

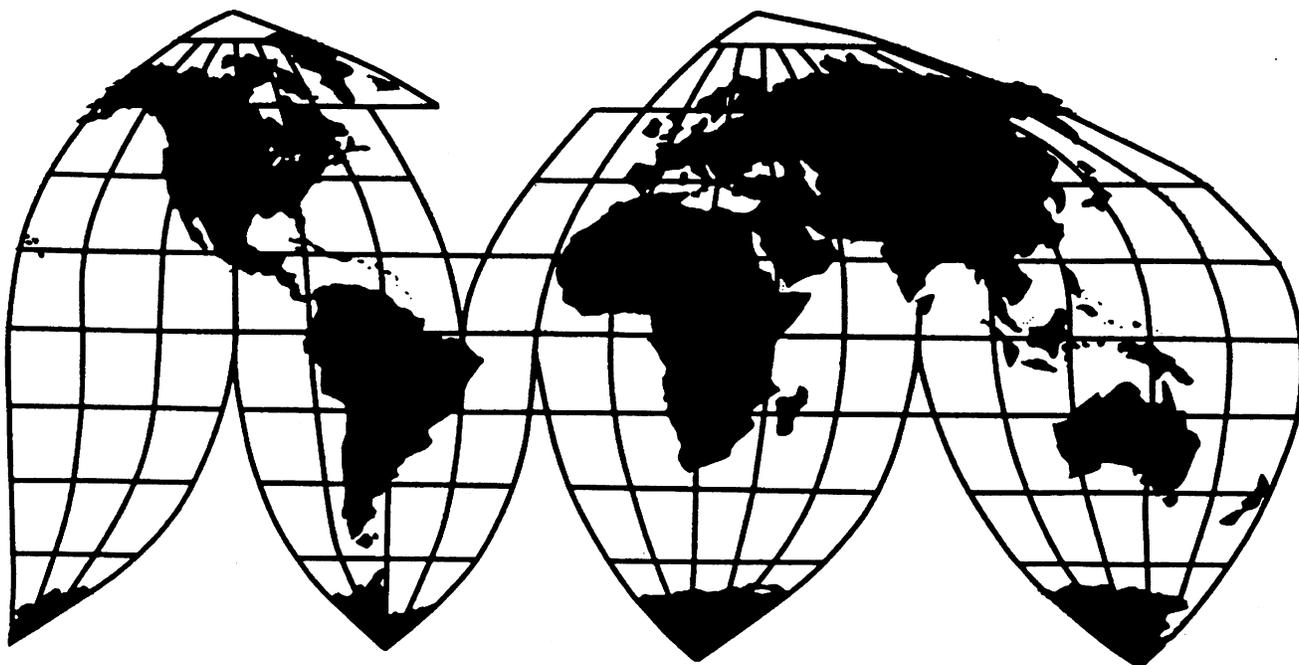
# Granular Polytetrafluoroethylene Resin From Italy and Japan

Investigations Nos. 731-TA-385 and 386 (Review)

Publication 3260

December 1999

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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*Staff assigned:*

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Ray Cantrell, *Commodity Industry Analyst*  
Clark Workman, *Economist*  
Jim Westcott, *Accountant*  
Gracemary Rizzo, *Attorney*

Vera Libeau, *Supervisory Investigator*

**Address all communications to  
Secretary to the Commission  
United States International Trade Commission  
Washington, DC 20436**

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## **Granular Polytetrafluoroethylene Resin From Italy and Japan**



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**Note.—Information that would reveal the confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.**

## GLOSSARY

AlliedSignal .....	AlliedSignal, Inc.
Asahi .....	Asahi Fluoropolymers, Inc.
Ausimont. ....	Ausimont USA, Inc.
*** .....	***
Commerce .....	U.S. Department of Commerce
Commission/USITC .....	U.S. International Trade Commission
Custom Compounding .....	Custom Compounding, Inc.
Customs .....	U.S. Customs Service
Daikin America .....	Daikin America, Inc.
Daikin Industries .....	Daikin Industries, Inc.
DuPont .....	E.I. DuPont de Nemours & Co.
DuPont-Mitsui .....	DuPont-Mitsui Fluorochemicals, Ltd.
FR .....	<i>Federal Register</i>
HTS .....	Harmonized Tariff Schedule of the United States
ICI .....	ICI Americas, Inc.
JETRO .....	Japan External Trade Organization
Montefluos .....	Montefluos S.p.A.
PTFE .....	Polytetrafluoroethylene
<i>Response</i> .....	Response to the Commission's Notice of Institution
TSUS .....	Tariff Schedules of the United States
UN .....	United Nations
Whitford Polymers .....	Whitford Polymers, Inc.

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

Investigations Nos. 731-TA-385-386 (Review)

**GRANULAR POLYTETRAFLUOROETHYLENE RESIN  
FROM ITALY AND JAPAN**

**DETERMINATIONS**

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

**BACKGROUND**

The Commission instituted these reviews on May 3, 1999 (64 F.R. 23677, May 3, 1999) and determined on August 5, 1999 that it would conduct expedited reviews (64 F.R. 44537, August 16, 1999). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on December 21, 1999.

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

<sup>2</sup> 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”), that revocation of the antidumping duty orders covering granular polytetrafluoroethylene (“PTFE”) resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1</sup>

### I. BACKGROUND

In August 1988, the Commission determined that an industry in the United States was being materially injured by reason of imports of granular PTFE resin from Italy and Japan that were being sold at less than fair value.<sup>2</sup> That same month, Commerce issued antidumping duty orders on imports of granular PTFE resin from Italy and Japan.<sup>3</sup> Subsequently, Commerce amended the scope of the order on Italy to cover wet raw polymer, an intermediate product exported from Italy to the United States.<sup>4</sup>

On May 3, 1999, the Commission instituted these reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on granular PTFE resin would likely lead to continuation or recurrence of material injury.<sup>5</sup> The Commission received one response to the notice of institution from E.I. DuPont de Nemours & Company (“DuPont”), the major domestic producer of granular PTFE resin. No producer, exporter, or U.S. importer of either Italian or Japanese granular PTFE resin filed a response to the notice of institution.

In five-year reviews, the Commission initially determines whether to conduct a full review (which would 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.<sup>6</sup> If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

On August 5, 1999, the Commission voted to conduct expedited reviews in the subject five-year reviews involving granular PTFE resin.<sup>7</sup> In this regard, the Commission determined that the domestic interested party group response was adequate.<sup>8</sup> Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group

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<sup>1</sup> Commissioners Crawford and Askey dissenting. They join Sections I, II, III. A., and IV. A.-B., of this opinion, except as otherwise noted. For a complete discussion of their analysis, see their separate views.

<sup>2</sup> Granular Polytetrafluoroethylene Resin from Italy and Japan Invs. Nos. 731-TA-385-386 (Final) USITC Pub. 2112 (August 1988) (“Original Determination”) at p. 2.

<sup>3</sup> 53 Fed. Reg. 33163 (Aug. 30, 1988) (Italy) and 53 Fed. Reg. 32267 (Aug. 24, 1988) (Japan).

<sup>4</sup> 58 Fed. Reg. 26100 (Apr. 30, 1993).

<sup>5</sup> 64 Fed. Reg. 23677 (May 3, 1999).

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

<sup>7</sup> 64 Fed. Reg. 44537 (Aug. 16, 1999).

<sup>8</sup> See Explanation of the Commission Determination on Adequacy in Granular PTFE Resin from Italy and Japan, (August 16, 1999) (“Adequacy Explanation”).

response was inadequate.<sup>9</sup> The Commission did not find any circumstances that would warrant conducting a full review. The Commission, therefore, determined to conduct an expedited review.<sup>10</sup> Subsequently, Commerce extended the date for its final results in the expedited reviews from August 31, 1999, to November 29, 1999.<sup>11</sup> On September 20, 1999, the Commission revised its schedule to conform with Commerce's new schedule.<sup>12</sup>

On December 2, 1999, DuPont filed comments pursuant to 19 C.F.R. § 207.62(d) arguing, as it had in its response to the notice of institution, that revocation of the antidumping duty orders on granular PTFE from the subject countries would likely lead to a recurrence of material injury to the domestic industry within a reasonably foreseeable time.<sup>13</sup>

## 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."<sup>14</sup> 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."<sup>15</sup> In its final five-year review determination, Commerce defined the subject merchandise as "granular polytetrafluoroethylene resin ("PTFE"), filled or unfilled. Also included in the scope is PTFE wet raw polymer exported from Italy."<sup>16</sup> Commerce indicated that PTFE dispersions in water, PTFE fine powders, and, additionally, reprocessed PTFE were excluded from the scope of the order. It further noted that the subject merchandise is classified under HTS subheading 3904.61.00.<sup>17 18 19</sup>

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<sup>9</sup> See Adequacy Explanation.

<sup>10</sup> See Adequacy Explanation.

<sup>11</sup> 64 Fed. Reg. 48579 (Sept. 7, 1999)

<sup>12</sup> 64 Fed. Reg. 52105 (Sept. 27, 1999).

<sup>13</sup> DuPont Comments at 2; DuPont Response to the Notice of Institution ("DuPont Response") at 3.

<sup>14</sup> 19 U.S.C. § 1677(4)(A).

<sup>15</sup> 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

<sup>16</sup> 64 Fed. Reg. 23596 (May 3, 1999)

<sup>17</sup> Id.

<sup>18</sup> In the review concerning granular PTFE from Italy, Commerce's current scope, with the inclusion of wet polymer, is slightly broader than the scope in the original investigation. In 1993, as a result of an affirmative circumvention determination, Commerce amended the scope of the order on Italy to cover wet raw polymer, an intermediate product exported from Italy to the United States. Commerce's anti-circumvention inquiry concerned PTFE wet polymer manufactured by Montefluos in Italy and exported to a related U.S. firm (Ausimont), which used it to produce granular PTFE resin. Commerce determined, among other things, that the monomer production processes and suspension polymerization processes used to produce PTFE wet raw polymer "impart the basic physical characteristics that distinguish granular PTFE resin from other forms of PTFE resin" and that the post-treatment processes that then transform PTFE wet raw polymer into granular PTFE resin "do not fundamentally alter the nature of the product." 58 Fed. Reg. 26100 (April 30, 1993).

In its original determination, the Commission defined the domestic like product to correspond to the scope as first defined by Commerce, all granular PTFE resin, both filled and unfilled. Original Determination at 13. The amendment of the scope by Commerce raises the possibility of two domestic like products, granular PTFE resin and

(continued...)

We find based on the facts available, that the appropriate definition of the domestic like product in this expedited review is granular PTFE resin, co-extensive with Commerce's scope, for the reasons stated in the Commission's original determination.

## **B. Domestic Industry**

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."<sup>20</sup> We define the domestic industry, as the Commission did in the original investigations, to include all domestic producers of granular PTFE resin.<sup>21 22</sup>

## **C. Related Parties**

We must further decide whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to section 771(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.<sup>23</sup>

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<sup>18</sup> (...continued)

wet raw polymer. However, no party has argued for such a definition. It appears that the two resins share fundamental characteristics and that there is no domestic production of wet raw polymer for sale. We do not consider finding separate like products to be appropriate in this case. See e.g., Synthetic Indigo from China, Inv. No. 731-TA-851, USITC Pub. 3222 at 7 (August 1999) (Preliminary) ("indigo slurry," a crude form of indigo, not considered a separate domestic like product since there is no domestic production of "indigo slurry" for domestic sales).

<sup>19</sup> We note that DuPont argued that the Commission should define the domestic like product as all granular PTFE resin, and no party advocated a contrary definition. DuPont Response at 3.

<sup>20</sup> 19 U.S.C. § 1677(4)(A).

<sup>21</sup> In the original determination, the Commission included Ausimont as part of the domestic industry. Original Determination at 16-17. Since that time, Ausimont sold its integrated, granular PTFE resin plant and constructed a new PTFE finishing facility, producing finished grades of granular PTFE resin using \*\*\*. Confidential Staff Report (September 30, 1999) ("CR") at I-9-10; Public Version of Staff Report ("PR") at I-7. It is not clear whether Ausimont's finishing processes (as detailed in 58 Fed. Reg. 21600) constitute sufficient production-related activity to be included in the domestic industry. We note that Ausimont did not respond to the Commission's notice of institution and has not provided any data in this proceeding.

<sup>22</sup> Chairman Bragg determines that Commerce's analysis of Ausimont's finishing processes provides a sufficient basis from which to infer, for purposes of these reviews, that these finishing processes do not constitute sufficient production related activity to be included in the domestic industry. 58 Fed. Reg. 21600. Chairman Bragg, therefore, finds that Ausimont is not a domestic producer of the like product. Chairman Bragg notes that she would have reached the same conclusion of likely continuation or recurrence of material injury even if she had included Ausimont in the domestic industry.

<sup>23</sup> See 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). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;

(continued...)

In this review, a related party issue arises with respect to DuPont, the largest U.S. producer of the domestic like product and the sole responding party. DuPont is a participant in a joint venture in Japan that manufactures and exports granular PTFE resin.<sup>24</sup> DuPont owns \*\*\* of Mitsui DuPont Fluorochemicals (“MDF”) a Japanese producer of the granular PTFE resin.<sup>25</sup> Consequently, DuPont appears to fit the related party definition under the statute.<sup>26</sup>

DuPont reports that it did not import any subject merchandise from either of the subject countries in 1998.<sup>27</sup> Further, it held a \*\*\* percent share of domestic shipments of unfilled granular PTFE resin in 1997.<sup>28</sup> According to DuPont, in 1998, it produced approximately \*\*\* of granular PTFE resin, which is roughly \*\*\* of granular PTFE production in the United States.<sup>29</sup>

Since the period covered by the original investigations, DuPont has made significant investments in fluoropolymers production, including PTFE. DuPont states that, with respect to its U.S.-based operations, it has made \*\*\*.<sup>30</sup>

These facts indicate that DuPont is committed to its domestic production of granular PTFE resin, and that its primary interest lies in domestic production and not importation. We therefore find that appropriate circumstances do not exist to exclude DuPont from the domestic industry.<sup>31</sup>

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<sup>23</sup> (...continued)

(2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and

(3) the position of the related producer vis-à-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Sebacic Acid from the People’s Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

<sup>24</sup> DuPont Response at 10.

<sup>25</sup> DuPont Response at 10.

<sup>26</sup> The Commission addressed the same issue in the original determination and concluded that DuPont was a related party but that it should not be excluded from the domestic industry given that DuPont was a major domestic producer of granular PTFE resin and that its imports from Japan were negligible. Original Determination at 15.

<sup>27</sup> DuPont Response at 10.

<sup>28</sup> DuPont Response at 10.

<sup>29</sup> DuPont Response at 10.

<sup>30</sup> DuPont Supplemental Response at 3.

<sup>31</sup> The available facts indicate that two other domestic producers of granular PTFE resin, Daikin America, Inc., (“Daikin”) and ICI Americas, Inc., (“ICI”) fall within the definition of related party since both are partially owned by and import from producers in the subject countries. CR at I-4, I-8; PR at I-4, I-7. However, there is insufficient evidence in the record to determine whether they should be excluded from the domestic industry. Neither Daikin nor ICI responded to the notice of institution and neither has provided any data during this proceeding. The Commission did not exclude ICI from the industry in making its original determination. Original Determination at 15.

### III. CUMULATION

#### A. Framework<sup>32</sup>

Section 752(a) of the Act provides that:

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

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market.

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry. We note that neither the statute nor the SAA provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.<sup>34 35</sup>

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<sup>32</sup> Chairman Bragg does not join this section of this opinion. Although Chairman Bragg agrees with the majority’s conclusion with respect to cumulation in these reviews, she does not join the majority’s analytical framework on this issue. See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate From China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999). In particular, Chairman Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining that there is likely to be a reasonable overlap of competition in the event of revocation.

<sup>33</sup> 19 U.S.C. § 1675a(a)(7).

<sup>34</sup> Vice Chairman Miller and Commissioners Hillman and Koplan note that the legislative history to the URAA provides guidance in the interpretation of this provision. The Senate Report on the URAA clarifies that “it is appropriate to preclude cumulation [in five-year reviews] where imports are likely to be negligible.” S. Rep. 103-412, at 51 (1994). The legislative history further explains that it is not appropriate “to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision” and, therefore, “the ‘no discernible adverse impact’ standard is appropriate in sunset reviews.” Thus, we understand the “no discernible adverse impact” provision to be largely a negligibility provision without the use of a strict numerical test of the sort now required by the statute in original antidumping and countervailing duty investigations. 19 U.S.C. § 1677(24). Indeed, before enactment of the URAA, cumulation was not required if the subject imports were “negligible and have no discernable adverse impact on the domestic industry.” 19 U.S.C. § 1677(7)(C)(v)(1994). Because of the similarity of the five-year provision with the pre-URAA test for negligibility, the Commission’s prior negligibility practice may provide some guidance in applying the “no discernible adverse impact” provision in five-year reviews.

<sup>35</sup> Commissioner Askey notes that the language of section 752(a)(7) of the Tariff Act of 1930 (the “Act”), as amended, clearly states that the Commission has the discretion to cumulate subject imports for purposes of its sunset analysis, as long as the statutory requirement of competition between the subject countries and the domestic like product is satisfied. Section 752(a)(7) also clearly states, however, that the Commission is precluded from exercising this discretion if the imports from a country subject to review are likely to have “no discernible adverse

(continued...)

As stated above, in order to cumulate, the statute requires that subject imports would be likely to compete with each other and with the domestic like product. The Commission has generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.<sup>36 37 38</sup> Only a "reasonable overlap" of competition is required.<sup>39</sup> 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 significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.<sup>40</sup>

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<sup>35</sup> (...continued)

impact on the domestic industry" upon revocation of the order. 19 U.S.C. ) 1675a(a)(7). Thus, under this provision, the Commission must find that the subject imports from a country will have a "discernible adverse impact on the domestic industry" after revocation of the order before cumulating those imports with other subject imports. Accordingly, the Commission's task under this provision is a straightforward one. To determine whether the Commission is precluded from cumulating subject imports from a particular country, the Commission must focus on how significantly the imports will impact the condition of the industry as a result of revocation, and not simply on whether there will be a small volume of imports after revocation, i.e., by assessing their negligibility after revocation of the order. If the impact of the imports is not discernible, then the Commission is precluded from cumulating those imports with other subject imports. See Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

<sup>36</sup> The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market.

<sup>37</sup> 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.

<sup>38</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

<sup>39</sup> 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).

<sup>40</sup> See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int'l Trade 1992) (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

Here, the statutory requirement that all of the granular PTFE resin reviews be initiated on the same day is satisfied.<sup>41</sup> For the reasons discussed below, we determine to cumulate imports from Italy and Japan.

## **B. Discussion**

### **1. Reasonable Overlap of Competition<sup>42</sup>**

DuPont argues that all imports of all grades of granular PTFE resin from Italy and Japan compete with each other and with the domestic like product.<sup>43</sup> It, therefore, contends that there is a reasonable overlap of competition and that the Commission should exercise its discretion to cumulate subject imports from the subject countries.<sup>44</sup>

The record indicates that domestically produced and imported granular PTFE resin are substitutable products. Granular PTFE resin is produced and sold in two forms in the United States, filled and unfilled, which are chemically identical.<sup>45</sup> As was true at the time of the original investigation, the majority of granular PTFE resin produced in the United States is of the unfilled type; the subject imports are in both filled and unfilled forms.<sup>46</sup> While the record of the original investigation indicated some quality differences between subject imports and domestically produced granular PTFE resin, and that different grades and formulas of granular PTFE resin were not fungible, domestic and imported product of the same grade or formula were found to be generally substitutable.<sup>47</sup> In addition, as the record indicates, the vast majority of granular PTFE resin, whether domestically produced or imported, can be molded directly into finished downstream products such as gaskets, seals, bearings, and insulated tape.<sup>48</sup>

It is less clear whether “wet polymer” from Italy may be substitutable with the domestic like product and Japanese subject imports. However, Commerce found that, “wet polymer has the same basic physical characteristics that distinguish granular PTFE resin from other forms of PTFE resin” and that the post-treatment processes which then transform PTFE wet raw polymer into granular PTFE resin “do not fundamentally alter the nature of the product.”<sup>49</sup> Moreover, finished granular PTFE resin, which is substitutable with both the domestic product and Japanese subject imports, would likely be imported from Italy.<sup>50</sup> Accordingly, we find that the record shows that there would be a significant level of fungibility between U.S. produced granular PTFE resin and likely imports if the orders were revoked.

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<sup>41</sup> Commissioners Crawford and Askey do not cumulate subject imports from Italy and Japan and do not adopt the majority’s conclusion as expressed in the following sentence; nor do Commissioners Crawford and Askey join in the majority’s discussion contained in section III. B. For a complete discussion of their analysis, see their separate views.

<sup>42</sup> Chairman Bragg joins in the Commission’s analysis finding a likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product.

<sup>43</sup> DuPont Response at 3.

<sup>44</sup> DuPont Response at 3.

<sup>45</sup> CR at I-6-7; PR at I-5-6.

<sup>46</sup> CR at I-6-7; PR at I-5-6.

<sup>47</sup> Original Determination at 23.

<sup>48</sup> CR at I-7; PR at I-5.

<sup>49</sup> 58 Fed. Reg. 21600 (April 30, 1993).

<sup>50</sup> CR at I-14, I-17; PR at I-11.

The record also indicates that the channels of distribution for domestic and imported granular PTFE would likely be similar and that the subject and domestic merchandise would likely be sold in the same or similar markets if the orders were revoked.<sup>51</sup>

The other factors (simultaneous presence and sales or offers to sell in the same geographic market) are less easy to evaluate, given that, since the orders were imposed, imports of the subject merchandise from Japan have declined substantially and may be no longer present in the U.S. market. In the original investigations, respondents agreed that imported granular PTFE resin generally competed directly with the domestic product and that both were sold through similar channels of distribution to similar markets.<sup>52</sup> With respect to Italy, imports have continued under the order, further suggesting their likely presence in the U.S. market if the order were revoked.

Overall, we find that there would likely be a reasonable overlap of competition between subject imports from Italy and Japan and the domestic like product as well as among the subject imports from these countries, if the antidumping duty orders covering granular PTFE resin from these countries were revoked.

As discussed above, we have also taken into account other significant conditions of competition that are likely to prevail if the orders under review were revoked in evaluating whether to cumulate imports. The limited record indicates that, if the orders are revoked, subject imports would likely compete in the U.S. market under similar conditions of competition. In this regard, we have considered the substantial capacity in the subject countries,<sup>53</sup> the export orientation of the foreign industries,<sup>54</sup> and the demonstrated ability of exporters to shift sales from one market to another.<sup>55</sup>

For these reasons, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from Italy and Japan in these reviews.<sup>56</sup>

#### **IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON GRANULAR PTFE RESIN FROM ITALY AND JAPAN WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME<sup>57</sup>**

##### **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.”<sup>58</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual

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<sup>51</sup> CR at I-9; PR at I-7.

<sup>52</sup> Original Determination at 23.

<sup>53</sup> CR at I-22-24; PR at I-17-19.

<sup>54</sup> CR at I-22, Table I-4; PR at I-17, Table I-4.

<sup>55</sup> CR at I-22, Table I-4; PR at I-17, Table I-4. See n. 94 infra.

<sup>56</sup> Chairman Bragg does not join this conclusion. Having found a reasonable overlap of competition, Chairman Bragg turns to the issue of no discernible adverse impact. Chairman Bragg finds that revocation of the orders at issue will lead to a likely discernible adverse impact. Accordingly, Chairman Bragg cumulates all subject imports.

<sup>57</sup> Commissioners Crawford and Askey dissenting. Commissioners Crawford and Askey join the majority in the discussion of the relevant legal standard and conditions of competition contained in sections IV. A.-B. For a complete discussion of their analysis, see their separate views.

<sup>58</sup> 19 U.S.C. § 1675a(a).

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.”<sup>59</sup> Thus, the likelihood standard is prospective in nature.<sup>60</sup> The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”<sup>61</sup> 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].”<sup>62 63</sup>

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.”<sup>64</sup> 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.<sup>65 66</sup>

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance

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<sup>59</sup> 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.

<sup>60</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>61</sup> 19 U.S.C. § 1675a(a)(5).

<sup>62</sup> 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.*

<sup>63</sup> 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.

<sup>64</sup> 19 U.S.C. § 1675a(a)(1).

<sup>65</sup> 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.

<sup>66</sup> 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.

with section 776.”<sup>67</sup> <sup>68</sup> As noted above, no respondent interested parties that are producers, exporters, or U.S. importers of the subject merchandise responded to the Commission’s notice of institution. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the record in the original investigation, limited information collected by the Commission since the institution of these reviews, and information submitted by DuPont.

For the reasons stated below, we determine that revocation of the antidumping duty order on granular PTFE resin would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.<sup>69</sup>

## **B. Conditions of Competition**

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the Commission is directed to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>70</sup> In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for granular PTFE resin.

Granular PTFE resin is produced and sold in two forms in the United States, filled and unfilled, which are chemically identical.<sup>71</sup> As discussed above, domestic and imported granular PTFE resin are generally substitutable within the same grades.<sup>72</sup>

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<sup>67</sup> 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). 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 from the record of the original determination and any other information placed on the record. *Id.*

<sup>68</sup> Chairman Bragg, Commissioners Koplán and Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. “[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations.” SAA at 869 (emphasis added). Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.” *Id.*

<sup>69</sup> Vice Chairman Miller and Commissioner Hillman emphasize that they have reached an affirmative determination in the absence of contrary evidence or argument from respondent interested parties.

<sup>70</sup> 19 U.S.C. § 1675a(a)(4).

<sup>71</sup> CR at I-7; PR at I-5.

<sup>72</sup> Original Determination at 23.

Apparent consumption of granular PTFE resin is largely derived from the demand for the products into which it is used to make.<sup>73</sup> As stated above, these products include gaskets, seals, and rings for the automotive industry; gaskets, linings, and packings for chemical applications; and insulators and tape for electrical applications.<sup>74</sup> The granular PTFE market is considered to be mature with relatively small growth in consumption anticipated in the future.<sup>75</sup>

Apparent U.S. consumption of granular PTFE resin has risen approximately \*\*\* percent since the time of the original investigations.<sup>76</sup> The domestic industry's market share of \*\*\* percent in 1998 is \*\*\* to that reported during the period examined in the original investigations.<sup>77</sup> Italy's share of apparent consumption has increased slightly from \*\*\* to \*\*\* percent in 1985-1987 to \*\*\* percent in 1998.<sup>78</sup> Japanese share of apparent consumption in 1985-1987 ranged from \*\*\* percent to \*\*\* percent. In 1998, however, Japanese subject imports were believed to be no longer present in the U.S. market.<sup>79</sup> The market share of imports from non-subject countries increased from \*\*\* percent in 1987 to \*\*\* percent in 1998.<sup>80</sup>

During the time of the original investigations, there were five firms producing granular PTFE resin in the United States, DuPont (unfilled), ICI (filled and unfilled), Ausimont U.S.A, Inc. (filled and unfilled), Custom Compounding, Inc. (filled), and Whitford Polymers, Inc. (filled).<sup>81</sup> Since that time, the industry has undergone some restructuring. Currently, there are three domestic manufacturers of the unfilled granular PTFE resin, DuPont, ICI, and Daikin America.<sup>82</sup> Filled granular PTFE resin production for merchant market sale is dominated by Custom Compounding and ICI Fluoropolymers.<sup>83</sup> Compounders that convert unfilled PTFE resin to filled resin and then process the filled resin into downstream products include \*\*\*.<sup>84</sup>

Granular PTFE resin production is technologically complex and capital intensive.<sup>85</sup> The high fixed costs associated with operating and maintaining a granular PTFE resin plant require manufacturers to sustain high capacity utilization rates to stay profitable.<sup>86</sup> U.S. capacity utilization, which decreased from 74.2 percent in 1985 to 64 percent in 1987, was over \*\*\* percent in 1998.<sup>87</sup>

Based on the record evidence, we find that these conditions of competition in the U.S. granular PTFE resin market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. granular PTFE market provide us with a basis

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<sup>73</sup> CR at I-19; PR at I-15.

<sup>74</sup> CR at I-19; PR at I-15.

<sup>75</sup> CR at I-19; PR at I-15

<sup>76</sup> CR at I-19, Table I-3; PR at I-15, Table I-3.

<sup>77</sup> The domestic industry's market share was \*\*\* percent in 1985, \*\*\* percent in 1986, and \*\*\* percent in 1987. CR at I-14-15, Table I-3.

<sup>78</sup> CR at I-19; PR at I-15.

<sup>79</sup> CR at I-19, Table I-3; PR at I-15, Table I-3.

<sup>80</sup> CR at I-19-20, Table I-3; PR at I-15-16, Table I-3.

<sup>81</sup> CR at I-8-10; PR at I-7-8.

<sup>82</sup> CR at I-8-10; PR at I-7-8.

<sup>83</sup> CR at I-9-10; PR at I-7-9.

<sup>84</sup> CR at I-9-10; PR at I-7-9.

<sup>85</sup> CR at I-21; PR at I-15.

<sup>86</sup> DuPont Response at 8.

<sup>87</sup> CR at I-10, Table I-1; CR at I-8, table I-1.

upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

### C. Likely Volume of Cumulated Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>88</sup> 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.<sup>89</sup>

During the period of the original investigation, subject imports increased sharply. Specifically, from 1985 to 1987, shipments of subject imports increased by 34 percent.<sup>90</sup> U.S. market penetration by subject imports increased from \*\*\* percent in 1985 to \*\*\* percent in 1987, before falling from \*\*\* percent in January-March 1987 to \*\*\* percent in the corresponding period in 1988.<sup>91</sup>

Several factors support the conclusion that subject import volume is likely to be significant if the orders are revoked. First, there is considerable granular PTFE capacity in the subject countries. In Japan, capacity to produce all PTFE resins was reported to be \*\*\* million pounds as of mid-1998, whereas Japanese consumption was estimated at only \*\*\* million pounds in 1997.<sup>92</sup> \*\*\* of the subject granular PTFE product was consumed in Japan during that time.<sup>93</sup> According to record evidence, demand for the granular PTFE resin has been \*\*\* in Japan since 1995.<sup>94</sup>

Similarly, the capacity to produce granular PTFE resins in Italy was estimated to be \*\*\* million pounds in 1997, a 67 percent increase over reported capacity in 1987.<sup>95</sup> The capacity to produce all PTFE resin in Italy was \*\*\* million pounds in 1997, and Italian consumption of all PTFE resin, including imports into Italy, was \*\*\* million pounds in 1997.<sup>96 97 98</sup>

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<sup>88</sup> 19 U.S.C. § 1675a(a)(2).

<sup>89</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>90</sup> Original Determination at 26.

<sup>91</sup> Original Determination at 26.

<sup>92</sup> CR at I-22-24; PR at I-17-19.

<sup>93</sup> CR at I-23-24; PR at I-17-19.

<sup>94</sup> CR at I-24; PR at I-18-19.

<sup>95</sup> CR at I-22-24; PR at I-17-19.

<sup>96</sup> CR at I-22; PR at I-17.

<sup>97</sup> DuPont estimates “overcapacity” in granular PTFE resin in Italy currently to be 7 million pounds and 8 million pounds in Japan. DuPont Response at 6.

<sup>98</sup> In this regard, we note DuPont’s assertion that a substantial amount of PTFE is imported into Italy for further processing and, thus, a substantial portion of the 9 million pounds consumed is not produced in Italy. If so, this would indicate that a greater portion of the \*\*\* pounds Italian capacity was not being used to satisfy domestic demand and therefore is potentially available for export. DuPont Supplemental Response at 4. The record indicates Italian capacity for all PTFE of 11 million pounds, consumption of 9 million pounds, and exports of \*\*\* pounds.

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Given the high fixed costs associated with granular PTFE resin production, there is an incentive to maximize utilization of available capacity. Thus, there is a significant incentive for the subject countries to increase exports to the relatively large U.S. market.<sup>99</sup>

At the time of the original investigation, home shipments in both countries declined, while exports, including those to the United States, rose.<sup>100</sup> Producers in both Italy and Japan still rely heavily on export shipments.<sup>101</sup> In 1997, total exports of all PTFE resins from Italy was \*\*\* pounds and total exports of all PTFE resins from Japan was \*\*\* pounds.

The past ability of the Italian and Japanese producers to easily divert granular PTFE resins shipments from their home markets to the United States, their export orientation, together with their apparent substantial capacity, indicate that they are likely to commence significant exports to the United States upon revocation of the antidumping duty orders.<sup>102</sup> Consequently, we conclude that cumulated subject imports would likely increase to a significant level and would regain significant U.S. market share if the orders are revoked.<sup>103</sup>

#### **D. Likely Price Effects of Cumulated Subject Imports**

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.<sup>104</sup>

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<sup>98</sup> (...continued)

These figures appear to support DuPont's claim, because they do not reconcile unless a significant portion of consumption and/or export was accounted for by unfilled imports of granular PTFE resin into Italy.

<sup>99</sup> It can be argued that producers of the subject merchandise (such as Montefluos, Daikin, and Asahi) would not have an incentive to export large volumes of low-priced imports to the United States because it could harm their U.S. affiliates (Ausimont, Daikin Industries, and ICI, respectively). However, since granular PTFE resin is produced in several grades and is often formulated to customer specifications, Japanese and Italian producers could readily ship grades of subject merchandise that supplement, rather than compete with, granular PTFE resin produced by their U.S. affiliates. Indeed, these U.S. affiliates have established sales channels and relationships that would be exploited in the sale of LTFV imports.

<sup>100</sup> In Italy, home market shipments of granular PTFE resin decreased from \*\*\* pounds in 1985 to \*\*\* pounds in 1987. At same time, exports to the United States increased from \*\*\* pounds in 1985 to \*\*\* pounds in 1987. Similarly, in Japan, home market shipments of all granular PTFE resin decreased from \*\*\* pounds in 1985 to \*\*\* pounds in 1987. Japanese subject imports to the United States increased from \*\*\* pounds in 1985 to \*\*\* pounds in 1987. CR at I-23, Table I-4; PR at 16, Table I-4.

<sup>101</sup> CR at I-23, Table I-4; PR at 16, Table I-4.

<sup>102</sup> CR at I-23, Table I-4; PR at 16, Table I-4.

<sup>103</sup> Chairman Bragg infers that, in the absence of the orders, Italian and Japanese producers would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission's original determinations. Based upon the record in this group review, Chairman Bragg finds that this historical emphasis will likely result in significant volumes of subject imports into the United States if the orders were revoked.

<sup>104</sup> 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.

In the original investigations, the Commission found that the subject imports consistently undersold the domestic market and had a growing adverse impact on prices in the domestic industry.<sup>105</sup> Given the general substitutability of subject imports with the domestic like product,<sup>106</sup> price appears to be an important factor in purchasing decisions. Thus, increased sales of subject imports would likely be achieved by means of aggressive pricing.<sup>107</sup>

There is little evidence in the record regarding prices of subject imports in the U.S. market, but that evidence indicates that the subject imports continue to undersell the domestic product. The 1997 and 1998 average landed duty values of imports from Italy are well below the average current selling prices of \*\*\* for the domestic like product as reported by DuPont.<sup>108</sup> However, it is uncertain what percentage of the Italian imports were the intermediate wet raw polymer product, which may explain some of this price differential.

The limited information in the record regarding current pricing indicates that cumulated subject imports would likely undersell the domestic product and have significant adverse price effects, as they did before the imposition of the orders, if the orders were revoked. We find that, given the importance of price in purchasing decisions, the incentive to maximize the use of available capacity, and the evidence of continued underselling, even in face of the orders, it is likely that, should the orders be revoked, cumulated subject imports would enter the United States at prices that would significantly depress or suppress U.S. prices.<sup>109</sup>

For the foregoing reasons, we find that revocation of the antidumping duty orders would be likely to lead to significant underselling by the cumulated subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

#### **E. Likely Impact of Cumulated Subject Imports**

In evaluating the likely impact of imports of subject merchandise if the orders 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.<sup>110</sup> 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.<sup>111</sup> As instructed by the statute, we have considered the

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<sup>105</sup> Original Determination at 27.

<sup>106</sup> Original Determination at 23.

<sup>107</sup> As a result, DuPont anticipates that selling prices would drop by approximately \*\*\* percent from the current selling price of \*\*\*, if the orders were revoked. DuPont Response at 9.

<sup>108</sup> DuPont Supplemental Response at 2.

<sup>109</sup> Chairman Bragg infers that, in the event of revocation, Italian and Japanese producers will revert to aggressive pricing practices with regard to exports to the United States, as evidenced in the Commission's original determinations.

<sup>110</sup> 19 U.S.C. § 1675a(a)(4).

<sup>111</sup> 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

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extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.<sup>112</sup>

In the original determination, the Commission found that the increasing volume of the lower-priced subject imports, and the significant market share accounted for by those imports, depressed prices and caused the U.S. industry to suffer growing financial losses despite increasing apparent consumption.<sup>113</sup> During the original investigation, U.S. consumption of granular PTFE resin increased substantially, from 10.9 million pounds in 1985 to 13.7 million pounds in 1987.<sup>114</sup> In contrast, U.S. domestic shipments increased from 8.0 million pounds in 1985 to 9.8 million pounds in 1987.<sup>115</sup> Overall, domestic capacity utilization for granular PTFE resin production fell from 74 percent in 1985 to 64 percent in 1987.<sup>116</sup> At the same time, income and loss data for granular PTFE resin operations showed declines,<sup>117</sup> and the industry suffered growing operating losses during the period of investigation, with net income following a similar trend.<sup>118</sup>

After imposition of the orders, subject imports decreased dramatically. DuPont states that since the orders were imposed, U.S. producers of granular PTFE resin have \*\*\* resulting in the creation of additional U.S. jobs.<sup>119</sup> Moreover, DuPont indicates that following imposition of the orders, it has made \*\*\*<sup>120</sup>

As discussed above, revocation of the antidumping duty orders would lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic product and significantly depress U.S. prices. In addition, the volume and price effects of the cumulated subject imports would have a significant negative impact on the domestic industry and would likely cause the domestic industry to lose market share. Moreover, the loss in market share and subsequent decrease in capacity utilization would be particularly harmful in this capital intensive industry. High fixed costs make it especially important that domestic producers maximize capacity utilization.

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

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<sup>111</sup> (...continued)

1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its final five-year determination, Commerce found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the following margins: Italy–Montefluos S.p.A./Ausimont U.S.A. and All Others at 46.46 percent; Japan-Daikin Industries at 103.00 percent, Asahi Fluoropolymers Co., Ltd. at 51.45 percent and All Others at 91.74 percent. Commerce Notice of Final Determinations at 4-5. 64 Fed. Reg. 67865 (Dec. 3, 1999).

<sup>112</sup> 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.

<sup>113</sup> Original Determination at 29.

<sup>114</sup> Original Determination at 18.

<sup>115</sup> Original Determination at 18.

<sup>116</sup> Original Determination at 19.

<sup>117</sup> Total net sales for the domestic industry declined from \$58 million in 1985 to \$52 million in 1986, and increased slightly in 1987 to \$54 million. Original Determination at 22.

<sup>118</sup> Original Determination at 21-22.

<sup>119</sup> DuPont Response at 8.

<sup>120</sup> DuPont Supplemental Response at 2. We do not find that the domestic industry is currently in a weakened state, as contemplated by the vulnerability criterion of the statute. We note that DuPont did not argue that the industry is currently vulnerable to material injury if the orders were revoked.

sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in employment declines for domestic firms.

Accordingly, based on the limited record in this review, we conclude that, if the antidumping duty orders were revoked, subject imports from Italy and Japan would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

### **CONCLUSION**

For the foregoing reasons, we determine that revocation of the antidumping duty orders on imports of granular PTFE resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury to the U.S. granular PTFE resin industry within a reasonably foreseeable time.

**ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER  
CAROL T. CRAWFORD**

Section 751(d) requires that the Department of Commerce (Commerce) revoke a countervailing duty or an antidumping duty order in a five-year (sunset) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.<sup>1</sup> In these reviews of the orders on granular polytetrafluoroethylene (PTFE) resin from Italy and Japan, I find that material injury is not likely to continue or recur within a reasonably foreseeable time if the orders are revoked.

I join my colleagues in their discussion regarding the domestic like product and the domestic industry, and in their explanation of the relevant legal standard. I also join in their discussion of the relevant conditions of competition. However, I add further observations regarding such conditions of competition below.

Unlike the majority, I have determined not to cumulate subject imports from Italy and Japan in determining whether revocation of the existing antidumping duty orders would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time. A full discussion of my views on this issue is provided below.

**I. CUMULATION**

Although the Commission cumulatively assessed the volume, price and impact of the subject merchandise from Italy and Japan on the domestic industry in its original determinations, I have determined not to cumulate the subject imports in these reviews. As I have explained in prior opinions, the statutory framework presents four distinct, sequential analyses that are required when determining whether or not to cumulate subject imports from different countries, in addition to the requirement that the reviews are initiated on the same day.

First, the definitions of the subject merchandise under review (*i.e.*, the scopes of the findings or orders) must be the same for the subject imports to be eligible for cumulation.<sup>2</sup> In addition, the statute precludes cumulation if the Commission determines that subject imports from a country “are likely to have no discernible adverse impact on the domestic industry.”<sup>3</sup> Thus, it is necessary first to determine that the subject imports are eligible for cumulation and that the statute does not preclude cumulation before determining whether to exercise the discretion to cumulate. I note that in these reviews, the scopes of the orders cover the same merchandise.<sup>4</sup> I also note that these reviews were initiated on the same day. Moreover, I do not find that revocation of the orders covering subject imports of granular PTFE resin from Italy and Japan likely would have “no discernible adverse impact” on the domestic

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<sup>1</sup> 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1).

<sup>2</sup> See Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada, Inv. Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review), USITC Pub. 3238 (Sept. 1999) at 43.

<sup>3</sup> 19 U.S.C. § 1675a(a)(7).

<sup>4</sup> The scopes of the orders in these reviews appear to differ slightly in light of Commerce’s affirmative anti-circumvention determination in 1993 (58 Fed. Reg. 26100 (April 30, 1993)). However, the same basis for Commerce’s decision to expand the scope of the Italian order to cover “PTFE wet raw polymer” equally would apply to subject Japanese merchandise if “PTFE wet raw polymer” from that country were to be imported in an attempt to circumvent the existing order. Therefore, I find that the imports covered by these two orders include the same merchandise.

industry. Thus, I find that the subject imports from Italy and Japan are eligible for cumulation with each other and are not statutorily prohibited from cumulation with each other.

Next, cumulation is only allowable if the subject imports “would be likely to compete with each other and with domestic like products in the United States market.”<sup>5</sup> Finally, the statute simply states that the Commission *may* cumulate if the competition requirement is met. However, the statute does not require cumulation under any enumerated circumstances, even if the competition requirement is met. Therefore, although competition is a condition precedent to cumulation, it is not necessarily a sufficient reason or the only factor to consider in deciding whether to exercise the discretion to cumulate. Furthermore, because cumulation is not required under any statutorily enumerated circumstances, there is no statutory or analytical presumption of cumulation. I concur with the majority in its conclusion that in the absence of the existing orders, there likely would be a reasonable overlap of competition between subject imports from Italy and Japan and the domestic like product, as well as between the subject imports from these countries. However, I have determined not to exercise my statutory discretion to cumulate these subject imports.

## II. CONDITIONS OF COMPETITION

As previously noted, I join the majority in the discussion of the relevant conditions of competition. However, discussed below are additional conditions of competition that weigh significantly in my analysis of the subject reviews.

### A. Supply Considerations

During the period covered by the original investigations, total domestic capacity for all granular PTFE resin increased from 14.9 million pounds in 1985 to 18.0 million pounds in 1987. Meanwhile, capacity utilization for total granular PTFE resin declined from 74.2 percent in 1985 to 64.0 percent in 1987. However, since the original investigations, domestic production of total granular PTFE resin has increased substantially from 11.6 million pounds in 1987 to \*\*\* million pounds in 1998.<sup>6</sup> E.I. Du Pont de Nemours & Co., Inc. (DuPont) reports that like other capital-intensive chemical industries, producers must operate at relatively high capacity utilization ratios to be profitable.<sup>7</sup> Given the relatively high percentage of underutilized domestic capacity for this type of an industry, the available facts indicate that the domestic industry’s ability to supply granular PTFE resin is relatively elastic.

There are only minimal data on the current record available for capacity, production, and shipments of granular PTFE resin for Italy and Japan. DuPont claims that there is excess global capacity to produce granular PTFE resin, particularly for Japanese and Italian manufacturers. It estimates that there is an annual “overcapacity” in granular PTFE resin production of 7 million pounds in Italy and 8 million pounds in Japan. Moreover, in conjunction with the need for manufacturers in this industry to produce at high capacity utilization rates, DuPont claims that the U.S. market is a prime target for increased imports of subject granular PTFE resin.<sup>8</sup>

The available data collected by staff appear to confirm that there is a “large amount” of overcapacity in Japan.<sup>9</sup> However, with respect to Italy, the available data are less clear. Between 1987

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<sup>5</sup> 19 U.S.C. § 1675a(a)(7).

<sup>6</sup> CR and PR at Table I-1.

<sup>7</sup> Supplemental Response at 5.

<sup>8</sup> *Id.* at 6-7.

<sup>9</sup> CR at I-24; PR at I-17.

and 1997, granular PTFE resin production capacity in Italy is reported to have grown by \*\*\* percent.<sup>10</sup> There was a reported \*\*\* pounds of production capacity for all PTFE resin available in Italy in 1998.<sup>11</sup> This figure is only somewhat higher than the reported \*\*\* pounds of all PTFE resin consumed in Italy in 1997.<sup>12</sup>

DuPont's estimate of current Italian production capacity suggests that subject "overcapacity" is about half the size of the entire domestic industry's production capacity. DuPont argues that of the \*\*\* pounds of Italian capacity available for granular PTFE resin production in 1997, it believes that the sole Italian manufacturer of subject merchandise devoted \*\*\* pounds of production to exports to the United States, \*\*\* pounds to shipments within Europe (including Italy), and \*\*\* pounds to shipments to other markets. The remainder of the available production capacity—approximately \*\*\* pounds—is excess capacity that DuPont claims is capable of being diverted to the U.S. market. In addition, DuPont claims that there are significant volumes of imports of granular PTFE resin that are imported into Italy and then compounded, otherwise reprocessed, or resold. DuPont argues that this source of supply—representing \*\*\* pounds annually—when considered in conjunction with the estimated overcapacity described above, brings total "overcapacity" in Italy to approximately 7 million pounds.<sup>13</sup>

In light of the apparent underutilized production capacity available in Japan, the available facts demonstrate that the elasticity of supply in Japan likely falls somewhere between moderate and relatively high. Moreover, given the fact that there appears to be a larger excess production capacity in Japan and in consideration of the speculative nature of DuPont's estimate of Italian production capacity, it is also apparent that the elasticity of supply for Italy is lower than the range specified for Japan.

Nonsubject imports appear to be a significant factor in the domestic market. In 1998, nonsubject import market share was \*\*\* percent. By comparison, through the period covered by the original investigations, nonsubject imports accounted for less than \*\*\* percent of apparent domestic consumption.<sup>14</sup> However, there is little information available on the current record with respect to supply conditions concerning nonsubject imports.

## **B. Demand Considerations**

Since the original investigations, overall demand for granular PTFE resin increased from a high of 13.7 million pounds in 1987, to \*\*\* pounds in 1998.<sup>15</sup> However, there is little current information on the record regarding present domestic demand conditions. In the original investigations, the Office of Economics reported that the domestic demand for granular PTFE resin ranged from moderately inelastic to slightly elastic.<sup>16</sup> Granular PTFE resin is a speciality chemical used for its unique properties. It is significantly more expensive than typical thermoplastics. Moreover, it must be further processed (*e.g.*, molded) to be commercially useful.<sup>17</sup> However, despite the fact that it is a high-performance product, the value of granular PTFE resin likely constitutes only a small portion of the value of most finished goods

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<sup>10</sup> CR and PR at Table I-4.

<sup>11</sup> This figure apparently includes PTFE resins outside the scope of the order (merchandise other than "granular" PTFE resin).

<sup>12</sup> CR at I-23-24; PR at I-17.

<sup>13</sup> Supplemental Response at 4-6.

<sup>14</sup> CR and PR at Table I-3.

<sup>15</sup> *Id.*

<sup>16</sup> Original Economics Memo at 23-31.

<sup>17</sup> *Id.* at 23, n.6.

that contain granular PTFE resin components.<sup>18</sup> This fact suggests that end use demand for granular PTFE resin likely would be unresponsive to small changes in its price.

In addition, where the end use requires the full range of granular PTFE resin properties, there are no direct substitutes for granular PTFE resin. Thus, potential alternative products for granular PTFE resin only serve in limited applications and may be more expensive in the long run. Moreover, where end use requirements are less demanding, the available information indicates that it is likely that more easily processed materials are already in use.<sup>19</sup> Therefore, in light of the absence of viable substitute products and the comparatively small portion of value added to finished goods that is accounted for by granular PTFE resin, I find that the elasticity of demand for this product is relatively low.

### C. Substitutability

The available data on the record regarding substitutability comes primarily from the original investigations. In those investigations, the Office of Economics reported a moderate elasticity of substitution between domestic and subject imports of granular PTFE resin, and that the elasticity of substitution for imports from Italy was slightly higher than that for Japan.<sup>20</sup> In terms of the product itself, information collected in the original investigations suggests that granular PTFE resin available from various suppliers is moderately differentiated. This was principally due to perceived minor differences in the physical characteristics of various suppliers that are significant to processors of granular PTFE resin. However, for certain limited applications, some forms of granular PTFE resin apparently have no acceptable substitutes.<sup>21</sup> Moreover, although most applications appear to permit processors to utilize different sources of supply, the need to qualify granular PTFE resin for a particular use may present a short-term barrier to substitution. Overall, the qualification barriers for certain cost-sensitive applications and new products or applications utilizing granular PTFE resin appear to be relatively low. In the period originally investigated, qualifying a new product took anywhere from 2 days to 2 years. However, the average period was about 4 months.<sup>22</sup>

In addition, information collected in the original investigations reveals that relationships with suppliers in this industry tend to be long-term in nature. Moreover, the costs incurred in switching suppliers and the lack of available technical support when switching suppliers appear to limit substitutability. Almost one-half of all purchasers in the original investigations reported that they could not easily switch between sources of supply.<sup>23</sup> Also, now as before, there are few worldwide suppliers of granular PTFE resin.<sup>24</sup> In particular, the market power of DuPont as the world's largest producer of granular PTFE resin<sup>25</sup> appears to contribute to a purchaser's willingness to maintain a relationship with this source in the expectation of long-term supply security. However, at the same time, multiple sourcing also appears to be a standard practice among granular PTFE resin processors. Several

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<sup>18</sup> *Id.* at 24-25.

<sup>19</sup> *Id.* at 25-26.

<sup>20</sup> *Id.* at 17-23.

<sup>21</sup> For example, in the original investigations the facts suggested that there was no acceptable substitute for Daikan M-12, a form of granular PTFE resin used in the production of thin-skived tape. See Additional Views of Acting Chairman Anne E. Brunsdale and Commissioner Susan Liebeler (Brunsdale/Liebeler Views) at 37.

<sup>22</sup> Original Economics Memo at 19. Some qualifications could reportedly be done "over a weekend." Brunsdale/Liebeler Views at 38 (citing the original transcript at 175).

<sup>23</sup> Original Economics Memo at 18.

<sup>24</sup> *Id.* at 19. See CR at I-21; PR at I-15. Production of granular PTFE resin is technologically complex and capital intensive. This has resulted in a very limited number of manufacturers on a worldwide basis. *Id.*

<sup>25</sup> CR at I-8; PR at I-7.

purchasers in the original investigations reported purchasing higher-priced material in order to maintain “multiple sources” or for purposes of maintaining “long-term supply.”<sup>26</sup> Additionally, although lead times and transportation costs do not appear to play a significant role in a purchaser’s source decisions,<sup>27</sup> consumer familiarity with DuPont’s trademark product, Teflon may also reduce the overall substitutability for this product. Some customers in the original investigations stated a preference for this product.<sup>28</sup>

Although there is little information in the current record, some portion of domestic production of granular PTFE resin is apparently captively consumed.<sup>29</sup> This, too, would tend to reduce the overall substitutability of the domestic like product for the subject merchandise. Finally, there is also little information on the record with respect to the substitutability of nonsubject imports between and among sources of supply. However, because such nonsubject merchandise appears to have replaced only subject imports in the wake of the imposition of the existing orders,<sup>30</sup> I conclude that nonsubject merchandise is a moderate substitute for subject merchandise.

In sum, despite the presence of some product differentiation and certain market segments in which substitution is difficult or impossible (*e.g.*, customer requirements and qualification procedures, supplier relationships, lack of acceptable substitutes), there apparently is some range of uses over which substitution among sources of supply is relatively common. Overall, therefore, the information available indicates that domestic and imported granular PTFE resin likely are moderate substitutes for one another with respect to Italy. The information available also indicates that there is a somewhat lower level of substitutability between Japanese merchandise and domestic supply. In addition, because nonsubject and subject imports appear to be moderate substitutes for one another, it logically follows that the level of substitutability between nonsubject and domestic sources of granular PTFE resin supply is also moderate.

### III. GENERAL CONSIDERATIONS

The statute directs us to take into account several general considerations.<sup>31</sup> I have taken into account the Commission’s prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.<sup>32</sup> I have also considered whether any improvement in the state of the industry is related to the orders, and whether the industry is vulnerable to

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<sup>26</sup> Original Economics Memo at 20.

<sup>27</sup> *Id.* at 20.

<sup>28</sup> *Id.* at 19, n.1. Evidence collected in the original investigations suggested that 25 percent of U.S.-market granular PTFE resin orders specified the use of Teflon. *See* Brunsdale/Liebeler Views at 37 (citing Daikan Posthearing Brief at 8).

<sup>29</sup> *See* discussion accompanying CR and PR at Table I-1, n.1.

<sup>30</sup> Domestic market share has remained relatively constant since imposition of the orders. Meanwhile, nonsubject market share has increased while subject market share has declined. *See* CR and PR at Table I-3.

<sup>31</sup> 19 U.S.C. § 1675a(a)(1). Commerce has not issued duty absorption findings, therefore they are not at issue in these reviews. *See* 64 Fed. Reg. 67865 (Dec. 3, 1999). The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). The margins of dumping that Commerce found likely to prevail if the existing orders on Italy and Japan are revoked are as follows: for Italy, 46.46 percent for Montefluos S.p.A./Ausimont U.S.A. and “all others;” for Japan, 103.00 percent for Daikan Industries, 51.45 for Asahi Fluoropolymers Co., Ltd., and 91.74 percent for “all others.” 64 Fed. Reg. at 67865.

<sup>32</sup> 19 U.S.C. § 1675a(a)(1)(A). According to the Statement of Administrative Action (“SAA”) to the Uruguay Round Agreements Act, if pre-order conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury. H. R. Rep. No. 103-316, vol. I, at 884 (1994).

material injury in the event of revocation.<sup>33</sup> My consideration of these factors supports the conclusion that revocation of the existing orders would not likely lead to a continuation or recurrence of material injury within a reasonably foreseeable time.

The record contains a limited amount of data concerning the state of the domestic industry following imposition of the orders. However, the available data indicates that the industry's condition has improved somewhat. During the period covered by the original investigations, certain financial indicators of the industry's health had improved (e.g., production, capacity, and the quantity and value of U.S. shipments), while other indicators declined (e.g., capacity utilization, and the unit value of U.S. shipments).<sup>34</sup> By way of contrast, the domestic industry's current capacity to produce granular PTFE resin, as well as its production and shipments levels, appears to have increased over that reported by the industry during the original 1985-87 investigations.<sup>35</sup> In addition, capacity utilization approached \*\*\* percent in 1997-98, a significant increase over the 64 percent figure reported in 1987.<sup>36</sup> Moreover, the industry's market share appears to have remained relatively stable since the period covered by the original investigations.<sup>37</sup> In light of these facts, and because the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability of the industry, I find that the domestic industry in this review is not particularly vulnerable to injury if the orders are revoked.

#### **IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM JAPAN IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

##### **A. Likely Volume of Subject Imports**

In the period covered by the original investigations, U.S. imports of all subject granular PTFE resin accounted for \*\*\* percent of the domestic market in 1985, before climbing to \*\*\* percent in 1987. At \*\*\* percent, Japan had nearly twice the market share of subject imports from Italy, which were \*\*\* percent in 1987.<sup>38</sup> However, as reported by DuPont, Japanese imports have declined precipitously to zero since the imposition of the antidumping duty order.

While there are few precise data on the current record, the available information reveals that Daikan America operates as a domestic subsidiary of Daikan Industries of Japan. In addition, both DuPont and ICI Americas maintain certain joint venture ownership interests in Japanese firms engaged in the production of subject merchandise from that country.<sup>39</sup> These facts indicate that Japanese producers likely would have little incentive to reinstate export shipments of subject merchandise to the U.S. market since they already supply this market through a U.S.-based subsidiary or affiliated company. Moreover, as previously noted, subject merchandise from Japan is at best a moderate substitute for the domestic like product. This fact has also likely contributed to the disappearance from the market of subject Japanese imports.

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<sup>33</sup> 19 U.S.C. § 1675a(a)(1)(B)-(C).

<sup>34</sup> CR at I-12 and Table I-1; PR at I-8 and Table I-1.

<sup>35</sup> The 1997 production capacity estimate shows an increase, while the 1998 production capacity estimate shows a slight decrease. *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Domestic market share was at \*\*\* percent in 1998. In the period covered by the original investigations, domestic market shares were 73.2 percent in 1985, 74.0 percent in 1986, and 71.5 percent in 1987. CR and PR at Table I-3.

<sup>38</sup> CR and PR at Table I-3.

<sup>39</sup> CR at I-14; PR at I-11.

Although the available information regarding supply elasticity suggests that Japanese producers could supply an increase in the volume of subject imports in the U.S. market, such producers likely would not significantly increase such volume in the absence of the existing order. The available data indicate that the market shares held by the subject imports from Japan have declined precipitously, and then disappeared from the domestic market. Thus, it is likely that any increase in the volume of subject imports will not be large if the order is revoked. Therefore, in light of the likely lack of significant price effects and impact on the domestic industry, I find that the volume of the subject imports is not likely to be significant if the order is revoked.

#### **B. Likely Price Effects of Subject Imports**

As previously discussed, demand for granular PTFE resin is likely to be inelastic. Thus, lowering prices likely would not result in a significant increase in overall demand. I have found that the volume of the subject imports is not likely to be large if the order is revoked, and thus any increase in demand for the subject imports is not likely to be large either. Because the domestic like product and the subject imports are at best moderate substitutes for each other, revocation of the order is not likely to lead to a significant shift in demand away from the domestic like product. Rather, it is likely that demand will shift away from nonsubject and Italian imports, which currently hold together a market share of \*\*\* percent.<sup>40</sup> Absent a significant shift in demand away from the domestic product, revocation of the order is not likely to have any effect on domestic prices. Consequently, I find that revocation of the order likely would not have any significant suppressing or depressing effect on domestic prices.

#### **C. Likely Impact of Subject Imports**

As discussed above, revocation of the order is not likely to lead to a significant shift in demand away from the domestic product. Therefore, it is likely that the domestic industry's output and sales will not decrease significantly if the order is revoked. Consequently, I find that there likely would not be a significant impact on the domestic industry if the order is revoked.

#### **D. Conclusion**

Subject imports of granular PTFE resin from Japan likely would not have a significant effect on the domestic industry's prices, output and sales, and therefore its revenues, if the existing order is revoked. Therefore, I determine that material injury would not be likely to continue or recur within a reasonably foreseeable time if the antidumping duty order is revoked.

### **V. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM ITALY IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

#### **A. Likely Volume of Subject Imports**

In the period covered by the original investigations, U.S. imports of all subject granular PTFE resin accounted for \*\*\* percent of the domestic market in 1985, before climbing to \*\*\* percent in 1987. At \*\*\* percent, Italy had about one-half of the market share of subject imports from Japan, which were

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<sup>40</sup> Nonsubject imports include those from Germany and "other sources." Thus, this figure represents the \*\*\* percent total import market share for nonsubject imports in 1998, and the \*\*\* percent market share for Italian imports in 1998. See CR and PR at Table I-3.

\*\*\* percent in 1987.<sup>41</sup> In comparison to subject Japanese imports and nonsubject merchandise, in the 11 years since imposition of the antidumping duty orders, imports of subject granular PTFE resin from Italy have increased somewhat. In the period covered by the original investigations, subject Italian merchandise accounted for a high of \*\*\* percent of the domestic market. By comparison, subject Italian merchandise accounted for \*\*\* percent of the market in 1998.<sup>42</sup>

Commerce has conducted eight administrative reviews on subject imports from Italy produced by Ausimont, S.p.A. (Ausimont), the sole Italian producer of the subject merchandise. A large portion of those reviews resulted in relatively small margins for the company.<sup>43</sup> Therefore, even in the face of lower margins, the available facts indicate that the antidumping duty order appears to have had little effect on the volume of subject Italian merchandise exported from that country. This is not surprising in light of Ausimont's relationship to a U.S.-based affiliated company. Apparently, Ausimont primarily exports a semi-finished subject product to the United States for further processing through this affiliated company. This is the same product that was subject to Commerce's anti-circumvention order in 1993. However, aside from this semi-finished subject product, Ausimont has little incentive to significantly increase exports of "other" subject materials such as compounded, otherwise reprocessed, or resold materials—the same "other" subject material cited by DuPont in its attempt to explain Italian production "overcapacity." Thus, as is the case with Japanese producers of granular PTFE resin, Ausimont likely would have little incentive to significantly increase its export shipments of subject merchandise to the U.S. market in the absence of the existing order.

The available data indicate that the market shares held by subject imports from Italy have always been fairly stable and relatively small. Thus, it is likely that the volume of these subject imports will not be large if the order is revoked. Therefore, in light of the likely lack of significant price effects and impact on the domestic industry, I find that the volume of the subject imports is not likely to be significant if the order is revoked.

#### **B. Likely Price Effects of Subject Imports**

As previously discussed, demand for granular PTFE resin is likely to be inelastic. Thus, lowering prices likely would not result in a significant increase in overall demand. I have found that the volume of the subject imports is not likely to be large if the order is revoked, and thus any increase in demand for the subject imports is not likely to be large either. Because the domestic like product and the subject imports are only moderate substitutes for each other, revocation of the order is not likely to lead to a significant shift in demand away from the domestic like product. Rather, it is likely that demand will shift away from nonsubject imports, which currently hold a market share of \*\*\* percent.<sup>44</sup> Absent a significant shift in demand away from the domestic product, revocation of the order is not likely to have any effect on domestic prices. Consequently, I find that revocation of the order likely would not have any significant suppressing or depressing effect on domestic prices.

#### **C. Likely Impact of Subject Imports**

As discussed above, revocation of the order is not likely to lead to a significant shift in demand away from the domestic product. Therefore, it is likely that the domestic industry's output and sales will

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<sup>41</sup> CR and PR at Table I-3.

<sup>42</sup> *Id.*

<sup>43</sup> These margins ranged from 2.26 percent to 45.72 percent. However, a substantial portion of these margins were under 15.21 percent. *See* CR at I-4, n.7; PR at I-3-4, n.7.

<sup>44</sup> CR and PR at Table I-2.

not decrease significantly if the order is revoked. Consequently, I find that there likely would not be a significant impact on the domestic industry if the order is revoked.

**D. Conclusion**

Subject imports of granular PTFE resin from Italy likely would not have a significant effect on the domestic industry's prices, output and sales, and therefore its revenues, if the existing order is revoked. Therefore, I determine that material injury would not be likely to continue or recur within a reasonably foreseeable time if the antidumping duty order is revoked.



## DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Section 751(d) requires that the Department of Commerce (“Commerce”) revoke a countervailing duty or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.<sup>1</sup> In this review of the antidumping duty orders on granular polytetrafluoroethylene (PTFE) resin from Italy and Japan, I find that revocation of the orders would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

I join my colleagues in their discussion of the domestic like product and the domestic industry and in their explanation of the relevant legal standard. I also join in their discussion of the relevant conditions of competition. However, I write separately to explain my views that revocation of the orders would not be likely to lead to a continuation and recurrence of material injury.

As a preliminary matter, I note that the largest domestic producer of granular PTFE resin, E.I. Du Pont de Nemours & Co., Inc. (DuPont), was the only interested party that responded to the Commission’s notice of institution. No respondent interested parties chose to participate in the review. I therefore have a limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>2</sup> In a case such as this, where only one party participates in an investigation or review, that party has an advantage in terms of its ability to present information to the Commission without rebuttal from the other side. However, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the data before it in terms of the statutory criteria.<sup>3</sup> The Commission cannot properly accept a participating party’s information and characterizations thereof without question and without evaluating other available information.<sup>4</sup>

### I. CUMULATION

As an initial matter, I find that the subject Japanese imports of granular PTFE resin are not likely to have a discernable adverse impact on the domestic industry if the order covering that merchandise is revoked, primarily because of the existence of significant corporate relationships between the three Japanese producers of subject merchandise and three significant members of the domestic industry. In this regard, I note that the domestic producer DuPont has owned a \*\*\* percent share of Mitsui DuPont Fluorochemicals since the period of the original investigation. In addition, a second major domestic producer, ICI, acquired a \*\*\* percent share of Asahi, another of the Japanese producers of subject merchandise. Finally, the third significant domestic producer of granular PTFE resin, Daikin America, is a Japanese subsidiary of Daikin Industries, the last of the three Japanese producers of granular PTFE

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<sup>1</sup> 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1).

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

<sup>3</sup> 19 U.S.C. § 1675a(a).

<sup>4</sup> See, e.g., Alberta Pork Producers’ Mktg. Bd. v. United States, 669 F. Supp. 445, 459 (Ct. Int’l Trade 1987) (“Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.”).

resin.<sup>5</sup> Thus, the only three Japanese producers of PTFE resin are closely related to the three major domestic producers of PTFE resin.

Given these relationships, I find that it is unlikely that the Japanese producers of granular PTFE resin will begin shipping more than minimal amounts of subject merchandise into the domestic market within the reasonably foreseeable future. I believe that significant shipments from the three Japanese producers are unlikely because those shipments would likely be in competition with the products produced by their related domestic producers. Moreover, because it is unlikely that the subject Japanese producers will be shipping more than minimal volumes to the United States within the reasonably foreseeable future, I find that it is also unlikely that the subject imports will have more than minimal price or other effects on the domestic industry within the reasonably foreseeable future. Accordingly, I find that the subject imports from Japan are not likely to have a discernible adverse impact on the domestic industry in the reasonably foreseeable future. Accordingly, I am precluded by the statute from cumulating the subject imports from Japan with those from Italy for purposes of performing my analysis in this review.

## II. CONDITIONS OF COMPETITION

As previously noted, I concur in the Commission majority's discussion of the relevant conditions of competition. However, I believe that following conditions of competition are also relevant to my analysis of this market as well.

First, although there is a limited amount of record data with respect to the substitutability of the subject and domestic merchandise, the available evidence indicates that there is only a moderate level of substitutability between the subject imports from Italy and Japan and the domestic merchandise. For example, in the original investigation, the Commission's Office of Economics reported that there was only a moderate elasticity of substitution between domestic and subject imports of granular PTFE resin and that the elasticity of substitution for imports from Italy was slightly higher than that for Japan.<sup>6</sup> The substitutability of the subject imports and the domestic merchandise is moderated by several factors, including the fact that some purchasers require particular categories of PTFE resin for certain end uses and the fact that there is a qualification process for some end uses of PTFE resin. In this regard, the limited record evidence indicates that some purchasers prefer and, indeed, require for their end use products the PTFE product marketed by DuPont under the brand name TEFLON. Substitutability of the subject merchandise is further limited by the preference of some purchasers for long-term relationships with certain their suppliers. Finally, although there is little information in the current record, some portion of domestic production of granular PTFE resin is apparently captively consumed.<sup>7</sup> The existence of significant levels of captive supply would further reduce the overall substitutability of the domestic like product for the subject merchandise.

Second, although there is also limited record information with respect to the substitutability of nonsubject imports and the subject and domestic merchandise, the non-subject merchandise appears to have replaced only subject imports in the wake of the imposition of the existing orders.<sup>8</sup> Accordingly, I find that it is reasonable to conclude that nonsubject merchandise is a moderate substitute for subject merchandise.

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<sup>5</sup> CR at I-14; PR at I-10.

<sup>6</sup> *Id.* at 17-23.

<sup>7</sup> See discussion accompanying CR and PR at Table I-1, n.1.

<sup>8</sup> Domestic market share has remained relatively constant since imposition of the orders. Meanwhile, nonsubject market share has increased while subject market share has declined. See CR and PR at Table I-3.

### III. GENERAL CONSIDERATIONS

The statute directs me to take into account several general considerations.<sup>9</sup> As directed by the statute, I have taken into account the Commission's prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.<sup>10</sup> In the original determination, the Commission majority found that the domestic industry was materially injured by reason of the cumulated subject imports from Italy and Japan.<sup>11</sup> The Commission majority found that, until interim 1988, there was an increasing volume of generally lower-priced LTFV imports from Japan and Italy during the period of investigation and an increasing and significant market share accounted for by the imports. Moreover, the majority found that there was evidence of price suppression and depression in the U.S. market because of the subject imports and that the subject imports had caused the deteriorating performance of the domestic industry.<sup>12</sup> Two other Commissioners found that the industry was materially injured by reason of the subject imports, relying on the significant volume of subject imports, the high dumping margins, and the fact that there was enough substitutability between the domestic and subject merchandise that the revenue lost to the subject imports rose to the level of material injury.<sup>13</sup> Finally, one Commissioner found that the industry was materially injured by reason of the subject imports because the LTFV sales by the subject producers had produced a significant adverse effect on domestic production and a smaller but more than *de minimis* adverse impact on domestic prices.<sup>14</sup>

I have also considered whether any improvement in the state of the industry is related to the orders, and whether the industry is vulnerable to material injury in the event of revocation.<sup>15</sup> The record contains a limited amount of data concerning the state of the domestic industry following imposition of the orders but that data indicates that the industry's condition has improved somewhat since the original investigation. During the period covered by the original investigations, certain financial indicators of the industry's health had improved (*e.g.*, production, capacity, and the quantity and value of U.S. shipments), while other indicators declined (*e.g.*, capacity utilization, and the unit value of U.S. shipments).<sup>16</sup> By way of contrast, the domestic industry's production and shipment levels have increased significantly over that reported by the industry during the original 1985-87 investigations. In addition, capacity utilization approached \*\*\* percent in 1997-98, a significant increase over the 64 percent figure reported in 1987.<sup>17</sup> Moreover, the industry's market share appears to have remained relatively stable -- at \*\*\* percent in

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<sup>9</sup> 19 U.S.C. § 1675a(a)(1). Commerce has not issued duty absorption findings; thus, this is not an issue in this proceeding. See 64 Fed. Reg. 67865 (Dec. 3, 1999). The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). The margins of dumping that Commerce found likely to prevail if the existing orders on Italy and Japan are revoked are as follows: for Italy, 46.46 percent for Montefluos S.p.A./Ausimont U.S.A. and "all others;" for Japan, 103.00 percent for Daikan Industries, 51.45 for Asahi Fluoropolymers Co., Ltd., and 91.74 percent for "all others." 64 Fed. Reg. at 67865.

<sup>10</sup> 19 U.S.C. § 1675a(a)(1)(A). According to the Statement of Administrative Action ("SAA") to the Uruguay Round Agreements Act, if pre-order conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury. H. R. Rep. No. 103-316, vol. I, at 884 (1994).

<sup>11</sup> Original Views at 3.

<sup>12</sup> Original Views at 25-29.

<sup>13</sup> Original Views at 45-46.

<sup>14</sup> Original Views at 90.

<sup>15</sup> 19 U.S.C. § 1675a(a)(1)(B)-(C).

<sup>16</sup> CR and PR at I-12 & Table I-1.

<sup>17</sup> *Id.*

1998 -- since the period covered by the original investigation.<sup>18</sup> Given these improvements in the industry's condition, I find that the domestic industry would not be vulnerable to material injury if the orders were revoked.

**IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM JAPAN IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

As described in section I above, I have found that the subject imports from Japan are not likely to have a discernible adverse impact on the domestic industry if the order covering Japan is revoked. Accordingly, I have not cumulated the subject imports from Japan with those from Italy for purposes of my analysis in this review. Moreover, for the same reasons that were described in section I above, I find that the subject imports are not likely to have significant volume, price or other effects on the domestic industry if the order were revoked. Accordingly, I determine that revocation of the antidumping order on granular PTFE resin from Japan is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**V. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM ITALY IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

**A. Likely Volume of Subject Imports**

I find that the volume of the subject imports from Italy is not likely to be significant within a reasonably foreseeable time if the antidumping duty order is revoked. In coming to this conclusion, I first considered the available data concerning the subject Italian producer's capacity levels.<sup>19</sup> Although there is limited record evidence available with respect to the subject producer's capacity, the limited evidence indicates that the producer had a total capacity of approximately \*\*\* million pounds in 1998 and that this capacity level was somewhat less than total Italian consumption in 1997.<sup>20</sup> Accordingly, as the staff report indicates, the record data suggests that there is not a significant level of unused capacity in Italy that can be used to increase subject imports to the United States significantly.

Moreover, I note that post and pre-order volume trends for the Italian imports indicate that it is unlikely that the volume of the Italian imports will change significantly after revocation of the order. In this regard, I note that the available record from the original investigation indicates that the market share of the subject imports from Italy actually declined somewhat during the original period of investigation.<sup>21</sup> Thus, the data from the original investigation does not support a conclusion that the Italian imports are likely to increase their volumes or market share significantly upon revocation of the order. Moreover, as in the original investigation, the record of this investigation indicates that a substantial portion of the subject imports from Italy are being imported by the \*\*\*.<sup>22</sup> Given that this apparently substantial volume of subject Italian imports is being imported \*\*\*, this further diminishes the likelihood that the subject imports would be imported in such volumes as to cause material injury to the domestic industry upon

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<sup>18</sup> *Id.* at Table I-3.

<sup>19</sup> See CR and PR at Tables I-1 and I-4.

<sup>20</sup> CR at I-22-24; PR at I-17.

<sup>21</sup> The market share of the subject Italian producer declined from \*\*\* percent in 1985 to \*\*\* percent in 1987. CR and PR at Table I3.

<sup>22</sup> CR at I-14-17; PR at I-10-11.

revocation of the order. In addition, in light of the moderate substitutability of the domestic and subject merchandise and the higher substitutability levels of the non-subject and subject merchandise, I find that any volume changes that would occur upon revocation of the order would be more likely to come at the expense of the non-subject imports rather than the domestic merchandise.

Further, the record indicates that imports of subject granular PTFE resin from Italy have actually increased somewhat since imposition of the antidumping duty order.<sup>23</sup> Given this, I find that the antidumping duty order covering Italy appears to have had little effect on the volume of subject Italian imports exported by the subject Italian producer. Accordingly, I find further that it is unlikely that revocation will have a significant impact on the likely volumes of the subject Italian imports within the reasonably foreseeable future.

Finally, the record does not contain any information on the extent to which there are significant inventories of subject merchandise or to what extent the subject producers have the ability to engage in product shifting. The record does indicate that there are no antidumping orders in place against the subject imports from Italy.<sup>24</sup> Accordingly, the available record evidence indicates that there are no barriers to trade that indicate a likelihood of increased imports into the United States upon revocation of the order.

Accordingly, I find that the volume of the subject imports would not likely be significant within a reasonably foreseeable time if the order were revoked.

#### **B. Likely Price Effects of Subject Imports**

I also find that the record of this review indicates that it is unlikely that the subject imports from Italy will have a significant adverse impact on domestic prices within the reasonably foreseeable future if the order were revoked. I note that the record in this review contains no current pricing data and that the Commission found in its original investigation that the subject imports from Italy and Japan had price-suppressive and -depressive effects on domestic prices. Nonetheless, as I stated above, I find that it is unlikely that the subject Italian imports will enter the market in substantial volumes within the reasonably foreseeable future if the order were revoked. Given this, any possible volume change with respect to the Italian imports is likely to be too small to have a significant adverse impact on domestic prices. In addition, as I stated above, I find that the available data indicates that the domestic product and the subject imports are only moderate substitutes for each other. Accordingly, any minimal price impact of the subject imports will be moderated further by the somewhat limited substitutability of the domestic and subject merchandise.

Accordingly, I find that the subject imports from Italy would not be likely to have any significant suppressing or depressing effect on domestic prices within a reasonably foreseeable time if the order were revoked.

#### **C. Likely Impact of Subject Imports**

As discussed above, I find that the subject imports from Italy are not likely to have significant adverse volume or price effects on the domestic industry within the reasonably foreseeable future if the order were revoked. Accordingly, I also find that subject imports would not be likely to have a significant impact on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, or investment within a reasonably foreseeable time in the event the order is revoked. Further, I find that revocation of the order is not likely to lead to a significant reduction in U.S.

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<sup>23</sup> CR and PR at Table I-3.

<sup>24</sup> CR at I-25; PR at I-19.

producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.

Accordingly, I find that there is not likely to be a significant impact on the domestic industry if the order is revoked.

**D. Conclusion**

For the foregoing reasons, I determine that revocation of the antidumping duty order covering subject imports of PTFE Resin from Italy would not be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.

**INFORMATION OBTAINED IN THE REVIEWS**



## INTRODUCTION

On May 3, 1999, the Commission gave notice that it had instituted reviews to determine whether revocation of the antidumping duty orders on granular PTFE resin from Italy and Japan would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>1</sup> On August 5, 1999, the Commission determined that the domestic interested party response to its notice of institution was adequate;<sup>2</sup> the Commission also determined that the respondent interested party response was inadequate for both Italy and Japan. The Commission found no other circumstances that would warrant full reviews. Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)).<sup>3</sup> The Commission voted on these reviews on December 8, 1999, and notified Commerce of its determinations on December 21, 1999.

### The Original Investigations

The Commission completed the original investigations<sup>4</sup> in August 1988, determining that an industry in the United States was being materially injured by reason of imports of granular PTFE resin from Italy and Japan that were being sold at less than fair value.<sup>5</sup> The Commission found that all granular PTFE resin constitutes a single like product and determined that the domestic industry includes the U.S. producers of granular PTFE resin, both unfilled and filled.<sup>6</sup> After receipt of the Commission's determinations, Commerce issued antidumping duty orders on imports of granular PTFE resin from Italy and Japan.<sup>7</sup>

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<sup>1</sup> 64 FR 23677, May 3, 1999. All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

<sup>2</sup> A single response to the Commission's notice was filed on behalf of DuPont, a U.S. producer of granular PTFE resin. DuPont is believed to account for approximately \*\*\* percent of U.S. granular PTFE resin production. *Response of DuPont*, p. 11.

<sup>3</sup> 64 FR 44537, Aug. 16, 1999. Subsequently, Commerce extended the date for its final results in the expedited reviews from August 31, 1999 to November 29, 1999 (64 FR 48579, Sept. 7, 1999). The Commission, therefore, revised its schedule to conform with Commerce's new schedule (64 FR 52105, Sept. 27, 1999). The Commission's notices of expedited reviews and its change in schedule appear in app. A. See the Commission's web site (<http://www.usitc.gov>) for Commissioner votes on whether to conduct expedited or full reviews. The Commission's statement on adequacy is presented in app. B.

<sup>4</sup> The investigations resulted from petitions filed by DuPont on Nov. 6, 1987.

<sup>5</sup> *Granular Polytetrafluoroethylene Resin from Italy and Japan*, USITC Pub. 2112, Aug. 1988, p. 3.

<sup>6</sup> A like product issue was raised in the investigations of whether unfilled and filled granular PTFE resin are a single like product or two distinct like products. The arguments of the parties were largely focused on the question of the substitutability of filled and unfilled PTFE in various applications. The Commission stated that "{o}n balance, we determine that all granular PTFE resin constitutes a single like product. All granular PTFE resin incorporates those unique qualities that lead purchasers to select a granular PTFE resin rather than a less expensive alternative. The further choices, of unfilled resin of a particular grade or a particular compound of filled resin of a particular grade, are determined by the user's specific requirements for the finished grades." *Id.*, pp. 8-16.

<sup>7</sup> 53 FR 33163, Aug. 30, 1988 (Italy); 53 FR 32267, Aug. 24, 1988 (Japan). The antidumping order for subject imports from Italy required the posting of cash deposits equal to the estimated weighted-average antidumping duty  
(continued...)

## Commerce's Final Results of Expedited Sunset Reviews

Commerce extended the time limit for the final results of its expedited sunset reviews for granular PTFE resin from Italy and Japan to not later than November 29, 1999.<sup>8</sup> Its determination is presented in App. A.

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<sup>7</sup> (...continued)

margins, which were 46.46 percent for Montefluos/Ausimont S.p.A. and 46.46 percent for all others. 53 FR 26096, July 11, 1988. The antidumping order for subject imports from Japan required the posting of cash deposits equal to the estimated weighted-average antidumping duty margins, which were 103.00 percent for Daikin Industries, 51.45 percent for Asahi, and 91.74 percent for all others. FR 53 25191, July 5, 1988. In determining its weighted-average antidumping duty margins for Italy, Commerce compared the U.S. price with the foreign market value. Since Montefluos failed to report data on its sales of filled granular PTFE resins, Commerce used the margins from the petition as best information available. The U.S. price for unfilled granular PTFE resin was based on (adjusted) exporter's sales price; foreign market value was based on (adjusted) prices to unrelated purchasers. In determining its weighted-average antidumping duty margins for Japan, Commerce also compared the U.S. price with the foreign market value. However, the fair value comparisons for Daikin Industries and Asahi's filled granular PTFE resin were calculated using margins supplied in the petition since Daikin Industries did not respond to Commerce's questionnaire and Asahi failed to complete the section dealing with filled granular PTFE resin. For Asahi's unfilled granular PTFE resin, the U.S. price was based on (adjusted) exporter's sale price; foreign market value was based on (adjusted) prices to unrelated purchasers in Japan.

Subsequent administrative reviews for Italy resulted in the following antidumping duty margins: Montefluos, 20.79 percent, and all others, 20.79 percent (Dec. 11, 1990); Montefluos, 23.57 percent, and all others, 23.57 percent (Nov. 15, 1991); Ausimont, S.p.A., 13.31 percent, and all others, 46.46 percent (Apr. 21, 1995); Ausimont, S.p.A., 2.26 percent, and all others, 46.46 percent (Oct. 17, 1995); Ausimont, S.p.A., 6.64 percent, and all others, 46.46 percent (May 20, 1996); Ausimont, S.p.A., 15.21 percent (amended), and all others, 46.46 percent (Feb. 6, 1997 and (amended) Apr. 29, 1997); Ausimont, S.p.A., 5.95 percent, and all others, 46.46 percent (Sept. 16, 1997); and Ausimont, S.p.A., 45.72 percent, and all others, 46.46 percent (Sept. 14, 1998). Subsequent administrative reviews for Japan resulted in the following antidumping duty margins: Daikin Industries, 10.99 percent, and all others, 91.74 percent (Sept. 27, 1993); Daikin Industries, 23.33 percent, and all others, 91.74 percent (June 27, 1995); and Daikin Industries, 53.68 percent, and all others, 91.74 percent (Jan. 26, 1996). See Commerce's web site ([http://www.ita.doc.gov/import\\_admin/records/sunset](http://www.ita.doc.gov/import_admin/records/sunset)) at *Case History and Scope Information*.

Finally, Commerce amended the scope of the order on Italy to also cover PTFE wet raw polymer, an intermediate product exported from Italy to the United States. 58 FR 26100, Apr. 30, 1993. Its anti-circumvention inquiry examined PTFE wet raw polymer manufactured by Montefluos in Italy and exported to a related U.S. firm (Ausimont), which used it to produce granular PTFE resin. Commerce determined, among other things, that the monomer production and suspension polymerization processes used to produce PTFE wet raw polymer "impart the basic physical characteristics that distinguish granular PTFE resin from other forms of PTFE resin" and that the post-treatment processes which then transform PTFE wet raw polymer into granular PTFE resin "do not fundamentally alter the nature of the product."

<sup>8</sup> 64 FR 48579, Sept. 7, 1999.

## THE PRODUCT

### Scope

The imported product covered by these reviews is granular PTFE resin, filled or unfilled, from Italy or Japan. The orders also cover granular PTFE resin wet raw polymer exported from Italy to the United States, but exclude PTFE dispersions in water and fine powders from either Italy or Japan.<sup>9</sup> The product is classified under HTS subheading 3904.61.00<sup>10</sup> and enters under the bound column 1-general rate duty of 5.8 percent ad valorem. The HTS subheading is provided for convenience and for Customs purposes; the written description remains dispositive as to the scope of the product coverage.

### Description and Uses<sup>11</sup>

Subject granular PTFE resins are a subset of a group of high-performance plastics used to make articles for a variety of applications. These PTFE resins are all highly resistant to oxidation, possess high-temperature stability, act as excellent insulators, and have the lowest "surface energy" of lubricity of any common solid, giving them the superior anti-stick performance for which they are most popularly known under DuPont's trademark as Teflon.

PTFE resins are commercially available in three physically distinct forms--as fine powders, in aqueous dispersions, and as the subject granular product. The forms share basic chemical and physical properties, but they are distinct in methods of manufacture and processing and in their end uses. Granular PTFE resin accounted for about \*\*\* percent of reported U.S. production of all forms of PTFE resins during the original investigations. In 1997, granular PTFE resin accounted for almost \*\*\* percent of total PTFE consumption in the United States.<sup>12</sup> Also, a small segment of the market for granular PTFE consists of scrap or reprocessed material.<sup>13</sup>

The subject product is used in molding and extruding products intended primarily for the chemical-processing, automotive, and non-electrical industries.<sup>14</sup> Granular PTFE resin is produced by

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<sup>9</sup> In its petition, DuPont requested that Commerce investigate both filled and unfilled granular PTFE resins. Although DuPont did not produce filled PTFE, DuPont asked that it be included in the investigations to prevent the possible circumvention of any orders on unfilled granular PTFE resin. DuPont did not request that PTFE dispersions in water and fine powders be covered by the investigations. Commerce found that both filled and unfilled resins were within the same class or kind of merchandise. Commerce also preliminarily determined that DuPont had standing with respect to both filled and unfilled granular PTFE resins and, in its final determinations, stated that if the Commission found in its final determinations that filled and unfilled were separate like products it would rescind the initiation of the investigations as they pertain to filled granular PTFE resin. However, as noted above, the Commission found one like product for filled and unfilled granular PTFE resins. 53 FR 26096, July 11, 1988 (for Italy); FR 53 25191, July 5, 1988 (for Japan).

<sup>10</sup> HTS 3904.61.00 is a larger category than the scope of this order, as it also includes PTFE dispersions in water as well as fine powders.

<sup>11</sup> All of the discussion in this section is from the original investigations, unless otherwise noted. *Staff Report of Aug. 4, 1988*, pp. A-2 through A-9 and A-17 through A-18.

<sup>12</sup> \*\*\*.

<sup>13</sup> *Staff Report of Aug. 4, 1988*, p. A-91.

<sup>14</sup> In contrast, nonsubject PTFE fine powders are used to manufacture tubing and wire insulation, via a paste

(continued...)

suspension polymerization, a process involving vigorous agitation to produce a precipitated resin. The process produces string-like particles of raw polymer, which are wet-cut to achieve desired particle size and then pelletized (agglomerated) and dried. The pelletized resin can be ground to produce "fine-cut" granular PTFE, or ground and heated to just below the melting point to produce "presintered" granular PTFE. Granular PTFE resin is sold in each of these three product types or grades, i.e., as pelletized, fine cut, or presintered. The differences among the grades are subtle and primarily relate to the flow characteristics, density, and particle size of the polymers. At the time of the original investigations, there was a modest price spread among the grades (generally less than 10 percent).

Granular PTFE resin (the fine-cut grade is usually used) may also be mixed in a mechanical compounding operation with additives like glass fibers, graphite, asbestos, or metals like bronze to enhance particular characteristics of the resin, resulting in a product which is referred to as "filled granular PTFE resin." The fillers are used to add strength and enhance such mechanical properties as improved wear resistance, hardness, coefficient of expansion, and thermal conductivity. Fillers may also be added merely to impart color. The price of filled granular PTFE resin is related to that of the virgin product but varies depending on the amount and type of filler used and the way in which it is mixed with the base resin. During the period covered by the original investigations, filled granular PTFE resin represented about \*\*\* to \*\*\* percent of the volume of all domestically consumed granular PTFE resin. According to the \*\*\*, fine-cut resin today accounts for \*\*\* of the granular PTFE market in the United States and a \*\*\* of that is compounded with fillers.<sup>15</sup>

The vast majority of both U.S.-produced and imported Italian and Japanese granular PTFE resin was sold to processors that molded the resin directly into finished downstream intermediate products such as gaskets, seals, bearings, and insulated tape, or that made stock shapes such as sheet or rod to be machined by end users. DuPont reported during the original investigations that imported granular PTFE resin was comparable in quality and performance to the domestically produced granular PTFE resin and could be substituted for the domestic product in virtually all major end uses.<sup>16</sup> However, downstream processors had to qualify each producer's product prior to use and adjust or retool their machinery. Respondents in the original investigations argued that the qualification process served as a barrier to entry into the U.S. granular PTFE resin market, a process allegedly made more difficult because of the inherent value of DuPont's Teflon trademark.<sup>17</sup>

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<sup>14</sup> (...continued)

extrusion process, and nonsubject PTFE aqueous dispersions are sprayed on metal substrates to provide a desired chemical resistance and/or nonstick, low friction properties, such as to coat cookware.

<sup>15</sup> \*\*\*.

<sup>16</sup> Respondents agreed that imported granular PTFE resin generally competed directly with the U.S.-produced product and that both were sold through similar channels of distribution to similar markets. However, the different grades of unfilled granular PTFE resin, as well as the different types of filled granular PTFE resin, are not fungible products in that specific customer requirements are important, particularly with respect to different formulas for filled granular PTFE resin. *Granular Polytetrafluoroethylene Resin from Italy and Japan*, USITC Pub. 2112, Aug. 1988, p. 23.

<sup>17</sup> DuPont was the original commercial developer and marketer of granular PTFE resin, which it introduced to the market in 1946 under the trade name Teflon. It held a patent on the production of granular forms of Teflon until 1964.

## THE INDUSTRY IN THE UNITED STATES

### U.S. Producers

In 1987, there were five firms producing granular PTFE resin in the United States: DuPont (the petitioner and the world's largest producer of fluoropolymers (or products containing fluorine as an integral part of their polymeric structure<sup>18</sup>), ICI, Ausimont, Custom Compounding, and Whitford Polymers. DuPont produced unfilled granular PTFE resin at its Parkersburg, WV, plant. It held a \*\*\*-percent share of the unfilled granular PTFE resin market (based on domestic shipments in 1987), but did not manufacture filled granular PTFE resin in the United States. (DuPont also manufactures granular PTFE resin in a 100-percent owned plant in the Netherlands and through its DuPont-Mitsui joint venture in Japan.)<sup>19</sup> ICI produced unfilled granular PTFE resin in its plant in Bayonne, NJ, as well as the filled product at other facilities. Ausimont also produced both filled and unfilled granular PTFE resin at two factories acquired from AlliedSignal in June 1986; all unfilled production was at its Elizabeth, NJ, plant. The remaining two manufacturers identified during the Commission's original investigations, Custom Compounding and Whitford Polymers, produced just the filled granular PTFE resin, generally to special order, and for a limited segment of the market. In addition, many purchasers of unfilled granular PTFE resin had filling operations of their own, producing compounded resin for their own processing operations.<sup>20</sup>

According to DuPont, there are currently three manufacturers of granular PTFE resin, not including compounding or finishing operations: DuPont,<sup>21</sup> ICI,<sup>22</sup> and Daikin America (in Decatur, AL).<sup>23</sup> Daikin America, the newest producer among the three, began commercial production of granular PTFE at its Decatur, AL, plant in early 1994.<sup>24</sup> In a move out of fully-integrated U.S. production of the unfilled product, Ausimont shut down its aging Elizabeth, NJ, facility in the fourth quarter of 1988 and the plant was sold back to AlliedSignal in early 1989. In 1990, Ausimont completed construction of a new PTFE finishing facility at its Orange, TX, site, producing finished grades of granular PTFE resin<sup>25</sup> using \*\*\*.<sup>26</sup>

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<sup>18</sup> \*\*\*.

<sup>19</sup> Id.

<sup>20</sup> *Staff Report of Aug. 4, 1988*, pp. A-19 through A-22.

<sup>21</sup> DuPont has made significant investments in fluoropolymers, including PTFE, since the period covered by the original investigations. (However, it is not clear how much of this investment pertains directly to the subject product, granular PTFE resin.) \*\*\*. A 1998 news article quotes Henry Voigt, global business director for Teflon at DuPont, as stating that DuPont has allocated significant funds to strengthen its position in the worldwide Teflon PTFE market: "We've invested \$20 million in PTFE in the past three years, and we're going to invest another \$100 million during the next five years." See NEWSCLIPS (issue date of Nov. 30, 1998) at <http://www.dupont.com/corp/ir/ar97/poly.html>. DuPont's 1997 *Annual Report* indicates that "a major expansion program" in fluoropolymers at its plants in West Virginia, the Netherlands, and Japan is "near completion."

DuPont states that, with respect to its U.S.-based operations, the orders have enabled DuPont to \*\*\*." Further, since the imposition of the orders, it has made "\*\*\*\*" Supplemental *Response* of DuPont, p. 2.

<sup>22</sup> \*\*\*.

<sup>23</sup> *Response* of DuPont, p. 10.

<sup>24</sup> DuPont states that Daikin Industries established a U.S. production facility after the order was imposed to avoid paying significant antidumping duties. Supplemental *Response* of DuPont, p. 2.

<sup>25</sup> As part of its anti-circumvention inquiry concerning wet raw polymer from Italy, Commerce found that

(continued...)

U.S. merchant production of filled granular PTFE is dominated by Custom Compounding (Aston, PA) and ICI Fluoropolymers (Exton, PA). Captive compounders include \*\*\*.<sup>27</sup>

### U.S. Production, Capacity, and Shipments

Data reported by U.S. producers of granular PTFE resin in the Commission's original investigations and in response to its review institution notice are presented in table I-1. The data considered during the Commission's original investigations were compiled from questionnaires and published statistics on the U.S. granular PTFE resin industry are minimal. The data presented in table I-1 are estimates for 1997 and 1998; further, the data listed for each year are derived from different sources (as discussed in the notes to table I-1, 1997 data are based upon published total PTFE figures, and 1998 data are a projection of DuPont's company-specific data). Accordingly, it may be more statistically valid to use 1997 and 1998 data as independent estimates of "current" industry totals, rather than to consider 1997-98 trends.

From 1985 to 1987, certain indicators of industry health increased (i.e., production (albeit irregularly), capacity, and the quantity and value of U.S. shipments)<sup>28</sup> while other indicators fell (i.e., capacity utilization and the unit value of U.S. shipments). Current capacity to produce granular PTFE resin and production and shipments of the product appear to have increased significantly over that reported by the industry during 1985-87.<sup>29</sup> Capacity utilization is well over \*\*\* percent, a sharp increase over the 64 percent figure reported in 1987.

Suppliers of granular PTFE quote prices by the pound on a delivered basis.<sup>30</sup> Although there were fluctuations, the individual producer price series for the five granular PTFE resin products (which included both filled and unfilled resins) reviewed by the Commission during its original investigations suggested a pattern of prices lower in 1986 than at the beginning of 1985, with some improvement in pricing starting in 1987.<sup>31</sup> According to the \*\*\*, \*\*\*, \*\*\* estimates that prices are "likely to continue to

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<sup>25</sup> (...continued)

"respondents in this inquiry sold the finished product processed in the United States at a loss." (Respondents asserted that their U.S. facility operated during the period of inquiry at levels consistent with an industry in recession; petitioner DuPont argued that "the results of respondents' U.S. operations, and the ratio of respondents' investment in their U.S. facility to the facility's output, illustrate that respondents' U.S. operations defy economic rationality." 58 FR 26100, Apr. 30, 1993.

<sup>26</sup> \*\*\*.

<sup>27</sup> \*\*\*.

<sup>28</sup> The Commission noted during its original investigations that U.S.-produced domestic shipments did not increase as much as consumption. Also, capacity increases between 1985 and 1986 were largely attributable to the entry of Whitford Polymers into the filled sector of the industry, and an expansion of filled capacity; capacity increases for facilities producing only unfilled granular PTFE were small. *Granular Polytetrafluoroethylene Resin from Italy and Japan*, USITC Pub. 2112, Aug. 1988, pp. 18-19.

<sup>29</sup> According to DuPont, "the high fixed costs associated with operating and amortizing a plant give rise to a 'capacity utilization imperative' i.e., manufacturers require high capacity utilization rates to maintain viable operations and to stay in business." *Response of DuPont*, p. 5.

<sup>30</sup> *Staff Report of Aug. 4, 1988*, p. A-90.

<sup>31</sup> *Id.*, pp. A-96, A-98.

**Table I-1**  
**Granular PTFE resin: U.S. producers' capacity, production, and U.S. shipments, 1985-87 and 1997-98**

Item	1985	1986	1987	1997	1998
Production: <sup>1</sup>					
Unfilled product (1,000 pounds)	9,011	9,064	7,826	(2)	(2)
Filled product (1,000 pounds)	2,051	3,435	3,719	(2)	(2)
Total (1,000 pounds)	11,062	12,499	11,545	*** <sup>3</sup>	**** <sup>4</sup>
Capacity: <sup>1</sup>					
Unfilled product (1,000 pounds)	11,400	11,650	11,800	(2)	(2)
Filled product (1,000 pounds)	3,506	6,216	6,227	(2)	(2)
Total (1,000 pounds)	14,906	17,866	18,027	***	**** <sup>5</sup>
Capacity utilization: <sup>1</sup>					
Unfilled product (percent)	79.0	77.8	66.3	(2)	(2)
Filled product (percent)	58.5	55.3	59.7	(2)	(2)
Total (percent)	74.2	70.0	64.0	***	***
U.S. shipments: <sup>6</sup>					
Quantity (1,000 pounds)	8,010	9,406	9,761	(2)	**** <sup>4</sup>
Value (1,000 dollars)	38,033	43,606	44,690	(2)	**** <sup>4</sup>
Unit value (dollars per pound)	\$4.74	\$4.64	\$4.58	(2)	**** <sup>4, 7</sup>

<sup>1</sup> The better comparison between capacity/production data for 1985-87 and that for 1997-98 appears to be for 1985-87 data for the unfilled product to be compared to 1997-98 data for all granular PTFE resin. The Commission's capacity/production data as presented in the staff report for the original investigations appears to present separate data for the unfilled and filled products, with the listed total being a simple aggregation. Since, during the period examined in the original investigations, manufacturers of filled granular PTFE resin purchased the unfilled base or transferred it from a captive operation, a simple aggregation of unfilled and filled capacity leads to some double-counting. However, the double-counting is not one-for-one (and, likewise, the above-suggested comparison is not precise) in that the downstream compounding operation adds a certain weight of filler material. Also, an unfilled (1985-87) to total (1997-98) comparison does not take into account use of imported unfilled granular PTFE resin, or an intermediate product, to produce filled granular PTFE resin.

<sup>2</sup> Not available.

<sup>3</sup> Staff applied the share of total PTFE consumption in the United States accounted by the granular product in 1997 (or \*\*\* percent) to available total PTFE production and capacity estimates. \*\*\*.

*Continued.*

*Continuation.*

<sup>4</sup> Projection by staff based upon data provided for the operations of DuPont. DuPont estimated that its production represents approximately \*\*\* percent of granular PTFE resin production in the United States.

<sup>5</sup> Figure provided by DuPont in its statement that since the antidumping duty orders were imposed "U.S. producers of granular PTFE resin have \*\*\*." However, as shown above, reported production capacity in 1987 to produce (unfilled) granular PTFE resin was 11.8 million pounds. The reason for the discrepancy is not clear.

<sup>6</sup> Figures for 1985-87 exclude shipments of unfilled granular PTFE resin to filling operations to avoid double-counting. *Staff Report of Aug. 4, 1988*, p. A-85.

<sup>7</sup> As discussed, this unit value reflects only the data of DuPont. In 1987, prices reported by DuPont during the original investigations ranged from \$\*\*\* per pound to \$\*\*\* per pound for unfilled, pelletized grades; \$\*\*\* per pound to \$\*\*\* per pound for unfilled, fine-cut grades; and \$\*\*\* per pound for unfilled, presintered grades. The aggregate reported unit value for DuPont's domestic shipments was \$\*\*\* per pound in 1987. *Staff Report of Aug. 4, 1988*, pp. A-30 and A-99 through A-100.

Note.—Data obtained by the Commission through questionnaires in its original investigations covered 100 percent of U.S. production of unfilled granular PTFE resin and all known U.S. production of filled granular PTFE resin (some of the non-responding U.S. producers may have produced the filled product).

Source: *Staff Report of Aug. 4, 1988*, pp. A-25, A-26, A-29, and A-30 (for 1985-87 data, which was obtained from questionnaires); \*\*\* (for 1997 data); and *Response of DuPont*, pp. 8 and 11 (for 1998 data).

rise in the future because demand will remain strong and because major suppliers in the developed regions of the world have been slow to add capacity." The \*\*\* lists the following U.S. price ranges for granular PTFE resin: \*\*\*.<sup>32</sup> The antidumping orders for granular PTFE resin from Italy and Japan were issued in August 1988. Dupont estimates that selling prices for granular PTFE resin would drop by approximately \*\*\* percent from the current 1999 year-to-date average selling price of \$\*\*\* per pound if the orders were revoked.<sup>33</sup>

## U.S. IMPORTS AND CONSUMPTION

### U.S. Imports<sup>34</sup>

During the original investigations, the Commission identified 24 importers of what it labeled "significant" quantities of the subject merchandise. Ausimont was the only significant importer of

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<sup>32</sup> \*\*\*, citing the Commission's report in the original investigations and \*\*\* estimates as sources.

<sup>33</sup> *Response of DuPont*, pp. 8-9.

<sup>34</sup> The Commission based its determinations in the original investigations on a cumulative analysis of the volume and price effects of Italian and Japanese imports. *Granular Polytetrafluoroethylene Resin from Italy and Japan*, USITC Pub. 2112, Aug. 1988, p. 24. DuPont argues that it is again appropriate to assess cumulatively the volume and price effects of granular PTFE resin from Italy (including PTFE wet raw polymer) and from Japan. *Response of DuPont*, pp. 3 and 5.

granular PTFE resin from Italy, importing both the filled and unfilled product from its related sister company, Montefluos, in Alessandria, Italy. (Prior to the establishment of Ausimont in 1987, imports from Italy were handled by the New York office of Montedison S.p.A., the parent company of Montefluos.) In contrast, imports from Japan entered the United States through several different sources, including small shipments imported by DuPont and ICI from their joint ventures in Japan with Mitsui Fluorochemicals and Asahi Fluoropolymers, respectively.<sup>35 36</sup> According to DuPont, Ausimont and Daikin America are the importers for subject product arriving from Italy and Japan, respectively, since 1987.<sup>37</sup>

Information concerning current levels of subject granular PTFE resin imports is somewhat imprecise, and, at times, contradictory. (As discussed in a note to table I-2, Commerce gathers import statistics for PTFE resins as a group.) DuPont implies in its *Response* that it believes subject imports from Japan to now be minimal: "Under the order, Daikin {Industries} must effectively limit its sales in the United States to current U.S. capacity {referring to its U.S. subsidiary, Daikin America}." Also, "{s}ince the imposition of the order, Asahi has had little or no presence in the United States because it could not sell here without dumping, and it is subject to the "all others" rate of 91.74%."<sup>38</sup> Customs' *Antidumping/Countervailing Duty Annual Report* indicates that only \$\*\*\* of imports from Japan in FY 1997 were subject to the antidumping duty order. In contrast, the report shows \$\*\*\* of imports from Italy to be subject product. According to the \*\*\*, significant amounts of granular PTFE resin have been imported in recent years from \*\*\*.<sup>39</sup>

Figure I-1 shows imports of all PTFE resins as recorded in official Commerce statistics for the years 1985 through 1998 (but does not attempt to estimate the portion that is granular). As shown, there was a sharp decrease in total PTFE imports from Japan from 1987 to 1988; since then, imports have continued to decrease and, as discussed above, the portion that is subject to the antidumping duty order may well be minimal. In contrast, total PTFE imports from Italy have continued to rise, albeit irregularly, since the end of the Commission's antidumping investigation in 1988. As noted earlier in this report, Ausimont apparently continues to import unfinished, but still subject, granular PTFE resin from Italy for its domestic manufacturing operation in Orange, TX. Commerce determined during its 1993 anti-circumvention inquiry of imported PTFE wet raw polymer from Italy that "since the issuance of the antidumping order on granular PTFE resin, the pattern of trade indicates a shift away from sales of imported granular PTFE resin to sales of domestically-produced PTFE resin, and that imports of PTFE wet raw polymer have increased while imports of the finished product have declined ..."<sup>40</sup> DuPont states that "since the entered value of the wet raw polymer is less than the entered value of the finished product,

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<sup>35</sup> DuPont and ICI owned \*\*\*. During the original investigations, the Commission determined not to exclude DuPont, ICI, or Ausimont from the domestic industry under the related parties provision. *Granular Polytetrafluoroethylene Resin from Italy and Japan*, USITC Pub. 2112, Aug. 1988, pp. 15-17. The primary responsibility of the DuPont subsidiary in Japan was, according to DuPont, to serve the Japanese, Chinese, and Korean markets. *Staff Report of Aug. 4, 1988*, p. A-74. DuPont continues to maintain \*\*\* percent ownership of the Japanese producer. However, it did not import any subject merchandise from either Italy or Japan in 1998. *Response of DuPont*, pp. 10-11.

<sup>36</sup> *Staff Report of Aug. 4, 1988*, pp. A-22 through A-23.

<sup>37</sup> *Response of DuPont*, p. 10.

<sup>38</sup> Supplemental *Response of DuPont*, p. 2. It also states that it estimates Daikin Industries' 1998 market share to essentially be composed of U.S. production. *Response of DuPont*, p. 9.

<sup>39</sup> \*\*\*.

<sup>40</sup> 58 FR 26100, Apr. 30, 1993.

**Table I-2**  
**PTFE: U.S. imports, 1985-87 and 1997-98<sup>1</sup>**

Item	1985	1986	1987	1997	1998
	Granular PTFE resin			All PTFE resins	
	Quantity (1,000 pounds)				
Italy	***	***	***	3,310	3,898
Japan	***	***	***	1,029	1,338
Subject sources	***	***	***	4,339	5,236
Germany	(2)	(2)	(2)	3,432	3,913
Other sources <sup>3</sup>	***	***	***	4,057	4,451
Total	***	***	***	11,828	13,600
	Landed duty-paid value (1,000 dollars)				
Italy	***	***	***	11,514	13,678
Japan	***	***	***	9,088	12,980
Subject sources	***	***	***	20,602	26,658
Germany	(2)	(2)	(2)	19,331	19,116
Other sources <sup>3</sup>	***	***	***	18,448	20,646
Total	***	***	***	58,382	66,420
	Landed duty-paid unit value (dollars per pound)				
Italy	***	***	***	\$3.48	\$3.51
Japan	***	***	***	8.83	9.70
Subject sources	***	***	***	4.75	5.09
Germany	(2)	(2)	(2)	5.63	4.88
Other sources <sup>3</sup>	***	***	***	4.55	4.64
Total	***	***	***	4.94	4.88
<i>Continued.</i>					

*Continuation.*

<sup>1</sup> The tariff categories under which granular PTFE resin enters the United States (former TSUS item 445.54 for 1983-88 data and HTS subheading 3904.61.00 for 1989-98 data) include all PTFE resins, including nonsubject PTFE fine powder and PTFE aqueous dispersions. Because precise figures for the subject product were not published, the Commission obtained data on imports through questionnaires in its original investigations. These data were believed to account for nearly all imports of the subject products from Italy and Japan and for the majority of such imports from other sources. A comparison of the questionnaire data gathered to official Commerce statistics shows that, in 1987, approximately \*\*\* percent of total imports from Italy under TSUS item 445.54 were granular PTFE resin. Further, \*\*\* percent of total imports from Japan and at least \*\*\* percent of total imports from other sources under TSUS item 445.54 were the subject product. According to the \*\*\*, “\*\*\*\*.” In its *Response* (p. 14), DuPont states that “some” nonsubject merchandise is included in the HTS number for PTFE resins.

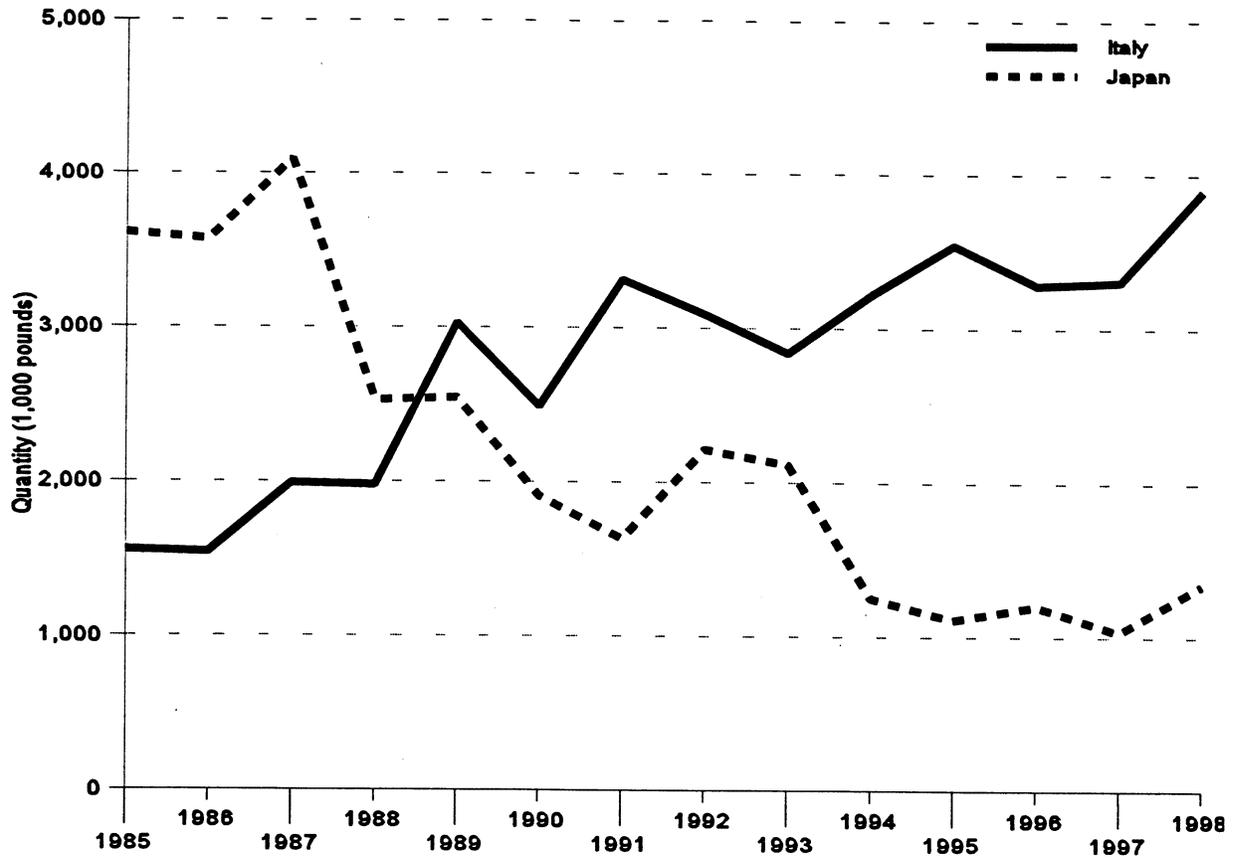
<sup>2</sup> Not available.

<sup>3</sup> The primary other source during 1985-87 was West Germany.

Note.—Data on the value of annual imports reviewed by Customs that are subject to the antidumping duty orders for FY 1997 are \$\*\*\* for Italy and \$\*\*\* for Japan. Data for FY 1998 and FY 1994 through FY 1996 are also confidential, but are not available. *Antidumping/Countervailing Duty Annual Report*.

Source: *Staff Report of Aug. 4, 1988*, p. A-79 for import quantities, values, and unit values (which were from questionnaires) for 1985-87 data; official Commerce statistics for import data in 1997-98.

Figure I-1  
PTFE: U.S. imports from Italy and Japan, by quantity, 1985-98



Source: Official Commerce statistics.

Ausimont's current arrangement of importing semi-processed products into the United States still provides some benefit under the order."<sup>41</sup>

As shown in table I-2 (which presents data specifically for the subject product gathered during the Commission's original investigations as well as the currently-published statistics for all PTFE resins), the unit values of U.S. imports from Italy under HTS No. 3904.61.00 in 1997 and 1998 were significantly less than the unit values for all imports, suggesting a much-lower valued product mix. In contrast, the reported unit values for imports from Japan in 1997 and 1998 were much higher than the unit values for all imports, suggesting importation of a product other than granular PTFE resin. The subject granular PTFE resin is a commodity product and, as such, should not be expected to experience wide variations in pricing for identical product.

### Apparent U.S. Consumption

Apparent consumption of granular PTFE resin is largely derived from the demand for the products into which it is fabricated. These products include gaskets, seals, and rings for use in the automotive industry; gaskets, linings, and packings for chemical applications; and insulators and tape for electrical applications.<sup>42</sup> The PTFE market is considered to be mature, with relatively small growth in consumption anticipated in the future. From 1997 to 2002, it is estimated that U.S. consumption of granular PTFE resin will grow at an annual rate of \*\*\* percent.<sup>43</sup>

Apparent U.S. consumption of granular PTFE resin has risen about \*\*\* percent since the time of the original investigations (table I-3, citing the increase shown from 1987 to 1998). The market share held by the domestic industry in 1998 (\*\*\* percent) is \*\*\* to that reported during the period examined during the original investigations and that currently reported for Italy (\*\*\* percent in 1998) is only slightly more than the market shares of \*\*\* to \*\*\* percent reported during 1985-87. In contrast, subject imports from Japan are no longer found in the U.S. market. The market share of U.S. imports from countries other than Italy and Japan was estimated at \*\*\* percent in 1998 compared to \*\*\* percent in 1987, with a particular increase shown in imports of granular PTFE resin from Germany.

### FOREIGN INDUSTRIES

The process to produce granular PTFE resin is technologically complex and capital intensive, resulting in a very limited number of manufacturers for the product on a worldwide basis. Montefluos was the sole Italian producer of granular PTFE resin during the 1985-87 period, manufacturing both unfilled and filled granular PTFE at its plant in Spinetta, Italy. There were three known Japanese manufacturers of the subject product: Daikin Industries (at its Osaka and Kashima plants), DuPont-Mitsui (at its plant in Shimizu City, Shizuoka Prefecture), and Asahi (at its Ichihara, Chiba Prefecture plant). Daikin Industries was the largest producer in Japan during the period of the original investigations, with an estimated \*\*\*-percent share of the Japanese market, followed by DuPont-Mitsui and Asahi, which each held approximately \*\*\* percent of the market.<sup>44</sup> The same four firms produce granular PTFE resin in Italy and Japan today.

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<sup>41</sup> Supplemental Response of DuPont, p. 2.

<sup>42</sup> Staff Report of Aug. 4, 1988, pp. A-9 and A-15.

<sup>43</sup> \*\*\*; Supplemental Response of DuPont, p. 3.

<sup>44</sup> Staff Report of Aug. 4, 1988, pp. A-69 and A-73 through A-74.

**Table I-3**  
**Granular PTFE resin: U.S. producers' U.S. shipments, U.S. imports, and apparent U.S. consumption, on the basis of quantity, 1985-87<sup>1</sup> and 1997-98**

Item	1985	1986	1987	1997	1998
	<b>Quantity (1,000 pounds)</b>				
U.S. producers' U.S. shipments	8,010	9,406	9,761	(2)	*** <sup>3</sup>
Shipments of imports from--					
Italy	***	***	***	(2)	*** <sup>3</sup>
Japan	***	***	***	(2)	-
Subject sources	***	***	***	(2)	*** <sup>3</sup>
Germany	(2)	(2)	(2)	(2)	*** <sup>3</sup>
Other sources	***	***	***	(2)	*** <sup>3</sup>
Total	2,932	3,312	3,897	(2)	*** <sup>3</sup>
Apparent U.S. consumption	10,942	12,718	13,658	***	<sup>4</sup>
	<b>Share of consumption (percent)</b>				
U.S. producers' U.S. shipments	73.2	74.0	71.5	(2)	***
Shipments of imports from--					
Italy	***	***	***	(2)	***
Japan	***	***	***	(2)	***
Subject sources	***	***	***	(2)	***
Germany	(2)	(2)	(2)	(2)	***
Other sources	***	***	***	(2)	***
Total	26.8	26.0	28.5	(2)	***

<sup>1</sup> As described earlier (see note to table I-1), the figures for U.S. producers' U.S. shipments in 1985-87 are believed to account for virtually all of the total U.S. granular PTFE resin industry.

<sup>2</sup> Not available.

<sup>3</sup> Calculated by applying 1998 market shares supplied by DuPont in its *Response* to total estimated 1998 U.S. consumption. Note that this figure is only slightly different from that provided for U.S. shipments in table I-1 (which was \*\*\* pounds), which was calculated using a different methodology.

*Continued.*

*Continuation.*

<sup>4</sup>Estimated by staff based upon the \*\*\* figure of \*\*\* pounds of granular PTFE resin consumption in the United States in 1997, adjusted upward by \*\*\* percent to account for anticipated annual growth between 1997 and 1998. (This figure includes estimated captive consumption, primarily for compounding. The data also include the estimated weight of fillers added by resin producers with compounding operations. The total weight of fillers is estimated at \*\*\* to \*\*\* pounds annually. By way of comparison, \*\*\* estimated apparent U.S. consumption of granular PTFE resin to be \*\*\* pounds in 1985.)

Source: *Staff Report of Aug. 4, 1988*, p. 87 for 1985-87 data (of which import data were questionnaire data); 1997 and 1998 total consumption figures are from \*\*\*; and 1998 market shares are from the *Response of DuPont*, p. 9.

As shown in table I-4, the capacity to produce granular PTFE resin in Italy increased from 1985 to 1987, as did actual production. However, home market shipments decreased, while export shipments, including exports to the United States, rose. In Japan, granular PTFE resin capacity also increased from 1985 to 1987. However, production of the resin decreased in Japan, as did home market shipments and exports to countries other than the United States. Only shipments of the subject product to the United States increased from 1985 to 1987. Most of the subject exports from Italy during 1985-87 were unfilled granular PTFE resin, although a significant amount of the filled product was also exported. In contrast, virtually all the subject exports from Japan during 1985-87 were unfilled granular PTFE resin.<sup>45</sup>

There are minimal data available for current capacity, production, or shipments of granular PTFE resin in Italy and Japan. DuPont asserts that there is excess global capacity to produce granular PTFE resin, particularly for Japanese and Italian manufacturers. It estimates that there is currently "overcapacity" in granular PTFE resin production of 7 million pounds in Italy and 8 million pounds in Japan on an annual basis.<sup>46</sup> As shown in table I-4, capacity to produce granular PTFE resins in Italy was estimated to be 8.8 million pounds in 1997, a 67 percent increase over reported capacity in 1987. Consumption and shipment figures are only available for all PTFE resins in Italy; however, they do not appear to show significant excess capacity. The capacity to produce all PTFE resins in Italy was \*\*\* pounds as of January 1, 1998, which is somewhat less than the consumption figure of \*\*\* pounds in 1997 (which would also include imports into Italy).<sup>47</sup> But in addition to the consumption of the product within Italy, there are significant Italian exports of PTFE (table I-4). In contrast, there does appear to be a large amount of overcapacity in Japan, where the capacity to produce all PTFE resins is reported to be \*\*\* pounds (as of mid-1998) (table I-4), with consumption estimated at \*\*\* pounds (in 1997) by \*\*\*. Of the quantity of PTFE consumed in Japan, \*\*\* is the subject granular product; the remainder is PTFE fine powder and aqueous dispersions. \*\*\* states that the demand for granular PTFE resin has been \*\*\* in Japan since 1995.<sup>48</sup>

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<sup>45</sup> *Staff Report of Aug. 4, 1988*, pp. A-70 and A-75.

<sup>46</sup> *Response of DuPont*, p. 6.

<sup>47</sup> \*\*\*.

<sup>48</sup> *Id.*

**Table I-4**  
**PTFE: Italy and Japan's capacity and shipments, 1985-87 and 1997-98**

Item	1985	1986	1987	1997	1998
	Granular PTFE resin			All PTFE resins, except as noted	
	Quantity (1,000 pounds, except as noted)				
Italy:					
Production	***	***	***	(1)	(1)
Capacity	***	***	***	***2	(1)
Capacity utilization ( <i>percent</i> )	***	***	***	(1)	(1)
Shipments:					
Home market	***	***	***	(1)	(1)
Exports:					
United States	***	***	***	***	(1)
Other	***	***	***	***	(1)
Total exports	***	***	***	***	(1)
Japan:					
Production	***	***	***	(1)	(1)
Capacity	***	***	***	(1)	***3
Capacity utilization ( <i>percent</i> )	***	***	***	(1)	(1)
Shipments:					
Home market	***	***	***	(1)	(1)
Exports:					
United States	***	***	***	1,510	1,759
Other	***	***	***	7,780	7,802
Total exports	***	***	***	9,290	9,561
<i>Continued.</i>					

*Continuation.*

<sup>1</sup> Reported figure is for PTFE (suspension) capacity, the production process used only for granular PTFE resins (and not PTFE fine powders or aqueous dispersion). According to the \*\*\*, plans to expand to \*\*\* metric tons {or \*\*\* pounds} are “under discussion.” The \*\*\* also notes that \*\*\*.

<sup>2</sup> Not available.

<sup>3</sup> Reported as of mid-1998. The DuPont-Mitsui plant accounts for \*\*\* pounds of the total reported capacity (or \*\*\* percent).

Source: *Staff Report of Aug. 4, 1988*, pp. A-70 and A-71 for 1985-87 data for Italy (which was provided by counsel for Ausimont) and pp. A-75 and A-76 for 1985-87 data for Japan (which was converted from metric tons as provided by counsel for Daikin Industries and DuPont-Mitsui); \*\*\* for 1997-98 capacity data for Italy and Japan; and official UN statistics for 1997 exports for Italy and official Japanese export statistics obtained through JETRO for 1997-98 exports for Japan. (Official UN statistics are copyrighted and not to be distributed outside the U.S. Government.)

As shown in table I-4, U.S. exports accounted for \*\*\* percent of total exports of granular PTFE resin from Italy in 1987. Ten years later, \*\*\* percent of all PTFE resins exported from Italy were shipped to the United States. Similarly, U.S. exports accounted for \*\*\* percent of total exports of granular PTFE resin from Japan in 1987. However, other export markets today account for a greater share of total Japanese exports of all PTFE resins, with only \*\*\* percent of total exports exported to the United States in 1998.

There is little data on pricing available. \*\*\*.<sup>49</sup> DuPont states that “the industry’s high fixed amortization and operating costs, combined with the fact that the rate of contribution to pre-tax profit of each sold pound of granular PTFE resin is in the range of \*\*\* to pre-tax profit, indicate that there are enormous incentives for Japanese and Italian producers to use aggressive prices to capture U.S. sales.”<sup>50</sup> It also asserts that the Japanese manufacturer Asahi has already used low prices to capture market share in numerous Asian markets outside of Japan.<sup>51</sup>

There are no antidumping orders in place, other than in the United States, for granular PTFE resin produced in Italy and Japan.<sup>52</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> *Response of DuPont*, p. 8.

<sup>51</sup> *Supplemental Response of DuPont*, p. 2.

<sup>52</sup> World Trade Organization ([www.wto.org](http://www.wto.org)).



**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



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**INTERNATIONAL TRADE  
COMMISSION**

[Investigations Nos. 731-TA-385-386  
(Review)]

**Granular Polytetrafluoroethylene Resin  
From Italy and Japan**

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Scheduling of expedited five-  
year reviews concerning the  
antidumping duty orders on granular  
polytetrafluoroethylene resin from Italy  
and Japan.

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

**EFFECTIVE DATE:** August 5, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

**SUPPLEMENTARY INFORMATION:****Background**

On August 5, 1999, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 23677, May 3, 1999) of the subject five-year reviews were adequate and the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.<sup>1</sup> Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

**Staff Report**

A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on September 20, 1999, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

**Written submissions**

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,<sup>2</sup> and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before September 23, 1999, and may not contain new factual information. Any person that is neither

a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 23, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

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

**Determination**

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

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

Issued: August 11, 1999

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99-21172 Filed 8-13-99; 8:45 am]

**BILLING CODE 7020-02-P**

<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

<sup>2</sup> The Commission found the response submitted by E.I. DuPont de Nemours & Co. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

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**INTERNATIONAL TRADE  
COMMISSION**

**[Investigations Nos. 731-TA-385-386  
(Review)]**

**Granular Polytetrafluoroethylene Resin  
From Italy and Japan**

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Revised schedule for the subject  
five-year reviews.

**EFFECTIVE DATE:** September 20, 1999.

**FOR FURTHER INFORMATION CONTACT:**  
Debra Baker (202-205-3180), Office of  
Investigations, U.S. International Trade  
Commission, 500 E Street SW,  
Washington, DC 20436. Hearing-  
impaired persons can obtain  
information on this matter by contacting  
the Commission's TDD terminal on 202-  
205-1810. Persons with mobility  
impairments who will need special  
assistance in gaining access to the  
Commission should contact the Office  
of the Secretary at 202-205-2000.  
General information concerning the  
Commission may also be obtained by  
accessing its internet server ([http://  
www.usitc.gov](http://www.usitc.gov)).

**SUPPLEMENTARY INFORMATION:** On August  
5, 1999, the Commission established a  
schedule for the conduct of these  
expedited five-year reviews (64 FR  
44537, August 16, 1999). Subsequently,  
the Department of Commerce extended  
the date for its final results in the  
expedited reviews from August 31, 1999  
to November 29, 1999 (64 FR 48579,  
September 7, 1999). The Commission,  
therefore, is revising its schedule to  
conform with Commerce's new  
schedule.

The Commission's new schedule for  
the five-year reviews is as follows: the  
staff report will be placed in the public  
record on September 30, 1999; the  
deadline for interested party comments  
(which may not contain new factual  
information) on the staff report is  
October 5, 1999; the deadline for  
interested party comments (which may  
not contain new factual information) on  
Commerce's final results is December 2,  
1999; and the deadline for brief written  
statements (which shall not contain new  
factual information) pertinent to the  
reviews by any person that is neither a  
party to the five-year reviews nor an  
interested party is December 2, 1999.

For further information concerning these five-year reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**Authority:** These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 21, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99-25081 Filed 9-24-99; 8:45 am]

BILLING CODE 7020-02-P

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**DEPARTMENT OF COMMERCE****International Trade Administration****[A-475-703, A-588-707]****Final Results of Expedited Sunset Reviews: Granular Polytetrafluoroethylene Resin From Italy and Japan****AGENCY:** Import Administration, International Trade Administration, Department of Commerce.**ACTION:** Notice of final results of expedited sunset reviews: Granular polytetrafluoroethylene resin from Italy and Japan.

**SUMMARY:** On May 3, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on granular polytetrafluoroethylene resin ("PTFE") from Italy and Japan (64 FR 23596) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington, DC 20230; telephone: (202) 482-3207 or (202) 482-1560, respectively.

**EFFECTIVE DATE:** December 3, 1999.

**Statute and Regulations**

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

**Scope**

The merchandise subject to these antidumping duty orders is PTFE from Italy and Japan. The subject merchandise is defined as granular PTFE resin, filled or unfilled. The order explicitly excludes PTFE dispersions in water and PTFE fine powders. Such merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 3904.61.00. This HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

There has been one scope ruling with respect to the order on PTFE from Japan in which reprocessed PTFE powder was determined to be outside the scope of the order (57 FR 57420; December 4, 1992). The Department issued a circumvention determination in which it determined that PTFE wet raw polymer exported from Italy to the United States falls within the scope of the order on PTFE from Italy (58 FR 26100; April 30, 1993).

These reviews cover imports from all manufacturers and exporters of PTFE from Italy and Japan.

**History of the Orders***Italy*

The Department published its final affirmative determination of sales at less than fair value ("LTFV") with respect to imports of PTFE from Italy on July 11, 1988 (53 FR 26096). In this determination, the Department published a weighted-average dumping margin for one company as well as an

"all others" rate. These margins were subsequently affirmed when the Department published its antidumping duty order on PTFE from Italy on August 30, 1988 (53 FR 33163). The Department has conducted several administrative reviews of this order since its imposition.<sup>1</sup> The order remains in effect for all manufacturers and exporters of the subject merchandise from Italy.

#### Japan

On July 5, 1988, the Department issued its affirmative final determination of sales at LTFV regarding PTFE from Japan (53 FR 25191). In this determination, the Department published weighted-average dumping margins for two companies as well as an "all others" rate. These margins were upheld when the antidumping duty order on PTFE from Japan was published on August 24, 1988 (53 FR 32267). Since the order was published, the Department has conducted three administrative reviews with respect to PTFE from Japan.<sup>2</sup> The order remains in effect for all manufacturers and exporters of the subject merchandise from Japan.

The Department has not issued any duty-absorption findings in either of these cases.

<sup>1</sup> See *Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Administrative Review*, 55 FR 50854 (December 11, 1990); *Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Administrative Review*, 56 FR 58031 (November 15, 1991); *Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Administrative Review*, 60 FR 19884 (April 21, 1995); *Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Administrative Review*, 60 FR 53737 (October 17, 1995); *Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Administrative Review*, 61 FR 25195 (May 20, 1996); *Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Administrative Review*, 62 FR 5590 (February 6, 1997); as amended, *Granular Polytetrafluoroethylene Resin from Italy; Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 23219 (April 29, 1997); *Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Administrative Review*, 62 FR 48592 (September 16, 1997); *Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy*, 63 FR 49080 (September 14, 1998).

<sup>2</sup> See *Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 50343 (September 27, 1993); *Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review*, 60 FR 33188 (June 27, 1995); *Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review*, 61 FR 2489 (January 26, 1996).

#### Background

On May 3, 1999, the Department initiated sunset reviews of the antidumping duty orders on PTFE from Italy and Japan (64 FR 23596), pursuant to section 751(c) of the Act. For both of the reviews, the Department received a notice of intent to participate on behalf of E.I. DuPont de Nemours & Company ("DuPont"), on May 18, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Pursuant to section 771(9)(C) of the Act, DuPont claimed interested party status as a domestic producer of the subject merchandise. The Department received complete substantive responses from DuPont on May 28, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On September 7, 1999, the Department determined that the sunset reviews of the antidumping duty orders on PTFE from Italy and Japan are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than November 29, 1999, in accordance with section 751(c)(5)(B) of the Act.<sup>3</sup>

#### Determination

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

<sup>3</sup> See *Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 48579 (September 7, 1999).

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, DuPont's comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

#### Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that it normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall conclude that revocation of the order would be likely to lead to continuation or recurrence of dumping where an interested party waives its participation in the sunset review. In these instant reviews, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

#### Italy

In its substantive response, DuPont argues that revocation would likely lead to continuation or recurrence of dumping because dumping has continued over the life of the order at levels well above *de minimis* and that import volumes declined significantly after the issuance of the order. DuPont points out that, in the most recent

administrative review, the dumping margin for Ausimont S.p.A., an Italian manufacturer/exporter of the subject merchandise, was calculated to be 45.72 percent, a significant increase from the margin of 5.95 percent determined in the preceding administrative review (see May 28, 1999, substantive response of DuPont at 6). Moreover, DuPont argues that the post-order decline in import volumes provides further strong support for a determination that dumping is likely to continue or recur should the order be revoked. To support its argument DuPont pointed out that imports of PTFE from Italy declined by over 43 percent between 1987, the year preceding the order, and 1990, the second year following the order (see *id.* at 6-7).

#### Japan

DuPont makes similar arguments regarding the likely effect of revocation of the Japanese order. Indeed, DuPont again argues that because dumping has continued over the life of the order at levels well above *de minimis* and import volumes declined significantly after the issuance of the order, the Department should determine that revocation of the order would likely lead to continuation or recurrence of dumping. DuPont points out that dumping margins at levels significantly above *de minimis* have been found in the three administrative reviews conducted by the Department. DuPont also maintains that PTFE imports from Japan decreased by over 78 percent between 1987, the year preceding the issuance of the order, and 1990, the second year following the order (see May 28, 1999, substantive response of DuPont at 5-6).

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63-64, if companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. As pointed out above, dumping margins above *de minimis* continue to exist for shipments of the subject merchandise from Italy and Japan.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As demonstrated in each respective section above, DuPont argues that a significant decline in the volume of imports of the subject merchandise from Italy and Japan since the imposition of the orders provides further evidence that dumping would continue if the orders were revoked. Moreover, as mentioned above, in its substantive responses, DuPont provides

statistics demonstrating the decline in import volumes of PTFE from Italy and Japan.

Using the Department's statistics, including IM146 reports, on imports of the subject merchandise from these countries, we agree with the domestic interested parties' assertions that imports of the subject merchandise declined after the orders were imposed and have not regained pre-order volumes.

As noted above, in conducting its sunset reviews, pursuant to section 752(c) of the Act, the Department considers the weighted-average dumping margins and volume of imports before and after the imposition of the order when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above *de minimis* levels and a reduction in import volumes after the issuance of the orders is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a *de minimis* level continues in effect for imports of the subject merchandise from at least one Italian and one Japanese manufacturer/exporter. Therefore, given that dumping has continued over the life of the orders, import volumes declined significantly after the imposition of the orders, respondent parties waived participation, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the orders were revoked.

#### Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.) To date, the Department has not issued any duty-absorption findings in either of these cases.

In their substantive responses, DuPont recommends that, consistent with the *Sunset Policy Bulletin*, Department provide to the Commission the

company-specific margins from the original investigations. Moreover, regarding companies not reviewed in the original investigation, DuPont suggested that the Department report the "all others" rates included in the original investigations.

The Department agrees with DuPont. The Department finds that the margins calculated in the original investigation are probative of the behavior of Italian and Japanese producers and/or exporters if the orders were revoked as they are the only margins which reflect their behavior without the discipline of the order in place. Therefore, the Department will report to the Commission the company-specific and "all others" rates from the original investigations as contained in the Final Results of Reviews section of this notice.

#### Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
<b>Italy</b>	
Montefluos S.p.A./Ausimont	
U.S.A. ....	46.46
All Others .....	46.46
<b>Japan</b>	
Daikin Industries, Inc. ....	103.00
Asahi Fluoropolymers Co., Ltd.	51.45
All Others .....	91.74

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

These five-year ("sunset") reviews and notices are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 24, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-31430 Filed 12-2-99; 8:45 am]

BILLING CODE 3510-DS-P



**APPENDIX B**  
**STATEMENT ON ADEQUACY**



**EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY**  
in  
*GRANULAR POLYTETRAFLUOROTHYLENE RESIN FROM ITALY AND JAPAN*  
Inv. Nos. 731-TA-385 and 731-TA-386 (Review)

On August 5, 1999, the Commission determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1970, as amended, 19 U.S.C. § 1675(c)(3)(B). The Commission determined that the domestic interested party group response was adequate. In this regard, the Commission received a response from a domestic producer of granular polytetrafluoroethylene resin, which accounts for a substantial percentage of domestic production. Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant conducting a full review. The Commission, therefore, determined to conduct an expedited review.

