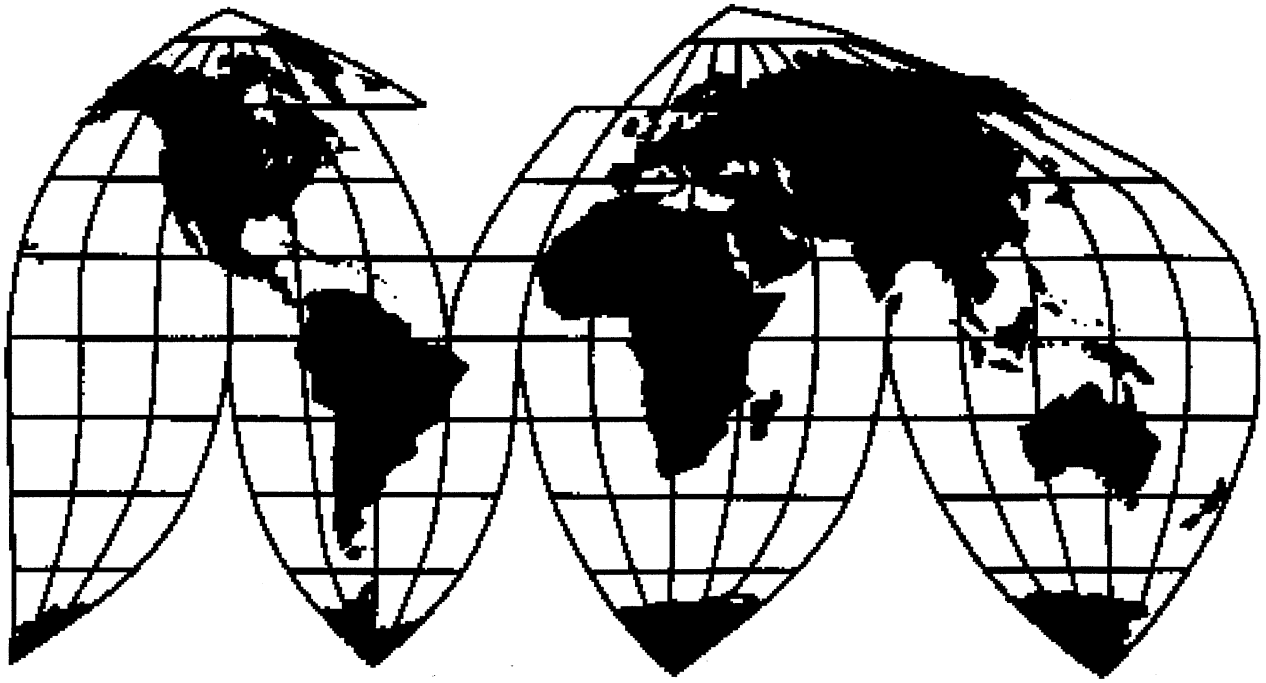
# Aspirin from Turkey

Investigation No. 731-TA-364 (Review)

**Publication 3215** **July 1999**

U.S. International Trade Commission



Washington, DC 20436

# U.S. International Trade Commission

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**Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been replaced by asterisks (***).**



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# GLOSSARY

| | |
|---|---|
| Atabay | Atabay Kimya Sanayi ve Ticaret A.S. |
| Bayer | Bayer Corp. |
| Bayer Turkey | Bayer Turk Kimy Sanayi ve Ticaret A.S. |
| C & F | Cost and freight |
| Commerce | U.S. Department of Commerce |
| Commission | U.S. International Trade Commission |
| Customs | U.S. Customs Service |
| Dow | Dow Chemical, U.S.A. |
| FR | *Federal Register* |
| HTS | Harmonized Tariff Schedule of the United States |
| Ilkim | Ilkim Kimya Maddler Sanayi ve Ticaret A.S. |
| Proses | Proses Kimya Sanayi ve Ticaret |
| *Public China Petition* | Public version of the Petition Requesting the Imposition of Antidumping Duties on Imports of Bulk Aspirin from the People's Republic of China filed by Rhodia on May 28, 1999 |
| *Response* | Response to the Commission's Notice of Institution |
| Rhodia | Rhodia, Inc. |
| SG&A | Selling, general, and administrative |
| TSUS | Tariff Schedules of the United States (Repealed) |
| UN | United Nations |



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## UNITED STATES INTERNATIONAL TRADE COMMISSION

**Investigation No. 731-TA-364 (Review)**

**ASPIRIN FROM TURKEY**

### DETERMINATION

On the basis of the record[1] 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 aspirin from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

### BACKGROUND

The Commission instituted this review on March 1, 1999 (64 F.R. 10012) and determined on June 3, 1999, that it would conduct an expedited review (64 F.R. 31608).

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[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 Carol T. Crawford and Thelma J. Askey dissenting, determining that revocation of the antidumping duty order 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.

## 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 aspirin from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[1]

## I. BACKGROUND

In August 1987, the Commission determined that an industry in the United States was being injured by reason of imports of bulk aspirin from Turkey that were being sold at less than fair value.[2] On August 25, 1987, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of bulk aspirin from Turkey.[3] The Commission instituted this five-year review on March 1, 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, Rhodia, Inc. ("Rhodia"), the sole domestic producer of bulk aspirin, filed a response to the notice of institution.[6] No foreign producer, U.S. importer, or other interested party responded to the Commission's notice of institution.

On June 3, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate.[7] The Commission further determined that the respondent interested party group response was inadequate because no foreign producers or U.S. importers of subject merchandise responded to the Commission's notice of institution. Pursuant to section 751(c)(3)(B) of the Act, the Commission voted to conduct an expedited review.[8]

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[1] Commissioners Crawford and Askey dissenting. Commissioners Crawford and Askey determine that revocation of the antidumping duty order covering aspirin from Turkey 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 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] Bulk Aspirin from Turkey, Inv. No.731-TA-364 (Final), USITC Pub. 2001 (August 1987) ("Original Determination").

[3] 52 Fed. Reg. 32030 (Aug. 25, 1987).

[4] 64 Fed. Reg. 10012 (Mar. 1, 1999).

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

[6] Response of Rhodia, Inc. to the Commission's Notice of Institution of a Five-Year (Sunset) Review ("Response of Rhodia").

[7] See Explanation of Commission Determination on Adequacy in Bulk Aspirin from Turkey; see also 64 Fed. Reg. 31608 (June 11, 1999). The Commission's determination was unanimous.

[8] 19 U.S.C. § 1675(c)(3)(B).

On July 7, 1999, Rhodia filed comments pursuant to 19 C.F.R. § 207.62(d), arguing that revocation of the antidumping duty order on bulk aspirin from Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[9]

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the "domestic like product" and the "industry."[10] The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[11] In its final five-year review determination, Commerce defined the subject merchandise as

> [A]cetylsalicylic acid (aspirin) from Turkey, containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the Handbook of Non-Prescription Drugs, eighth edition, American Pharmaceutical Association, and is not in tablet, capsule, or similar forms for direct human consumption. This product is currently classifiable under the Harmonized Tariff Schedule ("HTS") of the United States item numbers 2918.22.10 and 3003.90.00. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.[12]

In its original determination, the Commission defined the domestic like product as all bulk aspirin.[13] 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 all bulk aspirin.

### 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

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[9] Final Comments of Rhodia (July 7, 1999) ("Rhodia's Comments").

[10] 19 U.S.C. § 1677(4)(A).

[11] 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).

[12] 64 Fed. Reg. 3628 (July 6, 1999). The scope in the original investigation did not include HTS 3003.90.00. Commerce recently decided, at the urging of the domestic producer, that the written description of the scope covered a product represented by both HTS 2918.22.10 and 3003.90.00. Commerce confirmed with the U.S. Customs Service that both HTS item numbers were appropriate. Id. This change does not have any impact on the Commission's like product analysis because the written description has remained the same, and the written description, not the HTS reference, determines the scope of the investigation.

[13] Original Determination at 4.

of the total domestic production of that product."[14] In this review, we find that the domestic industry consists of the current sole domestic producer of bulk aspirin, Rhodia.[15]

## III. REVOCATION OF THE ORDER ON BULK ASPIRIN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME[16]

### 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."[17] 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."[18] Thus, the likelihood standard is prospective in nature.[19] 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."[20] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations]."[21] [22]

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[14] 19 U.S.C. § 1677(4)(A).

[15] At the time of the original determination, there were four U.S. producers of bulk aspirin: Dow Chemical Company, Monsanto Chemical Company, Norwich-Eaton, and Sterling Drug. CR at I-6-7, PR at I-5. Since that time, the bulk aspirin industry has consolidated, and Rhodia is the sole remaining domestic producer. CR at I-7, PR at I-5.

[16] Commissioners Crawford and Askey dissenting. They join in sections III A & B.

[17] 19 U.S.C. § 1675a(a).

[18] 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.

[19] 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.

[20] 19 U.S.C. § 1675a(a)(5).

[21] 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.

[22] 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 3
(continued...)

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."[23] 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.[24] [25]

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."[26] [27] As noted above, no respondent interested parties responded 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 original investigation, limited information collected by Commission staff since the institution of this review, and information submitted by Rhodia.

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[22] (...continued)
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.

[23] 19 U.S.C. § 1675a(a)(1).

[24] 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.

[25] 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). To date, Commerce has not issued any duty absorption findings in this case. 64 Fed. Reg. 36328, 36330 (July 6, 1999).

[26] 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.

[27] 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 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.

For the reasons stated below, we determine that revocation of the antidumping duty order on bulk aspirin would be likely to lead to continuation or recurrence of material injury to the domestic bulk aspirin industry within a reasonably foreseeable time.[28] [29]

### 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."[30] In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for bulk aspirin.

The demand for bulk aspirin is derived from the demand for any finished tablet containing aspirin.[31] Additionally, aspirin competes with acetaminophen and ibuprofen in the finished analgesics market.[32] Chemically, however, there are no direct substitute products for bulk aspirin.[33] The demand for aspirin has grown modestly in recent years, largely because of aspirin's use as a preventative measure against second heart attacks.[34]

Over the last decade, the domestic industry producing bulk aspirin went through two major consolidations. In 1987, four firms comprised the domestic industry: Dow Chemical Company ("Dow"), Monsanto Chemical Company ("Monsanto"), Norwich-Eaton, and Sterling Drug.[35] In 1989, Rhone-Poulenc S.A. ("Rhone-Poulenc") acquired the analgesics business of Monsanto, including Monsanto's bulk aspirin manufacturing facility in St. Louis, Missouri. In 1994, Bayer Corp. acquired Sterling Drug and closed that company's bulk aspirin production operations. In the following year, Norwich-Eaton ceased production of bulk aspirin and began to source its aspirin requirements from Rhone-Poulenc. In late 1995, Rhone-Poulenc entered into an agreement to acquire certain assets of Dow's salicylates businesses, including Dow's inventory of bulk aspirin as well as its customer lists.[36] These structural changes culminated in an industry that was reduced from four to one producer by the end of 1996. Rhodia was formed in 1997 following a reorganization by Rhone-Poulenc. Rhone-Poulenc retains 70 percent ownership of Rhodia.[37]

All bulk aspirin sold in the United States must meet the specifications defined in the official monograph of United States Pharmacopoeia (USP) 23.[38] Bulk aspirin may be purchased in different forms: pure aspirin crystals, typically available in different granular (mesh) sizes; granular 100 percent aspirin;

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[28] Vice Chairman Miller and Commissioner Hillman emphasize that they have reached this conclusion in the absence of contrary evidence or argument from respondent interested parties.

[29] Commissioners Crawford and Askey determine that revocation of the antidumping duty order covering aspirin from Turkey 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 Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey.

[30] 19 U.S.C. § 1675a(a)(4).

[31] See Rhodia's Comments at 10-11.

[32] CR at I-12, P.R. at I-10.

[33] See Rhodia's Comments at 8, citing Bulk Ibuprofen from India, USITC Pub 2428 at 11-12 (finding that ibuprofen, aspirin, and acetaminophen have different chemical compositions and properties).

[34] Response of Rhodia at 36.

[35] CR at I-6, PR at I-5.

[36] CR at I-7 n.17, PR at I-5 n.17.

[37] CR at I-7 n.17, PR at I-5 n.17.

[38] Rhodia's Comments at 11.

and pure aspirin mixed with starch, usually a blend of 90 percent aspirin and 10 percent starch.[39] Processors generally have a preferred mesh size, and their operations would be slowed if they had to use other sizes.[40] Adding starch to aspirin generally makes it more cohesive and easier to process into tablets.[41] Aspirin starch typically is priced higher than pure aspirin.[42]

The volume of imports from nonsubject countries was large and grew steadily over the period of investigation. In 1996, nonsubject import volume of bulk aspirin to the United States totaled 3.4 million pounds, and this volume increased to 6.4 million pounds by 1998. The market share of nonsubject imports also grew from *** percent in 1996 to *** percent in 1998.[43] China is a significant source of these imports.[44]

Finally, the record in the original investigation indicated that subject imports are substitutable with the domestic like product.[45] None of the additional information developed in this review suggests otherwise. Accordingly, based on the facts available, we find that the subject merchandise and the domestic like product are substitutable.

### 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.[46] 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.[47]

The record from the original investigation indicates that the Turkish bulk aspirin industry had the ability and incentive to establish a significant presence in the U.S. market in a short period of time. The volume of U.S. imports from Turkey more than quadrupled from 1984 to 1986, and their market penetration increased from 0.8 percent of apparent U.S. consumption in 1984 to 4.8 percent in 1986.[48] Further, such

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[39] CR at I-6, PR at I-5.

[40] Rhodia's Comments at 11.

[41] CR at I-6 n.11, PR at I-5 n.11.

[42] CR at I-6, PR at I-5.

[43] CR & PR at Tables I-2 & I-3.

[44] CR at I-9, PR at I-10. Bulk aspirin from China is currently subject to an antidumping investigation. On July 9, 1999, the Commission reached an affirmative preliminary determination in that investigation. See 64 Fed. Reg. 38689-90 (July 19, 1999).

[45] See Original Final Report to the Commission on Investigations Nos. 701-TA-283 (Final) and 731-TA-364 (Final), INV-K-091, July 28, 1987 at A-38 ("producers and importers comment[ed] on the quality and substitutability of bulk aspirin . . . [and] most firms familiar with the Turkish product have found it to be acceptable for most uses and that it regularly meets USP standards"); Dissenting Views of Chairman Liebler, Original Determination. at 12 ("it is clear from the record that domestically produced aspirin and imported Turkish aspirin are substitutable"); Dissenting Views of Vice Chairman Anne E. Brunsdale, Original Determination at 39 (". . . purchasers of aspirin, which is a relatively fungible product, frequently change suppliers and are very sensitive to the price terms quoted by different sources").

[46] 19 U.S.C. § 1675a(a)(2).

[47] 19 U.S.C. § 1675a(a)(2)(A)-(D).

[48] CR & PR at Tables I-2 & I-3.

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imports accounted for 6.7 percent of the total volume of U.S. imports of bulk aspirin in 1984 and increased to 31.5 percent by 1986.[49]

The Commission obtained data on capacity from three of the four firms in Turkey that produced bulk aspirin during the original investigation.[50] The capacity of these three Turkish producers remained at a constant 3.1 million pounds between 1983 and 1985, and their production increased from 1.7 million pounds to 2.4 million pounds over the same period.[51] The Turkish producers' exports increased from 0.9 million pounds to 2.3 million pounds over that same period, with the United States receiving 14.5 percent of those exports in 1983 and 63.1 percent in 1985.[52] The volume of bulk aspirin imported from Turkey declined sharply after the order was imposed and declined to zero by 1990.[53]

Several factors support the conclusion that subject (bulk aspirin) import volume is likely to be significant if the order is revoked. The current conditions of competition are similar to those in existence prior to issuance of the order.[54] In the original investigation, the record evidence indicated that Turkish capacity was 3.1 million pounds.[55] In the absence of information to the contrary, for this review we conclude that Turkish capacity is at least 3.1 million pounds.[56] The 3.1 million pounds of Turkish capacity is equal to *** percent of 1998 U.S. consumption.[57] The record in the original investigation showed that Turkish producers were export-oriented and that the majority of their exports was shipped to the United States.[58] [59]

The ability of Turkish exporters to rapidly increase exports to the U.S. is enhanced by their prior and current marketing operations. One Turkish producer, Atabay, tested the U.S. bulk aspirin market by shipping a small amount of bulk aspirin to the United States in 1997.[60] Atabay already has a potential chain of distribution and customers for its bulk aspirin because it sells bulk acetaminophen on the domestic market to some of the same processors that would purchase bulk aspirin.[61] Also, Atabay's major U.S. customer before the imposition of the order, ***.[62]

Another significant purchaser of domestic bulk aspirin in the United States, Bayer Corporation, owns bulk aspirin plants in Turkey and Spain.[63] Bayer once was Rhodia's ***. Bayer currently imports

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[49] CR & PR at Table I-2.

[50] CR at I-14, P.R. at I-11. The one firm for which data was not available, Ilkim, was believed to be a tableter that produced bulk aspirin solely for captive consumption. CR at I-14 n.27, PR at I-11 n.27.

[51] CR at I-14, PR at I-11.

[52] CR at I-14, PR at I-11.

[53] CR at I-9, PR at I-9.

[54] 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.

[55] CR at I-14, PR at I-11.

[56] In fact, the domestic industry has suggested that Turkish capacity has increased since that time. Response of Rhodia at 13.

[57] Rhodia's Comments at 22.

[58] CR at I-14, PR at I-11. Of the 3.1 million pounds available in 1985, Turkish producers exported 2.3 million pounds, and the U.S. market received 63.1 percent of those exports. Id.

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

[60] CR at I-14, PR at I-11.

[61] CR at I-14 n.30, PR at I-12, n.30; Response of Rhodia at 17.

[62] Response of Rhodia at 17.

[63] Response of Rhodia at 16.

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bulk aspirin from its plant in Spain, but ***.[64] In the absence of any information to the contrary, we conclude that Bayer would shift to imports from its Turkish plant to satisfy a significant portion of the demand that cannot be filled by its Spanish product if the antidumping order were revoked.

Based on the foregoing, we find it likely in these circumstances that the exporters who have ceased exporting bulk aspirin to the United States would, upon revocation of the order, reenter the U.S. market, and that the import volume would rise significantly if the discipline of the order were removed.[65] [66] Consequently, we conclude that subject imports would likely increase to a significant level, and would regain significant U.S. market share, absent the restraining effect of the order.

### 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.[67]

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 domestic prices for bulk aspirin decreased over the period of investigation and that the prices of subject imports from Turkey consistently undersold domestic prices by significant margins. In addition, the Commission found that the prices of Turkish bulk aspirin steadily declined over the period of investigation. Finally, the Commission noted that there were several instances of confirmed lost sales by domestic producers to the Turkish product.[68]

The limited information in the record regarding current pricing further indicates that imports from Turkey would undersell the domestic product and have significant adverse price effects, as they did before the imposition of the order, if the order is revoked. As we have found above, the subject merchandise from Turkey and the domestic like product are substitutable products, and price is an important criterion in the purchasing decision for customers. Turkish aspirin producers thus likely would have an incentive to undersell the domestic producers in order to regain market share.[69] Underselling by imports from Turkey and the likely significant increase in the volume of imports of bulk aspirin from Turkey would likely suppress and depress domestic producers' prices to a significant degree if the order is revoked.

The limited record evidence also suggests that the imports from Turkey would be aggressively priced as was the case in the original determination. For example, in 1998, the average unit value of bulk aspirin exported to third countries from Turkey was $4.50 per pound. This price was *** percent below the domestic price for bulk aspirin at that time.[70]

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[64] Response of Rhodia at 16.

[65] See SAA at 890.

[66] The record of this five-year review and the record of the original investigation do not contain any information on the levels of inventories maintained by Turkish producers.

[67] 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.

[68] Original Determination at 8-9.

[69] Chairman Bragg infers that, in the event of revocation, Turkish producers will revert to aggressive pricing practices with regard to exports to the United States, as evidenced in the Commission's original determination.

[70] Rhodia's Comments at 27.

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For the foregoing reasons, 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.[71] 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.[72] 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.[73]

In the original determination, the Commission found that the domestic industry suffered material injury by reason of increasing volumes of low-priced LTFV imports of bulk aspirin that were gaining an increasing share of the market in which the domestic product directly competed.[74] The Commission also noted that the domestic industry's attempts to modernize had failed to boost the industry's performance in the face of declining sales, profitability, and demand.[75] In addition, the Commission found that the domestic industry's inventories increased over the period of investigation and that inventories as a ratio of domestic shipments were substantial and increased sharply over the same period,[76] while employment levels declined,[77] and profit levels eroded.[78] Also, the Commission found that the industry's investments in capital improvements and research and development did not yield the expected returns. [79]

Since imposition of the antidumping duty order, subject imports exited the market but have been supplanted by imports from other countries. The domestic industry's share of the U.S. market declined in

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[71] 19 U.S.C. § 1675a(a)(4).

[72] 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. The dumping margins calculated by Commerce under that provision of the statute are as follows: Atabay Kimya Sanayi ve Ticaret, 27.35 percent; Proces Kimya Sanayi ve Ticaret, 38.60 percent; all others, 32.98 percent. 64 Fed. Reg. at 36330.

[73] 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.

[74] Original Determination at 8.

[75] Original Determination at 5.

[76] Original Determination at 6.

[77] Original Determination at 6.

[78] Original Determination at 7.

[79] Original Determination at 7.

1997 and 1998 to levels below those in the original investigation.[80] Early in the period examined, the industry's performance was significantly better than during the original investigation. There is insufficient information in the record for us to determine whether that apparent improvement was the result of the antidumping duty order. However, the domestic industry suffered an operating loss in 1998.[81] Thus, the 1998 data suggests that the industry is vulnerable, and it is therefore more susceptible to material injury from the substantial volume of low-priced and highly substitutable imports that would likely result from the revocation of the order.

Given the substitutable nature of the likely imports from Turkey and the domestic product, we find that a significant volume of low-priced subject imports 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 and employment levels as well as its 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 bulk aspirin from Turkey would be likely to lead to continuation or recurrence of material injury to the domestic bulk aspirin industry within a reasonably foreseeable time.

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[80] CR & PR at Table I-3.

[81] CR and PR at Table I-1. Rhodia suffered a *** loss in 1998 and the ratio of its operating income to net sales was *** percent. Rhodia only made a gross profit of only *** in 1998 as compared to *** in 1997 and *** in 1996. 10

## DISSENTING VIEWS OF COMMISSIONERS CAROL T. CRAWFORD AND THELMA J. ASKEY

Section 751(d) requires that 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 aspirin from Turkey, 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 Rhodia, Inc. (Rhodia), the sole domestic producer of bulk aspirin, was the only interested party to file a response 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 one party participates in an investigation or review, that party has an advantage in terms of being able to present its 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 the participating party's information and characterizations thereof without question and without evaluating other available information.[4] [5]

### 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."[6] 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 aspirin industry within a reasonably foreseeable time.

In the 12 years since the order went into effect, the domestic aspirin industry has changed significantly. Most important, the domestic industry has been consolidated into a single domestic producer.

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[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 27 in the Majority Opinion, section I. B.

[6] 19 U.S.C. § 1675a(a)(4).

In 1987, at the time of the original investigation, there were four U.S. producers of bulk aspirin: Monsanto Chemical Co.; Dow Chemical, U.S.A.; Sterling Drug, and Norwich-Eaton.[7] Since then, each of these producers has either sold its bulk aspirin manufacturing facilities or ceased production. In 1989, Rhone-Poulenc S.A. purchased Monsanto's analgesics business, including its bulk aspirin plant. In 1995, Rhone-Poulenc acquired Dow's bulk aspirin business as well as its inventory and customer lists. The Sterling Drug and Norwich-Eaton facilities ceased bulk aspirin production in 1994 and 1995, respectively. Rhone-Poulenc created Rhodia in 1997 to handle its specialty pharmaceutical ingredients, including bulk aspirin.

We note that with consolidation of domestic production, the domestic industry now consists of a single producer of bulk aspirin. By quantity, Rhodia captured *** percent of apparent domestic consumption in 1996, *** percent in 1997, and *** percent in 1998.[8] In addition, we note that the volume of imports of bulk aspirin from nonsubject countries has grown substantially over the 1996-98 period. In 1996, nonsubject sources represented *** percent of the domestic market. By 1998, that share had grown to *** percent.[9]

### B. General Considerations

The statute directs us to take into account several general considerations.[10] 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.[11] In examining the current marketplace for bulk aspirin, we note that several facts point to the existence of a very different marketplace than existed in 1987 at the end of the original period of investigation.

Since that time, market shares have clearly been redistributed. During the original 1984-86 period of investigation, Turkish imports held 0.8 percent, 3.9 percent, and 4.8 percent of the domestic market, respectively; non-subject imports held 11.7 percent, 12.3 percent, and 10.5 percent, respectively; and the domestic producers held 87.5 percent, 83.8 percent, and 84.7 percent, respectively. In contrast, Turkish imports were virtually nonexistent in 1998, while nonsubject imports accounted for *** percent of the market and the domestic producer held *** percent.[12]

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[7] Rhodia Response at 3-4. Two firms, Monsanto and Dow, accounted for about *** percent of U.S. production and virtually all open-market sales of bulk aspirin. The remaining two producers, Norwich-Eaton and Sterling Drug, captively consumed nearly all of the bulk aspirin they produced. CR at I-6; PR at I-5.

[8] CR and PR at Table I-3.

[9] CR and PR at Table I-3.

[10] 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. 36328, 36330 (July 6, 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. 36330. Thus, the margins of dumping that will occur if the order is revoked are 27.35 percent for Atabay and 38.60 for Proces. The "all others" rate stands at 32.98 percent. Id.

[11] 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. 1 at 884 (1994).

[12] CR and PR at Table I-3.

Between 1986-98, U.S. consumption quantity declined by *** pounds, or *** percent, which resulted in a *** percent drop in the value of the market.[13] However, Rhodia reports that it believes that the long term decline in demand has leveled off.[14]

Moreover, although domestic market share is declining, subject Turkish imports are not a source of competition for the domestic industry. Imports of nonsubject merchandise have become the only significant source of competition for the domestic industry.[15] Given Rhodia's role as the exclusive domestic producer of bulk aspirin and the low volume of Turkish imports, we conclude that the domestic industry is not vulnerable to material injury if the order is revoked.[16]

### 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.[17] [18] 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.[19]

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 had a significant impact on the market penetration of subject imports, the existing domestic share of the U.S. producer is not likely to be adversely affected if the order is revoked. Following the initiation of the original antidumping investigation, subject imports decreased in 1987 to slightly below their 1984 level. By 1990, subject imports had fallen to zero.[20]

By quantity, U.S. imports of bulk aspirin from all sources increased *** percent from 1996 to 1998. However, subject Turkish imports were negligible or non-existent, totaling a mere *** pounds in 1997 and zero pounds in 1996 and 1998.[21] Thus, nonsubject merchandise accounted for virtually all bulk

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[13] See CR and PR at Table I-2.

[14] CR at I-13; PR at I-10.

[15] The Commission is currently investigating dumping allegations concerning bulk aspirin from China, and has issued a preliminary affirmative determination with respect to such imports. See 64 Fed. Reg. 38689-90 (July 19, 1999).

[16] 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 particularly vulnerable to injury if the order is revoked.

[17] 19 U.S.C. § 1675a(a)(2).

[18] In analyzing whether revocation of a order or 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)(iv).

[19] 19 U.S.C. § 1675(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.

[20] CR at I-9, Figure I-1; PR at I-6, Figure I-1.

[21] CR and PR at Table I-2, Figure I-1. The small shipment of Turkish imports in 1997 was reportedly made by Atabay as a basis for requesting an administrative review of the antidumping duty order. Rhodia Response at 31-13 (continued...)

aspirin imports, maintaining market shares of *** percent in 1996, *** percent in 1997, and *** percent in 1998. By comparison, the domestic industry captured market shares of *** percent, *** percent, and *** percent, respectively.[22] However, we note that while domestic consumption of aspirin has decreased since the original period of investigation, U.S. production of such merchandise over the period has been consolidated in one domestic producer. It is apparent, therefore, that nonsubject imports are the only true source of significant competition to the domestic industry.

Reportedly, three producers of subject merchandise in Turkey are known to have exported to the United States: Bayer Turk Kimya Sanayi ve Ticaret (Bayer Turkey); Atabay Kimya Sanayi ve Ticaret A.S. (Atabay); and Proses Kimya Sanayi ve Ticaret (Proses).[23] However, the current record is almost devoid of any factual information regarding the capacity or production capability of the subject bulk aspirin industry in Turkey.[24]

According to official statistics from the United Nations, total Turkish exports of bulk aspirin decreased by *** percent from 1985 to 1996. Such exports fell another *** percent in 1997. In 1996, Turkish exports of bulk aspirin totaled *** pounds and were valued at $***. In 1997, such exports totaled *** pounds and were valued at $***. Spain, Bulgaria, Germany and Tajikistan were the primary markets for these exports.[25]

Rhodia asserts that Turkish producers have at least the same capacity as they did during the original investigation. In that investigation, the Commission found that three Turkish producers, Atabay, Bayer Turkey, and Proses, had a combined capacity of 3.1 million pounds.[26] According to Rhodia, because current U.S. consumption is *** million pounds, the "known" Turkish capacity from the original investigation amounts to *** percent of current U.S. consumption.[27] Moreover, Rhodia claims that since the UN data show a large gap between known Turkish exports and last-reported Turkish capacity, the Commission must infer that substantial capacity is underutilized or otherwise available to shift to the U.S. market.[28]

We find Rhodia's argument unpersuasive. Such assertions disregard the fact that the Turkish bulk aspirin industry, like the domestic industry itself, appears to have experienced a contraction and consolidation of production. The most recent UN export figures are direct evidence of such circumstances. Accordingly, we conclude from the evidence on the record that Turkish suppliers currently have insufficient available production capacity, inventories, or product shifting capabilities, from which to export bulk aspirin in significant quantities to the United States within a reasonably foreseeable time. We further note that Commerce assigned a zero percent margin to a small shipment of *** pounds of bulk aspirin produced by the Turkish producer Atabay in the course of Commerce's most recent administrative review in 1997.[29] In spite of this zero percent margin, Atabay has neither flooded the market nor exported any additional subject merchandise.

The U.S. market is dominated by a single domestic producer. In addition, nonsubject imports hold a significant share of the U.S. market while subject imports do not compete in the domestic market. Moreover, the available evidence on the record indicates that subject Turkish suppliers are not equipped to export significant quantities of subject merchandise to the United States. Thus, we find that revocation of

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[21] (...continued)
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[22] CR and PR at Table I-3.

[23] Rhodia Response at 31-32. See CR at I-14; PR at I-11.

[24] See CR at I-14; PR at I-12.

[25] CR at I-14, n.29; PR at I-12, n.29.

[26] CR at I-14; PR at I-11.

[27] Rhodia Comments at 22.

[28] Rhodia Comments at 23-24.

[29] 63 Fed. Reg. 34146 (June 23, 1998).

the antidumping order is not likely to lead to an increase in the volume of subject imports such that the likely volume of subject imports would be significant within a reasonably foreseeable time.

### 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.[30]

The record in this review contains no pricing data on subject aspirin in the United States. We therefore have no information comparing current prices of the domestic like product and subject imports in the U.S. market. Consequently, our conclusions regarding the likely price effects if the order is revoked are drawn largely from our conclusions on likely subject volumes and the pertinent known conditions of competition.

Given the fact that the available evidence shows that subject Turkish suppliers do not have the capability of exporting a significant volume of subject merchandise, it is reasonable to conclude that the likely price effects of subject Turkish bulk aspirin would not be significant in the absence of the existing order. Moreover, in light of the sizable market share held by nonsubject imports, it is reasonable to assume that any likely shift in demand toward subject merchandise resulting from a revocation of the existing order would also come partially at the expense of nonsubject imports. In turn, this would tend to further mitigate any price effects associated with the shift in demand away from domestic merchandise.

Consequently, in light of our conclusion regarding the likely volume of subject merchandise in the absence of the existing order and the pertinent known conditions of competition, we find that such subject imports are too minimal to have any discernible adverse price effects within a reasonably foreseeable time.

### 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.[31]

Subject imports are not likely to have a significant adverse impact on the domestic aspirin industry if the order is revoked. As noted above, there currently are no imports of subject merchandise in the domestic market. By comparison, the domestic industry held *** percent of the market in 1998, while nonsubject merchandise held *** percent,[32] and we have determined that subject imports are not likely to increase to significant levels or significantly influence prices within a reasonably foreseeable time. Furthermore, in light of the significant market share held by nonsubject imports, any increase in subject imports resulting from a revocation of the existing order would also likely come at the expense of nonsubject imports.

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[30] 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.

[31] 19 U.S.C. § 1675a(a)(4).

[32] CR and PR at Table I-3.

Consequently, we find that subject imports would not be likely to have a significant impact on the domestic aspirin 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. We therefore find that revocation is not likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

## III. CONCLUSION

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 in this review would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

# INFORMATION OBTAINED IN THE REVIEW



I-1

## INTRODUCTION

On March 1, 1999, the Commission gave notice that it had instituted a review to determine whether revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to a continuation or recurrence of material injury.[1] On June 3, 1999, the Commission determined that the domestic interested party response to its notice of institution was adequate;[2] the Commission also determined that the respondent interested party response was inadequate because no response was received. The Commission found no other circumstances that would warrant a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)).[3] The Commission voted on this review on July 22, 1999, and notified Commerce of its determination on July 29, 1999.

### The Original Investigation

The Commission completed the original investigation[4] in August 1987, determining that an industry in the United States was being materially injured by reason of imports of aspirin from Turkey that were being sold at less than fair value. The Commission found the relevant domestic industry to consist of producers of bulk aspirin. After receipt of the Commission's determination, Commerce issued an antidumping duty order on imports of bulk aspirin from Turkey.[5]

### Commerce's Final Results of Expedited Sunset Review

On June 29, 1999, the Commission received Commerce's "Final Results of Expedited Sunset Review" concerning aspirin from Turkey.[6] The review covered all producers and exporters of aspirin from Turkey. Commerce noted that to date there have been no duty absorption findings with respect to aspirin from Turkey and determined that dumping is likely to continue or recur if the antidumping duty order is

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[1] 64 FR 10012, Mar. 1, 1999. All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

[2] A single response to the Commission's notice was filed on behalf of Rhodia; this firm is the only known current U.S. producer of bulk aspirin for sale on the open market. *Response* of Rhodia, p. 3.

[3] 64 FR 31608, June 11, 1999. The Commission's notice of expedited review appears in app. A. See the Commission's web site (http://www.usitc.gov) for Commissioner votes on whether to conduct an expedited or full review. A statement on adequacy is presented in app. B.

[4] The investigation resulted from a petition filed on behalf of Monsanto on Oct. 31, 1986.

[5] 52 FR 32030, Aug. 25, 1987. This order required the posting of a cash deposit equal to the estimated weighted-average antidumping duty margins, which were 27.35 percent for Atabay, 38.60 percent for Proses, and 32.98 for all other firms. Because Atabay and Proses accounted for at least 60 percent of the exports of bulk aspirin from Turkey, Commerce limited its investigation to those two firms. However, Proses did not respond to Commerce inquiries, so the best information available, which was that contained in the petition, was used. In determining the weighted-average antidumping duty margins for Atabay, Commerce used a comparison between U.S. price (that was based on C & F U.S.-port purchase price, as adjusted for freight, brokerage, handling, and bank charges, since the merchandise was sold to unrelated purchasers prior to importation into the United States) and foreign market value (that was based on C & F prices, as adjusted for freight and differences in the credit expenses and exchange rates, since there were sufficient sales to unrelated customers in the home market) (52 FR 24492, July 1, 1987). There has been only one administrative review of the antidumping duty order to date, covering the period August 1, 1996-July 31, 1997, which resulted in a 0 percent weighted-average dumping margin for Atabay; the cash deposit rates for all other firms remained unchanged (63 FR 34146, June 23, 1998).I-3

[6] The notice is presented in app. A. It was published in the *Federal Register* on July 6, 1999.

revoked. The following tabulation provides information with regard to the margin (in percent) of dumping that Commerce found would likely prevail if the antidumping duty order is revoked:

| Company | Margin |
|---|---|
| Atabay | 27.35 |
| Proses | 38.60 |
| All others | 32.98 |

## THE PRODUCT

### Scope

The imported product covered by this review is acetylsalicylic acid (aspirin), containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring materials), and/or active substances in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the Handbook of Nonprescription Drugs, 8th edition, American Pharmaceutical Association, and not in tablet, capsule, or similar forms for direct human consumption. It is classifiable in HTS subheadings 2918.22.10 (dutiable at a general rate of 8.4 percent ad valorem in 1999) and 3003.90.00[7] (free of duty, regardless of country of origin in 1999). The HTS subheadings are provided for convenience and for Customs purposes; the written description remains dispositive as to the scope of the product coverage.

### Related Investigations

On May 28, 1999, Rhodia filed an antidumping petition with Commerce and the Commission alleging that imports of bulk aspirin from China are injuring the domestic industry. That investigation is currently pending at Commerce.

At the time of the original antidumping investigation concerning bulk aspirin from Turkey, countervailing duty investigation 701-TA-283 concerning bulk aspirin from Turkey was concurrently initiated and resulted in a countervailing duty order assigning a 6.54-percent countervailing duty on imports of bulk aspirin from Turkey, excluding product manufactured and exported by Proses. Subsequently, the countervailing duty order was revoked due to a lack of interest by the domestic industry.[8]

### Description and Uses

Ortho-acetylsalicylic acid, commonly known as aspirin, is a white, odorless, crystalline powder of organic derivation having the formula $C_2H_3O_2C_6H_4CO_2H$. Bulk aspirin, which contains no active additives in such quantities as to have any therapeutic effect, and which is not in tablet, capsule, or similar form for

[7] HTS subheading 3003.90 was not included in previous Commerce scopes, but in its final results, Commerce stated that it had confirmed with Customs that the HTS subheading was appropriate. Rhodia had noted that imports of bulk aspirin mixed with other ingredients, as described above, is classified in other than HTS subheading 2918.22.10 (e.g., bulk aspirin mixed with 10 percent, by weight, of starch is classified in HTS subheading 3003.90). *Response* of Rhodia, pp. 14, 15, and 34. See also, the *Public China Petition*, exhibit 2, which presents three separate Custom rulings regarding the classification of 90 percent aspirin mixed with 10 percent starch).

[8] *Staff Report of July 28, 1987*, p. A-1, and *Public China Petition*, pp. 4-5.

direct human consumption, is the product subject to this review. Aspirin is used principally as an analgesic to relieve mild to moderate pain, as an antipyretic to relieve fever, and as an anti-inflammatory agent. It is also used in treating stress and cardiovascular disease.[9] Rhodia reports that, although there has been an increasing demand for aspirin for heart disease therapy, because the dosage is low this application has not resulted in any significant change in demand.[10]

Bulk aspirin is produced by mixing salicylic acid with acetic anhydride, which results, after various proprietary processes, in a liquid containing acetic acid and aspirin. The acetic acid is removed by centrifuge and the remaining solution is dried to produce white crystals of pure bulk aspirin. The bulk aspirin is then typically (1) screened to separate into different granular (mesh) sizes, (2) ground into a fine powder (pharmaceutical form), or (3) combined with small amounts of inactive substances[11] (compound form), before packaging for storage and sale. Because of the additional processing, the pharmaceutical and compound forms sell at a premium price.[12] Rhodia reports that the bulk aspirin industry is mature; there have been only incremental improvements in technology, production methods, and development efforts since the original investigation and there have not been any significant changes in the supply and demand conditions or in the business cycle since the dumping order was imposed.[13]

## THE INDUSTRY IN THE UNITED STATES

### U.S. Producers

In 1987, there were four U.S. producers of bulk aspirin: Monsanto, with a plant in St. Louis, MO; Dow, with a plant in Midland, MI; Norwich-Eaton,[14] with a plant in Norwich, NY; and Sterling Drug, with a plant in Trenton, NJ. Monsanto and Dow, which accounted for about *** percent of U.S. production and virtually all open-market sales during the original investigation, did not further process any of the bulk aspirin into forms suitable for direct human consumption. Norwich-Eaton and Sterling Drug, however, consumed nearly all[15] of the bulk aspirin they produced in the production of tablets. Over 100 firms, in addition to Norwich-Eaton and Sterling Drug, processed bulk aspirin into forms suitable for direct human consumption.[16]

Since the original investigation, there has been a consolidation of the bulk aspirin industry. The St. Louis plant, previously operated by Monsanto and currently owned by Rhodia, has reportedly been the sole U.S. bulk aspirin production facility operational since 1995.[17]

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[9] *Staff Report of July 28, 1987*, p. A-4, and *Public China Petition*, p. 5.

[10] *Response* of Rhodia, p. 36.

[11] Inactive substances that are typically added are starch, lactose, cellulose, or coloring materials. These additives usually facilitate further processing by buyers; e.g., the addition of starch makes the aspirin more cohesive and easier to process into tablets. Active additives, if any, are in such quantities as to have no therapeutic effect.

[12] *Staff Report of July 28, 1987*, pp. A-4 and A-5, and *Public China Petition*, p. 6.

[13] *Response* of Rhodia, pp. 35-36.

[14] Norwich-Eaton was acquired by Procter and Gamble in 1982. *Procter & Gamble - Company Report*, abstracted from Investext May 20, 1996.

[15] *** about *** percent of its bulk aspirin. *Staff Report of July 28, 1987*, p. A-11.

[16] *Staff Report of July 28, 1987*, p. A-7.

[17] *Response* of Rhodia, pp. 3-4. Rhone-Poulenc acquired Monsanto's analgesics business, including the bulk aspirin manufacturing facility, in 1989; Rhone-Poulenc also acquired the assets of Dow's salicylate businesses, including bulk aspirin inventory and customer lists, in 1995. In 1997, Rhone-Poulenc spun off its pharmaceutical ingredients and specialty chemicals business and created Rhodia, whose assets include the bulk aspirin plant formerly owned by Monsanto and the aspirin business acquired from Dow. Rhone-Poulenc retains 70 percent I-5
(continued...)

### U.S. Production, Capacity, Shipments, and Financial Data

Data reported by U.S. producers of bulk aspirin in the Commission's original investigation and in response to its review institution notice are presented in table I-1. During the original investigation, producers' unit values for bulk aspirin declined from 1984 to 1986, while production, capacity utilization, total shipments, net sales, and operating income all decreased in 1985 and then recovered in 1986, but to levels still below 1984. During 1996-98, Rhodia reported decreasing total shipments, net sales, and operating income; these indicators, plus production[18] and capacity[19] were all lower than they had been during the period of the original investigation. All unit values were higher during 1996-98 than during the original investigation, but although domestic open-market shipment unit values increased steadily from 1996 to 1998, those of exports decreased. Rhodia reported that it is squeezed between declining shipments and rising costs and therefore has ***.[20]

## U.S. IMPORTS AND CONSUMPTION

### U.S. Importers

During the original investigation, there were at least a dozen firms that imported bulk aspirin from Turkey; however, the three largest accounted for *** percent of imports from Turkey and also imported from other countries. One of the three largest importers was ***.[21] In its *Response*, Rhodia reported that, because there were no imports from Turkey in 1998, it does not know of any firms that are currently importing bulk aspirin from Turkey. Rhodia further noted that there are numerous U.S. importers of bulk aspirin from other countries, including Bayer which currently imports from an affiliated plant in Spain.[22]

### U.S. Imports

As shown in figure I-1 and table I-2, U.S. imports of bulk aspirin from Turkey increased four-and-one-half fold between 1984 to 1986, and Turkey's share of total imports increased from 6.7 percent to 31.5 percent during the same period. Subsequent to the initiation of the antidumping investigation, such imports decreased in 1987 to slightly below the 1984 level and then continued to decline to zero in 1990. Since then, the only importation of bulk aspirin from Turkey was a negligible amount entered in 1997.[23]

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[17] (...continued)
ownership of Rhodia and the remaining 30 percent of Rhodia shares is independently held by investors. Sterling Drug was acquired by Bayer in 1994 and subsequently the bulk aspirin production unit was shut down. *Id.* According to an article in the *Chemical Marketing Reporter*, Jan. 6, 1997, the Norwich-Eaton plant was at that time the only U.S. producer of bulk aspirin other than Rhone-Poulenc (subsequently Rhodia); however, Rhodia reports that Norwich-Eaton ceased production of bulk aspirin in 1995 and now purchases bulk aspirin for its tableting operations (*Response* of Rhodia, p. 4).

[18] Although production increased in 1997, it is likely that the production in 1996 was reduced in order to sell off the inventory acquired from the December 1995 purchase of Dow's aspirin business.

[19] The capacity of the Monsanto plant to produce bulk aspirin during the original investigation was reportedly *** pounds; Rhodia reported current capacity of the same plant to be *** pounds.

[20] *Response* of Rhodia, p. 23 and exhibit 7.

[21] *Staff report of July 28, 1987*, p. A-8.

[22] *Response* of Rhodia, p. 28.

[23] Data on the value of annual imports reviewed by Customs that are subject to the antidumping duty order are listed in the *Case History and Scope Information*, available on Commerce's web site (http://www.ita.doc.gov/import_admin/records/sunset). These data list no imports during FY 1993-96. I-6
(continued...)

**Table I-1**
**Bulk aspirin: U.S. producers' capacity, production, shipments, and certain financial data, 1984-86 and 1996-98**

| Item | 1984 | 1985 | 1986 | 1996 | 1997 | 1998 |
|---|---|---|---|---|---|---|
| Production (*1,000 pounds*) | 29,660 | 23,365 | 27,628 | *** | *** | *** |
| Capacity (*1,000 pounds*) | 42,700 | 42,700 | 42,700 | ***[1] | ***[1] | ***[1] |
| Capacity utilization (*percent*) | 69.5 | 54.7 | 62.5 | ***[1] | ***[1] | ***[1] |
| Intracompany consumption (*1,000 pounds*)[2] | *** | *** | *** | 0 | 0 | 0 |
| Open-market domestic shipments:[3] | | | | | | |
| Quantity (*1,000 pounds*) | *** | *** | *** | *** | *** | *** |
| Value (*1,000 dollars*) | *** | *** | *** | *** | *** | *** |
| Unit value (*per pound*) | $*** | $*** | $*** | $*** | $*** | $*** |
| Export shipments: | | | | | | |
| Quantity (*1,000 pounds*) | *** | *** | *** | *** | *** | *** |
| Value (*1,000 dollars*) | *** | *** | *** | *** | *** | *** |
| Unit value (*per pound*) | $***[4] | $***[4] | $*** | $*** | $*** | $*** |
| Financial data:[3] | | | | | | |
| Net sales (*1,000 dollars*) | *** | *** | *** | *** | *** | *** |
| Cost of goods sold (*1,000 dollars*) | *** | *** | *** | *** | *** | *** |
| Gross profit or (loss): | | | | | | |
| Value (*1,000 dollars*) | *** | *** | *** | *** | *** | *** |
| Ratio to net sales (*percent*) | *** | *** | *** | *** | *** | *** |
| SG&A expenses (*1,000 dollars*) | *** | *** | *** | *** | *** | *** |
| Operating income or (loss): | | | | | | |
| Value (*1,000 dollars*) | *** | *** | *** | *** | *** | *** |
| Ratio to net sales (*percent*) | *** | *** | *** | *** | *** | *** |

**[1] Data presented do not include any capacity that may exist at Norwich-Eaton; according to an article published in the *Chemical Market Reporter*, Jan. 6, 1997, Norwich-Eaton's capacity was 4 million pounds, ***.**

**[2] Only Norwich-Eaton and Sterling Drug internally consumed bulk aspirin.**

**[3] Data for 1984-86 are for Monsanto and Dow, the only producers with open-market domestic shipments; Rhodia is the successor to these two firms.**

**[4] Unit values presented differ insignificantly from those presented in the staff report of the original investigation.**

**Source: *Staff Report of July 28, 1987*, pp. A-9, A-11, A-12, and A-21 for 1984-86 data, except where noted, and *Response* of Rhodia, pp. 25, 26, and 34 for 1996-98 data.**

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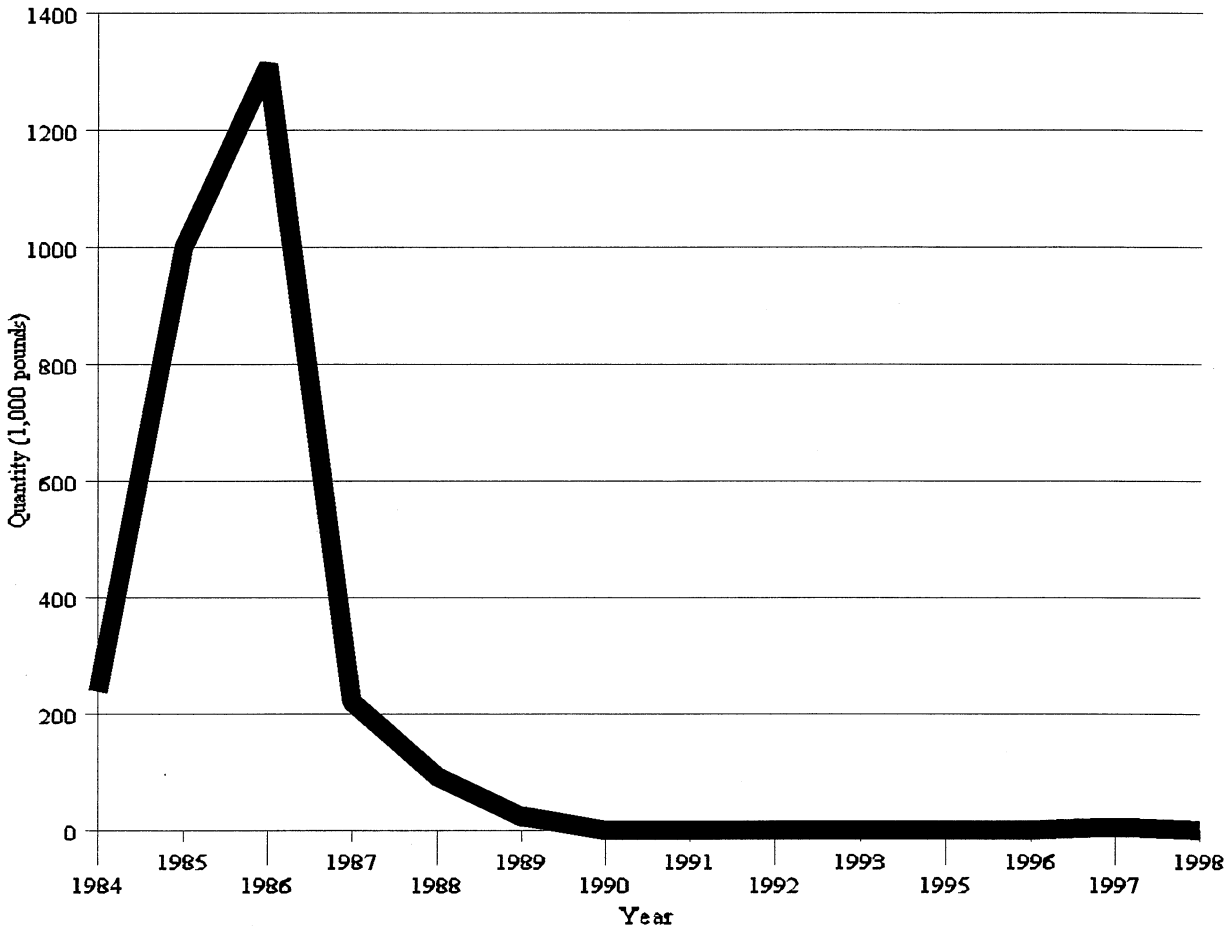
[23] (...continued)
Information received from Customs indicates that during FY 1997, deposits on antidumping duties amounted to $*** for imports reviewed that were valued at $***. *Antidumping/Countervailing Duty Annual Report.*

Figure I-1
Bulk aspirin: U.S. imports from Turkey, 1984-98




Source: *Staff Report of July 28, 1987*, p. A-29 for 1984-86 (which were from official Commerce statistics), and official Commerce statistics for 1987-98.



I-8

**Table I-2**
**Bulk aspirin:[1] U.S. imports, by sources, 1984-86 and 1996-98**

| Item | 1984 | 1985 | 1986 | 1996 | 1997 | 1998 |
|---|---|---|---|---|---|---|
| | | | Quantity (*1,000 pounds*) | | | |
| Turkey | 238 | 1,001 | 1,311 | 0 | 5 | 0 |
| Other sources[2] | 3,328 | 3,204 | 2,848 | 3,400 | 4,695 | 6,411 |
| Total | 3,566 | 4,205 | 4,159 | 3,400 | 4,700 | 6,411 |
| | | | Value (*1,000 dollars*) | | | |
| Turkey | 293 | 1,228 | 1,649 | 0 | 17 | 0 |
| Other sources[2] | 5,449 | 5,189 | 4,032 | 4,889 | 7,601 | 10,576 |
| Total | 5,742 | 6,417 | 5,681 | 4,889 | 7,601 | 10,576 |
| | | | Share of total quantity (*percent*) | | | |
| Turkey | 6.7 | 23.8 | 31.5 | 0 | 0.1 | 0 |
| Other sources[2] | 93.3 | 76.2 | 68.5 | 100.0 | 99.9 | 100.0 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| | | | Unit value (*per pound*) | | | |
| Turkey | $1.23 | $1.23 | $1.26[3] | (4) | $3.40 | (4) |
| Other sources[2] | 1.64 | 1.62 | 1.42 | $1.44 | 1.62 | $1.65 |
| Total | 1.61 | 1.53 | 1.37 | 1.44 | 1.62 | 1.65 |

[1] Data presented for 1984-86 are for imports under former TSUS item 410.72; Data presented for 1996-98 are for imports under HTS subheading 2918.22.10 plus an estimate for the imports from China of bulk aspirin mixed with starch that are imported under HTS subheading 3003.90. The bulk aspirin-starch is estimated to have amounted to 420,000 pounds, valued at $506,000, in 1996; 1,014,000 pounds, valued at $1,612,000, in 1997; and 1,926,000 pounds, valued at $3,022,000, in 1998.

[2] The primary other sources during 1984-86 were Germany, France, and China; between 1984 and 1986, imports from Germany were essentially level, imports from China doubled, and imports from France fell by 94 percent. During 1996-98, there were no imports from Germany and imports from France were negligible, whereas imports from China accounted for 59 percent of total imports and imports from Colombia, Mexico, Thailand, and Argentina accounted for 36 percent.

[3] Differs insignificantly from data presented in the staff report of the original investigation.

[4] Not applicable.

Source: *Staff Report of July 28, 1987*, p. A-29, for 1984-86 data (which were from official Commerce statistics), and official Commerce statistics for 1996-98 data, except where noted (values are landed, duty paid, but do not include any antidumping duty).



I-9

Imports from other sources were about 3 million pounds during the original investigation and in 1996. By 1997, however, these imports amounted to 6.4 million pounds. China, Argentina, Thailand, Mexico, and Spain accounted for virtually all of the increase between 1996 and 1998.

Separate official statistics are available for bulk aspirin that has not been mixed with starch, lactose, etc. Bulk aspirin that has been mixed with other materials is classified in a residual or "basket" HTS category, and data are generally not available for the aspirin-mixture component of this basket category, so import data on bulk aspirin may be understated. However, it appears that China accounts for a substantial amount of imports classified under the basket category for mixtures and estimates have been made to adjust for these imports.[24]

## Apparent U.S. Consumption

During the original investigation, apparent U.S. consumption of bulk aspirin decreased in 1985, then increased in 1986 but remained below the 1984 level (table I-3). Declining consumption during the original investigation was attributed to competition with products containing ibuprofen and acetaminophen, which unlike aspirin do not upset the stomach. Also in late 1984 came the discovery that the development of Reyes Syndrome in young children could be linked to aspirin taken when they were sick with chicken pox or flu; this resulted in warning labels being required on bottles of aspirin beginning in early 1985. However, aspirin's efficacy in treating cardiovascular problems was also just becoming known, and was expected to affect demand for aspirin in a beneficial way.[25] During the 1996-98 period, consumption of bulk aspirin continued to decline. Although there has been an increasing demand for aspirin in heart disease therapy, Rhodia reports that the tablets are low-dosage and have not caused any significant change in demand; nevertheless, the firm believes that the long-term decline in demand has leveled off.[26]

During the original investigation, U.S. producers lost market share between 1984 and 1986, but this loss was less than 3 percentage points. In 1996, Rhodia's market share was almost the same as that of the U.S. producers in 1986. However, during 1996-98, Rhodia's share of the market decreased by 21 percent on the basis of quantity and by 16 percent on the basis of value. China, which accounted for 43

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[24] Export data for China are available for aspirin in the *World Trade Atlas*. A comparison of these data with those for U.S. imports of pure aspirin reveals that only about 61 percent of China's exports to the United States during 1996-98 was imported under HTS subheading 2918.22.10, the classification for pure aspirin. An argument was made in the *Response* of Rhodia that imports of aspirin-starch mixtures were being classified in HTS subheading 3003.90, a basket classification for mixtures; Rhodia stated that a unit-value analysis of import data for this basket category suggested that a substantial portion of imports from China were aspirin-starch and recommended that imports from China into New York be used as an estimate of the aspirin-starch component of imports under this basket classification (*Response* of Rhodia, pp. 14, 15, and 34). There have been Customs rulings that aspirin-starch mixtures are properly classifiable in the basket category (three such rulings were presented in the *Public China Petition*, exhibit 2), and an analysis of the monthly unit values of imports in the basket category from China into New York indicates that they were substantially less than those for imports from China into any other port. However, adding the imports under the basket category into New York to the imports of the chemically pure aspirin results in quantities that exceed in every year the Chinese export data during 1996-98. Therefore, staff decided that it would be more appropriate to use the export quantities reported for China's exports of aspirin as an estimate of U.S. imports of aspirin from China; values were estimated using the unit values of imports of the basket category into New York (after removal of obviously nonaspirin products), and may be overstated because this basket also contains higher value mixtures. There do not appear to be any imports of aspirin mixtures from Turkey, and staff believes such imports from sources other than China are negligible.

[25] *Staff Report of July 29, 1987*, pp. A-29, A-30, and A-31.

[26] *Response* of Rhodia, p. 36.



I-10

**Table I-3**
**Bulk aspirin: Apparent U.S. consumption and market shares, 1984-86 and 1996-98**

| Item | 1984 | 1985 | 1986 | 1996 | 1997 | 1998 |
|---|---|---|---|---|---|---|
| | | | Apparent U.S. consumption | | | |
| Quantity (*1,000 pounds*) | 28,510 | 25,931 | 27,107 | *** | *** | *** |
| Value (*1,000 dollars*) | 58,440 | 46,553 | 47,625 | *** | *** | *** |
| | | | Share of consumption quantity (*percent*) | | | |
| Producers' U.S. shipments | 87.5 | 83.8 | 84.7 | *** | *** | *** |
| Imports: | | | | | | |
| Turkey | .8 | 3.9 | 4.8 | 0 | *** | 0 |
| Other sources | 11.7 | 12.3 | 10.5 | *** | *** | *** |
| Total | 12.5 | 16.2 | 15.3 | *** | *** | *** |
| | | | Share of consumption value (*percent*) | | | |
| Producers' U.S. shipments | 90.2 | 86.2 | 88.1 | *** | *** | *** |
| Imports: | | | | | | |
| Turkey | .5 | 2.6 | 3.5 | 0 | *** | 0 |
| Other sources | 9.3 | 11.1 | 8.5 | *** | *** | *** |
| Total | 9.8 | 13.8 | 11.9 | *** | *** | *** |

**Source: *Staff Report of July 28, 1987*, p. A-29, for 1984-86 data (which were from official Commerce statistics), *Response* of Rhodia, p. 34, and official Commerce statistics for 1996-98 data; (values are landed, duty paid, but do not include any antidumping duty).**

percent of the increased imports in 1998 compared with 1996, picked up much of Rhodia's lost market share; Argentina, Thailand, Mexico, and Spain, also picked up market share.

## THE INDUSTRY IN TURKEY

At the time of the original investigation, there were four producers of bulk aspirin in Turkey: Atabay, Proses, Bayer Turkey, and Ilkim. There were no data available for Ilkim,[27] but capacity, production, and export data were available for the remaining producers, who accounted for all of the exports to the United States. During 1983-85, the capacity of these firms to produce bulk aspirin remained constant at 3.1 million pounds while production increased from 1.7 million pounds to 2.4 million pounds and exports increased from 0.9 million pounds to 2.3 million pounds. The U.S. share of exports grew from 14.5 percent in 1983 to 63.1 percent in 1985. At that time, all three of the firms for which data were available reportedly ***.[28]

[27] Ilkim was believed to be a tableter that produced bulk aspirin solely for captive use. *Response* of Rhodia, p. 30.

[28] *Staff Report of July 28, 1987*, pp. A-3 and A-27.



I-11

There are no current data available concerning the capacity or production of the bulk aspirin industry in Turkey. Exports decreased by *** percent from 1985 to 1996 and fell by another *** percent in 1997.[29] Rhodia notes that Atabay and Bayer Turkey are poised to re-enter the U.S. market if the antidumping order is revoked.[30]

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[29] According to official UN statistics (which are copyrighted and not to be distributed outside the U.S. Government), Turkey's exports of bulk aspirin amounted to *** pounds, valued at $***, in 1996, and *** pounds, valued at $***, in 1997. Spain and Bulgaria received most of the 1996 exports and 1997 exports went primarily to Germany and Tajikistan.

[30] *Response* of Rhodia, pp. 15-18. Atabay, which received a zero-percent dumping margin on a small shipment of bulk aspirin imported in 1997, is also a producer and exporter of bulk acetaminophen and therefore has established channels of distribution in the U.S. market with customers that typically also produce aspirin tablets. The tableter activities of Bayer in the United States, which *** began shifting its bulk aspirin sourcing from Rhodia to Bayer's Spanish bulk aspirin plant in 1998, could be supplied completely by Bayer Turkey and the Bayer Spanish plant. *Id.*

# APPENDIX A

# *FEDERAL REGISTER* NOTICES



A-1

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731-TA-364 (Review)]**

### Aspirin From Turkey

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of an expedited five-year review concerning the antidumping duty order on aspirin from Turkey.

**SUMMARY:** The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

**EFFECTIVE DATE:** June 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Noreen (202-205-3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:**

*Background.*—On June 3, 1999, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 10012, March 1, 1999) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

*Staff report.*—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on July 1, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found responses submitted by Rhodia, Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

the Secretary on what determination the Commission should reach in the review. Comments are due on or before July 7, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by July 7, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Determination.*—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 8, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99-14912 Filed 6-10-99; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-489-602]**

### Final Results of Expedited Sunset Review: Aspirin From Turkey

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: aspirin from Turkey.

**SUMMARY:** On March 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on aspirin from Turkey (64 FR 9970) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Review* section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-6397 or (202) 482-1560, respectively.

**EFFECTIVE DATE:** July 6, 1999.

### Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

### Scope

The product covered by this review is acetylsalicylic acid (aspirin) from Turkey, containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, eighth edition, American Pharmaceutical Association, and is not in tablet, capsule, or similar forms for direct human consumption. This product is currently classifiable under the Harmonized Tariff Schedule ("HTS") of the United States item numbers 2918.22.10 and 3003.90.00.[1] The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

### History of the Order

On July 1, 1987, the Department issued a final determination of sales at less than fair value with respect to imports of aspirin (acetylsalicylic acid) from Turkey.[2] The antidumping duty order on aspirin was issued by the Department on August 25, 1987, and, in the order, the dumping margins that were found in the final determination were confirmed.[3] Since the imposition of this order, the Department has conducted one administrative review.[4] The order remains in effect for all manufacturers and exporters of the subject merchandise.

This review covers all producers and exporters of aspirin from Turkey.

### Background

On March 1, 1999, the Department initiated a sunset review of the antidumping order on aspirin from Turkey (64 FR 9970), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Rhodia on March 15, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from Rhodia on March 31, 1999, within the 30-day deadline specified in the *Sunset Regulations* in section 351.218(d)(3)(i). Rhodia claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of the domestic like product.

Additionally, Rhodia stated that it was not a participant in either the original investigation nor the lone administrative review conducted by the Department. However, Rhodia stated that, of the four domestic producers originally involved in the investigation, two—Sterling Drug and Norwich-Eaton—have since ceased production of subject aspirin. The other two producers, Monsanto Chemical Company and Dow Chemical U.S.A., had their aspirin production taken over by Rhone-Poulenc S.A. Rhodia is the subsidiary of Rhone-Poulenc S.A. responsible for bulk aspirin production and is the successor in interest to Monsanto, which was the original petitioner.

We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, the Department determined to conduct an expedited, 120-day, review of this order.

### Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the

[1] In its substantive response, Rhodia noted that the written description of the scope of the order indicated that this product was covered under not only under HTS item number 2918.22.10, but also item number 3003.90.00. The Department agrees. Although this item number has not been previously included in the scope section of prior Department determinations in this case, we confirmed with the U.S. Customs Service that both HTS item numbers were appropriate (*see* Memo to File; Re: HTS Item Numbers for Aspirin). Therefore, we have included HTS item number 3003.90.00.

[2] *See Final Determination of Sales at Less Than Fair Value; Acetylsalicylic Acid From Turkey*, 52 FR 24492 (July 1, 1987).

[3] *See Acetylsalicylic Acid From Turkey; Antidumping Duty Order*, 52 FR 32030 (August 25, 1987).

[4] *See Acetylsalicylic Acid From Turkey; Final Results of Antidumping Duty Administrative Review*, 63 FR 34146 (June 23, 1998), and *Termination of Antidumping Duty Administrative Review; Acetylsalicylic Acid From Turkey*, 58 FR 11208 (February 24, 1993).

Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Rhodia's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

**Continuation or Recurrence of Dumping**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping when (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping when a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, Rhodia argued that revocation of the order will likely lead to continuation or recurrence of dumping of aspirin from Turkey. Rhodia stated that compelling evidence supporting this conclusion includes: (1) The cessation of Turkish imports following the issuance of the order; (2) increased imports of bulk aspirin from other countries; (3) downward pricing pressure resulting from intense competition in the U.S. market from Chinese imports; and (4) continuing interest in the U.S. market by Turkish producers as evidenced by the temporary resumption of Turkish imports in 1997.

With respect to whether imports of the subject merchandise ceased after the issuance of the order, Rhodia, citing data from the United States Census Bureau, argued that imports of Turkish aspirin declined significantly with the imposition of dumping duties in 1987. Specifically, Rhodia stated that, in 1987, the year immediately following imposition of the order, import volumes from Turkey declined dramatically, decreasing from 1.3 million pounds to just over 200,000 pounds. Rhodia stated that imports of aspirin from Turkey continued to decline until they completely ceased in 1990. Further, Turkish imports remained at zero until 1997 when imports rose to just over 5,000 pounds. The 1997 shipment, Rhodia argues, was the basis for the sole administrative review of the order, conducted for the 1996–1997 time period. Therefore, Rhodia argues, the decline and cessation of Turkish import volumes of bulk aspirin following the imposition of the antidumping duty order provides a strong indication that, absent an order, dumping would be likely to recur, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes. (*See* Substantive Response of Rhodia at 10.)

Additionally, Rhodia also argues that, because of the nature of the market for bulk aspirin, were Turkish producers to reenter the U.S. market, they would have to dump in order to compete. Rhodia argues that bulk aspirin is a commodity and, as such, competition is based primarily on price. Further, recent imports of bulk aspirin from other countries, most notably China, have increased and, as import volumes have increased, prices have fallen. Therefore, Rhodia argues that the only way that Turkish producers would realistically be able to reenter the U.S. market would be to meet the price competition posed by the low Chinese import prices.

Consistent with section 752(c) of the Act, the Department has considered whether dumping continued at any level above de minimis after the issuance of the order. In the administrative review covering the 1996–1997 period, the Department determined that no dumping margin existed for Atabay Kimya Sanayi ve Ticaret A.B. ("Atabay") (63 FR 34146, June 23, 1998) and, therefore, a cash deposit rate of zero was imposed for Atabay. Because neither Proces Kimya Sinayi ve Ticaret ("Proces"), one of the two companies examined in the original investigation, nor any other companies, other than Atabay, have been examined in the course of administrative review, the deposit rates for all companies, other than Atabay, continue to be the margins of dumping found in the original investigation—38.60 percent for Proces and 32.98 percent for all others. Therefore, we determine that although there was no dumping found for Atabay in the 1997 review period, the same cannot be said for other Turkish producers/exporters.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The import statistics on imports of the subject merchandise from pre-order 1986 to 1998 (as provided by the domestic industry and confirmed by the Department by United States Census Bureau IM146 data) demonstrate that imports of the subject merchandise declined dramatically immediately following the imposition of the order, and continued to decline until 1990 when imports ceased. The only imports of bulk aspirin from Turkey since 1990 involved just over 5,000 pounds in 1997. We agree with Rhodia that imports from Turkey have declined substantially since the imposition of the order in 1987 and, therefore, we determine that, although dumping was eliminated by Atabay, its export volumes have declined significantly since the issuance of the order.

As set forth in the *Sunset Policy Bulletin* (section II.A.3), and consistent with the SAA at 889–90 and the House Report at 63, the Department normally will find that revocation of the antidumping duty order likely will lead to continuation or recurrence of dumping when dumping margins continued at any level after the issuance of the order or when dumping was eliminated after the issuance of the order and import volumes of the subject merchandise declined significantly or ceased. With respect to Atabay, although dumping was eliminated in 1997, shipments of the subject merchandise have declined dramatically. Further, with respect to all

other Turkish producers/exporters, antidumping duty deposit rates remain in effect and we have no reason to believe that dumping has been eliminated. On the basis of this analysis, in conjunction with the fact that respondent interested parties have waived their right to participate in this review before the Department, and, absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

**Magnitude of the Margin**

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for two Turkish producers/exporters of the subject merchandise, Atabay and Proses, and for all other producers/exporters (52 FR 24492, July 1, 1987). The margins calculated in that determination were 27.35 percent for Atabay, 38.60 percent for Proses, and an "all others" rate of 32.98 percent. Atabay, as mentioned above, received a zero margin during the sole administrative review for the 1996–1997 review period (63 FR 34146, June 23, 1998). We note that, to date, we have not issued any duty absorption findings in this case.

In its substantive response, Rhodia argued that the Department, consistent with its *Sunset Policy Bulletin*, should provide the Commission with the company-specific and all others rates from the original investigation as the magnitude of the margin likely to prevail if the order were revoked. Alternatively, Rhodia suggested that the Department could conclude that higher margins would prevail if the order were revoked. In this case, Rhodia suggests that, using Turkish import and export statistics coupled with average U.S. import statistics, the Department could calculate a new margin of 63.14 percent.

Consistent with section II.B.1 of the *Sunset Policy Bulletin*, the Department finds that the rates from the original investigation are probative of the behavior of producers/exporters without the discipline of the order. As a result, the Department determines, absent argument and evidence to the contrary, that the margins from the original investigation are the ones most likely to prevail if the order were revoked. As such, we will report to the Commission the company-specific and all others rates contained in the Final Results of Review section of this notice.

**Final Results of Review**

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Atabay Kimya Sanayi ve Ticaret | 27.35 |
| Proces Kimya Sanayi ve Ticaret | 38.60 |
| All Others | 32.98 |

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

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# APPENDIX B

# STATEMENT ON ADEQUACY



B-1

## EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY
in
*Aspirin from Turkey*, Inv. No. 731-TA-364 (Review)

On June 3, 1999, the Commission determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Act, 19 U.S.C. 1675(c)(3)(B). The Commission determined that the domestic interested party group response was adequate. In this regard, the Commission received a response containing company specific data from Rhodia, Inc., that appears to account for all current U.S. domestic production of the domestic like product. Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant conducting a full review. The Commission therefore determined to conduct an expedited review.