

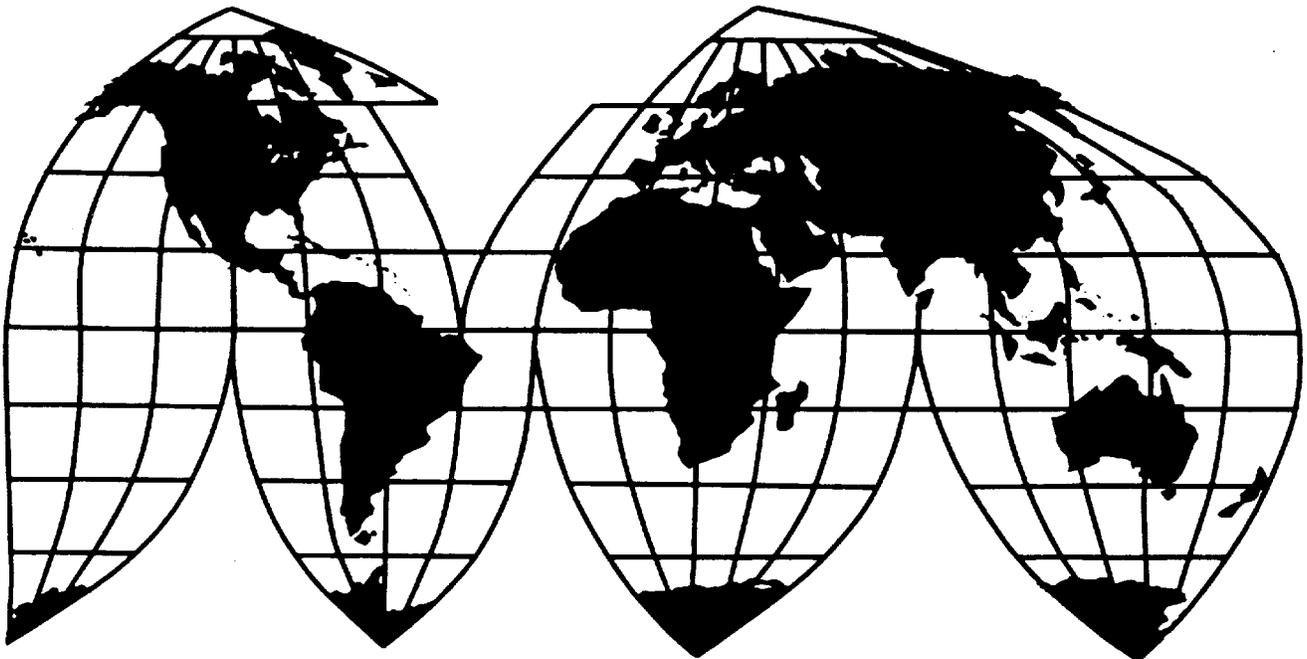
Synthetic Indigo From China

Investigation No. 731-TA-851 (Review)

Publication 3846

April 2006

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-851 (Review)

SYNTHETIC INDIGO FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission (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 synthetic indigo from China would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on May 2, 2005 (70 F.R. 22701) and determined on August 5, 2005 that it would conduct full review (70 F.R. 48588, August 18, 2005). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on September 27, 2005 (70 F.R. 56489). The hearing was held in Washington, DC, on February 9, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order on synthetic indigo from China would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

I. BACKGROUND

This review presents rare factual circumstances and legal issues.

Since the early 1960s, there has been only one domestic producer of synthetic indigo, Buffalo Color Corp. (“BCC”). In June 2000, the Commission determined that an industry in the United States was materially injured by reason of less than fair value imports of synthetic indigo from China.² That same month, Commerce issued an antidumping duty order on imports of synthetic indigo from China.³ In 2002, two years after the imposition of the order, BCC filed for Chapter 11 bankruptcy protection but continued production of synthetic indigo. In 2003, BCC reduced its workforce, laying off all but 12 of its 120 employees, and began to divest its other businesses (e.g., anhydride and alkyl anilines production). BCC ceased commercial production of synthetic indigo in *** 2003.⁴ During 2004, BCC produced *** amounts of synthetic indigo on short-term production runs during only February and March and only employed *** workers, all of whom assisted in the production runs.⁵ BCC did not produce any synthetic indigo in 2005.⁶

The Commission instituted this five-year review on May 2, 2005.⁷ The Commission received substantive responses from BCC, the sole domestic producer of synthetic indigo, Clariant Corp. (“Clariant”) and Trinity Manufacturing, Inc. (“Trinity”), U.S. importers of synthetic indigo from China, Jiangsu Taifeng Chemical Industrial Co., Ltd. (“Jiangsu”) and Chongqing Taifeng Taixing Chemical Industrial Co., Ltd. (“Chongqing”), Chinese producers of the subject merchandise, and Wonderful Chemical Industrial Ltd. (“Wonderful”), a Chinese exporter of the subject merchandise.

On August 5, 2005, the Commission determined that it should proceed to a full review. In so doing, it found that BCC’s individual response was adequate. As BCC accounted for one hundred percent of U.S. production during the period of review, the Commission also determined that the domestic interested group response was adequate. Because the Commission received adequate responses from Chinese firms representing a substantial portion of Chinese production of synthetic indigo and adequate responses from importers of the subject merchandise, the Commission determined that the respondent

¹ Chairman Koplan and Commissioner Aranoff concur in the determination for the reasons indicated in their separate views. See Views of Chairman Stephen Koplan and Commissioner Shara L. Aranoff.

² Synthetic Indigo from China, Inv. No. 731-TA-851 (Final), USITC Pub. 3310 at 1 (June 2000) (“Original Determination”).

³ 65 Fed. Reg. 37961 (June 19, 2000).

⁴ Confidential report (“CR”) at I-12, public report (“PR”) at I-8.

⁵ Notes from December 13, 2005 visit by Commission staff to Buffalo Color Corporation, Buffalo, New York (“Staff Field Trip Notes”) at 1; BCC’s Supplemental Response to the Notice of Institution at 3 (July 7, 2005) (EDIS CBI 05-385).

⁶ CR/PR at Table III-1.

⁷ 70 Fed. Reg. 22701 (May 2, 2005).

interested group response was adequate. Having found both the domestic and respondent interested group responses to be adequate, the Commission determined to conduct a full review.⁸

In an unusual circumstance, after the Commission voted to conduct full reviews, but prior to its hearing, the bankruptcy court's restructuring officer reported that the Pension Benefit Guarantee Corporation ("PBGC") secured a lien on BCC's assets, effectively making it the owner of BCC and putting it in control of all of BCC's assets.⁹ On February 14, 2006, the restructuring officer informed the Commission that BCC Corporation was being forced to liquidate its assets, including its indigo operations.¹⁰ During this same time period, BCC withdrew its notice of appearance in this review.¹¹

II. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER IS REVOKED

A. Legal Standard In A Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke 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 the antidumping duty order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."¹² The SAA states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports."¹³ Thus, the likelihood standard is prospective in nature.¹⁴

The U.S. Court of International Trade has found that "likely," as used in the sunset review provisions of the Act, means "probable," and the Commission applies that standard in five-year

⁸ Commission's Statement on Adequacy. CR/PR at Appendix A.

⁹ CR at III-2, PR at III-1.

¹⁰ Electronic mail message from ***, BCC Restructuring Officer, February 14, 2006. See CR at III-3, PR at III-2. *** notified the Commission as early as January 23, 2006 that the PBGC will "likely authorize BCC to convert to chapter 7 liquidation." CR at III-2, PR at III-2.

¹¹ Letter to Commission Secretary Marilyn R. Abbott from Ronald M. Wisla, Counsel for BCC, January 27, 2006.

¹² 19 U.S.C. § 1675a(a).

¹³ Uruguay Round Agreements Act Statement of Administrative Action, H.R. Rep. No. 103-316, vol. I (1994) at 883-84 ("SAA"). The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed." SAA at 883.

¹⁴ 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.

reviews.^{15 16 17} The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”¹⁸ According to the SAA, a “reasonably foreseeable time” will vary from case-to-case, but normally will exceed the “imminent” timeframe applicable in a threat of injury analysis in original investigations.”¹⁹

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, 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 orders are revoked or the suspended investigation is terminated.”²⁰ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).²¹

¹⁵ See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), aff’d without opinion, 05-1019 (Fed. Cir. August 3, 2005); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int’l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int’l Trade Dec. 20, 2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

¹⁶ Vice Chairman Okun notes that, consistent with her dissenting views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” to mean “probable.” See Usinor Industeel, S.A. et. al. v. United States, No. 01-00006, Slip Op. 02-39 at 13 (Ct. Int’l Trade April 29, 2002). However, she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses the issue. See also Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 (Review) and 731-TA-707-710 (Review)(Remand), USITC Pub. 3754 (Feb. 2005).

¹⁷ Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape from Italy, USITC Pub. 3698 at 24, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” but she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.

¹⁸ 19 U.S.C. § 1675a(a)(5).

¹⁹ 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.*

²⁰ 19 U.S.C. § 1675a(a)(1).

²¹ 19 U.S.C. § 1675a(a)(1). With respect to the antidumping duty order under review, Commerce has not issued any duty absorption findings. CR at I-7, PR at I-5. 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.

B. Domestic Like Product and Industry

1. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”²² The Act defines the “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.”²³ The Commission’s practice in five-year reviews is to look to the like product definition from the original determination and any previous reviews and consider whether the record indicates any reason to revisit that definition.²⁴

Commerce has defined the imported product subject to the order under review as:

The deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as “Vat Blue 1.” Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (e.g., powder, granular, paste, liquid, or solution) and in any strength.²⁵

Indigo is a vat dye with a characteristic deep blue color that has a good resistance to color degradation by light or heat. Indigo dyes are used primarily as fiber and fabric dyes, mostly in connection with the manufacture of denim products. Approximately 98 percent of indigo dyes are used in the production of denim, with the remaining two percent used by the food coloring industry.²⁶

In the original investigation, the Commission defined a single domestic like product coextensive with Commerce’s scope description.²⁷ The only domestic like product issues raised in the preliminary phase of the original investigation concerned whether the various forms or uses of synthetic indigo should be considered either as a single like product or several.²⁸ In their responses to the notice of institution of this review, the parties indicated that they agree with the manner in which the Commission defined the domestic like product in the original investigation.²⁹

²² 19 U.S.C. § 1677(4)(A).

²³ 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. 249, 96th Cong., 1st Sess. 90-91 (1979).

²⁴ See Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan and the United Kingdom, Inv. No. 701-TA-381-382 and 731-TA-797-804 (Review), USITC Pub. 3788 at 5-6 (July 2005); Crawfish Tail Meat from China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 at 4-5 (July 2003); Steel Concrete Reinforcing Bar from Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 4-5 (Feb. 2003).

²⁵ Synthetic Indigo from the People’s Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order, 70 FR 53165, 53166 (Sept. 7, 2005).

²⁶ CR at I-9, PR at I-7.

²⁷ Original Determination, USITC Pub. 3310 at 5.

²⁸ Original Determination, USITC Pub. 3310 at 5; Synthetic Indigo from China, Inv. No. 731-TA-851 (Preliminary), USITC Pub. 3222 at 6-9 (Aug. 1999).

²⁹ CR at I-12, PR at I-8.

The record contains no information indicating that any of the characteristics of synthetic indigo has changed since the time of the original investigation.³⁰ We note that, as detailed above, BCC, the sole domestic producer of synthetic indigo during the period of review, ceased commercial production of synthetic indigo in *** 2003 and currently BCC likely is liquidating its assets.³¹ In light of these facts and the lack of any contrary argument by the parties, we define the domestic like product in the same manner as in the original investigation and coextensive with the scope of the order.

2. Domestic Industry

The Act defines the relevant domestic industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”³² Thus, the Commission’s definition of the domestic industry is derivative of our finding as to the domestic like product. The statute’s domestic like product and domestic industry provisions ostensibly apply both to original investigations and to five-year reviews.³³ The definitions were first adopted for original investigations and then referenced for five-year reviews when such reviews were added to the statutory scheme. Thus, if this review were instead an original investigation and there were no current domestic production of synthetic indigo, the Commission would have to make its injury determination with respect to the industry producing the product that is “most similar in characteristics and uses” to synthetic indigo.³⁴

The issue, however, is more complex in a five-year review, given that the Commission is reviewing the likely effect of revocation of an existing order and must extrapolate into the reasonably foreseeable future based on past events. For the Commission, the underlying purpose of a five-year review is to determine whether revocation of an order would likely lead to the continuation or recurrence of material injury to the industry.³⁵ The statute also directs the Commission to take into account its prior injury determinations, which includes its findings as to like product and domestic industry, and which specifically requires consideration of the impact of imports on the industry during the period preceding the order.³⁶ In addition, the Commission must consider whether any improvement in the state of the

³⁰ See CR at I-9-11, PR at I-7-8.

³¹ CR at I-12, PR at I-8.

³² 19 U.S.C. § 1677(4)(A). In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States. See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

³³ The terms “domestic like product” and “industry” appear in identical form in the statutory provisions governing both original investigations and five-year reviews, e.g., 19 U.S.C. § 1673d(b), 1675a(a), 1677(4), and 1677(10). The terms are defined in a general provision that expressly applies “{f} or {the} purpose of this subtitle.” 19 U.S.C. § 1677. The referenced subtitle is subtitle IV of title 19 of the U.S. Code, which encompasses both original investigations and five-year reviews. See U.S.C.A. at 7-8 (1999) (indicating contents of subtitle IV).

³⁴ See, e.g., Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 at 5 (Aug. 2003) (absent domestic production of frozen basa and tra fillets, the Commission defined the domestic product as frozen catfish fillets); Nepheline Syenite from Canada, Inv. No. 731-TA-525, USITC Pub. 2502 at 7-11 (April 2002) (absent domestic production of nepheline syenite, the Commission defined the domestic product as feldspar and aplite).

³⁵ 19 U.S.C. § 1675a(a)(1). See also SAA at 883-84.

³⁶ 19 U.S.C. § 1675a(a)(1)(A). See also SAA at 884. See Cheflene Corp. v. United States, 170 F.Supp.2d 1320, 1326 (Ct. Int’l Trade 2001) (“The Commission has interpreted § 1675a(a)(1)(A) to include its prior like product

(continued...)

industry is related to the order and whether the industry is vulnerable to material injury if the order is revoked.³⁷ Thus, the statute directs the Commission to review the likely effects of the revocation of an order on that collection of entities, the domestic industry, producing and likely to produce products that compete directly with the subject imports. To do so, the Commission first must look back to the original investigation and the industry for which the remedial order was imposed.³⁸

In a typical five-year review, the domestic like product found in the original investigation remains in production during the period of review. Hence, the Commission generally adopts the like product and industry definitions from the original investigation. While there have been some reviews where the Commission has found no domestic production of a specific product within the scope of the review, to date, such reviews have involved situations where there was domestic production of products “like” at least some of the products within the scope of the subject merchandise. Thus, the Commission generally finds production of the domestic like product.³⁹

In addition, the Commission indicated in the Notice of Final Rulemaking preamble that, in appropriate circumstances, it retains the discretion to revisit its original domestic like product and domestic industry definitions in five-year reviews.⁴⁰ The Commission has done so in several circumstances such as when there has been an evolution in the product or the industry since the original investigation.⁴¹ In virtually all reviews to date, there has been domestic production of the domestic like product even if the product or the industry has evolved since the original investigation. The Commission, however, has not encountered the unique set of circumstances presented in the current review – no

³⁶ (...continued)
determinations”).

³⁷ 19 U.S.C. § 1675a(a)(1)(B) and (C). See also SAA at 884-85.

³⁸ Cheflin, 170 F.Supp.2d at 1327 (finding that the Commission may treat the original determination as a “starting point” in its analysis).

³⁹ See Ferrovandium and Nitrided Vandium from Russia, Inv. No. 731-TA-702 (Review), USITC Pub. 3420 at 5 (May 2001) (absent U.S. production of nitrided vandium during the period of review, the Commission narrowed the domestic product to include ferrovandium only); Extruded Rubber Thread from Malaysia, Inv. No. 731-TA-527 (Review), USITC Pub. 3327 at 5-6 (July 2000) (while subject imports included both food-grade and non-food-grade extruded rubber thread, the domestic like product included non-food-grade extruded rubber thread only).

⁴⁰ 63 Fed. Reg. 30599, 30602, 30604 (June 5, 1998). See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1318 (Ct. Int’l Trade 2003) (quoting the Commission’s Notice of Final Rulemaking, the Commission may “revisit its like product determination when there have been significant changes in the products at issue since the original investigation . . .”).

⁴¹ See, e.g., Internal Combustion Industrial Forklift Trucks from Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 at 3, 17 (Dec. 2005) (noting changes in manufacturing operations since the original investigation, thus changing the definition of domestic like product to eliminate any reference to frame production) (noting “substantial changes” in the U.S. industry and market, and finding that appropriate circumstances did not now exist to exclude related producers from the domestic industry), Petroleum Wax Candles from China, Inv. No. 731-TA-282 (Second Review), USITC Pub. 3790 at 7-9 (July 2005) (redefined like product and domestic industry to include a blended product that was not produced during the original investigation), Cut-to-Length Carbon Steel Plate from China, Russia, South Africa and the Ukraine, Inv. Nos. 731-TA-753-756 (Review), USITC Pub. 3626 at 8-9 (Sept. 2003) (redefined like product to include microalloy steel cut-to-length plate because of changes in usage since the original investigations).

commercial domestic production since 2003 and an industry that is about to be liquidated.^{42 43} Thus, the Commission has not had to consider whether to investigate in a five-year review a domestic industry composed of not only totally different producers than existed in the original investigation, but also a totally different set of producers who are manufacturing an entirely different product from that examined in the original investigation and that was not the subject of its original investigation. To do so would require the Commission here to define the domestic like product as that which is “most similar in characteristics and uses with” the subject product where that “most similar” product was not part of the original investigation, is manufactured by entirely different producers, and, assessed on the record evidence in this review, is neither interchangeable with the subject imports nor competes with them.⁴⁴

A number of factors weigh in favor of making a five-year review determination with respect to the domestic industry that produced the domestic like product in the original investigation. It is that industry that received protection from subject imports under the existing order. The statute requires the Commission to take into account its prior injury determination. In addition, the Commission must consider whether “any improvement in the state of the industry is related to the order”⁴⁵ and “whether the industry is vulnerable to material injury if the order is revoked.”⁴⁶ Finally, the statute requires the Commission to determine whether material injury is likely to “continue” or “recur.” Thus, in a five-year review, the statutory scheme anticipates that the Commission is investigating the same industry it examined in the original investigation. While the Commission can, and has, examined industries that have evolved from the time of the original investigation, it should not examine an industry wholly separate from the one that was found to be injured in the original investigation and that received protection under the order. We note that no party has argued that the Commission should find a different, e.g., most similar, like product than synthetic indigo. Thus, having found nothing on the record to indicate otherwise, we decline to do so.

We acknowledge that five-year reviews are prospective in nature,⁴⁷ and require a determination as to what is likely to occur “within a reasonably foreseeable time.”⁴⁸ The likely absence of a domestic industry producing the subject product in the reasonably foreseeable future, however, does not require the Commission to search for another industry, regardless of the lack of any similarity in terms of the product produced with that originally investigated, to consider when determining whether revocation of the order

⁴² In Sebacic Acid from China, domestic production had ceased during the Commission’s review. However, facilities still existed that could have been used for the production of sebacic acid and the remaining domestic producer indicated that it could easily resume operations in the future. Sebacic Acid from China, Inv. No. 731-TA-653 (Review), USITC Pub. 3775 at 6-7, 9 (May 2005).

⁴³ Moreover, in cases where the domestic industry has ceased to exist between the time an order is put in place and the time of a five-year review, the Department of Commerce will revoke an order based on the lack of any expression of support by the domestic industry. The domestic synthetic indigo industry expressed support for retaining the order when the Department of Commerce initiated its review. 70 Fed. Reg. 53165, 53166 (Sept. 7, 2005). The domestic industry, BCC, indicated its willingness to fully participate in the Commission’s investigation, but was later unable to do so. We note that the Commission is conducting this review, therefore, because of the timing of the domestic industry’s liquidation (i.e., after the Department of Commerce received a Notice of Intent to Participate from BCC and a complete substantive response from BCC within the regulatory deadlines).

⁴⁴ 19 U.S.C. § 1677(10).

⁴⁵ 19 U.S.C. § 1675a(a)(1)(B).

⁴⁶ 19 U.S.C. § 1675a(a)(1)(C).

⁴⁷ SAA at 884.

⁴⁸ 19 U.S.C. § 1675a(a).

will lead to continuation or recurrence of material injury. Instead, material injury cannot continue or recur if the domestic industry no longer exists.⁴⁹

C. Conditions of Competition

As detailed above, the domestic industry has changed dramatically since the original investigation. The sole domestic producer of synthetic indigo, BCC, filed for bankruptcy in 2002, ceased commercial production in 2003, ceased all production in early 2004, and currently is facing liquidation.

Conditions in the U.S. market for synthetic indigo also changed after the issuance of the antidumping duty order in June 2000. Imports of subject merchandise from China declined precipitously from *** pounds in 1999 to *** pounds in 2003, the year after BCC filed for bankruptcy protection.⁵⁰ Subject import volume fluctuated between 2000 and 2004 at levels between *** pounds and *** pounds.⁵¹ However, during interim 2005, long after BCC filed for bankruptcy, subject imports increased, due in substantial part to the reduction in the amount of the antidumping duty applicable to one Chinese manufacturer. *** accounted for most of the subject imports from that producer.⁵²

Concurrently with the decline in subject import volume after issuance of the antidumping duty order, non-subject imports from countries other than China increased steadily. Imports of synthetic indigo from Germany increased from *** pounds to *** pounds between 2000 and 2004. Imports from Korea, the second largest source of non-subject imports increased from *** to *** pounds between 2000 and 2004.⁵³ BCC's production declined from *** pounds in 1999 to *** pounds in 2004. BCC's commercial sales quantity declined from *** pounds in 1999 to *** pounds in 2004.⁵⁴

Based on the record evidence, we find that these conditions of competition in the domestic synthetic indigo market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we have taken these conditions of competition into account in assessing the likely effects, within the reasonably foreseeable future, of revocation of the antidumping duty order.

D. Likely Volume, Price Effects and Impact of Subject Imports Upon Revocation of the Order

For the reasons stated below, we determine that revocation of the antidumping duty order on synthetic indigo from China would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

⁴⁹ In reaching its definition of domestic industry in the original determination, the Commission considered whether converters should be considered part of the domestic industry but found that converters did not engage in sufficient production-related activity. In so doing, the Commission found that capital investment and employment levels, and the value added by conversion were quite low. Moreover, the Commission found that the conversion process itself appeared to be relatively simple requiring little technical expertise. Original Determination, at 8. We note that none of the parties has advocated that converters should be included in the domestic industry in this review. Since there is no new information in the record that would warrant reconsideration of this determination, we find that converters should not be included in the domestic industry.

⁵⁰ CR/PR at Tables I-1 and IV-1.

⁵¹ CR/PR at Table IV-1.

⁵² CR at I-18, PR at I-11.

⁵³ CR/PR at Table C-1.

⁵⁴ CR/PR at Table III-1.

In the original investigation, the Commission defined the domestic like product to be synthetic indigo coextensive with Commerce's scope.⁵⁵ Consequently, the Commission defined the domestic industry as all producers of synthetic indigo.⁵⁶ BCC was the sole producer of synthetic indigo during the original investigation.⁵⁷ Throughout the period of review, BCC, the sole domestic producer of synthetic indigo, struggled to continue operations.

Although BCC did not respond to the Commission's questionnaires and, thus, did not provide detailed sales or any financial data, the filing of the bankruptcy and the likely commencement of liquidation of its assets pursuant to Chapter 7 underlines the severity of its financial condition. At the close of the record in this review, it appeared that BCC was about to expire as a legal entity. BCC did not produce any synthetic indigo in 2005.⁵⁸ In December 2005, the bankruptcy court's restructuring officer reported that the PBGC secured a lien on BCC's assets, effectively making it the owner of BCC and putting it in control of all of BCC's assets.⁵⁹ On February 14, 2006, the bankruptcy court's restructuring officer informed the Commission that BCC had been forced to begin liquidating its indigo operations.⁶⁰

Based on the record in this review, it is clear that revocation of the antidumping order would not be likely to lead to a continuation or a recurrence of injury to the domestic industry. Considering the condition of the domestic industry and given the likely absence of future domestic production of synthetic indigo, it is not possible to conclude that such imports, even were they to increase to significant levels if the order were revoked, would have negative effects on domestic prices, or negatively impact the domestic industry.

III. CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on synthetic indigo from China would not be likely to lead to continuation or recurrence of material injury to the domestic synthetic indigo industry within a reasonably foreseeable time.

⁵⁵ Original Determination at 8.

⁵⁶ See Original Determination at 6-8.

⁵⁷ CR at III-1, PR at III-1.

⁵⁸ CR/PR at Table III-1.

⁵⁹ CR at III-1, PR at III-1.

⁶⁰ CR at III-3, PR at III-2. Based on the record, we find it uncertain at best that an entity would purchase BCC's remaining assets to produce synthetic indigo. Hearing testimony suggests that BCC may have already begun to sell-off or otherwise dispose of its synthesizing equipment. Hearing Transcript at 14 (Mr. Jones). Moreover, at the time of the staff's visit to BCC, reaction units *** and the facility would require both time and money to restart production. Staff Field Trip Notes at 3 (BCC estimates that it would take about *** and an investment of about \$***. Other industry experts found these estimates to be ***).

VIEWS OF CHAIRMAN STEPHEN KOPLAN AND COMMISSIONER SHARA L. ARANOFF

On the basis of the record developed in this review, we join our colleagues in finding that revocation of the antidumping duty order on synthetic indigo from China is not likely to lead to continuation or recurrence of material injury to a domestic industry within a reasonably foreseeable time. We agree with the majority that, if the Commission defines the domestic industry in this review as the industry producing synthetic indigo, a negative determination is warranted.

On the facts of this review, however, we find it unlikely that there will be domestic production of synthetic indigo within a reasonably foreseeable time. In light of this factual finding, we conclude that the better approach is to base our determination on the industry producing the domestic product “most similar in characteristics and uses”¹ with synthetic indigo, which we find to be reactive blue dye. For the reasons explained below, we find that revocation of the antidumping duty order on synthetic indigo from China is not likely to lead to continuation or recurrence of material injury to a domestic industry within a reasonably foreseeable time, regardless of whether the relevant industry is defined as that producing reactive blue dye or synthetic indigo.

I. The Commission Must Define the Domestic Industry to Which Its Sunset Determination Applies

In a sunset review, the statute directs the Commission to determine whether revocation of an antidumping duty order “would be likely to lead to continuation or recurrence . . . of . . . material injury” to a domestic “industry.”² Indeed, many of the factors that the Commission must consider in a sunset review presuppose the existence of a specified domestic industry. For example, the Commission must take into account “any improvement in the state of the industry,” whether “the industry is vulnerable,” and whether subject imports from individual countries “are likely to have no discernible adverse impact on the domestic industry.”³ The Commission must ultimately consider “the likely impact” of subject imports “on the industry,” including likely effects on sales, market share, employment, wages, and efforts to develop more advanced versions of the domestic like product.⁴ Accordingly, there is no meaningful way in which to make a sunset determination without first defining the domestic industry to which it pertains.

As further detailed below, this review presents unusual facts. In the original investigation, the Commission defined the domestic like product as synthetic indigo, and the domestic industry as the sole domestic producer of that product: Buffalo Color Corporation (“BCC”).⁵ In the current sunset review, which covers the period January 2000 through September 2005, the record shows that BCC continued to produce synthetic indigo in commercial quantities for some years, but that production ended in 2004.⁶ BCC, which was operating under Chapter 11 bankruptcy protection at the time, responded to the Commission’s notice of institution of this review and declared its intent to participate fully in this

¹ See 19 U.S.C. § 1677(10) (defining the term “domestic like product”).

² 19 U.S.C. §§ 1675(c)(1) & 1675a(a)(1).

³ 19 U.S.C. § 1675a(a)(1) & (7).

⁴ 19 U.S.C. § 1675a(a)(4).

⁵ Synthetic Indigo from China, Inv. No. 731-TA-851 (Final), USITC Pub. 3310 (June 2000) at 3-8.

⁶ Notes from December 13, 2005 visit by Commission staff to Buffalo Color Corporation, Buffalo, New York (“Staff Field Trip Notes”) at 1, confidential report (“CR”) at III-4, and public report (“PR”) at III-3.

proceeding.⁷ Shortly thereafter, however, BCC withdrew its participation.⁸ The latest evidence available to the Commission is that “BCC has been forced to move forward with liquidating [its] indigo operations.”⁹

As a matter of common sense, it is tempting on such facts to find that there simply is no domestic industry producing synthetic indigo, and that revocation of the antidumping duty order could not possibly injure an industry that does not exist. As a matter of law, however, we do not believe that the Commission has the option to find that there is “no” domestic industry. We therefore proceed to consider the appropriate like product and domestic industry in this review.

II. Statutory Guidance on Defining the Domestic Like Product and Industry in a Sunset Review

The statute makes clear that the Commission’s definition of the domestic industry is derivative of our finding as to the domestic like product. The term “industry” means “the producers as a [w]hole of a domestic like product.”¹⁰ The term “domestic like product,” in turn, means “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

The statute explains what the Commission is supposed to do in the event that there is no domestic production of a product that is “like” the imported articles within the scope. In such a case, the Commission is directed to make its determination with respect to the industry producing the product that is “most similar” to the subject imported articles “in characteristics and uses.”¹²

These provisions apply not only to sunset reviews but to original investigations as well.¹³ If this review were instead an original investigation and there were no current domestic production of synthetic indigo, the Commission would have no choice but to make its injury determination with respect to the industry producing the product that is “most similar in characteristics and uses” to synthetic indigo.¹⁴

The issue is more complex in a sunset review, given that the Commission must extrapolate into the reasonably foreseeable future based on past events. The statute directs the Commission to take into account “its prior injury determinations,” which includes its determination as to like product and domestic

⁷ Response of BCC to the Notice of Institution at 2.

⁸ Letter to Commission Secretary Marilyn R. Abbott from Ronald M. Wisla, Counsel for BCC, January 27, 2006.

⁹ Electronic mail message from ***, BCC Restructuring Officer, February 14, 2006. *See* CR at III-3, PR at III-2. *** notified the Commission as early as January 23, 2006 that the Pension Benefits Guarantee Corporation will “likely authorize BCC to convert to chapter 7 liquidation.” CR and PR at III-2.

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(10).

¹² 19 U.S.C. § 1677(4), (10).

¹³ The terms “domestic like product” and “industry” appear in identical form in the statutory provisions governing both original investigations and sunset reviews. *E.g.*, 19 U.S.C. § 1673d(b), 1675a(a), 1677(4), and 1677(10). The terms are defined in a general provision that expressly applies “[f]or [the] purpose of this subtitle.” 19 U.S.C. § 1677. The referenced subtitle is subtitle IV of title 19 of the U.S. Code, which encompasses both original investigations and sunset reviews. *See* 19 U.S.C.A. at pp. 7-8 (1999) (indicating scope of subtitle IV).

¹⁴ *E.g.*, Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 (Aug. 2003) at 5 (absent domestic production of frozen basa and tra fillets, the Commission defined the domestic product as frozen catfish fillets); Nepheline Syenite from Canada, Inv. No. 731-TA-525, USITC Pub. 2502 (April 2002) at 7-11 (absent domestic production of nepheline syenite, the Commission defined the domestic product as feldspar and aplite).

industry.¹⁵ Nevertheless, in its Notice of Final Rulemaking for sunset reviews, the Commission indicated that, in appropriate circumstances, it retains the discretion to revisit its original like product and domestic industry determinations in five-year reviews.¹⁶ Similarly, the Commission’s reviewing courts have affirmed that the agency may treat the original determination as a “starting point” in its analysis,¹⁷ and that the Commission may “revisit its like product determination when there have been significant changes in the products at issue since the original investigation”¹⁸

In an ordinary sunset review, the domestic like product found in the original investigation remains in production during the period of review (“POR”) and is likely to remain in production for the reasonably foreseeable future. In such cases, the Commission need not consider an alternate product or industry. There have been reviews, however, where the Commission has found no domestic production of a product within the scope of the review, and has made its determination with respect to the domestic industry producing the “most similar” product. To date, such cases have involved situations where there was domestic production of products “like” at least some of the products within the scope of the subject merchandise, so the Commission did not need to investigate an entirely new domestic industry that was not the subject of its original investigation.¹⁹

Since the Commission must identify the domestic industry to which its determination pertains, and since the Commission has the authority to revisit its like product and industry determinations if warranted, the difficult question presented in this review is whether the Commission should make its determination with respect to the domestic industry that existed during at least a substantial portion of the period of review (the synthetic indigo industry) or should turn, instead, to the domestic industry producing the product that is most similar in characteristics and uses with synthetic indigo and is likely to be produced by a domestic industry in the reasonably foreseeable future.

A number of factors weigh in favor of making a sunset determination with respect to the domestic industry that produced the like product during the POR – in this case, BCC. The POR is the most recent period for which the Commission has verifiable information, and past events are inherently more certain than future events. Additionally, the statute expressly requires the Commission to evaluate conditions during the POR, such as whether “any improvement in the state of the industry is related to the order.”²⁰ On their face, the statutory requirements that the Commission consider its prior injury determination, assess whether the order has led to any improvement in the state of the industry, and consider whether material injury is likely to “continue” or “recur,” make the most sense when the Commission is looking at the same industry it examined in the original investigation.²¹ Accordingly, domestic production during

¹⁵ 19 U.S.C. § 1675a(a)(1)(A). See *Cheflene Corp. v. United States*, 170 F.Supp.2d 1320, 1326 (Ct. Int’l Trade 2001) (“The Commission has interpreted § 1675a(a)(1)(A) to include its prior like product determinations.”).

¹⁶ 63 Fed. Reg. 30599, 30602, 30604 (June 5, 1998).

¹⁷ *Cheflene*, 170 F.Supp.2d at 1327.

¹⁸ *NMB Singapore Ltd. v. United States*, 288 F. Supp. 2d 1306, 1318 (Ct. Int’l Trade 2003) quoting Commission Notice of Final Rulemaking, 63 Fed. Reg. 30599, 30602 (June 5, 1998).

¹⁹ E.g., Ferrovandium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Review), USITC Pub. 3420 (May 2001) at 5 (absent production of nitrided vanadium during the POR, the Commission narrowed the domestic product to include ferrovandium only) and Extruded Rubber Thread from Malaysia, Inv. No. 731-TA-527 (Review), USITC Pub. 3327 (July 2000) at 5-6 (while subject imports included both food-grade and non-food-grade extruded rubber thread, the domestic like product included non-food-grade extruded rubber thread only).

²⁰ 19 U.S.C. § 1675a(a)(1)(B).

²¹ We disagree, however, with respondents’ assertion that these provisions in the statute should be read to preclude the Commission from considering a like product in a sunset review that is different than the one it examined in the original investigation. See Posthearing brief of Swift Galey and C.H. Patrick & Company, Inc. at 8 (the statute “did not intend the Commission to redefine the domestic like product from ‘like’ to ‘most similar’ for (continued...)”).

the POR is arguably the most determinative fact in assessing what domestic production will likely take place in the reasonably foreseeable future.

On the other hand, there are also factors that suggest it is more appropriate for the Commission to make its determination with respect to the industry likely to exist in the reasonably foreseeable future, even if that industry is different from the one identified in the original investigation or operating during the POR. Sunset reviews are “prospective in nature,”²² and constitute a judgment as to what is likely to occur “within a reasonably foreseeable time.”²³ The statute explicitly directs the Commission to make a forward-looking determination with respect to many statutory factors in such reviews. In assessing whether to cumulate subject imports, the Commission must determine whether imports from multiple subject countries “would be likely to compete with each other and with domestic like products in the United States market” or are “likely to have no discernible adverse impact on the domestic industry.”²⁴ Similarly, the statute directs the Commission to consider the likely future volume of imports, likely future price effects, and the likely impact of subject imports on the domestic industry.^{25 26}

In our view, the decision on which of these approaches to follow is highly dependent on the facts of each individual review. In this instance, if we were to conclude that there is likely to be an operating synthetic indigo producer in the United States which would experience the effects of revocation of the antidumping duty order, we would define the domestic industry as the industry producing synthetic indigo, even though there has been no such production since 2004. The Commission has previously recognized that, where a domestic industry consists of a single producer, it is not uncommon for production not to be continuous based on, for example, events such as fires, strikes, or other production

²¹ (...continued)

purposes of a [sunset] review . . .”). As noted, the Court of International Trade has affirmed that we may treat our original like product determination as a “starting point,” yet we may revisit the issue if there have been “significant changes in the products at issue since the original investigation . . .” *Chefline*, 170 F.Supp.2d at 1326-27. Indeed, the Commission must, and routinely does, take into account changes in the composition of the domestic industry in sunset reviews. *E.g.*, Internal Combustion Industrial Forklift Trucks from Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 (Dec. 2005) at 3, 17 (noting “substantial changes” in the U.S. industry and market, and finding that appropriate circumstances did not now exist to exclude related producers from the domestic industry) and Frozen Concentrated Orange Juice from Brazil, Inv. No. 731-TA-326 (Second Review), USITC Pub. 3760 (March 2005) at 6-7 (unlike in the original investigation and first review, statutory requirements for inclusion of growers in the domestic industry not satisfied).

²² Statement of Administrative Action relating to the Uruguay Round Agreements Act, H.R. Doc. 103-316 (1994) at 884.

²³ 19 U.S.C. § 1675a(a). In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

²⁴ 19 U.S.C. § 1675a(a)(7).

²⁵ 19 U.S.C. § 1675a(a)(2)-(4).

²⁶ As an additional example, in reviews of original determinations involving a regional industry, the statute permits the Commission to base its review determination on either the original regional industry, a different regional industry, or a national industry and directs the Commission to define the appropriate domestic industry in a forward-looking manner, based on “whether the [regional industry] criteria . . . are likely to be satisfied if the order is revoked.” 19 U.S.C. § 1675a(a)(8) (emphasis added).

disruptions.²⁷ Moreover, although there is some conflicting evidence in the record, BCC's synthetic indigo plant appears to be intact and capable of being restarted, and the bankruptcy trustee had been looking for a buyer as late as February 2006.²⁸ Accordingly, there is at least some possibility that domestic production of synthetic indigo could resume within the reasonably foreseeable future.²⁹

On balance, however, we believe the better interpretation of the facts is that, while possible, domestic production of synthetic indigo is not likely to resume within a reasonably foreseeable time. BCC filed for Chapter 11 bankruptcy protection in October 2002.³⁰ In the following year it laid off the bulk of its employees.³¹ By spring or summer of 2003, BCC had ceased continuous production operations for synthetic indigo.³² During 2004, BCC produced only *** pounds of synthetic indigo in sporadic production runs that ***.³³ BCC did not produce any synthetic indigo in 2005.³⁴ In December 2005, the bankruptcy court's restructuring officer reported that the Pension Benefit Guarantee Corporation ("PBGC") secured a lien on BCC's assets, effectively making it the owner of BCC and putting it in control of all of BCC's assets.³⁵ In late January 2006, BCC withdrew its notice of appearance in this review, and on February 14, 2006, the restructuring officer informed the Commission that BCC was being forced to liquidate its assets, including its indigo operations.³⁶

Based on our weighing of these record facts concerning the likelihood that synthetic indigo will be produced in the United States in the reasonably foreseeable future, we believe the better approach is to make our determination with respect to the domestic industry producing the product that is most similar in characteristics and uses with the subject merchandise. We note, however, that there is no need to choose between these two possible approaches. As explained below, regardless of which domestic industry we choose, the result in this review is the same.

²⁷ *E.g.*, Industrial Nitrocellulose from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia, Inv. Nos. 731-TA-96, 439-445 (Review), USITC Pub. 3342 (Aug. 2000) at 6 & n.18.

²⁸ With respect to conflicting evidence, *compare* transcript of February 9, 2006 hearing at 14 (Mr. Jones) (testifying as to his "understanding that [BCC] actually sold or otherwise disposed of its synthesizing equipment two years ago and can no longer manufacture itself [or] process imported indigo powder") *with* CR and PR at II-1 to II-2 (BCC has assets in place and could resume production), Staff Field Trip Notes at 3 (BCC could resume production with existing assets and an investment of about \$***), and CR and PR at III-3 (bankruptcy restructuring officer seeking buyer for assets).

²⁹ This is the approach taken by the Commission in Sebacic Acid from China, Inv. No. 731-TA-653 (Review), USITC Pub. 3775 (May 2005).

³⁰ Response of BCC to importers' questionnaire at 5A.

³¹ Response of BCC to Notice of Institution at Attachment 2 (Press Release of Louise M. Slaughter) (all but 11 of its 140 employees laid off), BCC's response to importers' questionnaire at 5A (layoffs totaling *** employees), and Response of Clariant to Notice of Institution at Exhibit 1, at 1-2 (BCC laid off all but 12 of 120 employees).

³² Staff Field Trip Notes at 1 (full scale production ended in *** 2003) and Response of BCC to importers' questionnaire at 5A (full scale production ended in *** 2003).

³³ Staff Field Trip Notes at 1, BCC's response to importers' questionnaire at 5A, CR and PR at Table III-2.

³⁴ CR and PR at Table III-2.

³⁵ CR and PR at III-1.

³⁶ CR at III-3, PR at III-2.

III. Revocation of the Antidumping Duty Order Is Not Likely to Lead to Continuation or Recurrence of Material Injury to a Domestic Industry Within a Reasonably Foreseeable Time

For the reasons explained above, we have in our discretion determined to analyze the likely effects of revocation in this review with respect to both the domestic industry producing the product most similar in characteristics and uses with the subject imports (reactive blue dye) and the domestic industry producing synthetic indigo.

A. Revocation of the Antidumping Duty Order Is Not Likely to Lead to Continuation or Recurrence of Material Injury to the Domestic Reactive Blue Dye Industry Within a Reasonably Foreseeable Time

1. The Domestic Product Most Similar in Characteristics and Uses with Synthetic Indigo Is Reactive Blue Dye

In order to identify the domestic product most similar to subject synthetic indigo, the Commission sent written surveys to 48 members of the textile dye industry, and received responses from 3 domestic producers, 1 foreign producer, 12 importers, and 8 purchasers.³⁷ The surveys were designed to identify any domestically produced dye that could be substituted for synthetic indigo. The Commission also received written submissions from the parties and it conducted telephone interviews with industry participants.³⁸ The conclusions reached below are based on the data gathered by these efforts.

The data received indicate that synthetic indigo has unique characteristics and uses. Synthetic indigo is a vat dye with a deep blue color that has good resistance to color degradation.³⁹ Approximately 98 percent of synthetic indigo is used to dye denim, with the remainder used as a food coloring.⁴⁰ When used to dye denim, synthetic indigo has unique fading characteristics when washed.⁴¹ Because the dye does not penetrate the yarn, denim dyed with synthetic indigo loses depth of shade with each washing.⁴² For the same reason, denim dyed with synthetic indigo imparts a characteristic light and dark contrast around the pockets, seams, and cuffs.⁴³ Both the parties to this review and industry participants providing information to the Commission indicated uniformly that there are no domestically produced substitutes for synthetic indigo that produce the precise fading and coloring effects of synthetic indigo in dyeing denim, or for use as a food coloring.⁴⁴

While the record indicates that there are no domestically produced dyes that are *good* substitutes for synthetic indigo, we are still required to identify a domestic product that is *most* similar with it in characteristics and uses. To be most similar within the meaning of the statute, a product needs to be the closest available substitute in terms of characteristics and uses – even if it is a very poor substitute in the view of market participants. The fact that the “most similar” product is a poor substitute is an important

³⁷ CR at I-13 to I-14, PR at I-9.

³⁸ CR at I-14, PR at I-9.

³⁹ CR at I-9, PR at I-7.

⁴⁰ CR at I-9 and II-7 to II-8, PR at I-7 and II-5.

⁴¹ CR at I-9, PR at I-7.

⁴² CR at Appendix E at E-5, PR at Appendix E.

⁴³ CR at Appendix E at E-5, PR at Appendix E.

⁴⁴ Posthearing briefs of Clariant Corporation at 11-12 and of Swift Galey and C.H. Patrick & Company, Inc. at 4, CR and PR at II-8 and Appendix E.

consideration in our causation analysis, but does not excuse us from finding a most similar product in the first place.

In the category of other textile dyes, market participants reported that no other vat dyes are produced in the United States, nor is there domestic production of direct or sulfur textile dyes.⁴⁵ As a result, the only textile dyes that are domestically produced are reactive and acid dyes. While neither shares many of the distinctive characteristics and uses of synthetic indigo, we conclude that reactive blue dye is nevertheless the domestic product most similar in characteristics and uses with the subject synthetic indigo.

Both synthetic indigo and reactive dyes are cellulose dyes and each has an affinity for cotton.⁴⁶ Nevertheless, synthetic indigo is devoted almost entirely to denim production, while reactive dyes are devoted almost entirely to women's apparel and home furnishings.⁴⁷ Compared to synthetic indigo, reactive dyes impart brighter colors, fade more gradually, and do not impart the color contrast around pockets, seams, and cuffs that is characteristic of synthetic indigo.⁴⁸ Reactive dyes are water soluble, while synthetic indigo is not.⁴⁹ The parties to this review and industry participants report that synthetic indigo and reactive dyes are not interchangeable.⁵⁰ One participant reported that it had searched for an alternative to synthetic indigo without success for years.⁵¹

Despite the very significant differences between reactive dyes and synthetic indigo, reactive dyes appear somewhat more similar in characteristics and uses with the subject imports than do acid dyes. Acid dyes have an affinity for nylon while synthetic indigo does not.⁵² Acid dyes cannot be used to dye cotton.⁵³ By contrast, as noted above, both synthetic indigo and reactive dyes are cellulose dyes and can be used in dyeing cotton. While neither dye class is closely similar to synthetic indigo in characteristics and uses, we find that reactive blue dye is the domestic product most similar to the subject synthetic indigo in this review.

The sole domestic producer of reactive blue dye is ***.⁵⁴

2. Likely Effects of Revocation of the Antidumping Duty Order With Respect to the Domestic Reactive Blue Dye Industry

In evaluating the likely effects of revocation of the antidumping duty order on the domestic reactive blue dye industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁵⁵

⁴⁵ CR at I-14 to I-15, PR at I-9.

⁴⁶ CR at I-15, Appendix E at E-3 to E-4; PR at I-9, Appendix E.

⁴⁷ CR at I-15, II-6, Appendix E at E-4; PR at I-9, II-4, Appendix E.

⁴⁸ CR at I-15, Appendix E at E-4, E-20; PR at I-9, Appendix E.

⁴⁹ CR at I-15, PR at I-9.

⁵⁰ CR at II-6, Appendix E at E-7 to E-8; PR at II-4, Appendix E. See Posthearing briefs of Clariant Corporation at 11-12 and of Swift Galey and C.H. Patrick & Company, Inc. at 4.

⁵¹ CR at Appendix E at E-20, PR at Appendix E.

⁵² CR at I-15, Appendix E at E-3; PR at I-9, Appendix E.

⁵³ See telephone notes of conversations between Commission staff and Mr. *** (Oct. 25, 2005) (not all dye classes dye cotton) and with Mr. *** (Oct. 28, 2005) (list of dye classes used on cotton excludes acid dyes).

⁵⁴ CR at I-14 to I-15, PR at I-9.

⁵⁵ 19 U.S.C. § 1675a(a)(4).

The record identifies only one domestic producer of reactive blue dye: ***.⁵⁶ In addition to reactive blue dye, *** also manufactures *** in its production facility in ***.⁵⁷ *** is one of apparently only *** textile dye producers remaining in the United States.⁵⁸

The primary condition of competition relevant here is that there is no known competition between subject imports of synthetic indigo and domestically produced reactive blue dye. As explained above, synthetic indigo is devoted almost entirely to the dyeing of denim, whereas reactive blue dye is devoted to the dyeing of other apparel as well as home furnishings.⁵⁹ Synthetic indigo has unique and valued properties in dyeing denim, including the characteristic deep blue color imparted, the manner in which the color fades with washing, and the contrasting light and dark areas that synthetic indigo leaves near the pockets, seams, and cuffs of the denim garment.⁶⁰ Reactive blue dyes are brighter in color, fade more gradually, and do not impart contrasting areas of light and dark after fading.⁶¹ The parties to this review and domestic industry participants report uniformly that the two dyes are not interchangeable, even in synthetic indigo's secondary use as a food coloring.⁶²

Based on the record evidence, we find that these conditions of competition in the domestic reactive blue dye market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we have taken these conditions of competition into account in assessing the likely effects of revocation of the antidumping duty order within the reasonably foreseeable future.

As the statute also requires, we have considered the "likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked."⁶³

With respect to the likely volume of subject imports,⁶⁴ the record from the original investigation indicates that subject imports from China rose from *** million pounds of 20-percent synthetic indigo paste in 1997 to *** million pounds in 1998, before falling to *** million pounds in 1999.⁶⁵ During these years, subject imports held a market share ranging from approximately *** to *** percent of apparent U.S. consumption.⁶⁶ After the imposition of the order, subject import volumes fell to *** million pounds in 2000 and remained at low levels through 2004, although it was sharply higher in interim 2005 at ***

⁵⁶ See CR at I-14 to I-15, Appendix E; PR at I-9, Appendix E.

⁵⁷ Notes from telephone conversation between Commission staff and Mr. *** (Oct. 27, 2005).

⁵⁸ Notes from telephone conversation between Commission staff and Mr. *** (Oct. 27, 2005).

⁵⁹ CR at I-15, II-6, Appendix E at E-4; PR at I-9, II-4, Appendix E.

⁶⁰ CR at I-15, Appendix E at E-4 to E-5, E-20; PR at I-9, Appendix E.

⁶¹ CR at I-15, Appendix E at E-4 to E-5, E-20; PR at I-9, Appendix E.

⁶² CR at II-8, Appendix E at E-7 to E-8; PR at II-5, Appendix E. See Posthearing briefs of Clariant Corporation at 11-12 and of Swift Galey and C.H. Patrick & Company, Inc. at 4.

⁶³ 19 U.S.C. § 1675a(a)(1).

⁶⁴ In respect to the likely volume of subject imports, we must consider "all relevant economic factors," including four enumerated factors: "(A) any likely increase in production capacity or existing unused production capacity in the exporting country, (B) existing inventories of the subject merchandise, or likely increases in inventories, (C) the existence of barriers to the importation of such merchandise into countries other than the United States, and (D) 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 U.S.C. § 1675a(a)(2). While we have considered each of these factors in light of the information in the record, we find the factor most relevant to our analysis to be the lack of substitutability between the subject synthetic indigo and domestic reactive blue dye.

⁶⁵ CR and PR at Table I-5.

⁶⁶ CR and PR at Table I-6.

million pounds than during interim 2004 at *** million pounds.⁶⁷ In terms of U.S. imports, subject imports held less than a *** percent share of total imports of synthetic indigo from 2001 through 2004, although they were much higher at *** percent in interim 2005 than at *** percent in interim 2004.⁶⁸

In this review, we conclude that the very large volumes imported during interim 2005, after years of imports at relatively low levels, indicate that the volume of subject imports is likely to be significant in absolute terms within a reasonably foreseeable time if the order is revoked. However, given the absence of competition between subject synthetic indigo and domestic reactive blue dye in the domestic market for textile dyes, we find that the volume of synthetic indigo is not likely to be significant relative to the production or consumption of reactive blue dye in the United States. In fact, absent competition between the two products, the volume of subject imports of synthetic indigo is likely to be essentially irrelevant to the domestic production and consumption of reactive blue dye. Consistent with our finding, the sole domestic producer of reactive blue dye, ***, reported that it did not anticipate any changes in its production or shipments as a result of revocation of the antidumping duty order on synthetic indigo from China.⁶⁹

Given the lack of competition between subject imports and the domestic like product, we also find that revocation of the antidumping duty order is not likely to lead to significant price effects on the domestic industry. We are directed under the statute to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.⁷⁰ Absent meaningful levels of competition between the subject merchandise and the domestic product, we find that any underselling that may occur is not likely to be significant. For the same reason, we find no mechanism by which subject synthetic indigo would be likely to enter the United States at prices that would have a significant depressing or suppressing effect on prices for domestic reactive blue dye. Consistent with our finding as to the likely absence of adverse price effects upon revocation, the sole domestic producer of reactive blue dye reported that it did not anticipate any change in revenues, profits or cash flow as a result of revocation of the order under review.⁷¹

In evaluating the likely impact of imports of subject merchandise if the order is revoked, we are directed to consider all relevant economic factors that are likely to have a bearing on the state of the domestic industry, including various factors listed in the statute.⁷² Absent likely volume or price effects, and absent any significant competition between the subject merchandise and the domestic product, we find that revocation of the order is not likely to lead to an adverse impact on the domestic industry within a reasonably foreseeable time. In this respect, the sole domestic producer of reactive blue dye reported that it did not anticipate any changes in its inventories, purchases, employment, revenues, costs, capital expenditures, research and development expenditures, or asset values as a result of revocation of the antidumping duty order under review.⁷³ For these reasons, we determine that revocation of the antidumping duty order under review would not be likely to lead to continuation or recurrence of material injury to the domestic reactive blue dye industry within a reasonably foreseeable time.

⁶⁷ CR and PR at Table IV-1. The increase in the volume of subject imports occurred after ***. CR at I-7 and I-18, PR at I-6 and I-11. ***. CR at I-18, PR at I-11.

⁶⁸ Considering the lack of domestic production during interim 2005, we use the share of synthetic indigo imports as a proxy for the share of apparent U.S. consumption for this time period. CR and PR at Table IV-1.

⁶⁹ CR at I-16, PR at I-10.

⁷⁰ 19 U.S.C. § 1675a(a)(3).

⁷¹ CR at I-16, PR at I-10.

⁷² 19 U.S.C. § 1675a(a)(4).

⁷³ CR at I-16, PR at I-10.

B. Revocation of the Antidumping Duty Order Is Not Likely to Lead to Continuation or Recurrence of Material Injury to the Domestic Synthetic Indigo Industry Within a Reasonably Foreseeable Time

As indicated above, we reach the same conclusion if we instead consider the likely effects of revocation in relation to the domestic industry producing synthetic indigo.

With respect to the conditions of competition, an important change since the original investigation is that BCC – the sole domestic producer of synthetic indigo – is struggling to continue as a going concern.⁷⁴ As noted, the company declared bankruptcy in 2002, it laid off the bulk of its employees in 2003, and it ceased sporadic production in 2004.⁷⁵ BCC’s assets are now subject to a lien in favor of the PBGC, and a buyer is being sought for its remaining assets.⁷⁶

A second important change since the original investigation is the surge in the volume of non-subject imports. In 1999, prior to the imposition of the order, non-subject imports accounted for *** percent of apparent U.S. consumption.⁷⁷ By 2004, however, non-subject imports comprised *** percent of apparent U.S. consumption.⁷⁸ During the first nine months of interim 2005, non-subject imports accounted for *** percent of imports, as the volume of subject imports increased.⁷⁹

We find that the financial deterioration of the domestic industry and the sharp increase in the volume of non-subject imports are conditions of competition likely to continue in the reasonably foreseeable future. Accordingly, we take these conditions into account in assessing the likely effects of revocation of the antidumping duty order.

Of prime importance to our analysis is that the condition of the domestic industry declined sharply during the POR, notwithstanding the imposition of the antidumping duty order. The domestic industry produced between *** million pounds and *** million pounds during the three years prior to the imposition of the order, but only *** pounds in 2004.⁸⁰ In terms of market share, the domestic industry accounted for about *** (***) percent of apparent U.S. consumption in 1999 but only *** percent in 2004.⁸¹ This decline occurred despite the imposition of the antidumping duty order and the resulting sharp decline in the volume of subject imports. The volume of subject imports ranged from *** million pounds to *** million pounds during 1997-99, yet they amounted to just *** million pounds in 2000, and

⁷⁴ While BCC comes within the related parties provision as an importer of subject merchandise, we do not find appropriate circumstances exist to exclude it from the domestic industry. 19 U.S.C. § 1677(4)(B). Although the volume of subject merchandise imported by BCC in 2004 was *** than its domestic production that year, we decline to exclude the sole domestic producer from the domestic industry on related party grounds. *Compare* CR and PR at Table I-3 (volume of subject merchandise imported by BCC) *with* CR and PR at III-4 (domestic production). *See Tetrahydrofurfuryl Alcohol from China*, Inv. No. 731-TA-1046 (Preliminary), USITC Pub. 3620 at 5 n.20 (“As it has been the sole domestic producer throughout the [period of investigation], however, appropriate circumstances do not exist to exclude it from the domestic industry.”).

⁷⁵ Response of BCC to the importers’ questionnaire at 5A, Response of BCC to the Notice of Institution at Attachment 2 (Press Release from Rep. Louise M. Slaughter), Staff Field Trip Notes at 1, CR II-1 and III-3, and PR at II-1 and III-2.

⁷⁶ CR and PR at III-1 to III-3.

⁷⁷ CR and PR at Table I-1.

⁷⁸ CR and PR at Table I-1.

⁷⁹ CR and PR at Table IV-1. Given that there was no domestic production of synthetic indigo in interim 2005, we use the share of imports of synthetic indigo as a proxy for apparent U.S. consumption during that period.

⁸⁰ CR and PR at Table I-1.

⁸¹ CR and PR at Table I-1.

fell below *** million pounds annually through 2004.¹ In terms of market share, subject imports accounted for *** to *** percent of apparent U.S. consumption in the three years prior to the order, but only *** percent in 2004.² Contrary to expectation, the condition of the domestic industry declined sharply after the imposition of the antidumping duty order, notwithstanding the abrupt decline in the volume of subject imports.

Given the seeming lack of a causal nexus between the volume of subject imports and the condition of the domestic industry, it appears that factors other than subject imports drove the condition of the domestic industry during the POR, factors that are likely to continue in the reasonably foreseeable future. Non-subject imports increased sharply in volume after the imposition of the order, at the same time that the condition of the domestic industry deteriorated. Other factors also appear to have contributed to BCC's financial collapse and its decision to end production. The PBGC is asserting pension claims against BCC in excess of \$21 million, and it has secured a lien on BCC's assets as discussed above.³ In addition, BCC's production of synthetic indigo involves the use of a variety of caustic, corrosive, and toxic chemicals.⁴ By the time of the original investigation, BCC had begun to incur substantial environmental costs, which amounted to \$*** in 1999 alone.⁵

As noted above with respect to the reactive blue dye industry, we find that the volume of subject imports is likely to be significant in absolute terms within a reasonably foreseeable time if the order is revoked. However, we find that factors unrelated to subject imports – non-subject imports, pension liabilities, and environmental operating costs – are likely to drive the condition of the domestic industry in the reasonably foreseeable future. Absent evidence of a likely causal link between the volume of subject imports and the condition of the domestic industry, and given affirmative evidence that other factors, including non-subject imports, are likely to determine the condition of the industry, we find that the volume of subject imports, while significant in an absolute sense, are not likely to result in a significant adverse impact on the domestic synthetic indigo industry within a reasonably foreseeable time. Similarly, we conclude that any underselling by or price effects of subject imports are not likely to be significant because the condition of the domestic industry is determined almost entirely by factors other than subject imports.

On these bases, we conclude that revocation of the antidumping duty order on synthetic indigo from China is not likely to lead to continuation or recurrence of material injury to the domestic synthetic indigo industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on synthetic indigo from China would not be likely to lead to continuation or recurrence of material injury to the domestic reactive blue dye industry or the domestic synthetic indigo industry within a reasonably foreseeable time.

¹ CR and PR at Tables I-1 and IV-1.

² CR and PR at Table I-1.

³ CR and PR at III-1.

⁴ CR at I-10, PR at I-7.

⁵ Synthetic Indigo from China, Inv. No. 731-TA-851 (Final), confidential staff report at VI-4 and USITC Pub. 3310 (June 2000) at VI-2.

PART I: INTRODUCTION AND OVERVIEW

BACKGROUND

On May 2, 2005, the Commission gave notice, pursuant to section 751(c) of the Tariff Act of 1930 (the Act), that it had instituted a five-year review to determine whether revocation of the antidumping duty order on synthetic indigo¹ from China would likely lead to the continuation or recurrence of material injury to a domestic industry. Effective August 5, 2005, the Commission determined that it would conduct a full review pursuant to section 751(c)(5) of the Act, because the domestic and respondent interested party responses to the notice of institution were adequate. Information relating to the background of the review is provided in the following tabulation.²

Effective date	Action
June 19, 2000	Commerce's antidumping duty order (65 FR 37961)
May 2, 2005	Commission's institution of review (70 FR 22701)
August 5, 2005	Commission's decision to conduct a full review (70 FR 48588, August 18, 2005)
September 7, 2005	Commerce's final results of expedited review (70 FR 53165)
September 21, 2005	Commission's scheduling of the review (70 FR 56489, September 27, 2005)
February 9, 2006	Commission's hearing ¹
March 23, 2006	Commission's vote
April 5, 2006	Commission's determination transmitted to Commerce

¹ List of hearing witnesses is presented in appendix B.

Statutory Criteria and Organization of the Report

Section 751(c) of the Act requires Commerce and the Commission to conduct a review no later than five years after the issuance of an antidumping or countervailing duty order or the suspension of an investigation to determine whether revocation of the order or termination of the suspended investigation “would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.”

Section 752(a) of the Act provides that in making its determination of likelihood of continuation or recurrence of material injury--

(1) IN GENERAL.-- . . . the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account--

¹ A complete description of the product subject to this review investigation is presented in *The Subject Product* section of this part of the report.

² The Commission's notice of institution, notice to conduct a full review, scheduling notice, and statement on adequacy appear in app. A and may also be found at the Commission's web site (internet address www.usitc.gov). Commissioners' votes on whether to conduct an expedited or full review may also be found at the ITC web site.

(A) *its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,*

(B) *whether any improvement in the state of the industry is related to the order or the suspension agreement,*

(C) *whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and*

(D) *in an antidumping proceeding . . . , (Commerce's findings) regarding duty absorption . . .*

(2) **VOLUME.**--*In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including--*

(A) *any likely increase in production capacity or existing unused production capacity in the exporting country,*

(B) *existing inventories of the subject merchandise, or likely increases in inventories,*

(C) *the existence of barriers to the importation of such merchandise into countries other than the United States, and*

(D) *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.*

(3) **PRICE.**--*In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether--*

(A) *there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and*

(B) *imports of the subject merchandise 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 products.*

(4) **IMPACT ON THE INDUSTRY.**--*In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to--*

(A) *likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,*

(B) *likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and*

(C) *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.*

The Commission shall evaluate all such relevant economic factors . . . within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.

Section 752(a)(6) of the Act states further that in making its determination, “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy.

Information obtained during the course of the review that relates to the above factors is presented throughout this report. U.S. industry data are limited to the few items of information provided by Buffalo Color Corporation (“BCC”) in response to the Commission’s notice of institution of this five-year review. BCC is the sole U.S. producer of synthetic indigo.³ U.S. import data for the period of this review (January 2000-September 2005) are based on official Commerce statistics, and a summary of U.S. import data is presented in appendix C. Responses by U.S. importers and purchasers of synthetic indigo, and producers of synthetic indigo in China to a series of questions concerning the significance of the existing antidumping duty order and the likely effects of revocation are presented in appendix D.

The Original Investigation

On June 30, 1999, a petition was filed with Commerce and the Commission alleging that an industry in the United States was materially injured by reason of dumped imports of synthetic indigo from China.⁴ On May 3, 2000, Commerce made a final affirmative dumping determination, with margins as follows:⁵

Manufacturer/producer/exporter	Weighted-average margin (percent ad valorem)
Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry Company, Ltd.	79.70
China National Chemical Construction Jiangsu Company	79.70
China Jiangsu International Economic Technical Cooperation Corp.	79.70
Shanghai Yongchen International Trading Company Ltd.	79.70
Hebei Jinzhou Import & Export Corporation	79.70
Sinochem Hebei Import & Export Corporation	79.70
Chongqing Dyestuff Import & Export United Corporation	79.70
Wuhan Tianjin Chemicals Imports & Exports Corp., Ltd.	79.70
China-wide rate	129.60

³ BCC has not submitted a response to the Commission’s producer questionnaire due to its bankruptcy proceedings and lack of funds to complete the questionnaire. Email from ***, BCC Restructuring Officer, December 19, 2005.

⁴ The petition was filed by BCC, Parsippany, NJ, and the United Steelworkers of America, AFL-CIO/CLC.

⁵ *Notice of Amendment of Antidumping Duty Order: Synthetic Indigo From the People’s Republic of China*, 65 FR 39128 (June 23, 2000).

The Commission made its final affirmative injury determination on June 12, 2000 and Commerce issued an antidumping duty order on June 19, 2000.⁶

Table I-1 presents a summary of data from the original investigation and from this review.

Table I-1
Synthetic indigo: Summary data from the original investigation and the current review, 1997-99 and 2004

* * * * *

COMMERCE'S ADMINISTRATIVE REVIEWS

Commerce has conducted two administrative reviews of the antidumping duty order on synthetic indigo from China as shown in the following tabulation:

Period of review	Date results published	Margin (percent ad valorem)
09/15/99-05/31/01	May 24, 2002 (67 FR 36573)	Wonderful Chemical 129.60 China Jiangsu 129.60 China-wide rate 129.60
06/01/01-05/31/02	September 12, 2003 (68 FR 53711)	Liyang Skyblue Chemical 4.60 China-wide rate 129.60

COMMERCE'S RESULTS OF EXPEDITED REVIEW

On September 7, 2005, Commerce published the final results of its expedited sunset review, and determined that revocation of the antidumping duty order on imports of synthetic indigo from China would likely lead to continuation or recurrence of dumping as follows:⁷

Manufacturer/producer/exporter	Weighted-average margin (percent ad valorem)
Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry Company, Ltd.	129.6
China National Chemical Construction Jiangsu Company	79.7
China Jiangsu International Economic Technical Cooperation Corp.	129.6
Shanghai Yongchen International Trading Company Ltd.	79.7
Hebei Jinzhou Import & Export Corporation	79.7
Sinochem Hebei Import & Export Corporation	79.7
Chongqing Dyestuff Import & Export United Corporation	79.70
Wuhan Tianjin Chemicals Imports & Exports Corp., Ltd.	79.7
China-wide rate	129.6

Commerce has not issued a duty absorption finding with respect to this order.

⁶ *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Synthetic Indigo From the People's Republic of China*, 65 FR 37961 (June 19, 2000).

⁷ *Synthetic Indigo from the People's Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 70 FR 53165, September 7, 2005.

DISTRIBUTION OF CONTINUED DUMPING AND SUBSIDY OFFSET ACT FUNDS

The Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”), commonly known as the “Byrd Amendment,” provides that duties assessed pursuant to an antidumping or countervailing duty order are distributed on an annual basis by U.S. Customs and Border Protection (“Customs”) to “affected domestic producers.” Disbursements received by BCC, the sole U.S. producer of synthetic indigo, since enactment of the CDSOA are presented in table I-2.

Table I-2

Synthetic indigo: CDSOA claims and disbursements for BCC, Federal fiscal years 2001-05

U.S. dollars (<i>actual</i>)				
2001	2002	2003	2004	2005
242,582	344,391	87,809	674,158	184,689

Source: Compiled from Customs CDSOA Annual Reports, found at http://www.cbp.gov/xp/cgov/import/add_cvd/cont_dump, retrieved January 9, 2006.

THE SUBJECT PRODUCT

The imported synthetic indigo subject to the antidumping duty order under review, as defined by Commerce, are:

the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as “Vat Blue 1.” Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (e.g., powder, granular, paste, liquid, or solution) and in any strength.⁸

Tariff Treatment

Imports of synthetic indigo and its derivatives subject to the antidumping duty order are provided for in Harmonized Tariff Schedule of the United States (“HTS”) subheadings 3204.15.10 (Vat blue 1, synthetic indigo), and 3204.15.40 and 3204.15.80 (pre-reduced and solubilized indigo). The current column 1-general tariff rate for all subheadings is 6.5 percent *ad valorem* for imports from countries with normal trade relations, including China. The majority of indigo produced and imported into the United States has a Colour Index Number (“C.I.”) of 73000 and imports are properly classified under HTS subheading 3204.15.10. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

⁸ *Synthetic Indigo From the People’s Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 70 FR 53165, September 7, 2005.

Physical Characteristics and End-Use Applications⁹

Synthetic indigo and its derivatives, pre-reduced indigo and solubilized indigo (“synthetic indigo” or “indigo”), are designated commercially as “Vat Blue 1.” Indigo is a vat dye with a characteristic deep blue color that has good resistance to color degradation by light or heat. Indigo dyes are used chiefly as fiber and fabric dyes, mostly in connection with the manufacture of denim products. A unique characteristic of indigo is that it fades evenly when washed. Approximately 98 percent of indigo dyes is used in the production of denim; the remaining two percent is used in the food industry and in other applications.

All natural and synthetic dyes are classified according to the Colour Index, which is published jointly by the Society of Dyers and Colourists, Bradford, England, and the American Association of Textile Chemists & Colorists, Research Triangle, NC. The majority of indigo imported into the United States is generally in the form of water-insoluble dry powder which requires the addition of an alkaline reducing agent such as sodium hydroxide (caustic soda) to form a water-soluble salt that can be absorbed by the fabric to be colored. Indigo dyes which already contain enough of an alkaline reducing agent and water to make them useful with a minimum of further preparation are said to “pre-reduced” or “solubilized.”

Denim mills, the principle consumer of synthetic indigo, use synthetic indigo in the solution or paste form in their operations, which are supplied domestically by BCC and also by U.S. firms that convert the imported powder into a paste form. BCC markets most of the synthetic indigo it makes directly to the end user. The subject merchandise generally enters the United States in powder form in order to reduce shipping costs and is then processed into a solution or paste and sold to end users. Once processed into paste or solution, both the domestic and imported indigo dyes are delivered to denim mills and are generally interchangeable at this point of use.¹⁰

Manufacturing Processes¹¹

The commercial production process for synthetic indigo uses a variety of caustic, corrosive, and toxic chemicals and requires careful process control to maximize product yields. It begins with the manufacturing of two chemical intermediates, the potassium salt of phenylglycine (“PGK”) and sodium amide (“sodamide”). These intermediates are then reacted to form crude synthetic indigo, which is further processed into a powder, solution, or paste, and in any specified strength (e.g., 20 percent, 40 percent, 42 percent, 100 percent, etc.). A diagram of the production (synthesis) process for synthetic indigo is presented in figure I-1.

Figure I-1
Synthetic indigo: Production process diagram

* * * * *

BCC and Chinese manufacturers use different starting materials to produce PGK. BCC uses a single step, reacting formaldehyde, cyanide, aniline, and potassium hydroxide to form PGK. The Chinese

⁹ The following discussion generally is from the original investigation, except as noted. *Synthetic Indigo from China, Inv. No. 731-TA-851 (Final)*, USITC Publication 3310, June 2000, pp. I-2-I-3.

¹⁰ Synthetic indigo solution requires special storage and processing equipment which is not required for paste. DyStar’s importer questionnaire response, section V-1-A.

¹¹ The following discussion generally is from the original investigation, except as noted. *Synthetic Indigo from China, Inv. No. 731-TA-851 (Final)*, USITC Publication 3310, June 2000, p. I-3.

use a 2-step process in which chloroacetic acid, ferrous sulfate, and analine are mixed to form the iron salt of phenylglycine, which is then mixed with potassium hydroxide (caustic potash) to get PGK. The PGK produced is then further processed into raw (crude) indigo, which is filtered, standardized into specified strengths and grades, and packaged as finished dyes. The production of pre-reduced indigo requires additional steps. Typically, a reducing agent, such as sodium hydrosulfite, is added to a 20-percent indigo paste, and the solvent, which is usually water, is adjusted so as to return it to a 20-percent paste. The Chinese material is dried to a powder form for shipping, then reprocessed into a solution or paste for final sale in the United States to the denim mills.

The starting materials used by BCC, particularly the formaldehyde and the cyanide, are very toxic and environmentally unfriendly chemicals. As a result, compliance with the much more stringent U.S. environmental regulations could increase the domestic cost of production of this product relative to that of the Chinese product.

DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY ISSUES

In its original determination the Commission found the appropriate domestic like product to be “synthetic indigo corresponding to Commerce’s scope,”¹² and the domestic industry to be producers of synthetic indigo, excluding converters.¹³ During this five year review, all parties agreed with the Commission’s definition of the domestic like product and domestic industry.¹⁴

Respondent interested parties, however, argued that there are currently no known U.S. producers of synthetic indigo since BCC ceased full production of the domestic like product in 2003.¹⁵ Respondent interested parties submitted to the Commission an investigative report which found that BCC: (1) filed for Chapter 11 bankruptcy protection on October 1, 2002; (2) reduced its workforce in 2003, laying off all but 12 of its approximately 120 employees; and (3) ceased production of synthetic indigo in July 2003 and began divesting its other businesses (e.g., anhydride and alkyl anilines business).¹⁶ Commission staff confirmed that BCC ceased “full” production¹⁷ of synthetic indigo in *** 2003, that production in 2004 consisted of limited production from ***, and that there was no production of synthetic indigo in 2005.¹⁸ BCC staff indicated that the firm has ***, and that start-up would take approximately *** and cost a minimum of \$***.¹⁹ One respondent, Clariant, estimated that restarting BCC’s synthetic indigo

¹² *Synthetic Indigo from China*, Investigation No. 731-TA-851 (Final), USITC Publication 3310, June 2000, p. 5.

¹³ The Commission determined that “(t)he record indicates that the converters are not engaged in sufficient production-related activity to support their inclusion in the domestic industry. In particular, capital investment and employment levels, and the value added by conversion are quite low. Moreover, the conversion process itself appears to be relatively simple, requiring little technical expertise.” *Synthetic Indigo from China*, Investigation No. 731-TA-851 (Final), USITC Publication 3310, June 2000, p. 8.

¹⁴ See responses to the notice of institution, June 21, 2005.

¹⁵ Hearing transcript, pp. 11-15 (Friemark).

¹⁶ Clariant’s response to the notice of institution, exh. 1, pp. 1 and 2.

¹⁷ According to BCC, full production is defined as the synthesis of synthetic indigo from raw material chemicals and operation at *** percent capacity utilization. Staff field trip notes, BCC, December 13, 2005, p. 1.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

production would ***.²⁰ Another respondent, C.H. Patrick, estimated that it would cost *** for BCC to restart commercial production of synthetic indigo.²¹

The Act defines the relevant industry as the “producers as a whole of a domestic like product”²² and the “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.²³ If there is no domestically produced article corresponding to merchandise described in the scope of the investigation/order, the Commission must find the “most similar” article that is domestically produced.

The Commission sought information from parties and the textile dye industry as to a product or products “most similar” to synthetic indigo that is/are currently being produced in the United States as follows:

1) Comments on draft questionnaires.—In seeking comments on its draft questionnaires in this five-year review, the Commission requested that parties identify a product “most similar” to synthetic indigo. BCC did not submit any comments. Respondent interested parties reported that there is no product, manufactured domestically, which would be considered “most similar in characteristics and uses.”²⁴

2) Two-page survey.-- During November 2005, the Commission sought additional information through a two-page survey of members of the textile dye industry regarding products “most similar” to synthetic indigo. The Commission received information from 3 of 3 domestic producers, 12 of 29 importers, 8 of 10 purchasers, and 1 of 6 foreign producers. The activities of the responding firms regarding alternative types of textile dyes are presented in the following tabulation.

* * * * *

As indicated in the tabulation and from staff telephone interviews, other than BCC, there is no U.S. production of vat textile dyes (the dye category that includes synthetic indigo). In addition, there reportedly is no U.S. production of direct or sulfur textile dyes.²⁵ Two other types of textile dyes were reportedly produced by ***: acid (***) and reactive (***)

Four firms, ***, compared synthetic indigo to reactive textile dyes. *** noted that “none of the traditional vats we use, nor any of the other textile dye types are most similar to the use of vat blue 1 (synthetic indigo).” With respect to characteristics and uses, *** reported that reactive dyes are water soluble whereas indigo is not, and *** reported that both dyes have an affinity for cotton, but do not have the same color fastness or range. Synthetic indigo is used in the denim market, and reactive dyes are used in other apparel uses. All four firms did not consider reactive dyes to be interchangeable with synthetic indigo. The manufacturing processes for reactive dyes and synthetic indigo are similar in that they are both synthesized using similar equipment, similar manufacturing processes, and similar skilled labor levels, but with different raw materials. However, *** noted that reactive dyes and synthetic indigo are

²⁰ Clariant’s posthearing brief, p. 7.

²¹ Swift Galey and C.H. Patrick’s posthearing brief, p. 9 and exh. 2. In addition to the estimated synthetic indigo restart production costs, C.H. Patrick’s posthearing brief stated that the “***.” Swift Galey and C.H. Patrick’s posthearing brief, p. 9. Staff spoke to Leslie Sedida of the City of Buffalo on February 23, 2006. She is not aware of any new requirements for water treatment should BCC resume production. Staff telephone interview with Leslie Sedida, Manager, Buffalo Sewer Authority, City of Buffalo, February 23, 2006.

²² 19 U.S.C. § 1677(4)(A).

²³ 19 U.S.C. § 1677(10).

²⁴ Comments on draft questionnaires, October 7, 2005: Clariant, p. 3, and Wonderful, p. 1.

²⁵ The lack of U.S. production of sulfur blue 7, in particular, was also found by the Commission in November 2005. See Memorandum of Proposed Tariff Legislation, November 4, 2005.

not manufactured on the same equipment due to dangers of contamination. Both reactive dyes and synthetic indigo are sold through similar channels of distribution, principally to textile end users. *** all reported that reactive dyes and synthetic indigo have distinct customer and producer perceptions. *** noted that reactive dyes have more shades and are brighter than synthetic indigo. *** noted that indigo washes down quicker and is not as bright as reactive dyes. The pricing for reactive dyes appears to be higher than that for synthetic indigo. *** added that prices for reactive dyes ranged from \$*** per pound at 25 to 50 percent concentration and \$*** per pound at 100 percent concentration, and that synthetic indigo sells for approximately \$*** per pound at 100 percent concentration.

One firm, ***, provided comparison information for synthetic indigo to acid textile dyes. The firm reported that (a) acid dyes have an affinity for nylon, unlike synthetic indigo; (b) the dyes are not interchangeable; (c) both are synthesized using similar equipment but with different raw materials; (d) both are sold through similar channels; (e) the products are different given the end users; and (f) reactive dyes sell between \$*** per pound at 100 percent concentration and synthetic indigo sells in the mid \$3.00 per pound range at 100 percent concentration. Appendix E presents a summary of survey comments as to the differences and similarities of a number of textile dyes.

In addition, ***. The firm reported that “***.”²⁶

U.S. MARKET PARTICIPANTS

U.S. Producer

Since the early 1960s, BCC, a petitioner in the original investigation, has been the sole U.S. producer of synthetic indigo at its facility in Buffalo, NY. In 2002, BCC filed for Chapter 11 bankruptcy protection. According to company officials, BCC ***.²⁷ BCC also imports the subject product from China to supply its U.S. customers since curtailing production. In 2005, BCC ***. BCC remains opposed to revocation of the antidumping duty order on synthetic indigo from China. Additional details on BCC’s current status can be found in part III of this report.

As previously indicated, the Commission determined during the original investigation that the converters of synthetic indigo were not engaged in sufficient production-related activity to support their inclusion in the domestic industry. Three firms currently convert imported synthetic indigo powder into paste. Additional information gathered during this five-year review regarding U.S. synthetic indigo conversion activities can be found in appendix F.

U.S. Importers

During the original investigation, the majority of importers reported importing synthetic indigo from China, with Germany as the other large source of synthetic indigo imports.²⁸ The majority of these importers were based on the East Coast of the United States, in New York and the Carolinas. BCC, the sole U.S. producer of synthetic indigo, was also a *** importer of synthetic indigo, accounting for *** percent of total subject imports in 1999. BCC reportedly imported indigo powder from China to supplement its domestic production of synthetic indigo, which was not sufficient to service its export markets.²⁹

²⁶ E-mail from ***, December 5, 2005.

²⁷ BCC’s response to the notice of institution, June 21, 2005, p. 4.

²⁸ *Synthetic Indigo from China*, Inv. No. 731-TA-851 (Final), USITC Staff Report, May 2000, p. IV-5.

²⁹ In 1999, BCC’s total foreign market sales were slightly greater than its domestic market sales. *Synthetic Indigo from China*, Inv. No. 731-TA-851 (Final), USITC Staff Report, May 2000, p. IV-4.

In the present five-year review, importer questionnaires were sent to 33 firms identified by Customs as having imported synthetic indigo between January 2000 and September 2005. Responses were received from 21 firms, with 13 certifying no imports of synthetic indigo, one firm importing small amounts, less than *** pounds, and seven firms providing usable import data. *** imports synthetic indigo to sell in the U.S. market. In addition, ***. *** imports synthetic indigo from China into the United States. In some cases, the importer of record for ***'s imports from China may be listed as “***.” In addition, *** was the importer of record for synthetic indigo from China, but ***. In return, ***. All of these firms are headquartered either in New York or the Carolinas. Information regarding U.S. importers of synthetic indigo are presented in table I-3.

Table I-3
Synthetic indigo: U.S. importers, locations, and reported 2004 imports, by source

* * * * *

U.S. Purchasers

In response to Commission purchaser questionnaires issued in this review, 11 purchasers supplied usable data. These 11 purchasers include 7 denim manufacturers, 2 food color manufacturers, and 2 converters. Table I-4 presents a summary of information regarding U.S. purchasers of synthetic indigo.

Table I-4
Synthetic indigo: U.S. purchasers, U.S. headquarters, sources of purchases, types of indigo purchased, types of firms, and end products produced using synthetic indigo

* * * * *

Purchasers are concentrated in the southeast region. Most denim mills, which make up the largest component of the end users of synthetic indigo, are located in the Southeast. The converters, which convert synthetic indigo in powder form to paste for denim mills, are also located in the Southeast.

A small portion (2 percent) of synthetic indigo is purchased by food coloring manufacturers. The two responding food coloring manufacturers are located in the Midwest.

APPARENT U.S. CONSUMPTION AND MARKET SHARES

U.S. consumption data collected in the original investigation and in this five-year review are presented in table I-5. From 1999 to 2004, apparent U.S. consumption declined by less than *** percent based on quantity, and approximately *** percent based on value.

Table I-5
Synthetic indigo: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, 1997-99 and 2004

* * * * *

Table I-6 presents U.S. market shares for the same periods. From 1999 to 2004, BCC's share of the U.S. market fell from *** percent based on quantity, and from *** percent based on value. Imports of synthetic indigo from China accounted for *** percent of the market during 2004, representing a loss of *** percentage points since 1999. Imports of synthetic indigo from nonsubject sources increased from *** percent of apparent U.S. consumption in 1999 to *** percent in 2004.

Table I-6
Synthetic indigo: U.S. market shares, 1997-99 and 2004

* * * * *

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

U.S. MARKET SEGMENTS / CHANNELS OF DISTRIBUTION

There are two domestic industries that use synthetic indigo: approximately 98 percent of indigo is used to produce denim, and the remainder is used in food coloring. The two principal forms of synthetic indigo sold in the United States are paste and powder. Powder, which is typically 94-98 percent pure indigo, is used directly only by manufacturers of food coloring. Denim mills cannot use powder to dye denim; they rely on converters to mix the powder with water and a reducing agent to produce a paste that is able to penetrate cotton fibers. The resulting paste can be produced in any concentration, and the current industry standard contains 42-percent indigo. Paste is sold mostly in the southeastern United States, the location of domestic denim mills. Typically, indigo is imported into the United States as a powder to minimize transportation costs, but there is also some direct importation of a 40-percent solution of synthetic indigo from Germany.¹

During the period of review, BCC was the sole domestic producer of synthetic indigo in the United States. Although BCC produced synthetic indigo in commercial quantities over the period of review, it has produced very limited quantities since December 2003. In 2004, it shipped enough U.S.-produced paste to satisfy only *** percent of total U.S. demand.² BCC produced no synthetic indigo in 2005.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, staff believes that the U.S. synthetic indigo producer is likely to make no response to small or moderate changes in demand. BCC has assets in place and could restart production. However, it is uncertain whether this is a practical possibility given that BCC has begun to liquidate assets.

There is currently no domestic production of synthetic indigo. BCC maintains *** at its plant in South Buffalo, NY. BCC estimates that it would take *** and cost *** to restart production at this plant.³ In posthearing briefs, respondents interested parties disagree with these estimates. They estimate that repairs and upgrades necessary to restart production would take up to *** and cost \$***,⁴ and they estimate that startup costs (including raw materials, labor, freight, administration, and interest) would cost an additional \$***.⁵

Supply responsiveness cannot be precisely estimated in the absence of production, but given sufficient investment to make the plant operational again, supply responsiveness is enhanced by substantial excess capacity. Export potential is also unknown, but it is likely limited by low prices in chief export markets and substantial declines of U.S. exports of all vat dyes to these markets in recent years.

¹ This solution does not require further processing by converters.

² Much of this indigo was from inventory. BCC produced a quantity equal to only *** percent of U.S. demand in 2004.

³ Staff field trip report, BCC, December 13, 2005.

⁴ Clariant's posthearing brief, p. 7.

⁵ Swift Galey and C.H. Patrick's posthearing brief, exh. 2.

Industry capacity

BCC's reported capacity utilization for synthetic indigo decreased from "full capacity" to 0 percent from 2000 to 2005.⁶ Industry capacity is currently contingent on investment at BCC sufficient to make its plant operational. Absent this investment, U.S. production capacity is zero. BCC's capacity at the beginning of this review period was *** pounds of 20-percent paste per year.⁷ There is no indication that BCC's potential production capacity has changed since 2000.⁸ BCC's potential capacity is sufficient to supply *** percent of U.S. market demand in 2004. This indicates that BCC has substantial available capacity with which it could increase production of synthetic indigo in the event of a price change, if the change is large enough for BCC to restart production.

Alternative markets

Information on exports and prices suggests that the ability of domestic producers to shift shipments between the United States and other markets in response to price changes has declined in this period. Producers of synthetic indigo may have limited ability to change shipments to other markets.

BCC has not provided information to document its exports during the period of review. Official U.S. export statistics do not record exports of synthetic indigo either, because the statistics aggregate synthetic indigo with other vat dyes such as vat brown 3, vat red 1, and vat blue 5.⁹ However, official statistics of aggregate U.S. exports of all vat dyes (including indigo) may be informative, because vat dyes and synthetic indigo may have similar export markets. For example, major export markets for all U.S.-produced vat dyes in 2005 were Mexico, Germany, and Canada; Mexico and Germany were major U.S. export markets for synthetic indigo in 2000.¹⁰ However, the total volume of U.S. exports of vat dyes decreased by 90 percent from 2000 to 2004.¹¹ Reported information on foreign prices also indicates limited export potential for synthetic indigo. Of the four purchasers that described prices in foreign markets, all agreed that Mexican prices were lower. Europe, Central America, and Asia were also reported by purchasers as regions with lower prices for synthetic indigo than the United States.

Inventory levels

BCC did not provide inventory information during this five-year review. In 2004, its sales from inventory were equal to *** percent of its production.¹² BCC had no production and made no sales from inventory in 2005. If BCC restarts production, the current lack of inventory will reduce supply responsiveness.

⁶ 2000 value from *Synthetic Indigo from China*, Inv. No. 731-TA-851 (Final), USITC Publication 3310, June 2000.

⁷ *Synthetic Indigo from China*, Inv. No. 731-TA-851 (Final), USITC Staff Report, May 2000.

⁸ Staff field trip report, BCC, December 13, 2005.

⁹ Exports of vat dyes are aggregated into HTS 3204.15.

¹⁰ *Synthetic Indigo from China*, Inv. No. 731-TA-851 (Final), USITC Publication 3310, June 2000.

¹¹ Some portion of this decline is attributable to the exiting of BCC from the market; however, BCC's exports accounted for approximately *** percent of all U.S. vat dye exports.

¹² This quantity of shipments represented only *** percent of U.S. demand in 2004.

Production alternatives

No other products are made domestically using the same production workers and equipment that are used to produce synthetic indigo. It would be possible to use the present facilities and equipment to make other dyes; however, this would require substantial reconfiguration. In addition, indigo dye is made under harsh conditions not found in most other dye manufacturing, so some equipment would be unnecessary in the production of other dyes.¹³ The limited ability to shift to other dye production provides little flexibility to quickly change the quantity of shipments.

Subject Imports

Based on available information, suppliers of imports of synthetic indigo from China are likely to respond to changes in demand with relatively moderate changes in the quantity shipped to the U.S. market. Supply responsiveness is increased by the large number of alternative markets and excess capacity; however, it is limited by low inventories and the inability to use indigo production equipment for alternative uses.¹⁴

Industry capacity

Reported Chinese capacity increased *** percent between 2000 and 2004 from *** million pounds in 2000 to *** million pounds in 2004.¹⁵ Capacity utilization rates increased from *** percent in 2000 to *** percent in 2004; capacity utilization rates were *** and *** percent in interim 2004 and 2005, respectively. These data indicate that Chinese suppliers of synthetic indigo have a small amount of excess capacity with which they could increase production of synthetic indigo in the event of a price change.

Alternative markets

Data on Chinese suppliers' shipments of synthetic indigo indicate that approximately *** percent of Chinese shipments are to companies within China. The largest Chinese export markets are other Asian countries, the European Union, and the United States. These data indicate that foreign producers in China can divert shipments to or from alternative markets in response to changes in the price of synthetic indigo.

¹³ Staff field trip report, BCC, December 13, 2005.

¹⁴ Supply responsiveness may differ by company because of widely different antidumping duty margins. For example, Liyang Wego Indigo Blue LLC (Liyang) established a margin of 4.6 percent in September 2004. Liyang's share (by quantity) of world synthetic indigo exports to the United States rose from *** percent in January-September 2004 to *** percent in January-September 2005. With current antidumping orders in place, Liyang has a much greater ability to respond to changes in U.S. demand than other Chinese exporters. Other Chinese exporters had margins of at least 79.7 percent, and had no exports to the United States in 2004 or 2005.

¹⁵ All Chinese information is based on one reporting exporter, Wonderful Chemical Industrial Co., Ltd. Wonderful accounted for *** percent of total Chinese production in 2004, but it has not exported to the United States since ***. The *** Chinese exporter to the U.S. (Liyang) did not provide information for this report.

Inventory levels

Data on Chinese producers' inventory levels indicate that between 1999 and 2004, inventories as a share of total shipments ranged from a minimum of *** percent in 2000 to a maximum of *** percent in 2003. In the interim periods, inventories accounted for *** percent in 2004 and *** percent in 2005. These data indicate that foreign producers have a very limited ability to use inventories as a means of increasing shipments of synthetic indigo to the U.S. market.

Production alternatives

Chinese producers, like U.S. producers, report that they cannot use equipment currently devoted to synthetic indigo production to manufacture other products. This limited ability to shift to other dye production provides little flexibility to quickly change the quantity of shipments from China.

U.S. Demand

Based on available information, synthetic indigo consumers are likely to respond to changes in the price of synthetic indigo with small changes in their purchasers of synthetic indigo. The main contributing factors to the low responsiveness of demand are the low cost share and the lack of commercially viable substitute products.¹⁶

Demand Characteristics

U.S. demand for synthetic indigo depends on the level of demand for downstream products using synthetic indigo, which include denim and food coloring. Approximately 98 percent of synthetic indigo is used in the production of denim. Purchasers and importers of denim report no substitutes for synthetic indigo, and report that indigo typically accounts for less than 5 percent of the total cost of denim. When asked whether demand had changed since 2000, five of the seven denim manufacturers reported decreased demand for domestic denim since 2000, and two reported increased demand. The reasons given by denim mills for decreased demand were the decline in the number of U.S. mills and increased offshore production of denim. The reasons reported for increased demand were growth in demand for darker shades of denim and growth in worldwide demand for denim. Similarly, five of seven mills expect continued plant closings and continued future increases in imported denim. The other two mills reported that they expect no change in future demand.

U.S. production of denim was relatively steady from 1997 to 2000, then declined every year, decreasing 30 percent from 2000 to 2004 (table II-1). January-June 2005 production also declined relative to January-June 2004. Coincident with the decline in U.S. production, total U.S. imports of denim also declined 32 percent between 2000 and 2004. There was considerable change in the sources of supply of denim to the U.S. market during the period of review. In 2000, Mexico was the number one foreign supplier, accounting for 35 percent of U.S. imports of denim. In January-September 2005, Mexico remained the number one foreign supplier, but the Mexican import share had declined to 26 percent. Italy made consistent gains to become the number two source of U.S. imports with an import share of 17 percent in January-September 2005. China greatly increased shipments of denim to the United States after the Agreement on Textiles and Clothing ended on January 1, 2005. Chinese shipments increased from 2 percent of U.S. denim imports in January-March 2005 to 12 percent of such imports in July-September 2005.

¹⁶ The cost share of synthetic indigo in food coloring manufacturing can be high, but food coloring uses only 2 percent of total U.S. shipments of synthetic indigo.

Table II-1**U.S. blue denim: Production and imports for consumption from China, Mexico, and all other countries, 1997-2004, January-June 2004, and January-June 2005**

Period	U.S. production	Imports from China	Imports from Mexico	Imports from all other countries	Total
	<i>(In millions of square yards)</i>				
1997	853.8	1.5	93.9	103.8	1052.9
1998	922.3	0.3	78.1	104.4	1105.1
1999	832.9	0.8	72.6	91.4	997.7
2000	867.3	1.2	53.0	97.7	1019.2
2001	741.7	1.3	44.3	111.8	899.1
2002	703.4	1.6	58.2	125.6	888.8
2003	613.0	0.7	38.0	73.1	724.8
2004	609.8	0.6	35.8	66.9	713.1
Jan.-June 2004	301.2	0.4	17.8	42.4	361.9
Jan.-June 2005	280.7	3.2	13.0	29.0	325.9

Source: U.S. Bureau of the Census, "MQ313T" and "MQ313A," and USITC Trade Dataweb, HTS subcategories 5209.42.0020 and 5209.42.0040.

Food coloring accounts for the remaining 2 percent of U.S. demand for synthetic indigo. There are two food colors produced with synthetic indigo: Blue No. 2 dye, which is water soluble and called Brilliant Blue FCF; and Blue No. 2 lake, which is water insoluble and called indigotine. For the two manufacturers of food coloring, one reported increased demand since 2000, and the other reported decreased demand. Neither expects future demand changes.

Of the 11 responding purchasers, seven produce denim fabric, two (***) convert indigo powder to paste for use by denim producers, and two (***) produce food coloring. The two converters are also importers. To prevent double counting, this report includes the responses of the converters with importers but not with purchasers.

Substitute Products

Six of seven denim mills and all seven importers agree that no substitute product exists for synthetic indigo. Other dyes can be used to alter the shade or color fastness of denim, but no other dye can reproduce the unique fade pattern demanded by U.S. denim consumers. The only statement to the contrary was one purchaser that reported that other dyes were "not easily" substitutable for synthetic indigo, but that same firm reported elsewhere that there were no substitutes. Both food coloring producers reported that there were no substitutes for synthetic indigo.

Cost Share

Synthetic indigo is an intermediate product used in the production of denim and in food dyes. Price changes for synthetic indigo will likely have only a small effect on consumption because synthetic indigo accounts for a relatively small percentage of the total cost of the end products in which synthetic indigo is used.

Purchasers were asked to provide information on the cost share of synthetic indigo relative to the end products in which it is used. Six denim mills reported that synthetic indigo represents between 2 and 8 percent of the total cost of denim (with an average of 4.0 percent), and one importer reported a cost share between 5 and 10 percent. The cost share varies with color saturation, with some darker shades using more than twice as much indigo as lighter shades. The cost share of indigo in food coloring is higher and more variable than it is in denim. The share reported by two food coloring manufacturers ranged from *** to *** percent, depending on the company and the type of food coloring.¹⁷ Although these cost shares are high, food coloring makes up only 2 percent of U.S. demand for indigo.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported synthetic indigo depends upon factors such as relative prices, quality (e.g., consistency, strength, and purity) and conditions of sale (e.g., lead times between order and delivery, availability of product, and product services). Based on available data, staff believes that there is a relatively high degree of substitution between domestically produced synthetic indigo and synthetic indigo imported from China.

Factors Affecting Purchasing Decisions

Purchasers were asked to identify the three major factors considered by their firm in deciding from whom to purchase synthetic indigo (table II-2). Five of the nine responding firms reported that quality was the most important factor; the most commonly cited second-most-important factors were quality and technical support; price was the most-commonly cited third most important factor according to six firms. Food coloring manufacturers also cited purity and heavy metal content as additional concerns. Purchasers were asked what factors determined the quality of synthetic indigo. Factors mentioned included consistency, shade matching, strength, and chemical properties such as alkalinity, particle size, and reduction potential.

¹⁷ The Blue No. 2 dye contains a higher percentage of indigo than the Blue No. 2 lake, and indigo makes up a correspondingly higher percentage of total cost of the dye.

Table II-2
Synthetic indigo: Most important factors in selecting a supplier, as reported by purchasers

Factor	First	Second	Third
Quality ¹	5	3	1
Price	2	1	6
Availability	2	1	1
Technical support	0	2	1
Consistency	0	1	0
Delivery quality	0	1	0

¹ Quality includes factors such as consistency, shade matching, strength, and chemical properties.

Source: Compiled from data submitted in response to Commission questionnaires.

Purchasers were asked if they always, usually, sometimes, or never purchased the lowest priced synthetic indigo. None of the nine purchasers reported always purchasing the lowest priced product; six usually purchased the lowest priced product; two sometimes purchased the lowest priced product; and one purchaser never purchased the lowest priced product. Purchasers were also asked if they purchased synthetic indigo from one source although a comparable product was available at a lower price from another source. Four purchasers responded, reporting reasons why they purchased from a source that might be more expensive. These reasons included reliability and timeliness of delivery, technical assistance, and consistency of product quality.

Purchasers were asked to rate the importance of 15 factors in their purchasing decisions (table II-3). Supply and product quality were the most important factors: all nine responding purchasers reported that availability and reliability of supply were very important, and all nine also reported that product consistency and quality meeting (though not necessarily exceeding) industry standards was very important. The next most important factor was price, with eight of nine purchasers responding that price was very important.

Purchasers were asked for a country-by-country comparison on the same 15 factors (table II-4). Purchasers reported that U.S., Chinese, and nonsubject indigo were comparable in almost all factors. Two purchasers compared U.S. and Chinese synthetic indigo. For these two purchasers, the only reported difference in the factors was that the U.S. product was superior to the Chinese product in availability and technical support, while the Chinese product was reported to be superior to the U.S. product for lower price. Two purchasers also compared U.S. synthetic indigo to nonsubject (Mexican and German) indigo. These were reported as comparable in every case except technical support, in which one purchaser rated the United States superior. Purchasers also compared Chinese product to product from nonsubject countries. Chinese synthetic indigo was reported as similar to Mexican and Korean indigo for all factors except lower price, in which one supplier rated China superior.¹⁸

¹⁸ The comparison of Chinese and German indigo was the only case in which opinions were mixed. Two purchasers reported that the products were comparable, one purchaser reported that German indigo was generally superior, and one purchaser reported that Chinese indigo was superior in some factors.

Table II-3**Synthetic indigo: Importance of purchase factors, as reported by purchasers**

Factor	Very important	Somewhat important	Not important
	<i>Number of firms responding</i>		
Availability	9	0	0
Delivery terms	4	5	0
Delivery time	6	3	0
Discounts offered	2	3	4
Extension of credit	3	5	1
Price	8	1	0
Minimum quantity requirements	1	3	5
Packaging	3	3	3
Product consistency	9	0	0
Quality meets industry standards	9	0	0
Quality exceeds industry standards	3	3	3
Product range	2	2	5
Reliability of supply	9	0	0
Technical support/service	5	2	2
U.S. transportation costs	2	5	2

Note.--Not all purchasers responded for each factor.

Source: Compiled from data submitted in response to Commission questionnaires.

Table II-4
Synthetic indigo: Comparisons of product by source country, as reported by purchasers

Factor	U.S. vs China		
	S	C	I
	<i>Number of firms responding</i>		
Availability	1	1	0
Delivery terms	0	2	0
Delivery time	0	2	0
Discounts offered	0	2	0
Extension of credit	0	2	0
Lower price	0	1	1
Minimum quantity requirements	0	2	0
Packaging	0	2	0
Product consistency	0	2	0
Quality meets industry standards	0	2	0
Quality exceeds industry standards	0	2	0
Product range	0	2	0
Reliability of supply	0	2	0
Technical support/service	1	1	0
Lower U.S. transportation costs	0	2	0
<p>Note 1.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior. Note 2.--Not all companies gave responses for all factors.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>			

Purchasers were asked if certain grades or types of synthetic indigo were available from a single source. Three purchasers reported that pre-reduced indigo was available from a single source (Dystar of Germany). None of the of nine responding purchasers reported that buying product produced in the United States is an important factor in the purchasing of synthetic indigo.

Purchasers were asked if they required certification or prequalification for synthetic indigo. All nine of the responding purchasers reported that they required certification or prequalification. Of the nine, eight required it for all their purchases and one firm required it for “some” of its purchases in 2004. Reported elements of the precertification process are sample testing to ensure quality and strength, followed by plant trials to judge performance, color, and wash characteristics.

Eight purchasers reported factors they considered in qualifying a new supplier. Factors considered included the quality and availability of product, as well as the reliability, expertise, and service of the supplier. The time required to qualify a new supplier ranged from one to four months for these eight purchasers. Purchasers were asked if any suppliers had failed to qualify their product or lost their approved status. None of nine responding firms reported that suppliers had failed to qualify.

Purchasers were asked whether their purchasing patterns for synthetic indigo from subject and nonsubject sources had changed since 2000. Two of the nine responding purchasers reported that they had purchased synthetic indigo from China before 2000; one reduced or stopped purchasing from China as a result of the antidumping duty order, and the other changed its purchase patterns for reasons other than the antidumping duty order. When asked about purchases from nonsubject countries, all nine purchasers reported that they purchased from nonsubject countries after the order. The largest change in purchasing patterns occurred after BCC stopped large-scale production in 2003. Five purchasers reported being affected by this change. All five initially switched to nonsubject imports, and then four changed to Chinese imports after September 2004.¹⁹

Purchasers were asked how frequently they and their customers purchased synthetic indigo from specific producers and from specific countries (table II-5). One of nine responding purchasers always purchased indigo from a particular company; two sometimes bought from particular companies, either to get technical advice or to encourage competition; and six never bought from a particular company. None of the nine purchasers made purchasing decisions based on the country of origin of the synthetic indigo.

Table II-5
Synthetic indigo: Importance of specific producer or country of origin, as reported by purchasers

Item	Always	Usually	Sometimes	Never
	<i>Number of firms responding</i>			
Purchaser makes decision based on producer	1	0	2	6
Purchaser's customer makes decision based on producer	0	0	2	6
Purchaser makes decision based on country	0	0	0	9
Purchaser's customer makes decision based on country	0	0	0	9

Source: Compiled from data submitted in response to Commission questionnaires.

Responding purchasers contacted between 1 and 15 suppliers before making a purchase. Five of nine firms contacted either two or three suppliers; two firms contacted only one supplier; and two contacted

¹⁹ As reported by ***, indigo suppliers (i.e., CH Patrick and Clariant) switched their source of supply back to China in this period.

more than three suppliers. Most purchasers, seven of the nine responding, reported that they had changed suppliers in the last five years.

Lead Times

Lead times for the U.S. producer were not available. For the five responding importers, three reported that 100 percent of shipments were made from inventory, with lead times that ranged from one to three days; two responding importers reported that 100 percent of shipments were produced to order, with lead times that ranged from 30 days to 10 weeks.

Comparisons of Domestic Products, Subject Imports, and Nonsubject Imports

Producers, importers, and purchasers were asked to report how frequently synthetic indigo from different countries was used in the same applications (table II-6). If products from different countries were not always used in the same application, purchasers were asked to explain why. The answers of purchasers and importers of powder differed from the answers of those companies handling paste. Importers and purchasers of powder reported that indigo from different countries was always interchangeable. *** is the only firm that reported imports of synthetic indigo ***. The purchasers of paste (i.e., denim mills) reported that the quality of paste can depend on the expertise of the converter, or that they were unaware of the country of origin of the powder. No information is available from the U.S. producer because BCC did not return the producer questionnaire.

Table II-6

Synthetic indigo: U.S. purchasers' perceived degree of interchangeability of products produced in the United States and other countries¹

Country comparison	U.S. producers					U.S. importers					U.S. purchasers				
	A	F	S	N	0	A	F	S	N	0	A	F	S	N	0
U.S. vs. China	(²)	3	0	1	0	1	3	0	1	0	1				
U.S. vs. Nonsubject	(²)	3	0	1	0	1	4	0	1	0	0				
China vs. Nonsubject	(²)	4	0	1	0	1	4	0	1	0	1				

¹ Producers, importers, and purchasers were asked whether synthetic indigo produced in the United States and in other countries is used interchangeably.

² Not available. No questionnaire response was received from BCC, the sole U.S. producer.

Note.-- "A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never, and "0" = No familiarity.

Source: Compiled from data submitted in response to Commission questionnaires.

Producers and importers were asked to assess how often differences other than price were significant in sales of synthetic indigo from the United States, subject countries, or nonsubject countries (table II-7). Producers and importers were asked to specify the nature of these nonprice differences. One importer reported that purity can vary, and that Chinese imports are sometimes less than 94 percent pure. Another importer responded that U.S. indigo differs from foreign indigo because U.S. indigo is not currently available.

Table II-7**Synthetic indigo: Perceived significance of differences other than price between synthetic indigo produced in the United States and other countries¹**

Country comparison	U.S. producers					U.S. importers				
	A	F	S	N	0	A	F	S	N	0
U.S. vs. China	(²)	1	0	2	0	0				
U.S. vs. Nonsubject	(²)	1	0	2	0	0				
China vs. Nonsubject	(²)	0	0	2	1	1				

¹ Producers, importers, and purchasers were asked whether differences other than price were a significant factor in sales of synthetic indigo.

² Not available. No questionnaire response was received from BCC, the sole U.S. producer.

Note.-- "A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never, and "0" = No familiarity.

Source: Compiled from data submitted in response to Commission questionnaires.

ELASTICITY ESTIMATES**U.S. Supply Elasticity**

The domestic supply elasticity for synthetic indigo measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of synthetic indigo. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternative markets for U.S.-produced synthetic indigo. The U.S. industry is currently not producing synthetic indigo and has not submitted any data; therefore no elasticity estimate can be made.

U.S. Demand Elasticity

The U.S. demand elasticity for synthetic indigo measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of synthetic indigo. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of synthetic indigo in the production of any downstream products. Based on the available information, the aggregate demand for synthetic indigo is likely to be low, in a range of -0.2 to -0.5. Purchasers would not likely be very sensitive to changes in the price of synthetic indigo and would continue to demand fairly constant quantities over a considerably wide range of prices.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.²⁰ Product differentiation, in turn, depends upon such factors as quality and conditions of sale. No estimate can be given because there is no U.S. production. However, the elasticity of substitution between subject and nonsubject synthetic indigo can be estimated based on

²⁰ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

available information about substitution in the U.S. market. The elasticity of substitution between foreign varieties in the U.S. market is likely to be moderately large and in the range of 3 to 6.

PART III: CONDITION OF THE U.S. INDUSTRY

BCC has been the only U.S. producer of synthetic indigo since the early 1960s when DuPont ceased production of this dye. BCC's plant is located in Buffalo, NY, where it has produced synthetic indigo since 1924. During the original investigation, it was reported that BCC also ***.¹ BCC also produced, in separate facilities at its Buffalo plant, a range of intermediate chemicals for use in pharmaceuticals, electronics applications, and in the curing of epoxy resins.²

During this five-year review, information was provided by BCC's bankruptcy court restructuring officer regarding the status of BCC's operations, and includes the following:³

"The Company's largest creditor and only secured creditor is the PBGC {Pension Benefit Guarantee Corporation}. Their secured claim is approximately \$3.15mm and unsecured is approximately \$18mm. Given BCC's recent inability to sell or be a reseller of synthetic indigo dye, BCC has no revenue. The only proceeds BCC has to fund operations are from the sale of non-indigo assets, all of which have a senior secured lien attached in favor of the PBGC. The PBGC's secured lien substantially exceeds the total enterprise value of BCC assets; therefore, the PBGC is effectively the owner of all of BCC's assets and in control of BCC under the U.S.B.C. (U.S. Bankruptcy Court). That said, the PBGC reached an agreement with BCC to pursue the structured sale of non-indigo assets, while waiting completion of the two-year plus investigation by CBP {Customs and Border Protection} and ICE {Immigration and Customs Enforcement} of the illegal trans-shipment of synthetic indigo dye through Korea and Mexico. As part of this agreement, all remaining employees except three, either left BCC or were terminated. Subject to the outcome of the investigation or the sale of the indigo operations, these employees would be hired back. In addition, a BCC operating budget (monthly through December '05) was approved by the PBGC, and was to be funded from asset sales proceeds. Unfortunately, the investigation by CBP and ICE has gone from two to three years (even with the hard evidence that Congresswoman Slaughter handed over to them showing proof of illegal Chinese trans-shipments from Korea).

Also unfortunate, is that the sale of non-indigo assets was delayed two months by the DEC {Department of Environmental Conservation} and as a result, BCC's administrative and legal costs have exceeded budget. Given these events, BCC is not only unable to retain individuals necessary who have the expertise to complete the producer's questionnaire, but BCC is unable to make the current payroll on the few remaining employees and pay certain legal fees.

¹ Confidential *Staff Report* (INV-X-110), May 19, 2000, pp. III-1 and III-2.

² Ibid.

³ Email from ***, BCC Restructuring Officer, December 19, 2005.

Presently Buffalo Color is in the process of trying to close on three major assets sales of which one should close this week and the other two by the end of next week. ***.

***.”

Another communication from BCC’s bankruptcy court restructuring officer provided the following updated information:⁴

“There are two non-developments to report:

- 1) Contrary to a written, signed and approved agreement with the DEC, they have once again delayed the previously approved assets sales. This matter will be taken in front of the Bankruptcy Judge later this week.
- 2) The investigation by CBP and ICE of the illegal trans-shipments of synthetic indigo has produced no new information. Given that this matter was reported in January 2003, it should have been resolved well before BCC's Sunset Review. We have received no recent feedback and do not understand why CBP and ICE were unable to enforce the federal anti-dumping ruling and are not able to conclude this investigation after three years.

As a result of the events, as well as the inability to start-up or sell BCC's indigo operation, and the lack of funds to make payroll and pay utilities, *** likely authorize BCC to convert to chapter 7 liquidation.”

The most recent communication from BCC’s bankruptcy court restructuring officer provided the following updated information:⁵

“BCC has been forced to move forward with liquidating the indigo operations.

This unfortunate action is due to four factors: (1) no response from the 3-year investigation by ICE and CBP on the illegal indigo transshipment, (2) lower than expected payment of "Byrd money" in December (presently, there appears to be at least \$100,000 that is missing), (3) the PBGC (who has a secured lien on all assets) has not yet decided to allocate assets sales proceeds to BCC so that BCC can keep from liquidating, and (4) as a result of #1, #2, and #3 above, BCC has been unable to find a buyer of the indigo operations.”

⁴ Email from ***, BCC Restructuring Officer, January 23, 2006.

⁵ Email from ***, BCC Restructuring Officer, February 14, 2006.

**U.S. PRODUCER’S CAPACITY, PRODUCTION,
U.S. SHIPMENTS, AND INVENTORIES**

BCC has not returned a producer questionnaire response to the Commission. The 2004 data presented in table III-1 are from data submitted by BCC in its June 2005 response to the Commission’s notice of institution. As indicated above, BCC has been operating under Chapter 11 bankruptcy protection since 2002, states that ***. Data regarding BCC’s synthetic indigo production activities and shipments during 1999 and 2004 are presented in table III-1. No data on BCC’s U.S. inventories of synthetic indigo are available.

Table III-1
Synthetic indigo: U.S. producer’s capacity, production, capacity utilization, and U.S. commercial shipments, 1999 and 2004

* * * * *

U.S. PRODUCER’S IMPORTS AND PURCHASES

As noted in Part I, BCC imported subject synthetic indigo from China starting in 2004. The company’s imports accounted for *** percent of total U.S. imports from China in 2004. In 2004, the quantity of BCC’s imports (***)⁶ was approximately *** times that of its production quantity (***). BCC did not produce any synthetic indigo in 2005, and its imports from China, combined with those of ***, accounted for *** percent of imports of synthetic indigo from China during January-September 2005. BCC’s imports of synthetic indigo from China are shown in table III-2.

Table III-2
Synthetic indigo: BCC’s production and imports (from China), 2004, and January-September 2005

* * * * *

U.S. PRODUCER’S EMPLOYMENT, WAGES, AND PRODUCTIVITY

Currently, BCC does not have any production-related workers since its plant closed in 2005. No additional data are available from BCC on employment, wages, and productivity.

FINANCIAL EXPERIENCE OF THE U.S. PRODUCER

BCC did not provide any financial data during the course of this review.

⁶ ***.

PART IV: U.S. IMPORTS AND THE FOREIGN INDUSTRY

U.S. IMPORTS

The Commission sent questionnaires to 33 firms believed to have imported synthetic indigo between January 2000 and September 2005, and received data from seven of the firms.¹ Importing firms responding to the Commission's questionnaire accounted for *** percent of subject imports from China during 2004.

Data relating to U.S. imports of synthetic indigo are presented in table IV-1 and figure IV-1 and are compiled from official Commerce statistics (adjusted to include questionnaire data for U.S. imports from ***).² Total U.S. imports more than doubled between 2000 and 2004, from *** million to *** million pounds, or by *** percent. In the January to September period of 2005, total imports were *** percent higher than in the corresponding 2004 period. The composition of these imports changed noticeably over the period of review. During 2000, imports of synthetic indigo from China accounted for *** percent of total U.S. imports; such imports declined to *** percent during 2004, and increased to *** percent during January-September 2005.³ The most recent growth was attributable to increased imports by ***. The volume of U.S. imports from China declined by approximately 15 percent from 2000 to 2004, or by 316,000 pounds. During January-September 2005, imports from China increased 27-fold when compared to the same period of 2004. Conversely, imports of synthetic indigo from nonsubject sources increased between 2000 and 2004, and declined during the interim periods.

Figure IV-1

Synthetic indigo: U.S. imports, by sources, 1997–2004, January-September 2004, and January-September 2005

* * * * *

The average unit values of subject imports from China fluctuated from a high of \$0.56 per pound in 2002 to a low of \$0.33 per pound during January-September 2004. The unit values of total U.S. imports of synthetic indigo increased from 2000 to 2002, declined from 2002 to 2004, and increased again during January-September 2005.

U.S. imports of synthetic indigo from Germany and Brazil accounted for the largest shares of imports during the earlier periods of this review, while imports from Germany and Korea accounted for the largest shares during the latter periods.⁴ However, during January-September 2005, imports from

¹ As noted in Part I, a total of 21 firms responded to the Commission's importers' questionnaires. Thirteen firms certified that they had not imported synthetic indigo from any source since January 1, 2000. One firm, ***, indicated that it had imported nonsubject synthetic indigo in very small quantities, less than *** pounds and did not have the resources to respond to the Commission's questionnaire.

² The official Commerce statistics for 2000-04 used in this report are for HTS statistical reporting number 3204.15.1000 only. Synthetic indigo is not the only item that may be imported under two other HTS subheadings, 3204.15.40 and 3204.15.80, that are identified in the scope of the antidumping duty order.

³ ***.

⁴ Germany's exports to the United States are from ***.

Table IV-1
Synthetic indigo: U.S. imports, by source, 2000-04, January-September 2004, and January-September 2005

Source	Calendar year					January - September	
	2000	2001	2002	2003	2004	2004	2005
Quantity (1,000 pounds on a 20-percent paste form basis)							
China	2,151	1,875	638	419	1,835	557	15,587
Korea	0	0	3,307	7,602	13,917	12,859	0
Germany ¹	***	***	***	***	***	***	***
Mexico	0	0	2,295	5,566	2,835	2,561	171
Brazil	872	7,413	1,649	0	0	0	1,771
All other sources	1,063	79	145	0	203	203	304
Total imports	***	***	***	***	***	***	***
Landed, duty-paid value (\$1,000)							
China	1,161	953	359	167	704	182	7,741
Korea	0	0	1,771	3,554	5,912	5,447	0
Germany ¹	***	***	***	***	***	***	***
Mexico	0	0	1,274	2,775	1,280	1,093	107
Brazil	254	2,113	425	0	0	0	501
All other sources	640	55	70	0	102	102	172
Total imports	***	***	***	***	***	***	***
Unit value (per pound)							
China	\$0.54	\$0.51	\$0.56	\$0.40	\$0.38	\$0.33	\$0.50
Korea	(²)	(²)	0.54	0.47	0.42	0.42	(²)
Germany ¹	***	***	***	***	***	***	***
Mexico	(²)	(²)	0.56	0.50	0.45	0.43	0.62
Brazil	0.29	0.29	0.26	(²)	(²)	(²)	0.28
All other sources	0.60	0.69	0.48	(²)	0.51	0.51	0.56
Average	***	***	***	***	***	***	***

Table continued on next page.

Table IV-1--Continued

Synthetic indigo: U.S. imports, by source, 2000-04, January-September 2004, and January-September 2005

Source	Calendar year					January - September	
	2000	2001	2002	2003	2004	2004	2005
Share of quantity (percent)							
China	***	***	***	***	***	***	***
Korea	***	***	***	***	***	***	***
Germany ¹	***	***	***	***	***	***	***
Mexico	***	***	***	***	***	***	***
Brazil	***	***	***	***	***	***	***
All other sources	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***
Share of value (percent)							
China	***	***	***	***	***	***	***
Korea	***	***	***	***	***	***	***
Germany ¹	***	***	***	***	***	***	***
Mexico	***	***	***	***	***	***	***
Brazil	***	***	***	***	***	***	***
All other sources	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***
¹ Data for Germany are compiled from ***. ² Not applicable.							
Source: Compiled from official Commerce statistics for HTS statistical reporting number 3204.15.1000 and ***.							

China accounted for approximately *** percent of total imports. U.S. firms reported importing synthetic indigo acid from nonsubject countries including Brazil, Germany, and Mexico. Proprietary Customs data show substantial imports from Korea by *** during 2002-04.⁵

U.S. IMPORTERS' INVENTORIES

Data relating to U.S. importers' inventories of imported synthetic indigo are presented in table IV-2. The level of importers' inventories of subject synthetic indigo fluctuated over the period examined. Relative to import quantity, inventories of subject imports ranged from *** to *** percent of imports between 2000 and 2004. As a ratio to U.S. shipments of imports, inventories of subject imports during this period were close to *** percent, except for a spike of *** percent in 2001. Over the entire 2000-

⁵ ***.

September 2005 period, imports from nonsubject sources accounted for *** of U.S. importers' inventories of imported synthetic indigo.

Table IV-2
Synthetic indigo: U.S. importers' end-of-period inventories of imports, 2000-04, January-September 2004, and January-September 2005

* * * * *

THE INDUSTRY IN CHINA

Between 1997 and 1999, the period examined in the Commission's original investigation, there were reportedly seven known producers of synthetic indigo in China. In this review, foreign producer/exporter questionnaires were sent to six Chinese firms identified as producers or exporters of synthetic indigo from proprietary Customs data and identified in responses to the Commission's notice of institution, including the companies that participated in the original investigation and in several of Commerce's administrative reviews. Responses were received from one firm, Wonderful, that included data from *** affiliated firms in China.⁶ Data on the Chinese synthetic indigo industry, based on data and estimates contained in Wonderful's questionnaire response, are presented in table IV-3.

Table IV-3
Synthetic indigo: Wonderful's capacity, production, inventories, and shipments, 2000-04, January-September 2004, January-September 2005

* * * * *

Data reported by U.S. importers in this review indicate that two Chinese exporters, Wonderful Chemical Industrial Co., Ltd. ("Wonderful") and Liyang Blue, accounted for *** of synthetic indigo exported to the United States in the period examined. On the basis of BCC and Wego's importer questionnaire responses, Liyang Blue had *** exports to the United States from 2000 to 2003, but exported *** pounds in 2004 and *** pounds in January-September 2005.^{7 8} Both in terms of quantity and share of total Chinese shipments, exports to the United States from Wonderful declined *** after 2000, with *** pounds in 2000 and *** pounds in 2002, but *** exports to the United States after 2002 (table IV-3).

Wonderful and its affiliates are capable of producing a projected *** pounds of synthetic indigo per year starting in 2005.⁹ No data are available regarding the actual quantity of the total Chinese industry's capacity, production, or total shipments.¹⁰ Based on data constructed from estimates provided by Wonderful, the company had *** exports of Chinese synthetic indigo to the United States, with the

⁶ Wonderful's questionnaire response combined data for Wonderful Chemical Industrial Co., Ltd. and its related companies: ***.

⁷ The data reported from the combined questionnaire data of BCC and Wego differ from official statistics due to the conversion of 100 percent indigo powder to 20 percent paste. Imports of synthetic indigo may be in concentrations of 100 percent, 42 percent, 40 percent, etc.

⁸ Liyang Blue's antidumping duty rate is 4.60 percent after a Commerce administrative review issued on September 12, 2003.

⁹ Wonderful's capacity estimate is based on the consolidated capacity of two of its affiliated companies, ***.

¹⁰ Wonderful reported that its production of synthetic indigo accounted for approximately *** percent of total production in China. It also reported that it ***. Wonderful's foreign producer questionnaire response, section II-16.

exception of *** exports in 2000 and 2002.¹¹ Wonderful's reported capacity to produce synthetic indigo in China grew *** from *** pounds in 2000 to *** pounds in 2004, a *** percent increase. In January-September 2005, Wonderful's capacity to produce synthetic indigo increased to *** pounds, or by *** percent compared to January-September 2004. Wonderful's reported production of synthetic indigo in China also increased steadily from *** pounds in 2000 to *** pounds in 2004, or an increase of *** percent. Production in January-September 2005 was *** percent higher than production in January-September 2004. Capacity utilization stayed at around the same level, fluctuating between a low of *** percent and a high of *** percent during the period of review.

In response to the Commission's question on changes in capacity, one of Wonderful's affiliated companies, ***, responded that it entered into *** since June 19, 2000.¹² In 2002, *** formed a new company with initial capacity of *** pounds. The company's current capacity is *** pounds. Furthermore, *** began working on *** to produce synthetic indigo at lower cost and to replace the older *** plant. Production is scheduled to begin in July 2006 with initial capacity expected to be *** pounds per year.¹³

The Commission asked foreign producers to describe the production technology and inputs used in the manufacture of synthetic indigo. Wonderful reported that the current production process for synthetic indigo in China requires inputs of phenylglycine nitrile, potassium hydroxide liquid, sodium metal, and potassium hydroxide solid. In addition, Wonderful reported that an innovative breakthrough occurred in the middle of 2000 in the processing of ***. Previously, Chinese indigo producers had to produce ***.¹⁴

Sales of synthetic indigo accounted for *** percent of total sales by Wonderful and its affiliates in their most recent fiscal year. During 2000-04, Wonderful's internal consumption and home market shipments of synthetic indigo increased from *** percent of total shipments in 2000 to a high of *** percent in 2003 but then declined to *** percent in 2004. Also during this review period, total exports fluctuated from a high of *** percent of total shipments in 2000 to a low of *** percent in 2003 and then increased somewhat to *** percent in 2004.

After 2000, Wonderful's shipments of synthetic indigo went increasingly to the home market and other export markets while exports to the United States declined overall from 2000 through 2004. Wonderful stated that its sales of synthetic indigo to other markets in Asia and the EU increased as a result of the "tremendous expansion" of denim production in those countries, and not as a result of the U.S. antidumping duty order.¹⁵

¹¹ ***.

¹² ***'s capacity and production data are reflected in the capacity and production totals discussed in the previous paragraph.

¹³ Wonderful's foreign producer questionnaire response, sections II-1 and II-2.

¹⁴ Wonderful's foreign producer questionnaire response, further response to section II-5.

¹⁵ Wonderful's foreign producer questionnaire response, section II-13.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Materials

The process BCC uses to produce synthetic indigo first reacts formaldehyde, cyanide, and aniline to produce an intermediate, which is dried and fused in the presence of sodamide and caustic to make synthetic indigo.¹ Formaldehyde, cyanide, aniline, elemental sodium, and sodium hydroxide are the main raw material inputs, and all are purchased on the market. Other important inputs are direct labor and energy. BCC, the sole U.S. producer, has not provided information on the cost share of raw materials, so staff cannot determine the influence raw materials may have on the selling price of synthetic indigo. In 2000, raw materials accounted for *** percent of BCC's indigo production on a per-pound, 20-percent-paste basis.² The 2000 cost share could be an accurate estimate of the current cost share if changes in the prices of raw materials, labor, and energy have been approximately equal.

Transportation Costs to the U.S. Market

Transportation costs for synthetic indigo from China to the United States (excluding U.S. inland costs) in 2004 are estimated to be approximately 6.2 percent of the customs value for product from China. This estimate is derived from official Commerce data and represents the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.³ All imports from China are currently in powder form, which is shipped in bags. There are currently no imports of synthetic indigo in paste form from any country; all paste is currently produced by domestic converters from imported powder. There are some imports of a pre-reduced solution from a nonsubject country (***).⁴ This solution is shipped via tanker. Transportation costs of solution are higher than for powder, but they cannot be estimated from official Commerce data because the solution enters as a part of an HTS code that encompasses many other dye products.⁵

U.S. Inland Transportation Costs

For the five reporting importers, these costs ranged between 1 percent and 5 percent, with an average of 1.75 percent. Producers and importers were also asked to estimate the percentage of their sales that occurred within certain distance ranges. These ranges differed by the form of synthetic indigo shipped. Paste is heavier and more costly to ship than powder, and correspondingly paste importers ship products shorter distances than powder importers. One of the four responding paste importers reported that 50 percent of shipments were made within 100 miles, and three reported at least 80 percent of their shipments were between 101 and 1,000 miles. The one responding powder importer reported that all shipments were shipped farther than 1,000 miles.

¹ Staff field trip report, BCC, December 13, 2005.

² *Synthetic Indigo from China*, Inv. No. 731-TA-851 (Final), confidential staff report (INV-X-110), May 19, 2000, p. V-1.

³ This estimate is based on HTS subheading 3204.15.10, Vat Blue 1 (synthetic indigo), Color Index No. 73000.

⁴ This solution is similar to paste but it requires special processing equipment to prevent oxidation by air.

⁵ Pre-reduced solution, Color Index No. 73001, is classified as a portion of HTS subheading 3204.15.40, and the exact percentage is not known.

BCC reported that U.S. inland transportation costs were approximately 8 percent.⁶ BCC did not provide information on the distance of shipments, but staff estimate that most of its shipments are made between 100 and 1,000 miles, because the distance from Buffalo, New York to mills in North and South Carolina (the most common locations for mills) is between 600 and 750 miles.

Exchange Rates

From 2000 to June of 2005, the Chinese currency was pegged at 8.28 yuan per U.S. dollar. There was a small (2 percent) revaluation in the third quarter of 2005, raising the value of the Chinese currency to 8.09 yuan per dollar.

PRICING PRACTICES

Pricing Methods

Sales of synthetic indigo are mostly made on a short-term contract basis. Three of five responding importers reported at least 80 percent of sales of synthetic indigo were on a short-term contract basis. Of the remaining two responding importers, one had chiefly (***) percent) long-term contracts and the other exclusively spot contracts. None of the five responding importers has a discount policy (except ***, which has a *** percent discount for prompt payment). All five responding importers quote prices on a delivered basis; the length varies from 15 to 45 days.

PRICE DATA

The Commission requested U.S. producers and importers of synthetic indigo to provide quarterly data for the total quantity and f.o.b. value of synthetic indigo products that were shipped to unrelated customers in the U.S. market. Data were requested for the period January 2000 to September 2005. The products for which pricing data were requested are as follows:

Product 1.—Vat Blue 1, 18-22 percent strength, in paste form

Product 2.—Vat Blue 1, 94-98 percent strength, in powder form

Product 3.—Vat Blue 1, 40-44 percent strength, in paste form

No information is available for U.S.-produced synthetic indigo. BCC, the sole U.S. producer, did not return a producer questionnaire (though they did report their activities as an importer), and no importers reported purchasing U.S.-produced synthetic indigo for conversion to paste at any time from 2000-05. In contrast, the data for imports of synthetic indigo from China are much more complete. By quantity, pricing data reported by responding firms in 2004 accounted for approximately 83 percent of U.S. shipments of subject imports from China. Six importers of synthetic indigo from China provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. The descriptions below concern those periods for which data were reported.

Importers reported almost no imports of products 1 and 3 from China during this period: no firms reported imports of product 3, and only one firm reported imports of product 1, and that for only a single quarter.⁷ Accordingly, products 1 and 3 are not discussed, and the remainder of Part V deals only with indigo in powder form (i.e., product 2).

⁶ Staff field trip report, BCC, December 13, 2005.

⁷ *** reported importing *** pounds of product 1 at a price of *** per pound in the ***.

Price Trends

During the period for which data were collected, U.S. firms imported synthetic indigo in two distinct time periods separated by an interval with no imports. These two periods had different price levels, different quantities, and almost completely different sets of importers.

This pattern held for synthetic indigo imported from China and sold to unrelated parties (table V-1 and figure V-1). In the first period, imports began in July 2001 and continued to December 2002, and then stopped. Prices in this first period ranged from *** to *** per pound. Then there was a break of 15 months with no imports, followed by a resumption of imports in April 2004. These imports showed steadily increasing quantities. Prices in this second period were uniformly higher than in the first period, and ranged from *** to *** per pound.

Table V-1

Synthetic indigo: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, January 2000-September 2005

* * * * *

Figure V-1

Synthetic indigo: Weighted-average f.o.b. prices and quantities of imported product 2, sold to unrelated U.S. companies, and for own use by firm

* * * * *

Firms reported that they imported considerably less synthetic indigo from China for their own use. These imports occurred only in April-September 2002. Quantities were low, and prices ranged from *** to *** per pound.⁸

In addition to differences in prices between the 2001-02 and 2004-05 periods, these periods also had almost completely different sets of importers. Five importers (Campbell, Clariant, Matrix, CH Patrick, and Wego) imported at relatively low prices and high antidumping duties (79.7 or 129.6 percent) in 2001-02, and two importers (Wego and BCC) imported at relatively high prices and low antidumping duty rates (4.6 percent) in the 2004-05 period.⁹

Price Comparisons

Prices and quantities for synthetic indigo produced in the United States are not available from BCC,¹⁰ and other firms did not report any use of U.S. product for conversion. Thus no price comparisons between U.S.-produced and subject synthetic indigo can be made. Additionally, margins of underselling or overselling cannot be calculated.

⁸ The high price of *** per pound in April-June 2002 is based on one unusually small shipment of only *** pounds, and as such is not likely to be indicative of overall price trends. This is the only import by *** in the 2001-02 period.

⁹ For all imports of synthetic indigo from China for August 2004-June 2005, ***. To match official import totals, staff has eliminated any double-reporting of these imports and has classified them all as “sales to unrelated U.S. companies.”

¹⁰ In the response to the notice of institution, BCC reported 2004 production of *** pounds of 42-percent paste at *** per pound, equivalent to approximately *** pounds of powder at approximately *** per pound. BCC did not report production on a quarterly basis, however, or report production data for any other years. See BCC’s response to the notice of institution, June 21, 2005, p. 6.

APPENDIX A

***FEDERAL REGISTER* NOTICES AND
COMMISSION STATEMENT ON ADEQUACY**

by submitting the information specified below to the Commission;¹ to be assured of consideration, the deadline for responses is June 21, 2005. Comments on the adequacy of responses may be filed with the Commission by July 15, 2005. 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).

EFFECTIVE DATE: May 2, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), 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>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: *Background.* On June 19, 2000, the Department of Commerce issued an antidumping duty order on imports of synthetic indigo from China (65 FR 37961). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 05-5-125, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as synthetic indigo corresponding to Commerce's scope.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of synthetic indigo, excluding converters.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 19, 2000.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-851 (Review)]

Synthetic Indigo From China

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on synthetic indigo from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on synthetic indigo from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice

for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 21, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 15, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's

rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's 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 APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response To This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty

order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since the Order Date.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject

Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) *(Optional)* A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: April 20, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-8722 Filed 4-29-05; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE
COMMISSION****[Investigation No. 731-TA-851 (Review)]****Synthetic Indigo From China****AGENCY:** United States International Trade Commission.**ACTION:** Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on synthetic indigo from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on synthetic indigo from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. 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).**DATES:** *Effective Date:* August 5, 2005.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), 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>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On August 5, 2005, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act.¹ The Commission found that both the domestic and respondent interested party group responses to its notice of institution (70 FR 22701, May 2, 2005) were adequate. 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.

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

By order of the Commission.

Issued: August 11, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-16339 Filed 8-17-05; 8:45 am]

BILLING CODE 7020-02-P

¹ Commissioner Marcia E. Miller did not participate in this determination.

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-856

Synthetic Indigo from the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order

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

SUMMARY: On May 2, 2005, the Department of Commerce ("the Department") initiated the sunset review of the antidumping duty order on synthetic indigo from the People's Republic of China ("China") 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, adequate substantive response filed on behalf of a domestic interested party, and lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins likely to prevail if the order were revoked are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION Hilary E. Sadler, Esq., AD/CVD Operations, Office 8, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4340.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on synthetic indigo from China. See *Initiation of Five-year (“Sunset”) Reviews*, 70 FR 22632 (May 2, 2005) (“Initiation Notice”). On May 17, 2005, the Department received a Notice of Intent to Participate from Buffalo Color Corporation (“Buffalo Color”), a domestic interested party, within the deadline specified in section 315.218(d)(1)(i) of the Department’s regulations. Buffalo Color claimed interested party status under section 771(9)(C) of the Act, as a manufacturer, producer, or wholesaler in the United States of a domestic like product. On June 1, 2005, the Department received a complete substantive response from Buffalo Color within the deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. We did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department determined to conduct an expedited review of this order.

Scope of the Order

The products subject to this order are the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as “Vat Blue 1.” Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No.

73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (e.g., powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this order are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the “Issues and Decision Memorandum” (“Decision Memo”) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 30, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>, under the heading “September 2005.” The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on synthetic indigo from China would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
Sinochem Hebei Import & Export Corporation	79.70
Chongqing Dyestuff Import & Export United Corporation	79.70
Wuhan Tianjin Chemicals Imports & Exports Corp., Ltd.	79.70
China-wide Rate	129.60

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

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4865 Filed 9-6-05; 8:45 am]

BILLING CODE 3510-DS-S

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry Company, Ltd.	129.60
China National Chemical Construction Jiangsu Company	79.70
China Jiangsu International Economic Technical Cooperation Corp	129.60
Shanghai Yongchen International Trading Company Ltd.	79.70
Hebei Jinzhou Import & Export Corporation	79.70

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).

EFFECTIVE DATE: September 21, 2005.

FOR FURTHER INFORMATION CONTACT:

Joanna Lo (202-205-1888), 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>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. On August 5, 2005, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (70 FR 48588, August 18, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this

review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the review will be placed in the nonpublic record on January 19, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on February 9, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 27, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 1, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is February 1, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 17, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-851 (Review)]

Synthetic Indigo From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on synthetic indigo from China.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on synthetic indigo from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the

the subject of the review on or before February 17, 2006. On March 14, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 17, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's 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.

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.

By order of the Commission.

Issued: September 22, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-19287 Filed 9-26-05; 8:45 am]

BILLING CODE 7020-02-P

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

Synthetic Indigo from China,
Inv. No. 731-TA-851 (Review)

On August 5, 2005, the Commission determined that it should conduct a full review in the subject five-year review pursuant to section 751(c)(5) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(5).

The Commission determined the domestic interested party group response to the notice of institution to be adequate. The Commission received a single response from Buffalo Color Corp., the only known domestic producer of synthetic indigo. Because the Commission received an adequate response from the sole domestic producer accounting for one hundred percent of U.S. production, the Commission determined that the domestic interested group response was adequate.

The Commission determined that the respondent interested party group response was adequate. The Commission received responses to the notice of institution from Clariant Corp. and Trinity Manufacturing, Inc., U.S. importers of synthetic indigo from China; and Jiangsu Taifeng Chemical Industrial Co., Ltd. and Chongqing Taifeng Taixing Chemical Industrial Co., Ltd., Chinese producers of synthetic indigo and their affiliate, Wonderful Chemical Industrial Ltd., a Chinese exporter of the subject merchandise. Because the Commission received adequate responses from Chinese firms representing a substantial portion of Chinese production of synthetic indigo and adequate responses from importers of the subject merchandise, the Commission determined that the respondent interested group response was adequate. The Commission therefore determined that it would conduct a full review.

A record of the Commissioners' votes is available from the Office of the Secretary and the Commission's web site (<http://www.usitc.gov>).

APPENDIX B
HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Synthetic Indigo from China
Inv. No.: 731-TA-851 (Review)
Date and Time: February 9, 2006 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room, 500 E Street (room 101), SW, Washington, D.C.

OPENING REMARKS:

In Opposition to Continuation of Order (**Matthew T. McGrath**,
Barnes Richardson & Colburn)

In Opposition to Continuation of Antidumping Duty Order:

Barnes, Richardson & Colburn
Washington, D.C.
on behalf of

Clariant Corporation

Timothy A. Friemark, Vice President,
Textiles - North America, Clariant Corporation

Gerald Jones, Consultant, Former Director of Denim
Sales, Clariant Corporation

Matthew T. McGrath)
) – OF COUNSEL
Stephen W. Brophy)

**In Opposition to Continuation of
Antidumping Duty Order (continued):**

Adduci, Mastriani & Schaumberg, L.L.P.
Washington, D.C.
on behalf of

Swift Gale
C.H. Patrick & Company, Inc. (“C.H. Patrick”)

Forrest E. Putnam, Technical Director,
Swift Gale

Thomas J. Reardon, President and CEO,
C.H. Patrick

Vicky Robinson, Marketing Manager,
C.H. Patrick

William C. Sjoberg)
) – OF COUNSEL
Barbara A. Murphy)

CLOSING REMARKS:

In Opposition to Continuation of Order (**William C. Sjoberg**,
Adduci, Mastriani & Schaumberg, L.L.P.)

APPENDIX C
SUMMARY OF U.S. IMPORT DATA

Table C-1
Synthetic indigo: Summary data concerning U.S. imports, 2000-04, January-September 2004, and
January-September 2005

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APPENDIX D

**COMMENTS BY U.S. IMPORTERS, PURCHASERS, AND FOREIGN
PRODUCERS/EXPORTERS REGARDING THE EFFECTS OF THE
ANTIDUMPING DUTY ORDER AND THE LIKELY EFFECTS OF
REVOCATION**

**U.S. IMPORTERS' COMMENTS REGARDING THE EFFECTS OF THE ORDER AND THE
LIKELY EFFECTS OF REVOCATION**

U.S. importers were asked whether they anticipated any changes in the character of their operations or organization relating to the importation of synthetic indigo in the future if the antidumping duty order were to be revoked (Questions II-5 in the Importers' Questionnaire). Their responses were as follows:

“No.”

“Yes. Increase in volume from Chinese suppliers resulting in lower price levels.”

“No. Our company was considerably impacted by a large number of textile company bankruptcies. We no longer supply products to the textile industry.”

“Yes. If the order were revoked, it would not be possible for Buffalo Indigo to resume U.S. production of synthetic indigo. If the discipline of the antidumping duty order were removed, numerous Chinese producers will be able to reenter the U.S. market without restraint. Imports would dramatically increase to pre-1999 levels and pricing in the U.S. will plummet. Under these conditions, Buffalo Indigo would be forced to withdraw its asset purchase agreement from the U.S. Bankruptcy Court. The U.S. Bankruptcy Court would then order the disposal of Buffalo Color's remaining indigo assets and the domestic industry producing synthetic indigo would cease to exist.”

“No.”

“Yes. Anticipated sales of synthetic indigo (if antidumping duty is revoked) 2006 - \$*** annually.”

“We would compete with the market in order to regain the food additives business for indigo in the U.S., as soon as possible, following the revoking of the antidumping duty.”

U.S. importers were asked to describe the significance of the existing antidumping duty order covering imports of synthetic indigo from China in terms of its effect on their imports, U.S. shipments of imports, and inventories (Question II-9 in the Importers' Questionnaire). Their responses were as follows:

“The existing antidumping duty, specifically the reduced rate to Liyang Blue Sky, has eliminated our ability to compete in the U.S. market for 2005. As a result, we have lost a projected revenue for 2005 of around \$***.”

“The antidumping duty order has not changed ***’s business model for supply and selling of Indigo products. The key source of Indigo products was and is ***.”

“Before antidumping duty (***) had \$*** of indigo business. *** indigo business from January 2000 to March 2002.”

“***.”

“The antidumping duty is of no significance to our company. We were in indigo for Burlington Industries only. They declared bankruptcy in November 2001. Our company has been in difficult financial situation since this and other textile company bankruptcies.”

“***.”

“Cost of importing indigo has increased such that U.S. denim are less and less competitive with foreign denim makers (e.g. Mexico) - so *** has lost business at U.S. denim mills.”

U.S. importers were asked whether they had undertaken any changes in their imports, U.S. shipments of imports, or inventories of synthetic indigo in the future if the antidumping duty order on synthetic indigo from China were to be revoked (Question II-10 in the Importers' Questionnaire). Their responses were as follows:

"No. If the antidumping duty order is revoke, it is anticipated that the Chinese producers will rapidly and dramatically increase their sales to the United States."

"No. The market is fully served - capacity/availability is not an issue. Cost is the driving issue, and the effect of the order has been to make the U.S. denim producers extremely vulnerable to foreign competition (who do not have the artificially high indigo cost due to the dumping order). Dan River closed its U.S. denim mill in October 2005; Cone Mills closed its Cliffside mill this year and reduced production at its White Oak mill by 42%."

"No."

"Yes. We would again be able to compete in a fair market and would attempt to regain the business lost, which would increase our total sales by around ***%."

"Yes. Immediate reduction in imports in the face of competition from other Chinese suppliers once the discipline of the order is removed."

"Yes. If indigo duty lifted, *** anticipates increase in indigo business to \$*** annually."

"Yes. If the order were revoked, all Chinese producers will be able to sell in the U.S. without restriction. Import volumes would increase and prices would fall. *** would have to abandon its plans to resume U.S. production and would be forced to dispose of its indigo assets under bankruptcy."

**U.S. PURCHASERS' COMMENTS REGARDING THE EFFECTS OF THE ORDER AND THE
LIKELY EFFECTS OF REVOCATION**

U.S. purchasers were asked to describe the likely effects of any revocation of the antidumping duty order for imports of synthetic indigo from China in terms of (1) the future activities of their firm and (2) the U.S. market as a whole (Question III-42 in the Purchasers' Questionnaire). Their responses were as follows:

“(1) The reduction of the tariff should increase competition among different dye suppliers - thus reducing the price. This can only help this textile company which operates in an open economy. The implementation of the order in 2000 raised indigo pricing and left the entire market with one supplier. They no longer call on the U.S. textile market. We are not currently aware of an U.S. producer operating; (2) the same comments as above can be used for the entire U.S. market.”

“***.”

No response.

“(1) Assuming price and quality remain stable, we will continue to purchase synthetic indigo produced in China indefinitely; (2) assuming that a revocation of the antidumping duty order would result in lower prices for synthetic indigo in the United States, the U.S. market would likely focus its purchases of synthetic indigo on China.”

“(1) If the order is revoked, *** would expect more suppliers to enter the U.S. market, and prices would fall to market-driving levels; (2) the price disparity between the U.S. and e.g. Mexico, will be eliminated if the order is revoked, and this would clearly benefit the U.S. denim producers.

“(1) Potential lower price; (2) potential lower price.”

“(1) None; (2) none.”

“(1) Revocation of the antidumping order should allow us to buy indigo at a lower price, thus making us more competitive vs. imported denim; (2) same answer as in (1).”

“(1) The likely effects would be a reduction in domestic indigo pricing which might allow us into denim markets that we currently turn down; (2) same, allow competition with foreign imports.”

“(1) This could allow China to compete in the U.S. market; (2) don’t know.”

“(1) Firm will get a fair price, competitive to the rest of the world; (2) same.”

“(1) {We} are ***; (2) with no domestic producer to protect, revocation of the antidumping duty will result in lower cost of imported dye allowing USA users to be more competitive in the global market.”

FOREIGN PRODUCERS’/EXPORTERS’ COMMENTS REGARDING THE EFFECTS OF THE ORDER AND THE LIKELY EFFECTS OF REVOCATION

Foreign producers and exporters were asked whether they anticipated any changes in the character of their operations or organization relating to the production of synthetic indigo in the future if the antidumping duty order were to be revoked (Question II-3 in the Foreign Producers’/Exporters’ Questionnaire). Their responses were as follows:

Wonderful

“***.”

Foreign producers and exporters were asked to describe the significance of the existing antidumping duty order covering synthetic indigo from China in terms of its effect on their production capacity, production, home market shipments, exports to the United States and other markets, or inventories (Question II-14 in the Foreign Producers’/Exporters’ Questionnaire). Their responses were as follows:

Wonderful

“***.”

Foreign producers and exporters were asked whether they anticipated any changes in their production capacity, production, home market shipments, exports to the United States and other markets, or inventories relating to the production of synthetic indigo in the future if the antidumping duty order on synthetic indigo from China were to be revoked (Question II-15 in the Foreign Producers’/Exporters’ Questionnaire). Their responses were as follows:

Wonderful

“***.”

APPENDIX E

“MOST SIMILAR” PRODUCT SURVEY INFORMATION

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APPENDIX F
CONVERTER OPERATIONS

U.S. SYNTHETIC INDIGO CONVERTER OPERATIONS

In deciding whether a firm qualifies as a domestic producer, the Commission analyzes the firm's production-related activities in the United States, considering six factors:

- (1) the source and extent of the firm's capital investment;
- (2) the technical expertise involved in U.S. production activities;
- (3) the value added to the product in the United States;
- (4) employment levels;
- (5) the quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the domestic like product.

Information related to these factors is presented below.

Three domestic firms – *** – provided useable data on their operations converting synthetic indigo from imported/purchased crude powder to paste. *** sold the synthetic indigo they converted in the commercial market, while ***. No firm reported conversion operations in calendar year 2000, *** reported conversion operations in 2001, and all three reported conversion operations from 2002 on. ***.

Conversion Process

During the original investigation, it was reported that while the conversion process may vary by importer, the conversion of indigo powder to paste form begins with mixing the indigo powder with water. The mixture is then ground, or slurred, at which point more water may be added as well as caustic soda to adjust the PH balance. Finally, the batch is stirred and standardized.¹ During this five-year review, converters confirmed this process and reported that the full process from bag material to packaged liquid required an average time of ***.²

Data on conversion costs as reported by ***, are presented in table F-1. The data indicate that the value added by the conversion process varied over the period of review, ranging from *** percent of total costs, with an average for 2000-04 of *** percent.

Table F-1
Synthetic indigo: U.S. converters' conversion costs, 2000-04, January-September 2004, and January-September 2005

* * * * *

Table F-2 presents summary data regarding U.S. converter operations during the period of review. No firms reported either transfers of synthetic indigo to related firms, or internal consumption. As the converters ramped up their operations from 2001 on, net sales quantities and values steadily increased, while profitability fluctuated from 2001 to 2002 before becoming positive and increasing in

¹ *Synthetic Indigo from China, Investigation No. 731-TA-851 (Final)*, USITC Publication 3310, June 2000, p. IV-6.

² *** producer/converter questionnaire response, section VI-6.

both 2003 and 2004. From January-September 2004 to January-September 2005, net sales ***.³ *** reported nominal capital expenditures and research and development (“R&D”) expenses in most periods, *** reported *** expenditures in 2003 but none in any other periods, and *** reported no expenditures in any period. *** was the only converter to report research and development expenditures.

Table F-2
Synthetic indigo: Summary data concerning U.S. converters, 2000-04, January-September 2004, and January-September 2005

* * * * *

³ These data incorporate the revised SG&A expenses reported by *** in response to staff questions (see confidential staff report (INV-DD-030), March 7, 2006, pp. F-4 (fn 3)). As a result of revisions to *** data, the converters’ aggregate SG&A expenses, which were *** percent of net sales values in 2004, are now *** percent. *** (whose SG&A expenses *** percent of its net sales values in 2002 to *** percent in 2005) stated that, in its view, its ***. E-mail from ***, February 27, 2006.

***, whose SG&A expenses *** percent of its net sales values in 2002 to *** percent in 2005, indicated that its revised SG&A expenses include *** to the converter operations. ***. E-mail from ***, March 8, 2006.

