

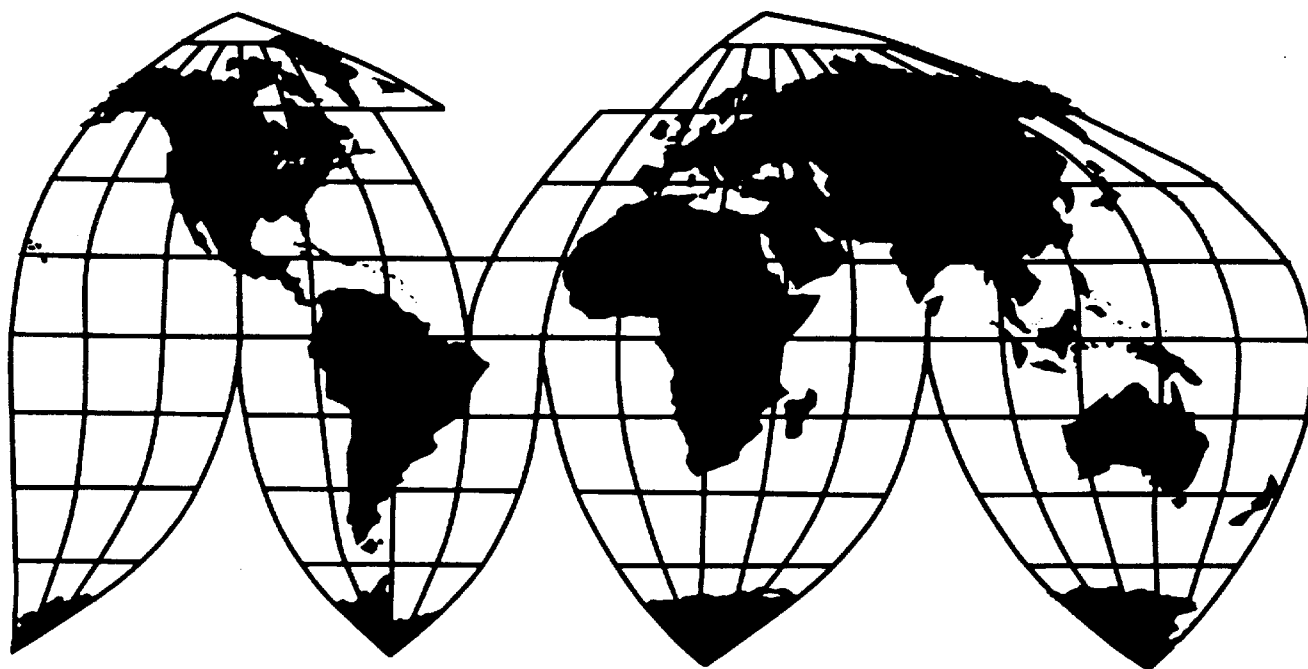
# Sorbitol From France

Investigation No. 731-TA-44 (Second Review)

**Publication 3706**

**July 2004**

**U.S. International Trade Commission**



Washington, DC 20436

# **U.S. International Trade Commission**

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**UNITED STATES INTERNATIONAL TRADE COMMISSION**

Investigation No. 731-TA-44 (Second Review)

**SORBITOL FROM FRANCE**

**DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930,<sup>3</sup> that revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**BACKGROUND**

The Commission instituted this review on February 2, 2004 (69 FR 4981), and determined on May 7, 2004, that it would conduct an expedited review (69 FR 28949, May 19, 2004).

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

<sup>2</sup> Vice Chairman Deanna Tanner Okun and Commissioners Charlotte R. Lane and Daniel R. Pearson dissenting.

<sup>3</sup> 19 U.S.C. § 1675(c).





**UNITED STATES INTERNATIONAL TRADE COMMISSION****SORBITOL FROM FRANCE**

Investigation No. 731-TA-44 (Second Review)

**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 sorbitol from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1</sup>

The product in this review is crystalline sorbitol, a sugar-free sweetener, used primarily in the production of sugarless gum, candy, specialty foods, and pharmaceuticals. Made from a crude sorbitol solution that is purified and evaporated to eliminate any liquid content, crystalline sorbitol is available in granular and powdered forms.<sup>2</sup> Three firms currently account for all known U.S. production: Archer Daniels Midland Co. (ADM), SPI Polyols, Inc. (SPI), and Roquette America, Inc. (Roquette).<sup>3</sup>

Apparent U.S. consumption of crystalline sorbitol has increased \*\*\* since the Commission's original investigation and first five-year review of the antidumping duty order, rising from \*\*\* million pounds in 1980 to \*\*\* million pounds in 1997, and further to \*\*\* million pounds in 2003, the last full year for which data are available.<sup>4</sup>

**I. BACKGROUND**

In March 1982, the Commission determined that an industry in the United States was being injured by reason of imports of liquid and crystalline sorbitol from France that were being sold at less than fair value (LTFV).<sup>5</sup> The following month, the Department of Commerce (Commerce) issued an antidumping duty order on such imports.<sup>6</sup> A French producer and an importer appealed the determinations of the Commission and Commerce to the United States Court of International Trade (the

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<sup>1</sup> Vice Chairman Deanna Tanner Okun and Commissioners Charlotte R. Lane and Daniel R. Pearson determined that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States. See their dissenting views. They join in Sections I and II of these views.

<sup>2</sup> Confidential Staff Report, INV-BB-069 (June 3, 2004) (CR) at I-7-I-8, Public Staff Report (PR) at I-8; Sorbitol from France, Inv. No. 731-TA-44 (Review), USITC Pub. 3165 (Mar. 1999) (first or 1999 review) at 4-5. The crude sorbitol solution is produced by dissolving dextrose in water to a 50-percent solution, to which a catalyst is added. This solution is then heated and reacted with hydrogen under pressure. Liquid sorbitol is crude sorbitol solution that has been concentrated to a liquid content of 30 percent. CR, PR at I-8.

<sup>3</sup> CR, PR at Table I-5. We refer to Roquette's corporate parent, the French firm Roquette Frères, by its full name.

<sup>4</sup> CR, PR at Table I-9.

<sup>5</sup> Sorbitol from France, Inv. No. 731-TA-44 (Final), USITC Pub. 1233 (Mar. 1982) (original determination) at 1.

<sup>6</sup> 47 Fed. Reg. 15391 (Apr. 9, 1982).

Court). The Commission took a voluntary remand to consider additional evidence,<sup>7</sup> and issued its remand determination in October 1983.<sup>8</sup>

In both its original and remand determinations, the Commission found two domestic industries: one producing liquid sorbitol and one producing crystalline sorbitol.<sup>9</sup> In the original determination, the Commission found material injury to a domestic industry by reason of imports of crystalline and liquid sorbitol.<sup>10</sup> On remand, the Commission made an affirmative determination with respect to crystalline sorbitol and a negative determination with respect to liquid sorbitol.<sup>11</sup> The Court affirmed the determinations of the Commission and Commerce,<sup>12</sup> following which Commerce revoked the antidumping duty order with respect to liquid sorbitol.<sup>13</sup> In October 1998, the Commission instituted its first five-year review pursuant to section 751(c) of the Act.<sup>14</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. In order to make this decision, the Commission first determines whether individual responses to the notice of institution are adequate. Next, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as importers, exporters, foreign producers, trade associations, or subject country governments) – demonstrate a sufficient willingness among each group to participate and provide information requested in a full review. If the Commission finds the responses from both groups of interested parties adequate, or if other circumstances warrant, it will determine to conduct a full review.<sup>15</sup>

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<sup>7</sup> *Roquette Freres v. United States*, 6 CIT 42 (1983).

<sup>8</sup> *Sorbitol from France*, Inv. No. 731-TA-44 (Remand), USITC Pub. 1441 (Oct. 1983) (remand determination). (We refer to the Commission proceedings in connection with the original and remand determinations as the original investigation.)

<sup>9</sup> Original Determination, USITC Pub. 1233 at 4 (Views of Chairman Bill Alberger and Vice Chairman Michael J. Calhoun) (finding two like products and two industries), 9 (Views of Commissioner Stern) (noting concurrence with finding of two like products but finding available data insufficient to disaggregate production for separate industry analyses) & 11 (Views of Commissioner Eckes) (finding one like product and one domestic industry). Remand Determination, USITC Pub. 1441 at 4 (Views of Commissioners Paula Stern, Veronica A. Haggart and Seeley G. Lodwick) (finding two like products and two industries).

<sup>10</sup> The Commission was unanimous (4-0) in its determination respecting the former, and evenly divided (2-2) in regard to the latter. Original Determination, USITC Pub. 1233 at 4 (Views of Chairman Bill Alberger and Vice Chairman Michael J. Calhoun) (affirmative determination respecting producers of crystalline sorbitol and negative determination respecting producers of liquid sorbitol) & 9 (Views of Commissioners Paula Stern and Alfred E. Eckes) (affirmative determination respecting producers of all sorbitol).

<sup>11</sup> Remand Determination, USITC Pub. 1441 at 3-4 (Views of Commissioners Paula Stern, Veronica A. Haggart and Seeley G. Lodwick). This determination prompted a cross-appeal by a domestic producer.

<sup>12</sup> *Roquette Freres v. United States*, 583 F. Supp. 599 (Ct. Int'l Trade 1984).

<sup>13</sup> 49 Fed. Reg. 26773 (June 29, 1984).

<sup>14</sup> 63 Fed. Reg. 52750, 52757 (Oct. 1, 1998).

<sup>15</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

Two interested parties filed timely responses to the Commission's notice of institution of the first review, ADM and SPI. The Commission conducted an expedited review, pursuant to section 1675(c)(3)(B) of the Act, and ultimately determined that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>16</sup> Commerce published its notice of continuation of the antidumping duty order in August 1999.<sup>17</sup>

In February 2004, the Commission instituted the present review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>18</sup> The Commission received substantive responses to the notice of institution from three domestic producers, ADM, SPI, and Roquette (ADM, SPI, and Roquette Responses, respectively).<sup>19</sup> As in its first review, the Commission received no responses from respondent interested parties.

In May 2004, the Commission determined that the response of the domestic interested party group was adequate and that the respondent interested party group response was inadequate. The Commission voted to conduct an expedited review.<sup>20</sup>

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the "domestic like product" and the "industry."<sup>21</sup> The Act defines the "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."<sup>22</sup> The imported product subject to the order under review consists of "crystalline sorbitol ('sorbitol')," defined by Commerce as "a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals."<sup>23</sup> The scope remains unchanged from the first five-year review.

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<sup>16</sup> 1999 Review, USITC Pub. 3165 at 3. Two Commissioners dissented. *Id.* at 15 (Dissenting Views of Chairman Lynn M. Bragg and Commissioner Thelma J. Askey).

<sup>17</sup> 64 Fed. Reg. 42920 (Aug. 6, 1999).

<sup>18</sup> 69 Fed. Reg. 4981 (Feb. 2, 2004).

<sup>19</sup> Collectively, we refer to these parties as the domestic producers.

<sup>20</sup> 69 Fed. Reg. 28949 (May 14, 2004); *see also* CR, PR at App. B (Explanation of Commission Determination on Adequacy). ADM has filed comments, pursuant to 19 C.F.R. § 207.62(d), regarding the determination it advocates the Commission should reach in this expedited second review.

<sup>21</sup> 19 U.S.C. § 1677(4)(A).

<sup>22</sup> 19 U.S.C. § 1677(10). *See Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). *See also* S. Rep. No. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979).

<sup>23</sup> 69 Fed. Reg. 36062, 36063 (June 28, 2004). Subject imports are currently classifiable under subheading 2905.44.00 of the Harmonized Tariff Schedule of the United States (HTSUS). *Id.*

The starting point of the Commission's like product analysis in a five-year review is the Commission's like product determination in the original investigation.<sup>24</sup> In the original investigation, the Commission found two like products corresponding to the scope (which then consisted of sorbitol in either form, liquid or crystalline), liquid and crystalline sorbitol.<sup>25</sup> In the 1999 review, in which the scope consisted of crystalline sorbitol only, the Commission found one like product, crystalline sorbitol.<sup>26</sup>

In response to the Commission's notice of institution, domestic producers have stated that they are in agreement with the like product finding from the 1999 review.<sup>27</sup> No party takes issue with this definition,<sup>28</sup> nor have new facts been presented on this record to warrant a conclusion different from that reached by the Commission in the prior review. We therefore find one domestic like product, co-extensive with the scope: crystalline sorbitol, a polyol produced by the hydrogenation of sugars, used in the production of sugarless gum, candy, groceries, and pharmaceuticals.

## B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."<sup>29</sup> In the original investigation after remand, having found two like products, the Commission found two domestic industries.<sup>30</sup> The record in the original investigation raised no related parties issues.

In the 1999 review, the Commission found that the domestic industry consisted of all producers of crystalline sorbitol, consistent with its like product determination and Commerce's scope.<sup>31</sup> Two of the producers were related parties under 19 U.S.C. § 1677(4)(B) as they had imported subject merchandise during the period of review – Roquette, which imported from its parent company, Roquette Frères, and SPI, which imported through a joint venture it was developing with the firm Amylum France SAS (Amylum). However, no party sought the exclusion of Roquette or SPI from the domestic industry definition, and the evidence showed that each firm's primary interest was in the domestic production of

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<sup>24</sup> In its like product determinations, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes, and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. *See Timken*, 913 F. Supp. at 584. No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. *See, e.g.*, S. Rep. No. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979); *Torrington*, 747 F. Supp. at 748-49.

<sup>25</sup> Remand Determination, USITC Pub. 1441 at 4.

<sup>26</sup> 1999 Review, USITC Pub. 3165 at 5.

<sup>27</sup> ADM Response at 5; SPI Response at 4.

<sup>28</sup> Roquette did not respond to optional question 11, regarding the definitions of like product and domestic industry.

<sup>29</sup> 19 U.S.C. § 1677(4)(A). In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States. *See United States Steel Group v. United States*, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>30</sup> Remand Determination, USITC Pub. 1441 at 4.

<sup>31</sup> 1999 Review, USITC Pub. 3165 at 6.

crystalline sorbitol rather than its importation. Accordingly, the Commission determined not to exclude either from its domestic industry definition.<sup>32</sup>

In this second review, domestic producers have stated that they agree with the domestic industry definition from the 1999 review.<sup>33</sup> We find no basis upon which to depart from it. Currently, three firms produce crystalline sorbitol in the United States, ADM, SPI, and Roquette, all of which have participated in this review.<sup>34</sup> SPI no longer imports subject merchandise, and is no longer engaged in a joint venture with the French firm Amylum.<sup>35</sup> SPI is thus not a related party under 19 U.S.C. § 1677(4)(B).

Roquette continues to import crystalline sorbitol from its French parent company Roquette Frères.<sup>36</sup> However, such subject imports totaled \*\*\* pounds in 2003, equivalent to only \*\*\* percent of Roquette's domestic production of crystalline sorbitol in 2003.<sup>37</sup> The volume of Roquette's domestic production therefore \*\*\* its importation of the subject merchandise. Moreover, Roquette supports the continuation of the antidumping duty order,<sup>38</sup> and neither ADM nor SPI, the other domestic producers, contends that Roquette's exclusion from the U.S. industry is warranted. Thus, similar to the record in the 1999 review, the evidence here supports a finding that appropriate circumstances do not exist to exclude Roquette from the domestic industry as a related party.

Accordingly, we adopt the same domestic industry definition utilized in the 1999 review and define the domestic industry as all domestic producers of crystalline sorbitol, currently ADM, SPI, and Roquette.<sup>39</sup>

### **III. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER IS REVOKED**

#### **A. Legal Standard In A Five-Year Review**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the antidumping duty order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."<sup>40</sup> The SAA states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in

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<sup>32</sup> 1999 Review, USITC Pub. 3165 at 5-6.

<sup>33</sup> ADM Response at 5; SPI Response at 4.

<sup>34</sup> CR, PR at Table I-5.

<sup>35</sup> CR at I-17 n.40, PR at I-16 n.40.

<sup>36</sup> Roquette Response at 2.

<sup>37</sup> CR at I-9, PR at I-11. Roquette's total domestic production, in turn, amounts to \*\*\* percent of U.S. production. CR, PR at Table I-7 (2003 data).

<sup>38</sup> CR, PR at Table I-5.

<sup>39</sup> CR, PR at Table I-5.

<sup>40</sup> 19 U.S.C. § 1675a(a).

the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>41</sup> Thus, the likelihood standard is prospective in nature.<sup>42</sup> The U.S. Court of International Trade has found that “likely,” as used in the sunset review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.<sup>43 44</sup> The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>45</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis [in antidumping investigations].”<sup>46 47</sup>

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<sup>41</sup> 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.

<sup>42</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>43</sup> 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)”); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int’l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int’l Trade Dec. 20, 2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

<sup>44</sup> Commissioner Hillman interprets the statute as setting out a standard of whether it is “more likely than not” that material injury would continue or recur upon revocation. She assumes that this is the type of meaning of “probable” that the Court intended when the Court concluded that “likely” means “probable”. See Separate Views of Vice Chairman Jennifer A. Hillman Regarding the Interpretation of the Term “Likely”, in Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom (Views on Remand), Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review) (Remand), USITC Pub. 3526 (July 2002) at 30-31.

<sup>45</sup> 19 U.S.C. § 1675a(a)(5).

<sup>46</sup> 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.*

<sup>47</sup> In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

Although the standard in a five-year review is not the same as the standard applied in an original antidumping investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated.”<sup>48</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>49</sup>

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776 of the Act.”<sup>50</sup> We have relied on the facts available in this review, which consist primarily of information from the original investigation and first review, information submitted by the domestic producers, and official Commerce statistics.

Although the information on the record in an expedited review is limited with respect to conditions subsequent to the imposition of the order, the absence of more complete evidence does not favor a determination that material injury is not likely upon revocation. In this case an important reason for the sparse data on recent conditions is that respondent interested parties provided no information in response to the Commission’s notice of institution. The domestic interested parties, however, responded fully to the data requested in the Commission’s notice of institution. Consequently, while the record information is limited, we must determine whether the record information better supports the conclusion that material injury is likely or that material injury is not likely.

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

## **B. Conditions of Competition**

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>51</sup> In 1978, the first year of the period examined in the original investigation, apparent U.S. consumption, a proxy for demand, was \*\*\* million pounds and imports from France held a \*\*\* percent share of the market. By 1980, apparent U.S.

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<sup>48</sup> 19 U.S.C. § 1675a(a)(1).

<sup>49</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886. Commerce has conducted several administrative reviews, but has made no duty absorption findings. CR, PR at Table I-3.

<sup>50</sup> 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a).

<sup>51</sup> 19 U.S.C. § 1675a(a)(4).

consumption had declined to \*\*\* million pounds, and imports from France had increased nearly \*\*\*, capturing \*\*\* percent of such consumption.<sup>52</sup>

ADM and SPI state that demand in the U.S. market has increased since the first review.<sup>53</sup> Roquette states that while the market originally grew, it has not grown since the first review and may have contracted.<sup>54</sup> Data for apparent U.S. consumption show a \*\*\* between the last full year for which data were available in the first review, 1997, and 2003.<sup>55</sup> Domestic consumption in 1997, in turn, had increased \*\*\* since the original investigation.<sup>56</sup>

As in the first review, information respecting supply conditions is limited. The \*\*\* of the demand in the U.S. market (approximately \*\*\* percent) is supplied by domestic producers.<sup>57</sup> \*\*\* of the domestic production (\*\*\* percent) was commercially shipped in the United States in 2003.<sup>58</sup> Domestic producers' share of the U.S. market has remained stable since 1997, approximately \*\*\* percentage points higher than domestic producers' share in 1980, the last full year of the original period of investigation.<sup>59</sup> Since the first review, nonsubject imports have \*\*\* supplied the remainder of the market.<sup>60</sup> Sorbitol imports from France accounted for \*\*\* percent of U.S. consumption in 1997 and \*\*\* percent of U.S. consumption in 2003.<sup>61</sup>

In the first review, the Commission found that large contracts, often of multiyear duration, dominated the U.S. market. Winning or losing a single contract thus could have serious consequences for the individual producer and for the domestic industry as a whole. The Commission further found that sorbitol, whether produced domestically or in France, is highly substitutable and easily transportable.<sup>62</sup>

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<sup>52</sup> CR, PR at Table I-9.

<sup>53</sup> ADM Response at 4 & Exh. 3; SPI Response at 4.

<sup>54</sup> Roquette's Response at 5.

<sup>55</sup> CR, PR at Table I-9 (\*\*\* million pounds in 1997 as compared to \*\*\* million pounds in 2003). We note that the data for subject and nonsubject imports included in the apparent U.S. consumption figures for these years cover imports of sorbitol in either form, liquid or crystalline, because the two are not broken out separately under the HTSUS. However, with U.S. producers' domestic shipments of crystalline sorbitol accounting for the \*\*\* of apparent U.S. consumption – \*\*\* million pounds in 1997 and \*\*\* million pounds in 2003, the totals fairly reflect overall trends in the U.S. market. CR, PR at Table I-9.

<sup>56</sup> Apparent U.S. consumption of crystalline sorbitol in 1980, the last full year for which data were available in the original investigation, was \*\*\* million pounds, down from \*\*\* million pounds in 1978, the first year of the original period examined. As noted above, apparent U.S. consumption in 1997, in contrast, was \*\*\* million pounds. CR, PR at Table I-9.

<sup>57</sup> CR, PR at Table I-9.

<sup>58</sup> CR, PR at Table I-7 (domestic production was \*\*\* million pounds, while U.S. shipments totaled \*\*\* million pounds).

<sup>59</sup> CR, PR at Table I-9 (\*\*\* percent in 1997; \*\*\* percent in 1980).

<sup>60</sup> Imports of crystalline sorbitol from nonsubject countries supplied \*\*\* percent of the U.S. market in 1980, prior to the imposition of the order. CR, PR at Table I-9. Total sorbitol imports from nonsubject countries supplied \*\*\* percent of the market in 1997 and \*\*\* percent in 2003. CR, PR at Table I-9. (It is unclear from the Commerce data what percentage of the total sorbitol imports were represented by imports of crystalline sorbitol in 1997 and 2003.)

<sup>61</sup> CR, PR at Table I-9; CR at I-13, PR at I-12 (noting that crystalline sorbitol accounted for \*\*\* percent of total sorbitol imports from France in 2003 of \*\*\* pounds, or \*\*\* pounds).

<sup>62</sup> 1999 Review, USITC Pub. 3165 at 8.



There is nothing in the record before us to suggest that the nature of sales of sorbitol in the U.S. market or its substitutability has changed. Sorbitol thus competes primarily on the basis of price.<sup>63</sup>

The domestic industry has consolidated since the first review. In 1998, the domestic industry consisted of six producers. Currently, as noted above, three producers account for all known U.S. production.<sup>64</sup>

Except as otherwise noted, we find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis upon which to assess the likely effects of revocation of the antidumping duty order within the reasonably foreseeable future.

### C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>65</sup> 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.<sup>66</sup>

The record in the original investigation showed that from 1978 to 1980, France was the primary source of imported crystalline sorbitol for the United States, accounting for nearly \*\*\* percent of the total quantity of all imports during the period. Sorbitol imports from France increased rapidly, rising from \*\*\* million pounds in 1978 to \*\*\* million pounds in 1979, and further to \*\*\* million pounds in 1980.<sup>67</sup> The market share of imports from France, as noted above, grew from \*\*\* percent to \*\*\* percent in the same period.<sup>68</sup> Since the original investigation, the volume of imports of crystalline sorbitol from France has dropped considerably, from \*\*\* pounds in 1980 to \*\*\* pounds in 2003.<sup>69</sup> The market share of sorbitol imports from France has also decreased from \*\*\* percent in 1980 to \*\*\* percent in 2003.<sup>70</sup> The decreases in volume are likely due to the restraining effects of the order.

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<sup>63</sup> See, e.g., ADM Response at 2; CR, PR at I-8 (“virtually all crystalline sorbitol marketed in the United States [is of] USP grade.”).

<sup>64</sup> CR at I-8-I-9, PR at I-9; CR, PR at Table I-5. See also CR, PR at Figure I-1 (chronology of industry’s consolidation since 1994).

<sup>65</sup> 19 U.S.C. § 1675a(a)(2).

<sup>66</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

<sup>67</sup> CR, PR at Table I-9. Imports from France of crystalline sorbitol accounted for \*\*\* percent of total sorbitol imports from France in 1978, \*\*\* percent in 1979, and \*\*\* percent in 1980. CR at I-13, PR at I-12.

<sup>68</sup> CR, PR at Table I-9.

<sup>69</sup> CR, PR at Table I-8; CR at I-13, PR at I-12. In 1980, crystalline sorbitol imports from France represented \*\*\* percent of \*\*\* pounds and, in 2003, they represented \*\*\* percent of 2.34 million pounds.

<sup>70</sup> CR, PR at Table I-9.

In the 1999 review, the Commission found a significant expansion of capacity in crystalline sorbitol production in France, led by Roquette Frères, the world's largest producer. The Commission further found that the U.S. market was an important one for French producers before the order issued, and its importance was likely enhanced by the substantial growth in demand in the U.S. market since the original investigation. The Commission also noted that Roquette was bidding on large supply accounts in the United States and found that, if acquired, the volume required to supply these accounts would substantially exceed Roquette's U.S. capacity. The Commission concluded that significant volumes were likely to be exported to the United States in the reasonably foreseeable future, particularly in light of the contracting methods in the sorbitol market, and that such imports likely would regain significant market share absent the restraining effect of the order.<sup>71</sup>

In the original investigation, French producers' capacity to produce sorbitol was \*\*\* pounds,<sup>72</sup> greater than the current level of apparent U.S. consumption. According to Roquette in this second review, crystalline sorbitol production capacity in France is expanding significantly while home market demand is not keeping pace, and cannot be expected to keep pace, with the capacity increase. Indeed, the industry in France has grown since the first review, and now consists of three producers, Roquette Frères, Amylum France, and Syral S.A.<sup>73</sup> Roquette Frères remains the principal producer of crystalline sorbitol in France and the world's largest producer, as well as the principal exporter to the United States.<sup>74</sup> Most recently, it acquired the sorbitol units of a Korean firm in Korea and China, and has plans to expand production capacity in China to supply Asian markets.<sup>75</sup>

In addition, product shifting is possible between liquid and crystalline sorbitol, and also between sorbitol and other products, such as maltitol. If the order were revoked, Roquette Frères is thus well positioned to direct crystalline sorbitol produced in facilities in France to the U.S. market. As ADM and SPI contend, Roquette Frères would be highly motivated to do so. Crystalline sorbitol and maltitol, a higher value, more profitable sugar substitute, are produced using the same equipment. The shift of production from sorbitol to maltitol products is not difficult. Roquette could thus produce greater quantities of maltitol in the United States, and Roquette Frères could shift production of crystalline sorbitol to its French facilities, thereby increasing exports to the United States if the order were revoked.<sup>76</sup>

The likelihood of a significant increase in subject import volume is supported by demand trends in the United States. Apparent U.S. consumption has increased \*\*\* percent since the first review.<sup>77</sup> A strong and growing U.S. market, historically the destination for significant volumes of subject imports, would be an attractive export market for France's crystalline sorbitol industry in the absence of the antidumping duty order.

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<sup>71</sup> 1999 Review, USITC Pub. 3165 at 9-10.

<sup>72</sup> Capacity figures for both U.S. and French producers are for all sorbitol, due to the nature of the production process, in which liquid sorbitol is first produced and crystalline sorbitol is then produced from a concentrated form of the liquid.

<sup>73</sup> Roquette Response at 2, 4.

<sup>74</sup> CR at I-17, PR at I-16.

<sup>75</sup> ADM Response at 4-5 & Exh. 2.

<sup>76</sup> ADM Response at 4-5; SPI Response at 2-3. ADM estimates that \*\*\* pounds of sorbitol would likely be imported from France through the end of 2004 if the order were revoked and that its sales volume could drop by as much as \*\*\* percent. ADM Response at 2.

<sup>77</sup> CR, PR at Table I-9.

Accordingly, based on the available information, including the un rebutted information provided by the domestic industry, we conclude that the likely volume of imports of the subject merchandise, both in absolute terms and relative to production or consumption in the United States, would be significant absent the restraining effect of the antidumping duty order.<sup>78</sup>

#### **D. Likely Price Effects of Subject Imports**

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products 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 domestic like products.<sup>79</sup>

In the original investigation, the Commission found that dumped imports from France exhibited significant margins of underselling during 1978-1980. Although the domestic producers' prices increased in each quarter of the period of investigation, those increases failed to keep pace with price increases for the key raw material used in the production of sorbitol, *i.e.*, dextrose. Lost sales data further supported the finding of adverse price effects.<sup>80</sup>

In the 1999 review, the Commission noted that, while the pricing data was limited, the domestic industry supplied information demonstrating price declines. The Commission found that the capacity available to French producers provided a strong incentive to engage in aggressive pricing behavior. Given the substitutability of sorbitol, prices for domestically produced sorbitol would likely continue to decline to a significant degree due to the effects of increased volumes of subject imports offered at lower prices. Price softness in the market, the Commission noted, supported a finding that any significant increase in supply would at least suppress domestic prices. Moreover, adverse price effects would be magnified given the large size and lengthy duration of typical sorbitol contracts. Accordingly, the Commission found that revocation of the antidumping duty order would likely lead to significant price effects, including significant underselling by subject imports, as well as significant price depression or suppression.<sup>81</sup>

Sorbitol is a highly substitutable product regardless of its source and, as a result, is sold primarily on the basis of price.<sup>82</sup> Despite increases in demand, price competition in the U.S. market continues to be stiff.<sup>83</sup>

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<sup>78</sup> We note that there is no information on the record regarding the level of inventories in France, or significant barriers to importation from other countries.

<sup>79</sup> 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.

<sup>80</sup> Remand Determination, USITC Pub. 1441 at 4, 7; Original Determination, USITC Pub. 1233 at 6.

<sup>81</sup> 1999 Review, USITC Pub. 3165 at 10-12.

<sup>82</sup> See, e.g., ADM Response at 2; CR, PR at I-8 (“virtually all crystalline sorbitol marketed in the United States [is of] USP grade.”).

<sup>83</sup> See, e.g., ADM Response at 2 (stating that ADM \*\*\* due to price competition). We note that domestic average unit values have declined from a pre-order level of \$\*\*\* per pound in 1980, to \$\*\*\* per pound in 2003. CR, PR at (continued...)

Domestic producers argue that imports of crystalline sorbitol from France would likely be sold at prices discounted from prevailing U.S. prices in order to gain volume and market share,<sup>84</sup> and nothing in the current competitive conditions of the U.S. market indicates otherwise. Indeed, Roquette contends that price declines of \$0.10 per pound in the U.S. market would result if the order were revoked, based in part on the pricing of exports from France to other markets and the system of export refunds currently in effect in the European Union.<sup>85</sup> Such refunds are designed to compensate producers for the high internal price of grains that constitute base ingredients for making crystalline sorbitol.<sup>86</sup> Moreover, as the Commission found in the first review, the nature of the transactions in the U.S. market (*i.e.*, the size of typical sorbitol contracts) is such that it would amplify the adverse price effects of subject imports.

Based on the importance of price in the sorbitol market, the high degree of substitutability between subject imports and domestically-produced sorbitol, the likely significant volume of such imports, the likely significant underselling by such imports, and the pricing practices demonstrated in the original investigation, we find a likelihood of significant negative price effects from the subject imports. We conclude that, if the antidumping duty order were revoked, significant volumes of sorbitol from France likely would significantly undersell the domestic like product to gain market share and likely would have significant depressing or suppressing effects on the prices of the domestic product.

### E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>87</sup> 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.<sup>88</sup> As instructed by the statute, we have

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<sup>83</sup> (...continued)

Table I-6.

<sup>84</sup> See ADM Response at 2; SPI Response at 3; Roquette Response at 2-3.

<sup>85</sup> Roquette Response at 2-3. ADM predicts a decline in U.S. prices of \*\*\* percent if the order were revoked. ADM Response at 2.

<sup>86</sup> Roquette Response at 3.

<sup>87</sup> 19 U.S.C. § 1675a(a)(4).

<sup>88</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In the final results of its expedited sunset review of the antidumping duty order on sorbitol from France, Commerce determined that revocation of the order would likely lead to a continuation or recurrence of dumping at weighted-average margins of 2.9 percent for Roquette Frères and 2.9 percent for all others. 69 Fed. Reg. 36062, 36063 (June 28, 2004).

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 is revoked.<sup>89 90</sup>

In the original investigation, the Commission found material injury to the domestic industry as evidenced by declines in domestic production, substantial declines in commercial shipments and market share, declines in capacity utilization and employment, and a deterioration of the domestic industry's financial condition.<sup>91</sup>

In the 1999 review, the Commission noted that there was little information in the record on the current condition of the domestic industry. The Commission found that the industry was not vulnerable to material injury as contemplated by the Act given that none of the available information demonstrated vulnerability. The Commission noted that since the imposition of the antidumping duty order, the domestic industry's market share increased as subject imports virtually exited the market. The domestic industry, rather than nonsubject imports, gained the most from the declines in subject import volumes. The substitutability of the product had also enabled the domestic industry readily to replace subject imports in the U.S. market. The Commission thus found that any future increase in subject import market share would be largely at the expense of that of the domestic industry. Based on the available information, the Commission concluded that subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.<sup>92</sup>

The domestic industry has regained market share since the order was imposed but there is little information in the record on the current condition of the domestic industry given the expedited nature of this review. The domestic producers do not contend that they are vulnerable within the meaning of the Act, and there is no information before us that demonstrates such vulnerability. We therefore find, as the Commission found in the first review, that the domestic industry is not presently vulnerable.

That subject imports have largely exited the market does not demonstrate that French producers have abandoned the U.S. market as an export destination or that the reentry of such imports would not have an adverse impact on the U.S. industry. As noted, Roquette, a U.S. producer and the wholly-owned U.S. subsidiary of French producer Roquette Frères, supports continuation of the antidumping duty order.<sup>93</sup> With the capacity expansion reportedly taking place in France and the focus of that industry's exports away from Asian markets (which Roquette Frères will be able to supply through its new facilities in Asia), the attractive and growing U.S. market will likely become, once again, an important destination for exports from France absent the order.

Revocation of the antidumping duty order, as we found above, would likely lead to a significant increase in the volume of subject imports that would undersell the domestic like product and significantly

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<sup>89</sup> The antidumping duty order resulted in imports from France largely exiting the U.S. market, enabling the domestic industry to regain market share following issuance of the order. The market share for subject imports has remained consistently \*\*\* since the first review. CR, PR at Table I-9; CR at I-13, PR at I-12 (noting that crystalline sorbitol accounted for \*\*\* percent of total sorbitol imports from France in 2003).

<sup>90</sup> 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.

<sup>91</sup> Remand Determination, USITC Pub. 1441 at 5-7.

<sup>92</sup> 1999 Review, USITC Pub. 3165 at 12-13.

<sup>93</sup> Roquette's Response at 2-3.

suppress or depress U.S. prices. The volume and price effects of subject imports also would likely have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. These reductions, in turn, would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments.

Accordingly, we conclude that, if the antidumping duty order on subject imports from France is revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

### **CONCLUSION**

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

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**SORBITOL FROM FRANCE**

Investigation No. 731-TA-44 (Second Review)

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

Section 751(d)(2) of the Tariff Act of 1930, as amended (“the Act”), requires that the U.S. Department of Commerce (“Commerce”) revoke a countervailing duty or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the 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.<sup>1</sup> Based on the record in this second five-year review, we determine that material injury is not likely to continue or recur within a reasonably foreseeable time if the order on sorbitol from France is revoked.

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

**I. REVOCATION OF THE ORDER ON SORBITOL IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

**A. Legal Standard**

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

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<sup>1</sup> 19 U.S.C. § 1675(d)(2).

<sup>2</sup> 19 U.S.C. § 1675a(a).

<sup>3</sup> 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.

<sup>4</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in

(continued...)

termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>5</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis in antidumping and countervailing duty investigations.”<sup>6</sup>

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated.”<sup>7</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>8</sup>

## B. Facts Available

The statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.<sup>9</sup> We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. In general, the Commission makes determinations by “weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and

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<sup>4</sup> (...continued)

making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>5</sup> 19 U.S.C. § 1675a(a)(5).

<sup>6</sup> 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.*

<sup>7</sup> 19 U.S.C. § 1675a(a)(1).

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

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



by drawing reasonable inferences from the evidence it finds most persuasive.”<sup>10</sup> In this case, not all interested parties participated in this review. Accordingly, we have relied on the facts available in this review, which consist primarily of the report and opinion in the original determinations, the report and opinions in the first five-year review, information collected by the Commission since the institution of this second five-year review, and information submitted by the domestic producers in this review.

We recognize that in expedited reviews, the Commission generally is faced with more limited data on the record than in a full review, but limited data do not relieve the Commission of its statutory obligation to examine the record evidence in support of its finding. In the current review, we evaluate the impact of removing an order that is almost a quarter of a century old. Many shifts in global trade patterns have occurred during this time period which have affected the market for crystalline sorbitol, including the expansion of the European Union, the end of the Asian financial crisis, and a significant increase in demand for the subject product. Therefore, we examine the original record in the context of the dramatically changed market for sorbitol based on the limited updated information on the record.

### C. The “Likely” Standard

As noted above, the legal standard the Commission is to apply is whether revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>11</sup> In reviewing the Commission’s application of the “likely” standard, the U.S. Court of International Trade has found that “likely,” as used in the sunset review provisions of the Act, means “probable,” and that a Commission affirmative determination in such a review would be deemed by the Court to be in error absent application of this standard.<sup>12</sup> Pursuant to the Usinor Industeel and Usinor remand orders, the Commission issued remand determinations that applied the “probable” standard.<sup>13 14</sup>

<sup>10</sup> SAA at 869.

<sup>11</sup> 19 U.S.C. § 1675a(a).

<sup>12</sup> See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (2003) (“‘likely’ means probable within the context of 19 U.S.C. §§ 1675(c) and 1675a(a)”; Nippon Steel Corp., et al. v. United States, Slip Op. 02-153 at 7-8 (Dec. 24, 2002) (same) (Nippon); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 6 n.6 (Dec. 20, 2002) (“the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”) (Usinor Industeel III); and Usinor v. United States, Slip Op. 02-70 at 43-44 (July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”) (Usinor).

<sup>13</sup> In its remand determination in Usinor Industeel (Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom) (Views on Remand), Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review) (Remand), USITC Pub. 3526 (July 2002) at 6), the Commission (Chairman Okun and Commissioners Bragg and Miller) stated that the Commission, in rendering its initial determination in those reviews, did not equate “likely” with “probable” or “possible” for purposes of its determination of whether material injury was likely to recur. The Commission stated its view of the meaning of the word “likely” is found in the statutory language itself and the relevant explication of that text found in the SAA. The Commission noted that the SAA explains that a determination by the Commission in a five-year review “is inherently predictive.” SAA at 883. As a result of the inherently predictive nature of the inquiry, the SAA explains that “[t]here may be *more than one* likely outcome following revocation.” SAA at 883 (emphasis added). Thus, the Commission stated that reading the term “likely” in conjunction with the SAA led it to conclude that “likely” captures a concept that falls in between “probable” and “possible” on a continuum of relative certainty.

Vice Chairman Hillman stated her separate view that “likely” means “more likely than not,” which is the standard she understood the Court to prescribe when it used the term “probable.” Separate Views of Vice Chairman  
(continued...)

Subsequently, the Court has stated that it “has not interpreted ‘likely’ to imply any degree of ‘certainty,’” but it has indicated that the Court views “likely” to equal a standard of “more likely than not.” Usinor Industeel III, Slip. Op. 02-152 at 6 n.6. While we do not concur with the Court’s interpretation, we will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.<sup>15</sup>

The Court’s standard means that the Commission must revoke an order unless the continuation or recurrence of material injury is “more likely than not.” While this standard may not equate to a high level of certainty, there may be reviews in which there could be “more than one likely outcome,”<sup>16</sup> but the likelihood of continuation or recurrence of injury is not more likely than any other outcome.

For the reasons stated below, we determine that revocation of the order on sorbitol from France would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. While it may be *possible* that revocation of the order could lead to continuation or recurrence of material injury, a standard that the Commission has never applied under any interpretation of “likely,” revocation of the order is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

#### **D. Conditions of Competition**

In evaluating the impact of subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all the relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>17</sup> Discussed below are the conditions of competition that weigh significantly in our determination that revocation of the order is not likely to lead to continuation or recurrence of material injury to the crystalline sorbitol industry within a reasonably foreseeable time.

During the original investigation and again in the 1998 five-year review conducted by the Commission, Roquette Freres (“RF”) was identified as the only French producer of the subject product. RF was described in a response to the Commission’s notice in this current review as the principal

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<sup>13</sup> (...continued)

Jennifer A. Hillman Regarding The Interpretation of the Term “Likely” at 2. Commissioner Koplan, in dissent, found no error in the Court’s construction of the term. Dissenting Views of Commissioner Stephen Koplan Regarding the Interpretation of the Term “Likely” at 1 (“were I to select a synonym for ‘likely,’ I would accept the Court’s conclusion that ‘likely’ is best equated with ‘probable’”).

<sup>14</sup> In reviewing the Commission’s remand determination in Usinor Industeel, the Court rejected the Commission’s interpretation that “likely” captures a concept that falls in between “probable” and “possible” on a continuum of relative certainty. Usinor Industeel III, Slip. Op. 02-152 at 5-6. (The Court, however, did not remand the matter to the Commission on those grounds, as the Commission explicitly adopted the Court’s definition of “likely” for purposes of making that remand determination. Usinor Industeel III, Slip. Op. 02-152 at 4.) (Subsequent to Usinor Industeel III, Commissioners Hillman, Koplan, and Miller explicitly stated they were applying the court’s definition of “likely” per Usinor Industeel, Usinor, and Nippon Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 13 n.60 (Feb. 2003).)

<sup>15</sup> While, for purposes of this review, Commissioner Pearson does not take a position on the correct interpretation of “likely,” he notes that he would have made a negative determination under any interpretation of “likely” other than that equating “likely” with merely “possible.”

<sup>16</sup> SAA at 883.

<sup>17</sup> 19 U.S.C. § 1675a(a)(4)

producer of crystalline sorbitol in France.<sup>18</sup> Since the original investigation, RF has begun production of sorbitol at a wholly owned U.S. subsidiary, Roquette America (“RA”), which is currently the \*\*\* domestic producer of the domestic like product, accounting for over \*\*\* of domestic production in 2003.

Since 1983, the domestic crystalline sorbitol industry has changed dramatically. During the original investigation, six companies were identified as U.S. producers of sorbitol. Only ICI Americas and Pfizer, Inc. were further identified as producers of crystalline sorbitol; all others were classified as producers of liquid sorbitol. Pfizer was the sole petitioner in the original investigation. In 1994, Archer Daniels Midland Co. (ADM) purchased Pfizer’s sorbitol business and SPI acquired the sorbitol facilities of ICI Americas. In 1996, RA opened a new plant in Keokuk, IA. During the first five-year review in 1998, the crystalline sorbitol industry in the United States reportedly consisted of six producers: ADM, SPI Polyols, Inc., RA, Ethichem Corp. Hoffman-LaRoche and Co., and Lonza, Inc. ADM, RA, and SPI Polyols were believed to be the largest U.S. producers of crystalline sorbitol at that time.

Since the 1998 review, there have been additional changes in the industry. In 1999, UK-based Associated British Foods purchased SPI, and in 2000, SPI purchased the polyols business of Lonza.<sup>19</sup> Three U.S. producers, ADM, RA, and SPI Polyols, responded to the Commission’s notice of institution of this review. These producers are believed to account for all known U.S. production of crystalline sorbitol during 2003.<sup>20</sup>

Sorbitol is used as an artificial sweetener. The record indicates that demand for the product has increased significantly since the original investigation. In 1980, the last full year of the period in the Commission’s original investigation, apparent domestic consumption of crystalline sorbitol was \*\*\* pounds. At the time of the 1997 review, apparent domestic consumption increased to \*\*\* pounds. The increase in demand did not abate since the last review. Domestic consumption in 2003 is estimated at \*\*\* pounds, a \*\*\* percent increase over 1997 levels.<sup>21</sup> The domestic industry itself appears optimistic about prospects for growth.<sup>22</sup>

In 1980, domestic producers accounted for \*\*\* percent of domestic consumption, compared with \*\*\* percent in 1997 and \*\*\* percent in 2003.<sup>23</sup> Not only has the domestic industry’s market share grown to represent a progressively larger portion of the domestic market, but the respondent in the original investigation is also in a dramatically different position. As discussed above, after the antidumping duty order was instituted, RF’s wholly owned subsidiary RA began production in the United States, and is now the \*\*\* domestic producer of the domestic like product. We note, however, that despite their affiliation, RA supports continuation of the antidumping duty order.

The domestic industry’s performance has apparently improved during the decades the order has been in effect, as evidenced by the fact that the domestic producers have not argued that they are currently injured or even vulnerable, or facing threat from other conditions. Moreover it does not necessarily

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<sup>18</sup> After the imposition of the antidumping order, ADM reported in its response to the notice of institution in this review that the French firm Syral S.A. began producing only very small amounts of liquid and crystalline sorbitol in 2001, but ADM was not aware of whether any had been exported to the United States. CR at I-17.

<sup>19</sup> CR at I-9-10.

<sup>20</sup> CR at I-9.

<sup>21</sup> CR at Table I-9.

<sup>22</sup> ADM Response to the Notice Of Institution at Exh. 3.

<sup>23</sup> CR at Table I-9.

follow that revocation of the order will reverse this improvement. Indeed, the record here suggests that fundamental changes in the domestic marketplace itself since the order was imposed, including the significant increase in total consumption, are perhaps more responsible for the industry's performance than the order.

### **E. Likely Volume of Subject Imports**

The Commission is to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States if the order under review were revoked. In so doing, the Commission shall consider "all relevant economic factors," including four enumerated in the statute: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise in countries other than the United States; and (4) the potential for product shifting if the production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>24</sup>

Our focus is whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping order is revoked.<sup>25</sup> In performing our analysis, we have taken into account the Commission's previous volume findings with respect to the subject imports from France. In the original investigation, the Commission found that subject imports from France were the primary source of imported crystalline sorbitol for the United States, accounting for nearly \*\*\* percent of the total quantity of all imports during the original period of investigation (1978-1980). Imports from France increased from \*\*\* million pounds in 1978 to \*\*\* million pounds in 1980. The market share of imports from France grew from \*\*\* percent in 1978 to \*\*\* percent in 1980.<sup>26</sup>

Although the available data suggest that the antidumping order may have had a significant impact on the market penetration when first implemented, it does not appear likely that revocation would lead to an adverse impact on the domestic industry if the order is revoked. In 1980, subject imports from France were \*\*\* million pounds, which was \*\*\* percent of the market. For years after 1980, the data available in the record reports total sorbitol imports, not just crystalline sorbitol. However, this data does show that total sorbitol imports from France dropped through 1992, reaching 6.1 percent of the total quantities of sorbitol imports. Total sorbitol imports from France then increased significantly in 1993 and 1994, peaking at 8.332 million pounds, or 50.2 percent of total sorbitol imports in 1994. This trend of increasing sorbitol imports from France reversed in 1993, which appears to be coincident with the opening of RA's U.S. plant.<sup>27</sup> Since then, sorbitol import volume has fluctuated. In 2003, sorbitol imports from France rebounded to \*\*\* pounds, which represents \*\*\* percent of total sorbitol imports or \*\*\* percent of the U.S. market, which is well below the peak in 1994 but significantly higher than in the most recent years. This may suggest that the order is currently having little effect on subject import volume or that other

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<sup>24</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

<sup>25</sup> 19 U.S.C. § 1675a(a)(2).

<sup>26</sup> Remand Determination, USITC Pub. 1233 at 6, A-27.

<sup>27</sup> Subject import and nonsubject import data for all but the original period of investigation are overstated since they are based on official import statistics, which include both liquid and crystalline sorbitol. CR at I-14, Table I-8.

market factors are more likely to be impacting sorbitol imports.<sup>28</sup> Nonsubject imports accounted for \*\*\* percent of domestic consumption in 1980, \*\*\* percent in 1997, and \*\*\* percent in 2003.<sup>29</sup>

ADM argues that a “significant expansion of crystalline sorbitol capacity is now occurring in the EU, particularly in France...” and that demand in the EU, growing very slowly, cannot absorb this increase.<sup>30</sup> ADM also cites the RA response to the Department of Commerce as evidence that EU producers receive export refunds for extra-EU sales of sorbitol, indicating that the French producer has an incentive to export sorbitol.<sup>31</sup> ADM also claims that, since RF acquired a Korean producer in 2001 and expanded capacity in China in 2002, it can direct more of its facilities in France to the U.S. market.<sup>32</sup> However, these arguments are directed primarily at “EU producers,” and not subject product specifically. Moreover, SPI estimates that demand in Europe has grown by 10-15 percent since 1997, and also that the growth in demand for the subject production Latin America and Asia has been substantially higher, indicating that there are other markets for the subject product. There is no indication on the present record that increased production in France would be directed to the U.S. market. Moreover, there is no evidence that subject imports have increased as a result of incentives offered by the EU. The record does not contain data regarding the existence of barriers to the importation of the subject merchandise in countries other than the United States (and the EU) or the potential for product shifting in France, in which production of another product can be converted into production of the subject merchandise.

Finally, ADM claims that RF can shift its U.S. facilities to maltitol (another sugar-free sweetener) and supply sorbitol from its French facilities.<sup>33</sup> RA is the \*\*\* domestic producer, both in terms of total production and domestic shipments. The success of RA would suggest that RF is not likely to invade the U.S. market and undercut its own subsidiary. The arguments of ADM and SPI—that RA will shift to higher-margin maltitol in the event of revocation, overlook the fact that there is nothing to preclude RA from producing and selling maltitol now, and there is no evidence that such a shift has occurred.

The statute directs the Commission to consider the effects of existing inventories of the subject merchandise, or likely increases in inventory. The record does not contain data relating to inventory, nor does it indicate whether or not the domestic producers have excess capacity for the production of crystalline sorbitol.

The record supports a finding that the volume of subject imports would likely not be significant upon revocation. The domestic like product in 2003 accounted for a larger share of apparent consumption than it had in the last year of the original investigation. More importantly, demand for the product has increased significantly in recent years and is likely to continue to increase over the foreseeable future. The official import statistics indicate that the order has had at best a mixed effect on import volume in recent years, and imports have not noticeably surged after dumping margins declined.<sup>34</sup> RF now has an affiliate in the U.S. serving the U.S. market. Because the domestic market is dominated by U.S. and nonsubject

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<sup>28</sup> CR at Table I-8.

<sup>29</sup> CR at Table I-9.

<sup>30</sup> ADM Response to the Notice of Initiation at 2, *citing* RA’s substantive response to the Department of Commerce.

<sup>31</sup> ADM Response to the Notice of Initiation at 3.

<sup>32</sup> ADM Response to the Notice of Initiation at 4.

<sup>33</sup> ADM Response to the Notice of Initiation at 4-5.

<sup>34</sup> Compare Official Import Statistics at Table I-8 to Administrative Review Margins at Table I-3.

suppliers, we find that revocation of the antidumping duty order is not likely to lead to a significant increase in the volume of subject imports.

## F. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping order is revoked, the Commission considers whether there is likely to be significant underselling by the subject imports as compared to domestic like product, and if the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.<sup>35</sup>

In performing our analysis, we have taken into account the Commission's previous price findings. In the original determination, the Commission found that subject imports from France exhibited significant margins of underselling during 1978-1980. Although the domestic producers' prices increased in each quarter of the period of investigation, those increases failed to keep pace with raw materials increases. The Commission found that lost sales data further supported the finding of adverse price effects.<sup>36</sup>

No pricing data are available on the record in this review. We therefore have no information that compares current prices of the domestic like product with those of subject imports in the U.S. market. We note Commerce's determination that dumping is likely to continue or recur if the antidumping order is revoked as well as the commodity nature of sorbitol.<sup>37</sup> However, our conclusions regarding the likely price effects if the antidumping order is revoked are drawn largely from our conclusions on likely subject volumes. As discussed in our volume analysis, we do not find that subject import market share is likely to increase significantly if the antidumping order is revoked, particularly given the increasing demand for crystalline sorbitol.

Consequently, we find that revocation of the antidumping order would not likely lead to significant underselling by the subject imports as compared to the domestic like product, or to significant price depression or suppression within a reasonably foreseeable time.<sup>38</sup> Therefore, we find that revocation of the order is not likely to lead to any significant price effects.

## G. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the antidumping order is revoked, the Commission considers all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including, but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and

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<sup>35</sup> 19 U.S.C. § 1675(a)(3).

<sup>36</sup> Remand Determination, USITC Pub. 1441 at 4,7; Original Determination at 6.

<sup>37</sup> We note, however, that the level of dumping margins, *per se*, tells nothing about whether there is likely to be significant price underselling by subject imports or whether subject imports are likely to be sold at prices that depress or suppress U.S. prices for sorbitol.

<sup>38</sup> The record contains no information on other price-related factors such as the channels of distribution used; the methods of contracting (such as spot sales or long-term contracts); and lead times for delivery of goods; discounts; and payment terms.

(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.<sup>39</sup>

In the original determination the Commission found that material injury to the domestic industry by reason of increased subject imports, both absolutely and relatively to domestic consumption. The Commission found declines in production and substantial declines in commercial shipments and market share, as well as declines in capacity utilization and employment, and a deterioration of the domestic industry's financial condition.<sup>40</sup>

Subject imports are not likely to have a significant adverse impact on the domestic crystalline sorbitol industry if the order is revoked. Sorbitol imports from France accounted for \*\*\* percent of U.S. consumption in 2003, which as indicated above is probably overstated. The domestic industry is well established and dominated the U.S. market with a market share in 2003 of over \*\*\* percent. Nonsubject suppliers accounted for over \*\*\* percent of the market in 2003.<sup>41</sup> Subject imports would have to increase substantially to have a likely adverse effect volume or prices, which given the minuscule market share of subject imports is not likely. We have determined that subject imports are not likely to increase to significant levels. Further, any increased subject imports resulting from the revocation of the order are likely to gain market share at the expense of nonsubject imports rather than at the expense of the domestic industry. There is no information on the record that would indicate otherwise. Indeed, we find support for this in the data.<sup>42</sup>

There are no updated data on the record regarding the state of the domestic industry for the current review. The domestic industry has not indicated that it is in a vulnerable position. There have been significant changes in the U.S. industry since the original investigation, such as massive growth in consumption, production, and increases in U.S. market share, as well as new entrants that have made additional investments in the U.S. market. We therefore find that subject imports would not be likely to have a significant impact on domestic sorbitol producers' cash flow, inventories, employment, wages, growth, ability to raise capital, or investment within a reasonably foreseeable time in the event the order is revoked. In conjunction with our findings regarding likely price and volume effects, we find that revocation is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.<sup>43</sup> We therefore find that revocation of the order is not likely to lead to the continuation or recurrence of material injury to the domestic crystalline sorbitol industry within a reasonably foreseeable time.

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<sup>39</sup> 19 U.S.C. § 1675(a)(4).

<sup>40</sup> Remand Determination, USITC Pub. 1441 at 5-7.

<sup>41</sup> CR at Table I-9.

<sup>42</sup> From 1997 to 2003, sorbitol imports from France increased from \*\*\* percent of market share to \*\*\* percent of market share while all other sorbitol imports dropped from \*\*\* percent market share to \*\*\* percent. During the same period, U.S. producers domestic shipments actually increased from \*\*\* percent market share to \*\*\* percent. CR at Table I-9.

<sup>43</sup> The record contains no current information with regard to the factors provided in the SAA, such as: the fungibility or differentiation within the product in question; and the level of substitutability between the imported and domestic products; as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities." SAA at 887.

## **II. CONCLUSION**

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



## INFORMATION OBTAINED IN THE SECOND REVIEW

### INTRODUCTION

#### Background

On February 2, 2004, in accordance with section 751(c) of the Tariff Act of 1930 (the Act),<sup>1</sup> as amended, the U.S. International Trade Commission (Commission) gave notice that it had instituted a second five-year (“sunset”) review to determine whether revocation of the antidumping duty order on sorbitol from France would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>2 3</sup> On May 7, 2004, the Commission determined that the domestic interested party response to its notice of institution was adequate;<sup>4</sup> the Commission also determined that the respondent interested party group response was inadequate.<sup>5</sup> The Commission found no other circumstances that would warrant conducting a full review.<sup>6</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930.<sup>7</sup> Information relating to the background of this review is presented in table I-1. A historical chronology of the original investigation and first five-year review is presented in table I-2.

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<sup>1</sup> 19 U.S.C. 1675(c).

<sup>2</sup> All interested parties were requested to respond to the notice by submitting information requested by the Commission. Copies of the Commission’s *Federal Register* notices are presented in app. A.

<sup>3</sup> 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. 69 FR 4921, February 2, 2004.

<sup>4</sup> The Commission received three submissions in response to its notice of institution for the subject review: Archer Daniels Midland Co. (March 23, 2004); Roquette America, Inc. (March 22, 2004); and SPI Polyols, Inc. (March 22, 2004). See also Commission’s memorandum of April 27, 2004, INV-BB-048, *Sorbitol from France: Investigation No. 731-TA-44 (Second Review)–Recommendation on Adequacy of Responses to Notice of Institution*.

<sup>5</sup> An entry of appearance and APO application was filed with the Commission on behalf of Roquette America, a domestic producer and importer of sorbitol from France, and Roquette Frères, a foreign manufacturer and exporter of sorbitol from France; however, only Roquette America provided a response to the Commission’s notice of institution in this review. Because Roquette America’s response to the Commission’s notice of institution indicated its support of the continuation of the antidumping duty order with respect to sorbitol from France, it is not listed separately as a respondent interested party (U.S. importer) in this review.

<sup>6</sup> A copy of the *Explanation of Commission Determination on Adequacy* is presented in app. B.

<sup>7</sup> 19 U.S.C. § 1675(c)(3).

**Table I-1**  
**Sorbitol: Chronology of investigation No. 731-TA-44 (Second Review)**

Date	Action
February 2, 2004	Commission publishes notice of institution of second five-year review in <i>Federal Register</i> <sup>1</sup>
February 2, 2004	Commerce publishes notice of initiation of second five-year review in <i>Federal Register</i> <sup>2</sup>
May 7, 2004	Commission votes to conduct expedited second five-year review
May 19, 2004	Commission publishes notice of scheduling for second five-year review in <i>Federal Register</i> <sup>3</sup>
June 3, 2004	Commerce publishes extension of time for final results of expedited second five-year review <sup>4</sup>
June 22, 2004	Commerce publishes extension of time for final results of expedited second five-year review <sup>5</sup>
June 28, 2004	Commerce publishes final results of expedited second five-year review <sup>6</sup>
July 2, 2004	Commission publishes revised schedule <sup>7</sup>
July 8, 2004	Commission's vote
July 16, 2004	Commission's transmittal of determination and views to Commerce
<p><sup>1</sup> 69 FR 4981.  <sup>2</sup> 69 FR 4921.  <sup>3</sup> 69 FR 28949.  <sup>4</sup> 69 FR 31354. A copy of Commerce's <i>Federal Register</i> notices is presented in app. A.  <sup>5</sup> 69 FR 34652.  <sup>6</sup> 69 FR 36062.  <sup>7</sup> 69 FR 40417.</p> <p>Source: Cited <i>Federal Register</i> notices.</p>	

**Table I-2**  
**Sorbitol: Selected historical actions taken by the Commission and Commerce**

Action	Date of action	Federal Register citation
Inv. No. 731-TA-44 (Final):		
Commission publishes determination	04/07/82	47 FR 14981
Commerce publishes antidumping duty order (A-427-001) <sup>1</sup>	04/09/82	47 FR 15391
Inv. No. 731-TA-44 (Final) (Remand):		
Commission publishes notice of institution of investigation on remand <sup>2</sup>	08/03/83	48 FR 35186
Commission publishes determination on remand <sup>3</sup>	10/26/83	48 FR 49560
Commerce publishes revocation in part of antidumping duty order <sup>4</sup>	06/29/84	49 FR 26773
Inv. No. 731-TA-44 (Review): <sup>5</sup>		
Commission publishes notice of institution of review	10/01/98	63 FR 52757
Commerce publishes notice of initiation of review	10/01/98	63 FR 52683
Commission publishes determination	03/10/99	64 FR 11948
Commerce publishes continuation of antidumping duty order	08/06/99	64 FR 42920
<p><sup>1</sup> The antidumping duty margin for crystalline sorbitol was 2.9 percent <i>ad valorem</i> for all producers/exporters in France. The antidumping duty margin for liquid sorbitol was 5.5 percent <i>ad valorem</i> for all producers/exporters in France.</p> <p><sup>2</sup> The effective date of institution was July 18, 1983. The Court of International Trade (CIT) remanded the investigation for a new determination. See <i>Roquette Frères v. United States</i>, Slip Op. 83-71, July 18, 1983.</p> <p><sup>3</sup> On remand, the Commission reaffirmed its affirmative determination with respect to crystalline sorbitol but made a negative determination with respect to liquid sorbitol.</p> <p><sup>4</sup> Commerce revoked the antidumping duty order with respect to liquid sorbitol following the CIT's affirmation of the Commission's remand results. See <i>Roquette Frères and Roquette Corporation v. United States</i>, Slip Op. 84-22, March 19, 1984. The antidumping duty order continued on imports of crystalline sorbitol from France.</p> <p><sup>5</sup> The Commission's first five-year review was also expedited.</p>		
Source: Cited <i>Federal Register</i> notices.		

### The Original Investigation and First Five-Year Review

The Commission completed its original investigation in March 1982, determining that an industry in the United States was materially injured by reason of imports of sorbitol from France which Commerce determined were being sold, or likely to be sold, at less than fair value (LTFV).<sup>8</sup> Commerce issued an antidumping duty order on the imports of such merchandise from France in April 1982.<sup>9</sup>

In July 1983, the Court of International Trade (CIT) remanded the investigation to the Commission. In its original determination and in response to the remand from the CIT, the Commission found two domestic industries, one producing liquid sorbitol and one producing crystalline sorbitol. In the original determination, the Commission made affirmative findings for both industries. However, in its remand determination, the Commission made an affirmative finding only with respect to the producers of crystalline sorbitol.<sup>10</sup> Commerce subsequently revoked the antidumping duty order in part, by revoking the order with respect to liquid sorbitol.<sup>11</sup>

On October 1, 1998, the Commission instituted the first five-year review on sorbitol. On March 2, 1999, the Commission determined that revocation of the antidumping duty order on sorbitol from France would be likely to lead to a continuation or recurrence of material injury.<sup>12</sup>

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<sup>8</sup> 47 FR 14981, April 7, 1982. *See also Sorbitol From France: Inv. No. 731-TA-44 (Final)*, USITC Pub. 1233, March 1982. The original investigation resulted from a petition filed with Commerce and the Commission on behalf of Pfizer Inc. *See* 46 FR 32700, June 24, 1981.

<sup>9</sup> 47 FR 15391, April 9, 1982. The antidumping duty margin for crystalline sorbitol was 2.9 percent *ad valorem* for all other producers/exporters in France. The antidumping duty margin for liquid sorbitol was 5.5 percent *ad valorem* for all other producers/exporters in France.

<sup>10</sup> 48 FR 49560, October 26, 1983. *See also Sorbitol From France: Inv. No. 731-TA-44 (Final) (Remand)*, USITC Pub. 1441, October 1983.

<sup>11</sup> 49 FR 26773, June 29, 1984.

<sup>12</sup> *See Commission's News Release 99-025*, March 2, 1999.

### Commerce's Administrative and Five-Year Reviews

Between 1982 and 2004, Commerce conducted numerous administrative reviews with respect to imports of sorbitol from France. Table I-3 presents information on Commerce's order, administrative reviews, and first five-year review.

**Table I-3**  
**Sorbitol: Commerce's administrative and five-year reviews**

Action	Date of action	Federal Register citation	Period of review	Antidumping duty margins	
				Roquette Frères	All others
				<i>Percent ad valorem</i>	
Final determination	02/12/82	47 FR 6459	01/01/81–06/30/81	2.90	2.90
Order (A-427-001)	04/09/82	47 FR 15391	( <sup>1</sup> )	2.90	2.90
Administrative review	03/22/84	49 FR 10695	10/01/81–05/31/82	3.69	3.69
Order revocation in part <sup>2</sup>	06/29/84	49 FR 26773	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Administrative review	11/26/86	51 FR 42873	06/01/82–03/31/83	0.70	0.70
Administrative review	11/26/86	51 FR 42873	04/01/83–03/31/84	0.96	0.96
Administrative review	11/26/86	51 FR 42873	04/01/84–03/31/85	0.21	0.21
Administrative review	06/01/87	52 FR 20444	04/01/85–03/31/86	12.07	12.07
Administrative review	06/08/88	53 FR 21506	04/01/86–03/31/87	0.46	0.46
Administrative review	02/26/90	55 FR 6668	04/01/87–03/31/88	0.94	0.94
Five-year review	02/04/99	64 FR 5636	( <sup>1</sup> )	2.90	2.90
Continuation of order	08/06/99	64 FR 42920	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Administrative review	02/14/00	65 FR 7361	04/01/98–03/31/99	12.07	2.90
<sup>1</sup> Not applicable. <sup>2</sup> Commerce revoked the antidumping duty order with respect to liquid sorbitol following the CIT's affirmation of the Commission's remand results. See <i>Roquette Frères and Roquette Corporation v. United States</i> , Slip Op. 84-22, March 19, 1984. The antidumping duty order continued on imports of crystalline sorbitol from France.					
Source: Cited <i>Federal Register</i> notices.					

## Commerce's Final Results of Second Expedited Five-Year Review

On June 28, 2004, the Commission received notification of Commerce's "Final Results of Expedited Sunset Review" concerning sorbitol from France.<sup>13</sup> The review covered all manufacturers and exporters of sorbitol from France. Commerce determined that dumping is likely to continue or recur if the antidumping duty order is revoked, with margins of dumping of 2.9 percent *ad valorem*.

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

Since September 21, 2001, qualified U.S. producers of sorbitol have been eligible to receive disbursements from the U.S. Bureau of Customs and Border Protection (Customs) under the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), also known as the Byrd Amendment.<sup>14</sup> Two firms, Pfizer<sup>15</sup> and Lonza,<sup>16</sup> are eligible to receive such funds.<sup>17</sup> However, neither firm received CDSOA funds in federal fiscal years 2001, 2002, or 2003.<sup>18</sup>

## THE PRODUCT

### Scope

According to Commerce, the merchandise covered by this review is crystalline sorbitol from France. Crystalline sorbitol is a polyol (sugar alcohol) produced by the hydrogenation of sugars (glucose). It is used in the production of sugarless gum, candy, groceries, and pharmaceuticals. Crystalline sorbitol is currently classified under subheading 2905.44.00 of the Harmonized Tariff Schedule of the United States (HTS).<sup>19</sup>

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<sup>13</sup> 69 FR 36062.

<sup>14</sup> 19 CFR 159.64(g).

<sup>15</sup> ADM purchased Pfizer's sorbitol business in 1994.

<sup>16</sup> SPI Polyols purchased the polyols business of Lonza in 2000.

<sup>17</sup> 66 FR 40782, August 3, 2001; 67 FR 44722, July 2, 2002; and 68 FR 41597, July 14, 2003.

<sup>18</sup> The preliminary amount to be disbursed in fiscal year 2003 under the sorbitol antidumping duty order (A-427-001) is \$193.38. See *CDSOA Duty for FY2003, Preliminary Dollars to Disburse*, retrieved at Customs' web site: [http://www.cbp.gov/xp/cgov/import/add\\_cvd/](http://www.cbp.gov/xp/cgov/import/add_cvd/). See also Customs' *CDSOA Annual Reports* for fiscal years 2001, 2002, and 2003.

<sup>19</sup> See Commerce's Final Results of the Sunset Review of Antidumping Duty Order, 69 FR 69 FR 36062, June 28, 2003.

### U.S. Tariff Treatment

Table I-4 presents current tariff rates for sorbitol. In addition to the general column-1 duty rates, imports of crystalline sorbitol from France are currently subject to antidumping duties ranging from 2.9 percent *ad valorem* to 12.07 percent *ad valorem*.<sup>20</sup>

**Table I-4**  
**Sorbitol: Tariff rates, 2004**

HTS provision	Article description <sup>1</sup>	General <sup>2</sup>	Special <sup>3</sup>	Column 2 <sup>4</sup>
		Rates ( <i>percent ad valorem</i> )		
2905.44.00 <sup>5</sup>	Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: Other polyhydric alcohols: D-Glucitol (Sorbitol)	4.9	Free	50.0

<sup>1</sup> An abridged description is provided for convenience; however, an unabridged description may be obtained from the respective headings, subheadings, and legal notes of the HTS.  
<sup>2</sup> Normal trade relations rate, formerly known as the most-favored-nation duty rate, applicable to imports from France.  
<sup>3</sup> For eligible goods under the Generalized System of Preferences, Caribbean Basin Economic Recovery Act, Andean Trade Preference Act, Israel Free Trade Agreement, Jordan Free Trade Agreement, Chile Free Trade Agreement, Singapore Free Trade Agreement, and NAFTA-originating goods of Canada and Mexico.  
<sup>4</sup> Applies to imports from a small number of countries that do not enjoy normal or preferential trade relations duty status.  
<sup>5</sup> Includes crystalline and (nonsubject) liquid sorbitol.

Source: Harmonized Tariff Schedule of the United States (2004).

### Domestic Like Product and Domestic Industry

In the first expedited five-year review determination, the Commission defined the domestic like product as crystalline sorbitol and the domestic industry to be all U.S. producers of crystalline sorbitol.<sup>21</sup> In its notice of institution in this review, the Commission proposed identical definitions for the domestic like product and the domestic industry as determined in the first expedited five-year review.<sup>22</sup>

Two domestic producers, ADM and SPI Polyols, agree with the definitions of the domestic like product and the domestic industry identified in the Commission's notice of institution for this review.<sup>23</sup> One domestic firm, Roquette America, did not object to the Commission's definitions of the domestic like product and the domestic industry.<sup>24</sup>

<sup>20</sup> Based on Commerce's latest administrative review. See 65 FR 7361, February 14, 2000.

<sup>21</sup> See *Sorbitol From France: Investigation No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, pp. 4-6.

<sup>22</sup> 69 FR 4981, February 2, 2004.

<sup>23</sup> See submissions to Commission's notice of institution of ADM (March 23, 2004), p. 5; and SPI Polyols (March 22, 2004), p. 4.

<sup>24</sup> See submission to Commission's notice of institution of Roquette America (March 23, 2004).

## Description and Uses<sup>25</sup>

Polyols are sugar-free sweeteners. The most widely used polyols are sorbitol, mannitol, and maltitol. Sorbitol is derived from glucose, mannitol from fructose, and maltitol from high maltose corn syrup. Chemically, polyols are considered polyhydric alcohols or sugar alcohols because part of their structure resembles sugar and part is similar to alcohols. However, these sugar-free sweeteners are neither sugars nor alcohols, as these words are commonly used. Although polyols are derived from sugars, they are not processed in the human body like sugars. Polyols possess several advantages over sugar such as reduced calories, reduced insulin response,<sup>26</sup> non-promotion of tooth decay, and may be labeled in products containing them as “sugar-free” or “no sugar added.”<sup>27</sup>

Polyols are used mostly in confectionery, food,<sup>28</sup> oral care,<sup>29</sup> pharmaceutical,<sup>30</sup> and industrial applications.<sup>31</sup> Some characteristics of polyols are fewer calories, pleasant sweetness, ability to hold moisture, and improved processing. Polyols serve as humectants, bulking agents, and freeze point depressants. Polyols are versatile ingredients, used in a variety of applications to provide value-adding properties.

## Manufacturing Process

Crystalline sorbitol has the chemical formula  $C_6H_8(OH)_6$  and is available in granular and powdered forms. United States Pharmacopeia (USP) specifications for crystalline sorbitol allow for up to 9 percent of impurities, with virtually all crystalline sorbitol marketed in the United States being USP grade.<sup>32</sup>

The production of crystalline sorbitol is capital intensive and requires a number of steps. Initially, dextrose is dissolved in water to a 50-percent solution, to which a catalyst is added. Next, the dextrose solution is heated and reacted with hydrogen under pressure. The resulting crude sorbitol solution is purified and evaporated to reduce the liquid content to 30 percent. The solution is then further concentrated to obtain sorbitol in a crystalline form. In effect, crystalline sorbitol (100 percent solution) is obtained from liquid sorbitol (70 percent solution).<sup>33</sup>

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<sup>25</sup> The description and uses section is based on information obtained from SPI Polyols’ web site: <http://www.spipolyols.com/whatarepolyols.html>, retrieved on May 20, 2004.

<sup>26</sup> Sorbitol does not require insulin for digestion and therefore is a suitable sugar substitute in diabetic foods and candies.

<sup>27</sup> Unlike high potency sweeteners like aspartame which is used in very small amounts, polyols are used in the same quantity as sucrose.

<sup>28</sup> Sorbitol is a large component of products like sugar-free gum and mints.

<sup>29</sup> Polyols are used in toothpaste and mouthwashes for a variety of functions such as bodying/bulking agent, crystallization inhibitor, flavoring agent/sweetener, humectant, and shelf-life extender.

<sup>30</sup> In cosmetics, polyols are used in lotions, moisturizers, soaps, shampoos, and other hair care products to provide conditioning, gloss, humectancy, and texture.

<sup>31</sup> Polyols’ industrial use aids in the production of polyurethanes, adhesives, papermaking, joint compound, tobacco, and many other applications. Their use as antistatic, chelating, and cross linking agents, as well as, a gloss enhancer, humectants, and plasticizer promote better quality for many finished products.

<sup>32</sup> See *Sorbitol From France: Investigation No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, pp. I-3-I-4.

<sup>33</sup> *Ibid.*, p. I-4.



## THE INDUSTRY IN THE UNITED STATES

### U.S. Producers

In 1983, at the time of the original investigation, six companies were identified as U.S. producers of sorbitol: Hoffman-LaRoche and Co.; ICI Americas, Inc.; Pfizer, Inc.; Lonza Inc.; Merck & Co., Inc.; and Ethichem Corp.<sup>34</sup> These companies all produced liquid sorbitol;<sup>35</sup> however, only ICI Americas and Pfizer were further identified as producers of the crystalline variety. Pfizer was the sole petitioner in the original investigation.<sup>36</sup>

During the first five-year review conducted by the Commission in 1998, the crystalline sorbitol industry in the United States reportedly consisted of six producers: Archer Daniels Midland Co. (ADM); SPI Polyols, Inc.; Roquette America, Inc.;<sup>37</sup> Ethichem Corp.; Hoffman-LaRoche and Co.; and Lonza, Inc. ADM, Roquette America, and SPI Polyols were believed to be by far the largest U.S. producers of crystalline sorbitol at that time.

Table I-5 presents a list of known U.S. producers of crystalline sorbitol in 2003. Figure I-1 presents a chronology of significant industry changes since 1994. The data presented for U.S. producers are based on the responses of three firms believed to account for all known U.S. production in 2003.

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<sup>34</sup> *Ibid.*, p. I-4.

<sup>35</sup> As previously noted, Commerce revoked the antidumping duty order concerning liquid sorbitol in June 1984.

<sup>36</sup> See 46 FR 32700, June 24, 1981 (the Commission's notice of institution in investigation No. 731-TA-44 (Preliminary): Sorbitol from France).

<sup>37</sup> Roquette America is a wholly owned subsidiary of Roquette Frères, Lestrem, France.

Table I-5

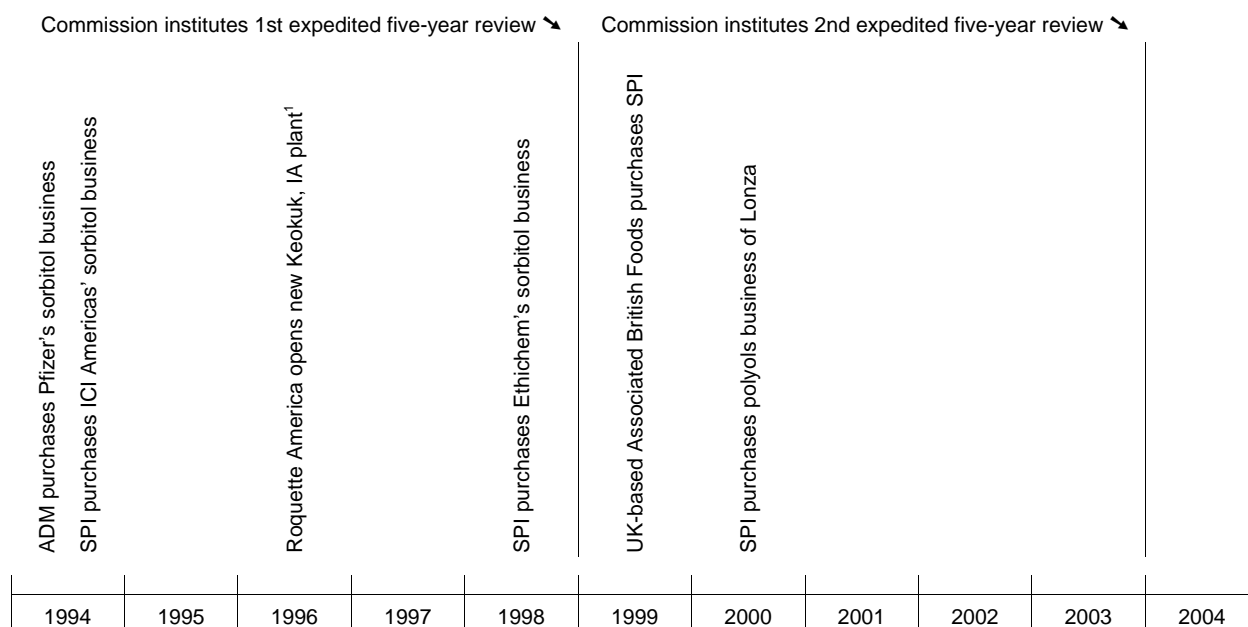
**Sorbitol: U.S. producers, locations of headquarters and production facilities, whether firm responded to the notice of institution in the second five-year review, and whether firm supports the continuation of the antidumping duty order**

Firm	Location of headquarters	Location of production facilities	Firm responded to the notice of institution in the second five-year review		Firm supports the continuation of the antidumping duty order	
			Yes	No	Yes	No
ADM	Decatur, IL	Decatur, IL	✓		✓	
Roquette America	Keokuk, IA	Gurnee, IL Keokuk, IA	✓		✓	
SPI Polyols	New Castle, DE	Atlas Point, DE Easton, PA Mapleton, IL	✓		✓	

Source: Compiled from submissions to the Commission.

Figure I-1

**Sorbitol: Chronology of significant changes in the U.S. industry, 1994-2004**



<sup>1</sup> The Keokuk plant produces only liquid sorbitol.

Source: *Sorbitol From France: Investigation No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, pp. I-4; *Prepared Foods*, Cahners Publishing Co., July 2000; and *Chemical Market Reporter*, October 1, 2001.

### U.S. Producers' Trade, Employment, and Financial Data

Three U.S. producers, ADM, Roquette America, and SPI Polyols, responded in a timely manner to the Commission's notice of institution in this review. The three producers are believed to account for all known U.S. production of crystalline sorbitol during 2003. Information on the U.S. industry, therefore, is based on the data provided by these three firms. Table I-6 presents information on the U.S. industry's trade, employment, and financial data during 1978-80, 1997, and 2003. Information on U.S. producers' production and shipments, by firms, in 2003 is presented in table I-7.

**Table I-6**

**Sorbitol: U.S. producers' trade, employment, and financial data, 1978-80, 1997, and 2003**

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*	*	*	*	*	*	*
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**Table I-7**

**Sorbitol: U.S. producers' production and shipments, by firms, 2003**

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*	*	*	*	*	*	*
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Roquette America reported imports of crystalline sorbitol in 2003 from its French parent company, Roquette Frères. Such subject imports amounted to \*\*\* pounds and accounted for \*\*\* percent of Roquette America's U.S. production of crystalline sorbitol during 2003.

## U.S. IMPORTS AND CONSUMPTION

### U.S. Imports

Table I-8 presents information on U.S. imports of sorbitol<sup>38</sup> during 1978-80 and 1989-2003, and figure I-2 presents similar information for 1989-2003. Roquette America reported imports of crystalline (powder) sorbitol from France in 2003 of \*\*\* pounds valued at \$\*\*\*. According to official Commerce statistics, imports of sorbitol (crystalline and liquid) from France in 2003 were 2.3 million pounds valued at \$641,908. Based on the imports of crystalline sorbitol reported by Roquette America (the exclusive importer for the sole exporter in France), crystalline sorbitol accounted for \*\*\* percent of total sorbitol imports from France in 2003. According to import data presented in the original investigation, crystalline sorbitol accounted for \*\*\* percent of total sorbitol imports from France (based on quantity) in 1978, \*\*\* percent in 1979, and \*\*\* percent in 1980; crystalline sorbitol accounted for \*\*\* percent of total sorbitol imports (based on value) in 1978, \*\*\* percent in 1979, and \*\*\* percent in 1980.

### Apparent U.S. Consumption and Market Shares

Table I-9 presents information on apparent U.S. consumption and market shares for the periods 1978-80, 1997, and 2003.

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<sup>38</sup> Official import statistics do not break out crystalline and liquid sorbitol.

Table I-8  
Sorbitol: U.S. imports, 1978-80 and 1989-2003<sup>1</sup>

Item	1978	1979	1980	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
				<b>Quantity (1,000 pounds)</b>														
France	1,601	2,240	4,984	4,880	2,789	1,436	611	3,625	8,332	2,733	445	66	776	347	777	164	111	2,338
All other	928	2,341	2,698	16,076	14,885	11,761	9,468	7,926	8,273	9,628	7,092	7,413	7,622	9,604	7,477	7,522	6,920	7,633
Total	2,529	4,581	7,682	20,956	17,673	13,197	10,079	11,552	16,605	12,361	7,538	7,479	8,398	9,951	8,254	7,686	7,031	9,971
				<b>Landed duty-paid value (\$1,000)</b>														
France	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	1,149	1,498	922	133	2,304	5,224	1,809	500	144	682	318	685	318	201	642
All other	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	3,476	3,846	3,063	2,554	2,394	3,186	4,417	3,417	4,682	4,682	5,663	5,269	5,418	3,872	4,427
Total	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	4,625	5,343	3,985	2,687	4,699	8,409	6,226	3,917	4,826	5,364	5,981	5,955	5,736	4,074	5,069
				<b>Unit value (per 1,000 pounds)</b>														
France	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	\$235	\$537	\$642	\$218	\$636	\$627	\$662	\$1,124	\$2,175	\$879	\$917	\$883	\$1,940	\$1,807	\$275
All other	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	216	258	260	270	302	385	459	482	632	614	590	705	720	560	580
Total	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	221	302	302	267	407	506	504	520	645	639	601	721	746	579	508
				<b>Share of quantity (percent)</b>														
France	63.3	48.9	64.9	23.3	15.8	10.9	6.1	31.4	50.2	22.1	5.9	0.9	9.2	3.5	9.4	2.1	1.6	23.4
All other	36.7	51.1	35.1	76.7	84.2	89.1	93.9	68.6	49.8	77.9	94.1	99.1	90.8	96.5	90.6	97.9	98.4	76.6
Average	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
				<b>Share of value (percent)</b>														
France	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	24.8	28.0	23.1	4.9	49.0	62.1	29.1	12.8	3.0	12.7	5.3	11.5	5.5	4.9	12.7
All other	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	75.2	72.0	76.9	95.1	51.0	37.9	70.9	87.2	97.0	87.3	94.7	88.5	94.5	95.1	87.3
Average	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

<sup>1</sup> Data presented include imports of crystalline and (nonsubject) liquid sorbitol. Official Commerce statistics do not break out crystalline and liquid sorbitol. Based on the imports of crystalline sorbitol reported by Roquette America (the exclusive importer for the sole exporter in France), crystalline sorbitol accounted for \*\*\* percent of total sorbitol imports in 2003. According to import data presented in the original investigation, crystalline sorbitol accounted for \*\*\* percent of sorbitol imports from France (based on quantity) in 1978, \*\*\* percent in 1979, and \*\*\* percent in 1980; crystalline sorbitol accounted for \*\*\* percent of total sorbitol imports (based on value) in 1978, \*\*\* percent in 1979, and \*\*\* percent in 1980 (staff report of October 3, 1983, table 1).

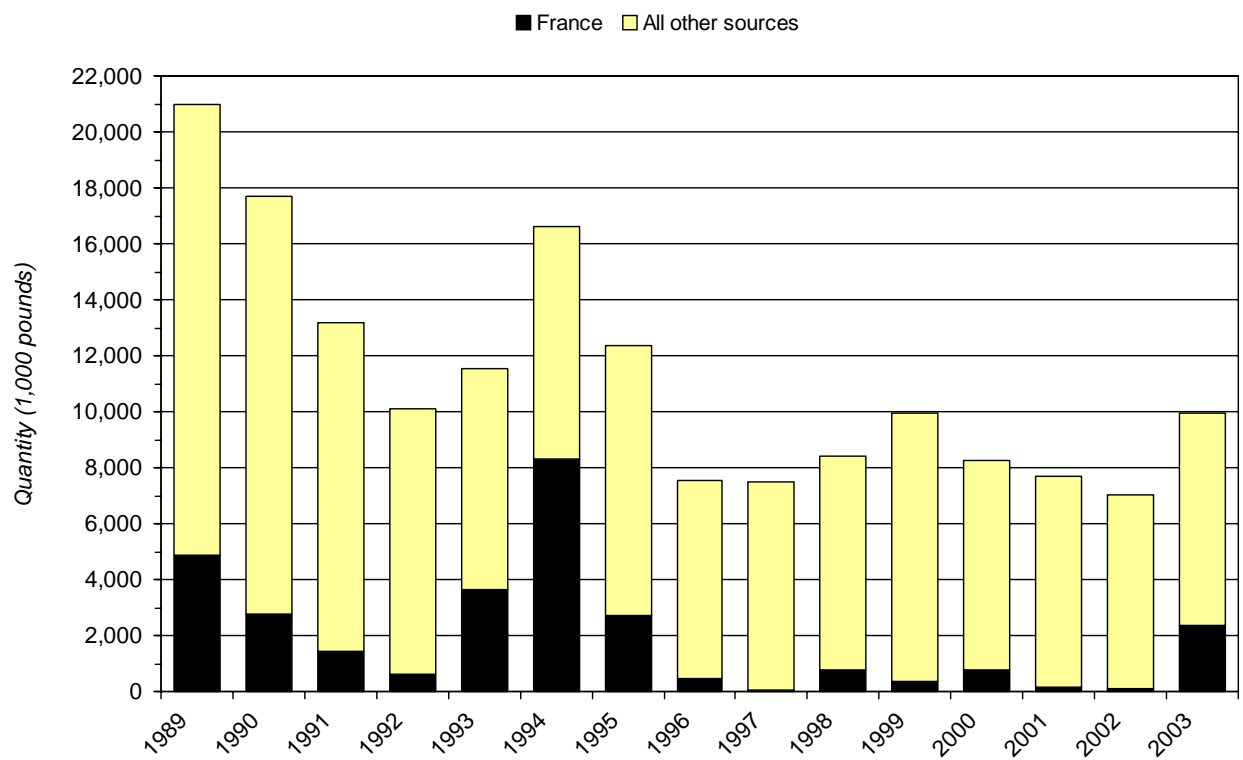
<sup>2</sup> Data not available.

<sup>3</sup> Not applicable.

Note.—Data presented for the period 1978-80 are based on the staff report of October 3, 1983, table 1. Data for all other periods are based on official Commerce statistics.

Source: Compiled from the staff report of October 3, 1983, and official Commerce statistics.

**Figure I-2**  
**Sorbitol: U.S. imports, 1989-2003**



Source: Table I-8.

Table I-9

**Sorbitol: U.S. shipments of domestic product, U.S. imports, by sources, apparent U.S. consumption, and market shares, 1978-80, 1997, and 2003**

Item	1978	1979	1980	1997	2003
	<b>Quantity (1,000 pounds)</b>				
U.S. producers' domestic shipments	***	***	***	***	***
U.S. imports from: <sup>1</sup>					
France	1,601	2,240	4,984	66	2,337
All other sources	928	2,341	2,698	7,413	7,635
Total imports	2,529	4,581	7,682	7,479	9,971
Apparent U.S. consumption	***	***	***	***	***
	<b>Share of apparent U.S. consumption based on quantity (percent)</b>				
U.S. producers' domestic shipments	***	***	***	***	***
U.S. imports from:					
France	***	***	***	***	***
All other sources	***	***	***	***	***
Total imports	***	***	***	***	***
<p><sup>1</sup> Import data for the period 1978-80 are based on responses to Commission questionnaires as presented in the original staff report of October 3, 1983. Import data for 1997 and 2003 are based on official Commerce statistics and include imports of crystalline and liquid sorbitol.</p> <p>Note.--Data presented for the period 1978-80 are based on the staff report of October 3, 1983; data for 1997 are based on memorandum INV-W-019, staff report of February 11, 1999, Sorbitol from France: Investigation No. 731-TA-44 (Review), table I-1, p. I-7. Data for 2003 are based on the submissions of ADM, Roquette America, and SPI Polyols in response to the notice of institution in this second five-year review.</p> <p>Source: Compiled from data presented in the staff reports in the original investigation and the first five-year review; submissions in response to the notice of institution in the second five-year review; and official Commerce statistics.</p>					

## The Industry In France

During the period of the original investigation, Roquette Frères was identified as the only producer of crystalline sorbitol in France. It had manufactured sorbitol since the 1960s, and at the time of the investigation was the largest sorbitol producer in the world.<sup>39</sup> In the early 1980s, Roquette Frères established Roquette America as a U.S. production subsidiary. Roquette Frères was identified as the only crystalline sorbitol producer in France during the first five-year review in 1998.<sup>40</sup>

Roquette Frères was described in a response to the Commission's notice in this current five-year review as the principal producer of crystalline sorbitol in France and "the largest global producer of powder sorbitol."<sup>41</sup> ADM reported in its response to the notice of institution in this second five-year review that the French firm Syral S.A. began producing only very small quantities of liquid and crystalline sorbitol in 2001, but ADM was not aware of whether Syral exported sorbitol to the United States.<sup>42</sup>

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<sup>39</sup> See *Sorbitol From France: Investigation No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, pp. I-7-I-8.

<sup>40</sup> According to SPI Polyols, its French joint venture with Amylum France SAS, known as Amylum SPI, was to begin production of crystalline sorbitol in France in early 1999. See *Sorbitol From France: Investigation No. 731-TA-44 (Review)*, USITC Pub. 3165, March 1999, p. I-10. However, in a letter to Commerce, dated March 3, 2004, Amylum France SAS reported that the joint venture no longer exists. In its response to the Commission's notice of institution in this second five-year review, SPI Polyols indicated that it did not import the subject merchandise during 2003. See submission to the Commission's notice of institution of SPI Polyols (March 22, 2004).

<sup>41</sup> Response of Roquette America (March 1, 2004) to the Commission's notice of institution, p. 3.

<sup>42</sup> See Commission's memorandum of April 27, 2004, INV-BB-048, *Sorbitol from France: Investigation No. 731-TA-44 (Second Review)—Recommendation on Adequacy of Responses to Notice of Institution*, pp. 3-4.



**APPENDIX A**

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***FEDERAL REGISTER NOTICES***



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**INTERNATIONAL TRADE  
COMMISSION**

**[Investigation No. 731-TA-44 (Review)]**

**Sorbitol From France**

**AGENCY:** International Trade Commission.

**ACTION:** Institution of a five-year review concerning the antidumping duty order on sorbitol from France.

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**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 sorbitol from France 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;<sup>1</sup> to be assured of consideration, the deadline for responses is March 23, 2004. Comments on the adequacy of responses may be filed with the Commission by April 16, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** February 2, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.** On April 9, 1982, the Department of Commerce issued an antidumping duty order on imports of sorbitol from France (47 FR 15391). Following five-year reviews by Commerce and the Commission, effective March 17, 1999, Commerce issued a continuation of the antidumping duty order on imports of sorbitol from France (64 FR 42920, August 6, 1999). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the

facts available, which may include information provided in response to this notice.

**Definitions.** The following definitions apply to this review:

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

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

(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 and in response to the July 18, 1993, order of the United States Court of International Trade remanding the investigation, the Commission defined two Domestic Like Products, crystalline and liquid sorbitol. In its original determination, the Commission made affirmative findings for both Domestic Like Products; however, in the remand investigation, the Commission made an affirmative determination with respect to crystalline sorbitol only. Certain Commissioners defined the Domestic Like Product differently in the original and remand investigations. In its expedited five-year review determination, the Commission found that the appropriate definition of the Domestic Like Product is the same as Commerce's scope: crystalline sorbitol, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals. For the purposes of this notice, you should consider the Domestic Like Product to be crystalline sorbitol, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and in response to the July 18, 1993, order of the United States Court of International Trade remanding the investigation, the Commission defined two Domestic Industries, one producing crystalline sorbitol and one producing liquid sorbitol. In its original determination, the Commission made affirmative findings for both Domestic Industries; however, in the remand investigation, the Commission made an affirmative determination with respect to only the U.S. producers of crystalline sorbitol. Certain Commissioners defined

the Domestic Industry differently in the original and remand investigations. In its expedited five-year review determination, the Commission defined the Domestic Industry to encompass all U.S. producers of crystalline sorbitol. For the purposes of this notice, you should consider the Domestic Industry to be all U.S. producers of crystalline sorbitol.

(5) 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 § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

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

<sup>1</sup> No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 04-5-081, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

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 § 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 § 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 23, 2004. Pursuant to § 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, 2004. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 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 § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with §§ 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 § 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 § 776(b) of the Act in making its determination in the review.

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

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

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

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

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

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

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the

Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

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

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

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

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

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

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

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

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003

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

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

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

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

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

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

Issued: January 27, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-2063 Filed 1-30-04; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE  
COMMISSION**

[Investigation No. 731-TA-44 (Second Review)]

**Sorbitol From France**

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

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

**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 sorbitol from France would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** May 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Fred Fischer (202-205-3179 or [fred.fischer@usitc.gov](mailto:fred.fischer@usitc.gov)), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.* On May 7, 2004, the Commission determined that the domestic interested party group response to its notice of institution (69 FR 4979, February 2, 2004) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.<sup>1</sup> 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, 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,<sup>2</sup> 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, 2004 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by June 8, 2004. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

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

individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

<sup>2</sup> The Commission has found the responses submitted by Archer Daniels Midland Co.; Roquette America, Inc.; and SPI Polyols, Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

**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 14, 2004.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-11317 Filed 5-18-04; 8:45 am]

**BILLING CODE 7020-02-P**

<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any





respondent interested parties to the notice of initiation. The Department's final results of this review were scheduled for June 1, 2004. However, issues have arisen over the appropriate magnitude of the dumping margin likely to prevail for certain companies subject to the sunset review. Because of these complex issues, the Department will extend the deadline. Thus, the Department intends to issue the final results not later than June 15, 2004 in accordance with section 751(c)(5)(B).

Dated: May 27, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-12604 Filed 6-2-04; 8:45 am]

BILLING CODE 3510-DS-P

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-427-001]

**Sorbitol From France; Final Results of Expedited Sunset Review of Antidumping Order**

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

**ACTION:** Notice of extension of time limit for final results of expedited sunset review: Sorbitol from France.

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**SUMMARY:** The Department of Commerce ("the Department") is extending the time limit for its final results in the expedited sunset review of the countervailing duty order on sorbitol from France.<sup>1</sup> The Department intends to issue final results of this sunset review on or before June 15, 2004.

**DATES:** Effective Date: June 3, 2004.

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

**Extension of Final Determination**

On February 2, 2004, the Department initiated a sunset review of the antidumping order on Sorbitol from France. *See Initiation of Five-Year (Sunset) Reviews*, 69 FR 4921 (February 2, 2004). The Department determined that it would conduct an expedited (120 day) sunset review of this order based on responses from the domestic and

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<sup>1</sup> The Department normally will issue its final results in an expedited sunset review not later than 120 days after the date of publication in the **Federal Register** of the notice of initiation. However, if the Secretary determines that a sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days. *See* section 751(c)(5)(B) of the Act.



Avenue, NW., Washington, DC 20230;  
telephone: (202) 482-4340.

#### Extension of Final Determination

On February 2, 2004, the Department initiated a sunset review of the antidumping order on Sorbitol from France. See Initiation of Five-Year (Sunset) Reviews, 69 FR 4921 (February 2, 2004). The Department determined that it would conduct an expedited (120 day) sunset review of this order based on responses from the domestic and respondent interested parties to the notice of initiation. The Department's final results of this review were scheduled for June 1, 2004. However, issues have arisen over the appropriate magnitude of the dumping margin likely to prevail for certain companies subject to the sunset review. Because of these complex issues, the Department will extend the deadline. Thus, the Department intends to issue the final results not later than June 30, 2004 in accordance with section 751(c)(5)(B).

Dated: June 15, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-13990 Filed 6-21-04; 8:45 am]

BILLING CODE 3510-DS-P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-427-001]

#### Sorbitol From France; Final Results of Expedited Sunset Review of the Antidumping Order

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

**ACTION:** Notice of Extension of Time Limit for the Final Results of Expedited Sunset Review: Sorbitol from France.

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**SUMMARY:** The Department of Commerce ("the Department") is extending the time limit for its final results in the expedited sunset review of the antidumping order on sorbitol from France.<sup>1</sup> The Department intends to issue final results of this sunset review on or about June 30, 2004.

**EFFECTIVE DATE:** June 22, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Hilary E. Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution

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<sup>1</sup> The Department normally will issue its final results in an expedited sunset review not later than 120 days after the date of publication in the **Federal Register** of the notice of initiation. However, if the Secretary determines that a sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days. See section 751(c)(5)(B) of the Act.



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**DEPARTMENT OF COMMERCE****International Trade Administration****[A-427-001]****Sorbitol from France: Final Results of Expedited Sunset Review of Antidumping Duty Order**

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

**ACTION:** Notice of Final Results of the Second Expedited Sunset Review of Antidumping Duty Order on Sorbitol from France.

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**SUMMARY:** On February 2, 2004, the Department of Commerce (“the Department”) published the notice of initiation of the second sunset review of the antidumping duty order on sorbitol from France (69 FR 4921) pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). On the basis of the notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response from respondent interested parties, we determined to conduct an expedited (120-day) sunset review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled “Final Results of Review.”

**EFFECTIVE DATE:** June 28, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Hilary E. Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 2837, Washington, DC, 20230; telephone: (202) 482-4340.

**SUPPLEMENTARY INFORMATION:****Background**

On February 2, 2004, the Department published the notice of initiation of the second sunset review of the antidumping duty order on sorbitol from France pursuant to section 751(c) of the Act.<sup>1</sup> The Department received the Notice of Intent to Participate on behalf of SPI Polyols, Inc. ("SPI"), Archer Daniels Midland Company ("ADM"), and Roquette America ("RA"), the domestic interested parties, within the deadline specified in section 351.218(d)(1)(I) of the *Department's Regulations* ("Sunset Regulations"). ADM and SPI claimed interested party status under section 771(9)(C) of the Act, as domestic producers of sorbitol. RA claimed interested party status as a domestic producer and as an importer of the subject merchandise. We received a complete substantive responses from all domestic interested parties within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i).

We received a substantive response from one respondent interested party, Amylum France SAS ("Amylum"), in this proceeding. Amylum's response accounted for less than 50 percent of the exports of sorbitol from France to the United States.<sup>2</sup> As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(2)(i), the Department conducted an expedited (120-day) sunset review of this finding.

**Scope of Review**

The products covered in this order are shipments of crystalline sorbitol ("sorbitol"), a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals. The above-described sorbitol is classified under HTS subheading 2905.44.00. The HTS subheadings are provided for convenience and for customs purposes. The written description remains dispositive.

<sup>1</sup> *Initiation of Five-Year (Sunset) Reviews*, 69 FR 4921 (February 2, 2004).

<sup>2</sup> Memorandum to Ronald K. Lorentzen, *Sunset Review of Sorbitol from France: Adequacy of Respondent Interested Party Response to the Notice of Initiation* (March 16, 2004).

**Analysis of Comments Received**

All issues raised in this case are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated June 15, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the finding were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "June 2004." 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 finding on sorbitol from France would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin Percent
Roquette Freres .....	2.9
All Others .....	2.9

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

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

Dated: June 22, 2004.

**James J. Jochum,**  
Assistant Secretary for Import Administration.

[FR Doc. 04-14618 Filed 6-25-04; 8:45 am]

**BILLING CODE 3510-DS-S**

**APPENDIX B**

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**STATEMENT ON ADEQUACY**





## **EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY**

in

*Sorbitol from France*, Inv. No. 731-TA-44 (Second Review)

On May 7, 2004, the Commission determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3)(B).

The Commission received responses from domestic producers Archer Daniels Midland Co., Roquette America, Inc. and SPI Polyols, Inc. The Commission determined that the responses were individually adequate. The Commission also determined that the responses were an adequate domestic interested party group response because the three producers account for all domestic production of the like product.

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

