

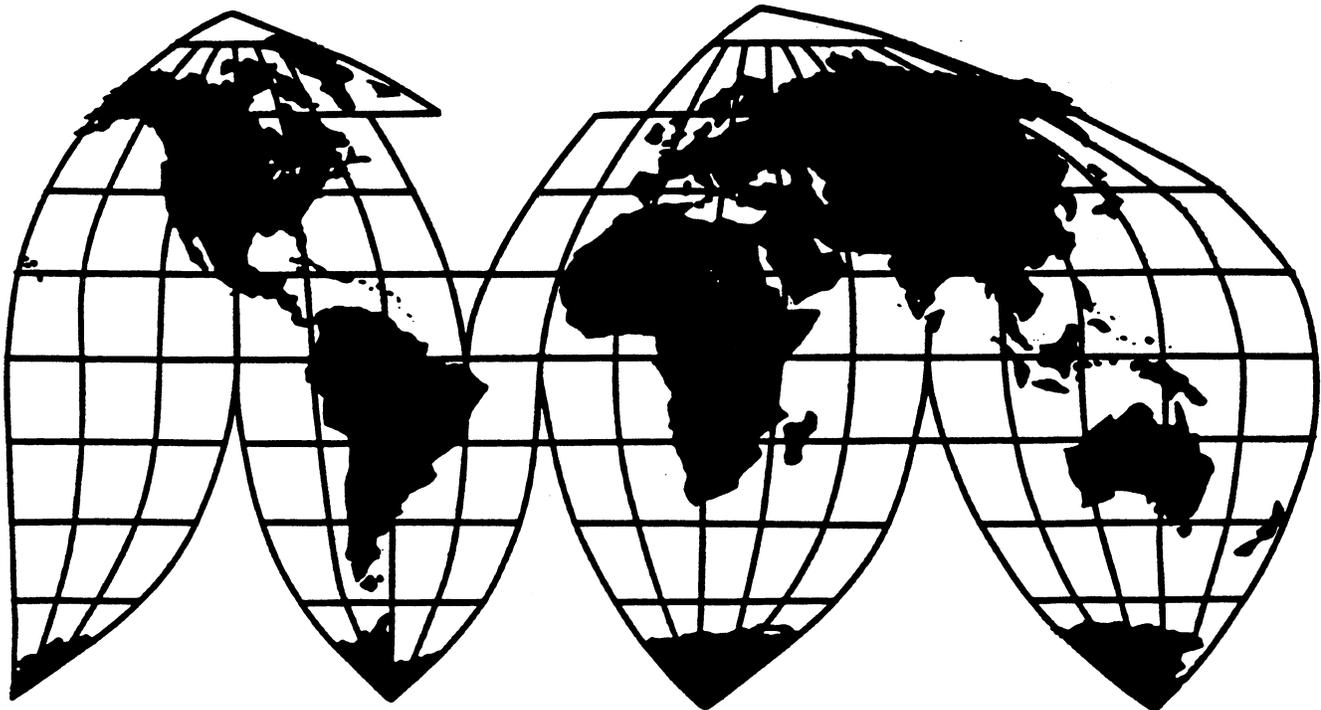
Coumarin from The People's Republic of China

Investigation No. 731-TA-677 (Final)

Publication 2852

February 1995

U.S. International Trade Commission



U.S. International Trade Commission

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Coumarin from The People's Republic of China

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GLOSSARY OF ABBREVIATIONS

Aceto	Aceto Corp.
CAS	Chemical Abstracts Service
China	People's Republic of China
Commerce	Department of Commerce
Commission	International Trade Commission
Dial	The Dial Corp.
DuPont	E.I. DuPont de Nemours
FDA	Food and Drug Administration
FTZ	Foreign trade zone
George Uhe	George Uhe Co.
HTS	Harmonized Tariff Schedule
IFF	International Flavors and Fragrances, Inc.
LTFV	Less than fair value
MOFTEC	Ministry of Foreign Trade and Economic Cooperation
Quest	Quest International Fragrances Co.
Polarome	Polarome Manufacturing Co., Inc.
Proctor & Gamble	Proctor & Gamble, Inc.
PRW	Production and related worker
Rhodia	Rhodia Chemical Co.
Rhône-Poulenc	Rhône-Poulenc Specialty Chemicals Co.

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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-677 (Final)

COUMARIN FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines, 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 materially injured by reason of imports from the People's Republic of China of coumarin,² provided for in subheading 2932.21.00 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). Chairman Watson, Vice Chairman Nuzum, and Commissioner Bragg find that critical circumstances exist with respect to subject imports from China. Commissioner Rohr, Commissioner Newquist, and Commissioner Crawford find that critical circumstances do not exist with respect to subject imports from China.

Background

The Commission instituted this investigation effective August 2, 1994, following a preliminary determination by the Department of Commerce that imports of coumarin from the People's Republic of 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 August 24, 1994 (59 F.R. 43590). The hearing was held in Washington, DC, on December 13, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² For purposes of this investigation, coumarin is an aroma chemical with the chemical formula $C_9H_6O_2$ that is also known by other names, including 2H-1-benzopyran-2-one, 1,2-benzopyrone, cis-o-coumarinic acid lactone, coumarinic anhydride, 2-Oxo-1,2-benzopyran, 5,6-benzo-alpha-pyrone, ortho-hydroxy-cinnamic acid lactone, cis-ortho-coumaric acid anhydride, and tonka bean camphor. All forms and variations of coumarin are included within the scope of the investigation, such as coumarin in crystal, flake, or powder form, and "crude" or unrefined coumarin (*i.e.*, prior to purification or crystallization). Excluded from the scope are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$).



VIEWS OF THE COMMISSION

Based on the record in this final investigation, we unanimously determine that an industry in the United States is materially injured by reason of imports of coumarin from the People's Republic of China ("China") that the Department of Commerce ("Commerce") has found to be sold in the United States at less than fair value ("LTFV").^{1 2} Chairman Watson, Vice Chairman Nuzum, and Commissioner Bragg find that critical circumstances exist with respect to subject imports from China and address this issue in separate views. Commissioner Rohr, Commissioner Newquist, and Commissioner Crawford find that critical circumstances do not exist with respect to subject imports from China and address this issue in separate views.^{3 4}

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the domestic "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."⁵ 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 articles subject to an investigation."⁶

Our decision regarding the appropriate like product(s) in an investigation is essentially a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a

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

² The petition in this investigation was filed prior to the effective date of the law implementing the Uruguay Round Trade Agreements. This investigation thus remains subject to the substantive and procedural rules of the pre-existing law. See Pub. L. 103-465, 108 Stat. 4809 (1994) at § 291.

³ Commissioner Rohr and Commissioner Newquist note that the statute does not explicitly anticipate the disposition of tie votes regarding the question of "critical circumstances." While they favor the view that the material injury provisions regarding "tie votes" should apply to this "critical circumstances" finding, they recognize that the administration of antidumping orders and the collection of antidumping duties is the responsibility of the Department of Commerce and Customs. Therefore, at this time they defer to Commerce's and Customs' interpretation in the first instance regarding the appropriate application of the statute. Should additional guidance be sought, they will, of course, provide their views after consultation with the Commission's General Counsel. Since resolution of this question involves statutory interpretation and general application, it also might be prudent as a matter of sound public policy to seek the views of trade law practitioners and other interested persons, including appropriate Congressional oversight committees.

⁴ See the additional views of Chairman Watson and Commissioner Crawford and the additional views of Vice Chairman Nuzum and Commissioner Bragg setting forth their respective views of how this tie vote on critical circumstances should be interpreted under the antidumping statute.

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

⁷ See Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991) ("[E]very like product determination 'must be made on the particular record at issue' and the 'unique facts of each case.'"). 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) when appropriate, price. United States Steel Group v. United States, Slip Op. 94-201 at 12 n.4 (Ct. Int'l Trade Dec. 30, 1994).

particular investigation. The Commission looks for "clear dividing lines among possible like products" and disregards minor variations.⁸

The imported merchandise subject to this investigation has been defined by the Department of Commerce as:

an aroma chemical with the chemical formula $C_9H_6O_2$ that is also known by other names, including 2H-1-benzopyran-2-one, 1,2-benzopyrone, cis-o-coumaric acid lactone, coumarinic anhydride, 2-Oxo-1,2-benzopyran, 5,6-benzo-alpha-pyrone, ortho-hydroxycinnamic acid lactone, cis-ortho-coumaric acid anhydride, and tonka bean camphor.

All forms and variations of coumarin are included within the scope of the investigation, such as coumarin in crystal, flake, or powder form, and "crude" or unrefined coumarin (i.e. prior to purification or crystallization). Excluded from the scope are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$).⁹

Coumarin is a white crystalline substance with a sweet, fresh, hay-like odor. Its primary use is as a major fragrance component in detergents and personal care products.¹⁰ Coumarin is also used as a metal brightener in the electroplating industry and as an intermediate chemical to produce derivative products such as dihydrocoumarin (used as a flavor and in the fragrance industry).¹¹

In the preliminary investigation, the Commission found a single like product consisting of all coumarin.¹² In this final investigation, petitioner again argued that all coumarin is a single like product.¹³ Respondents did not address the issue.¹⁴ Because there is no new information of record in this final investigation that would suggest a different result, and for the reasons set forth in the preliminary determination, we find a single like product consisting of all coumarin. We likewise determine that the domestic industry consists of petitioner Rhône-Poulenc Specialty Chemicals Co. ("Rhône-Poulenc"), the sole domestic producer of coumarin.

II. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether the domestic industry is materially injured or threatened with material injury by reason of LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁵ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."¹⁶

⁸ Torrington, 747 F. Supp. at 748-49.

⁹ 59 Fed. Reg. 66895 (Dec. 28, 1994) (Appendix A to the Report).

¹⁰ During 1993, 92.6 percent of U.S. shipments of coumarin were for use in fragrance compounding. Confidential Report ("CR") at I-5, Public Report ("PR") at II-4.

¹¹ CR at I-4-I-5, PR at II-4.

¹² See Coumarin from the People's Republic of China, Inv. No. 731-TA-677 (Preliminary), USITC Pub. 2733 at I-6-I-7 (Feb. 1994) ("Prelim. Det.").

¹³ Petitioner's Prehearing Brief (Dec. 8, 1994) at 3-5.

¹⁴ Respondents in this investigation are the Coumarin Importers' Coalition ("CIC"), consisting of nine importers of coumarin from China. Although respondents entered an appearance in this final investigation, they did not participate at the hearing and their briefs addressed only the issue of critical circumstances.

¹⁵ 19 U.S.C. § 1677(7)(C)(iii).

¹⁶ 19 U.S.C. § 1677(7)(C)(iii). No arguments addressing the business cycle were raised by any of the parties to this investigation, nor did we receive any information relevant to such a consideration.

We note at the outset several pertinent conditions of competition distinctive to the domestic coumarin industry. First, coumarin is a commodity product, and coumarin sold in the U.S. market from virtually all sources is highly substitutable.¹⁷ Second, importers maintain significant inventories in the United States,¹⁸ allowing them to meet customer just-in-time delivery requirements just as effectively as the domestic producer.¹⁹

Third, information about price changes is rapidly communicated in the coumarin market because there are only a few sellers of coumarin, and a few manufacturers of fragrance products account for a large share of total domestic coumarin consumption.²⁰ Importers and brokers frequently provide these customers with quote sheets that facilitate the rapid dissemination of pricing information throughout the market.²¹

Fourth, several characteristics of the U.S. coumarin market heighten the degree to which sellers compete with each other on the basis of price. Specifically, large purchasers tend to award their business through annual requirements contracts for which domestic producers and importers compete through a bidding process. Contracts in the industry typically contain meet-or-release clauses that require the seller to meet competitors' price reductions or release the customer from its purchase obligation.²² In addition, the number of companies importing subject coumarin into the United States has increased over the period of investigation, and the record suggests fierce price competition among the various importers.²³

A final condition of competition that we note is the fact that the demand for coumarin is derived from the demand for downstream fragrance products. Because coumarin represents a small share of the cost of production of these fragrance products, a decline in the price of coumarin is not likely to result in a significant increase in coumarin demand.²⁴

Because there is only one domestic producer of coumarin, our discussion of the condition of the industry in the public version of these views is necessarily general in nature.²⁵

During the period of investigation, U.S. consumption of coumarin remained generally stable. The quantity and value of apparent U.S. consumption of coumarin increased slightly from 1991 to 1992, and then declined slightly from 1992 to 1993. Consumption both by quantity and value was lower in interim 1994 than in interim 1993.²⁶

Despite these relatively stable consumption trends, the domestic producer's U.S. shipments by both quantity and value declined significantly from 1991 to 1992, and continued to decline from 1992 to 1993. Domestic shipments were also lower in interim 1994 than in

¹⁷ CR at I-13, I-33-I-34, I-43 (experience of ***); PR at II-5, II-8. As we noted in the preliminary determination, the only exception is a small amount of specially formulated coumarin sold by petitioner to electroplaters. Prelim. Det. at I-6 n.16; Transcript of Staff Conference (Jan. 20, 1994) at 49 ("Conf. Tr.").

¹⁸ Table 9, CR at I-25, PR at II-10-II-11.

¹⁹ *Id.*; CR at I-24, PR at II-10; Respondents' Postconference Brief (Jan. 26, 1994) at 5 n.10 and 28 n.23. See also note 66, *infra*.

²⁰ CR at I-7-I-8, I-9, I-11-I-12; PR at II-6-II-7.

²¹ Petitioner's Prehearing Brief at 29-30 and Exhibit 3; Petitioner's Posthearing Brief (Dec. 21, 1994) at 12-13; Transcript of Commission Hearing (Dec. 13, 1994) at 17 ("Hearing Tr."); Conf. Tr. at 82-83.

²² CR at I-32 and n.50, PR at II-14; Petitioner's Prehearing Brief at 14.

²³ CR at I-12 and I-40, PR at II-7, II-16; Table 14, CR at I-38-I-39, PR at II-16 (up to seven importers competing for some contracts).

²⁴ CR at I-33, PR at II-14; Memorandum EC-S-005 (Jan. 19, 1994) at 8-9.

²⁵ To protect confidential business information, actual numbers are presented in confidential footnotes. In most cases, even when there is a single domestic producer, we discuss the trends with respect to the condition of the domestic industry in general terms. In this investigation, however, petitioner has objected even to the general characterization of trends, except to the extent that such trends are a matter of public record. We regret that we are therefore unable to offer a detailed explanation of the bases on which we reached our determination in the public version of these views.

²⁶ By quantity, apparent U.S. consumption was ***. By value, consumption was ***. Table 1, CR at I-10, PR at II-6.

interim 1993. In each period, the decline in shipments ***.²⁷ Domestic production of coumarin followed the same trend, declining *** from 1991 to 1992 and continuing to decline from 1992 to 1993. Production was lower in interim 1994 than in interim 1993.²⁸ Production declined ***.²⁹

Domestic coumarin production capacity remained constant throughout the period of investigation.³⁰ Because production declined while capacity stayed constant, capacity utilization steadily declined over the period.³¹ ***, U.S. producers' inventory levels ***.³² The ratio of inventories to shipments ***.³³

The number of production and related workers ("PRWs") in the domestic industry declined from 1991 to 1993, and remained constant between the interim periods.³⁴ Hours worked, wages paid and total compensation paid to PRWs ***, while hourly wages and hourly total compensation ***. Productivity *** and unit labor costs *** over the period.³⁵

The domestic industry's net sales declined throughout the period of investigation.³⁶ This decline in sales revenues was accompanied by a deterioration in the industry's profits and operating income, resulting in losses by the end of the period.³⁷ The industry's operating income margin *** between 1991 and 1992, then *** between 1992 and 1993, and reflected a *** in interim 1994 compared with a *** in interim 1993.³⁸ As net sales fell, the industry's cost of goods sold as a percent of net sales *** between 1991 and 1992, then *** between 1992 and 1993, and was *** in interim 1994 than in interim 1993.³⁹

The deterioration in production and financial performance occurred while the domestic industry ***.⁴⁰ The domestic industry made *** expenditures on research and development during the 1991 to 1993 period, ***.⁴¹ ⁴²

III. 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 found to be sold at LTFV.⁴³ In making this determination, 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

²⁷ Petitioner's Prehearing Brief at 8-9; Hearing Tr. at 26; Table 1, CR at I-10, PR at II-6. The domestic producer's U.S. shipments by quantity were ***. Its shipments by value were ***.

²⁸ Petitioner's Prehearing Brief at 10; Table 2, CR at I-14, PR at II-8. Production fell from ***.

²⁹ Table 2, CR at I-14, PR at II-8; Table D-1, CR at D-3, PR at D-3.

³⁰ Petitioner's Prehearing Brief at 10; Table 2, CR at I-14, PR at II-8. Average-of-period production capacity remained at ***.

³¹ Table 2, CR at I-14, PR at II-8. Average-of-period capacity utilization fell from ***.

³² Table 2, CR at I-14, PR at II-8. Inventories were ***.

³³ Table 2, CR at I-14, PR at II-8. The ratio of inventories to shipments was ***.

³⁴ Petitioner's Prehearing Brief at 10-11.

³⁵ Table 3, CR at I-17, PR at II-8.

³⁶ Petitioner's Prehearing Brief at 8; Table 5, CR at I-20, PR at II-9. Net sales fell from ***.

³⁷ Petitioner's Prehearing Brief at 7; Hearing Tr. at 8, 9, 21-22, 26; Table 5, CR at I-20, PR at II-9. Gross profits ***. Operating income fell from ***.

³⁸ Table 5, CR at I-20, PR at II-9. The industry's operating income margin was ***.

³⁹ Table 5, CR at I-20, PR at II-9. Cost of goods sold as a percent of net sales ***.

⁴⁰ Table 8, CR at I-23, PR at II-10. Capital expenditures for coumarin were ***.

⁴¹ CR at I-22, PR at II-10.

⁴² Based on the foregoing, Commissioner Rohr and Commissioner Newquist determine that the domestic industry is currently experiencing material injury.

⁴³ 19 U.S.C. § 1673d(b). The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

operations.⁴⁴ Although the Commission may consider alternative causes of injury to the industry other than LTFV imports, it is not to weigh causes.^{45 46 47 48} For the reasons discussed below, we find that the domestic industry producing coumarin is materially injured by reason of LTFV imports from China.

A. Volume of the Subject Imports

As a preliminary matter, we have considered whether shipments of Chinese coumarin into a foreign trade zone ("FTZ") are subject imports for purposes of our material injury analysis. We conclude, with one exception, that they are.

One importer of Chinese coumarin, ***, enters the product into an FTZ for use in the manufacture of fragrance compounds. Of those downstream products, *** are entered and sold for consumption within the customs territory of the United States and *** are shipped to third countries from the FTZ.⁴⁹ Petitioner argued that all entries into an FTZ should be considered subject imports, because Commerce treats them as such when it

⁴⁴ 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

⁴⁵ 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).

⁴⁶ 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).

⁴⁷ Commissioner Rohr and Commissioner Newquist further note that the Commission need not determine that imports are "the principal, a substantial, or a significant cause of material injury." S. Rep. No. 249 at 57, 74. Rather, a finding that imports are a cause of material injury is sufficient. See, e.g., Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista, 704 F. Supp. at 1101.

⁴⁸ 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).

⁴⁹ The share of *** total shipments of Chinese coumarin used in the production of product shipped to third countries was *** percent in 1991, *** percent in 1992, *** percent in 1993, *** percent in interim 1993, and *** percent in interim 1994. *** Importers' Questionnaire Response at 16. ***. *Id.*; Table 10 n.1, CR at I-29, PR at II-13.

calculates the dumping margin.⁵⁰ Respondents argued that entries into an FTZ should be excluded from the Commission's import data, because, by law, there is no importation of coumarin into the customs territory of the United States if the coumarin has been transformed into a downstream product before the entry for consumption takes place.⁵¹

As we noted in the preliminary determination, the statute requires us to determine whether an industry in the United States is injured "by reason of imports . . . of the merchandise *with respect to which the administering authority has made an affirmative determination*"⁵² Commerce considers all shipments into FTZs to be subject imports when it calculates dumping margins.⁵³ However, only entries into FTZs that are subsequently imported into the customs territory of the United States (either in their original form or incorporated into a downstream product) are subject to suspension of liquidation and the eventual assessment of antidumping duties.⁵⁴ Since Commerce's affirmative determination does not apply to coumarin shipped from an FTZ to a third country, we decline to include such re-exports in our import data. We therefore conclude that entries into an FTZ, with the exception of amounts that are re-exported from the FTZ without entering the customs territory of the United States, are subject imports for purposes of our injury analysis.^{55 56}

We find both the volume of imports and the increase in that volume to be significant. In assessing the volume of subject imports, we observe that both the quantity of imports of coumarin from China and the U.S. market penetration of those imports increased substantially during the period of investigation.⁵⁷ The volume of subject imports increased dramatically from 1991 to 1992, then declined somewhat in 1993, but remained well above the 1991 level. Subject imports by quantity were higher in interim 1994 than in interim 1993.⁵⁸ The value of imports followed the same trend, but the unit value of the subject imports, after rising from 1991 to 1992, declined in 1993 to below the 1991 level.⁵⁹

The market share of subject imports increased as a result of the rapid increase in import levels. By the end of the period of investigation, subject imports' market share, in terms of quantity, more than doubled from an already significant level, to account for a

⁵⁰ Petitioner's Prehearing Brief at 17-23.

⁵¹ Respondents' Postconference Brief at 32; Conf. Tr. at 94-95.

⁵² Prelim. Det. at I-9 & n.41, citing 19 U.S.C. § 1673d(b).

⁵³ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany, 58 Fed. Reg. 37136 at 37140 (July 9, 1993).

Customs and Commerce regulations provide that merchandise subject to an antidumping duty order or suspension of liquidation enters an FTZ as "privileged foreign merchandise." Such merchandise is subject to suspension of liquidation and antidumping duties, as appropriate, when it enters the customs territory of the United States, regardless of whether it has been transformed into a downstream product. However, such merchandise may be re-exported, without payment of antidumping duties, regardless of whether it has been transformed. See 15 C.F.R. § 400.33(b) (1994); 19 C.F.R. §§ 146.41 & 146.65 (1994). The Foreign Trade Zone Board has occasionally denied a particular FTZ applicant such re-export privileges, but *** indicates that it does have re-export privileges. Telephone conversation of Jan. 18, 1994, between Brad Hudgens, Office of Investigations, and ***.

⁵⁵ See Defrost Timers from Japan, Inv. No. 731-TA-643 (Final), USITC Pub. 2740 at I-11-I-12 (Feb. 1994).

⁵⁶ We have also considered whether to treat imports held in bonded warehouses as subject imports. Commerce does not consider such imports to be subject imports in calculating dumping margins nor are they subject to duties until and unless they are entered for consumption. See 19 C.F.R. Part 144 (1994). Therefore, for purposes of our analysis, we have subtracted in-bond inventories from the figures shown in Table 9. CR at I-25, PR at II-11.

⁵⁷ Table 10, CR at I-29, PR at II-13; Table 11, CR at I-31, PR at II-14.

⁵⁸ Imports by quantity, excluding re-exports from FTZs, rose from ***. Table 10 n.1, CR at I-29, PR at II-13.

⁵⁹ Table 10, CR at I-29, PR at II-13.

majority of the U.S. market.⁶⁰ Moreover, because the petitioner and the subject imports are virtually the only sources of coumarin available in the U.S. market, every percentage point of market share gained by the subject imports represents an equal loss in market share by the domestic industry. Thus, as the volume of Chinese imports has risen over the period of investigation, the domestic industry has lost a correspondingly large share of the market.⁶¹

B. Price Effects of the Subject Imports

Petitioner argued that its strategy has been to hold the line on price as much as possible, even if to do so results in loss of sales volume. It also argued that its attempts to raise prices have been unsuccessful.⁶² The data support these contentions. During 1991 to 1993, coumarin prices for non-bid contract sales fluctuated within a narrow range, with prices of imported coumarin from China generally below U.S. producer prices. Prices for spot sales remained relatively stable, with prices of imported coumarin from China consistently below U.S. producer prices. In the second half of 1993 and the first half of 1994, however, prices for domestic coumarin remained relatively steady, while prices for Chinese coumarin declined, significantly widening the gap between domestic and import prices.⁶³

As we noted above, coumarin from China and the domestic like product are highly substitutable in most applications.⁶⁴ In addition, pricing information is widely and rapidly disseminated.⁶⁵ Thus, once a supplier completes a qualification process, competition for sales is based principally on price.⁶⁶ The record demonstrates that, as the price gap between domestic and imported coumarin has widened, purchasers have increasingly switched some or all of their purchases from the domestic product to Chinese imports.⁶⁷ Six of 12 responding purchasers reported that, had the price of the Chinese product been 20 to 30 percent higher, they would have purchased U.S.-produced coumarin, while 4 reported that they would have switched to domestic sources had imports been priced 10 to 15 percent higher.^{68 69}

⁶⁰ Hearing Tr. at 18; Table 11, CR at I-31, PR at II-14. The subject imports' market share rose from ***.

⁶¹ Respondents contended that ***. CR at I-28, PR at II-12. We note, however, that ***. Table 10, CR at I-29, PR at II-13; CR at I-11-I-12 and I-28, PR at II-8.

⁶² Petitioner's Posthearing Brief, Exhibit 2 at 3-5, Exhibit 3 at 2-3.

⁶³ Hearing Tr. at 18-21; Tables 12 and 13, Figures 7 and 8, CR at I-36-I-37, PR at II-15-II-16.

⁶⁴ CR at I-13, I-33-I-34, I-43 (experience of ***); PR at II-5, II-8.

⁶⁵ Petitioner's Prehearing Brief at 29-30 and Exhibit 3; Petitioner's Posthearing Brief at 12-13; Transcript of Commission Hearing (Dec. 13, 1994) at 17 ("Hearing Tr."); Conf. Tr. at 82-83.

⁶⁶ Despite some problems with inconsistent quality of product shipped by some Chinese producers, U.S. importers have uniformly been able to qualify as suppliers to the largest coumarin purchasers. CR at I-8, I-34, I-38-I-39; PR at II-5, II-8, II-15. Importers use a combination of screening procedures and ample U.S. inventories to assure that deliveries to purchasers meet the purchasers' specifications despite variability in the quality of material supplied by Chinese producers. Conf. Tr. at 64, 93; Respondents' Postconference Brief at 5 n.10 and 28 n.23.

⁶⁷ CR at I-38-I-39, PR at II-15.

⁶⁸ CR at I-34, PR at II-15.

⁶⁹ Commissioner Crawford does not join the remainder of this discussion. To analyze the effect of the LTFV imports on domestic prices, Commissioner Crawford compares domestic prices that existed when the imports were dumped with what domestic prices would have been if imports had been priced fairly. In this analysis she considers a number of factors including the degree of substitutability between subject imports and the domestic like product, the capacity utilization of the domestic industry, and the presence of nonsubject imports. As discussed above, domestic coumarin and subject imports are highly substitutable. In this investigation, only one of the Chinese producers, which accounted for a small portion of subject imports, received a dumping margin that is small enough that its imports would have continued to have been sold in the U.S. market at fairly traded prices. The dumping margins applicable to the vast majority of subject imports, however, were so high that they would have been priced out of the market at fairly traded prices. Thus, if the dumping had not

(continued...)

Subject imports undersold the domestic like product in the majority of pricing comparisons for both non-bid contract and spot sales.⁷⁰ The margins of underselling increased toward the end of the period of investigation, confirming the widening price gap between the domestic and imported products.⁷¹ The record also reflects that petitioner lost several large customers in 1993 and early 1994, including ***, because of low import prices.⁷² We confirmed numerous additional instances of lost revenues and lost sales on the basis of price.⁷³ Accordingly, we conclude that the underselling was significant.

Finally, we note that petitioner experienced *** increases in its unit cost of goods sold and cost of goods sold as a percentage of net sales over the period of investigation.⁷⁴ Contrary to respondents' allegations, ***.⁷⁵ We find that price competition from unfairly traded imports prevented petitioner from raising its prices commensurate with these cost increases.

For all of these reasons, we conclude that imports have suppressed domestic coumarin prices to a significant degree.

⁶⁹ (...continued)

occurred, very few of the subject imports would have been sold and purchasers would have bought more of the domestic product.

The ability of the domestic industry to raise prices under these circumstances depends on several supply and demand factors. As discussed above, the demand for coumarin is derived from the demand for the downstream fragrance products in which it is used. Coumarin accounts for a small portion of the value of these downstream products, and there are not any good substitute products. This indicates that purchasers are not particularly sensitive to changes in price (i.e., a low demand elasticity), and would have been willing to pay a higher price for the product. This suggests that the domestic industry would have been able to increase prices if the supply of subject imports were reduced. To determine if the domestic industry would have been able to increase prices also requires examination of certain supply side considerations. In a competitive market, it is unlikely that domestic producers would have been able to increase prices if there was excess capacity in the market or if alternative nonsubject import sources of supply existed, either of which would have exercised discipline in the marketplace and prevented a price increase, notwithstanding the willingness of purchasers to pay more if required to do so. In other words, price discipline may be imposed either by purchasers or competitors in a competitive market. The U.S. market for coumarin, however, is not a competitive market. The domestic industry consists of only one producer, the petitioner, and there are virtually no nonsubject imports. Consequently, at fairly traded prices nearly all subject imports would have been priced out of the market, and petitioner would have had near monopoly market power. Thus, there would have been no price discipline imposed by competition from either nonsubject imports or other domestic producers. In addition, although petitioner had sufficient excess capacity to meet the increase in demand for its coumarin resulting from the decreased supply of subject imports at fairly traded prices, this excess capacity would not have imposed price discipline in the market. Because petitioner would have had near monopoly power, it would have been in a position to choose whether to raise its prices or increase its production or some combination of both. Because demand is inelastic, petitioner would have been able to sustain significant price increases if the subject imports had not been dumped. Accordingly, Commissioner Crawford finds that the LTFV imports from China did have significant price effects on the domestic industry.

⁷⁰ Tables 12 and 13, CR at I-36, PR at II-15-II-16. Subject imports undersold the domestic product in *** out of *** comparisons for non-bid contract sales and *** out of *** comparisons for spot sales. Respondents conceded that Chinese coumarin has consistently undersold the domestic product. Respondents' Postconference Brief at 11-12; Conf. Tr. at 66-67, 69, 72, 81, 101.

⁷¹ Tables 12 and 13, CR at I-36, PR at II-15-II-16.

⁷² CR at I-43, I-45, PR at II-17; Petitioner's Prehearing Brief at 33.

⁷³ CR at I-43-I-45, PR at II-17.

⁷⁴ Petitioner's Prehearing Brief at 8; Table 5, CR at I-20, PR at II-9.

⁷⁵ CR at I-18, PR at II-8; Verification Report for Rhône-Poulenc Specialty Chemicals Co. (Dec. 5, 1994) at 3, 7-8.

C. Impact of the Subject Imports on the Domestic Industry

Subject imports had a detrimental impact on the domestic industry in several ways.⁷⁶ First, declines in import prices were an important factor explaining the loss of market share held by the domestic industry. By attempting to maintain its price in the face of declining import prices, petitioner lost a large volume of sales.⁷⁷ Second, as sales volume, production, and capacity utilization declined, petitioner experienced increased per unit production costs which it was unable to recover through price increases in the face of declining import prices.⁷⁸ Operating income and profitability, as well as employment, suffered as a result.⁷⁹

CONCLUSION

In light of the significantly increasing volume and market penetration of the subject imports over the period of investigation, significant underselling by the subject imports, their suppressing effects on domestic coumarin prices, and the resulting declines in domestic production, shipments, market share, capacity utilization, and financial performance, we determine that the domestic coumarin industry is materially injured by reason of LTFV imports from China.⁸⁰

⁷⁶ In her analysis of material injury by reason of LTFV imports, 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. As she noted earlier, Commissioner Crawford finds that petitioner would have had near monopoly power had subject imports been sold at fairly traded prices. Thus, petitioner would have been able to both increase the price of its coumarin while at the same time increasing the absolute quantity of its production and sales. Either change alone would have increased petitioner's revenues. Because of petitioner's near monopoly power, it would have been in a position to choose the combination of price and production levels that would have maximized its profits. Maximizing profits may or may not result in an increase in overall revenues. However, due to the low elasticity of demand, Commissioner Crawford finds that both an increase in profits and revenues would have occurred. The combination of circumstances in this case -- inelastic demand, the significant volume of LTFV imports, and petitioner's near monopoly power -- would have allowed petitioner to increase both output and prices. An increase in sales, combined with the price increase it would have sustained, clearly would have made the domestic industry materially better off if the subject imports had been fairly traded. Accordingly, Commissioner Crawford determines that the domestic industry is materially injured by reason of the LTFV imports of coumarin from China.

⁷⁷ Compare Table 11, CR at I-31, PR at II-14, with Tables 12 and 13, CR at I-36, PR at II-15-II-16.

⁷⁸ Table 6, CR at I-21, PR at II-9.

⁷⁹ Tables 3 and 5, CR at I-17 and I-20, PR at II-8-II-9.

⁸⁰ Commissioner Crawford concurs in the conclusion that the domestic industry is materially injured by reason of LTFV imports from China for the reasons stated above. She does not concur in this statement of the conclusion, however, because her determination is not based on the trends in the industry indicators.

SEPARATE VIEWS OF CHAIRMAN WATSON, VICE CHAIRMAN NUZUM, AND COMMISSIONER BRAGG ON CRITICAL CIRCUMSTANCES

Commerce has made a final determination that critical circumstances exist with respect to imports of coumarin from China, with the exception of imports from Jiangsu Native Produce Import/Export Corporation ("Jiangsu").¹ When Commerce makes an affirmative critical circumstances determination, we are required to determine, for each domestic industry for which we make an affirmative injury determination, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."² For purposes of making this finding, the Commission is to "make an evaluation as to whether the effectiveness of the antidumping duty order would be materially impaired if such imposition did not occur."³

An affirmative critical circumstances determination is therefore a finding that, absent retroactive application of the antidumping order, the surge of imports that occurred after the case was filed, but prior to the suspension of liquidation, will prolong or cause a recurrence of material injury to the domestic industry.⁴ The purpose of the provision is to provide relief from effects of the massive imports and to deter importers from attempting to circumvent the dumping laws by making massive shipments immediately after the filing of an antidumping petition.

The statute requires that the Commission consider the following factors in evaluating the effectiveness of the antidumping duty order absent the retroactive imposition of antidumping duties:

- (I) the condition of the domestic industry,
- (II) whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid potential imposition of antidumping duties,
- (III) whether foreign economic conditions led to the massive imports of the merchandise, and
- (IV) whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this part.⁶

In this investigation, the petition was filed on December 30, 1993, and liquidation was suspended on August 4, 1994.⁷ Thus, the 90-day period for which retroactive suspension would occur includes the period from May 6, 1994 through August 3, 1994.

¹ 59 Fed. Reg. 66895 (Dec. 28, 1994) (CR and PR at Appendix A).

² 19 U.S.C. § 1673d(b)(4)(A)(i).

³ 19 U.S.C. § 1673d(b)(4)(A)(ii).

⁴ 19 U.S.C. § 1673d(c)(4). The Commission need not find a separate causal link between the massive imports and material injury. *ICC Industries, Inc. v. United States*, 632 F. Supp. 36, 40 (Ct. Int'l Trade 1986), *aff'd*, 812 F.2d 694 (Fed. Cir. 1987).

⁵ See H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

⁶ 19 U.S.C. § 1673d(b)(4)(A)(iii).

⁷ 59 Fed. Reg. 39727 (Aug. 4, 1994). The original deadline for Commerce's preliminary determination was June 8, 1994. On April 13, 1994, Commerce, on its own initiative, postponed the deadline for its preliminary determination to July 28, 1994. 59 Fed. Reg. 19692 (Apr. 25, 1994).

We find that there was a significant surge in LTFV imports immediately following the filing of the petition in this investigation. Monthly imports of coumarin from China in 1993, excluding imports from Jiangsu,⁸ ranged from *** pounds (in April) to *** pounds (in May), and totalled *** pounds in January through March. In January through March of 1994, coumarin imports surged to *** pounds, *** pounds and *** pounds, respectively, for a total of *** pounds in the first quarter of 1994 -- more than four times their level in the same three months of 1993, and well above the total for the entire preceding year.⁹ Although the most dramatic surge in imports took place in the first quarter of 1994, substantial quantities of LTFV imports continued to enter the United States market in the second quarter of 1994, totalling *** pounds.¹⁰

As we found above, the domestic industry has suffered significant declines in production, capacity utilization, sales, and profitability by reason of the subject imports, and has been unable to raise its prices commensurate with its costs. Accordingly, we find that the present condition of the domestic industry weighs in favor of an affirmative finding of critical circumstances in this investigation.

We do not find credible respondents' contention that the surge in imports was necessitated by annual contracts entered into prior to the filing of the petition.¹¹ Obligations undertaken under such contracts account for only a portion of the import surge and, in any event, large U.S. inventories of Chinese product were already adequate to satisfy those purchasers' requirements.¹² Because respondents have been unable to offer and we are unable to discern any credible reason why they had to import four times as much coumarin in the first quarter of 1994 as they did in the comparable period of the previous year, we conclude that the import surge can be accounted for by efforts to avoid potential antidumping duties.¹³

The record in this investigation does not support a finding that foreign economic conditions led to the surge in imports of Chinese coumarin after the filing of the petition. In light of our other findings, however, such evidence is not necessary to a determination that critical circumstances exist in this investigation.

We also find that the impact of these massive imports of Chinese coumarin is likely to continue after the issuance of an antidumping duty order. At the end of interim 1994, U.S. importers continued to hold very large inventories of Chinese coumarin that are not the result of pre-existing contractual obligations.¹⁴ Since imports have continued to enter at significant levels during the pendency of this investigation, we conclude that these inventories have not been substantially dissipated.¹⁵ Moreover, we have found that the domestic industry is materially injured by the subject imports principally through the loss of sales to lower-priced imports. If retroactive duties are not imposed, these significant additional quantities of

⁸ For purposes of our analysis, we adjust our import data so that it only includes the individual producers covered by Commerce's affirmative critical circumstances determination.

⁹ Total LTFV imports, less imports from Jiangsu, in 1993 were *** pounds, less than three quarters of the volume entered in the first quarter of 1994 alone. Table C-1, CR at C-3, PR at C-3 .

¹⁰ Table C-1, CR at C-3, PR at C-3 .

¹¹ See Respondents' Prehearing Brief at 9-11.

¹² CR at I-38-I-39, PR at II-16. Even assuming respondents are correct that all 1994 deliveries documented were made pursuant to contracts entered into prior to the filing of the petition, contracts for the 1994 requirements of *** account for at most *** pounds out of the *** entered in the first three months of 1994. Table C-1, CR at C-3, PR at C-3. Moreover, importers' end of period inventories for 1993 provided an additional *** pounds of ready supply of Chinese coumarin. Table 9, CR at I-25, PR at II-11 (less in-bond inventories).

¹³ Compare Magnesium from Canada, Invs. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Pub. 2550 at 21 (Aug. 1992) (wide use of requirements contracts would make it very easy for purchasers to accelerate their deliveries in order to avoid antidumping duties).

¹⁴ See note 66, *supra*. We note that interim 1994 end-of-period inventories exceeded end-of-period inventories for full year 1993. Table 9, CR at I-25, PR at II-11.

¹⁵ Table C-1, CR at C-3, PR at C-3.

imports, which will still be in the stream of commerce after an order is imposed, can be sold at LTFV prices, undermining the effectiveness of the order.

Finally, we disagree with respondents' contention that the fact that only 15 percent of subject imports entered since the petition was filed fall within the 90-day period to which retroactive duties may be applied¹⁶ precludes us from finding that critical circumstances exist in this investigation.¹⁷ As we have previously noted, the fact that the post-petition surge in imports largely predates the 90-day period does not preclude a finding of critical circumstances, so long as some portion of the import surge would be captured by retroactive duties.¹⁸ The statute directs our attention to any surge in imports entered during the investigation, not just imports entered during the 90-day period.¹⁹ Congress has stated that, where it is likely that such an import surge occurs as a result of efforts to circumvent the order, "[t]here is a need to deter such efforts, particularly where they exacerbate the injury to the industry."²⁰

Accordingly, based on the existence of a large surge in imports immediately following the filing of the petition, the likelihood that this import surge was motivated by an attempt to avoid antidumping duties, the weakened condition of the domestic industry, and the likelihood that the massive imports will continue to injure the domestic industry after an antidumping duty order is imposed, we conclude that the effectiveness of the antidumping duty order would be materially impaired if retroactive duties are not imposed and that the retroactive imposition of duties is therefore necessary to prevent the recurrence of material injury to the domestic industry. Accordingly, we find that critical circumstances exist with respect to imports of coumarin from the People's Republic of China.

¹⁶ Table C-1, CR at C-3, PR at C-3 (months of May, June and July).

¹⁷ Respondents' Prehearing Brief at 5-8.

¹⁸ Stainless Steel Wire Rod from India, Inv. No. 731-TA-638 (Final), USITC Pub. 2704 at I-20 n.126 (Nov. 1993).

¹⁹ ICC Industries, Inc. v. United States, 632 F. Supp. 36, 40-41 (Ct. Int'l Trade 1986), aff'd, 812 F.2d 694 (Fed. Cir. 1987).

²⁰ H.R. Rep. No. 576, 100th Cong., 2d Sess. 611 (1988). Although the Uruguay Round Agreements Act does not apply to this investigation, we note that the Statement of Administrative Action to the URAA clarifies that the Commission is to determine whether the surge in imports prior to the suspension of liquidation will undermine the effectiveness of relief, regardless of whether the surge in imports was confined to the 90-day period for which retroactive duties may be assessed. See Statement of Administrative Action at 207.

**SEPARATE VIEWS OF COMMISSIONERS DAVID B. ROHR, DON E. NEWQUIST,
AND CAROL T. CRAWFORD ON CRITICAL CIRCUMSTANCES**

Commerce has made a final determination that critical circumstances exist with respect to imports of coumarin from China, with the exception of imports from Jiangsu Native Produce Import/Export Corporation ("Jiangsu").¹ When Commerce makes an affirmative critical circumstances determination, we are required, for each domestic industry for which we make an affirmative injury determination, to "include a finding as to whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."² The purpose of the provision is to provide relief from effects of the massive imports and to deter importers from attempting to circumvent the dumping laws by making massive shipments immediately after the filing of an antidumping petition.

In this investigation, the petition was filed on December 30, 1993, and liquidation was suspended on August 4, 1994.⁴ Thus, the 90-day period for which retroactive suspension would occur would include the period from May 6, 1994 through August 3, 1994.

Monthly imports of coumarin from China, excluding imports from Jiangsu, peaked in the first three months of 1994, rising to *** pounds, *** pounds and *** pounds, respectively. Subject imports then fell to only *** pounds in April, *** pounds in May, *** pounds in June, *** pounds in July, *** pounds in August, and *** pounds in September, levels only slightly below those for the same months of 1993.⁵ Thus, only about 15 percent of the Chinese imports entered after the petition was filed would fall within the 90-day period subject to retroactive duties.⁶

We find that any surge in imports had largely dissipated prior to the relevant 90-day period. In such circumstances, retroactive imposition of duties cannot meaningfully prevent recurrence of any material injury resulting from the surge, since the duties cannot be imposed on the vast majority of those imports and, therefore, cannot affect the impact of those LTFV imports.⁷

On balance, given the evidence of reduced and declining imports during the 90-day period for which retroactive duties could be assessed, we find that retroactive imposition of antidumping duties on the merchandise is not necessary to prevent the recurrence or prolongation of material injury.⁸ In making this finding, we conclude that the effectiveness of the antidumping duty order will not be materially impaired if retroactive imposition does not occur.⁹ We thus make a negative finding with respect to critical circumstances on subject imports from China.

¹ 59 Fed. Reg. 66895 (Dec. 28, 1994) (CR and PR at Appendix A).

² 19 U.S.C. § 1673d(b)(4)(A)(i).

³ See H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

⁴ 59 Fed. Reg. 39727 (Aug. 4, 1994). The original deadline for Commerce's preliminary determination was June 8, 1994. On April 13, 1994, Commerce, on its own initiative, postponed the deadline for its preliminary determination to July 28, 1994. 59 Fed. Reg. 19692 (Apr. 25, 1994).

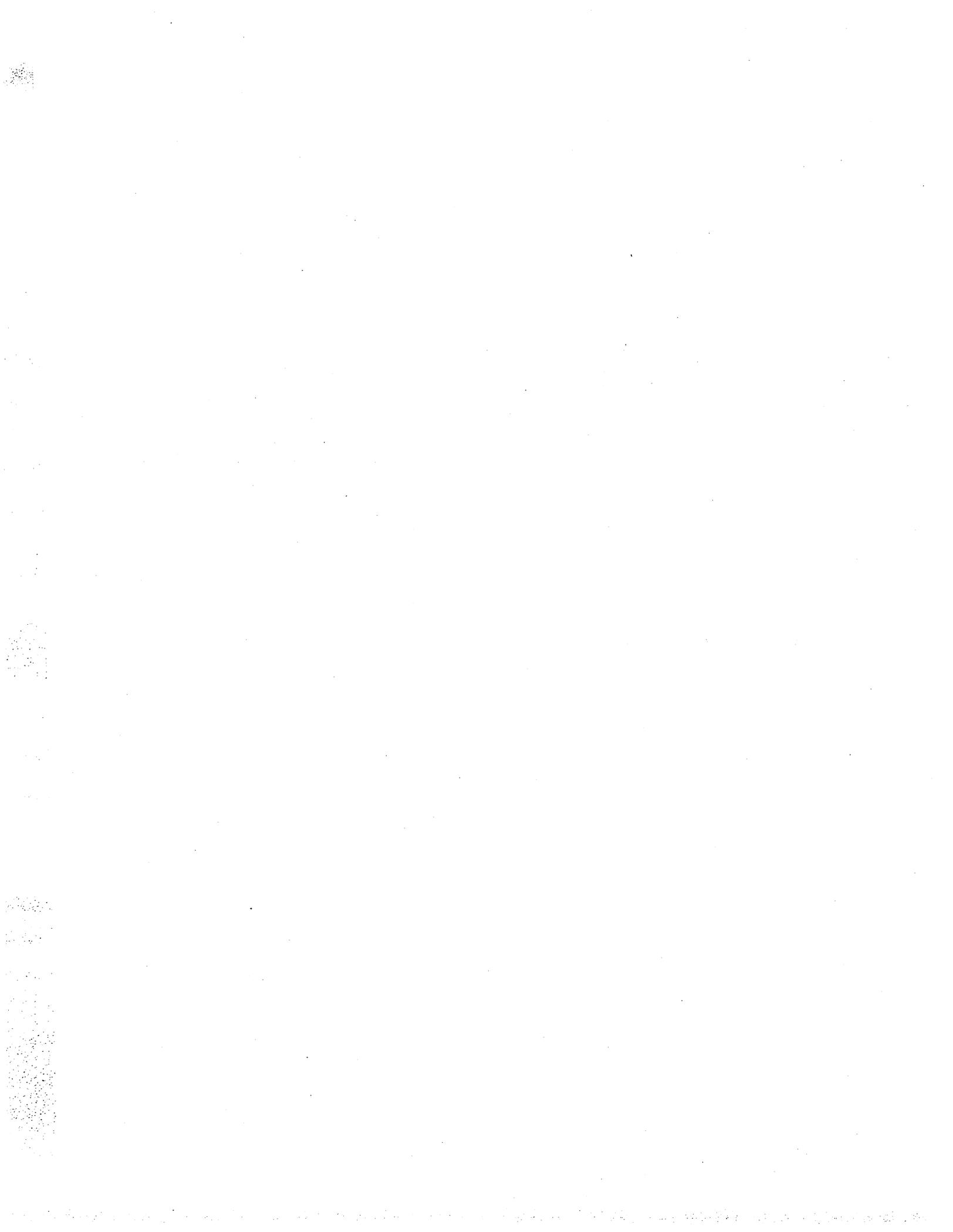
⁵ Table C-1, CR at C-3, PR at C-3.

⁶ Table C-1, CR at C-3, PR at C-3 (months of May, June and July). We note that, had Commerce not extended the deadline for its preliminary determination, the volume of imports entered during the 90-day period, based on the initial preliminary date, would have been significantly greater.

⁷ See Certain Flat-Rolled Carbon Steel Products, Invs. Nos. 701-TA-319 and 731-TA-573 et al. (Final), USITC Pub. 2664 at 251 (Aug. 1993).

⁸ Similarly, although U.S. importers held significant inventories of Chinese coumarin at the end of the period of investigation and those inventories may prolong the material injury to the domestic industry, retroactive duties could only reach that small portion of those inventories entered during the 90-day period prior to the suspension of liquidation.

⁹ 19 U.S.C. § 1673d(b)(4)(A)(ii).



**ADDITIONAL VIEWS OF
CHAIRMAN WATSON AND COMMISSIONER CRAWFORD
ON CRITICAL CIRCUMSTANCES**

This investigation poses a question of first impression for the Commission in the interpretation of the statute's provisions concerning critical circumstances. The question of first impression is whether the Commission has made a finding of critical circumstances when three Commissioners make an affirmative finding and three Commissioners make a negative finding as to the existence of the same.

A finding of critical circumstances results in providing extraordinary relief from dumping through the retroactive imposition of antidumping duties. Because the relief is extraordinary, compared to the normal prospective imposition of duties, we believe that the statute must be construed narrowly. Accordingly, we interpret the statute to mean that a "tie vote" on critical circumstances does not constitute such a finding by "the Commission".

When, as here, Commerce has made an affirmative finding of critical circumstances:

...then the final determination of the Commission shall include a finding as to whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time.¹ (Emphasis supplied.)

The authority to make a critical circumstances finding under this provision of the statute is invested in the Commission, as a body. Absent specific authority to the contrary, i.e. that a 3-3 tie is a finding by the Commission, a majority of the Commission is necessary for a finding by the Commission that critical circumstances exist.

The critical circumstances provisions contain no specific authority defining the Commission as less than a majority. Therefore, a 3-3 tie is a finding by the Commission only if the "tie vote" provision of the statute applies equally to a critical circumstances finding. While the "tie vote" provision applies to Commission "determinations", the critical circumstances provisions require the Commission to make a subsidiary "finding" within its overall determination. In our view, a "finding" of critical circumstances does not rise to the level of a Commission "determination" within the meaning of the "tie vote" provision.

A final determination is defined to include material injury, threat of material injury and material retardation by reason of LTFV imports², hereinafter referred to as the "material injury provisions". However, if the Commission determines either that there is no material injury or no threat of material injury by reason of LTFV imports, it need not make a critical circumstances finding.³ Thus, the finding required by the critical circumstances provisions has a narrow application, applying only to a subset of one of the "material injury provisions" within the Commission's overall final determination, not to the overall final determination itself.

In contrast, the tie vote provision applies only to Commission AD and CVD "determinations". The provision is an exception to the general rule requiring a Commission majority for a decisive determination.⁴ 19 U.S.C. §1677(11) provides:

¹ 19 U.S.C. § 1673d(b)(4)(A)(i).

² See 19 U.S.C. §1673d(b).

³ See, e.g., Certain Helical Spring Lockwashers from the People's Republic of China, Inv. No. 731-TA-624 (Final), USITC Pub. 2684 at I-12 n.73 (Oct. 1993).

⁴ The tie-vote provision does not apply to other types of Commission investigations, such as those under §§ 337, 22, 406, and 201.

(11) Affirmative determinations by divided Commission

If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is--

- (A) material injury to an industry in the United States,
- (B) threat of material injury to such industry, or
- (C) material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, and affirmative vote on any of these issues shall be treated as a vote that the determination should be affirmative.

In our view, the tie vote provision applies only to the Commission's overall determination. First, the situation the tie vote provision addresses is where Commissioners "are evenly divided as to whether the determination should be affirmative or negative". Second, the provision deals with the material injury provisions as subsidiary "issues" within the overall determination. Finally, the provision treats an affirmative vote on any of the subsidiary "issues" as a vote that "the determination" is affirmative. In this context, "the determination" can only mean the overall determination because the material injury provisions are merely subsidiary "issues" that are subsumed in the overall determination.

The provision defines no other set of circumstances in which the tie vote provision applies. Consequently, the tie vote provision applies only to the Commission's overall determination and does not apply to lesser and subsidiary issues.

Under the critical circumstances provision, the Commission is required to make a "finding" which is not a "determination" as defined by the statute. Thus, on this basis alone, the tie vote provision does not apply. In addition, the finding is only a subset of one of the "issues" of the material injury provisions. As discussed above, the tie vote provision does not apply to the "issues" of the material injury provisions. Since nothing in the tie vote provision extends its application beyond the overall determination, neither does it apply to a subset of the issues to which it does not apply.

We would conclude our analysis at this point but for a single reference in the statute that characterizes the Commission's critical circumstances finding as a determination. 19 U.S.C. 1673d(b)(4)(A) is the "substantive" critical circumstances provision that requires the Commission to make a finding of whether or not critical circumstances exist. 19 U.S.C. § 1673d(c)(3) is a critical circumstances provision that details the effect of a Commission finding that critical circumstances do not exist, that is, the specific action that Commerce must take. Commerce is given no discretion in the action that it must take, and so this is a "ministerial" provision that does not alter the Commission's substantive responsibilities in making its critical circumstances finding. Nonetheless, the ministerial provision does refer to the Commission's substantive critical circumstances finding as a "determination". An analysis of the legislative history of both the tie-vote and critical circumstances provisions resolves this apparent ambiguity.

The first tie vote provision was added to the law in 1958 as an amendment to the Antidumping Act of 1921. That provision applied only to whether the Commission's overall determination was affirmative or negative. Prior to 1979, there were no critical circumstances provisions, and the legislative history contains no reference to applying the tie vote provision to any situation other than the overall determination. In 1979, the law was revised extensively including major revisions of the "injury" determination provisions. The 1921 Act was revised from a determination of whether an industry is injured or likely to be

injured to a determination of whether an industry is materially injured, threatened with material injury or the establishment of an industry is materially retarded. The current tie vote provision was added in 1979 to "carry forward under the new law the analogous provision under existing law, with wording changes necessary to conform it to the framework of the new law and clarify its meaning."⁵ The legislative history of the 1979 amendment makes no reference to applying the tie vote provision to critical circumstances findings.

We note that, when the first critical circumstances provision was enacted in 1979, only the "substantive" provision requiring the Commission to make a finding of critical circumstances was enacted. The legislative history of this provision makes no reference to the tie vote provision. Subsequently, in 1984 the apparent ambiguity was introduced by the addition of the "ministerial" provision, which characterized the finding required by the substantive provision as a "determination". The legislative history makes no mention of a reason for characterizing the finding as a determination. Rather, the legislative history explained the amendment as clarifying that a final critical circumstances "determination" may be affirmative even though the preliminary "determination" was not.⁶ There was no indication that this amendment was intended to invoke the tie vote provision.

Finally, in 1988 the substantive critical circumstances provision was amended to clarify the standards to be used by the Commission in assessing whether the imposition of retroactive duties is necessary to prevent recurrence of injury. While the standards may have been clarified, the legislative history perpetuated the apparent ambiguity created by the ministerial provision. The legislative history does so by characterizing the Commission's critical circumstances decisions as "determinations".⁷ Notwithstanding these characterizations in the legislative history, Congress did not amend the statute to require the Commission to make critical circumstances "determinations". Rather, the statutory requirement for a "finding" was retained. Once again, the legislative history made no reference to the tie vote rule.

In our view, the legislative history supports our conclusion that the tie vote provision does not apply to the Commission's critical circumstances finding. There is no evidence that the Congress intended to apply tie vote provision to anything other than the Commission's overall determination, much less that it intended the provision to apply to the critical circumstances finding. Indeed, the tie vote provision preceded the critical circumstances provisions by some 20 years. And, when the substantive critical circumstances provision was enacted at the same time the tie vote provision was amended in 1979, Congress did not apply the tie vote provision to the critical circumstances finding. The failure by Congress to do so, either in the statute or the legislative history, is persuasive evidence that Congress did not intend the tie vote provision to apply to a critical circumstances finding.

Finally, the addition of the ministerial provision that created the apparent ambiguity does not alter our conclusion. At least two scenarios can account for the apparent ambiguity. First, the characterization in the ministerial provision is, in all likelihood, inadvertent and thus does not create any ambiguity. That is, the term "determination" in the ministerial provision is not used as a term of art, but rather as a word with the same meaning as "finding" in the substantive provision. This conclusion is supported by the 1988 amendments to the substantive provision that retained the term "finding" in the statute, but used the term "determination" interchangeably with "finding" in the legislative history. In addition, the apparent ambiguity results from a characterization in the ministerial provision, rather than the substantive provision. As such, the characterization has no substantive effect on the Commission's decisionmaking, and, absent evidence to the contrary, indicates that the choice between the two words in the ministerial provision is legally irrelevant to the operation of either the ministerial provision or the substantive provision. Consequently, the use of the

⁵ S. Rep. No. 249, 96th Cong., 1st Sess. 91 (1979).

⁶ H.R. Rep. No. 1156, 98th Cong., 2d Sess. 183 (1984).

⁷ H.R. Rep. No. 576, 100th Cong., 2d Sess. 611 (1988).

term "determination" in the ministerial provision is not a "determination" within the meaning of the tie vote provision.

Even if the ministerial provision does create ambiguity, there is no legislative history suggesting that the tie vote provision is intended to apply to the critical circumstances provisions. At most, the legislative history shows no Congressional intent one way or the other. However, the 1979 amendment to the tie vote provision and its legislative history indicate that Congress did intend that tie votes on the overall determination should continue to be deemed affirmatives. The very use of the word "deemed" in both the statute and the legislative history indicates that Congress recognized that, in the absence of statutory authority to the contrary, a majority vote is necessary for the Commission to make its overall determination. Congress provided such authority for the Commission's overall determination. However, Congress provided no such authority for the Commission's critical circumstances finding. Absent such authority, we conclude that a majority of the Commission must make an affirmative critical circumstances finding for the extraordinary relief of imposing antidumping duties retroactively to be provided.

**ADDITIONAL VIEWS OF COMMISSIONER BRAGG
AND VICE CHAIRMAN NUZUM
REGARDING EFFECT OF CRITICAL CIRCUMSTANCES TIE VOTE**

In this case, three Commissioners voted in the affirmative regarding critical circumstances, and three Commissioners voted in the negative. The Commission has not previously addressed the question of the effect of such a tie vote. We believe that this determination should be deemed affirmative under the tie vote rule of the antidumping statute, which provides that:

If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination.¹

The tie vote provision does not define the term "determination." We conclude, however, that there is nothing in its language or legislative history to indicate that Congress intended a narrow construction of this provision. While noting that there is some question whether a decision regarding critical circumstances is a "determination" within the purview of the tie vote rule, we believe that it is reasonable, and in keeping with the language of the statute and its underlying legislative intent, to so deem it.

The antidumping statute uses a variety of terms to describe a Commission decision regarding critical circumstances. Such a decision is referred to in some parts of the statute as a "determination," and elsewhere is termed a "finding."² We do not regard these differences in terminology as meaningful in this instance. That the statute itself recognizes a critical circumstances decision as a "determination"³ is, in our view, conclusive in resolving any doubt regarding the applicability of the tie vote provision to such a decision.

Not only the plain language of the statute, but also the purpose of the tie vote provision, weigh in favor of applying its rule to a critical circumstances determination. In fashioning the tie vote rule, Congress clearly intended that decisions that would affect the availability and extent of relief provided in an antidumping action be resolved, in cases of a three-three split among Commissioners, in favor of the petitioning domestic industry.⁴ A critical circumstances determination, which affects the starting date on which imports will be subject to antidumping duties, is such a decision. Indeed, the importance of the critical circumstances remedy was recognized by Congress in the legislative history of the 1988 amendments to the antidumping law, when Congress added provisions designed to strengthen the remedy.⁵ Thus, we believe that the three-three vote on this issue should be regarded as an affirmative determination pursuant to the tie vote rule.

¹ 19 U.S.C. § 1677(11).

² Compare 19 U.S.C. § 1673d(b)(4)(A) with § 1673d(c)(3).

³ See 19 U.S.C. § 1673d(c)(3), describing the effect of a negative "determination" of the Commission under subsection (b)(4)(A), the critical circumstances provision.

⁴ See Border Brokerage Co. v. United States, 646 F.2d 539, 546 (C.C.P.A. 1981) (noting that "[i]n the case of the Antidumping Act, enacted for the benefit of United States manufacturers, the stated purpose of the tie vote provision was to provide additional deterrent strength to the law and greater certainty, speed, and efficiency in its enforcement").

⁵ H.R. Rep. No. 576, 100th Cong., 2d Sess. 611 (1988).

PART II
INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

This investigation results from a petition filed by Rhône-Poulenc, Cranbury, NJ, on December 30, 1993, alleging that an industry in the United States was materially injured and threatened with material injury by reason of imports of LTFV imports of coumarin¹ from China. Information relating to the background of this investigation is provided below.²

<u>Date</u>	<u>Action</u>
December 30, 1993	Petition filed at the Commission and Commerce; institution of Commission preliminary investigation
January 27, 1994	Commerce's notice of initiation
February 14, 1994	Commission's affirmative preliminary determination
August 4, 1994	Commerce's affirmative preliminary determination; institution of Commission final investigation (59 F.R. 43590, August 24, 1994)
September 9, 1994	Notice of postponement of Commerce's final antidumping duty determination (59 F.R. 46618)
September 22, 1994	Notice of Commission's revised schedule (59 F.R. 48638)
December 13, 1994	Public hearing ³
December 28, 1994	Commerce's affirmative final determination (59 F.R. 66895) ⁴

A summary of the data collected in this investigation is presented in appendix D.

THE PRODUCT

The Commission's decision regarding the appropriate domestic product or products that should be considered like the subject imported product is based on a number of factors including: (1) physical characteristics and uses; (2) the use of common manufacturing facilities and production employees; (3) interchangeability of the products; (4) customer and producer perceptions of the products; (5) channels of distribution; and (6) price. In this final investigation, petitioner argued that the appropriate like product consists of all coumarin. The importer respondents did not address this issue, but in the preliminary investigation, they agreed with petitioners that the like product was all coumarin.

¹ For purposes of this investigation, coumarin is an aroma chemical with the chemical formula $C_9H_6O_2$. All forms and variations of coumarin are included within the scope of the investigation, such as coumarin in crystal, flake, or powder form, and "crude" or unrefined coumarin (*i.e.*, prior to purification or crystallization). Excluded from the scope are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$). Coumarin is provided for in subheading 2932.21.00 of the HTS with a most-favored-nation tariff rate of 18.6 percent ad valorem, applicable to imports from China.

² *Federal Register* notices cited in the tabulation are presented in app. A.

³ A list of participants at the hearing is presented in app. B.

⁴ Commerce calculated LTFV margins to be as follows: Jiangsu Native, 15.04 percent; Tianjin Native, 50.35 percent; and all others, 160.80 percent. Commerce also found that critical circumstances exist for all exporters except Jiangsu Native. A finding of critical circumstances means that suspension of liquidation will apply to all such entries of coumarin from China that are entered, or withdrawn from warehouse, for consumption on or after May 5, 1994. To assist the Commission in its critical circumstances determination, 1994 monthly import data by quantity and value for all exporters except Jiangsu Native are presented in app. C.

Physical Characteristics and Uses

Coumarin (CAS Registry Number 91-64-5) is a white, almost colorless⁵ crystalline solid, manufactured from petroleum-based organic chemicals. It has a sweet, fresh, hay-like, slightly spicy odor, similar to that of vanilla, and a bitter aromatic burning taste.⁶ Coumarin is classified structurally as a lactone with the molecular formula $C_9H_6O_2$. It can be marketed as characteristic colorless crystals, or as a free-flowing powder or flake. Coumarin sold in the United States generally is sold in crystalline form. According to the petitioner, there are no differences in odor, appearance, or chemistry between the batches of coumarin which it produces.⁷

Coumarin was initially isolated in 1820 from tonka beans, which contain up to 1.5 percent coumarin.⁸ Synthetic production has since displaced natural sources for coumarin.

The primary application for coumarin is as a major fragrance component in a wide variety of consumer and industrial products, such as baby powder, household soaps and detergents, and cosmetics and other personal care products.⁹ During 1993, 92.6 percent of U.S. shipments of coumarin were for use in fragrance compounding. The remaining coumarin was consumed as an intermediate chemical to produce derivatives such as dihydrocoumarin (used primarily as a flavor and secondarily in the fragrance industry), or in non-food grade applications (e.g., as a metal brightener) in the electroplating industry.

Use of Common Manufacturing Facilities and Production Employees

Coumarin is produced commercially using the Perkin reaction, which involves the heating of salicylaldehyde¹⁰ in the presence of acetic acid and sodium acetate. After the crude coumarin mixture is removed from the reaction vessel, several purification steps are performed in order to arrive at the desired product. Rhône-Poulenc purifies the crude coumarin twice by distillation and once by crystallization in methanol and water. The methanol and water are subsequently separated from the coumarin in a centrifuge, leaving purified coumarin.¹¹ Several other possible synthetic chemical reactions could produce coumarin; however, there is no indication in published literature that any of these processes are being used on a commercial basis.¹²

The petition asserts that coumarin production in China involves the same procedures and raw materials as the process used in the United States.¹³ However, the petition notes that some Chinese producers reportedly use salicylaldehyde made in a different process than the salicylaldehyde used by Rhône-Poulenc, but salicylaldehyde made from either process is substantially the same and is interchangeably used as an input for coumarin manufacture at about the same usage level per pound of coumarin.¹⁴ Salicylaldehyde cannot be used for the same applications as coumarin.

⁵ The amount of color in a batch of coumarin can vary.

⁶ The FDA prohibits the use of coumarin in edible products.

⁷ Conference transcript, p. 48.

⁸ Walter C. Meuly, Rhodia Inc., "Coumarin," *Kirk-Othmer Encyclopedia of Chemical Technology*, 3rd Edition (Vol. 7), 1979, pp. 196-206.

⁹ *Ibid.*, pp. 196-206.

¹⁰ Salicylaldehyde (chemical formula $C_7H_6O_2$, also known as ortho-hydroxybenzaldehyde) is an oily liquid or dark red oil with a bitter almond-like odor and a burning taste. It is used in analytical chemistry, in perfumes and flavors, as an auxiliary fumigant, and as an intermediate in the synthesis of coumarin.

¹¹ Petition, p. 8.

¹² Walter C. Meuly, Rhodia Inc., "Coumarin," *Kirk-Othmer Encyclopedia of Chemical Technology*, 3rd Edition (Vol. 7), 1979, pp. 196-206.

¹³ The Chinese producers did not respond to the Commission's request for information in either the preliminary or this final investigation.

¹⁴ Petition, Exhibit C, Affidavit of Jacques A. Dunbar. Mr. Dunbar is an industrial expert at Rhône-Poulenc.

Rhône-Poulenc produces coumarin and salicylaldehyde at the same facility, but the equipment used to manufacture coumarin is completely dedicated to that product; nothing else is produced on that equipment.¹⁵ In terms of employment, Rhône-Poulenc uses the same PRWs to produce both coumarin and salicylaldehyde. The employment data concerning the production of coumarin are based on an allocation of the two products.

Interchangeability and Customer and Producer Perceptions of the Product

Petitioner and importer respondents agree that there is no known single-product direct substitute for coumarin that can accomplish all of the fragrance and other functions of the subject material, although both parties indicate that groups of chemicals can collectively replace coumarin in individual products with specific end use applications.¹⁶ However, replacing coumarin would require changing the ratio of chemical components or altering substantially the end product¹⁷ and would entail additional material costs and research and development costs for end users. There are no reports of end users replacing coumarin with other products in their applications.

In terms of interchangeability between the domestic and imported product, the petitioner maintained that domestically produced coumarin and the imported product are equivalent in content and quality.¹⁸ The importer respondents disputed this characterization, however, and asserted that there are differences in the overall quality of some Chinese coumarin as compared to that produced by Rhône-Poulenc as well as inconsistency between and within import shipments of coumarin from China.¹⁹ The importer respondents attributed these features of certain Chinese coumarin to differences in raw materials and production techniques.²⁰ Purchasers' responses to the Commission's question concerning the quality of the imported product versus the domestic product are mixed, with six reporting that the products are comparable and seven reporting that the imported product is inferior. Of the six largest purchasers, which accounted for about 60 percent of total purchases of coumarin during 1993, all have used both the domestic and imported product in their manufacture of fragrances.

Channels of Distribution

In the U.S. market, sales of coumarin were made primarily to end users. The following tabulation presents a summary of the channels of distribution used by Rhône-Poulenc for its domestically produced coumarin and by importers of coumarin from China in 1993, according to questionnaire responses:

	<u>Distributors</u>	<u>End users</u>
Share of Rhône-Poulenc's shipments made to...	***	***
Share of U.S. importers' shipments made to....	***	***

¹⁵ Conference transcript, p. 46.

¹⁶ Hearing transcript, p. 14; conference transcript, pp. 16, 32, 52, and 98.

¹⁷ Conference transcript, p. 98.

¹⁸ Dr. Kenneth R. Button, economic consultant for the petitioner, described coumarin as "a classic homogeneous commodity product. It is a chemical product with a specific chemistry. There are normally no commercially significant differences in coumarin sold in the U.S. market." Conference transcript, p. 31.

¹⁹ According to David Herbst, Vice President and Managing Director of Polarome, the quality of coumarin produced in different Chinese factories "varies dramatically." Quality also varies (in color, appearance, and odor) "from shipment to shipment, even from the same factory." Conference transcript, p. 63.

²⁰ Conference transcript, p. 64. According to Mr. Herbst, however, at least some factories in China do produce coumarin of very high quality. Conference transcript, p. 65.

The largest share of Rhône-Poulenc's 1993 U.S. shipments (***) percent) was for use in the production of fragrances, followed by metal plating (***) percent). The largest share of importers' 1993 U.S. shipments of imports from China (***) percent) was also for use in the production of fragrances, with the remainder (***) percent) going to other uses, primarily for the production of dihydrocoumarin.

Price

With prices ranging from \$*** to \$*** per pound for contract sales and from \$*** to \$*** for spot sales during the period for which data were collected, Rhône-Poulenc sells all of its coumarin within a narrow price range. The weighted-average prices of imported Chinese coumarin ranged from \$*** to \$*** for contract sales and from \$*** to \$*** for spot sales. For more information concerning price comparisons between domestic and Chinese coumarin, see the "Prices" section of this report.

THE DOMESTIC MARKET

Apparent U.S. Consumption

Data on apparent consumption of coumarin are presented in table 1 and figure 1. The Commission received usable data from the only company known to be producing coumarin in the United States and from 21 firms importing coumarin.²¹ Petitioner and importers generally agree that the consumption of coumarin has remained relatively constant during the period for which data were collected and that there have been no principal factors affecting changes in demand. In response to the question in the Commission's questionnaire concerning the demand for coumarin, only 1 of 21 importers reported that demand had increased since 1991. This importer's response was that it "assumed that demand had increased but had no supporting documentation."

Table 1
Coumarin (including FTZ): U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent U.S. consumption, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Figure 1
Coumarin (including FTZ): Apparent U.S. consumption, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

U.S. Producer

The petitioner in this investigation, Rhône-Poulenc of New Brunswick, NJ, is the only producer of coumarin in the United States. It is a division of Rhône-Poulenc, Inc., the

²¹ The data presented in this report are believed to include all U.S.-produced coumarin and virtually all imported coumarin, both subject and nonsubject, during the period for which data were collected.

U.S. subsidiary of the French company Rhône-Poulenc S.A.²² Rhône-Poulenc, Inc. has 56 facilities in the United States that employ 7,500 workers and account for \$2.3 billion in sales. Rhône-Poulenc consists of 30 facilities, with 2,600 employees, accounting for \$1 billion in sales. Coumarin is produced at Rhône-Poulenc's plant in New Brunswick, NJ, which is a part of its Aroma branch of the Fine Organics subdivision.²³ During World War I, Rhodia built the New Brunswick plant, which it continued to operate until 1931, when the plant was sold to DuPont. In 1954, Rhodia (in association with Société des Usines Chimiques RP) purchased the plant back from DuPont with the intent to manufacture chemical products; in 1956 Rhodia began manufacturing industrial chemicals and in 1962 began coumarin production. In 1979, Rhodia changed its corporate name to Rhône-Poulenc.

U.S. Importers

Questionnaires were sent to 35 firms named in the petition and in information provided by the U.S. Customs Service as importing coumarin from China. Of the 35 firms, 21 provided the Commission with usable import data, accounting for virtually all U.S. imports from China during 1993.²⁴ Almost all of the responding firms reported imports exclusively from China; ***. Accounting for *** percent of imports during 1993, *** is the largest importer of coumarin from China. ***, a major supplier of coumarin to fragrance manufacturers, ***, ***.

Another importer, ***, imported coumarin into an FTZ for the purpose of manufacturing fragrances. Its imports of coumarin accounted for *** percent of total imports during 1993.²⁵ In each year during the period for which data were collected, *** percent of the coumarin imported into *** FTZs was used to produce fragrance compounds that were ultimately imported into the United States.²⁶

The number of companies importing coumarin from China increased steadily over the period for which data were collected, from 12 in 1991 to 16 in 1992 and 17 in 1993. Ten companies consume portions of their coumarin imports internally, primarily for their fragrance production.²⁷ Nearly all companies reporting imports of coumarin are located in New York or New Jersey.²⁸

²² The petitioner is owned by Rhône-Poulenc S.A. (*** percent), Rhône-Poulenc, Inc. (*** percent), Rhône-Poulenc Holdings I, Inc. (*** percent), and Alcolac, Inc. (*** percent). The petitioner is affiliated with Usine de Saint-Fons Chimie, a fully owned Rhône-Poulenc S.A. affiliate which produces coumarin in France.

²³ In addition to coumarin, Rhône-Poulenc produces salicylaldehyde and acetic acid at its New Brunswick plant.

²⁴ Thirteen firms responded that they did not import coumarin from any country during the period for which data were collected.

²⁵ In the preliminary investigation, the Commission determined FTZ imports to be subject imports; therefore the data for this company are included in the presentation of import data. Data excluding these imports are presented in table D-2 in app. D.

²⁶ The quantity and value of coumarin used in the manufacture of fragrance compounds that were reexported during the period for which data were collected are as follows: ***.

²⁷ In 1993, company transfers accounted for *** pounds (*** percent) of U.S. shipments of coumarin from China.

²⁸ Three companies are located in California.

CONSIDERATION OF ALLEGED MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

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

Data regarding U.S. capacity, production, shipments, and inventories are presented in table 2 and figures 2 and 3. Rhône-Poulenc's production and shipments of coumarin *** during the period for which data were collected. ***.

The volume and value of Rhône-Poulenc's export shipments *** during the period for which data were collected. ***.

End-of-period inventories *** during the period for which data were collected. ***. Rhône-Poulenc maintains a small portion of its inventory *** and the bulk of its inventory ***. Rhône-Poulenc noted in its questionnaire response that it can respond to customers' orders for coumarin, on average, in *** calendar days. For orders requiring tighter schedules, it can ship coumarin *** in a shorter period of time.

Table 2
Coumarin: U.S. capacity, production, shipments, and inventories, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Figure 2
Coumarin: U.S. capacity, production, and capacity utilization, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Figure 3
Coumarin: Shipments by Rhône-Poulenc, by types, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

U.S. Employment, Wages, Compensation, and Productivity

Rhône-Poulenc's employment and productivity data are presented in table 3. ***.

Table 3
Average number of total employees and PRWs in the U.S. establishment wherein coumarin is produced, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by products, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Financial Experience of the U.S. Producer

Rhône-Poulenc, the sole U.S. producer of coumarin, provided financial data on its overall establishment operations and its operations producing coumarin.²⁹

* * * * *

²⁹ Rhône-Poulenc's fiscal year ends Dec. 31.

Overall Establishment Operations

Rhône-Poulenc's income-and-loss experience on its overall establishment operations is presented in table 4. In addition to coumarin, Rhône-Poulenc's New Brunswick plant also produces salicylaldehyde, the primary raw material and major cost component in coumarin. Coumarin accounted for approximately *** percent of overall establishment net sales in 1993, salicylaldehyde accounted for approximately *** percent, and acetic acid, a by-product of coumarin production, *** percent.

Table 4

Income-and-loss experience of Rhône-Poulenc on its overall establishment operations, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Operations on Coumarin

The income-and-loss experience of Rhône-Poulenc on its coumarin operations is presented in table 5 and figure 4. ***.

Table 5

Income-and-loss experience of Rhône-Poulenc on its operations producing coumarin, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Figure 4

Net sales, combined cost of goods sold and selling, general, and administrative expenses, and operating income of Rhône-Poulenc on its operations producing coumarin, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Costs of Production

Salicylaldehyde, the primary raw material used in the production of coumarin as shown in table 6, is produced in the same establishment as coumarin, but on different equipment. The per-pound value of salicylaldehyde ***.

Table 6

Costs of production of Rhône-Poulenc for coumarin, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Investment in Productive Facilities

*** Rhône-Poulenc's investment in property, plant, and equipment is shown in table 7.

Table 7
Value of assets and return on assets of Rhône-Poulenc's operations producing coumarin, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Capital Expenditures

Capital expenditures by Rhône-Poulenc are shown in table 8.

Table 8
Capital expenditures by Rhône-Poulenc, by products, calendar years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Research and Development

Rhône-Poulenc reported overall research and development expenses of \$*** in 1991, \$*** in 1992, and \$*** in 1993.

Capital and Investment

The Commission requested Rhône-Poulenc to describe and explain the actual and potential negative effects of imports of coumarin from China on its growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of coumarin). Rhône-Poulenc's response is presented in appendix E.

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise 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 is presented in the section entitled "Consideration of Alleged Material Injury to an Industry in the United States." Available information on U.S. inventories of the subject products; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Other threat indicators have not been alleged or are otherwise not applicable.

U.S. Importers' Inventories

As indicated in table 9, end-of-period inventories of coumarin imported from China increased from 1991 to 1992. In the preliminary investigation, the importer respondents suggested two explanations for this increase: an increasing insistence by consumers for just-in-time delivery and a need for insurance against the failure of Chinese deliveries to meet preshipment specifications.³⁰

³⁰ Respondents' postconference brief, pp. 5 and 23.

Table 9
 Coumarin (including FTZ¹): End-of-period inventories of U.S. importers, by sources, 1991-93,
 Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June--	
				1993	1994
<i>Quantity (1,000 pounds)</i>					
China	130	482	357	444	380
Other sources	(2)	0	0	-	-
Total	131	482	357	444	380
<i>Ratio to U.S. shipments of imports (percent)</i>					
China	40.0	74.2	54.4	79.2	47.1
Other sources	11.1	0	-	-	-
Average	40.1	74.2	54.4	79.2	47.1

¹ Including bonded warehouses, as discussed below.

² Positive figure, but less than significant digits displayed.

Note.--Because of rounding, figures may not add to the totals shown. Ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information. Part-year inventory ratios are annualized.

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

Four companies reported holding inventories of coumarin imported from China but not entered into the customs area of the United States during the period for which data were collected, *** in bonded warehouses and *** in an FTZ. Such inventories are shown in the following tabulation (*in pounds*):

* * * * *

U.S. Importers' Current Orders

Reported orders for Chinese coumarin that U.S. importers have placed for delivery after June 30, 1994, totaled 61,730 pounds. Orders were placed by three U.S. importers of Chinese product that provided import data in response to the Commission's questionnaire. Deliveries on these orders were scheduled through August 1994.

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other than the United States

The petition identified by name six companies (three large and three small) producing coumarin in China. None of these producers are represented by counsel before the Commission. The Commission attempted to obtain general information and specific data regarding the industry producing coumarin in China from the U.S. Embassy in Beijing; from MOFTEC, also in Beijing; and from counsel representing the Chinese exporters at Commerce. None of these sources were able to provide the Commission with any usable data regarding the industry producing coumarin in China. Therefore, all information presented below is from secondary sources (the petition and trade publications) and direct testimony.

The industry producing coumarin in China is believed to consist of 3 large producers and 10 smaller producers. According to the petition, the three large producers, Tianjin Number 1 Perfumery, Changzhou Number 2 Plant, and Shanghai Perfumery Works,³¹ have a current combined annual capacity of approximately 3.1 million pounds and current annual production of approximately 1.9 million pounds. The 10 smaller producers of coumarin in China are estimated to have a collective capacity of approximately 700,000 pounds and production of approximately 500,000 pounds. The Chinese coumarin-producing industry, therefore, is estimated to have a total capacity of approximately 3.7 million pounds, current production of 2.4 million pounds, capacity utilization of 64.7 percent, and unused capacity amounting to approximately 1.3 million pounds.³²

According to the trade publication *Chemical Marketing Reporter*, the capacity to produce coumarin in China reportedly has increased by 30 to 50 percent during the last 3 years. According to the same publication, the Chinese industry is described by sources as having "fierce competition between Chinese producers."³³ This description is consistent with testimony presented at the Commission's conference.³⁴

The markets in which the largest coumarin purchasers are located are the United States and Europe. Coumarin is also subject to an antidumping investigation by the European Union effective April 1994.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

U.S. imports of coumarin as collected by the Commission through its questionnaires are presented in table 10 and figure 5.³⁵ The increase in imports from China during 1992 is partly attributed to a substantial rise in imports by the largest importer, ***. ***.

Market Shares

Market shares based on the U.S. producer's shipments and U.S. importers' shipments are presented in table 11 and figure 6.

³¹ Tianjin Number 1 Perfumery, allegedly the largest Chinese coumarin producer, produces the highest quality Chinese coumarin, while Shanghai Perfumery Works, allegedly the smallest of the three large producers, produces the next highest quality. *Chemical Marketing Reporter*, Sept. 21, 1992, p. 13.

³² Petition, p. 9. Capacity utilization is derived from unrounded data.

³³ *Chemical Marketing Reporter*, Nov. 15, 1993, p. 35.

³⁴ According to the testimony of David Herbst, Vice President and Managing Director of Polarome, "As far as competition in China, as we've testified to, there are independent and different factories who would like to sell coumarin to whoever they can find...whoever will deal with that group or that factory." Conference transcript, p. 96.

³⁵ Data on imports for consumption based on Commerce's official statistics for HTS subheading 2932.21.00, under which coumarin is properly entered into the United States, not only correctly include ethylcoumarins and methylcoumarins, but also incorrectly include imports of ***, a florescent brightener, from ***. Letter from ***. Further, in several instances, coumarin originating in China was reported in the official statistics as imports from other, nonsubject countries or trading areas. Questionnaire responses indicate that nearly all imports of coumarin are of Chinese origin. Conference transcript, p. 89; questionnaire responses of ***.

According to the official statistics on imports for consumption of product provided for in HTS subheading 2932.21.00, the reported quantities of imports from China were 372,332 pounds in 1991; 892,233 pounds in 1992; 545,864 pounds in 1993; 242,067 pounds in January-June 1993; and 493,835 pounds in January-June 1994.

Table 10
 Coumarin (including FTZ¹): U.S. imports, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

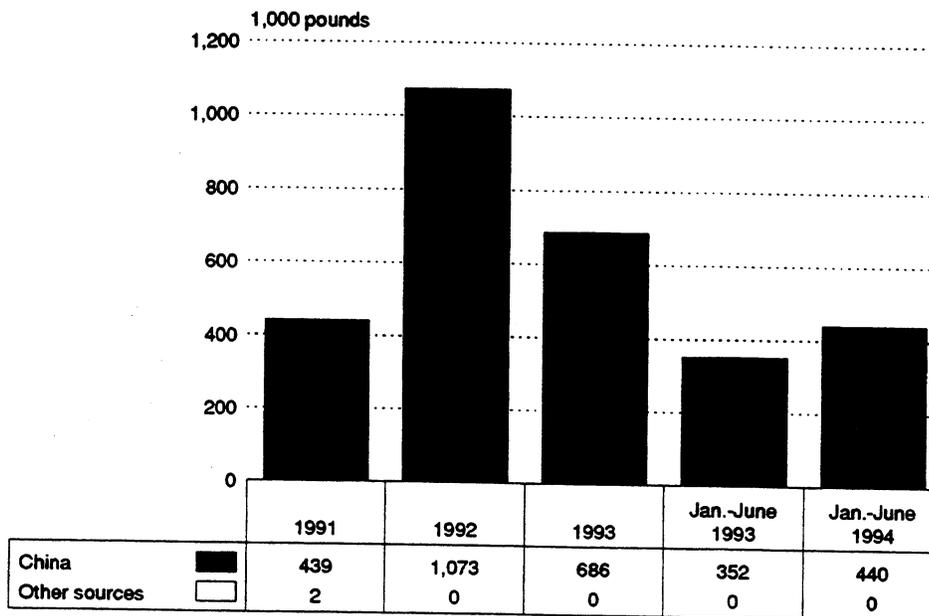
Item	1991	1992	1993	Jan.-June-- 1993	1994
<i>Quantity (1,000 pounds)</i>					
China	439	1,073	686	352	440
Other sources	2	0	0	0	0
Total	441	1,073	686	352	440
<i>Value (1,000 dollars)</i>					
China	2,806	7,171	3,520	2,002	2,043
Other sources	36	0	0	0	0
Total	2,842	7,171	3,520	2,002	2,043
<i>Unit value (per pound)</i>					
China	\$6.39	\$6.68	\$5.13	\$5.69	\$4.64
Other sources	16.16	(2)	(2)	(2)	(2)
Average	6.44	6.68	5.13	5.69	4.64

¹ The quantity (in 1,000 pounds) and value (in 1,000 dollars) of Chinese imports net of ***'s FTZ imports that were reexported are as follows: ***.

² Not applicable.

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

Figure 5
 Coumarin (including FTZ): U.S. imports, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994



Source: Table 10

Table 11
 Coumarin (including FTZ): Market penetration, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Figure 6
 Coumarin (including FTZ): Share of the quantity of U.S. consumption, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Prices

Marketing Practices

Both Rhône-Poulenc and importers sell the vast majority of their coumarin directly to fragrance producers, most of which are located in the New York metropolitan area. There are a large number of purchasers of coumarin. However, six companies, ***, accounted for *** percent of 1993 apparent consumption of coumarin.

Rhône-Poulenc sells nearly all of its coumarin on either a negotiated contract or a bid basis.³⁶ In 1993, importers sold about half of their coumarin on a spot basis, and about half on a bid or negotiated contract basis. Contracts typically last for three months to one year and often include "meet-or-release" provisions.³⁷ In the case of bid sales, customers send a bid request to various suppliers. Supplier bids typically include price, delivery and payment terms, packaging, and may also specify a minimum volume.

Rhône-Poulenc and the importers of Chinese coumarin generally quote prices on an f.o.b. warehouse basis. Rhône-Poulenc publishes price lists that specify quantity discounts ***. Most importers negotiate prices on a transaction-by-transaction basis and do not publish price lists.

Rhône-Poulenc's and importers' U.S. inland transportation costs are small, generally accounting for *** of the total delivered price of coumarin. Rhône-Poulenc's lead times for sales of coumarin average *** days while importers' reported lead times for sales from inventory vary from 2 to 5 days.³⁸ All U.S.-produced coumarin shipments are by truck, *** 200-pound fiber drums with a \$*** per pound premium for coumarin shipped in 25-pound drums. Imported Chinese coumarin is generally packaged in 50-kilogram drums and also shipped inland by truck. Both the U.S. producer and importers report that sales terms are typically net 30 days.

Product Comparisons

The majority of purchasers, ***, purchased both U.S.-produced and Chinese coumarin during January 1991-June 1994. Coumarin generally accounts for a small percentage of the final cost of the finished fragrance products.

Quality was the most important factor named by purchasers in deciding from whom to purchase coumarin, while price was most often named as the second most important factor. Six of the 13 purchasers that purchased both U.S.-produced and Chinese coumarin between January 1991 and June 1994 reported that coumarin from both sources was

³⁶ *** of 1993 sales were on a spot basis.

³⁷ Rhône-Poulenc reported that almost all of its supply agreements contain a meet-or-release clause. Conference transcript, p. 26. ***.

³⁸ Lead times for direct shipments from China are as long as 3 months.

comparable in quality while 7 reported that the Chinese product was inferior in quality. ***. Many purchasers reported that the quality of the Chinese product varies by supplier.

Most end users require suppliers to provide a pre-shipment sample of coumarin to determine if it meets certain quality standards. The most important quality consideration is odor. The qualification period may take from 1 week to several months. Purchasers reported a number of instances in which coumarin, mainly imports from China, did not meet odor, color, or melting point standards. Nevertheless, all but 1 of 22 purchasers surveyed purchased Chinese coumarin between January 1991 and June 1994. Furthermore, almost every purchaser reported that they increased purchases of Chinese coumarin relative to domestic coumarin during 1991-94.

Several purchasers reported buying the domestic product although Chinese coumarin was available at a lower price. Five purchasers cited lower or inconsistent quality of the Chinese product. Other reasons cited included reliability of supply, contract obligations, and the desire to maintain several sources of supply.

Purchasers of Chinese coumarin were asked how much higher the price of imported coumarin would have had to have been before they would have purchased U.S.-produced coumarin. Six of 12 responding purchasers reported that the price of the Chinese product would have had to have been 20 to 30 percent higher while 4 reported that it would have had to have been 10 to 15 percent higher.³⁹

Questionnaire Price Data

The Commission requested that Rhône-Poulenc, importers, and purchasers provide quarterly U.S. f.o.b. prices and total quantities and values of coumarin based on the largest contract sale and largest spot sale of coumarin (as defined below) for each quarter between January 1991 and June 1994.

Coumarin: Coumarin sold as a solid in the form of crystals, flakes, or a free-flowing powder, packaged in drums generally of 50 kg. (110 lbs.) to 100 kg. (220 lbs.)

Rhône-Poulenc and 11 importers provided pricing data. Reported pricing for non-bid contract sales accounted for *** percent of U.S. shipments of U.S.-produced coumarin and *** percent of U.S. shipments of Chinese coumarin, while reported pricing for spot sales accounted for *** percent of U.S. shipments of U.S.-produced coumarin and *** percent of U.S. shipments of Chinese coumarin. F.o.b. prices for contract and spot sales of U.S.-produced and imported Chinese coumarin to end users are presented in tables 12-13 and figures 7-8. Purchaser prices are presented in appendix F.

The Commission also asked the U.S. producer, importers, and purchasers to provide information regarding bids made to supply or purchase coumarin since 1991. Five end users reported bid information as presented in table 14.

Table 12

Coumarin: Weighted-average net f.o.b. prices and total quantities of non-bid contract sales to end users, by quarters, Jan. 1991-June 1994

* * * * *

³⁹ The other two purchasers reported that the price would have had to have been 3 percent and 50 percent higher.

Table 13
 Coumarin: Weighted-average net f.o.b. prices and total quantities of spot sales to end users, by quarters, Jan. 1991-June 1994

* * * * *

Figure 7
 Coumarin: Weighted-average net f.o.b. prices of non-bid contract sales to end users, by quarters, Jan. 1991-June 1994

* * * * *

Figure 8
 Coumarin: Weighted-average net f.o.b. prices of spot sales to end users, by quarters, Jan. 1991-June 1994

* * * * *

Table 14
 Coumarin: Initial and final bid quotes, bid quantities, quantities awarded, and quantities and prices of actual shipments, reported by U.S. purchasers, 1991-94

* * * * *

During 1991-93, coumarin prices fluctuated within a narrow range with prices of imported coumarin from China generally slightly below U.S.-producer prices. This gap widened greatly during the latter part of 1993 and the first part of 1994 as prices of Chinese coumarin fell sharply. Prices reported by purchasers for both contract and spot sales showed even larger margins of underselling.⁴⁰ Rhône-Poulenc reported that its pricing strategy has been to try to maintain its prices.⁴¹

Overall competition in the coumarin market increased as the number of firms importing coumarin increased between January 1991 and June 1994. In addition, more importers became approved suppliers with purchasers. ***. While importers' spot sales declined slightly from January-June 1993 to January-June 1994, contract sales increased significantly during this period.

Exchange Rates

The nominal value of the Chinese yuan (figure 9) depreciated by 40 percent in relation to the U.S. dollar between January 1991 and June 1994. The sharp drop in the nominal exchange rate at the beginning of 1994 is the result of changes in the way the People's Bank of China sets the exchange rate.⁴² Producer price index information for China is unavailable; thus real exchange rates cannot be calculated.

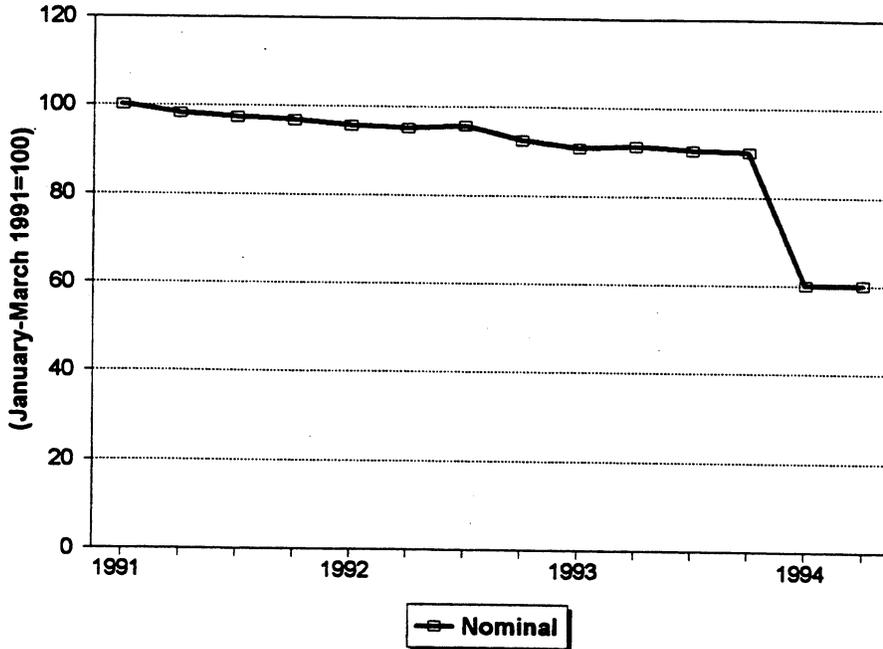
⁴⁰ Prices reported in the purchaser questionnaires by end users included prices paid for direct imports of coumarin while prices reported in the importer questionnaires are only for coumarin which was imported by each firm and then sold to an end user.

⁴¹ Petitioner's posthearing brief, exhibit 2, p. 3.

⁴² International Monetary Fund, *International Financial Statistics*, Oct. 1994, p. 164.

Figure 9
Indexes of the nominal exchange rates between the Chinese yuan and the U.S. dollar, by
quarters, Jan. 1991-June 1994

Chinese Yuan



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

Lost Sales and Lost Revenues

Rhône-Poulenc reported numerous lost sale and lost revenue allegations involving 18 customers. The total quantity and value of these allegations are shown in the following tabulation.

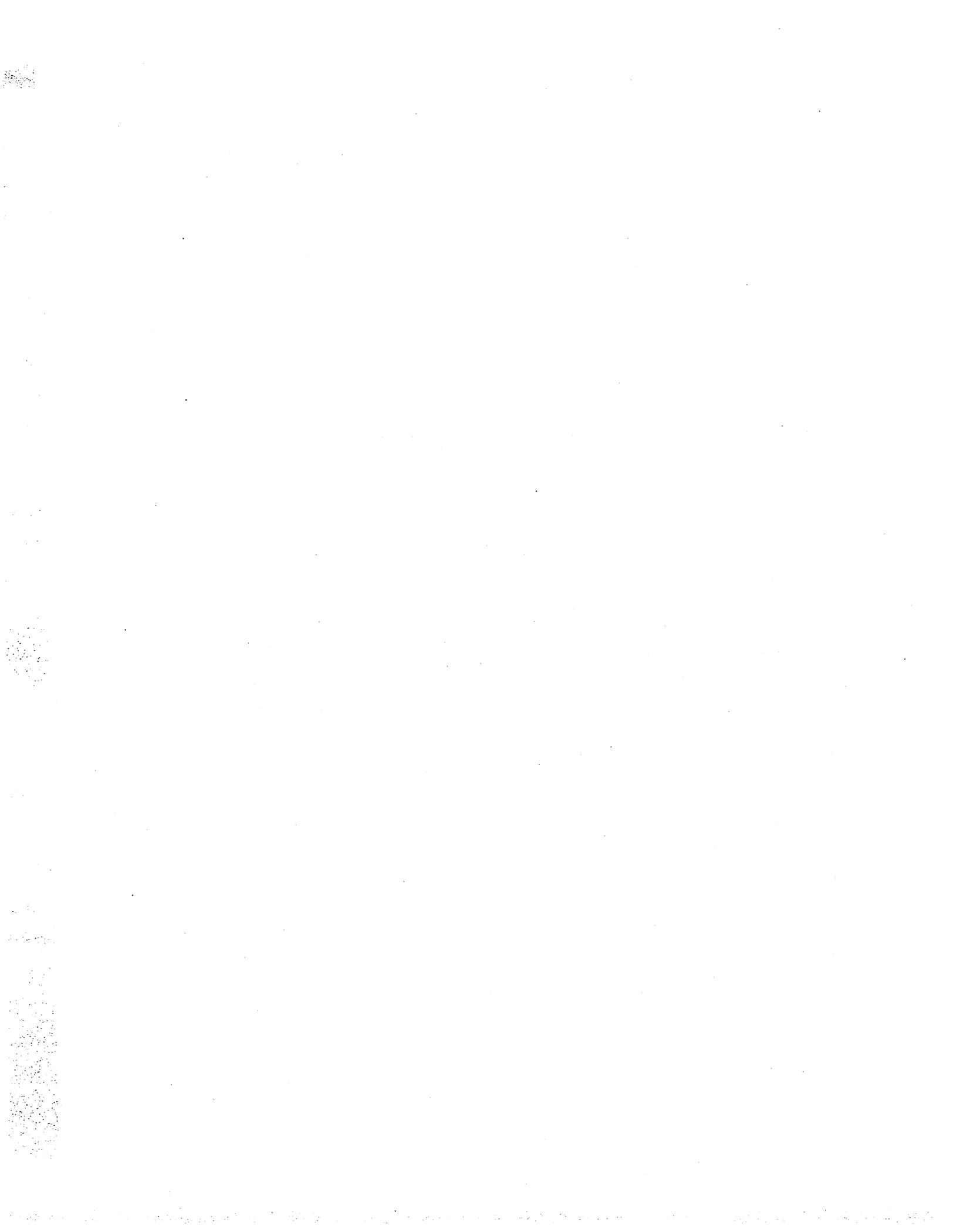
	<u>Quantity</u> (1,000 pounds)	<u>Value</u> (1,000 dollars)
Lost revenues.....	***	***
Lost sales.....	***	***

The specific allegations and information provided by the customers named in the allegations are presented in table 15.⁴³

Table 15
Lost sale and lost revenue allegations reported by Rhône-Poulenc and information reported by purchasers named in the allegations

* * * * *

⁴³ The table presents only the allegations for which staff was able to obtain information from the purchaser.



APPENDIX A
FEDERAL REGISTER NOTICES

subheading 2932.21.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 2, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202-205-3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N.8.1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of coumarin from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on December 30, 1994, by Rhône-Poulenc Specialty Chemicals Co., Cranbury, NJ.

Participation in the investigation and Public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to

powder form, and "crude" or unrefined coumarin (i.e., prior to purification or crystallization). Excluded from the scope are ethylcoumarins (C₁₁H₁₀O₂) and methylcoumarins (C₁₀H₈O₂).

section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on October 4, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 18, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 4, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 11, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is October 12, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 26, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or

[Investigation No. 731-TA-677 (Final)]

Coumarin From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-677 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of coumarin,¹ provided for in

¹ For purposes of this investigation, coumarin is defined as an aroma chemical with the chemical formula C₉H₆O₂. All forms and variations of coumarin are included in the scope of the investigation, namely coumarin in crystal, flake, or

before October 26, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

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

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: August 16, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-20837 Filed 8-23-94; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE**International Trade Administration****[A-570-830]****Postponement of Final Antidumping
Duty Determination: Coumarin From
the People's Republic of China****AGENCY:** Import Administration,
International Trade Administration,
Commerce.**EFFECTIVE DATE:** September 9, 1994.**FOR FURTHER INFORMATION CONTACT:****Karla Whalen (202-482-6309) or David
J. Goldberger (202-482-4136), Office of
Antidumping Investigations, Import
Administration, International Trade
Administration, U.S. Department of
Commerce, 14th Street and Constitution
Avenue NW, Washington, D.C. 20230.****SUPPLEMENTARY INFORMATION:** On July
28, 1994, the Department of Commerce
("the Department") issued its
affirmative preliminary determination of
sales at less than fair value (59 FR
39727, August 4, 1994).

On August 11, 1994, respondents
Jiangsu Native Produce Import/Export
Corp., Changzhou No. 2 Chemical Plant,
Tianjin Chemical Import/Export Corp.,
Gaoyao City Perfumery Factory, Tianjin
Native Produce Import/Export Corp.,
and Tianjin No. 1 Perfumery Factory
requested an extension of the final
determination. Pursuant to 19 CFR
353.20(b), if respondents who account
for a significant proportion of exports of
the subject merchandise request such an

extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request.

Given that the requirement of 19 CFR 353.20(b) has been met, and that there are no compelling reasons to deny the request, we are postponing the final determination for this investigation until the 135th day after the publication date of the preliminary determination. The deadline for issuing this determination is now no later than December 19, 1994.

This notice is published pursuant to section 733(a)(2) of the Act and 19 CFR 353.20(b).

Dated: August 31, 1994.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-22233 Filed 9-8-94; 8:45 am]

BILLING CODE 3510-DS-M

Department of Commerce extended the date for its final determination in the investigation from October 11, 1994, to December 19, 1994 (59 FR 46618—September 9, 1994). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than December 2, 1994; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on December 6, 1994; the prehearing staff report will be placed in the nonpublic record on November 23, 1994; the deadline for filing prehearing briefs is December 8, 1994; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on December 13, 1994; and the deadline for filing posthearing briefs is December 21, 1994.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: September 16, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-23383 Filed 9-21-94; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-677 (Final)

**Coumarin From the People's Republic
of China**

AGENCY: United States International
Trade Commission.

ACTION: Revised schedule for the subject
investigation.

EFFECTIVE DATE: September 14, 1994.

FOR FURTHER INFORMATION CONTACT: Brad
Hudgens (202-205-3189), Office of
Investigations, U.S. International Trade
Commission, 500 E Street SW.,
Washington, DC 20436. Hearing-
impaired persons can obtain
information on this matter by contacting
the Commission's TDD terminal on 202-
205-1810. Persons with mobility
impairments who will need special
assistance in gaining access to the
Commission should contact the Office
of the Secretary at 202-205-2000.
Information can also be obtained by
calling the Office of Investigations' remote
bulletin board system for
personal computers at 202-205-1895
(N,8,1).

SUPPLEMENTARY INFORMATION: On August
2, 1994, the Commission instituted the
subject investigation and established a
schedule for its conduct (59 FR 43590—
August 24, 1994). Subsequently, the

International Trade Administration
[A-570-830]

Final Determination of Sales at Less Than Fair Value: Coumarin From the People's Republic of China

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

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482-4136 or (202) 482-1769, respectively.

Final Determination:

We determine that coumarin 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 "Continuation of Suspension of Liquidation" section of this notice. The U.S. Department of Commerce (the Department) also determines that critical circumstances exist for all exporters except Jiangsu Native Produce Import & Export Corp. (Jiangsu Native).

Case History

Since the preliminary determination on July 24, 1994 (Notice of Preliminary Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China, 59 FR 3841, July 30, 1994), the following events have occurred.

During August 1994, respondents submitted revised information on factors of production. From August 13 through 22, 1994, we verified the responses of the exporters Jiangsu Native and Tianjin Native Produce Import & Export Corp. (Tianjin Native); and the manufacturers Changzhou No. 2 Chemical Factory (Changzhou No. 2) and Tianjin Perfumery Factory (Tianjin Perfumery). Prior to scheduled verifications, counsel for Tianjin Chemicals Import & Export Corp. and

Gaoyo City Perfumery Factory advised the Department that these clients would not agree to verification. On August 18, 1994, counsel withdrew its appearance for the two respondents.

On August 11, 1994, we received a request from respondents to postpone the final determination in this investigation, pursuant to 19 CFR 353.20. Accordingly, on August 31, 1994, we did so (59 FR 46618, September 9, 1994).

Petitioner and respondents filed case briefs on October 19, 1994, and rebuttal briefs on October 24, 1994. A public hearing was held on October 26, 1994.

Scope of Investigation

The product covered by this investigation is coumarin. Coumarin is an aroma chemical with the chemical formula $C_9H_6O_2$ that is also known by other names, including 2H-1-benzopyran-2-one, 1,2-benzopyrone, cis-o-coumaric acid lactone, coumarinic anhydride, 2-Oxo-1,2-benzopyran, 5,6-benzo-alpha-pyrone, ortho-hydroxycinnamic acid lactone, cis-ortho-coumaric acid anhydride, and tonka bean camphor.

All forms and variations of coumarin are included within the scope of the investigation, such as coumarin in crystal, flake, or powder form, and "crude" or unrefined coumarin (i.e. prior to purification or crystallization). Excluded from the scope are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$). Coumarin is classifiable under subheading 2932.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). 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 July 1 through December 31, 1993.

Separate Rates

Both of the participating exporters, Jiangsu Native and Tianjin Native, have requested a separate, company-specific dumping margin. Their respective business licenses indicate that they 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* and *de facto* governmental control over export activities.

De Jure Analysis¹

The PRC laws placed on the record of this case establish that the responsibility for managing companies owned by "all the people," including the respondent companies, 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). In particular, 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). The Export Provisions list those products subject to direct government control. Coumarin does not appear on the Export Provisions list and is not, therefore, subject to the constraints of those provisions. Consistent with Silicon Carbide, we determine that the existence of these laws demonstrates that Jiangsu Native and Tianjin Native companies owned by "all the people," are not subject to *de jure* control.

An additional PRC law concerning foreign exchange was obtained by the Department during this investigation. During verification, Changzhou No. 2 submitted a copy of the PRC's "Provisional Regulations on Handling the Turnover to the State of Foreign Exchange Quotas," issued on January 1, 1991 (Foreign Exchange Regulations). As stated in these regulations, "[i]n the case of general commodities, 20 percent of export exchange earnings shall be turned over gratis to the State." We find that these foreign exchange

¹Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An 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 measure by the government decentralizing control of companies.

requirements have functioned as an implied export tax rather than a demonstration of state control over export activities. Therefore, the existence of these foreign exchange regulations is not a cause for a finding of *de jure* government control. (See Comment 1 for further discussion of this issue).

In light of reports² indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly, our standard analysis of *de facto* control becomes critical in determining whether respondents are, in fact, subject to governmental control.

*De Facto Control Analysis*³

In the course of verification, we confirmed that export prices for both Jiangsu and Tianjin Native are not set, nor subject to approval, by any government authority. This point was supported by the companies' sales documentation and customer correspondence. We also confirmed, based on examination of documents related to sales negotiations, written agreements and other correspondence, that respondents have the authority to negotiate and sign contracts and other agreements independent of government intervention. We further found that, during the POI, although required to remit a portion of their foreign exchange earnings to the government, respondents retained proceeds from their export sales, net of the "implied export tax," and made independent decisions regarding disposition of profits and financing of losses. The respondents' financial statements, accounting records, and bank statements supported this conclusion.

Based on our examination of company correspondence files during verification, we have determined that both Jiangsu Native and Tianjin Native had autonomy from the central government in making decisions regarding the selection of management. In the case of

² 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.).

³ 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).

Tianjin Native, the general manager was elected by an employee assembly. We found no involvement by any government entity in Tianjin Native's selection of management.

With respect to Jiangsu Native, we found that the general manager was appointed by the local administering authority, the Jiangsu Council on Foreign Trade and Economic Cooperation (JCOFTEC). While this may indicate that Jiangsu Native is subject to the control of JCOFTEC, there is no evidence that any other exporter of the subject merchandise is currently under the control of JCOFTEC. Therefore, we have concluded that this does not preclude Jiangsu Native from receiving a separate rate.⁴ This determination is consistent with our recent decision in Final Determination of Sales at Less Than Fair Value: Paper Clips from the People's Republic of China, 59 FR 51168, (October 7, 1994) (Paper Clips).

Based on the foregoing analysis, we have determined that Jiangsu Native and Tianjin Native are entitled to separate rates.

Nonmarket Economy

The PRC has been treated as a nonmarket economy country (NME) in past antidumping investigations (see e.g., Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 59 FR 58818 (November 15, 1994) (*Saccharin*)). 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, we continue to treat 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 NME country, and (2) significant producers of comparable merchandise. The Department has determined that India is the country most comparable to the PRC in terms of overall economic development (see Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Director of Division I of Office of Antidumping Investigations, dated March 10, 1994). In addition, there is evidence on the record that

⁴ All non-responding exporters are presumed to be under the control of the central government. There is no basis on which to conclude that any non-responding exporter is controlled by JCOFTEC.

India is a significant producer of coumarin.

Fair Value Comparisons

To determine whether sales of coumarin from the PRC to the United States by Jiangsu Native and Tianjin Native 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

United States price was calculated on the basis of purchase price, as described in the preliminary determination, in accordance with section 772(b) of the Act. Pursuant to findings at verification, we adjusted foreign inland freight for Changzhou No. 2 based on verified distances between factory and port of exportation. No additional revisions were made to either exporter's USP.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the subject merchandise for the two participating exporters. We calculated FMV based on factors of production as cited in the preliminary determination, making the following adjustments:

- For Tianjin Perfumery, we based the value for the salicylaldehyde input on a weighted-average of self-produced salicylaldehyde and purchased salicylaldehyde, according to the proportion of each used during the POI. Labor and energy factors were prorated between salicylaldehyde and coumarin production based on verification information. (See Comment 5 for further discussion).

- For Changzhou No. 2, we recalculated inland freight distances between factory and input supplier, based on verified distances; adjusted the number of direct labor hours upward, on verified time sheets and included a factor for unreported usage of plastic bags for packing, which was discovered at verification.

- We added input freight values to packing materials for both producers.

- We revised the factor calculations for both producers to remove water as a separate material input, as the Department is treating water as part of "factory overhead" (see Comment 9 for further discussion).

To calculate FMV, the verified factor amounts for each company were multiplied by the appropriate surrogate values for the different input materials. In determining which surrogate value to

use for valuing each factor of production, we selected, where it was available and was non-aberrational, publicly available published information ("public information") from India. If there were multiple such sources for a given factor, we selected the value that was (a) most current; (b) product specific; and (c) tax-exclusive. With regard to those few factors for which we did not have public information, or where such values were considered aberrational (as discussed below), we have relied on price quotes obtained in India and submitted by petitioner. As a result, we have used the same surrogate values used in the preliminary determination, with the following exceptions:

- For chlorine and hydrochloric acid, we have reassigned values based on price quotes submitted by petitioner, because we found that values derived from Indian import statistics are aberrational. (See Comment 6 for further discussion of this issue.)

- For inputs purchased from market-economy countries, we have assigned the market price to those inputs, if they were purchased by the manufacturers directly from foreign suppliers in convertible currency. Inputs purchased from market-economy countries by trading companies for use by their suppliers, have been assigned the surrogate value (see Comment 7 for further discussion of this issue).

Finally, with respect to by-product offsets, we have revised our FMV calculations to offset the cost to manufacture coumarin by the amount of by-product recovered, which is consistent with Generally Accepted Accounting Principles (GAAP) and Department practice (see Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the PRC, 59 FR 28053 (May 31, 1994)) ("*Sebacic Acid*"). In the preliminary determination, we accepted an offset to the cost of materials for by-product values. For Changzhou No. 2, we have disallowed the offset for sodium hypochlorite because the company could not demonstrate that an economic benefit accrued to the firm from the disposition of this by-product (see Comment 8 for further discussion).

Best Information Available (BIA)

In this investigation, some PRC exporters failed to respond to our questionnaire or failed to participate in verification. We have determined that those exporters should receive rates based on BIA. In addition, because we presume all exporters to be centrally controlled, absent verified information to the contrary, in accordance with

section 776(c) of the Act, we have assigned a margin based on BIA to all exporters who have not demonstrated their independence from central control. This determination is consistent with our use of a BIA-based "All Others" rate in other recent investigations (see e.g., *Silicon Carbide*).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns less adverse margins to those respondents that cooperated in an investigation and more adverse margins for those respondents that did not cooperate in an investigation. As outlined in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plated From Belgium (58 FR 37083, July 9, 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, (b) the highest calculated rate of any respondent in the investigation, or (c) the margin from the preliminary determination for that firm.

We consider all PRC exporters that did not respond, failed to participate in verification, or otherwise did not participate in the investigation, to be uncooperative and are assigning to them the highest margin based on information submitted in the petition, as recalculated by the Department. In recalculating the petition rate, we reassigned the value of salicylaldehyde based on the average unit value for the Indian import statistics category that includes salicylaldehyde. We did not adjust the petition margins for chlorine and hydrochloric acid values, because these are inputs used in salicylaldehyde production, and the petition's margin methodology was not based on the input values for salicylaldehyde. When applying BIA from the petition, Department practice is not to revise the information accepted at initiation, except where the petition includes erroneous or grossly aberrational data (see e.g., Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China, 59 FR 55625, November 8, 1994) (Pencils). In this instance, the surrogate value cited for salicylaldehyde, the principal raw material, was fair in excess of any other value for the material obtained in the course of this investigation. Therefore, we revised the petition calculation using the same

value for salicylaldehyde that we are using in our company-specific FMV calculations. The recalculated petition rate applies to all exporters other than those responding exporters that are receiving separate rates.

Critical Circumstances

In our preliminary determination, we found that critical circumstances exist with respect to imports of coumarin from Tianjin Native and "all other" exporters in the PRC. We also found that critical circumstances did not exist with respect to imports of coumarin from Jiangsu Native.

Pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we based that preliminary determination on a finding of (1) an imputed knowledge of dumping to the importers because the estimated dumping margins were in excess of 25 percent, and (2) massive imports of coumarin over a relatively short period, based on an analysis of respondents' shipment data. We used BIA as the basis for our determination of critical circumstances for non-respondent exporters.

Because information submitted for the preliminary determination has been verified, and no additional information was submitted since that determination, the Department affirms the analysis as explained in its preliminary finding. Accordingly, we determine that critical circumstances exist with respect to imports of coumarin from Tianjin Native and firms covered by the "All Others" rate. Regarding imports of coumarin from Jiangsu Native, we determine that critical circumstances do not exist, as we did at the preliminary determination.

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, and original source documents provided by respondents.

Interested Party Comments

Comment 1: Separate Rates Eligibility—The petitioner argues that the Department should find that Jiangsu Native and Tianjin Native are subject to *de jure* and *de facto* control by the central government in the PRC. The respondents argue that "the totality of the information on the record" demonstrates that the respondent companies are not subject to *de jure* and *de facto* state control.

De Jure Analysis Comments

The petitioner argues that the laws submitted by the respondents in this investigation "evince significant governmental control over these companies." As an example, the petitioner cites to Chapter VI, Article 55, of the 1988 Law, which states that "[t]he government, or the government department in charge, shall * * * uniformly issue mandatory plans to enterprises * * * examine and approve plans submitted by enterprises * * * appoint or remove from office or reward or penalize factory directors." The petitioner also cites to the Foreign Exchange Regulations, as evidence that enterprises in the PRC are subject to significant foreign currency surrender requirements and other restrictions on access to foreign currency earnings. Specifically, the petitioner cites to Article 1, Section 3 of the Foreign Exchange Regulations which states that "[i]n the case of general commodities, 20% of export exchange earnings shall be turned over gratis to the State." Finally, the petitioner cites to a 1994 World Bank report, China Foreign Trade Reform (World Bank Report), which describes a foreign trade contract system in the PRC which has "the effect of holding local authorities and FTCs (foreign trade companies) to what are in effect mandatory export targets."

The respondents argue that the Department has reviewed the 1988 Law in previous PRC investigations, and has consistently rejected that document as a basis for a finding of *de jure* control. The respondents further argue that mandatory plans and foreign trade contracts are reserved for controlled industries or products in the PRC, as listed in the Export Provisions list—and that coumarin is not one of the controlled products. The respondents also argue that the Department has recognized the limited scope of mandatory plans in the PRC, and cite to a verification report in Silicon Carbide which reported that "[a]fter 1988, the central government was not in the internal workings of companies. In particular, there were no mandatory plans, with the exception of critical elements of the national economy," * * * such as "grain, cotton, and coal." (See, Silicon Carbide, Verification Report of Meeting at Ministry of Foreign Trade and Economic Cooperation (MOFTEC), February 15, 1994). With respect to the Foreign Exchange Regulations, the respondents argue that these regulations reflect the "complex foreign exchange system" relating to Chinese currency and foreign exchange credits in the PRC, but that the

regulations "do not require that the respondents give a portion of their sales revenues to the government."

De Facto Control Comments

The petitioner argues that an examination of the factors considered by the Department in assessing evidence of *de facto* control, leads to a finding of government control of export functions. According to the petitioner, respondent companies: (1) Do not freely establish export prices nor have unrestricted autonomy to negotiate and sign contracts, because of the restrictions and controls imposed by the foreign trade contract system as outlined in the World Bank Report; (2) do not have autonomy regarding selection of management, because the general manager of Jiangsu Native was appointed by the JCOFTEC; and (3) do not retain all proceeds of their export sales because of significant restrictions on access to foreign currency earnings, and, in the case of Tianjin Native, the respondent's proceeds from export sales are deposited into an account labeled "China Native," the national trading company known as China Native Produce Import & Export Corporation.

The respondents argue that the evidence on the administrative record in this investigation, "overwhelmingly" supports a finding of a *de facto* lack of state control. The respondents assert that (1) the Department examined the exporter's purchase orders, invoices, and correspondence files, and these documents demonstrated that the exporters freely negotiate prices with customers; (2) JCOFTEC's "recommendation" of a general manager was done according to law; and (3) China Native does not have any access or control over Jiangsu Native's bank account, and respondents were able to retain earnings in the amount invoiced to customers at the Renminbe converted rate. In addition, the respondents argue that the Department examined respondents' correspondence and financial files at verification and found no evidence of mandatory business plans.

DOC Position: Regarding mandatory plans, we agree with the respondents that the provision in the 1988 Law for mandatory export plans applies to controlled industries or products, as identified in the Export Provisions list. Coumarin is not identified in the list. The business plans obtained from respondent companies at verification, which were prepared by the respondents and submitted to the local administering authorities, consisted of export targets based on company growth from previous years. We find that these

business plans do not demonstrate mandatory government planning or government interference in the respondents' export activities.

With respect to the foreign trade contract system described in the World Bank Report, we find respondents' statement that such contracts, which fix export quantities for specific products, only apply to controlled industries as identified in the Export Provisions list, to be consistent with the evidence of record. We find that there is no evidence on the record indicating that a government entity controlled Jiangsu Native's or Tianjin Native's report activities during the POI through a foreign trade contract. To the contrary, we verified that the companies negotiated and signed contracts and other agreements without interference from any government entity. Although business plans are part of the foreign trade contracting system as discussed above, we do not find these plans demonstrate government interference in the respondents' exporting activities.

Regarding the foreign currency requirements cited by petitioner, we agree with the World Bank Report which refers to the PRC's foreign exchange system as a "very substantial tax burden on Chinese exports," and an "implied export tax." Absent the foreign currency requirements, an exporter would have realized a greater portion of the income associated with its export sales. This income reduction is comparable to a tax payment. We found that during the POI, Jiangsu Native retained proceeds from its export sales, net of the "implied export tax," and made independent decisions regarding the disposition of profits.

As stated in the "Separate Rates" section of this notice, we have determined that both Jiangsu Native and Tianjin Native had autonomy from the central government in making decisions regarding the selection of management. With respect to Jiangsu Native, although JCOFTEC may exercise some control through the appointment of the general manager, there is no evidence that any other exporter of the subject merchandise is currently under the control of JCOFTEC. Therefore, Jiangsu Native remains eligible for a separate rate.

*Comment 2: Separate Rates for Suppliers—*The respondents argue that manufacturing respondents should be assigned the same rate as their respective exporters, and not the "all others" rate. The respondents urge the Department to issue instructions to Customs that clarify that the calculated rates apply to the particular manufacturers. In support of this

argument, the respondents cite Departmental practice outlined in Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the People's Republic of China (58 FR 7543, February 8, 1993) (Sulfur Dyes), where the Department listed LTFV margins for specific exporters paired with the PRC factory which supplied that exporter. The respondents argue further that because the manufactures in this investigation were "cooperative," it would be "contrary to the statute and judicial precedent to assign a BIA margin to these companies."

Also relying on Sulfur Dyes, the petitioner agrees with the respondents to the extent that it is appropriate for the Department to assign the margin calculated for a given exporter to that exporter and its supplying factory. However, the petitioner argues that the Department should not assign the responding manufacturer separate rates because: (1) the companies have not responded to the Department's separate rates questionnaire and, therefore, have not demonstrated that they are entitled to any rate other than the "all others" rate; and (2) separate rates should only apply to the producer/exporter pair on whom that rate was based. The petitioner cites to *Paper Clips* where the Department found that companies that had claimed that they had no shipments during the POI could not receive any rate other than the country-wide BIA rate because those companies had not replied to the Department's separate rates questionnaire.

DOC Position: As noted by the petitioner, Department practice is to examine sales by exporters. We have determined that exporters and producers should not be "paired" in our instructions to Customs. Although exporters and producers were paired in *Sulfur Dyes*, recent Department practice has been to assign rates only to exporters, and in the case of multiple suppliers, margins have been based on weight-averaged FMVs (see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cut-to-length Carbon Steel Plate from Poland (58 FR 27205, July 9, 1993), Pencils,⁵ and Preliminary

⁵ In *Pencils*, the Department calculated a zero rate for one exporter based upon the factors of production provided by the suppliers of the exporter. The Department determined that the zero rate applied only to the exporter's sales of merchandise produced by those suppliers, and that, if the exporter sold merchandise produced by other suppliers, that merchandise would be subject to the "All Others" rate. However, in the same case, the Department gave another exporter that had multiple suppliers, and did not have a zero rate, a single margin based on the weighted-average FMV of all suppliers.

Determination of Sales at Less Than Fair Value: Magnesium from the People's Republic of China, 59 FR 55420, November 7, 1994). In this investigation, the manufacturing respondents did not export coumarin to the United States. Our separate rates determinations apply only to the exporters of the subject merchandise who have responded to the Department's questionnaire and were verified on this issue. Therefore, we are not assigning rates to the suppliers.

Comment 3: Exporters' SG&A and Profit—The petitioner argues that the Department must include SG&A expenses and profit of the exporters, as well as the suppliers, to arrive at the FMV of the subject merchandise. The resulting FMV would be based on the SG&A and profits associated with sales of coumarin to the United States during the POI. The petitioner cites Department practice in Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway (56 FR 7665, February 25, 1991) (Norwegian Salmon), which stated that the Department "combined the SG&A of the farmer and the exporter for the statutory ten percent test." The petitioner argues that because responding exporters did not report SG&A expenses, the Department should rely on the manufacturers' SG&A, as well as profit, rates and apply them to the exporters' costs.

The respondents argue that the Department followed its normal practice in the preliminary determination, in that the surrogate value for SG&A includes all selling expenses necessary to sell chemical products in the home market (see e.g., *Paper Clips*, Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese from the People's Republic of China (59 FR 31199, June 17, 1994), Sebacic Acid, and Silicon Carbide). The respondents further assert that the petitioner has incorrectly interpreted Norwegian Salmon because in that case, the Department included the SG&A expenses of the exporters because the farmers had no selling expenses, and the case involved the use of third country sales as FMV. The respondents claim that the petitioner's suggested calculation for SG&A and profit would deviate from the Department's normal practice, and would result in double-counting.

DOC Position: We find the petitioner's reliance on Norwegian Salmon to be misplaced because of the differences in fact patterns in the investigations, as cited by the respondents. Therefore, consistent with Department practice in NME cases, as cited by the respondents, we find that SG&A and profit of the

exporters should not be included in the calculation of FMV. The statute and regulations provide for valuation of factors used in the production of (emphasis added) the subject merchandise. As stipulated in § 353.52(c) of the Department's regulations, FMV is calculated "using constructed value based on factors of production incurred in the home market country in producing (emphasis added) the subject merchandise." Therefore, we have only used the SG&A and profit of the manufacturers.

Comment 4: Captively-produced Inputs—The petitioner argues that the Department should value only inputs used in the coumarin production process, and, therefore, should not base the FMV of coumarin on the value of the factors of production of the captively-produced intermediate product, salicylaldehyde. The petitioner argues that coumarin is the merchandise under investigation, and not salicylaldehyde. According to the petitioner, valuation of only the subject merchandise, is consistent with section 773 of the Act. The petitioner further argues that, since the Department did not value the factors of production for captively-produced phenol, the Department must be consistent and not value factors for any captively-produced input.

The respondents argue that section 773 of the Act requires that FMV be based on "the value of the factors of production utilized in producing" coumarin. In this case, the respondents contend that there are two production stages utilized in producing coumarin: (1) Salicylaldehyde production, and (2) finishing production of coumarin. Therefore, they argue that both stages should be valued. Further, the respondents cite the antidumping investigation concerning refined antimony trioxide as establishing Departmental practice of valuing significant input materials in all stages of the production process, including intermediate stages (see Final Determination of Sales at Less Than Fair Value: Refined Antimony Trioxide from the People's Republic of China, 57 FR 6801, February 28, 1992) (Refined Antimony).

DOC Position: We agree with the respondents that under section 773 of the Act it is appropriate to value all of the factors of production, including intermediate inputs captively-produced by the responding producer. Further, this methodology is consistent with Department practice in NME cases (see e.g., Refined Antimony, and the Calculation Memorandum for the Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's

Republic of China, 57 FR 29705, July 6, 1992). Regarding Changzhou No. 2's captively-produced phenol, we will not value its factors of production because phenol accounts for an insignificant percentage of materials, based on quantity and value, required to produce coumarin.

Comment 5: Purchased

Salicylaldehyde—The petitioner argues that, since Tianjin Perfumery purchased significant quantities of its salicylaldehyde from outside suppliers, the Department should calculate the value of this input based on a weighted-average of the self-produced and purchased salicylaldehyde. The petitioner contends that the purchased portion of salicylaldehyde, and not the inputs into its production, should be valued in a surrogate country, including additional cost for inland freight. As such, this methodology would be consistent with Department practice, cited in Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 59 FR 42806 (August 19, 1994), which holds that "it is inappropriate to specifically identify inputs obtained at a lower cost to a particular product or production run."

The respondents argue that, because the factory was able to satisfy its salicylaldehyde input needs for coumarin sold to the U.S. during the POI with its self-produced amounts, there is no need to ignore the factory's production factors for valuing all of the salicylaldehyde factor. Thus, it is not necessary to resort to surrogate values because the factory was able to cover its input needs.

DOC Position: We agree with the petitioner that the salicylaldehyde value for Tianjin Perfumery should be based on a weighted-average of Tianjin Native's own factors and the purchased salicylaldehyde, because the company both self-produced and purchased the salicylaldehyde during the POI. While this situation does not occur often, where it does (e.g., Preliminary Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China, signed on December 9, 1994), we use the weighted-average. This methodology recognizes the additional economic cost to a producer when it substitutes outside purchases for an input it normally produces. The weighted-average cost is thus more representative of the company's cost of production during the POI than to assume that it produced all of the input material.

Comment 6. Chlorine—The respondents contend that the surrogate value for chlorine applied at the preliminary determination is

aberrational and unrealistic. The respondents compare the value derived from Indian import statistics, which was used for the preliminary determination, to numerous examples of alternative price sources, including Indian price quotes submitted by the petitioner. According to their analysis, the Indian import value is several times higher than these other values. While acknowledging the Department's preference for public information such as the Indian import statistics, the respondents cite Silicon Carbide where the Department has tested the reasonableness of its surrogate values and rejected those it found to be aberrational. For the final determination, the respondents argue that the Department should value chlorine using the petitioner's Indian price quote, or values based on either Indonesian import statistics or U.S. export statistics.

The petitioner responds that the Department properly followed its practice of utilizing public information for valuing chlorine in India based on import statistics rather than the unpublished price quote, and should continue to do so for the final determination.

DOC Position: We agree with the respondents that, although the Indian import value is preferable according to our methodology, this value is aberrational. We note that, in addition to Silicon Carbide, the Department specifically rejected surrogate values for chlorine and hydrochloric acid in Saccharin (materials common to saccharin and coumarin production) derived from Indian import statistics because these values were aberrational when compared against data derived from export statistics from five countries (Canada, Germany, Japan, South Korea, and the United States) that exported the materials to India. The only other Indian values for chlorine and hydrochloric acid properly submitted for the record in this investigation are the petitioner's price quotes. Therefore, we value both chlorine and hydrochloric acid using these Indian price quotes.

Comment 7: Inputs from Market-Economy Countries—The petitioner argues that raw material inputs that manufacturers purchased from PRC trading companies in PRC currency should be valued in a surrogate country, even though the inputs were purchased by the trading companies from market economy sources in convertible currency. The petitioner points out that the convertible currency prices were paid by the trading companies and not the manufacturers, and that prices paid by the manufacturer to the trader were

in nonconvertible currency. Therefore, the petitioner contends that these factors should be assigned surrogate values.

The respondents contend that the Department should use the actual import prices for these inputs, as it did in the preliminary determination. As the respondents explain, these purchases were made by the trading companies on behalf of the producers because of the trading companies' access to foreign currency. The producers reimbursed the trading companies for the imported goods in RMB. The respondents add that there is no support for the petitioner's position in Departmental practice. They cite Paper Clips where market prices for imported goods were used to value certain inputs that were obtained by PRC manufacturers through their suppliers.

DOC Position: We agree with the petitioner. Department practice allows for the valuation of inputs in NME cases based on market prices paid by the manufacturer for goods obtained from a market economy source because these prices reflect commercial reality (see e.g., Saccharin and Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the PRC (56 FR 55271, October 25, 1991) (Fans). In this case, some of the transactions are conducted by the trading companies and not the manufacturers. Thus, the manufacturer obtained the input from a PRC source (the trading company) and paid for the input in PRC currency. This is not the type of situation encountered in Saccharin or Fans where we have accepted the actual prices paid. (We note that the respondents' cite to Paper Clips is incorrect; we did not use the import prices in the situation cited.) Accordingly, for those market economy-source inputs that were exclusively obtained by PRC trading companies and resold to the manufacturers, we have applied the appropriate surrogate value.

Comment 8: By-Products—The petitioner argues that all subsidiary products generated in the production of coumarin should be classified as by-products, rather than co-products, due to the insignificance of by-product sales values when compared to the subject merchandise. Nonetheless, the petitioner goes on to argue that no by-product offsets should be made to FMV in this investigation because: (1) Hydrochloric acid, alcohol, and sodium hypochlorite are by-products of salicylaldehyde production and no coumarin production; (2) insufficient information was provided by the respondents on product held in inventory; therefore, the Department

should assume that the manufacturers did not sell coumarin by-products, and GAAP allows for by-product adjustments only for product sold; (3) there is insufficient information on the record to substantiate that the coumarin production facilities at Changzhou No. 2 benefit from the sodium hypochlorite that was given away by the manufacturer; and (4) the respondents failed to provide the Department with sufficient information regarding the grade, quality, purity, and after-separation costs of the by-products.

The respondents agree that all subsidiary products recovered during the production of coumarin should be classified as by-products. However, regarding valuation of the by-products, the respondents argue that the petitioner's suggestions are erroneous because: (1) GAAP allow for by-product offsets on the basis of production quantities, as well as sales quantities; (2) there is ample information on the record to demonstrate that the factories sell recovered by-products, except for product held in inventory; (3) Changzhou No. 2 does not retain sodium hypochlorite for its own use, but disposes of it in a manner that yields an economic benefit to the company; and (4) the respondents reported all necessary physical parameters of the by-products, including concentration levels, and the record indicates that no after-separation costs are incurred by the factories in the sale of the by-products.

DOC Position: In this investigation, we find that alcohol, acetic acid and hydrochloric acid, are produced as a result of the production of coumarin, and that these products have low sales values compared with the sales value of coumarin. Therefore, we find these products to be by-products, and that the cost to manufacture coumarin should be offset by the value of by-product recovered, except for sodium hypochlorite, adjusted for concentration levels. Such treatment is consistent with GAAP and previous Department practice (see e.g., Sebacic Acid). We agree with the respondents that GAAP allows for by-product offsets on the basis of production quantities. We have also verified the respondent's reported sales of by-products, including concentration levels, and that there are no after-separation costs associated with the by-products. We determined that no offset should be made for the sodium hypochlorite recovered and disbursed by Changzhou No. 2, because the company could neither demonstrate that any economic benefit accrued to the firm, nor that the benefit was linked to coumarin production.

Comment 9: Water—The respondents argue that the Department erred in its preliminary determination, in calculating a cost for water, separate from factory overhead. The respondents cite to Department practice that includes water costs in factory overhead, i.e., Paper Clips and Silicon Carbide.

The petitioner argues that the Indian survey data from the metals and chemicals market sector used to calculate factory overhead contained water costs associated with administrative functions. The petitioner further argues that there is no evidence in the record indicating that water used for production purposes is included in the factory overhead category of "other manufacturing expense."

DOD Position: The facts in this case are very similar to those in Saccharin with respect to water consumption. In Saccharin we found that it is normal practice to include water in factory overhead, and that it is reasonable to presume that water is included in the Indian surrogate value overhead percentage. Accordingly, we have revised FMV calculations for both producers and not valued water as a separate input.

Continuation of Suspension of Liquidation

In accordance with sections 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of coumarin from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice 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:

Manufacturer/producer/exporter	Weighted-average margin percentage	Critical circumstances
Jiangsu Native Produce I/E Corp.	15.04	Negative.
Tianjin Native Produce I/E Corp.	50.35	Affirmative.
All Others	160.80	Affirmative.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the

International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry in the United States, 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 duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the 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: December 19, 1994.

Susan G. Esserman,
Assistant Secretary for Import Administration.

[FR Doc. 94-31962 Filed 12-27-94; 8:45 am]
BILLING CODE 3510-06-M

APPENDIX B

LIST OF PARTICIPANTS IN THE HEARING

CALENDAR OF PUBLIC HEARINGS

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

Subject **COUMARIN FROM THE PEOPLE'S
REPUBLIC OF CHINA**

Inv. No. **731-TA-677 (Final)**

Date and Time **December 13, 1994 - 9:30 a.m.**

Sessions were held in connection with the investigation in the Main Hearing Room, 500 E Street, S.W., Washington, D.C.

OPENING REMARKS

Petitioner

**In Support of Imposition of
Antidumping Duties:**

**Baker and Botts
Washington, D.C.
on behalf of**

Rhone-Poulenc Specialty Chemicals Company

**John A. Pannucci, Business Director,
Diphenols and Aromas, Rhone-Poulenc**

**Lawrence J. Esposito, Marketing Manager,
Fine Organics, Rhone-Poulenc**

**Kenneth R. Button, Ph.D., Vice President,
Economic Consulting Services, Incorporated**

**Vincent M. Honnold, Director of Statistical
Programs, Economic Consulting Services,
Incorporated**

**Michael X. Marinelli)--OF COUNSEL
Andrea F. Farr)**

APPENDIX C
MONTHLY IMPORT STATISTICS

Table C-1

Coumarin: U.S. imports from China (except shipments made by Jiangsu) and UK/Netherlands, by months, Jan. 1993-Sept. 1994

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Figure C-1

Coumarin: U.S. imports from China (except shipments made by Jiangsu), by months, Jan.-Sept. 1993

* * * * *

Figure C-2

Coumarin: U.S. imports from China (except shipments made by Jiangsu) and UK/Netherlands, by months, Jan.-Sept. 1994

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APPENDIX D
SUMMARY DATA



Table D-1

Coumarin (including FTZ): Summary data concerning the U.S. market, 1991-93, Jan.-June 1993, and Jan.-June 1994

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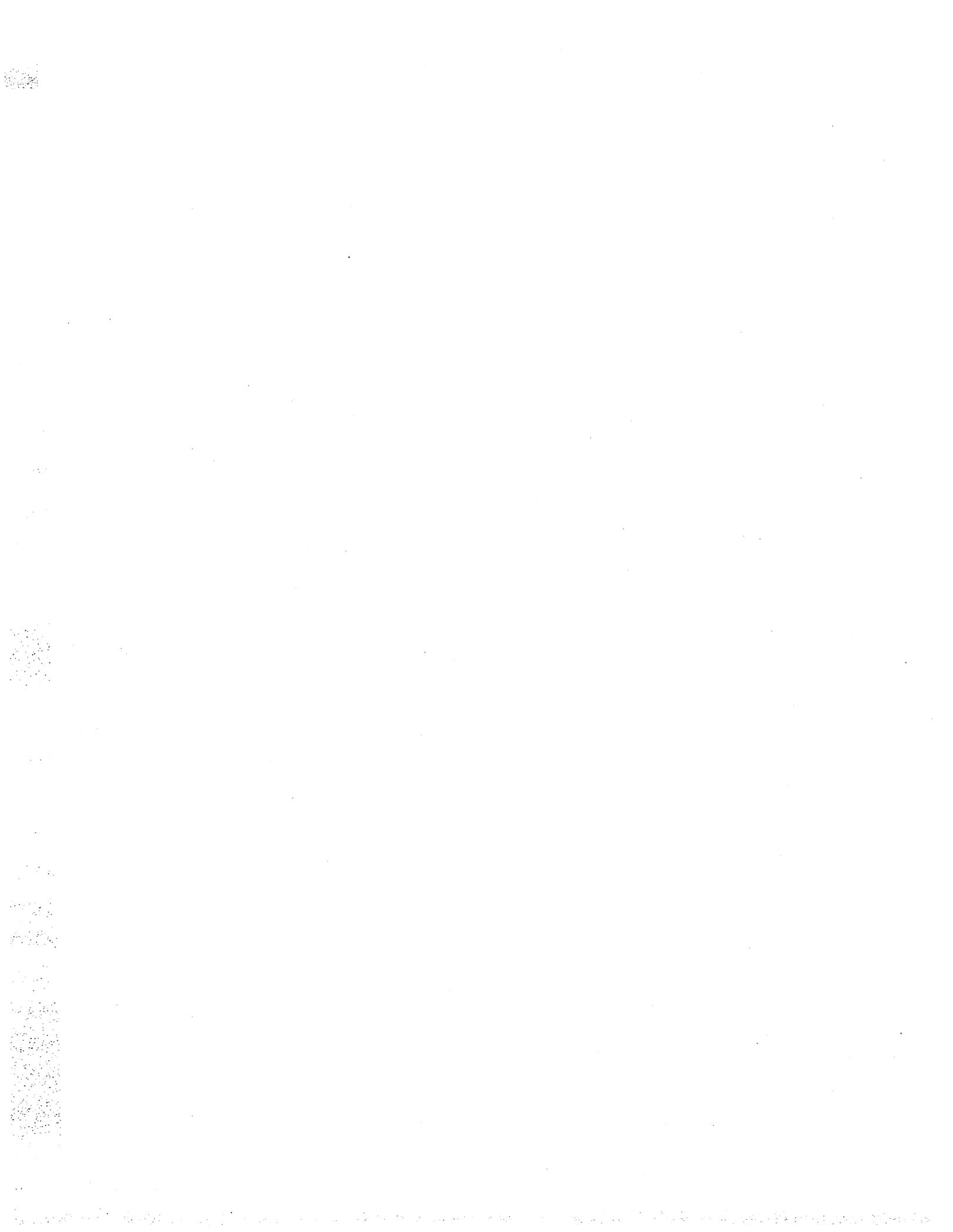
Table D-2

Coumarin (excluding FTZ): Summary data concerning the U.S. market, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

APPENDIX E

**COMMENTS RECEIVED FROM THE U.S. PRODUCER ON
THE IMPACT OF IMPORTS OF COUMARIN FROM CHINA ON
ITS GROWTH, INVESTMENT, ABILITY TO RAISE
CAPITAL, AND DEVELOPMENT
AND PRODUCTION EFFORTS**



The Commission requested Rhône-Poulenc to describe and explain the actual and potential negative effects of imports of coumarin 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). Rhône-Poulenc was also asked whether the scale of capital investments undertaken has been influenced by the presence of imports of this product from China. Rhône-Poulenc's responses are shown below.

Actual Negative Impact

* * * * *

Anticipated Negative Impact

* * * * *

APPENDIX F
PURCHASERS' PRICES

Table F-1

Coumarin: Weighted-average net f.o.b. prices and total quantities of non-bid contract purchases by end users, by quarters, Jan. 1991-June 1994

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Table F-2

Coumarin: Weighted-average net f.o.b. prices and total quantities of spot purchases by end users, by quarters, Jan. 1991-June 1994

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