from each of the three countries. Original CR at a-99-106.

¹⁴⁴ CR/PR at Tables V-1 through V-11.

¹⁴⁵ For example, product 1 from France, Germany, and the United Kingdom undersold the domestic product by margins of *** percent, *** percent, and *** percent, respectively, during the period April through June 2000. CR/PR at Table V-1.

In the original investigation on France, the Commission found that the trends in the volume of imports, the suppressed domestic prices, the margins of underselling by imports, and the sales lost by the domestic industry to subject imports indicated that such imports caused material injury to the domestic industry.¹⁴⁶ In the original investigations on INC from all the other subject countries, the Commission found that underselling by the cumulated subject imports caused a shift in market share within a relatively fixed level of consumption, to the detriment of the domestic industry, and that, although the domestic industry raised its prices during the period of investigation, the persistent underselling by the subject imports, resulting in lost sales and lost revenue, prevented the domestic industry from raising its prices sufficiently to cover fixed costs. The Commission also found that, when the domestic producer did raise prices, it lost market share, which had an adverse effect on plant capacity utilization and the economies of scale inherent in chemical processes.¹⁴⁷

We find that the likely significant volume of cumulated subject imports, at prices that would likely undersell the domestic product and suppress or depress U.S. prices, would adversely impact the domestic industry if the antidumping duty orders were revoked.

The record indicates that there has been no material improvement in the condition of the domestic industry since the orders were imposed. Hercules, the sole domestic producer since the orders were imposed until June 16, 2000, showed a net loss throughout the review period for its INC business.¹⁴⁸

As noted previously, U.S. INC production decreased by *** percent from 1998 to 1999, and U.S. shipments decreased by *** percent from 1997 to 1998 and by *** percent from 1998 to 1999.¹⁴⁹ While subject imports gained U.S. market share, from *** percent in 1997 to *** percent in 1999, as did total imports, from *** percent in 1997 to *** percent in 1999, the U.S. industry's market share declined, from *** percent in 1997 to *** percent in 1999.¹⁵⁰ The decrease in U.S. production and shipments is due in part to an accident at Hercules' production facility in May 1999. As a result of the accident, and in reaction to Hercules' announcement in

¹⁴⁶ USITC Pub. 1409 at 6.

¹⁴⁷ USITC Pub. 2295 at 21-22.

¹⁴⁸ Hercules' operating losses and margins worsened from a loss in 1997 of \$*** to a loss in 1998 of \$***, or from a negative *** percent of sales to a negative *** percent of sales. These two indicators declined further from an operating loss of \$*** to an operating loss of \$***, and from a negative *** percent of sales to a negative *** percent of sales between January-September 1998 and the same period in 1999. Hercules' poor operating performance is attributed to a decrease in total sales quantities and value between 1997 and 1998, as well as between January-September 1998 and the same period in 1999, exacerbated by a sales price decline of *** cents per pound between 1997 and 1998, and a further price decrease of *** cents per pound between January-September 1998 and the same period in 1999. The fact that the company's unit cost of goods sold and unit selling, general, and administrative expenses did not fall to the same extent as the unit value of its net sales contributed to the decline in its overall performance. CR at III-11, PR at III-5.

¹⁴⁹ CR at II-1, PR at II-1.

¹⁵⁰ CR/PR at Table C-1.

December 1999 that it planned to phase out INC production and sell its INC operations, some INC customers switched to imports for their supply.¹⁵¹

U.S. demand for INC has declined since 1983, primarily because of environmental considerations, and is expected to remain flat or to decline slightly in the reasonably foreseeable future.¹⁵² Demand in Europe, likewise, is expected to remain near current levels or to decline in the near future.¹⁵³ Hercules stated that it exited the INC business because of the “persistent over-capacity of the global nitrocellulose market.”¹⁵⁴

Green Tree acquired the INC business of Hercules on June 16, 2000. Its projected business plan for 2000-02 calls for streamlining administrative, labor, and other costs. A comparison of Hercules’ and Green Tree’s operating costs indicates that Green Tree expects to achieve cost savings in the amount of \$*** in INC production.¹⁵⁵ Green Tree also projects ***.¹⁵⁶ It projects a return on investment of *** percent for its first full year of operation, premised on INC prices remaining stable.¹⁵⁷

The record thus indicates that, not only has the domestic industry failed to improve materially since the orders were imposed, but its financial condition deteriorated during the review period to the point where the sole domestic producer decided to exit the INC business. While the new entrant to the U.S. industry plans to streamline costs in order to operate at a profit, it faces declining U.S. demand and the need to recapture market share lost to subject imports. At Green Tree’s modest projected sales level of *** pounds for 2000, its selling price per pound could drop to \$*** and it would still break even, but its projected margin of safety (the excess of budgeted or actual sales over the break-even volume of sales) is small, and its operating results would be sensitive to even small changes in price and volume.¹⁵⁸

Given the declining financial performance of the domestic industry since the orders were imposed and the hurdles faced by Green Tree as it strives to regain customers, increase production levels, cut costs, and operate at a profit, we conclude that the domestic industry currently is vulnerable to material injury from the likely significant volume of cumulated subject imports and the subsequent negative price effects that would occur if the antidumping duty orders were revoked.¹⁵⁹

¹⁵¹ CR at II-1, PR at II-1.

¹⁵² CR at II-5, PR at II-3.

¹⁵³ CR at II-6, PR at II-4.

¹⁵⁴ CR at III-10, PR at III-4.

¹⁵⁵ CR at III-15, PR at III-6.

¹⁵⁶ Posthearing Brief of Hercules and Green Tree at 4.

¹⁵⁷ Posthearing Brief of Hercules and Green Tree at 14.

¹⁵⁸ CR at III-18-19, PR at III-7-8.

¹⁵⁹ 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.”).

As discussed above, revocation of the orders would likely lead to a significant increase in the volume of subject imports, and these aggressively priced shipments would likely undersell the domestic product and significantly depress or suppress the domestic industry's prices. With U.S. demand for INC essentially stagnant in a price-sensitive market, the increase in subject imports is likely to cause declines in both the prices and volumes of the domestic producer's shipments. 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. In addition, we find it likely that revocation of the orders will result in commensurate employment declines for the industry.

Accordingly, based on the record in these reviews, we conclude that, if the antidumping duty orders are revoked, the cumulated subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

D. Revocation of the Antidumping Duty Order on Imports of INC From Yugoslavia Is Not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

As discussed above, we find that imports from Yugoslavia are likely to have no discernible adverse impact on the domestic industry if the order is revoked.¹⁶⁰

There were no INC imports from Yugoslavia during the review period.¹⁶¹ We find, given the destruction of the only known INC production facility in Yugoslavia and the lack of any indication in the record of these reviews that Yugoslav INC production and exports to the United States are likely to resume in the reasonably foreseeable future, that the volume of INC imports from Yugoslavia would not be likely to increase significantly within a reasonably foreseeable time if the antidumping duty order is revoked.

Given Yugoslavia's apparent current inability to produce INC and the non-existence of any exports to the United States during the review period, the record in this review contains no evidence regarding the prices of INC from Yugoslavia in the U.S. market. Because we find little likelihood that exports of INC from Yugoslavia to the United States are likely to resume in the reasonably foreseeable future, we find it unlikely that INC imports from Yugoslavia would have significant negative effects on domestic INC prices.

As indicated in our discussion of the likely impact of subject imports from the cumulated subject countries, we find that the U.S. INC industry is vulnerable to material injury. However, we find that the likely insignificant volume and price effects of imports from Yugoslavia will not likely result in a significant adverse impact on the domestic industry upon revocation of the order. We therefore determine that revocation of the antidumping duty order on INC from Yugoslavia is not likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

¹⁶⁰ See also Separate Views of Commissioner Lynn M. Bragg Regarding Cumulation.

¹⁶¹ CR/PR at Table IV-1, Table IV-2.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on imports of INC from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to the U.S. INC industry within a reasonably foreseeable time.¹⁶² We also determine that revocation of the antidumping duty order on imports of INC from Yugoslavia would not be likely to lead to continuation or recurrence of material injury to the U.S. INC industry within a reasonably foreseeable time.

¹⁶² Commissioner Askey dissenting with respect to Brazil and Korea.

SEPARATE VIEWS OF COMMISSIONER LYNN M. BRAGG REGARDING CUMULATION

Based upon the record in these reviews, I join the Commission majority's discussion of background, domestic like product and domestic industry, and findings that, under section 751(c) of the Tariff Act of 1930, as amended, revocation of the antidumping duty orders on subject industrial nitrocellulose ("INC") imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time; and that revocation of the antidumping duty order on subject imports from Yugoslavia is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Although I also join the Commission in finding a likely discernible adverse impact in the event the antidumping duty orders on subject imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom are revoked, and no likely discernible adverse impact in the event the antidumping duty order on subject imports from Yugoslavia is revoked, I provide the following separate views to detail my cumulation analysis for these grouped sunset reviews.

I. CUMULATION

A. Analytical Framework

As set forth in previous views,¹⁶³ in considering whether to cumulate subject imports in a sunset review, I first assess: (1) whether the reviews were initiated on the same day; and (2) the likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product, in the event the orders are revoked.

If, as a result of the foregoing assessment, I determine that subject imports are amenable to cumulation, I then proceed to examine whether the statutory exception precludes cumulation of such imports that are otherwise amenable to cumulation—i.e., I examine whether such imports, when considered individually, are likely to have no discernible adverse impact on the domestic industry. In instances where I find that subject imports from more than one subject country are likely to have no discernible adverse impact, I then consider whether these individual countries for which I have made a likely no discernible adverse impact finding are, in the aggregate, likely to have no discernible adverse impact on the domestic industry. However, because I find that only one subject country is likely to have no discernible adverse impact in these reviews, I do not reach my aggregate analysis.

Upon review of the record in these reviews, I find, as discussed below, that there is likely to be a discernible adverse impact to domestic INC producers as a result of revocation of the antidumping duty orders on subject imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom. I also find, however, that there is likely to be no discernible adverse

¹⁶³ See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999) at 27-30. See also, Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269-270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (March 2000) at 27-32.

impact to the domestic industry as a result of revocation of the antidumping duty order on subject imports from Yugoslavia.

B. Reasonable Overlap of Competition

The record indicates that domestically produced and imported INC are essentially fungible, although there are some perceived quality differences among the INC from the various countries.¹⁶⁴ The record also indicates that *** percent of the imports from Germany are plasticized, and therefore not fully interchangeable with the domestic like product and with other subject imports.¹⁶⁵ However, most German imports of INC are alcohol wet, and therefore fully interchangeable with the domestic like product and with other subject imports.¹⁶⁶ In addition, the record indicates that subject imports and the domestic like product have similar channels of distribution, a geographical overlap of sales, and an actual or likely simultaneous presence in the marketplace.¹⁶⁷ I therefore find a reasonable overlap of competition among subject imports and the domestic like product.

C. Likely Discernible Adverse Impact

As set forth below, I find that revocation of the antidumping duty orders on subject imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom would be likely to have a discernible adverse impact on the domestic industry. I also find, however, that revocation of the antidumping duty order on subject imports from Yugoslavia would be likely to have no discernible adverse impact on the domestic industry. I therefore cumulate subject imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom, and do not cumulate subject imports from Yugoslavia with any other subject country.

1. Brazil

INC imports from Brazil were *** pounds in 1989, as compared to *** pounds in 1997.¹⁶⁸ U.S. shipments of imports from Brazil represented *** percent of apparent U.S. consumption in 1989 and *** percent in 1997.¹⁶⁹ Imports of INC from Brazil dropped sharply in 1998 to *** pounds and then rose slightly to *** pounds in 1999.¹⁷⁰ U.S. shipments of imports from Brazil represented *** percent in 1998 and *** percent in 1999 of U.S. apparent

¹⁶⁴ CR at II-9, PR at II-6.

¹⁶⁵ CR at I-24, PR at I-19; Posthearing Brief of Hercules and Green Tree at 21-22.

¹⁶⁶ Posthearing Brief of Hercules and Green Tree at 21-22.

¹⁶⁷ CR and PR at Tables IV-1 and IV-2. I note that while there were no subject imports from Yugoslavia over the period reviewed, subject imports from Yugoslavia were present in the U.S. market at the time of the Commission's original investigation. I also note that there were no subject imports from China in 1997, and from Korea in 1998 and 1999, likely due to the restraining effect of the orders.

¹⁶⁸ CR and PR at Table I-2.

¹⁶⁹ CR and PR at Table I-2.

¹⁷⁰ CR and PR at Table IV-1.

consumption.¹⁷¹ This decline in imports from Brazil was apparently due to ***.¹⁷² The record indicates, however, that Nitro Quimica's INC facility has ***, and resumed exports to the United States.¹⁷³

Based upon all of the foregoing, the record indicates that, in the event of revocation, subject imports from Brazil will likely have a discernible adverse impact on the domestic INC industry. Such imports are therefore amenable to cumulation.

2. China

The only years during the period reviewed in which there were imports from China were 1998 and 1999, at levels of *** pounds and *** pounds, respectively, which amounted to a minuscule percentage of apparent U.S. consumption in both years.¹⁷⁴ In contrast, imports from China at the time of the original investigation ranged from *** pounds to *** pounds, which represented between *** percent and *** percent of U.S. apparent consumption.¹⁷⁵ Additionally, in the original investigation, China's production capacity was estimated at *** pounds and its capacity utilization at *** percent.¹⁷⁶ In the absence of any current Chinese production data,¹⁷⁷ I infer that China's current production capacity is at least *** pounds. I therefore find that China has the ability to match or exceed pre-order subject import volumes in the event of revocation.

Based upon all of the foregoing, the record indicates that, in the event of revocation, subject imports from China will likely have a discernible adverse impact on the domestic INC industry. Such imports are therefore amenable to cumulation.

3. Japan

At the time of the original investigation, the highest level of Japanese imports was *** pounds, or *** percent of U.S. apparent consumption.¹⁷⁸ Asahi, which reportedly represented *** percent of Japanese INC production in 1998 and was the only producer to respond to the

¹⁷¹ CR and PR at Table C-1.

¹⁷² CR and PR at IV-1.

¹⁷³ Prehearing Brief of Hercules and Green Tree at 18-19; Posthearing Brief of Hercules and Green Tree at 5-6.

¹⁷⁴ CR and PR at Table IV-1 and Table C-1.

¹⁷⁵ CR and PR at Table I-2.

¹⁷⁶ Original CR at a-46.

¹⁷⁷ The current number of INC producers in China is unknown. The record indicates that Bergerac, a French INC producer, has an ownership interest in two Chinese INC producers, Xingxiang T.N.C. Chemical Corp. Ltd. and Shanghai T.N.C. Chemical Corp., through China CNC, its joint venture in China. Pursuant to an agreement of the joint venture, China CNC is not authorized to sell "technical nitrocellulose" manufactured by Xingxiang or Shanghai in either the United States or China. However, these two Chinese producers reportedly account for only 35 percent of INC production in China. Respondents' Posthearing Brief at Attachment C.

¹⁷⁸ CR and PR at Table I-2.

Commission's questionnaire,¹⁷⁹ reported capacity to be *** pounds during the period reviewed.¹⁸⁰ The capacity utilization of Asahi was reported to be *** percent in 1998.¹⁸¹ Accordingly, Asahi's excess capacity is equivalent to *** percent of 1998 apparent consumption in the United States.

Based upon all of the foregoing, the record indicates that, in the event of revocation, subject imports from Japan will likely have a discernible adverse impact on the domestic INC industry. Such imports are therefore amenable to cumulation.

¹⁷⁹ CR at IV-12, PR at IV-6.

¹⁸⁰ CR and PR at Table IV-7.

¹⁸¹ CR and PR at Table IV-7.

4. Korea

U.S. imports from Korea represented *** percent of U.S. apparent consumption in 1997, as compared to *** percent in 1989.¹⁸² At the time of the original investigation, the production capacity of Miwon, one of the two known Korean producers, was *** pounds and its capacity utilization was *** percent.¹⁸³ In the absence of current Korean production data, I infer that Korea's production capacity is at least *** pounds. This accounts for *** percent of U.S. apparent consumption in 1998. I therefore find that Korea has the ability to match or exceed pre-order subject import volumes in the event of revocation.

Based upon all of the foregoing, the record indicates that, in the event of revocation, subject imports from Korea will likely have a discernible adverse impact on the domestic INC industry. Such imports are therefore amenable to cumulation.

E. France

U.S. imports from France represented *** percent of U.S. apparent consumption in 1999, as compared to *** percent in 1982.¹⁸⁴ The quantity of French imports increased from 1997 to 1999 by *** percent.¹⁸⁵ The capacity utilization of Bergerac, the only known French producer, was *** percent in 1998, and *** percent of its shipments were exports, although only *** percent were to the United States.¹⁸⁶ Accordingly, in 1998, France's excess capacity was equivalent to *** percent of apparent consumption in the United States.

Based upon all of the foregoing, the record indicates that, in the event of revocation, subject imports from France will likely have a discernible adverse impact on the domestic INC industry. Such imports are therefore amenable to cumulation.

6. Germany

U.S. imports from Germany represented *** percent of U.S. apparent consumption in 1999, as compared to *** percent in 1989.¹⁸⁷ The quantity of German imports increased from 1997 to 1999 by *** percent.¹⁸⁸ The capacity utilization of Wolff, the only known German producer, was *** percent in 1998, and *** percent of its shipments were exports, although only *** percent were to the United States.¹⁸⁹ Accordingly, in 1998, Germany's excess capacity was equivalent to *** percent of apparent consumption in the United States.

¹⁸² CR and PR at Table I-2.

¹⁸³ Original CR at a-46-47, Table 17.

¹⁸⁴ CR and PR at Table I-1, Table C-1.

¹⁸⁵ CR and PR at Table C-1.

¹⁸⁶ CR and PR at Table IV-5.

¹⁸⁷ CR and PR at Table I-2, Table C-1.

¹⁸⁸ CR and PR at Table C-1.

¹⁸⁹ CR and PR at IV-6.

Based upon all of the foregoing, the record indicates that, in the event of revocation, subject imports from Germany will likely have a discernible adverse impact on the domestic INC industry. Such imports are therefore amenable to cumulation.

7. United Kingdom

U.S. imports from the United Kingdom represented *** percent of U.S. apparent consumption in 1999, as compared to *** percent in 1989.¹⁹⁰ The quantity of imports from the United Kingdom increased from 1997 to 1999 by *** percent.¹⁹¹ The capacity utilization of Nobel, the only known British producer, was over *** percent in 1998, and a majority of its shipments were exports, of which *** percent were to the United States.¹⁹² Accordingly, in 1998, the United Kingdom's excess capacity was equivalent to *** percent of apparent consumption in the United States.

Based upon all of the foregoing, the record indicates that, in the event of revocation, subject imports from the United Kingdom will likely have a discernible adverse impact on the domestic INC industry. Such imports are therefore amenable to cumulation.

H. Yugoslavia

There were no imports of INC from Yugoslavia during the period reviewed.¹⁹³ During the original investigation, Milan Blagojevic was the only known INC producer in Yugoslavia, and both respondents and the domestic industry in these reviews reported that this producer's facilities were destroyed or severely damaged as a result of military action.¹⁹⁴ It is the opinion of the domestic industry that the destruction of the manufacturing facilities and the continuing U.S. sanctions on Serbia make it unlikely that any producer will return to production and U.S. distribution within a reasonably foreseeable time.¹⁹⁵

Based upon all of the foregoing, the record indicates that subject imports from Yugoslavia will likely have no discernible adverse impact on the domestic INC industry. Such imports are therefore not amenable to cumulation.

II. CONCLUSION

Based upon the foregoing analysis, I find that revocation of the antidumping duty orders on subject imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom is likely to have a discernible adverse impact on the domestic industry; and that revocation of the

¹⁹⁰ CR and PR at Table I-2, Table C-1.

¹⁹¹ CR and PR at Table C-1.

¹⁹² CR and PR at Table IV-8.

¹⁹³ CR and PR at Table IV-1, Table IV-2.

¹⁹⁴ Response to the Notice of Institution of Nobel Enterprises and ICI Americas, Inc. at 8 (July 21, 1999); Prehearing Brief of Hercules and Green Tree at 11, n.7.

¹⁹⁵ Prehearing brief of Hercules and Green Tree at 11, n.7.

antidumping duty order on subject imports from Yugoslavia is likely to have no discernible adverse impact on the domestic industry. I therefore cumulate subject imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom; and do not cumulate subject imports from Yugoslavia. I join the Commission in finding that revocation of the antidumping duty orders covering subject imports from Brazil, China, France, Germany, Japan, Korea, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time; and that revocation of the antidumping duty order covering subject imports from Yugoslavia 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.

CONCURRING AND DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Section 751(d) of the Tariff Act of 1930, as amended, requires the Department of Commerce to revoke an antidumping duty or countervailing duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹⁹⁶

Based on the record in these five-year reviews, I determine that revocation of the antidumping duty orders covering industrial nitrocellulose (“INC”) from China, France, Germany, Japan, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I also determine that revocation of the antidumping duty orders covering INC from Brazil, Korea, and Yugoslavia 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 write separately to explain my determinations in this proceeding. However, I concur with my colleagues with respect to their findings concerning the domestic like product and the domestic industry. Accordingly, I join the Commission’s views on these issues, as well their discussion of the legal standards governing the Commission’s cumulation and causation analysis in sunset reviews.

I. CUMULATION

A. *General*

In sunset reviews, the Commission has the discretion to cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews were initiated on the same day if those imports would be likely to compete with each other and with the domestic like product within a reasonably foreseeable time if the orders are revoked.¹⁹⁷ Thus, in five-year reviews, the relevant inquiry is whether there would likely be competition among the domestic and subject merchandise within the reasonably foreseeable future, even if none currently exists. Because of the prospective nature of five-year reviews and the discretionary nature of the cumulation decision, the Commission has also examined other conditions of competition that are likely to prevail upon revocation when deciding whether to cumulate in sunset reviews.

Although cumulation is discretionary in sunset reviews, the statute unambiguously states that the Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise if those imports are “likely to have no discernible adverse impact on the domestic industry” upon revocation of the order covering those imports.¹⁹⁸ As can be seen, the statute does not direct the Commission to focus its discernability analysis solely on the likely volume levels of the imports; instead, the statute expressly directs the Commission to assess whether the subject imports will have a discernible adverse “impact” on the industry upon revocation. Accordingly, when I assess whether I am permitted to cumulate the subject imports in sunset reviews, I first focus on whether the imports will impact the condition of the industry in a

¹⁹⁶ 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).

¹⁹⁷ 19 U.S.C. §1675a(a)(7).

¹⁹⁸ Section 752(a)(7) of the Act, 19 U.S.C. 1675a(a)(7)

discernible way as a result of revocation, and not simply on whether there will be a small (i.e., negligible) volume of imports after revocation.¹⁹⁹

In this case, the reviews of the orders covering INC from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia were initiated on the same day. Accordingly, I must first assess whether subject imports from these countries are likely to have a “discernible adverse impact” on the domestic industry upon revocation of the orders. If I find that imports from any of these countries are not likely to have a discernible adverse impact on the domestic industry upon revocation of the order, then I am precluded from cumulating the imports from that country with those of the other subject countries. If I find that they are likely to have a discernible adverse impact on the industry upon revocation of the order, I must then consider whether it is appropriate to exercise my discretion to cumulate imports from the subject countries.

I discuss my cumulation analysis for each of these countries below.

B. Discernible Adverse Impact

1. The Subject Imports from Yugoslavia Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within the Reasonably Foreseeable Future Upon Revocation of The Order

I find that the subject imports from Yugoslavia are likely to have no discernible adverse impact on the domestic industry if the antidumping duty order covering Yugoslavia is revoked. The record of this review indicates that Yugoslavia currently has no available production facilities for INC because they were destroyed during NATO’s bombing raids.²⁰⁰ As a result, Yugoslavia has had no imports of INC into the United States during the period of review.²⁰¹ Moreover, the United States has continuing sanctions against imports from Serbia. In addition, I note that counsel for petitioners concede that Yugoslavia is not likely to have a discernible impact on the industry.

Accordingly, because of their current inability to produce any INC, I find that the Yugoslavian producers are not likely to export any INC to the United States within the reasonably foreseeable future. In light of this, I also find that the subject Yugoslavian imports are not likely to have any discernible adverse volume or price impact on the domestic industry upon revocation of the order. I have, therefore, not cumulated the subject imports of INC from Yugoslavia with imports from the other subject countries for purposes of my analysis in these reviews.

2. The Subject Imports from Brazil Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within The Reasonably Foreseeable Future Upon Revocation of the Brazilian Order

I also find that the subject imports from Brazil are likely to have no discernible adverse impact on the domestic industry if the antidumping order covering Brazil is revoked. During the original period of

¹⁹⁹ I discussed the rationale for my approach in more detail in my Additional Views in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245, at 31 (October 1999). I also further explained my views in Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Invs. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 & 379-380 (Review), USITC Pub. 3290, at 36-37 (April 2000).

²⁰⁰ CR at IV-16, PR at IV-7.

²⁰¹ CR and PR at Table I-5.

investigation, the market share of the subject Brazilian imports was small, ranging between *** and *** percent.²⁰² Although Brazil's market share increased to *** percent in 1997, its market share declined to minimal levels in 1998 and 1999 after a major explosion substantially destroyed its INC production facilities in November 1997.²⁰³ Although the petitioner asserts that the Brazilian producer now has several production lines running, an importer related to the Brazilian producer indicates that the producer's facility has been destroyed by the explosion and that the producer has no plans to ship merchandise to the United States.²⁰⁴ I therefore find that the record indicates the Brazilian producer is unlikely to ship more than miniscule levels of INC merchandise to the United States upon revocation of the order and that these miniscule levels are unlikely to have any discernible price or volume impact on the industry.

Accordingly, I find that the subject imports from Brazil are likely to have no discernible adverse impact on the domestic industry upon revocation of the order. I have, therefore, not cumulated the subject imports from Brazil with imports from the other subject countries for purposes of my analysis in these reviews.

3. The Subject Imports from Korea Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within The Reasonably Foreseeable Future Upon Revocation of the Korean Order

I also find that the subject imports from Korean are likely to have no discernible adverse impact on the domestic industry if the antidumping duty order covering Korean is revoked. During the original period of investigation, the market share of the subject imports from Korea was extremely small, ranging from *** percent in 1987 to *** percent in 1988 to *** percent in 1989.²⁰⁵ During the period of review, Korea's market share levels have also been very small, being *** percent in 1997, *** percent in 1998, and *** percent in 1999.²⁰⁶ Moreover, although the Commission has no data concerning the Korean producers' capacity and production levels, the record indicates that, despite the imposition of low cash deposit rates on a significant Korean producer in late 1998 and 1999 of 2.1 percent, no Korean imports have entered the market during that period.²⁰⁷ This suggests that the Korean producers remain focused on their home and other export markets and that they are not interested in exporting to the United States market. Finally, purchasers report that the Korean product is of lower quality than the domestic product, which indicates that it is unlikely that the minimal levels of Korean merchandise that might be expected upon revocation of the order would have a noticeable impact on the domestic industry. Given the historically low market share levels of the Korean imports, the Korean producers' apparent lack of interest in the U.S. market, and their low level of substitutability with the domestic merchandise, I find that it is unlikely that Korea would have a discernible volume or price impact on the domestic industry upon revocation of the order.

Accordingly, I find that the subject imports from Korea are likely to have no discernible adverse impact on the domestic industry upon revocation of the order. I have, therefore, not cumulated the subject imports from Korea with imports from the other subject countries for purposes of my analysis in these reviews.²⁰⁸

²⁰² CR and PR at Table I-2.

²⁰³ CR and PR at Table I-5; CR at IV-1-2, PR at IV-1.

²⁰⁴ CR at IV-1-2, PR at IV-1.

²⁰⁵ CR and PR at Table I-2.

²⁰⁶ Cr and PR at Tables I-2 & C-1.

²⁰⁷ See CR at I-16, PR at I-13; CR and PR at Table I-4.

²⁰⁸ In accordance with the statute, I have also considered whether the subject imports from China, France,

(continued...)

C. *Reasonable Overlap of Competition*

I have chosen to exercise my discretion to cumulate the subject imports of INC from China, France, Germany, Japan and the United Kingdom for purposes of my analysis in these reviews. The record indicates that there is likely to be a reasonable overlap of competition among the subject imports and the domestic merchandise upon revocation of the orders. In particular, the record indicates that the French, German, Japanese, and British imports of INC are generally viewed as being similar in quality by purchasers and by market participants as being interchangeable in their end uses.²⁰⁹ Moreover, although the subject imports from China, like those from Korea and Yugoslavia, are reported to be of poorer quality and not generally used interchangeably with the other subject and domestic merchandise,²¹⁰ low quality INC reportedly can be used by itself or blended with higher quality merchandise for most applications.²¹¹ Accordingly, I find that there is a high level of fungibility among the French, German, Japanese and British imports and domestic merchandise, while there is a limited but reasonable degree of fungibility between the other subject and domestic merchandise and the Chinese imports. Moreover, I note that the record indicates the subject and domestic merchandise are sold in similar channels of trade and that it is likely that they will be simultaneously present in the market upon revocation of the order.

On the whole, I find that the record contains sufficient evidence of likely competitive overlap between the domestic and subject merchandise to warrant cumulation. Accordingly, I have chosen to exercise my discretion to cumulate the subject imports from China, France, Germany, Japan and the United Kingdom for purposes of my analysis in this review.

II. **CONDITIONS OF COMPETITION**

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”²¹² The market for INC in the United States is characterized by the following conditions of competition:

First, demand for INC has declined significantly since the original periods of investigation. Apparent U.S. consumption has decreased from *** million pounds in 1982 and *** million pounds in 1989 to *** million pounds in 1998 and 1999.²¹³ Demand has declined due to the gradual replacement of INC by water-based systems that do not require the use of organic solvents, such as acetone, which are listed as toxic air pollutants by the EPA and OSHA. In addition, the need for INC has been reduced by

²⁰⁸ (...continued)

Germany, Japan and United Kingdom would be likely to have a discernible adverse impact on the industry upon revocation of the orders. As I discuss below, I find that the record indicates that the producers in these countries have sufficient incentive and capacity to increase their exports to the United States upon revocation of the order in a manner that will have a discernible impact on the industry.

²⁰⁹ CR at II-9, PR at II-6.

²¹⁰ Ibid.

²¹¹ Prehearing Brief of Hercules and Green Tree at 6-7.

²¹² 19 U.S.C. § 1675a(a)(4).

²¹³ CR and PR at Tables I-1, I-2 & I-5.

advancements in polymer technologies.²¹⁴ Demand for INC in the United States is expected to remain flat or to decline slightly during the reasonably foreseeable future.²¹⁵

Second, the German, French, British and Japanese producers all report that demand for INC is expected to remain flat or to decline in their home markets.²¹⁶ Nonetheless, demand in other Asian markets, such as China, is expected to increase. One Chinese importer reported that demand in China is growing in double digits.²¹⁷

Third, Hercules, the sole domestic producer during the original period of investigations and most of the period of review, sold its INC production facilities to Green Tree Chemical Technologies (“Green Tree”) this year. Late in 1999, Hercules announced that it intended either to sell its INC operations or to phase out its production of INC by the third quarter of 2000. However, on January 28, 2000, Hercules announced its intention to advance the phaseout and divestiture while it stated there were interested buyers for its INC operations. On June 16, 2000, Green Tree acquired all of Hercules’ INC operations and commenced operation on June 17, 2000. Green Tree reports that it will generally produce most of the broad line of INC products formerly produced by Hercules but that its fixed costs of operating the Parlin facility will be lower, and that it will shorten its operating hours, lower its production volumes, and reduce its export levels.²¹⁸

Fourth, price and quality are the two most important factors in the purchase decision. Four of 10 responding purchasers rated price as the most important factor in the purchase decision, four rated it the second most important factor, and two rated it the third most important factor.²¹⁹ Similarly, four purchasers rated quality the most important factor and four rated it the second most important factor.²²⁰ However, eleven of fifteen purchasers reported that their purchase decision was always or usually based on price.²²¹

Fifth, the record indicates that there is a reasonably high degree of substitutability between the domestic and subject merchandise from France, Germany, Japan, and the United Kingdom. Purchasers reported that the quality of these imports and the domestic merchandise is similar and that the domestic merchandise can be used interchangeably with the subject merchandise.²²² The substitutability of the Chinese product with the domestic merchandise is lower than that of the other four countries, primarily because there are quality differences between the Chinese and domestic merchandise.²²³

Sixth, there is a substantial and increasing volume of non-subject sources in the INC market. Non-subject imports accounted for *** percent of the market in 1997, *** percent in 1998 and *** percent in 1999.²²⁴ Generally, the non-subject imports are reported to be reasonably substitutable with the domestic and subject merchandise.²²⁵

²¹⁴ CR at I-19-20 & II-5, PR at I-14,16 & II-3.

²¹⁵ CR at II-5, PR at II-3.

²¹⁶ CR at II-6, PR at II-4.

²¹⁷ CR at IV-8, PR at IV-1.

²¹⁸ CR at IV-3, III-1-5, III-9-10, & III-15-19; PR at IV-3, III-1-2, 6-8.

²¹⁹ CR at II-7-8, PR at II-5.

²²⁰ CR at II-7, PR at II-5.

²²¹ CR at II-7, PR at II-5.

²²² CR at II-9, PR at II-6.

²²³ CR at II-9, PR at II-6.

²²⁴ CR and PR at Table I-5.

²²⁵ CR at II-9, PR at II-6.

I find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide a reasonable basis on which to assess the likely effects of revocation within the reasonably foreseeable future.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDERS COVERING IMPORTS OF INDUSTRIAL NITROCELLULOSE FROM CHINA, FRANCE, GERMANY, JAPAN, AND THE UNITED KINGDOM IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME²²⁶

A. Likely Volume of the Cumulated Subject Imports

In evaluating the likely volume of imports of subject merchandise if an antidumping order is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.²²⁷ 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.²²⁸

In the original investigation on France, the Commission found that the trends in the volume of subject imports, coupled with other factors, indicated that the domestic industry was materially injured by reason of the French imports of INC.²²⁹ In the original investigations on INC from all the other subject countries, the Commission found that both market penetration and the absolute volume of the cumulated subject imports increased significantly during the period of investigation, noting that the subject imports’ U.S. market share doubled from 1986 to 1989.²³⁰

I find that the volume of the cumulated subject imports from China, France, Germany, Japan, and the United Kingdom is likely to be significant upon revocation of the orders. As an initial matter, I note that imposition of the orders does not appear to have resulted in a significant reduction of INC imports from France, Germany, and the United Kingdom. In fact, the current market share levels of these countries are the same or higher than the levels attained by these countries during the original periods of investigation.²³¹ However, I note that imposition of the orders does appear to have had some restraining effect on the subject imports from China and Japan, with the market share of imports from these two

²²⁶ 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. I find that the likely dumping margins announced by Commerce for the cumulated subject countries in this proceeding provide further support for my affirmative finding for China, France, Germany, Japan and the United Kingdom.

²²⁷ 19 U.S.C. § 1675a(a)(2).

²²⁸ 19 U.S.C. § 1675a(a)(2)(A)-(D).

²²⁹ USITC Pub. 1409 at 6.

²³⁰ USITC Pub. 2295 at 19.

²³¹ CR and PR at Table I-1 & I-2.

countries declining to minimal levels after issuance of the orders.²³² Moreover, although the subject imports from France, Germany, and the United Kingdom remain in the market in substantial volumes even now, I find that revocation of the orders will allow the producers in these countries to increase their exports to the United States significantly upon revocation of the order, for the reasons discussed below.

First, the subject producers in the subject countries have ample available capacity and are likely to use that capacity to increase their export shipments to the United States upon revocation of the orders. For example, the record indicates that neither the French producer nor the Japanese producers are currently operating at high capacity utilization rates. The sole French producer of INC has a total production capacity that could easily have supplied all of U.S. demand for INC in 1999 and operated at less than full capacity utilization rates throughout the period of review, with their capacity utilization rates ranging between *** percent and *** percent.²³³ Thus, if the French producer operated at a capacity utilization rate of approximately *** percent in the reasonably foreseeable future, the record indicates that the producer would be able to ship more than *** million additional pounds of INC to the United States on an annual basis, which would be equivalent to more than *** percent of domestic consumption in 1999. Moreover, because France currently maintains a significant presence in the United States market and generally exports the large majority of its INC production, I find that the French producer is likely to increase its exports significantly to the United States upon revocation of the order.

With respect to Japan, the record indicates that the Japanese industry has less than half the total production capacity of the French producer but that it has been operating at substantially lower capacity utilization rates during the period of review. The total production capacity of the Japanese producers in 1999 was apparently equivalent to *** percent of domestic consumption in 1999. The available data indicate that the Japanese industry was operating at capacity utilization rates of *** percent in 1998 and *** percent in interim 1999. Thus, the record evidence indicates that, if the Japanese producers were to increase their capacity utilization rates to the *** percent level in the reasonably foreseeable future, they would be able to ship between *** million and *** million pounds of INC to the United States upon revocation of the order.²³⁴ Moreover, although Japan now ships the vast majority of its production to its home market, I believe that the industry's very low capacity utilization rates will provide it with a significant incentive to resume exportation of INC to the United States upon revocation, especially given the expected flat level of demand in the Japanese market. In this regard, I note that, although the Japanese market share declined during the original period of investigation, the subject imports did obtain a market share of *** percent at one point during the original period of investigation.²³⁵ Accordingly, given the substantial available capacity of the Japanese industry and its market share levels during the original investigation, I find it likely that the Japanese producers will ship significant amounts of INC to the United States upon revocation of the Japanese order.

Unlike the French and Japanese producers, the subject producers in Germany and England have been operating throughout the period of investigation at high to very high capacity utilization rates. During the period of review, the only reporting German producer was operating at capacity utilization rates of *** percent in 1997, *** percent in 1998 and *** percent in the first nine months of 1999.²³⁶ Similarly, the sole British producer reported that it was operating at capacity utilization rates of *** percent in 1997,

²³² CR and PR at Table I-1 & I-2.

²³³ CR and PR at Table IV-5.

²³⁴ See CR and PR at Table IV-7.

²³⁵ CR and PR at Table I-2.

²³⁶ CR and PR at Table IV-6.

*** percent in 1998, and *** percent in interim 1999.²³⁷ Although the German and British producers are operating at high capacity utilization rates, I note that the record indicates that their capacity utilization rates have declined somewhat during the period of review and they have both proven that they are able to operate at higher capacity utilization rates than their recent levels in 1998 and 1999. Given that the producers in both countries have substantial amounts of total capacity compared to total U.S. consumption in 1999,²³⁸ even the small amounts of capacity that are now available to these producers would permit them to ship significant additional volumes of INC to the United States upon revocation of the orders. In fact, if the German and British producers were to increase their capacity utilization rates to their highest reported levels upon revocation of the order, they would be able to ship approximately *** million additional pounds to the United States market, which would equal nearly *** percent of total U.S. consumption in 1999. Finally, I note that the German and British producers generally export more than *** percent of their total production and have maintained a significant continuing presence in the United States market. Given the foregoing, I find that the British and German producers are likely to increase their exports significantly to the United States upon revocation of the order.²³⁹

There is little record evidence with respect to the capacity and production levels of the subject Chinese producers in this proceeding.²⁴⁰ The Commission was unable to obtain capacity, production and shipment levels for the Chinese producers for the period of review. However, during the original investigation, five Chinese producers were reported to be producing INC and China's production capacity was estimated to be *** million pounds.²⁴¹ Moreover, the Chinese producers were able to obtain a market share of *** percent during the original period of investigation. While these total capacity levels and historic market share levels are not particularly troubling in and of themselves, I note that, when they are considered on a cumulated basis with the capacity and likely volume trends of the other subject imports, they indicate that the subject Chinese imports are likely to increase the future adverse volume impact of the cumulated subject imports.²⁴²

I further note that a number of the subject producers report that there are substantial barriers to trade with respect to INC in third countries. For example, the French producer Bergerac reports that Mexico and Venezuela impose quotas on INC imports, that Brazil prohibits INC imports from France and that India imposes high tariffs on imports of INC.²⁴³ Moreover, the Japanese producer Asahi reports that China, Indonesia and Thailand have very high tariffs on INC.²⁴⁴ The existence of substantial barriers to trade in other export markets provides the subject producers with an additional incentive to ship significant volumes of additional merchandise to the United States upon revocation of the orders.

²³⁷ CR and PR at Table IV-8.

²³⁸ The total capacity of the reporting German producer is *** million pounds, which is larger than all of U.S. consumption of INC in 1999, CR and PR at Table IV-6, while reported capacity for the British producer is *** million pounds, which would be equivalent to approximately *** of domestic consumption in 1999. CR and PR at Table IV-8.

²³⁹ In this regard, I note that the record indicates that there is a reasonably high degree of substitutability between the domestic and subject merchandise and that price is a very important factor in the purchase decision. As a result, the subject imports from France, Germany, Japan and the United Kingdom will be able to take market share directly from the sole domestic producer, primarily through underselling upon revocation of the order.

²⁴⁰ CR at IV-7-8, PR at IV-1.

²⁴¹ Original Staff Report at A-46.

²⁴² I note, however, that my affirmative determination for France, Germany, Japan and the United Kingdom would not have changed if I had not cumulated the subject imports.

²⁴³ CR at IV-10, PR at IV-6.

²⁴⁴ CR at IV-12, PR at IV-6.

Finally, I note that there is little possibility of product shifting in the production facilities of the subject producers and that the inventory levels of subject merchandise in both their home market and the United States are not so large that they indicate, by themselves, a likelihood of significant volume increases upon revocation of the orders. However, these factors do not outweigh the fact that the subject producers in the cumulated countries have significant levels of available capacity that are likely to be used to ship significant additional amounts of merchandise to the United States within the reasonably foreseeable future.

Accordingly, I find that the volume of the cumulated subject imports from China, France, Germany, Japan, and the United Kingdom is likely to be significant upon revocation of the orders.

B. Likely Price Effects of the Cumulated Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with 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.²⁴⁵

In the original investigation on France, the Commission found that, given the price sensitive nature of INC, the margins of underselling were commercially significant and that the subject imports suppressed domestic prices and caused lost sales.²⁴⁶ In the original investigations on the other subject countries, the Commission found that there was significant underselling by the cumulated subject imports and that this underselling resulted in lost sales and lost revenue to the domestic producer.²⁴⁷

I find that the increased volumes of imports from the cumulated subject countries likely to enter the United States upon revocation of the orders are also likely to undersell the domestic merchandise and to have significant price-suppressive effects on the prices of the domestic merchandise. In this regard, as I discussed above, the record indicates that there is a reasonably high degree of substitutability between the domestic and subject merchandise and that price is a very important aspect of the purchase decision. Moreover, the record indicates that demand is not particularly price-elastic²⁴⁸ and that demand is expected to remain flat in the United States for the foreseeable future. Finally, the record indicates that the substantial volumes of French, German and British subject merchandise in the U.S. market now consistently undersell the domestic merchandise and that domestic prices have been generally falling during the period of review.²⁴⁹ Given all of the foregoing, I find that revocation of the antidumping duty orders will be likely to result in an increase in aggressive price competition from the subject imports and a significant increase in the decline of domestic prices as a result of that price competition.

Accordingly, I find that the cumulated subject imports are likely to have significant adverse effects on domestic prices upon revocation of the order.

C. Likely Impact of the Cumulated Subject Imports

²⁴⁵ 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.

²⁴⁶ USITC Pub. 1409 at 6-7.

²⁴⁷ USITC Pub. 2295 at 20-21.

²⁴⁸ See CR at II-11, PR at II-7.

²⁴⁹ CR and PR at Tables V-1-V-11; CR at V-35-40, PR at V-9-13, 31; CR and PR at Table V-12.

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.²⁵⁰ 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.²⁵¹

In the original investigation on France, the Commission found that the trends in the volume of imports, suppressed domestic prices, the margins of underselling by imports, and the sales lost by the domestic industry to imports revealed material injury to the domestic industry.²⁵² In the original investigations on INC from all the other subject countries, the Commission found that underselling by the cumulated subject imports caused a shift in market share within a relatively fixed level of consumption, to the detriment of the domestic industry. It also found that, while the domestic industry raised its prices during the period of investigation, persistent underselling by the subject imports prevented the domestic industry from raising its prices sufficiently to cover fixed costs. It further found that, when the industry did raise prices, it lost market share, which had an adverse effect on plant capacity utilization and the economies of scale inherent in chemical processes.²⁵³

I find that the U.S. industry is currently in a vulnerable state. The industry's condition has deteriorated significantly since imposition of the antidumping duty orders. As subject imports from France, Germany and the United Kingdom have continued to enter the market in substantial volumes despite the imposition of the order and continued to undersell the domestic merchandise, the industry's market share and its production, sales, and profitability levels have declined significantly since the original investigations. In particular, the industry's market share levels have fallen considerably since the original investigations, decreasing from levels above *** percent in the 1983 investigation and *** percent in the 1989 investigations to market share levels below *** percent in 1998 and 1999.²⁵⁴ The industry's production levels have been cut significantly, declining from *** million pounds in 1980 and *** million pounds in 1987 to *** million pounds in 1998 and *** million pounds in 1999.²⁵⁵ The industry's sales revenues and domestic shipments have exhibited similar declines.²⁵⁶ Moreover, the industry's operating income levels have declined precipitously, decreasing from a *** percent operating income margin in 1982 and a *** percent operating margin in 1989 to *** operating losses throughout the period of review, ending in a *** percent operating loss in 1999.²⁵⁷ Moreover, although the INC operations of Hercules were acquired by new management this year, the new entity remains essentially a new entrant into the INC market. While I recognize that Green Tree has optimistically projected that it will be able to reduce its

²⁵⁰ 19 U.S.C. § 1675a(a)(4).

²⁵¹ 19 U.S.C. § 1675a(a)(4).

²⁵² USITC Pub. 1409 at 6.

²⁵³ USITC Pub. 2295 at 21-22.

²⁵⁴ CR and PR at Tables I-1 & I-2 & I-5.

²⁵⁵ CR and PR at Tables I-1 & I-2 & III-1.

²⁵⁶ CR and PR at Tables I-1 & I-2 & III-8.

²⁵⁷ CR and PR at Tables I-1 & I-2 & III-8.

costs significantly and achieve a significant profit in the foreseeable future,²⁵⁸ I believe that the new entity will be especially vulnerable to continued aggressive competition from the subject imports as it tries to maintain its hold on Hercules' old customer base. In my view, the continuation of the orders is necessary to help the new firm get on its feet in a very competitive, relatively price-sensitive market.

As I discussed above, the record of these reviews indicates that the subject imports from China, France, Germany, Japan, and the United Kingdom are likely to have significant adverse volume and price effects on the domestic industry within the reasonably foreseeable future if the orders were revoked. Accordingly, I also find that the cumulated subject imports would be likely to have a significant impact on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, investment or development efforts within a reasonably foreseeable time if the orders were revoked. Further, I find that revocation of the orders would be likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.

Accordingly, I find that revocation of the antidumping duty orders covering INC from China, France, Germany, Japan and the United Kingdom would be likely to have a significant impact on the domestic industry. I therefore determine that revocation of the antidumping duty orders covering these imports would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING INDUSTRIAL NITROCELLULOSE FROM YUGOSLAVIA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed above, I determined that the subject imports from Yugoslavia are not likely to have a discernible adverse impact on the domestic industry if the Yugoslavian order is revoked. Accordingly, I have not cumulated the subject imports from Yugoslavia with the other subject imports for purposes of my sunset analysis. In addition, for the reasons I outlined previously, I find that the subject imports from Yugoslavia are not likely to have significant adverse volume or price effects on the domestic industry after revocation of the order. Accordingly, I find that revocation of the order on the subject imports from Yugoslavia 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.²⁵⁹

V. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING INDUSTRIAL NITROCELLULOSE FROM BRAZIL IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

²⁵⁸ CR and PR at Table III-11, CR at III-15-19, PR at III-6-8.

²⁵⁹ As discussed above, I find that the domestic industry is currently vulnerable to imports and I have taken into account the Commission's affirmative findings in its original determination in my analysis. I also note that Commerce found that the Yugoslavian producers would be likely to dump at a rate of 10.81 percent upon revocation of the order. However, I find that these considerations do not outweigh the factors I previously discussed that indicate that the Yugoslavian imports are not likely to have a discernible adverse impact on the industry upon revocation of the order.

As discussed above, I determined that the subject imports from Brazil are not likely to have a discernible adverse impact on the domestic industry if the Brazilian order is revoked. Accordingly, I have not cumulated the subject imports from Brazil with the other subject imports for purposes of my sunset analysis. In addition, for the reasons I outlined previously, I find that the subject imports from Brazil are not likely to have significant adverse volume or price effects on the domestic industry after revocation of the order. Accordingly, I find that revocation of the order on the subject imports from Brazil 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.²⁶⁰

VI. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING INDUSTRIAL NITROCELLULOSE FROM KOREA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed above, I determined that the subject imports from Korea are not likely to have a discernible adverse impact on the domestic industry if the Korean order is revoked. Accordingly, I have not cumulated the subject imports from Korea with the other subject imports for purposes of my sunset analysis. In addition, for the reasons I outlined previously, I find that the subject imports from Korea are not likely to have significant adverse volume or price effects on the domestic industry after revocation of the order. Accordingly, I find that revocation of the order on the subject imports from Korea 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.²⁶¹

²⁶⁰ As discussed above, I find that the domestic industry is currently vulnerable to imports and I have taken into account the Commission's affirmative findings in its original determination in my analysis. I also note that Commerce found that the Brazilian producers would be likely to dump at a rate of 61.25 percent upon revocation of the order. However, I find that these considerations do not outweigh the factors I previously discussed that indicate that the Brazilian imports are not likely to have a discernible adverse impact on the industry upon revocation of the order.

²⁶¹ As discussed above, I find that the domestic industry is currently vulnerable to imports and I have taken into account the Commission's affirmative findings in its original determination in my analysis. I also note that Commerce found that the Korean producers would be likely to dump at a rate of 66.3 percent upon revocation of the order. However, I find that these considerations do not outweigh the factors I previously discussed that indicate that the Korean imports are not likely to have a discernible adverse impact on the industry upon revocation of the order.

