

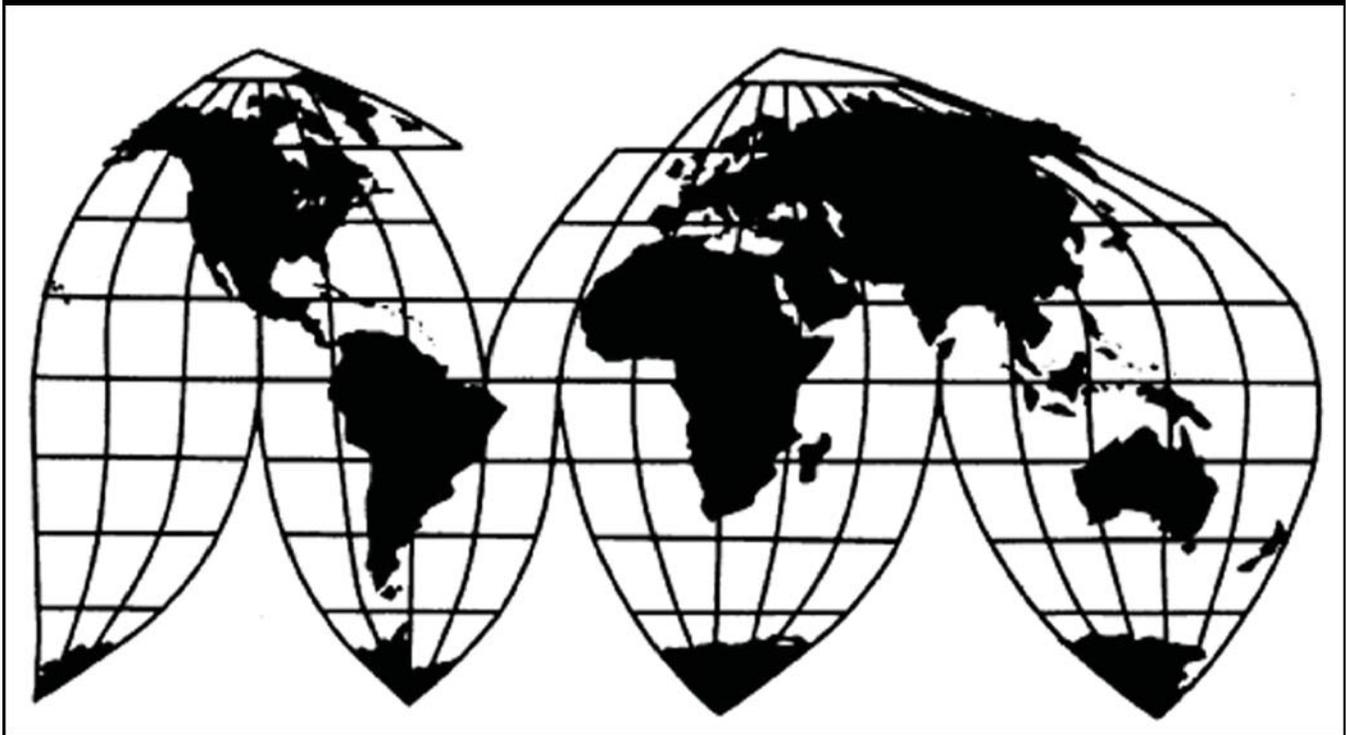
Certain Tissue Paper Products from China

Investigation No. 731-TA-1070B (Review)

Publication 4165

July 2010

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been identified by the use of *. Final identification of confidential information is in the public version of the staff report.**

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1070B (Review)

CERTAIN TISSUE PAPER PRODUCTS FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on certain tissue paper products from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

BACKGROUND

The Commission instituted this review on February 1, 2010 (75 F.R. 5115) and determined on May 7, 2010 that it would conduct an expedited review (75 F.R. 28061, May 19, 2010).

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 and Commissioner Pearson found two domestic like products - consumer tissue paper and bulk tissue paper. They determined that revocation of the antidumping duty order on bulk tissue paper would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. They also determined that revocation of the antidumping duty order on consumer tissue paper would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

VIEWS OF THE COMMISSION

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

I. BACKGROUND

On February 17, 2004, Seaman Paper Company of Massachusetts, Inc. (“Seaman”), Eagle Tissue LLC (“Eagle”), Flower City Tissue Mills Co. (“Flower City”), Garlock Printing & Converting Inc. (“Garlock”), and Putney Paper Co., Ltd. (“Putney”), joined by two other paper producers and a labor union,² filed an antidumping duty petition concerning imports of certain tissue paper products (“tissue paper”) and certain crepe paper products (“crepe paper”) from China. The case was subsequently divided into two separate investigations, crepe paper (731-TA-1070A) and tissue paper (731-TA-1070B).³

In March 2005, the Commission completed its original investigation of tissue paper, determining that an industry in the United States was materially injured by reason of less-than-fair-value (“LTFV”) imports of tissue paper products from China.⁴ The U.S. Department of Commerce (“Commerce”) issued an antidumping duty order with respect to imports from China on March 30, 2005.⁵

The Commission’s original investigation included examination of all issues raised by petitioners and respondents, including whether tissue paper should be defined as a single domestic like product (advocated by petitioners) or two like products consisting of consumer tissue paper and bulk tissue paper (advocated by respondents). The Commission preliminarily found that, although there were some differences between the products with respect to their packaging, distribution, and pricing, significant similarities existed with respect to the products’ physical characteristics, end uses, and production processes. The Commission therefore found that there was not a clear dividing line between consumer and bulk tissue paper and defined them as a single like product, noting that it intended to revisit the issue in its final investigation.⁶

In the final investigation, the six Commission members split on the domestic like product definition. Three Commissioners, Chairman Koplan and Commissioners Hillman and Lane, found that there were insufficient distinctions between consumer and bulk tissue paper to warrant treating them as

¹ Chairman Okun and Commissioner Pearson dissenting, finding two domestic like products consisting of bulk and consumer tissue paper, and making an affirmative determination with respect to bulk tissue paper and a negative determination with respect to consumer tissue paper. See Dissenting Views of Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson. They join only the Background section of this opinion.

² The two producers were Paper Service Ltd., which is no longer in business, and American Crepe Paper Corporation, a manufacturer of crepe paper but not tissue paper. The other petitioner was the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO, CLC.

³ Certain Crepe Paper Products from China, Inv. No. 731-TA-1070A (Final), USITC Pub. 3749 (Jan. 2005) at 3; Certain Tissue Paper Products from China, Inv. No. 731-TA-1070B (Final), USITC Pub. 3758 (Mar. 2005) (“USITC Pub. 3758”) at 3.

⁴ Certain Tissue Paper Products from China, 70 Fed. Reg. 15350 (Mar. 25, 2005). The Commission also made a negative finding with respect to critical circumstances. Id.

⁵ Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People’s Republic of China, 70 Fed. Reg. 16223 (Mar. 30, 2005).

⁶ Certain Tissue Paper Products and Crepe Paper Products from China, Inv. No. 731-TA-1070 (Preliminary), USITC Pub. 3682 (Apr. 2004) at 9-12.

separate like products.⁷ As a result, these Commissioners defined the domestic industry as consisting of all producers of tissue paper, both consumer and bulk.⁸ They made an affirmative determination that the industry producing consumer and bulk tissue paper was materially injured by reason of subject imports of tissue from China.⁹

Three Commissioners, Vice Chairman Okun and Commissioners Miller and Pearson, found consumer and bulk tissue paper to be separate domestic like products and therefore found that there were two domestic industries, one producing consumer tissue paper and the other producing bulk tissue paper.¹⁰ They determined that the industry producing bulk tissue paper was materially injured by reason of subject imports from China and that the industry producing consumer tissue paper was neither materially injured nor threatened with material injury by reason of subject imports from China.¹¹

Because the Commissioners were evenly divided in the original investigation, pursuant to the Act,¹² the affirmative determination of Chairman Koplan and Commissioners Hillman and Lane became the Commission's determination.

Domestic producer and importer Cleo Inc., its subsidiary, Crystal Creative Products, Inc. (collectively "Cleo"), and purchaser and importer Target Corporation ("Target") appealed the Commission's determination to the United States Court of International Trade ("CIT"), claiming errors in the like product and domestic industry definitions, as well as in the volume, price, and impact findings.

On August 31, 2006, the CIT sustained the Commission's determination in all respects. The Court found that the Commission reasonably concluded that consumer and bulk tissue were one domestic like product and that subject tissue paper imports from China materially injured the domestic tissue paper industry.¹³

Cleo and Target then appealed to the United States Court of Appeals for the Federal Circuit ("Federal Circuit") raising the same issues. On September 10, 2007, the Federal Circuit similarly upheld the Commission's determination, rejecting each of appellants' factual and legal arguments and finding that the Commission majority had reasonably analyzed all of the pertinent record evidence and provided substantial support for its findings in its determination. The Court thus affirmed the determination as being supported by substantial evidence and in accordance with law.¹⁴

Since issuance of the antidumping duty order, Commerce has denied two requests for exclusion from the order of tissue paper packaged with other products¹⁵ and issued two affirmative circumvention

⁷ USITC Pub. 3758 at 5-9.

⁸ Id. at 9-10.

⁹ Id. at 12-23.

¹⁰ USITC Pub. 3758 at 29-32 (dissenting views).

¹¹ Id. at 33-37, 38-43 (dissenting views).

¹² 19 U.S.C. § 1677(11).

¹³ Cleo Inc. v. United States, 30 CIT 1380 (2006).

¹⁴ Cleo Inc. v. United States, 501 F.3d 1291 (Fed. Cir. 2007).

¹⁵ See 73 Fed. Reg. 72771 (Dec. 1, 2008) (denying requests of Walgreen Co. and QVC Corporation for the exclusion of tissue paper in their respective gift bag sets and gift wrap kits); see also Confidential Staff Report ("CR"), Public Report ("PR") at Table I-3.

determinations concerning tissue paper imported from Vietnam and Thailand.¹⁶ Commerce recently initiated a third circumvention proceeding.¹⁷

The Commission instituted the present review on February 1, 2010.¹⁸ The Commission received a joint response to the notice of institution from Seaman, Eagle, Flower City, Garlock, and Putney (collectively, “domestic interested parties”) on March 3, 2010, and no response from any respondent interested party.¹⁹ On May 7, 2010, the Commission determined that the domestic interested party group response was adequate and the respondent interested party group response was inadequate. In the absence of an adequate respondent interested party group response or any other circumstances warranting a full review, the Commission unanimously determined to conduct an expedited review pursuant to section 751(c)(3) of the Act.²⁰

On June 8, 2010, the domestic interested parties filed final comments pursuant to 19 C.F.R. § 207.62(d).²¹ No respondent interested party has provided information or arguments to the Commission in this review. Accordingly, for our determination in this review, we rely as appropriate on facts available on the record, which consist of information collected in this five-year review (including information submitted by domestic producers and publicly available information) and information from the original investigation.

II. DOMESTIC LIKE PRODUCT

In making its determination under section 751(c) of the Act, the Commission defines “the domestic like product” and the “industry.”²² 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.”²³ The Commission’s practice in five-year reviews is to look to the like

¹⁶ See 73 Fed. Reg. 57591 (Oct. 3, 2008) (finding that tissue paper products produced by Vietnam Quijiang Paper Co., Ltd. (“Vietnam Quijiang”) from jumbo rolls made in China by its Chinese parent company, Guilin Qifeng Paper Co, Ltd. (“Guilin Qifeng”), were circumventing the antidumping duty order on tissue paper from China); 74 Fed. Reg. 29172 (June 19, 2009) (finding that tissue paper products produced by Sunlake Décor Co., Ltd. (“Sunlake”) in Thailand from jumbo rolls and/or cut sheets made in China were circumventing the antidumping duty order on tissue paper from China). See also CR, PR at Table I-3.

¹⁷ See 75 Fed. Reg. 17127 (Apr. 5, 2010) (circumvention inquiry to determine whether tissue paper products exported to the United States from Vietnam by Max Fortune (Vietnam) Paper Products Co., Ltd. (“Max Fortune Vietnam”), which is wholly owned by Chinese producer Max Fortune, are circumventing the antidumping duty order because they are allegedly made from jumbo rolls and cut sheets of tissue paper produced in China); see also CR, PR at I-5 n.13.

¹⁸ 75 Fed. Reg. 5115 (Feb. 1, 2010).

¹⁹ See Response to Notice of Institution of Five-Year Review (Mar. 3, 2010) (“Joint Resp.”). They also filed a supplemental response at the request of the Commission on April 8, 2010 (“April 8 Letter”).

²⁰ Explanation of Commission Determination on Adequacy, reprinted in CR, PR at App. B.

²¹ See Final Comments of Domestic Producers (June 8, 2010) (“Final Comments”).

²² 19 U.S.C. § 1677(4)(A).

²³ 19 U.S.C. § 1677(10); see, e.g., *Cleo Inc. v. United States*, 501 F.3d 1291, 1299 (Fed. Cir. 2007); *NEC Corp. v. Department of Commerce*, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); *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).

product definition from the original determination and any completed reviews and consider whether the record indicates any reason to revisit the prior findings.²⁴

In its expedited review determination, Commerce defined the subject merchandise as follows:

. . . tissue paper products covered by the order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to the order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to the order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.²⁵

Commerce expressly excluded the following tissue paper products from the scope of investigation:

- (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications;
- (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat . . . ; [and]
- (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers²⁶

In the original investigation, as noted above, the Commission found a single domestic like product that was co-extensive with Commerce’s scope definition, a finding affirmed by the CIT and the Federal Circuit. Specifically, applying its traditional six-factor like product test, the Commission found that bulk and consumer tissue paper share the same general physical characteristics and uses, noting that both forms of tissue paper are made from flat tissue and consist of lightweight paper with a gauze-like, fairly transparent character.²⁷ Moreover, the Commission found, although consumer and bulk tissue paper both come in a variety of grades, colors, designs, dimensions, quantities, and packaging, they are both

²⁴ See, e.g., Internal Combustion Industrial Forklift Trucks From Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 at 8-9 (Dec. 2005); Crawfish Tail Meat From China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 at 4 (July 2003); Steel Concrete Reinforcing Bar From Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 4 (Feb. 2003).

²⁵ Certain Tissue Paper Products from the People’s Republic of China: Final Results of Expedited Sunset Review, 75 Fed. Reg. 32910 (June 10, 2010); see 70 Fed. Reg. at 16223 (same; original order). Subject imports from China initially did not have distinct tariff or statistical categories assigned to them under the Harmonized Tariff Schedule (“HTS”) and thus could be imported under one or more of several different broad subheadings that covered a range of paper products. Since the original investigation, four HTS statistical reporting numbers for tissue paper were created, effective July 1, 2005 (4804.39.4041; 4811.90.4010; 4811.90.6010; 4811.90.9010), to cover tissue paper when it is classifiable in four legal categories. CR at I-11-I-12, PR at I-10; cf. 75 Fed. Reg. at 32910 (identifying multiple subheadings under which subject merchandise may be classified). All general or normal trade relations rates in HTS ch. 48 are “free.” CR at I-12, PR at I-10.

²⁶ 75 Fed. Reg. at 32910; see 70 Fed. Reg. at 16223 (same; original order).

²⁷ USITC Pub. 3758 at 4-5.

sold primarily as white or solid color sheets.²⁸ Further, both consumer and bulk tissue paper may be sold in printed form or undergo specialty treatment in small amounts.²⁹ Finally, both consumer and bulk tissue paper are used for the wrapping of an item within a box or bag or as a lightweight gift wrap.³⁰

The Commission also found reasonable similarity with respect to the production processes for bulk and consumer tissue paper.³¹ The Commission noted that bulk and consumer tissue paper are both made from jumbo rolls of flat paper and, indeed, one large producer indicated that it maintains jumbo roll inventories so it can produce both types of tissue paper.³² Moreover, the production processes for manufacturing roll stock into both bulk and consumer tissue paper are similar.³³ In fact, producers making both forms of tissue paper reported that production takes place in the same facilities, using overlapping equipment and employees. For example, the producer *** reported making bulk and consumer tissue paper on the same equipment, and *** reported using the same equipment to produce bulk tissue paper and club packs of consumer tissue paper. Finally, the Commission found that both bulk and consumer tissue paper are printed on the same presses.³⁴

In terms of customer and producer perceptions of the two forms of tissue paper and their interchangeability, the Commission found that the record was somewhat mixed. The Commission noted that some record evidence showed that market participants found the two forms of tissue to be interchangeable.³⁵ For example, except for Cleo, all domestic producers considered bulk and consumer tissue paper to be the same or very similar products, while seven of twelve importers reported that bulk and consumer tissue paper were interchangeable. Similarly, the Commission noted, although *** claimed bulk and consumer tissue paper were distinct products, three other purchasers indicated there were no differences between them.³⁶ The Commission acknowledged that the interchangeability of the two categories of tissue was limited in certain respects, such as the fact that consumer tissue paper is packaged to catch the eye of the consumer, while bulk tissue is packaged somewhat more plainly.³⁷ The Commission found, however, that there were no inherent qualities in the product that would prevent the two different types of tissue paper from being used interchangeably.

In terms of channels of distribution and price, the Commission found there was only a limited degree of similarity between the two forms of tissue paper.³⁸ In this regard, domestic consumer tissue paper was sold primarily to retailers in 2003 (*** percent of such shipments), while most domestic bulk

²⁸ In terms of packaging, the Commission noted that although consumer tissue is often sold packaged for sale as a retail item in quantities ranging from 5 to 40 sheets – smaller than typical bulk quantities (bulk tissue is typically sold by the ream, but may also be sold in half reams or in multiple ream packaging) – sheet counts for seasonal packages and club packs of consumer tissue paper range from 90 to 400 sheets and higher, and such higher count formats represented a modest but growing share of the U.S. market. USITC Pub. 3758 at 7. The Commission also noted that bulk tissue is typically sold in flat sheets, but is also sold in quire-folded sheets, and that consumer tissue, though typically sold in folds, is also sold in flat sheets. Id.

²⁹ Id. at 6-7.

³⁰ Id. at 5.

³¹ Id. at 8.

³² Id.

³³ Id. at 8-9.

³⁴ USITC Pub. 3758 at 8.

³⁵ Id. at 7.

³⁶ Certain Tissue Paper Products from China, Inv. No. 731-TA-1070B (Final), Confidential Views of the Commission (Mar. 2005) (EDIS Doc. 422544) (“Conf. Views”) at 8.

³⁷ USITC Pub. 3758 at 7.

³⁸ USITC Pub. 3758 at 7-9.

tissue paper sales in 2003 were made to distributors (***) percent of such shipments).³⁹ Further, the price of consumer tissue paper was generally higher than that of bulk tissue paper.⁴⁰ On the other hand, the Commission noted, prices for consumer tissue paper were more comparable to bulk with respect to larger consumer packaging sizes, suggesting that sheet quantities per package played an important role in explaining price differences.⁴¹

The Commission thus found that there was a significant degree of similarity between bulk and consumer tissue paper in terms of physical characteristics, uses, and manufacturing processes. It also found that the evidence was mixed with respect to the products' interchangeability and customer and producer perceptions, and that the similarities were limited with respect to channels of distribution and prices. The Commission determined that the differences between these two products did not establish the clear distinction required to establish separate domestic like products and, accordingly, defined the domestic like product as all tissue paper, co-extensive with the scope.⁴²

The evidence regarding the six-factor like product test remains essentially unchanged in this expedited review.⁴³ In their joint response to the notice of institution, domestic interested parties agree with the single domestic like product definition adopted by the Commission in the original investigation.⁴⁴ Moreover, no party has requested that we revisit this like product definition, much less adopt a definition that divides tissue paper into two like products. There is, therefore, no basis on this record to call into question the Commission's previous domestic like product definition.⁴⁵ Accordingly, we continue to define the domestic like product as all tissue paper, co-extensive with Commerce's scope.

III. DOMESTIC INDUSTRY

Section 771(4)(A) of the Act defines the relevant industry as the domestic "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."⁴⁶ 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.

In the original investigation, consistent with its domestic like product finding, the Commission found a single domestic industry – all domestic producers, whether integrated or converters, of tissue paper.^{47 48} In their joint response to the Commission's notice of institution, the domestic interested parties

³⁹ Conf. Views at 8.

⁴⁰ USITC Pub. 3758 at 8.

⁴¹ Id. at 8 & n.48.

⁴² Id. at 8-9.

⁴³ See CR at I-12-I-20, PR at I-11-I-16.

⁴⁴ Joint Resp. at 32.

⁴⁵ Commissioner Aranoff notes that the Commission was divided 3-3 on the like product issue in the original investigation. In this expedited review, she finds one like product because the issue is uncontested. Nevertheless, she reserves the right to reconsider this domestic like product definition in any future investigation of subject tissue paper if arguments of parties or the factual record in that proceeding warrant.

⁴⁶ 19 U.S.C. § 1677(4)(A). The definitions in 19 U.S.C. § 1677 are applicable to the entire subtitle containing the antidumping and countervailing duty laws, including 19 U.S.C. §§ 1675 and 1675a. See 19 U.S.C. § 1677.

⁴⁷ USITC Pub. 3758 at 9-10.

⁴⁸ Vice Chairman Okun and Commissioners Miller and Pearson, consistent with their finding of two domestic like products, found two domestic industries, an industry producing bulk tissue and an industry producing consumer

(continued...)

agree with the domestic industry definition adopted by the Commission in the original investigation.⁴⁹ The domestic interested parties also report that they constitute five of the six current producers of the tissue paper products in the United States and account for approximately 95 percent of total U.S. production.⁵⁰

In the original investigation, the Commission identified *** and Cleo as related parties by virtue of their importation of subject merchandise during the period of investigation. The Commission, however, determined that appropriate circumstances did not exist to exclude these producers from the domestic industry.⁵¹

In their joint response to the Commission's notice of institution, the domestic interested parties report that ***.⁵² They state that ***.⁵³ They further state that ***.⁵⁴ ***.⁵⁵

The new information in this review regarding *** ownership interest in *** and importation of subject merchandise during the period of review demonstrates that *** is a related party within the meaning of section 771(4)(B) of the Act.⁵⁶ ⁵⁷ We determine, however, that appropriate circumstances do not exist to exclude *** from the domestic industry.

Since the imposition of the order, the total quantity and value of *** imports of subject merchandise have been *** square meters and \$***, respectively.⁵⁸ Such imports correspond to only ***.⁵⁹ Moreover, domestic interested parties reported that based on the available data, *** production of subject imports in 2009 accounted for less than *** percent of total Chinese production and exports to the United States, and *** total 2009 production capacity of *** represented less than *** percent of the capacity to produce tissue paper in China based on the available data.⁶⁰ There is no evidence that *** interests no longer lie primarily in domestic production or that *** related party status has shielded its domestic production operations or otherwise benefitted its domestic production operations financially. Therefore, based on the record in this review, the Commission's decisions in the original investigation not to exclude any related party, and the lack of any objection to *** or any other producer's inclusion in the

⁴⁸(...continued)

tissue (consisting of all firms producing these products). USITC Pub. 3758 at 32 (dissenting views).

⁴⁹ Joint Resp. at 32.

⁵⁰ Id. at 29 (identifying Hallmark as the only other domestic producer of tissue paper).

⁵¹ Conf. Views at 12-16.

⁵² Joint Resp. at 29.

⁵³ Id. at 29-30; see also April 8 Letter at 4.

⁵⁴ Id.

⁵⁵ Id. at 2-4.

⁵⁶ See 19 U.S.C. § 1677(4)(B) (allowing the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers); see also Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), aff'd, 991 F.2d 809 (Fed. Cir. 1993). Exclusion of such a producer is within the Commission's discretion based on the facts presented in each case. See, e.g., Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd mem., 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp 1348, 1352 (Ct. Int'l Trade 1987).

⁵⁷ ***, but there is no evidence that *** has an ownership interest in any foreign producer or imported subject merchandise during the period of review, or that its domestic operations benefit in any way, much less significantly, from *** foreign interests or limited importation of subject merchandise during the period of review. CR at I-28, PR at I-21. No other related party issues are raised on this record.

⁵⁸ Joint Resp. at 30; April 8 Letter at 2-3.

⁵⁹ CR at I-27-I-28 n.64, PR at I-21 n.64.

⁶⁰ CR at I-28, PR at I-21.

domestic industry, we find that appropriate circumstances do not exist to exclude any producer from the domestic industry.

Accordingly, and consistent with our like product determination, we continue to define the domestic industry as all U.S. producers of tissue paper (whether integrated or converters), namely, Seaman, Eagle, Flower City, Garlock, Putney, and Hallmark.

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

A. Legal Standards

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless (1) it makes a determination that dumping or subsidization is likely to continue or recur and (2) the Commission makes a determination that revocation of the antidumping duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁶¹ The Uruguay Round Agreements Act (“URAA”), Statement of Administrative Action (“SAA”), states that “under the likelihood standard, the Commission will engage in a counterfactual 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.”⁶² Thus, the likelihood standard is prospective in nature.⁶³ The CIT has found that “likely,” as used in the five-year review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.^{64 65}

The Act 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.”⁶⁶ According to

⁶¹ 19 U.S.C. § 1675a(a).

⁶² The 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.

⁶³ Although 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.

⁶⁴ See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), aff’d mem., 140 Fed. Appx. 268 (Fed. Cir. 2005); Nippon Steel Corp. v. United States, 26 CIT 1416, 1419 (2002) (same); Usinor Industeel, S.A. v. United States, 26 CIT 1402, 1404 nn. 3, 6 (2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, 26 CIT 767, 794 (2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

⁶⁵ Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape From Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004), she does not concur with the U.S. Court of International Trade’s interpretation of “likely,” but she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.

⁶⁶ 19 U.S.C. § 1675a(a)(5).

the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”⁶⁷

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The Act provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”⁶⁸ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).⁶⁹ The Act 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.⁷⁰

No respondent interested party participated in this review. The record, therefore, contains no information from foreign producers, exporters, or importers with respect to Chinese tissue paper capacity or production during the period of review. Accordingly, for our determination, we rely as appropriate on facts available on the record.⁷¹

B. Conditions of Competition and Business Cycle

In evaluating the likely impact of the subject imports on the domestic industry, the Act directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷² We find the following conditions of competition relevant to our determination.

Demand. In the original investigation, the Commission found that there was a modest increase in apparent demand during the period examined, with apparent U.S. consumption growing by 4.9 percent

⁶⁷ 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.*

⁶⁸ 19 U.S.C. § 1675a(a)(1).

⁶⁹ 19 U.S.C. § 1675a(a)(1). Commerce has made no duty absorption findings with respect to the order under review. CR, PR at I-5; 75 Fed. Reg. at 32910 (final results of its expedited review).

⁷⁰ 19 U.S.C. § 1675a(a)(5). Although the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

⁷¹ 19 U.S.C. § 1677e(a) 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 other person withholds information requested by the agency, fails to provide such information in the time, form, or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The verification requirements in section 782(i) are applicable only to Commerce. 19 U.S.C. § 1677m(i). See *Titanium Metals Corp. v. United States*, 155 F. Supp. 2d 750, 765 (Ct. Int’l Trade 2001) (“[T]he ITC correctly responds that Congress has not required the Commission to conduct verification procedures for the evidence before it, or provided a minimum standard by which to measure the thoroughness of a Commission investigation.”).

⁷² 19 U.S.C. § 1675a(a)(4).

between 2001 and 2003.⁷³ The Commission rejected the notion that the market for bulk and consumer tissue paper is clearly segmented.⁷⁴ Therefore, the Commission stated that it considered the data for the market as a whole, but examined data for bulk and consumer tissue paper separately when appropriate.⁷⁵

The domestic interested parties report that the recent economic downturn has had a significant impact on the U.S. retail market, including the holiday and gift-giving sectors, which in turn has adversely affected the market for tissue paper products. They state that although the demand for such products had remained relatively stable since the original investigation, demand more recently has declined and continues to lag.⁷⁶ The available data corroborate this view. The quantity of apparent U.S. consumption in 2009 was lower than at any time during the original investigation and was *** percent less than apparent U.S. consumption in 2003.⁷⁷ American Greetings, reportedly one of the largest purchasers of subject tissue paper in the United States, similarly observed that it “experienced difficult industry conditions during 2009 as the global economic slowdown increased in severity throughout the course of the year, particularly during the second half of the year, which is critical to the social expressions industry due to the concentration of major holidays during that period. These industry conditions were characterized by lower customer traffic in retail stores, less consumer spending due to economic uncertainties and a number of retailer bankruptcies.” American Greetings also observed that in this period “revenues in the North American Social Expression Products segment declined primarily due to lower sales of gift packaging products, party goods, and specialty products”⁷⁸

Supply. In the original investigation, the Commission found that the market was supplied almost exclusively by domestic production and subject imports.⁷⁹ The Commission further found that the domestic industry’s production capacity grew between 2001 and 2002, but declined in 2003 and interim (January-September) 2004, due in part to the temporary closure of Cleo’s production facilities.⁸⁰

The Commission noted that there was conflicting evidence with respect to the reasons for Cleo’s closure of its production facilities.⁸¹ The Commission noted that Cleo claimed it closed the facility and began purchasing a growing volume of subject imports because one of its significant suppliers of domestic roll stock shut down its production facilities in 2003 and one of its printers shuttered its facilities as well.⁸² The Commission found, however, that the record showed there were domestic roll stock producers willing to meet Cleo’s raw material requirements, as well as printing companies able to satisfy

⁷³ USITC Pub. 3758 at 13.

⁷⁴ *Id.* at 13 n.84.

⁷⁵ *Id.* The domestic interested parties’ response to the notice of institution and other information submitted do not distinguish between bulk and consumer tissue paper. The record in this expedited review contains no updated data segregating bulk and consumer tissue paper.

⁷⁶ *See* Joint Resp. at 19-21, 32.

⁷⁷ CR, PR at Table I-9; CR at I-38, PR at I-27. We note that consumption during the period examined in the original investigation was calculated using Commission questionnaire data while the available data for calculating 2009 consumption are necessarily based on Commerce statistics.

⁷⁸ CR at I-38-I-39, PR at I-29, quoting from Joint Resp. Exh. 4.

⁷⁹ USITC Pub. 3758 at 14.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

Cleo's print needs.⁸³ The Commission also noted that Cleo had been importing significant amounts of subject tissue paper well before it lost its supplier of roll stock.⁸⁴

The Commission also considered respondents' claim that tissue paper purchasers sourced subject imports due to an inability to obtain specialty types of tissue paper or packaging from domestic suppliers.⁸⁵ The Commission noted that this appeared not to explain the large increases in the volume of subject imports, because sales of specialty tissue paper in the United States were not particularly significant when compared to the entire tissue paper market and the domestic industry competed with subject imports for the bulk of these sales.⁸⁶

Since the original investigation, the volume of subject imports from China has declined irregularly but significantly. For example, between 2003 and 2009, subject imports from China decreased by 81.7 percent overall, from 751.4 million square meters to 137.6 million square meters.⁸⁷ The volume of subject imports in 2008 (135.2 million square meters) and 2009 (137.6 million square meters) reflects an increase over the 2006-07 period, when subject import volumes were 68.4 million square meters and 60.0 million square meters, respectively.⁸⁸ The value of subject imports similarly declined, falling by 79.3 percent during 2003-09, from \$30.1 million to \$6.2 million (the highest level since the original investigation based on available data).⁸⁹

As a share of apparent U.S. consumption, subject imports from China declined in quantity from *** percent in 2003 to *** percent in 2009. In value, their share of apparent U.S. consumption declined from *** percent in 2003 to *** percent in 2009.⁹⁰

Non-subject imports have established a substantial presence in the U.S. market since the original investigation, increasing substantially during 2003-09. Non-subject imports increased in quantity from *** square meters to 374.2 million square meters during 2003-09 and increased in value from \$*** to \$16.7 million during this period.⁹¹ As a share of apparent U.S. consumption, non-subject imports were *** percent of the U.S. market in quantity and *** percent in value in 2009, compared to *** percent in quantity and *** percent in value at the end of the original period of investigation.⁹²

The largest sources of non-subject imports during the period of review were Indonesia, Vietnam, India, and Thailand, which together accounted for the vast majority of non-subject imports.⁹³ The available data on tissue paper imports from countries other than China, however, include certain cut-to-length sheets of tissue paper produced by converters from China-origin jumbo rolls and found by Commerce to be circumventing the antidumping duty order.⁹⁴

⁸³ *Id.* at 14-15.

⁸⁴ *Id.* at 14.

⁸⁵ *Id.* at 16-17.

⁸⁶ *Id.*

⁸⁷ CR, PR at Table I-6. We note that during the original investigation, import data were based on Commission questionnaire responses; the available data for the period of review are necessarily based on Commerce statistics.

⁸⁸ CR, PR at Table I-6. Due to the lack of distinct HTS statistical reporting numbers for certain tissue paper products, comparable data for 2004 and 2005 are unavailable. CR at I-29, PR at I-22; *cf.* Joint Resp. Exh. 2.

⁸⁹ CR, PR at Table I-6 (subject import value was \$2.6 million in 2006).

⁹⁰ CR, PR at Table I-9.

⁹¹ CR, PR at Table I-6.

⁹² CR, PR at Table I-9.

⁹³ CR, PR at Table I-7.

⁹⁴ For example, in mid-2006, Seaman requested that Commerce conduct an inquiry to determine whether tissue paper products exported to the United States from Vietnam and completed or assembled by Vietnam Quijiang (a
(continued...)

Ten established firms accounted for nearly all domestic production of tissue paper in 2003.⁹⁵ The largest of these were Cleo, which ceased any domestic production of tissue paper in 2007,⁹⁶ and Eagle, Flower City, Garlock, Putney, and Seaman – the domestic interested parties in this review.⁹⁷ These domestic interested parties are estimated to have represented 95 percent of tissue paper production in 2009.⁹⁸ In 2009, the industry’s reported capacity was *** square meters, and it produced *** square meters of tissue paper, a low capacity utilization rate of *** percent that domestic interested parties attribute to weak demand.⁹⁹

Channels of Distribution. In the original investigation, the Commission found that U.S. shipments of tissue paper – domestically produced and from China – were directed to three channels of distribution – distributors, retailers, and end users.¹⁰⁰ The share of U.S. shipments of domestic product to distributors increased from 58.7 percent in 2001 to 64.7 percent in 2003, and was lower in interim 2004 than in interim 2003. Conversely, the share of U.S. shipments to retailers decreased from 41.0 percent in 2001 to 34.7 percent in 2003, and was higher in interim 2004 than in interim 2003.¹⁰¹ Shipments to end users accounted for 0.4 percent of total U.S. shipments in 2001, 0.6 percent in 2003, and 0.6 percent and 1.3 percent in interim 2003 in interim 2004, respectively.¹⁰²

⁹⁴(...continued)

wholly-owned subsidiary of the Chinese producer Guilin Qifeng) from Chinese-origin jumbo rolls were circumventing the antidumping duty order. On October 3, 2008, Commerce affirmatively determined that certain tissue paper products produced by Vietnam Quijiang from Chinese-origin jumbo rolls were circumventing the order. Commerce had preliminarily suspended liquidation and required a cash deposit of estimated duties at the PRC-wide rate of 112.64 percent *ad valorem* as of April 22, 2008, and in its final order also directed the imposition of duties at this rate on all unliquidated entries of Chinese tissue paper products from Vietnam Quijiang retroactive to September 5, 2006, when the inquiry was initiated. See 73 Fed. Reg. 57591 (Oct. 3, 2008).

Similarly, in September 2008, Seaman requested that Commerce initiate a second circumvention inquiry, this time concerning imports of tissue paper products from Thailand produced by Sunlake from jumbo rolls and/or cut sheets made in China. On June 19, 2009, Commerce determined that certain tissue paper products exported to the United States from Thailand by Sunlake were circumventing the order. Commerce had preliminarily suspended liquidation and required a cash deposit of estimated duties at the PRC-wide rate of 112.64 percent *ad valorem* as of April 30, 2009, and its final order further directed Customs to impose duties at this rate on all unliquidated entries of Sunlake’s shipments of tissue paper product to the United States on or after October 21, 2008, the date Commerce initiated the inquiry. See 74 Fed. Reg. 29172 (June 19, 2009).

In apparent reaction to Commerce’s anti-circumvention actions, tissue paper imports from Vietnam began declining in 2008 and had declined by 82 percent by 2009, from 232.9 million square meters in 2006 to 40.8 million square meters in 2009. CR, PR at Table I-7. Similarly, tissue paper imports from Thailand declined by 97.5 percent between 2008 and 2009, from 51.9 million square meters to 1.3 million square meters. CR, PR at Table I-7. We note that Commerce has initiated a third inquiry to determine whether tissue paper products exported to the United States from Vietnam by Max Fortune Vietnam – whose parent is the Chinese producer Max Fortune – are circumventing the antidumping duty order because they are allegedly made from jumbo rolls and cut sheets of tissue paper produced in China, but no determination has been made. See 75 Fed. Reg. 17127 (Apr. 5, 2010).

⁹⁵ CR at I-23, PR at I-18; USITC Pub. 3758 at 10 n.54.

⁹⁶ CR at I-23, PR at I-18; CR, PR at Table I-4.

⁹⁷ CR at I-23, PR at I-18.

⁹⁸ CR at I-23, PR at I-18.

⁹⁹ CR, PR at Table I-5; Final Comments at 12.

¹⁰⁰ USITC Pub. 3758 at 15.

¹⁰¹ Id.

¹⁰² Id. at 15 n.105.

During the period examined in the original investigation, subject imports' share of U.S. shipments to distributors increased from 8.0 percent in 2001 to 19.9 percent in 2003, and was 23.0 percent and 30.3 percent, respectively, in interim 2003 and interim 2004. Subject imports' share of U.S. shipments to retailers declined between 2001 and 2003, from 80.8 percent to 51.8 percent, and was 46.6 percent in interim 2003 and 32.4 percent in interim 2004.¹⁰³ Subject imports' share of U.S. shipments to end users increased from 11.2 percent in 2001 to 28.2 percent in 2003, and was 30.4 percent and 37.3 percent, respectively, in interim 2003 and interim 2004. The data on U.S. shipments of subject imports to end users included direct importing by retailers. Subject imports' increasing shipments to end users, the Commission found, reflected the growing role of mass merchandisers in the U.S. tissue paper market.¹⁰⁴

Domestic interested parties report that the overlapping channels of distribution continue to exist in the market today.¹⁰⁵ We find no evidence of changes in the market that would likely result in the domestic industry not competing with subject imports from China in the same channels of distribution in the reasonably foreseeable future were the order to be revoked.

Substitutability. In the original investigation, the Commission found a high degree of substitutability between subject imports and domestically produced tissue paper, noting that most producers, importers, and purchasers reported that the domestic and Chinese products were interchangeable.¹⁰⁶ The Commission also found that price was a critical factor in the purchasing decision for tissue paper, with purchasers citing price more frequently than any other factor as one of the three most important factors in selecting a supplier.¹⁰⁷

Domestic interested parties maintain that the high degree of substitutability between domestically produced tissue paper and subject imports and the importance of price in the U.S. market for tissue paper continue to exist as factors in the U.S. market.¹⁰⁸ There is no evidence in this record to suggest that these conditions have changed since the original investigation.

Accordingly, in this review, we find that the conditions in the market discussed above provide us with a reasonable basis on which to assess the likely effects of the revocation of the order in the reasonably foreseeable future.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the antidumping duty order were 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.¹⁰⁹ 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,

¹⁰³ *Id.* at 15.

¹⁰⁴ *Id.* at 16.

¹⁰⁵ Joint Resp. at 18.

¹⁰⁶ USITC Pub. 3758 at 16-17.

¹⁰⁷ *Id.*

¹⁰⁸ Joint Resp. at 18.

¹⁰⁹ 19 U.S.C. § 1675a(a)(2).

which can be used to produce the subject merchandise, are currently being used to produce other products.¹¹⁰

In the original investigation, the Commission found that the volume of subject imports was significant, both in absolute terms and relative to consumption and production in the United States. The absolute volume of subject imports increased by approximately 268 percent between 2001 and 2003, with the subject imports gaining *** percentage points of market share during this period. Moreover, since non-subject imports accounted for a very small part of the U.S. market, this growth in market share came directly at the expense of the domestic industry, which lost *** percentage points of market share in the same period.¹¹¹ Subject import volume relative to domestic production rose from 9.8 percent in 2001 to 43.4 percent in 2003, and reached 49.7 percent in interim 2004.¹¹²

In contrast, since the imposition of the antidumping duty order, subject imports from China have declined significantly but have remained in the U.S. market in reduced volumes. As discussed above, subject imports decreased by 81.7 percent by quantity and by 79.3 percent by value from 2003 to 2009.¹¹³ Subject imports accounted for *** percent of the U.S. market in 2009, down significantly from the *** percent captured in 2003.¹¹⁴

In the original investigation, the Commission sent foreign producer questionnaires to 78 firms believed to be subject tissue paper producers in China. Two producers completed and returned the questionnaires for their production operations in China (Guilin Qifeng and Max Fortune), as did one exporter for its trading operations (Constant China Import Export, Ltd.). China National also responded, partially.¹¹⁵ These firms' exports of subject merchandise accounted for 84.1 percent of total U.S. imports of tissue paper from China during 2003.¹¹⁶ The responding producers reported an increase in production capacity from 2.36 billion square meters in 2001 to 2.88 billion square meters in 2003. Production by these firms reportedly increased significantly as well, from 2.17 billion square meters in 2001 to 2.81 billion square meters in 2003.¹¹⁷ Capacity utilization fluctuated from 90.4 percent to 97.5 percent during the period of investigation.¹¹⁸ The data also demonstrated the export orientation of the industry. Responding producers' exports of subject merchandise to the United States reportedly accounted for 21.1 percent of their total shipments in 2003, at which time exports of subject merchandise to all export markets reportedly constituted 29.6 percent of their total shipments.¹¹⁹

Due to the lack of responses from subject foreign producers in this review, there is limited information in the record concerning current levels of production capacity in China. The domestic interested parties, however, provide evidence that the Chinese industry has increased its capacity since the imposition of the antidumping duty order and plans to further increase capacity in the reasonably foreseeable future.¹²⁰ The information submitted indicates that the Chinese producers continue to produce

¹¹⁰ 19 U.S.C. § 1675a(a)(2)(A)-(D).

¹¹¹ USITC Pub. 3758 at 17-18; Conf. Views at 23-24.

¹¹² USITC Pub. 3758 at 17.

¹¹³ See CR, PR at Table I-6.

¹¹⁴ CR, PR at Table I-9.

¹¹⁵ CR at I-39-I-40, PR at I-30.

¹¹⁶ CR at I-40, PR at I-30.

¹¹⁷ CR, PR at Table I-10.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ For example, in 2005, Max Fortune transferred its headquarters and put its Changning, Huizhou factory "to full use for production purposes," reportedly quadrupling the size of the space. In 2009, the firm added another new
(continued...)

significant volumes of tissue paper, have increased production capacity since the order was imposed, have plans for further increases in the near future, and are export-oriented, with a demonstrated interest in the U.S. market.¹²¹

Moreover, as noted above, the record in the original investigation demonstrated that, even though they were operating at fairly high levels of capacity utilization, the Chinese industry produced and exported to the U.S. market significant, and significantly increasing, volumes of tissue paper.¹²² Subject import volume has dropped markedly since the original investigation; however, despite the restraining effects of the antidumping duty order, the record shows a continuing (albeit significantly reduced) presence of subject imports from China in the U.S. market. This indicates the continued attractiveness of the U.S. market to the Chinese producers and, given an existing customer base and distribution channels, demonstrates the ability to rapidly increase exports to the United States if the antidumping duty order were revoked. Commerce's affirmative circumvention determinations also indicate that Chinese producers are actively seeking ways to access the U.S. market and would aggressively target the U.S. market in the absence of the order.¹²³

Domestic interested parties contend that, although there are no data on existing inventories of subject merchandise in China or the United States, Chinese producers possess the ability to build significant inventories of subject merchandise in a short time given the substantial capacity of the industry.¹²⁴ They also contend that, although China's exports of tissue paper currently are not subject to antidumping duties in third country markets, the United States is the single largest market for tissue paper in the world and Chinese imports would immediately return to the United States if the order were revoked.¹²⁵

Based on the increase in the volume and market share of subject imports during the original investigation, the substantial Chinese production capacity and unused capacity at the end of the original investigation, the ability of Chinese producers to increase capacity and production quickly, the evidence of the Chinese industry's current capacity to produce tissue paper, the export orientation of the Chinese industry, and the attractiveness of the U.S. market, we find that Chinese producers have the ability and the incentive to increase their exports to the United States significantly if the order were revoked. Therefore, we find that the volume of subject imports, both in absolute terms and relative to production and consumption in the United States, would likely be significant within the reasonably foreseeable future if the order were revoked.

¹²⁰(...continued)

factory in Longxi, Huizhou and announced the proposed construction of an additional, larger factory in Fuzhou, for which it has already ordered at least two tissue paper machines that can each produce 60,000 tons of tissue paper per year. Joint Resp. at 23-24 and Exh. 5 at 10-23 (17, 19-21, 23). Fujian Naoshan Paper Group Co., Ltd. announced plans in November 2009 for a new special project that is expected to have an annual output of 150,000 tons. Joint Resp. at 24-25 and Exh. 5 at 44-49 (49). The Youlanfa Group, which claims to have the world's largest manufacturing base for tissue paper, produced 230,000 tons in 2007. The Youlanfa Group's "development plan" predicts that the firm can more than double its production capacity by 2012 to 600,000 tons. Joint Resp. at 25 and Exh. 5 at 51-53. One member of the Youlanfa Group, Fujian Youlanfa Group, is initiating a new production project at its Huaxiang plant with a capacity to produce 150,000 tons per year and a new project at its Huarong plant with the capacity to produce 250,000 tons per year. Joint Resp. at 25 and Exh. 5 at 55-57. Subject producer Guilin Qifeng also announced plans, in March 2009, to move to a new, larger, paper-making factory. Joint Resp. at 24 and Exh. 5 at 34-42 (41).

¹²¹ See, e.g., Joint Resp. at 22-26 and Exh. 5; Final Comments at 5-6.

¹²² CR, PR at Tables I-6, I-7, I-10; USITC Pub. 3758 at 18.

¹²³ See 73 Fed. Reg. 57591 (Oct. 3, 2008); 74 Fed. Reg. 29172 (June 19, 2009).

¹²⁴ Joint Resp. at 18.

¹²⁵ *Id.*

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order were revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.¹²⁶

In the original investigation, the Commission examined whether subject imports significantly undersold the domestic like product during the period of investigation.¹²⁷ The Commission collected pricing data for four tissue paper products: three consumer products (products 1-3) and one bulk product (product 4). The Commission analyzed the price comparison data for each of the individual products, as well as in the aggregate, and found that there was underselling in virtually every possible quarterly comparison for products 2-4 and in 6 of 15 comparisons for product 1. The Commission found that subject imports undersold the domestic product in 33 of 45 quarters by margins ranging from *** percent to *** percent and, on a combined weighted basis, *** percent.¹²⁸

Moreover, the Commission found that this consistent underselling caused significant market share shifts between subject and domestic suppliers. After noting that the pricing data contained “some evidence of price depression” but did not indicate significant price depression or suppression overall,¹²⁹ the Commission found that the “significant underselling {was} fueling the rapidly increasing volume and market share of subject imports and its direct displacement of sales by domestic producers.”¹³⁰ In addition to the fact that the consistent underselling by the subject imports correlated with the domestic industry’s rapid market share declines, the Commission noted that 16 of 20 responding purchasers reported that the Chinese product was lower priced than the domestic product and that they shifted purchases from domestic suppliers to subject imports.¹³¹ Three of nine responding purchasers admitted they had shifted to Chinese imports for pricing reasons, and another three reported that price was part of the reason for the shift, while one other purchaser reported that the industry generally reduced its prices because of Chinese imports.¹³²

Further, several purchasers confirmed the domestic industry’s allegations that it lost sales to subject imports due to the lower price of the subject imports.¹³³ In addition, ***, reported that ***. Similarly, ***.¹³⁴ The Commission therefore concluded that subject imports were able to gain significant U.S. market share at the expense of the domestic industry as a result of aggressive underselling.¹³⁵

There is no new product-specific pricing information on the record of this review. The domestic interested parties report that domestic prices have “stabilized and increased moderately” since the

¹²⁶ 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.

¹²⁷ USITC Pub. 3758 at 18-20.

¹²⁸ *Id.* at 19-20.

¹²⁹ *Id.* at 20.

¹³⁰ USITC Pub. 3758 at 20.

¹³¹ *Id.* at 19-20.

¹³² *Id.* at 20.

¹³³ *Id.*

¹³⁴ Conf. Views at 29.

¹³⁵ USITC Pub. 3758 at 20.

imposition of the antidumping duty order.¹³⁶ They also state that input costs have replaced the price of LTFV imports as the primary driver of tissue paper prices.¹³⁷ This suggests that the discipline of the order has improved domestic prices and helped stabilize the domestic industry.

As explained above, we find that if the antidumping duty order were revoked Chinese producers likely would increase their exports to the United States significantly in the reasonably foreseeable future. Moreover, the record in this review indicates that tissue paper products produced in the United States and China remain highly substitutable and that price continues to be an important factor in purchasing decisions. Consequently, we find that absent the disciplining effects of the antidumping duty order, competitive conditions likely would return to those prevailing prior to the imposition of the order. Subject imports would likely re-enter the U.S. market in large volumes and be aggressively marketed at low prices in order to gain market share, just as they did during the period examined in the original investigation. As a result, the domestic industry likely would lose critical sales volume and face significant pricing pressure driven by LTFV subject imports. Therefore, we conclude that, if the order were revoked, subject imports from China likely would increase significantly at prices that would significantly undersell the domestic industry, eroding the domestic industry's market share and causing significant adverse effects on prices for the domestic like product.

E. Likely Impact of Subject Imports¹³⁸

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order were revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including, but not limited to the following: (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.¹³⁹ 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.¹⁴⁰ As instructed by the Act, we have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the order were revoked.

¹³⁶ Joint Resp. at 16.

¹³⁷ Id.

¹³⁸ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885; see also 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Tariff Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The Act defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

In its expedited review of the antidumping duty order, Commerce found that revocation of the order would be likely to lead to continuation or recurrence of dumping at a margin of 112.64 percent for all manufacturers and exporters. 75 Fed. Reg. 32910 (June 10, 2010). These dumping margins are the same as the margins Commerce calculated in its original final determination. CR, PR at Table I-1.

¹³⁹ 19 U.S.C. § 1675a(a)(4).

¹⁴⁰ 19 U.S.C. § 1675a(a)(4).

In the original investigation, the Commission examined pertinent factors bearing on the condition of the industry to assess whether the subject imports had materially impacted the industry.¹⁴¹ The Commission found that, as subject imports captured significant market share by underselling, the industry's production, capacity utilization, shipments, sales, employment, and profitability levels all fell between 2001 and 2003.¹⁴² Specifically, between 2001 and 2003, the industry's output fell by 16.8 percent, its capacity utilization fell by 10.5 percentage points, its U.S. shipments fell by 18.3 percent, and its net sales fell by 26.7 percent. The number of workers employed by the industry fell from 592 to 428, and total wages declined as well. In addition, the industry's operating income fell from \$8.2 million in 2001 to \$3.6 million in 2003, while its operating profit margins fell from 6.6 percent to 3.9 percent.¹⁴³

The Commission found that the industry was experiencing significant declines in its market share, production, sales, employment levels, and profits in the face of a rapid increase in low-priced subject imports during the period examined. Given the correlation between these declines in the industry's condition and the significant increases in the volume of low-priced subject imports, the Commission concluded that subject imports were having a significant adverse impact on the domestic industry.¹⁴⁴

Because this is an expedited review, there is limited information on the record concerning the performance of the domestic industry since the original investigation. Thus, the information pertains only to certain economic factors¹⁴⁵ and is available only for 2009.¹⁴⁶ The information is insufficient to enable us to make a determination as to whether the industry is currently vulnerable.¹⁴⁷

As discussed above, we find that revocation of the order would likely lead to a significant increase in the volume of subject imports and that subject imports would aggressively compete with the domestic product on price, resulting in significant adverse effects on U.S. prices for the domestic like product. We find that the intensified subject import competition that would likely occur after revocation of the order would likely have a significant adverse impact on the domestic industry. Specifically, the domestic industry would likely lose market share to low-priced subject imports and would likely obtain lower prices due to competition from subject imports, which would adversely impact the industry's production, shipments, sales, and revenue. These reductions would likely have a direct adverse impact on

¹⁴¹ USITC Pub. 3758 at 21-23.

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ Id. at 23. The Commission considered the arguments of Cleo and Target that subject imports were not significantly contributing to these declines in the industry's condition. The Commission rejected Cleo's claim that Cleo/Crystal had only purchased significant volumes of subject merchandise because it lost a significant source of its roll stock and one of its printers went out of business, noting that there were other suppliers of roll stock that were able to sell to Cleo and available printers. Id. at 22-23. Similarly, the Commission rejected Target's claim that it was unable to source its tissue paper requirements domestically, noting that the record showed that the industry was willing and able to supply these products to Target and had done so at a significant level during and before the period of investigation. Id. at 23. The Commission also noted that both arguments pertained only to consumer tissue paper and ignored bulk tissue paper, a large part of the tissue paper market. Id. at 23 n.176. Thus, the Commission found that these arguments did not explain the significant market share gains by subject imports of bulk tissue at the expense of domestic producers, nor the sharp drop in profitability of the bulk tissue operations for domestic producers that occurred from 2001 to 2003. Id.

¹⁴⁵ There is no information in the record of this review pertaining to indicators that we customarily consider in assessing whether the domestic industry is in a weakened condition, such as productivity, return on investments, wages, ability to raise capital, investment capacity, and employment levels.

¹⁴⁶ See CR at I-25, PR at I-20; CR, PR at Table I-5.

¹⁴⁷ Id.

the industry's profitability and employment levels, as well as its ability to raise capital and make and maintain necessary capital investments.¹⁴⁸

Accordingly, we conclude that, if the antidumping duty order on certain tissue paper products from China were revoked, subject imports from China would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the above-stated reasons, we determine that revocation of the antidumping duty order on certain tissue paper products from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

¹⁴⁸ We further find that, if the order were revoked, the likely significant adverse impact would not be attributable to non-subject imports. As previously noted, the available data on tissue paper imports from countries other than China include certain cut-to-length sheets of tissue paper produced by converters from China-origin jumbo rolls and found by Commerce to be circumventing the antidumping duty order. Moreover, even at the highest recorded levels, non-subject imports during the review period have not approached the tremendous volume of subject imports from China during the period of the original investigation. CR, PR at Table I-6. Finally, although non-subject imports have increased at the same time subject imports have declined, they have not completely replaced subject imports and have not taken market share from the domestic industry. In fact, based on the available data, the share of U.S. consumption of all imports has declined between the last full year of the original period of investigation and 2009, as measured by quantity and value, and the domestic industry's share has increased. CR, PR at Table I-9. The available information also indicates that prices have stabilized despite non-subject imports' increased presence since imposition of the order. Joint Resp. at 16.

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

I. INTRODUCTION

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 five-year review, we define two domestic like products, bulk tissue paper and consumer tissue paper, and two domestic industries. Accordingly, we determine under section 751(c) of the Act² that revocation of the antidumping duty order on subject imports of tissue paper from China would be likely to lead to continuation or recurrence of material injury to an industry producing bulk tissue paper in the United States within a reasonably foreseeable time. We further determine that revocation of the antidumping order on subject imports of tissue paper from China would not be likely to lead to continuation or recurrence of material injury to an industry producing consumer tissue paper in the United States within a reasonably foreseeable time.³

II. DOMESTIC LIKE PRODUCT

In making its determination under section 751(c) of the Act, the Commission defines “the domestic like product” and the “industry.”⁴ 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.”⁵ The Commission’s practice in five-year reviews is to look to the like product definition from the original determination and any completed reviews and consider whether the record indicates any reason to revisit the prior findings.⁶

In the original investigation, we found significant differences between bulk tissue paper and consumer tissue paper in terms of packaging, end use, interchangeability, customer and producer perceptions, channels of distribution, manufacturing processes, and price. In particular, bulk tissue paper was more likely to be packaged in large quantities and in utilitarian containers, while consumer tissue paper was typically packaged as a retail item; consumer tissue paper was often designed, marketed, and sold in conjunction with related products like gift bags and ribbons; consumer tissue paper was more likely to be colorful and customized; purchasers reported dissimilarities between the products in terms of

¹ 19 U.S.C. § 1675(d)(2).

² 19 U.S.C. § 1675(c).

³ We join in and adopt as our own section I, Background, from the majority opinion.

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10); see, e.g., Cleo Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); 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).

⁶ See, e.g., Internal Combustion Industrial Forklift Trucks From Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 at 8-9 (Dec. 2005); Crawfish Tail Meat From China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 at 4 (July 2003); Steel Concrete Reinforcing Bar From Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 4 (Feb. 2003).

size and weight; purchasers that bought both types of paper used different purchasing departments; even producers tended to regard the products as different business segments; consumer tissue paper was far more likely to be sold directly to retailers, while bulk was far more likely to be sold to distributors; bulk tissue paper was used primarily by retailers or manufacturers, while consumer tissue paper was destined for use as wrapping paper; consumer tissue paper required different production lines or specialized equipment for the distinct packaging, as well as sometimes lengthy design phases; and there was a marked difference in price.⁷ We therefore found bulk tissue paper and consumer tissue paper to be distinct like products.⁸

The record in this expedited review contains no new information on the question of domestic like product. We therefore adopt our domestic like product finding from the original investigation and define bulk tissue paper and consumer tissue paper to be separate domestic like products. Accordingly, we consider the question of whether material injury is likely to continue upon revocation separately.⁹

III. DOMESTIC INDUSTRIES AND RELATED PARTIES

Section 771(4)(A) of the Act defines the relevant industry as the domestic “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”¹⁰ 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.

In light of our domestic like product findings, we therefore define two domestic industries, one including all producers of bulk tissue paper and the other including all producers of consumer tissue paper. We therefore analyze whether material injury is likely to continue or recur upon revocation separately.

In the original investigation, we considered whether appropriate circumstances existed to exclude any producers as related parties, and we declined to exclude any producer on related party grounds.¹¹ The record in this review indicates that ***.¹² ***.¹³

⁷ Dissenting Views of Vice Chairman Deanna Tanner Okun, Commissioner Marcia E. Miller, and Commissioner Daniel R. Pearson, Confidential Version (CO), EDIS Document 227120, at 4-7; USITC Pub. 3758 at 29-31.

⁸ CO at 7-8; USITC Pub. 3758 at 31.

⁹ In the original investigation, three Commissioners found one domestic like product. USITC Pub. 3758 at 9. The single like product finding was considered and found to be supported by substantial evidence on the record by both the Court of International Trade and the Court of Appeals for the Federal Circuit. Cleo Inc. v. United States, 30 CIT 1380, 1389 (2006); Cleo Inc. v. United States, 501 F.3d 1291, 1298 (2007). However, neither court considered or rejected our finding of two domestic like products; Judge Bryson, writing for the Court of Appeals of the Federal Circuit, found the issue to be a “close one.” 501 F.3d at 1298. We therefore find no bar to our adopting our original like product findings.

We note that domestic parties’ filings in this review failed to address the fact that half of the Commissioners that considered the record in the original investigation made a separate, two-product finding. We hope that parties to subsequent reviews will be more mindful of the full Commission opinions in earlier investigations and address alternate like product findings.

¹⁰ 19 U.S.C. § 1677(4)(A). The definitions in 19 U.S.C. § 1677 are applicable to the entire subtitle containing the antidumping and countervailing duty laws, including 19 U.S.C. §§ 1675 and 1675a. See 19 U.S.C. § 1677.

¹¹ CO at 8-10; USITC Pub. 3758 at 32-33.

¹² Domestic producers’ response to notice of institution, 3/3/2010, at 29.

¹³ Domestic producers’ response to notice of institution, 3/3/2010, at 29-30 and letter of April 8, 2010, at 4.

Imports of subject merchandise by *** during the period of review were equivalent to *** of its domestic production during that time period.¹⁴ There is no evidence on this record indicating that *** is no longer primarily interested in domestic production, or that its related party status shielded its domestic production operations or otherwise benefitted its domestic production operations financially. Based on the record in this review and our decision in the original investigation not to exclude any related party, we find that appropriate circumstances do not exist to exclude any producer from either the bulk tissue paper domestic industry or the consumer tissue paper domestic industry.

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY TO THE INDUSTRY PRODUCING BULK TISSUE PAPER IF THE ORDER ON TISSUE PAPER FROM CHINA WERE REVOKED

A. Legal standards

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless (1) it makes a determination that dumping or subsidization is likely to continue or recur and (2) the Commission makes a determination that revocation of the antidumping duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”¹⁵ The Uruguay Round Agreements Act (“URAA”), Statement of Administrative Action (“SAA”), states that “under the likelihood standard, the Commission will engage in a counterfactual 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.”¹⁶ Thus, the likelihood standard is prospective in nature.¹⁷ The CIT has found that “likely,” as used in the five-year review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.^{18 19}

¹⁴ CR at I-27, PR at I-21.

¹⁵ 19 U.S.C. § 1675a(a).

¹⁶ The 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.

¹⁷ Although 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.

¹⁸ See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”, aff’d mem., 140 Fed. Appx. 268 (Fed. Cir. 2005); Nippon Steel Corp. v. United States, 26 CIT 1416, 1419 (2002) (same); Usinor Industeel, S.A. v. United States, 26 CIT 1402, 1404 nn. 3, 6 (2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, 26 CIT 767, 794 (2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

¹⁹ For a complete statement of Chairman Okun’s interpretation of the likely standard, see Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-362 (Review) and 731-TA-707-710 (Review) (Remand), USITC Pub. 3754 (Feb. 2005).

The Act 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.”²⁰ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis in original investigations.”²¹

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The Act provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”²² It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).²³ 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.²⁴

No respondent interested party participated in this review. The record, therefore, contains no information from foreign producers, exporters, or importers with respect to Chinese tissue paper capacity or production during the period of review. Accordingly, for our determination, we rely as appropriate on facts available on the record.^{25 26}

²⁰ 19 U.S.C. § 1675a(a)(5).

²¹ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

²² 19 U.S.C. § 1675a(a)(1).

²³ 19 U.S.C. § 1675a(a)(1). Commerce has made no duty absorption findings with respect to the order under review. CR at I-5, PR at I-5; 75 Fed. Reg. at 32910 (final results of its expedited review).

²⁴ 19 U.S.C. § 1675a(a)(5). Although the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

²⁵ 19 U.S.C. § 1677e(a) 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 other person withholds information requested by the agency, fails to provide such information in the time, form, or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The verification requirements in section 782(i) are applicable only to Commerce. 19 U.S.C. § 1677m(i). See *Titanium Metals Corp. v. United States*, 155 F. Supp. 2d 750, 765 (Ct. Int’l Trade 2001) (“[T]he ITC correctly responds that Congress has not required the Commission to conduct verification procedures for the evidence before it, or provided a minimum standard by which to measure the thoroughness of a Commission investigation.”).

²⁶ Chairman Okun notes that 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. See 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties’ suggested interpretations of the record evidence. Regardless of the level of participation, 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.” SAA at 869.

B. Likely Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the Act directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”²⁷

In the original investigation, we took into consideration the following conditions of competition: demand for bulk tissue paper had risen over the period of investigation (POI) but was somewhat lower in the final interim period; bulk tissue paper was primarily sold to distributors although retailers were the primary users of the product; bulk tissue paper sales were somewhat seasonal, peaking in the fourth quarter; the domestic industry included eight producers; all parties found domestic and subject imports of bulk tissue paper to be interchangeable; purchasers were more likely to name price as the most important factor in selecting a supplier of bulk tissue paper, and all responding purchasers ranked price as one of the top three factors; three-quarters of all purchasers reported “always” or “usually” choosing the lowest-price material; and purchasers overwhelmingly regarded subject imports as less expensive.²⁸

We note that the record in this expedited investigation contains no new information regarding current or future conditions of competition specific to the bulk tissue paper industry. We therefore adopt our prior findings regarding the conditions of competition and consider these conditions as likely to prevail upon revocation.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the antidumping duty order were 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.²⁹ 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.³⁰

In the original investigation, we found that apparent U.S. consumption of bulk tissue paper had been healthy throughout most of the POI, but the volume of subject imports had increased at a significantly greater rate. While apparent U.S. consumption had increased by *** percent between 2001 and 2003, subject import volume had increased by *** percent over that same two-year period; subject import volume in interim 2004 was *** percent higher than in interim 2003, though apparent U.S. consumption was *** percent lower than in interim 2003. As subject import volume was increasing far faster than demand, shipments by the domestic industry declined by *** percent between 2001 and 2003, and the domestic industry’s market share declined as well. Subject imports captured the entire increase in demand between 2001 and 2003. We therefore found the increase in subject imports to be significant, both absolutely and relatively.³¹

²⁷ 19 U.S.C. § 1675a(a)(4).

²⁸ CO at 11-12; USITC Pub. 3758 at 34-35.

²⁹ 19 U.S.C. § 1675a(a)(2).

³⁰ 19 U.S.C. § 1675a(a)(2)(A)-(D).

³¹ CO at 13-14; USITC Pub. 3758 at 34-35.

The limited record in this expedited review contains no new information contradicting our original findings on volume, including the demonstrated ability of the industry in China to increase exports to the U.S. market in very significant quantities, in excess of any demand growth, over a short period of time. We therefore find it likely that revocation of the order would likely lead to increases in the volume of subject imports of bulk tissue paper that would be significant both absolutely and relatively.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order were revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.³²

In the original investigation, we found that subject bulk tissue imports consistently undersold the domestic like product, in 11 of 12 quarterly comparisons, and by margins ranging from *** percent to *** percent. We found both the frequency of underselling and the margins to be significant. We also found that prices for the domestic like product, when compared to prices for the same quarter in the preceding year, declined steadily after the first quarter of 2002 and throughout 2003, when subject imports began entering the U.S. market in significant quantities and underselling by significant margins. Product-specific data indicated that price declines did not continue into 2004, suggesting that the pendency of the investigation had slowed growth in both import volume and brought some price discipline into the market. Purchasers admitted that domestic producers were forced to drop prices and that they shifted to subject import purchases for reasons of price. In light of the foregoing, we found that underselling by subject imports had depressed domestic prices to a significant degree.³³

The limited record in this expedited review contains no new information contradicting our original findings on price, including the evidence of significant underselling and subsequent fall in prices. We therefore find it likely that revocation of the order would likely lead to significant underselling and subsequent significant depression or suppression of prices for the domestic like product.

³² 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.

³³ CO at 14-16; USITC Pub. 3758 at 35-36.

E. Likely Impact of Subject Imports³⁴

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order were revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including, but not limited to the following: (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.³⁵ 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.³⁶ As instructed by the Act, we have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the order were revoked.

In the original investigation, we found that domestic production capacity for bulk tissue paper had increased over the original POI, but production and shipments had peaked in 2002 and declined in 2003; domestic capacity utilization declined notably from its 2002 peak; market share fell by *** percentage points between 2001 and 2003; the value of the industry's net sales fell by *** percent between 2001 and 2003; the industry's unit cost of goods sold (COGS) had remained steady between 2001 and 2003 but operating income dropped by *** percent; operating income as a percentage of net sales fell from *** percent in 2001 to *** percent in 2003; capital expenditures declined. All of these declines occurred at a time when apparent U.S. consumption was increasing, but subject import volume was rising at a significantly faster rate and the domestic industry's sales actually declined as demand rose.³⁷

The limited record in this expedited review contains no new information contradicting our original findings on impact, including the relationship between a rapid increase in subject imports, significant underselling, and deterioration in the domestic industry's condition.³⁸ We find it likely that revocation of the order would likely lead to a significant adverse impact on the domestic industry producing bulk tissue paper.

³⁴ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885; see also 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Tariff Act states that "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The Act defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

In its expedited review of the antidumping duty order, Commerce found that revocation of the order would be likely to lead to continuation or recurrence of dumping at a margin of 112.64 percent for all manufacturers and exporters. 75 Fed. Reg. 32910 (June 10, 2010). These dumping margins are the same as the margins Commerce calculated in its original final determination. CR, PR at Table I-1.

³⁵ 19 U.S.C. § 1675a(a)(4).

³⁶ 19 U.S.C. § 1675a(a)(4).

³⁷ CO at 16-18; USITC Pub. 3758 at 36-37.

³⁸ We find that the record in this expedited review does not permit us to determine whether the domestic industry is vulnerable.

V. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY TO THE CONSUMER TISSUE INDUSTRY IF THE ORDER ON TISSUE PAPER FROM CHINA WERE REVOKED

A. Likely Conditions of Competition

In the original investigation, we took into consideration the following conditions of competition: apparent U.S. consumption of consumer tissue paper was generally stable over the POI; consumer tissue paper was generally sold directly to retailers; demand was seasonal, peaking in the fourth quarter; it was used by individual consumers to wrap packages and competed with other types of gift wrapping; the industry included both integrated producers that internally produced jumbo rolls, the primary raw material input, and converters that purchased jumbo rolls; in 2003, Crystal, a converter, learned that its primary supplier of jumbo rolls would not be able to meet its supply obligations, and Crystal subsequently shut down domestic production and increased imports to meet its own customer obligations; retailers increasingly preferred suppliers to bid on groups of related products including gift bags, wrapping paper, and tags as well as consumer tissue; and the domestic industry's ability to compete for contracts for full arrays of related products was somewhat limited.³⁹

We note that the record in this expedited investigation contains no new information regarding current or future conditions of competition specific to the consumer tissue paper industry. We therefore adopt our prior findings regarding the conditions of competition and consider these conditions as likely to prevail upon revocation.

B. Likely Volume of Subject Imports

In the original investigation, we found that subject import volume had increased between 2001 and 2003, with market share rising from *** percent in 2001 to *** percent in 2003. The greatest increase, both absolutely and relatively, came between 2002 and 2003, when approximately *** percent of the total increase occurred. But almost *** percent of that increase was a result of Crystal's increased imports in the wake of a raw material supply disruption that year. Crystal's imports were ***, and as a result ***. Because a ***.⁴⁰ We also noted that a significant portion of the U.S. market, represented by large retailers such as Target, had specialized needs that were not generally met by domestic producers, which had only a limited ability to supply an array of related products.⁴¹ In light of these factors, along with the high level of production capacity utilization reported by the industry in China, no evidence suggesting substantial increases in capacity, low inventory levels, and marked increases in shipments to the home market, as well as the absence of orders limiting imports of subject merchandise in other markets, we also found that substantial increases in the volume of subject imports were not likely.⁴²

The limited record in this expedited review contains no information contradicting our original findings on volume.⁴³ We therefore find it likely that revocation of the order would not likely lead to significant increases in subject import volume, either absolutely or relatively.

³⁹ CO at 20-22; USITC Pub. 3758 at 39.

⁴⁰ CO at 22-23; USITC Pub. 3758 at 40.

⁴¹ CO at 23; USITC Pub. 3758 at 40.

⁴² CO at 27; USITC Pub. 3758 at 42-43.

⁴³ We are mindful that domestic parties have submitted information indicating an increase in capacity in China. Domestic producers' response to notice of institution, 3/3/2010, at 22-26. The record does not indicate whether the additional capacity is dedicated to bulk or consumer tissue paper production. We therefore rely primarily on the record and our findings in the original investigation.

C. Likely Price Effects of Subject Imports

In the original investigation, we found that subject imports had oversold the domestic like product in 9 out of 15 possible comparisons for one consumer tissue product; the pricing data for the other two consumer products were of limited value given the lack of relevant comparisons. Domestic prices were generally stable during the POI. The record did not indicate price suppression, as the ratio of cost of goods sold to net value declined between 2001 and 2003.⁴⁴ We did not find significant price effects, and we also found it unlikely that subject imports would enter the U.S. market at prices that would significantly suppress or depress domestic prices in the immediate future.⁴⁵

The limited record in this expedited review contains no information contradicting our original findings on price, including the lack of significant underselling or price effects.⁴⁶ We therefore do not find it likely that revocation of the order would likely lead to significant underselling and subsequent significant depression or suppression of prices for the domestic like product.

D. Likely Impact of Subject Imports⁴⁷

In the original investigation, we noted some declines in the domestic industry's production and shipments, but the declines occurred largely in 2003, when ***. We therefore did not find subject imports to be a cause of those declines, and we noted that other indicia, such as production capacity, the number of production-related workers, wages paid, productivity, and capital expenditures were stable or rising 2001-2002. The average unit value of U.S. shipments by domestic producers increased steadily over the POI and per unit operating income and the ratio of operating income to net sales both rose between 2001 and 2003.⁴⁸ We further found, in the absence of significant volume, significant price effects, or adverse impact, that subject imports did not threaten the domestic industry with material injury.⁴⁹

⁴⁴ CO at 23-24; USITC Pub. 3758 at 40-41.

⁴⁵ CO at 27; USITC Pub. 3758 at 43.

⁴⁶ We are mindful that domestic producers have argued that revocation would likely lead to significant price effects. Domestic producers' response to notice of institution, 3/3/2010, at 26-28. The arguments do not address the question of price effects for bulk or consumer tissue paper separately. We therefore rely primarily on the record and our findings in the original investigation.

⁴⁷ In its expedited review of the antidumping duty order, Commerce found that revocation of the order would be likely to lead to continuation or recurrence of dumping at a margin of 112.64 percent for all manufacturers and exporters. 75 Fed. Reg. 32910 (June 10, 2010). These dumping margins are the same as the margins Commerce calculated in its original final determination. CR, PR at Table I-1.

⁴⁸ CO at 25-26; USITC Pub. 3758 at 42.

⁴⁹ CO at 27; USITC Pub. 3758 at 42.

The limited record in this expedited review contains no information contradicting our original findings on impact, including the lack of a causal link between subject imports and the condition of the domestic industry.^{50 51} We do not find it likely that revocation of the order would likely lead to a significant adverse impact on the industry producing consumer tissue paper.

CONCLUSION

For the foregoing reasons, we determine that revocation of the order on bulk tissue paper from China would likely lead to the continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. We determine that the revocation of the order on consumer tissue paper would not likely lead to the continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

⁵⁰ We are mindful that domestic parties have submitted information indicating that revocation would likely have a negative impact on the domestic tissue paper industry. Domestic producers' response to notice of institution, 3/3/2010, at 28-29. The record does not indicate whether these arguments are equally relevant to both the bulk and consumer tissue paper industries. We therefore rely primarily on the record and our findings from the original investigation.

⁵¹ We find that the record in this expedited review does not permit us to determine whether the domestic industry is vulnerable.

INFORMATION OBTAINED IN THE REVIEW

INTRODUCTION

On February 1, 2010, in accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”),¹ the U.S. International Trade Commission (“Commission” or “USITC”) gave notice that it had instituted a review to determine whether revocation of the antidumping duty order on certain tissue paper products (“tissue paper”) from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.^{2 3} On May 7, 2010, the Commission determined that the domestic interested party group response to its notice of institution was adequate⁴ and that the respondent interested party group response was inadequate.⁵ In the absence of respondent interested party responses and any other circumstances that would warrant the conduct of a full review, the Commission determined to conduct an expedited review of the antidumping duty order pursuant to section 751(c)(3) of the Act (19 U.S.C. § 1675(c)(3)).⁶ The Commission is scheduled to vote on this review on June 22, 2010, and will notify Commerce of its determination on July 1, 2010. The following tabulation presents selected information relating to the schedule of this five-year review.⁷

¹ 19 U.S.C. 1675(c).

² *Tissue Paper from China*, 75 FR 5115, February 1, 2010. All interested parties were requested to respond to this notice by submitting the information requested by the Commission. The Commission’s notice of institution is presented in app. A.

³ In accordance with section 751(c) of the Act, the U.S. Department of Commerce (“Commerce”) published a notice of initiation of a five-year review of the subject antidumping duty order concurrently with the Commission’s notice of institution. *Initiation of Five-year (“Sunset”) Review*, 75 FR 5042, February 1, 2010.

⁴ The Commission received one submission in response to its notice of institution in the subject review. It was filed on behalf of Seaman Paper Co. of Massachusetts, Inc. (“Seaman”), Eagle Tissue LLC (“Eagle”), Flower City Tissue Mills Co. (“Flower City”), Garlock Printing & Converting, Inc. (“Garlock”), and Putney Paper Co., Ltd. (“Putney”). The domestic interested parties reportedly accounted for approximately 95 percent of total U.S. production of tissue paper. The production coverage figure presented for the five responding domestic producers was provided in the domestic producers’ response to the Commission’s notice of institution in this review, Domestic Producers’ Response, p. 29. This estimate does not distinguish between bulk and consumer tissue paper (discussed within).

⁵ The Commission did not receive a response from any respondent interested parties to its notice of institution.

⁶ *Certain Tissue Paper Products from China*, 75 FR 28061, May 19, 2010. The Commission’s notice of an expedited review appears in app. A. The Commission’s statement on adequacy is presented in app. B.

⁷ Cited *Federal Register* notices beginning with the Commission’s institution of a five-year sunset review are presented in app. A.

Effective date	Action	Federal Register citation
February 1, 2010	Commission's institution of five-year review	75 FR 5115 February 1, 2010
February 1, 2010	Commerce's initiation of five-year review	75 FR 5042 February 1, 2010
May 7, 2010	Commission's determination to conduct an expedited five-year review	75 FR 28061 May 19, 2010
June 10, 2010	Commerce's final determination in its expedited five-year review	75 FR 32910 June 10, 2010
June 22, 2010	Commission's vote	Not applicable
July 1, 2010	Commission's determination transmitted to Commerce	Not applicable

The Original Investigation

On February 17, 2004, a petition was filed with Commerce and the Commission alleging that industries in the United States were materially injured and threatened with further material injury by reason of less-than-fair-value (“LTFV”) imports of certain tissue paper products and crepe paper products from China.⁸ Although the original petition covered both tissue paper products and certain crepe paper products, the final phase of the Commission’s investigation proceeded on two separate schedules because Commerce postponed its determination regarding tissue paper but not its determination regarding crepe paper. In its preliminary-phase and final-phase investigations, the Commission treated crepe paper and tissue paper as separate domestic like products. On February 14, 2005, Commerce made an affirmative final LTFV determination⁹ and, on March 21, 2005, the Commission completed its original investigation, determining that an industry in the United States was materially injured by reason of LTFV imports of tissue paper from China.¹⁰ After receipt of the Commission’s final affirmative determination, Commerce issued an antidumping duty order on imports of tissue paper from China.¹¹

⁸ The petition was filed by Seaman; American Crepe Corp. (“American Crepe”); Eagle; Flower City; Garlock; Paper Service Ltd. (“Paper Service”); Putney; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO, CLC (“PACE”). *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, p. I-1. All of the original petitioning firms except American Crepe were identified as U.S. producers of tissue paper.

⁹ *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People’s Republic of China*, 70 FR 7475, February 14, 2005.

¹⁰ *Certain Tissue Paper Products from China*, 70 FR 15350, March 25, 2005. Vice Chairman Okun and Commissioners Miller and Pearson found two domestic like products – consumer tissue paper and bulk tissue paper. They determined that an industry in the United States was materially injured by reason of imports of bulk tissue paper from China. They also determined that an industry in the United States was not materially injured or threatened with material injury, and that the establishment of an industry in the United States was not materially retarded, by reason of imports of consumer tissue paper from China. *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. 27-43 (Dissenting Views of Vice Chairman Deanna Tanner Okun, Commissioner Marcia E. Miller, and Commissioner Daniel R. Pearson).

¹¹ *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People’s Republic of China*, 70 FR 16223, March 30, 2005.

Commerce's Original Determination and Subsequent Review Determinations

Commerce's original determination was published on February 14, 2005, and the antidumping duty order concerning tissue paper from China was issued on March 30, 2005. Commerce has completed three administrative reviews of the antidumping duty order on tissue paper from China as shown in table I-1. Commerce is currently conducting a fourth administrative review of the subject merchandise from China for the 2008-09 period and has published its preliminary results; however, the final results of Commerce's administrative review are not expected to be released until mid-August 2010.¹² Although there have been two scope rulings and two circumvention findings¹³ concerning the antidumping duty order,¹⁴ there have been no changed circumstances determinations and no duty absorption findings.

Commerce's Final Result of Expedited Five-Year Review

Commerce published the final result of its review based on the facts available on June 7, 2010. Commerce concluded that revocation of the antidumping duty order on tissue paper from China would likely lead to continuation or recurrence of dumping at margins determined in its original amended final determination. Information on Commerce's final determination, antidumping duty order, administrative review determinations and final results of its expedited five-year review is presented in table I-1.

Distribution of Continued Dumping and Subsidy Offset Act Funds to Affected Domestic Producers

The Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") (also known as the Byrd Amendment) provides that assessed duties received pursuant to antidumping or countervailing duty orders must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such orders.¹⁵ Qualified U.S. producers of tissue paper have been eligible to receive disbursements from the U.S. Customs and Border Protection ("Customs") under CDSOA relating to the orders covering the subject merchandise beginning in Federal fiscal year 2006.¹⁶ Certifications were filed with Customs by seven claimants with respect to tissue paper from China during 2006-09. Eagle, Flower City, Hallmark, Putney, Seaman, and PACE filed separate claims to receive disbursements under CDSOA in 2006. From 2007-09, Garlock, along with the previous six firms, filed claims. Putney did not file a claim in 2009. No other CDSOA claims/disbursements were made with respect to the subject merchandise from China prior to 2006.¹⁷ Table I-2 presents CDSOA claims and disbursements for Federal fiscal years 2006-09.

¹² *Certain Tissue Paper Products From the People's Republic of China: Preliminary Results of the 2008-2009 Administrative Review*, 75 FR 18812, April 13, 2010.

¹³ In February 2010, Commerce initiated a third anti-circumvention inquiry to determine whether imports of tissue paper from Vietnam, which petitioner Seaman alleges Max Fortune (Vietnam) made from jumbo rolls and cut sheets of tissue paper produced in China, are circumventing the antidumping duty order. Max Fortune Vietnam is wholly owned by Chinese producer Max Fortune. *Certain Tissue Paper Products from the People's Republic of China: Notice of Initiation of Anti-circumvention Inquiry*, 75 FR 17127, April 5, 2010.

¹⁴ See the section of this report entitled "Scope" for information concerning Commerce's scope rulings.

¹⁵ Section 754 of the Tariff Act of 1930, as amended (19 U.S.C. § 1675(c)). The Deficit Reduction Act of 2005 repealed the CDSOA with respect to duties on entries of goods made and filed on or after October 1, 2007. See Pub. L. No. 109-171, 120 Stat. 4, 154 (2006).

¹⁶ 19 CFR 159.64 (g).

¹⁷ Customs' *CDSOA Annual Reports 2004-2009*, http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/.

Table I-1

Tissue paper: Commerce’s final determination, antidumping duty order, administrative reviews, and final results of expedited five-year review

Action	Effective date	Federal Register citation	Period of investigation/ review	Antidumping duty margins	
				Firm-specific	Country-wide ¹
				Percent ad valorem	
Final determination	02/14/2005	70 FR 7475			
Amended final determination ²	03/30/2005	70 FR 16223	07/01/2003-12/31/2003	BA Marketing 112.64% Everlasting 112.64% Fujian Nanping 112.64% Fuzhou Light 112.64% Guilin Qifeng 112.64% Max Fortune 112.64% Ningbo Spring 112.64% Qingdao Wenlong 112.64% Samsam 112.64%	112.64%
Antidumping duty order	03/30/2005	70 FR 16223	--	BA Marketing 112.64% Everlasting 112.64% Fujian Nanping 112.64% Fuzhou Light 112.64% Guilin Qifeng 112.64% Max Fortune 112.64% Ningbo Spring 112.64% Qingdao Wenlong 112.64% Samsam 112.64%	112.64%
Administrative review	10/16/2007	72 FR 58642	09/21/2004-02/28/2006	Max Fortune 0.07%	112.64%
Administrative review	10/06/2008	73 FR 58113	03/01/2006-02/28/2007	Max Fortune 0.00%	112.64%
Administrative review	10/09/2009	74 FR 52176	03/01/2007-02/29/2008	Max Fortune 14.25%	112.64%
Preliminary results of administrative review	04/13/2010	75 FR 18812	03/01/2008-02/28/2009	Max Fortune 112.64%	--
Final results of expedited five-year review	06/10/2010	75 FR 32910	--	BA Marketing 112.64% Everlasting 112.64% Fujian Nanping 112.64% Fuzhou Light 112.64% Guilin Qifeng 112.64% Max Fortune 112.64% Ningbo Spring 112.64% Qingdao Wenlong 112.64% Samsam 112.64%	112.64%

¹ The country-wide rate applies to all companies that otherwise have not received a “firm-specific” rate.

² Commerce ruled that no ministerial errors were made in the calculations of the weighted-average dumping margins. However, Commerce inadvertently identified Anhui Light as receiving a separate rate after previously determining that it did not meet the Separate Rates criteria. Commerce also neglected to include BA Marketing, which qualified for and received a separate rate. 70 FR 16223, March 30, 2005.

Source: Cited *Federal Register* notices.

Table I-2

Tissue paper: CDSOA claims and disbursements, Federal fiscal years 2006-09^{1 2}

Year	Claimant	Share of yearly allocation	Certification amount ³	Amount disbursed
		Percent ⁴	Dollars	
2006	Eagle	5.69	4,989,552.00	9,454.60
	Flower City	8.11	7,117,001.98	13,485.85
	Hallmark	7.70	6,759,561.00	12,808.55
	Putney	8.23	7,223,072.00	13,686.84
	Seaman	70.27	61,666,899.00	116,851.29
	PACE	0.00	2,776.00	5.26
	Total	100.00	87,758,861.98	166,292.39
2007	Eagle	4.68	10,281,429.92	26,590.15
	Flower City	7.09	15,564,760.95	40,254.07
	Garlock	19.41	42,631,411.00	110,254.68
	Hallmark	4.81	10,556,487.45	27,301.51
	Putney	5.66	12,434,457.16	32,158.38
	Seaman	58.34	128,122,440.71	331,354.22
	PACE	0.00	5,761.00	14.90
Total	100.00	219,596,748.19	567,927.91	
2008	Eagle	4.70	11,727,762.77	195,976.11
	Flower City	5.79	14,437,695.46	241,260.29
	Garlock	19.61	48,936,465.32	817,750.02
	Hallmark	4.68	11,685,516.94	195,270.17
	Putney	5.58	13,915,376.78	232,532.11
	Seaman	59.64	148,823,829.49	2,486,912.13
	PACE	0.00	5,746.00	96.02
Total	100.00	249,532,392.76	4,169,796.85	
2009	Eagle	4.97	11,522,332.06	31,055.77
	Flower City	6.13	14,196,435.17	38,263.19
	Garlock	20.77	48,118,715.30	129,692.80
	Hallmark	4.96	11,490,246.77	30,969.29
	Seaman	63.17	146,336,917.00	394,417.12
	PACE	0.00	5,650.00	15.23
	Total	100.00	231,670,296.30	624,413.40

¹ The Federal fiscal year is October 1-September 30.

² No CDSOA claims or disbursements were made with respect to tissue paper from China prior to 2006.

³ Qualifying expenditures incurred by domestic producers since the issuance of an order.

⁴ Total presented as reported in Annual Report may not add to figures shown.

Source: Customs' CDSOA Annual Reports 2004-09, http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/.

Related Commission Investigations and Reviews

The Commission has conducted no other investigations or reviews concerning tissue paper. However, in 2001, the Commission conducted an antidumping duty investigation on folding gift boxes from China, issuing a final affirmative determination in December of that year.¹⁸ Commerce issued an antidumping duty order on imports of certain folding gift boxes from China on January 8, 2002.¹⁹ Following affirmative expedited review determinations by the Commission and Commerce in 2007, the antidumping duty order was continued.²⁰

In addition, as discussed above, the Commission conducted an antidumping duty investigation on crepe paper products from China in 2004-05, issuing a final affirmative determination on January 18, 2005.²¹ After receipt of the Commission's final affirmative determination, Commerce issued an antidumping duty order on imports of crepe paper from China.²² Following affirmative expedited review determinations by the Commission and Commerce in 2010, the antidumping duty order was continued.²³

The Commission also has conducted investigations on several paper products involving China, including lightweight thermal paper from China, Germany, and Korea in 2008,²⁴ coated free sheet paper from China, Indonesia, and Korea in 2007,²⁵ and certain lined paper school supplies from China, India, and Indonesia in 2006.²⁶ In addition, the preliminary phase of investigations on certain coated paper from Indonesia and China was concluded in 2009, and the final phase is ongoing.²⁷

¹⁸ *Folding Gift Boxes from China, Investigation No. 731-TA-921 (Final)*, USITC Publication 3480, December 2001.

¹⁹ *Notice of Antidumping Duty Order: Certain Folding Gift Boxes from the People's Republic of China*, 67 FR 864, January 8, 2002.

²⁰ *Folding Gift Boxes From China, Investigation No. 731-TA-921 (Review)*, USITC Publication 3917, April 2007; *Folding Gift Boxes from the People's Republic of China: Continuation of Antidumping Duty Order*, 72 FR 28025, May 18, 2007.

²¹ *Certain Crepe Paper Products From China*, 70 FR 3385, January 24, 2005.

²² *Antidumping Duty Order: Certain Crepe Paper From the People's Republic of China*, 70 FR 3509, January 25, 2005.

²³ *Certain Crepe Paper Products From the People's Republic of China: Continuation of Antidumping Duty Order*, 75 FR 26919, May 13, 2010.

²⁴ *Certain Lightweight Thermal Paper from China, Germany, and Korea, Investigation Nos. 701-TA-451 and 731-TA-1126-1127 (Final)*, USITC Publication 4043, November 2008.

²⁵ *Coated Free Sheet Paper from China, Indonesia, and Korea, Investigation Nos. 701-TA-444-446 and 731-TA-1107-1109 (Final)*, USITC Publication 3965, December 2007.

²⁶ *Certain Lined Paper School Supplies from China, India, and Indonesia, Investigation Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final)*, USITC Publication 3884, September 2006.

²⁷ *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia, Investigation Nos. 701-TA-470-471 and 731-TA-1169-1170 (Preliminary)*, USITC Publication 4108, November 2009.

THE PRODUCT

Scope

In its original antidumping duty order, Commerce defined the subject merchandise as follows:

The tissue paper products subject to this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles. . . .

Excluded from the scope of this order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, i.e., disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).^{28 29}

Commerce has received two separate requests for scope rulings and two separate requests for circumvention inquiries since the original antidumping duty order date. The requestors, outcomes, and completion dates of Commerce's scope and circumvention rulings are listed in table I-3.

²⁸ *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223, March 30, 2005.

²⁹ Tariff treatment of this product is presented in the next section of this report. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

**Table I-3
Tissue paper: Commerce’s scope and circumvention rulings**

Requestor	Scope/Circumvention ruling	Date of completion	Federal Register citation
Walgreen Co.	Exclusion request denied. The tissue paper in its gift bag sets, consisting of one gift bag, one crinkle bow, and one to six sheets of tissue paper, is within the scope of the antidumping duty order.	September 19, 2008	73 FR 72771 (December 1, 2008)
QVC Corporation	Exclusion request denied. The tissue paper in its gift wrap kits, each containing different amounts and combinations of some or all of the following components: gift bags, gift tins, gift boxes, bows, wrapping paper, tissue paper, gift tags, gift cards, gift card pouches, ribbon and stickers, is within the scope of the antidumping duty order.	September 19, 2008	73 FR 72771 (December 1, 2008)
Seaman	Affirmative circumvention ruling. Certain tissue paper products produced by Vietnam Quijiang Paper Co., Ltd. (“Quijiang”) ¹ are circumventing the antidumping duty order. Quijiang circumvented the Order as a result of its exports to the United States of PRC-origin jumbo rolls converted to cut-to-length tissue paper in Vietnam.	October 3, 2008	73 FR 57591 (October 3, 2008)
Seaman	Affirmative circumvention ruling. Certain tissue paper products exported to the United States from Thailand by Sunlake Decor Co., Ltd. (“Sunlake”) are made from jumbo rolls and/or cut sheets of tissue paper produced in the People’s Republic of China (PRC), and are circumventing the antidumping duty order.	June 19, 2009	74 FR 29172 (June 19, 2009)
<p>¹ Quijiang is wholly owned by Chinese producer Guilin Qifeng.</p> <p>Note.—In February 2010, Commerce initiated a third anti-circumvention inquiry to determine whether imports of tissue paper from Vietnam, which petitioner Seaman alleges Max Fortune (Vietnam) made from jumbo rolls and cut sheets of tissue paper produced in China, are circumventing the antidumping duty order. Max Fortune Vietnam is wholly owned by Chinese producer Max Fortune. <i>Certain Tissue Paper Products from the People’s Republic of China: Notice of Initiation of Anti-Circumvention Inquiry</i>, 75 FR 17127, April 5, 2010.</p> <p>Source: Cited <i>Federal Register</i> notices.</p>			

U.S. Tariff Treatment

The tissue paper products subject to this review initially did not have distinct tariff or statistical categories assigned to them under the HTS and thus could be imported under more than a dozen HTS subheadings or statistical reporting numbers in Chapter 48, “Paper and paperboard; articles of paper pulp, of paper or of paperboard,” and under one HTS statistical reporting number in Chapter 95, “Toys, games and sports requisites; parts and accessories thereof.” Since the original investigation, four specific HTS statistical reporting numbers for tissue paper were created effective July 1, 2005 to cover the subject tissue paper when it is classifiable in four legal categories. These four statistical reporting numbers are 4804.39.4041; 4811.90.4010; 4811.90.6010; and 4811.90.9010. All general or NTR rates in Chapter 48 of the HTS are “free.”

Domestic Like Product and Domestic Industry

The domestic like product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the subject merchandise. In its original determination, the Commission was evenly divided on this issue. Chairman Koplan and Commissioners Hillman and Lane defined the domestic like product as all tissue paper, co-extensive with Commerce's scope.³⁰ Vice Chairman Okun and Commissioners Miller and Pearson, in contrast, found two domestic like products and two domestic industries corresponding to bulk tissue paper and consumer tissue paper.³¹ According to Chairman Koplan and Commissioners Hillman and Lane, the record demonstrated a significant degree of commonality in terms of physical characteristics and uses, and manufacturing facilities, processes, and employees; mixed evidence respecting interchangeability and producer and purchaser perceptions; and limited overlap in terms of channels of distribution and prices. These Commissioners further noted that the most salient distinctions observed were more pertinent to the conditions of competition in the tissue paper market rather than the like product definition.³² On the other hand, Vice Chairman Okun and Commissioners Miller and Pearson cited differences in physical characteristics and uses, limited interchangeability, differing customer and producer perceptions, distinct channels of distribution, and significant price differences for defining the domestic like product as consisting of two separate like products: bulk tissue paper and consumer tissue paper.³³

Arguing that the three-member Commission majority made errors in its single like product and domestic industry definitions (as well as its volume, price, and impact findings), Cleo Inc., its subsidiary, Crystal Creative Products, Inc., (at that time a domestic producer and importer of tissue paper) and Target Corp. (at that time a purchaser and importer of tissue paper) appealed the Commission's affirmative determination to the United States Court of International Trade ("CIT") and later to the United States Courts of Appeals for the Federal Circuit ("Federal Circuit"). On August 31, 2006, the CIT sustained the Commission's affirmative determination in all respects and, on September 10, 2007, the Federal Circuit similarly affirmed the determination of the Commission.³⁴

The information regarding the nature of tissue paper (including bulk and consumer tissue paper) is unchanged since the original investigation. The domestic producers of tissue paper participating in this review indicated in their response to the Commission's notice of institution that they agree with the Commission's definitions of one domestic like product and one domestic industry.³⁵

³⁰ *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. 4-10. As discussed in greater detail below, this finding (among other issues) was appealed unsuccessfully by three of the original respondents.

³¹ Vice Chairman Okun and Commissioners Miller and Pearson determined that an industry in the United States was materially injured by reason of imports of bulk tissue paper from China that was found by Commerce to be sold in the United States at less than fair value ("LTFV") and that an industry in the United States was not materially injured or threatened with material injury, and the establishment of an industry in the United States was not materially retarded, by reason of imports of consumer tissue paper from China, that was found by Commerce to be sold in the United States at LTFV. *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. 27-32 (Dissenting Views).

³² *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. 8-9.

³³ Dissenting Views of Vice Chairman Deanna Tanner Okun, Commissioner Marcie E. Miller, and Commissioner Daniel R. Pearson, pp. 27-32.

³⁴ *Cleo Inc. v. United States*, 30 Ct. Int'l Trade (2006), *aff'd*, 501 F. 3d 1291 (Fed. Cir. 2007).

³⁵ Domestic Producers' Response at 32.

The domestic industry is the collection of 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 the original investigation, the Commission defined the domestic industry to include all domestic producers of bulk and consumer tissue paper, whether those producers are integrated or operate as converters.³⁶ During the original investigation, the domestic industry producing certain tissue paper consisted of 12 established companies, the largest of which were ***.³⁷ Four of the 12 established companies were vertically integrated firms that manufactured jumbo rolls and other firms were converters that purchased jumbo rolls and produced finished tissue paper from the purchased rolls.³⁸ The U.S. industry data presented in the Commission's staff report in the original investigation were based on the questionnaire responses of 10 tissue paper producers that were believed to have accounted for nearly all U.S. production of certain tissue paper products during 2003.³⁹ The Commission found in the original investigation that the following five established U.S. producers or former producers imported or purchased imports of the subject merchandise produced in China during the original investigation period for which information was collected: ***. However, the Commission determined that appropriate circumstances did not exist to exclude these producers from the domestic industry.⁴⁰

According to the domestic producers' response to the Commission's notice of institution in this review, there are currently six producers of tissue paper products in the United States: Seaman, Eagle, Flower City, Garlock, Hallmark, and Putney. The five domestic interested parties participating in this review accounted for approximately 95 percent of total U.S. domestic production.⁴¹ Two domestic producers, Seaman and Garlock, were identified as related parties in their response. The domestic producers explained that ***.⁴² In addition, the domestic producers reported that *** imported into the United States *** square meters (** pounds, \$***) of subject merchandise from China during ***. They explained that ***'s subject imports accounted for *** percent of ***'s domestic production of tissue paper since the imposition of the order. Furthermore, they indicated that ***.

³⁶ *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, p. 9. Converters make finished products from purchased jumbo rolls of tissue paper; integrated producers make the jumbo rolls as well as the finished downstream products. *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, p. 9.

³⁷ *Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)*, February 18, 2005 (INV-CC-014), p. I-3. Crystal, formerly one of the larger U.S. producers, was closing its tissue paper operations during the original investigation.

³⁸ *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, p. I-9.

³⁹ *Ibid.*, p. III-1. DMD Industries ("DMD") and Printwrap Corp. ("Printwrap"), producers of certain tissue paper products, did not complete questionnaires during the original investigation. The production and U.S. shipments of these producers combined were believed to account for a modest share of the U.S. market during the period examined. In addition, Glitterwrap Inc. and Standard Quality Corp. reportedly began production in the second half of 2004 but provided few details regarding their operations. *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, p. III-1 n. 1.

⁴⁰ Confidential Views of the Commission, pp. 12-16.

⁴¹ The production coverage figure presented for the five responding domestic producers was provided in the domestic producers' response to the Commission's notice of institution in this review.

⁴² The domestic producers reported that *** produced *** square meters of tissue paper products during 2009, which was estimated to have accounted for less than *** percent of total Chinese production and exports to the United States of certain tissue paper products during 2009. They also reported that *** total 2009 capacity of *** represented less than *** percent of the capacity to produce tissue paper in China. Domestic Producers' Response at 30; Response to Commission's Letter Regarding Domestic Producers' Substantive Response, pp. 2-3 and n.3.

Physical Characteristics and Uses⁴³

Subject tissue paper is of a class of lightweight paper (no greater than 29 grams per square meter) that generally exhibits a gauze-like, fairly transparent character. Available in a variety of colors, designs, and packaging, it tends to be used for the wrapping of product within a box or bag, decorative purposes, or as a lightweight gift wrap. Certain tissue paper products are cut-to-length sheets that are produced from rolls of flat tissue paper (i.e., jumbo rolls)⁴⁴ and are sold either flat or folded. Basis weights for subject tissue paper products reportedly range from 13.8 grams per square meter to 24.4 grams per square meter, and the ink for printed designs may add as much as an additional 4.9 to 6.5 grams per square meter.

Although subject tissue paper is available in standard or custom colors, printed designs, and packaging, white tissue paper is a large part of the U.S. market. The industry recognizes four different grades of white tissue based on the whiteness and brightness of the tissue paper. Lower grades of white tissue paper reportedly have little decorative value and are used principally as dunnage to stuff or wrap items such as shoes and handbags.

The tissue paper covered by this proceeding is generally sold in two forms, consumer and bulk. “Consumer” tissue paper is sold packaged for retail sale to consumers, while “bulk” tissue paper is typically used by businesses as a wrap to protect customer purchases. Both forms are converted from jumbo rolls of flat tissue paper and sold in a range of dimensions, frequently in white or solid colors. In terms of form, bulk tissue is typically sold in flat sheets, but is also sold in quire-folded sheets (in which a stack of sheets is folded as a unit). Consumer tissue paper is typically sold in folds, although it is occasionally sold in flat format. In terms of sheet count, bulk tissue is typically sold by the ream (480-500 sheets), but may also be sold in half reams (250 sheets) or in multiple ream packaging. Consumer tissue is typically sold packaged for sale as a retail item in smaller quantities, although sheet counts for seasonal packages and club counts range from 90 to 400 sheets.⁴⁵

Manufacturing Process⁴⁶

Vertically integrated producers also manufacture rolls of tissue paper, or jumbo rolls, the principal upstream raw material for certain tissue paper products, while others are converters that purchase jumbo rolls. Typically, the U.S. paper mills that make rolls of flat tissue paper do not have pulp mills and, therefore, rely on purchases of market pulp and/or waste paper. Bales of dried pulp and/or waste paper are put into a repulper (essentially a very large blender) along with water, dyes, and chemical additives. A revolving agitator stirs the mixture thereby separating the individual wood fibers. Refiners clean and condition the resulting pulp slurry before it is pumped to storage chests to await delivery to the paper machine.

Next, the pulp slurry is pumped to the “wet end” of the paper machine, which forms a thin sheet of pulp in a continuous process. Water drains from the sheet as it is formed and conveyed to the press section. The press forms the sheet squeezing out more water, after which the sheet enters the dryer section to be dried. Tissue paper machines have either a conventional or Yankee dryer. A conventional

⁴³ Unless indicated otherwise, the discussion in this section is based on information contained in *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005.

⁴⁴ Subject tissue paper is made from flat rather than dry-creped tissue paper, the latter of which is used for sanitary or household purposes.

⁴⁵ For a more detailed discussion of consumer tissue versus bulk tissue, see Appendix D.

⁴⁶ Unless indicated otherwise, the discussion in this section is based on information contained in *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. I-9-I-12.

dryer has two or more tiers of steam-heated cylinders 30 to 60 inches (0.8 to 1.5 meters) in diameter which dry the sheet as it passes over and under successive cylinders. A conventional dryer imparts an unburnished finish to the sheet called a machine finish (MF). A Yankee dryer is particularly effective drying lightweight papers and consists of one large, steam-heated cylinder 9 to 15 feet (2.7 to 4.6 meters) in diameter that dries the sheet completely as it passes once around. The cylinder is polished and imparts a hard, smooth finish called a machine glaze (MG).⁴⁷

As the paper exits the dryer, it is wound onto a large reel. Once filled, the reel is hoisted by an overhead crane to a winder that is in line with the back end of the paper machine. The winder unwinds the reel, slits the sheet to the appropriate width, and rewinds the sheet onto paperboard cores. The resulting jumbo rolls are wrapped with kraft paper or shrink wrap for protection during transit. Diameters and widths of the rolls vary depending on the attributes of the converting equipment for which the paper is intended. If necessary, tissue paper products are typically printed on high speed, multicolor, web-fed (rotary), flexographic presses. Modern presses yield intricate graphic designs and greatly increase manufacturers' printing capacity. Customers may have their own seasonal designs, and their tissue purchases may become part of a coordinated product line.

Jumbo rolls intended for bulk and consumer tissue paper may be produced from the same reel of tissue paper. Bulk and consumer tissue paper often are printed on the same presses and typically share the same basic converting process, which includes sheeting, folding, and packaging. Because tissue paper is lightweight and lacks stiffness, it is not possible to cut individual sheets. Therefore, converting lines have multiple back stands (i.e., roll stands), and multiple sheets (commonly 10 or 24 sheets) are converted simultaneously to ensure that the web has enough rigidity to feed properly. Electric charges may be imparted to the sheets in order to "pin" them together. Generally, sheeters are rotary knives that cut the tissue paper at regular intervals as the web advances through the machine. Wider sheeters may also slit the web longitudinally in addition to the perpendicular cuts being made by the rotary knife. Guillotines also are used to cut large quantities of sheets to size at one time.

Production of tissue folds requires the paper be folded in two directions, both parallel and perpendicular to the direction of the machine. On a particular converting line, the folding equipment may be interspersed with the sheeting equipment. Folds made parallel to the machine flow are made before sheeting while the paper is still a continuous web. Then, the folded web is cut with a rotary sheeter as described above. Once cut to size, the sheets are folded perpendicular to machine flow by a tucker; additional tucks may be made depending on the size of the package. Stepped folds are made by offsetting different colored rolls by 1 inch on the roll stands. The offset is maintained throughout folding and sheeting, and once packaged, the different colors can be seen through the package.

Once sheeting and folding are complete, tissue paper may be packaged in a variety of ways. In a continuous process, form, fill, and seal equipment automatically wraps a tissue fold in plastic film and seals the ends of each package. A three-step process is used for preformed plastic bags. A jet of air opens the mouth of the bag, the tissue fold is inserted, and the open end is sealed. Larger, hard to handle products (e.g., flat and quire-folded reams) may be packaged in plastic wrap using "L" bagger equipment, which requires more manual labor to insert the product and seal the bag. If necessary, a certain number of individual packages may be further packed in wholesale bags, which help the distributors control their shipments and quantities. Finally, the individual packages or wholesale packages are packed manually into corrugated containers for shipping.

⁴⁷ In general, MG papers are especially suited for printed tissue paper, especially those with intricate designs. However, the amount of gloss varies from sheet to sheet depending on how highly polished the surface of a particular Yankee dryer is, so MG papers produced on different machines would exhibit a range of finishes.

Interchangeability and Customer and Producer Perceptions

In the original investigation, the Commission found that there was a high degree of substitutability between domestically produced tissue paper and subject imports from China. Most U.S. producers, U.S. importers, and U.S. purchasers reportedly perceived tissue paper produced in the United States and in China to be “always” or “frequently” interchangeable.⁴⁸

Channels of Distribution⁴⁹

During the period examined in the original investigation, U.S. shipments of tissue paper, domestically-produced and from China, were directed to three channels of distribution: distributors, retailers, and end users. Overall, in terms of share of U.S. shipments, 64.7 percent of U.S. producers' U.S. shipments were to distributors in 2003, while 34.7 percent were to retailers in the same year. In contrast, 19.9 percent of U.S. shipment of imports were to distributors in 2003, compared to 51.8 percent to retailers and 28.2 percent to end users. Between 2001 and 2003 there was a marked increase in shipments to end users by U.S. retailers that were importing tissue paper directly.⁵⁰

In the original investigation, the Commission noted that in 2001, 3.4 percent of consumer tissue paper shipments of subject imports and 100.0 percent of bulk tissue paper shipments were to distributors. This fell to 1.3 percent for consumer tissue paper and to 77.3 percent for bulk tissue paper in 2003. For imports of bulk tissue paper, virtually all of the remainder was imported directly by retailers. With respect to consumer tissue paper, the share of shipments by importers to retailers fell from 84.9 percent in 2001 to 68.6 percent in 2003. Direct imports by retailers, however, rose from 11.8 percent in 2001 to 30.1 percent in 2003.

Pricing

During the original investigation the Commission collected pricing data for four tissue paper products—three consumer and one bulk—to unrelated customers. In addition to providing quarterly sales price data for each product, importers and U.S. producers were asked to specify if the products were sold to distributors or retailers. Of the 45 quarters for which direct comparisons were available, subject imports undersold the domestic product in 33 quarters by a combined weighted average margin of *** percent.⁵¹ Consistent with the pattern of underselling revealed by the price data, the vast majority of purchasers (16 of 20) reported that the Chinese product was lower-priced than the domestic product.

In the original investigation, purchasers identified the three major factors considered by their firm in deciding from whom to purchase tissue paper. Purchasers cited price more frequently than any other factor. Price was cited most often as the most important factor with respect to bulk tissue paper purchases, and the second most important factor (after quality) with respect to consumer tissue paper

⁴⁸ *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. 16-17.

⁴⁹ Unless indicated otherwise, the discussion in this section is based on information contained in *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. 15-16 and table I-3.

⁵⁰ The Commission further noted that the increasing share of subject imports procured as direct imports by retailers reflects the growing role of mass merchandisers. These entities may purchase products via reverse internet auctions. Mass merchandisers such as Target may procure tissue paper in conjunction with other items, such as gift bags, gift boxes, or roll wrap, thereby requiring vendors seeking Target's business to source items from different manufacturers.

⁵¹ Confidential Views of the Commission, pp. 26-30.

purchases. The Commission observed that the significance of price in this comparison was revealed further by the fact that virtually all responding purchasers identified the quality of domestically produced tissue paper and subject imports from China as comparable.⁵²

THE INDUSTRY IN THE UNITED STATES

U.S. Producers

U.S. industry data collected in the original investigation were based on the questionnaire responses of 10 domestic producers that accounted for nearly all U.S. production of certain tissue paper products during 2003. At that time, the domestic industry producing certain tissue paper consisted of 12 established companies.⁵³ Four of the 12 established companies were vertically integrated firms that manufactured jumbo rolls and other firms were converters that purchased jumbo rolls and produced finished tissue paper from the purchased rolls. The largest U.S. producers that participated in the original investigation and their shares of reported domestic production for subject tissue paper during 2003 were as follows: Crystal (***) percent), Eagle (***) percent), Flower City (***) percent), Garlock (***) percent), Putney (***) percent), and Seaman (***) percent).^{54 55}

The domestic interested parties reported in their response that there are currently six domestic producers of certain tissue paper products.⁵⁶ Five of the 10 participants from the original investigation responded to the Commission's notice of institution of this review. Table I-4 lists the ten original participating firms, each firm's location(s), and shares of reported production in 2003 and 2009.

⁵² *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. 16-17. Commissioners that focused on bulk tissue paper and consumer tissue paper as separate like products noted that, with respect to the latter, "(p)rice plays an important role in sales of consumer tissue products but was not the overriding consideration," and later observed that underselling by U.S. imports of consumer tissue paper from China was "limited." *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. 40-41.

⁵³ DMD and Printwrap did not complete questionnaires during the original investigation. The production and U.S. shipments of these producers combined were believed to account for a modest share of the U.S. market during the period examined. *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, p. III-1 n.1.

⁵⁴ *Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)*, February 18, 2005 (INV-CC-014), p. III-2 and table III-1.

⁵⁵ During the period for which data were collected in the original investigation, Eagle, Flower City, Garlock, Green Mountain, Paper Service, and Putney's domestic production operations consisted mostly, if not exclusively, of bulk tissue paper. Crystal, Hallmark and Pacon's operations were mostly, if not exclusively, of consumer tissue. Crystal and Seaman, whose production constituted more than *** of total U.S. production during the original period examined, produced both bulk and consumer tissue paper. *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, table III-1.

⁵⁶ See domestic producers' response to the Commission's notice of institution in this review.

Table I-4

Tissue paper: U.S. producers, locations, and company shares of 2003 and 2009 total domestic production

Firm	Location	Related Companies	Share of 2003 reported production (percent)	Estimated share of 2009 reported production (percent)
Crystal ¹	Memphis, TN	Wholly owned by Cleo, Inc., which is wholly owned by CSS Industries, Inc.	***	Ceased production
Eagle	South Windsor, CT	None	***	***
Flower City ³	Rochester, NY	None	***	***
Garlock	Gardner, MA	Seaman owns *** percent	***	***
Green Mountain	Bellows Falls, VT	None	***	(²)
Hallmark ⁴	Kansas City, MO	Hallmark is related to a group of companies as diverse as television programming, crayons and artists' supplies, printing, retail merchandising, and residential and commercial real estate.	***	(²)
Pacon	Appleton, WI	N/A	***	(²)
Paper Service	Ashuelot, NH	None	***	(²)
Putney	Putney, VT	None	***	***
Seaman ⁵	Otter River, MA Gardner, MA	MBW Inc.; Specialized Paper Converting, Inc.; Garlock Printing & Converting Inc.	***	***
Total			100.0	100.0

¹ Crystal was identified as an importer of subject merchandise in the original investigation. According to Crystal, the reason the company decided to import certain tissue paper from China was to ***. But see Views of the Commission at 33 & 13-14.

² Not available.

³ Flower City was identified as an importer of subject merchandise in the original investigation. The reason the company decided to import certain tissue paper from China was ***.

⁴ ***.

⁵ Seaman was identified as an importer of subject merchandise in the original investigation. The reason the company decided to import subject tissue paper from China was ***.

Note.—Because of rounding, figures may not add to the totals shown.

Source: *Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)*, February 18, 2005 (INV-CC-014), table III-1; Domestic Producers' Response.

During the original investigation, Crystal was a leading importer of tissue paper from China. The company was reportedly “the largest supplier of tissue paper in the U.S. market in the 1980s and the 1990s.” In October 2002, Cleo, a subsidiary of CSS Industries and importer of the subject merchandise, acquired Crystal. Cleo sold assets related to Crystal’s bulk tissue business in July 2003 and closed Crystal’s primary manufacturing facility in Maysville, KY, in October 2003. To mitigate the effect of antidumping duties resulting from the original investigation, however, Crystal resumed tissue converting operations at its Maysville facility in 2004.⁵⁷ In addition, CSS Industries stated that it was “evaluating sourcing arrangements outside of China” for tissue paper in 2004. After the imposition of the antidumping duty order on subject tissue paper in 2005, CSS Industries incurred an expense of approximately \$2.3 million in fiscal year 2005 to cover antidumping duties from importing Chinese tissue paper. The company stated that it had no intention of importing subject tissue paper from China in the future. In fiscal year 2007, CSS Industries reported the closure of Cleo’s Maysville facility.⁵⁸

U.S. Producers’ Trade, Employment, and Financial Data

Table I-5 presents data reported by U.S. producers of tissue paper in the Commission’s original investigation and in response to its five-year review institution notice. Data presented for the period examined in the final phase of the original investigation were provided by 10 producers (Crystal, Eagle, Flower City, Garlock, Green Mountain, Hallmark, Pacon, Paper Service, Putney, and Seaman) that were believed to represent nearly all of U.S. production of tissue paper during January 2001-September 2004. Data presented for 2009 were provided by five producers (Eagle, Flower City, Garlock, Putney, and Seaman) that are believed to represent *** percent of tissue paper production during 2009.⁵⁹

⁵⁷ *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. III-5-III-6.

⁵⁸ CSS Industries, SEC 10-K for fiscal years 2004, 2005, and 2007, filed on June 14, 2004; June 1, 2005; and June 6, 2007, respectively.

⁵⁹ The domestic interested parties accounted for the great majority of reported domestic production during the period examined in the original investigation.

Table I-5

Tissue paper: U.S. producers' trade, employment, and financial data, 2001-03, January-September 2003, January-September 2004, and 2009¹

(Quantity=1,000 square meters; unit values and unit labor costs=\$/1,000 square meters)

Item	2001	2002	2003	January-September		2009
				2003	2004	
Capacity ¹	3,722,201	3,878,349	3,814,081	2,737,161	2,579,323	***
Production	2,079,215	2,221,313	1,730,868	1,249,484	1,156,725	***
Capacity utilization (percent)	55.9	57.3	45.4	45.6	44.8	***
U.S. shipments:						
Quantity	2,050,248	2,109,769	1,675,321	1,113,738	1,071,459	***
Value (\$1,000)	118,875	121,388	93,879	62,552	65,091	***
Unit value	\$57.98	\$57.54	\$56.04	\$56.16	\$60.75	\$***
Exports:						
Quantity	41,388	46,767	47,304	28,915	30,662	(²)
Value (\$1,000)	2,265	2,436	2,373	1,453	1,621	(²)
Unit value	\$54.73	\$52.09	\$50.16	\$50.25	\$52.87	(²)
Total shipments:						
Quantity	2,091,636	2,156,536	1,722,625	1,142,653	1,102,121	(²)
Value (\$1,000)	121,140	123,824	96,252	64,005	66,712	(²)
Unit value	\$57.92	\$57.42	\$55.88	\$56.01	\$60.53	(²)
End-of-period inventories	303,427	368,103	376,345	467,599	431,195	(²)
Production and related workers (number)	592	571	428	413	437	(²)
Hours worked (1,000 hours)	1,219	1,188	1,018	725	670	(²)
Wages paid (\$1,000)	14,652	15,556	13,805	9,643	9,180	(²)
Hourly wages	\$12.02	\$13.09	\$13.57	\$13.30	\$13.70	(²)
Productivity (1,000 square meters/hour)	1,705.7	1,869.5	1,701.1	1,723.3	1,726.8	(²)
Unit labor costs	\$7.05	\$7.00	\$7.98	\$7.72	\$7.94	(²)
Net sales (\$1,000)	124,967	121,342	91,934	63,935	66,709	***
Cost of goods sold (\$1,000)	92,831	91,627	66,918	47,705	48,231	***
Gross profit or (loss) (\$1,000)	32,135	29,715	25,016	16,230	18,478	***
SG&A expenses (\$1,000)	23,908	24,672	21,403	15,059	15,771	***
Operating income or (loss) (\$1,000)	8,228	5,044	3,613	1,171	2,707	***
Operating income (loss)/sales (percent)	6.6	4.2	3.9	1.8	4.1	***

¹ Data presented for 2001-03, January-September 2003, and January-September 2004 were provided by 10 producers (Crystal, Eagle, Flower City, Garlock, Green Mountain, Hallmark, Pacon, Paper Service, Putney, and Seaman). These 10 firms were believed to have represented nearly all of U.S. production of tissue paper during the period for which data were collected. Data presented for 2009 were provided by five producers (Eagle, Flower City, Garlock, Putney, and Seaman) that are believed to represent *** percent of tissue paper production during 2009.

² Not available.

Note.—Separate data for bulk and consumer tissue paper appear in App. C.

Source: Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final), February 18, 2005 (INV-CC-014), tables III-2, III-3, III-4, III-5, and VI-1; Domestic Producers' Response.

During the period examined in the original investigation, the domestic industry’s capacity, production, and capacity utilization increased between 2001 and 2002, but were lower in 2003 and in interim 2004 (relative to interim 2003). This reflects in part the temporary (and later permanent) closure of Crystal.⁶⁰ Accordingly, the largest reductions in production and capacity during the period for which data were collected correspond to the periods in which consumer tissue paper production (2003) and capacity (January-September 2004) declined most noticeably. U.S. shipment volume increased somewhat in 2002 before decreasing in 2003 (primarily as a result of lower consumer tissue paper shipments) and into 2004 (as a result of lower bulk tissue paper shipments).⁶¹ Unit values of U.S. shipments decreased from 2001 to 2003, but increased by 8.2 percent in January-September 2004 from January-September 2003. Average hours worked decreased gradually in relatively small increments from 2001 to 2003, and were 7.6 percent lower in January-September 2004 than in January-September 2003. Hourly wages increased by 12.9 percent from 2001 to 2003 and were 3.0 percent higher in interim 2004 than in interim 2003. The operating income margin decreased from 2001 to 2003, but improved in interim 2004 compared with interim 2003. Total net sales also decreased during the same period, but improved slightly in January-September 2004 when compared with January-September 2003. The trend was similar in total gross profit and operating income.

During the period examined in this five-year review, production capacity, production volume, U.S. shipment quantity, value, unit value, net sales, cost of goods sold, gross profit, SG&A expenses, and operating income for calendar/fiscal year 2009 are the only industry indicators available. U.S. production in 2009 was lower than production during the original investigation, by *** percent compared to 2001 and by *** percent compared to 2003. Production capacity increased by *** percent in 2009 when compared with 2003, while capacity utilization was *** percent in 2009, a decrease from *** percent in 2003. The operating income margin increased from 3.9 percent in 2003 to *** percent in 2009. U.S. shipments in terms of quantity decreased by *** percent in 2009 when compared to 2003. The trend was similar in net sales, which decreased by *** percent in 2009 when compared with 2003. Average unit values were slightly higher in 2009 than in 2001-03.

The following tabulation presents Seaman’s trade and financial data for 2009 compared with those of Eagle, Flower City, Garlock, and Putney. Seaman is the dominant remaining producer of consumer tissue paper from the original investigation (although it produced and sold substantial quantities of bulk tissue as well). The other four companies that provided data, Eagle, Flower City, Garlock, and Putney, produced and sold *** in the original investigation.⁶²

* * * * *

⁶⁰ Crystal was acquired in October 2002 by Cleo, a subsidiary of CSS Industries. The company subsequently sold assets related to Crystal’s bulk tissue business in July 2003 and closed Crystal’s primary manufacturing facility in October 2003. During the original investigation, a company official elaborated in testimony that raw material supply was a driving factor in the closure of Crystal’s tissue paper operations. To mitigate the effect of any duties resulting from the Commission’s investigation, however, Crystal temporarily resumed tissue converting operations. *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. III-5-III-6.

⁶¹ Crystal’s U.S. shipments decreased from *** in 2003; however, seven of the nine other domestic producers of tissue paper also experienced declining domestic shipments in 2003, the exceptions being ***. *Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)*, February 18, 2005 (INV-CC-014), p. III-10.

⁶² *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, table III-1; Domestic Producers’ Response, exhibit 10.

Related Party Issues

In the original investigation, the Commission identified ***, and Cleo/Crystal as related parties by virtue of their importation of subject merchandise.⁶³ However, the Commission determined that appropriate circumstances did not exist to exclude these producers from the domestic industry. The domestic interested parties indicated in their response to the Commission's notice of institution in this review that *** are related parties. The domestic producers explained that, ***. In addition, the domestic producers reported that *** imported into the United States *** square meters (***, \$***) of subject merchandise from China during 2009. They explained that ***.⁶⁴

U.S. IMPORTS AND APPARENT U.S. CONSUMPTION

U.S. Imports⁶⁵

The Commission reported in its original investigation that at least 42 U.S. companies imported certain tissue paper from China, the largest of which were ***, accounting for *** of subject tissue paper imports from China in 2003.⁶⁶ The Commission sent questionnaires to 189 firms identified as U.S. importers of tissue paper from all countries in the petition and from a review of Customs data for the basket categories that included tissue paper in the final phase of the original investigation. Usable data on imports of certain tissue paper products were received from 38 firms, 21 of which were importers of subject tissue paper from China during 2001.⁶⁷

In their response to the Commission's notice of institution in this review, the domestic producers identified approximately 250 U.S. importers of the subject tissue paper from China but noted that U.S. imports of tissue paper from China have "retreated substantially from the U.S. market following imposition of the order." According to official import statistics, U.S. imports of tissue paper from China during 2009 was valued at approximately \$6.2 million.⁶⁸ China, however, is no longer the largest source

⁶³ Confidential Views of the Commission, pp. 12-16.

⁶⁴ The domestic producers reported that *** produced *** square meters of tissue paper products during 2009, which was estimated to have accounted for less than *** percent of total Chinese production and exports to the United States of certain tissue paper products during 2009. They also reported that *** total 2009 capacity of *** represented less than *** percent of the capacity to produce tissue paper in China. Domestic Producers' Response at 30; Response to Commission's Letter Regarding Domestic Producers' Substantive Response, pp. 2-3 and n.3.

⁶⁵ Staff excluded Canada and Japan from the data despite seemingly substantial importation of tissue paper. Unit values for imports from Canada were exceptionally low. Moreover, the manufacturer that accounted for the vast majority of imports is not known to produce tissue paper products subject to the antidumping duty order. Unit values for imports from Japan were exceptionally high.

⁶⁶ *Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)*, February 18, 2005 (INV-CC-014), p. IV-4. In 2004, lower imports by *** were offset by higher imports by ***. *Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)*, February 18, 2005 (INV-CC-014), p. IV-4 n. 6.

⁶⁷ *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, IV-1.

⁶⁸ The import data presented for 2006-09 are for subject tissue paper classified in official import statistics under the HTS statistical reporting numbers 4804.39.4041, 4811.90.4010, 4811.90.6010, and 4811.90.9010.

of U.S. imports of tissue paper. Indeed, Target, the *** importer of subject merchandise in the original investigation, continues to sell imported consumer tissue paper from such sources as Indonesia.⁶⁹

Annual data for tissue paper for the period 2001-09 are presented in table I-6. Data are not available for 2004 and 2005 due to the lack of distinct statistical reporting numbers for certain tissue paper products under the HTS. Import volume increased sharply throughout the original period examined, rising from 204.1 million square meters in 2001 to 328.1 million square meters in 2002, and further to *** square meters in 2003 (an increase between 2001 and 2003 of approximately 268 percent). The trend was similar for the value of U.S. imports of tissue paper from China, with an increase of 76.2 percent from 2001 to 2002 and a continued increase of 146.4 percent from 2002 to 2003. Imports from nonsubject countries did not have share in the U.S. market prior to 2003.

Since the period of the original investigation, the value of U.S. imports of tissue paper from China decreased by 79.3 percent, from 2003 to 2009.⁷⁰ However, the value of subject imports rose steadily from 2006 to 2009, increasing by 25.6 percent from 2006-07, by 33.8 percent from 2007-08, and by 43.3 percent from 2008-09, for a total increase of 140.8 percent throughout the entire period. Max Fortune, a respondent and foreign producer in the original investigation, received reduced antidumping duty rates from 2007 to 2009 as a result of administrative reviews.⁷¹ Max Fortune's antidumping duty rate was 0.07 percent in 2007, 0.00 percent in 2008, and 14.25 percent in 2009.⁷² Max Fortune had previously operated under the country-wide antidumping duty rate at the time the antidumping duty order was instituted.⁷³

⁶⁹ See, e.g., EDIS, Document ID 424241. A Target witness testifying in the final phase of the original investigation regarding the firm's likely actions in the event of an antidumping duty on tissue paper from China, stated that "We would not change our product assortments, so we would be seeking alternate suppliers in other countries, other areas." Hearing transcript, p. 303 (Kelly).

⁷⁰ Staff notes that this comparison is between ITC questionnaire data (2003) and Commerce import data (2009).

⁷¹ In its questionnaire response during the original investigation, Max Fortune reported that it accounted for *** percent of Chinese imports to the United States.

⁷² Final Results of Administrative Reviews 2004-2006, 2006-2007, and 2007-2008. 72 FR 58642, October 16, 2007; 73 FR 58113, October 6, 2008; 74 FR 52176, October 9, 2009.

⁷³ *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223, March 30, 2005.

Table I-6
Tissue paper: U.S. imports, by source, 2001-03 and 2006-09

Source	2001	2002	2003	2006	2007	2008	2009
Quantity (1,000 square meters)							
China	204,082	328,119	751,352	68,393	59,952	135,207	137,610
All others ¹	0	0	***	533,569	517,336	443,452	374,219
Total imports	204,082	328,119	***	601,961	577,288	578,660	511,829
Value (\$1,000)							
China	6,936	12,218	30,104	2,592	3,256	4,355	6,242
All others ¹	0	0	***	24,573	24,912	22,034	16,655
Total imports	6,936	12,218	***	27,166	28,167	26,389	22,897
Unit value (per 1,000 square meters)							
China	\$33.98	\$37.24	\$40.07	\$37.90	\$54.30	\$32.21	\$45.36
All others ¹	(²)	(²)	***	46.05	48.15	49.69	44.51
Average total imports	33.98	37.24	***	45.13	48.79	45.60	44.73
Share of value (percent)							
China	100.0	100.0	***	9.5	11.6	16.5	27.3
All others ¹	(²)	(²)	***	90.5	88.4	83.5	72.7
Total imports	100.0	100.0	100.0	100.0	100.0	100.0	100.0
<p>¹ The largest "other" sources and their respective shares of the total value of imported tissue paper during 2009 include the following: Indonesia (43.5 percent), India (15.2 percent), Vietnam (8.7 percent), and Thailand (0.4 percent).</p> <p>² Not applicable.</p> <p><u>Note.</u>--Data are not available for 2004 and 2005 due to the lack of distinct statistical reporting numbers for certain tissue paper products under the HTS.</p> <p><u>Note.</u>--Conversion factor of 16 grams per square meter. While the Commission's unit of measurement for subject tissue paper is 1,000 square meters, official Commerce statistics report data in kilograms. The only Chinese producer that addressed the issue of basis weights in its questionnaire in the original investigation used an average basis weight of *** grams per square meter to convert the firm's production to square meters. Also, U.S. basis weights reportedly range from approximately 14 to 18 grams per square meter for tissue paper without printing. <i>Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)</i>, February 18, 2005 (INV-CC-014), p. VII-2 n. 14 and p. VII-3.</p> <p><u>Note.</u>--Imports from Canada and Japan excluded. Unit values for imports from Canada were exceptionally low. Moreover, the manufacturer that accounted for the vast majority of imports is not known to produce tissue paper products subject to the antidumping duty order. Unit values for imports from Japan were exceptionally high.</p> <p><u>Note.</u>--Because of rounding, figures may not add to the totals shown.</p> <p>Source: <i>Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)</i>, February 18, 2005 (INV-CC-014), table IV-2 (2001-03), official Commerce statistics, HTS statistical reporting numbers 4804.39.4041, 4811.90.4010, 4811.90.6010, and 4811.90.9010 (2006-09).</p>							

Bulk and Consumer Tissue Paper Imports

U.S. imports of bulk tissue paper from China accounted for all imports of bulk tissue paper throughout the period for which data were collected in the original investigation. The quantity of U.S. imports of bulk tissue paper from China increased from *** square meters in 2001 to *** square meters in 2002 and to *** square meters in 2003, and was *** square meters in January-September 2004, compared with *** square meters in January-September 2003. The value of U.S. imports of bulk tissue paper from China increased from \$*** in 2001 to \$*** in 2002 and to \$*** in 2003, and was \$*** in January-September 2004, compared with \$*** in January-September 2003. The average unit values of U.S. imports of bulk tissue paper from China decreased from \$*** per thousand square meters in 2001 to \$*** per thousand square meters in 2002 and to \$*** per thousand square meters in 2003, but was \$*** per thousand square meters in January-September 2004, compared with \$*** per thousand square meters in January-September 2003.⁷⁴

U.S. imports of consumer tissue paper from China accounted for all imports of consumer tissue paper in 2001 and 2002, and the vast majority throughout the remainder of the period for which data were collected in the original investigation. The quantity of U.S. imports of consumer tissue paper from China increased from *** square meters in 2001 to *** square meters in 2002 and to *** square meters in 2003, but was *** square meters in January-September 2004, compared with *** square meters in January-September 2003. The value of U.S. imports of consumer tissue paper from China increased from \$*** in 2001 to \$*** in 2002 and to \$*** in 2003, but was \$*** in January-September 2003 and January-September 2004. The average unit values of U.S. imports of consumer tissue paper from China increased from \$*** per thousand square meters in 2001 to \$*** per thousand square meters in 2002 and to \$*** per thousand square meters in 2003, and was \$*** per thousand square meters in January-September 2004, compared with \$*** in January-September 2003.⁷⁵

Staff notes that, based on average unit values, current imports appear to consist primarily of consumer tissue paper.

Leading Nonsubject Sources of Imports

During the period examined in the original investigation, there were no nonsubject imports until 2003. There was a substantial increase in 2009 when compared to 2003. Using comparable data from 2006-09, nonsubject imports were relatively steady from 2006-07, decreased by 11.6 percent in terms of value from 2007-08, then decreased further by 24.4 percent in terms of value from 2008-09. During the period for which data were collected, imports of subject tissue paper entered the United States from a variety of sources. The largest source of certain tissue paper products in 2009 was Indonesia with imports valued at \$10.0 million (43.5 percent of all imports). Other leading sources of tissue paper include: India, Vietnam, and Thailand, which accounted for 15.2 percent, 8.7 percent, and 0.4 percent of 2009 U.S. import share respectively. As discussed previously, Commerce found circumvention of the subject order with respect to imports from Vietnam in 2008 and Thailand in 2009. Table I-7 presents data for the leading sources of imports.

⁷⁴ *Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)*, February 18, 2005 (INV-CC-014), p. IV-4 n. 7.

⁷⁵ *Ibid.*, p. IV-6 n. 8.

Table I-7
Tissue paper: U.S. imports, by source, 2006-09

Source	2006	2007	2008	2009
Quantity (1,000 square meters)				
China	68,393	59,952	135,207	137,610
Indonesia	107,410	145,985	175,621	185,623
Vietnam	232,865	166,404	123,260	40,788
India	164,037	145,723	48,445	121,183
Thailand	8,893	44,426	51,932	1,315
All other	20,364	14,798	44,195	25,310
Total imports	601,961	577,288	578,660	511,829
Value (\$1,000)				
China	2,592	3,256	4,355	6,242
Indonesia	5,736	7,319	9,570	9,968
Vietnam	11,971	7,974	5,467	1,984
India	5,223	5,573	1,722	3,478
Thailand	664	2,850	3,613	96
All other	981	1,196	1,663	1,129
Total imports	27,166	28,167	26,389	22,897
Unit value (per 1,000 square meters)				
China	\$37.90	\$54.30	\$32.21	\$45.36
Indonesia	53.40	50.13	54.49	53.70
Vietnam	51.41	47.92	44.35	48.65
India	31.84	38.25	35.54	28.70
Thailand	74.62	64.14	69.57	72.63
All other	48.15	80.80	37.63	44.61
Total imports	45.13	48.79	45.60	44.73

Table continued on the following page.

Table I-7--Continued
Tissue paper: U.S. imports, by source, 2006-09

Source	2006	2007	2008	2009
Share of value (percent)				
China	9.5	11.6	16.5	27.3
Indonesia	21.1	26.0	36.3	43.5
Vietnam	44.1	28.3	20.7	8.7
India	19.2	19.8	6.5	15.2
Thailand	2.4	10.1	13.7	0.4
All other	3.6	4.2	6.3	4.9
Total imports	100.0	100.0	100.0	100.0

Note.--Conversion factor of 16 grams per square meter. While the Commission's unit of measurement for subject tissue paper is 1,000 square meters, official Commerce statistics report data in kilograms. The only Chinese producer that addressed the issue of basis weights in its questionnaire in the original investigation used an average basis weight of *** grams per square meter to convert the firm's production to square meters. Also, U.S. basis weights reportedly range from approximately 14 to 18 grams per square meter for tissue paper without printing. *Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)*, February 18, 2005 (INV-CC-014), p. VII-2 n. 14 and p. VII-3.

Note.--Imports from Canada and Japan excluded. Unit values for imports from Canada were exceptionally low. Moreover, the manufacturer that accounted for the vast majority of imports is not known to produce tissue paper products subject to the antidumping duty order. Unit values for imports from Japan were exceptionally high.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Official Commerce statistics, HTS statistical reporting numbers 4804.39.4041, 4811.90.4010, 4811.90.6010, and 4811.90.9010 (2006-09).

Ratio of Imports to U.S. Production

Information concerning the ratio of U.S. imports to U.S. production of tissue paper is presented in table I-8. Subject imports of tissue paper from China were equivalent to 9.8 percent of U.S. production in 2001, increased to 14.8 percent during 2002, and then further increased to 43.4 percent in 2003. The same ratio was 43.8 percent in interim 2003 and reached 49.7 percent by interim 2004. Subject imports of tissue paper from China were equivalent to *** percent of U.S. production during 2009. The ratio of nonsubject imports to domestic production increased substantially from *** percent in 2003 to *** percent in 2009.

Table I-8

Tissue paper: Ratio of U.S. imports to U.S. production, by sources, 2001-03, January-September 2003, January-September 2004, and 2009¹

Item	2001	2002	2003	January-September		2009
				2003	2004	
Quantity (1,000 square meters)						
U.S. production	2,079,215	2,221,313	1,730,868	1,249,484	1,156,725	***
Ratio of U.S. imports to production (percent)						
China	9.8	14.8	43.4	43.8	49.7	***
Other	0.0	0.0	***	***	***	***
Total imports	9.8	14.8	***	***	***	***

¹ Production data presented for 2001-03, January-September 2003, and January-September 2004 were provided by 10 producers believed to have represented nearly all of U.S. production of tissue paper during January 2001-September 2004. Data presented for 2009 were provided by Eagle, Flower City, Garlock, Putney, and Seaman.

Source: *Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)*, February 18, 2005 (INV-CC-014), tables III-2 and IV-4 (2001-03, January-September 2003, and January-September 2004); official Commerce statistics, HTS statistical reporting numbers 4804.39.4041, 4811.90.4010, 4811.90.6010, and 4811.90.9010 (for 2009 U.S. import data); and *Response* of domestic interested parties (for 2009 production data).

Apparent U.S. Consumption and Market Shares

Apparent U.S. consumption and market shares are presented in table I-9. U.S. shipments of domestically produced tissue paper decreased overall during the period examined in the original investigation, while U.S. shipments of tissue paper from China increased, resulting in a significant shift in market shares.

The domestic industry's share of apparent U.S. consumption fell from 91.0 percent in 2001 to 70.9 percent in 2003, and was 71.3 percent in interim 2004 as compared to 76.1 percent in interim 2003. The value of apparent U.S. consumption in 2003 remained relatively stable compared with 2001. Additionally, the Commission noted in the original investigation that bulk tissue paper shipments accounted for approximately 53 percent of apparent U.S. consumption of tissue paper, while consumer tissue paper accounted for approximately 47 percent. U.S. imports of bulk tissue paper from China accounted for all imports of bulk tissue paper during this period. U.S. imports of consumer tissue paper from China accounted for all imports of consumer tissue paper in 2001 and 2002 and virtually all throughout the remainder of the period examined.⁷⁶

The quantity of apparent U.S. consumption in 2009 was lower than at any time during the original investigation, and was *** percent less than apparent U.S. consumption in 2003. The domestic tissue paper industry held an estimated *** percent of apparent U.S. consumption on the basis of quantity in 2009 and an estimated *** percent on the basis of value in that year. U.S. imports from China held a *** percent share of the U.S. market in 2009 on the basis of quantity and *** percent on the basis of value, while other sources held a *** percent share on the basis of quantity and *** percent on the basis of value.

⁷⁶ *Certain Tissue Paper Products From China: Investigation No. 731-TA-1070B (Final)*, USITC Publication 3758, March 2005, pp. 17-18.

Table I-9

Tissue paper: U.S. producers' U.S. shipments, U.S. shipments of imports, and apparent U.S. consumption, 2001-03, January-September 2003, January-September 2004, and 2009¹

Item	2001	2002	2003	Jan.-Sept.		2009 ¹
				2003	2004	
Quantity (1,000 square meters)						
U.S. producers' U.S. shipments	2,050,248	2,109,770	1,675,321	1,113,738	1,071,459	***
U.S. shipments of imports from ¹ -- China	202,212	310,895	***	***	***	137,610
Other sources	0	0	***	***	***	374,219
Total import shipments	202,212	310,895	687,753	350,047	431,718	511,829
Apparent U.S. consumption	2,252,460	2,420,665	2,363,074	1,463,784	1,503,178	***
Value (1,000 dollars)						
U.S. producers' U.S. shipments	118,874	121,388	93,879	62,552	65,091	***
U.S. shipments of imports from ¹ -- China	11,201	17,291	***	***	***	6,242
Other sources	0	0	***	***	***	16,655
Total import shipments	11,201	17,291	36,822	18,828	25,856	22,897
Apparent U.S. consumption	130,075	138,680	130,701	81,380	90,947	***
Share of consumption based on quantity (percent)						
U.S. producers' U.S. shipments	91.0	87.2	70.9	76.1	71.3	***
U.S. shipments of imports from ¹ -- China	9.0	12.8	***	***	***	***
Other sources	0.0	0.0	***	***	***	***
Total import shipments	9.0	12.8	29.1	23.9	28.7	***
Apparent U.S. consumption	100.0	100.0	100.0	100.0	100.0	100.0
Share of consumption based on value (percent)						
U.S. producers' U.S. shipments	91.4	87.5	71.8	76.9	71.6	***
U.S. shipments of imports from ¹ -- China	8.6	12.5	***	***	***	***
Other sources	0.0	0.0	***	***	***	***
Total import shipments	8.6	12.5	28.2	23.1	28.4	***
Apparent U.S. consumption	100.0	100.0	100.0	100.0	100.0	100.0

¹ Consumption during the period examined in the original investigation was calculated using import shipments while 2009 consumption was calculated using Commerce import data.

² ***

Note.—Because of rounding, figures may not add to the totals shown.

Source: Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final), February 18, 2005 (INV-CC-014), table IV-3-IV-4, official Commerce statistics, HTS statistical reporting numbers 4804.39.4041, 4811.90.4010, 4811.90.6010, and 4811.90.9010, and response to the notice of institution.

American Greetings, reportedly one of the largest purchasers of subject tissue paper in the United States, observed in a February 2010 news article that it “experienced difficult industry conditions during 2009 as the global economic slowdown increased in severity throughout the course of the year, particularly during the second half of the year, which is critical to the social expressions industry due to the concentration of major holidays during that period. These industry conditions were characterized by lower customer traffic in retail stores, less consumer spending due to economic uncertainties and a number of retailer bankruptcies. These circumstances significantly impacted our results during 2009, leading to lower revenues and earnings throughout the Corporation.” American Greetings also reported that “revenues in the North American Social Expression Products segment declined primarily due to lower sales of gift packaging products, party goods and specialty products...”⁷⁷

According to the response of the domestic interested parties, the conditions of competition in the domestic tissue paper industry discussed in the previous sections—the high degree of substitutability, overlapping channels of distribution, and the importance of price—continue to exist in the market, and renders the domestic industry vulnerable to the continuation or recurrence of material injury if the order is revoked.⁷⁸

ANTIDUMPING ACTIONS OUTSIDE THE UNITED STATES

Based on available information, subject tissue paper from China has not been subject to any other import relief investigations in the United States or in any other countries.

⁷⁷ Domestic Producers’ Response, exh. 4. “Price of Love is Down this Valentine’s Day,” AOL News, February 10, 2010.

⁷⁸ Domestic Producers’ Response at 19.

THE SUBJECT INDUSTRY IN CHINA

The Commission reported in the original investigation that there were more than 4,000 paper mills in China, of which approximately 750 produced tissue paper (broadly defined). However, as in the United States, the vast majority of tissue production in China was considered to be dry-creped tissue for sanitary and household purposes. The Commission sent foreign producer questionnaires to 78 firms identified as possible tissue paper producers in the petition and from internet searches in the original investigation. Two producers (Guilen Quifeng Paper Co., Ltd., and Max Fortune Industrial, Ltd.)⁷⁹ completed and returned the Commission's questionnaire for their production operations in China, as did one exporter (Constant China Import Export, Ltd.) for its trading operations. China National provided only a partial response to the Commission's questionnaire in the original investigation. Their exports of subject merchandise accounted for *** percent of total U.S. imports of tissue paper from China during 2003.

The Commission did not receive any responses to its notice of institution in this review from Chinese producers of the subject merchandise. However, the domestic interested parties listed 79 producers of tissue paper in China and indicated that China's capacity to produce tissue paper products has increased significantly since the imposition of the order. They provided a number of examples that they argued were representative of a mere sampling of the increase in China's tissue paper production capacity in recent years.⁸⁰

Table I-10 presents trade data for the Chinese tissue paper industry compiled during the original investigation and U.S. imports from China in 2009. As these data show, Chinese production increased throughout the period for which data were collected in the original investigation. During the period examined in the original investigation, the Chinese producers operated their facilities at capacity utilization rates ranging from 90.4 to 97.5 percent during 2001-03 and projected 2004. The responding producers' exports of the subject merchandise to the United States accounted for approximately 21.1 percent of their total shipments of tissue paper and 84.1 percent of total U.S. imports from China during 2003.⁸¹

According to the domestic producers' response, Chinese production capacity has increased since the imposition of the order in 2005, and is likely to continue to increase in the reasonably foreseeable future. The domestic interested parties emphasize that the Chinese tissue paper industry is highly export-oriented. They also emphasize that Chinese producers "have continued to demonstrate an active interest in the U.S. market and a willingness to go to great lengths to access our market, despite the presence of the order," which is corroborated by the two circumvention findings and a third anti-circumvention inquiry that is currently underway. Therefore, they conclude, in the absence of the dumping order low-priced imports from China will surge.⁸²

⁷⁹ Guilen Quifeng was the subject of an affirmative circumvention finding in 2008. Max Fortune is the subject of a current anti-circumvention inquiry initiated in 2010. 73 FR 72771, December 1, 2008; 75 FR 17127, April 5, 2010.

⁸⁰ Domestic Producers' Response, pp. 22-26 and exhibit 8.

⁸¹ Available data for Chinese producers of bulk and consumer tissue paper are presented on a dis-aggregated basis in *Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final)*, February 18, 2005 (INV-CC-014), tables C-4 and C-5.

⁸² Domestic Producers' Response at 22-26.

Table I-10

Tissue paper: Chinese production capacity, production, shipments, and inventories, 2001-03, projected 2004-05, and 2009

Item	2001	2002	2003	Projections		2009
				2004	2005	
Quantity (1,000 square meters)						
Capacity	2,356,005	2,711,866	2,877,333	2,890,900	2,880,600	(¹)
Production	2,166,512	2,451,586	2,806,246	2,813,854	2,803,714	(¹)
End of period inventories	168,443	160,528	57,927	58,730	58,450	(¹)
Shipments:						
Internal consumption	***	***	***	***	***	(¹)
Home market	***	***	***	***	***	(¹)
Exports to--						
The United States	425,752	468,918	631,937	542,272	503,902	137,610
All other markets ²	185,309	177,990	256,457	269,110	273,120	(¹)
Total exports	611,061	646,908	888,394	811,382	777,022	(¹)
Total shipments	2,142,073	2,487,503	2,998,302	2,947,896	2,939,322	(¹)
Ratios and shares (percent)						
Capacity utilization	92.0	90.4	97.5	97.3	97.3	(¹)
Inventories to production	7.8	6.5	2.1	2.1	2.1	(¹)
Inventories to total shipments	7.9	6.5	1.9	2.0	2.0	(¹)
Share of total quantity of shipments:						
Internal consumption	***	***	***	***	***	(¹)
Home market	***	***	***	***	***	(¹)
Exports to--						
The United States	19.9	18.9	21.1	18.4	17.1	(¹)
All other markets ²	8.7	7.2	8.6	9.1	9.3	(¹)
All export markets	28.5	26.0	29.6	27.5	26.4	(¹)
¹ Not available. ² The domestic interested parties stated in their response that other Chinese export markets include Canada and Europe. Domestic Producers' Response, p. 22. ³ ***.						
Note – Because of rounding, figures may not add to the totals shown.						
Source: Staff Report on Certain Tissue Paper Products from China, Investigation No. 731-TA-1070B (Final), February 18, 2005 (INV-CC-014), Table VII-1; Official Commerce statistics, HTS statistical reporting numbers 4804.39.4041, 4811.90.4010, 4811.90.6010, and 4811.90.9010.						

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION****[Investigation No. 731-TA-1070B (Review)]****Tissue Paper From China****AGENCY:** United States International Trade Commission.**ACTION:** Institution of a five-year review concerning the antidumping duty order on certain tissue paper products from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on certain tissue paper products from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to be assured of consideration, the deadline for responses is March 3, 2010. Comments on the adequacy of responses may be filed with the Commission by April 16, 2010. 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), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* February 1, 2010.

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

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. 10-5-210, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 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.

Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On March 30, 2005, the Department of Commerce issued an antidumping duty order on imports of certain tissue paper products from China (70 FR 16223). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

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

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

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as all tissue paper, co-extensive with Commerce's scope. Certain Commissioners defined the *Domestic Like Product* differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic producers (whether integrated or converters) of tissue paper. Certain Commissioners defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is March 30, 2005.

(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 advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics.

Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

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

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of

the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 3, 2010. 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 April 16, 2010. 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) and name, telephone number, fax number, and E-mail address of the certifying official.

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

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

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

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

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

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) 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 2009, except as noted (report quantity data in square meters 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) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

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

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

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) 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 2009 (report quantity data in square meters and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

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

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

(11) 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 2009 (report quantity data in square meters and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

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

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) 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.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different

national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

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

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

By order of the Commission.

Issued: January 26, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010-1836 Filed 1-29-10; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-year (“Sunset”) Review

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”), the Department of Commerce (“the Department”) is automatically initiating a five-year review (“Sunset Review”) of the antidumping duty order listed below. The International Trade Commission (“the Commission”) is publishing concurrently with this notice its notice of *Institution of Five-year Review* which covers the same order.

EFFECTIVE DATE: February 1, 2010.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution

Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department’s procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department’s conduct of Sunset Reviews is set forth in the Department’s Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–570–894	731–TA–1070B	China	Tissue Paper Products	Brandon Farlander (202) 482–0182

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department’s regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department’s Internet Web site at the following address: “<http://ia.ita.doc.gov/sunset/>.” All submissions in these Sunset Reviews must be filed in accordance with the Department’s regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (“APO”) immediately

following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department’s regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department’s regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. See 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department’s

regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department’s information requirements are distinct from the Commission’s information requirements. Please consult the Department’s regulations for information regarding the Department’s conduct of Sunset Reviews.¹ Please consult the Department’s regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and

¹ In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: January 22, 2010.

John M. Andersen,

*Acting Deputy Assistant Secretary for
Antidumping and Countervailing Duty
Operations.*

[FR Doc. 2010-2063 Filed 1-29-10; 8:45 am]

BILLING CODE 3510-DS-S

**INTERNATIONAL TRADE
COMMISSION****[Investigation No. 731–TA–1070B (Review)]****Certain Tissue Paper Products From
China****AGENCY:** United States International
Trade Commission.**ACTION:** Scheduling of an expedited
five-year review concerning the
antidumping duty order on certain
tissue paper products from China.**SUMMARY:** The Commission hereby gives
notice of the scheduling of an expedited
review pursuant to section 751(c)(3) of
the Tariff Act of 1930 (19 U.S.C.
1675(c)(3)) (the Act) to determine
whether revocation of the antidumping
duty order on certain tissue paper
products from China 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).**DATES:** Effective Date: May 7, 2010.**FOR FURTHER INFORMATION CONTACT:**

Keysha Martinez (202–205–2136), 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](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 May 7, 2010, the
Commission determined that the
domestic interested party group
response to its notice of institution (75
FR 5115, February 1, 2010) 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 June
3, 2010, 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 June 8,
2010 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 June 8, 2010.
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

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 by Eagle Tissue LLC, Flower City Tissue
Mills Co., Garlock Printing & Converting, Inc.,
Putney Paper Co., Ltd., and Seaman Paper Co. of
Massachusetts, Inc. to be individually adequate.
Comments from other interested parties will not be
accepted (see 19 CFR 207.62(d)(2)).

means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

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.

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

By order of the Commission.

Issued: May 13, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010-11970 Filed 5-18-10; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-894]

Certain Tissue Paper Products from the People's Republic of China: Final Results of Expedited Sunset Review

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

SUMMARY: On February 1, 2010, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on certain tissue paper products from the People's Republic of China (PRC) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department conducted an expedited (120-day) sunset review of this order. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1766 or (202) 482-0182, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On February 1, 2010, the Department published the notice of initiation of the

sunset review of the antidumping duty order on certain tissue paper products from the PRC pursuant to section 751(c) of the Act. See *Initiation of Five-year ("Sunset") Review*, 75 FR 5042, February 1, 2010. The Department received a Notice of Intent to Participate from the following domestic tissue paper producers: Seaman Paper Company of Massachusetts, Inc., Eagle Tissue LLC, Flower City Tissue Mills Co., Garlock Printing & Converting, Inc., and Putney Paper Co., Ltd. (collectively the domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as producers of a domestic like product in the United States. We received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from any respondent interested parties. 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 the order.

Scope of the Order

The tissue paper products covered by the order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to the order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to the order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to the order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to the order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject

merchandise may be under one or more of several different subheadings, including: 4802.30, 4802.54, 4802.61, 4802.62, 4802.69, 4804.31.1000, 4804.31.2000, 4804.31.4020, 4804.31.4040, 4804.31.6000, 4804.39, 4805.91.1090, 4805.91.5000, 4805.91.7000, 4806.40, 4808.30, 4808.90, 4811.90, 4823.90, 4802.50.00, 4802.90.00, 4805.91.90, 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.¹

Excluded from the scope of the order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China" (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of the continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order 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 the Central Records Unit, room 1117 of the main Commerce building.

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

Final Results of Review

We determine that revocation of the antidumping duty order on certain

¹ On January 30, 2007, at the direction of U.S. Customs and Border Protection, the Department added the following HTSUS classifications to the antidumping duty/countervailing duty module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

tissue paper products from the PRC at the following weighted-average
would be likely to lead to the percentage margins:
continuation or recurrence of dumping

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Qingdao Wenlong Co. Ltd	112.64
Fujian Nanping Investment & Enterprise Co	112.64
Fuzhou Light Industry Import & Export Co. Ltd	112.64
Guilin Qifeng Paper Co. Ltd	112.64
Ningbo Spring Stationary Limited Company	112.64
Everlasting Business & Industry Corporation Ltd	112.64
BA Marketing & Industrial Co. Ltd	112.64
Samsam Production Limited & Guangzhou Baxi Printing Products Limited	112.64
Max Fortune Industrial Limited	112.64
PRC-wide rate	112.64

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. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders 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: June 3, 2010.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-13972 Filed 6-9-10; 8:45 am]

BILLING CODE 3510-DS-S

APPENDIX B
COMMISSION'S STATEMENT ON ADEQUACY

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

Tissue Paper from China
Inv. No. 731-TA-1070B (Review)

On May 7, 2010, the Commission determined that it should conduct an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)(B)).

The Commission received a consolidated response to the notice of institution from domestic producers Seaman Paper Company of Massachusetts, Inc., Eagle Tissue LLC, Flower City Tissue Mills Co., Garlock Printing & Converting, Inc., and Putney Paper Co., Ltd. These producers collectively account for approximately 95 percent of U.S. production of the domestic like product. The Commission found the individual response of each of these domestic producers to be adequate. The Commission also determined that the domestic interested party group response was adequate.

No responses were received from any respondent interested parties. Consequently, the Commission determined that the respondent interested party group response was inadequate.

In the absence of an adequate respondent interested party group response or any other circumstance warranting proceeding to a full review of the order, the Commission determined to conduct an expedited review.

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

APPENDIX C

**TABLES C-1, C-2, AND C-3 FROM COMMISSION'S PUBLIC REPORT IN
THE FINAL PHASE OF THE ORIGINAL INVESTIGATION**

Table C-1

Tissue paper products: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

Item	Reported data					Period changes			
	2001	2002	2003	January-September		2001-03	2001-02	2002-03	Jan.-Sept. 2003-04
				2003	2004				
U.S. consumption quantity:									
Amount	2,252,460	2,420,665	2,363,074	1,463,784	1,503,178	4.9	7.5	-2.4	2.7
Producers' share (1)	91.0	87.2	70.9	76.1	71.3	-20.1	-3.9	-16.3	-4.8
Importers' share (1):									
China	9.0	12.8	***	***	***	***	3.9	***	***
All other sources	0.0	0.0	***	***	***	***	0.0	***	***
Total imports	9.0	12.8	29.1	23.9	28.7	20.1	3.9	16.3	4.8
U.S. consumption value:									
Amount	130,075	138,680	130,701	81,380	90,947	0.5	6.6	-5.8	11.8
Producers' share (1)	91.4	87.5	71.8	76.9	71.6	-19.6	-3.9	-15.7	-5.3
Importers' share (1):									
China	8.6	12.5	***	***	***	***	3.9	***	***
All other sources	0.0	0.0	***	***	***	***	0.0	***	***
Total imports	8.6	12.5	28.2	23.1	28.4	19.6	3.9	15.7	5.3
U.S. shipments of imports from:									
China:									
Quantity	202,212	310,895	***	***	***	***	53.7	***	***
Value	11,201	17,291	***	***	***	***	54.4	***	***
Unit value	\$55.39	\$55.62	***	***	***	***	0.4	***	***
Ending inventory quantity	21,750	37,197	***	***	***	***	71.0	***	***
All other sources:									
Quantity	0	0	***	***	***	***	0	***	***
Value	0	0	***	***	***	***	0	***	***
Unit value	0	0	***	***	***	***	0	***	***
Ending inventory quantity	0	0	***	***	***	***	0	***	***
All sources:									
Quantity	202,212	310,895	687,753	350,047	431,718	240.1	53.7	121.2	23.3
Value	11,201	17,291	36,822	18,828	25,856	228.7	54.4	113.0	37.3
Unit value	\$55.39	\$55.62	\$53.54	\$53.79	\$59.89	-3.3	0.4	-3.7	11.3
Ending inventory quantity	21,750	37,197	95,427	233,686	235,154	338.7	71.0	156.5	0.6
U.S. producers':									
Average capacity quantity	3,722,201	3,878,349	3,814,081	2,737,161	2,579,323	2.5	4.2	-1.7	-5.8
Production quantity	2,079,215	2,221,313	1,730,868	1,249,484	1,156,725	-16.8	6.8	-22.1	-7.4
Capacity utilization (1)	55.9	57.3	45.4	45.6	44.8	-10.5	1.4	-11.9	-0.8
U.S. shipments:									
Quantity	2,050,248	2,109,770	1,675,321	1,113,738	1,071,459	-18.3	2.9	-20.6	-3.8
Value	118,874	121,388	93,879	62,552	65,091	-21.0	2.1	-22.7	4.1
Unit value	\$57.98	\$57.54	\$56.04	\$56.16	\$60.75	-3.4	-0.8	-2.6	8.2
Export shipments:									
Quantity	41,388	46,767	47,304	28,915	30,662	14.3	13.0	1.1	6.0
Value	2,265	2,436	2,373	1,453	1,621	4.8	7.5	-2.6	11.6
Unit value	\$54.73	\$52.09	\$50.16	\$50.25	\$52.87	-8.3	-4.8	-3.7	5.2
Ending inventory quantity	303,427	368,103	376,345	467,599	431,195	24.0	21.3	2.2	-7.8
Inventories total shipments (1)	14.5	17.1	21.8	30.7	29.3	7.3	2.6	4.8	-1.3
Production workers	592	571	428	413	437	-27.7	-3.4	-25.2	5.8
Hours worked (1,000s)	1,219	1,188	1,018	725	670	-16.5	-2.5	-14.4	-7.6
Wages paid (\$1,000s)	14,652	15,556	13,805	9,643	9,180	-5.8	6.2	-11.3	-4.8
Hourly wages	\$12.02	\$13.09	\$13.57	\$13.30	\$13.70	12.9	8.9	3.6	3.0
Productivity (sq meters/hour)	1,705.7	1,869.5	1,701.1	1,723.3	1,726.8	-0.3	9.6	-9.0	0.2
Unit labor costs	\$7.05	\$7.00	\$7.98	\$7.72	\$7.94	13.2	-0.6	13.9	2.8
Net sales:									
Quantity	2,191,763	2,114,996	1,606,772	1,142,607	1,102,121	-26.7	-3.5	-24.0	-3.5
Value	124,967	121,342	91,934	63,935	66,709	-26.4	-2.9	-24.2	4.3
Unit value	\$57.02	\$57.37	\$57.22	\$55.96	\$60.53	0.4	0.6	-0.3	8.2
Cost of goods sold (COGS)	92,831	91,627	66,918	47,705	48,231	-27.9	-1.3	-27.0	1.1
Gross profit or (loss)	32,135	29,715	25,016	16,230	18,478	-22.2	-7.5	-15.8	13.8
SG&A expenses	23,908	24,672	21,403	15,059	15,771	-10.5	3.2	-13.2	4.7
Operating income or (loss)	8,228	5,044	3,613	1,171	2,707	-56.1	-38.7	-28.4	131.2
Capital expenditures	2,057	1,382	1,004	2,464	291	-51.2	-32.8	-27.4	-88.2
Unit COGS	\$42.35	\$43.32	\$41.65	\$41.75	\$43.76	-1.7	2.3	-3.9	4.8
Unit SG&A expenses	\$10.91	\$11.67	\$13.32	\$13.18	\$14.31	22.1	6.9	14.2	8.6
Unit operating income or (loss)	\$3.75	\$2.38	\$2.25	\$1.02	\$2.46	-40.1	-36.5	-5.7	139.7
COGS/sales (1)	74.3	75.5	72.8	74.6	72.3	-1.5	1.2	-2.7	-2.3
Operating income or (loss)/ sales (1)	6.6	4.2	3.9	1.8	4.1	-2.7	-2.4	-0.2	2.2

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Not applicable.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

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

Table C-2

Bulk tissue paper products: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

Item	Reported data					Period changes				
	2001	2002	2003	January-September		2001-03	2001-02	2002-03	Jan.-Sept.	
				2003	2004				2003-04	
U.S. consumption quantity:										
Amount	***	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***	***
Importers' share (1):										
China	***	***	***	***	***	***	***	***	***	***
All other sources	***	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***	***
U.S. consumption value:										
Amount	***	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***	***
Importers' share (1):										
China	***	***	***	***	***	***	***	***	***	***
All other sources	***	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***	***
U.S. shipments of imports from:										
China:										
Quantity	9,101	47,296	***	***	***	***	419.7	***	***	***
Value	286	1,081	***	***	***	***	278.0	***	***	***
Unit value	\$31.43	\$22.86	***	***	***	***	-27.3	***	***	***
Ending inventory quantity	1,495	6,230	***	***	***	***	316.7	***	***	***
All other sources:										
Quantity	0	0	***	***	***	***	0	***	***	***
Value	0	0	***	***	***	***	0	***	***	***
Unit value	0	0	***	***	***	***	0	***	***	***
Ending inventory quantity	0	0	***	***	***	***	0	***	***	***
All sources:										
Quantity	9,101	47,296	168,459	96,633	134,413	1751.0	419.7	256.2	39.1	
Value	286	1,081	3,383	1,919	3,140	1082.8	278.0	212.9	63.6	
Unit value	\$31.43	\$22.86	\$20.08	\$19.86	\$23.36	-36.1	-27.3	-12.1	17.6	
Ending inventory quantity	1,495	6,230	24,685	6,889	57,058	1551.2	316.7	296.2	728.2	
U.S. producers':										
Average capacity quantity	***	***	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***	***	***
Capacity utilization (1)	***	***	***	***	***	***	***	***	***	***
U.S. shipments:										
Quantity	***	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***	***
Export shipments:										
Quantity	***	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***	***
Production workers	***	***	***	***	***	***	***	***	***	***
Hours worked (1,000s)	***	***	***	***	***	***	***	***	***	***
Wages paid (\$1,000s)	***	***	***	***	***	***	***	***	***	***
Hourly wages	***	***	***	***	***	***	***	***	***	***
Productivity (sq meters/hour)	***	***	***	***	***	***	***	***	***	***
Unit labor costs	***	***	***	***	***	***	***	***	***	***
Net sales:										
Quantity	***	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***	***	***	***	***
Unit operating income or (loss)	***	***	***	***	***	***	***	***	***	***
COGS/sales (1)	***	***	***	***	***	***	***	***	***	***
Operating income or (loss)/sales (1)	***	***	***	***	***	***	***	***	***	***

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Not applicable.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

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

Table C-3

Consumer tissue paper products: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

(Quantity=1,000 square meters, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per 1,000 square meters; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2001	2002	2003	January-September		2001-03	2001-02	2002-03	Jan.-Sept. 2003-04
				2003	2004				
U.S. consumption quantity:									
Amount	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Producers' share (1)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Importers' share (1):									
China	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
All other sources	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Total imports	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
U.S. consumption value:									
Amount	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Producers' share (1)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Importers' share (1):									
China	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
All other sources	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Total imports	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
U.S. shipments of imports from:									
China:									
Quantity	193,111	263,599	xxx	xxx	xxx	xxx	36.5	xxx	xxx
Value	10,915	16,210	xxx	xxx	xxx	xxx	48.5	xxx	xxx
Unit value	\$56.52	\$61.50	xxx	xxx	xxx	xxx	8.8	xxx	xxx
Ending inventory quantity	20,255	30,967	xxx	xxx	xxx	xxx	52.9	xxx	xxx
All other sources:									
Quantity	0	0	xxx	xxx	xxx	xxx	0	xxx	xxx
Value	0	0	xxx	xxx	xxx	xxx	0	xxx	xxx
Unit value	0	0	xxx	xxx	xxx	xxx	0	xxx	xxx
Ending inventory quantity	0	0	xxx	xxx	xxx	xxx	0	xxx	xxx
All sources:									
Quantity	193,111	263,599	519,294	253,413	297,306	168.9	36.5	97.0	17.3
Value	10,915	16,210	33,439	16,909	22,717	206.4	48.5	106.3	34.3
Unit value	\$56.52	\$61.50	\$64.39	\$66.73	\$76.41	13.9	8.8	4.7	14.5
Ending inventory quantity	20,255	30,967	70,742	226,797	178,096	249.3	52.9	128.4	-21.5
U.S. producers:									
Average capacity quantity	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Production quantity	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Capacity utilization (1)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
U.S. shipments:									
Quantity	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Value	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Unit value	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Export shipments:									
Quantity	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Value	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Unit value	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Ending inventory quantity	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Inventories/total shipments (1)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Production workers	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Hours worked (1,000s)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Wages paid (\$1,000s)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Hourly wages	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Productivity (sq meters/hour)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Unit labor costs	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Net sales:									
Quantity	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Value	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Unit value	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Cost of goods sold (COGS)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Gross profit or (loss)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
SG&A expenses	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Operating income or (loss)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Capital expenditures	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Unit COGS	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Unit SG&A expenses	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Unit operating income or (loss)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
COGS/sales (1)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Operating income or (loss)/ sales (1)	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Not applicable.

Note: Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

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

APPENDIX D

**DOMESTIC LIKE PRODUCT SECTION FROM COMMISSION'S PUBLIC
REPORT IN THE FINAL PHASE OF THE ORIGINAL INVESTIGATION**

typically require high levels of management, logistical,⁹⁰ and/or design expertise of their suppliers,⁹¹ all of which may be manifest in vendor prequalification programs.⁹² Subject tissue paper may be purchased in conjunction with other items such as gift bags, gift boxes, and/or roll wrap⁹³ requiring vendors to source items from different manufacturers.

Price

Price data collected by the Commission for specific tissue paper products appear in Part V of this report. In the aggregate, the average unit values for U.S. shipments of domestically produced certain tissue paper products were \$57.98 per thousand square meters in 2001, \$57.54 in 2002, and \$56.04 in 2003. By comparison, the average unit values paid by direct importers for U.S. imports of certain tissue paper products from China were \$33.98 per thousand square meters in 2001, \$37.24 in 2002, and \$40.07 in 2003. The average unit values for U.S. shipments of imports of certain tissue paper products from China were \$55.39 per thousand square meters in 2001, \$55.62 in 2002, and \$*** in 2003.⁹⁴ Because certain U.S. retailers are themselves direct importers of the subject merchandise from China, both calculations of average unit values are believed to be relevant.

DOMESTIC LIKE PRODUCT ISSUES

The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price. In this investigation, petitioners have identified one domestic like product, certain tissue paper products.⁹⁵ Petitioners oppose further subdivision or expansion of the domestic like products.⁹⁶ Respondents contend that the Commission should find two distinct domestic like products, consumer tissue paper and, in contrast, bulk tissue paper.^{97 98}

⁹⁰ Respondents Cleo's and Crystal Creative's Prehearing Brief, exhibit 2, p. 22.

⁹¹ Respondent Target's Responses to Hearing Questions, p. 2.

⁹² Respondent Target's Responses to Hearing Questions, p. 7.

⁹³ Respondent Target's Responses to Hearing Questions, p. 1.

⁹⁴ For additional details on prices, please see Part V, "Price Data." For additional details on average unit values, please see Part III and Part IV.

⁹⁵ Petition, p. 30.

⁹⁶ Petitioners' Postconference Brief, pp. 4-14.

⁹⁷ Respondents Cleo's and Crystal Creative's Posthearing Brief, p. 2, and Respondent Target's Posthearing Brief, p. 1.

⁹⁸ The Commission noted in its Views in the preliminary phase of this investigation its intention of collecting additional information and revisiting the issue as to whether bulk tissue paper and consumer tissue paper should be characterized as two domestic like products. See *Certain Tissue Paper Products and Crepe Paper Products From China, Investigation No. 731-TA-1070 (Preliminary)*, USITC Publication 3682, April 2004, p. 12. Accordingly, this report contains additional quantitative and narrative information from questionnaire responses in the final phase of this investigation. Comparisons between bulk and consumer tissue paper by U.S. producers, U.S. importers, and U.S. purchasers are reproduced in full in appendix D.

Physical Characteristics and Uses

Certain tissue paper products are cut-to-length sheets of tissue paper in various sizes, colors, and printed designs that are packaged in various forms.⁹⁹ In questionnaire responses, U.S. producers of certain tissue paper products generally indicated that the physical characteristics of sheets of bulk and consumer tissue were essentially the same. However, the respondents contend that there are discernable physical differences in the tissue paper based on sheet size and design.¹⁰⁰ According to the respondents and one purchaser of both bulk and consumer tissue (see purchaser comments in appendix D), sheets of bulk tissue generally are larger than sheets of consumer tissue.¹⁰¹ Petitioners dispute the claim that bulk tissue sheets are always larger than consumer tissue sheets and note that some retailers are reducing the size of their tissue paper in order to control cost.¹⁰² They suggest that there is substantial overlap in sheet sizes.¹⁰³ A comparison of Seaman's standard sizes for bulk (***) sizes) and consumer (***) sizes) tissue paper is shown in table I-4.

Table I-4
Standard dimensions of Seaman's consumer and bulk tissue paper products

* * * * *

Respondents also contend that bulk and consumer tissue have different designs; bulk tissue is often plain, solid color, or has a basic pattern,¹⁰⁴ whereas consumer tissue is customized with colors, artwork, and designs¹⁰⁵ that are sometimes coordinated with other products such as gift bags (see purchaser comments in appendix D). Of 2003 U.S. shipments of bulk tissue paper, *** percent was white tissue paper, *** percent was solid colored tissue paper (other than white), *** percent was printed tissue paper, and *** percent was other tissue paper.¹⁰⁶ (Comparable figures for consumer tissue paper appear in table I-1.)

Respondents stress the differences in packaging between bulk and consumer tissue. Bulk tissue packaging is functional and minimally adorned,¹⁰⁷ whereas consumer tissue paper is packaged in colorful, customized primary packaging¹⁰⁸ and in decorated corrugated containers that are intended to be in-store displays. Finally, respondents contend that a difference exists based on sheet counts of bulk and consumer tissue packages.¹⁰⁹ Purchasers report that sheet counts for packages of consumer tissue paper range from 5 to 480 sheets; sheet counts for packages of bulk tissue paper vary from 200 sheets (see

⁹⁹ *Petition*, p. 30.

¹⁰⁰ *Respondents Cleo's and Crystal Creative's Postconference Brief*, pp. 4, 5.

¹⁰¹ *Respondents Cleo's and Crystal Creative's Postconference Brief*, p. 5.

¹⁰² *Hearing Transcript*, testimony of George Jones, president, Seaman, p. 22.

¹⁰³ *Petitioners' Prehearing Brief*, p. 6 and *Postconference Brief*, pp. 6, 7.

¹⁰⁴ *Respondents Cleo's and Crystal Creative's Prehearing Brief*, p. 5.

¹⁰⁵ *Respondents Cleo's and Crystal Creative's Postconference Brief*, p. 5.

¹⁰⁶ The reported shares by type of tissue paper are weighted averages based on shipment data provided by five U.S. producers of bulk tissue paper and representing *** percent of total U.S. shipments of bulk tissue paper in 2003. *Respondents Cleo's and Crystal Creative's Posthearing Brief*, p. 5, e-mail from Kathleen Cannon, Counsel to the Petitioners, Collier Shannon Scott, to Fred Forstall, USITC, February 16, 2005, and *Hearing Transcript*, p. 67.

¹⁰⁷ *Respondents City Paper et al.'s Postconference Brief*, p. 4.

¹⁰⁸ *Respondents Cleo's and Crystal Creative's Posthearing Brief*, p. 5 and *Postconference Brief*, p. 5.

¹⁰⁹ *Respondents Cleo's and Crystal Creative's Prehearing Brief*, p. 6 and *Postconference Brief*, p. 3.

purchaser comments in appendix D) to multiple reams, and in some cases, bulk tissue is sold strictly by weight.

Petitioners assert that such differences in dimensions, colors, and designs as noted above demonstrate a continuum within a single domestic like product, and argue that the sale of tissue paper in bulk does not constitute a separate domestic like product from the sale of the same tissue paper in consumer packages.¹¹⁰ Petitioners assert that the characteristics of tissue paper sold in bulk to retailers and to consumers are similar and that the vast majority of the tissue sold to consumers in the U.S. market is white or a single color.¹¹¹ They also suggest that differences in package size reflect customers' shelf space and that tissue paper sold in bulk to retailers can be either folded or flat.¹¹²

Respondents emphasize the difference in the end uses of consumer tissue, which is used for "decorative wrapping," and bulk tissue, which is sold to retail stores¹¹³ to protect merchandise and laundry and to fill voids in goods and packages.¹¹⁴ Petitioners note that in either case, the tissue paper is used as internal wrapping in a box or bag.¹¹⁵

Manufacturing Facilities and Production Employees

The domestic industry producing certain tissue paper products includes 12 established producers, of which Seaman, Flower City, and Pacon currently produce both consumer and bulk tissue paper.¹¹⁶ In addition, Crystal Creative (acquired in 2002 by U.S. importer Cleo) produced both consumer and bulk tissue paper until 2003 when it suspended production at its Maysville, KY, facility;¹¹⁷ it now produces only consumer tissue, having recently resumed converting operations at Maysville.¹¹⁸ These four firms accounted for *** percent of total U.S. tissue paper production in 2001, *** percent in 2002, and *** percent in 2003.

Respondents acknowledge that certain manufacturing steps (e.g., printing) may be accomplished on the same equipment for both bulk and consumer tissue paper,¹¹⁹ but they note that the manufacture of consumer tissue paper begins with a design phase that can require an 18-month lead time.¹²⁰ They contend that bulk and consumer tissue often are manufactured on different production lines or on different "types" of equipment, the principal differences being size¹²¹ and the number of folds. Finally, they note

¹¹⁰ *Petitioners' Prehearing Brief*, p. 8.

¹¹¹ *Petitioners' Prehearing Brief*, p. 7 and *Postconference Brief*, p. 6.

¹¹² *Petitioners' Prehearing Brief*, p. 6 and *Postconference Brief*, pp. 6, 7.

¹¹³ *Respondents Cleo's and Crystal Creative's Prehearing Brief*, pp. 6, 7 and *Postconference Brief*, p. 3.

¹¹⁴ *Respondents City Paper et. al.'s Postconference Brief*, p. 5.

¹¹⁵ *Petitioners' Postconference Brief*, p. 8.

¹¹⁶ *Conference Transcript*, testimony of George Jones, president, Seaman, p. 19; testimony of William Shafer, president, Flower City, p. 26.

¹¹⁷ *Conference Transcript*, testimony of Andrew Kelly, president, Cleo, pp. 125-126.

¹¹⁸ CSS Industries 10-Q for the quarter ending September 30, 2004, *Petitioners' Posthearing Brief*, exhibit 6, p. 16.

¹¹⁹ *Respondents Cleo's and Crystal Creative's Postconference Brief*, p. 7.

¹²⁰ *Respondent Target's Postconference Brief*, p. 2.

¹²¹ Jumbo rolls used in the production of bulk tissue paper are typically wider. *Respondents Cleo's and Crystal Creative's Postconference Brief*, p. 7.

that bulk and consumer tissue often are manufactured in different factories¹²² or by different firms.¹²³ Petitioners contend that all tissue paper shares the same basic manufacturing process¹²⁴ and that bulk grades and consumer grades may be produced in the same facility with common employees and similar processes.¹²⁵ In its questionnaire response, one firm, ***, asserted that there was no crossover of product between bulk and consumer tissue. However, ***, reported that it made bulk and consumer tissue with the very same equipment. Another U.S. producer, ***, uses the same equipment to produce bulk and club packs.¹²⁶

Interchangeability and Customer and Producer Perceptions

Respondents contend that at the level “defining the products as sold,” bulk tissue paper (sold to retailers) and consumer tissue paper (sold to consumers) are not interchangeable.¹²⁷ Respondents also note the differences in quantities per package between consumer and bulk tissue, arguing that individuals that purchase consumer tissue do not wish to purchase tissue paper in reams¹²⁸ and that club packs, in fact, are consumed by consumers and not by businesses.¹²⁹ Petitioners dispute this contention, arguing that small businesses may also purchase club packs.¹³⁰ Respondents also assert that consumer tissue is a more “flashy” commodity¹³¹ that retailers do not use as dunnage for their products.¹³²

U.S. producers reportedly view bulk tissue paper and consumer tissue paper as the same, or at least very similar, with one exception. *** indicated that the only similarity between consumer and bulk tissue is the base tissue stock. That company pointed to differences in the packaging, diversity of product with packages, labeling, artwork, folds, and customers of consumer and bulk tissue paper.

Customer perceptions were more mixed. While three purchasers suggested that there were no differences (or general interchangeability) between bulk and consumer tissue, one (***) stated flatly that there was no comparability between the tissue types, stressing differences in package size, content, price (to consumer), and seasonal offerings. Many purchasers indicated that they purchased only one form of tissue paper; others pointed out distinctions in the size, weight, packaging, and ultimate consumer of bulk and consumer tissue paper.¹³³

¹²² Respondents *City Paper et. al.'s Postconference Brief*, p. 10.

¹²³ Respondents *Cleo's and Crystal Creative's Postconference Brief*, p. 7.

¹²⁴ *Petition*, p. 31.

¹²⁵ *Petitioners' Postconference Brief*, p. 8.

¹²⁶ E-mail from Kathleen Cannon, Counsel to the Petitioners, Collier Shannon Scott, to Fred Forstall, USITC, March 25, 2004.

¹²⁷ Respondents *Cleo's and Crystal Creative's Prehearing Brief*, p. 7.

¹²⁸ Respondents *City Paper et. al.'s Postconference Brief*, p. 6.

¹²⁹ Respondents *City Paper et. al.'s Postconference Brief*, p. 13, and Respondents *Cleo's and Crystal Creative's Postconference Brief*, p. 4.

¹³⁰ *Petitioners' Postconference Brief*, p. 7.

¹³¹ Respondents *City Paper et. al.'s Postconference Brief*, p. 8.

¹³² Respondents *City Paper et. al.'s Postconference Brief*, p. 7.

¹³³ Many importers addressed this issue based on whether or not they themselves imported bulk and consumer tissue paper; those that imported only one variety tended not to be able to compare the two varieties. Seven importers generally found consumer and bulk tissue paper to be interchangeable and five importers generally found the two varieties not to be at all interchangeable. Many of those importers with clearly stated views are parties to this investigation.

Channels of Distribution

According to the petition, certain tissue paper products are sold through both distributors and retailers.¹³⁴ Distributor sales, however, are more prevalent for bulk tissue paper than for consumer tissue paper. Questionnaire responses indicate that, with respect to consumer tissue paper, *** percent of domestic shipments in 2003 were made through distributors and *** percent were made directly to retailers. With respect to bulk tissue paper, *** percent of 2003 domestic shipments were made through distributors, *** percent were made directly to retailers, and *** percent were made directly to the consumer. One U.S. producer, ***, indicated that bulk and consumer tissue were sold to the same distributors, sometimes on the same order, but that larger distributors tended to buy more bulk tissue paper. Respondents contend, however, that bulk and consumer tissue generally are sold by different firms¹³⁵ and generally are purchased by different firms. High-end retailers (e.g., Saks, Nordstrom) and laundries buy bulk tissue, and party stores, gift stores, and low-end retailers (e.g., Target, Wal-Mart) purchase consumer tissue.¹³⁶ Respondents also contend that U.S. manufacturers that sell both bulk and consumer tissue have separate sales personnel for each type of tissue.¹³⁷ Respondents note that when firms purchase both types of tissue paper the purchases are made by different parts of the organization.¹³⁸ Petitioners agree that some differences in channels of distribution do exist and that a greater percentage of bulk tissue sales is to distributors and a greater percentage of consumer tissue goes to retailers, but point out that substantial volumes of each go through the other channel of distribution.¹³⁹

Price

U.S. purchasers and U.S. importers of certain tissue paper products report that prices depend on such factors as the quantity purchased, the design (e.g., colors or prints), the grade of paper, the basis weight, whether the paper is a specialty (e.g., die cut), packaging, and freight (see purchaser comments in appendix D). Respondents contend that prices generally are higher for consumer tissue based on the difference in quantities and packaging¹⁴⁰ and the fact that bulk tissue is sold by weight¹⁴¹ or on a ream or half ream basis.¹⁴² One U.S. producer, ***, indicated that the price of bulk tissue was lower than consumer tissue because it generally required less packaging and fewer folds. However, petitioners maintain that prices are within a reasonable range of a single like product.¹⁴³ Price data collected by the Commission for tissue paper folds (consumer tissue paper) and tissue paper reams (bulk tissue paper) appear in Part V of this report. In the aggregate, the average unit values for U.S. shipments of consumer tissue paper were \$*** per thousand square meters in 2001, \$*** in 2002, and \$*** in 2003. By comparison, the average unit values for bulk tissue paper were lower: \$*** per thousand square meters in 2001, \$*** in 2002, and \$*** in 2003.

¹³⁴ *Petition*, p. 31.

¹³⁵ *Respondents Cleo's and Crystal Creative's Postconference Brief*, p. 6.

¹³⁶ *Respondents City Paper et. al.'s Postconference Brief*, p. 7.

¹³⁷ *Respondents Cleo's and Crystal Creative's Prehearing Brief*, p. 2.

¹³⁸ *Respondent Target's Postconference Brief*, p. 2.

¹³⁹ *Petitioners' Prehearing Brief*, pp. 7, 8.

¹⁴⁰ *Respondents Cleo's and Crystal Creative's Postconference Brief*, p. 7.

¹⁴¹ *Respondents City Paper et. al.'s Postconference Brief*, p. 30.

¹⁴² *Respondents Cleo's and Crystal Creative's Prehearing Brief*, p. 15.

¹⁴³ *Petitioners' Postconference Brief*, p. 10.

