UNITED STATES INTERNATIONAL TRADE COMMISSION

SUGAR FROM THE EUROPEAN UNION; SUGAR FROM BELGIUM, FRANCE, AND GERMANY; AND SUGAR AND SYRUPS FROM CANADA

Investigation Nos. 104-TAA-7 (Review);
AA1921-198-200 (Review); and 731-TA-3 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3238, September 1999)

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DETERMINATIONS

On the basis of the record[1] developed in the subject five-year reviews, 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 countervailing duty order on sugar from the European Union would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determines[3] that revocation of the antidumping findings on sugar from Belgium, France, and Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Further, the Commission determines that revocation of the antidumping duty order on sugar and syrups from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on October 1, 1998 (63 F.R. 52759), and determined on January 7, 1999, that it would conduct full reviews (64 F.R. 4901, February 1, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on March 11, 1999 (64 F.R. 12178). The hearing was held in Washington, DC, on July 15, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 28, 1999. The views of the Commission are contained in USITC Publication 3238 September 1999, entitled *Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada: Investigation Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review).*

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

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[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] Commissioners Crawford and Askey dissenting.

[3] Commissioners Crawford and Askey dissenting.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended ("the Act"),[1] that revocation of the antidumping findings covering sugar from Belgium, France, and Germany, and/or the countervailing duty order covering sugar from the European Union, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] We further determine that revocation of the antidumping duty order covering sugar and syrups from Canada 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 of 1979, the Commission determined that a regional industry, consisting of domestic producers of sugar cane and raw cane sugar located in the "Southeastern United States region" (*i.e.,* Florida and Savannah, Georgia), was being injured by reason of less than fair value ("LTFV") imports of sugar from Belgium, France, and West Germany (Germany).[3] On February 12, 1979, the Department of Treasury ("Treasury") imposed antidumping findings on sugar from Belgium, France, and Germany.[4]

In March of 1980, the Commission determined that a regional industry, consisting of domestic producers of refined sugar located in the "Northeastern States region,"[5] was materially injured by reason of LTFV imports of sugar and syrups from Canada.[6] The Department of Commerce ("Commerce") imposed an antidumping duty order on imports of sugar and syrups from Canada on April 9, 1980.[7] Commerce revoked the antidumping duty order in Sugar and Sirups from Canada with respect to imports from Redpath Sugars, Ltd., entered on or after July 20, 1984, and with respect to imports from Lantic Sugar, Ltd., entered on or

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[1] Pursuant to 19 U.S.C. § 1675(c)(5)(C)(v), we have determined to extend the time limit for completion of these reviews by one day.

[2] Commissioners Crawford and Askey dissenting. *See* their Dissenting Views.

[3] Sugar from Belgium, France, and West Germany, Inv. Nos. AA1921-198-200, USITC Pub. 972 (May 1979) ("BFG Original Determination").

[4] 44 Fed. Reg. 8949 (Feb. 12, 1979). Treasury was responsible for calculating antidumping and countervailing duty margins and imposing findings and orders until January 1, 1980, when that role was transferred to the Department of Commerce.

[5] The Commission defined the region to include the states of Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont.

[6] Sugars and Sirups from Canada, Inv. No. 731-TA-3 (Final), USITC Pub. 1047 (Mar. 1980) ("Canada Original Determination").

[7] 45 Fed. Reg. 24126 (Apr. 9, 1980). The Commission's 1980 determination was appealed to the Court of International Trade. After three remands, the CIT reversed the Commission's affirmative determination on the grounds that it was not supported by substantial evidence and vacated the antidumping duty order. The Commission then appealed to the Federal Circuit, which overruled the CIT and reinstated the antidumping duty order in September of 1984. *See* Atlantic Sugar, Ltd. v. United States, 744 F.2d 1556 (Fed. Cir. 1984).

after February 10, 1987. The only company currently subject to the Canadian antidumping duty order is Rogers Sugar, Ltd. ("Rogers"), successor in interest to British Columbia Sugar Refining Company Ltd.[8]

On July 31, 1978, Treasury imposed a countervailing duty order on imports of sugar from the European Community.[9] On March 28, 1980, the Commission received a request from the Delegation of the European Community (now the European Union) for an investigation under section 104(b) of the Trade Agreements Act of 1979 of whether revocation of the countervailing duty order on sugar from the European Community would cause material injury or threat of material injury to a domestic industry. On May 6, 1982, the Commission determined that an industry in the United States would be threatened with material injury if the countervailing duty order on sugar from the European Community were revoked.[10] Accordingly, the order remained in effect.

On October 1, 1998, the Commission instituted five-year reviews pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping findings covering sugar from Belgium, France, Germany, the countervailing duty order covering sugar from the European Union, and the antidumping duty order covering sugar and syrups from Canada would be likely to lead to continuation or recurrence of material injury.[11]

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.[12] 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 these reviews, the Commission received responses to the notice of institution from the United States Beet Sugar Association ("USBSA"), the United States Cane Sugar Refiners' Association ("USCSRA"), and their individual members, as well as from Rogers, the sole Canadian producer still subject

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[8] Due to consolidations in the Canadian sugar industry since the original investigation, there are now only three refined sugar producers in Canada: Redpath, Lantic (formerly Atlantic Sugar), and Rogers. Rogers operates the sole Canadian beet sugar processing facility. Rogers also refines imported raw cane sugar, as do Redpath and Lantic. Confidential Report (Aug. 19, 1999) ("CR") at IV-6 and IV-8, Public Report ("PR") at IV-4 and IV-6. As discussed below, since 1987 sugar refined in Canada from imported raw cane sugar is not considered a product of Canada for U.S. Customs purposes. Therefore, all subject imports of refined sugar entering the United States from Canada since 1987 are processed from sugar beets grown in Canada. CR at IV-6, PR at IV-4 and IV-6.

[9] 43 Fed. Reg. 33237 (July 31, 1978). The countervailing duty order was imposed without a Commission injury determination pursuant to former section 303 of the Tariff Act of 1930. 19 U.S.C. § 1303 (1978).

[10] Sugar from the European Community, Inv. No. 104-TAA-7, USITC Pub. 1247 (May 1982) ("EU Original Determination").

[11] 63 Fed. Reg. 52759 (Oct. 1, 1998).

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

to the Canadian antidumping duty order. The Commission received no responses to the notice of institution on behalf of producers in Belgium, France, Germany, or the European Union.

On January 7, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews. With regard to Sugar and Syrups from Canada, the Commission determined that both domestic and respondent interested party individual and group responses were adequate. With regard to Sugar from the European Union, the Commission determined that the domestic interested party group response was adequate,[13] but that, because no respondent interested party responded to the notice of institution, the respondent interested party group response was inadequate. The Commission determined to conduct a full review, however, because conducting a full review would promote administrative efficiency in light of the Commission's decision to conduct a full review with respect to Sugar and Syrups from Canada, and because of the significant domestic like product and domestic industry issues presented by this review.[14] Finally, with regard to Sugar from Belgium, France, and Germany, the Commission determined that both the domestic interested party group response[15] and the respondent interested party group response were inadequate because it received no responses to the notice of institution from any domestic producer of the like product in those investigations (sugar cane and raw cane sugar) and no responses from any respondent interested parties. The Commission nevertheless determined to conduct full reviews for the same reasons cited with respect to Sugar from the European Union.[16]

On July 15, 1999, the Commission held a hearing in these reviews, at which representatives of the USBSA, USCSRA, and Rogers appeared. The domestic producers filed briefs in support of continuation of all five findings and orders, and Rogers filed briefs urging revocation of the antidumping duty order covering sugar and syrups from Canada.

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."[17] 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."[18]

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[13] Commissioner Askey dissenting. Commissioner Crawford concurred in the finding of group adequacy, but, in light of the lack of response from any growers or processors of the like product, found that individual responses from such producers were not adequate.

[14] Commissioner Crawford dissenting. Commissioner Askey concurring in the result.

[15] Chairman Bragg dissenting.

[16] Commissioners Crawford and Askey dissenting. *See* Vote Sheets in Sugar from the European Union, Inv. No. 104-TAA-7 (Review), Sugar from Belgium, Inv. No. AA1921-198 (Review), Sugar from France, Inv. No. AA1921-199 (Review), Sugar from Germany, Inv. No. AA1921-200 (Review), and Sugar and Syrups from Canada, Inv. No. 731-TA-3 (Review) (Jan. 7, 1999); Notice of Commission Determination to Conduct Full Five-Year Reviews, 64 Fed. Reg. 4901 (Feb. 1, 1999); Explanation of Commission Determinations on Adequacy (undated, February 1999).

[17] 19 U.S.C. § 1677(4)(A).

[18] 19 U.S.C. § 1677(10). *See* Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995);

(continued...)

In its final five-year review determinations, Commerce defined the subject merchandise as follows:

For the antidumping findings covering sugar from Belgium, France, and Germany: sugar, both raw and refined, with the exception of specialty sugars.[19]

For the countervailing duty order on sugar from the European Union: sugar, with the exception of specialty sugars (e.g., cones, hats, pearls, loaves).[20]

For the antidumping duty order on sugars and syrups from Canada: sugar and syrups produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar.[21]

Sugar is chemically classified as sucrose. Although sucrose is a carbohydrate that naturally occurs in fruits and vegetables, it is only found in quantities large enough for commercial extraction in sugar cane and sugar beets.[22] Raw sugar, which is produced from sugar cane, consists of large sucrose crystals coated with molasses and is normally 90-99 percent pure sucrose.[23] Refined sugar may be made from raw (cane) sugar or directly from sugar beets and is generally over 99.9 percent pure sucrose. Most refined sugar is sold in crystalized or powdered form. Liquid sugar and invert syrup are also forms of refined sugar. Liquid sugar is sucrose dissolved in water and is used for the coating of breakfast cereals. Invert syrup is a chemically modified form of liquid sugar that does not crystallize and is used in the production of jams, jellies, and some bakery products.[24]

Refined beet sugar is generally produced directly from sugar beets in a single process by a sugar beet processor.[25] By contrast, refined cane sugar is generally produced from sugar cane in two distinct stages involving different facilities. Sugar cane millers extract raw sugar from sugar cane at sugar cane mills. The production process for refined cane sugar is then completed at a cane sugar refinery.[26] In order to avoid high transportation costs and deterioration of the sugar beets and sugar cane, cane millers and beet processors are

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[18] (...continued)
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).

[19] Final Results of Expedited Sunset Review: Sugar from Belgium, France, and Germany, 64 Fed. Reg. 5638 (Feb. 4, 1999). The antidumping finding covering sugar from France excludes homeopathic sugar pellets meeting the following criteria: (1) are composed of 85 percent sucrose and 15 percent lactose; (2) have a polished matte appearance, and are more uniformly porous than domestic sugar cubes; and (3) are produced in two sizes of 2 mm and 3.8 mm in diameter.

[20] Final Results of Full Sunset Review: Sugar from the European Community, 64 Fed. Reg. 49464 (Sept. 13, 1999). Blends of sugar and dextrose, a corn-derived sweetener, containing at least 65 percent sugar are within the scope of this order.

[21] Final Results of Full Sunset Review: Sugar and Syrups from Canada, 64 Fed. Reg. 48362 (Sept. 3, 1999). The scope of the order excludes icing sugar decorations as determined in a U.S. Customs Classification of Jan. 31, 1983.

[22] CR at I-20-I-21, PR at I-17.

[23] CR at I-21, PR at I-17.

[24] CR at I-21-I-22, PR at I-17-I-18.

[25] CR at I-23, PR at I-19.

[26] CR at I-22-I-23, PR at I-18.

located close to growers.[27] Raw sugar is shipped nationally and internationally in bulk, often over long distances. Thus, cane refiners need not be located close to growers and millers. Refined sugar is more difficult and expensive to transport and store, because higher sanitary standards must be maintained.[28]

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 determinations concerning sugar from Belgium, France, and Germany. It did define the "domestic industry," however, as "the facilities for the production of sugar cane and raw cane sugar in the Southeastern region of the United States."[29]

Although the Commission's original investigation of sugar and syrups from Canada was conducted pursuant to the Tariff Act of 1930, which contains a like product provision, the Commission similarly did not make an explicit like product determination. As to the domestic industry, it stated that "we consider the relevant domestic industry to consist of the facilities producing refined sugar located in the Northeastern United States region."[30]

The Commission's investigation of sugar from the European Union was conducted under section 104(b) of the Trade Agreements Act of 1979, which required the Commission to determine whether an industry would be materially injured, or threatened with material injury, or the establishment of such industry would be materially retarded, if the existing countervailing duty order (imposed without an injury test) were revoked. In that case, the Commission expressly found that the like product "consists of both beet and cane sugar" whether raw or refined.[31]

For purposes of these five-year reviews, the domestic producers argue that the Commission should find a single like product consisting of all sugar, whether beet or cane, and whether raw or refined.[32] Rogers argues that the Commission should define the domestic like product in the review of the Canadian antidumping duty order as refined beet and cane sugar only.[33]

In light of the Commission's focus on defining an industry based on geographic factors rather than the identity of the products produced by the relevant domestic producers, we place little weight on any guidance on the appropriate like product contained in the Commission's original determinations concerning Belgium, France, Germany, and Canada. By contrast, in the most recent of the Commission's original determinations, Sugar from the European Community, the Commission expressly defined the like product as raw and refined sugar, whether cane or beet. We find that defining the like product in this manner is also appropriate in these reviews.

The semifinished product analysis supports treating raw and refined sugar as a single domestic like product.[34] Because the U.S. Food and Drug Administration considers raw sugar unsuitable for human

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[27] USBSA and USCSRA Posthearing Brief, Exhibit 11 at 8; Hearing Tr. at 90.

[28] Rogers Posthearing Brief at 15.

[29] BFG Original Determination at 3.

[30] Canada Original Determination at 3.

[31] EU Original Determination at 4.

[32] Posthearing Brief of USBSA and USCSRA (revised version, July 28, 1999), Responses to Commissioner and Staff Questions, Exhibit 11 at 5-12.

[33] Posthearing Brief of Rogers Sugar at 12-16.

[34] When analyzing whether a product at an earlier stage of its production process is "like" a finished or further processed product, the Commission generally employs a semifinished product analysis, rather than the traditional six factor analysis. The five factors considered are:

(continued...)

consumption either as a food or as an intermediate food ingredient due to its high level of impurities, raw sugar is dedicated to the production of refined sugar.[35] There is no evidence that producers or consumers perceive separate markets for raw sugar that are unrelated to its consumption in the form of refined sugar. Raw and refined sugar consist almost entirely of sucrose and ultimately are used as a caloric food sweetener. Differences in physical characteristics are dictated by their relative degrees of processing.[36] Moreover, while the process of refining raw sugar is capital intensive and technologically complex,[37] the value added by refining appears to be modest relative to that added by milling.[38]

Accordingly, consistent with the Commission's like product determination in the most recent original investigation and the factual record in these reviews, we find the same domestic like product in all five reviews consisting of raw and refined sugar, whether cane or beet.

B. Domestic Industry

1. In General

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

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[34] (...continued)

(1) whether the upstream article is dedicated to the production of the downstream article, or has independent uses;
(2) whether there are perceived to be separate markets for the upstream and downstream articles;
(3) differences in the physical characteristics and functions of the upstream and downstream articles;
(4) differences in the costs or value of the vertically differentiated articles; and
(5) significance and extent of processes used to transform the upstream product into the downstream article.

See, e.g., Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 6 (Feb. 1999).

[35] CR at I-21, PR at I-17.

[36] CR at I-21, PR at I-17; USBSA and USCSRA Posthearing Brief, Exhibit 11 at 10-11; Rogers Posthearing Brief at 13-15.

[37] USBSA and USCSRA Posthearing Brief, Exhibit 11 at 11; Rogers Posthearing Brief at 16.

[38] One representative of a domestic cane refiner testified that he pays about 23.5 cents per pound for raw sugar to produce refined sugar that sells for about 26 cents per pound, a 2.5 cent markup for the refiner. Hearing Tr. at 101-102 (Mr. Martinelly of Domino Sugar); *see also* Hearing Tr. at 87 (Mr. Roney) (referring to a raw cane price of 22 cents and a refined beet price of 26 cents). Moreover, the record indicates that in 1997 and 1998, raw sugar represented 72.7 and 78.2 percent of the reported value of refined sugar. CR at III-B-9 n.26, PR at III-B-10 n.26.

the total domestic production of that product."[39] 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.[40]

Two preliminary issues arise with respect to the appropriate definition of the domestic industry. First, since four of the five original determinations subject to review were made on the basis of regional industry analyses, we must consider whether the domestic industry producing raw and refined sugar is one national industry or several regional industries. Second, because raw and refined sugar are processed agricultural products, we consider whether to include producers of the raw agricultural products (sugar cane and sugar beets) in the domestic industry producing raw and refined sugar. For the reasons discussed below, we find one national industry in all reviews and define that industry to include sugar cane and sugar beet growers as well as cane millers, cane refiners, and beet processors.

2. Whether to Define One or More Regional Industries

Section 752(a)(8) of the Act permits, but does not require, use of a regional industry analysis in a five-year review when the Commission's original determination was premised on a regional industry.[41] Moreover, the proper inquiry for the Commission is not whether the regional industry criteria of section 771(4)(C) are presently satisfied, but whether those criteria are likely to be satisfied if the order subject to review is revoked or the suspension agreement terminated.[42]

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[39] 19 U.S.C. § 1677(4)(A).

[40] *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).

[41] The statute provides:

> In a review under section 1675(b) or (c) of this title involving a regional industry, the Commission may base its determination on the regional industry defined in the original investigation under this subtitle, another region that satisfies the criteria established in section 1677(4)(C) of this title, or the United States as a whole. In determining if a regional industry analysis is appropriate for the determination in the review, the Commission shall consider whether the criteria established in section 1677(4)(C) of this title are likely to be satisfied if the order is revoked or the suspended investigation terminated.

19 U.S.C. § 1675a(a)(8). The Statement of Administrative Action ("SAA") to the Uruguay Round Agreements Act ("URAA") states that this provision "provides that the Commission is not bound by any determination it may have made in the original determination regarding the existence of a regional industry." SAA, H. Doc. No. 103-316, vol. 1 at 887 (1994). Section 1677(4)(C), 19 U.S.C. § 1677(4)(C), provides that the Commission may find a regional industry only when:

> (i) The producers within such market sell all or almost all of their production of the domestic like product in question in that market, and
> (ii) The demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

[42] SAA at 888.

In its original determinations concerning Belgium, France, and Germany, the Commission found a "Southeastern" regional industry consisting of cane growers and millers located in Florida.[43] It based its regional industry definition on two findings: that the Southeastern region received about 78 percent of the sugar imports from Belgium, France, and Germany; and that, prior to the LTFV sales of raw sugar in the "Southeastern region," Florida sugar producers (*i.e.*, growers and millers) supplied nearly all the raw sugar used by the two refiners in this region, with sales to those two refiners historically accounting for about 85 percent of the distribution of the raw sugar produced by Florida producers.[44]

In the original investigation concerning Canada, the Commission defined a "Northeastern states" regional industry consisting of cane sugar refiners located in the states of Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont.[45] In support of this conclusion, the Commission noted that 96 percent of the sales made by refineries located in the Northeastern states were to customers in that region during the period 1975-1979; only 5.5 percent of sales of refiners located outside the region were to customers in the region; less than one percent of imports from Canada entered the United States at Customs ports in states outside the region; and only about 3.3 percent of imports from Canada entering the United States through Customs ports located within the region were eventually sold in states outside the region.[46]

The parties agree that the Commission should now find a single national sugar industry. The domestic producers argue that, as a result of consolidations in the sugar industry, the industry no longer has distinct geographical markets where producers within such markets sell all or almost all of their production to consumers in those markets.[47] Rogers argues that the circumstances that led the Commission to find a regional industry consisting of the Northeastern states in the original investigation concerning Canada no longer exist. In particular, Rogers notes that, at the time of the original investigation, the subject imports from Canada consisted of refined cane sugar made from raw cane sugar that had been imported into Canada, refined in Eastern Canada, and then shipped into the Northeastern United States. Today, by contrast, the only sugar subject to the order being imported from Canada is refined beet sugar from Rogers' Taber, Alberta, facility, and that sugar is being imported into the Midwestern and North Central United States.[48]

With respect to refined sugar, the record reflects that some domestic processors now ship to locations over 1,000 miles from their plants, while others continue to serve closer markets.[49] Consolidation in the domestic industry has also affected shipping patterns. For example, United Sugars, founded in 1994, is a marketing cooperative made up of three cooperative beet sugar processors in the North Central states and one cane sugar refinery in Florida. United Sugars accounts for about *** percent of domestic refined sugar sales

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[43] The region was defined to include Savannah, Georgia, as well, but only in so far as one of the refiners that purchased the Florida producers' raw cane sugar was located there. There was no investigation of any possible cane growing or milling operations in Georgia. BFG Original Determination at 3.

[44] BFG Original Determination at 3-4.

[45] Canada Original Determination at 3-4.

[46] *Id.* at 4. In the original investigation concerning the European Union, no party proposed, and the Commission did not consider, any regional industry. EU Original Determination at 3-4.

[47] USBSA and USCSRA Posthearing Brief, Exhibit 11 at 50-53.

[48] Rogers Posthearing Brief at 24-25; CR at IV-4, PR at IV-3.

[49] CR at II-2, PR at II-1-II-2.

and ships to more than 2,000 destinations nationwide.[50] Similarly, Tate & Lyle, the largest domestic refiner, accounts for about *** percent of domestic production and ships nationwide from beet and cane sugar production facilities in Nebraska, Montana, Colorado, Wyoming, Maryland, New York, and Louisiana.[51] Consolidation among purchasers also has affected shipping patterns since the original investigations, with producers reporting that large purchasers have national account purchasing strategies.[52] In addition, the domestic producers submitted a chart of sugar trade flows in the United States showing that, in 1998, sugar flowed from surplus regions (West and South) to regions with larger demand (Chicago, Mid-Atlantic, and New England).[53] Finally, the record indicates that sugar prices are determined on a national basis, such that changed market conditions in any region may affect prices nationwide, and that refined sugar is traded on commodity markets.[54]

With respect to raw sugar, the record indicates that domestically-grown sugar cane is milled only in Florida, Hawaii, Louisiana, Texas, and Puerto Rico. By contrast, domestic cane sugar refineries are located in Florida, Louisiana, Texas, Georgia, California, New York, Puerto Rico, and Maryland. Moreover, Refined Sugars, a New York refiner, is a subsidiary of the Sugar Cane Growers Cooperative of Florida.[55] Thus, it appears that raw sugar shipments are also less regional today than they were at the time of the original determinations. In particular, the recent purchase of a New York refining facility by Florida cane grower/millers suggests that the "shipments out" criterion is unlikely to be satisfied with respect to the Southeastern (Florida/Georgia) region identified in the original investigations concerning Belgium, France, and Germany if the findings are revoked.

Based on the factors discussed, we find that the market for raw and refined sugar is now a national one. Moreover, the evidence suggests that these changes in marketing patterns since the original investigations have more to do with consolidations among producers and purchasers of raw and refined sugar than with the effects of the antidumping and countervailing duty orders. Thus, we find that the criteria specified in section 771(4)(C) of the statute would not likely be satisfied even if the findings and orders are revoked.

3. Whether the Domestic Industry Producing Raw and Refined Sugar Includes Sugar Cane and Sugar Beet Growers

In cases involving processed agricultural products, section 771(4)(E) of the Act authorizes the Commission to include growers of a raw agricultural input within the domestic industry producing the processed agricultural product if:

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[50] Tables I-12 and I-15, CR at I-39 and I-43, PR at I-30 and I-34; CR at I-40, PR at I-31; CR at II-2-II-3, PR at II-1-II-2; Hearing Tr. at 23-24.

[51] Hearing Tr. at 29; Tables I-12 and I-15, CR at I-39 and I-43, PR at I-30 and I-34.

[52] Hearing Tr. at 24.

[53] Hearing Tr. at 25; USBSA and USCSRA Posthearing Brief, Exhibit 11, Attachment C.

[54] Hearing Tr. at 30-31, 165; Rogers Posthearing Brief, Exhibit 2; USBSA and USCSRA Posthearing Brief at 9 and Exhibit 11 at 52.

[55] Tables I-15 and I-17, CR at I-43, I-45-I-46, PR at I-34 and I-36-I-37.

(a) the processed agricultural product [here, raw[56] and refined sugar] is produced from the raw product [sugar beets and sugar cane][57] through a single continuous line of production,[58] and

(b) there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon relevant economic factors.[59]

The domestic producers argue that the grower/processor provision is satisfied in this case, and the Commission should include sugar cane and sugar beet growers in the domestic industry producing raw and refined sugar.[60] Rogers argues that the provision is not satisfied for either cane or beet growers.[61] For the reasons discussed below, we find that the domestic industry producing raw and refined sugar includes sugar beet and sugar cane growers.

Because sugar cane and sugar beets have no other commercially significant use, they are substantially devoted to the production of raw and refined sugar. Similarly, raw and refined sugar are made completely from sugar beets or sugar cane.[62] We therefore find a continuous line of production.

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[56] As noted above, "raw" sugar is sugar cane that has been partially processed. CR at I-21, PR at I-17.

[57] "Raw agricultural product" is defined as any farm or fishery product. 19 U.S.C. §1677(4)(E)(iv).

[58] The statute provides that the processed product shall be considered to be processed from the raw product in a single continuous line of production if:

(a) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(b) the processed agricultural product is produced substantially or completely from the raw product.

19 U.S.C. § 1677(4)(E)(ii).

[59] In addressing coincidence of economic interest under the second prong of the test, the Commission may, in its discretion, consider price, added market value, or other economic interrelationships. Further:

(a) if price is taken into account, the Commission shall consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and

(b) if added market value is taken into account, the Commission shall consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

19 U.S.C. § 1677(4)(E)(iii).

[60] USBSA and USCSRA Posthearing Brief, Exhibit 11 at 35-37.

[61] Rogers Posthearing Brief at 17-18.

[62] CR at I-20-I-23, PR at I-17. We note that two byproducts are created during the sugar production (continued...)

The record indicates that, with respect to about *** of domestic refined sugar production, and a far higher percentage of domestic raw cane sugar production, growers and processors are under common ownership.[63] In cooperative arrangements, grower-owners contribute their harvest for processing and share in the net proceeds generated by the processors' sales of raw or refined sugar in proportion to the number of shares they own in the cooperative operation.[64] Non-cooperative cane millers and refiners and beet processors purchase sugar cane or sugar beets from growers or raw sugar from millers. However, the amount of sugar cane or sugar beets to be supplied to a processor by a particular grower is determined in advance by contracts in which growers and processors share the risk of over- or underproduction, and neither group can operate without such an understanding.[65]

Accordingly, we find that there is a substantial coincidence of economic interest between sugar cane and sugar beet growers, on the one hand, and cane millers, cane refiners, and beet processors, on the other. We therefore further find that the grower/processor provision is satisfied in these reviews and include sugar cane and sugar beet growers, together with cane millers, cane refiners, and beet processors, in the industry producing raw and refined sugar.

C. Related Parties

In defining the domestic industry in these reviews, 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. 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

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[62] (...continued)
process: molasses and pulp. These circumstances are distinguishable from the situation in which a substantial portion of the raw agricultural product is either not processed at all or is processed into products other than the one subject to investigation. *See, e.g.*, <u>Certain Non-Frozen Concentrated Apple Juice from China</u>, Inv. No. 731-TA-841 (Preliminary), USITC Pub. 3216 at 9-10 (July 1999). In these reviews, virtually all domestic production of sugar cane and sugar beets is subjected to the processes that result in the production of refined sugar. Although byproducts are created through that process, the record suggests that the domestic growers would not grow sugar cane and sugar beets solely for the purpose of having them processed into molasses and pulp. CR at I-22-I-23, I-27, PR at I-18-I-19, I-21.

[63] Three of the seven domestic beet sugar processors and two domestic cane refiners, collectively accounting for *** percent of domestic refined sugar production in 1998, are owned by grower cooperatives. Table I-12, CR at I-39-I-40 and n.53, PR at I-30-I-31 and n.53; Table I-15, CR at I-43, PR at I-34. U.S. Sugar Corp., a refinery built by a grower/miller operation in Florida, opened in October 1998 and is not reflected in our 1998 data. CR at I-43, PR at I-31.

[64] CR at III-B-6, PR at III-B-5.

[65] For example, Western Sugar's 1985 closure of its beet processing facility at Goodland, Kansas, marked the end of sugar beet farming in Kansas. CR at I-40, PR at I-31. Imperial did not reopen its beet processing facility in Freemont, Ohio, in 1997, after receiving commitments by growers to grow beets on fewer than half the acres needed to supply the plant. CR at I-40 n.52 and III-B-6-III-B-7, PR at I-31 n.52 and III-B-5-III-B-7. Similarly, cane refiner Domino Sugar attributes the anticipated *** closure of its Brooklyn refinery, which will reduce the company's total capacity by 25 percent, to "***." CR at I-44, PR at I-33; Hearing Tr. at 31-32, 101.

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.[66]

In the instant review concerning sugar from the European Union, domestic producers Western Sugar and Domino are related parties because they are owned by Tate & Lyle (US), which is owned in turn by Tate & Lyle PLC, a producer of refined sugar based in the United Kingdom. The domestic producers concede that Domino and Western meet the statutory definition of related parties, but they argue that appropriate circumstances do not exist to exclude them from the industry.[67] Rogers does not address this issue.[68]

Domino and Western collectively accounted for *** percent of domestic refined sugar production in 1998.[69] While *** reported ***, neither company reported any imports of subject merchandise.[70] Indeed, because Domino and Western operate under the same import restrictions as all other U.S. refiners (discussed in detail *infra*), their U.S. refining operations could not be devoted principally to refining imported raw sugar even if that were their preference. Therefore, we find that their primary interest lies in domestic production and appropriate circumstances do not exist to exclude Domino and Western from the domestic industry.

In addition, prior to its December 1998 acquisition by a group of domestic cane millers, domestic producer Refined Sugars was owned by Canadian producer Lantic Sugar, which is under common management with Rogers, and was therefore arguably a related party in the review concerning sugars and syrups from Canada at that time.[71] In 1998, Refined Sugars accounted for *** percent of domestic refined sugar production.[72] Refined Sugars reported *** during the period of investigation, but no imports or purchases of subject merchandise.[73] Accordingly, we find that Refined Sugars' primary interest lies in domestic production and that appropriate circumstances do not exist to exclude Refined Sugars from the domestic industry.

III. CUMULATION

A. Framework

Section 752(a) of the Act provides that:

> the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of

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[66] *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).

[67] USBSA and USCSRA Posthearing Brief, Exhibit 11 at 22-25.

[68] Rogers argues that domestic sugar cane refiners who import tier II raw sugar should be excluded from the industry. Rogers Posthearing Brief at 18-19. Since current tier II imports are from Mexico, a nonsubject country, there is no statutory basis for excluding such domestic producers from the industry. CR at II-8-II-9, PR at II-6.

[69] Tables I-12 and I-15, CR at I-39 and I-43, PR at I-30 and I-34.

[70] CR at I-52, PR at I-41.

[71] CR at III-A-1, PR at III-A-1.

[72] Table I-15, CR at I-43, PR at I-34.

[73] CR at I-52, PR at I-41.

this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market.[74]

Thus, cumulation is discretionary in five-year reviews, and the Commission may exercise its discretion to cumulate, if the statutory criteria are met.

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

(1) the degree of fungibility[75] between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and

(4) whether the imports are simultaneously present in the market.[76]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.[77] Only a "reasonable overlap" of competition is required.[78] Further, because of the prospective nature of Commission determinations in five-year reviews, the relevant inquiry is whether there would likely be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission's traditional factors, but also other conditions of competition that have a bearing on the likely volume and price trends of subject imports if the orders under review are revoked. Such an analysis is consistent with the Commission's analysis of cumulation in threat of material injury determinations, where the Commission has taken into

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[74] 19 U.S.C. § 1675a(a)(7).

[75] Commissioner Crawford notes that the Court of International Trade has recognized repeatedly that analyses of substitutability may vary under different provisions of the statute, based upon the requirements of the relevant statutory provision. *E.g.* U.S. Steel Group v. United States, 873 F. Supp. 673, 697 (Ct. Int'l Trade 1994); R-M Industries, Inc. v. United States, 848 F. Supp. 204, 210 n.9 (Ct. Int'l Trade 1994); BIC Corp. v. United States, 964 F. Supp. 391 (Ct. Int'l Trade 1997). Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute.

[76] *See* Titanium Sponge from Japan, Kazakhstan, Russia, and Ukraine, Inv. Nos. 751-TA-17-20, USITC Pub. 3119 at 7 (Aug. 1998); Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff'd*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade 1988), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996).

[77] *See e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[78] *See* Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int'l Trade 1994), *aff'd* 96 F.3d 1352 (Fed. Cir. 1996).

account, among other factors, significant differences in volume and price trends among subject imports in deciding whether to exercise its discretion to cumulate.

In a five-year review, however, the Commission "shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry."[79] Neither the statute nor the SAA provides further guidance on what factors the Commission is to consider in determining that imports "are likely to have no discernible adverse impact."[80] Prior to the URAA, cumulation was not required if the subject imports were "negligible," and had "no discernible adverse impact on the domestic industry."[81] Our prior practice provides some guidance in this regard, but we are mindful of the different focus for the review analysis on whether imports are "likely" to have no discernible adverse impact.[82] For these reviews, our discernible adverse impact analysis is focused on subject imports and competition among products that is likely to occur within a reasonably foreseeable time.

Here, the threshold criterion for cumulation is satisfied, because all of the sugar reviews were initiated on the same day.[83] The domestic producers argue that there is a reasonable overlap of competition and that the Commission should exercise its discretion to cumulate and cross-cumulate subject imports from

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[79] 19 U.S.C. § 1675a(a)(7).

[80] The Senate Report concerning the URAA explains that "it is appropriate to preclude cumulation where imports are likely to be negligible" but it is not appropriate to adopt a strict numerical test "because of the extraordinary difficulty of projecting import volumes into the future with precision." S. Rep. 103-412, at 51 (1994).

[81] 19 U.S.C. §1677(7)(c)(v) (1994).

[82] The pre-URAA provision regarding treatment of negligible imports did not include numerical criteria. Rather the pre-URAA statute directed the Commission to "evaluate all relevant economic factors regarding imports" including whether: the volume and market share of imports were negligible; sales transactions were isolated and sporadic; and the domestic market is price sensitive. 19 U.S.C. § 1677(7)(c)(v)(1994). *See* Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Inv. Nos. 701-TA-319-332, 334, 446-342, 344, and 347-353 (Final) and Inv. Nos. 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 at 28 (Aug. 1993) ("Flat-Rolled Carbon Steel").

[83] Commissioner Crawford determines that the statute precludes the Commission from cumulatively assessing the volume and effect of imports from two or more countries when such imports do not consist of the same subject merchandise. Section 752(a)(7) of the Tariff Act of 1930, as amended, gives the Commission discretion to cumulatively assess the volume and effect of imports of "the subject merchandise" from all countries as to which reviews were initiated on the same day, if such imports compete with each other and with the domestic like product in the U.S. market. The statute specifically defines the term "the subject merchandise" as "the class or kind of merchandise that is within the scope of an investigation . . . ." 19 U.S.C. § 1677(25). Here, the classes or kinds of merchandise that are within the scopes of the Canadian order and the EU order differ from each other, and from the scopes of the Belgium, France, and Germany findings. Therefore imports from Canada and the EU are not eligible for cumulation with each other or with imports from the other three countries. Because the scopes covering imports from Belgium, France, and Germany are the same, only imports from these countries are eligible for cumulation under the plain reading of the statute. *See* Separate Views of Commissioner Crawford on Cumulation.

Belgium, France, Germany, Canada, and the European Union.[84] Rogers argues that there is no reasonable overlap of competition between imports from Canada and other subject imports and that, in any event, the Commission should not cumulate imports from Canada because they are likely to have no discernible adverse impact.[85] For the reasons discussed below, we do not cumulate subject imports from Canada with subject imports from Belgium, France, Germany and the European Union, because we find that subject imports from Canada are likely to have no discernible adverse impact on the domestic industry. We do, however, determine to cumulate imports from Belgium, France, Germany, and the European Union.[86]

B. Discussion

1. No Discernible Adverse Impact

In 1998, U.S. shipments of refined sugar from Canada were 12,102 short tons,[87] in a market that consumes close to 10 million short tons of refined sugar annually.[88] U.S. imports from Canada represented approximately 0.1 percent of domestic consumption in 1997, 1998, and interim (Jan.-Mar.) 1999.[89] While Canada was permitted to export up to 11,354 short tons raw value ("STRV") under the Canada-specific TRQ in the 1997/98 season, its actual exports amounted to 10,495 STRV.[90] Rogers Sugar, the only Canadian producer of refined beet sugar, operated at a *** rate of capacity utilization in 1997-1998 and, aside from an

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[84] USBSA and USCSRA Posthearing Brief, Exhibit 11 at 37-50.

[85] Rogers Posthearing Brief at 19-23.

[86] To the extent that these Views address the likely impact of imports from Canada (in the event of revocation) before considering whether there is a reasonable overlap of competition between the Canadian and domestic like product, and among the Canadian product and other subject imports, these Views do not reflect the sequence of Chairman Bragg's analysis.

In considering whether to cumulate subject imports from Canada, Belgium, France, Germany, and the European Union, Chairman Bragg first determined whether there was a "reasonable overlap of competition" between the domestic like product and the subject imports, and among the subject imports. The Chairman then proceeded to determine whether any "subject merchandise is likely to have no discernible adverse impact." In these reviews, the Chairman determined that a "reasonable overlap of competition" exists between the domestic like product and subject imports from Canada, Belgium, France, Germany, and the European Union, as well as among all subject imports.

For the reasons set forth below, Chairman Bragg further determined that imports from Canada are likely to have no discernible adverse impact on the domestic industry if the order is revoked.

[87] Table IV-1, CR at IV-2, PR at IV-2.

[88] Table III-A-1, CR at III-A-2, PR at III-A-2; Table I-21, CR at I-56, PR at I-44.

[89] Table I-21, CR at I-56, PR at I-44.

[90] Table I-9, CR at I-34, PR at I-26.

expansion underway to make up for closure of another beet processing facility, reported no planned capacity expansions at its Taber facility.[91]

Further, as discussed below, we find no reasonable likelihood that imports from Canada at the tier II duty rate will occur if the order is revoked. Thus, we find that Canadian imports are not likely to exceed Canada's potential in-quota level of 19,169 STRV (11,354 STRV allocated plus potential share of 7,815 STRV first-come, first-served global quota) in the reasonably foreseeable future if the antidumping duty order is revoked. We view this volume of imports as minimal, since it would amount to 0.2 percent of 1998 domestic apparent consumption.[92] Moreover, the additional tonnage available in the U.S. market would in fact be only the difference between current imports from Canada and Canada's country-specific quota allocation, because any additional imports from Canada under the global first-come, first-served quota would necessarily come at the expense of imports from other countries, and not domestic industry shipments. Finally, as discussed below, we find that even such a minimal increase in imports from Canada is unlikely, due to Rogers' capacity restraints and marketing commitments. Accordingly, we find that imports from Canada are likely to have no discernible adverse impact on the domestic industry if the antidumping duty order is revoked, and decline to cumulate such imports with subject imports from Belgium, France, Germany, and the European Union.

2. Reasonable Overlap of Competition

Raw and refined sugar are fungible products. Both producers and purchasers describe raw and refined sugar as commodities subject to widely known quality standards, and virtually all responding producers and purchasers indicated that domestic sugar is interchangeable with imports from all subject European countries and that subject European imports are interchangeable with each other.[93] The record indicates that the channels of distribution for domestic and imported European refined and raw sugar are the same. All raw sugar is imported directly by or sold to domestic refiners, while imported refined sugar is sold to the same end users that purchase sugar directly from domestic refiners.[94] With respect to geographic overlap, imports from Belgium, France, Germany, and the European Union enter the United States through ports on the East and West coasts, including Baltimore, Los Angeles, New York and San Francisco.

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[91] Table IV-7, CR at IV-11, PR at IV-8; CR at IV-8-IV-10, PR at IV-6. We note that Rogers' capacity utilization did ***. From 1990 to 1994, imports from Canada were not limited by a quota and the antidumping duty deposit rate on imports from Canada was zero. During that period, imports of refined beet sugar from Canada averaged about 35,000 tons per year, or less than 0.5 percent of domestic consumption. Hearing Tr. at 115, 124, 174. Despite the price sensitivity of the U.S. sugar market, there is no evidence of record that subject imports from Canada have had any discernible adverse impact on the domestic industry either at 1990-1994 levels or at current lower levels. The only specific allegations of adverse impact made by the domestic industry with respect to imports from Canada concern imports of "stuffed molasses," a nonsubject product. CR at I-24-I-25, PR at I-19; Hearing Tr. at 30-31, 165-166. The domestic industry's only reference to subject imports from Canada is a vague assertion that during the period 1990-1994 importers of Canadian sugar "did discount" their prices in the Chicago area. Hearing Tr. at 166.

[92] Table I-21, CR at I-56, PR at I-44.

[93] CR at I-26-I-27 and II-24, PR at I-21 and II-17.

[94] CR at I-28, PR at I-22.

Domestic sugar is shipped nationwide.[95] Finally, with respect to simultaneous presence, Commerce data show that subject imports from Belgium, Germany, and the European Union were shipped during every quarter of 1997 and 1998 and in the first quarter of 1999, albeit in small amounts.[96]

Overall, we find that there is a reasonable overlap of competition between subject imports from Belgium, France, Germany, and the European Union and the domestic like product as well as among the subject imports. We further find no reason why this reasonable overlap of competition would not continue to exist if the antidumping findings covering sugar from Belgium, France, and Germany and the countervailing duty order covering sugar from the European Union were revoked. We therefore conclude that the subject imports from Belgium, France, Germany, and the European Union would be likely to compete with each other and with the domestic like product in the U.S. market if the order were revoked. Moreover, Belgium, France, and Germany are members of the European Union as well as its largest sugar producers (accounting for over 56 percent of EU production in marketing year 1997/98).[97] For these reasons, and because there is no indication of other significant differences in the conditions of competition in these markets such that the likely volume and effect of subject imports would be substantially different, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from Belgium, France, Germany, and the European Union in these reviews.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUGAR AND SYRUPS FROM CANADA 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 or order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the finding or order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[98] The SAA states that "under the likelihood 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 or order] . . . and the elimination of its restraining effects on volumes and prices of imports."[99] Thus, the likelihood standard is prospective in nature.[100] The statute states that "the Commission

[95] CR at IV-4, PR at IV-3.

[96] Imports from France were shipped in all quarters except the first and second quarters of 1997. CR at IV-4, PR at IV-3 (European Union); Department of Commerce, Official Imports Statistics (Belgium, France, and Germany quarterly import data) (included in public release of Aug. 25, 1999).

[97] Table IV-4, CR at IV-7, PR at IV-5.

[98] 19 U.S.C. § 1675a(a).

[99] SAA at 883-84. 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.

[100] 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 (continued...)

shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time."[101] 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]."[102] [103]

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to "consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked."[104] 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.[105] [106]

In these reviews, the domestic producers argued that the Commission must make an affirmative determination as long as any reasonable interpretation of the facts of record will support such a conclusion.[107]

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[100] (...continued)
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.

[101] 19 U.S.C. § 1675a(a)(5).

[102] 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*.

[103] In analyzing what constitutes a reasonably 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.

[104] 19 U.S.C. § 1675a(a)(1).

[105] 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.

[106] 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 these matters.

[107] USBSA and USCSRA Prehearing Brief at 8 and Posthearing Brief at 3, *citing* SAA at 883. The referenced language of the SAA states:

(continued...)

As we previously stated in response to a very similar argument in Synthetic Methionine from Japan,[108] to the extent that the domestic producers seek to constrain the Commission's discretion by means of this argument, 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 duty order on sugar and syrups from Canada would not be likely to lead to continuation or recurrence of material injury to the domestic industry producing raw and refined sugar 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."[109] In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for raw and refined sugar.

The most important condition of competition in the U.S. sugar market is the U.S. "sugar program," a term generally used to refer to multiple government policies affecting the sugar industry, including the loan program administered by the Commodity Credit Corporation ("CCC") of the U.S. Department of Agriculture ("USDA"), the tariff-rate quota ("TRQ"), and the safeguards program.[110] The purpose of the sugar program is to stabilize and maintain sugar prices in the U.S. market and thereby protect farm income.[111] The sugar program, as currently structured, is a fundamental change in market conditions since the existing orders were issued.

The United States is now, and historically has been, a net importer of sugar. Thus, the domestic industry produces almost entirely for domestic consumption, but is not able to satisfy domestic demand and exports very little.[112] In addition, the United States has international commitments under the World Trade Organization ("WTO") and North American Free Trade Agreement ("NAFTA") to accept a certain minimum

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[107] (...continued)

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.

[108] Inv. No. AA1921-115 (Review), USITC Pub. 3205 at 8-9 (July 1999).

[109] 19 U.S.C. § 1675a(a)(4).

[110] CR at I-29-I-37, PR at I-22-I-29; USBSA and USCSRA Prehearing Brief at 13-18; Rogers Prehearing Brief at 8-10; Rogers Posthearing Brief at 5, 30-31.

[111] CR at I-28, PR at I-22.

[112] Hearing Tr. at 14; Table III-A-1, CR at III-A-2, PR at III-A-2.

tonnage of raw and refined sugar imports annually.[113] The TRQ is administered to accommodate both U.S. demand and the minimum level of required imports through the operation of a two-tier system. Each year, USDA determines the "tier I" level of imports by calculating the amount of sugar the United States is required to permit to be imported pursuant to international commitments plus any additional amount needed to meet anticipated U.S. demand.[114]

So-called "within quota" or "tier I" imports are dutiable at 0.63 cent/pound for raw cane sugar and 1.43 to 1.66 cents/pound for refined sugar. Within quota imports from Mexico and Canada are duty free under NAFTA.[115] Any additional "over quota" sugar imports pay the tier II duty, which is currently 13.6 cents/pound raw and 9.32 to 14.41 cents/pound refined for Mexico and 15.82 cents/pound raw and 16.69 cents/pound refined for all other countries (including Canada). Over quota imports from countries other than Mexico and Canada also may be subject to additional "safeguard" duties.[116] USDA does not release all of the tier I quota at once. Therefore, it can adjust the amount permitted to be imported under the annual TRQ downward through the cancellation of one or more of three scheduled annual "tranches" (allotments) in the event that domestic stock-to-use ratios are higher than anticipated. However, the TRQ cannot be decreased below the level to which the United States has committed under its WTO and NAFTA agreements.[117]

The level at which the TRQ is set in turn determines the kind of loans made available by the CCC. Loans are made to cane millers and beet processors. The CCC loan rate is currently 22.9 cents/pound for refined beet sugar and 18 cents/pound for raw cane sugar.[118] If USDA sets the TRQ at more than 1.5 million tons, the CCC must make non-recourse loans, which give domestic producers the option of repaying the loan amount at the end of the season or forfeiting their collateral (*i.e.*, their sugar production) plus a one cent/pound forfeiture penalty. The government would have no recourse for collection on the loan balance beyond the forfeited collateral. If the TRQ is 1.5 million tons or less, the CCC makes recourse loans, which require the loan recipient to pay back the loan amount rather than merely to forfeit collateral. Since the sugar

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[113] Pursuant to market access commitments under the Uruguay Round agreements, the United States is required to permit imports of not less than 1,117,195 metric tons (1,231,484 short tons) annually of raw cane sugar and not less than 22,000 metric tons (24,251 short tons) annually of other sugars (including all refined sugar and raw beet sugar), syrups, and molasses at lower (tier I) duty rates. CR at I-30, PR at I-23. In fiscal year 2001, U.S. minimum commitments for imports from Mexico under NAFTA rise from 30,814 short tons to 275,575 short tons. Table I-9, CR at I-34, PR at I-26; CR at II-9, PR at II-6; Hearing Tr. at 17. It is unclear whether such additional tonnage from Mexico is intended to be in addition to or in place of tonnage currently included under the TRQ allocations of other countries. Hearing Tr. at 20-21.

[114] CR at I-30 and II-7-II-8, PR at I-23 and II-5-II-6; USBSA and USCSRA Posthearing Brief, Exhibit 11 at 56. While USDA sets the total quota amount, the Office of the United States Trade Representative ("USTR") allocates the quota among all eligible exporting countries.

[115] Table I-8, CR at I-32, PR at I-25.

[116] Table I-8, CR at I-32, PR at I-25. The tier II duty rate for countries other than Mexico declines to 16.2 cents/pound in 2000. Safeguard duties are provided for in the WTO Agreement on Agriculture. Current U.S. safeguard duties are price-based, which means that the additional duty varies with the declared import value of the merchandise. Because the trigger for application of safeguard duties is price-based, safeguard duties operate independently of tier II duties under the TRQ. Refined sugar imports with a declared import value exceeding 15.88 cents/pound are not subject to safeguard duties. In addition, no safeguard duties apply to imports from Canada and Mexico. CR at I-33-I-36, PR at I-24-I-28; Table I-10A, CR at I-36, PR at I-28.

[117] CR at II-7-II-8, PR at II-5; USBSA and USCSRA Posthearing Brief, Exhibit 11 at 56-58.

[118] CR at I-29, PR at I-22.

program was most recently revised in 1996, all loans have been non-recourse.[119] Thus, by operation of the loan rate and the non-recourse loan provision, the result of the CCC loan program is to create a minimum price for raw cane sugar and refined beet sugar (and indirectly for refined cane sugar) in the U.S. market.[120]

A related condition of competition is the USDA's goal of operating the sugar program at no cost to the U.S. Government. Prior to 1996, USDA was required by law to operate the loan program at no cost to the government. It achieved that goal by regulating the amount of imports under tier I of the TRQ in order to maintain a domestic price at least as high as the loan rate, thereby avoiding forfeitures. The legal requirement that the program be operated at no cost to the government was eliminated in 1996, but USDA has continued to operate the program on that basis.[121] All of the various tariffs applicable to U.S. sugar imports are effectively bound and cannot be increased consistent with U.S. international commitments. Therefore, once USDA reduces the TRQ to the minimum provided for by U.S. international commitments, it has no further discretionary means at its disposal for controlling import volumes and thereby maintaining the domestic price of sugar. Thus, once tier I of the TRQ is reduced to the minimum level consistent with international commitments, any factor that reduces domestic prices below the loan rate could trigger forfeitures on non-recourse loans, imposing costs on the government.[122]

Thus, the relationship between the world price of sugar and the U.S. price becomes critical in determining the volume of sugar, if any, that is likely to be imported at the tier II duty rate. The world price for sugar is historically quite volatile. Due to high world production of sugar, the world price is currently at near-record low levels.[123] Because of the price-support program and the TRQ, the U.S. price of sugar is generally higher and less volatile than the world price.[124] While the current world price for refined sugar is less than nine cents per pound, the current U.S. price for refined sugar is approximately 27.00 cents per pound.[125] For the first time since the current sugar program has been in place, the world price is low enough relative to the U.S. price that there is an incentive for some foreign producers to ship over-quota sugar to the United States even after paying the tier II duties (and safeguard duties, if triggered).[126] [127]

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[119] Hearing Tr. at 18, 53.

[120] CR at I-29-I-30 and II-6-II-7, PR at I-22-I-23 and II-3-II-5; USBSA and USCSRA Posthearing Brief, Exhibit 11 at 67-68; Hearing Tr. at 15. However, the domestic price for refined sugar has been consistently above 22.9 cents/pound since the loan rate was set at that amount in 1985. Figure V-5, CR at V-11, PR at V-8.

[121] CR at I-30, PR at I-23; USBSA and USCSRA Posthearing Brief, Exhibit 11 at 54-55; Rogers Posthearing Brief at 25.

[122] USBSA and USCSRA Posthearing Brief at 6-8; Hearing Tr. at 20-21, 54-55.

[123] Table I-6, CR at I-18, PR at I-15; CR at II-16, PR at II-10; Hearing Tr. at 58, 123, 153, 162; USBSA and USCSRA Posthearing Brief at 11-12 and Exhibit 9 at 2-3; USBSA and USCSRA Prehearing Brief at 18-19. World refined sugar prices are futures prices from the London International Financial Futures and Options Exchange. The world prices do not include import duties and are, in that sense, free market prices. CR at V-9, PR at V-7.

[124] CR at V-10, PR at V-7; Hearing Tr. at 96-99; Rogers Prehearing Brief at 8-9; USBSA and USCSRA Prehearing Brief at 20.

[125] USDA, Sugar and Sweetener (May 1999), Tables 2 and 5 (most recent prices reported are April 1999 world and May 1999 U.S.).

[126] Tier II imports are currently entering the United States from Mexico. We note, however, that (continued...)

Finally, as discussed above with respect to cumulation, we find that sugar is a substitutable commodity product regardless of source.[128] The U.S. sugar market is extremely price sensitive,[129] such that even very small price differences can cause purchasers to switch suppliers.[130] Moreover, the majority of sales in the U.S. market are made pursuant to annual contracts, most of which are negotiated during a narrow window of time in the fall after the size of the beet crop is estimated and the TRQ is set for the next year. As the number of market participants has declined through consolidations, price competition for these contracts has become more intense.[131]

Based on the record evidence, we find that these conditions of competition in the U.S. raw and refined sugar market are not likely to change significantly in the reasonably foreseeable future.[132] Accordingly, we find that current conditions in the U.S. raw and refined sugar market provide us with a reasonable basis upon which to assess the likely effects of revocation of the antidumping duty order within the reasonably foreseeable future.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the 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.[133] 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

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[126] (...continued)
sugar from Mexico is dutiable at a lower tier II rate than sugar from all other countries and that both Mexico and Canada are not subject to safeguard duties. Table I-8, CR at I-32, PR at I-25; Table I-10A, CR at I-36, PR at I-28; USBSA and USCSRA Prehearing Brief at 19-20; Hearing Tr. at 115-116, 168; Rogers Posthearing Brief at 8-9.

[127] Commissioners Crawford and Askey do not agree that the U.S. market is becoming an attractive market for those subject imports that are subject to tier II duties. *See* their Dissenting Views. In addition, they note that nearly all imports subject to tier II duties are from Mexico, and therefore have a lower tier II tariff rate than subject imports and are not subject to safeguard duties. CR at II-8-II-9, PR at II-6.

[128] While refined sugar from the various sources are good physical substitutes, differences in transportation costs among the sources may affect domestic purchasers' decisions to buy Canadian or EU sugar vis-à-vis the U.S. product.

[129] Commissioner Crawford does not join this conclusion.

[130] Domestic producers testified that sales can be won and lost based on price differences of as little as 0.1 cent per pound. Hearing Tr. at 28.

[131] CR at V-5, PR at V-5; Hearing Tr. at 25, 26, 28, 30-31, 72-73; USBSA and USCSRA Posthearing Brief at 8-10. The domestic producers also testified that, although contracts generally do not include meet and release clauses, purchasers will often refuse to take agreed upon shipments if prices fall, or will seek compensation in the current or next year's contract.

[132] We note that, under existing legislation, the U.S. sugar program is funded through September 2002. CR at I-29, PR at I-22.

[133] 19 U.S.C. § 1675a(a)(2).

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.[134]

In the original determination concerning Canada, the Commission found that imports from Canada of refined sugar increased from only one short ton in 1974 to a high of 138,000 short tons in 1977, then declined to 98,000 short tons in 1978, and were 81,000 tons in the first three quarters of 1979. It further found that such imports held a market share in the Northeastern States region of 4.5 percent in 1977, 3.3 percent in 1978, and 4.0 percent in interim (Jan.-Sept.) 1979.[135] At that time (from 1975 through 1981) the United States had no quota on sugar imports.[136] In 1980 and 1981, the years during and immediately following the original investigation and imposition of the antidumping duty order, imports from Canada fell to 638 and 2,597 short tons, respectively.[137] In 1982, the United States instituted absolute quotas on sugar imports, allocating to Canada 1.1 percent of the global quota. In the same year, the antidumping duty deposit rate applicable to Rogers declined from the original rate of just over one cent per pound to zero, where it has remained ever since.[138] During the period 1982-1986, imports from Canada ranged from 35,035 to 14,501 short tons.[139]

In 1987, the United States Customs Service ("Customs") ruled that refining imported raw cane sugar is not a substantial transformation of the sugar for purposes of establishing country of origin. Since that time, imports from Canada have consisted exclusively of refined beet sugar made from sugar beets grown in Canada.[140] Imports of refined sugar from Canada ranged from 10,509 to 10,870 short tons during 1987-1989.[141]

From 1990 through 1994 there was no quota on imports from Canada and the antidumping duty deposit rate was zero. During that period, imports of refined sugar from Canada ranged from 27,496 to 58,748 short tons, averaging about 35,000 tons per year (less than half of one percent of domestic consumption). In 1995 and 1996, when Canada shared in the first-come, first-served TRQ allotment, U.S. imports from Canada of refined sugar fell to 25,245 and 8,402 short tons, respectively.[142] Starting in 1997, Canada has been allocated an 11,354 STRV per year share of the TRQ, in addition to having access to the

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[134] 19 U.S.C. § 1675a(a)(2)(A)-(D). There is no potential for product-shifting in this review, because sugar can only be produced in dedicated facilities.

[135] Canada Original Determination at 7.

[136] CR at I-29, PR at I-22.

[137] Table IV-2, CR at IV-3, PR at IV-3.

[138] CR at I-13 and I-29, PR at I-11 and I-22; Hearing Tr. at 114. The antidumping duty order was revoked as to Redpath and Lantic, the other two remaining Canadian producers, in 1984 and 1987, respectively.

[139] Table IV-2, CR at IV-3, PR at IV-3.

[140] CR at I-25-I-26 and n.37, PR at I-20 and n.37. Customs' ruling means that raw cane sugar imported into Canada and refined in Canada is not considered a Canadian product for purposes of U.S. quotas, tariff rates, and safeguard duties but rather a product of the country of origin of the raw cane sugar.

[141] Table IV-2, CR at IV-3, PR at IV-3.

[142] Table IV-2, CR at IV-3, PR at IV-3; Hearing Tr. at 124.

first-come, first-served refined sugar quota of 7,815 STRV.[143] Imports from Canada were 12,731 STRV in 1997, 12,102 STRV in 1998, and 1,828 STRV in interim (Jan.-Mar. 1999).[144]

Thus, despite periods in which sugar imports from Canada have been subject to a zero antidumping duty deposit rate, zero tariff rate, and no quota, imports have never approached their pre-order levels. Moreover, despite the fact that sugar prices in Canada are far lower than U.S. prices, Canada has not filled its share of the TRQ since that share was allocated in 1997.[145] Based on this historical pattern and for the reasons discussed below, we find that the volume of subject imports from Canada is not likely to be significant if the order is revoked.

Like the United States, Canada is a large net importer of sugar at world market prices. Canada maintains no quota or similar controls on sugar imports.[146] Given the market orientation of the Canadian sugar industry as a whole and Rogers in particular, we find no basis to conclude that tier II imports from Canada would be likely to occur if the antidumping duty order were revoked. A representative of Rogers testified that, at the current U.S. and world prices, a sale in the United States at the tier II duty rate would be less profitable than Rogers' least profitable sale in Canada.[147] Indeed, the record reveals that, at current U.S. and world market prices and after accounting for significant inland transportation costs from west central Canada to a major U.S. market (noted *infra*), the net return received on a tier II sale in the United States would likely be considerably less than the net return after transportation costs on a sale at the world price (or a somewhat higher price) prevailing in Canada.[148] Thus, Rogers would have no incentive to make additional U.S. sales at the tier II duty rate, rather than sell its product in the Canadian home market, if the antidumping duty order were revoked.[149]

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[143] Hearing Tr. at 114-115; CR at I-31, PR at I-24.

[144] Table IV-1, CR at IV-2, PR at IV-2; Table IV-2, CR at IV-3, PR at IV-3. The data for 1997 and 1998 may include some nonsubject and/or non-quota merchandise, because USDA reports that within quota imports from Canada were 10,495 STRV in fiscal year 1997/98 and 10,527 STRV in fiscal year 1998/99. Table I-9, CR at I-34, PR at I-26; CR and PR at Appendix F. Short tons refined sugar divided by 0.96 equals STRV.

[145] Table I-9, CR at I-34, PR at I-26.

[146] Canada has modest customs duties on imported sugar. It also currently has a countervailing duty order in place against imports of sugar from the European Union and an antidumping duty order applicable to imports from the United States. Hearing Tr. at 111, 158.

[147] Hearing Tr. at 124-125, 173.

[148] As noted above, the current U.S. price for refined sugar is approximately 27 cents per pound, while the current world price is less than nine cents per pound. The tier II tariff rate applicable to Canada is 16.69 cents per pound in 1999 and will be 16.2 cents per pound in 2000. USDA, Sugar and Sweetener (May 1999), Tables 2 and 5; Table I-8, CR at I-32, PR at I-25; Hearing Tr. at 124-126; CR at V-2, PR at V-2 (transportation costs from Canada add an average of 4.5 percent to cost of sugar delivered to the United States).

[149] We note, in this regard, that the world price for refined sugar has been on a declining trend during 1998 and the first four months of 1999, while the U.S. price for refined sugar has been generally rising over the same period. USDA, Sugar and Sweetener (May 1999) at Tables 2 and 5.

Accordingly, we find that at most Canadian exports to the United States would be likely to increase only minimally in the reasonably foreseeable future if the antidumping duty order were revoked.[150] We further find, however, that even a minimal increase in imports from Canada is not likely, for several reasons.

Rogers is the only producer of refined beet sugar in Canada and the only Canadian producer still subject to the antidumping duty order. Because of the Customs ruling on substantial transformation, Rogers is the only Canadian producer that can export Canadian sugar to the United States. Rogers' total capacity to produce beet sugar declined from *** short tons in 1997 to *** short tons in 1998. While capacity utilization fell between 1997 and 1998, it was still *** percent in 1998.[151] Rogers' total production of beet sugar was *** short tons in 1997 and *** short tons in 1998, which is equivalent to approximately *** percent, respectively, of total U.S. consumption in those years.[152] Rogers reported plans to increase capacity at its Taber, Alberta, beet processing facility, but noted that the expansion was needed to replace capacity lost through the closure of a second beet processing facility in Manitoba in 1996 and would result in no net increase in overall beet sugar production capacity. Rogers plans no other capacity expansions at this time.[153] The vast majority of Rogers' shipments -- *** percent in 1997 and *** percent in 1998 -- is sold in its home market.[154] Moreover, because of high transportation costs associated with reaching its core market, Rogers holds an extremely large share of the market in west central Canada, including substantial sales to soft drink bottlers in the region, and is committed to maintaining its home market share.[155] Although the United States was Rogers' *** export market for beet sugar during 1997-1999, beet sugar exports to the United States represented only about one percent of total Canadian refined beet and cane sugar shipments.[156] Overall, given Rogers' large, secure domestic market, limited capacity, and high level of capacity utilization, we conclude that Rogers has little incentive to increase its exports to the United States significantly over current levels if the antidumping duty order is revoked.

In light of the foregoing considerations, we conclude that the volume of subject imports from Canada is not currently significant in the context of the conditions of competition in the U.S. and Canadian sugar

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[150] Because we find that Rogers would not ship over-quota sugar to the United States if the order were revoked, the most that Canadian imports to the United States could possibly increase is about 8,600 short tons, which represents the difference between total 1997/98 in-quota imports from Canada and the sum of the Canada-specific TRQ and the entire first-come, first-served global TRQ for refined sugar. Tables I-9 and I-11, CR at I-34 and I-37, PR at I-26 and I-29. That amounts to less than 0.1 percent of domestic consumption. Table I-21, CR at I-56, PR at I-44. The additional tonnage available in the U.S. market would in fact be only the difference between current imports from Canada and Canada's country-specific quota allocation, because any additional imports from Canada under the first-come, first-served quota would be at the expense of imports from other countries. We note that it is extremely speculative to assume that the Canadian producer will out-bid every other foreign producer and fill all of the first-come, first-served quota with its merchandise. We are giving the benefit of the doubt to the domestic producers, however, in this regard.

[151] Table IV-7, CR at IV-11, PR at IV-8.

[152] Table I-21, CR at I-56, PR at I-44; Table IV-7, CR at IV-11, PR at IV-8.

[153] CR at IV-10, PR at IV-6; Hearing Tr. at 122.

[154] Table IV-7, CR at IV-11, PR at IV-8. The *** of Rogers' beet sugar shipments in those years was exported to the United States.

[155] Hearing Tr. at 138-139, 141 (95 percent market share in Western Canada).

[156] Table IV-8, CR at IV-12, PR at IV-9.

markets. We further conclude that the volume of subject imports from Canada is not likely to reach significant levels within a reasonably foreseeable time if the antidumping duty order is revoked.

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 imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.[157]

In the original determination, the Commission found that underselling by Canadian refined sugar had forced domestic refiners in the Northeastern States region either to make substantial discounts from their list prices in order to meet competition or to risk the loss of grocery shelf space that was difficult to regain. The Commission also found several instances of lost sales where subject import prices were below domestic producers' cost of production. The Commission concluded that LTFV imports of sugar from Canada had contributed materially to price suppression and price depression of sugar sold in the Northeastern States region.[158]

As discussed in the context of conditions of competition in this market, sugar is a substitutable commodity product regardless of source, and the U.S. market for sugar is as price sensitive[159] today as the Commission found it to be in the original investigation. As noted above, however, we find that Rogers, the only Canadian producer still covered by the order, is not likely to significantly increase exports to the United States in the reasonably foreseeable future if the antidumping duty order is revoked. Thus, we find that the likely volume of imports from Canada resulting from revocation of the antidumping duty order would be so minimal that it is unlikely to have a significant effect on domestic prices for raw or refined sugar.[160] Accordingly, we conclude that the Canadian 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 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

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[157] 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.

[158] Canada Original Determination at 5, 8.

[159] Commissioner Crawford does not join this conclusion.

[160] The domestic producers contend that every 100,000 short tons of additional supply in the U.S. sugar market lowers the U.S. price by about 0.4 cent per pound. Hearing Tr. at 163-164. Because we think it is unlikely that imports from Canada would increase significantly from current levels, any price effects from such imports are not likely to be significant if the order is revoked.

develop a derivative or more advanced version of the domestic like product.[161] 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.[162] 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.[163] We have also considered the likely effects of subject imports on the government price-support program if the order were revoked.

In its original determination, the Commission found that, by depressing and suppressing domestic prices, subject imports from Canada contributed to the declining capacity utilization, profits, and return on investments of the regional producers. It also found that subject imports caused prices in the region to fall below the minimum support price, resulting in substantial forfeitures to the CCC.[164]

Given the myriad changes in the U.S. sugar market since imposition of the order at issue, it is difficult to assess whether there has been any improvement in the condition of the domestic industry as a result of the order. We do find, however, that the domestic industry producing raw and refined sugar is vulnerable to material injury if the order is revoked.[165] We base this finding on the low operating returns evident in some segments of the domestic industry and the overall lackluster financial performance of the industry as a whole, despite the operation of the U.S. sugar program.[166] In particular, we note that net profits as a percentage of net sales for cane refiners and non-cooperative beet processors declined from 5.6 percent in 1997 to 2.1 percent in 1998, and were 2.7 percent in interim (Jan.-Mar.) 1999, compared with 3.3 percent in interim 1998.[167] The ratio of net proceeds to net sales also declined between 1997 and 1998 for cooperative

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[161] 19 U.S.C. § 1675a(a)(4).

[162] 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 concerning sugar and syrups from Canada, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order were revoked is 1.0105 cents/pound for Rogers and 2.37 cents/pound for all others. 64 Fed. Reg. 48362 (Sept. 3, 1999).

[163] 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.

[164] Canada Original Determination at 5-6, 9-11.

[165] Commissioners Crawford and Askey find that the domestic industry is not vulnerable because the sugar program insulates the domestic industry from import competition and creates a minimum price in the U.S. market.

[166] *See generally* Tables III-B-3a, III-B-3b, III-B-4a, III-B-4b, and III-B-5a, CR at III-B-13-III-B-14, III-B-16-III-B-17, and III-B-19, PR at III-B-7-III-B-8, III-B-11-III-B-13.

[167] Table I-3B, CR at I-11, PR at I-10. Because cooperative beet processors do not include the cost of sugar beets in their cost of goods sold, their financial results are not comparable to those of non-cooperative producers. We note that their operating income as a percentage of net sales declined between (continued...)

cane millers.[168] Nevertheless, because we have concluded that no significant adverse volume or price effects are likely to occur if the order were revoked, we likewise find no reasonable likelihood that subject imports from Canada will have an adverse impact on either the domestic industry or the domestic price-support program. Therefore, we conclude that revocation of the antidumping duty order 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, likely negative effects on the domestic industry's development and production efforts, or likely forfeitures to the CCC under the price-support program within a reasonably foreseeable time.

V. REVOCATION OF THE ANTIDUMPING FINDINGS ON SUGAR FROM BELGIUM, FRANCE, AND GERMANY AND THE COUNTERVAILING DUTY ORDER ON SUGAR FROM THE EUROPEAN UNION ARE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME[169]

A. Legal Standard and Conditions of Competition

For purposes of our affirmative determinations with respect to sugar from Belgium, France, Germany, and the European Union ("EU"), we adopt the discussion of the legal standard and conditions of competition contained in sections IV.A and IV.B, *supra*. We also find that there is an additional condition of competition relevant to our analysis in these reviews: the EU sugar program.

The EU sugar program, which is part of the Common Agricultural Policy ("CAP"), is a complex arrangement including price controls, production controls, import restrictions, and export subsidies.[170] Under the program, sugar beets produced in the EU are annually designated as part of the "A quota," "B quota," or as "C sugar" prior to processing. The A quota is intended to assure production of the quantity of sugar needed to meet anticipated demand within the EU in the coming year. The B quota, which is generally between 10 and

[167] (...continued)
1997 and 1998, but was slightly higher in interim 1999 than in interim 1998. *See* Table III-B-3a, CR at III-B-13, PR at III-B-7.

[168] Table III-B-4a, CR at III-B-16, PR at III-B-11. The operating income as a percentage of net sales for non-cooperative sugar cane millers rose between 1997 and 1998. Table III-B-4b, CR at III-B-17, PR at III-B-12. Sugar cane growers' gross value of production less cash expenses declined between 1994 and 1996, the period for which data were available, while sugar beet growers' gross value of production less cash expenses increased between 1995 and 1997. Tables III-B-1 and III-B-2, CR at III-B-11-III-B-12, PR at III-B-4 and III-B-6.

[169] Commissioner Crawford and Commissioner Askey do not join this section. *See* their Dissenting Views.

[170] We are somewhat hampered in our ability to assess the full effects of the EU sugar program by the fact that the European respondents did not participate in these reviews. In the adequacy phase of these reviews, the Commission received no responses to the notice of institution from any interested party from Belgium, France, Germany, or the European Union. In the full phase of these reviews, the Commission received usable questionnaire responses from only two of the more than twenty EU sugar producers. CR at IV-5, PR at IV-4.

35 percent of the A quota, is set to assure that sugar stocks are adequate to meet shifts in supply or demand for A quota sugar in the EU. Any sugar not classified under the A or B quota is classified as C sugar.[171]

Sugar from the A quota can be either sold in the EU or exported, but all other sugar produced in the EU, unless needed from the B quota to meet demand, must be exported. Quota portions are allocated on the basis of historical production patterns.[172] Significantly, a producer's failure to fill its annual quota allotments can result in reduction of the next year's allotment.[173] As a consequence, producers have an incentive to overproduce in order to assure that they can always fill their quota allotments, and thus maintain their quota allotments from year to year. This results in substantial surplus production (*i.e.*, C sugar) that must be exported from the EU.

Under the EU program, guaranteed prices, known as "intervention prices," are set each marketing year for both A and B quota sugar. Intervention prices guarantee processors a minimum price for raw and refined sugar produced under the A and B quotas. In marketing year 1999/2000, the intervention price for A and B quota refined sugar is $740.07 per short ton, or approximately 37 cents per pound.[174] C sugar receives no price guarantee. In addition, the program provides for minimum prices that processors must pay to farmers for A and B quota sugar beets.[175] This guaranteed minimum price, which is well above both the world price and the U.S. price, acts not only to encourage the production of A and B sugar, but also indirectly benefits the production and export of C sugar because it makes overproduction of C sugar less damaging to the financial bottom line than it otherwise might be. Indeed, the programs for the A and B sugar are so lucrative that it is financially prudent for EU growers and processors to produce significant quantities of C sugar (which must be sold at a loss) in order to maintain the A and B quota levels.

In order to assure that producers receive the guaranteed minimum price for their A and B quota sugar production when that production is exported, EU sugar producers are given restitution payments at the end of the marketing year to make up the difference between the current world price and the internal price on quantities exported.[176] No payments are given for C sugar production, and EU producers are forced to pay penalties at the end of the marketing year if they cannot provide evidence that all C sugar was exported.[177] All

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[171] CR at I-14-I-15, PR at I-12.

[172] CR at I-15, PR at I-12.

[173] CR at II-10, PR at II-7.

[174] Table I-4, CR at I-16, PR at I-13; CR at I-15, PR at I-12.

[175] CR at I-15, PR at I-12.

[176] CR at I-15, PR at I-12-I-13. In five-year reviews concerning countervailing duty orders, the Commission is required to consider "information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement." 19 U.S.C. § 1675a(6). In its final determination in the five-year review concerning sugar from the EU, Commerce found that the EU export restitution program is a countervailable export subsidy, but that it is not a subsidy described in Articles 3 or 6.1 of the Subsidies Agreement, because it falls within an exception for certain agricultural subsidies governed by the Agreement on Agriculture. 64 Fed. Reg. 49464 (Sept. 13, 1999).

[177] CR at I-15, PR at I-12. Since marketing year 1995/1996, subsidized sugar exports from the European Union have been subject to limits, both in volume and subsidy value, under Uruguay Round commitments. Although official EU notifications of volume and subsidy value have not been made for the 1997/98 and 1998/99 marketing years, USDA predicts that they will exceed the EU's commitments, which will require the use of non-allocated subsidy commitments from prior years (until those are exhausted). CR

(continued...)

EU producers pay a production levy on their A and B sugar volumes in order to recoup the cost of export restitution payments made by the EU Commission. The levy on A sugar is relatively low, however (about 2 percent of the intervention price).[178]

Finally, the EU controls sugar imports through a system of variable tariffs which are imposed in addition to regular import duties listed in the Common Customs Tariff when world prices fall below a certain level. Those rates are frequently revised. This system of frequently changing tariffs has effectively shut out sugar imports to the EU, except those from countries that receive preferential treatment under the Lomé Convention and other such arrangements.[179]

In sum, despite the high internal price of sugar in the EU and the fact that EU producers are on average less efficient than U.S. beet sugar producers, the EU sugar program encourages large surplus production and makes the EU one of the world's largest net exporters of sugar.[180]

B. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the findings and order under review are 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.[181] 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.[182]

In the original determinations concerning Belgium, France, and Germany, the Commission found that subject imports of raw sugar represented 9 percent of the sugar refined in the Southeastern region and that these imports had taken sales from domestic cane millers, resulting in forfeiture of about 40 percent of the 1977/78 crop to the CCC.[183] In the original determination concerning the European Community, the Commission found that the EC had over 5 million short tons of sugar available for export from the 1981/82 crop, an amount which almost equaled total U.S. imports for 1981. It reasoned that, because the United States was the world's second largest importer of sugar, the EC would target the United States market if the existing countervailing duty order were revoked.[184]

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[177] (...continued) at I-16-I-17, PR at I-13-I-14.

[178] CR at I-19, PR at I-15-I-16.

[179] CR at II-11-II-12, PR at II-8.

[180] CR at II-12-II-13, PR at II-8-II-9; Table II-1, CR at II-5, PR at II-4 (including the EU among "major exporters" of refined beet sugar).

[181] 19 U.S.C. § 1675a(a)(2).

[182] 19 U.S.C. § 1675a(a)(2)(A)-(D). There is no potential for product-shifting in these reviews, because sugar can only be produced in dedicated facilities.

[183] BF&G Original Determination at 4-5.

[184] EU Original Determination at 8-9.

Current EU sugar exports to the United States are virtually nonexistent.[185] Nevertheless, our focus in five-year reviews is on the likely volume of subject imports that would enter the United States if the antidumping findings and countervailing duty order were revoked. Based on the facts in the record of these reviews, we find that the volume of cumulated imports of sugar from Belgium, France, Germany, and the European Union is likely to be significant in the reasonably foreseeable future if the findings and order are revoked.

The amount of surplus EU production available for export has increased significantly since the time of the Commission's original determinations. In crop year 1997/98, the last year for which complete data are available, EU sugar exports totaled over 7 million STRV, with "C" sugar alone totaling over 5 million STRV.[186] This amount is equal to about 73 percent of U.S. apparent consumption and more than three times total U.S. imports in 1998.[187] As discussed above, the EU sugar program requires that surplus production, including all "C" sugar, be exported. The EU is predicted to continue producing and exporting large surpluses over the next several years.[188] At present, the EU's largest export markets are principally in North Africa and the Middle East.[189] For the following reasons, however, we conclude that, despite the existence of the U.S. TRQ and safeguard duties, producers in the EU would be likely to shift a significant volume of C sugar export sales from third country markets to the United States if the antidumping findings on sugar from Belgium, France, and Germany and the countervailing duty order on sugar from the EU were revoked.

Because EU producers are required to export their surplus production and receive no direct export subsidies on exports of "C" sugar, they will sell that sugar in the market that provides the highest overall net return. As discussed above, taking into account tier II duties, the U.S. price for refined sugar presently exceeds the world price by about 1.5 cents/pound (about 17 percent).[190] Thus, if the findings and the order were revoked, EU producers would have an incentive to export to the U.S. market, given the commodity nature of the sugar market. This incentive will increase next year, when the tier II duty rate declines from 16.69 to 16.2 cents/pound. At that tier II duty rate, EU producers would earn a significantly higher return on sales in the United States (even after paying tier II duties) than on sales at the world price if the applicable antidumping findings and countervailing duty order were revoked.[191] We note, in this regard, that the world price for refined sugar has been on a declining trend during 1998 and the first four months of 1999, while the U.S. price

[185] CR at IV-1-IV-3, PR at IV-1; Table IV-2 at note 1, CR at IV-3, PR at IV-3.

[186] Table IV-4, CR at IV-7, PR at IV-5. The "C" sugar production total includes 314,000 STRV from Belgium/Luxembourg, 2,081,000 STRV from France, and 881,000 STRV from Germany. We find that the ability of EU producers to export C sugar to the United States is best measured in terms of their total surplus production rather than in more traditional measures of excess capacity and inventories.

[187] Table I-21, CR at I-56, PR at I-44.

[188] CR at IV-6, PR at IV-4.

[189] CR at II-12, PR at II-8.

[190] The most recent U.S. and world prices for refined sugar of record are 27 cents per pound and 8.79 cents per pound, respectively. USDA, Sugar and Sweetener (May 1999), Tables 2 and 5. The current tier II tariff rate applicable to the EU is 16.69 cents per pound. Table I-8, CR at I-32, PR at I-25.

[191] Our conclusion is based on the assumption that importers would set the entered value of EU sugar at no less than 15.88 cents per pound, thereby avoiding any additional safeguard duties. Table I-10A, CR at I-36, PR at I-28. An import value exceeding 15.88 cents per pound is certainly credible for Customs purposes when the U.S. price is 27 cents per pound.

for refined sugar has been generally rising over the same period.[192] Moreover, experts report that the world price is unlikely to increase significantly in the foreseeable future.[193] Because the net return that EU producers could obtain for their refined sugar in the United States (with a tier II duty of 16.2 cents/pound) is more than 20 percent higher than they could obtain selling at the world price, we conclude that they would sell a substantial portion of their four to five million STRV annual production of "C" sugar in the United States, if the antidumping findings and countervailing duty order were revoked.

In light of the foregoing considerations, we conclude that the volume of cumulated subject imports from Belgium, France, Germany, and the European Union is likely to reach significant levels within a reasonably foreseeable time if the antidumping findings on sugar from Belgium, France, and Germany, and the countervailing duty order on sugar from the European Union are revoked.

C. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping findings and countervailing duty order are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.[194]

In its original determination concerning sugar from Belgium, France, and Germany, the Commission found that subject imports undersold the domestic product by an average of 0.42 cent per pound, as a consequence of which Southeast regional producers were unable to sell a substantial portion of their raw sugar at a price equal to or greater than either the loan rate or their cost of production, resulting in forfeitures to the CCC.[195] In the original determination concerning sugar from the European Community, the Commission found that the domestic industry, which it characterized as just starting to recover, would again be threatened with material injury by a large influx of imports from the European Community if the order were revoked.[196]

As discussed above, because sugar is a fungible commodity product, the domestic sugar market remains today as price sensitive as it was at the time of the original determinations. Thus, small differences in price are sufficient to induce purchasers to switch suppliers, as the Commission found in 1979.[197] Due to the minimal volumes of current imports from Belgium, France, Germany and the European Union, as well as the lack of participation in these reviews by EU producers, we were unable to obtain meaningful current pricing or

[192] USDA, Sugar and Sweetener (May 1999) at Tables 2 and 5.

[193] USBSA and USCSRA Posthearing Brief at Exhibit 9 (citing, *inter alia*, statements by International Sugar Organization Executive Director Peter Baron, ISO Chief Economist Tony Hannah, German research firm F.O. Licht GmbH, French research firm Etudes et Recherches Sucrieres, Deutsche Bank Securities, and officials from Brazil and Thailand).

[194] 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.

[195] BFG Original Determination at 4-5.

[196] EU Original Determination at 4, 9.

[197] Hearing Tr. at 28; CR at II-22-II-24, II-26, PR at II-16-II-18.

average unit value information on such imports.[198] In any event, our focus in five-year reviews is on the likely price effects of subject imports if the relevant findings and order were revoked.

Because sugar is a commodity product sold primarily on the basis of price, EU producers would be likely to price their sugar below the prevailing U.S. price in order to induce U.S. refined sugar purchasers to switch from domestic sugar or third country imports to sugar from the EU. Moreover, the EU producers would have an incentive to continue sending their "C" sugar exports to the United States by underselling U.S. producers and third country imports until the additional volume of imports depressed the U.S. price at least to the point that sales of tier II imports no longer earned a net return greater than that on sales in third country markets at the world price. The substantial likely additional supply of sugar from the EU would also lower U.S. prices for all domestic producers, whether or not they actually lost sales volume to the EU product.

Accordingly, we conclude that there is likely to be significant underselling by the subject imports as compared with the domestic like product, and that sugar from Belgium, France, Germany and the European Union is likely to enter the United States at prices that would have a significant depressing or suppressing effect on prices for the domestic like product if the antidumping findings and countervailing duty order are revoked.

D. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the findings and order are 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.[199] 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.[200] As instructed by the statute, we have considered the extent to which any

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[198] Chairman Bragg notes that the statute 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, or fails to provide such information in the time or in the form or manner requested, or significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information contained in the record of the Commission's original investigation or any other information placed on the record in a review. *Id.*

Chairman Bragg infers that, in the event of revocation, producers in Belgium, France, and Germany will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original investigations.

[199] 19 U.S.C. § 1675a(a)(4).

[200] 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 or the magnitude of the net countervailable subsidy" 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

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improvement in the state of the domestic industry is related to the antidumping findings or countervailing duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.[201]

In its original determination concerning sugar from Belgium, France, and Germany, the Commission found that subject imports displaced domestic sales through underselling, causing domestic producers to build up inventories and suffer financial losses. The Commission further determined that the industry's losses would have been worse but for the ability to forfeit production to the CCC at the loan rate.[202] In its original determination with respect to sugar from the European Community, the Commission found that the domestic industry's production and capacity utilization were beginning to recover, and inventories were declining, but that the industry would be threatened with material injury if the countervailing duty order on sugar from the European Community were revoked.[203]

Given the myriad changes in the U.S. sugar market in the past twenty years, it is difficult to assess whether there has been any improvement in the condition of the domestic industry as a result of the findings and order at issue. As discussed above, however, we find that the domestic industry producing raw and refined sugar is vulnerable to material injury if the antidumping findings and countervailing duty order are revoked. As detailed above, we base this finding on the low operating returns evident in some segments of the domestic industry and the overall lackluster financial performance of the industry as a whole, despite the existence of the U.S. sugar program.[204]

We have found that, if the antidumping findings and countervailing duty order are revoked, substantial volumes of "C" sugar are likely to enter the United States at prices below the current U.S. price, eventually depressing the U.S. price to a significant degree.[205] The combination of lost sales volume and lost per-pound

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[200] (...continued)
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 determinations, Commerce determined that the magnitude of the dumping margins that are likely to prevail if the antidumping findings are revoked are 103 percent for Belgium, 102 for France, and 121 percent for Germany. 64 Fed. Reg. 5638 (Feb. 4, 1999). Although the statute does not expressly define the "magnitude of the net countervailable subsidy" to be used by the Commission in five-year reviews, it states that "[t]he administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated." 19 U.S.C. §1675a(b)(3). In its final five-year review determination, Commerce determined that the magnitude of the countervailable subsidy that is likely to prevail if the countervailing duty order on sugar from the European Union is revoked is 23.69 cents per pound. 64 Fed. Reg. 49464 (Sept. 13, 1999).

[201] 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.

[202] <u>BFG Original Determination</u> at 4-5.

[203] <u>EU Original Determination</u> at 4, 9.

[204] *See generally* Tables III-B-3a, III-B-3b, III-B-4a, III-B-4b, and III-B-5a, CR at III-B-13-III-B-14, III-B-16-III-B-17, and III-B-19, PR at III-B-7-III-B-8, III-B-11-III-B-13.

[205] A decline in the domestic price of refined sugar of two cents per pound would not bring the U.S. price down to the current loan rate of 22.9 cents per pound for refined beet sugar. Accordingly, we do not
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revenue that the domestic industry would suffer under these circumstances would be likely to result in substantial declines in the industry's production, shipments, capacity utilization, employment, profitability, and return on investment. Therefore, we conclude that revocation of the antidumping findings and/or countervailing duty order would 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, and likely negative effects on the domestic industry's development and production efforts within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on imports of sugar and syrups from Canada would not be likely to lead to continuation or recurrence of material injury to the U.S. raw and refined sugar industry within a reasonably foreseeable time. We further determine that revocation of the antidumping findings on imports of sugar from Belgium, France, and Germany, and/or the countervailing duty order on imports of sugar from the European Union is likely to lead to continuation or recurrence of material injury to the U.S. raw and refined sugar industry within a reasonably foreseeable time.

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[205] (...continued)
find that revocation of the findings and order is likely to trigger widespread forfeitures to the CCC within a reasonably foreseeable time, such as occurred at the time of the original investigations. Thus, there would likely not be a significant cost to the government as a result of the likely volume of future subject imports. However, the existence of a likely burden on a government support program is not necessary to support our affirmative determinations. *See* S. Rep. No. 249, 96th Cong., 1st Sess. at 88 (1979) ("Agricultural producers may well be materially injured by reason of subsidized or dumped imports when prices are well above the minimum support level."); Atlantic Sugar, Ltd. v. United States, 519 F. Supp. 916, 922 (Ct. Int'l Trade 1981) (lack of any increased burden on government price-support program "would not necessarily detract from an injury determination which was based on the impact of the imports on the producers themselves").

DISSENTING VIEWS OF COMMISSIONERS CRAWFORD AND ASKEY

Based on the records in these reviews, we determine that revocation of the antidumping duty order on sugar and syrups from Canada is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time; that revocation of the countervailing duty order on sugar from the European Union is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time; and that revocation of the antidumping findings on raw and refined sugar from Belgium, France, and Germany is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. In making our determinations, we join our colleagues in the findings with respect to like product and domestic industry, the relevant legal standard, and the conditions of competition that are distinctive to the domestic industry.[1] We concur in our colleagues' determination with respect to the subject merchandise from Canada and join in that discussion. However, we do not concur in our colleagues' determinations with respect to the order and findings on the European Union and Belgium, France, and Germany. Rather, we find that revocation of the order and findings on the European Union and Belgium, France, and Germany would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Our dissenting views follow.

I. INTRODUCTION

The sugar industry in the United States currently is protected by a tariff rate quota ("TRQ") for raw and refined sugar that operates in conjunction with a loan program administered by the U.S. Department of Agriculture. Imports under the TRQ enter at very low tariff rates, called tier I tariffs. The TRQ for raw cane sugar is allocated to countries based on historical trade. The TRQ for refined sugar is a first-come, first-served quota in which all countries can participate. However, only 7,815 short tons of refined sugar imports are eligible for entry at these very low tariff rates (1.43 to 1.66 cents per pound).[2] Any imports exceeding the tier I level must enter under tier II, at a much higher tariff. The tier II tariff for refined sugar from Canada and the European Union is 16.69 cents per pound.[3]

In addition to the TRQ, imports of refined sugar from the European Union also are subject to price-based safeguard tariffs.[4] The declared customs import value of the subject merchandise serves as the trigger for imposing a safeguard tariff, which operates on a sliding scale. For example, a refined sugar safeguard tariff of 1.41 cents per pound is triggered when the import price of the subject merchandise falls below 15.88 cents per pound. The tariff increases incrementally to 9.80 cents per pound as the price of the subject merchandise falls to 2.27 cents per pound.

The threshold question in these reviews is whether the TRQ and the safeguard tariffs place an upper limit on imports of the subject merchandise into the U.S. market, thereby rendering the outstanding orders and findings superfluous. We conclude that they do.

II. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUGAR AND SYRUPS FROM CANADA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

[1] Commissioner Askey also joins in the majority views on cumulation.

[2] CR and PR at Table I-8. The remainder of the refined sugar TRQ is allocated to Canada and Mexico, or is allocated to specialty sugars, which are not part of these reviews. CR at I-31-33, PR at I-23-24.

[3] CR and PR at Table I-8.

[4] Canadian refined sugar does not face this limitation.

As noted above, we concur in our colleagues' determination that revocation of the order on the subject merchandise from Canada would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. We therefore join the Commission's views with respect to the Canadian order.

III. REVOCATION OF THE COUNTERVAILING DUTY ORDER ON SUGAR FROM THE EUROPEAN UNION IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME[5]

Even if raw cane sugar and refined cane sugar are both included in the scope of the order on the European Union, almost all of the subject merchandise that would enter the U.S. market from the European Union would be in the form of refined beet sugar.[6] To enter at the low tier I tariff rates, the EU countries therefore must bid for the 7,815 metric tons of imports that are open for bids from any country.[7] Otherwise, all the sugar that enters the United States from the European Union is subject to the tier II tariff of 16.69 cents per pound.[8] In addition, any imports of the subject merchandise from the European Union with an import value lower than 15.88 cents per pound must pay a safeguard tariff.[9]

In light of the high tier II tariffs and safeguard tariffs applicable to the subject merchandise from the European Union, the countervailing duty order is superfluous. No imports of EU refined sugar would enter the United States if the CVD order were revoked because the tier II tariffs and safeguard tariffs do not make it economically rational for the EU producers to sell their refined sugar in the U.S. market.

The market price for sugar in the U.S. in 1999 is approximately 27.00 cents per pound.[10] Thus, for European producers to sell their sugar in the United States, the price (including tariffs) also must be approximately 27.00 cents per pound. EU refined sugar is subject to the tier II tariff rate of 16.69 cents per pound, plus any applicable safeguard tariffs. Thus, the import value of the EU sugar declared to Customs could be no more than 10.31 cents per pound to compete at the U.S. market price.[11] An import value of 10.31 cents per pound would trigger additional, safeguard tariffs of 3.22 cents per pound, which would make EU sugar uncompetitive in the U.S. market.

An importer of EU sugar cannot legally avoid safeguard tariffs and still compete in the U.S. market. The GATT Valuation Code and the customs valuation statute require that the import value be declared by reference to transaction value between arms-length parties.[12] This legal requirement prevents an importer from artificially inflating the price of sugar. It is not economically rational for an arms-length purchaser to pay more than the world price for EU sugar. Thus, the declared import value for sugar from the European Union likely would be

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[5] Commissioner Askey cumulated the subject merchandise in Sugar from the European Union and Sugar from Belgium, France, and Germany. The following analysis is equally applicable to the cumulated subject merchandise as it is to Sugar from the European Union alone and explains her decision in all cases.

[6] The European Union does not have significant capacity to produce sugar cane. Nearly all the cane sugar production in the European Union comes from France, which produces approximately 300,000 short tons per year. CR & PR at Table IV-4. This amount is approximately 3 percent of total U.S. domestic consumption of sugar in 1998. CR & PR at Table I-20.

[7] CR at I-32-33, PR at I-24. Any attempt to allocate this amount entirely to one country would be purely arbitrary, and it would be speculative to conclude that the European Union would capture any of this available allocation.

[8] CR & PR at Table I-8.

[9] CR & PR at Table I-10A.

[10] USDA, Sugar and Sweeteners (May 1999) at Table 5.

[11] This import value is derived by subtracting the tier II tariffs from the U.S. market price.

[12] 19 U.S.C. § 1401a.

somewhere between the world price of 9 cents per pound[13] and the market price for sugar in the U.S. minus the tier II tariffs (10.31 cents per pound). Even assuming that an EU importer would set the price most adverse to the domestic industry, nine cents per pound, the safeguard and tier II tariffs would operate to prevent any imports of this merchandise.

An import value of nine cents per pound triggers a 4.35 cents per pound safeguard tariff. Therefore, an importer of sugar from the European Union must pay 21.04 cents per pound in tariffs on imports of the subject merchandise -- a 4.35 cents per pound safeguard tariff and a 16.69 cents per pound tier II import tariff. The seller of EU sugar at the U.S. market price of 27 cents per pound thus would realize a return of only 5.96 cents per pound, over three cents per pound below the nine cents per pound price the sugar would command on the world market. Even the EU producers, who have a surplus of C sugar that they are required to sell, would receive a larger net return if they sold their C sugar in the world market.

An EU importer may legally avoid triggering the safeguard tariff only by pricing its merchandise well above the U.S. market price. To legally avoid safeguard tariffs, the declared customs import value of the EU product must be at least 15.88 cents per pound. When the tier II tariff of 16.69 cents per pound is added onto this import value, the price in the U.S. market for EU sugar would be at least 32.57 cents per pound. The U.S. market will not bear this price, which is nearly six cents per pound greater than the U.S. market price.

Moreover, if the U.S. price of sugar declines, the EU producers would be even less able to compete in the U.S. market. As discussed, to avoid safeguard tariffs the price of EU sugar must be 32.57 cents per pound. Currently, the U.S. market price is 27.00 cents per pound, and thus EU sugar would be priced too high to compete in the U.S. market. If the U.S. price were to drop below 27.00 cents per pound, the importer of EU sugar could not lower its prices because of the tariffs, and the EU sugar would be even less competitive in the U.S. market. As the U.S. market price falls, the EU importer must declare a cheaper import value for its sugar because, in an arms-length transaction, the U.S. market price would set the upper bound on the transaction price. With a lower import value comes a higher safeguard tariff. As a result, the overall tariffs paid would increase, and the EU importers would earn a lower net return on the sale of sugar imports into the U.S. market.

Based on the foregoing, we conclude that if the countervailing duty order on EU sugar is revoked, there will be no increase in the volume of imports of the subject merchandise from the European Union. Because there would be no increase in the volume of the subject imports if the order is revoked, revocation of the order would not be likely to have any negative effects on U.S. prices or any adverse impact on the domestic industry.

We have considered the other statutory factors that we are directed to take into account.[14] However, our consideration of these factors does not alter our determination.[15] Consequently, we determine that revocation of the CVD order on imports of sugar from the European Union is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

IV. REVOCATION OF THE ANTIDUMPING DUTY FINDINGS ON SUGAR FROM BELGIUM, FRANCE, AND GERMANY IS NOT LIKELY TO LEAD TO CONTINUATION OR

[13] USDA, Sugar and Sweeteners Report (May 1999) at Table 2.

[14] 19 U.S.C. § 1675a(a)(1). We are 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. The statute also provides that the Commission may consider the margin of dumping or the net countervailable subsidy when making its determination, but it must consider the nature of the subsidy in a countervailing duty determination. 19 U.S.C. § 1675a(a)(6).

[15] In this regard, we note that the Department of Commerce has characterized the EU subsidy as an export subsidy but has determined that Articles 3 and 6 of the Subsidies Agreement do not apply to it. However, the nature of the subsidy does not affect our analysis or our determination.

RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME[16]

As is true with revocation of the EU order, the sugar program will prevent any imports of sugar from Belgium, France, and Germany even if the antidumping duty findings on these countries were revoked.[17] Producers in Belgium, France, and Germany likely would not be able to sell their product in the U.S. market because of the tier II and safeguard tariffs.

Almost all imports of sugar from Belgium, France**,** and Germany would be subject to the tier II and safeguard tariffs because no tier I allocation is available specifically for them. As explained above with respect to the revocation of the EU order, to meet the U.S. market price of 27.00 cents per pound the combined tier II and safeguard tariffs would be 21.04 cents per pound, and the net return to the producers in those countries would be 5.96 cents per pound. Because the world price is nine cents per pound, it would not make economic sense for producers in these countries to sell in the U.S. market. As a result, revoking the antidumping duty findings would not cause an increase in the volume of the subject merchandise from any of these three countries. Also, as in the case of the EU merchandise, producers in these European countries would have no incentive to drive down U.S. prices because, by doing so, their merchandise would be even less competitive with lower U.S. prices.

Based on the foregoing, if the antidumping duty findings on raw and refined sugar from Belgium, France, and Germany are revoked, there will be no increase in the volume of imports of the subject merchandise from any of these countries. Because there would be no increase in the volume of the subject imports from Belgium, France, and Germany if the orders are revoked, revocation of the orders would not be likely to have any negative effects on U.S. prices or any adverse impact on the domestic industry.

We have considered the other statutory factors that we are directed to take into account.[18] However, our consideration of these factors does not have any effect on our determinations. Consequently, we determine that revocation of the antidumping duty findings on imports of raw and refined sugar from Belgium, France, and Germany is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

[16] Commissioner Askey cumulatively considered the effects of sugar from Belgium, France, and Germany with sugar from the European Union; her views as to all imports are set forth in the preceding section. She therefore does not join the analysis in this section.

[17] Commissioner Crawford finds that the subject imports from Belgium, France, and Germany are eligible for cumulation with each other because the scope of the orders in these reviews cover the same subject merchandise. However, as she finds that no subject imports from any of these countries would enter the U.S. market if the orders were revoked, cumulation of these imports is not relevant to her analysis.

[18] 19 U.S.C. § 1675a(a)(1). We are 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. The statute also provides that the Commission may consider the margin of dumping. 19 U.S.C. § 1675a(a)(6).

SEPARATE VIEWS OF COMMISSIONER CRAWFORD ON CUMULATION

As noted in the Views of the Commission, I find that only the subject imports from Belgium, France and Germany are eligible for cumulation with each other. In my view, the statutory prerequisite for cumulation is not met in the reviews of the orders covering imports from the European Union and Canada.

The statute establishes a prerequisite that defines what subject imports are eligible for cumulation. The statutory prerequisite requires that the scope of the merchandise subject to the outstanding orders and findings must be the same in each review. Therefore, cumulation of imports subject to orders and findings with different scopes is not permitted simply because the reviews are grouped together - - and thus initiated on the same day - - for administrative efficiency.

In 1994 the statutory provisions governing cumulation in original investigations and sunset reviews were amended.[1] In the context of a sunset review, the statute provides:

> the Commission may cumulatively assess the volume and effect of imports of *the subject merchandise* from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market.[2]

Thus, imports eligible for cumulation are imports of *the subject merchandise*. In turn, subject merchandise is defined as "the class or kind of merchandise that is within *the scope* of . . . a review . . . ."[3] Therefore, it is the class or kind of the merchandise subject to an order that defines eligibility for cumulation. If the scopes of orders covering imports from different countries are the same, then the classes or kinds of merchandise are the same, and imports from the different countries are eligible for cumulation. However, if the scopes of the orders covering imports from different countries are different, then the classes or kinds of merchandise are not the same, and the imports from the different countries are not eligible for cumulation. Consequently, the plain language of these statute requires a conclusion that only imports from countries covered by orders with the same scope are eligible for cumulation.

In amending the statute, Congress chose the definite article "the" (which is used to individualize or particularize a succeeding word) to modify the terms "subject merchandise" and "scope." On the other hand the omission of a definite article or the use of an indefinite article (such as "a") would have given the succeeding word an indefinite distributive force.[4] In other words, "the" denotes particular, singular noun. Consequently, Congress chose language that clearly manifests that there is a prerequisite of a single scope among orders under review before cumulation of the merchandise subject to those orders is permissible.

I recognize that in some circumstances the use of the singular is construed to include the plural. However, such a construction is neither automatic nor without limitations. For example, "*unless the context indicates otherwise* - words importing the singular include and apply to several persons, parties, or things."[5] In addition, the plural may be read to apply to the singular "if that is the intended or reasonably understood meaning

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[1] The statutory provisions are the same for original investigations and sunset reviews, and thus the statutory prerequisite for cumulation is the same in original investigations and in sunset reviews.

[2] § 752(a)(7) of the Act, 19 U.S.C. § 1675a(a)(7) (emphasis added).

[3] § 771(25) of the Act, 19 U.S.C. § 1677(25) (emphasis added).

[4] Webster's New International Dictionary (2d Ed.).

[5] 1 U.S.C. § 1 (emphasis added).

and effect."[6] In fact, "discrete applications are favored except where the contrary intent or reasonable understanding is affirmatively indicated."[7]

In my view, there is no basis for ignoring the clear meaning of the statute. Imports from each country are legally entitled to a separate sunset review, and, as a legal matter, each order or finding contains its own separate scope. Thus, the singular, not the plural, is in fact indicated by the context of the statutory provisions governing cumulation in sunset reviews. Therefore, applying the plural to the singular is not the intended or reasonably understood meaning and effect. Furthermore, no contrary intent is affirmatively indicated. Congress amended the cumulation provisions in sunset reviews at the same time the statutory provision permitting the grouping of reviews for administrative efficiency was enacted.[8] However, Congress did not authorize administrative efficiency as a basis for cumulation. Indeed, Congress did not refer to grouped reviews in the context of cumulation or to cumulation in the context of grouped reviews, either in the statute or in the legislative history. Therefore, Congress did not authorize cumulation among orders or findings with different scopes, nor did it indicate anywhere in the legislative history its intention to do so. Consequently, there is no basis to ignore the plain language of the statute, which requires a conclusion that only imports from countries covered by orders with the same scope are eligible for cumulation.

In these grouped reviews, the scope of the order covering imports from Canada differs from the scope of the order covering imports from the European Union, and both of these scopes are different than the scopes of the findings covering imports from Belgium, France and Germany. Therefore, imports from Canada and the European Union are not legally eligible for cumulation with each other or with imports from Belgium, France or Germany. However, the scopes of the findings covering imports from Belgium, France and Germany are the same. Therefore, imports from these three countries are the only imports legally eligible for cumulation with each other.

[6]Sutherland Statutory Construction (5th Ed.) § 47.34 at 273-74.

[7]Id. at 274; First Nat'l Bank in St. Louis v. Missouri, 263 U.S. 640, 657 (1924); cf. Ferro Union, Inc. v. United States, 41 F.Supp. 1310, 1326 (CIT 1999).

[8]See § 751(c)(5)(D) of the Act, 19 U.S.C. § 1675(c)(5)(D).