

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN AMMONIUM NITRATE FROM RUSSIA

Investigation No. 731-TA-856 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3232, September 1999)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Russia of solid fertilizer grade ammonium nitrate (as defined by the Department of Commerce (Commerce)), provided for in subheading 3102.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

BACKGROUND

On July 23, 1999, a petition was filed with the Commission and Commerce by the ad hoc Committee for Fair Ammonium Nitrate Trade (COFANT) (consisting of Air Products & Chemicals, Inc., Allentown, PA; Mississippi Chemical Corp., Yazoo City, MS; El Dorado Chemical Co., Oklahoma City, OK; Nitram, Inc., Tampa, FL; LaRoche Industries, Inc., Atlanta, GA; and Wil-Gro Fertilizer, Inc., Celina, TX), alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of the subject ammonium nitrate from Russia. Accordingly, effective July 23, 1999, the Commission instituted antidumping investigation No. 731-TA-856 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 2, 1999 (64 FR 41948). The conference was held in Washington, DC, on August 13, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of certain ammonium nitrate from Russia that are allegedly sold in the United States at less than fair value (“LTFV”).

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.¹ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”²

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole 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.”⁴ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”⁵

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission

¹ 19 U.S.C. § 1673b(a); *see also* American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT __, Slip Op. 96-51, at 4-6 (Mar. 11, 1996).

² American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); *see also* Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

⁶ *See, e.g.*, NEC Corp. v. Dep’t of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and
(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁸ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of this investigation as follows:

solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate).¹⁰

Ammonium nitrate¹¹ is one of at least seven fertilizers that deliver nitrogen to the soil.¹² Ammonium nitrate is made from ammonia and nitric acid, each of which in turn requires natural gas as a major input.¹³ Ammonium nitrate has a nitrogen content of 34 percent. However, it often delivers more nitrogen to the soil under certain conditions than other fertilizers that have a higher nitrogen content but which may be

⁶ (...continued)

production employees; and, where appropriate, (6) price. *See Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁷ *See, e.g.*, S. Rep. No. 96-249, at 90-91 (1979).

⁸ *Nippon Steel*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49. *See also* S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

⁹ *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁰ 64 Fed. Reg. 45236 (August 19, 1999).

¹¹ In this opinion, the term “ammonium nitrate” refers to high density ammonium nitrate unless otherwise specified. This opinion also uses the term “high density ammonium nitrate” for clarity when that product is contrasted with low density ammonium nitrate.

¹² Confidential Report (“CR”) at I-4 and Public Report (“PR”) at I-3.

¹³ CR at I-2 to I-3 and PR at I-2.

more volatile.¹⁴ For ease of application by farmers, ammonium nitrate is produced in small spherical pellets of several different types, called prills, fattened prills, and granules.¹⁵

C. Domestic Like Product Issues

The petitioner asserts that the Commission should find a single domestic like product co-extensive with the scope of this investigation: solid, fertilizer grade ammonium nitrate products with a bulk density equal to or greater than 53 pounds per cubic foot.¹⁶ Two of the respondents question the petitioner's proposed definition, but none of the respondents proposes an alternative definition.¹⁷ As discussed below, we determine for purposes of the preliminary phase of this investigation that there is one domestic like product consisting of solid, fertilizer grade ammonium nitrate products with a bulk density equal to or greater than 53 pounds per cubic foot.

We have considered whether low density ammonium nitrate -- ammonium nitrate with a bulk density less than 53 pounds per cubic foot -- should be included in the domestic like product. The petitioner argues that it should not be included, while the respondents do not challenge the petitioner's position for purposes of the preliminary determination.¹⁸ As discussed below, applying the Commission's six-factor like product test, we find that low density ammonium nitrate is not part of the domestic like product.

Physical Characteristics and Uses -- The nitrogen content of both high and low density ammonium nitrate is the same (about 34 percent),¹⁹ but the two grades otherwise differ in physical characteristics and uses. While the density of low density ammonium nitrate usually ranges from 46 to 52 pounds per cubic foot, the density of the high density product is 53 pounds per cubic foot or greater, and is

¹⁴ CR at II-5 and PR at II-3; transcript from August 13, 1999 conference ("Conf. Tr.") at 12-14 (testimony of George Porvaznik, Commercial Director for LaRoche Industries, Inc.).

¹⁵ Conf. Tr. at 53-54 (Porvaznik), and 79-80 (testimony of Phil Gough, Senior Vice President, El Dorado Chemical Company).

¹⁶ Petition at 11.

¹⁷ Postconference Brief of importer ConAgra International Fertilizer Companies ("ConAgra") at 3-4; Postconference Brief of V.T.I. Fertasco, Inc. ("V.T.I.") at 5-6. These two respondents suggest that in any final phase of the investigation the Commission consider expanding the like product to include nitrogen fertilizers other than ammonium nitrate, but do not identify which of these other fertilizers the Commission should consider. ConAgra's Postconference Brief at 3-4; V.T.I.'s Postconference Brief at 2-6. For purposes of this preliminary investigation we do not include any other nitrogen fertilizers in the domestic like product, given the apparent differences between ammonium nitrate and other such nitrogen fertilizers based on the available information in the record. While some other nitrogen-based fertilizers appear to be substitutable for ammonium nitrate to some degree, ammonium nitrate is favored in certain warmer climates because it is less volatile than other nitrogen fertilizers and does not burn plants. CR at II-5 to II-6 and PR at II-3 to II-4. The higher price often paid for ammonium nitrate (per amount of nitrogen delivered) suggests that it is preferred by consumers over other fertilizers for reasons other than price. Conf. Tr. at 12-14 (Porvaznik). We will revisit this issue in any final phase investigation.

¹⁸ Petitioner's Postconference Brief at 2-7; ConAgra's Postconference Brief at 3; V.T.I.'s Postconference Brief at 4.

¹⁹ Petition at 5-6.

usually between 55 and 64 pounds per cubic foot.²⁰ Low density ammonium nitrate is more porous and better able to absorb the fuel oil necessary to produce an explosive product, while high density ammonium nitrate is less porous and less subject to deterioration.²¹ While both high and low density ammonium nitrate may take the form of prills (produced by allowing droplets of molten ammonium nitrate to cool into solid spheres during a fall through the air inside special prilling towers), only high density ammonium nitrate is made into granules (produced by layering molten ammonium nitrate solution onto seed particles).²² Although magnesium oxide is added to high density prills to prevent moisture absorption, it cannot be used with low density prills, which require different kinds of additives and coating agents.²³ The two grades have different uses: high density ammonium nitrate is used to increase the nitrogen content of the soil, while low density ammonium nitrate is used in explosive products.²⁴

Interchangeability -- High and low density ammonium nitrate have very limited interchangeability. High density ammonium nitrate is not suited to the manufacture of explosives because of its low porosity and strong anti-moisture additives, which inhibit the absorption of fuel oil.²⁵ On the other hand, low density ammonium nitrate is not suited for use as a fertilizer because it is subject to premature deterioration and is difficult to spread evenly on fields.²⁶

Producer and customer perceptions -- The evidence in the record indicates that high and low density ammonium nitrate are viewed as two very distinct products, both by ammonium nitrate producers and by customers, whether farmers or explosives manufacturers.²⁷

Production processes, manufacturing facilities and production employees -- Both high density and low density ammonium nitrate are produced using the same raw materials, nitric acid and ammonia,²⁸ although there are a number of differences in the production processes.²⁹ The production of low density ammonium nitrate requires additional equipment and a higher prill tower, and a large investment is generally required to produce high density and low density ammonium nitrate using the same equipment.³⁰ Two domestic producers produce both high density and low density ammonium nitrate at the same plant, sharing capacity and employees between the two products, while two domestic producers produce high density and low density ammonium nitrate at separate plants, and several domestic producers produce only high density or low density ammonium nitrate.³¹

Channels of distribution -- High and low density ammonium nitrate are sold through different channels of distribution. The high density product is sold primarily to wholesale distributors and retailers

²⁰ CR at I-2 n.4 and PR at I-2 n.4, Petition at 5-6.

²¹ CR at I-3 and PR at I-2.

²² CR at I-3 and PR at I-2, Conf. Tr. at 52 (testimony of Paul Rydlund, Senior Vice President, El Dorado Chemical Company).

²³ CR at I-3 and PR at I-2, Conf. Tr. at 30-31 (Rydlund).

²⁴ CR at I-2 to I-4 and PR at I-2 to I-3, Conf. Tr. at 17 (Porvaznik).

²⁵ CR at I-3 and PR at I-2.

²⁶ CR at I-3 and PR at I-2.

²⁷ Conf. Tr. at 18 (Porvaznik), 29-32 (Rydlund); Petitioner's Postconference Brief at 6.

²⁸ CR at II-3 and PR at II-2.

²⁹ Petitioner's Postconference Brief at 5 and Exh. 3.

³⁰ CR at II-3 and PR at II-2; Petitioner's Postconference Brief at Exh. 1, pp. 1-2; Conf. Tr. at 54-55 (Porvaznik).

³¹ CR at II-3, III-1 and PR at II-2, III-1; Petition at 2 n.1.

of farm products, while the low density product is sold primarily to distributors and retailers in the explosives market for resale to mining and construction companies.³²

Price -- Low density ammonium nitrate is generally priced approximately ten to twenty percent higher than high density ammonium nitrate product, reflecting correspondingly higher production costs associated with processing differences and the addition of fuel oil.³³ Most high density ammonium nitrate is sold in the spot market, with much of it sold using price lists, while low density ammonium nitrate is typically priced in a bidding process for supply contracts of industrial customers, and the pricing structure is different for the two grades.³⁴

We conclude that, while there are some similarities between high and low density ammonium nitrate (*e.g.*, raw materials used, nitrogen content in each), they are outweighed by the differences, particularly with respect to physical characteristics and uses, interchangeability, producer and customer perceptions, and channels of distribution. Accordingly, we determine that low density ammonium nitrate is not part of the domestic like product, and that there is one domestic like product consisting of solid, fertilizer grade ammonium nitrate products with a bulk density equal to or greater than 53 pounds per cubic foot.

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product.”³⁵ In defining the domestic industry, the Commission generally includes in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³⁶ Based on our finding of one domestic like product consisting of certain ammonium nitrate included within the scope of this investigation, for purposes of this preliminary determination, we find that the domestic industry consists of all domestic producers of this product.

We must also consider whether any producers of the domestic like product should be excluded from the domestic industry pursuant to the related parties provision in 19 U.S.C. § 1677(4)(B). That provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.³⁷ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.³⁸

³² CR at I-4 and PR at I-3, Petitioner’s Postconference Brief at 4; Conf. Tr. at 17 (Porvaznik).

³³ CR at I-3 and PR at I-2.

³⁴ CR at V-4 to V-5 and PR at V-3, Petitioner’s Postconference Brief at 6, Conf. Tr. at 17-18 (Porvaznik).

³⁵ 19 U.S.C. § 1677(4)(A).

³⁶ *See United States Steel Group v. United States*, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

³⁷ 19 U.S.C. § 1677(4)(B).

³⁸ *Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d without opinion*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to include the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*,

(continued...)

We have considered whether appropriate circumstances exist to exclude two domestic producers under our related party analysis: LaRoche Industries, Inc. (“LaRoche”) and El Dorado Chemical Co. (“El Dorado”), which both purchased subject ammonium nitrate from Russia.³⁹ There is no evidence to suggest that either was the importer of the subject merchandise it purchased. However, the Commission may consider such a purchaser to be a related party if its purchases are significant enough to amount to “control” of a large share of imports. The Commission has found such control to exist where the domestic producer was responsible for a predominant portion of an importer’s purchases and the importer’s purchases were substantial.⁴⁰

LaRoche purchased *** short tons of the subject ammonium nitrate in 1998, and *** short tons in the first quarter of 1999.⁴¹ These purchases represented *** percent of the total subject imports in 1998, and *** percent of total subject imports in the first quarter of 1999.⁴² LaRoche made these purchases from ***.⁴³ *** together account for *** percent of total subject imports.⁴⁴ We conclude that because LaRoche’s purchases accounted for a relatively small portion of total subject imports, and because it purchased from *** sellers, LaRoche did not control a large share of imports. Thus, it is not a related party as defined in the statute.

El Dorado purchased *** short tons of subject ammonium nitrate in 1998, and *** short tons in the first quarter of 1999.⁴⁵ These purchases accounted for *** percent of the total subject import volume in 1998 and *** percent of total subject imports in the first quarter of 1999.⁴⁶ El Dorado purchased the 1998 volume from *** and the first quarter 1999 volume from ***.⁴⁷ We conclude that because El Dorado’s purchases accounted for a relatively small portion of total subject imports, and because it purchased *** of that small volume from a ***, El Dorado did not control a large share of imports. Thus, it is not a related party as defined in the statute.

³⁸ (...continued)

whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producers lies in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia and Taiwan*, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n. 81.

³⁹ Both companies are also members of the Committee for Fair Ammonium Nitrate Trade (“COFANT”), the petitioner in this investigation.

⁴⁰ *See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea and Macedonia*, Inv. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (April 1999); *Certain Brakes and Drums and Rotors from China*, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (April 1997).

⁴¹ LaRoche’s producer questionnaire response at 6.

⁴² *See* LaRoche’s producer questionnaire at 6; Table IV-1, CR at IV-2 and PR at IV-2.

⁴³ *See* LaRoche’s questionnaire response at 6 and questionnaire response attachment at 2, CR at IV-1 and PR at IV-1.

⁴⁴ CR at IV-1 and PR at IV-1.

⁴⁵ El Dorado’s producer questionnaire response at 6.

⁴⁶ *See* El Dorado’s producer questionnaire response at 6; table IV-1, CR at IV-2 and PR at IV-2.

⁴⁷ El Dorado’s producer questionnaire response at 6.

Accordingly, we find that no domestic producer should be considered a related party for purposes of our preliminary determination in this investigation, and define the domestic industry as all domestic producers of ammonium nitrate.

III. MATERIAL INJURY

A. Reasonable Indication of Material Injury by Reason of Allegedly LTFV Imports

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.^{48 49} In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵⁰ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁵¹ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United

⁴⁸ 19 U.S.C. § 1673b(a).

⁴⁹ Commissioner Crawford notes that the statute requires that the Commission determine whether there is a reasonable indication that a domestic industry is “materially injured by reason of” the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, *see* Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’g* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

⁵⁰ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). *See also* Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁵¹ 19 U.S.C. § 1677(7)(A).

States.⁵² No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵³

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing certain ammonium nitrate is materially injured by reason of subject imports from Russia that are allegedly sold in the United States at less than fair value.

B. Conditions of Competition

High density ammonium nitrate is a commodity-type product, without readily identifiable variations or grades.⁵⁴ Price is thus a predominant factor in purchasing decisions. However, the quality of the product may deteriorate if exposed to moisture or changes in temperature and therefore may become more difficult to apply to the soil with a fertilizer spreader.⁵⁵ The subject merchandise is more often exposed to those adverse conditions than is the domestic product because Russian ammonium nitrate must be shipped long distances to the United States. In addition, after arriving in this country a greater portion of Russian ammonium nitrate is shipped by barge than is the domestic product.⁵⁶ By contrast, much of the domestic product is purchased at a plant or shipping point.⁵⁷ The Russian product is often of a different color, more dusty, and comes in smaller prills than the domestic product.⁵⁸ These differences do not in themselves denote lesser quality, and despite these differences each responding producer and importer reported that the Russian and domestic products are interchangeable. In fact, one producer/importer commingles the two products.⁵⁹ We note that some purchasers may still perceive the Russian product to be of a lesser quality based on the fact that it was of poor quality in years preceding the period of investigation (“POI”), and negative perceptions may linger.⁶⁰ We conclude that the subject merchandise is nonetheless largely interchangeable with the domestic product.

Demand for ammonium nitrate is seasonal, peaking in the spring planting season.⁶¹ Some farmers purchase ammonium nitrate during the off season and store it for use when needed. This practice

⁵² 19 U.S.C. § 1677(7)(C)(iii).

⁵³ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁴ CR at I-2, I-4 and PR at I-2, I-3 (ammonium nitrate is a commodity product, made to the same specifications worldwide); CR at II-7 to II-8 and PR at II-5 to II-6 (most producers and importers reporting that domestic, Russian, and third-country ammonium nitrate are interchangeable); Conf. Tr. at 14-15 (Porvaznik) (domestic producer has commingled its product and Russian ammonium nitrate).

⁵⁵ CR at V-3 to V-4 and PR at V-2; August 6, 1999 amendment to petition at 15-16.

⁵⁶ CR at II-7, V-3 to V-4 and PR at II-5, V-2 (degradation due to handling during transportation) and tables V-1 to V-4, CR at V-8 to V-11 and PR at V-5 (showing portions shipped by barge).

⁵⁷ CR at V-2 to V-3 and PR at V-2; compare table V-1, CR at V-8 and PR at V-5 with tables V-2 to V-4, CR at V-9 to V-11 and PR at V-5.

⁵⁸ CR at II-7 to II-9 and PR at II-5 to II-6; Conf. Tr. at 90 (testimony of Allen Silver, representing Mid-West Fertilizer, a fertilizer wholesaler).

⁵⁹ CR at II-7 and PR at II-5; Conf. Tr. at 15 (Porvaznik).

⁶⁰ See CR at II-7 and PR at II-5; Conf. Tr. at 90 (Silver).

⁶¹ CR at II-4, III-1 and PR at II-3 and III-1; Conf. Tr. at 21-22 (testimony of Gary Elliott, Director of Nitrogen and Phosphate Sales for domestic producer Mississippi Chemical Corporation), 87 (Silver), 93 (testimony of Brian Harlander, president of importer ConAgra International Fertilizer Companies).

apparently was seen less in 1998 as buyers delayed purchases in expectation of lower prices in the future.⁶² Although demand is seasonal, the timing of the planting season varies from year to year, depending on weather conditions.⁶³ Delays in the delivery of ammonium nitrate have developed during spring planting seasons throughout the POI, as demand temporarily exceeded local supply and transportation capacities.⁶⁴ The temporary inability to meet demand was most acute in the 1998 planting season, as favorable planting conditions arose in different regions of the country at the same time.⁶⁵ Although the total acreage planted with crops often fertilized with ammonium nitrate declined over the POI, apparent U.S. consumption declined only slightly from 1996 to 1997, and then increased above the 1996 level in 1998.⁶⁶

Although demand is seasonal, the domestic industry produces ammonium nitrate year round to maximize the efficient use of capital equipment.⁶⁷ For that reason, domestic producers tend to respond to competition by lowering prices in order to maintain market share, and to use their production plant efficiently, rather than by scaling back production.⁶⁸

We also note as an additional condition of competition the presence of non-subject imports, chiefly from Canada, the Netherlands, and Poland.⁶⁹ These imports were comparable with the domestic product in quality, and in some cases were perceived to be superior to the subject imports.⁷⁰ The volume of these non-subject imports exceeded that of the subject imports throughout the POI.⁷¹ Although the volume of the non-subject imports increased from 1996 to 1998, it increased less than did the volume of the subject imports, both as a percentage and in absolute terms.⁷² In 1996 the subject imports accounted for 27.7 percent of all imported merchandise, whereas in 1998 they accounted for 38.5 percent, and in the first quarter of 1999 they accounted for 48.2 percent of the total.⁷³ Although direct price comparisons are not available on the record, unit values for the non-subject imports were significantly higher than those of the subject merchandise, a difference that increased during the POI.⁷⁴

As noted, ammonium nitrate is one of at least seven nitrogen fertilizers.⁷⁵ Although ammonium nitrate is preferred over the other six fertilizers for use in certain circumstances, other fertilizers may also be substitutable with ammonium nitrate to a certain extent.⁷⁶ Ammonium nitrate is preferred where the

⁶² Conf. Tr. at 22-23, 27 (Elliott).

⁶³ CR at II-4 and PR at II-3.

⁶⁴ Conf. Tr. at 87-88 (Silver).

⁶⁵ CR at II-4, II-7 to II-8 and PR at II-3, II-5 (1998 spring demand compressed into two months instead of the normal four); Conf. Tr. at 87-88 (Silver).

⁶⁶ CR at II-4 and PR at II-3; ConAgra's Postconference Brief at 4 (acreage planted); table IV-2, CR at IV-3 and PR at IV-3 (apparent consumption).

⁶⁷ CR at II-2 and III-1 and PR at II-1 and III-1; Conf. Tr. at 22 (Elliott).

⁶⁸ See Conf. Tr. at 25 (Elliott).

⁶⁹ Table IV-1 n.1, CR at IV-2 and PR at IV-2.

⁷⁰ CR at II-8 to II-9 and PR at II-5 to II-6.

⁷¹ Table IV-1, CR at IV-2 and PR at IV-2.

⁷² Table IV-1, CR at IV-2 and PR at IV-2.

⁷³ Table IV-1, CR at IV-2 and PR at IV-2.

⁷⁴ Table IV-1, CR at IV-2 and PR at IV-2.

⁷⁵ CR at I-4 and PR at I-3.

⁷⁶ CR at I-4, II-5 and PR at I-3, II-3; Conf. Tr. at 85 (Silver) and 95-97 (Harlander).

fertilizer is applied directly to the soil or crop without tillage, and where the climate is warm.⁷⁷ Even after the differing nitrogen content of the various nitrogen fertilizers is accounted for, farmers who use ammonium nitrate consistently pay a premium for it over other nitrogen fertilizers.⁷⁸ Exogenous factors may exert price pressures on all nitrogen fertilizers, such as the falling commodity prices paid to farmers during the POI, which lowered the prices that farmers were willing to pay for all inputs.⁷⁹ In addition, changes in the price of one nitrogen fertilizer may affect the prices of the others, because at least some farmers appear willing to change fertilizers if prices change relative to one another.⁸⁰ For example, in 1997, China ceased to import large quantities of urea, a nitrogen fertilizer, which appears to have contributed to global price declines for urea and other nitrogen fertilizers during the POI.⁸¹

Finally, we note that natural gas is a primary input into the products used to make ammonium nitrate, accounting for 30-50 percent of the final production cost of the fertilizer.⁸² The average annual wellhead price of natural gas, an approximate benchmark for purchasing price, increased from \$2.17 per million British thermal units in 1996 to \$2.32 per million British thermal units in 1997. The price then decreased to \$1.96 per million British thermal units in 1998, and declined further in early 1999.⁸³

C. Volume

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”^{84 85}

Subject imports increased 82.2 percent by quantity from 1996 to 1998, with total subject imports equaling 246,972 short tons in 1998, compared to 135,524 short tons in 1996.⁸⁶ Additionally, subject imports were higher during the first quarter of 1999 at 100,505 short tons than during the first quarter of

⁷⁷ CR at I-4, II-5 and PR at I-3, II-3; Conf. Tr. at 13-14 (Porvaznik). Ammonium nitrate consumption is concentrated in the southwestern and southeastern regions of the country, particularly near the Mississippi river system, which serves as an important transportation conduit. CR at I-4 and PR at I-3; Conf. Tr. at 23 (Elliott) and 87 (Silver).

⁷⁸ CR at II-5 and PR at II-3; Conf. Tr. at 85 (Silver).

⁷⁹ CR at II-4 and PR at II-2 to II-3; Conf. Tr. at 86 (Silver), 98 (Harlander), and 101 (testimony of economist John Ascienzo, on behalf of respondents).

⁸⁰ CR at II-5 to II-6, V-4 to V.5 n.8 and PR at II-3 to II-4, V-3 n.8; Conf. Tr. at 15 (Porvaznik), 85-86 (Silver).

⁸¹ Conf. Tr. at 100, 102-104, and 123-24 (Ascienzo). Prices for urea are alleged to have declined 37 percent from 1996 to 1999. *Id.* at 85 (Silver).

⁸² CR and PR at V-1.

⁸³ CR and PR at V-1.

⁸⁴ 19 U.S.C. § 1677(7)(C)(i).

⁸⁵ Commissioner Crawford joins only in the factual, numerical discussion of the volume of subject imports in this section. She does not rely on any analysis of trends in the market share of subject imports or other factors in her determination of a reasonable indication of material injury by reason of the subject imports. She makes her finding of the significance of volume in the context of the price effects and impact of the subject imports. For the reasons discussed below, she finds that the volume of subject imports is significant.

⁸⁶ CR at IV-1 and PR at IV-1; Table IV-1, CR at IV-2 and PR at IV-2.

1998 at 69,775 short tons.⁸⁷ In terms of value, subject imports increased from \$16.1 million in 1996 to \$21.7 million in 1997, and they declined to \$19.6 million in 1998. The value of subject imports was slightly higher during the first quarter of 1999 (\$6.08 million) than during the first quarter of 1998 (\$5.95 million).⁸⁸

The share of the U.S. market held by the subject imports increased, particularly in terms of quantity. By volume, the market share of subject imports increased from 5.2 percent in 1996 to 8.9 percent in 1998, and was 9.0 percent in the first quarter of 1998 compared to 11.0 percent in the first quarter of 1999.⁸⁹ By value, the market share of subject imports increased from 4.2 percent in 1996 to 6.2 percent in 1998, while remaining constant at 7.0 percent in the first quarters of both 1998 and 1999.⁹⁰ Based on the foregoing, for purposes of this preliminary determination, we find the volume of subject imports of certain ammonium nitrate, and the increase in that volume, to be significant.

D. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁹¹

Prices for the domestic like product declined during the POI.⁹² We find that the significant volume of highly substitutable subject merchandise has placed considerable downward pressure on prices.⁹³ Subject imports undersold the domestic like product in 48 out of 53 monthly pricing comparisons, with margins of underselling ranging from 0.5 percent to 35.6 percent.⁹⁴ In pricing comparisons of product sold free on board at the plant or at the port, subject imports undersold the domestic like product in all nine observations, with margins in excess of 25 percent in eight of them.⁹⁵

⁸⁷ CR at IV-1 and PR at IV-1; Table IV-1, CR at IV-2 and PR at IV-2.

⁸⁸ Table IV-1, CR at IV-2 and PR at IV-2.

⁸⁹ CR at IV-1; PR at IV-1; Table IV-2, CR at IV-3 and PR at IV-3.

⁹⁰ CR at IV-1; PR at IV-1; Table IV-2, CR at IV-3 and PR at IV-3.

⁹¹ 19 U.S.C. § 1677(7)(C)(ii).

⁹² Tables III-2 and V-1 to V-4, CR at III-3 and V-8 to V-11 and PR at III-2, V-5; Conf. Tr. at 24 (Elliott).

⁹³ Commissioner Crawford finds that subject imports are not having significant effects on prices for domestic ammonium nitrate. Therefore, she does not join in this section of the opinion. Her analysis of the price effects of subject imports is provided in footnote 104.

⁹⁴ Tables V-1 to V-4, CR at V-8 to V-11 and PR at V-5.

⁹⁵ Table V-1, CR at V-8 and PR at V-5. Although we have attempted to arrive at ex-factory prices for other comparisons of the products by deducting the cost of transportation, we regard f.o.b. prices at the plant to be the most reliable. Additionally, of the volume of domestic product for which pricing information was collected, more was sold at the plant than was sold delivered either by barge, rail, or truck, although delivered sales collectively

(continued...)

Underselling resulted in numerous confirmed instances of lost sales by the domestic industry due to competition from the subject merchandise, and instances where the domestic industry retained the sale but lost revenue by having to reduce price in response to direct competition from the subject merchandise.⁹⁶ The occurrence of confirmed lost sales and revenues in 1999 indicates that the subject merchandise continued to exert downward pressure on price despite the possible effects of other factors throughout the POI.⁹⁷ Domestic producers also reported lowering prices in order to meet the price of the subject merchandise in general, even where not giving rise to an identifiable lost sale or loss of revenue.⁹⁸

The data regarding average unit values (“AUVs”) also suggest adverse price effects by the subject merchandise.⁹⁹ The average unit value of U.S. shipments fell by 22 percent from 1996 to 1998, falling from \$152.02 per short ton in 1996 to \$119.00 per short ton in 1998.¹⁰⁰ AUVs were lower in the first quarter of 1999, at \$97.84 per short ton, than in the first quarter of 1998, at \$113.69 per short ton.¹⁰¹ By comparison, AUVs for the subject merchandise fell 33 percent from 1996 to 1998 (from \$118.83 per short ton to \$79.55 per short ton), while AUVs for the non-subject merchandise fell 21 percent (from \$138.08 per short ton to \$109.29 per short ton) in the same years.¹⁰² Thus, subject import AUVs were substantially lower than the AUVs for either the domestic product or non-subject imports. In addition, the record demonstrates that over the POI subject import AUVs declined by a much greater degree than did AUVs for either the domestic product or non-subject imports.

We recognize that factors other than subject imports may have contributed to the decline in prices. Commodity agricultural prices paid to U.S. farmers generally have declined. In addition, prices for urea declined substantially during this period. Although ammonium nitrate generally commands a higher price than other nitrogen fertilizers, including urea, the ability of purchasers to substitute among the various nitrogen fertilizers means that a reduction in the price of one nitrogen fertilizer likely results in downward pressure on the prices of the others. We note that the domestic industry’s unit cost of goods sold (“COGS”) declined over the POI, in part as a result of declining natural gas prices.¹⁰³ We will explore the effect on prices of these other factors in any final phase investigation.

Based on the foregoing, although other factors may also have adversely affected domestic prices, we determine that there has been significant underselling by the subject imports and that they have had a significant depressing effect on the price of the domestic like product.¹⁰⁴

⁹⁵ (...continued)
exceeded the plant sales.

⁹⁶ CR at V-14 and PR at V-6.

⁹⁷ We will examine in any final phase of this investigation whether the domestic product encounters relatively more competition from the subject merchandise for customers requiring delivery by a particular mode of transportation, such as by barge, and whether any significant price differences result.

⁹⁸ Conf. Tr. at 24-25 (Elliott).

⁹⁹ We typically do not rely on AUVs in making our pricing comparisons where we have acceptable questionnaire pricing data. However, where, as here, there is little divergence in the product mix for both the subject imports and the domestic product, these data can provide an indication of the relative price levels and movements.

¹⁰⁰ Table III-2, CR at III-3 and PR at III-2.

¹⁰¹ *Id.*

¹⁰² Table IV-1, CR at IV-2 and PR at IV-2.

¹⁰³ CR at VI-5 and PR at VI-1.

¹⁰⁴ Commissioner Crawford finds that subject imports are not having significant effects on prices for domestic
(continued...)

E. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁰⁵ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{106 107 108}

¹⁰⁴ (...continued)

ammonium nitrate. To evaluate the effects of the alleged dumping on domestic prices, she compares domestic prices that existed when the imports were allegedly dumped with what domestic prices would have been if the subject imports had been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In these preliminary investigations, Commerce has reported dumping margins in its notice of initiation that range from 112.08 percent to 357.09 percent. 64 Fed. Reg. 45236, 45238 (August 19, 1999). Based on these large margins alone, prices for the subject imports likely would have risen significantly if they had been priced fairly, and they would have become more expensive relative to the domestic product and nonsubject imports. In such a case, because these products appear to be substitutable, demand would have shifted away from subject imports and towards the relatively less-expensive products. At fairly traded prices, a significant portion of the demand supplied by subject imports would have shifted away from this source. Since subject imports held a market share of 8.9 percent by quantity in 1998, the shift in demand away from the subject imports and toward other sources likely would have been significant. Nonsubject imports accounted for 14.3 percent of the market in 1998, and thus also represent competition for the domestic industry, which accounted for 76.8 percent of the market. It is likely, therefore, that demand for both the domestic product and nonsubject imports would have increased. However, in light of the existing market shares, a significant portion of the demand for subject imports likely would have shifted to the domestic product.

Nevertheless, the increase in demand for the domestic product would not have allowed the domestic industry to raise its prices significantly. There is significant competition within the domestic industry and from nonsubject imports. The domestic industry also has substantial inventories and unused production capacity available with which individual producers would have competed for sales, had demand shifted away from the subject imports. This competition would have enforced price discipline in the market. In these circumstances, any effort by a domestic producer to raise its prices would have been beaten back by the competition. Therefore, significant effects on domestic prices cannot be attributed to the alleged unfair pricing of these subject imports. Consequently, Commissioner Crawford finds that subject imports are not having significant effects on prices for domestic ammonium nitrate.

¹⁰⁵ 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851, 885 (“In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”).

¹⁰⁶ 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 & 731-TA-812-813 (Preliminary), USITC Pub. 3155, at 25 n.148 (Feb. 1999).

¹⁰⁷ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce stated that the estimated dumping margins on the subject merchandise ranged from 112.08 to 357.09 percent. 64 Fed. Reg. 45236, 45238 (August 19, 1999).

¹⁰⁸ Chairman Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See* Separate and

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We examine the various industry indicators in view of the pertinent conditions of competition. One such condition is that because domestic producers find it more efficient to operate near full capacity, they tend to respond to competition by dropping prices in an effort to maintain market share rather than by scaling back production. Consistent with this condition of competition, industry indicators relating to production volumes show little or no decline, while indicators reflective of price, such as operating income, show sharp declines.¹⁰⁹

Production, average production capacity, and U.S. shipments each increased slightly from 1996 to 1998, and were higher in the first quarter of 1999 than in the first quarter of 1998.¹¹⁰ The average number of production and related workers and the hours worked by those workers both increased slightly from 1996 to 1997, and then declined below the 1996 level in 1998.¹¹¹ Capacity utilization dipped slightly from 1996 to 1997, and then slightly further in 1998.¹¹² Capacity utilization was essentially the same in the first quarters of 1998 and 1999.¹¹³ Although domestic shipments increased slightly, the domestic industry's market share by quantity fell from 81.1 percent in 1996 to 76.8 percent in 1998.¹¹⁴ Subject imports accounted for most of the displacement over those years, increasing 3.7 percentage points in market share compared to an increase of 0.6 percentage points for non-subject imports.¹¹⁵ Additionally, end-of-period inventories grew rapidly, indicating that the domestic industry encountered increasing difficulty in selling its production, despite reducing prices sharply from 1996 to 1998.¹¹⁶

¹⁰⁸ (...continued)

Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

¹⁰⁹ Commissioner Crawford joins only in the factual, numerical discussion of the impact of subject imports in this section. She does not rely on any analysis of trends in the statutory impact factors in her analysis of a reasonable indication of material injury by reason of the subject imports.

¹¹⁰ Production fell slightly from 2,157,971 short tons in 1996 to 2,147,961 short tons in 1997, then increased slightly over the 1996 level to 2,242,830 short tons in 1998. Table III-2, CR at III-3 and PR at III-2. For the first quarter of 1998, production was 581,115 short tons compared to 590,939 short tons in 1999. *Id.* U.S. shipments followed the same pattern, with 2,102,217 short tons shipped in 1996; 2,064,156 short tons in 1997; 2,124,327 short tons in 1998; 616,519 short tons in the first quarter of 1998; and 709,098 short tons in the first quarter of 1999. *Id.* Capacity increased slightly in every successive full year, and was higher in the first quarter of 1999 than in the first quarter of 1998, at 2,574,151 short tons in 1996; 2,643,151 short tons in 1997; 2,782,151 short tons in 1998; 705,538 short tons in the first quarter of 1998; and 718,538 short tons in the first quarter of 1999. *Id.*

¹¹¹ The average number of production and related workers was 630 in 1996; 634 in 1997; 597 in 1998; 620 in the first quarter of 1998; and 584 in the first quarter of 1999. Table III-2, CR at III-3 and PR at III-2. Hours worked by production and related workers were 1,455,000 in 1996; 1,483,000 in 1997; 1,391,000 in 1998; 373,000 in the first quarter of 1998; and 326,000 in the first quarter of 1999. *Id.*

¹¹² Capacity utilization was 83.8 percent in 1996; 81.3 percent in 1997; and 80.6 percent in 1998. Table III-2, CR at III-3 and PR at III-2.

¹¹³ Capacity utilization was 82.4 percent in the first quarter of 1998 and 82.2 percent in the first quarter of 1999. Table III-2, CR at III-3 and PR at III-2.

¹¹⁴ Table IV-2, CR at IV-3 and PR at IV-3.

¹¹⁵ Table IV-2, CR at IV-3 and PR at IV-3.

¹¹⁶ End-of-period inventories rose from 193,240 short tons in 1996, to 274,943 short tons in 1997, and to 374,101 short tons in 1998. Table III-2, CR at III-3 and PR at III-2. Expressed as a ratio to total shipments, these inventories accounted for 9.2 percent in 1996, 13.3 percent in 1997, and 17.6 percent in 1998. *Id.* The end-of-

(continued...)

Although the domestic industry maintained production and sales volumes during the POI, its financial situation declined sharply, reflecting rapidly falling net sales values.¹¹⁷ As a share of sales, operating income for the domestic industry was 18.3 percent in 1996, 11.0 percent in 1997, and 2.3 percent in 1998.¹¹⁸ The first quarter 1999 results suggest that the trend in the full-year data apparently continued, with the industry experiencing operating income of 2.4 percent in the first quarter of 1998 and an operating loss of 5.1 percent in the first quarter of 1999.¹¹⁹ Consistent with declining operating income, a greater number of domestic producers reported operating losses in each successive year of the POI, and more reported losses in the first quarter of 1999 than in the first quarter of 1998.¹²⁰ Moreover, the domestic industry's financial performance declined despite a decrease in the average cost of goods sold per unit, which fell from \$109 per short ton in 1996, to \$106 per short ton in 1997, and to \$99 per short ton in 1998.¹²¹ The average cost of goods sold was also lower in the first quarter of 1999 than in the first quarter of 1998.¹²²

Because the volume of shipments by the domestic industry increased slightly, while its average unit cost of goods sold decreased, we attribute the industry's deteriorating financial performance to declining net sales values resulting from the adverse price effects of subject imports.

As discussed above, we recognize that certain economic and market forces have adversely affected the domestic industry during the POI. Almost all of the decline in industry performance can be attributed to price declines, which have resulted from the combination of a number of factors, some of which are not related to subject imports. Nevertheless, we have found that the significant volume of subject imports that are highly substitutable with the domestic like product, and the substantial and widespread underselling by subject imports, served to depress domestic prices to a significant degree.¹²³ Accordingly, we find that the record in the preliminary phase of this investigation indicates that the subject imports are having a significant adverse impact on the domestic industry.¹²⁴

¹¹⁶ (...continued)

period inventories for the first quarter of 1999 were slightly higher at 249,071 short tons than in the first quarter of 1998 at 234,003 short tons. *Id.* As a ratio to U.S. shipments, these inventories were 9.5 percent in the first quarter of 1998 and 8.8 percent in the first quarter of 1999. *Id.*

¹¹⁷ Although the volume of domestic shipments by the domestic industry increased slightly from 1996 to 1998, the value of those shipments declined from \$319.6 million in 1996, to \$285.2 million in 1997, and declined further to \$252.8 million in 1999. Table III-2, CR at III-3 and PR at III-2.

¹¹⁸ Table VI-1, CR at VI-2 and PR at VI-2.

¹¹⁹ *Id.*

¹²⁰ Two producers reported operating losses in 1996, three in 1997, and four in 1998. Table VI-1, CR at VI-2 and PR at VI-2. Four producers reported operating losses in the first quarter of 1998 and five did so in the first quarter of 1999. *Id.*

¹²¹ Table VI-3, CR at VI-5 and PR at VI-3.

¹²² The average unit cost of goods sold was \$101 per short ton in the first quarter of 1998 and \$93 per short ton in the first quarter of 1999. *Id.*

¹²³ As noted in the preceding section, Commissioner Crawford finds that the subject imports are not having significant effects on prices for domestic ammonium nitrate.

¹²⁴ As noted previously, Commissioner Crawford does not rely on any analysis of the trends in the statutory impact factors in her determination of a reasonable indication of material injury by reason of the subject imports. However, she concurs in the conclusion that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of unfairly traded imports, Commissioner Crawford evaluates
(continued...)

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing certain ammonium nitrate is materially injured by reason of imports of certain ammonium nitrate from Russia.

¹²⁴ (...continued)

the impact on the domestic industry by comparing the state of the industry when imports were traded unfairly with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the unfairly traded imports, and so she gauges the impact through those effects. In this regard, the impact on the domestic industry's prices, sales, and overall revenues is critical, because the impact on the other industry indicators (*e.g.*, employment, wages, *etc.*) is derived from this impact.

As noted in the preceding section, the domestic industry would not have been able to increase its prices significantly if the subject imports had been sold at fairly traded prices. Therefore, any impact of the allegedly dumped imports on the domestic industry would have been on the domestic industry's output and sales. Competition from nonsubject imports is moderate, and thus, had the subject imports not been unfairly traded, a greater portion of the demand satisfied by the subject imports would have shifted to the domestic product. This increase in demand for the domestic product likely would have been significant, and the domestic industry could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for subject imports that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not allegedly been dumped. Consequently, Commissioner Crawford determines that there is a reasonable indication that the domestic industry is materially injured by reason of the allegedly dumped subject imports.