Pressure Sensitive Plastic Tape From Italy

Investigation No. AA1921-167 (Second Review)

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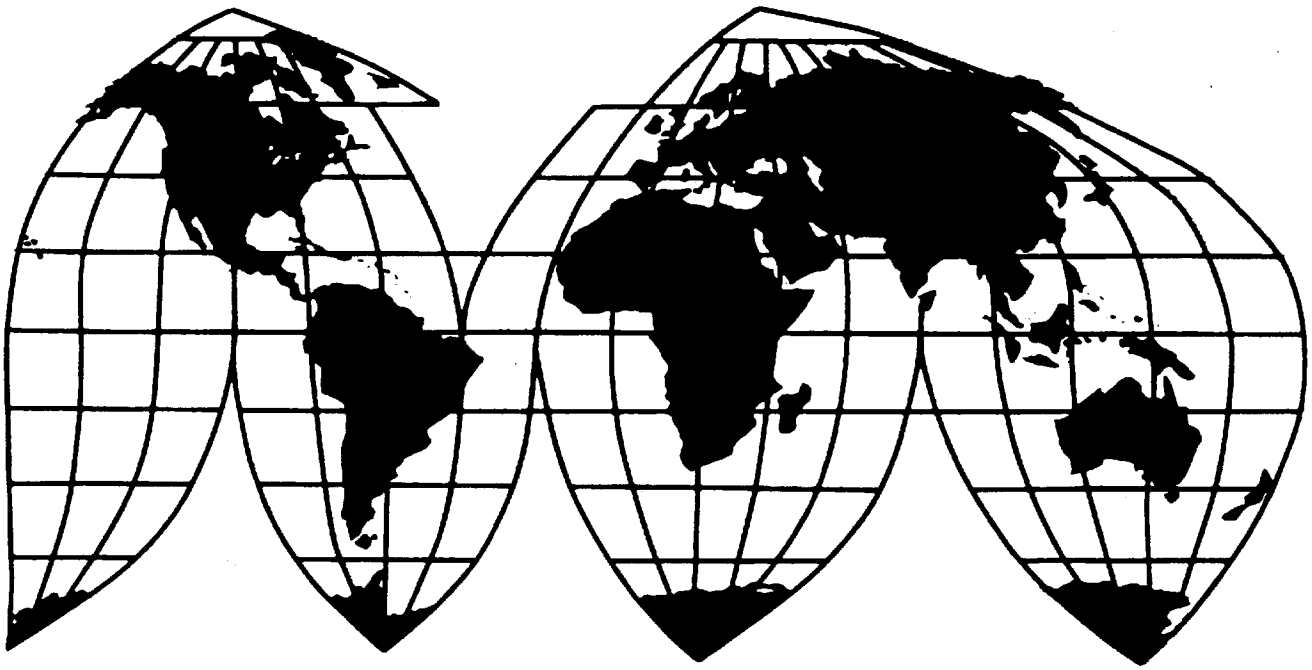
U.S. International Trade Commission



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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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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.

GLOSSARY OF TERMS

COGS	Cost of goods sold
Commerce	U.S. Department of Commerce
Commission	U.S. International Trade Commission
Customs	U.S. Bureau of Customs and Border Protection
FR	*Federal Register*
HTS	Harmonized Tariff Schedule of the United States
LTFV	Less than fair value
PSP tape	Pressure sensitive plastic tape
SG&A	Selling, general and administrative expenses
Treasury	U.S. Department of the Treasury
UPVC	Unplasticized polyvinylchloride

GLOSSARY OF FIRMS

3M	3M Company
3M/Italia	3M/Italia, S.p.A.
BST	BST, S.p.A.
Intertape	Intertape Polymer Group, Inc.
Manuli	Manuli Tapes, S.p.A.
NAR	NAR, S.p.A.
NAS	Nastri Adhesive Stampati
Sekisui	Sekisui Technologies, Inc.
Shurtape	Shurtape Technologies, Inc.
Tyco Adhesives	Tyco Adhesives Italia, S.p.A.
Vibac	Vibac, S.p.A.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. AA-1921-167 (Second Review)

PRESSURE SENSITIVE PLASTIC TAPE FROM ITALY

DETERMINATION

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping finding on pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on January 2, 2004 (69 FR 101), and determined on April 6, 2004, that it would conduct an expedited review (69 FR 21159, April 20, 2004).

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

[2] Chairman Okun, Commissioner Lane, and Commissioner Pearson dissenting.

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 finding concerning pressure sensitive plastic tape ("PSP tape") from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[1]

I. BACKGROUND

In August 1977, the Commission determined that an industry in the United States was being or was likely to be injured by reason of dumped imports of PSP tape from Italy pursuant to the Antidumping Act, 1921.[2] Subsequently, the Department of Treasury issued an antidumping finding covering these imports.[3] In February 1999, the Commission completed an expedited review in its first five-year review, and, on the basis of the facts available, determined that revocation of the finding on PSP tape from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

In five-year reviews, the Commission first determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. Specifically, the Commission determines whether individual responses to the notice of institution are adequate and, based on these individually adequate responses, whether the collective responses submitted by two groups of interested parties – domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as importers, exporters, foreign producers, trade associations, or subject country governments) – show a sufficient willingness among each group to participate and provide information requested in a full review, and if not, whether other circumstances warrant a full review.[5]

On January 2, 2004, the Commission instituted the present review, pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping finding on PSP tape from Italy would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[6]

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[1] Chairman Okun and Commissioners Lane and Pearson determined that revocation of the finding in this review would not be likely to lead to continuation or recurrence of material injury to an industry in the United States. *See* their dissenting views. They join in Sections I, II and III A. (but not the concluding paragraph of Section III A.) of these views.

[2] Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167, USITC Pub. 830 (Aug. 1977) ("Original Determination"). Of the three Commissioners voting in the affirmative, two found present injury and one found a likelihood of injury to the domestic industry. Shortly after issuing its determination in the investigation regarding imports from Italy, the Commission made a negative injury determination in Pressure Sensitive Plastic Tape from Germany, Inv. No. AA1921-168, USITC Pub. 831 (Sept. 1977). The staff report for both investigations is included in USITC Pub. 831. All references to the Original Determination Staff Report are to USITC Pub. 831.

[3] 42 Fed. Reg. 56110 (Oct. 21, 1977).

[4] Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167, USITC Pub. 3157 (Feb. 1999) ("First Five-Year Review Determination"). Chairman Bragg and Commissioners Crawford and Askey dissented and made negative determinations.

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

[6] 69 Fed. Reg. 101 (Jan. 2, 2004).

In this review the Commission received one submission in response to its notice of institution, which was filed on behalf of the domestic PSP tape producer 3M Co. ("3M") (formerly known as Minnesota Mining and Manufacturing Company), the petitioner in the original investigation ("3M Response"). Three other domestic PSP tape producers – Intertape Polymer Group, Inc.; Shurtape Technologies, Inc.; and Sekisui TA Industries, Inc. – cooperated with 3M and provided information in the 3M Response. On April 6, 2004, the Commission determined that the domestic interested party response was adequate, but that the respondent interested party response was inadequate. It determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930, as amended.[7] [8]

On May 13, 2004, 3M filed comments ("3M Comments") pursuant to 19 C.F.R. § 207.62(d) urging that the antidumping finding be continued.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines "the domestic like product" and the "industry." The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[9] In its second five-year review determination, the Department of Commerce ("Commerce") defined the imported product covered by the existing antidumping finding as "PSPT measuring over one and three-eighths inches in width and not exceeding four millimeters in thickness."[10]

PSP tape is a plastic film-backed tape with an adhesive on one side that remains permanently tacky at room temperatures, which is used primarily to seal cartons or corrugated boxes.[11]

Under then applicable statutory provisions, the Commission did not make a like product determination *per se* in its original determination. Instead, the Commission "considered the U.S. industry to consist of the facilities in the United States devoted to the production of PSP tape."[12] Thus, the Commission essentially treated all PSP tape as a single product. In the first five-year review, the

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[7] 19 U.S.C. § 1675(c)(3).

[8] 69 Fed. Reg. 21159 (April 20, 2004); see also Explanation of Determination on Adequacy, Confidential Staff Report ("CR") at Appendix B, Public Staff Report ("CR") at Appendix B.

[9] 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).

[10] 69 Fed. Reg. 26068, 26069 (May 11, 2004). We note that there is an inconsistency between the scope of the original Treasury Department determination of sales at less than fair value ("LTFV") and Commerce's definition of the scope in this five-year review. The original LTFV determination refers to four "mils" (i.e., four 1/1000s of an inch), and Commerce's scope definition in this review refers to four "millimeters" (i.e., four 39/1000s of an inch). As there is no evidence that Commerce changed the scope of the PSP tape finding since it was originally made, we assume that the reference to "millimeters" in Commerce's scope definition in this review is in error and possibly reflects the mistaken assumption that "mils" was an abbreviation for "millimeters." This inconsistency in the scope determination does not appear to have any practical implications for this review determination.

[11] Confidential Report ("CR") at I-5, Public Report ("PR") at I-4.

[12] Original Determination at 4.

Commission defined the domestic like product as all PSP tape measuring over one and three-eighths inches in width and not exceeding four mils in thickness, coextensive with Commerce's scope.[13]

3M stated in its response to the Commission's notice of institution in this second review that it agrees with the definition of the domestic like product in the notice of institution, namely PSP tape measuring over one and three-eighths inches in width and not exceeding four mils in thickness.[14] No new facts have arisen in this review to warrant an approach different from that followed by the Commission in its original finding and first five-year review. Accordingly, we find, based on the facts available, that the appropriate definition of the domestic like product in this expedited five-year review is the same as Commerce's scope: PSP tape measuring over one and three-eighths inches in width and not exceeding four mils in thickness.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[15] In its original determination and in the first five-year review, the Commission defined the domestic industry as all U.S. producers of PSP tape.[16] No party raised any objections to this domestic industry definition, and no new facts have been presented to warrant a conclusion different from that reached by the Commission in the original investigation and the first five-year review.[17] Accordingly, we define the domestic industry to encompass all U.S. producers of PSP tape.

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[13] First Five-Year Review Determination at 4.

[14] 3M Response at 9.

[15] 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).

[16] In the first five-year review the Commission noted that 3M imported the subject merchandise from Italy, but found that appropriate circumstances did not exist to exclude 3M. First Five-Year Review Determination at 5.

[17] In defining the domestic industry in this review, we consider whether any producers of the domestic like product should be excluded from the domestic industry pursuant to the related parties provision in section 771(4)(B) of the Act. There is one possible related party in this review. 3M reported that Tyco Adhesives is a related party, presumably because it owns one of the Italian PSP tape producers, Tyco Adhesives Italia S.p.A. 3M Response at 4. The statute provides in relevant part that "a producer and an exporter or importer shall be considered to be related parties, if . . . the producer directly or indirectly controls the exporter or importer." 19 U.S.C. §1677(4)(B)(ii)(I). As there is no information in the record as to whether Tyco Adhesives Italia S.p.A. is (or would be in the reasonably foreseeable future) an "exporter" of the subject merchandise, it is unclear whether Tyco Adhesives is in fact a related party. Further, there is no information in the record that appropriate circumstances exist to exclude the company from the domestic industry. Finally, because the company did not respond to the Commission's notice of institution, there are no data to exclude. Therefore, we do not exclude Tyco Adhesives from the domestic industry.

III. REVOCATION OF THE FINDING ON PSP TAPE IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order or terminate a suspended investigation unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order or termination of a suspended investigation "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[18] The Statement of Administrative Action ("SAA") states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports."[19] Thus, the likelihood standard is prospective in nature.[20] [21] 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."[22] According to the SAA, a "'reasonably foreseeable time' will vary from case to case, but normally will exceed the 'imminent' time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations]."[23] [24]

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[18] 19 U.S.C. § 1675a(a).

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

[20] 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.

[21] See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int'l Trade 2003); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int'l Trade, Dec. 24, 2002); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 6 n.6 (Ct. Int'l Trade, Dec. 20, 2002); Indorama Chemicals Ltd. v. United States, Slip Op. 02-105 at 20-21 (Ct. Int'l Trade, Sept. 4, 2002); Usinor v. United States, Slip Op. 02-70 at 43-44 (July 19, 2002).

[22] 19 U.S.C. § 1675a(a)(5).

[23] 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.

[24] In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplan examines all the current and likely conditions of competition in the relevant industry. He defines "reasonably foreseeable time" as the length of time it is likely to take for the market to adjust to a revocation 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;

(continued...)

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to "consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated."[25] 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 order is revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).[26]

Section 751(c)(3) of the Act and the Commission's regulations provide that in an expedited five-year review the Commission may issue a final determination "based on the facts available, in accordance with section 776."[27] We have relied on the facts available in this review, which consist primarily of information from the original investigation and first review, information submitted by the domestic producers, and information collected by the Commission since the institution of this review.[28]

For the reasons stated below, we determine that revocation of the antidumping finding on PSP tape from Italy would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the finding is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[29]

In the first five-year review determination the Commission identified the following conditions of competition as relevant to the PSP tape industry. The Commission noted that the domestic industry had apparently become *** since the time of the original investigation. Then, four domestic firms accounted for at least 80 percent of production and 3M was by far the largest U.S. manufacturer. By the time of the

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[24](...continued)
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.

[25] 19 U.S.C. § 1675a(a)(1).

[26] 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886. We note that no duty absorption findings have been made by Commerce.

[27] 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a).

[28] Chairman Okun and Commissioners Lane and Pearson make negative determinations and thus do not join in the remainder of this opinion. See their dissenting views.

[29] 19 U.S.C. § 1675a(a)(4).

first five-year review, 3M's share of domestic production had ***.[30] We noted further that the domestic market for PSP tape had grown significantly since imposition of the original finding in 1977. Apparent U.S. consumption of PSP tape had increased from *** square yards in 1976, to *** billion square yards in 1997. At the same time, the market share held by imports had declined, from *** percent in 1976 to *** percent in 1997.[31]

With regard to demand, we observed that since most PSP tape is used to seal cartons or corrugated boxes, demand for PSP tape appears to be derived from the demand for cartons and boxes. Because there were apparently no good commercial substitutes for the use of PSP tape in these applications, and because the tape accounts for only a small share of the value of the delivered cartons and boxes, demand for PSP tape appeared to be inelastic.[32] We further noted that PSP tape appears to be a commodity-like product, with a high degree of substitutability between imported and domestic PSP tape.[33]

We have received no information in this expedited review that these conditions of competition have changed, with one exception. According to 3M, there has been substantial consolidation through acquisitions in both the U.S. and worldwide PSP tape industries since the Commission's first five-year review. 3M maintains that this consolidation has given acquiring firms, including PSP tape producers in Italy, enhanced distribution systems, and allows these firms to source their products from multiple countries, depending on cost and availability.[34]

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the finding under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.[35] In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[36]

As discussed below, we conclude from the limited facts available[37] that subject import volume is likely to increase significantly and would be significant if the finding is revoked. This conclusion is based largely on the records from the original investigation and the first five-year review, and the information submitted by the domestic industry in this review. As noted above, no respondent interested parties responded to the Commission's notice of institution.

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[30] Confidential First Five-Year Review Determination at 10.

[31] Id.

[32] Id.

[33] Id.

[34] 3M Response at 9.

[35] 19 U.S.C. § 1675a(a)(2).

[36] 19 U.S.C. § 1675a(a)(2)(A)-(D).

[37] See 19 U.S.C. § 1677e(a).

We recognize that the most recent information available as to the volume of subject imports – information from the first five-year review [38] – shows that subject imports were at a low level relative to total consumption.[39] We attribute this low level of subject imports in part to the restraining effects of the finding. In a five-year review, however, our focus is on whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping finding is revoked.

The record from the original investigation indicates that Italian PSP tape producers had the ability and willingness to establish a significant presence in the U.S. market. In the original investigation, the Commission found that Italian PSP tape producers were able to increase their shipments to the United States and gain market share rapidly. Imports from less-than-fair-value suppliers in Italy more than tripled in one year, rising from eight million square yards in 1975, to more than 26 million square yards in 1976.[40] In the same period, the share of the U.S. market held by these suppliers more than doubled, rising from *** percent in 1975 to *** percent in 1976.[41] In our view, absent contrary information, the low market share of imports from Italy in 1997 likely reflected the restraining effects of the antidumping finding, rather than an inability or unwillingness to ship significant volumes to the U.S. market.

In the first five-year review, the Commission noted 3M's argument that imports would surge if the finding were revoked, and concluded, in the absence of contrary evidence or argument, that the likely volume of imports of PSP tape from Italy would be significant if the finding were revoked.[42]

PSP tape producers in Italy currently have substantial unused production capacity. The record indicates that their capacity utilization rate was only *** percent in 2003, and that they had excess capacity to produce approximately *** square yards of PSP tape.[43] Apparent U.S. consumption in 1997 was *** billion square yards of PSP tape.[44] Moreover, the U.S. market was an attractive one for subject Italian producers before the antidumping finding was issued, and that attractiveness is now enhanced by the substantial growth of demand for PSP tape in the U.S. market, as well as the substantial excess capacity existing in Italy. We also note that PSP tape is a commodity product that competes on price. Given the apparent high degree of substitutability between domestic and Italian PSP tape, relatively small changes in price can result in significant shifts in market share.

In these circumstances, 3M maintains that imports would surge if the finding is revoked.[45] In the absence of contrary evidence or argument, we conclude that the likely volume of imports of the subject merchandise would be significant if the finding is revoked.

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[38] More recent import data were not available to us. Official import statistics could not be used because the tariff subheading under which PSP tape is classified includes other non-subject products.

[39] The record shows that imports from Italy subject to the antidumping finding accounted for just over *** percent of apparent U.S. consumption in 1997. CR/PR at Table I-4.

[40] Original Determination at 5.

[41] Confidential First Five-Year Review Determination at 13.

[42] First Five-Year Review Determination at 8.

[43] CR/PR at Table I-5 (based on estimates supplied by 3M).

[44] CR/PR at Table I-4. More recent data on apparent U.S. consumption is not available.

[45] 3M Response at 3.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping finding is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and if 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 domestic like products.[46]

The record in this expedited review contains very little pricing data, and provides no information comparing current prices of the domestic like product and the subject imports in the U.S. market, given the current low level of subject imports in the U.S. market. Again, our conclusions are based primarily on the records of the original investigation and the first five-year review, and the information submitted by the domestic industry.

In the original determination, the Commission found that less than fair value imports from Italy consistently undersold U.S. producers and caused price depression in the U.S. market.[47] In the first five-year review, the Commission noted the domestic industry's argument that imports would again enter the U.S. market at prices that would have significant price depressing or suppressing effects if the finding were revoked, and the Commission concluded, in the absence of contrary evidence or argument, that revocation of the finding would be likely to lead to significant price effects in the reasonably foreseeable future.[48]

The domestic industry asserts that subject imports would again enter the U.S. market at prices that would have significant price depressing or suppressing effects if the finding is revoked.[49] In the absence of contrary evidence or argument, we agree with this conclusion.

As noted above, PSP tape is a commodity product for which purchasing decisions appear to be based largely on the prices of competing suppliers. It therefore appears likely that subject Italian exporters would offer attractively low prices to U.S. purchasers in order to regain market share. The substantial excess capacity available to the Italian producers provides a strong incentive to engage in aggressive pricing behavior. Consequently, prices for domestically produced PSP tape in the United States would likely decline to a significant degree due to the effects of increased volumes of highly substitutable subject PSP tape offered at lower prices.

Accordingly, in the absence of contrary evidence or argument, we find that revocation of the antidumping finding would be likely to lead to significant price effects, including significant underselling by the subject imports of the domestic like product, as well as to significant price depression or suppression in the reasonably foreseeable future.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the

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[46] 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

[47] Original Determination at 5-6.

[48] First Five-Year Review Determination at 9.

[49] 3M Response at 4.

state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[50] All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.[51] As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping finding at issue and whether the industry is vulnerable to material injury if the finding is revoked.[52]

In the original determination the Commission found that the significant increase in less-than-fair-value imports adversely affected the financial condition of the domestic industry. It found that the condition of the firms reporting financial data had declined from a substantial profit in 1974 to a substantial loss in 1976, and that these losses worsened over the interim periods.[53]

Since imposition of the finding, the domestic industry's market share increased as subject imports from Italy virtually exited the market. In the first five-year review, the Commission noted 3M's argument that subject imports would have a significant adverse impact if the finding were revoked, and the Commission concluded, in the absence of contrary evidence or argument, that revocation of the finding would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.[54]

There is little new information in the record on the current condition of the domestic industry. 3M has not argued that the industry is currently in poor condition or that it is facing difficulty from other sources.[55] However, 3M has argued that subject imports would have a significant adverse impact on the domestic industry if the finding is revoked, and that material injury is likely to recur.[56] In the absence of contrary evidence or argument, we agree with this conclusion. We have concluded that if the finding is revoked, the likely volume of subject imports would be significant and that these imports would have significant adverse price effects. These findings, in turn, indicate that the subject imports would likely have a significant adverse impact on the domestic industry if the finding is revoked.

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[50] 19 U.S.C. § 1675a(a)(4).

[51] 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887.

Commerce's expedited determination in its five-year review provided a likely margin of 10 percent for two specific PSP tape producers in Italy. The "all others" margin also is 10 percent. 69 Fed. Reg. at 26068, 26069 (May 11, 2004).

[52] The SAA states that in assessing whether the domestic industry is vulnerable to injury if the finding is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

[53] Original Determination at 6.

[54] First Five-Year Review Determination at 10.

[55] See, 3M Response and 3M Comments.

[56] 3M Response at 3-4, 3M Comments at 2-3.

Specifically, most PSP tape is used to seal cartons and boxes, and that tape represents only a small share of the value of the cartons and boxes. Thus, decreased prices for PSP tape would not stimulate additional demand but would likely result in changes in market share of suppliers as purchasers switch to lower-priced subject imports of PSP tape. Even if some market share gained by the increased volume of imports from Italy comes at the expense of fairly traded imports and not only the domestic product, given current market shares, a significant portion of the lost sales would be incurred by the domestic industry. This lost market share in turn would adversely impact industry revenues, production, capacity utilization, and employment, and result in significant adverse effects on the industry's financial condition. Accordingly, we conclude that if the antidumping finding is revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping finding on pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury to the U.S. pressure sensitive plastic tape industry within a reasonably foreseeable time.

DISSENTING VIEWS OF CHAIRMAN DEANNA TANNER OKUN, COMMISSIONER CHARLOTTE R. LANE, AND COMMISSIONER DANIEL R. PEARSON

Section 751(d)(2) of the Tariff Act of 1930, as amended ("the Act"), requires that the U.S. Department of Commerce ("Commerce") revoke a countervailing duty or an antidumping duty finding in a five-year ("sunset") review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the U.S. International Trade Commission ("Commission") determines that material injury to a U.S. industry would be likely to continue or recur within a reasonably foreseeable time.[1] Based on the record in this second five-year review, we determine that material injury is not likely to continue or recur within a reasonably foreseeable time if the finding on pressure sensitive plastic tape ("PSP tape") from Italy is revoked.

We join our colleagues' discussion regarding domestic like product and domestic industry. We write separately to discuss the legal standard governing sunset reviews, conditions of competition, and to provide our analysis of the statutory factors.

I. REVOCATION OF THE FINDING ON PSP TAPE IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order or terminate a suspended investigation unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order or termination of a suspended investigation "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[2] The Statement of Administrative Action (SAA) states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports."[3] Thus, the likelihood standard is prospective in nature.[4] 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."[5] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will

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[1] 19 U.S.C. § 1675(d)(2).

[2] 19 U.S.C. § 1675a(a).

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

[4] 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.

[5] 19 U.S.C. § 1675a(a)(5).

exceed the 'imminent' time frame applicable in a threat of injury analysis in antidumping and countervailing duty investigations."[6]

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to "consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated."[7] 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 finding or the suspension agreement under review, whether the industry is vulnerable to material injury if the finding is revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).[8]

B. Facts Available

The statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.[9] We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. In general, the Commission makes determinations by "weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."[10] In this case, not all interested parties participated in this review. Accordingly, we have relied on the facts available in this review, which consist primarily of the report and opinion in the original determinations, the report and opinions in the first five-year review, information collected by the

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[6] 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.

[7] 19 U.S.C. § 1675a(a)(1).

[8] 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886. We note that no duty absorption findings have been made by Commerce.

[9] 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 751(c)(3) of the Act and the Commission's regulations provide that in an expedited five-year review the Commission may issue a final determination "based on the facts available, in accordance with section 776 of the Act." Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a).

[10] SAA at 869.

Commission since the institution of this second five-year review, and information submitted by the domestic producers in this review.

As a preliminary matter, we note that, as was the case in the first review, we can base our decision only on an extremely limited record. Although the Commission does not issue questionnaires in expedited reviews, the interested parties are given the opportunity by responding to the Commission's Notice of Institution to provide information that is relevant to this review. In part, we lack updated data, especially with regard to the financial condition of the domestic industry and the current pricing of PSP tape. This data should have been readily available given the familiarity of the 3M Company ("3M") (the responding producer) with the data as they relate to its operations in the PSP tape industry. In this review, moreover, updated data are particularly vital, given the substantial and not inconsequential structural changes that have occurred in the domestic industry since the original investigation. In particular, the record lacks updated trade and financial data for 2003 beyond production volumes,[11] as well as subject import data and apparent consumption data, which do not extend beyond 1997.[12] [13] [14]

We recognize that in expedited reviews, the Commission generally is faced with more limited data on the record than in a full review, but limited data do not relieve the Commission of its statutory obligation to examine the record evidence in support of its finding. In the current review, we evaluate the impact of removing a finding that is more than a quarter of a century old. Many shifts in global trade patterns have occurred during this time period, including the creation of the European Union and the conclusion of several multilateral trade rounds, which have affected the market for PSP tape. Therefore, we examine the original record in the context of the dramatically changed market for PSP tape based on the limited updated information on the record.

C. The "Likely" Standard

As noted above, the legal standard the Commission is to apply is whether revocation of an finding "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[15] In reviewing the Commission's application of the "likely" standard, the U.S. Court of International Trade has found that "likely," as used in the sunset review provisions of the Act, means "probable," and that a Commission affirmative determination in such a review would be deemed by the

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[11] Confidential Report ("CR") at Table I-1.

[12] CR at Table I-3.

[13] CR at Table I-4.

[14] We recognize that official import statistics for the subject product in this review are not available because PSP tape is classified under a basket HTS subheading. CR at I-9.

[15] 19 U.S.C. § 1675a(a).

Court to be in error absent application of this standard.[16] Pursuant to the Usinor Industeel and Usinor remand orders, the Commission issued remand determinations that applied the "probable" standard.[17] [18]

Subsequently, the Court has stated that it "has not interpreted 'likely' to imply any degree of 'certainty,'" but it has indicated that the Court views "likely" to equal a standard of "more likely than not." Usinor Industeel III, Slip. Op. 02-152 at 6 n.6. While we do not concur with the Court's interpretation, we 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.[19]

The Court's standard means that the Commission must revoke an order unless the continuation or recurrence of material injury is "more likely than not." While this standard may not equate to a high

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[16] See NMB Singapore Ltd. V. United States, 288 F. Supp. 2d 1306, 1352 (2003) ("'likely' means probable within the context of 19 U.S.C. §§ 1675©) and 1675a(a)"); Nippon Steel Corp., et al. v. United States, Slip Op. 02-153 at 7-8 (Dec. 24, 2002) (same) (Nippon); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 6 n.6 (Dec. 20, 2002) ("the court has not interpreted 'likely' to imply any particular degree of 'certainty'") (Usinor Industeel III); and Usinor v. United States, Slip Op. 02-70 at 43-44 (July 19, 2002) ("'likely' is tantamount to 'probable,' not merely 'possible'") (Usinor).

[17] In its remand determination in Usinor Industeel (Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom (Views on Remand), Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review) (Remand), USITC Pub. 3526 (July 2002) at 6), the Commission (Chairman Okun and Commissioners Bragg and Miller) stated that the Commission, in rendering its initial determination in those reviews, did not equate "likely" with "probable" or "possible" for purposes of its determination of whether material injury was likely to recur. The Commission stated its view of the meaning of the word "likely" is found in the statutory language itself and the relevant explication of that text found in the SAA. The Commission noted that the SAA explains that a determination by the Commission in a five-year review "is inherently predictive." SAA at 883. As a result of the inherently predictive nature of the inquiry, the SAA explains that "[t]here may be *more than one* likely outcome following revocation." SAA at 883 (emphasis added). Thus, the Commission stated that reading the term "likely" in conjunction with the SAA led it to conclude that "likely" captures a concept that falls in between "probable" and "possible" on a continuum of relative certainty.

Vice Chairman Hillman stated her separate view that "likely" means "more likely than not," which is the standard she understood the Court to prescribe when it used the term "probable." Separate Views of Vice Chairman Jennifer A. Hillman Regarding The Interpretation of the Term "Likely" at 2. Commissioner Koplan, in dissent, found no error in the Court's construction of the term. Dissenting Views of Commissioner Stephen Koplan Regarding the Interpretation of the Term "Likely" at 1 ("were I to select a synonym for 'likely,' I would accept the Court's conclusion that 'likely' is best equated with 'probable'").

[18] In reviewing the Commission's remand determination in Usinor Industeel, the Court rejected the Commission's interpretation that "likely" captures a concept that falls in between "probable" and "possible" on a continuum of relative certainty. Usinor Industeel III, Slip. Op. 02-152 at 5-6. (The Court, however, did not remand the matter to the Commission on those grounds, as the Commission explicitly adopted the Court's definition of "likely" for purposes of making that remand determination. Usinor Industeel III, Slip. Op. 02-152 at 4.) (Subsequent to Usinor Industeel III, Commissioners Hillman, Koplan, and Miller explicitly stated they were applying the court's definition of "likely" per Usinor Industeel, Usinor, and Nippon. Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 13 n.60 (Feb. 2003).)

[19] While, for purposes of this review, Commissioner Pearson does not take a position on the correct interpretation of "likely," he notes that he would have made a negative determination under any interpretation of "likely" other than that equating "likely" with merely "possible."

level of certainty, there may be reviews in which there could be "more than one likely outcome,"[20] but the likelihood of continuation or recurrence of injury is not more likely than any other outcome.

For the reasons stated below, we determine that revocation of the finding on pressure sensitive plastic tape from Italy 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. While it may be *possible* that revocation of the finding could lead to continuation or recurrence of material injury, a standard that the Commission has never applied under any interpretation of "likely," revocation of the finding is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

D. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry if the finding is revoked, the statute directs the Commission to evaluate all the relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[21] The conditions of competition that inform our determination that revocation of the finding is not likely to lead to continuation or recurrence of material injury to the PSP tape industry within a reasonably foreseeable time follow.

3M was the only domestic producer to provide a response to the Commission's notice of institution in either the first or this second review. In the first review, 3M stated that the conditions of competition remained unchanged, or changed in certain marginal ways, between the original investigation and the first review, making the domestic industry more susceptible to injury if the finding were to be revoked.[22] In the current review, 3M states that conditions of competition have changed to a certain degree from the first review. In particular, 3M highlights industry consolidation since the first review, which 3M argues leaves the industry more susceptible to injury if the finding were to be revoked.[23]

Based on the record, we find that the PSP tape market has changed both from the original investigation and since the first review beyond those described by 3M. We conclude that these changes have been substantial and render the domestic industry less, not more, susceptible to injury if the finding were to be revoked.

Since 1976, the domestic PSP tape industry has changed with regard to the number of firms, composition of firms, and concentration of production. In 1976, there were eight domestic firms producing PSP tape in the United States. Four of these firms accounted for at least 80 percent of U.S. production.[24] In the first review investigation, there were six producers of PSP tape. Only one of the six, 3M, produced PSP tape at the time of the original investigation. The remaining five firms accounted for *** percent of U.S. production.[25]

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[20] SAA at 883.

[21] 19 U.S.C. § 1675a(a)(4)

[22] Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Review), USITC Pub. 3157 at 11 (Dissenting Views of Chairman Bragg and Commissioners Crawford and Askey), citing 3M's Response to Notice of Institution, filed Oct. 21, 1998, at 6, and 3M's Comments Filed in Support of Continuation of Order, filed Jan. 13, 1999, at 6-8.

[23] Submission of 3M to the Commission, Feb. 24, 2004 (3M Submission) at 8-9.

[24] CR at I-6.

[25] Confidential Staff Report of January 8, 1999, at I-6.

In the present review, 3M identified eleven companies currently producing PSP tape in the United States, four (***) of which accounted for *** percent of domestic production in 2003.[26] Only one company from the first review, Central Products Co., was not identified by 3M as a producer of PSP tape in the current review.[27] Thus, six new firms have entered the industry since the last review: Canadian Technical Tapes Cantech Industries, Inc); Manco; Nitto Denko (Permacel); Tyco Adhesives; Tara Tape; and Tesa Tape, Inc. Additionally, 3M acknowledges the possible existence of additional, smaller PSP tape producers in the United States that produced minimal amounts of PSP tape in 2003.[28] Since the original investigation, the record reflects that 3M has been the largest producer in the U.S. industry.[29]

As indicated in the original investigation, the primary use for PSP tape is to seal cartons or corrugated boxes in medium-to low-volume applications.[30] Demand for PSP tape is therefore primarily derived from the demand for cartons and boxes. Generally, for carton sealing, the three types of PSP tape can be used interchangeably, and are, for the most part, in direct competition with one another.[31] The record does not indicate any viable substitutes for PSP tape. Notwithstanding that fact, price appears to be the most important factor in purchasing decisions.[32] Domestic and imported subject product are largely interchangeable and considered "commodity products."[33]

Demand for PSP tape has grown significantly since the original investigation. Between the original investigation and the first review (i.e., 1976-1997), U.S. apparent consumption had increased more than 30 fold, from *** square yards to *** square yards.[34] No current estimates of U.S. apparent consumption or market shares can be made based on available data. During the same time period, domestic production increased nearly 60 fold, from *** square yards in 1976 to *** square yards in 1997.[35] Between 1997 and 2003, U.S. production further increased *** percent to approximately *** square yards.

Domestic producers' share of the U.S. market also increased significantly since the original investigation, from *** percent of apparent U.S. consumption in 1976 to *** percent in 1997.[36] The record indicates that the increase in domestic producers' market share was at the expense of both subject and nonsubject imports. In 1976, total imports accounted for *** percent of apparent consumption, of which subject imports comprised *** percent and nonsubject imports comprised *** percent. By contrast, in 1997, subject imports comprised *** percent of apparent consumption and nonsubject comprised *** percent.

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[26] 3M Submission at 4.

[27] Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Review), USITC Pub. 3157 at I-5. (Feb. 1999).

[28] CR at I-7.

[29] USITC Pub. 3157 at I-5; Pressure Sensitive Plastic Tape from West Germany, Inv. No. AA1921-167, USITC Pub. 831 (Sept. 1977) at A-11.

[30] CR at I-5.

[31] CR at I-5.

[32] USITC Pub. 831 at A-43.

[33] USITC Pub. 831 at A-5.

[34] CR at Table I-4.

[35] CR at Table I-1.

[36] CR at Table I-4.

Additionally, imports from Italy have, over time, become increasingly less significant relative to total U.S. imports of PSP tape.[37] Subject imports from Italy accounted for *** percent of total imports in 1976, whereas in 1997, all imports from Italy (whether subject or not) accounted for only *** percent of total U.S. imports of PSP tape, and subject imports accounted for an even smaller share of total imports, as the record indicates that subject import share in 1997 was approximately *** percent.[38] 3M further estimates that in 2003, total imports from Italy (whether subject or not) comprised an even smaller share, about 1 percent, of U.S. imports than they did in 1997.[39]

E. Likely Volume of Subject Imports

The Commission is to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States if the finding under review were revoked. In so doing, the Commission shall consider "all relevant economic factors," including four enumerated in the statute: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise in countries other than the United States; and (4) the potential for product shifting if the production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[40]

Our focus in this review is whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping finding is revoked.[41] In performing our analysis, we have taken into account the Commission's previous volume findings with respect to the subject imports from Italy. In the original determination, the Commission found that subject imports from Italy had increased 169 percent from 1975 to 1976, from 11.4 million square yards in 1975 to 30.6 million square yards in 1976. It further found that the U.S. market share held by subject imports from Italy rose from *** percent in 1975 to *** percent in 1976, by quantity. As we indicated earlier, the PSP market has changed considerably, therefore, our analysis concentrates on the changes since the original findings and the current market.

While the record in this review indicates that the Italian PSP tape industry has significantly increased production from an estimated *** square yards in 1997 to an estimated 4.3 billion square yards in 2003, and that estimated Italian capacity utilization stood at 60 percent in 2003, there is no indication that subject producers intend to or even have the ability to reenter the U.S. market.[42] To the contrary, the

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[37] As a preliminary matter in reference to imports from Italy, it is important to distinguish subject from nonsubject imports. In 1976, imports from Italy (other than that produced by Plasturopa-SIPA) were subject, but over the next 21 years, the antidumping finding was revoked by Commerce with respect to two Italian producers of PSP tape: Autoadesivi, S.p.A. in 1988 and Boston S.p.A in 1990. 1997 is the last year for which yearly import data are available for subject and nonsubject imports from Italy. Therefore, current import data from Italy likely represent both subject and nonsubject imports. Thus, when we refer to imports from Italy, we are likely overstating subject imports.

[38] Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Review), USITC Pub. 3157 at (confidential version) at 24 (Dissenting Views of Chairman Bragg and Commissioners Crawford and Askey).

[39] 3M Submission at 3.

[40] 19 U.S.C. § 1675a(a)(2)(A-D).

[41] 19 U.S.C. § 1675a(a)(2).

[42] CR at Table I-5.

U.S. market is dominated by domestic producers and nonsubject suppliers that held almost *** percent of U.S. apparent consumption in 1997,[43] which is in stark contrast to the situation in 1976 when U.S. producers held *** share of apparent consumption as subject imports.

3M argues that the "significant underutilization" in capacity by Italian producers would result in an increase in exports to the United States if the finding were revoked and that the increase would translate into a direct decrease in U.S. industry sales volume, production, capacity utilization, and wages.[44] There is no information on the record that supports the aforementioned assertion that the Italian product (1) would find its way to the U.S. market and (2) would capture market share from U.S. producers. Rather, significant changes in both the U.S. market and subject imports' home market indicate that subject imports would not increase beyond 1997 levels. While the original finding appears to have had an impact on the level of imports, and thus the market share of PSP tape from Italy, Italian market share has remained insignificant notwithstanding Commerce's revocation of the finding on two Italian companies, Autoadesivi, S.p.A. in 1988 and Boston S.p.A in 1990, which indicates that the United States is not the primary market for Italian PSP tape.

As we noted earlier, many shifts in global trade patterns have occurred over the past 27 years, including the expansion of the European market and the creation of the European Union, which has affected the global market for PSP tape. Most important in this review is that major structural changes have occurred in the European market since 1976. Between the original investigation and the first review, six countries joined the European Communities (EC) to form the European Union (EU-15) in 1995. Moreover, since the first review, the EU has further integrated the economies of additional member countries, and began circulating a common currency, the euro, on January 1, 2002. In May 2004, the EU expanded from 15 member countries, which includes Italy, to 25 member countries. This expansion represents a massive new market potential for Italian PSP tape producers. In essence, demand for Italian PSP tape has increased simply through the expansion of the EU. Italy's primary market is the EU, and the EU is likely to remain the primary market of Italian PSP tape producers, given the duty-free advantages it provides. There is nothing on the record that would indicate that it is more probable than not that Italy's current or potential production would be directed to the United States instead of its home market and other EU member country markets. In fact, 3M states that its Italian joint venture focuses its Italian production on the EU market and does not ship to the United States.[45] [46]

The record indicates that total imports from Italy accounted for approximately 1 percent of apparent U.S. consumption in 2003,[47] which is markedly different than subject import share in the original investigation, and smaller than the market share of total imports from Italy in the first five-year review. Although the data suggest that the antidumping finding had a significant impact on the market penetration of Italian imports, the massive growth in domestic consumption and the U.S. industry's extensive and consistently maintained share in that growth signify that increases in imports are not likely to lead to any adverse effect if the finding is revoked. Apparent domestic consumption increased from

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[43] CR at Table I-4.

[44] CR at I-14.

[45] 3M Submission at 7.

[46] On a related matter, we are surprised that 3M, having an Italian joint venture, did not submit more substantive information on the Italian market. Given its active participation in the Italian market, and given that the number of players in that market have contracted through consolidation (3M Submission at 8-9), it seems reasonable to conclude that 3M could have submitted additional data that may have further informed the Commission.

[47] 3M Submission at 3. Those imports subject to the finding likely accounted for less than 1 percent of apparent U.S. consumption in 2003.

*** square yards in 1976 to *** billion square yards in 1997.[48] In 1997, the most recent year for which data are available, U.S. producers held *** percent of the U.S. market. Between 1976 and 1997, U.S. producers were able to capture market share from nonsubject imports, as well as subject imports. Nonsubject imports in 1997 held *** percent of the market, while subject imports held a mere *** percent.[49]

Because the domestic market is dominated by U.S. producers and by nonsubject suppliers, and because the record demonstrates that at least some Italian suppliers are focused on the EU market, we find that revocation of the antidumping finding is not likely to lead to an increase in the volume of subject imports such that the likely volume of subject imports would be significant.[50]

F. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping finding is revoked, the Commission considers whether there is likely to be significant underselling by the subject imports as compared to domestic like product, and if the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or supressing effect on the price of domestic like products.[51]

In performing our analysis, we have taken into account the Commission's previous price findings. In the original determination, the Commission found price, while not the most important factor, to be a significant factor. The Commission indicated that the record showed consistent underselling and that prices of both domestic products and subject imports exhibited downward and flat trends. Consequently, the Commission found that imports depressed domestic prices.[52]

No pricing data are available on the record in this review. We therefore have no information that compares current prices of the domestic like product with those of subject imports in the U.S. market. We acknowledge Commerce's determination that dumping is likely to continue or recur if the antidumping finding is revoked[53] as well as the commodity nature of PSP tape.[54] However, our conclusions regarding the likely price effects if the antidumping finding is revoked are drawn largely from our conclusions on likely subject volumes. As discussed in our volume analysis, subject import market share is not likely to increase significantly if the antidumping finding is revoked. In fact, we find

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[48] CR at Table I-4.

[49] Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Review), USITC Pub. 3157 (confidential version) at 24 (Dissenting Views of Chairman Bragg and Commissioners Crawford and Askey).

[50] The record contains no current information with regard to the other statutory factors such as: existing inventories of the subject merchandise, or likely increases in inventories; the existence of barriers to the importation of the subject merchandise in countries other than the United States; and the potential for product shifting if the production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.

[51] 19 U.S.C. § 1675(a)(3).

[52] Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167, USITC Pub. 830 (Aug. 1977) ("Original Determination") at 5-6.

[53] 69 Fed. Reg. 26, 068 (May 11, 2004).

[54] We note, however, that the level of dumping margins, *per se*, tells us nothing about whether there is likely to be significant price underselling by subject imports or whether subject imports are likely to be sold at prices that depress or suppress U.S. prices for PSP tape.

that subject import volume is likely to remain at 1997 levels, the year for which the most recent data are available on the record.

Consequently, we find that revocation of the antidumping finding would not likely lead to significant underselling by the subject imports as compared to the domestic like product, or to significant price depression or suppression within a reasonably foreseeable time.[55] Therefore, we find that revocation of the finding is not likely to lead to any significant price effects.

G. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the antidumping finding is revoked, the Commission considers all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including, but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[56]

In the original determination the Commission found that the significant increase in less-than-fair value imports adversely affected the financial condition of the domestic industry. It found that the firms reporting financial data had gone from showing a substantial profit in 1974 to a substantial loss in 1976.[57]

Subject imports are not likely to have a significant adverse impact on the domestic PSP tape industry if the finding is revoked. Subject imports account for less than 1 percent of U.S. consumption.[58] The domestic industry is well established and dominated the U.S. market with a substantial market share of *** percent in 1997.[59] Nonsubject suppliers accounted for the difference, holding *** percent of the U.S. market in 1997.[60] Subject imports would have to increase substantially to have a likely adverse effect volume or prices, which given the minuscule market share of subject imports is not likely. We have determined that subject imports are not likely to increase to significant levels. Further, any increased subject imports resulting from the revocation of the finding are likely to gain market share at the expense of nonsubject imports rather than at the expense of the domestic industry. There is no information on the record that would indicate otherwise.

There are no updated data on the record regarding the state of the domestic industry for the current review. Most important, no financial data has been provided for periods beyond 1976. There have been significant changes in the U.S. industry over the past 27 years, such as massive growth in consumption, production, and increases in U.S. market share, as well as new entrants and therefore additional investment in the U.S. market.[61] We therefore find that subject imports would not be likely to have a significant impact on domestic PSP tape producers' cash flow, inventories, employment, wages,

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[55] The record contains no information on other price-related factors such as the channels of distribution used; the methods of contracting (such as spot sales or long-term contracts); and lead times for delivery of goods; discounts; and payment terms.

[56] 19 U.S.C. § 1675(a)(4).

[57] Original Determination at 6.

[58] 3M Submission at 3; see also footnote 40.

[59] CR at Table I-4.

[60] CR at Table I-4.

[61] As we have no current financial data, we have no current information indicating vulnerability. Indeed, all the aforementioned market conditions would indicate otherwise.

growth, ability to raise capital, or investment within a reasonably foreseeable time in the event the finding is revoked. In conjunction with our findings regarding likely price and volume effects, we find that revocation is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.[62] We therefore find that revocation of the finding is not likely to lead to the continuation or recurrence of material injury to the domestic PSP tape industry within a reasonably foreseeable time.

II. CONCLUSION

Subject imports are not likely to have adverse volume or price effects in the event of revocation, and are therefore not likely to have a negative impact on the domestic industry. Thus, we find that material injury to the U.S. PSP tape industry is not likely to continue or recur within a reasonably foreseeable time if the antidumping finding on PSP tape from Italy is revoked.

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[62] The record contains no current information with regard to the factors provided in the SAA, such as: the fungibility or differentiation within the product in question; and the level of substitutability between the imported and domestic products; as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities." SAA at 887.

INFORMATION OBTAINED IN THE REVIEW

INTRODUCTION

Background

On January 2, 2004, the Commission gave notice that it had instituted a second five-year ("sunset") review to determine whether revocation of the antidumping finding on imports of pressure sensitive plastic tape ("PSP tape") from Italy would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.[1] On April 6, 2004, the Commission determined that the domestic interested party response to its notice of institution was adequate;[2] the Commission also determined that the respondent interested party response was inadequate. The Commission found no other circumstances that would warrant conducting a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)).[3] The Commission voted on this review on May 27, 2004, and notified Commerce of its determination on June 7, 2004. Information relating to the background of the review is presented below.[4]

Effective date	Action	*Federal Register* citation
Oct. 21, 1977	Treasury's antidumping finding issued	42 FR 56110
Feb. 17, 1999	Commerce's continuation of antidumping finding after first five-year review	64 FR 51515 (Sept. 23, 1999)
Jan. 2, 2004	Commission's institution of second five-year review	69 FR 101
Apr. 6, 2004	Commission's determination to conduct expedited second five-year review	69 FR 21159 (Apr. 20, 2004)
May 11, 2004	Commerce's final results of expedited sunset review	69 FR 26068
May 27, 2004	Commission's expedited review determination	NA
June 7, 2004	Commission's determination to Commerce	NA

The Original Investigation and First Five-Year Review

The Commission completed the original investigation in August 1977, determining that an industry in the United States was being, or likely to be, injured by reason of the importation of PSP tape

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[1] All interested parties were invited to respond to the notice by submitting information requested by the Commission.

[2] The Commission received one submission in response to its notice of institution for the subject review. It was filed on behalf of 3M Co. ("3M") (formerly known as Minnesota Mining and Manufacturing Co.); Intertape Polymer Group, Inc.; Shurtape Technologies, Inc.; and Sekisui TA Industries, Inc. The four responding firms are believed to represent over 70 percent of U.S. production of PSP tape in 2003. *3M's February 23, 2004 Response* to the notice of institution ("*3M's Response*"), p. 2 and *3M's March 5, 2004 Addendum to Response*, p. 1.

[3] *See* the Commission's web site *(http://www.usitc.gov)* for Commissioner votes on whether to conduct an expedited or full review.

[4] Cited *Federal Register* notices since Commerce's first five-year review finding are presented in app. A. The Commission's statement on adequacy is presented in app. B.

of more than 1-3/8 inches in width and not exceeding 4 mils in thickness from Italy that was being, or was likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.[5] After receipt of the Commission's determination, Treasury issued an antidumping finding on imports of PSP tape from Italy.[6] In February 1999, the Commission completed an expedited five-year review of the antidumping finding, and, on the basis of facts available, determined that revocation of the finding on PSP tape from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[7]

Commerce's Final Results of Expedited Sunset Review

On May 11, 2004, the Commission received notification of Commerce's "Final Results of Expedited Sunset Review" concerning PSP tape from Italy.[8] The review covered all manufacturers and exporters of PSP tape in Italy. Commerce determined that dumping is likely to continue or recur if the antidumping finding is revoked. The following tabulation provides information with regard to the margins (in percent *ad valorem*) of dumping that Commerce found would likely prevail if the order is revoked:[9]

Company	Margin
Comet SARA, S.p.A.	10.0
Manuli Autoadesivi	10.0
All others	10.0

Between 1977, when the antidumping finding was imposed by Treasury, and 1998, Commerce conducted numerous administrative reviews with respect to imports of PSP tape from Italy. The antidumping finding was revoked with respect to two Italian producers of PSP tape, one each in 1988 and

[5] The investigation resulted from complaints filed with Treasury by Minnesota Mining and Manufacturing Company (3M, Co.) alleging sales at LTFV of "box sealing tape" from Italy and West Germany. In September 1977, the Commission determined that an industry in the United States was not being, and was not likely to be, injured by reason of imports of PSP tape from West Germany sold, or likely to be sold, at LTFV. *Pressure Sensitive Plastic Tape from West Germany, Investigation No. AA1921-168*, USITC Pub. 831, September 1977. Information obtained in the two separate investigations was presented together by the Commission in USITC Pub. 831, *Id.*

[6] 42 FR 56110 (October 21, 1977).

[7] 64 FR 6681 (February 10, 1999). Chairman Bragg and Commissioners Crawford and Askey made negative determinations. *See* their *Dissenting Views* in *Pressure Sensitive Plastic Tape from Italy, Investigation No. AA1921-167 (Review)*, USITC Pub. 3157, February 1999.

[8] 69 FR 26068 (May 11, 2004).

[9] Commerce's likelihood determination was based on the fact that dumping at levels above *de minimis* has continued over the life of the finding against imports of PSP tape from Italy. *See Issues and Decision Memorandum* from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, May 3, 2004. *http://ia.ita.doc.gov/frn.*

1990.[10] The finding remains in effect for all other producers and exporters of PSP tape from Italy.[11] Commerce has conducted no administrative reviews since completion of the first sunset review in 1999.

THE PRODUCT

Scope

Commerce's final results of its expedited sunset review provides the following definition of the product subject to review: PSP tape measuring over one and three eighths inches in width and not exceeding four millimeters in thickness. Subject PSP tape is classified under the HTS subheading 3919.90.50 and enters under the column 1-general rate of 5.8 percent *ad valorem*.[12]

Description and Uses[13]

PSP tape is a plastic, film-backed tape with an adhesive on one side that remains permanently tacky at room temperature. The tape adheres firmly to a variety of surfaces upon mere contact, without the need of more than finger or hand pressure. No activation by water, solvent, or heat is required in order to obtain a strong adhesive force.

At the time of the Commission's original investigation, PSP tape utilized one of three basic types of plastic film backing: polyester, unplasticized polyvinylchloride ("UPVC"), and propylene. In 1977, polyester film-backed tape was produced primarily in the United States, UPVC tape was produced almost entirely in Europe, and polypropylene tape was produced in the United States, Europe, the Far East, and other areas. Although their chemical compositions differed, the three types of film backing were virtually identical in appearance. On an equal thickness basis, polyester tape was considerably stronger than the other two types.

According to the information developed in the 1977 investigation, PSP tape is available in a variety of colors and sizes, but is generally sold to consumers in rolls of the following dimensions: 2 to 4 mils thick, 2 inches wide, and 55 yards long. PSP tape is also sold in converter rolls that range from 2 to 6 inches in width and up to 1,000 yards in length, as well as in jumbo or parent rolls 50 inches wide and 1,666 yards long.

The predominant use of PSP tape, as indicated in the 1977 investigation, is to seal cartons or corrugated boxes in medium- to low-volume applications. In general, all three types of PSP tape may be used interchangeably for carton sealing applications, and they compete directly with one another. There are, however, some applications in which one type of PSP tape may be preferred over another because of its suitability to handheld and automatic sealing devices. Additional uses for PSP tape at the time of the Commission's original investigation included printed labels, color coding, tabbing, and label protection. Some converter and jumbo rolls of PSP tape were processed into freezer tapes, carpet padding tape,

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[10] Commerce revoked the finding with respect to Autoadesivi, S.p.A. (53 FR 16444, May 9, 1988) and Boston, S.p.A. (55 FR 6031, February 21, 1990).

[11] The finding excludes Plasturopa, an Italian producer of PSP tape. Treasury found no LTFV margin for sales of PSP tape by Plasturopa, and excluded the company from its original investigation. *Pressure Sensitive Plastic Tape from West Germany, Investigation No. AA1921-168*, USITC Pub. 831, September 1977, p. A-6.

[12] HTS subheading 3919.90.20 was incorrectly included by Commerce in the first five-year review. 69 FR 26068 (May 11, 2004).

[13] All of the discussion in this section is from the original investigation. *Pressure Sensitive Plastic Tape from West Germany, Investigation No. AA1921-168*, USITC Pub. 831, September 1977, p. A-5.

security tape, and package carrying handles. All three types of PSP tape were used interchangeably for most of these applications, although UPVC tape was generally preferred for applications in which information had to be printed on the tape, such as in the production of labels.

No more current information on the description or uses of PSP tape is available.

THE INDUSTRY IN THE UNITED STATES

U.S. Producers

In 1976, there were eight firms producing PSP tape in the United States, most of which were located in the midwestern and northeastern parts of the country.[14] Four producers – 3M; Johnson & Johnson, Permacel Division; Nashua Corp., Industrial Tape Division; and Borden Co., Mystic Tape Division – accounted for at least 80 percent of U.S. production of PSP tape in the period examined in the original investigation.[15] Only one other U.S. producer, ***, was named in the 1977 staff report. In the Commission's 1998 sunset review, 3M, the only party to respond to the Commission's notice of institution in that review, provided the following list of U.S. producers of PSP tape: 3M; Intertape Polymer Group, Inc. ("Intertape"); Central Products Co.; Bemis Co., Inc.; Sekisui TA Industries, Inc. ("Sekisui"); and Shurtape Technologies, Inc. ("Shurtape").[16]

In its response to the Commission's notice of institution in the present review, 3M identified the following ten companies as those also currently producing PSP tape in the United States: Bemis Co. (MACtac); Canadian Technical Tapes (Cantech Industries, Inc.); Intertape; Manco; Nitto Denko (Permacel); Shurtape; Sekisui; Tyco Adhesives; Tara Tape; and Tesa Tape, Inc.[17] 3M further acknowledged that there may be additional, smaller producers of PSP tape in the United States, but stated that, to the best of its knowledge, such companies produced minimal amounts of PSP tape in 2003. To the best of 3M's knowledge, only Tyco Adhesives is a related party within the meaning of 19 U.S.C. 1677(4)(B). [18] [19]

U.S. Production, Capacity, and Shipments

Trade and financial data reported by U.S. producers of PSP tape in the Commission's original investigation, and in response to its sunset review institution notices, are presented in table I-1. From 1973 to 1976, the period for which data were collected in the original investigation, the U.S. industry's production, shipments, and net sales increased significantly, almost tripling in each case. The industry's

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[14] *Pressure Sensitive Plastic Tape from West Germany, Investigation No. AA1921-168*, USITC Pub. 831, September 1977, p. A-11.

[15] The original staff reported identified 3M as the largest U.S. manufacturer of PSP tape "by far." *Id.*

[16] *Pressure Sensitive Plastic Tape from Italy, Investigation No. AA1921-167 (Review)*, USITC Pub. 3157, February 1999, p. I-5.

[17] *3M's Response*, p. 4. 3M's submission included certified trade information for Intertape, Sekisui, and Shurtape, all of whom indicated support for continuation of the antidumping finding on imports of pressure sensitive plastic tape from Italy.

[18] Tyco Adhesives Italia S.p.A., an Italian producer of PSP tape, filed, and subsequently withdrew, an entry of appearance in the present review.

[19] 3M is presently engaged in a joint venture agreement with Italian PSP tape producer Sicad. Although the joint company, known as BST, is a producer of subject merchandise in Italy, none of its production is exported to the United States. *3M's Response*, p. 7.

financial indicators exhibited a declining trend in the period, however, as costs and expenses rose, while operating income turned negative. Detailed U.S. industry trade and financial data for more recent periods are not available.

Capacity utilization of the U.S. industry was not calculated in the original investigation because machinery and equipment used in the production of PSP tape were also used in the production of other plastic tape products.[20] No capacity utilization data were included in submissions made to the Commission in response to its notices of institution in the previous or present five-year review.

Table I-1
PSP tape: U.S. producers' trade and financial data, 1973-76, 1997, and 2003

* * * * * * *

In its response to the Commission's notice of institution in the present review, 3M submitted production and shipments data for four U.S. producers. These data are summarized in table I-2.

Table I-2
PSP tape: Responding U.S. producers' 2003 production and shipments

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U.S. IMPORTS AND CONSUMPTION

U.S. Imports

Official import statistics for the subject product in this second five-year review are not available as the applicable HTS subheading under which it is classified includes products other than PSP tape. Import data collected in the original investigation, and in the Commission's first five-year review, are presented in table I-3.

Data from the original investigation show that imports of PSP tape from Italy grew in line with imports from all countries from 1973 to 1976, increasing by just over 200 percent. In 1976, imports from Italy represented 42.9 percent of total U.S. imports of PSP tape. Data submitted to the Commission by 3M in the first five-year review suggested that imports from Italy had declined to a level representing just 4 percent of total U.S. imports in 1997. No more current estimates or data relating to U.S. imports of PSP tape were provided by 3M in its response to the Commission's notice of institution in the present review.

[20] *Staff Report* of August 15, 1977, p. A-23.

Table I-3
PSP tape: U.S. imports, by source, 1973-76, 1997, and 2003

Source	Calendar year					
	1973	1974	1975	1976	1997[1]	2003
	Quantity (*1,000 square yards*)					
Italy	8,618	8,391	11,396	30,615	***	N/A
Other sources	13,983	25,840	27,974	40,703	***	N/A
Total	22,601	34,231	39,370	71,318	***	N/A
	Value (*$1,000*)					
Italy	1,484	2,009	1,979	5,397	N/A	N/A
Other sources	2,947	5,653	5,370	8,007	N/A	N/A
Total	4,431	7,662	7,349	13,404	N/A	N/A
	Unit value (*per 1,000 square yards*)					
Italy	$172	$239	$174	$176	N/A	N/A
Other sources	211	219	192	197	N/A	N/A
Total	196	224	187	188	N/A	N/A
	Share of quantity (*percent*)					
Italy	38.1	24.5	28.9	42.9	4.0	N/A
Other sources	61.9	75.5	71.1	57.1	96.0	N/A
Total	100.0	100.0	100.0	100.0	100.0	100.0
	Share of value (*percent*)					
Italy	33.5	26.2	26.9	40.3	N/A	N/A
Other sources	66.5	73.8	73.1	59.7	N/A	N/A
Total	100.0	100.0	100.0	100.0	100.0	100.0

[1] In response to the Commission's 1998 notice of institution, 3M reported importing *** square yards of PSP tape from Italy into the United States in 1997. 3M estimated that its imports accounted for *** percent of all U.S. imports of PSP tape from Italy in 1997, and that imports from Italy represented 4 percent of U.S. imports of PSP tape from all sources.

Source: *Staff Report* of August 15, 1977, table 4. *Staff Report* of January 8, 1999, pp. I-6 and I-7.

Data on the value of U.S. imports of PSP tape subject to the antidumping finding during fiscal years 1993 to 1997, collected from the Commerce web site during the Commission's 1998 review, are presented below.

1993	1994	1995	1996	1997
$2,924,399	$1,858,956	$5,370,767	$368,297	$1,015,448

Yearly data from Commerce on the value of U.S. imports subject to antidumping and countervailing duty orders are no longer available. Since the enactment of the Continued Dumping and Subsidy Offset Act of 2000 ("Byrd Amendment"), Customs has maintained a record of disbursements of assessed antidumping and countervailing duties made to affected domestic producers. The values of yearly disbursements made by Customs to 3M, the only domestic producer eligible to receive disbursements of antidumping duties on PSP tape from Italy, are presented below.[21]

FY 2001	FY 2002	FY 2003
$413,729	$134,726	$5,877

Apparent U.S. Consumption

U.S. consumption data collected in the original investigation, and in the Commission's first five-year review, are presented in table I-4. Between 1976 and 1997, the domestic industry's share of apparent U.S. PSP tape consumption more than doubled from *** to *** percent. The share of apparent consumption accounted for by imports from Italy declined in the same period, from *** percent in 1976 to just over *** percent in 1997. The share of U.S. apparent consumption of PSP tape accounted for by imports from all other sources declined as well, from *** percent in 1976 to *** percent in 1997.

No current estimates of U.S. apparent consumption, or of the respective market shares of U.S. producers' shipments and imports, can be made based on available data.

[21] Disbursements represent all entries of subject PSP tape imports from Italy liquidated in the fiscal year.

Table I-4
PSP tape: U.S. apparent consumption and market shares, 1973-76, 1997, and 2003

Item	Calendar year					
	1973	1974	1975	1976	1997	2003
	Quantity (*1,000 square yards*)					
U.S. producers' U.S. shipments[1]	***	***	***	***	***[2]	N/A
Imports from Italy	8,618	8,391	11,396	30,615	***	N/A
Other imports	13,983	25,840	27,943	40,703	***	N/A
Total imports	22,601	34,231	39,370	71,318	***	N/A
Apparent consumption	***	***	***	***	***	N/A
	Share of apparent consumption (*percent*)					
U.S. producers' U.S. shipments	***	***	***	***	***	N/A
Imports from Italy	***	***	***	***	***	N/A
Other imports	***	***	***	***	***	N/A
Total imports	***	***	***	***	***	N/A

[1] U.S. shipments data in this table differ slightly from those presented in table I-1. The differences reflect discrepancies in the original data tables.
[2] 3M's estimate of the U.S. PSP tape industry's production quantity in 1997 is used as a proxy for U.S. producers' U.S. shipments. In 2003, U.S. shipments represented *** percent of production by the four U.S. producers of PSP tape for which data were submitted in the present review.

Source: *Staff Report* of August 15, 1977, table 14; *Staff Report* of January 8, 1999, p. I-8.

THE INDUSTRY IN ITALY

At the time of the Commission's original investigation, there were seven Italian manufacturers that exported PSP tape to the United States.[22] Four producers – Manuli Autoadesivi, S.p.A.; Boston, S.p.A.[23]; Comet S.A.R.A., S.p.A.; and Plasturopa - SIPA, S.a.S.[24] – accounted for *** percent of Italian exports of PSP tape to the United States during the period of Treasury's investigation (December 1975-

[22] *Pressure Sensitive Plastic Tape from West Germany, Investigation No. AA1921-168*, USITC Pub. 831, September 1977, p. A-36.

[23] As stated earlier, the antidumping finding was revoked by Commerce with respect to Boston, S.p.A. in 1990.

[24] Treasury found no LTFV margins on sales by Plasturopa in its original investigation, and determined that the company should be excluded from the investigation. *Pressure Sensitive Plastic Tape from West Germany, Investigation No. AA1921-168*, USITC Pub. 831, September 1977, p. A-6; Commerce's *Issues and Decision Memorandum*, May 3, 2004.

June 1976). Three other firms – Nastri Adhesive Stampati ("NAS"); Autoadesivi, S.p.A.[25]; and Vibac, S.p.A. ("Vibac") – exported "insignificant quantities" of PSP tape to the United States in the same period.[26]

In the Commission's previous review, 3M submitted the following list of Italian companies believed to be producing PSP tape at the time: 3M/Italia, S.p.A. ("3M/Italia");[27] Manuli Tapes, S.p.A. ("Manuli"); Sicad, S.p.A.; Syrom 90, S.p.A.; NAR, S.p.A. ("NAR"); Vibac; and NAS. In its response to the Commission's notice of institution in the present review, 3M again identified Sicad, Vibac, and NAR, and added three companies, "Magri," "Fabo," and "Tyco Adhesives," to the list of Italian companies believed to have exported PSP tape to the United States "after 1997."[28] 3M also reported participation in a joint venture with Italian producer Sicad in a company called BST, S.p.A. ("BST"). BST produces PSP tape subject to the present antidumping finding, but does not export any subject product to the United States.[29]

The staff report in the original investigation contains no trade data for the PSP tape industry in Italy. In 1998, 3M provided estimates, based on the activities of its Italian subsidiary at the time, of production quantity, production capacity, and capacity utilization for the Italian industry. Similarly, in the present review, 3M provided estimates for the Italian industry's trade data, based on the activity of its joint venture company producing PSP tape in Italy. These data are summarized in table I-5.

Table I-5
PSP tape: Italian producers' capacity, production, and shipments to the United States, 1997 and 2003

Item	1997[1]	2003[2]
Capacity (*1,000 square yards*)	***	7,176,000
Production (*1,000 square yards*)	***	4,306,000
Capacity utilization (*percent*)	***	60.0
U.S. shipments (*1,000 square yards*)	***	N/A
Ratio of U.S. shipments to production (*percent*)	***	N/A

[1] 1997 data are based on estimates submitted by 3M in response to the Commission's notice of institution in the previous review.
[2] 2003 data are calculated from estimates submitted by 3M in response to the Commission's notice of institution in the present review. Based on industry data, 3M estimates that Italian manufacturers produced about 3.6 billion square meters (4.3 billion square yards) of PSP tape in 2003, and that the production capacity for these producers in 2003 was about 6 billion square meters (7.2 billion square yards).

Source: *Staff Report* of January 8, 1999, p. I-8; and *3M's Response*, p. 7.

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[25] As stated earlier, the antidumping finding was revoked by Commerce with respect to Autoadesivi, S.p.A. in 1988.

[26] *Id.*

[27] 3M/Italia was reported in 1998 to be a wholly owned subsidiary of U.S. producer 3M. *Pressure Sensitive Plastic Tape from Italy, Investigation No. AA1921-167 (Review)*, USITC Pub. 3157, February 1999, p. I-6. 3M did not include this subsidiary in the list of Italian companies currently believed to be producing PSP tape in Italy that it submitted to the Commission in the present review.

[28] *3M's Response*, p. 5.

[29] *3M's Response*, p. 7.

According to the estimates provided by 3M in the present sunset review, the Italian PSP tape industry was operating at 60 percent capacity utilization in 2003. This rate, 3M argues, represents a "significant underutilization" of capacity, and would result in an increase in exports to the United States by Italian producers were the antidumping finding on PSP tape to be revoked.[30] An increase in imports from Italy, 3M contends, would lead directly to a decrease in the U.S. industry's sales volume, production, capacity utilization, employment, and wages.[31]

3M also notes that the PSP tape industry, both in Italy and in the United States, has undergone substantial consolidation in recent years. They point, in particular, to Tyco Italia's aggressive purchases of companies in the industry, including the acquisition of Manuli, the largest Italian producer of PSP tape.[32] 3M contends that this consolidation has provided acquiring companies with enhanced distribution and sourcing systems, providing them with the means, as well as an incentive, to sell PSP tape in the United States at "any price above variable cost."[33]

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[30] *3M's Response*, p. 3.

[31] *Id.*

[32] *3M's Response*, pp. 8 and 9.

[33] *Id.*

APPENDIX A

FEDERAL REGISTER NOTICES

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–32259 Filed 12–31–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–167 (Review)]

Pressure Sensitive Plastic Tape From Italy

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping finding on pressure sensitive plastic tape from Italy.

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 finding on pressure sensitive plastic tape from Italy 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 by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is February 23, 2004. Comments on the adequacy of responses may be filed with the Commission by March 16, 2004. 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: January 2, 2004.

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://www.edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On October 21, 1977, the Department of the Treasury issued an antidumping finding on imports of pressure sensitive plastic tape from Italy (42 FR 56110). Following five-year reviews by Commerce and the Commission, effective February 17, 1999, Commerce issued a continuation of the antidumping duty order on imports of pressure sensitive plastic tape from Italy (64 FR 51515, September 23, 1999). The Commission is now conducting a second 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) 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 Italy.

(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 expedited five-year review determination, the Commission found that the appropriate definition of the Domestic Like Product was the same as Commerce's scope: Pressure sensitive plastic tape measuring over 1⅜ inches in width and not exceeding 4 mils in thickness. The Commission did not make a like product determination per se in its original determination.

(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 and its expedited five-year review determination, the Commission defined the Domestic Industry as all producers of pressure sensitive plastic tape.

(5) The Order Date is the date that the antidumping duty order or finding under review became effective. In this review, the Order Date is October 21, 1977.

(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. Former employees may seek informal advice from Commission ethics officials concerning their eligibility to appear in five-year reviews. 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

[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. 04–5–078, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 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.

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 February 23, 2004. 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 March 16, 2004. 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 FR 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 finding 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 after 1997.

(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 2003 (report quantity data in square yards 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 2003 (report quantity data in square yards 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 or countervailing 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 and/or countervailing 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 and/or countervailing 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 2003 (report quantity data in square yards and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing 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 after 1997, 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.

Issued: December 22, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–32298 Filed 12–31–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–188 (Review)]

Prestressed Concrete Steel Wire Strand From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping finding on prestressed concrete steel wire strand from Japan.

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 finding on prestressed concrete steel wire strand from Japan 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 by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is February 23, 2004. Comments on the adequacy of responses may be filed with the Commission by March 16, 2004. 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: January 2, 2004.

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 December 8, 1978, the Department of the Treasury issued an antidumping finding on imports of prestressed concrete steel wire strand from Japan (43 FR 57599). Following five-year reviews by Commerce and the Commission, effective February 3, 1999, Commerce issued a continuation of the antidumping duty order on imports of prestressed concrete steel wire strand from Japan (64 FR 40554, July 27, 1999). The Commission is now conducting a second 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) *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 Japan.

(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 expedited five-year review, the Commission found that the appropriate definition of the Domestic Like Product was the same as Commerce's scope: all steel wire strand, other than alloy steel, not galvanized, which has been stress-relieved and is suitable for use in prestressed concrete. The Commission did not make a like production determination *per se* in its original determination.

(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 and its expedited five-year review, the Commission defined the Domestic Industry as producers of prestressed concrete steel wire strand.

[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. 04–5–079, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 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.

by June 21, 2004, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC. 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8 (d)).

This notice identifies information collections at 30 CFR 816.116 and 817.116 that OSM will be submitting to OMB.

OSM previously received approval for collection activities for 30 CFR part 816 and part 817. They were assigned clearance number 1029–0047. However, OSM inadvertently failed to include in the clearance request existing collection requirements for §§ 816.116 and 817.116. These sections require State regulatory authorities to develop statistically valid sampling techniques, and for operators to document revegetation information during Phase 3 bond release. OSM requested and received an emergency clearance from OMB for the collection activities in §§ 816.116 and 817.116. They were assigned clearance number 1029–0124. Now, OSM is seeking a 3-year term of approval for these collections.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Revegetation: Standards for Success, 30 CFR 816.116 and 817.116.

OMB Control Number: 1029–0124.

Summary: Section 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in inspecting surface and underground coal mining reclamation activities to ensure that they are revegetated in accordance with applicable State requirements.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Coal mining operators and State regulatory authorities.

Total Annual Responses: 882.

Total Annual Burden Hours: 70,600.

Total Annual Non-Wage Costs: $44,000.

Dated: April 14, 2004.

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 04–8902 Filed 4–19–04; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA–1921–167 (Review)]

Pressure Sensitive Plastic Tape From Italy

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping finding on pressure sensitive plastic tape from Italy.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping finding on pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Jai Motwane (202–205–3176), 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 April 6, 2004, the Commission determined that the domestic interested party group response to its notice of institution (69 FR 101, January 2, 2004) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on May 10, 2004, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before May 13, 2004, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by May 13, 2004. However, should the Department of Commerce extend the time limit for its

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

[2] The Commission has found the response submitted by 3M Co. (including those submitted on behalf of Intertape Polymer Group, Inc.; Shurtape Technologies, Inc.; and Sekisui TA Industries, Inc.) to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 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 § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

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

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

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

Issued: April 14, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–8882 Filed 4–19–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA–1921–188 (Review)]

Prestressed Concrete Steel Wire Strand From Japan

AGENCY: International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping finding on prestressed concrete steel wire strand from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping finding on prestressed concrete steel wire strand from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Jai Motwane (202–205–3176), 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 April 6, 2004, the Commission determined that the domestic interested party group response to its notice of institution (69 FR 101, January 2, 2004) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on May 10, 2004, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before May 13, 2004, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by May 13, 2004. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

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

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

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

Issued: April 14, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–8883 Filed 4–19–04; 8:45 am]

BILLING CODE 7020–02–P

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

[2] The Commission has found the responses submitted on behalf of American Spring Wire Corp., Insteel Wire Products Co., and Sumiden Wire Corp. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

[AAG/A Order No. 003–2004]

Privacy Act of 1974: System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice,

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From Korea: Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce initiated an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Korea. Based on requests from interested parties for withdrawal of the review with respect to all respondents, we are rescinding the administrative review.

EFFECTIVE DATE: May 11, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Holland or Julie Santoboni, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1279 or (202) 482–4194, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2003, the Department of Commerce ("the Department") published a notice in the **Federal Register** of the opportunity for interested parties to request an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Korea. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding or Suspended Investigation*, 68 FR 62279 (November 3, 2003). On November 26, 2003, the Department received a timely request for review of Husteel Co. Ltd. ("Husteel"), Hyundai HYSCO ("HYSCO"), and SeAH Steel Corporation, Ltd. ("SeAH") (collectively, "respondents") from Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, "domestic interested parties"). We also received timely filed requests for review from Husteel, HYSCO, and SeAH.

In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of the antidumping duty administrative review on December 24, 2003, with respect to the respondents. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 74550 (December 24, 2003). The period of review is November 1, 2002, through October 31, 2003.

On April 9, 2004, the domestic interested parties withdrew their request for review of all three respondents. HYSCO withdrew its request for review on April 21, 2004. Husteel and SeAH withdrew their requests for review on April 23, 2004.

Rescission of Antidumping Administrative Review

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department may extend this time limit if it decides it is reasonable to do so. Although the domestic interested parties and the respondents submitted requests for withdrawal of this administrative review subsequent to the 90 day deadline, *i.e.*, March 23, 2004, because all parties withdrew their requests for an administrative review, we are hereby rescinding this administrative review.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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.

This notice is issued and published in accordance with section 777(i) of the Act, as amended and 19 CFR 351.213(d)(4).

Dated: May 4, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–1072 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Final Results of the Second Sunset Review of Antidumping Duty Finding

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

ACTION: Notice of final results of the second expedited sunset review of antidumping finding on pressure sensitive plastic tape from Italy.

SUMMARY: On January 2, 2004, the Department of Commerce ("the Department") published the notice of initiation of sunset review on Pressure Sensitive Plastic Tape ("PSPT") from Italy. On the basis of the notice of intent to participate, and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited (120-day) sunset review. As a result of this review, we find that revocation of the antidumping duty finding would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: May 11, 2004.

FOR FURTHER INFORMATION CONTACT: Alessandra Cortez or Ozlem Koray, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5925 or (202) 482–3675.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 2004, the Department published the notice of initiation of sunset review of the antidumping duty finding on PSPT from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[1] The Department received the notice of intent to participate on behalf of 3M Company ("3M"), a domestic interested party, within the deadline specified in section 351.218(d)(1)(I) of the Department's Regulations ("Sunset Regulations"). 3M claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of a domestic like product. We received a complete substantive response from 3M within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i).

We did not receive a substantive response from any interested party respondents in this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this finding.

Scope of Review

The products covered in this review are shipments of PSPT measuring over one and three-eights inches in width and not exceeding four millimeters in thickness. The above described PSPT is classified under HTS subheading 3919.90.50.[2] On May 7, 1992, the Department issued a scope ruling on highlighting "note tape" and determined that it was not within the scope of the finding. *See* Scope Rulings, 57 FR 19602 (May 7, 1992). The HTS subheadings are provided for convenience and for customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this case by 3M are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated May 3, 2004, 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 margin likely to prevail if the finding were to be 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*, under the heading "May 2004." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty finding on PSPT from Italy would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Italy manufacturers/exporters/producers weighted average	Margin percent
Comet SARA, S.p.A	10
Manuli Autoadesivi (Manuli)	*10
All Others	10

*Tyco Adhesives Italia S.p.A became a successor-in-interest company to Manuli Tapes S.p.A. *See* Final Results of Antidumping Duty Changed Circumstances Review: Pressure Sensitive Plastic Tape from Italy, 69 FR 15297 (March 25, 2004).

This notice also serves as the only reminder to parties subject to administrative protective orders ("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: May 3, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–1074 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DR–P

[1] Initiation of Five-Year (Sunset) Reviews, 69 FR 50 (January 2, 2004).

[2] HTS number 3919.90.20 was incorrectly included in the first sunset review, but later determined to be an invalid number. Pressure Sensitive Plastic Tape From Italy, USITC Pub. 3157, p. I–4, fn. 8 (February 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium From Canada: Preliminary Results of Countervailing Duty Administrative Reviews

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

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2002, through December 31, 2002. We preliminarily find that certain producers/exporters have received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the U.S. Bureau of Customs and Border Protection to assess countervailing duties as detailed in the "Preliminary Results of Reviews" section of this notice. Interested parties are invited to comment on these preliminary results (*see* the Public Comment section of this notice).

EFFECTIVE DATE: May 11, 2004.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4987.

Case History

On August 31, 1992, the Department of Commerce ("the Department") published in the **Federal Register** the countervailing duty orders on pure magnesium and alloy magnesium from Canada (*see Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada,* 57 FR 39392 (July 13, 1992)). On August 1, 2003, the Department published a notice of "Opportunity to Request Administrative Review" of these countervailing duty orders (*see Antidumping or Countervailing Duty Order, Finding, or*

APPENDIX B

STATEMENT ON ADEQUACY

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY
in
Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Review)

On April 6, 2004, the Commission determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3)(B).

The Commission received responses from domestic producers 3M Company, Intertape Polymer Group, Inc., Shurtape Technologies, Inc., and Sekisui TA Industries, Inc. The Commission determined that the responses were individually adequate. The Commission also determined that the responses were an adequate domestic interested party group response because the four producers account for a significant share of domestic production of the like product.

The Commission did not receive a response from any respondent interested party. Consequently, the Commission determined that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant conducting a full review. The Commission therefore determined to conduct an expedited review. A record of the Commissioners' votes is available from the Office of the Secretary and the Commission's web site (http://www.usitc.gov).