

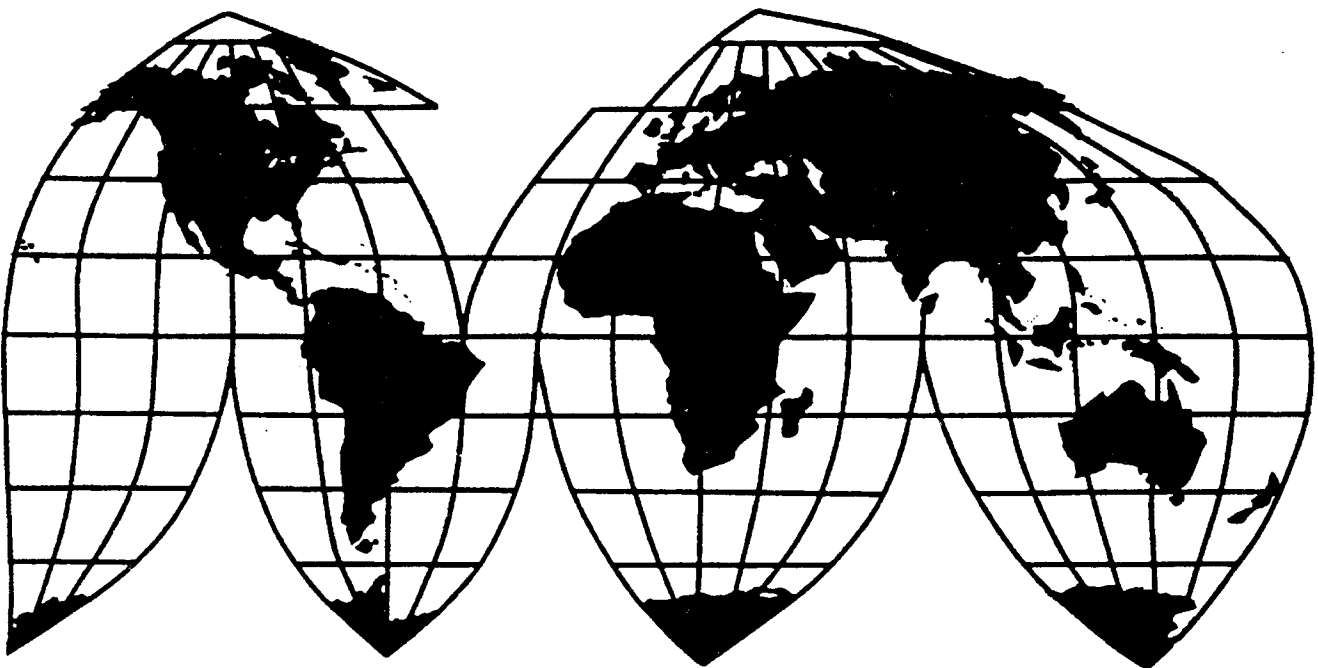
Sorbitol From France

Investigation No. 731-TA-44 (Review)

Publication 3165

March 1999

U.S. International Trade Commission



U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been replaced by asterisks (***).

GLOSSARY

ADM	Archer Daniels Midland Co.
CIT	U.S. Court of International Trade
Commerce	U.S. Department of Commerce
Commission	U.S. International Trade Commission
Customs	U.S. Customs Service
FR	<i>Federal Register</i>
LTFV	Less than fair value
HTS	Harmonized Tariff Schedule of the United States
<i>Response</i>	Response to the notice of institution
SPI	SPI Polyols, Inc.
USP	United States Pharmacopeia

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-44 (Review)

SORBITOL FROM FRANCE

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on October 1, 1998, (63 F.R. 52757) and determined on January 7, 1999, that it would conduct an expedited review (64 F.R. 5075, Feb. 2, 1999).

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

² Chairman Bragg and Commissioner Askey dissenting.

VIEWS OF THE COMMISSION

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

I. BACKGROUND

In March 1982, the Commission determined that an industry in the United States was being materially injured by reason of imports of sorbitol from France that were being sold at less than fair value.² In April 1982, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of sorbitol from France.³ In July 1983, the Court of International Trade remanded the investigation to the Commission. In both its original determination and in response to the remand, the Commission found two domestic industries: one producing liquid sorbitol and one producing crystalline sorbitol. In the original determination the Commission made affirmative findings for both industries. However, in its remand determination, the Commission made an affirmative finding only with respect to the producers of crystalline sorbitol.⁴ On October 1, 1998, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on crystalline sorbitol from France would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.⁵

In five-year reviews, the Commission first determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. Specifically, the Commission determines whether individual responses to the notice of institution are adequate and, based on those responses deemed individually adequate, whether the collective responses submitted by two groups of interested parties -- domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review, and if not, whether other circumstances warrant a full review.⁶ If responses from either group of interested parties are found to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review because inadequate responses from a group of parties indicate that they are not sufficiently willing to participate in a full review and provide information requested throughout such a proceeding.

In this review, the Commission received responses from two domestic producers: Archer Daniels Midland Company ("ADM") and SPI Polyols, Inc. ("SPI Polyols"). These producers also filed comments

¹ Chairman Bragg and Commissioner Askey dissenting. See their dissenting views. They join in Sections I, II and III.A of these views, except as otherwise noted.

² Sorbitol from France, Inv. No. 731-TA-44 (Final), USITC Pub. No. 1233 (Mar. 1982) ("Original Determination").

³ 47 Fed. Reg. 15391 (Apr. 9, 1982).

⁴ See Sorbitol from France, Inv. No. 731-TA-44 (Final – Court Remand), USITC Pub. No. 1441 (Oct. 1983) ("Remand Determination").

⁵ 63 Fed. Reg. 52750, 52757 (Oct. 1, 1998).

⁶ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

on adequacy, arguing that the review should be expedited because no French producer of sorbitol responded to the Commission's notice of institution.⁷

The Commission concluded that ADM's and SPI Polyols' individual responses to the Commission's notice of institution were adequate and that the domestic interested party group response was adequate.⁸ The Commission also determined that the respondent interested party group response was inadequate because no foreign producers or U.S. importers of subject merchandise responded to the Commission's notice of institution. Pursuant to section 751(c)(3)(B) of the Act, the Commission voted to conduct an expedited review.⁹ On February 16, 1999, ADM and SPI Polyols filed comments pursuant to 19 C.F.R. § 207.62(d) arguing that revocation of the antidumping duty order on sorbitol would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

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 five-year review determination, Commerce defined the imported product covered by the existing antidumping duty order as "crystalline sorbitol, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals."¹² The definition of the subject merchandise has been narrowed since the original Commerce determination.¹³

Crystalline sorbitol is used primarily in the production of sugarless gum, candy, specialty foods, and pharmaceuticals. Sorbitol does not contribute to tooth decay and, as such, has been used as a sugar

⁷ See 19 C.F.R. § 207.62(b) (authorizing, *inter alia*, all interested parties that have responded to the notice of institution to file comments with the Commission on whether the Commission should conduct an expedited review). Another domestic producer, Roquette America, Inc., filed its response to the notice of institution late. The Chairman determined that good cause did not exist for an extension of time to file the response and denied the late filing.

⁸ 64 Fed. Reg. 5075 (Feb. 2, 1999).

⁹ 19 U.S.C. § 1675(c)(3)(B); see 64 Fed. Reg. 5075 (Feb. 2, 1999). Commissioner Koplan voted for a full review of this matter in order to be able to consider information submitted by a domestic producer, Roquette America, Inc., that was excluded from the record because it was untimely filed. See Pioneer Investment Services Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993).

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹² 64 Fed. Reg. 5636 (Feb. 4, 1999). Crystalline sorbitol is currently classifiable under item 2905.44.00 of the Harmonized Tariff Schedule. *Id.*

¹³ See 47 Fed. Reg. 6459 (Feb. 12, 1982). We note that the original investigation included liquid sorbitol in the scope of the investigation. Because the Commission determined on remand that the domestic industry producing liquid sorbitol was not materially injured, or threatened with material injury, by reason of imports of liquid sorbitol from France, liquid sorbitol is no longer within the scope of the order.

substitute in sugarless confections. Also, unlike sugar, sorbitol does not require insulin for digestion and therefore is a suitable sugar substitute in diabetic foods and candies.¹⁴

In its original determination, the Commission found that there were two like products, consisting of crystalline and liquid sorbitol.¹⁵ In the remand determination, the Commission did not change its finding of two like products.¹⁶ We find, based on the facts available, that the appropriate definition of the domestic like product in this expedited five-year review is the same as Commerce's scope: crystalline sorbitol, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."¹⁷ 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.¹⁸ In defining the domestic industry in this review, we consider whether any producers of the domestic like product should be excluded from the domestic industry pursuant to the related parties provision in section 771(4)(B) of the Act.

In the instant review, ADM and SPI Polyols allege that one domestic producer, Roquette America, Inc. ("Roquette America"), is a wholly owned U.S. subsidiary of Roquette Freres and imports sorbitol from its French parent company.¹⁹ In addition, SPI Polyols has imported limited test quantities of crystalline sorbitol through its joint venture facility, Amylum/SPI Polyols, which is under development in France.²⁰ ADM and SPI Polyols have not provided, nor does the record contain, data with respect to the import activities of Roquette America.²¹ In the original investigation, Roquette America's crystalline sorbitol production was not scheduled to begin until mid-1983, *i.e.* approximately one year after completion of the Commission's investigation.²² Therefore, no related party issue existed at that time.

¹⁴ Confidential Report ("CR") at I-4 - I-5, Public Report ("PR") at I-4.

¹⁵ See Original Determination at 4, 9. Commissioner Eckes found one like product, comprising all sorbitol. *Id.* at 11.

¹⁶ See Remand Determination at 3.

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ See, *e.g.*, United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

¹⁹ ADM's Response to Notice of Institution at 3; SPI Polyols' Supplemental Response to Notice of Institution at 2; CR at I-8, PR at I-5.

²⁰ CR at I-8, PR at I-5. Because Amylum/SPI Polyols' facility was not scheduled to be commissioned until early 1999, SPI Polyols' Supplemental Response to Notice of Institution at 2, it appears that SPI Polyols has imported only test quantities of crystalline sorbitol.

²¹ SPI Polyols simply asserts that within the last year Roquette Freres has vigorously lobbied Commerce for early termination of the antidumping duty order, contending that there would be no likelihood of resumption of imports of crystalline sorbitol from France, although today it "has definite plans to import significant quantities of crystalline sorbitol from France, to be sold at prices far below the prices at which Roquette sells the product in France." SPI Polyols' Response to Notice of Institution at 2.

²² Original Determination at A-9. Production of liquid sorbitol was not scheduled to begin until November 1982. *Id.* The Commission's report was prepared in March 1982.

ADM and SPI Polyols do not contend that appropriate circumstances exist for exclusion of the related producers. We find that Roquette America's interests are primarily those of a domestic producer, as opposed to an importer of subject merchandise. It is the *** domestic producer,²³ and its total imports from France are quite small.²⁴ Roquette America's support for continuation of the order²⁵ underscores our conclusion.²⁶ SPI Polyols accounts for *** of domestic production and has, as noted above, imported only limited quantities of the subject merchandise.²⁷ Thus we find that SPI Polyols' primary interest lies in domestic production, not importation. Consequently, we find that appropriate circumstances do not exist to exclude either Roquette America or SPI Polyols from the domestic industry. Accordingly, we define the domestic industry to encompass all U.S. producers of crystalline sorbitol.

III. REVOCATION OF THE ORDER ON CRYSTALLINE SORBITOL IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME²⁸

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order or finding unless it makes a determination that dumping is likely to continue or recur and the Commission makes a determination that material injury would be likely to continue or recur if the order or finding is revoked, as described in section 752(a).

Section 752(a) of the Act states that in a five-year review "the Commission shall determine whether 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."²⁹ The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports."³⁰ Thus, the likelihood standard is prospective in nature.³¹ The statute states that "the Commission shall consider that the effects

²³ See CR at I-6, PR at I-5.

²⁴ See Revised Table I-1, INV-W-030 (Mar. 1, 1999).

²⁵ See ADM's Response to Notice of Institution, Att. A; SPI Polyols' Response to Notice of Institution at 3; 64 Fed. Reg. at 5637.

²⁶ In Commissioner Crawford's view, a related party's support for continuation of an order is not necessarily probative of whether appropriate circumstances exist to exclude that related party from the domestic industry, particularly in a situation such as here, where the related party began its U.S. operations after the order was issued.

²⁷ CR at I-6, I-8, PR at I-5.

²⁸ Chairman Bragg and Commissioner Askey do not find that revocation of the antidumping duty order on crystalline sorbitol is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time, but join the majority's discussion of the appropriate legal standard.

²⁹ 19 U.S.C. § 1675a(a).

³⁰ URAA SAA, H.R. Rep. No. 316, 103d Cong., 2d Sess., vol. I, at 883-84.

³¹ While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked." SAA at (continued...)

of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”³² According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{33 34}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.” It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{35 36 37}

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”³⁸ We have relied on the facts available in this review, which consist primarily of the record in the original investigation and information submitted by ADM and SPI Polyols.³⁹

³¹ (...continued)
884.

³² 19 U.S.C. § 1675a(a)(5).

³³ 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.*

³⁴ In analyzing what constitutes a reasonable foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider 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, their 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.

³⁵ 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.

³⁶ 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 an affirmative duty absorption finding in this matter. 64 Fed. Reg. at 5637.

³⁷ Commissioner Crawford finds that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability in the industry.

³⁸ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a).

³⁹ Chairman Bragg and Commissioner Askey determined that revocation of the order in this case would not be
(continued...)

For the reasons stated below, we determine that revocation of the antidumping duty order on crystalline sorbitol from France would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition⁴⁰

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴¹ In performing our analysis under the statute, we have taken into account the following conditions of competition in the crystalline sorbitol industry.

Demand in the United States has nearly doubled since the original investigation, when imports from France were substantial.⁴² It is unclear, however, whether supply exceeds demand in the U.S. market for sorbitol. We have no data with respect to capacity utilization for either ADM or SPI Polyols, but in 1997 both companies shipped *** of their production.⁴³ Moreover, the record indicates that Roquette America is utilizing approximately 90 percent of its capacity.⁴⁴

Large contracts, often multiyear requirements contracts, dominate the sorbitol market,⁴⁵ so that winning or losing a single contract may have serious consequences for a producer. Because three domestic producers account for approximately *** percent of U.S. crystalline sorbitol production,⁴⁶ the consequences for the domestic industry as a whole would likely be serious as well. Finally, sorbitol is a highly substitutable product that is easily transported.⁴⁷

Based on the record evidence, we find that these conditions of competition, particularly contracting methods and supply conditions, in the crystalline sorbitol market are not likely to change in the reasonably foreseeable future. Accordingly, in this review, we find that current conditions of competition provide us with a reasonable basis on which to assess the effects of revocation of the order.⁴⁸

³⁹ (...continued)

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

⁴⁰ Chairman Bragg and Commissioner Askey do not join this portion of the majority’s views. See their dissenting views.

⁴¹ 19 U.S.C. § 1675a(a)(4).

⁴² In 1980, apparent U.S. consumption was *** million pounds. In 1997, the figure had risen to *** million pounds. Imports from France comprised *** percent of apparent U.S. consumption in 1980. Revised Table I-1.

⁴³ CR at I-6, PR at I-5.

⁴⁴ SPI Polyols’ Response to Notice of Institution, Exh. 1.

⁴⁵ See SPI Polyols’ Response to Notice of Institution, Exh. 1. In the original investigation it was stated that approximately 80 percent of sorbitol is purchased by 20 percent of the major customers. Original Determination at A-6.

⁴⁶ CR at I-6 n.15, PR at I-5 n.15.

⁴⁷ SPI Polyols’ Response to Notice of Institution, Exh. 4; see Original Determination at A-7 (sorbitol is generally transported to U.S. buyers in truckloads or tank-car loads, depending on the volume shipped).

⁴⁸ In analyzing whether revocation of a finding or order would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time, Commissioner Crawford takes as her starting point the date on which the revocation would actually take place. In this review, the order would be revoked in January 2000. 19 U.S.C. § 1675(c)(6)(iv).

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁴⁹ In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁵⁰

As an initial matter, we note that our analyses of volume, price effects and impact on the domestic industry are based largely on the record from the original investigation and information submitted by the domestic industry in this review.⁵¹ As noted above, no respondent interested parties responded to the Commission's notice of institution. Accordingly, we believe that it is appropriate to rely in large part on the information submitted by the domestic industry.

We conclude, based on the facts available,⁵² that subject import volume is likely to increase significantly and would be significant if the order were revoked. In making this finding, we recognize that the volume of subject imports is currently at a low level relative to total consumption.⁵³ In a five-year review, however, our focus is on whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping duty order is revoked.

The record from the original investigation indicates that French sorbitol producers had the ability and willingness to establish a significant presence in the U.S. market. From 1978 to 1980, France was the primary source of imported crystalline sorbitol for the United States, accounting for nearly *** percent of the total quantity of all imports during the period.⁵⁴ Imports from France increased rapidly over this period, rising from *** million pounds in 1978 to *** million pounds in 1979, and increasing further to *** million pounds in 1980. The market share of imports from France grew from *** percent to *** percent during this period.⁵⁵ The record indicates that recently there has been a significant expansion in crystalline sorbitol capacity in France. Roquette Freres, the world's largest producer of sorbitol,⁵⁶ has

⁴⁹ 19 U.S.C. § 1675a(a)(2).

⁵⁰ 19 U.S.C. § 1675a(a)(2)(A)-(D). The record contains little or no information pertaining to existing inventories of the subject merchandise or the potential for product shifting in France with respect to crystalline sorbitol.

⁵¹ The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from any information placed on the record and information from the record of our original determination. *Id.*

⁵² See 19 U.S.C. § 1677e(a).

⁵³ The record shows that imports from France subject to the antidumping duty order accounted for *** percent of apparent U.S. consumption in 1997. Revised Table I-1.

⁵⁴ CR at I-8, PR at I-5.

⁵⁵ Revised Table I-1.

⁵⁶ SPI Polyols' Response to Notice of Institution, Exh. 3. Roquette Freres was the world's largest producer of sorbitol at the time of the original investigation. Original Determination at A-9.

significantly expanded its production capacity.⁵⁷ Moreover, Amylum and SPI Polyols have established a joint venture that is scheduled to come on line in early 1999.⁵⁸

The domestic producers argue that this expanded capacity would be used to supply significant volumes of crystalline sorbitol to the U.S. market if the order is revoked.⁵⁹ Specifically, the domestic producers assert that market demand is growing very slowly within the European Union and is declining in Asia due to the Asian economic crisis. Thus, they argue it is likely that the United States will be a new target of increased exports from France.^{60 61}

The limited information in the record supports this conclusion. As discussed above, the U.S. market was an important one for French producers before the order was issued, and that importance is now likely enhanced by the substantial growth in demand in the U.S. market, as well as the expanded capacity in France.⁶² We note in this regard that Roquette has been bidding on large supply accounts in the United States.⁶³ The record also reflects that Roquette's U.S. plant is operating at 90 percent capacity.⁶⁴ If these accounts are acquired, the volume required to supply these accounts would substantially exceed the capacity of Roquette's U.S. plant.⁶⁵ Roquette would therefore likely use its capacity in France to service the new business in the U.S. market. It is reasonable to assume that the new Amylum/SPI Polyols joint venture likewise would bid on major supply contracts in the U.S. market.

Thus, based on the limited record in this review, we find that significant volumes of crystalline sorbitol from France are likely to be exported to the United States in the reasonably foreseeable future if the antidumping duty order is revoked, particularly in light of the contracting methods in the sorbitol market. Consequently, we conclude that subject imports would increase to a significant level in the absence of the order and likely would regain significant U.S. market share absent the restraining effect of the order.⁶⁶

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject

⁵⁷ See ADM's Response to Notice of Institution at 2 & Att. A; SPI Polyols' Response to Notice of Institution, Letter from Alexander W. Sierck to Robert S. LaRussa at 5.

⁵⁸ SPI Polyols' Supplemental Response to Notice of Institution at 2; see CR at I-8 & I-10; PR at I-5 & I-8.

⁵⁹ See ADM's Response to Notice of Institution at 2 & Att. A; SPI Polyols' Response to Notice of Institution, Letter from Alexander W. Sierck to Robert S. LaRussa at 5. ADM claims that revocation of the order will lead to imports of *** million pounds from France in 1999 (or approximately *** percent of U.S. market share). See ADM's Response to Notice of Institution at 2.

⁶⁰ See ADM's Response to Notice of Institution at 2 & Att. A; SPI Polyols' Response to Notice of Institution, Letter from Alexander W. Sierck to Robert S. LaRussa at 5.

⁶¹ As a legal matter, Commissioner Crawford finds that mere allegations, claims, arguments, or other assertions do not constitute evidence on which to base a determination. Consequently, she places no evidentiary weight on unsubstantiated assertions.

⁶² Commissioner Crawford does not join this sentence. In her view, the fact that nearly 20 years ago the U.S. market was important for the sole French producer is not probative with respect to current market conditions, particularly since that French producer's wholly-owned subsidiary is now the *** domestic producer.

⁶³ SPI Polyols' Response to Notice of Institution at 2. It is unclear from the record whether it is Roquette Freres or Roquette America that is bidding on these accounts.

⁶⁴ SPI Polyols' Response to Notice of Institution, Exh. 1.

⁶⁵ SPI Polyols' Response to Notice of Institution at 2.

⁶⁶ Vice Chairman Miller and Commissioner Hillman emphasize that they reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

imports as compared to domestic like products and if 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.⁶⁷

The record in this expedited review contains a limited amount of pricing data. In the original and remand determinations, the Commission found that less than fair value imports from France exhibited significant margins of underselling during 1978-1980.⁶⁸ Although the domestic producers' prices increased in each quarter of the period of investigation, these increases failed to keep pace with price increases for the key raw material used in the production of sorbitol, *i.e.* dextrose.⁶⁹

In this review the domestic industry argues and has provided information indicating that prices have been declining. ADM claims its prices have *** since 1996, *** percent between 1996 and 1997, and *** percent between 1997 and 1998.⁷⁰ SPI Polyols also provided average prices, which *** between 1996 and 1997, and *** percent between 1997 and 1998.⁷¹ The domestic producers assert that the French producers would engage in aggressive pricing behavior if the order were revoked, thereby further depressing prices.⁷² They provided information indicating low bids recently made by Roquette on several large supply contracts.⁷³

Based on the limited record in this review, we find that it is likely that the French producers would offer attractively low prices to U.S. purchasers in order to regain market share. The capacity available to the French producers provides a strong incentive to engage in aggressive pricing behavior. We note that sorbitol from all sources is essentially a fungible product that must meet United States Pharmacopoeia (USP) specifications,⁷⁴ and thus is highly substitutable; it is also easily transported. Consequently, prices for domestically produced sorbitol would likely continue to decline to a significant degree due to the effects of increased volumes of subject imports offered at lower prices. The current softness in the market suggests that any significant increase in supply would at least suppress domestic prices. As discussed above, sorbitol contracts are large, often multiyear requirements, contracts. Even though they are few in number,⁷⁵ decreased prices for one contract would likely result in a magnified adverse effect.

⁶⁷ 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.

⁶⁸ Original Determination at 6, 14; Remand Determination at 7.

⁶⁹ Original Determination at 6-7, 14. Two of the four Commissioners making an affirmative determination stated that domestic prices had been significantly suppressed by imports. Original Determination at 14.

⁷⁰ In 1996, ADM's average price of sorbitol was *** per pound, but *** in 1997 to *** per pound. For January through October 1998, the average price was *** per pound. ADM's Response to Notice of Institution at 3-4. ADM estimates that imports of sorbitol from France in 1999 will result in an additional *** percent price decline. *Id.* at 2.

⁷¹ SPI Polyols' average price of crystalline sorbitol was approximately *** per pound in 1996, but *** approximately *** per pound in 1997. For January through October 1998, the average price was approximately *** per pound. SPI Polyols' Supplemental Response to Notice of Institution at 3.

⁷² See ADM's Response to Notice of Institution at 2.

⁷³ See SPI Polyols' Response to Notice of Institution at 2; ADM's Response to Notice of Institution & Att. A.

⁷⁴ Original Determination at A-2, A-7.

⁷⁵ See SPI Polyols' Response to Notice of Institution, Exh. 1.

Accordingly, we find that revocation of the antidumping duty order would be likely to lead to significant price effects, including significant underselling⁷⁶ by the subject imports of the domestic like product, as well as significant price depression and suppression, in the reasonably foreseeable future.⁷⁷

E. Likely Impact of Subject Imports

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.⁷⁸ 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.⁷⁹ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁸⁰

In the original and remand determinations the Commission found material injury to the domestic industry by reason of increased imports of crystalline sorbitol at less than fair value, both absolutely and relative to domestic consumption.⁸¹ It found declines in production and substantial declines in commercial shipments and market share, as well as declines in capacity utilization and employment, and deterioration of the domestic industry's financial condition.⁸²

Since imposition of the antidumping duty order, the domestic industry's market share increased as subject French imports virtually exited the market. As noted above, the domestic industry, rather than non-subject imports, gained most of the market share lost by the subject imports subsequent to imposition of the antidumping duty order.⁸³ The basic substitutability of the product has also enabled the domestic industry

⁷⁶ Commissioner Crawford does not base her conclusion on an analysis of underselling.

⁷⁷ Vice Chairman Miller and Commissioner Hillman emphasize that they reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

⁷⁸ 19 U.S.C. § 1675a(a)(4).

⁷⁹ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Commerce's expedited determination in its five-year review provided a likely margin of 2.90 percent for one specific crystalline sorbitol producer in France. The "all others" margin also is 2.90 percent. 64 Fed. Reg. at 5638.

⁸⁰ 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.

⁸¹ Original Determination at 6-7, 9, 12; Remand Determination at 7.

⁸² Original Determination at 6-7, 12-13; Remand Determination at 5-6.

⁸³ *See* Revised Table I-1.

to readily replace subject imports and increase domestic market share.⁸⁴ Thus it is likely that any future increase in the imports' market share would be largely at the expense of that of the domestic industry.

There is little other information in the record on the current condition of the industry. ADM and SPI Polyols have not argued that the industry is currently in poor condition or that it is facing difficulty from other sources.⁸⁵ There is no indication that the industry is currently vulnerable as contemplated by the statute.⁸⁶ Accordingly, in this review, we do not find that the industry is vulnerable to material injury if the order is revoked.

However, based on the limited record in this review, we have concluded that if the order is revoked, the likely volume of subject imports would be significant and that these imports would have significant adverse price effects. Given the contracting methods in the sorbitol market, we find that a significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipment, sales and revenue levels of the domestic industry. This reduction in the industry's production, sales and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make necessary capital investments. Accordingly, we conclude that, if the antidumping duty order is revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.⁸⁷

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order covering crystalline sorbitol from France would be likely to lead to continuation or recurrence of material injury to the domestic crystalline sorbitol industry within a reasonably foreseeable time.

⁸⁴ Original Determination at A-7 (sorbitol is essentially a fungible product).

⁸⁵ See ADM's Response to Notice of Institution; SPI Polyols' Response to Notice of Institution; SPI Polyols' Supplemental Response to Notice of Institution; ADM's Comments; SPI Polyols' Comments. While ADM and SPI Polyols have not argued that the industry is vulnerable, they do maintain that revocation of the order will likely lead to the continuation or recurrence of material injury to the domestic industry. ADM's Comments at 1; SPI Polyols' Comments at 3.

⁸⁶ SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. . . . 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").

⁸⁷ Vice Chairman Miller and Commissioner Hillman emphasize that they reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG AND COMMISSIONER THELMA J. ASKEY

Section 751(d) requires that Commerce revoke a countervailing duty or an antidumping 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.¹ In this review of the order on crystalline sorbitol from France, we find that material injury is not likely to continue or recur in a reasonably foreseeable time if the order is revoked.

We join our colleagues' discussion regarding domestic like product and domestic industry and in their explanation of the relevant legal standard. As a preliminary matter, we note that two domestic producers representing approximately *** percent of the domestic industry responded to the Commission's notice of institution; no respondent interested parties chose to participate in the review. We therefore have a limited record to review, with most current data provided by the two responding domestic producers and the submission to the Department of Commerce ("Commerce") by a third domestic producer, in determining whether revocation of the order will likely lead to continuation or recurrence of material injury in the reasonably foreseeable future.²

A. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all the relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³ Discussed below are the conditions of competition that weigh significantly in our determination that revocation of the order is not likely to lead to continuation or recurrence of material injury to the crystalline sorbitol industry within a reasonably foreseeable time.

Archer Daniels Midland Co. ("ADM") and SPI Polyols, Inc. ("SPI"), the only domestic interested parties responding to the Commission's notice of institution, argue that the conditions of competition are such that revocation of the antidumping duty order will lead to continuation or recurrence of material injury if the order is revoked. We disagree with the parties that the conditions of competition have not changed. To the contrary, we find that there have been substantial changes -- and that such changes would shield the domestic industry from continuation or recurrence of material injury in the event the antidumping order were revoked.

Since 1983, the domestic crystalline sorbitol industry has changed dramatically. During the original investigation six companies were identified as U.S. producers of sorbitol. Only ICI Americas and Pfizer, Inc. were further identified as producers of crystalline sorbitol; all others were classified as producers of liquid sorbitol. Pfizer was the sole petitioner in the original investigation. In 1994, ADM purchased Pfizer's sorbitol business and SPI acquired the sorbitol facilities of ICI Americas. Also, in June

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

² Commissioner Askey notes that Congress and the administration anticipated that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission's determination would be upheld unless it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. See Genentech Inc. v. United States Int'l Trade Comm'n, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission's decision on sanctions). Chairman Bragg concurs that Congress and the Administration anticipated the record in sunset reviews would be more limited than in full reviews.

³ 19 U.S.C. § 1675a(a)(4).

of 1998, SPI purchased the U.S. crystalline sorbitol business of Ethichem.⁴ In their responses to the notice of institution, ADM and SPI, neither a producer of crystalline sorbitol during the original investigation, identified themselves and four other producers of the domestic like product.

During the original investigation and again in this sunset review, Roquette Freres ("RF") was identified as the only French producer of the subject product. Since the original investigation, RF has begun production of sorbitol at a wholly owned U.S. subsidiary, Roquette America ("RA"), which is currently the *** domestic producer of the domestic like product, accounting for approximately *** percent of domestic production.⁵

In 1980, the last full year of the period of investigation in the Commission's original investigation, apparent U.S. consumption of crystalline sorbitol was ***. By 1997, apparent U.S. consumption had roughly doubled to ***. U.S. production increased *** from *** in 1980 to *** in 1997 – more than ***. Even though production increases ***, ADM and SPI reported that their 1997 shipments including exports *** production and did not claim to have any *** or excess capacity to increase production.

In 1980, domestic producers accounted for *** percent of apparent U.S. consumption, compared with *** percent of U.S. consumption in 1997. Not only has the domestic industry's market share grown, representing a large and growing portion of the domestic market, but the respondent in the original investigation is also in a dramatically different position. After the antidumping duty order was instituted, Roquette Freres began production in the United States at RA, a wholly owned subsidiary of RF. RA is now the *** domestic producer of the domestic like product. Although RF is the only firm identified by the domestic industry as currently producing crystalline sorbitol in France, SPI is currently in the process of establishing a joint venture facility in France to produce the subject merchandise. We note, however, that despite their affiliations, both RA⁶ and SPI support continuation of the dumping order.

B. General Considerations

The statute directs us to take into account some general considerations.⁷ We therefore have taken into account the Commission's prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.⁸ Based on the facts available, as recounted above, the industry appears to have changed and strengthened since the issuance of the order. U.S. production is approximately *** times larger, while domestic consumption is approximately *** times larger. The prior determination concluded that subject imports more than *** from *** in 1978 to *** in

⁴ Ethichem produced only liquid sorbitol at the time the antidumping duty order was instituted but expanded production at some point after 1983 to include both liquid and crystalline sorbitol.

⁵ Roquette Corporation was established in the United States in 1979 and construction of the sorbitol plant began in September, 1981 with production of liquid sorbitol to begin in November, 1982 and crystalline sorbitol production in mid-1983.

⁶ RA indicated its support for continuation of the dumping order in its submission to Commerce.

⁷ 19 U.S.C. § 1675a(a)(1). We are also to take into account the Commission's prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. *Id.* Commerce has made no findings of duty absorption in this case. 64 Fed. Reg. 5636, 5637 (Feb. 4, 1999). The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). Commerce determined that the margin it would expect in the event of revocation for French producers that remain subject to the order to be 2.9 percent; the all others rate would also be 2.9 percent. 64 Fed. Reg. at 5638 (February 4, 1999).

⁸ 19 U.S.C. § 1675a(a)(1)(A). According to the Statement of Administrative Action ("SAA") to the Uruguay Round Agreements Act, if pre-order conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury. H. R. Rep. No. 103-316, vol. 1 at 884 (1994).

1980, permitting French imports to *** their share of the U.S. market in the same period of time. Thus, by 1980, subject imports accounted for approximately *** percent of the U.S. market for crystalline sorbitol and *** of all imports. By contrast, in 1997, subject merchandise held approximately *** percent of the domestic market, or 66 thousand pounds, which represents 0.9 percent of total imports.⁹ Even if subject imports were to increase to pre-order levels, those imports would account for only *** of apparent U.S. consumption. We conclude that pre-order conditions are unlikely to recur within a reasonably foreseeable time if the order is revoked.

Although the domestic industry's performance has apparently improved during the many years the order has been in effect, it does not necessarily follow that revocation of the order will reverse or "undo" this improvement. Indeed, the record here suggests that fundamental changes in the domestic marketplace itself since the order was imposed, including the significant increase in total consumption, are perhaps more responsible for the industry's performance than the order. In fact, based on the industry's current performance as reflected in the record, we further conclude that the domestic industry is not vulnerable to material injury if the order is lifted.

C. Volume

The Commission is to consider whether the likely volume of subject imports if the order under review is revoked would be significant either in absolute terms or relative to production or consumption in the United States.¹⁰ In so doing, the Commission shall consider "all relevant economic factors," including four enumerated in the statute: (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 in 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.¹¹

Our focus in a sunset review is whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping duty order is revoked. Although the available data suggest that the antidumping duty order may have had a significant impact on the market penetration of subject imports when first imposed, it does not appear likely that revocation would lead to any adverse effect on the domestic industry if the order is revoked. Indeed, in 1997, subject imports accounted for just *** of total U.S. apparent consumption of crystalline sorbitol and only 0.9 percent of total imports of the subject merchandise.

The statute first directs the Commission to consider what the effects of any likely increase in production capacity or unused capacity in the exporting country would be on the domestic industry. SPI stated in its *Supplemental Response* that it is currently in the process of entering into a joint venture in France to produce the subject merchandise.¹² This leads us to conclude that SPI believes the market for sorbitol is stable, strong, and growing, and that it expects a reasonable rate of return from increased production. In addition, this indicates that SPI has the ability to fund capital expenditures. Further, this joint venture raises questions as to SPI's claim that European market growth has slowed and the Asian

⁹ CR at I-7, PR at I-6. This market share is calculated by quantity of crystalline sorbitol sold in the domestic market.

¹⁰ 19 U.S.C. § 1675a(a)(2).

¹¹ 19 U.S.C. § 1675(a)(2)(A)-(D). The SAA indicates that the statutory factors specified for analysis of volume, price, and impact are a combination of those used to determine both material injury by reason of subject imports and threat of material injury in original antidumping and countervailing duty investigations. See SAA at 886.

¹² The joint venture of SPI Polyols and Amylum is a new production facility which will be producing crystalline sorbitol for the world market.

economic crisis is affecting sales in Europe which would result in French producers focusing their sales on the U.S. market to sell their excess production.¹³ Although somewhat dated, SPI included in its response to the notice of institution an article which stated that "Sorbitol demand has been stimulated by increased activity in "sugarless" candies...and greater consumption by Pacific Rim and Third World countries. U.S. producers have benefitted, gradually expanding their plants while increasing exports."¹⁴ According to RA, the EU market, including France, is a highly protected market with a tariff structure that imposes a tariff of \$400 per metric ton plus 9.8% *ad valorem*. Given its size and those protective barriers, access to the EU market seems at least as likely as the U.S. market to engage the attention of French sorbitol producers.

Second the statute directs the Commission to consider the effects of existing inventories of the subject merchandise, or likely increases in inventory. According to ADM and SPI, they currently maintain *** inventory of crystalline sorbitol and shipments *** production in 1997. Neither ADM nor SPI stated whether or not it has excess capacity for the production of crystalline sorbitol, although SPI estimated that RA has 10 percent idle production capacity for crystalline sorbitol.

The record does not contain data regarding the existence of barriers to the importation of the subject merchandise in countries other than the United States (and the EU) or the potential for product shifting in France, in which production of another product can be converted into production of the subject merchandise.

Because the domestic market is dominated by U.S. and nonsubject suppliers, we find that revocation of the antidumping duty order is not likely to lead to a significant increase in the volume of subject imports such that the likely volume of subject imports would be significant.

D. Price

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether imports are likely to be sold at a significantly lower price than the domestic like product, and (2) whether imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like product.¹⁵

The record in this review contains very limited pricing data. These limited data, however, demonstrate that revocation of the antidumping duty order is not likely to adversely affect prices for the domestic like product in the reasonably foreseeable future.

Domestic prices for ADM's and SPI's crystalline sorbitol have been *** at least since 1996.¹⁶ Indeed, in 1997 and in interim 1998 (January through October), ADM's and SPI's domestic prices were *** than RF's U.S. price.¹⁷ In fact, in 1997, RF's U.S. price was *** ADM's and SPI's domestic selling price; in interim 1998, RF's price was roughly ***.¹⁸ Moreover, the derived RF price is for subject

¹³ Commissioner Askey notes that actual data would be more probative than general assertions about the detrimental effects of world market forces, such as the Asian economic crisis. Without specific information, the Commission is left to speculate what the actual effects of such forces are on the domestic industry.

¹⁴ SPI response to the Notice of Initiation, Exhibit 3, "Sorbitol Competition Fierce As Producers Expand Plants," Drugs and Five Chemicals Newsletter, January 1996

¹⁵ 19 U.S.C. § 1675a(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 or 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.

¹⁶ ADM's Response to Notice of Institution at 2, 3-4; SPI's Response to Notice of Institution at 3.

¹⁷ *Id.*; Official Commerce Statistics.

¹⁸ *Id.* We note that as a result of small import volumes, RF's U.S. selling price may be overstated. Nonetheless, these prices, derived from Official Commerce Statistics, are the only facts available concerning RF's

(continued...)

imports prior to assessment of the antidumping duty. Upon assessment of the duty, the RF selling price is assumedly even higher. Accordingly, it is unlikely that revocation of the order would lead to significant underselling by the subject imports or would otherwise have a suppressing or depressing effect on the prices of the domestic like product.

Finally, even if there were some evidence that subject imports may enter at prices which could perhaps adversely affect prices for the domestic like product, we would conclude that current volume levels are too minimal to have any discernible impact. And, in view of our finding above that subject import volume is not likely to increase significantly, we determine that imports of crystalline sorbitol from France are not likely to have a price suppressing or depressing effect within a reasonably foreseeable time in the event of revocation.

E. Impact

When considering the likely impact of subject imports, the Commission is to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including: (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 enhanced version of the domestic like product.¹⁹

Subject imports are not likely to have a significant adverse impact on the domestic crystalline sorbitol industry if the order is revoked. Subject imports account for only *** percent of U.S. consumption. The domestic industry accounts for a strong *** percent of apparent consumption and nonsubject imports account for the other *** percent of the market. In light of the quite minimal market share now held by subject imports, we find that revocation would not likely have an adverse impact on the domestic industry because subject imports would have to increase by an unrealistic degree in order to have any adverse impact. In fact, we have determined above that imports are not likely to increase to significant levels in the event of revocation.

We therefore find that subject imports would not be likely to have a significant impact on domestic crystalline sorbitol producers' cash flow, inventories, employment, wages, growth, ability to raise capital, or investment within a reasonably foreseeable time in the event the order is revoked. In conjunction with our conclusions regarding likely volume and price effects, we find that revocation is not 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. We therefore find that revocation is not likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

F. CONCLUSION

Subject imports are not likely to have adverse volume or price effects in the event of revocation, and are therefore not likely to have a negative impact on the domestic industry. Thus, we find that material injury is not likely to continue or recur in the reasonably foreseeable future if the antidumping duty order is revoked.

¹⁸ (...continued)
prices. See 19 U.S.C. §1677e(a).

¹⁹ 19 U.S.C. § 1675a(a)(4).

INFORMATION OBTAINED IN THE REVIEW

INTRODUCTION

On October 1, 1998, the Commission gave notice that it had instituted a review to determine whether revocation of the antidumping duty order on crystalline sorbitol from France would be likely to lead to the continuation or recurrence of material injury.¹ On January 7, 1998, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.² The Commission voted on this review on March 2, 1999, and notified Commerce of its determination on March 11, 1999.

The Original Investigation

The Commission completed the original investigation in March 1982, determining that an industry in the United States was materially injured by reason of imports of sorbitol from France that were being, or were likely to be, sold at LTFV. Commerce issued an antidumping duty order on the imports of such products from France in April 1982. In July 1983, the CIT remanded the investigation to the Commission. In its original determination and in response to the remand from the CIT, the Commission found two domestic industries, one producing liquid sorbitol and one producing crystalline sorbitol. In the original determination, the Commission made affirmative findings for both industries. However, in its remand determinations, the Commission made an affirmative finding only with respect to the producers of crystalline sorbitol.

Commerce's Final Results of Expedited Review

On January 29, 1999, the Commission received Commerce's "Final Results of Expedited Review" concerning crystalline sorbitol from France.³ The following tabulation provides information with regard to the margin (in percent) applicable to those firms subject to the antidumping duty order:

<u>Company</u>	<u>Margin</u>
Roquette Freres	2.90
All others	2.90

THE PRODUCT

According to Commerce, the imports covered by this review are crystalline sorbitol from France. Such merchandise is classified in HTS subheading 2905.44.00. Crystalline sorbitol is a sugar alcohol produced by the hydrogenation of dextrose (corn sugar). It has the chemical formula $C_6H_8(OH)_6$ and is

¹ 63 FR 52757 (Oct. 1, 1998). All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

² 64 FR 5075 (Feb. 2, 1999). Chairman Lynn M. Bragg, Vice Chairman Marcia E. Miller, and Commissioners Carol T. Crawford, Jennifer A. Hillman, and Thelma J. Askey concluded that domestic group responses in this review were adequate and respondent group responses were inadequate and voted for an expedited review. Commissioner Stephen Koplan concluded that domestic group responses in this review were adequate and respondent group responses were inadequate, but that circumstances warranted a full review. The Commission's notice of expedited review and Commerce's expedited determination appear in app. A. See also the Commission's web site (<http://www.usitc.gov>) for Commissioner votes on whether to conduct an expedited or full review. Statements on adequacy are presented in app. B.

³ 64 FR 5636 (Feb. 4, 1999).

available in granular and powdered forms. USP specifications for crystalline sorbitol allow for up to 9 percent of impurities, with virtually all crystalline sorbitol marketed in the United States being USP grade.⁴

The production of crystalline sorbitol is capital intensive and requires a number of steps.⁵ Initially, dextrose is dissolved in water to a 50-percent solution, to which a catalyst is added. Next, the dextrose solution is heated and reacted with hydrogen under pressure. The resulting crude sorbitol solution is purified and evaporated to reduce the liquid content to 30 percent. The solution is then further concentrated to obtain sorbitol in a crystalline form.⁶

Crystalline sorbitol is used primarily in the production of sugarless gum, candy, specialty foods, and pharmaceuticals. Sorbitol does not contribute to tooth decay and, as such, has been used as a sugar substitute in sugarless confections. Also, unlike sugar, sorbitol does not require insulin for digestion and therefore is a suitable sugar substitute in diabetic foods and candies.⁷

THE INDUSTRY IN THE UNITED STATES

U.S. Producers

In 1983, six companies were identified as U.S. producers of sorbitol: Hoffman-LaRoche and Co.,⁸ ICI Americas, Inc.; Pfizer, Inc.; Lonza Inc.; Merck & Co., Inc.; and Ethichem Corp.⁹ These companies all produced liquid sorbitol, but only ICI Americas and Pfizer were further identified as producers of the crystalline variety. Pfizer was the sole petitioner in the original investigation.

In 1998, the crystalline sorbitol industry in the United States reportedly consisted of six producers:¹⁰ ADM; SPI; Roquette America, Inc.; Ethichem Corp.; Hoffman-LaRoche and Co.;¹¹ and Lonza, Inc. In 1994, ADM purchased Pfizer's sorbitol business and SPI acquired the sorbitol facilities of ICI Americas. Also, in June 1998, SPI reportedly purchased the U.S. sorbitol business of Ethichem.¹² Roquette America is a wholly owned subsidiary of Roquette Freres of France, the sole respondent in the original investigation.

⁴ *Staff Report* of Oct. 3, 1983, pp. A-3 and A-4.

⁵ Sorbitol is found naturally in a variety of fruits, trees, and algae. However, the U.S. industry generally obtains its sorbitol synthetically through the hydrogenation process.

⁶ *Staff Report* of Oct. 3, 1983, p. A-4. In effect, crystalline sorbitol (100 percent solution) is obtained from liquid sorbitol (70 percent solution).

⁷ *Staff Report* of Oct. 3, 1983, p. A-5.

⁸ Hoffman-LaRoche was identified as captively consuming all of its sorbitol production and was not included as part of the domestic industry in the original investigation.

⁹ *Staff Report* of Oct. 3, 1983, p. A-11.

¹⁰ These six companies were listed as U.S. producers of crystalline sorbitol in ADM's *Response*, p. 2. However, in its *Supplemental Response*, SPI did not include Hoffman-LaRoche and Ethichem as U.S. producers of crystalline sorbitol, pp. 1-2. Also, according to SPI, Lonza, Inc. only produces crystalline sorbitol in very limited volumes.

¹¹ Reportedly, Hoffman-LaRoche captively consumes all of its U.S. sorbitol production. Matthew Lerner, "Sorbitol Competition Fierce as Producers Expand Plants," *Drugs and Fine Chemicals* (Jan. 1996), presented as Exhibit 3 in SPI's *Response*.

¹² "Sorbitol," *ChemExpo Profile*, found at <http://www.chemexpo.com/news/PROFILE980629.cfm>, retrieved Jan. 28, 1999.

U.S. Production and Shipments

Only SPI and ADM responded in a timely manner to the Commission's notice of institution. SPI reported production of approximately *** pounds of crystalline sorbitol in 1997, which it estimated to be *** of total U.S. production. SPI shipped *** at a total value of ***.¹³ ADM reported production of approximately *** pounds of crystalline sorbitol in 1997, which it estimated to be *** of total U.S. production. In 1997, ADM ***.¹⁴ Based on the estimates of the two firms, total U.S. production by quantity in 1997 would have been between roughly *** pounds, with the two firms collectively accounting for approximately *** percent of that total.¹⁵ As part of its *Response*, SPI included information from 1996 that estimated Roquette America's production at 50 million pounds. This information would rate Roquette America as the *** domestic producer and tend to support SPI's estimate of total U.S. production at *** pounds.¹⁶ This total will be used hereafter as the estimate for 1997 U.S. production. Information on domestic production and shipments is presented in table I-1.

U.S. IMPORTS AND CONSUMPTION

U.S. Importers

During the 1970s, the firm Gallard-Schlesinger acted as the exclusive U.S. dealer for Roquette Freres' sorbitol. In October 1980, that responsibility was shifted to Roquette Freres' newly established U.S. subsidiary, Roquette America, Inc.¹⁷ According to the *Responses* of ADM and SPI, Roquette America continues to import crystalline sorbitol from its French parent company. In addition, SPI noted that Amylum/SPI has imported limited quantities from a joint-venture facility under development in France. No other importers were identified by the domestic industry.

U.S. Imports

From 1978 to 1980, France was the primary source of imported crystalline sorbitol for the United States, accounting for nearly *** percent of the total quantity during the period. However, by the late 1990s, France's share of U.S. imports had declined significantly.¹⁸ In terms of quantity, Mexico, Germany, and Indonesia are currently the largest sources of U.S. imports, with Mexico accounting for over half of the total. Data on the quantity of imports are presented in table I-1 and figure I-1.

¹³ SPI's *Supplemental Response*, p. 2.

¹⁴ ADM's *Response*, p. 3.

¹⁵ Exhibit 1 of SPI's *Response* included data from a market research firm on U.S. production of crystalline sorbitol. According to that data, Roquette America accounted for *** percent, ADM for *** percent, SPI for *** percent, and Lonza for *** percent, respectively, of total U.S. production by quantity.

¹⁶ Roquette America did file a *Response* with the Commission. However, it was determined that it had not been received in a timely manner and was not accepted by the Commission.

¹⁷ *Staff Report* of Oct. 3, 1983, p. A-16.

¹⁸ In its *Response*, ADM estimated that revocation of the antidumping order would lead to imports of 10-15 million pounds of sorbitol from France in 1999.

Table I-1

Crystalline sorbitol: U.S. production, shipments, imports, and apparent consumption on the basis of quantity (1,000 pounds), 1978-80 and 1997

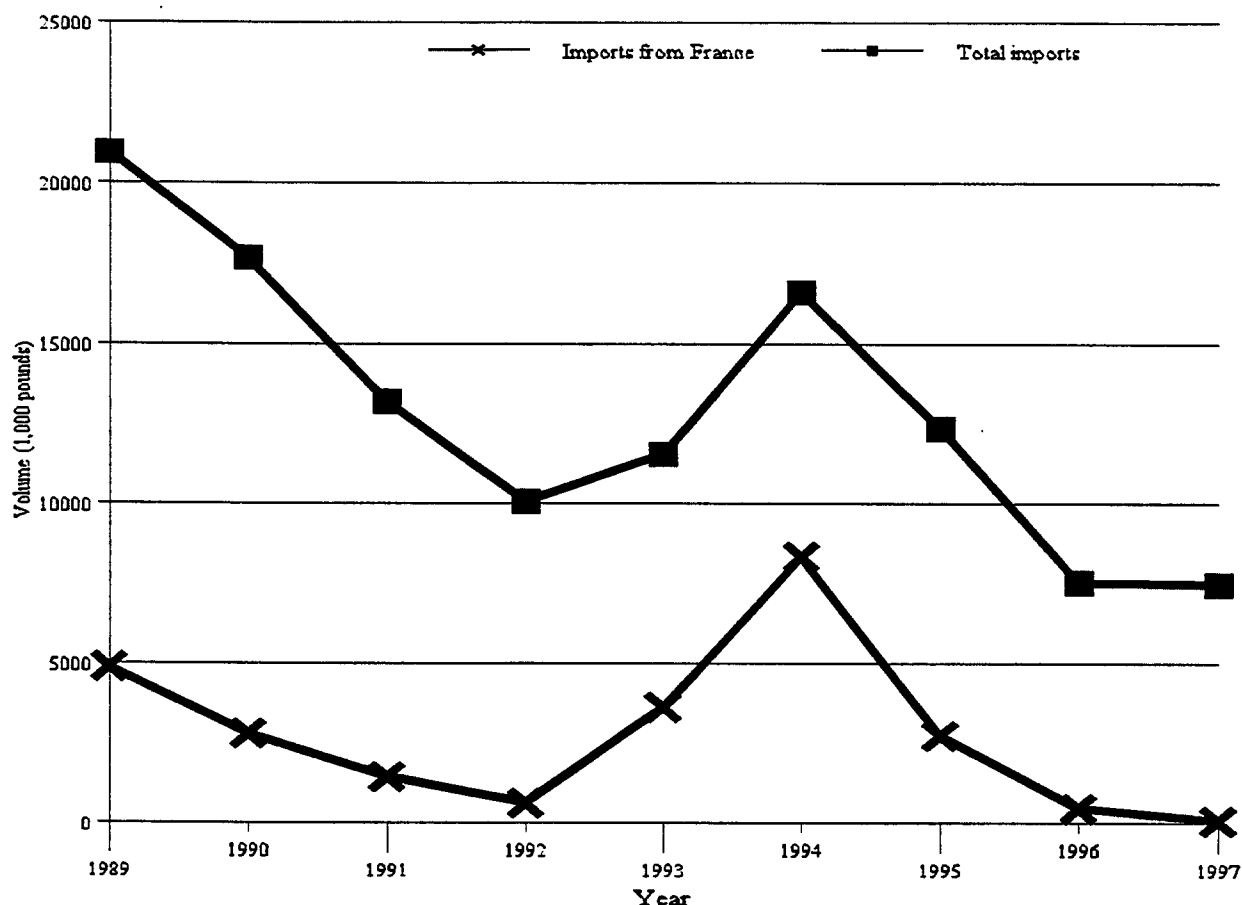
Item	Calendar year			
	1978	1979	1980	1997
Production	***	***	***	***
U.S. shipments ¹	***	***	***	***
Imports from France	***	***	***	66
Imports from other sources	***	***	***	7,413
Imports from all sources	***	***	***	7,479
Apparent U.S. consumption	***	***	***	***
Shares of apparent U.S. consumption				
U.S. shipments	***	***	***	***
Imports from France	***	***	***	***
Imports from other sources	***	***	***	***
Imports from all sources	***	***	***	***
¹ In their <i>Responses</i> , both ADM and SPI indicated that their 1997 shipments *** production. Staff derived U.S. shipments by subtracting the 1997 domestic export total obtained from official Commerce statistics (43.4 million pounds) from the estimate for domestic production.				
Note: All numbers in bold are estimates derived from data provided by ADM and SPI as well as official Commerce statistics. Since 1989, official Commerce statistics have been presented in kilograms. Kilograms were converted here to pounds by multiplying totals by 2.204622.				
Source: <i>Staff Report</i> of Oct. 3, 1983, pp. A-18 through A-53; <i>Responses</i> of ADM and SPI; and official Commerce statistics for statistical reporting number 2905.44.0000.				

Data on the value of annual imports reviewed by Customs that are subject to the antidumping duty order are proprietary according to the *Case History and Scope Information* available on Commerce's web site.¹⁹ However, confidential information received from Customs indicates that in FY 1997, antidumping duties of *** were deposited on imports of crystalline sorbitol from France having a customs value of ***.²⁰

¹⁹ See Commerce's web site (http://www.ita.doc.gov/import_admin/records/sunset).

²⁰ *Antidumping/Countervailing Duty Annual Report*, Nov. 4, 1997, p. 3.

Figure I-1
Crystalline sorbitol: Total U.S. imports and imports from France, by quantity, 1989-97



Note: Prior to 1989, a separate import category did not exist for crystalline sorbitol.

Source: Official Commerce statistics.

Apparent U.S. Consumption and Market Shares

Between 1980 and 1997, U.S. apparent consumption of crystalline sorbitol nearly doubled. The foreign share of the market declined by nearly half, while imports from France dropped to under *** percent. During that time, the share of the market held by domestic producers grew to nearly *** percent. Data on apparent U.S. consumption and market shares are presented in table I-1.

THE INDUSTRY IN FRANCE

During the period of the original investigation, Roquette Freres was identified as the only producer of crystalline sorbitol in France. It had manufactured sorbitol since the 1960s, and at the time of the

investigation was the largest sorbitol producer in the world.²¹ In the early 1980s, Roquette Freres established Roquette America as a U.S. production subsidiary. According to information provided in SPI's response, Roquette Freres' French and U.S. operations accounted for *** percent and *** percent, respectively, of total world production of crystalline sorbitol in 1997. In addition to Roquette Freres, SPI is currently in the process of establishing a joint-venture facility in France that will produce crystalline sorbitol. According to SPI, this plant is scheduled to be commissioned by early 1999.²² No other firms were identified by the domestic industry as currently producing crystalline sorbitol in France. No foreign producers responded to the Commission's notice of institution.

²¹ *Staff Report* of Oct. 3, 1983, p. A-17.

²² SPI's *Supplemental Response*, p. 2.

APPENDIX A
FEDERAL REGISTER NOTICES

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. 731-TA-44
(Review)]

SORBITOL FROM FRANCE

AGENCY: United States International
Trade Commission.

ACTION: Scheduling of an expedited five-
year review concerning the antidumping
duty order on sorbitol from France.

SUMMARY: The Commission hereby gives
notice of the scheduling of an expedited
review pursuant to section 751(c)(3) of
the Tariff Act of 1930 (19 U.S.C.
§ 1675(c)(3)) (the Act) to determine
whether revocation of the antidumping
duty order on sorbitol from France
would be likely to lead to continuation
or recurrence of material injury within
a reasonably foreseeable time. For
further information concerning the
conduct of this review and rules of
general application, consult the
Commission's Rules of Practice and
Procedure, part 201, subparts A through
E (19 CFR part 201), and part 207,
subparts A, D, E, and F (19 CFR part
207). Recent amendments to the Rules
of Practice and Procedure pertinent to
five-year reviews, including the text of
subpart F of part 207, are published at
63 F.R. 30599, June 5, 1998, and may be
downloaded from the Commission's
World Wide Web site at [http://
www.usitc.gov/rules.htm](http://www.usitc.gov/rules.htm).

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT:
Robert Carr (202-205-3402), Office of
Investigations, U.S. International Trade
Commission, 500 E Street SW,

Washington, DC 20436. Hearing-
impaired persons can obtain
information on this matter by contacting
the Commission's TDD terminal on 202-
205-1810. Persons with mobility
impairments who will need special
assistance in gaining access to the
Commission should contact the Office
of the Secretary at 202-205-2000.
General information concerning the
Commission may also be obtained by
accessing its Internet server ([http://
www.usitc.gov](http://www.usitc.gov)).

SUPPLEMENTARY INFORMATION:

Background.—On January 7, 1999, the
Commission determined that the
domestic interested party group
response to its notice of institution (63
F.R. 52757, Oct. 1, 1998) of the subject
five-year review was adequate and that
the respondent interested party group
response was inadequate. The
Commission did not find any other
circumstances that would warrant
conducting a full review.¹ Accordingly,
the Commission determined that it
would conduct an expedited review
pursuant to section 751(c)(3) of the Act.²

Staff report.—A staff report
containing information concerning the
subject matter of the review will be
placed in the nonpublic record on
February 11, 1999, and made available
to persons on the Administrative
Protective Order service list for this
review. A public version will be issued
thereafter, pursuant to section
207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in
section 207.62(d) of the Commission's
rules, interested parties that are parties
to the review and that have provided
individually adequate responses to the
notice of institution,³ and any party
other than an interested party to the
review may file written comments with
the Secretary on what determination the
Commission should reach in the review.
Comments are due on or before
February 16, 1999, and may not contain
new factual information. Any person
that is neither a party to the five-year
review nor an interested party may
submit a brief written statement (which
shall not contain any new factual
information) pertinent to the review by
February 16, 1999. If comments contain
business proprietary information (BPI),
they must conform with the
requirements of sections 201.6, 207.3.

¹ A record of the Commissioners' votes and
statements are available from the Office of the
Secretary and at the Commission's web site.

² Commissioner Koplan dissenting.

³ The Commission has found the responses
submitted by Archer Daniels Midland Co. and SPI
Polysols to be individually adequate. Comments
from other interested parties will not be accepted
(see 19 CFR 207.62(d)(2)).

and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 27, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-2374 Filed 2-1-99; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-001]

Final Results of Expedited Sunset Review: Sorbitol From France

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Sorbitol from France.

SUMMARY: On October 1, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on sorbitol from France (63 FR 52683) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and a complete substantive response filed on behalf of the domestic industry, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Review* section to this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthitt or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, D.C. 20230; telephone (202) 482-3207 or (202) 482-1560, respectively.

EFFECTIVE DATE: February 4, 1999.

Statute and Regulations: This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope: The merchandise covered by this order is crystalline sorbitol, a polyol produced by the hydrogenation of

sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals, currently classifiable under Harmonized Tariff Schedule ("HTS") item number 2905.44.00. The HTS item number is provided for convenience and for Customs purposes. The written description remain dispositive.

This review covers all manufacturers and exporters of sorbitol from France.

Background: On October 1, 1998, the Department initiated a sunset review of the antidumping order on sorbitol from France (63 FR 52683) pursuant to section 751(c) of the Act. On October 6, 1998, we received a Notice of Intent to Participate from SPI Polyols, Inc. ("SPI"). On October 16, 1998, we received a Notice of Intent to Participate from Archer Daniels Midland Company ("ADM") and Roquette America ("RA"). Each of these notices were received within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. ADM and SPI claimed interested party status under section 771(9)(C) of the Act, as domestic producers of sorbitol. RA claimed interested party status as a domestic producer and as an importer of the subject merchandise. The Department received substantive responses on behalf of each of the three parties within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act, and our regulations (19 C.F.R. § 351.218(e)(1)(ii)(C)(2)), we determined to conduct an expedited review.

Determination: In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, parties' comments with respect to the

continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping: Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (see section II.A.3. of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3. of the *Sunset Policy Bulletin*).

The Department's antidumping duty order on sorbitol from France was published in the *Federal Register* (47 FR 15391) on April 9, 1982. Since that time the Department has conducted several administrative reviews.¹ The antidumping duty order remains in effect for all imports of sorbitol from France.

In its substantive response, ADM argues that if the order on crystalline sorbitol from France were revoked dumping will continue or resume. ADM supports its conclusion by stating that after the issuance of the order, dumping of sorbitol continued at levels above *de minimis*, imports ceased and imports declined when they did not cease altogether. With respect to margins above *de minimis*, ADM notes that in five of the seven administrative reviews

¹ See *Sorbitol from France: Final Determination of Sales at Less Than Fair Value*, 47 FR 6459 (February 12, 1982); *Sorbitol from France: Final Results of Antidumping Duty Administrative Review*, 51 FR 42873 (November 26, 1986); *Sorbitol from France: Final Results of Antidumping Duty Administrative Review*, 52 FR 20444 (June 1, 1987); *Sorbitol from France: Final Results of Antidumping Duty Administrative Review*, 53 FR 21506 (June 8, 1988); *Sorbitol from France: Final Results of Antidumping Duty Administrative Review*, 55 FR 6668 (February 26, 1990).

conducted by the Department since 1982, margins exceeded de minimis, and in one instance, the margin was more than four times that of the original margin.² With respect to the cessation of imports, ADM states that Roquette Freres ("RF"), the only known exporter of sorbitol to the U.S., previously acknowledged that its sorbitol exports ceased for at least some period of time after the issuance of the antidumping order. ADM argues that because RF requested revocation in 1988 based on no shipments for several years and no sales that contained margins during the 1987-88 administrative review period, the Department could conclude RF could not ship sorbitol to the U.S. without dumping. Finally ADM argues that aggregated import statistics for HTSUS item no. 2905.44.00, which includes crystalline sorbitol, indicates that the total volume of imports declined, thus providing a basis to infer that RF exported smaller volumes in certain periods compared to the volumes that it shipped before the antidumping petition was originally filed.³

In its substantive response SPI asserts that absent the order, RF will resume large volume shipments from its French plant, producing dumping margins in the range of 40 percent. SPI further asserts that in recent years RF sold to U.S. customers exclusively from its U.S. plant. However, RF has been bidding at extra-low prices to obtain additional U.S. business. If successful, the additional business would substantially exceed the capacity at RF's Illinois plant. Thus, SPI asserts, it is obvious that RF plans to serve the additional business from its French plant. Citing to the July 1998 marketing report, "Sorbitol and Related Polyols—Worldwide Supply, Demand Business Opportunities 1997/8-2005" in which the price for sorbitol 100% is given as \$2.15/kg in the EU and \$1.65/kg in the United States, SPI estimates dumping margins of 40 percent.

RA, in its substantive response to the notice of initiation, supported the preservation of the antidumping order. RA claimed that the EU, particularly France, is currently significantly expanding production capacity for crystalline sorbitol. Further, because market demand within the EU is growing very slowly and cannot be expected to consume the capacity increase and because exports are expected to decline drastically because

of the Asian crisis, the EU industry will be seeking new export markets, with the United States being the likely target.

As discussed in section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63-64, "[E]xistence of dumping margins after the order, or cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed." As ADM noted, dumping margins above de minimis were found to exist in five of the seven administrative reviews conducted by the Department. Further, deposit rates above de minimis continue in effect for exports of sorbitol from France. Therefore, given that dumping margins above de minimis were found to exist and continue in effect, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin: In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margins from the investigation for each company because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. For companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. See section II.B.1 of the *Sunset Policy Bulletin*. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.

In the Department's final determination of sales at less than fair value of sorbitol from France, the Department established a 2.9 percent dumping margin for RF. The Department has not issued an affirmative duty absorption determination.⁴

ADM states that in compliance with the SAA, the Department should provide the original margin of 2.9 percent to the Commission because 2.9 percent reflects RF's behavior without

the discipline of an order in place.⁵ ADM further argues that, in this case, it is not appropriate for the Department to select a more recently calculated rate because the dumping margins calculated for the seven reviews conducted by the Department have fluctuated significantly and do not evince a pattern from which the Department could conclude that a more recently calculated rate is likely to prevail in the absence of the order.

RA argues that a dumping margin of more than 20 percent is likely to prevail if the order is revoked because the EU market, including France, is a highly protected market with a tariff structure which prohibits U.S. producers from exporting to the EU. In addition, RA claims that the EU has a system of export refunds to compensate EU producers for the high internal EU prices of grains which are the feedstock for crystalline sorbitol outside the EU.

As discussed above, SPI alleges that the margin of dumping likely to prevail if the order is revoked is 40 percent. SPI bases this allegation on an EU price of \$2.15/kg and a U.S. price of \$1.65.

As noted in the *Sunset Regulations* and *Sunset Policy Bulletin*, only under the most extraordinary circumstances will the Department rely on a dumping margin other than those it calculated and published in its prior determinations. Further, in antidumping sunset reviews, the Department will consider other factors, such as prices and costs, only where it determines that good cause to consider such other factors exists (see section 351.218(e)(2) of the *Sunset Regulations* and section II.C of the *Sunset Policy Bulletin*). Although RA and SPI assert that the dumping margin likely to prevail without the order could be 20 percent or 40 percent, they do not make any "good cause" arguments. Neither RA nor SPI offered any rationale suggesting that their estimated margins would not be more speculative and, therefore, less probative than the calculated rate from the original investigation.

The Department finds no reason to deviate from our *Policy Bulletin* in this review. Therefore, we determine that the original margin calculated by the Department which reflects the behavior of exporters without the discipline of the order, is probative of the behavior of the French producers of sorbitol. The Department will report to the Commission the company-specific and "all others" rate at the levels indicated in the *Final Results of the Review* section of this notice.

² See Substantive Response of ADM (November 2, 1998) at 4.

³ See Substantive Response of ADM (November 2, 1998) appendix B.

⁴ See *Sorbitol from France: Final Determination of Sales at Less Than Fair Value*, 47 FR 6549 (February 12, 1982).

nal Results of Review: As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below.

Manufacturer/Exporter	Margin (percent)
Roquette Freres	2.90
All Others	2.90

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: January 28, 1999.

Richard W. Moreland,

*ing Assistant Secretary for Import
Administration.*

[FR Doc. 99-2675 Filed 2-3-99; 8:45 am]

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APPENDIX B
STATEMENTS ON ADEQUACY

CHAIRMAN LYNN M. BRAGG
STATEMENT OF VIEWS ON UNTIMELY FILINGS:
SORBITOL FROM FRANCE, INV. NO. 731-TA-44 (REVIEW)
ANHYDROUS SODIUM METASILICATE FROM FRANCE, INV. NO. 731-TA-25 (REVIEW)

The instant reviews present an opportunity to comment upon what has become a repeated occurrence in the short history of sunset reviews before the Commission; namely, the late filing of both entries of appearance and responses to the notice of institution. Untimely responses to the Commission's notice of institution are of particular concern, because a rejected response is treated as a non-response for purposes of the sunset review.

In accordance with Commission regulations and established Commission practice, the decision to accept or reject a late filing is left to the Chairman's discretion. As amended, 19 C.F.R. § 201.14(b)(2) designates the Chairman, or such other person as is designated to conduct an investigation, to determine whether good cause has been shown justifying an extension of time within which to perform any act required by the rules, such as the filing of a response to a Commission notice of institution of a sunset review. With regard to late filings of entries of appearance, 19 C.F.R. § 201.11(c) also provides that the late filing shall be referred to the Chairman, or other person designated to conduct the investigation, who shall promptly determine whether good cause has been shown to accept the late filing.

Statutory and regulatory deadlines are integral to the Commission's function; this is particularly so in the conduct of sunset reviews, with many important deadlines measured in days, not weeks or months. In discussing the criteria for good cause, the U.S. Court of Appeals for the Federal Circuit has considered that a petitioner must show "that the delay was excusable under the circumstances where diligence or ordinary prudence ha[s] been exercised." Phillips v. United States Postal Service, 695 F.2d 1389, 1391 (Fed. Cir. 1982). In the context of sunset reviews, diligence and ordinary prudence begin with complete familiarity with applicable Commission regulations, and encompass a requirement that parties and their counsel allow for reasonably foreseeable circumstances which may impede the filing process, particularly when a filing is attempted at the eleventh hour. Consequently, in my view, the acceptance of a late filing in a sunset review should be considered extraordinary relief warranted solely when reasonably unforeseeable circumstances unexpectedly frustrate the exercise of professional diligence in assuring the timely filing of a submission.

I note that the history of Commission rulemaking for sunset reviews supports strict adherence to the deadline for responding to a notice of institution in all but extraordinary circumstances. In the Commission's proposed sunset regulations, parties were afforded thirty days within which to submit a response to the notice of institution. In response to both public comments and the sunset procedures adopted by Commerce, the Commission in its final regulations extended this period by providing fifty days within which to submit a response. The Commission also substantially reduced the amount of information to be requested in a notice of institution.

In adopting these changes, the Commission stated that "a 50-day deadline will provide ample time for interested parties to compile information and prepare responses to the notice of institution." 63 Fed. Reg. at 30,601. The Commission also stated that it "minimized the amount of empirical data requested in the notice of institution to reduce both the burdens imposed on interested parties at the outset of a review and the likelihood that interested parties will need to respond to duplicative information requests should there be a full review." Id.

Thus, the Commission has shown itself sensitive to the burdens imposed on parties that wish to respond to a notice of institution by both extending the period for response and by reducing the magnitude of the information request; concomitantly, parties must recognize the imperative need to adhere to administrative deadlines which are essential to the efficient conduct of sunset reviews.

COMMISSIONER STEPHEN KOPLAN
STATEMENT OF VIEWS ON ADEQUACY
SORBITOL FROM FRANCE, INV. NO. 731-TA-44 (REVIEW)
ANHYDROUS SODIUM METASILICATE FROM FRANCE, INV. NO. 731-TA-25 (REVIEW)

I have voted to conduct a full review in these investigations in order to be able to consider information excluded from the record because it was untimely filed. Specifically, in both investigations, a response to our notice of institution filed on behalf of a large domestic producer was rejected because it was filed one business day late. As a result of the decision to reject these submissions, there is no response to the respective notice of institution by those interested parties. Thus, those parties would be precluded from any further participation if these reviews were expedited and I would be unable to consider the information contained in their responses in rendering my determinations. In a full review, each party would be free to submit the information in question to the Commission.

I recognize that adherence to our administrative deadlines is important, particularly in five-year reviews which can have relatively short time frames. Indeed, I wish to stress that parties filing submissions after a deadline risk rejection. Nevertheless, I believe that given the importance of the information contained in the submissions at issue, the Commission should be more flexible in assessing whether to accept *de minimis* late filings.

My views on this matter are informed by the equitable principle of "excusable neglect." Under that principle, the U.S. Supreme Court has ruled that courts may accept late filings after weighing the prejudice to other parties, the extent of the delay, the impact of the delay on the conduct of the proceedings, and the reason for the delay, including whether it was the result of matters reasonably within the control of the party seeking to submit the material. See *Pioneer Investment Services Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380 (1993).

I believe that the Commission should apply its discretionary rules in a manner that takes into account the full range of equitable considerations, in keeping with our administrative responsibility to create a complete record. In this regard, I do not believe that the Commission should have a more narrow and limited rule for accepting late filed documents than that adopted by the U.S. Supreme Court. I do not believe that erecting a rigid barrier against late filings is necessary to deter parties from freely ignoring our deadlines so long as the more flexible approach is applied judiciously.

In both of these investigations, the submissions at issue arrived the next business day after the due date. Neither the Commission nor the parties to the investigation were prejudiced by that *de minimis* delay. In the case of *Sorbitol from France*, Inv. No. 731-TA-44 (Review), counsel for Roquette America Inc. in fact stated that he was informed by a Commission employee prior to sending the submission by overnight courier that the late-filed submission might be accepted "since the documents would not be looked at" before the next business day. See Letter from Oleg Rivkin, Esq., Fox Horan & Camerini LLP, to the Honorable Donna R. Koehnke, Secretary, USITC, December 8, 1998.

In this regard, I note that the deadlines at issue are administrative and are intended to aid us in our administration of the statute in a manner that provides due process to all interested parties. In these investigations, in my view, administration of our statutory responsibility is best served if we can consider the information at issue. Consideration of that information would provide a more complete record on which I can render my determination in these investigations while respecting the due process rights of all interested parties, including those seeking to supply the information. Based on the facts and circumstances surrounding both of these late filings, it is my opinion that the Commission should have exercised its discretion to accept them. Accordingly, I have voted to conduct a full review in these investigations.