Saccharin from China

Investigation No. 731-TA-675 (Final)

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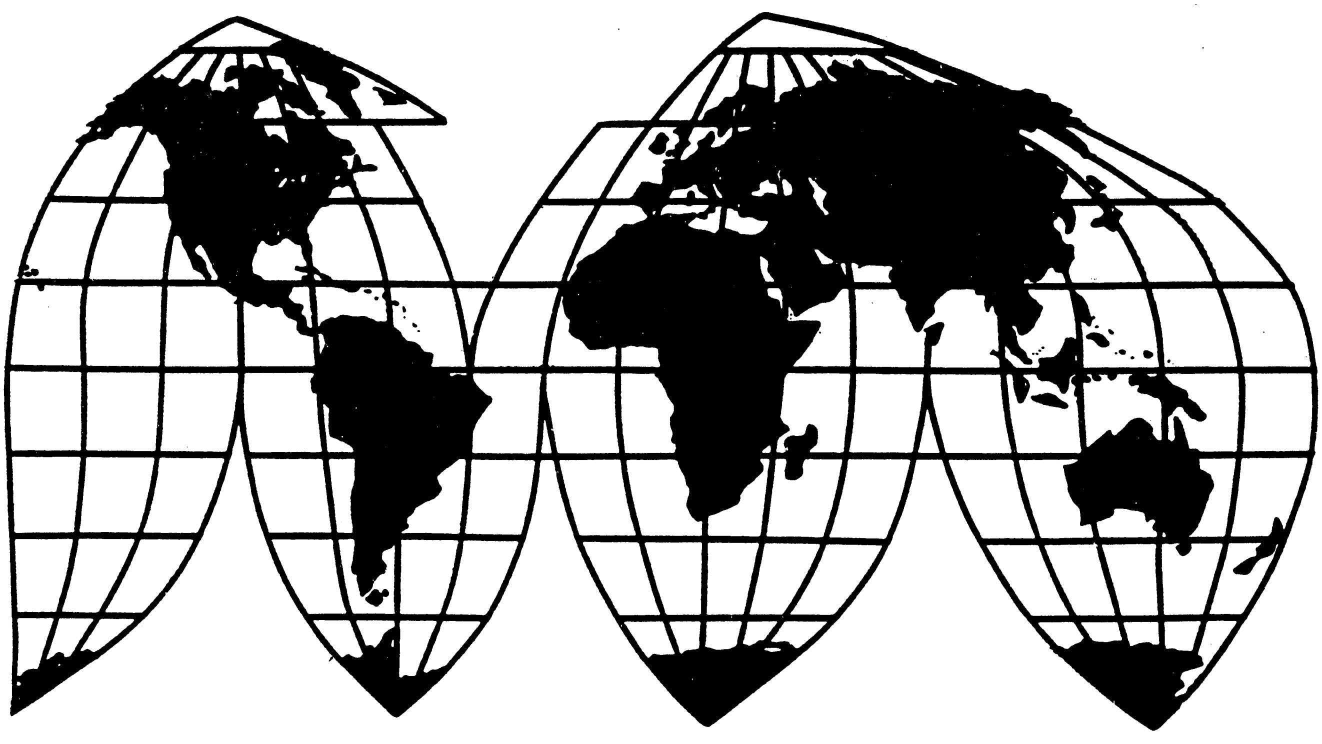

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

PART I

DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-675 (Final)

SACCHARIN FROM CHINA

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China of saccharin, provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective June 23, 1994, following a preliminary determination by the Department of Commerce that imports of saccharin from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of July 20, 1994 (59 F.R. 37056). The hearing was held in Washington, DC, on November 10, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Commissioner Rohr and Commissioner Newquist dissenting.

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that the industry in the United States producing saccharin is not materially injured or threatened with material injury by reason of imports of saccharin from the People's Republic of China ("China"), that have been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").[1] [2]

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

A. Background and Product Description

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, we first identify the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[3] In turn, the Act defines "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."[4]

Our decision regarding the appropriate like product in an investigation is a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[5] No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. Generally, we require "clear dividing lines among possible like products" and disregard minor variations.[6]

Commerce has identified the imported merchandise subject to this investigation as:

> saccharin . . . a non nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, animal feeds, and metalworking fluids. Three forms of saccharin are typically available as referenced in the American Chemical Society's Chemical Abstract Service (CAS). These forms are sodium saccharin (CAS Registry #128-44-9), calcium saccharin (CAS #6485-34-3), and acid (or insoluble) saccharin (CAS #81-07-2). Saccharin is currently classifiable under subheading 2925.11.00 of

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[1] Whether the establishment of an industry is materially retarded is not an issue in this investigation.

[2] Commissioner Rohr and Commissioner Newquist find that the domestic industry is materially injured by reason of LTFV imports, but join in the following discussion of like product, domestic industry and condition of the domestic industry. See "Dissenting Views of Commissioner Rohr and Commissioner Newquist," infra.

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(10).

[5] In analyzing like product issues, the Commission generally considers six factors, including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and (6) where appropriate, price.

[6] Torrington Co. v. United States, 747 F. Supp. 744, 748-749 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

the Harmonized Tariff Schedules of the United States (HTSUS). The scope of this investigation includes all types of saccharin imported under this HTSUS subheading including research and specialized grades.[7]

Saccharin is a petroleum-based, chemical additive, approximately 350 times as sweet as sugar, that is used primarily as a sweetener in foods and beverages, in personal care products such as toothpaste and mouthwash, and in animal feed.[8] Saccharin is also used as an additive in adhesives, tobacco, pharmaceuticals, and in metalworking fluids for electroplating.[9]

There are four primary chemical compositions of saccharin: (1) sodium saccharin; (2) calcium saccharin; (3) acid (or insoluble) saccharin; and (4) research grade saccharin. Most of the U.S.-produced and imported saccharin from China is sodium saccharin, which is available in granular, powder, spray-dried powder, and liquid forms.[10] During the period of investigation, research grade saccharin was not produced in the United States or imported from China.[11]

B. Analysis

In our preliminary investigation, we determined that there is a single like product including all grades and forms of saccharin and excluding aspartame, an alternative artificial sweetener.[12] The parties have not contested that finding.[13] There is nothing in the record in this final investigation to contradict our preliminary finding that all types of saccharin share basic physical characteristics and uses, are generally interchangeable, are sold through the same channels of distribution, share common production processes and manufacturing facilities and employees, and that purchasers perceive them as the same product.

The record in this final investigation also supports our preliminary finding that aspartame and saccharin are chemically different and are often used in distinct applications. Aspartame and saccharin are produced by different firms using different facilities and

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[7] Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 59 Fed. Reg. 58818, 58819 (Nov. 15, 1994).

[8] Confidential Report ("CR") at I-5-6, Public Report ("PR") at II-4.

[9] CR at I-5 and I-7-8; PR at II-4 and II-5. Petitioner -- PMC Specialties Group ("PMC"), the sole domestic saccharin producer -- has reported the various end uses for saccharin and their respective shares of PMC's sales for 1993: tabletop sweeteners ***; personal care products ***; soft drinks ***; electroplating ***; pharmaceutical ***; animal feed ***; tobacco ***; food mix ***; and miscellaneous ***. Petitioner's Prehearing Brief at 8.

[10] CR at I-5, PR at II-4.

[11] CR at I-5, PR at II-4. Although there is no domestic production of research grade saccharin, it is included in the scope as identified by Commerce. The Commission must determine which product is "like, or in the absence of like, most similar in characteristics and uses with, the articles subject to an investigation . . . ." We find the products most similar to research grade saccharin are the other types of domestically-produced saccharin.

[12] Saccharin from China and Korea, Inv. Nos. 731-TA-675 and 676 (Preliminary), USITC Pub. 2716 (Jan. 1994) at I-6.

[13] See Petitioner's Prehearing Brief at 1. Respondents have expressed concern that saccharin in liquid form be included in the like product finding. Respondents' Prehearing Brief at 6-8. Our like product definition includes all forms and types of saccharin, including liquid saccharin, and the domestic industry data do include petitioner's liquid saccharin operations.

employees. Furthermore, the customers for the two products are generally different, and the price for aspartame is considerably higher than that for saccharin.[14]

For these reasons, we reaffirm our preliminary finding that there is a single like product in this investigation consisting of all forms and types of saccharin, and excluding aspartame. Consequently, we determine that the domestic industry consists of petitioner PMC, the sole domestic producer of saccharin.[15]

II. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether the domestic industry is materially injured by reason of LTFV imports, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. These 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 we consider all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[16]

There are several conditions of competition distinctive to the U.S. saccharin industry. PMC is the only domestic producer of saccharin. In addition, there are significant quantities of saccharin imported from other countries, with the largest quantities being from Korea and Japan. These nonsubject imports accounted for a substantial share of domestic consumption, and increased notably during interim January to June 1994 compared with interim January to June 1993.

There are differences in the manner in which subject imports and PMC's products are sold. Subject imports are sold primarily to distributors on a spot basis, whereas PMC sells *** percent of its saccharin to end users and divides sales between contract and spot sales.[17] The lead times for PMC's sales are generally ***; the lead times for Chinese saccharin may take *** if sold from inventory, but can take *** if ordered from China.[18] We note that most sales of subject imports are ordered directly from China.[19] PMC also reported that it sometimes uses a tiered pricing system whereby PMC reduces the price of saccharin for particular customers who purchase in amounts over a specified volume; subject imports are not priced in this manner.

In addition, quality specifications are set by the Food and Drug Administration (FDA). Because virtually all end users, with the exception of adhesive and electroplating fluid producers, require "food grade" saccharin, many saccharin purchasers require a certificate of analysis or some other type of prequalification before they will purchase

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[14] CR at I-6-7, PR at II-4-5; Hearing Transcript ("Hearing Tr.") at 45-47.

[15] In the preliminary investigation, the Commission considered whether PMC was a related party and concluded that it was, but that appropriate circumstances did not exist to exclude it from the domestic industry. See Saccharin from China and Korea, Inv. Nos. 731-TA-675 and 676 (Preliminary), USITC Pub. 2716 (Jan. 1994) at I-6-7. The related party issue involved imports from Korea and is therefore no longer relevant to this final investigation because Commerce issued a negative final determination with respect to Korea. See 59 Fed. Reg. 58826 (Nov. 15, 1994). See also PMC's Importer's Questionnaire Response. Thus, there is no relationship to "subject" imports.

[16] 19 U.S.C. § 1677(7)(C)(iii).

[17] CR at I-31-32, PR at II-14-15.

[18] CR at I-31-32, PR at II-15.

[19] CR at I-31, PR at II-14.

saccharin from a new supplier.[20] Moreover, many products that contain saccharin must carry a warning label pursuant to the recent renewal of the Saccharin Study and Label Act.[21] The parties disagree as to the impact saccharin's warning label has had on domestic sales of saccharin.[22]

Finally, aspartame can substitute for saccharin in applications where an artificial sweetener is required, and aspartame's prices fell significantly after the expiration of the producer's patent in 1992.[23] The parties also disagree on the extent to which aspartame and saccharin are commercially substitutable.[24]

Apparent U.S. consumption of saccharin by quantity fell 6.3 percent from 1991 to 1993, decreasing from *** pounds in 1991 to *** pounds in 1992 and *** pounds in 1993. Saccharin consumption was 19.3 percent higher in interim 1994, amounting to *** pounds, than in interim 1993 at *** pounds.[25] Consumption by value decreased 10.7 percent from 1991 to 1993, falling from *** in 1991 to *** in 1992 and *** in 1993. In interim 1994, apparent consumption by value was ***, 13.2 percent higher than the interim 1993 value of *** million.[26]

Domestic production of saccharin decreased overall by *** percent, from *** pounds in 1991 to *** pounds in 1992 and *** pounds in 1993. In interim 1994, however, domestic production was *** percent higher (*** pounds) than in interim 1993 (*** pounds).[27]

Production capacity did not fluctuate during the period of investigation, amounting to *** pounds annually. Capacity utilization decreased from *** percent in 1991 to *** percent in 1992 and *** percent in 1993. Capacity utilization increased to *** percent in interim 1994 compared with *** percent in interim 1993.[28]

PMC's U.S. shipments of saccharin declined by *** percent from 1991 to 1993, and increased by *** percent in interim 1994 compared with interim 1993. Conversely, PMC's export shipments increased steadily from 1991 to 1993 by *** percent and then decreased *** percent in interim 1994 compared with interim 1993. Combined domestic and export shipments fell from *** pounds in 1991 to *** pounds in 1992 and 1993, and declined further from interim 1993 to interim 1994.[29]

Domestic end-of-period inventories of saccharin increased throughout the period of investigation, rising by *** percent from 1991 to 1993. They were *** percent higher in interim 1994 than in interim 1993.[30] The ratio of inventories to total shipments also

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[20] CR at I-5-6, PR at II-4.

[21] CR at I-6, PR at II-4.

[22] See, e.g., Petitioner's Posthearing Brief at 8-9; Respondents' Posthearing Brief at 18-20.

[23] See generally CR at I-6-8, I-29-31, and I-54-55, PR at II-4-5, II-13-14, and II-22; Hearing Tr. at 31-32.

[24] See, e.g., Hearing Tr. at 33; Petitioner's Posthearing Brief at 7-8; Respondents' Posthearing Brief at 20-25.

[25] Tables 10 and C-1, CR at I-27 and C-3, PR at II-12 and C-3. PMC believes that consumption of saccharin is relatively stable, and that the large increase in consumption reported in the interim period is an aberration due to comparison of interim periods. Petitioner expects full year 1994 figures will reflect no such increase. Hearing Tr. at 92.

[26] Tables 10 and C-1, CR at I-27 and C-3, PR at II-12 and C-3.

[27] Tables 1 and C-1, CR at I-11 and C-3, PR at II-6 and C-3.

[28] Tables 1 and C-1, CR at I-11 and C-3, PR at II-6 and C-3.

[29] Tables 1 and C-1, CR at I-11 and C-3, PR at II-6 and C-3.

[30] Tables 1 and C-1, CR at I-11 and C-3, PR at II-6 and C-3.

increased significantly throughout the period of investigation, rising from *** percent in 1991 to *** percent in 1992 and *** percent in 1993, for an overall increase of *** percentage points. This ratio was also *** percentage points higher in interim 1994 (*** percent) than interim 1993 (*** percent).[31]

The average number of production and related workers producing saccharin fell from *** production and related workers in 1991 to *** in 1992 and *** in 1993. There were *** such workers in interim 1994 compared with *** in interim 1993.[32] Hours worked and productivity (in terms of pounds produced per hour) followed the same trend, declining between 1991 and 1993 (by *** percent, respectively); but hours worked were *** percent higher in interim 1994 than in interim 1993 and productivity was *** percent higher. Total wages and total compensation increased throughout the period of investigation, rising from 1991 to 1993 (by *** percent, respectively); they were also *** percent higher in interim 1994 than in interim 1993.[33]

Net sales of saccharin by value ***; the value of net sales was higher in interim 1994 (***) than in interim 1993 (***).

Over the period of investigation, PMC *** on its domestic saccharin operations. PMC's operating ***. In interim 1994, PMC's operating ***. PMC experienced operating *** as a percentage of net sales throughout the period of investigation. The operating *** decreased from *** percent in 1991 to *** percent in 1992 and then increased to *** percent in 1993; the ***.[34] PMC earned ***, which *** in 1992; in 1993, however, PMC experienced ***. In interim 1994, PMC earned ***, which was a *** earned in interim 1993.[35]

Cost of goods sold declined from ***, a *** percent fall between 1991 and 1993. Cost of goods sold remained stable in interim 1994 compared with interim 1993 at (***). The cost of goods sold as a ratio to net sales decreased from *** percent in 1991 to *** percent in 1992 then increased to *** percent in 1993, and was lower in interim 1994 (*** percent) than in interim 1993 (*** percent).[36] The unit cost of goods sold decreased *** from 1991 to 1993, and was higher in interim 1994 *** compared with interim 1993.[37] Selling, general, and administrative expenses increased *** from 1991 to 1993, but were *** lower in interim 1994 compared with interim 1993.[38]

Capital expenditures on saccharin operations *** percent between 1991 and 1993, and PMC *** interim period.[39] Finally, the value of total assets in saccharin operations *** over the period.[40] [41]

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[31] Tables 1 and C-1, CR at I-11 and C-3, PR at II-6 and C-3.

[32] Tables 1 and C-1, CR at I-11 and C-3, PR at II-6 and C-3.

[33] Tables 1 and C-1, CR at I-11 and C-3, PR at II-6 and C-3.

[34] Table 2, CR at I-13, PR at II-7.

[35] Table 2, CR at I-13, PR at II-7.

[36] Table 2, CR at I-13, PR at II-7.

[37] Table C-1, CR at C-3, PR at C-3.

[38] Tables 2 and C-1, CR at I-13 and C-3, PR at II-7 and C-3.

[39] Tables 6 and C-1, CR at I-19 and C-3, PR at II-8 and C-3.

[40] Tables 5 and C-1, CR at I-18 and C-3, PR at II-8 and C-3.

[41] Based on declines in production, capacity utilization, unit value, employment, net sales, gross profit, and operating income, and increases in inventories during the investigation period, Commissioner Rohr and Commissioner Newquist find that the domestic industry producing saccharin is currently experiencing material injury.

III. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

In final antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports that Commerce has determined are sold at LTFV.[42] The Commission must consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product, but only in the context of U.S. production operations.[43]

Although the Commission may consider alternative causes of injury to the industry other than the LTFV imports, it is not to weigh causes.[44] [45] [46] For the reasons discussed below, we find that the domestic saccharin industry is not materially injured by reason of LTFV imports of saccharin from China.

A. Volume of the Subject Imports

The volume of imports of saccharin from China by quantity rose from 259,000 pounds in 1991 to 448,000 pounds in 1992 and to 472,000 pounds in 1993. Subject imports were 225,000 pounds in interim 1993, compared with 257,000 pounds in interim 1994. By value, subject imports followed the same trend.[47] The market share of subject imports in

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[42] 19 U.S.C. § 1673d(b).

[43] 19 U.S.C. § 1677(7)(B)(i). The Commission also may consider "such other economic factors as are relevant to the determination." Id.

[44] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following:

> [T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

[45] For Chairman Watson's interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772, at I-14 n.68 (May 1994).

[46] Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the 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 LTFV imports, not by reason of LTFV 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, at 75. 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 LTFV imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249, at 74. Rather, it is to determine whether any injury "by reason of" the allegedly subsidized and LTFV 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).

[47] Tables 10 and C-1, CR at I-27 and C-3, PR at II-12 and C-3.

terms of quantity rose from *** percent in 1991 to *** percent in 1992 and to *** percent in 1993. Market share was lower in interim 1994 (*** percent) than in interim 1993 (*** percent).[48] Subject imports increased by 82.2 percent in terms of volume from 1991 to 1993 and by *** percentage points in terms of market share.[49]

We note, however, that the volume of subject imports, while increasing, started from a small base of only 259,000 pounds in 1991, or *** percent of U.S. consumption. Even after the 82.2 percent increase, the volume of subject imports still remained relatively small during the period of investigation, especially in light of the large shares of domestic consumption held by PMC and by nonsubject imports throughout the period of investigation. Although the volume of subject imports was 14.2 percent higher in interim 1994 than in interim 1993, we do not find this increase to be significant in light of the fact that the volumes of both nonsubject imports and shipments of domestic saccharin also were higher in interim 1994.[50]

The market share, by volume, of subject imports increased by 3.6 percentage points between 1991 and 1993, but this gain was at the expense of nonsubject imports' market share, which declined by 3.8 percentage points from 1991 to 1993 over the same period. The domestic industry's market share actually increased during this period by 0.2 percentage points.[51] Moreover, despite the 14.2 percent increase in the quantity of subject imports in interim 1994, market share, by quantity, of subject imports actually declined by 0.3 percentage points.[52]

For these reasons, we conclude that the volume of subject imports is not significant, either in absolute terms or relative to domestic consumption.

B. Price Effects of the Subject Imports

1. Analysis of Price Data Collected by the Commission

We do not find significant adverse price effects by the subject imports. PMC's prices for products 1, 2, 5, and 7 ***, while its prices for products 3 and 4 ***.[53] There was also no discernible trend based on an evaluation of purchasers' prices paid for PMC's product; in the majority of cases, domestic prices either fluctuated with no clear trends or remained constant.[54] We also compared PMC's average unit values on both a quarterly and annual basis broken out by each product category, but again, we could discern no clear trends.[55] Because domestic prices generally did not decline, but rather remained stable or fluctuated, we find there is no price depression by the subject imports. We also note that

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[48] Tables 10 and C-1, CR at I-27 and C-3, PR at II-12 and C-3.

[49] Table C-1, CR at C-3, PR at C-3.

[50] Indeed, nonsubject imports increased by the greatest amount -- 49.1 percent. Table C-1, CR at C-3, PR at C-3.

[51] The value of market share followed the same trend. Tables 10 and C-1, CR at I-27 and C-3, PR at II-12 and C-3.

[52] Tables 10 and C-1, CR at I-27 and C-3, PR at II-12 and C-3.

[53] PMC did not have sufficient data to report price trends for product 6. CR at I-40-41 & n.28, PR at II-18 & n.23.

[54] CR at I-41 n.27, PR at II-18 n.22.

[55] See CR at I-42, PR at II-20, and Appendix F.

declining consumption, in terms of both volume and value, from 1991 to 1993 appears to have limited PMC's ability to raise prices.

Chinese prices also fluctuated considerably, with no clear trend, and there is no evident correlation between the movements of the Chinese and domestic prices. Moreover, subject imports were only available in the U.S. market for two out of the seven product categories (products 1 and 5) considered by the Commission. Price trends (based on average unit values) for products 1 and 5, the only products sold by importers of the Chinese product, do not differ markedly as a group from PMC's prices in the remaining product categories.[56]

We could only make four direct price comparisons between the domestic product and subject imports because domestic saccharin is sold *** to end users and Chinese saccharin is sold primarily to distributors.[57] However, even this limited evidence was mixed, with two of the four comparisons showing the Chinese product priced higher and two comparisons showing the Chinese product priced lower than the domestic product.[58] We find these few comparisons are insufficient to conclude that subject imports significantly undersold domestic prices.[59]

We also find that the saccharin market is not very price sensitive and that, for the most part, PMC's product and subject imports are not competing primarily on the basis of price. The majority of purchasers reported that quality is more important than price.[60] Nine out of 11 of PMC's major saccharin purchasers indicated that price generally ranks behind quality in order of importance. They would also not switch suppliers based upon a small reduction in the market price offered by importers of Chinese saccharin because their quality standards and qualification are too important.[61] Other nonprice factors considered in purchase decisions are the different regional distribution channels, the reported quality differences, and the longer delivery lead times for the Chinese product.[62]

The evidence indicates that the decision to add or replace a supplier can best be characterized as a carefully considered decision based primarily on quality and other factors, not an impulsive decision based on price. The fact that domestic and Chinese saccharin are only somewhat substitutable is reflected by the limited head-to-head competition between domestic and Chinese saccharin. Most purchasers of the domestic product did not purchase

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[56] See Figure F-1, CR at F-3, PR at F-3.

[57] See CR at I-42-43, PR at II-20. Where prices are from two different levels of trade, comparing them would not be an accurate indicator of significant underselling. See Ferrosilicon from Egypt, Inv. No. 731-TA-642 (Final), USITC Pub. 2688 (Oct. 1993) at I-24 (citing and comparing Keyes Fibre Co. v. United States, 682 F. Supp. 583 (Ct. Int'l Trade 1988)).

[58] See Figure 1, CR at I-44, PR at II-19.

[59] Commissioner Crawford rarely gives much weight to evidence of underselling since it usually reflects some combination of differences in quality, other nonprice factors, or fluctuations in the market during the period in which price comparisons were sought.

[60] Among the 27 purchasers of saccharin that ranked different purchasing considerations by order of importance, 15 considered quality to be the most important factor, while only 4 found price to be the most important. CR at I-33, PR at II-14-15.

[61] PMC reported that approximately one-third of its customers have such qualification requirements. See generally CR at I-5-6 and I-33-37, PR at II-4-5 and II-14-16. Many purchasers reported that they are reluctant to switch from sources that have been qualified, unless they are dissatisfied with their existing sources or are in need of a second supplier. See CR at I-27-28, PR at II-13; Final Economic Memorandum, EC-R-122 (Dec. 12, 1994) at 21.

[62] Final Economic Memorandum, EC-R-122 (Dec. 12, 1994) at 5, 10, and 23.

subject imports during the period of investigation, and those that did purchase both only did so on a limited basis.[63] [64] [65]

For the foregoing reasons we find that there has not been significant underselling by subject imports and that subject imports did not depress prices or prevent price increases to a significant degree.

2. Analysis of Alternative Pricing Methodologies Proposed by PMC

Consultants for PMC submitted alternative methods for considering prices in the U.S. market because they argued that the Commission's pricing data and price comparisons do not accurately represent true pricing dynamics between the domestic and Chinese products. We have considered whether PMC's alternative pricing methodologies are more probative or reliable than those referenced above, and we conclude that they are not.[66]

The first proposed alternative methodology is based upon PMC's average annual prices to specific, major customers. PMC justifies this methodology because PMC sometimes uses a tiered pricing structure, whereby it offers discounts to particular customers who purchase more than a designated volume. According to petitioner, the Commission's pricing data are not representative of PMC's actual prices because the Commission only collected prices for largest quarterly sales, and thus they do not reflect that PMC's pricing trends are down and subject imports are priced significantly below PMC's products.[67]

We have chosen not to rely upon this alternative methodology for two reasons. We are reluctant to rely upon data that are not representative of all PMC's sales, but rather are designated sales to certain customers for certain product categories chosen by PMC.[68]

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[63] See discussion regarding the impact of subject imports on the domestic industry, infra.

[64] Chairman Watson and Commissioner Bragg note that the availability of nonsubject imports may also limit the ability of the domestic industry to institute price increases by acting as an alternative competitive source of supply to PMC. Indeed, the record reflects that PMC historically has responded to changes in demand with changes in quantity supplied rather than price changes. Final Economic Memorandum, EC-R-122 (Dec. 12, 1994) at 7.

[65] Commissioner Crawford finds that the large presence of nonsubject imports in the U.S. market would have prevented any significant price increase even in the absence of Chinese saccharin.

[66] We note that, in general, the Commission has discretion to use whatever reasonable methodologies enable it to consider the effects of subject imports on pricing. See generally Keyes Fibre Co. v. United States, 682 F. Supp. 583 (Ct. Int'l Trade 1988); Maine Potato Council v. United States, 613 F. Supp. 1237, 1244-45 (Ct. Int'l Trade 1985).

[67] See Petitioner's Prehearing Brief at 17-19 and Exhibit 7; Hearing Tr. at 51.

[68] See Report at I-40-41 n.26. PMC acknowledged that it does not have a formal written policy for its tiered pricing system and the discounts may vary greatly depending on the customer and the product line. PMC stated that it uses tiered pricing for 11 out of 19 of its largest customers, which PMC estimated represents approximately 60 percent of PMC's sales. CR at I-40-41 n.26, PR at II-18 n.21; Hearing Tr. at 82. Since PMC's data only represent information on prices of certain large customers, and not all customers, we cannot make an accurate judgment as to overall trends. We also note that some of PMC's customers who receive volume discounts, including ***, do not purchase Chinese product. See Petitioner's Posthearing Brief, Exhibit 2, at Attachment I; CR at I-36-37, PR at II-16.

Furthermore, in applying PMC's approach, we do not discern any noticeable trend that differs substantially from the Commission's pricing data.[69]

Because there are so few direct price comparisons between domestic and Chinese saccharin, consultants for PMC have proposed another price comparison methodology. They adjusted the prices of subject imports to distributors by a markup of up to ten percent in order to compare those prices to PMC's prices to end-users.[70] This, petitioner argues, shows substantial underselling of the subject imports. While the petitioner proposes a ten percent markup of the distributor's price, the record shows that distributors may mark up imported Chinese product anywhere from 3 to 40 percent.[71] We find that PMC's proposed ten percent adjustment, therefore, does not necessarily reflect true market conditions and we decline to make price comparisons based on a methodology that may not be representative of actual distributor markups.[72]

PMC has also submitted an exhibit comparing its quarterly pricing data for 1993 and the first two quarters of 1994, with a purchaser's reported purchase prices of subject imports for those same periods.[73] We do not find this information more reliable than the data submitted to the Commission directly from purchasers.[74] We have considered pricing information submitted to the Commission by three purchasers who reported purchasing both Chinese and domestic saccharin during the period of investigation.[75] However, in light of the

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[69] We have also broken out PMC's average annual unit values by product, which we believe is more accurate than only considering PMC's selected pricing data, and we find that the trends still do not show any clear or significantly different pattern that would change our determination. Product 1, despite some fluctuation, remained relatively stable, as did product 7. On the other hand, products 2 through 5 fluctuated with no clear trend. See Figures F-1 through F-10 and Tables F-1 and F-2, CR at F-3-11, PR at F-3-11.

[70] Petitioner's Prehearing Brief at 19-20; Petitioner's Posthearing Brief, Exhibit 2, at 5-7.

[71] CR at I-51-52, PR at II-20-21; Hearing Tr. at 50 and 153; Petitioner's Posthearing Brief at 6. Respondents stated that distribution markups are generally less than ten percent, but can be as high as 30 to 40 percent for small sales. Respondents' Posthearing Brief at 30-31.

[72] Petitioner's Prehearing Brief, Exhibit 7. See also Petitioner's Posthearing Brief at 7. We note that an analysis across a range of markups for product 1 shows more mixed results on underselling by the Chinese than does the analysis submitted by PMC. CR at I-52, PR at II-21. Further, while this same approach shows consistent underselling for product 5, product 5 made up a smaller share of subject imports than did product 1. CR at I-50-51, PR at II-21. Moreover, prices for products 1 and 5 fluctuated throughout the period of investigation, making it difficult to identify a trend related to subject imports. Figure F-1, CR at F-3, PR at F-3. Ultimately, this analysis, speculating on underselling margins, also fails to explain price fluctuations or to establish a link between subject imports and price depression or suppression.

[73] Petitioner's Prehearing Brief, Exhibit 7. See also Petitioner's Posthearing Brief at 7.

[74] First, we note that PMC's exhibit compares prices paid by one purchaser, ***, for the Chinese product with "prices PMC is charging in the marketplace" not with reported purchaser prices. Petitioner's Prehearing Brief at 20. We note that ***. CR at I-53-54, PR at II-21. Second, in this exhibit PMC compares prices paid for products 3 and 5. Product 3, however, is not imported directly from China, but is a product which is further processed in the United States. Third, some of the pricing data PMC has reported appears to be inconsistent with prices *** reported. Compare Petitioner's Prehearing Brief, Exhibit 7, with CR at I-54, PR at II-21.

[75] Data from one of these purchasers, *** showed that the unit values of Chinese prices were lower in three out of five quarters where comparisons could be made. The second purchaser, ***, did not provide specific pricing data, but did note that both Korean and Chinese saccharin have consistently been about *** than the domestic price. The third purchaser, ***, did not purchase both (continued...)

more complete evidence of record, we do not find this limited information to be sufficient to conclude that subject imports are having a significant adverse impact on domestic prices.[76]

C. Impact of the Subject Imports on the Domestic Industry

We find that LTFV imports from China have had no significant adverse impact on the domestic industry. As noted, imports from China, while increasing, were at low levels and had no discernible adverse price effects.

We find it significant that the subject imports gained market share at the expense of nonsubject imports, not the domestic industry, from 1991 to 1993. During this period, PMC's market share fluctuated only slightly. In interim 1994, although PMC's market share declined, subject imports' market share also declined despite a significant rise in domestic consumption.[77] Nonsubject imports, not subject imports, captured the greatest part of the increase in domestic consumption in interim 1994.[78]

Although there were declines in many of the domestic industry indicators from 1991 to 1993 (e.g., production, capacity utilization, U.S. shipments, employment and productivity), virtually all indicators of the condition of the domestic industry, with the exception of inventories and exports, exhibited improvement in interim 1994 despite an increase in total imports.[79] [80]

We also find that most of PMC's customers are not purchasing the Chinese product. First, as noted above, many purchasers of the domestic product require saccharin suppliers to meet their strict product qualification, a process which can be time consuming and expensive,

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[75](...continued)
the domestic and Chinese saccharin in the same periods. It stated that ***. CR at I-58-59, PR at II-24. We find that at least some of these differences in price can be explained by some of the nonprice factors already discussed. Furthermore, the quantities of subject imports reported in these limited transactions were not significant relative to overall U.S. consumption.

[76] CR at I-52-53, PR at II-20-21.

[77] Although the volume of PMC's U.S. shipments declined from 1991 to 1993 by *** percent, we note that U.S. consumption declined by *** rate (6.3 percent by quantity and 10.7 percent by value) and that PMC's market share increased in terms of both quantity and value. Table C-1, CR at C-3, PR at C-3.

[78] The increase in nonsubject imports in 1994 covered 62 percent of the increase in domestic consumption. The increase in PMC's shipments in interim 1994 equaled just over 32 percent of the increase in consumption in this period while the increase in subject imports equaled less than 6 percent of the increase in domestic consumption in interim 1994. Table C-1, CR at C-3, PR at C-3.

[79] See the discussion of the Condition of the Domestic Industry, supra. PMC attributed its improvement in the interim period to ***. CR at I-12-14, PR at II-6. Thus, we find that the resulting increase in inventories is due to *** and not to subject imports.

[80] Regarding PMC's poor financial performance, especially the 1992-1993 decline in PMC's gross profit, we note that during the period of investigation, PMC's unit costs of goods sold (COGS) increased ***, while the value of net sales decreased by *** percent. This increase in unit COGS and reduction in net sales taken together account for most of the total decrease in gross profit between these two years. We attribute the decline in net sales to the decline in consumption, not to subject imports. During this 1992-93 period, there was a decline in overall U.S. consumption by value of 6.1 percent. While PMC's net sales declined during this period by *** percent, the decline was still less on a percentage basis than the decline in overall U.S. consumption by value. As already noted, the percentage decline in PMC's domestic shipments by volume between 1991 and 1993 was slightly less than the decline in apparent consumption. Table C-1, CR at C-3, PR at C-3.

and which serves to limit changing suppliers in response to small changes in price.[81] Second, out of 27 purchasers responding to Commission questionnaires, only eight had purchased saccharin from both PMC and Chinese sources, and out of the 21 purchasers who provided pricing data, only 9 reported prices for subject imports. In most cases, subject import prices were only reported for a few quarters.[82] Of PMC's major customers, only one out of eight had ever purchased subject imports on a commercial basis.[83] In addition, the information on the record reveals that only two purchasers, ***, purchased both subject imports and PMC's product in the same quarters between January 1991 and June 1994.[84] Moreover, of the seven product categories for which the Commission collected pricing data, PMC sold all seven, whereas importers of the Chinese material only sold two of the products.[85]

We note there was only one confirmed lost sale to lower priced imports from China.[86] An additional confirmed lost sale allegation involved imports from both Korea and China and the purchaser could not make a distinction between the two. This evidence is insufficient to find that subject imports are adversely impacting the domestic industry.

In conclusion, because of the relatively small volume of Chinese product, the lack of significant volume and price effects, the lack of correlation between the condition of the domestic industry's performance and subject imports, as well as the fact that most of PMC's purchasers are not purchasing the subject imports, we do not find that subject imports have had an adverse impact on the domestic industry.[87] [88]

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[81] See generally CR at I-5-6, I-27-28, and I-35-37, PR at II-4-6, II-13, and II-15-16.

[82] CR at I-38 and I-40, PR at II-17 and II-18.

[83] See CR at I-34-37, PR at II-15-16.

[84] CR at I-52-53, PR at II-21.

[85] CR at I-39-40, PR at II-17.

[86] CR at I-60-61, PR at II-24. Another lost sale allegation was confirmed, but the Chinese quote was for export sales in the Mexican market, rather than in the United States. No information was available to the Commission regarding the quality or grade of that sale. CR at I-56-58, PR at II-22.

[87] We have also taken into account the parties views with respect to the effect of aspartame and saccharin's warning label on the domestic industry. We find these to be conditions of competition, but we do not find them particularly instructive with respect to the effects of subject imports. There is evidence in the record that certain purchasers are switching increasingly to aspartame because of its preferred taste, reduced price, and the stigma of saccharin's warning label. However, there are several factors which may limit aspartame's substitutability with saccharin, including the fact that aspartame is still 15 to 20 times more expensive than saccharin, has a somewhat different taste profile (reportedly it is closer in taste to natural sweeteners and is approximately 200 times as sweet as sugar), is less stable over time and under certain conditions (e.g., heat), and has a different chemical composition which renders it unsuitable for certain end use applications, such as adhesives, electroplating, pharmaceuticals, tobacco, and animal feeds. CR at I-6-8, I-29-31, and I-54-55, PR at II-4-6, II-13-14, and II-22; Hearing Tr. at 31-32.

[88] In her analysis of material injury, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when the imports were dumped with what the state of the industry would have been without the dumping, that is, had imports been priced fairly. 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 and research and development as required by 19 U.S.C. § 1677(C)(iii). These factors either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices and sales is critical, because the impact on other industry indicators (e.g. employment, wages, etc.) is derived from this impact. Subject imports (continued...)

Accordingly, we determine that the domestic industry is not materially injured by reason of LTFV imports from China.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM CHINA

Section 771(7)(F) of the Act directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."[89] The Commission may not make such a determination "on the basis of mere conjecture or supposition."[90] In making our determination, we have considered all of the statutory factors that are relevant to this investigation.[91]

Chinese production capacity and capacity utilization are not likely to result in a significant increase in subject imports of saccharin from China into the United States. Chinese production capacity was stable at *** pounds annually from 1991 through interim 1994. Production capacity of the three Chinese producers accounting for most of the exports to the United States also remained stable during this period at *** pounds. None of the

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[88](...continued)
would have been priced considerably higher had they been priced at fair value. Because Chinese imports and the domestic product appear to be somewhat good substitutes, purchasers likely would not have continued to buy subject imports had they been fairly priced. As a result, substantially fewer and perhaps none of the imports from China would have been sold had they been fairly traded. The price increase also would have caused purchasers to switch from subject imports to alternative sources such as the domestic product and nonsubject imports.

As discussed above, competitive discipline would have come from fairly traded nonsubject imports which were present in the U.S. market throughout the period of investigation and represented a significant alternative source of supply for purchasers. Thus, even if subject imports had been priced fairly, the domestic industry would not have been able to raise prices significantly. Consequently, any impact on the domestic saccharin industry would have been on its output and sales, rather than its prices. Many purchasers would have been willing to switch to the domestic product if subject imports had been fairly priced, and the domestic industry had sufficient unused capacity and inventory to supply the small market share previously held by subject imports. The impact on the domestic industry's output and sales, however, would have been limited by the attractiveness and availability of nonsubject imports. Evidence of record indicates that nonsubject imports and the domestic product, and nonsubject imports and subject imports are reasonably good substitutes. In addition, the significant increase in volume and market share of nonsubject imports in interim 1994 strongly suggest their interest in and capacity for increased sales in the U.S. market. Therefore, nonsubject imports and the domestic producer together would have absorbed the small market share previously held by subject imports. The resulting increase in market share by the domestic industry, without any significant price increase, would not have significantly increased output, sales and revenues. Accordingly, Commissioner Crawford determines that the domestic industry would not have been materially better off if the subject imports had been priced fairly. Therefore, she determines that the domestic industry is not materially injured by reason of the LTFV imports from China.

[89] 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

[90] 19 U.S.C. § 1677(7)(F)(ii).

[91] 19 U.S.C. § 1677(7)(F)(i). Because subsidies are not at issue, factor I is not applicable. Moreover, factor IX regarding raw and processed agriculture products also is not applicable to this case.

Chinese producers reported ***.[92] The Chinese capacity utilization level increased throughout the period of investigation, and was *** percent in interim 1994.[93]

Moreover, a large proportion of Chinese output is exported to countries other than the United States, including ***. Only a small amount of China's total exports are directed to the U.S. market.[94] PMC argued that if the Chinese producers diverted sales away from their other export markets to the United States, the amount of additional production would flood the U.S. market.[95] There is no evidence in the record, however, that any sales are likely to be shifted from these other markets to the United States.[96] In addition, the Chinese home market is the largest market for Chinese saccharin and has accounted for an increasing share of Chinese saccharin shipments over the period of investigation.[97]

While Chinese import shipments and market share increased, subject imports were small both in absolute terms and in terms of their U.S. market share, and Chinese market share declined in interim 1994. Furthermore, most of the increase in Chinese import volumes occurred between 1991 and 1992, and the increase tapered off considerably in the later portion of the period of investigation. Moreover, as noted above, the increase in subject imports during the period of investigation came at the expense of fairly traded imports from other countries. Thus, we find no likelihood that import penetration will rise to injurious levels.

We also find that subject imports will not enter the United States at prices that will have a depressing or suppressing effect on domestic prices. We have found that subject imports are not currently having a depressing or suppressing effect.[98] There is no evidence that these market conditions will change in the immediate future, or that subject imports from China will be any more likely to affect prices adversely in the immediate future than they have during the period of investigation.

While there was a significant increase in importers' U.S. inventories in interim 1994, there is evidence in the record that inventory levels in the saccharin market are generally

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[92] Respondents also stated that due to shortages of phthalic anhydride -- a major input in the production of saccharin -- other chemical materials, and energy, it would be difficult to increase Chinese saccharin production. Capital shortages also make plant expansion difficult. See generally Hearing Tr. at 117-129. One major Chinese saccharin exporter to the United States, ***. CR at I-23-24 & n.13, PR at II-10-11. See also Hearing Tr. at 124 and 125; Respondents' Posthearing Brief at 5 and 10-12.

[93] CR at I-23, PR at II-10.

[94] CR at I-23, PR at II-10. At their peak in 1992, Chinese saccharin exports to the United States accounted for *** percent of total exports. CR at I-23, PR at II-10.

[95] Hearing Tr. at 56.

[96] Respondents stated that Chinese producers have long-term contracts with their customers in these other export markets and therefore there is no threat that they will divert exports away from these markets to the United States. Respondents' Posthearing Brief at 12-13. They also claim that they would rather sell in the Chinese market because the quality standards are less stringent and they do not have to go through extensive quality control procedures that are often required in the U.S. market. See CR at I-23, PR at II-10.

[97] CR at I-23, PR at II-10. See also Hearing Tr. at 124 and 125; Respondents' Posthearing Brief at 5 and 10-12.

[98] In addition, as Chairman Watson and Commissioner Crawford noted above, they find that the large share of nonsubject imports limits price increases.

larger in the beginning of the year and are not necessarily indicative of full-year trends.[99] In any event, increasing levels of inventories alone do not mandate a finding of threat of material injury.[100]

We find that there are no actual or potential negative effects on existing development and production efforts of the domestic industry. PMC indicated that new capital improvements are limited due to lack of profitability caused by imports. As discussed in the previous section, however, we do not find that the poor financial performance of the domestic industry is by reason of subject imports.

There is also no evidence in the record to support a finding that there is a potential for product-shifting, within the meaning of 19 U.S.C. section 1677(7)(F)(i)(VIII). There are also no known antidumping or countervailing duty orders or investigations.[101]

Finally, we find no "other demonstrable adverse trends" that indicate a probability that subject imports from China will be the cause of actual injury.[102] We therefore determine that the domestic industry producing saccharin is not threatened with material injury by reason of the LTFV imports from China.

CONCLUSION

For the reasons discussed above, we find that the domestic industry producing saccharin is neither materially injured nor threatened with material injury by reason of LTFV imports from China.

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[99] CR at I-22, PR at II-10. For example, we note that in interim 1993, end-of-interim-period inventories were *** percent, but in the full year of 1993, inventories were considerably lower at *** percent. CR at I-22, PR at II- . PMC's inventories were also higher in interim 1993 than in full-year 1993. Table 1, CR at I-11, PR at II-6.

[100] As discussed above, PMC reported the reason for its ***. CR at I-12-14, PR at II-6. Because of the *** should not occur.

[101] CR at I-24, PR at II-11.

[102] Chairman Watson further notes that significant increased sales of subject imports are not likely to threaten the domestic industry with material injury in the imminent future due to the length of many U.S. purchasers' qualification procedures which require long waiting periods (often in the six-months range). CR at I-36-37, PR at II-20.

SEPARATE VIEWS OF COMMISSIONER ROHR AND COMMISSIONER NEWQUIST

Based on the record in this investigation, we determine that the industry in the United States producing saccharin is materially injured by reason of imports of saccharin from the People's Republic of China ("China") that have been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").

As a preliminary matter, we note that we base our final determination on a finding that the domestic industry producing saccharin is currently experiencing material injury, and that imports of saccharin from China that have been sold in the U.S. market at less than fair value are a cause, although quite possibly not the only cause, of that injury. In our view, we are to determine whether the LTFV imports contribute to the injury experienced by the domestic industry, not whether they are the principal or most substantial cause of that injury.[1] While other factors might also have an impact on the domestic industry's performance, for the reasons discussed below, we do not believe that these factors, individually or in combination, are responsible for all of the injury currently being experienced by the domestic industry.

We concur with the majority's discussion of like product, domestic industry, and the condition of the domestic industry. However, because we differ to a certain degree from the majority view of the condition of the industry, we begin our discussion with an analysis of this latter subject.

I. Condition of the Domestic Industry

From 1991 to 1993, domestic production, capacity utilization, and shipments of saccharin declined steadily, and the domestic industry placed an increasing amount of its production into inventory.[2] The sole domestic producer, PMC, suffered increasingly large *** throughout 1991-93, despite an overall decline in basic production costs.[3] PMC's dismal financial performance during this period stifled possible plans for capital investments or improvements in its saccharin operations.[4] While interim 1994 (January-June) data indicate an improvement in the state of the domestic industry,[5] we note that this upturn likely reflects the Commission's affirmative preliminary determination made in January 1994, as well as a marked increase in domestic sales volume during the interim period.[6] Significantly, despite a dramatic surge in overall domestic consumption of saccharin in the interim period, PMC's share of the domestic market declined substantially.[7]

II. Material Injury by Reason of the Subject Imports

Chinese imports of saccharin increased substantially over the period of investigation. In 1991, 259,000 pounds of saccharin from China were imported into the United States.[8] By

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[1] See e.g., Iwatsu Electric Co. v. United States, 758 F. Supp. 1506 (Ct. Int'l Trade 1991).

[2] CR at Table 1.

[3] CR at Table 2.

[4] CR at Table 6.

[5] CR at Tables 1 and 2.

[6] CR at Table 2; PR at II-7.

[7] CR at Table 10; PR at II-12.

[8] CR at Table 9; PR at II-12.

1993, imports rose to 472,000 pounds, an increase of 82 percent.[9] Imports in interim 1994 (January-June) totalled 257,000 pounds compared to 225,000 pounds in interim 1993.[10] Significantly, at the same time that the volume of imports from China was rising, the unit values of these imports declined steadily, from $1.79 per pound in 1991 to $1.56 per pound in 1993.[11] Only in interim 1994, and likely as a result of the affirmative preliminary determination in this investigation, were unit values for imports higher than for the preceding comparable period.[12] Also, subject imports almost doubled their share of domestic consumption, from *** percent in 1991 to *** percent in 1993.[13] The interim 1994 share was just slightly less than for the same period in 1993.[14]

In our view, this is a fairly price-sensitive industry where even a small quantity of unfair imports in the marketplace can have a discernible adverse effect on domestic prices. A number of purchasers confirm that the domestic and imported saccharin are similar in terms of quality, and that price is an important factor when purchasing saccharin.[15]

In this final investigation, as in the preliminary, we are faced with a problematic price structure, requiring a cautious analysis of available price data. Petitioner sells the bulk of its saccharin directly to end users, while most saccharin imported from China is sold to distributors.[16] Moreover, direct price comparisons were possible with regard to only two products. However, for these two products, which represent a significant portion of petitioner's sales volume, domestic prices were notably lower in the final quarter for which prices were reported (April-June 1994) than in the first quarter (January-March 1991).[17]

Several major consumers of saccharin indicate that Chinese prices were generally lower than domestic prices during the period.[18] The low prices of Chinese saccharin sold to distributors allowed distributors to mark-up the price of Chinese imports substantially and still sell the saccharin to end users at prices below those of the domestic producer.[19] These price mark-ups at the distributor level ranged from 10 percent to as much as 40 percent.[20] Even with a 40 percent mark-up, the price of one of the Chinese products is much lower than the price of the comparable domestic product.[21] Furthermore, information gathered through lost sale and lost revenue inquiries indicates that Chinese saccharin has, in fact, been priced to end users from 5 percent to 25 percent below domestic saccharin prices, and that the petitioner has been forced to lower its prices to maintain its end user customers.[22] Chinese unit values declined more rapidly than domestic unit values during the period of investigation. Unit values for domestic saccharin decreased between 1991 and 1993, and

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[9] Id.

[10] Id.

[11] CR at Table 9; PR at II-12.

[12] Id.

[13] CR at Table 10; PR at II-12.

[14] CR at Table 10; PR at II-12.

[15] CR at I-33 to I-34 and I-36 to I-38; Economic Memorandum at 20-21.

[16] CR at I-8; PR at II-5.

[17] CR at Table 11; PR at II-19.

[18] CR at I-59 to I-60; PR at II-22-24.

[19] CR at 51; PR at II-20-21.

[20] CR at I-51; PR at II-20-21.

[21] CR at 52; PR at II-20-21.

[22] CR at I-59 to I-61; PR at II-22-24.

rose only slightly when comparing interim periods.[23] But, the unit value for saccharin imported from China fell sharply during the investigation period, by almost 9 percentage points more than the domestic decline, before increasing slightly when comparing interim periods.[24] In addition, Chinese unit values were consistently well below those of the domestic producer.[25]

Thus, in light of the significant increase in the volume and market share of imported saccharin from China sold in the United States at less than fair value, the steady decline in domestic saccharin prices, evidence of underselling by the Chinese imports, confirmed lost sales, and lower Chinese unit values, we find that dumped saccharin from China depressed and suppressed domestic saccharin prices to a significant degree.

Furthermore, we find unpersuasive respondents' arguments that factors other than the subject imports combined to cause <u>all</u> of the injury to the domestic industry. Specifically, the respondents argue that the increased use of aspartame as a substitute for saccharin, and the requirement that saccharin products carry health warning labels, caused PMC to lose sales.[26] However, if valid, these arguments suggest that overall consumption of saccharin should have continued to decline unless these factors were somehow eliminated. But, instead, domestic consumption of saccharin rose sharply during the interim 1993/1994 period,[27] despite the continued presence of the health warning labels and competition from aspartame. Moreover, Chinese producers steadily increased their sales of saccharin in the U.S. market throughout the period of investigation.[28] Obviously the Chinese were not deterred by the alleged decline in U.S. saccharin consumption supposedly caused by these two factors.

Respondents also argue that PMC is inflicting injury on itself through its export sales practices.[29] But, PMC exports only the saccharin that it cannot sell in the domestic market.[30] That PMC suffers a loss in selling its product abroad because it cannot sell its product in the domestic market only provides evidence, further supported by lost sales allegations, that subject imports are disrupting PMC's traditional market base.

III. Conclusion

Our analysis of the record reveals that imports of saccharin from China increased substantially during the period of investigation, and that these imports had a price depressing and suppressing effect on the domestic industry. We therefore conclude that the domestic industry producing saccharin is materially injured by reason of imports from China which the Department of Commerce has found to be sold at less than fair value in the United States.

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[23] CR at Table 2; PR at II-7.

[24] CR at C-3, Table C-1.

[25] <u>Id.</u>

[26] Respondents' Pre-Hearing Brief at 16-25.

[27] CR at Table 10; PR at II-12.

[28] <u>Id.</u>

[29] Respondents' Post-Hearing Brief at 5-6.

[30] Staff conversation with John Gloninger, PMC representative, December 13, 1994.

PART II

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

On November 18, 1993, PMC Specialties Group, Cincinnati, OH--the sole producer of saccharin in the United States--filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that imports of saccharin from China and Korea are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Accordingly, the Commission instituted and conducted preliminary antidumping investigations (Nos. 731-TA-675 and 676) under section 733(a) of the Tariff Act of 1930 (the Act) (19 U.S.C. 1673b(a)), and determined that there is a reasonable indication that an industry in the United States is materially injured by reason of such imports. Commerce, therefore, continued its investigations into the existence and extent of LTFV sales from China and Korea and on June 23, 1994, published in the *Federal Register* an affirmative preliminary determination with respect to China (59 F.R. 32412) but a negative preliminary determination with respect to Korea (59 F.R. 32416). Effective the same date, the Commission instituted a final investigation with respect to China.

Notice of the institution of the Commission's final investigation and of a public hearing to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the *Federal Register* on July 20, 1994 (59 F.R. 37056). Commerce continued its LTFV investigations and issued an affirmative final determination for China and a negative final determination for Korea on November 7, 1994.[1] The Commission held a public hearing with respect to China on November 10, 1994,[2] and voted on December 15.

The Commission has conducted two other investigations concerning saccharin: one involving Japan and the other involving Korea. Both were antidumping investigations, conducted in 1977, and both resulted in negative determinations (unanimous) by the Commission.[3]

NATURE AND EXTENT OF THE LTFV SALES

The actual number of saccharin producers and exporters in China is unknown. In response to Commerce's preliminary inquiry, the Chinese Ministry of Foreign Trade and Economic Cooperation (MOFTEC) supplied a list of four exporters and six supplying manufacturers which sold or produced saccharin exported to the United States during Commerce's period of investigation (June through November 1993); however, several others, though perhaps not exporting to the United States, are known to exist. (The China Association of Saccharin Producers has provided the Commission with trade data on 14 firms). Commerce's LTFV calculations were based on the responses it received from two exporters--Shanghai KJ Import and Export Corporation (Shanghai IE), which exports material produced by Shanghai No. 6 Pharmaceutical Factory (Shanghai), and Suzhou Cereals Import and Export Corporation (Suzhou IE), which exports material produced by Suzhou Auxiliary Agent Factory (Suzhou). On the basis of purchase prices in the United States and an analysis of the factors of production of these firms' suppliers (valued on the basis of similar production in Indonesia and India), Commerce determined final weighted-average margins of 160.68 percent for Shanghai IE, 276.62 percent for Suzhou IE, and 391.42 percent for all others.

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[1] Copies of Commerce's *Federal Register* notices of its final determinations are shown in app. A.

[2] A list of participants at the hearing is presented in app. B.

[3] *Saccharin from Japan and the Republic of Korea*, USITC publication 846, Dec. 1977.

THE PRODUCT

Description and Uses

Made from petroleum-based organic chemicals, saccharin is a chemical additive that is used primarily as a sweetener. First synthesized in 1879, it has been used in the United States as a sugar substitute since 1885--primarily in foods and beverages (either commercially added prior to consumption or personally added at the time of consumption) and in personal care products such as toothpaste and mouthwash. By weight, it is about 350 times sweeter than sugar. It is also used as an additive in adhesives and in metalworking fluids to facilitate electroplating.

Four chemical variations of saccharin are generally available: (1) sodium saccharin, which accounts for the bulk of U.S. consumption and which is available in granular, powder, spray-dried powder, or liquid form; (2) calcium saccharin, (3) acid (or insoluble) saccharin, and (4) research grade saccharin. Like that produced in the United States, most of the material imported from China is sodium saccharin. (Neither China nor the United States currently produces research grade saccharin. The market for this material, which constitutes less than 1 percent of total saccharin consumption, uses imports from Israel and Canada). The U.S. and Chinese producers, or at least those that export to the United States, also appear to produce reasonably comparable products. Before purchasing, most users either require a certificate of analysis or conduct their own tests for purity and for adherence to Food and Drug Administration (FDA) specifications outlined in the Food Chemical Codex (FCC) and United States Pharmacopeia (USP). Saccharin that meets these standards is known in the market as "food grade" and is required for virtually all uses other than adhesive production and electroplating. Both the U.S.- and Chinese-produced products are marketed as "food grade." Some complaints concerning the Chinese product have been reported, including inconsistent grain size, impure content, poor packaging (sometimes requiring repackaging), and hygroscopic clumping (requiring remilling); however, such complaints have also been reported from time to time for other sources, including U.S. producers.

Two production processes are currently in use worldwide: the Maumee process, a continuous-production method which was developed in the United States and is the only process used domestically; and the older Remsen-Fahlberg process, a batch-production method using different starting materials, that is the predominant method used worldwide. Both processes are used in China.

Pursuant to a study that found saccharin to be a cancer-causing agent in rats, the FDA banned the use of saccharin in food and beverages in 1977. Shortly thereafter, Congress imposed a moratorium on the ban, but subjected the sale of saccharin to certain requirements. The Saccharin Study and Label Act, recently renewed through May 1, 1997, mandated that health warning labels be placed prominently on all products containing saccharin. According to the petitioner, saccharin's association with cancer and the warnings pertaining thereto had a negative impact in some market sectors in the late 1980s, particularly the packaged (non-fountain) soft drink market, and was a factor in helping the only other major artificial sweetener, aspartame, to displace sales.

Aspartame is produced by a completely different chemical process and, other than being synthesized from organic compounds, bears no chemical relationship to saccharin. It is about 200 times sweeter than sugar and, unlike saccharin, has nutritive value with a caloric-count-to-weight ratio comparable to that of sugar. Aspartame's major advantage over saccharin in the marketplace, other than not having the stigma of a carcinogen, is that it is closer to natural sweeteners in taste. On the other hand, it is several times more expensive (for the equivalent sweetening capacity) and tends to lose both stability and sweetness over time and under certain conditions. Currently, it is used in two of saccharin's major markets--packaged (non-fountain) soft drinks and table-top sweeteners (the artificial sweetener packets provided by restaurants, airlines, etc.).

The large packaged-soft-drink manufacturers, such as Coca Cola and Pepsi, switched from saccharin to aspartame when warning labels were required and now use aspartame for the bulk of their diet-soft-drink production. Smaller producers are increasingly using blends of the two sweeteners or switching to aspartame entirely as more of them become incorporated into larger concerns and as the price of aspartame falls relative to that of saccharin. Aspartame's use in this market increased markedly when its U.S. producer's patent expired in late 1992, and prices, in the wake of foreign competition, fell from over $95 to less than $30 per pound.[4] To a lesser degree aspartame is also used in table-top sweeteners; however, its inherent instability limits its competitive potential in this and other major markets for synthetic sweeteners, such as fountain soft drinks. It does not accomplish the same function as saccharin in non-food applications, such as metal brightening and electroplating, pharmaceuticals, tobacco, and animal feeds.

U.S. Tariff Treatment

U.S. imports of saccharin are specifically provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States (HTS). The column 1-general (most-favored-nation) duty rate, applicable to imports from China, is 6.9 percent ad valorem.

U.S. MARKET AND CHANNELS OF DISTRIBUTION

About half of the saccharin consumed in the United States is used as a beverage additive, primarily in soft drinks (mostly fountain but also packaged) and in self-sweetened beverages like tea and coffee.[5] End users for these markets are mostly soft-drink manufacturers and manufacturers of table-top sweetener packets for restaurants, airlines, and other firms serving beverages to the public. Its use as an additive in personal care products, such as toothpaste and mouthwash, accounts for another 25 percent of its U.S. consumption. About half of the remainder is consumed in electroplating chrome bumpers and accessories by the auto and auto parts industries, and the rest is used in pharmaceuticals, animal feed, tobacco, and food mixes.

U.S.-produced saccharin is sold in all markets and directly to manufacturers of the above products. With one possible exception, the Chinese-produced product is also used in all markets,[6] but is sold first to independent importers and then to independent distributors before being purchased by product manufacturers. About half of the petitioner's sales are made on a loose contractual basis. Negotiations take place at the beginning of the year for a customer's annual needs, subject to both price and quantity adjustments at the time of shipment. The remainder of the petitioner's sales and all importers' sales are made on a spot basis.

U.S. PRODUCERS AND IMPORTERS

As noted above, PMC Specialties Group is the only producer of saccharin in the United States. PMC Specialties Group is wholly owned by PMC, Inc., Sun Valley, CA, which purchased the saccharin-producing operations of Sherwin-Williams Company in 1985. Sherwin-Williams began producing saccharin in 1966 when it purchased the Cincinnati, OH, saccharin plant of Maumee Chemical Company. Numerous other firms, including Monsanto Company, St. Louis, MO;

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[4] The difference in price between aspartame and saccharin on a per-pound basis (saccharin currently sells for less than $4.00 per pound) understates the actual cost difference because of saccharin's greater per-pound sweetening capacity.

[5] Percentage estimates are supplied by the petitioner--the only producer of saccharin in the United States.

[6] Petitioner and respondents disagree as to whether Chinese-produced saccharin is used in electroplating.

Lakeway Chemical Company, Muskegon, MI; and Pillsbury Company, Minneapolis, MN, previously produced saccharin in the United States. All of these firms ceased production of the subject product by 1972.

Three firms account for most of the saccharin imported from China in recent years: Helm New York Chemical Corporation, Piscataway, NJ (wholly owned by Helm AG, Hamburg, Germany), which imports from ***; Kinetic Industries, Inc./Gibraltar Trading Corporation, Woodbridge, NJ, which imports from ***; and Dastech International, Inc., Great Neck, NY, which imports ***. All three firms import saccharin ***. No significant value is added to the imported product except by Kinetic, which converts large quantities of acid saccharin to calcium saccharin before sale. ***.

CONSIDERATION OF THE ALLEGED MATERIAL INJURY

The data in this section reflect the saccharin operations of PMC Specialties Group from January 1991 through June 1994. Saccharin accounted for about *** percent of the firm's total sales during this period. (Other sales were of corrosion inhibitors, food/feed ingredients, and other chemical additives the company produces, mostly for industrial use). Most of the personnel and equipment the firm uses to produce saccharin are exclusive to saccharin production,[7] so the necessity of allocating joint resources to the subject product in the compilation of the data was minimal. In general, the data trend somewhat disfavorably from 1991 to 1993 and then show a modest recovery, or at least an improvement, from January-June 1993 to January-June 1994. A summary of the data, showing period-by-period percentage changes, is shown in appendix C. Selected data are presented graphically in appendix D.

U.S. Production, Capacity, Capacity Utilization, Shipments, Inventories, and Employment

From 1991 to 1993, PMC Specialties Group's capacity remained steady and exports increased modestly, but overall shipments, production, capacity utilization, employment, productivity, and most other variables either declined to some degree or showed no marked improvement (table 1). According to the firm's questionnaire response, no unusual circumstances such as plant changes, strikes, equipment failure, or material shortages had any role in the decline. Particularly noticeable is an extraordinarily high level of and increase in inventories during this period.

A qualified improvement is evident from January-June 1993 to January-June 1994. Domestic shipments, employment, and productivity increased moderately, and production went up by *** percent (effectively increasing capacity utilization), but most of the additional activity went into a further increase in inventory, which rose from *** percent to *** percent of total shipments. ***. Total shipments continued to decline, brought about by a ***-percent reduction in exports. Since 1991, exports have accounted for about a *** of U.S.-produced saccharin shipments.

Table 1
Saccharin: U.S. production, average practical capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of U.S. production and related workers and hours worked by and compensation paid to such workers, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * * * *

[7] Largely due to food-grade requirements, the firm allows nothing else to be made with the same equipment.

Financial Experience of U.S. Producers

PMC Specialties Group supplied income-and-loss data on its operations on saccharin and on the overall operations of the establishment in which saccharin is produced.

Data for PMC Specialties Group were verified by the Commission's staff. As a result of the verification, PMC Specialties Group changed the originally reported data for capacity, inventory, production, shipments, operations on saccharin, asset valuation, and sales prices of saccharin to U.S. end users.

Saccharin Operations

The income-and-loss data of PMC Specialties Group on its U.S. saccharin operations are presented in table 2. Data on the major components of the cost of goods sold on its U.S. saccharin operations are presented in table 3. Total net sales value declined from 1991 to 1992 due in part to a ***. The net sales value further declined in 1993 due primarily to a ***. The net sales value increased from January-June 1993 to January-June 1994 due partially to ***.

*   *   *   *   *   *   *

Table 2
Income-and-loss experience of PMC Specialties Group on its operations producing saccharin, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

*   *   *   *   *   *   *

Table 3
Major components of PMC Specialties Group's cost of goods sold on its saccharin operations, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

*   *   *   *   *   *   *

Overall Establishment Operations

The income-and-loss data of PMC Specialties Group on its overall U.S. establishment operations are presented in table 4. Saccharin's total net sales accounted for about *** percent of overall establishment net sales during the period for which data were reported; other products produced in the establishment, and their respective shares of total sales, include corrosion inhibitors (*** percent), industrial chemicals (*** percent), and fine chemicals (*** percent). ***.

Table 4
Income-and-loss experience of PMC Specialties Group on the overall operations of its establishment wherein saccharin is produced, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

*   *   *   *   *   *   *

Investment in Productive Facilities

PMC Specialties Group's investment in property, plant, and equipment and return on assets are shown in table 5. The assets allocated to saccharin do not include upstream assets such as those used in the production of isatoic anhydride and methyl anthranilate, and therefore it would not be feasible to compute a return on assets for saccharin.

Table 5
Value of assets and return on assets of PMC Specialties Group's operations producing saccharin, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * * * *

Capital Expenditures and Environmental Costs

Capital expenditures on PMC Specialties Group's operations are shown in table 6, and environmental costs are presented in table 7. ***.

Table 6
Capital expenditures by PMC Specialties Group, by products, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * * * *

Table 7
Environmental costs of PMC Specialties Group, by products, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * * * *

Research and Development Expenses

Research and development expenses are shown in table 8. Such expenses for saccharin operations ***.

Table 8
Research and development expenses of PMC Specialties Group, by products, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * * * *

Capital and Investment

The Commission requested the U.S. producer to describe any actual or potential negative effects of imports of saccharin from China on its growth, investment, ability to raise capital, and existing development and production efforts (including efforts to develop a derivative or improved version of saccharin). The producer's responses are presented in appendix E.

CONSIDERATION OF THE ALLEGED THREAT OF MATERIAL INJURY

Section 771(7)(F)(i) of the Act (19 U.S.C. 1677(7)(F)(i)) provides that--

> In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors[8]--
>
> > (I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),
> >
> > (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
> >
> > (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
> >
> > (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
> >
> > (V) any substantial increase in inventories of the merchandise in the United States,
> >
> > (VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
> >
> > (VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,
> >
> > (VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation,

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[8] Section 771(7)(F)(ii) of the Act (19 U.S.C. 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(i) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.[9]

Available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between the LTFV Imports and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in appendix E. Available information on U.S. inventories of the subject product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); and any other threat indicators, if applicable (item (VII) above), is discussed below.

Information on inventories was received from importers representing over 80 percent of imports from China during the period for which data were collected. Their combined inventory data are shown in the following tabulation:

* * * * * * *

As a percent of their annual shipments, U.S. importers' end-of-period inventories of Chinese-produced saccharin remained relatively low. (The relatively high levels shown in the interim periods are primarily a function of the time of year and should not be compared with the annual data). According to respondents to the Commission's questionnaire, only about *** percent of the imports from China in 1993 were imported for inventory. Most of the saccharin imported into the United States is ordered for specific customers' needs. Such intentions notwithstanding, a marked increase in inventories is evident from January-June 1993 to January-June 1994. PMC Specialties Group's data show a similar increase.

The total number of saccharin producers in China is unknown; however, parties in opposition to the petition supplied data from the China Association of Saccharin Producers that include 13 member firms and 1 non-member firm. The data, which include the operations of Suzhou and Shanghai and purportedly represent 90 percent of the producers in China, are shown below:

* * * * * * *

[9] Section 771(7)(F)(iii) of the Act (19 U.S.C. 1677(7)(F)(iii)) further provides that, in antidumping investigations, "...the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

According to the reported figures, China's capacity to produce saccharin is ***. Production quantities were large and increased markedly (by *** percent) from 1991 to 1993. How much of this production was U.S. food-grade quality is unknown; however, representatives from Shanghai IE, Shanghai, Shanghai Fortune Chemical Company, and the China Chamber of Commerce for Medicine and Health Products report that the quality standards necessary for consumption in the United States are not applicable in China, despite similar uses in both countries.[10] The data show that a large proportion of China's shipments was exported, although comparatively little was shipped to the United States. Export destinations other than the United States include ***.

Three Chinese producers--Suzhou, Shanghai, and Shanghai Fortune--account for most of the exports to the United States and together account for at least *** percent of Chinese saccharin production between 1991 and 1993. Information on their combined saccharin operations, which they provided to the Commission independently, is tabulated below:

* * * * * * *

Each of these firms reported ***. Exports generally accounted for over *** of their total shipments, of which the United States accounted for ***. None of these firms *** nor are they subject to any antidumping findings of any GATT-member country.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN THE LTFV IMPORTS AND THE ALLEGED MATERIAL INJURY

Imports, U.S. Consumption, and Market Penetration

From 1991 to 1993, the United States imported saccharin from several sources worldwide, mainly Japan and Korea; however, while the quantity of total imports declined somewhat in this period, imports from China increased by over 80 percent (table 9). Simultaneously, Chinese-produced saccharin rose from 11 percent to 21 percent of total imports. The trend changed from January-June 1993 to January-June 1994, when total imports increased by 41 percent, mainly due to imports from Korea, while imports from China increased by only 14 percent and fell as a share of imports from 24 percent to 20 percent. The unit value of imports from China remained well below that for aggregate imports throughout the period, although there was much less of a disparity in January-June 1994.

The decline in total imports from 1991 to 1993 conforms with a contiguous decline in U.S. producers' shipments and a corresponding decline in total consumption (table 10). The decline coincides with a general recessionary period worldwide. Aspartame has also displaced saccharin in some markets, particularly after its U.S. patent expired in 1992 and the influx of foreign competition made it relatively less expensive to use.[11] The actual extent to which it has displaced saccharin sales, however, is unknown, and possible gains of saccharin in other markets may have offset the effect of this penetration to some degree. In any case the total market for saccharin has grown noticeably in recent periods. From January-June 1993 to January-June 1994, U.S. saccharin consumption grew by over 19 percent.

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[10] Staff meeting with Ms. Guo Wei, China Chamber of Commerce for Medicine and Health Products; Mr. Ding, Chief Accountant of Shanghai Number 6 Pharmaceutical Factory; Mr. Chen, President of Shanghai IE; and Mr. George Chen, President of Majestic, on Nov. 10, 1994.

[11] The petitioner acknowledges that saccharin sales dropped significantly when the large U.S. diet-soft-drink manufacturers switched to aspartame in 1985; however, the petitioner added that saccharin sales recovered throughout the late 1980s and that aspartame had no appreciable effect on sales during the period for which the Commission collected data.

Table 9
Saccharin: U.S. imports, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	Jan.-June-- 1994
	Quantity (*1,000 pounds*)				
China	259	448	472	225	257
Other sources	2,118	1,901	1,745	713	1,063
Total	2,377	2,349	2,217	938	1,320
	Value (*1,000 dollars*)				
China	463	715	737	374	448
Other sources	6,078	5,465	4,989	2,053	2,464
Total	6,541	6,181	5,726	2,427	2,911
	Unit value (*per pound*)				
China	$1.79	$1.60	$1.56	$1.66	$1.74
Other sources	2.87	2.87	2.86	2.88	2.32
Average	2.75	2.63	2.58	2.59	2.21
	Share of total quantity (*percent*)				
China	10.9	19.1	21.3	24.0	19.5
Other sources	89.1	80.9	78.7	76.0	80.5
Average	100.0	100.0	100.0	100.0	100.0
	Share of total value (*percent*)				
China	7.1	11.6	12.9	15.4	15.4
Other sources	92.9	88.4	87.1	84.6	84.6
Average	100.0	100.0	100.0	100.0	100.0

Note.--Because of rounding, figures may not add to the totals shown; unit values are calculated from unrounded figures.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 10
Saccharin: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * * * *

As shown in table 10, the U.S. producer's and importers' relative shares of consumption quantities remained fairly constant until 1994. Despite increased imports from China and Korea between 1991 and 1993, PMC's share of the market varied by no more than 1 percentage point. That PMC should maintain its market share in the face of increased imports from China and Korea is not altogether unusual in the light of the market's general respect for and means of assuring quality standards. Users' qualification procedures serve as a natural deterrent to rapid penetration by new sources. At the same time, however, new entrants must compete mainly on price, since users are generally reluctant to switch from sources that are already qualified unless they are dissatisfied with their existing sources or are in need of a second supplier. As China and Korea increased their shares of imports, they correspondingly increased their shares of consumption. China's share alone rose from *** percent to *** percent in this period. The situation changed from January-June 1993 to January-June 1994. Mirroring PMC's loss in market share, imports' share of consumption went up by *** percentage points, but mainly due to imports from Korea. Imports from China fell from *** percent of consumption to *** percent.

The data confuse the extent to which sales of imports from China alone may have been at the expense of PMC. From 1991 to 1993, Chinese- and U.S.-produced saccharin both increased as a share of the market (albeit PMC's increase was marginal and irregular); from January-June 1993 to January-June 1994, Chinese- and U.S.-produced saccharin both declined as a share of the market (albeit China's decline was marginal). More specific effects Chinese imports may have had on PMC will be explored in the following sections on prices, lost revenues, and lost sales.

Pricing and Marketing Considerations

Since saccharin is an intermediate good used as a commercial sugar substitute and in other food and non-food applications, the demand for saccharin depends upon the demand for products that use it, as well as its own price and the prices of substitutes. PMC Specialties Group reported that the overall demand for saccharin has been relatively stable from January 1991 through September 1994. However, one importer reported that demand has declined over this period due to competition from aspartame, an alternative sweetener. Another importer reported that overall demand has increased, and the third said that it has been unchanged. Apparent U.S. consumption of saccharin declined in quantity terms from *** million pounds in 1991 to *** million in 1993. However, during the first half of 1994 consumption was nearly 20 percent higher than in the first half of 1993.

Aspartame as a Substitute

Although it is generally recognized that aspartame can be substituted for saccharin in applications where an artificial sweetener is required, opinions differ concerning the degree of substitutability. PMC Specialties Group acknowledged that aspartame is technically a substitute but argued that it is less stable in the end product and that its significantly higher cost is an important disincentive.[12] Kinetic Industries, an importer, argued that the substitution of aspartame for saccharin is relatively uncomplicated since beverage producers have had many years of experience with both products. Kinetic Industries stated that aspartame is completely substitutable for saccharin in the packaged beverage industry. However, in cases where the stability of the sweetener is important such as in fountain syrup, saccharin continues to be used.

In addition to PMC Specialties Group and the two importers, four purchasers commented in detail on the substitutability between aspartame and saccharin. Thomas J. Lipton Company of Englewood Cliffs, NJ *** in the manufacture of diet iced tea. The company stated that ***. While

[12] Unlike saccharin, aspartame chemically breaks down over time.

acknowledging that the price of aspartame declined after its patent expired in 1992, they said that ***. C&C Cola Corporation of Elizabeth, NJ said that ***. As in the case of Lipton, C&C Cola said that ***. Cumberland Packing Company of Brooklyn, NY uses sweeteners in the production of tabletop sugar substitutes. Cumberland said that either aspartame or acesulfame-K can be substituted for saccharin in the tabletop products, but that the taste profile differs. Cumberland said that the cost of these ingredients is approximately 15 times the cost of saccharin on a sweetness equivalency basis. Pepsico, Inc. said that aspartame and saccharin are not directly substitutable for each other. A spokesman said that their choice of a sweetener can depend upon many factors including ***. ***.

The NutraSweet Company of Deerfield, IL, the only U.S. producer of aspartame, said that saccharin and aspartame are substitutable to some extent in the products of many food and beverage companies, depending upon the formulations of the products. NutraSweet said that some products that had previously been formulated with saccharin are currently formulated using aspartame as the only sweetener, while others use aspartame in a blend with saccharin. Combinations of other categories of sweeteners are also used.

Sales and Pricing Policies

PMC Specialties Group sells saccharin mainly to end users, while sales of imports from China are divided between end users and distributors. The U.S. producer reported that ***. Among importers, ***.

Practically all sales by PMC Specialties Group are made from existing inventories, while the largest share of sales by importers consists of material that is specially ordered from abroad for a particular customer. ***. PMC Specialty Group's total sales of saccharin are ***, while all imported saccharin from China is sold on a spot basis. The petitioner's largest customers generally purchase saccharin on a contract basis.[13] The contracts ***.

Prices of saccharin are commonly quoted on either an f.o.b. or delivered basis. PMC Specialties Group reported that it quotes on an f.o.b. plant or warehouse basis for spot orders, and on a delivered basis for sales to contract customers with a minimum single shipment volume of at least *** pounds. Among importers of Chinese-produced saccharin, three quote prices on a delivered basis and one quotes prices on an f.o.b. warehouse basis. The terms of sale reported by PMC Specialties Group and the importers were net 30 days in all cases. The domestic producer and two of the four importers reported that they arrange transportation for their purchasers. Inland shipments are by truck.

PMC Specialties Group publishes price lists for its customers in the U.S. market. List prices are quoted f.o.b. shipping point in Cincinnati, OH, with premiums of *** and *** per pound, respectively, for shipments out of warehouses located in Fords, NJ, and Los Angeles, CA. PMC Specialties Group stated that price lists are used as a starting point in negotiations but are not generally followed in arriving at final transaction prices. However PMC Specialties Group does charge list prices on spot transactions. In contrast to PMC Specialties Group, none of the four importers of Chinese-produced saccharin publish list prices.

Although price is an important consideration in purchases of saccharin, it ranks well below quality in importance. Among the 27 purchasers of saccharin that ranked different factors in

[13] The staff conducted a telephone survey of 11 of the petitioner's largest saccharin customers to supplement the information obtained from purchaser questionnaires. The companies surveyed were ***. The combined purchases by these 11 customers from PMC Specialties Group accounted for 49 percent of the petitioner's total shipments during 1993 and 55 percent during January-June 1994. Purchases of imports from China amounted to about 5 percent of the total volume of purchases by these companies in 1993 and about 3 percent in January-June 1994. Nine of the 11 companies surveyed said that they buy all of their saccharin from PMC Specialties Group on a contract basis, while the remaining two customers buy from PMC on a spot basis.

importance, 15 considered quality to be the most important purchasing consideration while only 4 ranked price in first place. Other factors that received first place rankings include traditional supplier and availability. Price was ranked second in importance by 9 of the 26 purchasers, and in third place by 5 of these purchasers.

The telephone survey of the petitioner's major customers also indicated that price generally ranks behind quality in purchasing decisions. The customers were asked whether a small reduction in the market price of Chinese-produced saccharin would encourage them to switch from domestically produced saccharin to the Chinese product. Nine of the 11 companies surveyed indicated that they would be unwilling to switch any purchase on this basis alone. They all considered their quality standards and qualification requirements to be too important.[14] The spokesman for *** said that a small reduction in the Chinese price could cause them to shift some purchases from PMC Specialties Group to the Chinese source, but a major shift would not occur. The spokesman for *** said that a large reduction in the China price could eventually encourage his company to begin purchasing the Chinese material. At present the company purchases all of its material from *** and from *** and *** sources. China is not qualified as a supplier with ***.

While U.S.-produced saccharin is sold throughout the United States, imports from China are more commonly sold in regional markets. PMC Specialties Group and ***, ***, both sell nationwide. However, *** principal markets areas are the Northeast and Midwest, and *** sells mainly in the Northeast. *** considers the Midwest to be its main market.

Because of its broad market area, PMC Specialties Group generally sells to customers that are located further away from its facilities than is the case with importers. It reported that *** percent of its sales are to customers located within 100 miles of its production or storage facilities, *** percent to customers within 1,000 miles, and *** to customers located over 1,000 miles away. Among the three importers of Chinese-produced saccharin that responded to this question, two reported that *** percent or more of their sales were within 100 miles of their port of entry or storage facilities. The other importer reported that *** percent of its sales were within the 100 mile range. None of the importers reported inland shipping distances of more than *** miles.

Transportation costs account for a relatively small share of the total purchase price of saccharin. PMC Specialties Group reported that they average *** percent of the delivered price, and importers that responded to this question said that they average *** or *** percent. The petitioner believes that these costs are an important purchasing consideration, but two of the importers of Chinese material stated that they do not consider the costs important.

The lead time between the date of a customer's order and the delivery of saccharin varies widely. PMC Specialties Group reported an average lead time of *** for delivery after making a sale. Among importers of Chinese saccharin, the length of the lead times depended greatly upon whether the product is maintained in inventories in the United States or is ordered from the foreign producer. Questionnaire responses indicate that over *** percent of the Chinese saccharin sold by importers is material ordered from abroad. When the saccharin is available in U.S. inventories, the delivery time is typically ***, but if it is ordered from China *** are required. Among purchasers, the reported lead times for U.S.-produced saccharin ranged from 1 day to 1 month, and for imports from China they ranged from 7 days to 2 months.

Suppliers are often required to meet purchasers' qualification requirements in order to sell saccharin. PMC Specialties Group stated that about a third of its customers require qualification. The procedure includes an audit of their quality system, analytical techniques, and instrument calibration, as well as in-process quality control checks at PMC's facilities and an analysis of its finished products and record-keeping procedures. Importers reported that purchasers required samples in some cases. Some firms imposed internal requirements relating to purity and to mesh

[14] ***, the spokesman for ***, said that a reduction in price might encourage them to examine a test sample.

sizes and flowability. Purchasers emphasized the importance of quality, the ability to consistently meet specifications, and the reliability of the supplier. The reported periods required for testing and qualification ranged from a few days to as much as a year or more.

The telephone survey of the petitioner's largest customers indicates that qualification requirements are often very stringent and expensive. For example, the spokesman for *** said that the qualification of a new supplier would require comprehensive testing of samples and on-site audits of production facilities.[15] He said that it would take *** to complete the qualification process, at a cost of about ***. *** currently buys all of its saccharin from the ***. It has never evaluated samples of the Chinese material. *** estimated that the cost of qualifying a new supplier is *** to *** dollars, and that the process takes ***. *** currently purchases only ***. *** also imposes very stringent qualification requirements for the saccharin used in its ***.[16] The process generally takes *** and requires on-site inspections of production facilities. A sample of the Chinese material was tested by *** in ***, but it failed to meet their qualification requirements. *** currently purchases all of its saccharin from ***. In addition to ***, *** also impose strict qualification standards that require long waiting periods.[17] Among these companies, only *** has purchased Chinese-produced saccharin on a commercial basis.[18]

Product Comparisons

Producers, importers, and purchasers were asked to discuss differences between domestic and imported saccharin that would help to explain differences in prices and purchasing patterns. Product characteristics and marketing characteristics were both discussed in the questionnaire responses.

The petitioner and the majority of importers and purchasers indicated that domestically produced saccharin can generally be used for the same purposes as the Chinese imports. PMC Specialties Group said that the domestic product and the imports from China are interchangeable in about 80 percent of all cases. Four of five importers that responded to this question also consider the domestic product interchangeable with Chinese imports. Among purchasers, 15 of 17 stated that domestic saccharin and imported saccharin from China can be used for the same purposes. Two purchasers stated that the domestic saccharin is not interchangeable in use with the imports from either China or Korea. The other purchasers that completed questionnaires stated that they did not have the information needed to make comparisons.

PMC Specialties Group and three of the four importers of Chinese-produced saccharin stated that differences in quality between the domestically produced and imported products are not a factor in their sales. However, *** considers the Chinese product inferior because of its poor packaging, inconsistent grain size, and high levels of impurities.

The majority of purchasers that completed questionnaires reported that they only buy domestic or Korean-produced saccharin and have not had any recent experience in comparing the quality of the Chinese-produced saccharin with that of the domestic product. Just 8 of the 27 purchasers that completed questionnaires were able to make comparisons. Two of these purchasers said that the quality of the Chinese product is inferior, four said that the quality of the domestic and Chinese products is comparable, and two said that the domestic product is inferior.

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[15] Conversation with ***, Nov. 21, 1994.

[16] Conversation with ***, Nov. 21, 1994.

[17] Although *** imposes strict qualification requirements, it is generally able to complete the qualification process within *** because of the large amount of testing equipment and large number of trained personnel that are available at its *** facilities (conversation with *** of ***, Dec. 1, 1994).

[18] *** purchased a small quantity of Chinese-produced saccharin for testing in 1994.

In the telephone survey of the petitioner's major saccharin customers, opinions on the relative quality of the U.S. and Chinese products varied widely. *** stated that the Chinese product is inferior to the domestic product. According to ***, the material is clumpy and the packaging is not satisfactory.[19] *** also considers the Chinese-produced saccharin to be inferior to the domestic product. However, *** believes that Chinese-produced saccharin is actually superior to the domestic product.[20] *** based its conclusion on the results of a test sample. *** believes that U.S.-produced and Chinese-produced saccharin are equal in quality. None of the other major customers surveyed have had any recent experience either in testing or using the Chinese material. Therefore, they were unable to compare its quality with that of the petitioner's product.

Questionnaire Price Data

U.S. producers, importers, and purchasers were asked to provide quantity and price data on seven categories of commonly marketed saccharin products. For each product, producers and importers were asked to provide quarterly f.o.b. prices on their largest sales to end users and to distributors and total quantities and total values shipped to end users and distributors by quarters during January 1991-June 1994. U.S. purchasers were requested to report prices paid on an f.o.b. basis and total quantities and values of U.S.-produced and imported saccharin from China purchased by quarters during the same period. The product categories are:

Product 1: Sodium saccharin, granular, sized or unsized, FCC, 10-17 percent water

Product 2: Sodium saccharin, powder, FCC, 3-6 percent water

Product 3: Sodium saccharin, spray-dried powder, FCC, less than 3 percent water

Product 4: Acid or insoluble saccharin, spray-dried powder, FCC

Product 5: Calcium saccharin, spray-dried powder, FCC

Product 6: Acid or insoluble saccharin, crude grade

Product 7: Sodium saccharin, granular, sized or unsized, non-food grade, 10-17 percent water

Quarterly price data relating to aspartame were also requested for the period January 1991-June 1994. Nutrasweet, the only U.S. producer of this product, was asked to provide f.o.b. prices on the category of aspartame that competes most closely with saccharin, and total quantities and values of shipments.

Questionnaire responses with price data were received from PMC Specialties Group, 4 importers of saccharin from China, and 20 purchasers. NutraSweet also provided aspartame prices. PMC Specialties Group reported prices for sales to end users on all seven categories, but because of its very small volume of sales to distributors it does not maintain records on these transactions, and could not report prices. The products on which PMC Specialties Group reported prices have accounted for a majority of its total domestic saccharin shipments throughout January 1991-June 1994. In 1993 the seven products accounted for over *** percent of its shipments. Importers of Chinese-produced saccharin were able to report price data only for products 1 and 5. In contrast to

[19] Conversation with *** of ***, Nov. 18, 1994.

[20] Conversation with *** of ***, Nov. 22, 1994.

PMC Specialties Group, most of the import price data concerned sales to distributors. Very little import price data relating to sales to end users were received. The importers providing Chinese price data accounted for over 80 percent of total imports in 1993. The majority of the 21 purchasers that provided price data reported prices only on purchases from PMC Specialties Group. Only nine purchasers reported buying any imported saccharin from China during the 14-quarter period, and in most of these cases prices were available only for a few quarters.

Price trends

Quarterly price data for January 1991-June 1994 are shown in figures 1 and 2 and tables 11-15.[21] Prices of the U.S. products did not show a consistent pattern when compared across categories.[22] PMC Specialties Group's prices for products 1, 2, 5, and 7 *** during the period while its prices of products 3 and 4 ***.[23] The product 1 price ranged from a low of *** per pound to a high of *** during the 14 quarters. However, in 11 of the 14 quarters it ranged *** from *** to *** per pound. The price of product 2 ranged from a low of *** per pound in *** to a high of *** in ***. PMC Specialties Group's price for product 3 *** from a low of *** per pound in *** to a high of *** in ***. During the following 7 quarters it ***. The price of product 4 ***. During the next two years it ranged from *** per pound to ***. PMC Specialties Group's price for product 5 ***. It ranged from a low of *** per pound in *** to a high of *** in ***. The price of product 7 ranged from a low of *** in *** to a high of *** in ***.

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[21] In its prehearing brief the Gilbert Development Group, representing the petitioner, argued that since the U.S. producer price data presented in figures 1 and 2 and tables 11-15 are based on largest quarterly sales, some quarterly price declines simply reflect discounts given for particularly large sales. This results, they argue, from PMC Specialties Group's use of a tiered pricing system. Under this system, quarterly unit prices decrease as the cumulative annual purchase volume increases. Thus, in their view, selecting prices based on largest sales results in reported prices that are too low in some quarters. The petitioner does not have a formal written policy in place for the use of this system. Therefore, the discounts may vary greatly depending upon the customer and the product line (conversation with Mr. Gloninger, Nov. 28, 1994). A tiered pricing system is used for *** out of *** of the petitioner's largest customers (posthearing brief, Exhibit 2, p. 3).

As an alternate approach, they presented annual unit values of sales for selected large customers for 1991-93 and for January-June 1994 in both the prehearing and posthearing briefs. The reported unit values of sales declined during the periods shown for most of the customers that were chosen. However, information on trends in unit values for the petitioner's other customers was not presented. Therefore, this does not provide a complete picture of the overall trends.

In response to an additional request from the staff, Gilbert Development Group prepared quarterly data for all 7 product categories using their methodology. Average annual unit values were substituted for each quarterly largest sale price where they alleged that price discounts were given to large customers as a result of the tiered pricing system. No economic argument was given to support this methodology. It did not result in significantly different trends in prices from those shown in the staff report, and in more than half of the 63 substitutions, quarterly prices were actually replaced with smaller values rather than larger values.

[22] No consistent trends in domestic prices are evident in the data received from purchasers either. In a few cases purchasers reported higher domestic prices during 1991 than in later periods. In one case, the domestic price generally declined throughout the 14 quarters from January 1991 through June 1994. However, other purchasers reported increases in domestic prices over the periods where data were reported. In the majority of cases domestic prices either fluctuated with no clear trends or remained constant during periods where they were reported.

[23] In the case of product 6, prices were available in only 2 quarters. Therefore no trend could be determined.

Figure 1
Product 1: Net f.o.b. prices of the domestic product and net f.o.b. prices of the Chinese product sold to end users, by quarters, Jan. 1991-June 1994

* * * * * * *

Figure 2
Product 5: Net f.o.b. prices of the domestic product and net f.o.b. prices of the Chinese product sold to end users, by quarters, Jan. 1991-June 1994

* * * * * * *

Table 11
Product 1: Net f.o.b. prices for the domestic product and net f.o.b. prices for the Chinese product sold to end users, and margins of underselling (overselling), by quarters, Jan. 1991-June 1994

* * * * * * *

Table 12
Product 5: Net f.o.b. prices for the domestic product and net f.o.b. prices for the Chinese product sold to end users, and margins of underselling (overselling), by quarters, Jan. 1991-June 1994

* * * * * * *

Table 13
Products 2, 3, and 4: Net f.o.b. prices for domestic products sold to end users, by quarters, Jan. 1991-June 1994

* * * * * * *

Table 14
Products 6 and 7: Net f.o.b. prices for domestic products sold to end users, by quarters, Jan. 1991-June 1994

* * * * * * *

Table 15
Products 1 and 5: Net f.o.b. prices for imports from China sold to distributors, by quarters, Jan. 1991-June 1994

* * * * * * *

In addition to the f.o.b. price data, average unit value data on PMC Specialty Group's sales of the seven products were developed on both a quarterly and an annual basis for the period from January 1991 through June 1994. The data are presented graphically in figures F-1 through F-7 and in tables F-1 and F-2 in appendix F. No clear trends during the period are evident from any of the quarterly data. The annual data indicate that unit values on sales of products 3 and 7 decreased over the period, while unit values on sales of products 2 and 4 increased. No consistent pattern was apparent for products 1 and 5.

Very little data relating to sales of Chinese-produced saccharin to end users were reported.[24] The price of product 1 to end users was *** in both the first quarter of 1991 and the first quarter of 1992. The first transaction involved *** pounds of saccharin and the second involved *** pounds. Five other transactions relating to sales of product 1 to end users were reported. However, in all of these cases the transactions were so small that accurate price comparisons could not be made. Therefore, they are not shown in table 11.[25] Satisfactory import price data for product 5 were only available for the third quarter of 1993 and the first quarter of 1994. The Chinese price was *** in both quarters.[26]

Prices on sales to distributors of imports of products 1 and 5 from China are presented in table 15. No trend in prices was evident for either product during the periods where data were available. The price of product 1 ranged from a low of *** in *** to a high of *** in ***, and the price of product 5 ranged from a low of *** to a high of *** during the four quarters where sales were reported.

Price comparisons

Only four direct price comparisons between U.S.-produced and imported saccharin from China could be made from the data received from PMC Specialties Group and the importers. Prices of imports of product 1 from China on sales to end users were higher than domestic prices in both quarters where comparisons were possible by margins of *** percent and *** percent. However, prices of imports of product 5 from China on sales to end users were lower than domestic prices in both quarters by a margin of *** percent in both cases.

The relatively low prices reported on sales of Chinese products 1 and 5 at the distributor level suggest that distributors that purchase the imported products for resale are able to compete in price with PMC Specialties Group on sales to end users if mark-ups are not too large. A representative of one distributor said that his company is able to mark up the price of Chinese imports substantially and still sell the saccharin to end users at *** than the price charged by PMC Specialties Group.[27] Another supplier that sells to food companies said that mark-ups at the

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[24] Mr. John Gantt, an attorney of Ober, Kaler, Grimes & Shriver, representing the respondents, stated that the importer price data are complete and accurate.

[25] *** accounted for three of the sales of product 1 from China to end users, and *** accounted for the other two. *** reported a sale of *** pounds of imported saccharin from China at a price of *** per pound in the third quarter of 1993 and sales of *** pounds and *** pounds, respectively, in ***. In both cases the price was *** per pound. *** sold *** pounds in *** at *** per pound and *** pounds in ***.

[26] In addition to the data shown in table 12, *** reported price data for sales of product 5, ***. ***. The price reported by *** on sales of product 5 to end users was *** per pound in ***. In *** and ***, the price was ***.

[27] Conversation with *** of ***, Oct. 7, 1994. ***. Another distributor, ***, stated that Chinese-produced saccharin is definitely cheaper than the domestic product. *** sells to food and beverage manufacturers and other end users (conversation with ***, Dec. 1, 1994).

distributor level can range from as little as 10 percent to as much as 30 or 40 percent.[28] With only a 10-percent mark-up in all quarters, the distributor prices of Chinese imports of product 1 shown in table 15 would have ranged from a low of *** per pound to *** per pound. They would have been lower than PMC Specialties Group's prices for product 1 sales to end users shown in table 11 throughout January 1991-June 1994. However, with a 25-percent mark-up the Chinese prices would have been higher in 5 of the 14 quarters, and with a 40-percent mark-up they would have been higher in all quarters. In the case of product 5, the Chinese distributor price would have been much lower than the domestic price in all 4 quarters even with a 40-percent mark-up.

Some price comparison information was provided by purchasers. *** provided some price comparison data relating to domestic and imported saccharin in its purchaser questionnaire. *** purchased both U.S.-produced and Chinese-produced product 2 in the fourth quarter of 1991, the third and fourth quarters of 1992, and the first and third quarters of 1993. The average unit values of the Chinese imports were lower than the average unit values of the domestic product in three of the five quarters. The unit values for the Chinese product in the five quarters ranged from *** to *** per pound, and the unit values of the domestic saccharin ranged from *** to *** per pound. Quarterly purchases of the Chinese product during the five quarters ranged from *** pounds to *** pounds, and quarterly purchases of the domestic product ranged from *** pounds to *** pounds.

*** also provided some price data relating to the domestic and Chinese products. *** purchases both products 1 and 2 for use in ***.[29] It bought approximately *** pounds of the domestic product, *** pounds of imports from China, and *** during January-June 1994. *** said that his company was not able to break out price data in the form requested by the Commission. However, he said that the price has ranged between *** and *** per pound during 1994. According to ***, the Chinese and Korean prices have consistently been about 5 percent lower than the domestic price.

Some additional price comparison data were received in a purchaser questionnaire from ***. *** reported that it purchased all of its saccharin from PMC Specialties Group until ***. In its questionnaire response *** reported that it paid a price of *** per pound to PMC Specialties Group for product 3 throughout *** and *** and *** per pound for product 5 during this period. However, ***. These purchases were supplied by ***.[30] *** reported that the average unit value of its purchases of Chinese-produced product 3 from *** was *** per pound from August through December 1992, a level slightly lower than the *** per pound price that had prevailed on purchases from PMC Specialties Group earlier in the year. The average unit value of ***'s purchases of product 3 remained at *** per pound throughout 1993. During January-June 1994 the unit value declined to *** per pound. *** reported that the average unit value of its purchases of product 5 from *** was *** per pound during August-December 1992, a level significantly lower than the price of *** per pound paid to PMC Specialties Group earlier in the year. *** reported average values of purchases of *** per pound from *** for product 5 during all of 1993 and *** during the first six months of 1994.

[28] Conversation with ***, Oct. 6, 1994. ***. At the hearing, Neil Goldman of Kinetic Industries stated that mark-ups for his company are typically less than 10 percent, but for small sales they can range from 30 to 40 percent (hearing transcript, p. 152). Kinetic Industries, a major importer of Chinese saccharin, sells to both distributors and end users.

[29] Another purchaser, ***, reported that it bought both U.S-produced and Chinese-produced product 7 in the first quarter of 1994. However, the purchase of the small quantity of the Chinese imports was for testing purposes only. It was obtained from ***. (Conversation with ***, Nov. 22, 1994).

[30] ***.

Aspartame prices

Quarterly net f.o.b. prices of aspartame reported by NutraSweet on sales to end users are presented graphically in figure 3 on a quarterly basis for January 1991 through June 1994. During this period the price ranged from *** to *** per pound. Throughout the period, the price per pound of aspartame has consistently been many times higher than the price of an equivalent quantity of saccharin. During 1991 and 1992 when the patent was in effect, the price per pound ranged from *** to ***. However, following the expiration of the patent in December 1992, the price dropped sharply. It fell to *** in the first quarter of 1993 and remained below earlier levels throughout 1993 and the first half of 1994.

Figure 3
Aspartame: Net f.o.b. prices reported by NutraSweet on its largest sales to end users, by quarters, Jan. 1991-June 1994

* * * * * * *

Exchange Rates

Nominal exchange rate data for China are presented in figure 4.[31] Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese currency depreciated by 10 percent overall in relation to the U.S. dollar from the first quarter of 1991 to the fourth quarter of 1993. The real value of the Chinese currency could not be computed because producer price information for China is not available.

Lost Sales and Lost Revenues

PMC Specialties Group provided four allegations of lost sales due to competition from Chinese saccharin and two allegations of lost revenues. Two of the lost sales involved a combined total of *** pounds of saccharin valued at ***. Quantities and values were not specified for the other two lost sales allegations. The two lost revenue allegations involved *** on sales of *** pounds of material. The staff contacted purchasers and investigated all of the lost sales allegations and lost revenue allegations.

*** was identified as a customer in a lost sale allegation dated ***, involving *** pounds of *** saccharin priced at *** per pound. The source of the competing quote was China, and the price quoted was *** per pound. Company representative *** confirmed the quantities and prices involved in the allegation, but stated that the quote was for export sales and the competition with the Chinese supplier was for a purchase by *** in the *** market, rather than in the United States. *** reported in response to a purchaser questionnaire that it did not buy saccharin in the United States at any time during January 1991 through June 1994.

*** was identified as a prospective customer in a lost sale involving *** pounds of *** saccharin for a quoted price of *** per pound. The date of the allegation was ***, and the competing country was China. The petitioner did not know the competing quote from China but was told that its quote was not competitive. *** denied the allegation, stating that the quantity involved is at least 6 to 7 times the total amount that the company would purchase in a single year. Furthermore, *** stated that *** does not purchase, or even entertain quotes, from China because of a previous bad experience on another product.

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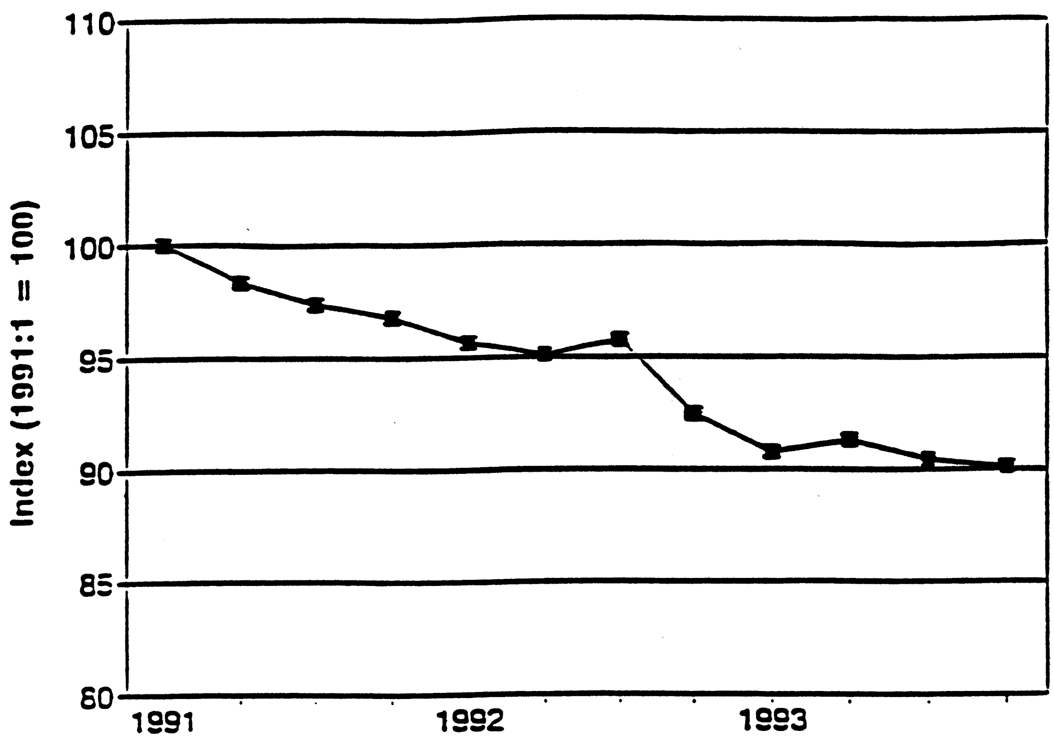
[31] China changed its method of reporting official exchange rates on Jan. 1, 1994. The new exchange rate data are not consistent with the data reported for the 1991-93 period and earlier.

Figure 4
Indexes of nominal exchange rates of the Chinese currency in relation to the U.S. dollar, by quarters, Jan. 1991-Dec. 1993



Source: International Monetary Fund, *International Financial Statistics*, October 1994.

PMC Specialties Group alleged that it lost significant revenues on a sale of *** saccharin to *** in *** due to competition from imports from China. The petitioner stated that its initial quote was *** on *** pounds of material. However, due to the import competition it was only able to sell *** pounds to ***, even after lowering its price. *** denied the allegation. *** stated that his company did change its supply source from the domestic producer to imports from China and Korea. However, this occurred in the *** rather than in ***. *** said that prior to *** his company had purchased *** saccharin from ***. However, due to ***, *** switched all of its purchases to imports from China and Korea. These imports were supplied by ***. Although the prices of Chinese and Korean imports were lower than the price of the domestic product (see discussion in price section), *** said that *** was the main reason for the change in suppliers. He also said that ***.

PMC Specialties Group alleged that it lost sales to *** during *** due to competition from imports from China. The quantities and values of sales were not specified. ***, the spokesman for the company, did not specifically address the allegation. However, he said that *** had reduced its overall purchases of saccharin in ***. According to ***, the company has a policy of purchasing saccharin from more than one source. During *** the company bought domestically produced saccharin and imported saccharin from China and Korea.[32] *** said that the saccharin from Korea and China has been about 5 percent lower in price on average than the domestic product. *** considers the price of saccharin very important since it is an important input in the production of ***.

PMC Specialties Group alleged that it lost revenues of *** on a sale of *** pounds of saccharin to *** in *** due to competition from imports from China. *** did not specifically address the allegation. However, *** reported that *** buys all of its saccharin from a domestic producer. The company considers U.S.-produced saccharin to be superior in quality to the Chinese product. ***.

PMC Specialties Group also alleged that it lost sales in *** to *** due to competition from imports from China. The quantities and values of sales were not specified. *** uses saccharin in the production of ***. *** said that the allegation was valid. He said that his company had purchased mostly domestic and Korean-produced saccharin in ***, but that it had switched *** to Chinese-produced saccharin in *** because of its low price.[33] According to ***, the Chinese-produced saccharin has been anywhere from $0.20 to $0.50 per pound lower than the price of the domestic product. He said that the quality of the Chinese product is not quite as good as that of the domestic product, but that the lower price makes up for the quality differential. *** said that *** has recently switched back to purchasing some saccharin from PMC Specialties Group. He said that because of the Chinese competition his company has been able to negotiate a much lower price for the saccharin than it previously paid to PMC.

During the preliminary investigation relating to China and Korea, a contact with a purchaser concerning lost sales and lost revenue allegations relating to Korea also provided information on Chinese import prices and competition. *** was identified in a lost revenue allegation of *** on *** pounds of *** saccharin, ***. The allegation, dated ***, involved Korea. Company representative *** acknowledged that *** does get lower price quotes from Korean and Chinese suppliers than from PMC Specialties Group, and that she requires the company to ***. *** stated that *** prefers to purchase saccharin from PMC Specialties Group, but sometimes purchases from Korean and Chinese sources because the import prices can be as much as 20-25 percent below the domestic level.

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[32] According to ***'s purchaser questionnaire, it bought about *** pounds of U.S.-produced and Chinese-produced saccharin during *** and *** pounds of Korean-produced saccharin during this period.

[33] The petitioner reported in its posthearing brief that it sold *** pounds of saccharin valued at *** to *** during ***. During ***, no sales to *** were reported (petitioner's posthearing brief, Attachment 1).

APPENDIX A

FEDERAL REGISTER NOTICES

[A-570-829]

Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China

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

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Penelope Naas, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-0189 or (202) 482-3534, respectively.

FINAL DETERMINATION: The Department of Commerce ("the Department") determines that saccharin from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation (59 FR 32412, June 23,1994), the following events have occurred.

On July 1, 1994, in accordance with section 735(a)(2)(A) of the Act, the respondents in this investigation requested that the Department postpone its final determination in this investigation until 135 days after the date of publication of the preliminary determination. Accordingly, the Department postponed its final determination until November 7, 1994 (59 FR 37969, July 26, 1994).

From August 4 through August 13, 1994, Department officials conducted verification of the responses of the responding exporters—Shanghai KJ Import and Export Corporation ("Shanghai IE") and Suzhou Cereals Import and Export Corporation ("Suzhou IE") ; and the producers—Suzhou Auxiliary Agent Factory, Shanghai No. 6 Pharmaceutical Factory, and the Wangxin Branch of Shanghai No. 6 Pharmaceutical Factory.

Petitioner and respondents submitted case and rebuttal briefs on September 23 and September 29, 1994, respectively. A public hearing was held on October 4, 1994.

Scope of Investigation

The product covered by this investigation is saccharin. Saccharin is a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, animal feeds, and metalworking fluids. Three forms of saccharin are typically available as referenced in the American Chemical Society's Chemical Abstract Service (CAS). These forms are sodium saccharin (CAS Registry #128–44–9), calcium saccharin (CAS #6485–34–3), and acid (or insoluble) saccharin (CAS #81–07–2). Saccharin is currently classifiable under subheading 2925.11.00 of the Harmonized Tariff Schedules of the United States (HTSUS). The scope of this investigation includes all types of saccharin imported under this HTSUS subheading including research and specialized grades.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is June 1, 1993, through November 30, 1993.

Separate Rates

Both of the two participating exporters, Shanghai IE and Suzhou IE, have requested a separate rate. We confirmed at verification that both companies are "owned by all the people." In the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, (May 2, 1994) (*Silicon Carbide*), we found that the PRC central government had devolved control of state-owned enterprises, i.e., enterprises "owned by all the people." As a result, we determined that companies owned "by all the people" were eligible for individual rates, if they met the criteria developed in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* 56 FR 20588 (May 6, 1991) (Sparklers) and amplified in *Silicon Carbide*. Under this analysis, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[1] and *de facto*[2] governmental control over export activities.

De Jure Analysis

The PRC laws placed on the record of this case establish that the responsibility for managing companies owned by "all the people" has been transferred from the government to the enterprise itself. These laws include: "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 (1988 Law); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (1992 Regulations); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 (Export Provisions).[3] The 1988 Law states that enterprises have the right to set their own prices (see Article 26). This principle was restated in the 1992 Regulations (see Article IX).

Consistent with Silicon Carbide, we determined that the existence of these laws demonstrates that Shanghai IE and Suzhou IE, companies owned by "all the people," are not subject to de jure control. In light of reports[4] indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly, an analysis of de facto control is critical in determining whether respondents are, in fact, subject to governmental control.

De Facto Control Analysis

We analyze below the issue of de facto control based on the criteria set forth in Silicon Carbide.

Suzhou IE

In the course of verification, we confirmed that Suzhou IE's export prices are not set, or subject to approval, by any government authority. This point was supported by the company's sales documentation, company correspondence, and confirmed through questioning of a Suzhou Commission of Foreign Trade and Economic Cooperation (COFTEC) representative. Through an examination of sales documents pertaining to U.S. saccharin sales, we also noted that Suzhou IE has the authority to negotiate contracts, including price, with its customers without government interference.

We confirmed, through an examination of bank documents, that Suzhou IE has the authority to borrow freely, independent of government authority. We also confirmed that Suzhou IE has negotiated other contracts independent of government authority. For instance, the company has (1) recently entered into a real estate venture with one Chinese and one foreign partner to purchase a building south of Suzhou, (2) leased the first floor of its current building to a garment manufacturer, and (3) purchased an automobile for company use.

We have determined that Suzhou IE has autonomy from the central government in making decisions regarding the selection of management. At verification, we found that the current general manager joined the company in 1992, following the retirement of his predecessor. We learned at verification that Suzhou IE recruited the current general manager from the Suzhou/China Council for Promotion of International Trade as it wanted a more "internationally" minded leader. We also learned that the rest of management is typically selected by the General Manager based on the Suzhou IE staff's opinion of the competency of the candidate. We also found that an employees' committee exists at the company made up of approximately one-third of all staff. However, according to the company, this committee operates informally, addressing issues such as wages and employee absences. Moreover, the Suzhou COFTEC representative confirmed that the company does send the names of its managers to Suzhou COFTEC, but we learned at verification

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[1] Evidence supporting, though not requiring, a finding of de jure absence of central control includes: (1) Absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

[3] While the PRC government has devolved control over state-owned enterprises, the government has continued to regulate certain products through export controls. The Export Provisions list designates those products subject to direct government control. Saccharin does not appear on the Export Provisions list and is not, therefore, subject to the constraints of these provisions.

[4] See "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93-133 (July 14, 1993) and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt.2 (102 Cong., 2d Sess)

that this is only so COFTEC will know who to contact at the company to disseminate and gather information.

Finally, we found that during the POI, although required to exchange a certain percentage of its foreign exchange at the official exchange rate, Suzhou IE retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses. The company's financial and accounting records supported this conclusion.

Based on an analysis of all these factors, we have determined that Suzhou IE is not subject to de facto control by governmental authorities.

Shanghai IE

In our verification of whether Shanghai IE is subject to de facto control, we found additional information regarding the company's ownership. We confirmed that it was a start-up company formed in 1992 and, according to its business license, is "owned by all the people." The company was established with the sponsorship and capital of the general manager and four other investors who work for other PRC companies. These individuals constitute Shanghai IE's current board of directors. They contributed capital to the company and also obtained a loan from another PRC company. According to information reviewed at verification, these investors decide how to handle and distribute the profits of the company.

In the course of verification, we also confirmed that Shanghai IE's export prices are not set, or subject to approval, by any government authority. This point was supported by the company's sales documentation, company correspondence, and confirmed through questioning of a Shanghai Commission of Foreign Trade and Economic Cooperation (COFTEC) representative. Through an examination of sales documents pertaining to U.S. saccharin sales, we also noted that Shanghai IE is able to negotiate contracts, including price, with its customers without government interference.

We confirmed, through an examination of bank documents, that Shanghai IE has the authority to borrow freely, independent of government authority. We also confirmed that Shanghai IE has negotiated other contracts independent of government authority. For instance, the company has: (1) Leased an office in the PuDong area of Shanghai at a specified rent, (2) negotiated a rental agreement with a warehousing company, and (3) purchased an automobile for company use.

We have also determined that Shanghai IE has autonomy from the central government in making decisions regarding the selection of management. At verification, we found that management is selected by the company with no outside involvement. We also learned at verification that the general manager is chosen by the board of directors (*i.e.*, the original investors) of the company. The general manager, in turn, chooses all of the company employees, with the advice of current employees. We reviewed an employee contract at verification which supported this explanation. Moreover, the Shanghai COFTEC representative stated that the company does not need to receive any approval from COFTEC regarding its management selections.

Finally, we found that during the POI, although required to exchange a certain percentage of its foreign exchange at the official exchange rate, Shanghai IE retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses. The company's financial and accounting records supported this conclusion.

Based on an analysis of all these factors, we have determined that Shanghai IE is not subject to *de facto* control by governmental authorities.

Conclusion

In the case of both Suzhou IE and Shanghai IE, the record demonstrates an absence of *de jure* and *de facto* government control. Accordingly, we determine that each of these exporters should receive a separate rate.

Market-Oriented Industry Claim

Respondents have argued that they should be treated as a market-oriented industry ("MOI"). However, we received MOI response information from only two saccharin producers in the PRC. We have no information on the remaining producers, of which there are at least four (according to information on the record provided by the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC")). Consequently, we have no basis to determine whether the production and sales practices of these producers are representative of PRC saccharin producers as a whole. Therefore, consistent with the policy outlined in the investigation of *Certain Helical Spring Lock Washers from the PRC*, (See, January 19, 1993, Memorandum from David L. Binder to Richard W. Moreland), we have determined that the PRC saccharin producers are not an MOI.

Nonmarket Economy

The PRC has been treated as a nonmarket economy (NME) in past antidumping investigations. (*See, e.g., Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the People's Republic of China*, 59 FR 51168 (October 7, 1994)). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with section 771(18)(c) of the Act, the Department has treated the PRC as an NME for purposes of this investigation.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that are (1) at a level of economic development comparable to that of the nonmarket economy country, and (2) significant producers of comparable merchandise. Of the countries that have been determined to be economically comparable to the PRC, evidence on the record of this case (i.e., export statistics data) indicates that India and Indonesia are significant producers of comparable merchandise, food-grade chemicals. We recognize that the food-grade chemical category is broad. However, because there are a significant variety of methods by which saccharin is produced, we have no means by which we can narrow this category further. Therefore, we have determined that it is appropriate to select from among the countries that are significant producers of a broad range of food-grade chemicals which encompass a variety of processes and input combinations. This method is reasonable particularly in light of the unavailability of reliable data on any appropriate export prices from the list of potential surrogates. (For a further discussion of the comparability of food-grade chemicals, please see November 7, 1994, Memorandum from Team to Susan Kuhbach).

In order to select a single surrogate from among those countries that meet the statutory criteria, we have reviewed the data that has been submitted and that we have been able to develop on factor values from these countries. We compared the Indian and Indonesian values against data developed from export statistics from five countries (Canada, Germany, Japan, South Korea, and the United States) that export the materials to these two countries. We rejected Indian and Indonesian values that were not reasonably comparable to the median. We then sought to ascertain which of the two countries provided a more complete data base for valuing the factors of production. Upon the basis of the above analysis, we selected Indonesia as our primary surrogate. Accordingly (except for certain inputs described below) we have relied upon Indonesian prices to value the PRC producers' factors of production.

Fair Value Comparisons

To determine whether sales of saccharin from the PRC to the United States by Suzhou IE and Shanghai IE were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States, and because the exporters' sales price methodology was not indicated by any other circumstances.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, CIF delivered prices to unrelated purchasers in the United States. We made deductions for containerization expenses and foreign inland freight based on Indonesian values. We made deductions for foreign handling and brokerage fees, and marine and inland insurance based on Indian values because we lacked Indonesian values. We also deducted ocean freight using international freight rates from Shanghai to New York obtained by the Department.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV using factors of production reported by the factories. The factors used to produce saccharin include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. For each of the factories, we made adjustments to material costs for recovery of by-products in the production process.

Our primary data source in Indonesia is the import data as reported in the *Indonesian Foreign Trade Statistical Bulletin*. We compared the Indonesian import price to the median of these five export prices, and where the Indonesian import price was reasonably comparable to the median, we used the Indonesian import value for the PRC production factor. Where the import data was determined to be aberrational, we turned to Indonesian export data and performed the same analysis. Where the Indonesian export prices were also found to be aberrational, we first used non-aberrational Indian import statistics, and where those were not available, we then examined domestic prices in India (as reported in Chemical Business and Indian Chemical Weekly) by applying the comparison noted above. Finally, if the prices in both comparable countries were found to be aberrational, we used the median export prices.

We adjusted the factor values, when necessary, to the POI, using wholesale price indices (WPIs) published by the International Monetary Fund (IMF). We also converted factor values, when necessary, to U.S. dollars using rates published by the IMF. For the chemicals methanol and toluene, we have converted information on the record from liters to kilograms, using the conversion rates used by responding companies and confirmed at verification.

We used Indonesian transportation rates to value inland freight between the source of the production factor and the saccharin factories. In those cases where the respondent failed to provide any information on transportation distances and modes, we applied, as BIA, the most expensive distance/mode combination that was available from the surrogate information we had selected.

To value electricity, we used publicly-available, published information ("PAPI") from the *Electric Utilities Data Book for the Asia and Pacific Region* (January 1993), published by the Asian Development Bank. This source provides an electricity rate for industrial use from our preferred surrogate country. We adjusted this value to the POI using the WPIs published by the IMF. To value distilled water, we have used the purest water price for Indonesia as published in *Water Utilities Data Book for the Asian and Pacific Region* (November 1993) by the Asian Development Bank. To value coal, we used the *Indonesian Foreign Trade Statistical Bulletin* for January 1993 through November 1993.

To value labor amounts, we used Indonesian wage rates reported in the International Labor Office's *1993 Yearbook of Labor Statistics*. We adjusted these values using the CPIs published by the IMF. We lacked Indonesian values for factory overhead. Therefore, to value factory overhead, we calculated percentages based on elements of industry group income statements from *The Reserve Bank of India Bulletin* (RBI), December 1993. For general expense percentages, we used the RBI data and allocated total general expenses over the total RBI-based materials, labor, and overhead cost calculated for each factory. The RBI data yielded a general expense percentage greater than the ten percent statutory minimum. For profit, we used the statutory minimum of eight percent of materials, labor, factory overhead, and general expenses, because the RBI percentage was less than eight percent.

Acid saccharin is produced using sodium saccharin as an input. At verification we found that Wangxin failed to report that it had purchased sodium saccharin to use as an input in its production of acid saccharin, as well as using its own manufactured sodium saccharin. Nor did it report how much acid saccharin was produced using the purchased sodium saccharin. Because we do not know the amount of acid saccharin produced from purchased sodium saccharin, we cannot adjust each factor input to calculate separate factors of production for acid saccharin. To compensate for respondent's understatement of the factors of production for both sodium and acid saccharin, we have treated purchased sodium saccharin as an input to both the sodium and acid saccharin produced by Wangxin.

Best Information Available

Because information has not been presented to the Department to prove otherwise, only Shanghai IE and Suzhou IE are entitled to separate dumping margins. Other exporters identified by the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) have failed to respond to our questionnaire. Lacking responses from these and other PRC exporters during the POI, we are basing the PRC country-wide rate on BIA in accordance with section 776(c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins for those respondents which did not cooperate in an investigation. As outlined in the *Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina (Argentina Steel)*, 58 FR 7066, 7069–70 (February 4, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the

Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

Here, the non-responding companies failed to cooperate. Therefore, we are assigning to them the highest margin in the petition, as recalculated by the Department for the initiation.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents using standard verification procedures, including the examination of relevant sales and financial records, and original source documentation.

Interested Party Comments

Comment 1: Surrogate Values

Respondents argue that, pursuant to *Chemical Products Corp. v. U.S.*, 645 F. Supp. 289 (CIT 1986), the Department should not use surrogate value information from India because the Indian surrogate values are hyperinflated and would lead to a skewed raw material cost. Respondents contend that when the Indian surrogate values are compared to raw material costs in the United States or the rest of the world, the Indian values are two to thirty times higher. These surrogate values are not reflective of the experience in China because, presumably, the costs in a developing country should be lower than the costs in a developed country. Moreover, respondents argue that the Chinese production process is more efficient than petitioner's; therefore, the Chinese production cost should be lower. Based on this analysis, a total cost of more than four times the U.S. cost, as the Department found in its preliminary determination could not be accurate.

Furthermore, based on the Department's study of *Trade Barriers in India*, respondents contend that the Indian Government has implemented a distortive import policy which requires import licenses and duties as high as 110 percent for chemical imports. Therefore, values reported in Indian Import Statistics are not appropriate because they reflect hyperinflated chemical import costs.

Petitioner argues that, pursuant to the Department's rules and regulations, and long-standing practice in dealing with NME antidumping investigations, the Department must use PAPI from India as the preferred surrogate values for the factors of production.

Petitioner contends that respondents' comparison between surrogate values in India and raw material costs in the United States is inappropriate because: (1) Raw material costs in India are more comparable to raw material costs in the PRC because India is at a level of economic development comparable to the PRC; (2) respondents do not purchase raw materials from the United States; and (3) the use of one U.S. price would entail using other U.S. prices (*e.g.*, labor rates) in order to maintain consistency.

With respect to the Department's report on Indian foreign trade barriers, petitioner argues that the report does not support respondents' argument that the surrogate values used in the preliminary determination are hyperinflated because: (1) The raw materials discussed in the report are agricultural and consumer items; chemicals are not mentioned on the list; (2) regarding import licenses, there is no evidence that the category "chemicals and pharmaceuticals" includes saccharin inputs; (3) the requirement for a license does not indicate the existence of a tariff; and (4) the report date does not match the POI.

DOC Position

We have determined that certain Indian import statistics should not be used (see, "Surrogate Country" section of the notice). However, we disagree with respondents' analysis. We find no basis on the record for presuming that costs are less in the PRC than in the United States because the PRC is a developing country or that PRC producers are more efficient than their U.S. competitors.

We also disagree with petitioner's position regarding use of Indian PAPI. As discussed above, we have identified both India and Indonesia as meeting the statutory criteria for selection as a surrogate. We determined that the Indonesian data were the most complete. Therefore, we selected Indonesia over India for valuing factors.

Comment 2: BIA vs. BAI

Respondents draw a distinction between the term "best available information" in section 773(c)(1)(B) of the Act for valuing of factors of production and best information available ("BIA") within the meaning of section 776 of the Act. They contend that the Department has an obligation to thoroughly investigate and obtain the best available information with respect to values for raw material inputs in the surrogate country. Respondents argue that they should not be punished if they do not provide sufficient PAPI information. Rather, the burden rests on the Department to seek out the best available information.

Petitioner argues that the Department did not use BIA when selecting surrogate values for India in the preliminary determination. Rather, the Department cross-checked the values used in the preliminary determination with values listed in *Chemical Weekly*, *Chemical Business*, and Indian Import Statistics and found them to be the best available information for use in the preliminary determination.

DOC Position

We agree with petitioner. The Department has made significant, independent efforts throughout the investigation to obtain PAPI. For both the preliminary and final determinations, our selection of surrogate values was based on the best available information on the record as mandated by the statute. We did not use BIA as respondents argue.

Comment 3: Phthalic Anhydride

Respondents state that when an input is sourced from a market economy, the Department should use the actual price paid to value that input. The Department verified that Shanghai No. 6 purchased phthalic anhydride from South Korea. Therefore, the Department should use this verified price to value this input for all three Chinese producers.

Petitioner maintains, however, that there is no information on the record proving that all of Shanghai No. 6's phthalic anhydride was sourced from Korea. Because the total amount purchased from Korea is not known, it cannot be assumed that the phthalic anhydride purchased by Shanghai No. 6 was used by its subsidiary, Wangxin, for its production of saccharin. The Korean price, therefore, cannot be attributed to Wangxin-produced material. Petitioner finds this omission significant because most of the saccharin sold by Shanghai IE was produced by Wangxin. Furthermore, petitioner asserts that there is no evidence to suggest that Suzhou purchases its phthalic anhydride from Korea or any other market economy source.

DOC Position

As the Department stated in the *Final Determination of Sales at Less than Fair Value: Oscillating Fans and Ceiling Fans from the PRC*, (56 FR 55271, 55275; October 25, 1991) ("*Fans*"), "(R)equiring the use of surrogate values in a situation where actual market-based prices incurred by a particular firm are available would be contrary to the statutory purpose." (See, also *Lasko*

Metal Products v. United States, 810 F.Supp. 314 (CIT 1992), affirming *Fans* in this regard). Therefore, because we verified that Shanghai No. 6 Factory actually imported phthalic anhydride from South Korea, at this price, we have used the price it actually paid to value this input.

However, there is no evidence on the record to suggest that either Wangdin or Suzhou Factory purchased phthalic anhydride from a market economy supplier. Therefore, we have no basis for applying this price in valuing phthalic anhydride for these two companies.

Comment 4: Solution Strengths

Respondents maintain that the PAPI sources used in the preliminary determination could contain prices for chemicals in 100 percent concentration, rather than prices for the industrial grade chemicals that are used in the production of saccharin. According to respondents, adjustments should be made for these "quality differences" in accordance with the Conference Report for the 1988 Omnibus Trade Act and the 1987 Senate Finance Report. Respondents, therefore, request that the Department seek out the strength or concentration levels of the chemical prices and use surrogate values and factor amounts which reflect the same concentrations.

Petitioner points out that there is no evidence that the surrogate values are for 100 percent concentration. In fact, several of the surrogate values used were described as being "in solution." Furthermore, petitioner claims that 100 percent pure concentrates are not the normal industrial standard. Therefore, the Department should not assume that the chemicals reported in the PAPI are for 100 percent concentrations. Rather, the Department should assume that the prices reflect the standard industrial chemical grades used by the Chinese, eliminating the need for any adjustments.

DOC Position

We agree with petitioner that there is no basis for assuming that the PAPI is for chemicals in 100 percent concentration. Although, we do not know what the exact concentration levels are, we find it reasonable to assume that the PAPI reflects standard concentrations commonly sold. Moreover, we verified that the PRC companies do not use special, non-standard-grade chemicals. Therefore, the import/export statistics that we have used to value these chemicals have not been adjusted for concentration levels.

Comment 5: Selling Expenses

Respondents argue that since the RBI data used at the preliminary determination listed selling expenses (*i.e.*, advertising, selling commissions, and bad debt expenses) separately, the Department improperly included these expenses in its constructed value calculation. Respondents cite *Fans* in support of the argument that when selling expenses can be separately identified, they should be excluded from the SG&A ratio.

DOC Position

In *Fans*, the Department determined that it would be unreasonable to add U.S. selling expenses to the FMV without making a corresponding downward adjustment to account for the selling expenses embodied in the surrogate SG&A. Likewise, it would be unreasonable to deduct the surrogate selling expenses from the FMV without making the appropriate circumstance of sale ("COS") adjustment (*i.e.*, adding U.S. selling expenses to the FMV). In this case, respondents have not identified the direct and indirect selling expenses incurred on their U.S. sales. Therefore, even if we were to agree that a COS adjustment was appropriate, we do not have the information with which to make such an adjustment.

Comment 6: Freight Rates

Respondents argue that prices paid for inputs in the PRC already include freight costs. Therefore, freight should not be added. Petitioner states that it is irrelevant whether the Chinese input prices include freight. The important consideration is whether it is included in the surrogate prices. If it is not included, the Department should continue with its past practice and include freight in the cost of each input.

DOC Position

We agree with petitioner that it is irrelevant whether the prices paid by the PRC producers include freight, as we are not using PRC prices. Instead, we are concerned with prices in the surrogate country. In this investigation, our surrogate values do not include inland freight. Therefore, we have included the cost of freight in the cost of each input.

Comment 7: Water, Distilled Water and Ice

Respondents state that in past cases, the Department has treated water as a component of factory overhead; therefore, the Department should not calculate separate costs for water, distilled water, or ice. They argue that distilled water is merely used to wash the sodium saccharin once it is produced. Therefore, distilled water should be treated similarly to materials such as the soap and oil used to clean a machine. Suzhou Factory argues that ice is also an indirect material used to cool the chemical reaction to a desired temperature. According to the respondents, normally the consumption of indirect materials such as ice or distilled water in a manufacturing operation is treated as a component of factory overhead. They also argue that factory overhead has both a variable and fixed component and just because a cost varies with production volume does not preclude it from being a factory overhead item.

Moreover, Suzhou argues that if the Department does not include water in factory overhead, then the water used by Suzhou should not be valued. The Department verified that Suzhou obtains its water from a nearby river and uses electricity to pump the water for use in the production process. Suzhou points out that in *Final Determination of Sales at Less than Fair Value: Sebacic Acid from the PRC* (59 FR 28053; May 31, 1994); *Final Determination of Sales at Less than Fair Value: Sulfanilic Acid from the PRC* (57 FR 29705; July 6, 1992); and *Final Determination of Sales at Less than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the PRC*, (58 FR 7537; February 8, 1993) no cost was attributed to water where the water was pumped from wells in the plant. According to Suzhou, since the water is not paid for, except for the cost of the electricity to pump it out of the river, establishing specific cost items for water and electricity would constitute double counting.

Petitioner argues that distilled water is not a utility. Since this "special" water, which is purchased in significant amounts by Shanghai No. 6 Factory, is used to wash the saccharin before it is packaged and sold, it must be regarded as a raw material input. According to petitioner, this water is used "to improve the quality of the mixture" and, therefore, is used directly in production. Consequently, petitioner argues that distilled water should not be included in factory overhead.

Furthermore, petitioner states that ice is used to cool the reactors—an activity which is directly related to the production of saccharin. Moreover, the ice is intentionally purchased by respondents, and is a necessary material because of the manner in which respondents produce saccharin. Petitioner argues that the Department's policy is clear—if the material is used in production, then it should be included in the direct materials calculation.

DOC Position

We agree with respondents that water and ice should be included in factory overhead. Because it is a normal practice to include such cost in factory overhead, we find it reasonable to presume that water and ice are included in the Indian overhead value we used. Therefore, if we were to assign separate values to water and ice, we would be double-counting the cost.

However, with respect to the distilled water used by Shanghai No. 6 Factory, we are not persuaded that the input would normally be included in factory overhead. Unlike other forms of water used in production facilities, distilled water is specially processed, packaged, and shipped to customers. Further, it is required for a particular segment of the production process for which the standard water will not suffice. This is more typical of items that are accounted for as direct material inputs, rather than as overhead items. Therefore, we have valued it separately.

Comment 8: Treatment of Indirect Materials and Trace Chemicals

Respondents argue that various trace chemicals, used when a particular batch does not meet acceptable standards, and other chemicals, used to cool the reactors during the production process, should be treated as components of factory overhead as they would be in market economy cases. For instance, Shanghai No. 6 Factory claims that the trace chemicals used in the production of saccharin are not raw material inputs. According to this company, these items were not used on a monthly basis, nor were these items substituted for other chemicals. The company explained that they were used in small amounts only when something in the batch fell below accepted levels. Furthermore, Wangxin argues that the chemicals discovered at verification should not be considered unreported raw material inputs; rather, they should be treated as auxiliary materials as indicated on its books. The company argues that the items are used to cool the production process and should be treated as components of factory overhead.

Respondents claim that these are examples of indirect materials, which should be a part of the factory overhead cost. They claim that, as the Department verified at Suzhou Factory, the Chinese treat auxiliary materials, depreciation expenses and repair and maintenance expenses as factory overhead items. Moreover, respondents cite to an accounting textbook which states that indirect manufacturing costs, commonly called factory overhead, include minor items, which are expensed as supplies or indirect materials. In nonmarket economy cases, the surrogate country supplies the factory overhead ratio, which would include all such indirect materials. To value these items separately and include them in the cost would result in double-counting.

Petitioner responds that the Department should not treat so-called "indirect or auxiliary materials" as factory overhead. Petitioner also argues that the frequency of the use of the unreported chemicals and the issue of whether or not they were substitutes are irrelevant. The fact remains that the Shanghai No. 6 used these raw materials in the production of saccharin. According to petitioner, it is not the Department's concern if a PRC company produces a poor quality product. Petitioner also suggests that it is irrelevant how the respondents treat these expenses. Petitioner argues that the Department's policy is clear—if the material is used in production, then it should be included in the direct materials calculation.

DOC Position

We disagree with petitioner's characterization of the Department's practice, *i.e.*, if a material is used in the production process, it should be included in the direct materials calculation. As stated above, with respect to water and ice, it is standard practice to classify certain inputs as variable overhead. The types of inputs in question here, trace chemicals and chemicals used to cool the reactors, are infrequently used in the production process and typically are small in value relative to the total cost of manufacturing the product and, hence, would be included in overhead. Therefore, we have assumed these inputs would be included in the Indian overhead value we have used in our calculations, and have not valued them separately.

Comment 9: Labor Cost

Suzhou Factory argues that it inadvertently included in its production workers eight administrative people (statisticians). According to Suzhou, the selling, general and administrative ratio obtained from the surrogate country will include all administrative workers. Therefore, the Department should not include the eight statisticians in the calculation of labor cost.

DOC Position

We disagree with respondent. We confirmed at verification that these eight statisticians played a significant role in production by directly monitoring the inputs into the production of saccharin. Therefore, we do not agree that they would be classified as administrative workers and included as part of the Indian SG&A value. Consequently, the labor hours associated with these workers have been included as part of the labor factor for producing saccharin.

Comment 10: Warehousing

Petitioner notes that at verification the Department discovered that saccharin can remain at Shanghai IE's warehouse for up to two weeks before it is shipped to the United States. Since Shanghai IE provided no transaction-specific data showing specifically how many days the product remained in the warehouse prior to shipment, the Department must assume that shipments are warehoused for two weeks. Using this information, the Department should calculate the cost of warehousing and subtract this amount from each U.S. sale reported during the POI.

Shanghai IE argues that it stated at verification that saccharin typically remains in its warehouse for 1–2 days (in rare instances, the product may remain at the warehouse for up to two weeks). According to Shanghai IE, since the saccharin stays in its warehouse usually only for one to two days, any warehouse charges should be minimal.

DOC Position

We disagree with both petitioner and respondent. The Department considers warehousing costs to be selling expenses. As noted in the response to Comment 5 above, we cannot make circumstance of sale adjustments for selling expenses when, as in the present case, all such expenses cannot be separately identified in both the FMV and U.S. price.

Comment 11: Marine Insurance and Ocean Freight

Petitioner notes that respondents claimed at verification that marine insurance and ocean freight charges were incurred in U.S. dollars and that the unit amounts reported in the sales responses were calculated based on amounts recorded in relevant exhibit documents. However, since respondents did not provide explanations regarding the derivation of their respective charges at verification, the Department should not use these charges for the final determination. Petitioner also states that, notwithstanding the fact that these charges were incurred in U.S. dollars, the charges were incurred with PRC companies. Consequently, petitioner suggests that the Department should use the same methodology it used for the preliminary determination—international freight rates from Sealand Service Inc.

Shanghai IE argues that it paid U.S. dollars to a Chinese agent of Sealand Service Inc. Consequently, the Department should use the actual freight costs in its calculations. Alternatively, Shanghai IE suggests that the Department should use the international freight rates from Sealand.

DOC Position

When the factor is being purchased from a domestic supplier in an NME, we are directed by statute to use a surrogate value. It is our standard practice to use international rates for ocean freight when available. Accordingly, we have used the international rates from Sealand for ocean freight and Indian values for marine insurance (see, *e.g.*, *Preliminary Determination of Sales at Less Than Fair Value: Coumarin from the PRC;* 59 FR 39727, August 4, 1994). We agree with petitioner that the currency in which the two charges were incurred is irrelevant.

Comment 12: Wangxin's Payments to Shanghai No. 6

Petitioner cites the verification reports as demonstrating that Shanghai No. 6 Factory "directly controls" Wangxin's product quality and, therefore, "their entire production process." Petitioner also points out that pursuant to this agreement, Shanghai No. 6 provides certain services to Wangxin, and in return, Wangxin pays Shanghai No. 6 for these services. The petitioner submits that since this information was not previously reported to the Department, the Department should adjust Wangxin's reported total cost of production to take into account the amount of these payments made to Shanghai No. 6.

Respondents argue that in nonmarket economy investigations the Department uses factors of production and surrogate values to determine foreign market value. The Department does not use the actual costs from the production process. According to respondents, if the Department is going to increase Wangxin's costs by market prices for payments to Shanghai No. 6, the Department should also use market prices for all the other raw material inputs in this case.

DOC Position

Royalty payments and quality control testing costs are explicitly included in the RBI-based factory overhead value. Therefore, there would be no need to calculate a separate amount for these payments.

Comment 13: Market-Oriented Industry Claim

Respondents argue that although they believe that the Chinese saccharin industry is a MOI, they did not argue that the Department should treat the Chinese saccharin industry as a MOI in their case brief because they believe that the Department has no real intention of applying such a standard to this case or to any other case in the future. Respondents claim that the Department only pursued a cursory discussion with several suppliers at verification, but did not, as respondents suggested, send any of the verifiers to Beijing for meetings with the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) or the Ministry of Chemical Industries to determine whether the chemical inputs are subject to the state plan, as it has done in the past.

Respondents also claim that the Department completely gutted its MOI test in *Silicon Carbide from the PRC* when it determined that since the Chinese government regulates the price and allocation of coal, an energy resource, the silicon carbide industry cannot be an MOI. Respondents point out that the U.S. government regulates the price of numerous energy resources, including coal, electricity, natural gas and oil. Respondents state that the key question facing the Department is whether the PRC government involvement in the economy so distorts the market situation that the input prices for saccharin are not reflective of the true costs of production.

Petitioner argues that (1) suppliers interviewed by Department officials at verification do not represent all chemical suppliers, (2) the chemicals supplied by those interviewed are not the main raw material inputs used in the production of saccharin, (3) the suppliers did not provide any written documentation to support their statements, and (4) none of Wangxin's suppliers were present at verification. Petitioner also notes that respondents have not met the MOI criteria delineated by the Department in *Preliminary Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China* (56 FR 25664; June 5, 1991) and *Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China* (56 FR 46153; September 10, 1991).

DOC Position

Respondents have argued that they should be treated as a market-oriented industry ("MOI"). The burden to demonstrate that an MOI exists rests with respondents and, as petitioner points out, respondents made no meaningful effort to meet the burden. We received MOI response information from only two of at least six saccharin producers in the PRC. Consequently, we have no basis to determine whether the production and sales practices of these producers are representative of PRC saccharin producers as a whole. With respect to the fact that the Department did not send members of the verification team to Beijing, we note that this point is irrelevant given that respondents did not provide information with respect to the entire saccharin industry.

Continuation of Suspension of Liquidation

In accordance with sections 733(d)(1) and 735(c)(4)(A and B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of saccharin from the PRC that are entered, or withdrawn from warehouse, for consumption on or after June 23, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

WEIGHTED-AVERAGE MARGIN

Manufacturer/producer/exporter	Percentage
Shanghai IE	160.68
Suzhou IE	276.62
All Others	391.42

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry within 45 days. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing U.S.

Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: November 7, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-28162 Filed 11-14-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-580-823]

Final Determination of Sales at Not Less Than Fair Value: Saccharin From Korea

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

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty or Peter Wilkniss, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-5055 and 482-0588, respectively.

FINAL DETERMINATION: We determine that saccharin from Korea is not being; nor is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the "Act").

Case History

Since the publication of the preliminary determination in the **Federal Register** on June 23, 1994 (59 FR 32416), the following events have occurred. On July 6, 1994, pursuant to section 353.20(b)(1) of the Department's regulations, petitioner requested that the final determination in this case be postponed. On July 19, 1994, the Department published in the **Federal Register** a notice postponing the deadline for the final determination in this case until November 7, 1994. On July 12, 1994, at the request of the Department, Jeil Moolsan Company Inc. ("JMC") submitted a revised response to the Department's cost of production questionnaire. On July 18, 19, and 20, 1994, the Department verified JMC's sales information at JMC's offices in Seoul, South Korea. On July 25, 26, and 27, 1994, the Department verified JMC's cost of production data at JMC's office in Seoul, South Korea. On September 16, 1994, and September 23, 1994, petitioner and respondent submitted case and rebuttal briefs to the Department. On September 30, 1994, the Department held a public hearing in this investigation.

Scope of the Investigation

The product covered by this investigation is saccharin. Saccharin is a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table-top sweeteners, animal feeds, and metalworking fluids. Three forms of saccharin are typically available as referenced in the American Chemical Society's Chemical Abstract Service ("CAS"). These forms are sodium saccharin (CAS #128-44-9), calcium saccharin (CAS #6485-34-3), and acid (or insoluble) saccharin (CAS #81-07-2). Saccharin is classified under subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States ("HTS"). The scope of this investigation includes all types of saccharin imported under this HTS subheading including research and specialized grades. The HTS subheading is provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is June 1, 1993, through November 30, 1993.

Product Comparisons

In making our fair value comparisons, in accordance with the Department's standard methodology, we first compared merchandise identical in all respects. If no identical merchandise was sold, we compared the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire ("Appendix V") (on file in Room B-099 of the main building of the Department of Commerce ("Public File")).

Regarding level of trade, JMC reported and we verified that JMC sells only to distributors in the United States and to both distributors and trading companies in the U.K. (U.K. sales were used for foreign market value because the home market was determined not to be viable, *see*, "Foreign Market Value" section below.) However, JMC reported that there is no difference between prices or conditions of sale made at the distributor and trading company levels of trade. We examined this issue at verification and found no evidence that JMC's prices or conditions of sale differed on the basis of level of trade. Therefore, in keeping with past practice (*see, e.g., Final Results of Administrative Review: Antifriction Bearings and Parts Thereof from the Federal Republic of Germany, et al.* (56 FR 31692, 31709-11; July 11, 1991), and in accordance with 19 CFR 353.58, we have compared JMC's U.S. sales to distributors to U.K. sales to either distributors or trading companies, without distinction, in determining whether or not JMC made sales at less than fair value.

Fair Value Comparisons

To determine whether JMC's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. With the exception of one sale to the United States, all comparisons of U.S. and third country sales involved identical merchandise. For the U.S. sale which was compared to a sale of similar merchandise, we made an adjustment for physical differences in merchandise pursuant to 19 CFR 353.57.

United States Price

Because JMC's U.S. sales of saccharin were made to unrelated purchasers prior to importation into the United States, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated JMC's PP based on packed and delivered prices to unrelated customers in the United States. We made deductions to the U.S. price, where appropriate, for foreign brokerage and handling, containerization, marine insurance, and freight expenses and charges. In accordance with section 772(d)(1)(B) of the Act, we made an addition to the U.S. price for the amount of import duties imposed on inputs which were subsequently rebated upon exportation of the finished merchandise to the United States.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As a result, we determined that the home market was not viable. Therefore, we have based FMV on JMC's sales to the largest third country market by volume, the U.K., in accordance with 19 CFR 353.49(b).

We calculated FMV based on delivered prices, inclusive of packing, to customers in the U.K. From the delivered price, we deducted third country packing and added U.S. packing costs. In light of the decision of the court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F3d 398 (Fed. Cir. 1994), we deducted post-sale movement charges from FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we also made circumstance-of-sale adjustments for differences in quality inspection charges and expenses related to securing credit including: advise charges, postage, interest paid to the bank in relation to the terms of payment, and outside bank charges. In addition, we added the amount of import duties imposed on inputs which as subsequently rebated upon exportation of the finished merchandise to the U.K.

Cost of Production

Petitioner alleged that JMC made third country sales during the POI at prices below the cost of production ("COP"). Based on petitioner's allegations, we concluded that we had reasonable grounds to "believe or suspect" that sales were made below COP. Thus, we initiated a COP investigation pursuant to section 773(b) of the Act.

We performed a product-specific cost test, in which we examined whether each home market sale was priced below that product's COP. The Department defines COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packing expense, in accordance with 19 CFR 353.51(c). (*See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea* (59 FR 35099; July 8, 1994).) We compared the COP for each product to the third country unit price, net of movement expenses.

With the following exceptions, we relied on submitted and verified COP information. At verification, we found that JMC included commission and dividend income as an offset to G&A expenses in its cost of production response. Since dividend income relates to the investment activities of JMC and not to JMC's production activity, we have adjusted JMC's reported G&A expenses to exclude dividend income as an offset to JMC's G&A expense. Likewise, commission income is related to the activities of JMC's retail division, not JMC's cost of producing saccharin. Therefore, we have also excluded commission income as an offset to JMC's G&A expense.

In accordance with section 773(b) of the Act, we also examined whether JMC's third country sales were made below COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit the recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of section 773(b)(1) that below-cost sales be disregarded only if made in substantial quantities, the following methodology was used: For each product where less than ten percent, by quantity, of the third country sales made during the POI were made at prices below the COP, we included all sales of that model in the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales made during the POI were priced below COP, we excluded from the calculation of FMV those third country sales which were priced below COP, provided that the below-cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of JMC's sales were at prices below the COP, and such sales were made over an extended period of time, we disregarded all sales of that product and calculated FMV based on constructed value.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month. (*See Preliminary Results and Partial Termination of Antidumping Duty Administrative Reviews: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* (58 FR 69336, 69338, December 10, 1993). We examined JMC's model-specific COP data, as corrected based on our findings at verification, and found no sales below COP.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Margin Calculation

Based on the calculation methodology outlined above, we calculated a margin of zero percent for U.S. sales of saccharin from Korea.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

Petitioner argues that evidence has been uncovered in this investigation which suggests that JMC employs a dual cost accounting system. Under such a system, JMC could arrange for dual pricing from suppliers and assign all low cost inputs to either home market or third country production in order to minimize below cost sales. Further, petitioner argues that the impact of such a system could be more distortive in a situation where the home market is determined to be not viable. This would allow all high cost inputs to be allocated to domestic production thereby decreasing the likelihood that the Department's cost analysis would find sales below cost in the third country market.

According to petitioner, in *Certain Circular Welded Carbon Steel Pipes and Tubes from the Republic of Korea*, 49 FR 9926 (March 16, 1984), the Department reasoned that where different costs are associated with producing for export as compared with domestic production and the merchandise is identical, it is appropriate to use the average cost of producing that merchandise in calculating cost of production or constructed value. Therefore, when presented with evidence that a respondent maintains two distinct cost systems, the Department has no alternative but to disregard the respondent's COP information and apply the best information available. Petitioner asserts that such a situation exists in this investigation.

Respondent argues that JMC does not maintain a dual cost system. Respondent outlines the verification procedures employed by the Department to verify the accuracy and completeness of JMC's cost accounting system and argues that the Department conducted a complete verification of JMC's cost of production response and found no evidence to indicate that such a system exists.

Respondent points out that the word "export" referred to by petitioner as evidence of the existence of a dual cost system pertains to JMC's cost of sales accounts. These sales accounts are used by JMC to track the cost of sales to each market at any given time. However, JMC's production costs across markets for identical merchandise are identical.

DOC Position

We disagree with petitioner. We conducted a thorough verification of JMC's cost accounts and cost of production questionnaire response and found no evidence that JMC employs a dual cost system as alleged by petitioner. The only evidence petitioner points to is that JMC maintains separate accounts for the cost of export and domestic sales. However, based on our review of JMC's accounting system, we are satisfied that the per unit cost of export and domestic sales are not segregated and that no additional costs have been allocated to either home market or third country sales.

Comment 2

Petitioner contends that the Department should disallow any offsets to JMC's general and administrative expenses ("G&A") that cannot be tied to the production of the subject merchandise, but should include in G&A any losses on foreign currency transactions and translations.

Petitioner points to two instances in JMC's cost of production submission where G&A offsets are claimed and should be disallowed. First, petitioner cites the cost verification report where the Department stated that JMC had included dividend and commission income as an offset to G&A, yet neither related to the production of saccharin. Second, petitioner argues that "miscellaneous income" should not be allowed as an offset, since there is no evidence that this income is related to the production of the subject merchandise.

Petitioner argues that foreign exchange losses on foreign currency transactions and translations should be included in the G&A calculation, since all company debt is fungible. Foreign exchange gains, however, should be excluded from G&A, unless it can be proven that such gains are directly related to the production of subject merchandise.

Respondent agrees with petitioner that the commission and dividend income is not directly related to the production of the subject merchandise. Respondent agrees that commission income should not be allowed as an offset to G&A, but since the dividend income is generated from assets which are classified in the "current assets" section of JMC's balance sheet and represents a use of working capital, dividend income is properly reported as an offset to G&A.

Respondent argues that miscellaneous income is also properly claimed as an offset to G&A because, contrary to petitioner's contention, this income is associated with JMC's manufacturing operations. Respondent points to the verified cost response at page 20, supplemented by Attachment D–11. According to respondent, miscellaneous income consists of (1) an import agent fee, (2) commission income for advertising, and (3) sales of iron scrap.

Respondent asserts that, contrary to petitioner's brief, gains and losses resulting from exchange rate fluctuations between the date of shipment and the date of payment, and gains and losses from translation of foreign currency loans, are separate and unrelated issues. Respondent asserts that gains and losses resulting from exchange rate fluctuations between the date of shipment and date of payment are not part of COP and thus have been appropriately excluded from the COP calculation. Respondent argues, however, that translation gains and losses related to debt should both be included in the calculation of interest expense.

DOC Position

We agree with petitioner with respect to JMC's treatment of commission and dividend income. Since commission and dividend income are not related to JMC's production of the subject merchandise (see "Cost of Production" section of this notice), they cannot be included in the G&A calculation. Therefore, we have adjusted JMC's reported G&A expense accordingly.

We agree with respondent that miscellaneous income should be permitted as an offset to G&A because this income is related to JMC's production operations. Therefore, we have included this income as an offset to G&A, as reported.

We agree with respondent, in part, with respect to foreign exchange gains and losses in that transaction and translation gains and losses should be examined separately. Foreign exchange gains and losses related to purchases of inputs to produce the subject merchandise should be included in COM. However, since we cannot conclusively determine whether JMC's net exchange loss on transactions was related specifically to such purchases, we consider it inappropriate to include the net loss in COM. Instead, we would normally include the net exchange loss in the G&A calculation, but since its inclusion would have virtually no effect on COP, we have not recorded such an adjustment.

We agree with respondent that foreign exchange gains and losses on year-end translation of financial assets and liabilities should be included in JMC's calculation of interest expense. But since JMC has net interest income in excess of these losses, there is no effect on COP. Therefore, no adjustment was made to JMC's interest expense for these losses.

Comment 3

Respondent contends that, contrary to the Department's sales verification report, JMC's reporting of quality inspection expense on a per kilogram basis is correct because JMC's gross unit price, as reported, is also on a per kilogram basis. Therefore, it makes no difference whether the adjustment for this expense is made on a per kilogram basis or as a percentage of the FOB price.

DOC Position

We agree with respondent. In the verification report, we noted that JMC had incurred this expense on the basis of value, not quantity. However, because JMC's gross unit price is reported on the same basis there is no need to adjust JMC's reported quality inspection expense.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: November 7, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-28161 Filed 11-14-94; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B

PARTICIPANTS AT THE COMMISSION'S HEARING

CALENDAR OF PUBLIC HEARING

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

Subject : SACCHARIN FROM CHINA

Inv. No. : 731-TA-675 (Final)

Date and Time : November 10, 1994 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main hearing room 101, 500 E Street, S.W., Washington, D.C.

OPENING REMARKS

Petitioner

Respondent

In Support of Imposition of Antidumping Duties:

Gilbert Development Group, Inc.
Pittsburgh, Pennsylvania

Gordon McCullough, Vice President of Plastic Management Corporation

John A. DeChellis, Controller of Plastic Management Corporation

Lori Robinson, Market Manager for Plastic Management Corporation

Dr. Ronald Pearson, Director of Research and Development for Plastic Management Corporation

William T. Miller, President, Beverage Research Center, Inc.

Robert Gilbert, Gilbert Development Group

John M. Gloninger, Gilbert Development Group

In Opposition to Imposition of Antidumping Duties

Ober, Kaler, Grimes and Shriver
Washington, D.C.
on behalf of

Shanghai KJ Import and Export Corporation
Shanghai No. 6 Pharmaceutical Factory
Suzhou Auxiliary Agent Factory
Suzhou Cereals Import and Export Corporation
Helm Chemical Company
Kinetic Industries

Neil Goldman, President, Kinetic Industries

Chris Torske, President, Helm Chemicals Company

Jialong Ding, Chief Accountant, Shanghai Number 6 Pharmaceutical Factory

Jiahao Chen, President, Shanghai KJ Import and Export Corporation

George Chan, President, Majestic Industries, Inc.

Cheng-Ren Lu, President, Gibraltar Trading

Guo, Wei, Representative, China Chamber of Commerce for Medicine and Health Products

William E. Perry)
Terry X. Gao) --OF COUNSEL

APPENDIX C

SELECTED DATA RELATED TO THE ALLEGED MATERIAL INJURY AND THE CAUSAL RELATIONSHIP BETWEEN THE LTFV IMPORTS AND THE ALLEGED MATERIAL INJURY

Table C-1
Saccharin: Summary data concerning the U.S. market, 1991-93, Jan.-June 1993, and Jan.-June 1994

(Quantity=*1,000 pounds*; value=*1,000 dollars*; unit values and unit labor costs are *per pound*; period changes=*percent, except where noted*)

Item	Reported data					Period changes			
				Jan.-June--					Jan.-June
	1991	1992	1993	1993	1994	1991-93	1991-92	1992-93	1993-94
U.S. consumption quantity:									
Amount	***	***	***	***	***	-6.3	-3.6	-2.9	+19.3
Producers' share[1]	***	***	***	***	***	+0.2	-0.9	+1.0	-5.8
Importers' share:[1]									
China	***	***	***	***	***	+3.6	+3.0	+0.6	-0.3
Other sources	***	***	***	***	***	-3.8	-2.2	-1.6	+6.1
Total	***	***	***	***	***	-0.2	+0.9	-1.0	+5.8
U.S. consumption value:									
Amount	***	***	***	***	***	-10.7	-4.9	-6.1	+13.2
Producers' share[1]	***	***	***	***	***	+0.7	+0.2	+0.5	-2.0
Importers' share:[1]									
China	***	***	***	***	***	+2.1	+1.6	+0.4	+0.3
Other sources	***	***	***	***	***	-2.8	-1.9	-0.9	+1.7
Total	***	***	***	***	***	-0.7	-0.2	-0.5	+2.0
U.S. importers' imports from--									
China:									
Imports quantity	259	448	472	225	257	+82.2	+73.0	+5.4	+14.2
Imports value	463	715	737	374	448	+59.2	+54.4	+3.1	+19.8
Unit value	$1.79	$1.60	$1.56	$1.66	$1.74	-12.6	-10.7	-2.1	+4.8
Other sources:									
Imports quantity	2,118	1,901	1,745	713	1,063	-17.6	-10.2	-8.2	+49.1
Imports value	6,078	5,465	4,989	2,053	2,464	-17.9	-10.1	-8.7	+20.0
Unit value	$2.87	$2.87	$2.86	$2.88	$2.32	-0.4	+0.2	-0.6	-19.4
All sources:									
Imports quantity	2,377	2,349	2,217	938	1,320	-6.7	-1.2	-5.6	+40.7
Imports value	6,541	6,181	5,726	2,427	2,911	-12.5	-5.5	-7.4	+19.9
Unit value	$2.75	$2.63	$2.58	$2.59	$2.21	-6.1	-4.4	-1.8	-14.7
U.S. producers'--									
Average capacity quantity	***	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***	***
Capacity utilization[1]	***	***	***	***	***	***	***	***	***
U.S. shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Exports/shipments[1]	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventory/shipments[1]	***	***	***	***	***	***	***	***	***
Production workers	***	***	***	***	***	***	***	***	***
Hours worked (*1,000s*)	***	***	***	***	***	***	***	***	***
Total comp. (*$1,000*)	***	***	***	***	***	***	***	***	***
Hourly total compensation	***	***	***	***	***	***	***	***	***
Productivity (*pounds/hour*)	***	***	***	***	***	***	***	***	***
Unit labor costs	***	***	***	***	***	***	***	***	***
Net sales--									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit sales value	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***
Gross profit (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income (loss)	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***	***	***	***
Unit op. income (loss)	***	***	***	***	***	***	***	***	***
COGS/sales[1]	***	***	***	***	***	***	***	***	***
Op. income (loss)/sales[1]	***	***	***	***	***	***	***	***	***

[1] "Reported data" are in percent and "period changes" are in percentage points.
[2] An increase of 1,000 percent or more.
[3] A decrease of less than 0.05 percent.
[4] A decrease of 1,000 percent or more.

Note.--Period changes, unit values, and other ratios are derived from the unrounded data. Period changes involving negative period data are positive if the amount of the negativity decreases and negative if the amount of the negativity increases. Because of rounding, figures may not add to the totals shown. Part-year inventory ratios are annualized.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

APPENDIX D

SELECTED GRAPHS

Figure D-1
Saccharin: U.S. capacity, production, and capacity utilization, 1991-93, Jan.-June 1993, and Jan.-June 1994

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Figure D-2
Saccharin: Shipments by U.S. producers, by types, 1991-93, Jan.-June 1993, and Jan. June 1994

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Figure D-3
Operating income and pretax net income of U.S. producers on their operations producing saccharin, as a share of net sales, 1991-93, Jan.-June 1993, and Jan.-June 1994

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Figure D-4
Operating income and pretax net income of U.S. producers' overall operations in which saccharin is produced, as a share of sales, 1991-93, Jan.-June 1993, and Jan.-June 1994

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Figure D-5
Saccharin: Apparent U.S. consumption, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

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Figure D-6
Saccharin: Shares of the quantity of U.S. consumption, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

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APPENDIX E

COMMENTS RECEIVED FROM PMC SPECIALTIES GROUP ON THE IMPACT OF IMPORTS OF SACCHARIN FROM CHINA ON ITS GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND DEVELOPMENT AND PRODUCTION EFFORTS

The Commission requested the U.S. producer to describe and explain the actual and potential negative effects of imports of saccharin from China on its growth, investment, ability to raise capital, and existing development and production efforts (including efforts to develop a derivative or more advanced version of the product). Its response is shown below:

*   *   *   *   *   *   *

APPENDIX F

AVERAGE UNIT VALUES OF DOMESTIC SHIPMENTS OF SACCHARIN

Figure F-1
Average unit values of PMC Specialties Group's shipments of products 1-5 and product 7, by quarters, Jan. 1991-June 1994

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Figure F-2
Average unit values of PMC Specialties Group's shipments of product 1, 1991-93, Jan.-June 1993, and Jan.-June 1994

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Figure F-3
Average unit values of PMC Specialties Group's shipments of product 2, 1991-93, Jan.-June 1993, and Jan.-June 1994

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Figure F-4
Average unit values of PMC Specialties Group's shipments of product 3, 1991-93, Jan.-June 1993, and Jan.-June 1994

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Figure F-5
Average unit values of PMC Specialties Group's shipments of product 4, 1991-93, Jan.-June 1993, and Jan.-June 1994

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Figure F-6
Average unit values of PMC Specialties Group's shipments of product 5, 1991-93, Jan.-June 1993, and Jna.-June 1994

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Figure F-7
Average unit values of PMC Specialties Group's shipments of product 7, 1991-93, Jan.-June 1993, and Jan.-June 1994

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Table F-1
Saccharin: Average unit values of the domestic producer's shipments of products 1-5 and product 7, by quarters, Jan. 1991-June 1994

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Table F-2
Saccharin: Average unit values of the domestic producer's shipments of products 1-5 and product 7, 1991-93, Jan.-June 1993, and Jan.-June 1994

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