

UNITED STATES INTERNATIONAL TRADE COMMISSION

FURFURYL ALCOHOL FROM CHINA AND THAILAND
Investigations Nos. 731-TA-703 and 705 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3412, April 2001)

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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 furfuryl alcohol from China and Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on May 1, 2000 (65 F.R. 25363) and determined on August 3, 2000, that it would conduct full reviews (65 F.R. 50003, August 16, 2000). 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 November 6, 2000 (65 F.R. 66559). The hearing was held in Washington, DC, on March 1, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on April 20, 2001. The views of the Commission are contained in USITC Publication 3412 (April 2001), entitled *Furfuryl Alcohol from China and Thailand: Investigations Nos. 731-TA-703 and 705 (Review)*.

By order of the Commission.

Donna R. Koehnke

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

Secretary

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VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders on furfuryl alcohol from China and Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

On June 14, 1995, the Commission found that an industry in the United States was materially injured by reason of imports of furfuryl alcohol sold at less than fair value (“LTFV”) from China.¹ On July 18, 1995, the Commission found that an industry in the United States was materially injured by reason of LTFV imports of furfuryl alcohol from Thailand.² The Department of Commerce (“Commerce”) published the antidumping duty order on imports from China on June 21, 1995,³ and the antidumping duty order on imports from Thailand on July 25, 1995.⁴

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.⁵ 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.

On May 1, 2000, 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 antidumping duty orders on imports of furfuryl alcohol from China and Thailand would be likely lead to continuation or recurrence of material injury.⁶ The Commission received responses to the notice of institution from ten interested parties. For the domestic industry, the Commission received a response from two domestic interested parties: Penn

¹ Furfuryl Alcohol from the People’s Republic of China and South Africa, Inv. Nos. 731-TA-703 and 704 (Final), USITC Pub. 2897 (June 1995). Commerce also issued an antidumping duty order on imports from South Africa in 1995 following the Commission’s affirmative determination. However, that order was revoked in 1999. Confidential Staff Report (“CR”) at I-2 n.5; Public Staff Report (“PR”) at I- 2.

² Furfuryl Alcohol from Thailand, Inv. No 731-TA-705 (Final), USITC Pub. 2909 (July 1995) .

³ 60 Fed. Reg. 32302 (June 21, 1995).

⁴ 60 Fed. Reg. 38035 (July 25, 1995).

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

⁶ 65 Fed. Reg. 25363 (May 1, 2000).

Specialty Chemicals, Inc. (“Penn”), a domestic producer of furfuryl alcohol, and Harborchem, one of the petitioners in the original investigations. For the foreign industries, the Commission received a response from Indo-Rama, the sole producer of the subject merchandise in Thailand, and a joint response from Sinochem International Furan Chemicals Co., Ltd., Shandong Zhucheng Chemical Co., Ltd., Shandong Baofeng Chemicals Group, Corp., Linzi Organic Chemical Inc., Jilin Sanchun Chemical Plant Co., Ltd., Sinochem Hebei Fuheng Co., Ltd., Shanxi Province Gaoping Chemical Industry Co., Ltd., Qingdao Import and Export Corp., and the China Chamber of Commerce of Metals, Minerals, and Chemicals (“CCCMC”), Chinese producers and exporters of the subject merchandise.

On August 3, 2000, the Commission determined that it should proceed to full reviews of the antidumping duty orders on furfuryl alcohol from China and Thailand.⁷ In so doing, the Commission determined that the domestic and respondent interested party group responses were adequate in Furfuryl Alcohol from Thailand. In Furfuryl Alcohol from China, the Commission concluded that the domestic interested party group response was adequate. The Commission further determined that although the CCCMC was not an interested party for purposes of determining adequacy, the respondent interested party group response was adequate because producers accounting for a substantial proportion of Chinese production submitted adequate responses.^{8 9}

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”¹⁰ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹¹ In a section 751(c) review, the Commission also must take into account “its prior injury determinations.”¹²

In its reviews, Commerce defined the subject merchandise as:

⁷ *Explanation of Commission Determinations on Adequacy*, reprinted in CR and PR at Appendix A.

⁸ Commissioner Bragg dissenting. Commissioner Bragg determined that the responses from the eight Chinese producers were inadequate, and that CCCMC is not an interested party. Nevertheless, Commissioner Bragg determined that a full review was appropriate in light of her determination to conduct a full review in Furfuryl Alcohol from Thailand. *Explanation of Commission Determinations on Adequacy*.

⁹ Commissioner Thelma J. Askey determined that the response from CCCMC was inadequate.

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹² 19 U.S.C. § 1675a(a)(1)(a).

furfuryl alcohol, C₄H₃OCH₂OH. Furfuryl Alcohol is a primary alcohol and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes.¹³

Furfuryl alcohol is a colorless to light-yellow, mobile liquid, which becomes brown to dark red upon exposure to light and air. Furfuryl alcohol is primarily used in the production of furan resins.¹⁴ Furfuryl alcohol is also used as a solvent in paint strippers and biocides and as an intermediate chemical in the production of tetrahydrofurfuryl alcohol, flavor and fragrance chemicals, and pharmaceutical and pesticide products.¹⁵

The starting point of the Commission's domestic like product analysis in a five-year review is the like product definition in the Commission's original determination.¹⁶ In the original investigations, the Commission found a single like product, furfuryl alcohol, based on evidence regarding the physical characteristics, uses, channels of distribution, manufacturing processes, and customer and producer perceptions of furfuryl alcohol.¹⁷

In these reviews, the parties have raised no new domestic like product issues and there is no information on the record that indicates a need to revisit the Commission's definition of the domestic like product in the original determinations. The record indicates that there have been no significant changes in the nature, uses, and manufacture of furfuryl alcohol since the original investigations. Accordingly, we define one domestic like product, furfuryl alcohol, coextensive with Commerce's scope.

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."¹⁸ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the

¹³ 65 Fed. Reg. 53701 (Sept. 5, 2000).

¹⁴ Furan resins are generally used as binders in the production of sand cores for casting metal and non-metal products. Furan resins are also used as binders in plastic and foam products, mortar and cements, and paper products. CR at I-10 and I-10 n. 7; PR at I-5.

¹⁵ CR at I-10 and I-10 n. 7, I-11; PR at I-5 n.7.

¹⁶ In the domestic 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 and producer perceptions; and, where appropriate, (6) price. See The Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 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.

¹⁷ USITC Pub. 2897 at I-7.

¹⁸ 19 U.S.C. § 1677(4)(A).

like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.¹⁹

The parties have made no arguments with respect to the domestic industry but appear to assume that the domestic industry is limited to Penn and its predecessor, Great Lakes Chemical Corporation (“Great Lakes”). Both are clearly manufacturers of the like product. Although Great Lakes no longer produces furfuryl alcohol, it produced the like product from 1996 to 1998 and therefore we have included its data for that period in our analysis of the domestic industry.²⁰

In addition, two firms toll-produced furfuryl alcohol during the period of review. The Commission’s practice generally is to include tollers in the domestic industry because tollers engage in the same processing activities in which non-toll producers engage—actual production of the domestic like product. However, if it is shown that the toller’s processing activities are minor in nature, the toller typically will not be included in the domestic industry.²¹ Ferro Industries toll-produced for ***, which sells to end users, from 1997 to 1999, and Penn toll-produced for ***.²² Both firms receive furfural from their tollees and convert it into furfuryl alcohol in exchange for a processing fee. As such, both Penn and Ferro engaged in substantial production activities and the production of the domestic like product. Consequently, we include tollers Ferro and Penn within the domestic industry.²³

¹⁹ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

²⁰ CR at I-12; PR at I-6.

²¹ Needle Bearing Wire, Inv. No.731-TA-760 (Preliminary) USITC Pub. 3033 (April 1997) at 6.; Stainless Steel Wire Rod from Brazil and France, Inv. Nos. 731-TA-636 and 637 (Final) USITC Pub. 2721 (Jan. 1994) at I-9 and cases cited therein.

²² CR at III-2-III-3; PR at III-1.

²³ In these reviews, no party has argued that the tollees, ***, should be included in the domestic industry. Generally, under a tolling arrangement the tollee supplies raw material to the toller, which produces the product for the tollee for a fee. Usually, the tollee pays to the toller only a fabrication fee and the price of the materials it did not supply. See e.g. Brass Sheet and Strip from France, Italy, Sweden and West Germany, Inv. No. 701-TA-270 (Final), 731-TA-311, 312, and 315 (Final), USITC Pub. 1930 (Dec. 1986). In previous cases, we have found that supplying raw materials and paying a fabrication fee does not constitute sufficient production activities to include tollees in the domestic industry. Stainless Steel Wire Rod from Brazil and France, Inv. Nos. 731-TA-636 and 637 (Final) USITC Pub. 2721 (Jan. 1994) at I-9; See, e.g., Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-448-450 (Final), USITC Pub. 2312 at 24 and n.69 (Sept. 1990) (“jobbers” that procured yarn and contracted for the production of sweaters, but did not engage in any production themselves, not domestic producers); Certain Brass Sheet and Strip from France, Italy, Sweden, and West Germany, Inv. Nos. 701-TA-270 and 731-TA-313-314, 316-317 (Final), USITC Pub. 1951 (Feb. 1987) (no party claimed that purchasers that supplied the raw material under toll arrangements were domestic producers of brass sheet and strip).

Although *** arrangement with Ferro is slightly different from the typical tolling arrangement in that it ***, and in the absence of any argument to the contrary, we find that neither *** nor ***engages in sufficient production-related activity to be included in the domestic industry. ***.

We therefore define the domestic industry in these reviews to include Penn, Great Lakes, and Ferro.

III. CUMULATION

A. Legal Standards

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.²⁴

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.²⁵ We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“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.²⁶ 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.²⁷

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.²⁸ Only a

²⁴ 19 U.S.C. § 1675a(a)(7).

²⁵ 19 U.S.C. § 1675a(a)(7).

²⁶ SAA, H.R. Rep. No. 103-316, vol. I (1994).

²⁷ For a discussion of the analytical framework of Chairman Koplan and Commissioners Miller and Hillman regarding the application of the “no discernible adverse impact” provision, *see* Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Chairman 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. 303-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplan Regarding Cumulation).

²⁸ 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

“reasonable overlap” of competition is required.²⁹ 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.³⁰

In these reviews, the statutory requirement for cumulation that all furfuryl alcohol reviews be initiated on the same day is satisfied. Based on the record, we find that subject imports from either of the countries would not be likely to have no discernible adverse impact on the domestic industry if the orders were revoked. We also find that a reasonable overlap of competition between the subject imports and the domestic like product likely would exist if the orders were revoked. Finally, we find that the subject imports likely will compete in the U.S. market under generally similar conditions of competition. We therefore exercise our discretion to cumulate the likely volume and price effects of subject imports from China and Thailand.

B. Likelihood of No Discernible Adverse Impact³¹

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

²⁹ *See Mukand Ltd. v. United States*, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); *Wieland Werke, AG*, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); *United States Steel Group v. United States*, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

³⁰ *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); *Metallwerken Nederland B.V. v. United States*, 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); *Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

³¹ Commissioner Bragg concurs with the majority’s findings of a reasonable overlap of competition and likely discernible adverse impact in the event the orders are revoked. Her determinations are based upon a different analytical framework than that of her colleagues. *See Separate Views of Commissioner Lynn M. Bragg Regarding Cumulation in Sunset Reviews*, found in *Potassium Permanganate From China and Spain*, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct.

Based on the conditions of competition and the current condition of the domestic industry, we do not find that subject imports from China and Thailand, respectively, are likely to have no discernible adverse impact on the domestic industry.

Relative to the U.S. market, the size of the industry in both countries is significant. Industry capacity in Thailand has grown since the original investigations and is *** to U.S. apparent consumption³² while industry capacity in China has remained sizeable and *** U.S. apparent consumption.³³ The furfuryl alcohol industries in both China and Thailand devote considerable resources to export markets. In 2000, 57.5 percent of total shipments of furfuryl alcohol were exported from China,³⁴ while the comparable figure for Thailand was *** percent.³⁵ In 2000, subject imports from Thailand had a *** percent share of the value of U.S. market.³⁶

As discussed below, we find that subject imports from each country would enter the U.S. market in sufficient quantities and at sufficiently low prices such that they would not likely have no discernible adverse impact on the domestic industry.

C. Reasonable Overlap of Competition

In the original investigations, the Commission found that the evidence indicated that there was a reasonable overlap of competition and cumulated subject imports from subject countries for the purposes of

1999); see also, Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, found in Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (Apr. 2000). In particular, Commissioner Bragg notes that she examines 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. Having found a reasonable overlap of competition in these reviews for the same reasons as those set forth by the Commission majority, Commissioner Bragg turns to the issue of no discernible adverse impact. Based upon the excess capacity in each of the subject countries, export orientation of the subject producers (and corresponding ability to redirect shipments from third country markets to the United States), current low prices of the Thai subject merchandise in the U.S. market, and evidence of underselling by subject imports from China during the original investigation, Commissioner Bragg finds that revocation of each of the orders at issue will lead to a likely discernible adverse impact to the domestic industry. Accordingly, Commissioner Bragg cumulates subject imports from China and Thailand.

³² In 1994, production capacity in Thailand was *** million pounds. In 2000, it had increased to *** million pounds. CR tabulations at IV-3, IV-4. By contrast, apparent U.S. consumption of furfuryl alcohol in 2000 was *** million pounds. CR and PR at Table I-1.

³³ In 2000, production capacity in China was 48.5 million pounds. CR and PR tabulations at IV-2.

³⁴ CR and PR at Table IV-2.

³⁵ CR and PR at Table IV-6.

³⁶ CR and PR at Table I-1.

its analysis of material injury by reason of subject imports. In so doing, the Commission found that furfuryl alcohol was a fungible commodity product, while noting there were some quality differences among the subject imports and between the subject imports and the domestic like product. However, on balance, these quality differences were not sufficient to warrant not cumulating. The Commission also determined that both the domestic like product and subject imports competed directly for sales in the same geographic markets and that the domestic and imported products were sold through similar channels of distribution since sales were made mostly to end users. Finally, the Commission concluded that subject imports from both China and Thailand were present in the U.S. market throughout the period of investigation.³⁷

The record in these reviews establishes that furfuryl alcohol is a fungible commodity.³⁸ Both producers and importers overwhelmingly found furfuryl alcohol from China and Thailand to be interchangeable with the domestic like product and with each other,³⁹ although importers identified some non-price differences between the domestic like product and subject imports.⁴⁰ We consequently find the subject imports from China and Thailand to be fungible with each other and with the domestic like product.

Our analysis of common channels of distribution is complicated by the fact that subject imports from China ceased immediately after the imposition of the orders. However, during the original investigations, the Commission found that subject imports from both China and Thailand were sold to end-users. Most current subject imports from Thailand are still sold directly to end users.⁴¹ On the basis of this information, we conclude that if subject imports from China return to the United States, they would likely be sold directly to end-users.

While only a small volume of the domestic like product currently is sold directly to end users,⁴² we do not find this difference significant enough to prevent us from concluding that there is likely to be a reasonable overlap of competition. In a five-year review, the proper focus is on the likely post-revocation behavior. Domestic producer Penn's tolling agreement ***,⁴³ and it has indicated that it ***.⁴⁴ We consequently conclude that in the reasonably foreseeable future both the domestic like product and subject imports are likely to compete directly for sales to end users.

Because subject imports from China are not currently present in the U.S. market, the most probative evidence concerning simultaneous presence and sales or offers to sell in the same geographic markets of subject imports from China is from the original investigations. The Commission found that imported furfuryl alcohol from both China and Thailand was simultaneously present and generally competed directly with the

³⁷ USITC Pub. 2897 at I-12-I-15.

³⁸ CR at I-12, II-17; PR at I-6, II-8.

³⁹ CR at II-11-13; PR at II-7-II-10.

⁴⁰ CR at II-15-17; PR at II-8-9.

⁴¹ USITC Pub. 2897 at I-14.

⁴² CR at II-1; PR at II-1.

⁴³ CR at III-I; PR at II-1. According to Penn, ***. Domestic Producer's Posthearing Br. at 7 and Exh. A, p.6.

⁴⁴ Confidential Transcript at 155.

domestic product nationwide.⁴⁵ On the basis of this information, we conclude that if the orders were revoked, the subject imports from China and Thailand are likely to be simultaneously present in the market and sold in the same geographic markets.

We therefore find that there likely would be a reasonable overlap of competition between the subject imports and the domestic like product, and between the subject imports themselves, if the orders are revoked.

We have taken into account other significant conditions of competition detailed below that are likely to prevail if the orders were revoked in evaluating whether to cumulate subject imports. We find that subject imports from China and Thailand would likely compete in the U.S. market under similar conditions of competition. Therefore, based on the foregoing, we exercise our discretion to cumulate subject imports from China and Thailand.

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING ORDERS ARE REVOKED

A. Legal Standard

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 subsidy is likely to continue or recur, and (2) the Commission makes a determination that revocation of the finding or order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁴⁶ The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the finding or order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁴⁷ Thus, the likelihood standard is prospective in nature.⁴⁸ 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.”⁴⁹ 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].”^{50 51}

⁴⁵ USITC Pub. 2778 at I-12-14.

⁴⁶ 19 U.S.C. § 1675a(a).

⁴⁷ SAA at 883-84. The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁴⁸ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁴⁹ 19 U.S.C. § 1675a(a)(5).

⁵⁰ 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

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.”⁵² 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.⁵³

We note that the statute 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. 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.”⁵⁴

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

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.*

⁵¹ In analyzing what constitutes a reasonably foreseeable time, Chairman 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.

⁵² 19 U.S.C. § 1675a(a)(1).

⁵³ 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.

⁵⁴ SAA at 869.

significant either in absolute terms or relative to production or consumption in the United States.⁵⁵ ⁵⁶ 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.⁵⁷

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.⁵⁸

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.⁵⁹ 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.⁶⁰ 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 orders at issue and whether

⁵⁵ 19 U.S.C. § 1675a(a)(2).

⁵⁶ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption determinations in the instant reviews.

⁵⁷ 19 U.S.C. § 1675(a)(2)(A)-(D).

⁵⁸ 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.

⁵⁹ 19 U.S.C. § 1675a(a)(4).

⁶⁰ 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. § 1675(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. Commerce found the following likely margins in its five-year reviews of the antidumping duty orders: *China*, Quingdao Chemicals & Medicines Import and Export Corp., 50.43 percent, Sinochem Shandong Import and Export Corp., 43.54 percent, and all others, 45.27 percent; *Thailand*, Indo-Rama Chemicals Ltd., and all others, 7.82 percent. 65 Fed. Reg. 53701 (Sept. 5, 2000).

the industry is vulnerable to material injury if the orders are revoked.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁶¹ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. furfuryl alcohol market.

As previously noted, furfuryl alcohol is a fungible commodity, used primarily as a monomer in the production of furan resins.⁶² There are no substitutes for furfuryl alcohol in the production of furan resins or as an intermediate in the production of other speciality chemicals.⁶³

As at the time of the original investigations, there are relatively few purchasers of furfuryl alcohol worldwide.⁶⁴ However, in recent years, global supply has outpaced demand, in part due to increases in capacity in China.⁶⁵ In general, the overall increase in the supply of furfuryl alcohol and the stagnant demand has resulted in declining prices worldwide.⁶⁶ However, U.S. prices have not fallen as rapidly as world prices and U.S. apparent consumption increased during the period of review, from *** million pounds in 1996 to *** million pounds in 2000.⁶⁷

The U.S. market is considered the single largest market for furfuryl alcohol. Three purchasers dominate the market, accounting for *** percent of apparent consumption in United States in 2000.⁶⁸ The three largest purchasers tend to be high-volume accounts that purchase principally on the basis of price.⁶⁹ As a result, a price differential of as little as one cent per pound can be a deciding factor in purchasing decisions. The smaller purchasers also view price as an important purchasing factor.⁷⁰ Most sales of furfuryl alcohol are in the spot market.⁷¹

Since the time of the original investigations, the domestic industry has undergone significant restructuring. During the original investigations, Great Lakes, an integrated producer, was the sole domestic

⁶¹ 19 U.S.C. § 1675a(a)(4).

⁶² CR at I-10; PR at I-5.

⁶³ CR at I-10; PR at I-5.

⁶⁴ TR at 26.

⁶⁵ CR at I-13-14; PR at I-7.

⁶⁶ CR at I-13-14; PR at I-7.

⁶⁷ CR at I-13-14, Table I-1; PR at I-7; Table I-1.

⁶⁸ Purchasers Questionnaires.

⁶⁹ CR at I-13-14; PR at I-7.

⁷⁰ CR at III-2; PR at III-2.

⁷¹ CR at II-11-12; PR at II-6.

producer, selling most of its product to end users.⁷² In 1998, Great Lakes exited the market and in 1999, it sold its furfuryl alcohol production facilities and derivatives business to Penn.⁷³ Penn subsequently shut down one of the two furfuryl alcohol plants it acquired from Great Lakes and ***.⁷⁴ From 1996 to 1999, in addition to Great Lakes and Penn, there was one other domestic producer, Ferro, a toll-producer, which toll-produced exclusively for ***.⁷⁵ Ferro left the market in 1999 due to what it states was ***.⁷⁶ Ferro's exit from the market and Penn's closure of a production facility have led to sharp declines in capacity. U.S. capacity for production of furfuryl alcohol declined from *** million pounds in 1998 to *** million pounds in 2000.⁷⁷

In 2000, Penn was the only domestic producer of furfuryl alcohol.⁷⁸ Unlike its predecessor, Great Lakes, Penn toll-produces *** percent of its production. Also unlike Great Lakes, Penn internally consumes over *** percent of its furfuryl alcohol (in 2000).⁷⁹

Immediately after imposition of the orders, imports from the subject countries left the U.S. market. However, in 1998, subject imports from Thailand re-entered the market.⁸⁰ Meanwhile, nonsubject imports' market share rose from *** percent in 1994 to *** percent in 2000.

Accordingly, we find that current conditions in the domestic furfuryl alcohol market provide us with a basis upon which to assess the likely effects of revocation of the antidumping duty orders within a reasonably foreseeable time.

C. Likely Volume of Subject Imports

In the original investigations, the Commission found that the volume of LTFV imports, measured by both quantity and value, was significant, and increased substantially during the period of investigation.⁸¹ The Commission further found that market penetration of subject imports increased dramatically during the period of the investigation.⁸² As noted earlier, upon issuance of the orders, the volume and market share of subject imports of furfuryl alcohol fell dramatically as both subject imports from China and Thailand left the market.⁸³ Subject imports from Thailand re-entered the U.S. market in 1998, increasing their market share to *** percent by 2000. By contrast, subject imports from China have not re-entered the U.S. market. On a cumulated basis, subject imports have remained substantially below the levels they attained during the

⁷² CR at III-1; PR at III-1.

⁷³ TR at 15.

⁷⁴ CR at III-1; CR at III-1.

⁷⁵ CR at III-1; PR at III-1.

⁷⁶ Ferro and ***.

⁷⁷ CR and PR at Table I-1.

⁷⁸ CR at III-1; PR at III-1.

⁷⁹ CR and PR at Table III-3.

⁸⁰ CR and PR at Tables I-1, C-1.

⁸¹ USITC Pub. 2778 at I-15-17.

⁸² USITC Pub. 2778 at I-15-17.

⁸³ CR and PR at Table I-1.

original investigations.⁸⁴

Several factors support the conclusion that subject import volume is likely to be significant if the orders are revoked. First, there is considerable capacity to produce furfuryl alcohol in the subject countries. In 2000, reported furfuryl alcohol production capacity in the subject countries totaled *** million pounds, *** U.S. apparent consumption for the same year.⁸⁵

Although responding subject producers reported high capacity utilization rates,⁸⁶ these are attributable to their reliance on export markets. At the time of the original investigations, subject producers exported a substantial portion of their furfuryl alcohol production.⁸⁷ Likewise, during the 1998-2000 period subject producers continued to export a considerable portion of their production.⁸⁸ In addition, subject producers have demonstrated considerable flexibility to switch between their export markets. A substantial portion of their exports that were being shipped to the United States during the original investigations have made their way to other markets.⁸⁹ Moreover, subject imports from Thailand which had been shipped to third country markets between 1995 and 1997, re-entered the U.S. market in 1998.⁹⁰

Revocation of the orders, which caused cumulated subject import volumes to decline since the time of the original investigations, would create an incentive for subject producers to shift or continue to shift exports from third countries, where demand for furfuryl alcohol is stagnant, to the United States, the world's largest market for furfuryl alcohol.⁹¹

Accordingly, we find that the likely volume of cumulated subject imports from China and Thailand

⁸⁴ CR and PR at Table I-1.

⁸⁵ CR IV-2, IV-4; PR at IV-2-3. Since the time of the original investigations, Thai production capacity has more than *** due in part to the relocation of the sole Thai producer's French production facility to Thailand. CR at IV-4. For the five responding Chinese producers, capacity has also grown over the last few years, from 49.3 million pounds in 1996 to 54.5 million pounds in 2000. CR and PR at tabulation at IV-2.

⁸⁶ CR and PR at Table IV-2, Table IV-6.

⁸⁷ 1994 Confidential Staff Report at II-44, II-46.

⁸⁸ Exports of Chinese furfuryl alcohol to other countries accounted for *** percent in 1998, ***percent in 1999, and *** percent in 2000 of Chinese furfuryl alcohol shipments. CR at IV-2. At the same time, exports of Thai furfuryl alcohol to other countries accounted for *** percent in 1998, *** percent in 1999, and *** percent in 2000 of Thai furfuryl alcohol shipments. CR at IV-4; PR at IV-4.

⁸⁹ CR tabulations at IV-2, IV-4; PR at tabulation IV-2.

⁹⁰ CR and PR at Table I-1.

⁹¹ CR and PR at Table I-1.

would be significant within a reasonably foreseeable time if the orders were revoked.^{92 93}

D. Likely Price Effects of Subject Imports

In the original investigations, the Commission found that, because price was an important factor in purchasing decisions and furfuryl alcohol was a commodity product, the significant volume of subject imports had significant price-depressing and suppressing effects.⁹⁴ For the following reasons, we find that such adverse price effects are likely to recur absent the restraining effects of the orders.

As noted above, the domestic and subject product are substitutable and price is an important factor in purchasing decisions.⁹⁵ Moreover, for major purchasers that buy large volumes annually, a difference of as little as one cent per pound could affect their purchasing decisions.⁹⁶ In the period of review, no importer price data were available for the Chinese product. With respect to the Thai product, unit values were consistently lower than the domestic unit values throughout the period of review.⁹⁷ The fungibility of furfuryl alcohol and the importance of price have allowed the low-priced subject imports from Thailand to capture a significant share of the U.S. market since 1998.⁹⁸

In light of the stagnant demand for furfuryl alcohol worldwide, subject producers in China and Thailand, in the event of revocation, have considerable incentive to enter the U.S. market and engage in aggressive pricing to recapture market share. This will put pressure on the U.S. producers to either reduce or suppress prices or lose market share.

In light of this, the current underselling by the Thai product, and the price effects observed during the

⁹² In so doing, we have also considered the other enumerated statutory factors of existing inventories of the subject merchandise, or likely increases in inventories; the existence of barriers to the importation of the subject merchandise into countries other than the United States; and 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.

⁹³ Commissioner Bragg infers that, upon revocation, subject producers from China would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission's original determinations. Based upon the record in these grouped reviews, Commissioner Bragg finds that the historical emphasis will likely result in significant volumes of subject imports into the United States if the orders are revoked.

⁹⁴ USITC Pub. 2897 at I-17-I-20.

⁹⁵ CR and PR at Table II-12, CR at II-13.

⁹⁶ CR at II-2, II-13; PR at II-1.

⁹⁷ Because furfuryl alcohol is a commodity product sold in a single grade, average unit value ("AUV") data in these investigations provide a reliable basis for price comparisons. The AUV per pound for U.S. shipments of the domestic product was \$*** in 1998, \$*** in 1999, and \$*** in 2000. CR and PR at Table I-1. The AUV for the subject product from Thailand was \$*** in 1998, \$*** in 1999, and \$*** in 2000. CR and PR at Table C-1.

⁹⁸ CR and PR at Table I-1.

original investigations, we conclude that if the orders are revoked the cumulated subject imports would be priced at levels that would likely have significant price depressing or suppressing effects on the domestic like product.⁹⁹

E. Likely Impact

In the 1995 determinations, the Commission found that the increasing volume of the subject imports, and the significant market share accounted for by those imports, depressed prices to a significant degree leading to the U.S. industry's loss of market share, reduced capacity utilization rates, and financial losses.¹⁰⁰

Immediately following imposition of the orders, the domestic industry's performance improved significantly, as subject imports exited the U.S. market.¹⁰¹ In 1996, the domestic industry's market share increased to *** percent from *** percent in 1994. The domestic industry's capacity utilization rate increased to *** percent from *** percent in 1994.¹⁰² At the same time, the domestic industry's U.S. commercial shipments also increased by value and quantity. In 1996, the domestic industry's operating margin improved to *** percent.¹⁰³

However, in the last three years, the indicators pertaining to the domestic industry's condition are mixed. The domestic industry's market share declined from *** percent in 1998 to *** percent in 2000.¹⁰⁴ In addition, U.S. capacity utilization rose from *** percent in 1997 to *** percent in 2000.¹⁰⁵ However, although capacity utilization improved, the domestic producers' overall production capacity decreased precipitously since the time of the original investigations because of plant closures and industry restructuring.¹⁰⁶ As production capacity decreased, so did employment levels.¹⁰⁷

Although both the quantity and value of the domestic industry's commercial shipments declined over the period of review,¹⁰⁸ the domestic industry's operating margin as a percentage of net sales remained relatively strong.¹⁰⁹ While we find below that the domestic industry would be negatively affected by the likely changes in the volume of subject imports and subsequent price changes that would occur in the event of revocation, we find that the domestic industry is not currently in a weakened condition as contemplated by the

⁹⁹ Commissioner Bragg infers that, in the event of revocation, subject producers from China will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original determinations.

¹⁰⁰ USITC Pub. 2897 at I-17-I-20.

¹⁰¹ The following discussion takes into account the various domestic producers' data for the particular period that they were operational. Where it is possible, the data are presented in the aggregate.

¹⁰² CR and PR at Table I-1.

¹⁰³ CR and PR at Table III-3.

¹⁰⁴ CR and PR at Table I-1.

¹⁰⁵ CR and PR at Table I-1.

¹⁰⁶ CR and PR at Table I-1.

¹⁰⁷ CR at III-1; PR at III-1.

¹⁰⁸ CR and PR at Table I-1.

¹⁰⁹ CR and PR at Table III-3.

vulnerability criterion of the statute.^{110 111}

We found above that revocation of the antidumping duty orders would likely lead to significant increases in the volume of cumulated subject imports at prices that would likely undersell the domestic product and significantly depress or suppress U.S. prices. We also find that the volume and price effects of the cumulated subject imports would have a likely significant negative impact on the domestic industry's prices 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 revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability 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 likely result in employment declines for the domestic firm.

Accordingly, we conclude that, if the antidumping duty orders were revoked, subject imports from China and Thailand would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

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

¹¹⁰ 19 U.S.C. § 1675a(1)(C). See SAA at 885 (The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury. If the Commission finds that the industry is a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.'').

¹¹¹ Commissioners Miller and Hillman find that the domestic industry is currently in a vulnerable condition. The domestic industry has lost significant market share over the last three years, and commercial shipments have declined by both quantity and value. CR and PR at Table I-1. Indeed, Penn has been unable to sell to the big three purchasers as a result of the presence of lower-priced subject imports from Thailand and nonsubject imports. CR at II-2; PR at II-1. Although capacity utilization and profitability increased in 2000, these increased levels are due only to a *** reduction in capacity levels during the period of review. CR and PR at Table I-1. One domestic producer has exited the market due to the increased competition from low-priced subject imports in a relatively stagnant market. ***.