

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN PASTA FROM ITALY AND TURKEY

Investigations Nos. 701-TA-365-366 (Review) and 731-TA-734-735 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3462, October 2001)

## UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-365-366 (Review) and 731-TA-734-735 (Review)

### Certain Pasta from Italy and Turkey

#### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the countervailing and antidumping duty orders on certain pasta from Italy and Turkey 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 June 1, 2001 (66 FR 29831, June 1, 2001) and determined on September 4, 2001 that it would conduct expedited reviews (66 FR 50453, October 3, 2001).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on October 29, 2001. The views of the Commission are contained in USITC Publication 3462 (October 2001), entitled *Certain Pasta from Italy and Turkey: Investigations Nos. 701-TA-365-366 (Review) and 731-TA-734-735 (Review)*.

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

## 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 and countervailing duty orders covering certain pasta from Italy and Turkey 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

In July 1996, the Commission determined that a domestic industry was materially injured by imports of certain pasta from Italy and Turkey.<sup>1</sup> The Department of Commerce (“Commerce”) issued antidumping and countervailing duty orders with respect to the imports from Italy and Turkey.<sup>2</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.<sup>3</sup> 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.

The Commission received three responses to the notice of initiation. Four domestic producers which estimate that they represent \*\*\* percent of U.S. production of pasta responded to the notice of institution.<sup>4</sup> Two groups of exporters/importers of pasta from Italy, La Molisana/Molisana U.S. and N. Puglisi/Rienzi also responded to the Commission’s notice. These two groups are estimated to account for \*\*\* percent of Italian subject exports to the United States in 2000.<sup>5</sup> No exporters or importers from Turkey responded to the Commission’s notice.

On September 4, 2001, the Commission determined that the domestic interested party group response was adequate, but the respondent group responses were inadequate.<sup>6</sup> The Commission did not

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<sup>1</sup> Certain Pasta from Italy and Turkey, Invs. Nos. 701-TA-365-366 and Invs. Nos. 731-TA-734-735, USITC Pub. 2977 (July 1996).

<sup>2</sup> 61 Fed. Reg. 38544 (July 24, 1996) (countervailing duty order for Italy); 61 Fed. Reg. 38546 (July 24, 1996) (countervailing duty order for Turkey); 61 Fed. Reg. 38547 (July 24, 1996) (antidumping duty order for Italy); 61 Fed. Reg. 38545 (July 24, 1996) (antidumping duty order for Turkey).

<sup>3</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

<sup>4</sup> See July 23, 2001, Response of New World Pasta Co., American Italian Pasta Co., Borden Foods Corp., and Dakota Growers Pasta Co. (“Domestic Producers’ Response”). In the original investigations, the Commission received questionnaire responses from 11 domestic producers representing three-quarters of domestic production. INV-T-048, June 25, 1996, at VI-1.

<sup>5</sup> Confidential Staff Report, INV-Y-211 (Oct. 15, 2001) (“CR”) and Public Staff Report (“PR”) at I-3, n.2.

<sup>6</sup> 66 Fed. Reg. 50453 (Oct. 3, 2001).

find that other conditions warranted conducting full reviews, and therefore determined to conduct expedited reviews pursuant to 19 U.S.C. § 1675(c)(3)(B).<sup>7</sup>

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making determinations under section 751(c), the Commission defines “the domestic like product” and the “industry.”<sup>8</sup> The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”<sup>9</sup>

In its expedited sunset determinations, Commerce defined the subject merchandise in these reviews as:

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions. Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.<sup>10</sup>

Pasta is a basic foodstuff that is sold as refrigerated, frozen, canned, or dry pasta.<sup>11</sup> The scope of these reviews only includes the dry form of pasta that is "non-egg" and sold in packages of five pounds or less.<sup>12</sup> At retail, pasta is sold in dry form in boxes and plastic bags.

The starting point of the Commission’s like product analysis in a five-year review is the like product determination in the Commission’s original investigations.<sup>13</sup> In the original investigations, the

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<sup>7</sup> Id.

<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</sup> 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (CIT 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).

<sup>10</sup> See, e.g., 66 Fed. Reg. 51640, 51641 (Oct. 10, 2001). Commerce also noted that the subject merchandise subject to the order is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States. Id. Commerce also indicated that organic pasta from Italy is excluded from the scope of its investigations. Id.; 66 Fed. Reg. 51016 (Oct. 5, 2001).

<sup>11</sup> Confidential Staff Report, INV-Y-211, October 15, 2001, at I-10 to I-11.

<sup>12</sup> Ninety percent of dry pasta produced domestically is non-egg pasta. CR at I-11, PR at I-9. In the Commission's 1996 determination, it noted that egg is one of many ingredients that is added to pasta. USITC Pub. 2977 at 10.

<sup>13</sup> In its like product determination, the Commission generally considers a number of factors including: (1)  
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Commission defined the domestic like product to be all dry pasta although the scope of Commerce's investigations consisted only of non-egg dry pasta in packages of five pounds or less.<sup>14</sup> The Commission found that all dry pasta shared the same basic physical characteristics and uses, and was manufactured with the same basic production equipment and processes.<sup>15</sup> While the different products had some distinctive features, similar variations were present throughout the continuum of dry pasta products and thus did not create clear dividing lines between any of the dry pasta products. Hence, the Commission determined that there was one domestic like product consisting of all dry pasta.<sup>16</sup>

In the current reviews, no party argues that the Commission should define the domestic like product differently than it did in the original investigations.<sup>17</sup> The record in these reviews indicates neither significant changes in the products at issue or in the factors we consider in our determinations, nor any other appropriate circumstance warranting revisiting the Commission's original like product determination.<sup>18</sup> Therefore, for the reasons relied upon in the original investigations, we define the domestic like product as all dry pasta.<sup>19</sup>

## **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."<sup>20</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.<sup>21</sup> Consistent

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<sup>13</sup> (...continued)  
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 (Ct. Int'l Trade 1996). No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of 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.

<sup>14</sup> 61 Fed. Reg. 30288 (June 14, 1996).

<sup>15</sup> USITC Pub. 2977 at 7.

<sup>16</sup> Id. Commissioner Bragg continues to define the domestic like product as dry non-egg pasta. See "Separate Views of Commissioner Lynn M. Bragg Regarding the Exclusion of Dry Egg Pasta from the Domestic like Product," USITC Pub. 2977 at 35.

<sup>17</sup> Domestic Producers' Response at 16; La Molisana/Molisana U.S. Response to Notice of Institution at 13; N. Puglisi/Rienzi Response to Notice of Institution at 21.

<sup>18</sup> See Notice of Final Rulemaking, 63 Fed. Reg. 30599, 30602 (June 5, 1998).

<sup>19</sup> Commissioner Bragg defines the domestic like product as dry non-egg pasta.

<sup>20</sup> 19 U.S.C. § 1677(4)(A).

<sup>21</sup> See, e.g., Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 at 8-9 (July 1999); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.19 (Nov. 1995) ("the Commission has generally included toll producers that engage in sufficient production-related activity to be part of the domestic industry"). See, e.g., United States Steel Group v. United States, 873 F.

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with our definition of the like product, we find the domestic industry to be all domestic producers of dry pasta.<sup>22 23</sup>

### III. CUMULATION<sup>24</sup>

#### A. Framework

Section 752(a) of the Act provides that:

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

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<sup>21</sup> (...continued)  
Supp. 673, 682-83 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>22</sup> The related parties provision, 19 U.S.C. § 1677(4)(B), allows for the exclusion of certain domestic producers from the domestic industry for the purposes of an injury determination. Applying the provision involves two steps. First, the Commission must determine whether a domestic producer meets the definition of a related party. Second, if a producer is a related party, the Commission may exclude such a producer from the domestic industry if “appropriate circumstances” exist.

A subsidiary of Barilla, an Italian producer and exporter, produces pasta in the United States and imported subject merchandise in 2000. CR at I-24, PR at I-17. However, Barilla’s imports of \*\*\* million pounds into the United States are small compared to its production capacity in the United States. See CR at I-22 and I-39, PR at I-15, I-28, I-29. Domestic producers AIPC, Borden, and New World were also importers of the subject imports during 2000, but the quantity imported by these producers is also small relative to each company’s production. See CR at I-23, PR at I-16. Consequently, we do not find that appropriate circumstances exist to exclude any of these producers from the domestic industry.

<sup>23</sup> Given her like product finding, Commissioner Bragg defines the domestic industry as those producers of dry non-egg pasta. She notes that the inclusion or exclusion of dry non-egg pasta producers does not substantially affect the data or trends examined in her analysis of the condition of the domestic industry.

<sup>24</sup> Commissioner Bragg does not join this section. While she 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 cumulation 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, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 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, Invs. 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 subject merchandise in the U.S. market, and evidence of underselling by subject imports 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. CR at I-37 to I-41, PR at I-28 to I-31 (foreign industries); CR and PR at Table I-4 (current AUVs); USITC Pub. 2977 at 26-28 (underselling). Accordingly, Commissioner Bragg cumulates subject imports from Italy and Turkey.

of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.<sup>25</sup>

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

In these reviews, the statutory requirement for cumulation that all reviews be initiated on the same day is satisfied as the Commission instituted all of the reviews on June 1, 2001.

The Commission generally has considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.<sup>29</sup> Only a “reasonable overlap” of competition is required.<sup>30</sup> In five-year reviews, the relevant inquiry is whether

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<sup>25</sup> 19 U.S.C. § 1675a(a)(7).

<sup>26</sup> Id.

<sup>27</sup> SAA, H.R. Rep. No. 103-316, vol. I (1994).

<sup>28</sup> For a discussion of the analytical framework of Chairman Koplán 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, Invs. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review), USITC Pub. 3274 (Feb. 2000). For a further discussion of Chairman 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. 303-TA-13 (Review); 701-TA-249 (Review); and 731-TA-262, 263, and 265 (Review), USITC Pub. 3247 (Oct. 1999) (Views of Commissioner Stephen Koplán Regarding Cumulation).

<sup>29</sup> The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

<sup>30</sup> 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). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. See, e.g., Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 (Preliminary) and 731-TA-812-

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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.<sup>31</sup>

## **B. Discernible Adverse Impact**

### **1. Italy**

Subject imports from Italy continued to increase after the imposition of the order in 1996 and remain close to their peak level during the original investigation.<sup>32</sup> Subject imports from Italy currently account for \*\*\* percent of domestic apparent consumption.<sup>33</sup> Total Italian production of non-egg dry pasta was an estimated \*\*\* pounds in 2000.<sup>34</sup> Italian producers' total exports of non-egg dry pasta were \*\*\* pounds in 1999.<sup>35</sup> At the time of the original investigation, almost one-quarter of Italy's exports were destined for the United States; \*\*\* percent of Italian exports were shipped to the United States in 1999.<sup>36</sup> Upon revocation of the orders on Italian producers,<sup>37</sup> it is likely that subject imports would increase to a

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<sup>30</sup> (...continued)

813 (Preliminary), USITC Pub. 3155 at 15 (Feb. 1999), aff'd sub nom. Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353 (CIT 1999); Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Invs. Nos. 731-TA-761-762 (Final), USITC Pub. 3098 at 13-15 (Apr. 1998).

<sup>31</sup> 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).

<sup>32</sup> See CR and PR at Table I-4. While import data may include nonsubject imports, ie., those that are imported in packages greater than five pounds, the record suggests that such volumes are likely to be small. See INV-T-048, June 25, 1996, at Table IV-5 (nonsubject imports in 1995 equivalent to 3.2 percent of pasta imports from Italy and Turkey).

<sup>33</sup> CR and PR at Table I-5.

<sup>34</sup> See Response to Notice of Initiation of La Molisana/Molisana U.S. at 12 (stating that its production constitutes \*\*\* percent of Italian production).

<sup>35</sup> CR at I-38, PR at I-28.

<sup>36</sup> CR at I-37 to I-38, PR at I-28.

<sup>37</sup> We also note that De Cecco, an Italian producer, is no longer subject to the antidumping duty order, but remains subject to the countervailing duty order. 66 Fed. Reg. 51015, 51017 (Oct. 5, 2001); 66 Fed. Reg. 51640, 51641 (Oct. 10, 2001). While De Cecco was one of the largest exporters to the United States in the original investigations, its exports to the United States still only accounted for \*\*\* percent of the exports reported in questionnaire responses to the Commission. See INV-T-048, June 25, 1996, at Table VII-1. However, the 23 producers that provided data in the original investigation accounted for just half of Italian production and approximately two-thirds of subject imports from Italy. Id. at VII-2. De Cecco's shipments were only \*\*\* percent of total shipments of pasta by Italian producers that were reported to the Commission. Id. at Table VII-1. Thus, we do not find that excluding De Cecco's likely exports to the United States from the antidumping determination significantly affects our assessment of the likely discernible adverse impact of the likely LTFV imports from Italy.

higher portion of Italian production than that in 1999.<sup>38</sup> Furthermore, unit values for Italian pasta continue to decline despite the orders.<sup>39</sup> Because of the likely volume of subject imports from Italy and their likely price effects, we conclude that subject imports from Italy likely would have a discernible adverse impact on the domestic industry.

## 2. Turkey

Subject imports from Turkey peaked at 65.9 million pounds in 1994, but fell after the orders were imposed in 1996.<sup>40</sup> Subject imports from Turkey only totaled 2.7 million pounds in 2000.<sup>41</sup> Capacity for production of all pasta in Turkey was 1.2 billion pounds at the time of the original investigations,<sup>42</sup> and exports accounted for \*\*\* percent of total shipments for the reporting Turkish producers.<sup>43</sup> During the original investigation, exports to the United States were the majority of Turkish exports, but in 1999, only \*\*\* percent of Turkey's exports of pasta were destined for the United States.<sup>44</sup> Data from the original investigations, not contradicted by any contrary evidence in these reviews, indicate that Turkish production capacity was underutilized. Thus, we find it likely that subject imports from Turkey will rise to at least the levels of the original investigations if the orders were revoked. Moreover, unit values for the subject imports from Turkey continue to fall.<sup>45</sup> The record of the original investigations indicates that the Turkish and U.S. product were moderately substitutable,<sup>46</sup> and the lower AUVs for the Turkish pasta, despite the outstanding orders, indicates the likelihood of significant underselling as occurred in the original investigation. Because of the likely volume of subject imports from Turkey and their likely price effects, we conclude that subject imports from Turkey would likely have a discernible adverse impact on the domestic industry.

### C. Reasonable Overlap of Competition

In the original investigation, the Commission concluded that there was sufficient fungibility among the subject imports and the domestic like product to satisfy this criterion. The Commission found that the mixed purchaser data concerning quality along with the price information and common end uses suggested substantial fungibility between domestic and Italian pasta.<sup>47</sup> The data indicated more limited fungibility between Italian and Turkish pasta and sufficient fungibility between the U.S. and Turkish product.<sup>48</sup>

The Commission also found an overlap in channels of distribution between the imported and domestic products. It found that an overlap in distribution channels exists in the retail grocery chain

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<sup>38</sup> See CR and PR at Fig. I-1.

<sup>39</sup> CR and PR at Table I-4.

<sup>40</sup> CR and PR at Table I-4.

<sup>41</sup> Id.

<sup>42</sup> CR at I-39, PR at I-29.

<sup>43</sup> CR and PR at Table I-7.

<sup>44</sup> CR at I-40, PR at I-30; CR and PR at Table I-7.

<sup>45</sup> CR and PR at Table I-4.

<sup>46</sup> See INV-T-048, June 25, 1996, at II-17, II-18.

<sup>47</sup> USITC Pub 2977 at 20-22.

<sup>48</sup> Id.

channel and the wholesale distributor channels in the retail market.<sup>49</sup> As to geographic overlap, the Commission found that domestically-produced dry pasta was sold nationwide, while Italian and Turkish products were sold in the Northeast and on the West Coast.<sup>50</sup> Finally, the Commission found that the domestic product and Italian and Turkish pasta were simultaneously present in the domestic market. The Commission observed that subject imports from Turkey and Italy were imported into the United States during each quarter in the period examined and domestically-produced dry pasta was sold in the United States throughout the period.<sup>51</sup>

No new evidence has been presented in these reviews concerning the factors the Commission traditionally considers when determining whether there would likely be an overlap of competition.

Based on the traditional four competition factors the Commission considers, we conclude that subject imports from the subject countries would be sufficiently fungible, be simultaneously present in the U.S. market, move in the same channels of distribution, and compete in the same geographic markets if the orders are revoked.

Consequently, we conclude that there likely would be a reasonable overlap of competition among subject imports from Italy and Turkey and the domestic like product in the absence of the orders.

In determining whether to exercise our discretion to cumulate subject imports, we examine whether, upon revocation of the orders, subject imports from Italy and Turkey likely would compete in the U.S. market under similar conditions of competition relative to each other and to the domestic like product. The record of these reviews does not indicate differences significant enough to warrant not exercising our discretion to cumulate.

#### **IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ORDERS ON IMPORTS FROM ITALY AND TURKEY ARE REVOKED**

##### **A. 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 reasonably foreseeable time.”<sup>52</sup> 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 or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>53</sup> Thus, the likelihood standard is prospective in

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<sup>49</sup> USITC Pub 2977 at 22.

<sup>50</sup> USITC Pub 2977 at 23.

<sup>51</sup> *Id.*

<sup>52</sup> 19 U.S.C. § 1675a(a).

<sup>53</sup> 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). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

nature.<sup>54</sup> The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>55</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”<sup>56 57</sup>

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated.”<sup>58</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, and whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated.<sup>59 60</sup>

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.<sup>61</sup> 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

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<sup>54</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [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.

<sup>55</sup> 19 U.S.C. § 1675a(a)(5).

<sup>56</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>57</sup> In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán 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 or termination. 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.

<sup>58</sup> 19 U.S.C. § 1675a(a)(1).

<sup>59</sup> *Id.* The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>60</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings with respect to these reviews.

<sup>61</sup> 19 U.S.C. § 1675(e).

automatically accept participating parties' suggested interpretations 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."<sup>62</sup> In these reviews, few respondent interested parties provided information requested by the Commission. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the information collected by the Commission since the institution of these reviews, information submitted by the cooperating domestic producers, respondent parties, and other parties in these reviews, and information from the original investigations.

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 the production or consumption in the United States.<sup>63</sup> In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>64</sup>

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 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 price of domestic like products.<sup>65</sup>

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>66</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>67</sup> As instructed by the statute, we have considered the

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<sup>62</sup> SAA at 869.

<sup>63</sup> 19 U.S.C. § 1675a(a)(2).

<sup>64</sup> 19 U.S.C. § 1675(a)(2)(A)-(D).

<sup>65</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

<sup>66</sup> 19 U.S.C. § 1675a(a)(4).

<sup>67</sup> *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. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the

(continued...)

extent to which any improvement in the state of the domestic industry is related to the antidumping and countervailing duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.<sup>68</sup>

For the reasons stated below, we determine that revocation of the antidumping and countervailing duty orders on certain pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

## **B. Conditions of Competition**

In evaluating the likely impact of the subject imports on the domestic 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.”<sup>69</sup> The following conditions of competition are relevant to our determinations.

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<sup>67</sup> (...continued)

Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

In its expedited reviews of the antidumping duty orders on pasta, Commerce found the following sunset margins with respect to Italian producers: 19.09 percent for Arrighi/Italpasta, 0.00 percent for De Matteis, 1.68 percent for Delverde/Tamma, 14.73 percent for La Molisana, 11.58 percent for Liguori, 17.47 percent for Pagani, and 11.26 percent for all other producers (except De Cecco for which the order was revoked). 66 Fed. Reg. 51015, 51017 (Oct. 5, 2001). With respect to producers in Turkey, Commerce found the likely margin of dumping to be 63.29 percent for Filiz, 48.26 percent for Maktas, and 51.49 percent for all others. 66 Fed. Reg. 51015, 51017 (Oct. 5, 2001).

The subsidy rates for the Italian producers are the following: Agritalia, S.r.l. 3.03 percent, Arrighi S.p.A. Industrie Alimentari 2.92 percent, De Matteis Agroalimentare S.p.A. 2.55 percent, Delverde, S.r.L. 4.04 percent, F.lli De Cecco di Filippo Fara S. Martino S.p.A 3.47 percent, Industria Alimentare Colavita, S.p.A. 2.08 percent, Isola del Grano S.r.L. 11.71 percent, Italpasta S.p.A. 11.71 percent, Italpasta S.r.L. 2.92 percent, La Molisana Alimentari S.p.A. 3.94 percent, Labor S.r.L. 11.71 percent, Molinoe Pastificio De Cecco S.p.A. Pescara 3.47 percent, Pastificio Guido Ferrara 1.41 percent, Pastificio Campano, S.p.A 2.54 percent, Pastificio Riscossa F.lli Mastromauro S.r.L. 6.48 percent, and “all other” producers 3.89 percent. 66 Fed. Reg. 51640, 51641-42 (Oct. 10, 2001). The subsidy rates for the Turkish producers are 3.87 percent for Filiz, 13.12 for Maktas, 15.82 percent for Oba, and 9.70 percent for all others. 66 Fed. Reg. 51019, 51020 (Oct. 5, 2001).

The statute further provides that “if a countervailable subsidy is involved, the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(6).

Commerce found that three of the Italian subsidy programs fall within the definition of an export subsidy as defined in Article 3.1 of the Subsidies Agreement. See CR at I-8, PR at I-6 to I-7; 66 Fed. Reg. 51640, 51642 (Oct. 10, 2001). Commerce also indicated some or all of the Italian subsidy programs might be inconsistent with Article 6.1 of the Subsidies Agreement. See CR at I-8; 66 Fed. Reg. 51640, 51642 (Oct. 10, 2001). Commerce also indicated that five of the Turkish subsidy programs fall within the definition of an export subsidy as defined in Article 3.1 of the Subsidies Agreement. See CR at I-8, PR at I-7; 66 Fed. Reg. 51019, 51020 (Oct. 5, 2001).

<sup>68</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

<sup>69</sup> 19 U.S.C. § 1675a(a)(4).

The subject imports and domestic pasta are generally substitutable, although there are some perceptions of quality differences among the subject imports and domestic pasta.<sup>70</sup> Price plays an important factor in purchasing decisions for both the domestic product and the subject imports.<sup>71</sup> The use of promotions is very important in purchasing decisions both for the domestic product and subject imports.<sup>72</sup> Domestic pasta is sold in “price tiers,” while subject imports tend to be marketed with line pricing.<sup>73</sup>

Apparent U.S. consumption of dry pasta has increased since the time of the original investigations, but it appears that the increasing use of ready-to-eat meals has recently slowed or reversed the increase.<sup>74</sup> Approximately \*\*\* percent of U.S. producers’ U.S. shipments of dry pasta is captively consumed with the remainder sold on the merchant market.<sup>75</sup>

The domestic industry has continued to consolidate since the time of the original investigations with the sale of Borden’s pasta brands.<sup>76</sup> Borden and Best Foods have also shut down operations,<sup>77</sup> but there have been significant additions to production capacity in the United States by Barilla, Pasta Montana, AIPC, and Dakota Growers.<sup>78</sup> On balance, the industry has expanded its capacity for production of dry pasta.<sup>79</sup> Nonsubject imports are not a major source of pasta in the domestic market.<sup>80</sup>

The foregoing conditions of competition provide the basis upon which we assess the likely effects of revocation within a reasonably foreseeable time.

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<sup>70</sup> CR at I-16, PR at I-11 to I-12.

<sup>71</sup> Lowest price was rated as somewhat to very important by 18 of 25 purchasers with respect to Italian imports, by 23 of 25 of the purchasers with respect to the domestic product, and by 5 of 7 purchasers with respect to Turkish imports. INV-T-048, June 25, 1996, at E-3.

<sup>72</sup> CR at I-18 to I-19, PR at I-13

<sup>73</sup> CR at I-17 to I-19, PR at I-12 to I-13. Tier pricing involves lower pricing for more popular and lower production cost pasta such as spaghetti and higher pricing for higher cost and less popular pasta (i.e., shells and lasagna). Line pricing means a uniform price per pound for all shapes of pasta. Id.

<sup>74</sup> CR at I-33, I-35, I-36, PR at I-25.

<sup>75</sup> INV-T-048, June 25, 1996, at III-11 to III-12.

<sup>76</sup> CR at I-22, PR at I-14.

<sup>77</sup> CR at I-23, n.66, PR at I-16, n.66.

<sup>78</sup> CR at I-22, PR at I-15 to I-16.

<sup>79</sup> CR at I-23, PR at I-16.

<sup>80</sup> See CR and PR at Table I-5.

**C. Revocation of the Orders on Subject Imports From Italy and Turkey Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time**

**1. Likely Volume of Subject Imports**

In the original investigations, the Commission found that the quantity of cumulated subject imports increased steadily from 262.8 million pounds to 379.5 million pounds between 1993 and 1995, while the share of all U.S. consumption held by subject imports steadily increased from 9.3 percent in 1993 to 12.2 percent in 1995.<sup>81</sup> The Commission concluded that the increase in market share came at the expense of the domestic industry, whose market share declined during each year of the period of investigation, from 87.0 percent in 1993 to 83.5 percent in 1995.<sup>82</sup>

Cumulated imports of dry non-egg pasta totaled 418.3 million pounds in 1998, 347.4 million pounds in 1999, and 312.2 million pounds in 2000.<sup>83</sup> While there was a significant decline in the subject imports from Turkey after imposition of the order in 1996,<sup>84</sup> pasta imports from Italy did not decline until the conclusion of Commerce's anti-circumvention inquiry on Barilla in 1998.<sup>85</sup>

The record contains limited information on the current state of the Italian industry. Italian producers' annual production was approximately 4.9 billion pounds of pasta at the time of the original investigation<sup>86</sup> and La Molisana, an Italian producer, has indicated that total Italian production of the subject merchandise had increased to \*\*\* pounds in 2000.<sup>87</sup> One hundred fifty-five Italian producers manufactured dry pasta in 1999.<sup>88</sup>

During the original investigations, exports accounted for an increasing share of Italian production and one-third of Italian shipments were exported in 1995.<sup>89</sup> In 1995, during the original investigations, nearly one-quarter of Italy's exports and 7.7 percent of production were destined for the United States while \*\*\* percent of Italy's exports were shipped to the United States in 1999.<sup>90</sup> Total Italian exports of non-egg dry pasta were \*\*\* pounds in 1999.<sup>91</sup> If exports to the United States again accounted for one-

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<sup>81</sup> USITC Pub. 2977 at 25.

<sup>82</sup> Id. It also noted that the rate of increase in subject import volumes far exceeded the rate of increase in domestic consumption. Id.

<sup>83</sup> CR and PR at Table I-4.

<sup>84</sup> See CR and PR at Table I-4. Subject imports from Turkey were 60.8 million pounds in 1995, but only 2.7 million pounds in 1997. Id.

<sup>85</sup> CR at I-30, PR at I-19; CR and PR at Fig. I-1. Commerce determined that Barilla's bulk importation of pasta and subsequent repackaging into packages of five pounds or less constituted circumvention of the antidumping duty order. See CR at I-10, PR at I-8.

<sup>86</sup> CR at I-37, PR at I-28.

<sup>87</sup> See Response to Notice of Initiation at 12 (stating that its production constitutes \*\*\* percent of Italian production).

<sup>88</sup> CR at I-38, PR at I-28.

<sup>89</sup> See CR and PR at Table I-6.

<sup>90</sup> CR at I-37 to I-38, PR at I-28 to I-29.

<sup>91</sup> CR at I-38, PR at I-28.

quarter of these exports, subject imports from Italy would be \*\*\* pounds or \*\*\* percent of domestic apparent consumption.<sup>92</sup>

Barilla was a large Italian producer of pasta in the original investigations, producing \*\*\* percent of Italian dry non-egg pasta in 1995.<sup>93</sup> The firm has recently expanded its market presence for dry pasta in the United States, and it now has capacity to produce approximately 250 million pounds of dry pasta in the United States, and therefore arguably has less incentive to export to this country.<sup>94</sup> However, even if Barilla ceased exporting as suggested by respondents, its exports to the United States only constituted \*\*\* percent of Italian subject imports at their peak in the original investigations.<sup>95</sup>

With respect to Turkey, there were 15 Turkish producers at the time of the original investigations.<sup>96</sup> Capacity for production of all pasta in Turkey was 1.2 billion pounds at the time of the original investigations,<sup>97</sup> and exports were \*\*\* percent of total shipments for the reporting Turkish producers in 1995.<sup>98</sup> During the original investigations, exports to the United States were the majority of Turkish exports. However, in 1999, with the orders in place, only \*\*\* percent of Turkey's exports of pasta were destined for the United States.<sup>99</sup> The record also indicates that Turkish producers' exports of dry non-egg pasta to Russia and Ukraine declined recently, suggesting that Turkish exporters are likely to be seeking an alternative market for merchandise previously destined for Russia and Ukraine.<sup>100</sup>

At the time of the original investigations, excess capacity in Italy and Turkey totaled approximately \*\*\* pounds.<sup>101</sup> No information in the current record indicates that unused capacity has declined since that time. This unused capacity is equivalent to \*\*\* percent of domestic apparent consumption in 2000.<sup>102</sup>

Based on the facts available, we find it likely that, absent the orders, competitive conditions would return to those prevailing prior to imposition of the orders. Moreover, given the large capacity for production of pasta in Italy and Turkey, Italian exporters' continued commitment to the U.S. market, and the decline in Turkish exports to other markets, we find that the likely volume of subject imports would be significant in the reasonably foreseeable future if the existing antidumping and countervailing duty orders were revoked.<sup>103</sup>

## 2. Likely Price Effects

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<sup>92</sup> See CR and PR at Table I-5.

<sup>93</sup> CR at I-39, PR at I-28.

<sup>94</sup> CR at I-22, PR at I-15.

<sup>95</sup> INV-T-048, June 25, 1996 at VII-5. Barilla exported \*\*\* pounds to the United States in 1995. Id.

<sup>96</sup> CR at I-39, PR at I-29.

<sup>97</sup> Id.

<sup>98</sup> CR and PR at Table I-7.

<sup>99</sup> CR at I-40, PR at I-30; CR and PR at Table I-7.

<sup>100</sup> CR at I-40, n.113, PR I-30, n.113.

<sup>101</sup> This total is estimated based on responses from one-half of the Italian industry and \*\*\* of the Turkish industry. See CR and PR at Table I-6; CR and PR at Table I-7.

<sup>102</sup> See CR and PR at Table I-5.

<sup>103</sup> Commissioner Bragg infers that, upon revocation, subject producers from Italy and Turkey 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.

In the original investigations, the Commission found that despite some perceived quality differences, the subject imports and the domestic product were substitutable.<sup>104</sup> On a cumulated basis, subject imports undersold the domestic product in 99 of 122 instances, with margins ranging from 0.2 percent to 39.5 percent.<sup>105</sup> The Commission also found that there was underselling by the subject imports from Italy, despite the fact that Italian pasta should have been priced higher than domestic pasta given its perceived higher quality.<sup>106</sup> As to the subject imports from Turkey, the Commission noted even more pervasive underselling.<sup>107</sup>

The Commission found that prices for the domestic product rose slightly during the period, but that domestic producers were caught in a cost-price squeeze because their costs were rising faster than prices.<sup>108</sup> The Commission concluded that the subject imports had suppressed domestic prices to a significant degree.<sup>109</sup>

The limited record in these reviews shows a decline in the average unit values for the subject imports from both Italy and Turkey despite the existence of the orders.<sup>110</sup> By contrast, the average unit values of nonsubject imports of non-egg dry pasta remained relatively stable.<sup>111</sup>

Given the likely significant volume of imports, the substitutability of the subject imports and domestic pasta, the persistent underselling by the subject imports in the original investigations, and the continuing decline in average unit values, we find that, in the absence of the orders, the subject imports likely would significantly undersell the domestic like product to gain market share and have significant depressing or suppressing effects on the prices of the domestic like product within a reasonably foreseeable time.<sup>112</sup>

### 3. Likely Impact

In the original investigations, the Commission found that increasing volumes of subject imports suppressed prices for domestic pasta, and the domestic industry was unable to raise prices to cover its

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<sup>104</sup> USITC Pub. 2977 at 26.

<sup>105</sup> USITC Pub. 2977 at 27.

<sup>106</sup> Id. The Italian products were priced below the domestic like product in 60 of 83 instances where direct comparisons were possible. Id. at 27-28.

<sup>107</sup> USITC Pub. 2977 at 28. Turkish products were priced below the domestic like product in all 39 instances where direct comparisons were possible. Id.

<sup>108</sup> USITC Pub. 2977 at 26-27.

<sup>109</sup> USITC Pub. 2977 at 28.

<sup>110</sup> See CR and PR at Table I-4. We have taken into account the fact that the import data from which we derive average unit values may include bulk shipments of dry pasta.

<sup>111</sup> See CR and PR at Table I-4.

<sup>112</sup> Commissioner Bragg infers that, in the event of revocation, subject producers from Italy and Turkey 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.

increasing costs.<sup>113</sup> The domestic producers also lost market share despite the growing demand for pasta.<sup>114</sup> The Commission concluded that this had a significant adverse impact on the industry's profitability.<sup>115</sup>

There is limited current information in the record concerning the condition of the domestic industry. The industry's capacity and production is greater than that at the time of the original investigations.<sup>116</sup> However, the average unit value of domestic shipments has fallen from \$0.48 in 1995 to \$\*\*\* in 2000,<sup>117</sup> and other anecdotal information suggests the industry is experiencing some difficulties.<sup>118</sup> Given the mixed information, we do not find the industry to be vulnerable. Similarly, because we do not have financial performance data for the years following the imposition of the orders at issue in these reviews, we cannot conclude whether any improvement in the industry's performance is related to the imposition of the orders at issue in these reviews.<sup>119</sup>

As discussed above, revocation of the orders likely would lead to a significant increase in the volume and market share of the subject imports from Italy and Turkey. Given limited growth in demand and the likely significant underselling by the subject imports, the significant increase in subject imports is likely to cause a significant decline in the volume of the domestic producers' shipments as well as an impact on prices. We find that this likely would have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. This likely reduction in the industry's production, shipments, sales, market share, and revenues would result in erosion of 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 the industry.

Accordingly, we conclude that if the orders were revoked, subject imports from Italy and Turkey 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 and countervailing duty orders on certain pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury to the U.S. industry within a reasonably foreseeable time.

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<sup>113</sup> USITC Pub. 2977 at 30.

<sup>114</sup> USITC Pub. 2977 at 30.

<sup>115</sup> USITC Pub. 2977 at 29. Operating income fell by \*\*\* percent over the period of investigation. INV-T-048, June 25, 1996, at Table B-1.

<sup>116</sup> CR and PR at Table I-2; CR at I-23, PR at I-16 (net gain in capacity). Production figures for the industry are estimates based on information provided by four domestic producers that account for \*\*\* percent of domestic industry. See CR and PR at Table I-2.

<sup>117</sup> CR and PR at Table I-2.

<sup>118</sup> See CR at I-24 to I-26, PR at I-17 to I-18.

<sup>119</sup> The current market share of the domestic producers is \*\*\* to that at the time of the original investigations. See CR and PR at Table I-5.