

UNITED STATES INTERNATIONAL TRADE COMMISSION

Synthetic Methionine From Japan
Investigation No. AA1921-115 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3205, July 1999)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. AA1921-115 (Review)

SYNTHETIC METHIONINE FROM JAPAN

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping finding on synthetic methionine from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on August 3, 1998 (63 F.R. 41290) and determined on November 5, 1998 that it would conduct a full review (63 F.R. 63748, November 16, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on December 31, 1998 (63 F.R. 72327). The hearing was held in Washington, DC, on May 18, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping finding covering synthetic methionine from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In May 1973, the Commission determined that an industry in the United States was being injured by reason of imports of synthetic methionine from Japan.¹ On July 10, 1973, the Department of the Treasury issued an antidumping finding on synthetic methionine from Japan.² In May 1981, at the request of an importer of synthetic L-methionine from Japan, the Commission instituted a section 751(b) review and determined that no industry in the United States would be materially injured or threatened with material injury by reason of imports of synthetic L-methionine from Japan if the order were modified to exclude synthetic L-methionine.³ Consequently, Commerce modified the antidumping finding to exclude synthetic L-methionine.⁴ The Commission instituted this five-year review on August 3, 1998.⁵

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁶ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant a full review, it will determine to conduct a full review.

In this review, the Commission received responses to the notice of institution from Degussa Corporation, NOVUS International, Inc., and Rhone-Poulenc Animal Nutrition (“RPAN”), who collectively account for all domestic production of synthetic methionine, and from Sumitomo Chemical Company, one of two Japanese producers of synthetic methionine. On November 5, 1998, the Commission determined that all individual interested party responses to its notice of institution were adequate, that the

¹ Synthetic Methionine from Japan, Inv. No. AA1921-115, TC Pub. 578 (May 1973) (“Original Determination”).

² 38 Fed. Reg. 18382 (July 10, 1973).

³ Synthetic L-Methionine from Japan, Inv. No. 751-TA-4, USITC Pub. 1167 (July 1981). See 46 Fed. Reg. 38785 (July 14, 1981). Synthetic L-methionine can be metabolized by the human body and is used for research and pharmaceutical purposes. Confidential Staff Report (“CR”), INV-W-128 (June 11, 1999) at I-9, Public Report (“PR”) at I-5. It is not produced in the United States, and as noted, is not within the scope of this review.

⁴ 47 Fed. Reg. 15622 (April 2, 1982).

⁵ 63 Fed. Reg. 41290 (Aug. 3, 1998).

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

domestic interested party group response was adequate, and that the respondent interested party group response was adequate.⁷ The Commission consequently decided to conduct a full five-year review.⁸

On May 18, 1999, the Commission held a hearing in this review, at which representatives of Degussa, NOVUS, RPAN, and Sumitomo appeared. The domestic producers filed briefs in support of continuation of the antidumping finding, and Sumitomo filed briefs urging revocation of the finding.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”⁹ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹⁰ In its final five-year review determination, Commerce defined the subject merchandise as “synthetic methionine other than synthetic L methionine.”¹¹

The starting point of our like product analysis in a five-year review is the like product definition in the Commission’s original determination. Because the Antidumping Act, 1921, did not contain a “like product” provision, the Commission did not make a like product determination *per se* in its original determination. Instead, it stated that the “domestic industry found to be injured consists of those facilities in the United States devoted to the production of methionine and its hydroxy analog.”¹² It did not elaborate on the basis for this finding, but noted that only the latter form (the hydroxy analog) was produced at that time in the United States.¹³ Then, as now, all synthetic methionine produced in Japan and imported into the United States was dry, or powdered, methionine. Thus, in the context of current statutory terminology, the Commission found the like product to be broader than the scope, by including the methionine hydroxy analog.¹⁴

⁷ See Vote Sheet for Action Request INV-98-506 (Nov. 5, 1998).

⁸ See 63 Fed. Reg. 63748 (Nov. 16, 1998).

⁹ 19 U.S.C. § 1677(4)(A).

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

¹¹ 63 Fed. Reg. 67665, 67666 (Dec. 8, 1999). According to Commerce:

Synthetic methionine is an amino acid produced in two grades, DL methionine national formula grade (used for research and pharmaceutical purposes) and [DL] methionine feed grade (used as a food additive). Both grades of synthetic methionine are currently classifiable under item 425.0420 of the Tariff Schedules of the United States Annotated and Harmonized Tariff Schedule item number [sic] 2930.40.00. *Id.*

¹² Original Determination, TC Pub. 578 at 4.

¹³ *Id.* During the period examined by the Commission during the original investigation, U.S. firms produced DL-methionine and a calcium salt of the hydroxy analog. See Original Staff Report (“OR”), SEQ#1997S0229 (May 1973) at 42. However, by the time of the original determination in 1973, the firm that produced DL-methionine had shut down, and the remaining members of the U.S. industry were producing only the calcium salt of the hydroxy analog. CR at I-10, PR at I-6; OR at 15, 42.

¹⁴ During the original investigation, hydroxy analog would have been covered by a different TSUS item than

(continued...)

In its 1981 section 751(b) changed circumstances review, the Commission addressed the like product question under section 771(10) of the Tariff Act of 1930, as it applied to imported L-methionine.¹⁵ The Commission first found that there was no product manufactured in the United States that was “like” synthetic L-methionine.¹⁶ In the absence of such a product, the Commission looked to see which domestic product was most similar in characteristics and uses to the L-methionine under review. The Commission determined that the domestically produced good most similar in characteristics and uses to the imported L-methionine was “synthetic methionine of the DL and MHA [methionine hydroxy acid] forms.”¹⁷ In grouping them as one like product, the Commission stated that “[t]he slight difference in the chemical formulas of DL-methionine and MHA is not a determining factor in the marketplace. They are commercially fungible as forms of synthetic methionine used in animal feeding.”¹⁸

The parties in this five-year review did not argue for a like product different from that of the original determination, as modified in 1981.¹⁹ Consistent with the Commission’s prior determinations as well as with our traditional like product analysis, we find one domestic like product that includes all DL-methionine and its hydroxy analog.

In reaching our finding, we considered whether DL-methionine and the hydroxy analog are two separate like products and we concluded that they are not. The hydroxy analog shares physical characteristics with DL-methionine in that it is chemically similar, although not identical, and is metabolized by poultry and swine in the same way that DL-methionine is metabolized.²⁰ Because of these physical similarities, the products are used for the same purpose, primarily as feed for poultry and swine.²¹ Notwithstanding some purchasers’ preferences for one form over the other, producers and purchasers perceive the products as interchangeable, and purchasers may switch between products based on price.²² Both DL-methionine and the hydroxy analog are sold to a combination of direct end users, such as integrated poultry producers, and resellers, such as feed distributors.²³ Both forms tend to sell at lower prices when sold in bulk or by contract than when sold in smaller containers and/or by spot purchase.²⁴ Although differences in the final stages of DL-methionine and hydroxy analog production require that

¹⁴ (...continued)

that under which the subject synthetic methionine entered. *See* OR at 9. Likewise, imports of the hydroxy analog would be covered by a different HTS subheading than that specified in Commerce’s scope for this review. The language of Commerce’s final determination appears to limit the scope to synthetic methionine (other than L-methionine) and not to cover the hydroxy analog, although Commerce has not issued a ruling on this question, and presumably would be unlikely to do so in the foreseeable future given that there is neither Japanese production nor imminent plans for production of the hydroxy analog.

¹⁵ Synthetic L-Methionine from Japan, USITC Pub. 1167 at 5-9.

¹⁶ *Id.*, USITC Pub. 1167 at 5, 8-9.

¹⁷ *Id.*, USITC Pub. 1167 at 8.

¹⁸ *Id.* At the time of the section 751(b) investigation, Degussa was, as it is now, the only domestic producer of synthetic DL-methionine. The two other industry members (Monsanto and DuPont), who were also part of the domestic industry during the original determination, still produced only the calcium salt of the liquid hydroxy. Synthetic L-Methionine from Japan, USITC Pub. 1167 at A-5.

¹⁹ Domestic Producers’ Prehearing Brief at 6-7; Transcript of Hearing (May 18, 1999) (“Tr.”) at 110-112.

²⁰ CR at I-10, PR at I-6; Tr. at 113.

²¹ CR at I-10, II-3, PR at I-6, II-2.

²² CR at I-13, II-15, PR at I-7, II-9. *See also* Tr. at 19-20.

²³ CR at I-13-14, II-3, PR at I-8, II-2. *See also* Tables V-1-6, CR at V-7-12, PR at V-5-6.

²⁴ CR at I-14, PR at I-8. *See* Tables V-1-6, CR at V-7-12, PR at V-5-6.

manufacturing equipment and facilities be dedicated to production of one or the other,²⁵ the virtually complete overlap between the end use and the customer market for the products and the producer and customer perceptions outweigh such production differences.

Accordingly, for purposes of this review we determine that there is a single domestic like product, consisting of all DL-methionine and its hydroxy analog.

²⁵ *Id.*

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.”²⁶ 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.²⁷ 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.²⁸ That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.²⁹

In this review, one domestic producer, NOVUS, is a related party because it is partially (35 percent) owned by Nippon Soda, a Japanese producer of synthetic DL-methionine.³⁰ NOVUS has not imported any subject synthetic methionine, and has indicated that it conducts its methionine operations

²⁶ 19 U.S.C. § 1677(4)(A).

²⁷ 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).

²⁸ The report prepared in connection with the original determination did not discuss or present any data pertaining to the question of related parties, inasmuch as there was no related parties provision in the Antidumping Act, 1921. In any event, the domestic industry for which we collected data in this review is composed entirely of different producers from those who were members of the domestic industry at the time of the original determination.

²⁹ See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993); Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987).

³⁰ CR at I-15, PR at I-8; Tr. at 61. NOVUS is also partially owned by Mitsui Co. Ltd. and Mitsui & Co. (U.S.A.), Inc.

independently of Nippon Soda.³¹ Both the domestic producers and Sumitomo argued that appropriate circumstances do not exist to exclude NOVUS from the domestic industry as a related party.³²

NOVUS is ***, accounting for *** of 1998 U.S. production and over *** percent of U.S. sales.³³ There is no indication that NOVUS's interests lie anywhere but in domestic production. Indeed, NOVUS recently invested in expanded capacity to produce the hydroxy analog.³⁴ It does not appear that NOVUS has been or will be shielded from any effects of subject imports or that it has conducted its operations differently from the other producers or in a manner that would allow it to benefit from its relationship with Nippon Soda.³⁵

In sum, NOVUS's interests appear to lie principally, if not exclusively, in domestic production. We accordingly find that appropriate circumstances do not exist to exclude NOVUS from the domestic industry.

We consequently find one domestic industry in this review. That industry consists of all domestic producers of DL-methionine and its hydroxy analog.³⁶

III. REVOCATION OF THE FINDING ON SYNTHETIC METHIONINE IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping finding unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the finding “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³⁷ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) states that “under the likelihood

³¹ Domestic Producers' Response to Notice of Institution at 29. *See* Tr. at 61-62. A NOVUS representative described the company's relationship with Nippon Soda as follows:

It is basically an arm's-length relationship in which NOVUS has stayed an independent U.S. company and . . . the methionine operations of NOVUS and Nippon Soda are in no way combined, coordinated, or in anyway related.

* * *

I consider NOVUS part-owned by Nippon Soda as an investment. There is no relationship between businesses. In fact, . . . in the marketplace we are actually competitors still. We do not combine our relationships in the methionine manufacturing or marketing.

Tr. at 61-62.

³² Domestic Producers' Posthearing Brief at 7-15; Sumitomo's Posthearing Brief at Tab G and Prehearing Brief at 39.

³³ CR at I-15, PR at I-8.

³⁴ CR at III-A-1; PR at III-1.

³⁵ *See* Table III-B-1, CR at III-B-2, PR at III-3.

³⁶ In these Views, references to the “domestic methionine industry” thus include the producers of both DL-methionine and the hydroxy analog. Likewise, unless otherwise noted, all discussion of synthetic methionine data and market conditions refer inclusively to DL-methionine and the hydroxy analog.

³⁷ 19 U.S.C. § 1675a(a).

standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the finding] . . . and the elimination of its restraining effects on volumes and prices of imports.”³⁸ Thus, the likelihood standard is prospective in nature.³⁹ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”⁴⁰ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{41 42}

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.”⁴³ 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.^{44 45}

³⁸ SAA, H.R. Rep. No. 103-316, Vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

³⁹ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁴⁰ 19 U.S.C. § 1675a(a)(5).

⁴¹ 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.*

⁴² In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplun 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.

⁴³ 19 U.S.C. § 1675a(a)(1).

⁴⁴ 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.

⁴⁵ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings in this matter. *See* 63 Fed. Reg. 67665 (continued...)

In this review, the domestic producers argued that the Commission must make an affirmative determination as long as one likely outcome of revocation is material injury, even if other outcomes could also be considered likely.⁴⁶ To the extent that by this argument the domestic producers seek to constrain the Commission's discretion, they misconstrue the cited SAA language, which simply underscores the predictive nature of sunset reviews and recognizes that the Commission's determination will not be deemed erroneous as long as it is reasonable in light of the facts of the case. The guidance offered by this passage of the SAA thus is not a mandatory instruction for the Commission to rule a certain way, nor is it intended to curb or otherwise limit the Commission's discretion to reach any reasonable determination based upon its view of the facts of the case.

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

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁴⁷ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for synthetic methionine.

The primary end use for synthetic methionine in the U.S. market both during and since the original investigation has been as feed for poultry and swine, and is likely to remain the same.⁴⁸ Demand for synthetic methionine follows the trends of the poultry industry, and to a lesser degree, those of the swine industry.⁴⁹ The demand for synthetic methionine in both the U.S. and the world markets has increased exponentially since the original determination. In the years since the original determination, increased chicken meat consumption in the United States and increases in the level of poultry exports from the United States have triggered an increase in broiler production, which has in turn resulted in an increased demand for synthetic methionine.⁵⁰ U.S. producers have indicated that they expect the increase in demand for

⁴⁵ (...continued)
and 64 Fed. Reg. 30488.

⁴⁶ Domestic Producers' Posthearing Brief at 10-11 and Responses to Questions from the Commission at 20-21, *citing* SAA at 883. The referenced language of the SAA states:

The determination called for in these types of reviews is inherently predictive and speculative. There may be more than one likely outcome following revocation or termination. The possibility of other likely outcomes does not mean that a determination that revocation or termination is likely to lead to continuation or recurrence of dumping or countervailable subsidies, or injury is erroneous, as long as the determination of likelihood of continuation or recurrence is reasonable in light of the facts of the case. In such situations, the order or suspended investigation will be continued.
SAA at 883.

⁴⁷ 19 U.S.C. § 1675a(a)(4).

⁴⁸ *See* CR at I-9-11, PR at I-5-6; OR at 11; Synthetic L-Methionine from Japan, USITC Pub. 1167 at A-3-4.

⁴⁹ CR at II-9, PR at II-5.

⁵⁰ CR at II-11, PR at II-7. Broiler production grew from 2.5 billion birds in 1973 to 9.1 billion birds in 1998. At the same time, apparent domestic consumption of synthetic methionine increased from *** pounds in 1972 to

(continued...)

synthetic methionine to slow down in the next few years, while purchasers have indicated that they expect demand to remain stable or increase slightly each year.⁵¹ The purchasers' view is supported by projections published by the U.S. Department of Agriculture, which project 5.1 percent increases in domestic production of poultry during 1999 and again in 2000, with continued growth through 2008.⁵²

U.S. producers' capacity to produce and actual production of synthetic methionine have increased to a greater degree than the level of increase in apparent consumption.⁵³ All domestic producers have increased their capacity since 1997, but the magnitude of the most recent increase in industry-wide capacity is largely attributable to NOVUS, ***, which added an additional *** pounds to its capacity in 1999, thereby expanding its capacity by *** percent.⁵⁴ In addition to a many-fold increase in U.S. producers' domestic commercial shipments, their export shipments have increased by an even larger percentage.⁵⁵ Thus, since the original determination, the U.S. industry has become a large exporter of synthetic methionine, exporting *** of synthetic methionine as it shipped to domestic purchasers.⁵⁶

The structure of the U.S. market has changed significantly since 1973. At the time of the original determination U.S. demand was met by two U.S. producers (Monsanto Company and E. I. du Pont de Nemours) as well as Degussa A.G. of Germany, Rhone Poulenc of France, and Nippon Soda of Japan.⁵⁷ Subject imports from Japan accounted for *** percent of the U.S. methionine market and total imports accounted for *** percent of the market.⁵⁸ The U.S. methionine industry was one-third the size of the industry in Japan and, at full capacity, could supply only a little more than half of the domestic demand.⁵⁹ In contrast, by 1997 and 1998, U.S. demand was predominantly met by the three U.S. producers, all of whom are affiliated with foreign producers of synthetic methionine.⁶⁰ There were virtually no subject imports from Japan, and nonsubject imports, *** of which were imported from France ***, held only a ***

⁵⁰ (...continued)

*** in 1998. OR at 47; Table I-2, CR at I-18, PR at I-10.

⁵¹ CR at II-12, PR at II-7.

⁵² CR at II-19, PR at II-11-12.

⁵³ Domestic producers' production capacity increased from an average annual capacity of *** pounds in 1972 to *** pounds in 1998, while production increased from *** pounds in 1972 to *** pounds in 1998. OR at 16; Table III-A-1, CR at III-A-1, PR at III-1.

⁵⁴ CR at III-A-1-2, PR at III-1.

⁵⁵ OR at 20; Table III-A-2, CR at III-A-3, PR at III-1. In 1972, U.S. producers sold *** pounds of synthetic methionine on the domestic market, compared to 1998 domestic shipments of *** million pounds. In 1972, they exported ***, compared to export shipments of *** million pounds in 1998.

⁵⁶ Table III-A-2, CR at III-A-3, PR at III-1.

⁵⁷ OR at 15; CR at I-15, n.33, PR at I-8, n.33.

⁵⁸ OR at 22. During the original investigation, *** was the primary manufacturer of synthetic methionine in Japan; *** were secondary producers. ***. Mitsui and Co. (U.S.A.) accounted for *** percent of imports of the subject merchandise from Japan between 1969 and 1972. OR at 5-6, 28, 51.

⁵⁹ CR at II-4, PR at II-2.

⁶⁰ Two of the three U.S. producers, Degussa and RPAN, are wholly-owned subsidiaries of the European producers who supplied the U.S. market during the original investigation. CR at I-15, PR at I-9. Degussa Germany and RPAN France established these U.S. subsidiaries primarily to serve the United States and North American Markets. Domestic Producers' Posthearing Brief, Responses to Commission Questions at 11. The third U.S. producer, NOVUS, is 35-percent owned by Nippon Soda, although, as discussed with respect to application of the related party provision, NOVUS has indicated that it operates independently of Nippon Soda. Tr. 61-62.

percent market share.⁶¹ The three U.S. producers held the remaining *** percent of the market. Thus, while the U.S. producers held approximately half of a relatively small U.S. market during the original investigation, the U.S. industry currently dominates a much larger domestic market.

Purchases of synthetic methionine are largely concentrated among *** integrated poultry producers (such as Tyson, Perdue, and Gold Kist) and animal feed companies (such as Purina Mills and Cargill), who account for approximately *** percent of all purchases.⁶² In addition to these major end-user transactions, another *** percent of U.S. synthetic methionine sales are also on a contract basis.⁶³ As a result, reduced-price, high-volume contracts are prevalent in the U.S. market, accounting for approximately *** percent of U.S. synthetic methionine sales in 1998.⁶⁴ The three domestic producers of synthetic methionine have established long-term contractual relationships with their high-volume customers and incorporate value-added services and equipment into the fee structure of their customers.⁶⁵

The majority of purchasers indicated that price is always a key factor in their purchasing decisions.⁶⁶ Although purchaser preferences may place some limitation on the degree of substitutability between the Japanese powdered DL-methionine and the most common forms of the U.S. product (*i.e.*, the liquid DL-methionine and the hydroxy analog), most purchasers indicated that the different forms were interchangeable and that they would switch among suppliers based on price.⁶⁷ Further, based on activities in other markets where the U.S. product competes with the Japanese product, the U.S. producers as well as the U.S. importers who responded to the Commission's questionnaires indicated that the U.S. and Japanese products could be used interchangeably.⁶⁸

A final condition of competition that we have taken into account is the capital intensive nature of the industry, which provides an incentive for producers to run their facilities at maximum capacity in order to spread their fixed costs over a larger production volume.⁶⁹

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

C. Likely Volume of Subject Imports

⁶¹ Table I-2, CR at I-18, PR at I-10. Imports of synthetic methionine from Japan dropped to nominal volumes beginning in 1978. *See* Sumitomo's Response to Notice of Institution at Exhibit 7.

⁶² CR at I-16, II-2, PR at I-9, II-1.

⁶³ *See* CR at V-4, PR at V-3.

⁶⁴ CR at V-4, PR at V-3.

⁶⁵ CR at II-6, II-14, PR at II-4, II-8. Final prices often include the free provision of value-added services: amino acid analysis, nutritional consulting, storage and equipment considerations, inventory and stocking systems, engineering services, etc. As one example, NOVUS provides its customers with a *** costing ***. This cost is ***. *See* Domestic Producers' Posthearing Brief at 13-14; Responses to Purchaser Questionnaires.

⁶⁶ CR at II-13, PR at II-8.

⁶⁷ CR at II-15, PR at II-9.

⁶⁸ CR at II-14-15, PR at II-9-10.

⁶⁹ Domestic Producers' Prehearing Brief at 12. For example, one U.S. producer indicated that it was ***. Memorandum INV-W-139 (June 25, 1999), data on *** 1999 operations.

In evaluating the likely volume of imports of subject merchandise if the finding under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁷⁰ 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.⁷¹

In the original determination, the Commission noted that imports of synthetic methionine from Japan increased their U.S. market share from *** percent in 1966 to more than *** percent in 1971 and 1972.⁷² The volume of subject imports increased from *** pounds (or *** metric tons) in 1970 to *** pounds (or *** metric tons) in 1972 (the year before the original antidumping finding).⁷³ Although the 1972 volume was lower than the *** pounds (or *** metric tons) imported in 1971, the Commission found that there were substantial inventories of unsold subject imports at the end of 1971, which exerted pressure on the market in 1972.⁷⁴ Substantial volumes of shipments of subject imports continued to enter the U.S. market for five years after imposition of the antidumping finding, i.e., through 1978.⁷⁵ Thus, synthetic methionine imports from Japan dropped to 2,165 metric tons in 1973 (the year of the finding), rebounded to 3,196 metric tons in 1974 (the year after the finding), peaked in 1976 at 4,224 metric tons, and declined to approximately 3,000 metric tons in 1977 and 1978.⁷⁶ Since 1978, imports of synthetic methionine from Japan have remained at levels below 100 metric tons.⁷⁷

Notwithstanding the virtual absence of subject imports from the U.S. market in recent years, our focus in five-year reviews is on the likely volume of subject imports that would enter the United States if the finding were revoked.⁷⁸ Based on the facts in the record of this review, we find for several reasons that the volume of imports of synthetic methionine from Japan is not likely to be significant in the reasonably foreseeable future if the finding is revoked.

First, we find that the capacity for Japanese production of synthetic methionine and the high level of capacity utilization by the Japanese producers make it unlikely that they would export significant volumes of synthetic methionine to the United States in the reasonably foreseeable future. During the original investigation, the three Japanese manufacturers of synthetic methionine had the capacity to supply

⁷⁰ 19 U.S.C. § 1675a(a)(2).

⁷¹ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁷² Original Determination, TC Pub. 578 at 5.

⁷³ Table I-1, CR at I-3, PR at I-2.

⁷⁴ Original Determination, TC Pub. 578 at 5. *See* Table I-1, CR at I-3, PR at I-2.

⁷⁵ Between 1972 and 1978, Monsanto expanded its capacity, and in 1978 German-owned Degussa began U.S. production. Both German and Japanese imports exited the market following the increase in domestic capacity. Tr. at 56-57; CR at II-1, PR at II-1.

⁷⁶ *See* Domestic Producers’ Response to Notice of Institution at 15, Table 1; Sumitomo’s Response to Notice of Institution at Exhibit 7.

⁷⁷ Official import statistics show small volumes of imports of synthetic methionine from Japan in 1997 and 1998. *See* Table IV-1, CR at IV-2, PR at IV-1. Particularly given the extremely high unit values of these imports (\$11.68 per pound in 1997 and \$12.33 per pound in 1998), we find, as the parties have suggested, that these imports mostly consisted of L-methionine, which is outside the scope of this review, but covered under the same HTS subheading as DL-methionine.

⁷⁸ *See, e.g., Sebacic Acid from China*, Inv. No. 731-TA-653 (Review), USITC Pub. 3189 (May 1999).

approximately *** percent of the *** pounds of synthetic methionine consumed in the U.S. market.⁷⁹ The Japanese industry, dominated by ***, accounted for approximately *** of worldwide capacity to produce methionine, and its total capacity was equivalent to approximately *** percent of the *** pounds of worldwide consumption, about half of which was consumed in the United States.⁸⁰ In 1998, the two remaining Japanese producers had the capacity (*** pounds) to supply just over *** of the *** pound U.S. consumption of synthetic methionine, if all Japanese production were directed toward the United States.⁸¹ By comparison, this capacity represented only *** of the U.S. industry's 1998 capacity to produce *** pounds.⁸²

In this review, the data submitted by the Japanese producers of synthetic methionine show that the Japanese industry is currently operating ***, even after Sumitomo opened a new plant in 1998, which increased Sumitomo's capacity by *** percent.⁸³ These facts indicate that the Japanese producers do not have the ability to increase production to supply significant volumes to the U.S. market. Nor is there is evidence of any *** in Japan in the reasonably foreseeable future. Moreover, information provided by both the domestic producers and Sumitomo indicates that ***.⁸⁴

While operating ***, the Japanese producers have sold their synthetic methionine almost exclusively in markets other than the United States.⁸⁵ Given the levels of capacity utilization and the Japanese producers' relationships with established customers in markets other than the United States,⁸⁶ the Japanese producers would need to divert shipments from other markets in order to begin exporting significant volumes of synthetic methionine to the United States.

The U.S. producers argued that the demand for synthetic methionine in the traditional markets for the Japanese product is stagnant or declining, and that the Japanese producers would therefore be likely to redirect their shipments to the U.S. market if the antidumping finding were revoked.⁸⁷ However, the evidence in the record, including the evidence relied on by the domestic producers, indicates that there likely will be continued overall growth in the poultry and swine markets both in the United States and the rest of the world.⁸⁸

⁷⁹ OR at 10.

⁸⁰ See Sumitomo's Response to Notice of Institution at 9 and Exhibit 1, and OR at 25.

⁸¹ Table IV-2, CR at IV-4, PR at IV-2 and Table I-2, CR at I-18, PR at I-10.

⁸² Table III-A-1, CR at III-A-1, PR at III-1.

⁸³ CR at IV-3-4 & Table IV-2, PR at IV-1-2. The U.S. producers questioned the accuracy of Sumitomo's capacity utilization figures, but Sumitomo provided detailed documentation supporting its 1997 and 1998 capacity and utilization data, as well as information showing that the data it provided for these years are consistent with Sumitomo's high historical capacity utilization levels. Sumitomo's Posthearing Brief at Tab C. The data show that, even after Sumitomo's expansion, the Japanese producers' total 1998 capacity was equivalent to just *** percent of worldwide capacity. See CR at IV-3-4 and Table IV-4, PR at IV-1-2; Sumitomo's Economic Analysis at 1A, Table 1; Sumitomo's Posthearing Brief at 2-3. By comparison, the U.S. industry's total 1998 capacity of *** pounds is equivalent to *** percent of worldwide capacity. Table III-A-1, CR at III-A-1, PR at III-1.

⁸⁴ See Tr. at 17; Tr. at 196 (Closed session).

⁸⁵ Table IV-2, CR at IV-4, PR at IV-2.

⁸⁶ See Tr. at 176; Tr. at 193, 204 (Closed Session).

⁸⁷ Domestic Producers' Response to Notice of Institution at 18, 20-25; Domestic Producers' Prehearing Brief at 21-31.

⁸⁸ The domestic producers acknowledged as much, although they emphasized that the growth rates in those end user markets are not necessarily predicted to be as high as originally projected or as high as the rate in the growth of demand during the early 1990s. See Domestic Producers' Response to Notice of Institution at 21-31.

Specifically, the U.S. Department of Agriculture projects annual increases in U.S. poultry production for 1999 through 2008, and growth in worldwide production as well, indicating a likely annual growth in demand for synthetic methionine of 2 to 4 percent.⁸⁹ Moreover, in the primary Asian markets where, according to the domestic producers, a large proportion of Japanese exports have gone in recent years,⁹⁰ the demand for synthetic methionine has continued to grow notwithstanding weak economic performance in some Asian countries. For example, information submitted by the domestic producers indicates that annual poultry meat production in China was projected to grow by *** percent from 1997 to 1998.⁹¹ Although this rate of growth in demand may not have been as robust as the growth rate of previous years, it nonetheless indicates that the overall demand in the traditional third country markets for Japanese synthetic methionine is unlikely to decline in the reasonably foreseeable future. Therefore, the Japanese producers are unlikely to divert synthetic methionine shipments to the United States.

In addition, in their home market and third country markets, the Japanese producers have established customer and distributor relationships, which they do not have in the U.S. market.⁹² Sumitomo indicated that its business plan is to continue giving first priority to its established customers and to continue supplying those customers.⁹³ Given that the supply demands of existing customers absorb virtually all of the synthetic methionine currently produced in Japan, it is unlikely that significant excess volumes of synthetic methionine could be exported to the United States in the reasonably foreseeable future.

The U.S. producers asserted that Sumitomo will have an available supply of uncommitted synthetic methionine upon the expiration in *** of ***.⁹⁴ We decline to speculate this far in advance of the expiration of these *** as to whether the parties would *** and, if not, whether Sumitomo would replace these *** with shipments to the U.S. market.

In addition, the volume of Japanese synthetic methionine that could possibly become available *** or by replacing the Japanese producers' current spot sales in other markets, would be small, as the domestic producers themselves acknowledge.⁹⁵ Indeed, given the Japanese producers' production capability and high levels of capacity utilization, as well as their commitment to filling their established customers' requirements for synthetic methionine, the Japanese producers would be unable to meet the contractual supply requirements of any of the major U.S. purchasers, who account for approximately *** percent of the U.S.

⁸⁹ CR at II-19, PR at II-11-12. *See* Domestic Producers' Response to Notice of Institution at 29-31, *citing* Foreign Agricultural Service report that global poultry consumption in 1998 was estimated to be 2 percent higher than 1997 global consumption, and projected to increase in non-U.S. markets by another 2 percent in 1999.

⁹⁰ *See* Domestic Producers' Response to Notice of Institution at 21.

⁹¹ *See* Domestic Producers' Prehearing Brief at 22-23, 25 (*quoting* Foreign Agriculture Service Report). Evidence submitted by the domestic producers also suggests the likelihood of increased consumption of synthetic methionine in the Philippines by virtue of a joint venture between Tyson Foods and Purina Mills for a commercial feed and swine operation. Domestic Producers' Prehearing Brief at Exhibit 6.

⁹² Tr. at 160-61, 173-74, 176; CR at IV-3, PR at IV-2. The domestic producers noted that Sumitomo has a U.S. representative who sells a different feed additive product manufactured by Sumitomo. Domestic Producers' Posthearing Brief at 1. We decline to find that the mere presence of one sales representative for a different product evidences the existence of established channels for the sale of Japanese synthetic methionine in the U.S. market.

⁹³ *See, e.g.*, Tr. at 167-68, 176.

⁹⁴ Domestic Producers' Posthearing Brief at 7-8 and Exhibit 6; Tr. at 223, 227 (Closed Session). Sumitomo has ***, *See* Sumitomo's Posthearing Brief at Tab O-3. Sumitomo has ***. *See* Sumitomo's Posthearing Brief at Tab O-2.

⁹⁵ *See, e.g.*, Domestic Producers' Response to Notice of Institution at Exhibit 17; Domestic Producers' Prehearing Brief at 56; Tr. at 31-32.

market.⁹⁶ Nor would the Japanese producers be readily able to provide the types of service that the U.S. producers offer, such as analysis of the feed components.⁹⁷

Nonetheless, even if the Japanese producers were able and inclined to switch some of their current spot sales or *** to the U.S. spot market, they would not gain significant market share at the expense of the U.S. producers. The U.S. producers themselves suggested that the sector of the U.S. market that the Japanese producers would easily be able to penetrate is the small portion in which brokers/resellers distribute feed on a spot sales basis.⁹⁸ The domestic producers estimate that the resale market to which they refer accounts for approximately *** percent of annual U.S. sales of synthetic methionine.⁹⁹ We find it unlikely that the Japanese producers would be able to capture all sales in this market, especially given the proximity and established relationships between the brokers and the U.S. producers. In addition, at least *** percent of the current sales in this market are of nonsubject dry DL-methionine imported ***.¹⁰⁰ As such, we find that any shift in demand away from U.S.-produced synthetic methionine to synthetic methionine from Japan would not be significant.

Finally, other factors we have considered also do not suggest likely significant volumes of subject imports from Japan. The Japanese producers' inventories of synthetic methionine are low, both in the absolute sense and as a share of production or of shipments.¹⁰¹ There are no reported antidumping orders or other such barriers to importation of synthetic methionine from Japan into other markets.¹⁰² Indeed, Japanese synthetic methionine producers export most of their methionine without restraint to third-country markets in Asia, Europe and South America.¹⁰³ In addition, facilities used to produce methionine cannot be used to produce other products. Consequently, there appears to be little or no potential for product shifting.¹⁰⁴

In light of the foregoing considerations, we conclude that subject import volumes are not currently significant in the context of the conditions of competition in the U.S. synthetic methionine market. We further conclude that subject import volumes are not likely to reach significant levels within a reasonably foreseeable time if the antidumping finding is revoked.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping finding is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like product.¹⁰⁵

⁹⁶ CR at II-2, PR at II- 1.

⁹⁷ Tr. at 166-167.

⁹⁸ See Tr. at 32; Domestic Producers' Response to Notice of Institution at Exhibit 17. See also INV-W-081 (April 28, 1999) (Prehearing Report) at II-1.

⁹⁹ Domestic Producers' Response to Notice of Institution at 10 and Exhibit 17.

¹⁰⁰ See *** Importer Questionnaire at 17. See also Sumitomo's Posthearing Brief at Tab P, p. 5-6 & n.13.

¹⁰¹ Table IV-2, CR at IV-4, PR at IV-2.

¹⁰² Tr. at 161.

¹⁰³ Tr. at 22-24, 27-30, 143, 153, 167-68; CR at II-8 and IV-3, PR at II-5.

¹⁰⁴ CR at II-8, PR at II-5.

¹⁰⁵ 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering (continued...)

As noted in the discussion of conditions of competition in this market, price is usually a key factor in purchasers' decisions, although actual substitutability between the liquid versions of the product (DL-methionine and the hydroxy analog) and the powdered form is somewhat limited by some purchasers' preferences for the liquid forms.¹⁰⁶ Neither Sumitomo nor Nippon Soda produces the liquid forms nor has either reported plans to do so in the reasonably foreseeable future. Thus, any imports of synthetic methionine that would enter the U.S. market would be powdered DL-methionine.

In the original determination, the Commission found price depression caused by the dumped imports from Japan.¹⁰⁷ The Commission also found that the domestic producers had lost sales and revenues due to low-price offers to customers from sellers of methionine from Japan.¹⁰⁸

Prices for synthetic methionine sold in the U.S. market generally declined from the first quarter of 1997 to the last quarter of 1998, and continued to decline in 1999.¹⁰⁹ These prices declined without any competition in the U.S. market from the Japanese product, and with limited competition from nonsubject imports, specifically ***.¹¹⁰ The record indicates that price declines were caused mainly by competition among the U.S. producers and by increases in domestic producers' capacity.¹¹¹ For example, ***. In turn, prices declined in early 1999 as ***.¹¹²

We decline to accept the premise offered by the domestic producers that the Japanese producers, in particular Sumitomo, have been the price leaders and have aggressively priced synthetic methionine sold in third country markets.¹¹³ Sumitomo contended that due to its small size in comparison to the domestic producers and their worldwide corporate affiliates, it is not capable of significantly affecting synthetic methionine prices in the United States or the rest of the world.¹¹⁴ Sumitomo also provided evidence that it has not captured market share in other countries through aggressive pricing and has instead been a price taker.¹¹⁵ Given the anecdotal nature of much of the evidence provided by both the domestic producers and Sumitomo, and the lack of a full record of the market conditions in the particular third countries or of the exact product mix of the methionine imports and sales, we place limited weight on this evidence.

We note, however, that the domestic producers themselves indicated that average market prices for synthetic methionine are lower in the U.S. market than in other markets where both the Japanese and U.S.

¹⁰⁵ (...continued)

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.

¹⁰⁶ CR at II-14-15; PR at II-9.

¹⁰⁷ Original Determination, TC Pub. 578 at 5-6.

¹⁰⁸ *Id.*

¹⁰⁹ See Tables V-1-6 and Figures V-2-7, CR at V-6-17, PR at V-5-6; INV-W-139.

¹¹⁰ In 1997 and 1998, nonsubject imports, virtually all of which were from ***, accounted for *** percent of apparent domestic consumption. Table I-2, CR at I-18, PR at I-10; CR at IV-1, PR at IV-1. These nonsubject imports consisted entirely of powdered DL-methionine that ***. See *** Importer Questionnaire.

¹¹¹ See CR at II-2, PR at II-1-2.

¹¹² CR at II-2, PR at II-1.

¹¹³ See, e.g., Domestic Producers' Response to Notice of Institution at 26-28 and Exhibits 14, 15 and 16; Domestic Producers' Prehearing Brief at 57-60 and Exhibits 3 and 4; Domestic Producers' Posthearing Brief at 7, Responses to Questions from the Commission at 24-26, and Exhibits 1 and 2.

¹¹⁴ Sumitomo's Prehearing Brief, Economic Analysis at 1-2; Tr. at 195 (closed session).

¹¹⁵ Sumitomo's Posthearing Brief at Tabs H and I.

products compete.¹¹⁶ These price differences are further evidenced by the fact that ***.¹¹⁷ In addition, the U.S. producers increased their export sales from 1997 to 1998, and ***.¹¹⁸ Thus, in those markets in which the U.S. product competes with the Japanese product, the U.S. producers have been able to sell their products at *** values than they sell their products for in the U.S. market, where their primary competition is from one another. We find that the Japanese products are less likely to have significant price effects in the very competitive U.S. market given the dominant position of the U.S. producers and the limited volumes that the Japanese producers would likely ship to the U.S. market.

Finally, the domestic producers argued that small volumes of subject imports could have significant effects on prices in the U.S. market. They contended that, with U.S. prices already declining (albeit without the presence of subject imports), the introduction of imports from Japan would have further significant depressing effects. We do not find this argument to be persuasive given the nature of the U.S. synthetic methionine market. The domestic producers acknowledged that overall U.S. prices are lower than prices prevailing in other markets because the U.S. market is dominated by larger volume purchases and longer contracts.¹¹⁹ In addition, for a variety of reasons, those contractual prices are on the whole lower than prices to resellers.¹²⁰ Indeed, the lower contractual prices also include significant value-added services and equipment that only the U.S. producers provide.¹²¹

Not surprisingly, therefore, our pricing data show only a moderate correlation between the movements of prices in the two market segments.¹²² Thus, for the *** percent of the market covering the largest purchasers, spot market prices do not appear to be a major factor in price negotiations since these purchasers would not turn to the spot market for their substantial needs. Those prices likely will continue to be set based on competition among the domestic producers. Similarly, as to the remaining portion of the contractual market segment, purchasers value both the security of supply and the services associated with these contracts. Thus, there does not appear to be a great incentive for many of those purchasers to turn to the reseller market in significant quantities except to fill unanticipated or other short term needs. Given these facts, although spot market prices may have some affect on contractual prices, they do not appear to be a significant factor influencing the overall level of U.S. prices. Thus, we would not anticipate the small quantities of imports from Japan into that reseller market to have a significant effect on U.S. prices.

Accordingly, we conclude that the Japanese product is unlikely to enter the United States at prices that would have a significant depressing or suppressing effect on prices for the domestic like product.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the finding 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

¹¹⁶ See, e.g. Domestic Producers' Response to Notice of Institution at 17; CR at II-4-5; PR at II-3 (summarizing producer questionnaire responses.) In their posthearing brief, the domestic producers qualified their previous statements by arguing that although the average market price in the United States is lower, prices for smaller accounts may receive higher prices in the United States than in other markets. Domestic Producers' Posthearing Brief at 4-5.

¹¹⁷ Table III-A-2, CR at III-A-3, PR at III-1.

¹¹⁸ Table III-A-2, CR at III-A-3, PR at III-1; INV-W-139 (Interim data for ***).

¹¹⁹ CR at II-4-5, PR at II-3.

¹²⁰ Tables V-1-V-6 and Figures V-2-V-7, CR at V-7-15, PR at V-5-6.

¹²¹ See Tr. at 166-167; Sumitomo's Posthearing Brief at Tab B.

¹²² Tables V-1-V-6, Figures V-2-V-15, CR at V-7-15, PR at V-5-6.

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.¹²³ 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.¹²⁴ 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 finding at issue and whether the industry is vulnerable to material injury if the finding is revoked.¹²⁵

In its original determination, the Commission found that the increasing volumes of low-priced subject imports had led to price depression, which in turn led to lost sales and revenues and reduced profitability.¹²⁶ By contrast, the domestic synthetic methionine industry today dominates a market that is many times larger than the 1973 market. During 1997 and 1998, the domestic industry was *** profitable, with stable or increasing production, capacity and capacity utilization, shipments, and employment.¹²⁷ The industry performed well despite ***.¹²⁸ Although interim 1999 data provided by the domestic producers show some declines in sales and profitability, the industry remained strong.¹²⁹ Further, despite claims by the domestic industry that poor economic performance in Asia has negatively affected worldwide demand, the U.S. producers in interim 1999 exported more synthetic methionine than they exported during the

¹²³ 19 U.S.C. § 1675a(a)(4).

¹²⁴ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination, as amended pursuant to court order, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping finding were revoked is 48 percent. 64 Fed. Reg. 30488 (June 8, 1999).

¹²⁵ 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.

¹²⁶ Original Determination, TC Pub. 578 at 6.

¹²⁷ U.S. producers’ production rose from *** million pounds in 1997 to *** million pounds in 1998. Capacity utilization increased from *** percent in 1997 to *** percent in 1998. Table III-A-1, CR at III-A-1, PR at III-1. U.S. producers’ shipments rose from *** pounds in 1997 to *** million pounds in 1998. Table III-A-2, CR at III-A-3, PR at III-2. In 1997 and 1999, the industry employed *** and *** employees, respectively. Hourly wages paid to these employees increased from *** in 1997 to *** in 1998. Unit labor costs remained at *** in 1997 and 1998. Table III-A-7, CR at III-A-6, PR at III-2. Domestic producers’ operating income was *** in 1997 and *** in 1998. The ratio of operating income to net sales was *** percent in 1997 and *** percent in 1998. Table III-B-1, CR at III-B-2, PR at III-3.

¹²⁸ *See* INV-W-139.

¹²⁹ *See* INV-W-139. Furthermore, the interim data reflect recent additions to capacity, the costs of which would be expected to be absorbed over time.

comparable period in 1998.¹³⁰ We consequently conclude that the domestic synthetic methionine industry is not vulnerable to material injury if the antidumping finding is revoked.¹³¹

As set out in the discussion of volume, substantial volumes of shipments of subject imports continued to enter the U.S. market for five years after imposition of the antidumping finding, i.e., through 1978. Given the significant changes in the nature and composition of the domestic industry since the issuance of the antidumping finding, including the exponential increase in the demand for synthetic methionine, the magnitude of foreign direct investment in the U.S. industry, and the expansion in U.S. and worldwide capacity by the U.S. producers and their corporate affiliates to meet that demand, we do not find that the current state of the domestic industry is attributable to a significant extent to the existence of the antidumping finding.

We also conclude that the subject imports are not likely to have an adverse impact on the synthetic methionine industry in the reasonably foreseeable future if the antidumping finding is revoked. We found above that revocation of the antidumping finding is not likely to lead either to significant additional volumes of subject imports or to significant price effects. These determinations in turn indicate that the subject imports are not likely to have a significant adverse impact on the domestic industry as a whole within the reasonably foreseeable future if the finding is revoked.

Therefore, we conclude that revocation of the antidumping finding would not be likely to lead to significant declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, or likely negative effects on the domestic industry's development and production efforts, within a reasonably foreseeable time.

¹³⁰ See INV-W-139. One producer, ***, reported the unit values of its interim 1999 exports, which were *** than those for interim 1998.

¹³¹ Commissioner Crawford finds that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability of the industry. She finds the domestic industry in this review is relatively less vulnerable to injury if the finding is revoked, primarily due to the U.S. industry's domination of the large and expanding U.S. market, the diversification of the industry's revenue sources by healthy participation in international markets, and the industry's strong operating performance.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping finding on synthetic methionine from Japan would not be likely to lead to continuation or recurrence of material injury to the U.S. synthetic methionine industry within a reasonably foreseeable time.