

UNITED STATES INTERNATIONAL TRADE COMMISSION

PETROLEUM WAX CANDLES FROM CHINA

Investigation No. 731-TA-282 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3226, August 1999)

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PETROLEUM WAX CANDLES FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, 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 order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

BACKGROUND

The Commission instituted this review on January 4, 1999 (64 FR 365, January 4, 1999) and determined on April 8, 1999 that it would conduct an expedited review (64 FR 19197, April 19, 1999).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 1, 1999. The views of the Commission are contained in USITC Publication 3226 (August 1999), entitled *Petroleum Wax Candles from China: Investigation No. 731-TA-282 (Review)*.

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

² Commissioners Crawford and Askey dissenting.

VIEWS

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

I. BACKGROUND

In August 1986, the Commission determined that an industry in the United States was being materially injured by reason of imports of petroleum wax candles from China that were being sold at less than fair value.² On August 28, 1986, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of petroleum wax candles from China.³ The Commission instituted this five-year review on January 4, 1999.⁴

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁵ If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In this review, the National Candle Association (“NCA”), a trade association a majority of whose members produce petroleum wax candles, filed a response to the notice of institution (“NCA’s Response”) as well as comments on adequacy.⁶ Woodbridge Candles, Inc. (“Woodbridge Candles”), a domestic

¹ Commissioners Crawford and Askey dissenting. Commissioners Crawford and Askey determine that revocation of the antidumping duty order covering petroleum wax candles from China would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Additional and Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. They join in sections I. - III. B. of these views except as otherwise noted.

² Petroleum Wax Candles from the People’s Republic of China, Inv. No. 731-TA-282 (Final), USITC Pub. 1888 (August 1986) (“Original Determination”). Chairman Liebler and Vice Chairman Brunsdale dissented.

³ 51 Fed. Reg. 30686 (August 28, 1986).

⁴ 64 Fed. Reg. 365 (Jan. 4, 1999).

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

⁶ The NCA was the petitioner in the original investigation. It believes that its 39 members represent approximately 75 percent of U.S. candle production. NCA’s Response at 2. The NCA provided aggregate 1998 industry data for *** domestic producers, which account for 85 percent of the total production of NCA members, *i.e.*, two-thirds of the quantity of total industry shipments. NCA’s Response at Attachment N.

producer that is not a member of the NCA, also filed a response to the notice of institution.⁷ No foreign producer, U.S. importer, or other interested party responded to the Commission's notice of institution.

On April 8, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate but that the respondent interested party group response was inadequate.⁸ Pursuant to section 751(c)(3)(B) of the Act,⁹ the Commission voted to conduct an expedited review of this antidumping duty order.¹⁰ Subsequently, Commerce extended the date for its final results in its expedited review from May 4, 1999, to August 2, 1999.¹¹ On May 14, 1999, the Commission revised its schedule to conform with Commerce's new schedule.¹²

On August 9, 1999, the NCA filed comments ("NCA's Comments") pursuant to 19 C.F.R. § 207.62(d), arguing, as it had in its Response, that revocation of the antidumping duty order on petroleum wax candles from China would likely lead to a recurrence of material injury to the domestic candle industry within a reasonably foreseeable time.

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."¹³ 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."¹⁴ In its final five-year review determination, Commerce defined the subject merchandise as

certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States

⁷ Woodbridge, which produces candles in Freeman, South Dakota, reported *** pounds of commercial shipments in 1998. Cured Response of Woodbridge Candles, Feb. 25, 1999.

⁸ See Explanation of Commission Determination on Adequacy in Petroleum Wax Candles from China (April 16, 1999), Confidential Report ("CR") at Appendix B, Public Report ("PR") at Appendix B. See also 64 Fed. Reg. 19197 (April 19, 1999). The Commission's determination as to the respondent interested party group was unanimous. As to the domestic interested party group response, Commissioner Crawford dissented, finding that response inadequate.

⁹ 19 U.S.C. § 1675(c)(3)(B).

¹⁰ Commissioners Hillman and Koplan dissented from the Commission's determination to conduct an expedited review, finding circumstances that would warrant conducting a full review. See Explanation of Commission Determination on Adequacy in Petroleum Wax Candles from China (April 16, 1999), CR and PR at Appendix B.

¹¹ 64 Fed. Reg. 24573 (May 7, 1999).

¹² 64 Fed. Reg. 27807 (May 21, 1999).

¹³ 19 U.S.C. § 1677(4)(A).

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

(TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule ("HTS") item number 3406.00.00.¹⁵

In its original determination, the Commission defined the domestic like product as petroleum wax candles.¹⁶ None of the additional information collected in this review warrants a departure from that definition. Accordingly, based on the facts available, we define the domestic like product as petroleum wax candles.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.”¹⁷ In defining the domestic industry in this review, we consider whether any producers of the domestic like product should be excluded from the domestic industry pursuant to the related parties provision in section 771(4)(B) of the Act.¹⁸

During the period of the original investigation, nine domestic producers imported subject candles from China, at least two of which—***-- have continued to import some petroleum wax candles from China.¹⁹ The record does not contain company-specific data for these two producers,²⁰ and therefore there

¹⁵ 64 Fed. Reg. 32481 (June 17, 1999). Commerce also listed numerous clarifications excluding certain candles from the scope of the order, and noted that additional scope rulings are pending. *Id.* See CR at I-4, n.8, PR at I-3, n.8, for the complete list of candles that Commerce has excluded from the scope.

¹⁶ Original Determination at 9. See also Original Determination at 19 (Views of Chairman Liebelser) and 35 (Dissenting Views of Vice Chairman Brunsdale).

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case. See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and
- (3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

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

¹⁹ Original Determination at 9 and Memorandum INV-J-131 (August 6, 1986) (“Original Confidential (continued...)”)

is little data that the Commission could “exclude” concerning these producers.²¹ Moreover, in the original determination, the Commission determined that appropriate circumstances did not exist to exclude any producers as related parties, including ***.²² None of the additional information collected in this review warrants a departure from that conclusion.

III. REVOCATION OF THE ORDER ON PETROLEUM WAX CANDLES IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME²³

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”²⁴ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”²⁵ Thus, the likelihood standard is prospective in nature.²⁶ 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.”²⁷ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will

¹⁹ (...continued)

Report”) at A-21-25 and A-54-56; NCA’s Response at Corrected Attachment T.

²⁰ CR at I-10, n.26, PR at I-6, n.26; NCA’s Response at Corrected Attachment T. However, *** is owned by another candle producer, ***, that provided aggregate data. See CR at ***.

²¹ See Roller Chain from Japan, Inv. No. AA1921-111 (Review), USITC Pub. 3203 at 9 (July 1999); Elemental Sulfur from Canada, Inv. No. AA1921-127 (Review), USITC Pub. 3152 at 10 (Jan. 1999). See also Sorbitol from France, Inv. No. 731-TA-44 (Review), USITC Pub. 3165 at 5 (March 1999).

²² Original Determination at 11.

²³ Commissioners Crawford and Askey dissenting. They join in sections III. A. & B., except as otherwise noted.

²⁴ 19 U.S.C. § 1675a(a).

²⁵ SAA, H.R. Rep. No. 103-316, Vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

²⁶ 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.

²⁷ 19 U.S.C. § 1675a(a)(5).

exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{28 29}

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.”³⁰ 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.^{31 32}

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”^{33 34} As noted above, no respondent interested parties responded to the Commission’s

²⁸ 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.*

²⁹ In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, their analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

³⁰ 19 U.S.C. § 1675a(a)(1).

³¹ 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.

³² 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 stated in its expedited five-year review determination that it has not issued any duty absorption finding in this case. 64 Fed. Reg. 32481, 32483 (June 17, 1999).

³³ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. *Id.*

³⁴ Chairman Bragg and Commissioners Koplan and Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the

(continued...)

notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the original investigation, limited information collected by the Commission since the institution of this review, and information submitted by the NCA and Woodbridge Candles.

For the reasons stated below, we determine that revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury to the domestic petroleum wax candle industry within a reasonably foreseeable time.³⁵

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³⁶ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for petroleum wax candles.

Apparent domestic consumption of petroleum wax candles has grown substantially since the original investigation, rising from 153.6 million pounds in 1985 to 676.3 million pounds in 1998.³⁷ Domestic producers, importers of candles from China, and importers of candles from non-subject countries have shared in this growth.³⁸ U.S. producers reported annual growth in demand of up to 20 percent since the mid-1990s, but indicated that this high rate of growth began to show signs of decline during 1998, leading them to expect the annual growth rate to return to approximately 10 percent.³⁹ The NCA attributes the increase in demand to the expanded roles of candles in household and personal use, particularly the increased use of scented candles.⁴⁰

While the increased demand has included all candle styles, types and sizes, NCA members report a relatively higher growth rate in the quantity of higher-cost and higher-valued candles sold in containers and

³⁴ (...continued)

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

³⁵ Commissioners Crawford and Askey determine that revocation of the antidumping duty order covering petroleum wax candles from China would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Additional and Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey.

³⁶ 19 U.S.C. § 1675a(a)(4).

³⁷ CR and PR at Table I-3.

³⁸ *Id.*

³⁹ CR at I-13, PR at I-10; NCA’s Response at 28.

⁴⁰ CR at I-13, PR at I-10; NCA’s Response at 26.

large dimensions, such as the 6-inch by 6-inch pillar.⁴¹ The NCA also reports that both domestic and Chinese producers have responded to this shift in demand by changing their product mix to include more of these higher-valued candles.⁴² According to the NCA, the increased demand for higher-valued candles is reflected in a tripling in the value of apparent domestic consumption between 1992 and 1998.⁴³

Information collected during the original investigation indicated that there were a few major domestic producers and many smaller manufacturers of candles.⁴⁴ At that time, the Commission identified more than 100 producers of candles for commercial sale in the United States, in addition to many small craft producers for local, noncommercial use.⁴⁵ Over the last decade, the number of domestic producers has doubled to more than 200 manufacturers.⁴⁶ As in the original investigation, many additional small craft producers also operate domestically.

Candles are sold principally in two types of outlets: department and specialty stores, and mass merchandisers.⁴⁷ Today, the mass merchandiser segment, which includes primarily large chain retailers as well as drug and food store chains, accounts for approximately 60 percent of the total market for petroleum wax candles.⁴⁸ This market segment is characterized by high-volume sales and competition among retailers, who reportedly will switch suppliers readily based on relatively small changes in price.⁴⁹

Finally, the record in the original investigation indicated that purchasers overwhelmingly viewed price as the most important factor in their purchasing decisions.⁵⁰ None of the information developed in this review suggests that this has changed.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁵¹ 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)

⁴¹ CR at I-10-11, n.29, PR at I-6, n.29; NCA’s Response at 20, n.26 and 26-27.

⁴² NCA’s Response at 26-27. The NCA reports that Chinese producers now have modern machinery that can be used for advanced candle making. NCA’s Response at 8-9.

⁴³ NCA’s Response at 28 and Attachment O.

⁴⁴ Original Confidential Report at A-61.

⁴⁵ CR at I-7, PR at I-4, *citing* Original Confidential Report at A-17.

⁴⁶ CR at I-7-8, PR at I-4.

⁴⁷ Original Confidential Report at A-61.

⁴⁸ NCA’s Response at 17-18.

⁴⁹ NCA’s Response at 18.

⁵⁰ Original Confidential Report at A-70.

⁵¹ 19 U.S.C. § 1675a(a)(2).

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.⁵²

The record from the original investigation indicates that the Chinese petroleum wax candle industry had the ability and incentive to establish a significant presence in each segment of the U.S. market in a short period of time. The volume of U.S. imports from China increased by more than 75 percent from 1983 to 1985, and their market penetration increased from 12.1 percent of apparent U.S. consumption in 1983 to 18.8 percent in 1985.⁵³ As a percentage of candle imports from all countries, subject imports from China increased by 10 percentage points, from 36.2 percent in 1983 to 46.2 percent in 1985.⁵⁴ In 1984, the factories that produced virtually all Chinese candles exported to the United States had a combined capacity of approximately *** million pounds, of which an estimated *** percent was utilized.⁵⁵

The volume of petroleum wax candles imported from China declined sharply after the order was imposed, from 28.9 million pounds in 1985 to 5.7 million pounds in 1986.⁵⁶ The volume remained below 1983-1985 levels until 1993, when it began to rise at an accelerating annual pace, culminating in a near doubling of import volume from 46.0 million pounds in 1997 to 86.6 million pounds in 1998.⁵⁷ Although it is uncertain exactly how much of that volume consists of candles falling within the scope of Commerce's order, the record indicates that well over half of the petroleum wax candles reported in the official import statistics are subject to the antidumping order.⁵⁸

Several factors support the conclusion that subject candle import volume is likely to be significant if the order is revoked. While apparent domestic consumption of petroleum wax candles has soared since the original investigation and the product mix has changed, other current conditions of competition, particularly the dominant market segments and the importance of price, are similar to those in existence prior to issuance of the order.⁵⁹ We find it likely in these circumstances that exporters who reduced shipments of petroleum wax candles to the United States would refocus on the U.S. market and that the import volume would rise significantly if the discipline of the order were removed.⁶⁰ In this regard, we note there is evidence that the Chinese producers have reacted to scope exclusion orders by substantially increasing their exports to the United States, as well as evidence that they may have transhipped candles through Hong Kong, Macao and Canada.⁶¹ Based on this behavior, it is reasonable to infer that revocation of the order would be likely to lead to an increase in the volume of subject imports.

⁵² 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁵³ CR and PR at Table I-3. *See also* Original Determination at 15.

⁵⁴ CR and PR at Table I-12; Original Determination at 15-16.

⁵⁵ Original Confidential Report at A-49.

⁵⁶ CR and PR at Figure I-1; NCA's Response at Attachment 2.

⁵⁷ CR and PR at Figure I-1.

⁵⁸ CR and PR at Table I-3, n.4.

⁵⁹ Chairman Bragg notes in this regard that the SAA states that "[i]f the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury." SAA at 884.

⁶⁰ *See* SAA at 890.

⁶¹ *See* NCA's Response at 10-13, NCA's Comments at 4-5.

The record in the original investigation showed that China was the largest exporter of petroleum wax candles to the United States.⁶² Although subject imports declined in 1986 after the order was issued and continued to decline for another year, imports from China have increased every year since 1988, making China the fastest growing exporter in the 1990s.⁶³ This rapid increase has taken place even with the antidumping order and a 54.21 percent antidumping duty, indicating that the increase would have been greater absent the order.

Although there are no aggregate data available on Chinese candle production, the substantial increase in the volume of imports into the United States of candles from China since the original investigation indicates that the Chinese producers have increased their production capacity since the original investigation.⁶⁴ In addition to the 46.0 million pounds of candles exported from China to the United States in 1997, China exported 184.3 million pounds of candles to other countries.⁶⁵ Current exports to other markets provide an additional source of Chinese candles that would be available for diversion to the United States were the order revoked. The NCA indicated, and there is no evidence to the contrary, that candles for the United States and other markets are substitutable and that Chinese producers can readily shift sales from Asian markets to the U.S. market without the need for retooling or product changes.⁶⁶

Further, the consistent increases in the volume of Chinese candles into the United States, as well as the growth of reported Chinese candle exports to other countries, indicate that the expansion of Chinese production is ongoing.⁶⁷ The evidence indicates that the Chinese producers already have manufacturing capacity and channels of distribution in place, along with an abundant source of labor and raw materials to expand Chinese candle production and increase exports to the U.S. market were the order to be revoked.⁶⁸ In this regard, the NCA provided evidence of expanding Chinese petroleum wax capacity, which provides the Chinese candle producers with large supplies of petroleum wax.⁶⁹ There is also evidence that Chinese producers' expansion of production capacity has included, and continues to include, investment in state-of-the-art machinery, which allows the Chinese producers to imitate and export to the United States product designs that compete directly with candles manufactured by U.S. producers.⁷⁰

⁶² Original Confidential Report at A-53, Table 20. The Commission credited the official Customs import statistics over inconsistent export data reported by the primary exporter of Chinese candles. The Commission found the latter to be "of questionable value." Original Determination at 15, n.51.

⁶³ NCA's Response at Attachment C.

⁶⁴ See CR and PR at Table I-2 (Imports of petroleum wax candles from China based on official Commerce statistics), and Table I-4 (China's exports of candles, as reported in the World Trade Atlas).

⁶⁵ CR and PR at Table I-4.

⁶⁶ NCA's Response at 15-16.

⁶⁷ See CR and PR at Table I-2 and Table I-4.

⁶⁸ See, e.g., NCA's Comments at 4-6.

⁶⁹ NCA's Response at Attachments R and S. See NCA's Comments at 9-10.

⁷⁰ NCA's Response at 8 and Attachment T (Affidavit of Michael Wainer), NCA's Comments at 5-6.

The NCA also reported that Mexico imposed an antidumping duty order on candles from China in 1993.⁷¹ We find that the Mexican order, which reportedly imposes 103 percent antidumping duties, creates an incentive for Chinese producers to ship more candles into the United States.⁷²

Finally, a number of factors suggest that there is a potential for the Chinese producers to shift from production of out-of-scope candles to subject candles if the order is revoked. First, the record indicates that all Chinese producers rely on the same main raw material--paraffin wax--for the production of all of their petroleum wax candles.⁷³ Second, the Chinese producers have been able to produce and increase their exports to the United States of out-of-scope candles following Commerce's issuance of scope exclusion orders, suggesting that they can easily shift to production of a particular candle once Commerce rules that imports of that type of candle are not subject to antidumping duties. Third, the evidence indicates that at least some Chinese producers have been able to shift production to candles that imitate new U.S. products.⁷⁴

Based on the foregoing, we find it likely that the exporters who have reduced exports of petroleum wax candles to the United States would, upon revocation of the order, increase exports to the U.S. market, and that the import volume would rise significantly if the discipline of the order were removed.^{75 76} Consequently, and in the absence of contrary information or argument,⁷⁷ we conclude that, absent the restraining effect of the order, subject imports would likely increase to a significant level and would regain significant U.S. market share.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.⁷⁸

⁷¹ CR at I-16, PR at I-12; NCA's Response at 13.

⁷² See NCA's Response at 13-14.

⁷³ NCA's Response at 9, 11-13.

⁷⁴ See NCA's Response at Attachment T.

⁷⁵ See SAA at 890.

⁷⁶ The record in this five-year review does not contain information about the current levels of inventories maintained by Chinese producers or those maintained by importers of petroleum wax candles from China. During the original investigation, the Commission obtained information about importers' inventories of petroleum wax candles, which rose from 1983-1985 both in absolute terms and as a percentage of imports. Original Confidential Report at A-51-52. In 1985, the ratio of inventories to imports was approximately 12 percent. *Id.*

⁷⁷ Chairman Bragg bases her conclusion on the entirety of the record in this review; she does not base her conclusion on the absence of argument to the contrary. See *supra* footnote 34.

⁷⁸ 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.

The record in this expedited review contains a limited amount of pricing data for the U.S. market. In the original determination, the Commission found that candles imported from China undersold by large margins all varieties of domestic candles in all segments of the market.⁷⁹ The Commission further found evidence of price suppression or depression in the mass merchandise segment, the marketing channel most affected by imports.⁸⁰ In this regard, the Commission observed that domestic prices to mass merchandisers generally declined during the period of investigation, as domestic producers responded to the market penetration of the low-priced Chinese imports in mass merchandise outlets by pricing their products competitively.⁸¹

The limited information in the record regarding current pricing indicates that imports from China would undersell the domestic product and have significant adverse price effects, as they did before the imposition of the order, if the order were revoked. As indicated above, price is the most important criterion in the purchasing decision for customers. Chinese candle producers thus would likely have an incentive to undersell the domestic producers in order to regain market share. Underselling by imports from China and the likely significant increase in their volume would likely suppress and depress domestic producers' prices to a significant degree if the order were revoked. As in the original determination, the price effects are likely to be the most adverse in the mass merchandise segment, where high volumes and intense competition among retailers make it likely that purchasers will switch supplies readily, based on relatively small changes in price.

The limited record evidence also suggests that the imports from China would be aggressively priced, as they were in the original determination. From 1985 (the year before the order) to 1987 (the year of the order), the average unit values of candles from China more than doubled, from \$0.51 per pound to \$1.14 per pound.⁸² As of 1996, the average unit value of imported candles from China was above the average unit value of domestic producers' shipments.⁸³ The unit values for Chinese and domestic candles were approximately the same in 1997, but in 1998 the average unit value for Chinese candles fell below the average unit value for U.S. producers' shipments.⁸⁴ However, U.S. producers reported recent shifts in Chinese candle product mix to higher-cost and higher-valued candles.⁸⁵ Absent evidence to the contrary, we therefore find that the large decline in the price of imports from China is not attributable to a change in product mix to include more lower-cost items.⁸⁶ Thus, the available evidence on average unit values indicates that a movement toward more aggressive pricing of Chinese imports has already begun, and is likely to continue to a greater degree if the order is revoked.

This conclusion is further supported by evidence submitted by two domestic candle producers concerning the pricing practices for Chinese candles. Stone Candles cited a number of instances in which Chinese products virtually identical to those created by Stone Candles were sold both to purchasers and to

⁷⁹ Original Determination at 16.

⁸⁰ Original Determination at 16-17.

⁸¹ Original Determination at 17. The Commission opined that the lower prices of the Chinese candles in the department store market may have allowed the Chinese imports to gain market share in that market segment. *Id.*

⁸² See NCA's Response at Attachment E.

⁸³ See NCA's Response at Attachment I.

⁸⁴ See NCA's Response Attachment I; CR and PR at Table I-1 and Table I-2.

⁸⁵ CR at I-10, n.29, PR at I-6, n.29; NCA's Response at 20, n.26.

⁸⁶ Chairman Bragg bases her conclusion upon an evaluation of the entirety of the record in this review. See supra footnote 34. In this regard, Chairman Bragg infers that the large decline in the price of imports from China is not attributable to a change in product mix to include more lower-cost items.

end consumers at prices below Stone Candle's cost.⁸⁷ Another producer, Woodbridge Candles, indicated that its business was *** in 1998 as compared to 1997 because it could not compete with Chinese candle pricing.⁸⁸

For the foregoing reasons, and in the absence of contrary information or argument,⁸⁹ we find that revocation of the antidumping duty order would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁹⁰ 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.⁹¹ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁹²

In the original determination, the Commission found that the domestic industry suffered material injury by reason of significantly increasing volumes of LTFV imports of petroleum wax candles that were underselling the domestic product by substantial margins and taking market share from domestic producers in each segment of the market.⁹³ The Commission also found that the domestic industry's employment

⁸⁷ NCA's Response at Attachment T.

⁸⁸ Response of Woodbridge Candles to Notice of Institution at 1; CR at I-9, n. 22, PR at I-5, n.22.

⁸⁹ Chairman Bragg bases her conclusion on the entirety of the record in this review; she does not base her conclusion on the absence of argument to the contrary. *See supra* footnote 34.

⁹⁰ 19 U.S.C. § 1675a(a)(4).

⁹¹ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Under that provision of the statute, Commerce found that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at margins of 54.21 percent for all Chinese manufacturers and exporters. 64 Fed. Reg. 32481, 32483 (June 17, 1999).

⁹² 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.

⁹³ Original Determination at 13 and 17.

levels and all financial indicators declined during the period of investigation.⁹⁴ Also, the domestic industry's capacity utilization was just over 50 percent and declining throughout the period investigated.⁹⁵

The antidumping duty order had a significant restraining effect on subject imports. After imposition of the order, the volume of subject imports sharply declined and the average unit value for the imports doubled.⁹⁶ U.S. producers were able to raise their prices and regain market share. However, despite the initial volume declines and price increases following imposition of the order, imports from China have in recent years decreased in per-unit value and regained a significant market presence. From 1997 to 1998, imports from China increased their market share by 3.6 percentage points to 12.8 percent of the U.S. market, near the market share they held at the beginning of the original investigation.⁹⁷ At the same time, U.S. producers lost market share and imports from other countries gained market share.

There is insufficient evidence in the record for us to determine the extent to which any improvement for the domestic industry resulted from the antidumping order. In the absence of information on current industry financial performance, we accordingly conclude that there is not sufficient information on the record for us to find that the domestic industry is in a weakened state, as contemplated by the vulnerability criterion of the statute.⁹⁸ However, there is some evidence indicating the likely impact of revocation on U.S. producers. In this regard, Stone Candles indicated that it may cease operations in 1999 due to the quick loss of sales of Stone Candles' products once imitation Chinese products appear on the shelf at prices below Stone Candles' costs.⁹⁹

Based on the experience of U.S. candle producers during the original investigation, we find it likely that the most immediate impact of revocation would be upon prices, particularly in the mass merchandise segment, where producers will likely seek to protect their high volume sales.¹⁰⁰ As in the original investigation, the department and specialty store segments are more likely to be adversely affected by larger losses in sales quantity and market share.¹⁰¹ The price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, 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 order will result in employment declines for domestic firms, particularly the smaller and medium-sized companies that do not utilize heavily automated processes. Accordingly, based on the limited record in this review, and in the absence of contrary information or argument,¹⁰² we conclude that, if the antidumping duty order were revoked, subject imports

⁹⁴ Original Determination at 13-14.

⁹⁵ Original Determination at 13. *See* CR and PR at Table I-1.

⁹⁶ *See* CR and PR at Figure I-1; NCA's Response at Attachment E.

⁹⁷ CR and PR at Table I-3.

⁹⁸ *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 and threat of material injury If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order. . .").

⁹⁹ NCA's Response at 32-33 and Attachment T.

¹⁰⁰ *See* Original Determination at 17.

¹⁰¹ *See* Original Determination at 17 and 13.

¹⁰² Chairman Bragg bases her conclusion on the entirety of the record in this review; she does not base her conclusion on the absence of argument to the contrary. *See supra* footnote 34.

would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury to the domestic petroleum wax candle industry within a reasonably foreseeable time.

**ADDITIONAL AND DISSENTING VIEWS OF
COMMISSIONERS CAROL. T. CRAWFORD and THELMA J. ASKEY**

Section 751(d) requires that the Department of Commerce (“Commerce”) revoke a countervailing duty or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹ In this review of the order on petroleum wax candles from China, we find that material injury is not likely to continue or recur within a reasonably foreseeable time if the order is revoked.

We join our colleagues in their discussion regarding domestic like product and domestic industry and in their explanation of the relevant legal standard. We also join in their discussion of the relevant conditions of competition, but add further observations below.

As a preliminary matter, we note that the National Candle Association (“NCA”) and Woodbridge Candles, Inc. were the only interested parties who responded to the Commission’s notice of institution; no respondent interested parties chose to participate in the review. We therefore have a limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.² In a case such as this, where only domestic interested parties participate in an investigation or review, those parties have an advantage in terms of being able to present information to the Commission without rebuttal from the other side. However, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the data before it in terms of the statutory criteria.³ The Commission cannot properly accept participating parties’ information and characterizations thereof without question and without evaluating other available information.^{4 5}

We are further constrained in this review by the fact that our data cover all Chinese candle imports, including a substantial portion of nonsubject imports. Thus, the data on subject imports are overstated. According to the U.S. Customs Service, “well over half” of Chinese imports (by quantity) remain subject to the order.⁶ Official data published in Commerce’s *Antidumping/Countervailing Duty Annual Report*, however, indicate that only about one third (by value) of Chinese imports were subject to antidumping duties in fiscal year 1998.⁷ While some of this discrepancy may be attributed to product mix, since many of the nonsubject imports appear to be beeswax and specialty candles that likely cost more than subject

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

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

³ 19 U.S.C. § 1675a(a).

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

⁵ See supra, note 34 in the Majority Opinion, section I.A.

⁶ Confidential Staff Report (“CR”) at Table I-2 n.2; Public Staff Report (“PR”) at Table I-2 n.2.

⁷ PR at Table I-2, note.

candles, we nevertheless must conclude that our data markedly overstate the amount of Chinese merchandise that is currently subject to the order.

A. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all the relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁸ Discussed below are the conditions of competition that weigh significantly in our determination that revocation of the order is not likely to lead to continuation or recurrence of material injury to the petroleum wax candle industry within a reasonably foreseeable time.

Demand for petroleum wax candles has increased tremendously, averaging approximately 10 - 15 percent annually, since the Commission made its original determination.⁹ Apparent U.S. consumption increased more than four-fold, rising from 153.6 million pounds in 1985 to 676.3 million pounds in 1998.¹⁰ The NCA attributes this increase to the “expanded roles” of candles for household and personal use. The NCA predicts that the increase in demand will diminish slightly but will remain at approximately 10 percent.¹¹

The domestic industry has also grown significantly since the initial period of investigation. In 1986, there were approximately 100 domestic producers of candles for commercial sale in the United States, in addition to many small craft producers for local, noncommercial use. By 1998, the industry had doubled in size, so there are more than 200 known commercial, religious, and institutional manufacturers of candles in the United States.¹² The NCA also reports that the domestic producers have allocated significant funds toward capital investment in recent years, with \$130 million spent during the last three years alone.¹³

Candles come in a wide variety of shapes and sizes. Major U.S. candle manufacturers reportedly will offer 1,000 to 2,000 varieties of candles in their product lines. Candle shipments tend to increase substantially during the Christmas holidays.¹⁴ At the time of the original investigation, shipments of candles in Christmas colors accounted for more than 60 percent of Chinese candle shipments, although Chinese candles were shipped in every market segment. The original staff report contained limited information on substitutability. However, an independent laboratory analysis comparing U.S.-produced candles and candles imported from China, which was incorporated into the original investigation, generally rated U.S.-produced candles as “good” and rated Chinese candles as “satisfactory” or “unsatisfactory.” In all cases, the Chinese candles were downgraded because of inferior wick quality.¹⁵ Similar to the original investigation, there is little current information on the record directly comparing U.S. and Chinese merchandise. The NCA claims that the Chinese candle producers have supplemented traditional highly labor-intensive candle making practices with sophisticated candle making equipment (purchased mainly in

⁸ 19 U.S.C. § 1675a(a)(4).

⁹ CR at I-13; PR at I-12. In fact, domestic consumption increased 36 percent from 1997 to 1998 alone. CR at I-13; PR at I-11.

¹⁰ CR and PR at Table I-3.

¹¹ CR at I-13; PR at I-12.

¹² CR at I-7; PR at I-6.

¹³ CR at I-9; PR at I-7.

¹⁴ CR at I-6 - I-7; PR at I-6.

¹⁵ Confidential Staff Report of August 6, 1986 at A-12.

Germany).¹⁶ However, one domestic manufacturer of petroleum wax candles reported that customers routinely rate its product as far superior to Chinese merchandise.¹⁷

U.S. producers accounted for a larger share of domestic consumption in 1996 and 1997 than they did during the original investigation, although U.S. producers' market share dropped in 1998 to 55.6 percentage points, slightly lower than the share held in 1985, as producers lost market share to both subject and nonsubject imports. China's market share increased 3.3 percentage points over the period, while nonsubject imports' share increased 11.6 percentage points, with many nonsubject imports coming from Canada and Mexico.¹⁸

B. General Considerations

The statute directs us to take into account several general considerations.¹⁹ We have taken into account the Commission's prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.²⁰ In examining the current marketplace for petroleum wax candles, we note that several facts point to the existence of a very different market than existed in 1986 at the end of the original period of investigation.

Since 1986, market shares have been redistributed. During the original 1983-1985 period of investigation, Chinese imports increased more than 75 percent by volume, while Chinese imports' share of the U.S. market increased from 12.1 percent in 1983 to 18.8 percent in 1985.²¹ Subject imports from China were 16.54 million pounds in 1983, 26.71 million pounds in 1984, and 28.95 million pounds in 1985. Imports from nonsubject countries were 29.12 million pounds in 1983, 34.46 million pounds in 1984, and 33.73 million pounds in 1985.²² By comparison, in 1998 Chinese imports reached 86.60 million pounds and nonsubject imports reached 214.15 million pounds, while domestic producers' shipments were 375.5 million pounds.²³ The market share of Chinese imports in 1998 was at approximately the same level

¹⁶ CR at I-15 - I-16; PR at I-13.

¹⁷ Affidavit of Michael Wainer, President of Stone Candles, Inc. NCA Response at Attachment T.

¹⁸ CR at I-10, I-13; PR at I-11. CR and PR at Table I-3.

¹⁹ 19 U.S.C. § 1675a(a)(1). We are to take into account the Commission's prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. Id. Commerce has not issued a duty absorption finding, so it is not an issue in this review. See 64 Fed. Reg. 32481, 32483 (June 17, 1999). The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). Commerce has determined that in the absence of argument or evidence to the contrary, "the margins from the original investigation are the ones most likely to prevail if the order were revoked." 64 Fed. Reg. at 32483. Thus, the margins of dumping that will occur if the order is revoked are 54.21 for all manufacturers. Id.

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

²¹ CR and PR at Table I-3.

²² Id.

²³ Id.

as it was in 1983, but nonsubject imports have become much more important market participants, adding 10.3 percentage points in 1998 market share compared to 1983.²⁴

Imposition of the order appears to have had an immediate effect on subject imports. Chinese imports fell from 28.9 million pounds in 1985 to 5.7 million pounds in 1986.²⁵ Market conditions have changed since that time, and the industry's improved position may be better attributed to the dramatic increase in domestic consumption exhibited from 1986 to 1998. Although the order undoubtedly helped limit Chinese candle imports, nonsubject imports grew substantially over this period and the domestic industry increased its market share from 1985 to 1996. While the domestic industry has lost 14.9 percentage points of its market share from 1996 to 1998, 11.6 percentage points of that loss was to nonsubject imports. Moreover, the significant amount of time -- 13 years -- that has elapsed since the order was imposed counsels against attributing current market conditions to the existence of the order.

The domestic industry has not argued that it is vulnerable to injury if the order is revoked, and we do not find that the record reflects vulnerability.²⁶

C. Volume

The Commission is to consider whether the likely volume of subject imports if the order under review is revoked would be significant either in absolute terms or relative to production or consumption in the United States.^{27 28} In so doing, the Commission shall consider "all relevant economic factors," including four enumerated in the statute: (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 in 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.²⁹

Our focus in a sunset review is whether subject import volume is likely to be significant within a reasonably foreseeable time if the antidumping duty order is revoked. Although the available data suggest that the existing antidumping order in this review has affected the market penetration of subject imports, current U.S. producer market share is not likely to be adversely affected if the order is revoked. The volume of Chinese imports has increased from 1996 to 1998, but the volume data on the current record include a large amount of nonsubject Chinese imports. In addition, the scope clarifications and exclusions

²⁴ Id.

²⁵ CR at Figure 1; PR at I-8; NCA's Response to the Notice of Institution, February 23, 1999, Attachment C.

²⁶ Commissioner Crawford finds that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability of the industry. She finds that the domestic industry in this review is not vulnerable to injury if the order is revoked

²⁷ 19 U.S.C. § 1675a(a)(2).

²⁸ In analyzing whether revocation of an order would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time, Commissioner Crawford takes as her starting point the date on which the revocation would actually take place. In this review, the order would be revoked in January 2000. 19 U.S.C. § 1675(c)(6)(A)(iv).

²⁹ 19 U.S.C. § 1675a(a)(2)(A)-(D). The SAA indicates that the statutory factors specified for analysis of volume, price, and impact are a combination of those used to determine both material injury by reason of subject imports and threat of material injury in original antidumping and countervailing duty investigations. See SAA at 886.

have lessened the number of candles subject to the order; thus the volume effect in the event of revocation is minimized because those candles already excluded from the order's scope will not be affected by revocation. By value, only about one-third of the candles entering from China in 1998 were subject to dumping duties.³⁰

In addition, we note that although total Chinese exports increased between 1996 and 1997 (the latest years for which we have information), most of those exports were directed to markets other than the United States. Chinese exports increased by 3.25 million pounds to the United States from 1996 to 1997, but by 29.96 million pounds to other countries.³¹ Thus, although Chinese suppliers have established distribution channels in the United States, that fact alone does not compel us to conclude that Chinese import volumes would rise significantly if the order is revoked given other outlets for Chinese petroleum wax candles.

D. Price

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether imports are likely to be sold at a significantly lower price than the domestic like product, and (2) whether imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like product.³²

Because the existing record indicates that domestic and Chinese merchandise are not wholly substitutable, any decrease in the price of subject Chinese imports resulting from the revocation of the existing order likely would not lead to a significant shift in demand toward the such merchandise, and away from the domestic product. Chinese average unit values ("AUVs") (excluding dumping duties) have fallen from 1996 to 1998, dropping from \$1.84 to \$1.10 per pound. Yet, so have the AUVs of nonsubject imports, which have fallen from \$1.59 to \$1.26 per pound.³³ Although not directly comparable because they are reported at a different level of trade, U.S. producers' AUVs are significantly higher -- they were estimated to be \$2.75 per pound in 1998 (1996 and 1997 figures are not available).³⁴

Although Chinese imports, both subject and nonsubject, appear to be priced below U.S. merchandise, we are not persuaded that the U.S. industry would lose market share to lower-priced Chinese petroleum wax candles in the event of revocation. From 1996 to 1998, aggregated subject and nonsubject Chinese imports were smaller in volume and increased at a lower rate than nonsubject non-Chinese imports. This pattern of growth suggests that nonsubject non-Chinese imports are price leaders and that subject Chinese imports are unlikely to have suppressing or depressing effects on prices in the domestic market if the order is revoked.

³⁰ CR and PR at Table I-2.

³¹ CR and PR at Table I-4.

³² 19 U.S.C. § 1675a(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 or 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.

³³ CR and PR at Table I-2.

³⁴ CR and PR at Table I-1.

E. Impact

When considering the likely impact of subject imports, the Commission is to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including: (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 enhanced version of the domestic like product.³⁵

Subject imports are unlikely to have a significant impact on the domestic market if the order is revoked. We have concluded that imports of subject Chinese candles are unlikely to increase in significant quantity if the order is revoked, and that consequently subject Chinese imports would be unlikely to suppress or depress U.S. prices. In addition, nonsubject non-Chinese imports hold a significant share of the market -- 31.6 percent in 1998, compared to China's 12.8 percent.³⁶ Thus, even assuming that subject Chinese imports would increase in volume and capture a greater share of the United States market if the order is revoked, at least some significant portion of that increase is likely to come at the expense of the nonsubject imports, not at the expense of the U.S. industry.

Furthermore, although Chinese producers have increased the amount of their exports in recent years, those exports have increased to a greater degree to non-U.S. markets, suggesting that Chinese producers have existing markets to which they can send their merchandise. Thus, despite existing distribution channels that Chinese exports could use to increase their penetration of the U.S. market, the record contains no evidence that Chinese producers would necessarily target the U.S. market.

Consequently, we find that subject imports would not be likely to have a significant impact on the domestic petroleum wax candle producers' cash flow, inventories, employment, wages, growth, ability to raise capital, or investment within a reasonably foreseeable time in the event the order is revoked. In conjunction with our conclusion regarding likely volume and price effects, we find that revocation is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.

F. Conclusion

In conclusion, we determine that subject imports are not likely to have adverse volume or price effects in the event of revocation, and are therefore not likely to have a negative impact on the domestic industry. Therefore, we determine that revocation of the order on petroleum wax candles from China would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

³⁵ 19 U.S.C. § 1675a(a)(4).

³⁶ CR and PR at Table I-3.