

UNITED STATES INTERNATIONAL TRADE COMMISSION

CASED PENCILS FROM CHINA
Investigation No. 731-TA-669 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3328, July 2000)

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CASED PENCILS 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)), that revocation of the antidumping duty order on cased pencils 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.

BACKGROUND

The Commission instituted this review on December 1, 1999 (64 F.R. 67304, December 1, 1999) and determined on March 3, 2000 that it would conduct an expedited review (65 F.R. 15007, March 20, 2000). The Commission transmitted its determination in this review to the Secretary of Commerce on July 24, 2000. The views of the Commission are contained in USITC Publication 3328 (July 2000), entitled *Cased Pencils From China: Investigation No. 731-TA-669 (Review)*.

¹ 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 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 imports of cased pencils 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.

I. BACKGROUND

In December 1994, the Commission determined that an industry in the United States was threatened with material injury by reason of imports of cased pencils from China that the Department of Commerce (“Commerce”) had determined to be sold in the United States at less than fair value.¹ On December 28, 1994, Commerce issued an antidumping duty order on cased pencils from China.²

On December 1, 1999, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on cased pencils from China would be likely to lead to continuation or recurrence of material injury.³

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.⁴ 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.

There were two responses to the notice of institution in this review. The first submission, which contained company-specific data, was filed on behalf of Aakron Rule Corporation (“Aakron Rule”), Dixon Ticonderoga Company (“Dixon”), General Pencil Company (“General Pencil”), Musgrave Pencil Company (“Musgrave”), Sanford Corporation (“Sanford”), Tennessee Pencil Company (“Tennessee Pencil”), and the Antidumping Committee of the Pencil Section of the Writing Instrument Manufacturers Association (“WIMA”), a trade association of cased pencils manufacturers. Aakron Rule, Dixon, General Pencil, Musgrave, Sanford, and Tennessee Pencil are U.S. producers of cased pencils and are members of WIMA. The second submission was filed by Raymond Geddes & Co. (“Geddes”), an importer of cased pencils from China. No other foreign producer, exporter, or U.S. importer filed a response. WIMA supported continuation of the antidumping duty order, while Geddes advocated revocation of the order.⁵

¹ Certain Cased Pencils from China, Inv. No. 731-TA-669 (Final), USITC Pub. 2837 (December 1994) (“Original Determination”).

² 59 Fed. Reg. 66909 (December 28, 1994).

³ 64 Fed. Reg. 67304 (December 1, 1999).

⁴ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁵ WIMA’s Response to Notice of Institution (“WIMA’s Response”)(August 20, 1999) at 11. Geddes’ Response to Notice of Institution (“Geddes’ Response”)(August 20,1999) at 11.

On March 3, 2000, the Commission determined that the individual and group domestic interested party responses to its notice of institution were adequate and that the one individual respondent interested party response was adequate.⁶ Because no other respondent interested party besides Geddes, which accounted for only a very small portion of subject import volume, responded to the notice of institution, the Commission determined that the respondent interested party group response was inadequate. Pursuant to section 751(c)(3)(B) of the Act,⁷ the Commission voted to conduct an expedited review of this matter.⁸

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 “domestic industry.”⁹ 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.”¹⁰ In a section 751(c) review, the Commission must also take into account “its prior injury determination.”¹¹

In its final five-year review determination, Commerce defined the subject merchandise as:

certain cased pencils of any shape or dimension, which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened.¹²

In the original investigation, the Commission determined that all cased pencils constituted a single like product.¹³ In this review, no party has argued for a different domestic like product definition and there is no new information obtained during this five-year review that would suggest a reason for departing from

⁶ See Explanation of Commission Determination on Adequacy in Cased Pencils from China (March 3, 2000).

⁷ 19 U.S.C. § 1675(c)(3)(B).

⁸ 65 Fed. Reg. 15007 (March 20, 2000).

⁹ 19 U.S.C. § 1677(4)(A).

¹⁰ 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 (CIT 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (CIT 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

¹¹ 19 U.S.C. § 1675(a)(1)(a).

¹² 65 Fed. Reg. 41431 (July 5, 2000). Specifically excluded from the scope are mechanical pencils, cosmetic pencils, pens, non-cased crayons, pastels, charcoals, and chalks. *Id.* On September 15, 1997, Commerce ruled that a plastic “quasi-mechanical” pencil known as the Bensia pencil is outside the scope of the order. 62 Fed. Reg. 62288 (November 21, 1997). In addition, “Naturally Pretty,” a young girl’s 10 piece dress-up vanity set, which included two 3-inch pencils, was found to be outside the scope, as of February 9, 1998. 63 Fed. Reg. 29701 (June 1, 1998).

¹³ Original Determination at I-8.

the Commission's original definition of the domestic like product.¹⁴ We consequently continue to define the domestic like product as all cased pencils, coextensive with Commerce's scope.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a 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."¹⁵ Given our definition of the domestic like product, we define the domestic industry as all domestic producers of cased pencils. The record indicates that there are currently between seven and nine U.S. manufacturers of cased pencils.¹⁶

C. Related Parties

We must further decide whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to section 771(4)(B) of the Act, which allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.¹⁷

***, a domestic producer of cased pencils, may be excluded from the domestic industry under 19 U.S.C. § 1677(4)(B)(i) because it imports subject merchandise.¹⁸ The limited information in this record does not indicate the extent of ***'s importation activities. Nevertheless, the fact that *** has appeared in this review as a domestic producer in support of continuation of the order, rather than as an importer,

¹⁴ Confidential Report ("CR") at I-7 through I-10; Public Report ("PR") at I-6 through I-8.

¹⁵ 19 U.S.C. § 1677(4)(A).

¹⁶ WIMA represents six of the domestic producers and states in its response to the notice of institution that J.R. Moon Pencil Co. is still manufacturing cased pencils. WIMA states that it is unaware whether Harcourt Pencil Co. or IFB, domestic producers at the time of the original investigation, are still in operation. An internet directory of U.S. pencil manufacturers lists Harcourt but not IFB. CR at I-11, n.28; PR at I-11, n.28.

¹⁷ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

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

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

¹⁸ CR at I-16, *citing* WIMA's Response at 13; PR at I-11.

suggests that it does not import significant volumes or is not likely to do so if the order is revoked. We, therefore, find that appropriate circumstances do not exist to exclude *** from the domestic industry.

We also considered whether to exclude Sanford, another producer, because it was alleged to have imported the subject merchandise. Geddes alleges in its response that Sanford, one of the U.S. producers represented by WIMA, also is an importer of the subject merchandise.¹⁹ WIMA asserts that Geddes' allegation is incorrect and has no basis.²⁰ In our view, WIMA's submissions provide the more probative information available on Sanford's status as an importer. We consequently conclude that Sanford does not import subject merchandise and therefore we do not consider its exclusion.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON CASED PENCILS FROM CHINA WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

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 subsidization and/or 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."²¹ The Uruguay Round Agreements Act 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."²² Thus, the likelihood standard is prospective in nature.²³ The statute provides 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."²⁴ 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 duty investigations]."^{25 26}

¹⁹ Geddes' Response at 3.

²⁰ Comments of Writing Instrument Manufacturers Association, Pencil Section, Antidumping Committee, *et al.*, Concerning the Determination That the Commission Should Reach in This Review ("Comments") (June 29, 2000) at 5, n.3.

²¹ 19 U.S.C. § 1675a(a).

²² 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.

²³ 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.

²⁴ 19 U.S.C. § 1675a(a)(5).

²⁵ 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

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Although the standard in five-year reviews is not the same as the standard applied in original antidumping 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.”²⁷ 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.^{28 29}

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.”³⁰ We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. 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

²⁵ (...continued)

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.*

²⁶ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

²⁷ 19 U.S.C. § 1675a(a)(1).

²⁸ *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.

²⁹ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings in connection with the order under review.

³⁰ 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.*

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.”³¹ As noted above, there was an inadequate respondent interested party group response to the Commission’s notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the Commission’s original investigation, the limited information collected by the Commission since the institution of this review, and the information submitted by WIMA and Geddes.

For the reasons stated below, we determine that revocation of the antidumping duty order on cased pencils from China 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.”³²

There are several conditions of competition applicable to the cased pencils industry, some of which are unchanged from the original investigation and others which have developed since that time. As in the original investigation, demand is seasonal, and influenced by population levels, especially changes in the number of school-age students.³³ A large portion of pencil sales occur during mid-summer for the back to school season. The economy pencil³⁴ is the largest selling pencil product during this period.³⁵

The record also indicates that the market for cased pencils is mature, with no new technological developments since the original investigation, or likely in the reasonably foreseeable future.³⁶ Nevertheless, demand for cased pencils has increased since the time of the original investigation. The quantity of apparent consumption increased approximately *** percent between 1993, the final year of the original period of investigation, and 1998.³⁷

In the original investigation, the Commission found that consolidation had occurred within the domestic industry.³⁸ This consolidation has continued; while there were 11 domestic producers at the time of the original investigation, there are now between seven and nine.³⁹

In the original investigation, the majority of the Commission observed the importance of price in purchasing decisions. Two Commissioners characterized the market for cased pencils as price sensitive.⁴⁰

³¹ SAA at 869.

³² 19 U.S.C. § 1675a(a)(4).

³³ CR at I-21; PR at I-16.

³⁴ The economy pencil is the standard yellow No. 2 pencil, which is the most commonly sold pencil. It is also known as the “commodity” pencil. CR at I-7; PR at I-7.

³⁵ CR at I-21, n.55; PR at I-16, n.55.

³⁶ WIMA’s Response at 10; Comments at 13.

³⁷ CR and PR at Table I-3.

³⁸ Original Determination at I-10.

³⁹ CR at I-10; PR at I-8 through I-9.

⁴⁰ Original Determination at I-22 (“Views of Commissioners Rohr and Newquist”).

Two other Commissioners observed that there was a shift in the office supply market from small, regional distributors to nationwide catalog wholesalers and superstores. They observed that the large, nationwide purchasers were increasingly making their purchasing decisions on the basis of price rather than non-price factors.⁴¹ This consolidation and concentration of purchasers has continued since the original investigation.⁴²

Finally, the quantity and market penetration of nonsubject imports have increased since the original investigation. During 1993, the last year of the original investigation, there were 2.0 million gross units of imports from nonsubject countries, accounting for *** percent of apparent consumption. In 1998, there were 8.9 million gross units imported from nonsubject countries, accounting for *** percent of U.S. apparent consumption.⁴³

Based on the record evidence, we find that these conditions of competition in the U.S. cased pencils market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. cased pencils market provide us with a sufficient basis upon which to assess the likely effects of revocation of the antidumping duty order within the reasonably foreseeable future.

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.⁴⁴ 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.⁴⁵

In the original investigation, the Commission found that subject import volume and market penetration increased rapidly during the period of investigation.⁴⁶ Immediately after issuance of the order, the quantity of subject imports declined. By 1998, however, total import volume from China had increased substantially to 6.002 million gross units.⁴⁷ This figure is 27 percent greater than the highest volume level attained by total Chinese imports during the original investigation.⁴⁸ The Chinese import volume decreased slightly in 1999 to 5.961 million gross units.⁴⁹

⁴¹ *Id.* at I-17 (“Views of Chairman Watson and Commissioner Bragg”).

⁴² *See* WIMA’s Response at 11.

⁴³ CR and PR at Table I-3.

⁴⁴ 19 U.S.C. § 1675a(a)(2).

⁴⁵ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁴⁶ Original Determination at I-16, I-22, I-26.

⁴⁷ Comments at 6 through 7.

⁴⁸ CR and PR at Figure I-1 and Table I-3; CR at I-16; PR at I-11, I-14.

⁴⁹ Comments at 6 through 7. Because of the negative Commerce dumping determinations with respect to certain Chinese producers, not all imports of cased pencils from China are subject imports. Staff did not attempt to determine what proportion of total imports were subject imports, other than to observe that there appeared to be a

(continued...)

There is limited information on the record concerning the current status of the cased pencils industry in China because there were no responses by foreign producers or exporters to the Commission's notice of institution. Between 1991 to 1993, Chinese capacity to produce cased pencils, actual production, and total shipments increased by *** percent, *** percent, and *** percent, respectively.⁵⁰ The share of Chinese exports coming into the United States more than ***, as evidenced by comparing the *** percent share in 1991 to the *** percent share in 1993.⁵¹ Today, the United States is the largest single export destination for cased pencils produced in China.⁵²

The record further indicates that the number of producers of cased pencils in China has increased since the time of the original investigation.⁵³ Because there is no information in the record that indicates that the Chinese cased pencil producers existing at the time of the original investigation have reduced their capacity, and because the number of Chinese producers has increased since the original investigation, we conclude that the capacity to produce cased pencils in China has likely risen since the time of the original investigation.⁵⁴ This conclusion is corroborated by information in the record showing that Chinese exports of cased pencils to all countries have risen considerably since 1993,⁵⁵ suggesting that capacity has indeed increased.

Furthermore, the fact that subject import volumes dropped sharply immediately after issuance of the order indicates that the order has had some restraining effect on import volumes. If the antidumping duty order is revoked, this restraining effect would be eliminated. In light of the Chinese cased pencil industry's capacity increases, the significant increase in their exportation levels since the order and historic ability to rapidly increase exports to the United States, we find that upon revocation of the order, producers of subject merchandise in China would increase exports to the United States above the currently high levels.⁵⁶ We consequently conclude that the likely volume of subject imports would be significant if the antidumping duty order is revoked.

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

⁴⁹ (...continued)

“significant” quantity of nonsubject Chinese imports from 1997 to 1999. CR and PR at Table I-2; CR at I-19; PR at I-14 through I-15. WIMA acknowledges that in this expedited review the limited information available to the Commission makes actual determinations of the volume or value of subject pencils difficult. *See* Comments at 7.

⁵⁰ CR at I-25; PR at I-19.

⁵¹ *Id.*

⁵² *Id.* *See The World Trade Atlas*, which provides Chinese export data for cased pencils in kilograms.

⁵³ CR at I-23 through I-26; PR at I-18 through I-19. Six manufacturers and/or exporters provided information to the Commission on the Chinese pencil industry during the original investigation. In this review, 16 firms were identified as currently producing cased pencils in China. *Id.*

⁵⁴ Commissioner Bragg infers that, since the time of the original investigation, the new entrants to the Chinese cased pencils industry have added to the capacity to produce cased pencils in China.

⁵⁵ CR at I-26; PR at I-19.

⁵⁶ Commissioner Bragg infers that, upon revocation, subject producers would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission's original determination. Based upon the record in this review, Commissioner Bragg finds that the historical emphasis will likely result in significant volumes of subject imports into the United States if the order is revoked.

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.⁵⁷

In the original determination, the Commission found that there was a significant likelihood the subject imports would have a depressing or suppressing effect on prices for the domestic like product. Subject import prices were declining for those products where competition with the domestic like product was most intense.⁵⁸ Additionally, the subject imports undersold domestically-produced cased pencils in the vast majority of pricing comparisons.⁵⁹

The information in this review on current pricing is limited to data on average unit values (“AUVs”) between 1997 and 1999. We acknowledge that AUVs can be affected by variations in product mix. Nevertheless, we have relied upon AUVs in this review because they constitute the only current data available. The AUVs of all cased pencils imported from China, both subject and nonsubject, increased from \$3.82 per gross in 1994 to \$5.59 per gross in 1995, the first full year after issuance of the antidumping duty order.⁶⁰ Since then, AUVs for imports from China have fluctuated at lower levels. In 1998, the AUV for cased pencil imports from China was \$4.81 per gross, which was considerably above pre-order levels, but well below the AUV for the domestic like product, which was valued at *** per gross.⁶¹

We conclude that, if the antidumping duty order is revoked, prices for the subject imports would decline significantly. The record suggests that the cased pencils market is price-sensitive and that there is a high degree of substitutability between the subject and domestic merchandise. Moreover, the pricing patterns of the subject imports both currently and during the original investigation indicate that there is likely to be significant underselling by the subject imports.⁶² In light of the growing concentration and consolidation of purchasers, which increasingly are nationwide catalog wholesalers and superstores that make purchasing decisions on the basis of price, increased volumes of low-priced subject imports will likely depress prices for domestically-produced cased pencils. Consequently, we find that, if the antidumping duty order is revoked, the subject imports will likely have significant price depressing or suppressing effects.

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

⁵⁷ 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.

⁵⁸ Original Determination at I-17, I-27.

⁵⁹ See Certain Cased Pencils from Thailand, Inv. No. 731-TA-670 (Final), USITC Pub. 2816 at II-53 (October 1994); Original Determination at II-3 (incorporating material from report in Thailand investigation).

⁶⁰ CR at I-20; PR at I-14 through I-15. As previously stated, the record does not permit segregation of data concerning subject and nonsubject imports from China.

⁶¹ CR and PR at Table I-2; CR and PR at Table I-1.

⁶² Commissioner Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission’s original determination.

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.⁶³ 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.⁶⁴ As required 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.⁶⁵

In the original investigation, the Commission found that the domestic industry's market share, capacity utilization, and employment declined and that the domestic industry experienced operating losses throughout the period of investigation.⁶⁶ The Commission concluded that increased volumes of subject imports would lead to price declines for the domestic like product, and in turn would prevent domestic producers from recovering cost increases. As a result, the domestic industry's financial performance would likely deteriorate.⁶⁷

The record in this review indicates that the order had a positive effect on industry performance. The domestic industry is now profitable, as compared to the time of original investigation when it operated at a loss.⁶⁸ In addition, the AUVs for domestically-produced pencils have increased from *** per gross in 1993 to *** per gross in 1998.⁶⁹ In light of the foregoing, we do not conclude that the domestic industry is currently in a vulnerable condition.⁷⁰

As discussed above, we find it likely that revocation of the order would result in a significant increase in the volume of subject imports at prices significantly lower than those of the domestic like product, and that such increased volumes of subject imports would likely depress or suppress the domestic industry's prices significantly. Because a reduction in cased pencils prices will not stimulate significant additional demand for the product, revocation 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,

⁶³ 19 U.S.C. § 1675a(a)(4).

⁶⁴ *Id.* Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 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.

In the final results of its five-year review, Commerce published a likely dumping margin of 8.60 percent for China First; 19.36 percent for Shanghai Lansheng Corp.; 11.15 percent for Shanghai Foreign Trade Corp.; 0.00 percent for Guangdong Stationery/Three Star; 53.65 percent for Guangdong Stationery/all other producers; and 53.65 percent for China-wide rate. 65 Fed. Reg at 41431 (July 5, 2000).

⁶⁵ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the orders are 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.

⁶⁶ Original Determination at I-9 through I-12.

⁶⁷ *Id.* at I-17 through 18, I-27 through 28.

⁶⁸ CR and PR at Table I-1.

⁶⁹ *Id.*

⁷⁰ Based upon the limited record in this expedited review, Commissioner Bragg determines that the domestic industry currently is not in a weakened condition as contemplated by the vulnerability criterion of the statute.

sales, and revenue levels would have a direct adverse impact on the industry's employment, profitability, and ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the limited record in this review, we conclude that, if the antidumping duty order is revoked, subject imports 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 cased pencils from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.