

UNITED STATES INTERNATIONAL TRADE COMMISSION

PORCELAIN-ON-STEEL COOKING WARE FROM CHINA, MEXICO,
AND TAIWAN, AND TOP-OF-THE-STOVE STAINLESS STEEL
COOKING WARE FROM KOREA AND TAIWAN

Investigations Nos. 701-TA-267 and 268 (Review) and
731-TA-297-299, 304 and 305 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3286, March 2000)

UNITED STATES INTERNATIONAL TRADE COMMISSION

**Investigations Nos. 701-TA-267 and 268 (Review) and 731-TA-297-299,
304 and 305 (Review)**

**Porcelain-on-Steel Cooking Ware From China, Mexico, and Taiwan, and
Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan**

DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on porcelain-on-steel cooking ware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.² The Commission also determines that the revocation of the countervailing duty orders and the revocation of the antidumping duty orders on top-of-the-stove stainless steel cooking ware from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³

BACKGROUND

The Commission instituted these reviews on February 1, 1999 (64 F.R. 4896) and determined on May 6, 1999, that it would conduct full reviews (64 F.R. 27295, May 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on July 16, 1999 (64 F.R. 38471).

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

² Commissioner Thelma J. Askey dissenting.

³ Chairman Lynn M. Bragg and Commissioners Thelma J. Askey and Deanna Tanner Okun dissenting.

The hearing was held in Washington, DC, on January 27, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on March 30, 2000. The views of the Commission are contained in USITC Publication 3286 (March 2000), entitled *Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan, and Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan: Investigations Nos. 701-TA-267 and 268 (Review) and 731-TA-297-299, 304 and 305 (Review)*.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering porcelain-on-steel cookware (“POS cookware”) from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹ We also determine that revocation of the countervailing and antidumping duty orders covering top-of-the-stove stainless steel cookware from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

I. BACKGROUND

In November 1986, the Commission determined that an industry in the United States was being materially injured by reason of less than fair value (“LTFV”) imports of POS cookware from China, Mexico, and Taiwan, and also by reason of subsidized imports from Mexico.³ Commerce issued antidumping orders with respect to POS cookware from these three countries, and a countervailing duty order with respect to Mexico, the next month.⁴

In January 1987, the Commission determined that an industry in the United States was being materially injured by reason of both LTFV and subsidized imports of top-of-the-stove stainless steel cookware from Korea and Taiwan.⁵ Commerce issued antidumping and countervailing duty orders with respect to top-of-the-stove stainless steel cookware from these two countries that same month.⁶

On February 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the various antidumping duty and countervailing duty orders on POS cookware from China, Mexico, and Taiwan, and on top-of-the-

¹ Commissioner Askey dissenting. *See* Dissenting Views of Commissioner Thelma J. Askey.

² Chairman Bragg and Commissioners Askey and Okun dissenting. *See* Dissenting Views of Chairman Lynn M. Bragg and Dissenting Views of Commissioners Thelma J. Askey and Deanna Tanner Okun.

³ Porcelain-on-Steel Cooking Ware From China, Mexico, and Taiwan, Invs. Nos. 701-TA-265, 731-TA-297-299 (Final), USITC Pub. 1911 (Nov. 1986) (“POS Cookware”).

⁴ *See* Porcelain-on-Steel Cooking Ware from the People’s Republic of China, 51 Fed. reg. 43414 (Dec. 2, 1986) (antidumping duty order); Porcelain-on-Steel Cooking Ware from Taiwan, 51 Fed. Reg. 43416 (Dec. 2, 1986) (antidumping duty order); Porcelain-on-Steel Cooking Ware from Mexico, 51 Fed. Reg. 43415 (Dec. 2, 1986) (antidumping duty order); and Porcelain-on-Steel Cooking Ware from Mexico, 51 Fed. Reg. 44827 (Dec. 12, 1986) (countervailing duty order).

⁵ Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan, Invs. Nos. 701-TA-267-268, 731-TA-304-305 (Final) (Jan. 1987), USITC Pub. 1934 (Jan. 1987) (“Top-of-the-Stove Stainless Steel Cookware”). An appeal of the Commission’s decision was rendered moot by the court’s rejection of the plaintiff’s challenges to Commerce’s dumping margin calculation. *See* General Housewares Corp. v. United States, 783 F. Supp. 1408, 1409 (CIT 1992).

⁶ *See* Certain Stainless Steel Cooking Ware from the Republic of Korea, 52 Fed. Reg. 2140 (Jan. 20, 1987) (countervailing duty order); Certain Stainless Steel Cooking Ware from the Republic of Korea, 52 Fed. Reg. 2139 (Jan. 20, 1987) (antidumping duty order); Certain Stainless Steel Cooking Ware from the Republic of Taiwan, 52 Fed. Reg. 2138 (Jan. 20, 1987) (antidumping duty order); Certain Stainless Steel Cooking Ware from the Republic of Taiwan, 52 Fed. Reg. 2141 (Jan. 20, 1987) (countervailing duty order).

stove stainless steel cookware from Korea and Taiwan, would likely lead to continuation or recurrence of material injury.⁷

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) – demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁸ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In these reviews, the Commission received responses to the notice of institution from: (1) domestic POS cookware producer Columbian Home Products, L.L.C. (“Columbian”), the sole domestic producer of POS cookware; (2) Mexican POS cookware producers Cinsa, S.A. de C.V. and Porcelanizados Enasa (collectively, “Cinsa”)⁹; (3) the Stainless Steel Cookware Committee (“the Committee”), which is composed of domestic stainless steel cookware producers Regal Ware, Inc., All-Clad Metalcrafters, Inc. (“All-Clad”), and Vita Craft Corp.; and (4) the Korea Metal-Ware Industry Association¹⁰ and eight of its individual members that produce stainless steel cookware (“Korean Respondents”). No response to the notice of institution was received from any producer, importer, or exporter of subject merchandise from China or Taiwan. Accordingly, on May 7, 1999, the Commission determined that the domestic interested party group responses were adequate in both sets of reviews, and that the respondent interested party group responses were adequate for the reviews concerning POS cookware from Mexico and top-of-the-stove stainless steel cookware from Korea.^{11 12} Pursuant to

⁷ 64 Fed. Reg. 4896 (Feb. 1, 1999).

⁸ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁹ We refer to these firms collectively as “Cinsa” because both are wholly owned subsidiaries of ISLO, S.A. de C.V., which is wholly owned by Grupo Saltillo, S.A. de C.V., and because Cinsa’s recent exports to the United States have been much greater than Enasa’s. See Porcelain-on-Steel Cookware From Mexico, 63 Fed. Reg. 1430 (Jan. 9, 1998) (admin. rev., prelim. results).

¹⁰ The Commission determined that the Korean Metal Ware Industry Association is not an interested party because a majority of its members are not producers or exporters of the subject merchandise. See Explanation of Commission Determinations of Adequacy in Porcelain-on-Steel Cooking Ware From China, Mexico, and Taiwan and Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan at 2, n.1 (May 1999) (“Explanation of Adequacy”).

¹¹ 64 Fed. Reg. 38471 (July 16, 1999).

¹² Commissioner Askey notes that the group adequacy approach adopted by the Commission to determine whether or not interested party responses are adequate to warrant full sunset review is not suggested by the Uruguay Round Agreements Act (“URAA”) or the Statement of Administrative Action (“SAA”). As the process is currently structured, Commissioners vote on the adequacy of each group, but not on the adequacy of the response overall. This process unnecessarily constrains Commissioners in how they decide whether or not a review should be expedited and implies that the group adequacy decision drives a Commissioner’s decision concerning whether or not to conduct an expedited review. For further discussion of Commissioner Askey’s views concerning the adequacy determination, see Elemental Sulfur from Canada, Inv. No. AA1921-127 (Review), USITC Pub. 3152 (Jan. 1999).

section 751(c)(5) of the Act,¹³ the Commission decided to conduct full five-year reviews for all eight orders in the group.¹⁴

On January 4, 2000, Commerce published its negative determination of the likelihood of the continuation or recurrence of a countervailable subsidy in the review of the countervailing duty order on POS cookware from Mexico.¹⁵ Accordingly, the Commission terminated its five-year review of that order effective January 4, 2000.¹⁶

On January 27, 2000, the Commission held a hearing in these reviews, at which representatives of Columbian, Cinsa, the Committee, and the Korean Respondents appeared. The domestic producers filed briefs in support of continuation of the orders, and Cinsa and the Korean Respondents filed briefs supporting revocation of the orders.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

1. Background

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”¹⁷ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹⁸ The Commission’s decision regarding the appropriate domestic like product(s) in an investigation or review is based on the facts, record, and legal parameters of the proceeding in question.¹⁹ In a section 751(c) review, the Commission must also take into account “its prior injury determinations.”²⁰

In its final five-year review determination for Porcelain-on-Steel Cooking Ware From Mexico, Commerce defined the subject merchandise as all POS cookware

which includes tea kettles, that do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule of

¹³ 19 U.S.C. § 1675(c)(5).

¹⁴ See Explanation of Adequacy. The Commission decided to conduct full reviews concerning POS cookware from China and Taiwan, and stainless steel cookware from Taiwan, notwithstanding the inadequate respondent interested party group responses in these reviews, to promote administrative efficiency in light of its decision to conduct full reviews concerning POS cookware from Mexico and stainless steel cookware from Korea. Id.

¹⁵ 65 Fed. Reg. 284 (Jan. 4, 2000).

¹⁶ 65 Fed. Reg. 2430 (Jan. 14, 2000).

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ 19 U.S.C. § 1677(10). See NEC Corp. v. Dep’t of Commerce, Slip Op. 98-164 at 8 (CIT, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁹ See, e.g., Citrosuco Paulista, S.A., v. United States, 704 F. Supp. 1075, 1087-88 (CIT 1988) (while each original investigation is sui generis, and the Commission is not bound by prior like product determinations, the like product definition must be based on a rational basis discernible to the reviewing court).

²⁰ 19 U.S.C. § 1675a(a)(1)(a).

the United States (“HTSUS”) subheading 7323.94.00. Kitchenware currently entering under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order remains dispositive.²¹

The scope definitions in the other two POS cookware reviews are generally the same, although there are several exclusions from the individual orders.²²

The imported products covered by the POS cookware reviews consist of articles of porcelain-coated carbon steel used as receptacles in the cooking and heating of food, including both top-of-the stove cookware and ovenware.²³ POS cookware is categorized in terms of the thickness of its steel substrate. Light-gauge POS cookware is typically less than 0.6 mm thick and bears a single coat of dark-colored porcelain, which may have white flecks.²⁴ Heavy-gauge POS cookware is typically more than 0.6 mm thick and, accordingly, can support more layers of porcelain, which allows the use of a broader array of colors and decorations.²⁵ POS cookware is available in a variety of shapes and sizes and is generally sold as individual pieces rather than in sets.²⁶

In its final five-year review determinations concerning top-of-the-stove stainless steel cookware, Commerce defined the subject merchandise as

top-of-the-stove stainless steel cookware from Korea and Taiwan. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers.²⁷

²¹ Porcelain-on-Steel Cooking Ware From Mexico, 65 Fed. Reg. 281 (Jan. 4, 2000) (final results of full sunset review).

²² The scope definition in the review concerning China does not specifically exclude kitchenware, but does state that certain mixing bowls “are properly considered kitchen ware and are therefore, outside the scope of the order.” Porcelain-on-Steel Cooking Ware From the People’s Republic of China, 64 Fed. Reg. 50271 (Sept. 16, 1999). In addition, the review concerning Taiwan does not include teakettles. See Porcelain-on-Steel Cooking Ware From Taiwan, 64 Fed. Reg. 50487 (Sept. 17, 1999). Commerce also listed numerous clarifications including and excluding particular types of cookware from the scope of the orders on China and Taiwan. See the Confidential Staff Report (“CR”) at I-14 - I-17, Public Staff Report (“PR”) at I-11 - I-14 for the complete list of clarifications.

²³ For example, the term “top-of-the-stove cookware” includes pots and pans, while “ovenware” includes roasting pans and broiling pans. See CR at I-19, PR at I-14 - I-15 for a more complete list of examples of the subject merchandise.

²⁴ CR at II-1, PR at II-1; Hearing Transcript (“Hrg. Tr.”) at 75-76 (D. Ryan); Cinsa Posthearing Brief, Att. F, sec. 4. There are no industry standards governing the gauge (thickness) of POS cookware.

²⁵ CR at II-1, PR at II-1. Hrg. Tr. at 75-76, 81-82, 123 (D. Ryan), Cinsa Posthearing Brief, Att. F, sec. 4. Cinsa categorizes cookware 0.6 mm thick as “medium-gauge.” Cinsa Posthearing Brief, Att. F, sec. 4.

²⁶ See, e.g., CR at I-19, PR at I-15.

²⁷ Top-of-the-Stove Stainless Steel Cookware From South Korea, 64 Fed. Reg. 48374, 48375 (Sept. 3, 1999) (final results of CVD sunset review); Top-of-the-Stove Stainless Steel Cookware From Taiwan, 64 Fed. Reg. 48372, 48373 (Sept. 3, 1999) (final results of CVD sunset review); Top-of-the-Stove Stainless Steel Cookware From the Republic of Korea and Taiwan, 64 Fed. Reg. 40570 (July 27, 1999) (final results of AD sunset reviews).

The scope of each of these four reviews is identical and states that the merchandise “is currently classifiable under Harmonized Tariff Schedule (“HTS”) item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.” However, there are several country-specific exclusions from the individual orders.²⁸

For the purpose of these reviews, top-of-the-stove stainless steel cookware consists of articles used to cook or heat food on surface heating elements.²⁹ Since stainless steel conducts heat poorly, it is often combined with more conductive aluminum or copper, in the form of either a metal disc (known as a “core”) affixed to the bottom of the pan or several layers of another metal sandwiched between layers of stainless steel on the bottom and sides of the pan (known as a “multi-ply” design).³⁰ Stainless steel cookware is available in a wide range of shapes and sizes, and is frequently sold in sets, which have a significantly lower price than would be charged if the individual pieces of cookware were sold separately.³¹

The starting point of the Commission’s like product analysis in a five-year review is the like product definition in the Commission’s original determination.³² In the original investigations, the Commission defined the like product for imported POS cookware to be domestically produced POS cookware,³³ and the like product for imported top-of-the-stove stainless steel cookware to be domestically produced top-of-the-stove stainless steel cookware.³⁴ Columbian and the Committee argue that the Commission should adopt the original like product definitions as the definitions of the domestic like products for these reviews. The respondents contend that the domestic like product for each set of reviews should include all metallic cookware. Cinsa proposes a definition that would combine POS cookware with all other metallic cookware and ovenware (e.g., stainless steel and aluminum) for the POS cookware reviews. For the top-of-the-stove stainless steel cookware reviews, the Korean Respondents propose a definition that would combine stainless steel with all other metallic top-of-the-stove cookware (excluding ovenware).

²⁸ See CR at I-17 - I-18, PR at I-14 for the complete list of clarifications to the scope of the orders on top-of-the-stove stainless steel cookware from Korea and the scope of the orders on top-of-the-stove stainless steel cookware from Taiwan.

²⁹ Stainless steel ovenware is excluded from the scope of each of the orders. *See, e.g., Testing Large Roasting Pans*, Cook’s Illustrated, Jan. & Feb. 1999, at 29.

³⁰ CR at I-21, PR at I-16.

³¹ CR at II-2, PR at II-1; *The cook’s wares*, Consumer Reports, Nov. 1998 at 40 (“Consumer Reports”).

³² In the like product analysis for an investigation, the Commission generally considers a number of factors, including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. *See The Timken Co. v. United States*, 913 F. Supp. 580, 584 (CIT 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. *See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington*, 747 F. Supp. at 748-49.

³³ *POS Cookware*, Pub. 1911 at 4-7. Commissioner Rohr dissented from this finding and instead found two like products, POS teakettles and other POS cookware. *Id.* at 19-20, n.5.

³⁴ *Top-of-the-Stove Stainless Steel Cookware*, Pub. 1934 at 5, n.7.

2. Analysis and Finding With Regard To POS Cookware

The record in the POS cookware reviews does not provide any reason to depart from the finding in the original investigation that domestically produced POS cookware is the like product for the subject merchandise.³⁵ There are clear distinctions between the POS cookware produced by Colombian, which is available only in light gauges, and other categories of domestic cookware.³⁶ Domestic POS cookware has a thin metal substrate, with no option for nonstick coating,³⁷ a surface finish that is prone to chip and crack,³⁸ and a limited product line, which is not the case with other categories of cookware.³⁹ Domestic POS cookware also lacks the extended or lifetime warranty and heat conductivity enhancements, such as aluminum disks or cladding, offered by the domestic producers of stainless steel cookware.⁴⁰ As a result, domestic POS cookware is used primarily for roasting or cooking applications that require large lightweight pots, and is rarely used for frying or in restaurant and institutional settings.⁴¹ Domestic POS cookware is not available in basic kitchen sets, a popular way to package and market other types of cookware,⁴² limiting the interchangeability between POS cookware and other categories of cookware. In addition, the facilities, equipment, and workers that produce POS cookware are different from those that

³⁵ Commissioner Askey notes that the starting point for her like product analysis is the like product definition contained in the original determination. Because the purpose of a sunset review is, literally, to review an existing order, the like product definition analysis in a review is different from that in an original investigation, where the Commission begins with a fresh record. She is, therefore, inclined to retain the original like product definition unless the existing definition(s) present a substantial impediment to arriving at a likelihood of injury determination.

As discussed in this section, there remain substantial differences between POS cookware and other types of cookware. However, as discussed below in the section on Conditions of Competition and in her Dissenting Views, there have been changes in the different types of cookware and in the market that appear to have narrowed some of the differences between POS cookware and other types of cookware; there are indications that there is more substitutability among different types of cookware, including POS cookware, today than during the time of the original investigation. Nevertheless, on balance, she finds that the record in these reviews does not support a departure from the finding in the original investigation that domestically produced POS cookware is the like product for the subject merchandise.

³⁶ Cookware made of metals other than aluminum, stainless steel, and porcelain-on-steel represent an insignificant portion of the cookware produced in the United States. See Cookware Manufacturers Association, Cookware Shipments, <http://www.cookware.org> (“CMA Shipment Statistics”). We note that the information on the record indicates that there is a clear dividing line between POS cookware and cast iron and copper cookware, and between top-of-the-stove stainless steel cookware and cast iron and copper cookware. See CR at I-27 - I-30, PR at I-19 - I-21. Therefore, we have focused the like product analysis on stainless steel, aluminum, and POS cookware.

³⁷ See Colombian Home Products, LLC, Price Schedule (June 1, 1999), in Producers’ Questionnaire, Attachment (“Columbian Price Schedule”).

³⁸ Hrg. Tr. at 28 (H. Rushing), CR at I-22, PR at I-16 - I-17.

³⁹ See Colombian Price Schedule, which contains a small number of saucepans and only one model of frying pan. *Accord* CR at I-19, n.18, PR at I-15, n.18.

⁴⁰ See, e.g., Hrg. Tr. at 19-20 (H. Rushing) (“Stainless steel cookware is the only type of cookware that has other types of metal added to it to improve its heat conductivity.”).

⁴¹ CR at I-22, PR at I-16 - I-17; Hrg. Tr. at 22 (H. Rushing).

⁴² CR at I-19, PR at I-15; see Consumer Reports at 40.

produce other categories of cookware.⁴³ Finally, POS cookware is generally priced lower than other types of cookware.⁴⁴

We considered the fact that purchasers described all categories of cookware as being essentially substitutable.⁴⁵ In addition, there is some overlap in channels of distribution between POS cookware and other types of cookware.⁴⁶ However, we find that on the whole, the relevant factors in these reviews indicate the existence of a clear dividing line between domestic POS cookware and other categories of cookware.

3. Analysis and Finding With Regard To Top-of-the-Stove Stainless Steel Cookware

The record in the top-of-the-stove stainless steel cookware reviews does not provide any reason to depart from the finding in the original investigation that domestically produced top-of-the-stove stainless steel cookware is the like product for the subject merchandise.⁴⁷ For the reasons noted above, POS cookware is not a part of the domestic like product for subject stainless steel cookware. Also, we find there are significant differences between domestic top-of-the-stove stainless steel and aluminum cookware. Even with the addition of an aluminum core or cladding, top-of-the-stove stainless steel cookware cannot match the heat conductivity of the best aluminum cookware.⁴⁸ Nonstick coatings are frequently put on aluminum cookware, but are used much less on stainless steel.⁴⁹ Consequently, top-of-the-stove stainless steel cookware is inferior to aluminum cookware for frying.⁵⁰ Conversely, top-of-the-stove stainless steel cookware is markedly superior to aluminum cookware in durability and non-reactivity with food, making it much more useful for making stocks.⁵¹ Stainless steel is more dishwasher-safe, increasing its convenience to consumers. By contrast, restaurants favor aluminum

⁴³ CR at I-20 - I-21, PR at I-15 - I-16.

⁴⁴ See, e.g., CR & PR, Tables V-1 - V-11, Testing Large Roasting Pans, Cook's Illustrated at 29 (Jan. & Feb. 1999), Consumer Reports at 43, and Columbian Price Schedule.

⁴⁵ CR at I-25, PR at I-18. We note that there is a large number of purchasers and our responses represent a relatively small portion of that group.

⁴⁶ CR at I-23 - I-24, PR at I-17.

⁴⁷ As she discussed above in footnote 35, Commissioner Askey is inclined to retain the original like product definition unless the existing definition(s) present a substantial impediment to arriving at a likelihood of injury determination. As discussed in this section, there remain substantial differences between top-of-the-stove stainless steel cookware and other types of cookware. However, as discussed more fully in the Dissenting Views of Commissioners Askey and Okun, the record also indicates that there have been changes in the physical characteristics of certain types of cookware, including top-of-the-stove stainless steel cookware, and in the market that have narrowed some of the differences between top-of-the-stove stainless steel cookware and other types of cookware since the time of the original investigation. These changes appear to be most pronounced in the comparison of top-of-the-stove stainless steel cookware with aluminum cookware. Nevertheless, on balance, she finds that the record in these reviews does not support a departure from the finding in the original investigation that domestically produced top-of-the-stove stainless steel cookware is the like product for the subject merchandise.

⁴⁸ Consumer Reports at 43.

⁴⁹ Hrg. Tr. at 74 (H. Rushing).

⁵⁰ Hrg. Tr. at 21 (H. Rushing).

⁵¹ Hrg. Tr. at 21 (H. Rushing); Cookware Manufacturers' Association, CMA Guide to Cookware and Bakeware at 68; Cinsa Posthearing Brief, Tab F at 2.

cookware.⁵² These considerations lead us to conclude that, although top-of-the-stove stainless steel cookware can be used in most of the same applications as aluminum cookware, interchangeability is limited. The concentration of top-of-the-stove stainless steel cookware in the direct sales channel of distribution, versus retail sales for aluminum cookware, is another important distinction between stainless steel cookware and aluminum cookware.⁵³ Finally, the facilities, equipment, and workers that produce top-of-the-stove stainless steel cookware cannot be used to produce any other category of cookware.⁵⁴

We have considered the similarities between top-of-the-stove stainless steel and aluminum cookware. Purchasers responding to the Commission's questionnaires generally indicated that all categories of cookware are essentially substitutable,⁵⁵ and the prices charged for stainless steel and aluminum cookware overlap to a large extent.⁵⁶ However, we find that, on the whole, the relevant factors in this review indicate the existence of a clear dividing line between domestic top-of-the-stove stainless steel and aluminum cookware.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."⁵⁷ In accordance with our domestic like product determinations, we determine that the domestic industry for the reviews of POS cookware consists of the domestic producer of POS cookware, Columbian. We further determine that the domestic industry for the reviews concerning top-of-the-stove stainless steel cookware consists of all domestic producers of top-of-the-stove stainless steel cookware.

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), which 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 that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁵⁸ The

⁵² Hrg. Tr. at 24 (H. Rushing).

⁵³ Top-of-the-stove stainless steel cookware accounts for *** percent of the cookware sold through direct sales, while direct sales represent the majority of sales of domestic top-of-the-stove stainless steel cookware. CR at I-24, PR at I-18, CR, Table III-B-6, PR, Table III-14.

⁵⁴ CR at I-21 - I-22, PR at I-16.

⁵⁵ CR at I-25, PR at I-18. We note that there is a large number of purchasers and our responses represent a relatively small portion of that group.

⁵⁶ See Consumer Reports at 43.

⁵⁷ 19 U.S.C. § 1677(4)(A).

⁵⁸ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987). 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;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*,

(continued...)

POS cookware reviews do not present any related party questions. However, in the top-of-the-stove stainless steel cookware reviews, two domestic producers were also importers during the review period – Revere and *** – making them related parties by definition.⁵⁹

The inclusion or exclusion of Revere, which closed its U.S. production facility in 1999 and became exclusively an importer of cookware, is largely moot in the prospective inquiry required in a five-year review.⁶⁰ In any event, the information submitted by Revere was too fragmentary for a meaningful aggregation with data submitted by other producers of top-of-the-stove stainless steel cookware.

*** imported ***, which it could not manufacture economically in the United States, to supplement its U.S. product line. The *** role that imports play in ***’s total sales suggests that the company’s primary interest lies with domestic production.⁶¹ Thus, we conclude that appropriate circumstances do not exist to exclude *** from the domestic industry.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON POS COOKWARE WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME⁶²

A. Cumulation

1. Framework⁶³

⁵⁸ (...continued)

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 (CIT 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. *See, e.g., 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).

⁵⁹ CR at III-A-6, PR at III-2; *see* section 771(4)(B)(I), 19 U.S.C. § 1677(4)(B)(I). “Revere” is the name commonly used to refer to the production by Corning Consumer Products Co. of its Revere Ware line of cookware. After the closure of its U.S. production facility, Corning Consumer Products Co. changed its name to World Kitchen, Inc.. CR at I-31, n. 48; PR at I-21, n. 48.

⁶⁰ *See* SAA, H.R Rep No. 103-316, vol. I, at 883-84.

⁶¹ *** held a *** percent share of U.S. production of stainless steel cookware (excluding Revere) in 1998, with the subject imports representing between *** percent of its sales. CR at III-A-6, PR at III-2; CR & PR, Table I-3.

⁶² Commissioner Askey dissenting. Commissioner Askey joins in the discussion of cumulation, the legal standard and the conditions of competition. For her analysis with respect to the likelihood that revocation of the antidumping duty orders of POS cookware from China, Mexico, and Taiwan would lead to continuation or recurrence of material injury within a reasonably foreseeable time, *see* the Dissenting Views of Commissioner Thelma J. Askey.

⁶³ Chairman Bragg does not join section III.A.1 of the opinion. For a complete statement of Chairman Bragg’s analytical framework regarding cumulation in sunset reviews, *see* Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate from China and Spain, Invs. 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 there is likely to be a reasonable overlap

(continued...)

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.⁶⁴

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.⁶⁵ 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.⁶⁶ With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.⁶⁷

The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.^{68 69} Only a

⁶³ (...continued)

of competition in the event of revocation.

⁶⁴ 19 U.S.C. § 1675a(a)(7).

⁶⁵ 19 U.S.C. § 1675a(a)(7).

⁶⁶ SAA, H.R. Rep. No. 103-316, vol. I (1994).

⁶⁷ Commissioner Askey notes that the Act clearly states that the Commission is precluded from exercising its discretion to cumulate if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, the Commission must focus on whether the imports will impact the condition of the industry discernibly as a result of revocation, and not simply on whether there will be a small volume of imports after revocation, *i.e.*, by assessing their negligibility after revocation of the order. For a full discussion of her views on this issue, see Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

⁶⁸ 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.

⁶⁹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

“reasonable overlap” of competition is required.⁷⁰ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.⁷¹

In these reviews, the statutory requirement that all of the POS cookware reviews be initiated on the same day is satisfied. We do not find that subject imports from any of the subject countries are likely to have no discernible adverse impact on the domestic industry if the orders are revoked.⁷²

2. Reasonable Overlap of Competition⁷³

In the original investigation, the Commission found that imports from China, Mexico, and Taiwan competed with each other and with the domestic like product.⁷⁴ The record in these reviews provides no reason to depart from this finding. The record indicates that there is a high degree of substitutability among the domestic like product and subject imports from Mexico, and a moderate degree with imports from China and Taiwan.⁷⁵ Light-gauge POS cookware accounts for a substantial portion of shipments of the domestic like product and the subject merchandise – 100 percent for Colombian, almost as much for Cinsa, and a significant proportion for imports from China and Taiwan.⁷⁶ The suppliers of cookware from these countries sometimes use similar designs for their cookware, to the extent that different producers’ pieces of cookware are in some cases indistinguishable and their covers interchangeable.⁷⁷

⁷⁰ See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

⁷¹ See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

⁷² For a discussion of the analytical framework of Vice Chairman Miller and Commissioners Hillman and Koplan regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Invs. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Commissioner Koplan’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephan Koplan Regarding Cumulation).

⁷³ Chairman Bragg joins in the Commission’s analysis and finding of a likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product.

⁷⁴ POS Cookware, USITC Pub. 1911 at 10.

⁷⁵ See CR at II-23, PR at II-14.

⁷⁶ CR at II-23, PR at II-14, Hrg. Tr. at 69 (D. Ryan).

⁷⁷ See, e.g., Hrg. Tr. at 44 (D. Ryan), Colombian product brochures, Cinsa International Co. brochure, and D.S. Import Inc. brochure in Colombian Prehearing Brief, Exhs. 8, 9 & 11.

*** the importers of subject POS cookware reported that they sell their merchandise nationwide, indicating that there are sales in the same geographic markets.⁷⁸ Import data show that Chinese, Mexican, and Taiwan subject merchandise entered the United States throughout the review period. This evidence of continuous presence in the U.S. market suggests that subject imports from each of these countries are likely to have a simultaneous presence in the U.S. market if the orders were revoked. Furthermore, the record indicates that the domestic merchandise and imports from all of the subject countries are sold through the same channels of distribution – large retailers, mail order houses, and distributors that sell to small retailers.⁷⁹ Therefore, we conclude that the subject and domestic merchandise has been and likely would be sold in the same or similar markets if the orders were revoked.

Overall, we find that there likely would be a reasonable overlap of competition between subject imports from China, Mexico, and Taiwan and the domestic like product as well as among the subject imports from these countries, if the antidumping duty orders covering POS cookware were revoked.

3. Other Considerations^{80 81}

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 record evidence that the level of underutilized capacity in all of the exporting countries is large relative to Columbian's average annual volume of shipments in 1997 and 1998.⁸² We have also noted the similarities in the average unit values for subject imports from China, Mexico, and Taiwan.⁸³ For these reasons, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from China, Mexico, and Taiwan in these reviews.

B. Legal Standard In a Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a

⁷⁸ CR at II-20, PR at II-12.

⁷⁹ CR at I-23 - I-24, PR at I-14 - I-15.

⁸⁰ Chairman Bragg does not join section III.A.3. of this opinion. Having found a reasonable overlap of competition, Chairman Bragg turns to the issue of no discernible adverse impact. Chairman Bragg assesses significant conditions of competition, such as the level of underutilized capacity in the subject countries in her analysis of the likelihood of no discernible adverse impact if each of the orders under review is revoked. Chairman Bragg finds that revocation of each of the orders under review will likely result in a discernible adverse impact. Accordingly, Chairman Bragg cumulates all subject imports.

⁸¹ Commissioner Askey does not join in Section III.A.3 of this opinion. Having found that subject imports are not likely to have no discernible adverse impact on the domestic industry and that subject imports are likely to compete with the domestic like product, she exercises her discretion to cumulate subject imports from all three countries in these reviews.

⁸² See the discussion below in section D of the likely volume of subject imports.

⁸³ We are cautious of placing undue reliance on average unit values because average unit values are affected by similarities and differences in product mix.

reasonably foreseeable time.”⁸⁴ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁸⁵ Thus, the likelihood standard is prospective in nature.⁸⁶ 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.”⁸⁷ 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].”^{88 89}

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.”⁹⁰ 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.⁹¹ 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

⁸⁴ 19 U.S.C. § 1675a(a).

⁸⁵ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁸⁶ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁸⁷ 19 U.S.C. § 1675a(a)(5).

⁸⁸ 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.

⁸⁹ In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁹⁰ 19 U.S.C. § 1675a(a)(1).

⁹¹ 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.

absorption.”⁹² Commerce found that Cinsa and Enasa absorbed antidumping duties on their sales during the 1996-97 review period.⁹³ We discuss the significance of this finding below.

We note that Section 776(a) of the Act authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.⁹⁴ 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.”⁹⁵ As noted above, no producer of the subject merchandise in China or Taiwan responded to the Commission’s questionnaire. Accordingly, with regard to China and Taiwan, we have relied on the facts available, which consist primarily of the records in the Commission’s original investigations, limited information collected by the Commission over the course of these reviews, and information submitted by the parties.

For the reasons stated below, we determine that revocation of the antidumping duty orders on POS cookware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.⁹⁶

C. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic POS cookware industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁹⁷

POS cookware is a small, but distinctive, segment of a large and varied U.S. cookware market that consists of products with many different combinations of metal substrate, coating, features, and design. Although aggregate demand for cookware has grown markedly since the late 1980s,⁹⁸ apparent domestic consumption of POS cookware during the review period was at almost the same level as during the original investigation period.⁹⁹ Based on the available information, we believe that demand will remain at this level for the foreseeable future.

⁹² 19 U.S.C. § 1675a(a)(1)(D).

⁹³ Porcelain-on-Steel Cookware From Mexico, 65 Fed. Reg. 281, 283 (Jan. 4, 2000) (sunset rev., final results) (finding that during the 1996-97 review period, Cinsa and Enasa absorbed duties on 68.03 and 98.52 percent of their U.S. sales, respectively).

⁹⁴ 19 U.S.C. § 1675(c)(3)(B). Section 751(c)(3)(B) of the Act specifically provides that in an expedited five-year review the Commission is to issue “a final determination based on the facts available, in accordance with section 776.” Section 776 of the Act, however, does not limit the use of facts available to an expedited review.

⁹⁵ SAA at 869.

⁹⁶ Commissioner Askey dissenting.

⁹⁷ 19 U.S.C. § 1675a(a)(4).

⁹⁸ See CMA Shipment Statistics, HomeWorld Business, Housewares Census 2000 at 26 (Jan. 2000).

⁹⁹ CR & PR, Table I-3.

Both during the review period and during the original investigation period, there was only one domestic producer of POS cookware – first General Housewares Corp. (“GHC”) and then its successor, Columbian.¹⁰⁰ During the current review period, Columbian’s production and market share in terms of both volume and value are *** lower than the levels reported by GHC in the 1983-86 period.¹⁰¹ Columbian’s production, market share, and *** increased over the course of the review period.¹⁰² Although its operating margin ***.

POS cookware is characterized in terms of the thickness of the underlying metal. The domestic industry produces only light-gauge POS cookware, while the subject countries produce both light- and heavy-gauge.¹⁰³ Light-gauge cookware is available in a limited selection of solid dark colors, while heavy-gauge cookware is available in a wider variety of colors and designs.¹⁰⁴ Therefore, substitutability and competition between light- and heavy-gauge POS cookware are limited.

In the original investigation, the Commission found that there was a “high degree of substitution in the U.S. market between domestically produced porcelain-on-steel cooking ware and the imports from the three countries.”¹⁰⁵ The record in the current reviews indicates that this finding remains true today with respect to Mexico and that there is a moderate degree of substitutability between and among the domestically produced POS cookware and subject imports from China and Taiwan.¹⁰⁶ Imported light-gauge POS cookware is highly substitutable with the domestic like product, while imported heavy-gauge POS cookware is much less substitutable.¹⁰⁷ Subject imports from Mexico consist almost exclusively of light-gauge POS cookware, while subject imports from China and Taiwan appear to consist of both light- and heavy-gauge POS cookware.¹⁰⁸ The record also reflects that most importers and purchasers reported other types of cookware, including stainless steel, aluminum, and glass, as substitutes for POS cookware.¹⁰⁹

Nonsubject imports accounted for the majority of sales in the United States during the review period, rising from *** percent of the volume of apparent domestic consumption in 1997 to *** percent in 1998, and from *** percent in the first nine months of 1998 to *** percent in the same period of 1999. Accordingly, nonsubject imports have doubled since the original investigation period, when they held between *** percent of the market.¹¹⁰ Petitioners testified that these imports consisted primarily of heavy-gauge, highly decorated fashion cookware that does not compete to a substantial degree with the light-gauge cookware produced by Columbian, the sole domestic producer.¹¹¹ Four of six responding importers reported that the nonsubject imports were interchangeable with the domestic POS cookware,

¹⁰⁰ CR at I-3, PR at I-1.

¹⁰¹ Production for Columbian is lower than that for GHC because Columbian ceased production of heavy-gauge POS cookware.

¹⁰² CR & PR, Table I-3.

¹⁰³ CR at I-19, PR at I-15.

¹⁰⁴ CR at I-20, PR at I-15 - I-16, Hrg. Tr. at 75-76 (D. Ryan).

¹⁰⁵ POS Cookware, Pub. 1911 at 11.

¹⁰⁶ See CR at II-23, PR at II-14.

¹⁰⁷ CR at II-23, PR at II-14.

¹⁰⁸ CR at II-23, PR at II-14.

¹⁰⁹ CR at II-19, PR at II-12. Again, we note that the purchaser questionnaire responses represent a relatively small portion of the total number of U.S. purchasers of POS cookware.

¹¹⁰ CR & PR, Table I-3.

¹¹¹ Hrg. Tr. at 44 & 68 (D. Ryan).

while two importers indicated that nonsubject imports from two countries were heavy-gauge POS cookware that is not made in the United States.¹¹² The unit values of nonsubject imports fell sharply over the course of the review period, while unit values for domestic products and subject imports increased.¹¹³

We do not expect the foregoing conditions of competition to change appreciably if the antidumping duty orders are revoked. Accordingly, we find that current conditions in the U.S. POS cookware industry provide us with a basis upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

D. Likely Volume of 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 subject imports would be significant either in absolute terms or relative to production or consumption in the United States.¹¹⁴ 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.¹¹⁵

In the original investigation, the Commission found that the cumulated volume of imports from China, Mexico, Taiwan, and Spain¹¹⁶ rose by 52 percent in terms of units and 25 percent in terms of value over the investigation period.¹¹⁷ Antidumping duties were imposed in late 1986, but imports of Mexican and Taiwan subject merchandise increased in 1987, while imports of Chinese subject merchandise decreased. In 1988, the volume of cumulated subject imports decreased, and then fluctuated between 8 and 10 million units from 1989 to 1996.¹¹⁸ The volume of cumulated subject imports was lower during the current review period than in the original investigation, which we find can be attributed to the effect of the antidumping duty orders. Nevertheless, subject import volume remained substantial, accounting for up to *** percent of the market during the review period.¹¹⁹

¹¹² CR at II-29 - II-31, PR at II-16 - II-17.

¹¹³ CR & PR, Table C-1. Consequently, market share in terms of value decreased for nonsubject imports, increased for the domestic like product, and stayed at approximately the same level for the subject imports. CR & PR, Table I-10.

¹¹⁴ 19 U.S.C. §1675a(a)(2).

¹¹⁵ 19 U.S.C. § 1675(a)(2)(A)-(D).

¹¹⁶ At the time of the original determination, imports of POS cookware from Spain were subject to a preliminary investigation by the Commission. POS Cookware, Pub. 1911 at 9, n. 20. The investigation with regard to Spain did not result in the issuance of an antidumping or countervailing duty order because it was terminated after GHC withdrew the dumping petition. *See* 52 Fed. Reg. 4394 (Feb. 11, 1987).

¹¹⁷ POS Cookware, Pub. 1911 at 13. We note that the data in that investigation show that aggregate imports from Mexico, China, and Taiwan increased by 43 percent in terms of value and 8 percent in terms of units. *See Porcelain-on-Steel Cooking Ware From Mexico, The People’s Republic of China, and Taiwan*, Final Report to the Commission, Table 10.

¹¹⁸ Columbian Prehearing Brief, Exh. 24.

¹¹⁹ Chairman Bragg notes that the volume of cumulated subject imports fell to 6.7 million units in 1997 and 4.7 million units in 1998, with 3.3 million units in the first nine months of 1998 and 3.2 million units in the same

(continued...)

Each of the subject countries appears to have a substantial volume of underutilized capacity. Even Cinsa, which reported relatively high capacity utilization rates, had excess capacity in the first nine months of 1999 that was equivalent to more than *** percent of Columbian's domestic shipments during that period.¹²⁰ The total output of the POS cookware industry in China dwarfs domestic production,¹²¹ as does the total volume of POS cookware exports from China.¹²² The limited information available on Taiwan indicates that Taiwan producers have a production capacity *** greater than the domestic industry,¹²³ and *** of excess capacity.^{124 125} We also note that the Mexican industry apparently has some ability to switch production from nonsubject merchandise, such as POS bowls, to subject POS cookware.¹²⁶ Therefore, we conclude that the subject producers have the ability to realize a substantial increase in their shipments to the United States if the orders were revoked.

Importers' inventories declined *** from 1997 to 1998, and then increased in the first nine months of 1999, as compared with the same period in 1998.¹²⁷ However, Cinsa alone maintained inventories in Mexico that were ***.¹²⁸ Finally, Cinsa itself projects annual increases in its volume of POS cookware exports to the United States through 2002.¹²⁹ We note that this projection is not

¹¹⁹ (...continued)

period in 1999. The market share of cumulated subject imports also declined steadily: *** percent in 1997, *** percent in 1998, *** percent in the first nine months of 1998, and *** percent in the same period in 1999. CR & PR, Table I-10. She concludes that the reduction in the volume and market share of subject imports since the original investigation period is, in part, an effect of the antidumping duty orders.

¹²⁰ Compare CR, Table III-A-3, PR, Table III-3, with Table IV-5.

¹²¹ Compare CR at IV-12, PR at IV-7 with CR, Table III-A-1, PR, Table III-1. We note that the Chinese government provided annual production figures of more than 400 million units, although these figures include production of both cookware and other POS items such as utensils. The State Department reported a much lower, but still substantial, figure of *** units for Chinese production of POS cookware in 1998. CR at IV-10, PR at IV-7.

¹²² See Columbian Prehearing Brief, Exh. 22 (total Chinese exports of POS cookware and kitchenware exceeded 90 million pounds in 1998).

¹²³ The only record information on Taiwan capacity is data gathered in the original investigation, which show that four Taiwan producers that accounted for *** percent of Taiwan's exports of POS cookware to the United States had a capacity of *** million units. Staff Report to the Commission, Porcelain-on-Steel Cooking Ware From Mexico, The People's Republic of China, and Taiwan, Invs. Nos. 701-TA-265, 731-TA-297-299 (Final), at A-29. Absent any additional information, we would expect the aggregate capacity of the Taiwan industry to be at least as large or larger.

¹²⁴ The one Taiwan producer to provide capacity utilization data to the Commission indicated operating only at *** percent of capacity. CR at IV-15, PR at IV-8.

¹²⁵ Chairman Bragg infers that producers in Taiwan continue to possess significant production capacity, and that in the event of revocation, such capacity will result in a significant volume of exports to the U.S. market.

¹²⁶ Cinsa Posthearing Brief, Att. E.

¹²⁷ CR & PR, Table IV-3.

¹²⁸ Compare CR & PR, Table IV-5 with Table I-8. We also note that Mexico has imposed an antidumping duty order on imports of Taiwan POS cookware. CR at IV-18, PR at IV-11.

¹²⁹ Cinsa indicated that it projected an annual increase of *** percent in exports of subject merchandise to the United States between 1998 and 2002. We note that Cinsa's attached table appears to show a *** percent annual increase in Cinsa International's light-gauge POS cookware sales from 1999 to 2002. Cinsa Posthearing Brief, Att. G.

contingent on the outcome of these reviews, and conclude that the removal of the antidumping duty orders would give Cinsa the incentive to increase shipments to the United States further still.

The high market share that the subject imports attained prior to the imposition of the antidumping duty orders on POS cookware, their retention of a significant market share, and Cinsa's stated plans to increase shipments further in the future suggest that subject producers will likely commence significant exports to the United States upon revocation of the antidumping duty orders.¹³⁰ Their high levels of excess capacity and ability to switch production from nonsubject products indicate that they would be able to achieve such increases. Consequently, based on the record in these reviews, we conclude that the volume of cumulated subject imports would likely increase to a significant level and would regain significant U.S. market share if the orders are revoked.

E. Likely Price Effects

In evaluating the likely price effects of subject imports if the 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 price of domestic like products.¹³¹

In the original investigation, the Commission found that pricing data were difficult to assess because producers changed styles over the course of the investigation period, and the pricing categories encompassed products of different gauges and colors. The Commission noted that the domestic producer had been unable to raise prices enough to cover increases in its costs, and that purchasers had provided anecdotal evidence of price undercutting.¹³²

In these reviews, the Commission used more specific definitions in its pricing analysis, and received pricing data covering *** percent of domestic shipments and *** percent of Cinsa's shipments.¹³³ There have been no allegations that physical differences might undermine the reliability of the pricing comparisons. We conclude, therefore, that the pricing data in these reviews are more probative than they were in the original investigation. In general, prices to retailers for both domestic and Mexican merchandise shipped to retailers dipped in late 1997, but recovered and rose for the remainder of the review period.¹³⁴ Prices for domestic and Mexican merchandise sold to distributors generally rose over the course of the review period, and did not fluctuate to as great a degree as did prices to retailers.¹³⁵ The pricing data yielded *** comparisons of U.S. and Mexican merchandise at the same level of trade, with underselling in *** of the comparisons.

The Commission received no specific pricing information for subject imports from China or from Taiwan. However, as noted above, the domestic like product and the subject merchandise are quite

¹³⁰ We note that AIT in Taipei reported that one Taiwan cookware producer will not reinstate exports to the United States unless the antidumping duty is removed. Cable from AIT Taipei to Secretary of State, Ref. State 195309, para. 6(1), Q5.

¹³¹ 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.

¹³² POS Cookware, Pub. 1911 at 14.

¹³³ CR at V-7, PR at V-5.

¹³⁴ CR & PR, Figures V-5 - V-11.

¹³⁵ Id.

similar, sometimes to the point of being virtually indistinguishable. Therefore, price is a critical factor in purchasing decisions, and domestically produced cookware is likely to be highly sensitive to price-based competition. In order to gain a greater share of the POS cookware market, subject imports from China and Taiwan would have to be priced aggressively.¹³⁶

As instructed by Section 752(a)(1)(D) of the Act, we considered Commerce's finding that Cinsa and its sister corporation, Enasa, absorbed duties on imports of Mexican POS cookware. Commerce found in its administrative review for the 1996-97 period that Cinsa and Enasa absorbed antidumping duties on 68.03 and 98.52 percent of their sales, respectively.¹³⁷ That finding is reflected in the 25.42 and 65.28 percent dumping margins for Cinsa and Enasa, respectively, that Commerce determined were likely to prevail if the order were removed.¹³⁸ The SAA explains that "[d]uty absorption may indicate that the producer or exporter would be able to market more aggressively should the order be revoked as a result of a sunset review."¹³⁹ In these reviews, the finding of duty absorption, together with the importance of price in purchasing decisions and Cinsa's current underselling, provide further support for our conclusion that Cinsa is likely to engage in aggressive marketing if the dumping orders are revoked.

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.

F. Likely Impact

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.¹⁴⁰ 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.¹⁴¹ As instructed by the statute, we have considered the

¹³⁶ Chairman Bragg infers that, in the event of revocation, firms in China and Taiwan would revert to aggressive pricing practices with regard to exports of subject merchandise to the United States, and that such aggressive pricing practices would result in significant price depression or suppression in the U.S. market.

¹³⁷ Porcelain-on-Steel Cookware From Mexico, 64 Fed. Reg. 29262, 29263 (June 1, 1999) (admin. rev., amended results).

¹³⁸ Porcelain-on-Steel Cooking Ware From Mexico, 65 Fed. Reg. 281, 283 (Jan. 4, 2000) (sunset rev., final). The dumping margins had been adjusted in the 1996-97 administrative review to account for reimbursement of antidumping duties, a process that Commerce found "effectively approximates the calculation we would make to account for duty absorption." Id.

¹³⁹ SAA at 885.

¹⁴⁰ 19 U.S.C. § 1675a(a)(4).

¹⁴¹ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year review investigations as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its reviews, Commerce found that revocation of the antidumping duty order would be likely to lead to continuation or

(continued...)

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 order is revoked.¹⁴²

In the original investigation, the Commission found that the domestic industry was materially injured, noting that production and capacity utilization declined over the course of the investigation period, as did domestic shipments, the number of workers, and the hours worked. The Commission also observed that all of the measures of the domestic industry's profitability declined from 1983 to 1985.¹⁴³ The domestic industry's operating margins were somewhat lower in the review period than in the original investigation period, while its production volume, number of production and related workers, hours worked, and market share were *** lower.^{144 145}

Imposition of the antidumping duty orders in 1986 had a positive effect on the domestic industry's performance. Although there was not a significant increase in domestic POS cookware shipments in 1987, the industry's condition did stabilize. GHC's shipment volume had decreased by an average of *** percent each year prior to the imposition of the orders. Although a small increase in shipment volume in 1987 was followed by further decreases in domestic shipments, the rate of decline was much lower.¹⁴⁶ Furthermore, the steep increase in the volume of subject imports, which rose by an average of 18.2 percent each year from 1983 through 1986, also stopped after imposition of the orders.¹⁴⁷ Cumulated subject imports increased by only 7.5 percent in 1987 and decreased in almost every subsequent year, decreasing by 42.5 percent from 1987 to 1997.¹⁴⁸

The industry's recent *** operating performance does not support a finding that the industry is vulnerable at the present time. However, the condition of the domestic industry reveals several signs of weakness. Columbian experienced *** as recently as 1997. It achieved its current levels of *** in part

¹⁴¹ (...continued)

recurrence of dumping at the following margins: 66.65 percent for all merchandise from China; 25.42 to 65.28 percent for named producers in Mexico, with 29.52 percent for all others; and 1.99 to 23.12 percent for named producers in Taiwan, with 6.82 percent for all others. 64 Fed. Reg. at 50272, 64 Fed. Reg. at 50488, 65 Fed. Reg. at 283.

¹⁴² 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.

¹⁴³ POS Cookware, Pub. 1911 at 7-8.

¹⁴⁴ CR & PR, Tables I-3, I-10, CR, Tables III-A-1 & III-A-7, PR, Tables III-1 & III-7.

¹⁴⁵ Chairman Bragg notes that in 1997, the domestic industry's operating income margin of *** percent was *** than at any time during the original investigation period. However, the operating income margin *** in 1998 to *** percent, and again in the first nine months of 1999, to *** percent, compared with *** percent in the same period in 1998. CR & PR, Table I-3. The domestic industry's market share increased in terms of units shipped from *** percent in 1997 to *** percent in 1998, with *** percent in the first nine months of 1998 and *** percent in the same period in 1999. CR & PR, Table I-10. Production levels did not change appreciably during the review period, and capacity utilization fluctuated between *** percent. CR, Table III-A-1, PR, Table III-1. However, most measures of employment increased over the review period, with the *** increase occurring in the first nine months of 1999. CR, Table III-A-7, PR, Table III-7.

¹⁴⁶ See Memorandum INV-X-067.

¹⁴⁷ CR & PR, Table I-3, Memorandum INV-X-067.

¹⁴⁸ See Memorandum INV-X-067.

by stopping sales of inventory at low closeout prices, and by reducing SG&A expenses.¹⁴⁹ Since the volume of Columbian's domestic shipments increased ***,¹⁵⁰ the new inventory management strategy has led to a *** in the company's inventories, both in absolute terms and in relation to U.S. shipments.¹⁵¹ These figures suggest that in the future, Columbian will have to ***.

As discussed above, revocation of the antidumping duty orders would likely lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic like product and significantly depress U.S. prices. With demand for POS cookware essentially stagnant and nonsubject imports consisting primarily of heavy-gauge cookware, the increase in subject imports is likely to cause a decrease in the volume of Columbian's domestic shipments. In addition, the volume and price effects of the cumulated subject imports would have a significant adverse impact on the domestic industry and would likely cause the domestic industry to lose market share.

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

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

IV. REVOCATION OF THE ANTIDUMPING AND COUNTERVAILING DUTY ORDERS ON TOP-OF-THE-STOVE STAINLESS STEEL COOKWARE WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME^{152 153}

A. Cumulation

1. Framework¹⁵⁴

¹⁴⁹ Hrg. Tr. at 50 (D. Ryan); CR, Table III-B-1, PR, Table III-9

¹⁵⁰ CR, Table III-A-3, PR, Table III-3.

¹⁵¹ CR, Table III-A-5, PR, Table III-5.

¹⁵² Chairman Lynn M. Bragg dissenting. Chairman Bragg determines that revocation of the antidumping and countervailing duty orders covering top-of-the-stove stainless steel cookware from Korea and Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. She joins only in the discussions of reasonable overlap of competition for purposes of cumulation, the legal standard, and the conditions of competition. See Dissenting Views of Chairman Lynn M. Bragg.

¹⁵³ Commissioners Askey and Okun dissenting. Commissioners Askey and Okun join in the discussion of cumulation, the legal standard, and the conditions of competition. For their analysis with respect to the likelihood that revocation of the antidumping duty orders on top-of-the-stove stainless steel cookware from Korea and Taiwan would lead to continuation or recurrence of material injury within a reasonably foreseeable time, see the Dissenting Views of Commissioners Thelma J. Askey and Deanna Tanner Okun.

¹⁵⁴ Chairman Bragg does not join section IV.A.1 of the opinion. For a complete statement of Chairman Bragg's analytical framework regarding cumulation in sunset reviews, see Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999). In particular, Chairman Bragg notes that she examines
(continued...)

For the purposes of our determination with respect to top-of-the-stove stainless steel cookware from Korea and Taiwan, we adopt the discussion of the framework for cumulation contained above in section III.A.1.

In these reviews, the statutory requirement that all of the top-of-the-stove stainless steel cookware reviews be initiated on the same day is satisfied. We do not find that subject imports from either of the subject countries are likely to have no discernible adverse impact on the domestic industry if the orders are revoked.¹⁵⁵

2. Reasonable Overlap of Competition¹⁵⁶

In the original investigation, the Commission found that imports from Korea and Taiwan competed with each other and with the domestic like product, in part because they were imported by many of the same parties, had similar configurations, and were available at a wide range of price points.¹⁵⁷ Although some of the conditions that were cited in the original determination have changed, we find that there is likely to be a reasonable overlap in competition in the event of revocation.

The most notable change since the original determination is that the remaining domestic producers make only high-end top-of-the-stove stainless steel cookware.¹⁵⁸ While the Korean producers continue to produce and export low-end and mid-range top-of-the-stove stainless steel cookware, most Korean exports to the United States consist of high-end cookware.¹⁵⁹ Further, although imports of Taiwan top-of-the-stove stainless steel cookware currently consist primarily of low-end and mid-range products, Taiwan cookware manufacturers also produce high-end merchandise that is sold in the United States.¹⁶⁰

¹⁵⁴ (...continued)

the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition in the event of revocation. In these reviews, she finds that subject imports from Korea and Taiwan are likely to have no discernible adverse impact on the domestic industry in the event of revocation. *See* Dissenting Views of Chairman Lynn M. Bragg.

¹⁵⁵ For a discussion of Vice-Chairman Miller's and Commissioners Hillman and Koplán's analytical framework regarding the application of the "no discernible adverse impact" provision, see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Invs. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Commissioner Koplán's analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephan Koplán Regarding Cumulation).

¹⁵⁶ Chairman Bragg joins in the Commission's analysis and finding of a likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product.

¹⁵⁷ Top-of-the-Stove Stainless Steel Cookware, Pub. 1934 at 10, n. 24.

¹⁵⁸ CR at II-2, PR at II-1.

¹⁵⁹ Telephone conversation between Willis Martyn, Office of the General Counsel, and ***, Feb. 16, 2000.

¹⁶⁰ Subject imports from Taiwan have a low average unit value relative to subject imports from Korea and the domestic like product, which suggests a preponderance of low-end and mid-range products. CR & PR, Table IV-2, CR, Table III-A-4, PR, Table III-4. However, domestic producers report that some Taiwan subject merchandise has entered the direct sales channel, where it is sold as part of high-end cookware sets. Hrg. Tr. at 112 (J. Reigle); Committee Prehearing Brief at 39, Exh. 41 (Taiwan producers ***). We did not place great weight on a U.S. Department of Commerce report submitted by Korean Respondents, as it covers housewares in general and makes no specific statements on the quality level of Taiwan cookware. *See* U.S. Department of Commerce, International Trade Administration, Taiwan – Housewares (Mar. 1, 1998) (ISA980301), in Korean Respondents' Posthearing

(continued...)

All of the domestic producers and importers who responded to the Commission's questionnaires reported that they market top-of-the-stove stainless steel cookware on a nationwide basis,¹⁶¹ indicating that there are sales of the domestic like product and subject merchandise from Korea and Taiwan in the same geographic markets. Import data show that Korean and Taiwan subject merchandise has entered the United States throughout the review period. This evidence of continuous presence in the U.S. market suggests that subject imports from each of these countries are likely to have a simultaneous presence in the U.S. market if the orders were revoked. Furthermore, while the domestic like product is sold in all channels of distribution, the majority is sold through the direct sales channel of distribution,¹⁶² with a portion of the remainder in the retail channel.¹⁶³ The record indicates that Korean subject merchandise is sold to retailers, sometimes to stores that also sell the domestic like product,¹⁶⁴ and is also sold in the direct sales channel.¹⁶⁵ Therefore, we conclude that some portion of the subject and domestic merchandise have been and likely would be sold in the same or similar markets if the orders were revoked.

Overall, we find that there likely would be a reasonable overlap of competition between subject imports from Korea and Taiwan and the domestic like product, as well as among the subject imports from these countries, if the antidumping and countervailing duty orders covering top-of-the-stove stainless steel cookware were revoked.

3. Other Considerations¹⁶⁶

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

¹⁶⁰ (...continued)

Brief, Att. 11. On balance, this evidence as a whole indicates that the subject merchandise from Taiwan includes at least some high-end cookware. Moreover, with the growing production of low-end and mid-range top-of-the-stove stainless steel cookware in countries such as China, India, Indonesia, and Thailand, Taiwan producers face the same incentives as Korean producers to upgrade the quality of their products. Hrg. Tr. at 57 (S. Jones); Hrg. Tr. at 121-123 (H. Rushing, J. Reigle); Field Trip Notes, Jan. 18, 2000.

¹⁶¹ CR at II-22, PR at II-13.

¹⁶² The domestic industry defines the direct sales channel to encompass door-to-door, in-home demonstration, and television infomercial sales, and any other medium in which representatives actually demonstrate the features and performance of the product and seek to persuade an audience that it is a better value than other types of cookware. Hrg. Tr. at 34 (J. Reigle).

¹⁶³ CR at I-24; PR at I-18; CR & PR, Tables V-8 - V-11.

¹⁶⁴ Tables V-8 - V-11, Hrg. Tr. at 95 (J. Reigle, T. Blanford). We note in this regard that *** was an importer of subject merchandise from Taiwan. See *** Importers' Questionnaire, Table II-9.

¹⁶⁵ Hrg. Tr. at 113 (J. Reigle).

¹⁶⁶ Chairman Bragg does not join section IV.A.3. of this opinion. Having found a reasonable overlap of competition, Chairman Bragg turns to the issue of no discernible adverse impact. Chairman Bragg assesses significant conditions of competition, such as the ability of subject producers to increase exports to the United States, in her analysis of the likelihood of no discernible adverse impact if each of the orders under review is revoked. Chairman Bragg finds that revocation of each of the orders under review will likely result in no discernible adverse impact to the domestic industry. Accordingly, Chairman Bragg does not cumulate the subject imports from Korea and Taiwan. See Dissenting Views of Chairman Lynn M. Bragg.

demonstrated ability of the Korean producers to increase exports to the United States¹⁶⁷ and the record evidence of a large number of Taiwan cookware producers that produce for both the domestic and export markets.¹⁶⁸ Both of these conditions suggest a flexibility to increase exports to the United States when conditions warrant. We also find that the cookware industries in both Korea and Taiwan are export oriented.¹⁶⁹ We also considered our previous finding that both Korean and Taiwan cookware are present in the direct sales channel of distribution and have the incentive to increase sales into that channel in competition with the bulk of domestic products.¹⁷⁰ We have also considered factors that militate against exercising our discretion to cumulate in this case; namely, differing market share patterns for imports from Korea and Taiwan, and divergent unit values between Korean and Taiwan imports. On balance, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from Korea and Taiwan in these reviews.^{171 172}

B. Legal Standard and Conditions of Competition

For the purposes of our determination with respect to stainless steel cookware from Korea and Taiwan, we adopt the discussion of the legal standard contained above in Section III.A. We also note the following conditions of competition distinctive to the top-of-the-stove stainless steel cookware industry.

Top-of-the-stove stainless steel cookware represents a significant segment of the larger U.S. cookware market. Aggregate demand for all cookware has grown markedly since the late 1980s, and

¹⁶⁷ Imports of top-of-the-stove stainless steel cookware from Korea increased by more than 70 percent in the first nine months of 1999, compared to the same period in 1998. The Korean top-of-the-stove stainless steel cookware producers that did not participate in these reviews increased their exports to the United States by an even greater percentage – 146 percent – in the first nine months of 1999, as compared with the same period in 1998. *See* CR & PR, Table IV-6.

¹⁶⁸ CR at IV-13, 15, PR at IV-7.

¹⁶⁹ Korean producers direct approximately two-thirds of their shipments to export markets. CR & PR, Table IV-6. With regard to Taiwan, no producers responded to our questionnaire. Taiwan Government data show substantial exports from Taiwan, but included stainless steel kitchenware along with cookware. *See* Domestic Industry's Prehearing Brief at 71, Exh. 17. Additional information gathered by AIT was anecdotal and did not specify whether it pertained to POS cookware, stainless steel top-of-the-stove cookware, or both. Nevertheless, in the absence of more probative information, we have taken into account the Taiwan Government data and the information from AIT. The information from AIT suggests that the antidumping duty order has hindered Taiwan's exports to the United States and that at least some Taiwan producers export to Europe. One Taiwan producer that responded to the inquiries from the U.S. officials indicated that *** of its production was dedicated to exports. CR at IV-15, PR at IV-7. While the information from AIT also suggests that many small firms produce only for the domestic Taiwan market, we find, overall, a sufficient level of export orientation.

¹⁷⁰ Commissioners Askey and Okun do not join in this sentence. *See* Dissenting Views of Commissioners Askey and Okun.

¹⁷¹ We also considered an argument raised by the Korean Respondents that cumulation of imports from Korea with imports from Taiwan would inappropriately penalize the Korean Respondents if the Commission were to take adverse inferences against exporters from Taiwan because they did not participate in these reviews. We note in this regard that the Commission has not taken an adverse inference against any interested party in these reviews.

¹⁷² With regard to the argument raised by the Korean Respondents, and discussed in the preceding footnote, Chairman Bragg notes that it would be contrary to the purpose of the cumulation provision to deny the domestic industry the benefits of a cumulated analysis, where that analysis is otherwise appropriate, simply because foreign exporters and producers from a subject country have refused to cooperate with the Commission's requests for data.

continued to grow over the review period.¹⁷³ Apparent domestic consumption of top-of-the-stove stainless steel cookware increased,¹⁷⁴ but not as rapidly as did consumption of aluminum cookware, which has become more competitive with stainless steel cookware and now accounts for a larger share of total cookware sales than at the time of the original investigation.^{175 176} The increase in consumption of top-of-the-stove stainless steel cookware has not prevented a decline in the number of domestic producers of that merchandise. There were nine producers of the domestic like product at the time of the original investigation; consolidations and plant closures have now reduced that number to four.¹⁷⁷

Brand names are important in differentiating among products. Many of the best known brands, such as Revere, Farberware, and KitchenAid, are owned by or licensed to importers of nonsubject merchandise, while others are owned by private label sellers who may source their cookware from domestic producers, subject producers, or nonsubject producers.¹⁷⁸ However, All-Clad, a brand with increasing popularity, is produced almost exclusively in the United States.¹⁷⁹

Top-of-the-stove stainless steel cookware is produced at a variety of quality levels and price points that fall into three groups – high-end, mid-range, and low-end cookware. During the original investigation, there were several domestic producers of low-end and mid-range top-of-the-stove stainless steel cookware. However, relatively high production costs rendered their operations uncompetitive with imports from nonsubject countries.¹⁸⁰ Farberware and Revere, ***,¹⁸¹ closed their domestic production facilities in 1996 and 1999, respectively,¹⁸² and the remaining U.S. producers make only high-end cookware.¹⁸³ The parties agree that the plant closures were not related to subject imports.¹⁸⁴ The subject producers manufacture cookware of all quality levels, and export a mix of high-end, mid-range, and low-end cookware to the United States, including a substantial quantity of high-end cookware.¹⁸⁵

¹⁷³ See CMA Shipment Statistics, HomeWorld Business, Housewares Census 2000 at 26 (Jan. 2000) (“CMA Statistics”).

¹⁷⁴ CR & PR, Table I-4. The figure for consumption quantity during the review period does not include Revere, which apparently had a large sales volume. Therefore, the actual consumption figures are larger than our data would indicate. See also CMA Statistics.

¹⁷⁵ See CMA Statistics.

¹⁷⁶ Commissioner Askey finds that aluminum cookware is competitive with top-of-the-stove stainless steel cookware.

¹⁷⁷ Staff Report to the Commission, Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan, Invs. Nos. 701-TA-267 & 268, 731-TA-304 & 305 (Final), at A-14 (Dec. 12, 1986) (“Original Top-of-the-Stove Stainless Steel Cookware Staff Report”); CR at I-30 - I-31, PR at I-21.

¹⁷⁸ Hrg. Tr. at 38, 96-97 (J. Reigle), Hrg. Tr. at 120 (H. Rushing); T. J. Farney, Cookware Competition Heating Up, Ft. Lauderdale Sun Sentinel, June 17, 1999.

¹⁷⁹ CR at III-A-6, PR at III-2, CR, Table III-B-6, PR, Table III-14.

¹⁸⁰ Hrg. Tr. at 31 (J. Reigle).

¹⁸¹ Original Top-of-the-Stove Stainless Steel Cookware Staff Report at A-14.

¹⁸² CR at I-30 - I-31, PR at I-21.

¹⁸³ CR at II-2, PR at II-1 - II-2.

¹⁸⁴ Hrg. Tr. at 99 (S. Jones).

¹⁸⁵ See above, section IV.A.2.

The record indicates that the subject imports are moderately substitutable with the domestic like product, with Korean cookware more substitutable than that from Taiwan.¹⁸⁶ It appears that the subject imports do not currently include a product line that equals the quality and price levels of top-of-the-line domestic merchandise,¹⁸⁷ but they currently do offer a substantial quantity of high-end products.¹⁸⁸ Moreover, the distinctive physical characteristics offered by domestic producers – multi-ply construction, professional style design, sturdy construction, and temperature control knobs¹⁸⁹ – are also available from subject producers.¹⁹⁰

As noted above, the direct sales distribution channel plays a distinctive role in sales of the domestic like product. Almost all sales through the direct sales channel are of stainless steel cookware, and all of those are high-end products.¹⁹¹ Three of the four domestic producers sell exclusively to direct sales companies, while the other, All-Clad, sells exclusively to retailers.¹⁹² The companies that sell in the direct sales channel had, in the aggregate, *** profits than All-Clad in the first nine months of 1999.¹⁹³ Until recently, imports of subject and nonsubject merchandise were not a significant factor in this distribution channel. However, responding Korean producers directed at least *** percent of their shipments to direct sales companies,¹⁹⁴ and solicited additional sales in that channel during the review period.¹⁹⁵

Finally, nonsubject imports, which were primarily low-end and mid-range products from China, India, Indonesia, and Thailand, accounted for a large and growing share of the U.S. market, in terms of both volume and value.¹⁹⁶ We find that this low-end and mid-range merchandise competes with the domestic like product to a lesser degree. However, high-end top-of-the-stove stainless steel is also available from nonsubject producers in Thailand and Europe.¹⁹⁷

We do not expect these conditions of competition to change appreciably if the antidumping duty orders are revoked. Accordingly, we find that current conditions in the U.S. POS cookware industry provide us with a basis upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

¹⁸⁶ CR at II-23, PR at II-14.

¹⁸⁷ See pricing data from the domestic producer and importer questionnaires. *See also* Consumer Reports at 43.

¹⁸⁸ Hrg. Tr. at 165 (C. Lewis).

¹⁸⁹ *See* Regal Ware Inc., Excellence in Cooking System Technology (Aug. 1997); Regal Ware Inc., Healthy Lifestyle Cooking System (Sept. 1997); All-Clad Metalcrafters, Inc., 4 Collection. One Standard. (1997).

¹⁹⁰ *See, e.g.*, Eastwest Housewares Ltd., Eastwest Cookware Collection; Saekwang Aluminum Co., Ltd., Stainless Steel Cookware; Hanil Stainless Steel Ind. Co., Ltd., excellent cookware; Cheflines product information, <http://www.cheffline.co.kr>.

¹⁹¹ Hrg. Tr. at 33 (J. Reigle); Hrg. Tr. at 34 (J. Reigle).

¹⁹² CR at II-3, n. 10, PR at II-2, n.10.

¹⁹³ CR, Table III-B-6, PR, Table III-14

¹⁹⁴ Korean Respondents' Posthearing Brief, Att. 1 at 36. These producers accounted for 65 percent of total imports in 1997 and 26 percent in the first nine months of 1999. CR & PR, Tables IV-2 & IV-6.

¹⁹⁵ *See* Letter from Jiwon Suh, Managing Director, Sungjin International, Inc., to Salad Master Inc. (Oct. 7, 1998) (suggesting that the purchaser "try our qualified products with most competitive prices."), *in* Committee Posthearing Brief, Exh. 9.

¹⁹⁶ CR at II-31 - II-32, PR at II-20; Hrg. Tr. at 57 (S. Jones).

¹⁹⁷ *See* Trip Notes, Jan. 18, 2000, at 3-4

B. Likely Volume of Subject Imports¹⁹⁸

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.¹⁹⁹ 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.²⁰⁰

In the original investigation, the Commission found that the cumulative value of subject imports increased by 28 percent from 1983 to 1985, and by 9.6 percent in the interim period of 1986, causing a significant increase in subject producers’ U.S. market share.²⁰¹ The volume of cumulated subject imports was lower during the current review period than in the original investigation, which we find can be attributed to the effect of the antidumping duty order. Nevertheless, subject import volume remained significant, accounting for up to 18 percent of the market during the review period.²⁰²

We conclude that subject producers have the capability to increase substantially their shipments to the United States. Although there is some dispute about the correct levels of production capacity and capacity utilization in the Korean industry,²⁰³ the record indicates that Korean producers have the flexibility to increase their shipments to the United States by a substantial amount regardless of the stated capacity utilization.²⁰⁴ We also note that after a decrease in 1998, top-of-the-stove stainless steel

¹⁹⁸ Chairman Bragg does not join in the remainder of these views. See Dissenting Views of Chairman Lynn M. Bragg.

¹⁹⁹ 19 U.S.C. § 1675a(a)(2).

²⁰⁰ 19 U.S.C. § 1675(a)(2)(A)-(D).

²⁰¹ These market shares reflected total shipments worth \$56.1 million in 1983, \$72.5 million in 1984, \$73.0 million in 1985, with \$53.9 million in the first nine months of 1985 and \$60.3 million in the same period in 1986. Original Top-of-The-Stove Stainless Steel Cookware Staff Report, Table 16. The Commission found that the value data were more reliable than volume data, which showed that the cumulative volume of subject imports increased from 1983 to 1985, and increased again in the interim period of 1986. Top-of-the-Stove Stainless Steel Cookware, Pub. 1936 at 11-12.

²⁰² In 1997, cumulated subject imports had a value of \$37.7 million, which decreased to \$35.6 million in 1998. The value of imports increased in the first nine months of 1999, to \$36.6 million, as compared with \$27.0 million during the same period in 1998. CR & PR, Table I-9. The market share of subject imports in terms of value was 11.6 in 1997, 10.1 in 1998, 10.4 in the first nine months of 1998, and 11.4 in the first nine months of 1999. CR & PR, Table I-11. In terms of volume, subject imports were 6.5 million units in 1997, 5.2 million units in 1998, 4.0 million units in the first nine months of 1998, and 5.2 million units in the same period of 1999. CR & PR, Table I-9. The market share of subject imports in terms of volume followed a similar trend, decreasing from 18.4 percent in 1997 to 12.2 percent in 1998, and increasing to 13.5 percent in the first nine months of 1999 as compared with 12.9 percent in the same period of 1998. CR & PR, Table I-11.

²⁰³ CR at IV-16 - IV-19, PR at IV-9 - IV-11.

²⁰⁴ See above, note 83. For example, the Korean producers who did not participate in these reviews increased their exports to the United States by 81.5 percent from 1997 to 1998, even though the Korean industry association claims to have been operating at more than *** percent capacity utilization at the time. See Table IV-7.

cookware production capacity reported by the Korean industry association increased in the first nine months of 1999.²⁰⁵ We found above that the Taiwan industry is export-oriented, and further find that the industry possesses substantial production capacity with which to increase exports to the United States.²⁰⁶

The record shows that, in addition to their excess capacity, subject producers have substantial flexibility to shift exports to the United States. Exports consistently represented between 63 and 68 percent of the volume shipped by the eight Korean producers who participated in these reviews, with exports to the United States accounting for less than one-third of total exports.²⁰⁷ The distribution of shipments among the home market, the United States, and other export markets varied from year to year.²⁰⁸ We also find that Taiwan producers can shift exports rapidly away from individual export markets when the situation warrants.²⁰⁹

Therefore, we conclude that the subject producers have the ability to realize a substantial increase in their shipments to the United States if the orders were revoked.

The record also shows that importers of the subject merchandise maintained high levels of inventory (as a percentage of importers' shipments) throughout the review period.²¹⁰ The maintenance of such large inventories indicates a commitment to having a sizeable presence in the United States.²¹¹

The record indicates that the subject producers will use this ability to increase exports to the United States if the antidumping and countervailing duty orders are removed. After decreasing from 1997 to 1998, the volume and market share of subject imports began increasing in the first nine months of 1999.²¹² Subject producers' desire to increase exports to the United States,²¹³ and their efforts to expand into the high-end market are likely to accelerate this increase. Much high-end merchandise is sold via direct sales. Many direct sales companies and distributors that sell to them are large and sophisticated purchasers, so we expect that if the antidumping and countervailing duty orders were revoked, Korean producers would face few barriers in making sales to those customers.^{214 215}

²⁰⁵ CR & PR, Table IV-7.

²⁰⁶ See note 169, above, citing, *inter alia*, Committee Prehearing Brief at 71, Exh. 17 (Taiwan exports of stainless steel cookware and kitchenware average more than 40 million pounds annually during 1996-98).

²⁰⁷ CR & PR, Table IV-6.

²⁰⁸ *Id.*

²⁰⁹ CR & PR, Table I-9. *See above*, note 169 (Taiwan producers shifted exports to Europe as a result of the U.S. antidumping duty order). *See also* AIT Cable.

²¹⁰ CR & PR, Table IV-4.

²¹¹ With respect to barriers to exports from subject countries to third-country markets, we note that South Africa also imposed antidumping duties on cookware from Korea. CR at IV-18, PR at IV-11.

²¹² CR & PR, Tables I-9 and I-11.

²¹³ Memorandum from Myung Suk Kim, Chairman of the Korean Metal-Ware Industry Association, to Regal Ware Inc., Jan. 22, 1999 at 1 (seeking assistance in removing the antidumping duty orders because they have been an "insurmountable stumbling block for exporting stainless steel cookware from Korea to the states."), *in* Committee Prehearing Brief, Exh. 18.

²¹⁴ Hrg. Tr. at 37-38 (J. Reigle). Although brand-name recognition can be important in the direct sales sector, in most instances the brand is a private label that belongs to the direct sales company or distributor, not the manufacturer. *Id.* Thus, brand-name recognition does not represent a barrier to entry into the direct sales segment.

²¹⁵ Although the eight Korean producers who responded to our questionnaire indicated that at most *** percent of their U.S. sales were made via the direct sales segment, we note that these producers represented a declining share of Korean exports to the United States over the review period. By interim 1999, these eight firms accounted
(continued...)

The huge market share that the subject producers attained prior to the imposition of the antidumping and countervailing duty orders on top-of-the-stove stainless steel cookware, their continued maintenance of a significant market share and their ability to significantly increase exports to the U.S. market, among the other information described above, suggest that subject producers will commence significant exports to the United States upon revocation of the orders. Consequently, based on the record in these reviews, we conclude that the volume of cumulated subject imports would likely increase to a significant level and would regain significant U.S. market share if the orders are revoked.

C. Likely Price Effects

In evaluating the likely price effects of subject imports if the order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with 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 price of domestic like products.²¹⁶

In the original investigation, the Commission found that the pricing data were “mixed” because of the wide variety of configurations of stainless steel cookware. However, it found that pricing trends revealed a causal link between subject imports and harm to the domestic industry in that the prices for domestic products trended downward, while the prices for subject imports either stayed the same or trended downward in spite of the subject producers’ shift toward higher quality products. Subject imports were typically sold to retailers at prices far lower than comparable domestic products.²¹⁷ During the review period, domestic products were sold primarily to distributors and the subject imports were sold primarily to retailers, which left the Commission with relatively few price comparisons of similar merchandise at the same level of trade. The *** in the small number of price comparisons is some indication that imports undersold the domestic like product.²¹⁸ In general, the prices for domestic

²¹⁵ (...continued)

for only about one-quarter of subject imports from Korea. Moreover, while exports to the United States of responding Korean producers were stagnant over the review period, total exports of subject merchandise from Korea to the United States increased by 15 percent between 1997 and 1998, and by over 70 percent comparing interim 1998 to interim 1999. *See* CR & PR, Tables IV-2 & IV-6. In other words, our data do not include those producers whose exports to the United States have been growing rapidly in recent years. This has made it difficult to obtain an accurate picture of the current presence of imports from Korean in the direct sales segment.

As noted above, given the Korean industry’s acknowledged move into sales of higher-end cookware, it stands to reason that at least some of the recent substantial increases in Korean product took place in the direct sales segment, since that is where a significant portion of U.S. sales of high-end cookware takes place. An increase in Korean sales in the direct sales segment is consistent with the fact that domestic shipments in the direct sales segment declined substantially over the review period. In any event, regardless of the Korean producers’ current share of the direct sales business, we find that their sales into this segment are likely to increase substantially in the reasonably foreseeable future.

²¹⁶ 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.

²¹⁷ Top-of-the-Stove Stainless Steel Cookware, Pub. 1936 at 13.

²¹⁸ CR at V-25, PR at V-9. However, in light of the differences among the products covered by the pricing data and the small volume of the data, we do not place great weight on this information.

products either increased or remained approximately unchanged, while prices for the subject merchandise generally declined.²¹⁹

We find that the domestic industry is currently sensitive to price-based competition. As noted above, high-end subject merchandise is sold in some of the same retail chains, such as Williams Sonoma, that sell high-end domestic top-of-the-stove stainless steel cookware. In the event of revocation, subject producers will have the incentive and the capability to export merchandise competitive with all of the products made in the United States. Moreover, the similarity in the features offered by domestic and subject producers ensures that importers would have ready access to high-end subject merchandise that is directly competitive with the domestic like product. The closing of the quality gap between the subject merchandise and the domestic like product means that price is likely to play a much greater role in competition in the foreseeable future, and that the prices charged for subject imports will influence the prices received by the domestic industry.

The growth in the volume of subject imports that would likely follow the revocation of the antidumping and countervailing duty orders is likely to lead to price suppression and depression. Since subject merchandise would be equal or close to the quality to the domestic like product, importers are likely to offer price concessions to obtain additional sales, especially in the direct sales distribution channel where they are relative newcomers. These developments are likely to result in price suppression and depression, which will become more intense and widespread as the volume of subject imports increases.

For the foregoing reasons, we find that revocation of the antidumping duty and countervailing 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.

D. Likely Impact

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.²²⁰ 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.²²¹ As instructed by the statute, we have considered the

²¹⁹ CR at V-22, PR at V-8.

²²⁰ 19 U.S.C. § 1675a(a)(4).

²²¹ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year review investigations as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its reviews, Commerce found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following margins: 0.75 to 31.23 percent for certain named companies in Korea, with 8.10 percent for all others, and 15.08 to 26.10 percent for certain named companies in Taiwan, with 22.61 percent for all others. 64 Fed. Reg. at 40572. Although the statute does not expressly define the “magnitude of the net countervailable subsidy” to be used by the Commission in five-year reviews, it states that “[t]he administering authority shall provide to the Commission the net

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extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.²²²

In the original investigation, the Commission found that even though apparent domestic consumption of stainless steel cookware increased over the investigation period, the domestic producers' market share declined steadily. In terms of volume, domestic producers' market share decreased from a high of 26.4 percent of the units sold in 1983 to 20.4 percent in the first nine months of 1986. In terms of value, domestic producers' market share fell from 68.2 percent in 1983 to 54.3 percent in the first nine months of 1986.²²³ By 1997, these figures had fallen further. In terms of volume, the domestic producers' market share was 13.4 percent in 1997, 10.0 percent in 1998, 9.9 percent in the first nine months of 1998, and 7.8 percent in the same period of 1999. In terms of value, market share had decreased to 42.5 percent in 1997, decreased again to 36.4 percent in 1998, with 36.6 percent in the first nine months of 1998 and 30.1 percent in the same period in 1999.²²⁴

The Commission observed in the original determination that the domestic industry's production, capacity, and capacity utilization decreased from the beginning to the end of the investigation period, although some of these figures improved slightly in the interim period of 1986.²²⁵ Employment figures also declined.²²⁶ Operating income margins decreased sharply, from 19.2 percent in 1983 to 9.7 percent

²²¹ (...continued)

countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated." 19 U.S.C. 1675a(b)(3). In its final five-year review determinations, Commerce determined that the magnitude of the countervailable subsidy that is likely to prevail if the countervailing duty order is revoked is 2.14 percent for subject merchandise from Taiwan and 0.77 percent for subject merchandise from Korea. 64 Fed. Reg. at 48374, 64 Fed. Reg. at 48377.

In five-year reviews concerning countervailing duty orders, the Commission is required to consider "information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement." 19 U.S.C. § 1675a(b)(6). In its final five-year review determination, Commerce found that all of the four programs at issue in the review regarding Taiwan, and four of the five programs at issue (short-term export financing, export tax reserves, business loans to promising companies, and duty drawback) in the review regarding Korea, fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. 64 Fed. Reg. at 48374, 64 Fed. Reg. at 48378.

²²² 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.

²²³ Top-of-the-Stove Stainless Steel Cookware, Pub. 1836 at 7-8. Domestic producers' shipments were worth \$135.2 million in 1983, \$134.5 million in 1984, and \$122.6 million in 1985, and interim period sales of \$89.5 million in 1985 and \$87.1 million in 1986. Original Top-of-the-Stove Stainless Steel Cookware Staff Report, Table 3.

²²⁴ CR & PR, Table I-11. These figures reflect shipments of 4.7 million units in 1997, 4.3 million units in 1998, 3.1 million units in January-September 1998, and 3.0 million units in January-September 1999. These shipments had a value of \$137.5 million in 1997, \$128.7 million in 1998, \$94.8 million in January-September 1998, and \$96.6 million in January-September 1999.

²²⁵ Top-of-the-Stove Stainless Steel Cookware, Pub. 1936 at 7.

²²⁶ Id. at 8.

in 1985, with 9.7 percent in the first nine months of 1985 and 6.8 percent in the same period of 1986.²²⁷ During the review period, production capacity increased steadily, while production decreased, resulting in a steady drop in capacity utilization.²²⁸ By 1997, operating income margins had increased to 11.1 percent. They increased again in 1998 to 13.1 percent, and then fell to 12.3 percent in the first nine months of 1999, compared with 13.5 percent for the same period in 1998.²²⁹

The imposition of the antidumping and countervailing duty orders in early 1987 led to an immediate and sharp reduction in the volume of subject imports.²³⁰ This reduction apparently gave the domestic producers of low-end and mid-range cookware a respite from import competition, and may have led to an increase in domestic production of those products.²³¹ However, increased competition from nonsubject imports apparently eroded the benefits of the orders, and contributed to the decisions by Farberware and Revere to cease production in the United States.²³²

Producers of high-end top-of-the-stove stainless steel cookware also felt the effects of the order. During the original investigation period, sales in the door-to-door channel of distribution, which was the precursor to the current direct sales channel of distribution, experienced a *** decline in profitability.²³³ All-Clad, although ***, had total revenues of less than *** percent of their current value.²³⁴ However, by 1997, both All-Clad and the companies that sold through the direct channel of trade had higher *** than in 1985, and All-Clad had a *** higher volume of shipments.²³⁵ We are hesitant to place great weight on these figures in the absence of data on domestic producers' operations in the intervening ten years. However, we also attribute the fact that the volume of subject imports remained far lower in 1997 than it was in 1985 at least in part to the pendency of the orders. Given the high levels of substitutability between the subject merchandise and the domestic like product, this reduction in the volume of subject merchandise is likely to have helped the domestic industry to maintain market share and profitability. In light of this information, we conclude that the orders had a positive effect on the domestic producers of high-end top-of-the-stove stainless steel cookware, although some of the benefit may have been eroded by increased quantities of nonsubject imports.

In spite of the effect of the order and the growing demand for high-end cookware, the industry's condition is a mixed picture. For the entire industry, the operating income margin has remained high, although it decreased slightly in the first nine months of 1999.²³⁶ Shipment volume, net sales revenue, market share, production volume, and capacity utilization all declined in 1998, and then again in the first

²²⁷ *Id.* at 8, Original Top-of-the-Stove Stainless Steel Cookware Staff Report, Table 7.

²²⁸ CR, Table III-A-2, PR, Table III-2.

²²⁹ CR, Table III-B-5, PR, Table III-13.

²³⁰ *See* Memorandum INV-X-067.

²³¹ *See* D. Fusaro, Cookware makers returning output to US plants, Metalworking News, Jan. 18, 1988 at 5 (“[s]purring these moves by domestic manufacturers is decreased low-cost competition from overseas, weakened by both the devalued dollar and duties on products ruled by U.S. trade authorities to have been dumped here.”).

²³² Hrg. Tr. at 99 (S. Jones); J. Messina, Farberware set to flee Bronx, Crains N.Y. Bus., Feb. 12, 1996, at 1.

²³³ Original Top-of-the-Stove Stainless Steel Cookware Staff Report at A-38.

²³⁴ *Compare* CR at III-B-6, PR at III-7 *with* Original Top-of-the-Stove Stainless Steel Cookware Staff Report at A-36.

²³⁵ CR, Table III-B-6, PR, Table III-14.

²³⁶ CR, Table III-B-5, PR, Table III-B-13. Profits would actually have increased if SG&A expenses had not risen dramatically.

nine months of 1999.²³⁷ This lackluster performance masks a significant change in the relative fortunes of the domestic producers. All-Clad's sales, which were exclusively in the retail distribution channel, increased in 1998 and then again in the first nine months of 1999, while the aggregate sales of the companies in the direct sales channel declined. The *** between All-Clad and the other three companies also widened. In light of this information we find that the evidence is mixed as to whether the domestic industry is vulnerable at this time.

We note that subject importers maintained a huge share of the domestic top-of-the-stove stainless steel cookware market during the original investigation period, and that even a partial return toward pre-order levels would result in material injury to the domestic industry. The factors discussed above indicate that this would be likely to occur if the order were revoked. The increase in subject imports and slight decrease in domestic shipments at the end of the review period suggest that the even at fairly traded prices, the subject imports are already causing the domestic industry's condition to worsen to a small degree.²³⁸ The significant increase in the volume of subject imports that is likely to follow revocation of the antidumping and countervailing duty orders would likely be sold at prices that would undersell the domestic like product and depress U.S. prices. These conditions would lead to a further erosion in the domestic industry's market share. The negative effects are likely to be particularly severe because the revocation of the orders would aid Korean producers' efforts to expand their shipments of high-end cookware, which would likely occur in the direct sales sector of the market, where a large portion of U.S. sales of high-end cookware take place and where the domestic industry's financial performance is weakest. As noted above, we are aware of no inherent barriers to increased participation in the direct sales sector by subject imports in the event of revocation. Therefore, we conclude that revocation of the orders would significantly accelerate the decline in the domestic industry's financial performance.²³⁹

The price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. These conditions would then 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 commensurate employment declines for domestic firms.

Accordingly, based on the record in these reviews, we conclude that, if the antidumping duty orders are revoked, subject imports from Korea and Taiwan 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 order on imports of POS cookware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to the U.S. POS cookware industry within a reasonably foreseeable time.²⁴⁰ We also determine that revocation of the antidumping and countervailing duty orders on imports of top-

²³⁷ CR & PR, Table I-11, CR, Tables III-A-2 & III-B-5, PR, Tables III-2 & III-13.

²³⁸ CR & PR, Table I-9. We note that nonsubject imports increased at the same time. Since the record indicates that these consist primarily of low- end and mid-range merchandise, we conclude that nonsubject imports are not responsible for the condition of the high-end cookware producers during the review period. Nor, for the same reason, would increased subject imports simply replace nonsubject imports.

²³⁹ In this regard, it is significant that increased import penetration resulted in an extremely rapid decrease in the top-of-the-stove stainless steel cookware industry's performance over the original investigation period.

²⁴⁰ Commissioner Askey dissenting.

of-the-stove stainless steel cookware from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to the U.S. top-of-the-stove stainless steel cookware industry within a reasonably foreseeable time.²⁴¹

²⁴¹ Chairman Bragg and Commissioners Askey and Okun dissenting.

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG

As noted, I join in the majority's affirmative determinations with regard to Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan. With regard to Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan, in addition to the discussion of domestic like product and domestic industry, I join in the majority's finding of a likely reasonable overlap of competition for purposes of cumulation, as well as the applicable legal standard and conditions of competition. However, because I find that revocation of the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware ("SS cookware") from Korea and Taiwan is likely to have no discernible adverse impact on the domestic industry, and because I render negative determinations with regard to the orders on SS cookware from Korea and Taiwan, I provide my dissenting views below.

Cumulation

Having found a likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product in the event of revocation, I turn to an assessment of whether subject imports from Korea and Taiwan, individually, are likely to have no discernible adverse impact in the event the orders on SS cookware are revoked.¹

Korea-

The most significant aspect of this review is the fact that, notwithstanding substantially lower price levels for increasing subject imports from Korea, the price levels for U.S. products actually increased during the period of review; in addition, non-subject imports now hold roughly three-quarters of the U.S. market for SS cookware.² Based upon the foregoing, I find that the likely pricing behavior of subject imports from Korea in the event of revocation will have no adverse impact on U.S. price levels.

First, I acknowledge that the pricing data collected by the Commission indicates uniform underselling by subject imports from Korea during the period of review; nevertheless, between the first quarter of 1997 and the third quarter of 1999, prices for each of the U.S. products increased while prices for each of the products imported from Korea declined.³ These trends are evident for both sales to distributors and sales to retailers. The record further indicates that the average unit value of subject imports from Korea ranged from \$9.27 in 1997 to \$9.25 in 1998 (and \$7.95 in interim 1999), while at the same time the average unit value of domestic producers' U.S. shipments ranged from \$29.18 in 1997 to \$30.25 in 1998 (and \$32.35 in interim 1999).⁴

Although average unit value ("AUV") data are often less probative than product-specific pricing data due to differences in product mix among countries and over time, I find that given the ongoing consolidation of the Korean industry toward the high end of the SS cookware market, the AUV data are also informative regarding the likely pricing behavior of subject imports from Korea in the event of

¹ See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, *Potassium Permanganate from China and Spain*, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 at 27-30 (October 1999) (articulating my analytical framework for cumulation in grouped sunset reviews).

² See Confidential Report ("CR") and Public Report ("PR") Table C-2.

³ See CR and PR Tables V-8, V-9, V-10, and V-11. I note that the pricing data account for only *** percent of U.S. shipments and *** percent of subject imports from Korea. CR at V-7, PR at V-5.

⁴ CR and PR Table C-2.

revocation.⁵ The AUV data thus reflect the same significant trend shown by the pricing data, i.e., that price levels for U.S. products increased during the period of review notwithstanding contemporaneous declines in substantially lower-priced subject imports from Korea.

Significantly, the declines in price levels for subject imports from Korea occurred even as the volume of subject imports increased substantially. Between 1997 and 1998, Korean imports increased 14.9 percent, while between interim 1998 and interim 1999, Korean imports increased 73.8 percent.⁶

In addition, I note that capacity utilization among the eight Korean firms that supplied individual data to the Commission ranged from 97.0 percent in 1997 to 89.6 percent in 1998 (and 93.5 percent in interim 1999).⁷ With regard to the Korean industry as a whole, I find most reliable the data supplied by the Korean Metal-Ware Industry Association, which indicates that capacity utilization ranged from an estimated *** percent in 1997 to *** percent in 1998 (and *** percent in interim 1999).⁸ Thus there is limited potential for increased production of SS cookware to be directed to the U.S. market in the event the order on Korea is revoked.

Based upon all the foregoing, I find that revocation of the orders on Korea will likely have no discernible adverse impact on the domestic industry.⁹ Indeed, I find that subject import volumes are unlikely to increase significantly if the orders on Korea are revoked, and that any such increase in import volumes is unlikely to have significant negative price effects in the U.S. market given the increase in price levels for U.S. products, which occurred despite the sustained and increasing disparity in price levels between subject imports from Korea and the domestic like product throughout the period of review.

Taiwan–

The most significant aspect of this review is the fact that, notwithstanding substantially lower price levels for subject imports from Taiwan, the price levels for U.S. products actually increased during the period of review; in addition, non-subject imports now hold roughly three-quarters of the U.S. market for SS cookware.¹⁰ Based upon the foregoing, I find that the likely pricing behavior of subject imports from Taiwan in the event of revocation will have no adverse impact on U.S. price levels.

There are no current product-specific pricing data available on the record with regard to subject imports from Taiwan. The record does indicate that the average unit value of subject imports from Taiwan ranged from \$2.86 in 1997 to \$2.21 in 1998 (and \$2.48 in interim 1999); again, I note that at the same time the average unit value of domestic producers' U.S. shipments ranged from \$29.18 in 1997 to \$30.25 in 1998 (and \$32.35 in interim 1999).¹¹ The AUV data thus reflect increasing price levels for U.S. products

⁵ Although the magnitude of the disparity between the AUVs of U.S. products and Korean imports suggests that there are still differences in product mix, I am satisfied that lower import prices and price movements are also reflected in the AUV data.

⁶ CR and PR Table C-2.

⁷ CR and PR Table IV-6.

⁸ CR and PR Table IV-7, as corrected in Office of Investigations' memorandum INV-X-053.

⁹ In this regard, I note that subject imports from Korea are sold largely to retailers, and therefore compete for the most part with All-Clad. CR at II-3 n.10, PR at II-2 n. 10. Notwithstanding such head-to-head competition from subject imports, All-Clad evidenced *** among domestic producers during the period of review. See CR Table III-B-6, PR Table III-14.

¹⁰ See CR and PR Table C-2.

¹¹ CR and PR Table C-2. Although the magnitude of the disparity between the AUVs of U.S. products and imports from Taiwan suggests differences in product mix, I am satisfied that lower import prices and price

(continued...)

during the period of review notwithstanding contemporaneous declines in substantially lower-priced subject imports from Taiwan.

Declining price levels for subject imports from Taiwan were accompanied by declining import volumes; between 1997 and 1998, Taiwan imports declined 49.1 percent, while between interim 1998 and interim 1999, Taiwan imports declined 46.8 percent.¹² Notably, even if pre-order conditions were to recur following revocation of the orders on Taiwan, this would result in a significant additional decline in import volume, as well as a significant increase in the average unit value of imports from Taiwan, compared with current levels.¹³ In other words, a return to pre-order conditions with regard to imports from Taiwan would likely benefit the domestic industry. Regardless of whether pre-order conditions recur, however, I am satisfied that revocation will not adversely impact the domestic industry based upon the behavior of imports from Taiwan evidenced in the record of these reviews.

The limited information of record indicates that the industry in Taiwan is made up of a number of small, in-house manufacturers whose production is almost entirely dedicated to home market consumption.¹⁴ Although one producer and exporter of cookware located in Taiwan did indicate that it operated at a relatively low level of capacity utilization during the period of review, this firm reported that it exported only non-subject product to the U.S. market;¹⁵ moreover, the amount of potential SS cookware production represented by this firm's unused capacity is equivalent to a relatively small volume of total apparent U.S. consumption.¹⁶

Based upon all the foregoing, I find that revocation of the orders on Taiwan will likely have no discernible adverse impact on the domestic industry. Indeed, I find that subject import volumes are unlikely to increase significantly if the orders on Taiwan are revoked, and that any such increase in import volumes is unlikely to have significant negative price effects in the U.S. market given the increase in price levels for U.S. products which occurred despite the sustained disparity in price levels between subject imports from Taiwan and the domestic like product throughout the period of review.

Aggregate Analysis—

As I have noted in prior grouped sunset review determinations, I believe that if a country-specific assessment leads to the conclusion that subject imports from two or more subject countries are individually likely to have no discernible adverse impact on the domestic industry in the event of revocation of the respective orders, the statute requires a further examination of whether such imports, in the aggregate, are likely to have no discernible adverse impact on the domestic industry.¹⁷ Thus, I turn to the question of

¹¹ (...continued)

movements are also reflected in the AUV data.

¹² CR and PR Table C-2.

¹³ See CR and PR Table I-4.

¹⁴ CR and PR at IV-13, IV-15.

¹⁵ CR at II-17, PR II-11.

¹⁶ Cf. CR at IV-15 and PR at IV-8 with Table C-2. The unused capacity of the responding firm in Taiwan during interim 1999 is equivalent to roughly *** percent of apparent U.S. consumption in that period.

¹⁷ See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, *Potassium Permanganate from China and Spain*, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 at 27-30 (October 1999); see also Separate and Dissenting Views of Chairman Lynn M. Bragg, *Certain Steel Wire Rope from Japan, Korea, and Mexico*, Invs. Nos. AA1921-124 and 731-TA-546-547 (Review), USITC Pub. 3259 at 33-39 (December 1999).

whether subject imports from Korea and Taiwan, when considered together, are likely to have no discernible adverse impact in the event of revocation of the orders on these two countries.

Upon review, I find that revocation of the orders on both subject countries will not have a discernible adverse impact on the domestic industry. Again, I am satisfied that revocation of the orders will not result in a significant increase in subject import volumes from either country, and that any increase in imports which does occur will not have discernible negative price effects in the U.S. market.¹⁸ Accordingly, I find that cumulation of Korea and Taiwan is precluded in these grouped reviews.

Likelihood of Continuation or Recurrence of Material Injury

Having found no likely discernible adverse impact if the orders on Korea and Taiwan are revoked, both individually and in the aggregate, it follows naturally that I find no likelihood of continuation or recurrence of material injury in the event of revocation for each country. To begin, I find that the domestic SS cookware industry is not in a weakened condition as contemplated by the vulnerability criterion of the statute.¹⁹ In this regard, I note that during the period of review the domestic industry enjoyed operating margins of 11.1 percent in 1997 and 13.1 percent in 1998, while interim data indicate operating margins of 13.5 percent in interim 1998 and 12.3 percent in interim 1999; these data reflect the financial health and increasing profitability of the domestic industry throughout the review period, notwithstanding declines in production and U.S. shipments.²⁰

Korea—

I have already found that revocation of the orders on Korea will not result in significant volumes of subject imports from Korea, and that any increase in imports which does occur will not have significant negative price effects in the U.S. market.²¹ Accordingly, I find that revocation will not result in significant declines in output, sales, market share, profits, productivity, or return on investments, for the domestic industry. I therefore determine that revocation of the orders on Korea will not have a significant adverse impact on the domestic SS cookware industry.

¹⁸ I note in this regard that following the domestic industry's consolidation at the high end of the SS cookware market, price appears to be a less critical competitive factor as compared with quality or brand name. *See* CR and PR Table II-2.

¹⁹ *See* The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. I, at 885 (1994).

²⁰ *See* CR and PR Table C-2.

²¹ The fact that nonsubject imports have captured a significantly increased share of the U.S. market since the original period of investigation further indicates that if the orders are revoked, the impact of any increase in imports from Korea on the domestic industry would be further attenuated. *See* CR and PR Table I-4.

Taiwan–

I have already found that revocation of the orders on Taiwan will not result in significant volumes of subject imports from Taiwan, and that any increase in imports which does occur will not have significant negative price effects in the U.S. market.²² Accordingly, I find that revocation will not result in significant declines in output, sales, market share, profits, productivity, or return on investments, for the domestic industry. I therefore determine that revocation of the orders on Taiwan will not have a significant adverse impact on the domestic SS cookware industry.

Conclusion

For the foregoing reasons, and based upon the entirety of the record in this grouped review, I find that revocation of the orders on SS cookware from Korea and Taiwan would not be likely to lead to continuation or recurrence of material injury to the domestic SS cookware industry within a reasonably foreseeable time.

²² The fact that nonsubject imports have captured a significantly increased share of the U.S. market since the original period of investigation further indicates that if the orders are revoked, the impact of any increase in imports from Taiwan on the domestic industry would be further attenuated. *See* CR and PR Table I-4.

DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Section 751(d) of the Tariff Act of 1930, as amended, requires that the Department of Commerce (“Commerce”) revoke a countervailing duty order or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹ Based on the record in these reviews, I determine that revocation of the antidumping duty orders covering porcelain-on-steel cooking ware (“POS cookware”) from China, Mexico and Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Except as otherwise noted, I join in the Majority’s analysis and findings with respect to the domestic like product, domestic industry and cumulation, the legal standard governing the Commission’s causation analysis in sunset reviews and conditions of competition in this marketplace. However, I have determined that revocation of the orders covering subject imports from China, Mexico and Taiwan would not be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time. I discuss the reasons for these determinations below.

As a preliminary matter, I note that the sole domestic producer of the domestic like product and the producers of the majority of the Mexican subject product chose to participate, but that no producers or importers of Chinese or Taiwan subject product chose to participate in these reviews. Given the level of responses in these reviews, the Commission has a somewhat limited record to consider in determining whether revocation of the orders will likely lead to continuation or recurrence of material injury in the reasonably foreseeable future. In a case such as this, where the domestic interested party (and no respondent producers, exporters or importers) fully participated in certain reviews, the participating party has an advantage in terms of being able to present information to the Commission without rebuttal from the other side. Nonetheless, 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 information and evidence before it in terms of the statutory criteria.² The Commission cannot properly accept participating parties’ information and characterizations thereof without question and without evaluating other available information and evidence.³

I. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON POS COOKWARE FROM CHINA, MEXICO AND TAIWAN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. *Likely Volume of Subject Imports*

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

² 19 U.S.C. § 1675a(a).

³ 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.”).

In evaluating the likely volume of imports of subject merchandise if an antidumping order is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁴ 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.⁵

In the original determinations the Commission found that the domestic industry was materially injured by reason of imports from China, Mexico and Taiwan that were found by the Department of Commerce to be sold in the United States at less than fair value.⁶ The Commission found that the volume of cumulated subject imports had increased by 52 percent from 1983 to 1985 and that their market share had increased by almost 14 percentage points.⁷

Imposition of the LTFV duties in 1986 had little, if any, effect on the subject imports; imports from all three countries fluctuated for several years after 1986, with an overall slow downward trend beginning in the early 1990s.⁸ During the review period, cumulated subject import market share declined, from *** percent in 1997 to *** percent in 1998, and still further to *** percent in interim 1999.

The market contains both light-gauge and heavy-gauge POS, which are both present in the same cookware market but are used for different purposes. Heavy- and light-gauge POS cookware do not compete with each other.⁹ Domestic producers’ POS cookware and subject imports other than those from Mexico are to some degree focused on different ends of the spectrum; domestic producers manufacture only light-gauge POS, while subject manufacturers produce and import both types.¹⁰ Roughly two-thirds of the subject imports are from China and Taiwan,¹¹ which import both light- and heavy-gauge POS.¹² While there is limited information on the record regarding the relative quantities of each type of POS cookware that each country imports, the evidence indicates that more than half of Chinese and Taiwan imports are of heavy-gauge POS,¹³ which does not compete with the domestic producers’ light-gauge POS cookware. Moreover, while Mexican imports are primarily of light-gauge POS, they import some heavy-gauge POS as well.¹⁴ Accordingly, competition between subject imports and the domestic like product is limited. Therefore, increases in subject imports, and in Chinese and Taiwan imports in particular, are unlikely to

⁴ 19 U.S.C. § 1675a(a)(2).

⁵ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁶ Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan, Invs. Nos. 701-TA-265, 731-TA-297-299 (Final), USITC Pub. 1911 (Nov. 1986) at 14 [hereinafter “Original det.”].

⁷ Id. at 13. Current cumulated numbers for that period are different because Spain was included in the cumulated countries during the original investigation. See Table I-3.

⁸ See Supplementary Figure IV-A: POS Cookware, U.S. imports from China, Mexico, and Taiwan, 1986-98.

⁹ CR at I-24, PR at I-17.

¹⁰ CR at I-19 and II-23, PR at

¹¹ See CR & PR at Table I-4.

¹² CR at II-23, PR at . See also notes from staff trip to the International Housewares Show in Chicago, 1/17/00-1/18/00 [hereinafter “Staff Trip Notes”].

¹³ See Staff Trip Notes.

¹⁴ CR at I-19, PR at

have significant volume effects on the domestic industry since a substantial portion of subject imports are of heavy-gauge POS cookware.

Available data shows that the sole Mexican producer that exports subject merchandise to the United States ***.¹⁵ Mexican production capacity increased somewhat between 1997 and 1998 and Cinsa's capacity utilization increased as well.¹⁶ Production and capacity information is not available for Chinese and Taiwan producers. Current data shows relatively low and stable Mexican producer inventories;¹⁷ current Chinese and Taiwan inventory data are not available. Currently, Taiwan producers may face a barrier to importation in Mexico, which imposed antidumping duties on imports of POS cookware from Taiwan in 1990.¹⁸ The record suggests that it is not possible for POS cookware producers to use the same production lines and workers to produce other categories of cookware.¹⁹

The market has changed significantly in that non-subject imports have increased substantially since the original POI, having roughly tripled their market share.²⁰ The vast majority of this increase has been at the expense of subject imports.²¹ Thus, if subject imports were to increase subsequent to revocation of the order, such an increase would come predominantly at the expense of non-subject imports.

In sum, I find that there is limited competition between the subject imports; the domestic like product and subject imports have been declining since the early 1990s; and there is little or no indication that imports that directly compete with the domestic industry will increase significantly in the reasonably foreseeable future. Therefore, I do not find that the past and current volume levels indicate that there will be a significant adverse volume effect on the industry if the orders covering China, Mexico and Taiwan are revoked.

B. Likely Price Effects

In evaluating the likely price effects of subject imports if an antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.²²

In the original determination, the Commission stated that pricing data were difficult to assess but that domestic producer prices had been unable to keep up with costs as import volumes increased, and that

¹⁵ CR & PR at Table IV-5.

¹⁶ Id.

¹⁷ Id.

¹⁸ CR at IV-18, PR at IV-11.

¹⁹ CR at I-22, PR at I-16.

²⁰ Id. The record evidence is limited with respect to comparisons between nonsubject imports and the domestic like product, but the available data suggests that the two are used in the same applications. CR at II-30-31, PR at

²¹ See CR at I-22, PR at I-16.

²² 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.

anecdotal purchaser information indicated some “undercutting” by the subject imports.²³ Current pricing data shows underselling on the part of Mexican imports in most quarterly comparisons;²⁴ pricing data is not available for Chinese or Taiwan products.

Current pricing data show underselling by subject imports from Mexico in a majority of quarterly comparisons, by average margins of *** percent in sales to *** and *** percent in sales to ***.²⁵ Pricing data is not available for Chinese and Taiwan imports.

The limited record suggests that subject imports have undersold domestic merchandise and may continue to do so again in the future. However, as I indicate above in my discussion of the likely volume effects of the imports, I find it unlikely that sufficient volumes of subject imports that actually compete with the domestic like product will be present in the market such as to affect domestic prices. Additionally, purchasers indicate that quality rather than price is the most import factor in purchasing decisions,²⁶ further limiting the likely effect of imports on domestic prices.

As instructed by the statute,²⁷ I considered Commerce’s finding that Cinsa and its sister corporation, Enasa, absorbed duties on imports of Mexican POS cookware.²⁸ That finding is reflected in the 25.42 and 65.28 percent dumping margins for Cinsa and Enasa, respectively, that Commerce determined were likely to prevail if the order were removed.²⁹ ³⁰ While the duty absorption finding may suggest that Mexican producers could engage in aggressive marketing efforts should the orders be revoked, I do not consider this finding alone to be sufficient to overcome the other evidence that leads me to conclude that subject imports would not be likely to have a significant adverse impact on domestic prices.

Accordingly, I find that the subject imports from China, Mexico and Taiwan would not be likely to have a significant adverse effect on domestic prices within a reasonably foreseeable time if the orders are revoked.

C. Likely Impact

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

²³ Original det. at 14.

²⁴ CR & PR at Table V-25.

²⁵ CR at V-25, PR at V-9.

²⁶ CR & PR at Tables II-1 & II-3.

²⁷ Section 752(a)(1)(D) of the Act, 19 U.S.C. § 1675a(a)(1)(D).

²⁸ Commerce found in its administrative review for the 1996-97 period that Cinsa and Enasa absorbed antidumping duties on 68.03 and 98.52 percent of their sales, respectively. Porcelain-on-Steel Cookware From Mexico, 64 Fed. Reg. 29262, 29263 (June 1, 1999) (admin. rev., amended results).

²⁹ Porcelain-on-Steel Cooking Ware From Mexico, 65 Fed. Reg. 281, 283 (Jan. 4, 2000) (sunset rev., final). The dumping margins had been adjusted in the 1996-97 administrative review to account for reimbursement of antidumping duties, a process that Commerce found “effectively approximates the calculation we would make to account for duty absorption.” Id.

³⁰ The SAA explains that “[d]uty absorption may indicate that the producer or exporter would be able to market more aggressively should the order be revoked as a result of a sunset review.” SAA at 885.

industry, including efforts to develop a derivative or more advanced version of the domestic like product.³¹ 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.³²

As instructed by the statute, I have considered the 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 those orders are revoked.³³ In these reviews, the record shows that the domestic industry is financially healthy at this time. Industry profits have been increasing since 1997, rising from \$*** in 1997 to \$*** in 1998 and increasing a further *** percent comparing interim 1998 with interim 1999 data. Moreover, while operating income was *** in 1997, it jumped *** in 1998 and again comparing the interim periods. Operating income as a percentage of sales was *** in 1997 but rose to *** percent in 1998 and *** percent in interim 1999.³⁴ I note that the industry is enjoying this *** positive performance 14 years after the orders were put in place, despite substantially increased nonsubject imports, declining market share, and the continued presence of subject imports in the market. I do not find that the industry is vulnerable to material injury if the orders are revoked.

Moreover, as discussed above, there is only limited direct competition between subject imports from China and Taiwan and the domestic producer because a substantial portion of imports from both China and Taiwan are of heavy-gauge POS cookware that does not compete significantly with the domestically produced light-gauge POS cookware. Accordingly, given my findings that increases in subject imports, if any, are not likely to have any significant volume or price impacts on the domestic industry, I also find that subject imports would not likely 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. 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 orders covering the subject imports from China, Mexico and Taiwan are revoked.

³¹ 19 U.S.C. § 1675a(a)(4).

³² *Id.* Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). In my analysis, I have taken note of the margins that Commerce found to be likely in the event that the orders are revoked. *See* 64 Fed. Reg. 50272 (Sept. 16, 1999), 64 Fed. Reg. 50488 (Sept. 17, 1999), 65 Fed. Reg. 283 (Jan. 4, 2000).

³³ 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.

³⁴ CR & PR, Table C-1.

II. CONCLUSION

For the reasons stated above, I determine that revocation of the antidumping duty orders on POS cookware from China, Mexico and Taiwan would not be likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**DISSENTING VIEWS OF COMMISSIONERS
THELMA J. ASKEY AND DEANNA TANNER OKUN**

Section 751(d) of the Tariff Act of 1930, as amended, requires that the Department of Commerce (“Commerce”) revoke a countervailing duty order or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹ Based on the record in these reviews, we determine that revocation of the antidumping duty and countervailing duty orders covering top-of-the-stove stainless steel cooking ware (“top-of-the-stove SS cookware”) from Korea and Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Except as otherwise noted, we join in the Majority’s discussions and findings with respect to the domestic like product and domestic industry, cumulation, the Commission’s legal standards governing causation analysis in sunset reviews, and conditions of competition in this marketplace. However, we have determined that revocation of the orders covering the subject top-of-the-stove SS cookware from Korea and Taiwan would not be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time. We discuss the reasons for these determinations below.

As a preliminary matter, we note that domestic producers accounting for a substantial portion of the production of the domestic like product² and some Korean producers chose to participate, but that no producers or importers of the subject product from Taiwan chose to participate in these reviews. Given the level of responses in this review, the Commission has a somewhat limited record to review in determining whether revocation of the orders will likely lead to continuation or recurrence of material injury in the reasonably foreseeable future. The statute obligates the Commission both to investigate the matters at issue and to evaluate the information and evidence before it in terms of the statutory criteria.³ The Commission makes determinations by weighing all the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence that it finds most persuasive.⁴ Thus, the Commission cannot properly accept participating parties’ information and characterizations thereof without question and without evaluating other available information and evidence.

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

² A large producer that had announced its intent to close its U.S. production facility did not respond. See Explanation of Commission Determinations on Adequacy.

³ 19 U.S.C. § 1675a(a).

⁴ SAA at 869.

I. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON TOP-OF-THE-STOVE COOKING WARE FROM KOREA AND TAIWAN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. *Likely Volume of Subject Imports*

In evaluating the likely volume of imports of subject merchandise if an antidumping order is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁵ 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.⁶

In the original determination, the Commission found that the domestic industry was materially injured by reason of imports of top-of-the-stove SS cookware from Korea and Taiwan that were subsidized and sold at less than fair value.⁷ The Commission found that cumulated subject imports from Taiwan and Korea held a combined market share of 50.0-50.2 percent by quantity in 1983-85; Korea held shares of 49.0-49.5 percent while Taiwan held shares of 0.7-1.0 percent.⁸ The Commission noted that while the market share of imports by quantity remained stable during the period examined, the market share by value increased, by 5.5 percentage points, and that the value of imports was a more reliable indicator of impact on the domestic industry.⁹

In 1997 and 1998, cumulated subject imports held market shares of 18.4 and 12.2 percent, respectively, with a slight rise to 13.5 percent in interim 1999.¹⁰ While the parties dispute the current Korean production capacity levels, using either number, the evidence demonstrates that Korean capacity has shrunk significantly since the time of the original investigation, declining by between *** and *** percent.¹¹ Available data for the period examined in these reviews shows little unused Korean producer capacity;¹² information on capacity for the industry in Taiwan was not available during the original

⁵ 19 U.S.C. § 1675a(a)(2).

⁶ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁷ Top-of-the-Stove Stainless Steel Cookware, USITC pub. 1934 (Jan. 1987) at 13 [“Original determination”].

⁸ CR at I-6, PR at I-5.

⁹ Original determination at 12.

¹⁰ CR & PR, Table I-4. Market share for imports from Taiwan increased somewhat after the orders went into place and then fluctuated at relatively low levels thereafter; they rose to 9.9 percent in 1997 before declining to 4.2 percent in 1998 and to 2.1 percent in interim 1999. Korean imports declined substantially after the original orders were imposed and held 8.5 and 8.1 percent of the market in 1998 and 1998, respectively, and rose to 11.4 percent in interim 1999. Id.

¹¹ CR & PR, Table IV-7.

¹² Id.

investigation¹³ and is not currently available.¹⁴ Current data shows low Korean producer inventories;¹⁵ current inventory data for the Taiwan industry is not available. Korean producers may face a barrier to importation in South Africa, which imposed antidumping duties on imports of stainless steel cookware from Korea in 1998.¹⁶ The record suggests that product-shifting is not likely because it is not possible for top-of-the-stove stainless steel cookware producers to use the same production lines and workers to produce other cookware.¹⁷

The record indicates that the market has changed considerably since the time of the original investigation. Particularly relevant are the substantial increase in the market share held by nonsubject imports, whose share has risen from one-quarter to three-quarters of the market,¹⁸ and the increase in competition from other types of cookware, most notably from aluminum cookware.¹⁹ Between 1997 and 1998 alone, nonsubject imports increased their market share by 9.7 percentage points.²⁰ At the same time, subject import market share declined by 6.2 percentage points and domestic market share declined by 3.4 percentage points.²¹ Accordingly, nonsubject market share has been increasing as both subject import and domestic producer market shares have declined. Given that nonsubject imports hold more than three-quarters of the market, it is likely that any increases in subject market share would come largely at the expense of nonsubject imports.

Imports from Taiwan were at extremely low levels before imposition of the antidumping duty orders and, while they rose after the orders were put in place, they have declined again in recent years to low levels.²² Accordingly, volumes of imports from Taiwan in particular have not been significant in the past and are unlikely to be so in the future. Korean imports were high prior to the order but had remained stable throughout the period examined; they declined after imposition of the orders, and have remained stable since the early 1990s.²³ Given the stable import volume of Korean imports, decreased Korean producer capacity, and low current and projected dumping and CVD margins for most producers,²⁴ it is unlikely that Korean imports would rise appreciably should the orders be revoked.

Therefore, we do not find that the past and current volume levels indicate that there will be a significant adverse volume effect on the industry if the orders covering Korea and Taiwan are revoked.

¹³ Original determination at A-43.

¹⁴ We note that petitioners report that Taiwan exports of stainless steel cookware and kitchenware averaged more than 40 million pounds annually during 1996-98. See Domestic Industry's Prehearing Brief at Exh. 17. However, we note that this number includes more than the subject product and the portion accounted for by just subject product is unknown.

¹⁵ CR & PR, Table IV-6.

¹⁶ CR at IV-18, PR at IV-11.

¹⁷ CR at I-22, PR at I-16.

¹⁸ CR & PR, Table I-4.

¹⁹ The more widespread use of non-stick surfaces on top-of-the-stove stainless steel cookware may account for some increased competition between aluminum and stainless steel cookware. See CR at I-28, II-6 and II-19-20, PR at I-20, II-4, and II-12.

²⁰ CR & PR, Table I-4.

²¹ Id.

²² See CR & PR, Table I-6; Supplemental Figure IV-B.

²³ Id.

²⁴ CR at I-14, PR at I-11.

B. *Likely Price Effects*

In evaluating the likely price effects of subject imports if an antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.²⁵

In the original determination, the Commission found that the pricing data was mixed but that pricing trends established a causal link between material injury and the subject imports in light of the import trends.²⁶ Current pricing data is extremely minimal and, therefore, is of limited probative value.²⁷

The record evidence indicates that there is limited competition between subject imports and the domestic product due to differences in product offerings (*e.g.*, high-end product versus low-end product) and differences in channels of distribution;²⁸ thus, subject imports, at any volume, do and would continue to have limited, if any, price effects on the domestic product. Domestic producers serve the high end of the market exclusively.²⁹ Korean producers serve both the high and low ends of the market while subject imports from Taiwan are focused in the mid and low end of the market.³⁰ The record indicates that there is little or no competition between the high and low ends of the market.³¹ While both Korean and domestic producers serve the high end market, the record shows that their respective sales are predominantly in different channels of distribution; Korean product is mostly marketed in retail outlets while domestic product is primarily marketed through direct sales.³² Accordingly, there is little or no competition between imports from Taiwan and the domestic like product and only limited competition between Korean imports and the domestic like product.³³

²⁵ 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.

²⁶ Original determination at 12-13.

²⁷ Price data for top-of-the-stove stainless steel cookware reported by U.S. producers accounted for only *** percent of U.S. producers’ shipments in 1998, while price data for imports from Korea accounted for *** percent of shipments of imports from Korea in 1998. CR at V-7, PR at V-5.

²⁸ CR at II-3, PR at II-2.

²⁹ CR at II-2, PR at II-1.

³⁰ CR at II-24, PR at II-14.

³¹ Hearing transcript (TR), p. 147-148.

³² Information on the record indicates that *** Korean producers had any sales in the direct sales channel of distribution. See Posthearing brief of Korean Respondents at 36. We further note that these sales accounted for a small portion (***) of total sales of subject Korean imports. Based on this small presence, the record does not indicate that Korean top-of-the-stove stainless steel cookware producers are likely to increase their presence in the direct sales channel in the reasonably foreseeable future.

³³ We find AUV comparisons generally to be of limited probative value, given issues concerning product mix, type, quality and levels of trade. Nevertheless, it seems highly unlikely that there is actual competition between Taiwan product with AUVs of less than \$3.00 and domestically produced products with AUVs of more than \$28.00. See CR & PR, Table C-2.

Moreover, there is limited price sensitivity in the high end of the top-of-the-stove SS cookware market³⁴ and limited side-by-side competition, particularly in the direct sales channel that is dominated by the domestic industry. Additionally, purchasers generally identified quality as the most important factor in making their purchasing decisions, with price predominantly appearing as the third among a variety of factors,³⁵ further limiting the likelihood that subject import pricing affects domestic prices.

Therefore, based on these factors, we find that the subject imports from Korea and Taiwan would not be likely to have a significant negative effect on domestic prices within a reasonably foreseeable time if the orders are revoked.

C. Likely Impact

In evaluating the likely impact of imports of subject merchandise if an antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.³⁶ 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.³⁷

As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if those orders are revoked.³⁸ In these reviews, the record shows that the domestic industry is in extremely sound condition financially. Industry profits are healthy and have been

³⁴ CR at II-35, PR at II-22.

³⁵ Table II-2.

³⁶ 19 U.S.C. § 1675a(a)(4).

³⁷ *Id.* Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). In our analysis, we have taken note of the margins and countervailable subsidies that Commerce found to be likely in the event that the orders are revoked. *See* 64 Fed. Reg. 40572 (July 27, 1999); 64 Fed. Reg. at 48374 (Sept. 3, 1999); 64 Fed. Reg. at 48377 (Sept. 3, 1999); Top-of-the-Stove Stainless Steel Cookware from Taiwan, 64 Fed. Reg. at 48374; and Top-of-the-Stove Stainless Steel Cookware from Korea, 64 Fed. Reg. at 48378.

In five-year reviews concerning countervailing duty orders, the Commission is required to consider “information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(b)(6). In its final five-year review determination, Commerce found that all of the four programs at issue in the review regarding Taiwan, and four of the five programs at issue (short-term export financing, export tax reserves, business loans to promising companies, and duty drawback) in the review regarding Korea, fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. *See* Top-of-the-Stove Stainless Steel Cookware from Taiwan, 64 Fed. Reg. at 48374; Top-of-the-Stove Stainless Steel Cookware from Korea, 64 Fed. Reg. at 48378.

³⁸ 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.

increasing since 1997, rising from \$57.5 million in 1997 to \$58.8 million in 1998 and increasing a further 8.2 percent comparing interim periods. Moreover, operating income was basically stable between 1997 and 1998 but increased by 22 percent comparing interim periods. Operating income as a ratio to net sales was 11.1 percent in 1997 and 13.5 percent in 1998. Productivity has increased and COGS have declined. These positive indicators are consistent with an industry that is focusing on the high end of a market that has been booming in recent years, with consumption increasing by 21.1 percent between 1997 and 1998 and a further 22.7 percent between interim periods.³⁹ We note that the industry is enjoying this extremely positive performance 14 years after the orders were put in place, and despite substantially increased nonsubject imports, declining market share and the continued presence of subject imports in the market.

Moreover, as discussed above, there is little or no competition between the Taiwan imports and the domestic like product, and only limited competition between the Korean imports and the domestic like product. Accordingly, given our findings that increases in subject imports, if any, are not likely to have any significant volume or price impacts on the domestic industry, we 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, we find that revocation of the order is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.

Accordingly, we find that there is not likely to be a significant impact on the domestic industry if the orders covering the subject imports from Korea and Taiwan are revoked.

II. CONCLUSION

For the reasons stated above, we determine that revocation of the antidumping duty orders on top-of-the-stove SS cookware from Korea and Taiwan would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

³⁹ CR & PR, Table C-2. Some indicators are not positive. We note that domestic shipments have been down slightly and export shipments more substantially, and that unit operating income has declined slightly. We also note that capital expenditures have fluctuated and are down somewhat between 1997 and interim 1998. Id. However, we do not view these indicators, when compared with the other strong positive indicators, as depicting an industry that is anything but in sound financial condition.