

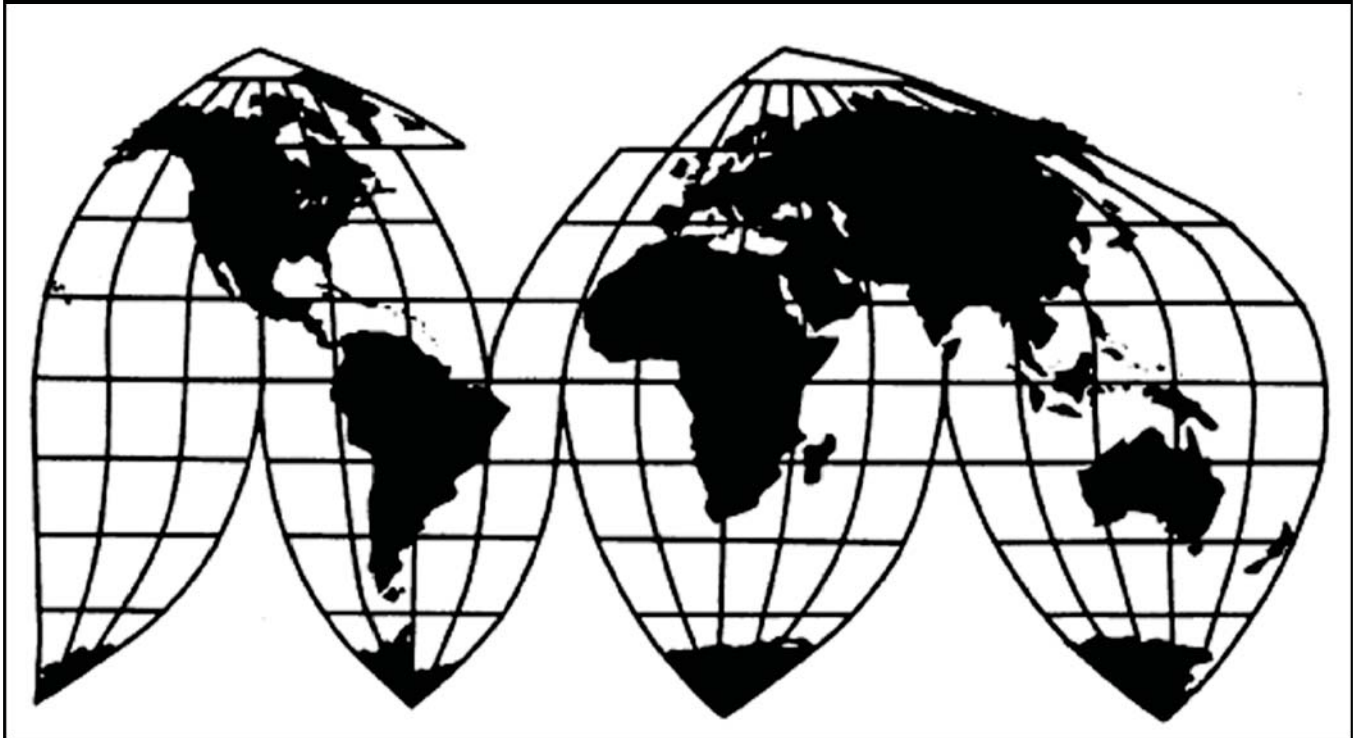
Chlorinated Isocyanurates from China and Spain

Investigation Nos. 731-TA-1082 and 1083 (Review)

Publication 4184

September 2010

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been identified by the use of *.**

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-1082 and 1083 (Review)

CHLORINATED ISOCYANURATES FROM CHINA AND SPAIN

DETERMINATIONS

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

BACKGROUND

The Commission instituted these reviews on May 3, 2010 (75 F.R. 23303) and determined on August 6, 2010 that it would conduct expedited reviews (75 F.R. 51113, August 18, 2010).

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

² Commissioner Daniel R. Pearson determines that revocation of the antidumping duty order on chlorinated isocyanurates from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine, under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders on chlorinated isocyanurates (“chlorinated isos”) from China and Spain would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

I. BACKGROUND

On May 14, 2004, Clearon Corporation (“Clearon”) and Occidental Chemical Corporation (“OxyChem”) filed petitions alleging that imports of chlorinated isos from China and Spain were being sold at less than fair value in the U.S. market and that a domestic industry was injured. Clearon and OxyChem are domestic integrated producers of chlorinated isos.² In June 2005, the Commission unanimously determined that the U.S. industry producing chlorinated isos³ was materially injured by reason of subject imports from China and Spain.⁴ On June 25, 2005, the U.S. Department of Commerce (“Commerce”) issued antidumping duty orders on subject imports from China and Spain.⁵

The Commission gave notice that it had instituted the instant reviews on May 3, 2010.⁶ Clearon and OxyChem jointly filed the sole response to the notice of institution.⁷ On August 6, 2010, the Commission determined that, for both of the reviews, the domestic interested party group response was adequate and the respondent interested party group response was inadequate. In the absence of an adequate respondent interested party group response or any other circumstances warranting full reviews, the Commission determined to conduct expedited reviews pursuant to section 751(c)(3) of the Act.⁸

On September 8, 2010, Clearon and OxyChem filed final comments pursuant to 19 C.F.R. § 207.62(d).⁹ No respondent interested party has provided any information or arguments to the Commission in these reviews. Accordingly, for our determinations, we rely as appropriate on the facts

¹ Commissioner Pearson finds that the revocation of the antidumping duty order on chlorinated isos from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. He finds, however, that the revocation of the antidumping duty order on chlorinated isos from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Except as otherwise noted, he joins the discussion and analysis in sections I, II, III, V.A., and V.B and provides the remainder of his analysis in separate and dissenting views. See Separate and Dissenting Views of Commissioner Daniel R. Pearson.

² Integrated producers manufacture chlorinated isos directly from raw materials (*i.e.*, cyanuric acid, caustic soda, and chlorine gas).

³ In the original investigations, all six Commissioners defined the domestic like product as all chlorinated isos, coextensive with Commerce’s scope.

⁴ In the original investigations, all six Commissioners cumulatively assessed the volume and effect of the subject imports.

⁵ Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People’s Republic of China, 70 Fed. Reg. 36561 (June 25, 2005); Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order, 70 Fed. Reg. 36562 (June 25, 2005).

⁶ 75 Fed. Reg. 23303 (May 3, 2010).

⁷ See Response of Clearon Corporation and Occidental Chemical Corporation to the Notice of Institution of a Five-Year Sunset Review (June 2, 2010) (“Clearon and OxyChem Response to Notice of Institution”).

⁸ See, Explanation of Commission Determinations on Adequacy, reprinted in Chlorinated Isocyanurates from China and Spain – Confidential Report (“CR”)/Public Report (“PR”) at App. B; 19 U.S.C. § 1675(c)(3).

⁹ See Final Comments of Clearon Corporation and Occidental Chemical Corporation in Five-Year Sunset Review (Sept. 8, 2010) (“Clearon and OxyChem Final Comments”).

available on the record, which consist of information collected in these five-year reviews (including information submitted by domestic producers, purchaser responses, and publicly available information) and information from the original investigations.

II. DOMESTIC LIKE PRODUCT

In making its determination under section 751(c) of the Act, the Commission defines the “domestic like product” and the “industry.”¹⁰ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹¹ The Commission’s practice in five-year reviews is to examine the like product definition from the original determination and any completed reviews and consider whether the record indicates any reason to revisit the prior findings.¹²

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

The products covered by the orders are chlorinated isocyanurates, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid ($\text{Cl}_3(\text{NCO})_3$), (2) sodium dichloroisocyanurate (dihydrate) ($\text{NaCl}_2(\text{NCO})_3 \cdot 2\text{H}_2\text{O}$), and (3) sodium dichloroisocyanurate (anhydrous) ($\text{NaCl}_2(\text{NCO})_3$). Chlorinated isos are available in powder, granular, and tableted forms. The orders cover all chlorinated isos.¹³

The scope definition used by Commerce in its expedited sunset review determinations is unchanged from the original determinations. In the original investigations, the Commission found a single domestic like product coextensive with the scope definition.

The record in these expedited reviews provides no basis to call into question the Commission’s previous definition of the domestic like product. In their response to the notice of institution, Clearon and OxyChem also concurred with the domestic like product definition adopted by the Commission in the original investigations.¹⁴ Accordingly, we continue to define the domestic like product as chlorinated isos coextensive with the scope definition.

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(10); see, e.g., Cleo Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991); see also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹² See, e.g., Internal Combustion Industrial Forklift Trucks From Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 (Dec. 2005) at 8-9; Crawfish Tail Meat From China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 (Jul. 2003) at 4; Steel Concrete Reinforcing Bar From Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 (Feb. 2003) at 4.

¹³ Chlorinated Isocyanurates from Spain and the People’s Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 75 Fed. Reg. 49464 (Aug. 13, 2010).

¹⁴ Clearon and OxyChem Response to Notice of Institution at 26.

III. DOMESTIC INDUSTRY

Section 771(4)(A) of the Act defines the relevant industry as the domestic “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”¹⁵ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

At the time of the Commission’s original investigations, three domestic producers accounted for all of U.S. integrated production of chlorinated isos from 2002 to 2004: Clearon, OxyChem, and BioLab, Inc. (“BioLab”).¹⁶ In 2009, Clearon, OxyChem, and BioLab were still the only known domestic integrated producers, accounting for an estimated *** percent, *** percent, and *** percent of U.S. production, respectively.¹⁷ The parent company of BioLab reportedly is in bankruptcy proceedings.¹⁸

In the original investigations, the Commission considered whether tableters of chlorinated isos engaged in sufficient production-related activities to qualify as domestic producers.¹⁹ After applying the traditional six-factor analysis, the Commissioners were evenly divided with respect to the definition of the domestic industry, with three Commissioners (Vice Chairman Okun and Commissioners Lane and Pearson) finding that tableters did not engage in sufficient production-related activity to qualify as domestic producers and three Commissioners (Chairman Koplun and Commissioners Miller and Hillman) finding that they did.²⁰

In these reviews, none of the tableters responded to the Commission’s notice of institution. No new evidence has been placed on the record of this proceeding with respect to whether tableters should be included in the definition of the domestic industry.²¹ While the capital investment necessary for tableting is not insubstantial, it is much less than that required for production of granular chlorinated isos and the value added by the tableting and repackaging process reported by most producers during the original

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

¹⁶ CR at I-20; PR at I-15. In 2004, Clearon accounted for *** percent of total reported U.S. production of chlorinated isos, OxyChem accounted for *** percent and BioLab, a non-petitioning company, accounted for *** percent of domestic production. CR/PR at Table I-7. The Commission also collected data in the original investigations for six U.S. tableters (i.e., firms that purchase domestically produced and/or imported granular chlorinated isos and form these into tablets). The tableters and their shares of tableting operations were as follows: Alden Leeds (*** percent), Aqua Tri (*** percent), LPM (*** percent), N. Jonas & Co., Inc. (“N. Jonas”) (*** percent), Stellar Manufacturing Co. (“Stellar”) (*** percent), and Cadillac Chemical Corp. (“Cadillac”) (no information available). CR at I-20; PR at I-15.

¹⁷ Clearon and OxyChem Response to Notice of Institution at 19-20; Clearon and OxyChem Response to Notice of Institution at 24; CR/PR at Table I-7.

¹⁸ Clearon and OxyChem Response to Notice of Institution at 9.

¹⁹ Tableters are firms that purchase domestically produced and/or imported granular chlorinated isos and form these into tablets. CR at I-20; PR at I-15.

²⁰ Chlorinated Isocyanurates from China and Spain, Inv. Nos. 731-TA-1082 and 1083 (Final), USITC Pub. 3782 (June 2005) (“USITC Pub. 3782”) at 10-14.

²¹ Clearon and OxyChem requested that the Commission conduct expedited reviews, but also argued that the Commission should revisit the issue of whether non-integrated producers of chlorinated isos (e.g., tableters) should be included in the definition of the domestic industry and mistakenly contended that the definition of the domestic industry would be “most appropriately addressed through the collection of relevant information in the Commission’s questionnaires.” Clearon and OxyChem Response to Notice of Institution at 26. The Commission, however, issues such questionnaires only during a full five-year review.

investigations is in the range of *** percent to *** percent.²² Moreover, only a moderate degree of technical expertise is necessary to conduct tableting and repackaging operations, which does not compare with that required by the upstream process.²³ In addition, producers of granular chlorinated isos employed *** times as many personnel as tableters and tableters reported significant employment of personnel that were not directly involved in tableting production, but instead were involved in support or repackaging positions.²⁴ Based on the record, the Commission finds in these reviews that the tableters do not engage in sufficient production-related activity to qualify as domestic producers.^{25 26}

In the original investigations, the Commission considered whether appropriate circumstances existed to exclude any producer of the domestic like product from the domestic industry as a related party.²⁷ The domestic integrated producer BioLab imported a *** of subject merchandise during the period examined and, thus, was a related party.²⁸ The Commission concluded that BioLab's interests rested primarily in domestic production rather than importation and that it did not appear to have substantially benefitted from its *** of subject imports (e.g., *** percent in 2004).²⁹ Additionally, the Commission found that BioLab's financial performance was *** and, therefore, would not skew the domestic industry data set.³⁰ Therefore, the Commission determined that appropriate circumstances did not exist to exclude BioLab from the domestic industry as a related party. BioLab was not identified as a current U.S. importer of chlorinated isos³¹ and there is no new information on the record of these reviews regarding the related party issue as it pertains to BioLab. Absent information identifying BioLab as a related party, we do not treat it as such. Even if BioLab were a related party, the record does not contain evidence indicating that appropriate circumstances exist to exclude BioLab from the domestic industry.³²

²² Confidential Views at 17-18, 20.

²³ Confidential Views at 18, 20.

²⁴ Confidential Views at 20.

²⁵ Commissioner Aranoff notes that the issue was close in the original determination and that no new factual information is available in these expedited reviews. Given that the only two participating parties in these reviews opposed the inclusion of tableters in the domestic industry, Commissioner Aranoff excludes the tableters for purposes of these reviews. She would give full consideration to any new facts and arguments presented on this issue in any future proceeding.

²⁶ Commissioners Williamson and Pinkert find that tableters qualify as domestic producers. Their analysis is based on information from the original investigations, as no new information regarding tableters is on the record in these expedited reviews. They find that, although there is variability in the reported capital investment necessary for tableting, the capital investment necessary for tableting generally is significant. They find that the value added by tableting, which appears to be in the range of *** to *** percent, is significant. They find that a moderate level of technical expertise is required for tableting due to the heavy machinery and hazardous materials involved and that tableters employ a significant number of personnel in their tableting operations. Commissioners Williamson and Pinkert therefore conclude that tableters engage in sufficient production-related activity to be included in the domestic industry.

²⁷ USITC Pub. 3782 at 15.

²⁸ 19 U.S.C. §1677(4)(B).

²⁹ Confidential Views at 24.

³⁰ Confidential Views at 24.

³¹ Clearon and OxyChem Response to Notice of Institution at 20-21.

³² Because Commissioners Williamson and Pinkert found that tableters engage in sufficient production-related activity to qualify as domestic producers, they also consider whether appropriate circumstances exist to exclude tableters Alden Leeds, Aqua Tri, Cadillac, and N. Jonas from the domestic industry as related parties. These companies were identified as importers of subject merchandise by Clearon and OxyChem in these reviews. Clearon and OxyChem Response to Notice of Institution at 20-22. The Commission did not receive any new information

(continued...)

Accordingly, we define the domestic industry as all of the domestic integrated producers of chlorinated isos, namely Clearon, OxyChem, and BioLab, and do not include those companies that only tablet and repackage chlorinated isos in the domestic industry.

IV. CUMULATION

A. Original Investigations

In the original investigations, the Commission cumulated subject imports from China and Spain for purposes of its affirmative material injury determinations because the petitions were filed on the same day and because the Commission found a reasonable overlap of competition among subject imports from the various sources and between subject imports and the domestic like product.³³

B. Legal Standard

With respect to five-year reviews, section 752(a) of the Act provides as follows:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.³⁴

Cumulation therefore is discretionary in five-year reviews, unlike original investigations, which are governed by section 771(7)(G)(I) of the Act.³⁵ The Commission may exercise its discretion to cumulate, however, only if the reviews are initiated on the same day, the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market, and imports from each such subject country are not likely to have no discernible adverse impact on the

³² (...continued)

from the tableters in these reviews, and there is no new information on the record. Based on the very limited information on the record about the two importing companies (Alden Leeds and Cadillac), and considering their prior low levels of importation, they find no basis for excluding them from the domestic industry. With respect to the companies that did not ***, based on the very limited information on the record regarding whether these companies exercised control over the importers, they find no basis for excluding them from the domestic industry. Clearon and OxyChem also identified Haviland as a U.S. importer of subject merchandise. Clearon and OxyChem Response to Notice of Institution at 20-22; CR at I-26; PR at I-19. In the original investigations, Haviland did not submit a producer questionnaire, but it is unclear whether the company may have tableting facilities in the United States. See Orig. Investigations CR/PR at Table III-1, n.5. Because the Commission has no information regarding Haviland, Commissioners Williamson and Pinkert find no basis for excluding it from the domestic industry.

³³ USITC Pub. 3782 at 20.

³⁴ 19 U.S.C. § 1675a(a)(7).

³⁵ 19 U.S.C. § 1677(7)(G)(i); see also, e.g., Nucor Corp. v. United States, 601 F.3d 1291, 1293, App. No. 2009-1234, Slip Op. at 7-8 (Fed. Cir. Apr. 7, 2010) (Commission may reasonably consider likely differing conditions of competition in deciding whether to cumulate subject imports in five-year reviews); Allegheny Ludlum Corp. v. United States, 475 F. Supp. 2d 1370, 1378 (Ct. Int'l Trade 2006) (recognizing the wide latitude the Commission has in selecting the types of factors it considers relevant in deciding whether to exercise discretion to cumulate subject imports in five-year reviews); Nucor Corp. v. United States, 569 F. Supp. 2d 1328, 1337-38 (Ct. Int'l Trade 2008).

domestic industry in the event of revocation. Our focus in five-year reviews is not only on present conditions of competition, but also on likely conditions of competition in the reasonably foreseeable future.

The statutory threshold for cumulation is satisfied in these reviews, because the reviews were initiated on the same day: May 3, 2010.³⁶ We consider three issues in deciding whether to exercise our discretion to cumulate the subject imports: (1) whether imports from any of the subject countries are precluded from cumulation because they are likely to have no discernible adverse impact on the domestic industry; (2) whether there is a likelihood of a reasonable overlap of competition among imports of chlorinated isos from the subject countries and the domestic like product; and (3) other considerations, such as whether there are similarities and differences in the likely conditions of competition under which subject imports are likely to compete in the U.S. market.^{37 38} Clearon and OxyChem argue that the Commission should cumulate imports from China and Spain in these reviews.³⁹

C. No Likelihood of No Discernible Adverse Impact

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.⁴⁰ Neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.⁴¹ With respect to this provision, the Commission generally considers the likely volume of subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.

Based on the record, we do not find that subject imports from either China or Spain are likely to have no discernible adverse impact on the domestic industry in the event of revocation of the antidumping

³⁶ See 75 Fed. Reg. 23303 (May 3, 2010).

³⁷ Chairman Okun notes that while she considers the same issues discussed in this section in determining whether to exercise her discretion to cumulate the subject imports, her analytical framework begins with whether imports from the subject countries are likely to face similar conditions of competition. For those subject imports which are likely to compete under similar conditions of competition, she next proceeds to consider whether there is a likelihood of a reasonable overlap of competition whereby those imports are likely to compete with each other and with the domestic like product. Finally, if based on that analysis she intends to exercise her discretion to cumulate one or more subject countries, she analyzes whether she is precluded from cumulating such imports because the imports from one or more subject countries, assessed individually, are likely to have no discernible adverse impact on the domestic industry. See Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine, Invs. Nos. 731-TA-873 to 875, 877 to 880, and 882 (Review), USITC Pub. 3933 (Jul. 2007) (Separate and Dissenting Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Regarding Cumulation). Accord Nucor Corp. v. United States, 605 F. Supp.2d 1361, 1372 (Ct. Int’l Trade 2009); Nucor Corp. v. United States, 594 F. Supp.2d 1320, 1345-47 (Ct. Int’l Trade 2008), aff’d, Slip Op. 2009-1234 (Fed Cir. Apr. 7, 2010).

³⁸ As explained below, Commissioners Lane and Pinkert apply a different analytical framework in determining whether other considerations justify declining to exercise their discretion to cumulate the subject imports.

³⁹ Clearon and OxyChem Response to Notice of Institution at 5-7; Clearon and OxyChem Final Comments at 2-3. Clearon and OxyChem assert that the facts underlying the Commission’s decision in the original investigations remain the same such that the statutory requirements for cumulation are satisfied and therefore urge the Commission to exercise its discretion and determine that it is appropriate to cumulate subject imports from China and Spain in these reviews. Clearon and OxyChem Response to Notice of Institution at 7; Clearon and OxyChem Final Comments at 3.

⁴⁰ 19 U.S.C. § 1675a(a)(7).

⁴¹ SAA, H.R. Rep. No. 103-316, vol. I at 887 (1994).

duty orders. Our analysis for subject imports from each country takes into account the nature of the product and the behavior of subject imports in the original investigations. In the original investigations, the Commission found that subject imports and the domestic like product were fungible.⁴² The record in these reviews also indicates that imports of subject chlorinated isos from China and Spain into the U.S. market continued throughout the review period,⁴³ despite the existence of the antidumping duty orders.

China. In the original investigations, the Commission found (based on importer questionnaire responses) that the volume of subject imports of all chlorinated isos from China increased from *** short tons in 2002, to *** short tons in 2003 and *** short tons in 2004.⁴⁴ According to official U.S. import statistics, U.S. imports of chlorinated isos from China were 45 short tons in 2005, 6,713 short tons in 2006, 6,425 short tons in 2007, 5,373 short tons in 2008, and 10,797 short tons in 2009.⁴⁵ These imports' share of apparent U.S. consumption was *** percent in 2002, *** percent in 2003, and *** percent in 2004.⁴⁶ In 2009, their share was *** percent.⁴⁷ The record in the original investigations demonstrated that Chinese producers of granular chlorinated isos and tableted chlorinated isos produced and exported substantial volumes of granular and tableted chlorinated isos to the United States during the period examined.⁴⁸

⁴² USITC Pub. 3782 at 19-20.

⁴³ CR/PR at Table I-9.

⁴⁴ USITC Pub. 3782 at Table IV-2.

⁴⁵ CR/PR at Table I-9. Although quantity data from PIERS submitted by domestic interested parties indicates that the official U.S. import statistics for the single HTS statistical reporting number that is not a basket category (*i.e.*, the “clean” reporting number) may be understated, *see* CR at I-28; PR at I-20-I-21, our findings place primary emphasis on data reported in the official U.S. import statistics, as such data constitute a consistent statistical series. We are mindful in our analysis, however, that additional volumes of chlorinated isos may enter the United States under separate, mixed use statistical reporting numbers and might be reflected in reporting by PIERS.

⁴⁶ CR/PR at Table I-11; Orig. Investigations CR/PR at Table C-1 (revised).

⁴⁷ CR at I-34; PR at I-25; CR/PR at Table I-11. Because BioLab, which accounted for an estimated *** percent of total 2009 U.S. production, did not provide data in these reviews, this figure is overstated. CR at I-23 and I-34, PR at I-17 and I-26. We make our finding, however, based on the data that is available on the record.

⁴⁸ The Commission sent questionnaires to 22 known Chinese producers; it received questionnaire responses from Changzhou Clean Chemical Co., Ltd.; Hebei Jiheng Chemical Co., Ltd.; Nanning Chemical Industry Co., Ltd.; and Sinochem Hebei Import and Export Corp. Orig. Investigations CR at VII-1. For all granular chlorinated isos, total reported Chinese capacity was *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004; the reported capacity utilization rate was *** percent in 2002, *** percent in 2003, and *** percent in 2004. CR/PR at Table I-14; Orig. Investigations CR/PR at Table VII-1 (revised). For all Chinese tableted chlorinated isos, total reported capacity was *** short tons in 2002, 2003, and 2004; the reported capacity utilization rate was *** percent in 2002, *** percent in 2003, and *** percent in 2004. CR/PR at Table I-15; Orig. Investigations CR/PR at Table VII-2 (revised). Total reported production of all Chinese granular chlorinated isos was *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004. CR/PR at Table I-14; Orig. Investigations CR/PR at Table VII-1. Total reported production of all Chinese tableted chlorinated isos was *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004. CR/PR at Table I-15; Orig. Investigations CR/PR at Table VII-2 (revised). Reported exports of granulated chlorinated isos from China to the United States increased from *** short tons in 2002 to *** short tons in 2003 before decreasing somewhat to *** short tons in 2004. CR/PR at Table I-14. Reported exports of tableted chlorinated isos from China to the United States increased from *** short tons in 2002 to *** short tons in 2003 and *** short tons in 2004. CR/PR at Table I-15; Orig. Investigations CR/PR at Table VII-2.

The Commission found in the original investigations that price was an important factor in purchasing decisions.⁴⁹ Price comparisons showed a prevalence of underselling of the domestic product by subject imports from China.⁵⁰

Although the record in these expedited reviews contains very limited current information about the Chinese industry, that information does not indicate that subject imports from China would likely have no discernible adverse impact.⁵¹ Therefore, in light of the quantities of subject imports from China during the original investigations, the volume of subject imports from China during the period of review, the export orientation of the Chinese industry, the significant Chinese production capacity and excess capacity, the substitutability of subject imports and the domestic like product, the importance of price in purchasing decisions, and the underselling by subject imports from China during the original investigations, we do not find that subject imports from China would likely have no discernible adverse impact on the domestic industry if the orders were revoked.

Spain. In the original investigations, the volume of subject imports of all chlorinated isos from Spain increased overall during the period examined, increasing from *** short tons in 2002 to *** short tons in 2003, before declining to *** short tons in 2004.⁵² According to official U.S. import statistics, U.S. imports of chlorinated isos from Spain were 1,152 short tons in 2005, 2,050 short tons in 2006, 1,146 short tons in 2007, 4,627 short tons in 2008, and 2,149 short tons in 2009.⁵³ The share of apparent U.S. consumption accounted for by subject imports from Spain increased from *** percent in 2002 to *** percent in 2003, before decreasing to *** percent in 2004.⁵⁴ In 2009, U.S. imports from Spain held a *** percent share of apparent U.S. consumption.⁵⁵

In the original investigations, there were two known Spanish producers of chlorinated isos.⁵⁶ The Commission received a questionnaire response from the only company in Spain that exported to the United States, Aragonesas Delsa S.A. (“Aragonesas”).⁵⁷ Although the record in the original investigations demonstrated that Aragonesas was operating at a relatively *** level of capacity utilization during the period examined, the record also shows that it produced and exported significant volumes of granular chlorinated isos to the United States during this period.⁵⁸

⁴⁹ Orig. Investigations CR at II-13.

⁵⁰ Orig. Investigations CR at V-10 and Tables V-1 to V-7; USITC Pub. 3782 at 27. The Commission collected pricing data (sales price data and purchaser price data) on three granular products and three tableted products. Orig. Investigations CR at V-8 to V-9; USITC Pub. 3782 at 26.

⁵¹ Information from *** indicated that there are at least 22 producers of chlorinated isos in China. CR at I-41; PR at I-30.

⁵² Orig. Investigations CR/PR at Table IV-2.

⁵³ CR/PR at Table I-9. As noted above, we place primary emphasis on official U.S. import statistics.

⁵⁴ Orig. Investigations CR/PR at Table C-1.

⁵⁵ CR at I-34; PR at I-25-I-26; CR/PR at Table I-11. As noted above, because of the lack of data for BioLab, the 2009 market share is overstated. CR at I-23 and I-34; PR at I-17 and I-26.

⁵⁶ Orig. Investigations CR at VII-10.

⁵⁷ Orig. Investigations CR at VII-10.

⁵⁸ Aragonesas’ capacity for all granular chlorinated isos was *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004, and its capacity utilization rate was *** percent in 2002, *** percent in 2003, and *** percent in 2004. CR/PR at Table I-17; Orig. Investigations CR/PR at Table VII-3 (revised). Aragonesas has *** during the period examined. CR/PR at Table I-18, n.2; Orig. Investigations CR/PR at Table VII-4, n.2. Aragonesas’ production of all granular chlorinated isos was *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004. CR/PR at Table I-17; Orig. Investigations CR/PR at Table VII-3. Reported exports of granular chlorinated

(continued...)

In the original investigations, the Commission found that price was an important factor in purchasing decisions.⁵⁹ Price comparisons showed mostly underselling of domestic like product by subject imports from Spain.

Although the record in these expedited reviews contains very limited current information about the industry in Spain, it contains no information indicating that subject imports from Spain would likely have no discernible adverse impact.⁶⁰ Therefore, in light of the appreciable quantities of subject imports from Spain during the original investigations, the volume of subject imports from Spain during the period of review, the export orientation of the Spanish industry, the substitutability of subject imports and the domestic like product, the importance of price in purchasing decisions, and evidence of underselling by subject imports from Spain during the original investigations, we do not find that subject imports from Spain would likely have no discernible adverse impact on the domestic industry if the orders were revoked.

D. Likelihood of a Reasonable Overlap of Competition

The Commission generally has considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.⁶¹ Only a “reasonable overlap” of competition is required.⁶² In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists because the subject imports are absent from the U.S. market.⁶³ We observe that the record of these expedited reviews contains very little new information about either the subject industries or the characteristics of the subject imports that have been present in the U.S. market since the period examined in the original investigations. Consequently, most of the information available is from the original investigations.

⁵⁸ (...continued)

isos from Spain to the United States were *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004. CR/PR at Table I-17; Orig. Investigations CR/PR at Table VII-4. Reported exports of tableted chlorinated isos from Spain to the United States were *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004. CR/PR at Table I-17; Orig. Investigations CR/PR at Table VII-4.

⁵⁹ Orig. Investigations CR at II-13.

⁶⁰ Information from *** indicates that the two Spanish producers export *** of their production. CR at I-47; PR at I-32.

⁶¹ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are as follows: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁶² See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. See, e.g., Live Cattle From Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812 to 813 (Prelim.), USITC Pub. 3155 (Feb. 1999) at 15, aff’d sub nom, Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp. 2d 1353 (Ct. Int’l Trade 1999); Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Invs. Nos. 731-TA-761 to 762 (Final), USITC Pub. 3098 (Apr. 1998) at 13-15.

⁶³ See generally Cheflene Corp. v. United States, 219 F. Supp. 2d 1313, 1314 (Ct. Int’l Trade 2002).

*Fungibility.*⁶⁴ In the original investigations, the Commission found that a majority of producers, importers, and purchasers reported that chlorinated isos from the United States, China, and Spain were always or frequently interchangeable, although some importers and purchasers reported that subject imports from China were of a lower quality.⁶⁵

Geographic Overlap. In the original investigations, the Commission found that domestic integrated producers, several tableters, and several large importers reported that they sold their products to national markets.⁶⁶

Channels of Distribution. In the original investigations, the Commission found that, although there were some differences, the channels of distribution between subject imports from China, subject imports from Spain, and the domestic product overlapped.⁶⁷

Simultaneous Presence in Market. In the original investigations, the Commission found that subject imports from China and Spain and the domestic product were simultaneously present in the U.S. market throughout the period examined.⁶⁸

Conclusion. The record in these expedited reviews does not contain any new information concerning likely reasonable overlap of competition that would contradict the Commission's findings in the original investigations or that suggests that circumstances in the U.S. market have changed.⁶⁹ Therefore, we find that the determinations made by the Commission in the original investigations concerning fungibility, geographic overlap, channels of distribution, and simultaneous presence in the market are also applicable in these five-year reviews. Consequently, we find a likely reasonable overlap of competition among the domestic like product and imports from China and Spain, and between subject imports from China and Spain.

⁶⁴ Commissioner Lane notes that, with respect to fungibility, her analysis does not require such similarity of products that a perfectly symmetrical fungibility is required and that this factor would be better described as an analysis of whether subject imports from each country and the domestic like product could be substituted for each other. See Separate Views of Commissioner Charlotte R. Lane, Certain Lightweight Thermal Paper from China, Germany, and Korea, Inv. Nos. 701-TA-451 and 731-TA-1126-1128 (Prelim.), USITC Pub. 3964 (Nov. 2007) at 32-33.

⁶⁵ USITC Pub. 3782 at 19-20.

⁶⁶ USITC Pub. 3782 at 20.

⁶⁷ USITC Pub. 3782 at 20.

⁶⁸ USITC Pub. 3782 at 20.

⁶⁹ See, e.g., CR at I-27; PR at I-20.

E. Other Considerations⁷⁰

In determining whether to exercise our discretion to cumulate the subject imports, we assess whether the subject imports from each group of subject countries for which we have found there is a likely reasonable overlap of competition are likely to compete under similar or different conditions in the U.S. market in the event of revocation.⁷¹ The record in these expedited reviews contains very little current information about the industries in China and Spain. Based on the available information, however, we find that subject imports from both China and Spain remained in the U.S. market during the period of review even after the imposition of the orders, both China and Spain have significant capacity to produce chlorinated isos, and the chlorinated isos industries in both China and Spain are export-oriented. Therefore, we find that, although there are some distinctions, there are sufficient similarities in the volume, price, and capacity to produce subject merchandise in China and Spain such that we find no significant differences in likely conditions of competition among imports from these countries in the U.S. market.

Accordingly, we have decided to exercise our discretion to cumulate subject imports from China and Spain in these reviews.

V. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDERS ARE REVOKED⁷²

A. Legal Standards

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping or countervailing duty order unless (1) it makes a determination that dumping or subsidization is likely to continue or recur and (2) the Commission makes a determination that revocation of the antidumping or countervailing duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁷³ The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the

⁷⁰ Commissioners Lane and Pinkert explain their analysis of other considerations as follows. Where, in a five-year review, they do not find that the subject imports would be likely to have no discernible adverse impact on the domestic industry if the orders were revoked, and find that such imports would be likely to compete with each other and with the domestic like product in the U.S. market, they cumulate such imports unless there is a condition or propensity – not merely a trend – that is likely to persist for a reasonably foreseeable time and that significantly limits competition such that cumulation is not warranted. They note, as is pointed out in the text, the paucity of record information about the industries in China and Spain. Consequently, they find that there is no condition or propensity warranting non-cumulation with respect to subject imports from China and Spain, and they have cumulated them in these reviews.

⁷¹ See, e.g., Nucor Corp. v. United States, 601 F.3d 1291, 1293, App. No. 2009-1234, Slip Op. at 7-8 (Fed. Cir. Apr. 7, 2010) (Commission may reasonably consider likely differing conditions of competition in deciding whether to cumulate subject imports in five-year reviews); Allegheny Ludlum Corp., 475 F. Supp. 2d at 1378 (recognizing the wide latitude the Commission has in selecting the type of factors it considers relevant in deciding whether to exercise discretion to cumulate subject imports in five-year reviews); Nucor Corp., 569 F. Supp. 2d at 1337-38.

⁷² Commissioners Williamson and Pinkert note that, in contrast to the majority, they have included tableters in the domestic industry in addition to the integrated producers. However, few tableters provided usable financial and employment data in the original investigations, and none provided any data for these reviews. Thus, the data and trends for the two differently defined domestic industries do not vary to any significant degree. As the conclusions they draw from the record are therefore the same as the majority’s, Commissioners Williamson and Pinkert join the remainder of these views.

⁷³ 19 U.S.C. § 1675a(a).

reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”⁷⁴ Thus, the likelihood standard is prospective in nature.⁷⁵ The U.S. Court of International Trade has found that “likely,” as used in the five-year review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.^{76 77 78}

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”⁷⁹ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”⁸⁰

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”⁸¹ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C.

⁷⁴ SAA at 883-84. The SAA states that “{t}he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” Id. at 883.

⁷⁵ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁷⁶ See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), aff’d mem., 140 Fed. Appx. 268 (Fed. Cir. 2005); Nippon Steel Corp. v. United States, 26 CIT 1416, 1419 (2002) (same); Usinor Industeel, S.A. v. United States, 26 CIT 1402, 1404 nn.3, 6 (2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, 26 CIT 767, 794 (2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

⁷⁷ For a complete statement of Chairman Okun’s interpretation of the likely standard, see Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina, Brazil, Germany, and Italy, Invs. Nos. 701-TA-362 (Review) and 731-TA-707 to 710 (Review) (Remand), USITC Pub. 3754 (Feb. 2005).

⁷⁸ Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape From Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004), she does not concur with the U.S. Court of International Trade’s interpretation of “likely,” but she will apply the Court’s standard in these reviews and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.

⁷⁹ 19 U.S.C. § 1675a(a)(5).

⁸⁰ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” Id.

⁸¹ 19 U.S.C. § 1675a(a)(1).

§ 1675(a)(4).⁸² The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination.⁸³

No respondent interested parties participated in these expedited reviews. The record, therefore, contains limited new information based on published sources with respect to the chlorinated isos industries in China and Spain during the period of review and similarly limited information on the U.S. chlorinated isos market during the period of review. Accordingly, for our determinations, we rely as appropriate on the facts available from the original investigations and the limited new information on the record in these reviews.^{84 85}

B. Conditions of Competition and Business Cycle

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁸⁶ We find the following conditions of competition relevant to our determinations.

1. Demand

The Commission found in the original investigations that demand, as measured by the volume of apparent U.S. consumption, increased in every year of the period examined, from 125,166 short tons in 2002 to 127,912 short tons in 2003 and 148,251 short tons in 2004.⁸⁷ The Commission found that most of the demand for chlorinated isos was generated by pool sanitization and that demand for chlorinated isos

⁸² 19 U.S.C. § 1675a(a)(1). There have been no duty absorption findings on the subject merchandise covered by the orders. CR at I-5; PR at I-4.

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

⁸⁴ 19 U.S.C. § 1677e(a) authorizes the Commission to "use the facts otherwise available" in reaching a determination when (1) necessary information is not available on the record or (2) an interested party or other person withholds information requested by the agency, fails to provide such information in the time, form, or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The verification requirements in section 782(i) are applicable only to Commerce. 19 U.S.C. § 1677m(i). See *Titanium Metals Corp. v. United States*, 155 F. Supp. 2d 750, 765 (Ct. Int'l Trade 2001) ("[T]he ITC correctly responds that Congress has not required the Commission to conduct verification procedures for the evidence before it, or provided a minimum standard by which to measure the thoroughness of a Commission investigation.").

⁸⁵ Chairman Okun notes that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. See 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties' suggested interpretations of the record evidence. Regardless of the level of participation, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." SAA at 869.

⁸⁶ 19 U.S.C. § 1675a(a)(4).

⁸⁷ USITC Pub. 3782 at 21.

was seasonal, peaking in the spring and summer months.⁸⁸ The Commission noted that the U.S. market for chlorinated isos was the largest market in the world and that, while U.S. demand generally tracked overall economic activity, market participants reported that it was dependent on new home construction, installation of new pools, and weather conditions.⁸⁹

The quantity of apparent U.S. consumption in 2009 (***) short tons) was lower than at any time during the original investigations, but was higher in terms of value when compared to 2004.⁹⁰ Clearon and OxyChem report that there was slow growth in demand in the U.S. market due to the decline in the U.S. housing market and the weak economy, which resulted in slow growth in the number of new swimming pools.⁹¹

2. Supply

In the original investigations, the Commission found that the U.S. market was supplied by three large, integrated domestic producers, several tableters, distributors, importers, and a variety of retailers.⁹² The Commission noted that market participants often had dual roles and overlapping customers. The Commission also noted that the three large, integrated U.S. producers (Clearon, OxyChem, and BioLab) manufactured granular chlorinated isos and subsequently tableted the product or contracted to have it tableted. The Commission found that tableters tableted and packaged granular chlorinated isos and sold them to distributors and retailers, and that tableters sold to large and small specialty retail stores, as well as mass merchandisers.⁹³ It also found that the domestic integrated producers had some of the same distributor, retail, and mass market customers as the tableters, thereby competing downstream with companies that they supplied with granular product.⁹⁴ The Commission noted that several tableters relied primarily on subject merchandise for their raw materials, although some of them also bought nonsubject imports or domestically-produced chlorinated isos.⁹⁵

The Commission found that changes in the application of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) to chlorinated isos were another important condition of competition that affected the supply of chlorinated isos in the U.S. market.⁹⁶ Specifically, the Commission noted that FIFRA required in-depth studies to determine the environmental safety of the product and that any firm that wished to obtain a license to sell chlorinated isos in the United States had to file an application with the Environmental Protection Agency (“EPA”). Because performing these studies individually was time-consuming and costly, individual producers were permitted to rely on studies that had been done in 1986 by an Ad Hoc Committee comprised of the three domestic integrated producers, several nonsubject suppliers of chlorinated isos to the U.S. market, and Spanish producer Aragonesas. The Ad Hoc Committee charged a \$400,000 fee to non-member applicants for the use of the studies. In 2001, the fifteen-year time period during which the Ad Hoc Committee could charge this fee expired; thus, starting in 2001, importers of subject imports could use the research to obtain U.S. licenses without paying the

⁸⁸ USITC Pub. 3782 at 22.

⁸⁹ USITC Pub. 3782 at 22.

⁹⁰ CR at I-34; PR at I-26; CR/PR at Table I-11. We note that with the inclusion of estimated data for BioLab, as well as imports identified by PIERS, the level of apparent U.S. consumption, specifically *** short tons in 2009, still was lower than any year in the original investigations. CR at I-34; PR at I-26.

⁹¹ Clearon and OxyChem Response to Notice of Institution at 25.

⁹² USITC Pub. 3782 at 22.

⁹³ USITC Pub. 3782 at 23.

⁹⁴ USITC Pub. 3782 at 22-23.

⁹⁵ USITC Pub. 3782 at 23.

⁹⁶ USITC Pub. 3782 at 23.

fee.⁹⁷ The changes made it significantly less costly for U.S. importers to obtain the required EPA registration and easier for importers to sell subject imports of chlorinated isos in the United States.⁹⁸

Clearon and OxyChem assert that, since the original investigations, there has been an increase in import supply from China and nonsubject countries such as Japan and Vietnam.⁹⁹ Other information in the record confirms that there have been increasing imports of chlorinated isocyanurates from Japan and Vietnam, particularly in 2008 and 2009.¹⁰⁰

3. Other Conditions

In the original investigations, the Commission noted that a majority of producers, importers, and purchasers reported that chlorinated isos from the United States, China, and Spain were always or frequently interchangeable and that the majority of purchasers reported that the quality of the domestic like product and the subject imports were comparable with respect to meeting minimum quality standards.¹⁰¹ The Commission also noted that purchasers reported that price is second only by a small margin to quality as a factor in purchasing chlorinated isos and that prices often are affected by current market conditions, even if the chlorinated isos are sold by contract.¹⁰²

Nothing on the record of these expedited reviews indicates that the Commission should reconsider its finding regarding substitutability or that the importance of price in purchasing decisions has declined since the time of the original investigations.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the antidumping duty orders under review were revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹⁰³ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.¹⁰⁴

In the original investigations, the Commission found that cumulated subject imports increased from *** short tons in 2002 to *** short tons in 2003 and *** short tons in 2004.¹⁰⁵ The Commission found that the increase in the absolute volume of subject imports over the period examined was

⁹⁷ USITC Pub. 3782 at 23-24.

⁹⁸ USITC Pub. 3782 at 23-24.

⁹⁹ Clearon and OxyChem Response to Notice of Institution at 25.

¹⁰⁰ CR/PR at Table I-9.

¹⁰¹ USITC Pub. 3782 at 24. The Commission noted, however, that several purchasers and importers reported that the domestic product was superior to subject imports from China in exceeding industry quality standards. USITC Pub. 3782 at 24.

¹⁰² USITC Pub. 3782 at 24.

¹⁰³ 19 U.S.C. § 1675a(a)(2).

¹⁰⁴ 19 U.S.C. § 1675a(a)(2)(A)-(D).

¹⁰⁵ Confidential Views at 36.

significant, noting that nonsubject import volume increased by only approximately *** short tons overall.¹⁰⁶

The Commission found that the increase in the volume of subject imports relative to consumption was significant, noting that subject import market share increased dramatically between 2002 and 2004, with the largest increase occurring in 2003. U.S. shipments of cumulated subject imports from China and Spain accounted for *** percent of apparent U.S. consumption in 2002, *** percent in 2003, and *** percent in 2004.¹⁰⁷ The domestic industry's share of apparent U.S. consumption fell from *** percent in 2002 to *** percent in 2003 and fell further in 2004 to *** percent.¹⁰⁸ The Commission noted that the share of the U.S. market supplied by domestic producers declined steadily and significantly by *** percentage points from 2002 to 2004, while the share supplied by subject imports increased by *** percentage points and the share held by nonsubject imports increased by *** percentage points.¹⁰⁹ The Commission also found that the increase in subject import volume was significant relative to production, with the ratio of subject imports to domestic production increasing from *** percent in 2002 to *** percent in 2003 and *** percent in 2004.¹¹⁰

The Commission found that the significant increase in subject import volume prevented the domestic industry from benefitting from the large increase in apparent U.S. consumption over the period examined, particularly in 2004 when apparent U.S. consumption increased by 15.9 percent, but the domestic industry increased production only by 2.3 percent.¹¹¹

The Commission concluded that the volume of subject imports thus increased substantially over the period examined, both in absolute terms and relative to consumption and production in the United States, and subject imports prevented U.S. producers from benefitting from increases in demand measured by apparent U.S. consumption. Accordingly, the Commission found the volume of subject imports, and the increase in that volume, to be significant.

No respondent interested parties participated in these expedited reviews. The record, therefore, contains no new information with respect to capacity and production of chlorinated isos in China and Spain during the period of review. Data received in the original investigations demonstrate that the combined industries in China and Spain have the capacity to produce and did produce significant volumes of chlorinated isos.¹¹² There is no evidence that the sizes of the foreign industries have declined since the original investigations.

¹⁰⁶ Confidential Views at 37.

¹⁰⁷ CR/PR at Table I-11.

¹⁰⁸ CR/PR at Table I-11.

¹⁰⁹ Confidential Views at 35. U.S. producers' trade data in the original investigations consisted of data on granular chlorinated isos provided by Clearon, OxyChem, and BioLab. See Orig. Investigations CR/PR at Table C-1 (revised).

¹¹⁰ Confidential Views at 37.

¹¹¹ Confidential Views at 37-38.

¹¹² For granular chlorinated isos, the combined capacity of China and Spain was *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004; combined production was *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004; and the combined capacity utilization rate was *** percent in 2002, *** percent in 2003, and *** percent in 2004. Orig. Investigations CR/PR at Table VII-5 (revised). For tableted chlorinated isos, the combined capacity of China and Spain was *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004; combined production was *** short tons in 2002, *** short tons in 2003, and *** short tons in 2004; and the combined capacity utilization rate was *** percent in 2002, *** percent in 2003, and *** percent in 2004. Orig. Investigations CR/PR at Table VII-6 (revised). As noted above, the data for China were from only four producers (out of a likely total of 22 or more) and data from Spain were from Aragonesas, one of two producers. Aragonesas has *** during the period examined. CR/PR at Table I-18, n.2; Orig. Investigations CR/PR at Table VII-4, n.2.

As noted above, the record in the original investigations also demonstrated that subject producers in China and Spain were export-oriented and exported large volumes of chlorinated isos to the United States.¹¹³

The record in these reviews also indicates that cumulated subject imports were present in the U.S. market throughout the review period, and increased overall from 2005 to 2009 despite the discipline of the orders.¹¹⁴ According to official U.S. import statistics, cumulated subject imports increased overall from 1,197 short tons in 2005 to 12,947 short tons in 2009.¹¹⁵ Moreover, as noted above, the market share of U.S. shipments of imports from China and Spain was *** percent in 2009, a level that is *** the market share of cumulated subject imports from China and Spain in 2004 (*** percent).¹¹⁶ Thus, subject imports were substantial and increasing both before the imposition of the orders and in recent years, supporting the conclusion that the volume of subject imports will increase in the imminent future if the orders were revoked.¹¹⁷

Based on the evidence from the original investigations regarding volume and market share of subject imports, substantial production capacity in China and Spain, the export orientation of the industries in China and Spain, as well as the continued presence and recent increase in the volume of imports from China and Spain in the U.S. market after imposition of the orders, we find that subject producers have the ability and the incentive to increase their exports to the United States significantly if the orders were revoked. Therefore, we find that the likely volume of subject imports, both in absolute terms and relative to production and consumption in the United States, would likely be significant within the reasonably foreseeable future if the order were revoked.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty orders under review were revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.¹¹⁸

In the original investigations, the Commission began its analysis of pricing by noting that subject imports and the domestic like product generally were highly interchangeable, price was a very important factor in purchasing decisions, and prices for chlorinated isos responded quickly to changes in market

¹¹³ Exports to the United States of granular chlorinated isos on a cumulated basis from China and Spain were *** percent of total shipments in 2002, *** percent in 2003, and *** percent in 2004. Orig. Investigations CR/PR at Table VII-5 (revised).

¹¹⁴ CR/PR at Table I-9.

¹¹⁵ CR/PR at Table I-9. See also CR at I-28; PR at I-20-I-21, showing a substantial increase in imports according to PIERS.

¹¹⁶ CR/PR at Table I-11. See also CR at I-34-I-35; PR at I-25-I-26 (data based on maximum volumes indicate a similar subject import market share of *** percent). In 2009, the domestic integrated producers' share of apparent U.S. consumption was *** percent. CR/PR at Table I-11.

¹¹⁷ We also note that Spanish producers appear to face significant competition from Chinese producers in Spain's traditional export markets in Europe. See Clearon and OxyChem Response to Notice of Institution at 12; Clearon and OxyChem Final Comments at 5-6. ***.

¹¹⁸ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

conditions.¹¹⁹ The Commission found that, in the aggregate, pricing data showed underselling in 77.7 percent of the available comparisons.¹²⁰ The Commission also noted that confirmed lost sales and lost revenues allegations, as well as purchaser questionnaire responses, indicated that subject imports from China were lower-priced than the domestic like product.¹²¹ The Commission concluded that the underselling by subject imports was significant, particularly in light of the large influx of subject import volumes beginning in 2003 and the high degree of interchangeability between subject imports and the domestic like product.¹²²

The Commission, relying on declining reported weighted-average sales prices and purchaser prices, also found that the increasing volume of subject imports at prices that consistently undersold the domestic like product depressed domestic prices to a significant degree.¹²³ Moreover, the Commission also found evidence that subject imports suppressed domestic prices over the period examined to a significant degree.¹²⁴ The Commission found that the domestic industry experienced a cost/price squeeze as downward pressure on prices exerted by increasing volumes of lower-priced subject imports prevented domestic producers from raising prices as demand and raw material costs increased.¹²⁵

There is no new product-specific pricing information on the record of these expedited reviews. As explained above, Chinese and Spanish producers likely would increase their exports to the United States significantly in the reasonably foreseeable future if the orders were revoked. Moreover, the Commission found in the original investigations that price was an important consideration in purchasing decisions, and there is no evidence on the record indicating that price will not continue to be an important factor for purchasers. Consequently, we find that subject imports would be likely to undersell the domestic like product in order to gain market share as they successfully did during the period examined in the original investigations. Therefore, we conclude that, if the orders were revoked, subject imports from China and Spain likely would increase at prices that would significantly undersell the domestic like product, and that those imports are likely to enter the United States at prices that would have a depressing and/or suppressing effect on prices for the domestic like product.

¹¹⁹ USITC Pub. 3782 at 26.

¹²⁰ USITC Pub. 3782 at 27.

¹²¹ USITC Pub. 3782 at 28.

¹²² USITC Pub. 3782 at 31. In the original investigations, the Commissioners that excluded tableters from the domestic industry analyzed the underselling data of the domestic like product produced by the domestic integrated producers and found that the data were not materially different from the underselling data that included the data provided by tableters. USITC Pub. 3782 at 27, n.221.

¹²³ USITC Pub. 3782 at 28-29.

¹²⁴ USITC Pub. 3782 at 29.

¹²⁵ USITC Pub. 3782 at 30.

E. Likely Impact of Subject Imports¹²⁶

In evaluating the likely impact of imports of subject merchandise if the antidumping duty orders under review were revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including, but not limited to the following: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.¹²⁷ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.¹²⁸ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the orders at issue and whether the industry is vulnerable to material injury if the orders were revoked.

In the original investigations, the Commission found that, despite a substantial increase in demand during the period examined, the domestic industry's production was relatively level, the domestic industry's capacity increased slightly, and the domestic industry's capacity utilization rate fell slightly.¹²⁹ Specifically, during the original investigations, the U.S. integrated producers' capacity utilization rate was 81.2 percent in 2002, 78.5 percent in 2003, and 79.9 percent in 2004.¹³⁰

The Commission found that the domestic industry's share of the U.S. market fell steadily from 2002 to 2004 and that most of the loss was to subject imports.¹³¹ The domestic industry's end-of-period-inventories increased from 2002 to 2003, before falling below 2002 levels in 2004.¹³²

¹²⁶ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885; see also 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Tariff Act states that "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

In its expedited sunset reviews of the antidumping duty orders, Commerce concluded that revocation of the antidumping duty orders on chlorinated isos from China and Spain would likely lead to continuation or recurrence of dumping at margins determined in its original determinations. With respect to the antidumping duty order on subject imports from China, Commerce found likely margins of 75.78 percent for Jiheng, 285.63 percent for Nanning, 137.69 percent for the section A respondents, and 285.63 percent for all companies that did not receive a "firm-specific" rate. CR/PR at Table I-1. With respect to the antidumping duty order on subject imports from Spain, Commerce found a dumping margin of 24.83 percent for Aragonesas and a country-wide rate of 24.83 percent for all firms that did not receive a "firm-specific" rate. CR/PR at Table I-2

¹²⁷ 19 U.S.C. § 1675a(a)(4).

¹²⁸ 19 U.S.C. § 1675a(a)(4).

¹²⁹ USITC Pub. 3782 at 32.

¹³⁰ USITC Pub. 3782 at 32, n.253.

¹³¹ USITC Pub. 3782 at 32.

¹³² USITC Pub. 3782 at 32.

The Commission found that most of the domestic industry's employment indicators deteriorated, citing to the decrease in the average number of production-related workers and the hours worked.¹³³ The Commission noted that hourly wages increased irregularly over the period examined, while productivity per short ton increased and unit labor costs decreased.¹³⁴

The Commission found that the domestic industry lost revenue as its prices and sales values declined, even though production and shipments measured in quantity were relatively stable and demand increased.¹³⁵ Although the quantity of net sales increased by *** percent from 2002 to 2004, the value of net sales declined by *** percent.¹³⁶ Domestic producer shipments increased by quantity, but fell by value as costs increased and unit raw materials costs and total unit cost of goods sold ("COGS") rose.¹³⁷ Thus, the Commission found that the domestic industry experienced a cost/price squeeze during the period examined, with the COGS to net sales ratio increasing from *** percent to *** percent, and prices for the domestic like product declining.¹³⁸

As a result of the trends in costs and prices, the Commission found that the domestic industry's financial indicators eroded substantially between 2002 and 2004.¹³⁹ Specifically, gross profit declined by *** percent, operating income fell from a positive operating income in 2002 to a negative operating income in 2004, and the operating margin fell from *** percent in 2002 to *** percent in 2003, before deteriorating to a negative operating margin of *** percent in 2004.¹⁴⁰ The Commission noted that the deterioration in the domestic industry's financial performance in 2004 occurred at the same time as apparent U.S. consumption rose by 15.9 percent.¹⁴¹ The Commission also found that the domestic industry's capital expenditures and research and development expenses declined.¹⁴² The Commission attributed the deterioration in the condition of the domestic industry to significant increases in subject import volume that took market share from the domestic industry and forced the domestic industry to cut prices despite increasing costs.¹⁴³

Based on the significant increases in the volume and market penetration of subject imports, the significant adverse price effects caused by the subject imports, and the causal link between the subject imports and the domestic industry's declines in market share, employment, and operating performance, the Commission concluded that subject imports had a significant adverse impact on the domestic chlorinated isos industry.¹⁴⁴

The limited and mixed evidence in these expedited reviews does not permit us to determine whether the domestic industry is vulnerable to the continuation or recurrence of material injury if the orders were revoked. The limited information collected with respect to indicators of the domestic industry's condition are only for 2009 and includes data from only two of the three domestic integrated

¹³³ USITC Pub. 3782 at 33.

¹³⁴ USITC Pub. 3782 at 33.

¹³⁵ USITC Pub. 3782 at 33.

¹³⁶ Confidential Views at 49, n.266.

¹³⁷ USITC Pub. 3782 at 33.

¹³⁸ Confidential Views at 50, n.270.

¹³⁹ USITC Pub. 3782 at 34.

¹⁴⁰ Confidential Views at 50, n.276.

¹⁴¹ USITC Pub. 3782 at 34.

¹⁴² USITC Pub. 3782 at 34.

¹⁴³ USITC Pub. 3782 at 34.

¹⁴⁴ USITC Pub. 3782 at 35.

producers, Clearon and OxyChem.¹⁴⁵ ¹⁴⁶ The producers' reported combined capacity was *** short tons, production was *** short tons, and the capacity utilization rate was *** percent which was *** than at any point during the original investigations.¹⁴⁷ Reported U.S. shipments were *** short tons with a value of \$*** and a unit value of \$***.¹⁴⁸ Reported net sales were \$*** and the reported cost of goods sold was \$***.¹⁴⁹ Reported gross profit was \$*** and SG&A expenses were \$***.¹⁵⁰ The reported operating income was \$*** and the ratio of operating *** to net sales was *** percent.¹⁵¹ While many indicators (*i.e.*, ***) were lower in 2009 than in 2004, other indicators, such as ***, were higher. The value of such comparisons, however, is limited by the fact that the data for 2004 includes data for the third major integrated domestic producer, BioLab, while the data for 2009 includes data only for Clearon and OxyChem. Generally, however, even when BioLab's estimated production is taken into consideration, volume indicators were lower in 2009 than in 2002 to 2004, while, as noted, unit values and operating income were higher.¹⁵²

Based on the information available in these reviews, including information from the record of the original investigations, we find that revocation of the orders likely would lead to a significant increase in the volume of subject imports. In addition, subject imports likely would significantly undersell the domestic like product, resulting in significant depression and/or suppression of U.S. prices for the domestic like product. We find that the intensified subject import competition that would likely occur after revocation of the orders would likely have a significant adverse impact on the domestic industry. Specifically, the domestic industry would likely lose market share to low-priced subject imports and would likely obtain lower prices due to competition from subject imports, which would adversely affect its production, shipments, sales, and revenue. These reductions would likely have an adverse impact on the domestic industry.

Accordingly, we conclude that, if the orders on chlorinated isos from China and Spain were revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the above reasons, we determine that revocation of the antidumping duty orders on chlorinated isos from China and Spain would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

¹⁴⁵ Clearon and OxyChem are believed to account for *** percent of chlorinated isos production in 2009. CR/PR at Table I-8, n.1. The parent company of the third domestic integrated producer, BioLab, which did not provide data in these reviews, announced that it had filed bankruptcy proceedings in March 2010. CR at I-21-I-22; PR at I-16.

¹⁴⁶ Commissioners Williamson and Pinkert note that no tableters responded to the Commission's notice of institution and the Commission did not receive any new information about tableters' operations or performance indicators for 2009.

¹⁴⁷ CR/PR at Table I-8.

¹⁴⁸ CR/PR at Table I-8.

¹⁴⁹ CR/PR at Table I-8.

¹⁵⁰ CR/PR at Table I-8.

¹⁵¹ CR/PR at Table I-8.

¹⁵² CR at I-25; PR at I-19.

SEPARATE AND DISSENTING VIEWS OF COMMISSIONER DANIEL R. PEARSON

I. INTRODUCTION

Section 751(d)(2) of the Tariff Act of 1930, as amended (“the Act”), requires that the U.S. Department of Commerce (“Commerce”) revoke a countervailing duty or an antidumping duty order or terminate a suspended investigation in a five-year review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the U.S. International Trade Commission (“Commission”) determines that material injury to a U.S. industry would be likely to continue or recur within a reasonably foreseeable time.¹ Based on the record in these five-year reviews, I determine that material injury is likely to continue or recur within a reasonably foreseeable time if the antidumping duty order on subject imports of chlorinated isocyanurates (“chlorinated isos”) from China is revoked. I also determine, however, that material injury is not likely to continue or recur within a reasonably foreseeable time if the antidumping duty order on subject imports of chlorinated isos from Spain is revoked.

I join my colleagues’ discussion regarding domestic like product and domestic industry, and the relevant conditions of competition in the U.S. market. I write separately to discuss the legal standard governing five-year reviews, my approach to cumulation in these reviews, and my analysis of the statutory factors.

II. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ORDERS ARE REVOKED

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order or terminate a suspended investigation unless: (1) it makes a determination that dumping or a countervailable subsidy is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order or termination of a suspended investigation would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.² The Statement of Administrative Action states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”³ Thus, the likelihood standard is prospective in nature.⁴ The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a

¹ 19 U.S.C. § 1675(d)(2).

² 19 U.S.C. § 1675a(a).

³ Statement of Administrative Action, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994) (“SAA”). The SAA states that “{t}he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

⁴ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued {sic} prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

longer period of time.”⁵ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis in antidumping and countervailing duty investigations.”⁶

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

B. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry if the orders are revoked, the statute directs the Commission to evaluate all the relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁹ In performing my analysis under the statute, I have taken into account the conditions of competition in the U.S. market for chlorinated isos noted by the Commission majority.

C. Cumulation

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.¹⁰

⁵ 19 U.S.C. § 1675a(a)(5).

⁶ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

⁷ 19 U.S.C. § 1675a(a)(1).

⁸ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886. I note that no duty absorption findings have been made by Commerce. Confidential Staff Report (INV-HH-087, Sept. 2, 2010, (hereinafter “CR”)) at I-5, Public Staff Report (hereinafter “PR”) at I-4.

⁹ 19 U.S.C. § 1675a(a)(4).

¹⁰ 19 U.S.C. § 1675a(a)(7).

Thus, cumulation is discretionary in five-year reviews. The Commission, however, may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.¹¹ I note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) SAA provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.¹² With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.

In these reviews, the statutory requirement for cumulation that all reviews be initiated on the same day is satisfied as Commerce initiated all the subject reviews on May 3, 2010. The Commission generally has considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.¹³ Only a “reasonable overlap” of competition is required.¹⁴ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, I have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are terminated. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.¹⁵

In deciding whether to exercise my discretion to cumulate in five-year reviews, my analysis consists of three steps. First, I examine whether imports from the subject countries are likely to face similar conditions of competition. Next, for those subject imports that are likely to compete under similar conditions of competition, I proceed to consider whether there is a likelihood of a reasonable overlap of competition whereby those imports are likely to compete with each other and with the domestic like product. Finally, if based on that analysis I intend to exercise my discretion to cumulate one or more subject countries, I analyze whether I am precluded from cumulating such imports because the imports from one or more subject countries, assessed individually, are likely to have no discernible adverse impact on the domestic industry.¹⁶

¹¹ 19 U.S.C. § 1675a(a)(7).

¹² SAA, H.R. Rep. No. 103-316, vol. I (1994).

¹³ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. *See, e.g., Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898 (CIT), *aff’d* 859 F.2d 915 (Fed. Cir. 1988).

¹⁴ *See Mukand Ltd. v. United States*, 937 F. Supp. 910, 916 (CIT 1996); *Wieland Werke, AG*, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); *United States Steel Group v. United States*, 873 F. Supp. 673, 685 (CIT 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

¹⁵ *See, e.g., Torrington Co. v. United States*, 790 F. Supp. at 1172 (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); *Metallwerken Nederland B.V. v. United States*, 728 F. Supp. 730, 741-42 (CIT 1989); *Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1068, 1072 (CIT 1988).

¹⁶ *See Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine*, Invs. Nos. 731-TA-873 to 875, 877 to 880, and 882 (Review), USITC Pub. 3933 (Jul. 2007) (Separate and (continued...))

In these reviews, my analysis concludes with the first step. Significant differences in the likely conditions of competition with respect to the subject imports from Spain versus subject imports from China lead me to decline to cumulate subject imports from both countries. Because I decline to cumulate subject imports from China and Spain on the basis of differences in likely conditions of competition, I find it unnecessary to evaluate the likelihood of reasonable overlap of competition and of no discernible adverse impact with respect to subject imports from China and Spain.¹⁷

My conclusion concerning differing likely conditions of competition is based on information from the original investigations; in particular, significant evidence of differing volume and price trends of the subject imports. With regard to volume trends, at the beginning of the original period examined (calendar years 2002 through 2004), total U.S. imports from China and from Spain were approximately the same volume. Yet, during the period examined, imports from China increased extremely rapidly, while imports from Spain also increased overall, but at a much more measured pace. By the end of the period, imports from China were several times those from Spain.¹⁸ Similar trends are seen with regard to market share. Chinese producers substantially increased their market share over the original period examined, whereas the market share of Spanish producers barely budged, and actually declined between 2003 and 2004.¹⁹ I also find it significant that, since the imposition of the orders, imports from China declined sharply at first, then rebounded, but never regained their peak 2004 level. By contrast, since imposition of the orders, imports from Spain have fluctuated without any clear trend at levels generally lower than those during the original period examined.²⁰ In general, U.S. imports of chlorinated isos from Spain have been far less volatile than those from China. Indeed, the Chinese producers, in contrast to those in Spain, have clearly demonstrated the ability to surge into the U.S. market.

With regard to price trends, during the original investigations Chinese product undersold U.S. product in 28 of 32 quarters (based on sales price comparisons), and Chinese prices declined.²¹ In contrast, imports from Spain oversold in 5 out of 7 quarters where sales prices were compared. In addition, there were no confirmed lost sales or lost revenue allegations for Spain, whereas there were a significant number of confirmed allegations for China.²² Finally, average unit values (AUVs) for chlorinated isos from Spain were higher than those for China in every period examined in the original investigations.²³ This pattern continued after imposition of the orders, and the unit values of imports from

¹⁶ (...continued)

Dissenting Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Regarding Cumulation). Accord Nucor Corp. v. United States, Slip Op. 09-16 at 23-25 (Ct. Int'l Trade Mar. 9, 2009); Nucor Corp. v. United States, Slip Op. 08-141 at 39-43 (Ct. Int'l Trade Dec. 23, 2008).

¹⁷ Cf. Top-of-the-Stove Stainless Steel Cooking Ware from Korea, Inv. Nos. 701-TA-267 and 731-TA-304 (Review)(Remand), USITC Pub. 3485 (Jan. 2002) at 5 (declining to address criterion of no discernible adverse impact in the absence of evidence of a reasonable overlap of competition).

¹⁸ CR at I-29, PR at I-21, table I-9. Between 2002 and 2004, imports from China increased from *** short tons to *** short tons, for an overall increase of *** short tons, whereas imports from Spain first increased from *** short tons in 2002 to *** short tons in 2003, before declining to *** short tons in 2004, for an overall increase of *** short tons.

¹⁹ CR/PR at table I-11. The market share of Chinese imports increased from *** percent in 2002 to *** percent in 2004. In contrast, the market share of imports from Spain first increased from *** percent in 2002 to *** percent in 2003 before declining to *** percent in 2004, for an overall increase of just *** percentage points.

²⁰ CR/PR at table I-9. Imports from China were only 45 short tons in 2005 (the year the order was imposed), then rebounded to 6,713 short tons in 2006, declined slightly to 5,373 short tons by 2008, then rose sharply to 10,797 short tons in 2009. Imports from Spain declined to 1,152 short tons in 2005, then increased irregularly to 2,149 short tons in 2009, peaking at 4,627 short tons in 2008.

²¹ Original confidential staff report (“OCR”) at V-10, V-13-V-20, tables V-1-V-7.

²² OCR at tables V-19 and V-20.

²³ CR/PR at table I-9.

Spain exceeded those for nonsubject imports as well as imports from China in all post-order years except for 2007.²⁴

A third factor leading me to conclude that subject imports will likely compete under different conditions of competition if the orders are revoked is that exports from Spain to the United States have been and continue to be largely granular forms of chlorinated isos, whereas a substantial share of exports from China to the United States consist of chlorinated isos in tablet form. For example, in 2003 and 2004, the majority of such imports from China consisted of tablets, in contrast to Spain, where tablet exports were minimal.²⁵

Thus I find, with regard to subject imports, that the current and past conditions of competition are sufficiently different between the two countries to override the fact that the products from each source may be essentially fungible. In other words, the fact that the trends in volume between the two countries were different during the original investigations suggests that, in the event of revocation, the volume of imports from the two countries would respond differently and would have differing impacts on the domestic industry. In addition, exporters in the subject countries also seem to sell at different price levels, further limiting potential competition upon revocation. Accordingly, in light of these factors, I do not exercise my discretion to cumulate subject imports from China with subject imports from Spain.

D. Revocation of the Antidumping Order on Imports from China Is Likely to Lead to a Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

1. Likely Volume of Subject Imports

In the original investigations, the Commission cumulated imports from China and Spain. In these reviews, I do not exercise my discretion, under 19 U.S.C. §1675a(a)(7), to cumulate imports from Spain with imports from China, based on significant differences in the conditions of competition with respect to the subject imports from both countries, owing to likely differing volume and price trends upon revocation. As a result, in analyzing the likely volume of imports from China I have taken into account the Commission's previous volume findings, recognizing the difference represented by imports from Spain.

In the original investigations, the Commission found that the volume and market share of subject imports from China and Spain increased significantly over the period examined.²⁶ The Commission did not comment specifically on the trend in volume for China. The record of these reviews indicates, however, that the volume of subject imports from China sharply increased from *** short tons in 2002 to *** short tons in 2004.²⁷

In these five-year reviews, because the Commission did not receive a response from any Chinese producer, we have very little record information regarding the factors we must examine under 19 U.S.C. 1675a(a)(2) in determining whether increases in the volume of subject imports are likely in the event of revocation of the order. Hence, based on my authority under 19 U.S.C. 1677e(a), I rely primarily on information provided by domestic interested parties. The record indicates that, after imposition of the order, import volumes from China first declined markedly, but in 2006 began to increase overall until

²⁴ *Id.*

²⁵ CR/PR at tables I-14, I-15, I-17, & I-18. In 2004, Chinese producers exported *** short tons of tableted chlorinated isos, and *** short tons of the granular form. By contrast, in 2004 the Spanish producer Aragonesas Delsa S.A. exported *** short tons of granular chlorinated isos, and only *** short tons of tableted chlorinated isos.

²⁶ Chlorinated Isoocyanurates from China and Spain, USITC Pub. 3782 (Jun. 2005) at 25 (Views of the Commission).

²⁷ CR/PR at table I-9.

reaching, by 2009, a level equivalent to the *** of the trend during the original investigation.²⁸ Domestic interested parties emphasize this trend, and argue that the Chinese industry exports almost its entire production of chlorinated isos, as there is no significant domestic market. They also allege that Chinese producers have continued to add new production capacity since the imposition of the orders, and that existing unused capacity for chlorinated isos production in China is somewhere between *** and *** metric tons.²⁹

In these reviews, there is no information on the record concerning current Chinese capacity to produce chlorinated isos, capacity utilization of facilities producing the subject product, or inventories. Under these circumstances, the Commission must look to patterns in these data during the original investigations. During the original period examined, Chinese producers did not increase their capacity unduly, but there was significant excess capacity of both the granular and tableted forms.³⁰ Inventories held in China were not particularly impressive, but there was a rapid run-up in inventories held by U.S. importers.³¹ No information is available on the potential for product-shifting, although the Chinese industry does face barriers to its chlorinated isos exports in the European Union.³² In addition, I find it significant that imports from China have rapidly increased in recent years.³³

In sum, based on the demonstrated ability of Chinese producers to increase rapidly imports into the U.S. market, their continued presence in the market, the existence of excess capacity at the close of the original period examined, and the past propensity of U.S. importers to increase markedly their inventories of Chinese product, I conclude that it is likely that, in the event the order on chlorinated isos from China is revoked, the likely volume of subject imports from China would be significant.

2. Likely Price Effects of Subject Imports

In the original investigations, the Commission found that cumulated subject imports undersold the domestic like product and had an adverse impact on prices in the domestic industry. With regard specifically to China, for sales prices (the category of prices traditionally examined by the Commission), Chinese product undersold in 28 of 32 comparisons.³⁴

In these reviews, I can draw very few conclusions from the pricing data, as the Commission received no information from Chinese producers of chlorinated isos. Domestic interested parties assert that in the original investigations, the Commission found that price was a very important factor in purchase decisions, and that this market characteristic has not changed. They also argue that although the orders have had little effect on subject import volumes, at least with regard to China some producers withdrew from the market after the orders were imposed and the firms that have taken their place have been forced by the order to price more fairly, resulting in improved price levels. Even so, they contend that, because of the intense competition in the chlorinated isos market, if the orders are revoked the

²⁸ CR/PR at table I-9.

²⁹ Domestic interested parties' response to notice of institution ("domestic interested parties' response"), Jun. 2, 2010, pp. 10-17.

³⁰ CR/PR at tables I-14, I-15. Excess capacity in 2004 was *** short tons for granulated chlorinated isos and *** short tons for tableted chlorinated isos.

³¹ Inventories of granular chlorinated isos held in China in 2004 were *** short tons, or *** percent of preceding-period shipments, and inventories of tableted chlorinated isos held in China in 2004 were *** short tons, or *** percent of preceding-period shipments. CR/PR at tables I-14 and I-15. Inventories of Chinese chlorinated isos held by U.S. importers in 2004 were *** short tons, having increased sharply from *** in 2002 and *** short tons in 2003. OCR at table VII-7.

³² CR at I-39; PR at I-29.

³³ CR/PR at table I-9. Imports from China more than doubled from 5,373 short tons in 2008 to 10,797 short tons in 2009.

³⁴ OCR at V-10.

foreign suppliers will have to price aggressively to gain market share, thus depressing and suppressing prices.³⁵

Evidence on the record of these reviews indicates that prices in the domestic market may currently be higher than they were at the close of the original period examined.³⁶ These price increases, however, to the extent that they are occurring, are doing so under the discipline of the existing orders and do not indicate what might happen to prices if the order on China were revoked. The record is also unclear as to whether this product remains particularly price-sensitive.

Nevertheless, given the likely significant volume of imports, the importance of price in the chlorinated isos market during the original investigations, the general substitutability of subject imports and the domestic like product, and the consistent and substantial underselling of imports from China in the original investigation, resulting in some lost sales and lost revenues, I find a likelihood of significant negative price effects from the subject imports. Consequently, I conclude that, if the order on chlorinated isos from China were revoked, significant volumes of subject imports from China would likely undersell significantly the domestic product and gain market share and would likely have significant depressing or suppressing effects on the prices of the domestic like product.

3. Likely Impact of Subject Imports

In the original investigations, the Commission found that even though production and shipment levels were fairly stable during the period examined, employment and financial indicators deteriorated as a result of declining prices and sales. This deterioration occurred against the backdrop of increasing demand for the subject product.³⁷

In these reviews, the Commission has limited information on the condition of the U.S. industry. Domestic interested parties claim that the industry is currently vulnerable, due primarily to the fact that it has lost market share and that its constituent producers are operating at low rates of capacity utilization. They also claim vulnerability based on continued high levels of subject imports, although they concede that those imports have been sold at higher prices.³⁸ Domestic interested parties provided data on their current capacity, production, shipments, and selected financial indicators.³⁹ Adjusted production and shipment levels in 2009 were somewhat lower than in 2004. On the other hand, unit values, operating income, and operating income margins were significantly higher in 2009 than in 2004. In particular, operating income for Clearon and Oxychem in 2009 was *** percent of sales, compared with the *** that the industry experienced in 2004.⁴⁰

Accordingly, what little information there is on the condition of the domestic industry indicates that, despite some loss in market share, the industry's fortunes may have improved overall since the original investigations. As domestic interested parties concede, pricing levels are higher and profitability has improved measurably, as the industry *** in 2004. As discussed above, revocation of the

³⁵ Domestic interested parties' response at 17-19.

³⁶ CR/PR at table I-8. The unit value of domestic producers' U.S. shipments was \$*** per short ton in 2009, compared with \$*** per short ton in 2004.

³⁷ USITC Pub. 3782 at 32-35.

³⁸ Domestic interested parties' response at 9-10, 19.

³⁹ Data were provided in these reviews by only two of the three U.S. firms that produced chlorinated isos during the original investigations. These data are estimated to account for *** percent of chlorinated isos production in 2009. CR at I-23; PR at I-17.

⁴⁰ CR/PR at table I-8. U.S. production (adjusted to account for missing data from the non-responding producer) was *** short tons in 2009, compared with *** short tons in 2004. The quantity (adjusted) of U.S. shipments was *** short tons in 2009, compared with *** short tons in 2004. In contrast, the unit value of U.S. shipments was \$*** per short ton in 2009, compared with \$*** per short ton in 2004, and operating income was \$*** in 2009, compared with *** in 2004.

antidumping duty order on imports from China would be likely to lead to a significant increase in the volume of subject imports that would undersell the domestic like product and significantly suppress or depress U.S. prices. Although the record does not permit me to determine conclusively whether the domestic industry is currently vulnerable, I find that these volume and price effects of the subject imports from China would necessarily have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. Accordingly, I conclude that, if the order on imports from China were revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

E. Revocation of the Antidumping Order on Imports from Spain Is Not Likely to Lead to a Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

1. Likely Volume of Subject Imports

In the original investigations, the Commission cumulated imports from China and Spain. In these reviews, I do not exercise my discretion, under 19 U.S.C. §1675a(a)(7), to cumulate imports from Spain with imports from China, based on significant differences in the conditions of competition with respect to the subject imports from both countries, in addition to likely differing volume and price trends upon revocation. As a result, in analyzing the likely volume of imports from Spain I have taken into account the Commission's previous volume findings, recognizing the difference represented by imports from China.

In the original investigations, the Commission found that the volume and market share of subject imports from China and Spain increased significantly over the period examined.⁴¹ The Commission did not comment specifically on the trend in volume for Spain. The record indicates, however, that the volume of subject imports from Spain increased overall, but only moderately, from *** short tons in 2002 to *** short tons in 2004, which represented a decline from its 2003 level (*** short tons).⁴²

In these five-year reviews, because the Commission did not receive a response from any producers in Spain, we have very little record information regarding the factors we must examine under 19 U.S.C. 1675a(2) in determining whether increases in the volume of subject imports are likely in the event of revocation of the order. Domestic interested parties argue that the Spanish producers are extremely export-oriented and have substantial incentives to sell into the United States. They point to the fact that Spanish producer Aragonesas opened a new factory during the original period examined. They do not provide an estimate of Aragonesas' excess capacity but note that Aragonesas stopped shipping after its margin increased in the last administrative review, so they theorize that the firm must have some excess capacity.⁴³

Given that these are expedited reviews, there is little information on the record concerning the statutory factors. In light of the paucity of information on the current record, I base my analysis, in line with 19 U.S.C. 1675a(a)(1)(A), on information from the original investigations. During the original investigations, there was evidence of some available capacity for granular chlorinated isos in Spain, particularly during the end of the period, but such excess capacity just barely exceeded *** short tons.⁴⁴ There were no third-country barriers facing the Spanish producers, and there is no evidence of any current barriers.⁴⁵ Inventories held in Spain were significant in comparison to preceding-period shipments, but

⁴¹ USITC Pub. 3782 at 25.

⁴² CR/PR at table I-9.

⁴³ Domestic interested parties' response at 10-17.

⁴⁴ CR/PR at table I-17.

⁴⁵ OCR at VII-29.

inventories held in the United States were minimal.⁴⁶ There is no information on product-shifting. In addition, I find it particularly significant that imports from Spain did not increase rapidly during the period examined – in fact, they declined in 2004 from their 2003 level.⁴⁷ Hence, I conclude that, in the event the order on imports from Spain is revoked, the likely volume of such imports will not be significant.

2. Likely Price Effects of Subject Imports

In the original investigations, the Commission found that in price comparisons involving sales prices, products from Spain were priced below the comparable domestic products in only 2 of 7 quarters.⁴⁸ The Commission was unable to confirm any lost sales or lost revenues allegations involving Spain.⁴⁹

In these reviews, I can draw very few conclusions from the pricing data, as the Commission received no information from producers in Spain of chlorinated isos. Although, as noted above, the record suggests that prices in the domestic market may currently be higher than before the order was imposed, this tells us little about what might happen to prices if the order on Spain were revoked. As with my analysis of likely volume effects, given the paucity of data on the record I rely mainly on information from the original investigations. In that regard, I find it significant that there was no evidence of confirmed lost sales or lost revenues to U.S. producers by reason of imports from Spain. Imports from Spain predominantly oversold the domestic product during the original investigations in the types of price comparisons traditionally analyzed by the Commission. Finally, average unit values of imports from Spain were consistently higher than those of imports from China during the original period examined.⁵⁰

Consequently, given the fact that a significant volume of imports from Spain is not likely to occur upon revocation, combined with significantly different price trends exhibited by imports from Spain during the original investigations, I do not find a likelihood of significant negative price effects from subject imports from Spain in the event of revocation of the order. Consequently, I conclude that, if the order on chlorinated isos from Spain were revoked, the volumes of subject imports from Spain would not be likely to undersell significantly the domestic product or gain market share, nor would such imports be likely to have significant depressing or suppressing effects on the prices of the domestic like product.

3. Likely Impact of Subject Imports

In the original investigations, the Commission found that even though production and shipment levels were fairly stable during the period examined, employment and financial indicators deteriorated as a result of declining prices and sales. This deterioration occurred against the backdrop of increasing demand for the subject product.⁵¹

As noted above in my discussion of the likely impact of subject imports from China, I conclude that the industry's fortunes appear to have improved since the original period examined. Accordingly, in light of my findings that revocation of the antidumping duty order on imports from Spain would not be likely to lead to a significant increase in the volume of subject imports that would undersell the domestic like product and significantly suppress or depress U.S. prices, I find that, if the order on imports from Spain were revoked, such imports would not be likely to have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. Hence, I conclude

⁴⁶ CR/PR at tables I-17 and I-18; OCR at table VII-7.

⁴⁷ CR/PR at table I-9.

⁴⁸ OCR at V-10.

⁴⁹ OCR at tables V-19 and V-20.

⁵⁰ CR/PR at table I-9.

⁵¹ USITC Pub. 3782 at 32-35.

that, if the order on imports from Spain were revoked, subject imports would not be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, I determine that revocation of the antidumping duty order on chlorinated isos from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I also determine that revocation of the antidumping duty order on chlorinated isos from Spain would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

INFORMATION OBTAINED IN THE REVIEWS

INTRODUCTION

On May 3, 2010, in accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”),¹ the U.S. International Trade Commission (“Commission” or “USITC”) gave notice that it had instituted reviews to determine whether revocation of the antidumping duty orders on chlorinated isocyanurates (“chlorinated isos”) from China and Spain would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.^{2 3} On August 6, 2010, the Commission determined that the domestic interested party group response to its notice of institution was adequate⁴ and that the respondent interested party group response was inadequate.⁵ In the absence of respondent interested party responses and any other circumstances that would warrant the conduct of full reviews, the Commission determined to conduct expedited reviews of the antidumping duty orders pursuant to section 751(c)(3) of the Act (19 U.S.C. § 1675(c)(3)).⁶ The Commission voted on these reviews on September 20, 2010, and notified Commerce of its determinations on September 30, 2010. The following tabulation presents selected information relating to the schedule of these five-year reviews.⁷

Effective date	Action	<i>Federal Register</i> citation
May 3, 2010	Commission’s institution of five-year reviews	75 FR 23303 May 3, 2010
May 3, 2010	Commerce’s initiation of five-year reviews	75 FR 23240 May 3, 2010
August 6, 2010	Commission’s determination to conduct expedited five-year reviews	75 FR 51113 August 18, 2010
August 13, 2010	Commerce’s final determinations in its expedited five-year reviews	75 FR 49464 August 13, 2010
September 20, 2010	Commission’s vote	Not applicable
September 30, 2010	Commission’s determinations transmitted to Commerce	Not applicable

¹ 19 U.S.C. 1675(c).

² *Chlorinated Isocyanurates From China and Spain*, 75 FR 23303, May 3, 2010. All interested parties were requested to respond to this notice by submitting the information requested by the Commission. The Commission’s notice of institution is presented in app. A.

³ In accordance with section 751(c) of the Act, the U.S. Department of Commerce (“Commerce”) published a notice of initiation of five-year reviews of the subject antidumping duty orders concurrently with the Commission’s notice of institution. *Initiation of Five-Year (“Sunset”) Review*, 75 FR 23240, May 3, 2010.

⁴ The Commission received one submission from domestic producers Clearon Corp. (“Clearon”) and Occidental Chemical Corp. (“OxyChem”) (collectively referred to herein as “domestic interested parties”) in response to its notice of institution for the subject reviews. The domestic interested parties reported that together they accounted for *** percent of total U.S. production of chlorinated isos in 2009. *Response of domestic interested parties*, June 2, 2010, p. 24.

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

⁶ *Chlorinated Isocyanurates From China and Spain*, 75 FR 51113, August 18, 2010. The Commission’s notice of the expedited reviews appears in app. A. The Commission’s statement on adequacy is presented in app. B.

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

The Original Investigations

On May 14, 2004, a petition was filed with Commerce and the Commission alleging that an industry in the United States was materially injured by reason of less-than-fair-value (“LTFV”) imports of chlorinated isocyanurates from China and Spain.⁸ On May 10, 2005, Commerce made affirmative final LTFV determinations⁹ and, on June 17, 2005, the Commission completed its original investigations, determining that an industry in the United States was materially injured by reason of LTFV imports of chlorinated isos from China and Spain.¹⁰

Commerce’s Original Determinations and Subsequent Review Determinations

Commerce’s original determinations were published on May 10, 2005,¹¹ and the antidumping duty orders concerning chlorinated isos from China and Spain were issued on June 25, 2005.¹² Commerce has completed three administrative reviews regarding chlorinated isos from China and three administrative reviews regarding chlorinated isos from Spain since the issuance of the antidumping duty orders. Commerce is currently conducting its fourth administrative review of the subject merchandise from China for the 2008-09 period and has published its preliminary results; however, the final results of Commerce’s administrative review are not expected to be released until after the issuance of this report in September 2010.¹³

Although there has been one new shipper review concerning the antidumping duty orders, and two scope rulings, there have been no changed circumstances determinations and no duty absorption findings.^{14 15}

⁸ The petition was filed by Clearon Corp. (“Clearon”) and Occidental Chemical Corp. (“OxyChem”). *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, p. I-1. Here and throughout this report, data and other information from the original investigations incorporate changes contained in Memorandum INV-CC-080, June 2, 2005, as well as staff supplementary table I.

⁹ *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502, May 10, 2005; *Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 24506, May 10, 2005.

¹⁰ *Chlorinated Isocyanurates From China and Spain*, 70 FR 36205, June 22, 2005.

¹¹ *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502, May 10, 2005; *Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 24506, May 10, 2005.

¹² *Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 36561, June 25, 2005; *Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order*, 70 FR 36562, June 25, 2005.

¹³ *Chlorinated Isocyanurates From the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 27302, May 14, 2010.

¹⁴ In addition, a new shipper review was initiated in regards to chlorinated isos from Spain but was later rescinded when the company withdrew its request. *Chlorinated Isocyanurates from Spain: Notice of Rescission of Antidumping Duty New Shipper Review*, 73 FR 45215, August 4, 2008.

¹⁵ A third request for a scope ruling was initiated, but later terminated, by Enviro Tech Chemical regarding whether powdered trichloroisocyanuric acid should be considered a separate like product. *Notice of Scope Rulings*, 71 FR 5646, February 2, 2006.

Commerce's Final Results of Expedited Five-Year Reviews

Commerce published the final results of its reviews based on the facts available on August 13, 2010. Commerce concluded that revocation of the antidumping duty orders on chlorinated isos from China and Spain would likely lead to continuation or recurrence of dumping at margins determined in its original determinations.¹⁶ Tables I-1 and I-2 present information relating to Commerce's final determinations, antidumping duty orders, administrative reviews, and new shipper reviews for China and Spain, respectively.

Table I-1

Chlorinated isos from China: Commerce's final determination, antidumping duty order, administrative and new shipper reviews, and final results of expedited five-year review

Action	Effective date	Federal Register citation	Period of investigation/ review	Antidumping duty margins		
				Firm-specific		Country-wide ¹
				Percent ad valorem		
Final determination	05/10/2005	70 FR 24502	10/01/2003-03/31/2004	Jiheng Nanning Sec. A ²	75.78 285.63 137.69	285.63
Antidumping duty order	06/25/2005	70 FR 36561	--	Jiheng Nanning Sec. A ²	75.78 285.63 137.69	285.13
Administrative review ³	02/19/2008	73 FR 9091	12/16/2004-05/31/2006	Jiheng	20.10	285.63
Administrative review ⁴	10/20/2008	73 FR 62249	06/01/2006-05/31/2007	Jiheng Nanning	0.90 54.86	285.63
Administrative review	12/14/2009	74 FR 66087	06/01/2007-05/31/2008	Jiheng	20.16	285.63
New shipper review	12/28/2009	74 FR 68575	06/01/2008-11/30/2008	Kangtai	20.54	--
Preliminary results of administrative review	05/14/2010	75 FR 27302	06/01/2008-05/31/2009	Jiheng	11.65	285.63
Final results of expedited five-year review	08/13/2010	75 FR 49464	--	Jiheng Nanning Sec. A. ²	75.78 285.63 137.69	285.63

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

² Section A Respondents include Changzhou Clean Chemical Co., Ltd., Liaocheng Huao Chemical Industry Co., Ltd., Sinochem Hebei Import & Export Corporation, and Sinochem Shanghai Import & Export Corporation.

³ The table reflects the results of the amendment to the original final results of the administrative review. The original final results of the administrative review were published on January 2, 2008 (73 FR 159) and the duty margin for Jiheng was set at 18.44 percent.

⁴ The table reflects the results of the amendment to the original final results of the administrative review. The original final results of the administrative review were published on September 10, 2008 (73 FR 52645) and the duty margins for Jiheng and Nanning were set at 0.80 percent and 53.67 percent respectively.

Source: Cited *Federal Register* notices.

¹⁶ *Chlorinated Isocyanurates from Spain and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 75 FR 49464, August 13, 2010.

Table I-2

Chlorinated isos from Spain: Commerce’s final determination, antidumping duty order, administrative and new shipper reviews, and final results of expedited five-year review

Action	Effective date	Federal Register citation	Period of investigation/ review	Antidumping duty margins		
				Firm-specific		Country-wide ¹
				Percent ad valorem		
Final determination	05/10/2005	70 FR 24506	10/01/2003-03/31/2004	Aragonesas	24.83	24.83
Antidumping duty order	06/25/2005	70 FR 36562	--	Aragonesas	24.83	24.83
Administrative review	11/15/2007	72 FR 64194	12/20/2004-05/31/2006	Aragonesas	2.35	24.83
Administrative review	12/30/2008	73 FR 79789	06/01/2006-05/31/2007	Aragonesas	4.07	24.83
Administrative review	10/01/2009	74 FR 50744	06/01/2007-05/31/2008	Aragonesas	28.04	24.83
Final results of expedited five-year review	08/13/2010	75 FR 49464	--	Aragonesas	24.83	24.83

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

Note.—An administrative review for the period 2008-09 was initiated on July 29, 2009. Aragonese withdrew its request for review on October 19, 2009 and Petitioners subsequently withdrew their request on October 27, 2009. *Chlorinated Isocyanurates from Spain: Rescission of Antidumping Duty Administrative Review*, 74 FR 61114, November 23, 2009.

Note.—A new shipper review was initiated in regards to chlorinated isos from Spain but was later rescinded when the company (INQUIDE) withdrew its request. *Chlorinated Isocyanurates from Spain: Notice of Rescission of Antidumping Duty New Shipper Review*, 73 FR 45215, August 4, 2008.

Source: Cited *Federal Register* notices.

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

The Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”) (also known as the Byrd Amendment) provides that assessed duties received pursuant to antidumping or countervailing duty orders must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such orders.¹⁷ Qualified U.S. producers of chlorinated isos have been eligible to receive disbursements from U.S. Customs and Border Protection (“Customs”) under CDSOA, relating to the orders covering the subject merchandise beginning in Federal fiscal year 2006.¹⁸ Certifications were filed with Customs by three claimants (BioLab, Clearon, and OxyChem) with respect to chlorinated isos from China and Spain during 2006-09. No other CDSOA claims/disbursements were made with respect to the subject merchandise prior to 2006.¹⁹ Tables I-3 and I-4 present CDSOA claims and disbursements for Federal fiscal years 2006-09.

¹⁷ Section 754 of the Tariff Act of 1930, as amended (19 U.S.C. § 1675(c)). The Deficit Reduction Act of 2005 repealed the CDSOA with respect to duties on entries of goods made and filed on or after October 1, 2007. See Pub. L. No. 109-171, 120 Stat. 4, 154 (2006).

¹⁸ 19 CFR 159.64(g).

¹⁹ Customs’ *CDSOA Annual Reports 2003-09*, http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/.

Table I-3
Chlorinated isos from China: CDSOA claims and disbursements, Federal fiscal years
2006-09^{1 2}

Fiscal year	Claimant	Share of yearly allocation	Certification amount ³	Amount disbursed
		Percent	Dollars	
2006	BioLab	(⁴)	58,072,073.00	(⁴)
	Total	(⁴)	58,072,073.00	(⁴)
2007	BioLab	23.05	126,600,011.00	11,466.32
	Clearon	31.03	170,394,933.00	15,432.88
	OxyChem	45.92	252,166,206.05	22,839.00
	Total	100.00	549,161,150.05	49,738.20
2008	BioLab	20.79	143,002,364.68	41,391.20
	Clearon	31.41	216,026,405.12	62,527.58
	OxyChem	47.80	328,810,049.06	95,172.15
	Total	100.00	687,838,818.86	199,090.93
2009	Clearon	(⁴)	215,963,877.54	(⁴)
	OxyChem	(⁴)	328,714,876.91	(⁴)
	Total	(⁴)	544,678,754.45	(⁴)

¹ The Federal fiscal year is October 1-September 30.
² No CDSOA claims and disbursements were made with respect to chlorinated isos from China prior to 2006.
³ Qualifying expenditures incurred by domestic producers since the issuance of an order.
⁴ No disbursement for this period.

Source: Customs' CDSOA Annual Reports 2003-09, http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/.

Table I-4
Chlorinated isos from Spain: CDSOA claims and disbursements, Federal fiscal years 2006-09^{1 2}

Fiscal year	Claimant	Share of yearly allocation	Certification amount ³	Amount disbursed
		Percent	Dollars	
2006	BioLab	(⁴)	58,072,073.00	(⁴)
	Total	(⁴)	58,072,073.00	(⁴)
2007	BioLab	(⁴)	126,600,011.00	(⁴)
	Clearon	(⁴)	170,394,933.00	(⁴)
	OxyChem	(⁴)	252,166,206.05	(⁴)
	Total	(⁴)	549,161,150.05	(⁴)
2008	BioLab	20.79	143,013,831.00	208,992.67
	Clearon	31.41	216,041,838.00	315,711.84
	OxyChem	47.80	328,832,888.06	480,538.58
	Total	100.00	687,888,557.06	1,005,243.09
2009	Clearon	39.65	215,726,126.16	52,432.92
	OxyChem	60.35	328,352,349.48	79,807.08
	Total	100.00	544,078,475.64	132,240.00

Table continued on the following page.

Table I-4--Continued

Chlorinated isos from Spain: CDSOA claims and disbursements, Federal fiscal years 2006-09^{1 2}

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

² No CDSOA claims and disbursements were made with respect to chlorinated isos from Spain prior to 2006.

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

⁴ No disbursement for this period.

Source: Customs' CDSOA Annual Reports 2003-09, http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/.

Related Commission Investigations and Reviews

On June 3, 1983, Monsanto Industrial Chemicals filed a petition for investigation of Japanese cyanuric acid and its chlorinated derivatives (“CA&CD”) (specifically from Shikoku Chemicals Corp, Nissan Chemical Industries, Ltd., and Nippon Soda Co., Ltd.), alleging that Japanese exporters were selling CA&CD at LFTV, causing material injury to domestic producers. The Commission instituted its final investigation effective November 18, 1983 following a preliminary determination by the Department of Commerce that imports of the subject products from Japan were being sold in the United States at LTFV. Commerce determined that CA&CD were being sold at LTFV, the Commission made an affirmative determination in the investigation²⁰ and Commerce subsequently issued the antidumping duty order on April 27, 1984.²¹ In the absence of any review request or objection from the domestic interested party, Commerce revoked the order in 1995.²²

In its preliminary determination, the Commission found that cyanuric acid and its chlorinated derivatives constituted two distinct like products. The Commission noted that although the chlorinated derivatives are divided into two categories based on their chlorine content, this difference did not significantly affect the end use.²³ In the final phase of the investigation, the Commission revisited its like product finding and determined that cyanuric acid, dichlor, and trichlor constituted a single like product.^{24 25}

²⁰ *Cyanuric Acid and its Chlorinated Derivatives from Japan, Inv. No. 731-TA-136 (Final)*, USITC Publication 1513, April 1984, p. 1.

²¹ *Cyanuric Acid and Its Chlorinated Derivatives From Japan Used In the Swimming Pool Trade; Antidumping Duty Orders*, 49 FR 18148, April 27, 1984.

²² *Cyanuric Acid From Japan, Revocation of the Antidumping Duty Order*, 60 FR 28576, June 1, 1995.

²³ *Cyanuric Acid and its Chlorinated Derivatives from Japan, Inv. No. 731-TA-136 (Preliminary)*, USITC Publication 1407, July 1983, p. 5.

²⁴ *Cyanuric Acid and its Chlorinated Derivatives from Japan, Inv. No. 731-TA-136 (Final)*, USITC Publication 1513, April 1984, p. 4. In the dissenting views, Commissioner Stern revised her like product definition. In the preliminary phase of the investigation, Commissioner Stern found three separate like products--cyanuric acid, dichloro isocyanurates, and trichloro isocyanuric acid. In the final phase of the investigation, she found one domestic like product. *Cyanuric Acid and its Chlorinated Derivatives from Japan, Inv. No. 731-TA-136 (Final)*, USITC Publication 1513, April 1984, pp. 17-19.

²⁵ Commerce determined cyanuric acid, dichloroisocyanurates, and trichloroisocyanurates to be separate categories of subject merchandise on the grounds that the chemical compositions of these products are distinct and that cyanuric acid is used to produce the chlorinated derivatives. *Final Determination of Sales at Less Than Fair Value; Cyanuric Acid and its Chlorinated Derivatives From Japan Used in the Swimming Pool Trade*, 49 FR 7424, February 29, 1984.

THE PRODUCT

Scope

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

The products covered by this order are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid (“TCCA”) (Cl₃(NCO)₃), (2) sodium dichloroisocyanurate (dihydrate) (NaCl₂(NCO)₃ X 2H₂O), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl₂(NCO)₃). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This order covers all chlorinated isocyanurates.^{26 27}

Commerce has considered two separate requests for scope rulings since the original antidumping duty order date.²⁸ The requestors, outcomes, and completion dates of Commerce’s scope rulings are listed in table I-5.

**Table I-5
Chlorinated isos: Commerce’s scope rulings**

Requestor	Scope ruling	Date of completion	Federal Register citation
BioLab, Inc.	Exclusion request denied. Chlorinated isos originating in the People’s Republic of China, that are packaged, tableted, blended with additives, or otherwise further processed in Canada by Capo Industries, Ltd. before entering the U.S., are within the scope of the antidumping duty order.	April 9, 2008	73 FR 49418 (Aug. 21, 2008)
BioLab, Inc.	Exclusion request granted. Chlorinated isos produced in and exported from Vietnam by Tian Hua (Vietnam) SPC Industries Ltd. are not included in the scope of the antidumping order.	March 23, 2009	74 FR 43681 (Aug. 27, 2009)
Note.—A third request for a scope ruling was initiated, but later terminated, by Enviro Tech Chemical regarding whether powdered trichloroisocyanuric acid should be considered a separate like product. <i>Notice of Scope Rulings</i> , 71 FR 5646, February 2, 2006.			
Source: Cited <i>Federal Register</i> notices.			

²⁶ *Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 36561, June 24, 2005; *Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order*, 70 FR 36562, June 25, 2005.

²⁷ Tariff treatment of this product is presented in the next section of this report. Although the HTS subheadings are provided for convenience purposes, the written description of the scope is dispositive.

²⁸ A third request for a scope ruling was initiated, but later terminated, by Enviro Tech Chemical regarding whether powdered trichloroisocyanuric acid should be considered a separate like product. *Notice of Scope Rulings*, 71 FR 5646, February 2, 2006.

U.S. Tariff Treatment

The subject merchandise is classified in the Harmonized Tariff Schedule of the United States (HTSUS) in subheading 2933.69.60, and imports are reported under statistical reporting numbers 2933.69.6015, 2933.69.6021, and 2933.69.6050. The statistical reporting number 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid while statistical reporting numbers 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Chlorinated isocyanurates have a normal trade relations tariff rate of 3.5 percent *ad valorem* applicable to imports from China and Spain.

Domestic Like Product and Domestic Industry

The domestic like product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the subject merchandise. In its original determinations, the Commission defined the domestic like product²⁹ as all chlorinated isocyanurates co-extensive with Commerce's scope, that is, all derivatives of cyanuric acid (primarily trichloroisocyanuric acid, sodium dichloroisocyanurate (dihydrate), and sodium dichloroisocyanurate (anhydrous)) in powder, granular, and tableted forms.³⁰ In the original investigations, several interested parties sought to distinguish various different forms of the product as separate from the scope of the investigations. Regarding potential distinctions between trichlor and dichlor, blended tablets and all other chlorinated isos, and powdered chlorinated isos and other chlorinated isos, the Commission found in all cases that there was no "clear dividing line" that would necessitate the classification of certain chlorinated isos into separate domestic product categories.³¹

The domestic industry is the collection of U.S. producers as a whole of the domestic like product, or those producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of the product. In the original investigations, the Commission defined the domestic industry as all U.S. producers of the domestic like product, as defined above.³²

In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. In the original investigations, the Commission was evenly divided as to whether to include companies that tablet and repackage chlorinated isos (referred to herein as "tableters") in the domestic industry.^{33 34}

²⁹ The Commission's six factor analysis includes an evaluation of (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price.

³⁰ *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, pp. 3-10.

³¹ *Ibid.*

³² *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, pp. 10-18. Further information concerning related party issues is contained in the section of this report entitled "Related Party Issues."

³³ In the original investigations, Chairman Koplman and Commissioners Miller and Hillman included tableters as part of the domestic industry. Although they recognized that the record was mixed on the issues of capital investment necessary for tableting and value-added by tableting, these Commissioners emphasized that in general, they found the capital investment necessary was significant and that the value-added was generally reported to be in the range of *** to *** percent. They noted that there is a moderate level of technical expertise necessary to

(continued...)

In its notice of institution in these current five-year reviews, the Commission solicited comments from interested parties regarding the appropriate domestic like product and domestic industry.³⁵ The domestic interested parties indicated that they do not disagree with the definition of the domestic like product contained in the Commission's notice of institution; however, they asserted that the Commission should revisit the issue of whether non-integrated producers of chlorinated isocyanurates (e.g., tableters and repackers) should be included in the definition of the domestic industry.³⁶

Physical Characteristics and Uses³⁷

Chlorinated isos are chemical compounds used primarily as sanitizing agents for swimming pools, spas, and industrial water, and as disinfecting and bleaching agents for detergents, bleaches, and cleansers. For actual application, these products are sold as a solid, usually in granular, tablet, or stick form. The active ingredient for sanitizing purposes is chlorine. Trichlor and dichlor differ mainly in the percentage of chlorine each has available for sanitizing and the rate of release of that chlorine in water. Trichlor, containing 90 percent available chlorine, has the highest chlorine content, but its chlorine is released relatively slowly in water and therefore it is more widely used for water treatment applications. Dihydrate and anhydrous dichlor contain less available chlorine, 53 and 63 percent, respectively, but the chlorine is released relatively quickly, making them more widely used in detergents, bleaches, and cleansers and as "shock" treatments to instill chlorine quickly in swimming pools. Although trichlor and dichlor generally perform the same function, one slower and one faster, one or the other is usually specifically preferred for any one type of application. During the period examined in the original

³³ (...continued)

perform tableting operations due to heavy machinery and hazardous materials involved. Additionally, tableters employ a significant number of personnel both in tableting operations and in support personnel (which causes them to incur additional costs), and although some rely heavily on subject merchandise for their raw materials, others rely on domestic materials or a mix of subject, nonsubject, and domestic raw materials. On balance, these Commissioners included tableters in the domestic industry. *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, pp. 10-12.

³⁴ Vice Chairman Okun and Commissioners Lane and Pearson did not include tableters in the domestic industry because they found that tableters do not engage in sufficient production-related activities. These Commissioners also noted the variability in the reported capital necessary for tableting and value-added by tableting. They did not find that the capital investment necessary for tableting to be significant in comparison to the capital investment necessary to establish an integrated chlorinated isos operation, nor did they believe the value-added was highly significant (most producers reported values in the range of *** percent to *** percent concerning the value-added). Despite the moderate level of expertise necessary for tableting, such expertise, they found, did not compare with that necessary in the upstream processes. They also noted that the wage differential between production workers that produce granular chlorinated isos versus tableting packaging workers is approximately *** and producers of chlorinated isos employ *** times as many workers as tableters. These Commissioners also acknowledged that some tableters rely heavily on subject merchandise for their raw materials, others rely on domestic materials or a mix of subject, nonsubject, and domestic raw materials and that tableters employ additional personnel and incur additional costs. However, considering all evidence put before the Commission, these Commissioners did not believe that tableters engaged in sufficient production-related activity to qualify as domestic producers. *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, pp. 12-14.

³⁵ *Chlorinated Isocyanurates from China and Spain: Notice of Institution*, 75 FR 23303, May 3, 2010.

³⁶ *Response* of domestic interested parties, June 2, 2010, p. 26.

³⁷ Unless indicated otherwise, the discussion in this section is based on information contained in *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, p. I-4.

investigations, owing to the relatively larger market for water treatment applications (pool and spa sanitation), trichlor accounted for the bulk of U.S. production and consumption and is generally priced somewhat lower per pound than dichlor.

Some of the trichlor tablets produced in the United States and China contain active ingredients other than chlorine that provide functions other than sanitizing, and are called “blended tablets.” The ingredients in these tablets include aluminum sulfate, which acts as an algicide, and copper sulfate, which acts as a water clarifier.

Manufacturing Process³⁸

The raw materials for the production of both trichlor and dichlor are cyanuric acid, caustic soda, and chlorine gas. Cyanuric acid, which U.S. chlorinated isos producers make and derive from urea, is refined and purified and then neutralized with caustic soda to become sodium cyanurate, the basic feedstock for both trichlor and dichlor. Both trichlor and dichlor are produced in the same kilns to mix the cyanuric acid and caustic soda to form the sodium cyanurate feedstock, using the same equipment and the same employees. The feedstock then goes through dedicated production lines to produce either trichlor or dichlor. To produce trichlor, chlorine gas is introduced into the feedstock and carefully controlled, resulting in a granular solid that is either packaged in 2,205-pound sacks or 300-pound drums and sold as such, or further processed into tablets or sticks and packaged in 10-50-pound pails. The bulk of trichlor is ultimately consumed as tablets.³⁹ To produce dichlor, a smaller amount of chlorine gas is introduced into the feedstock, resulting in an acid that is neutralized with caustic soda to produce the dichlor salt. This product can be further dried at higher temperatures to produce the anhydrous forms. Most dichlor is sold and used in granular form and is packaged in sacks or drums. For the most part, production is continuous, and the equipment and production workers used in production of chlorinated isos are specific to that purpose.

Interchangeability and Customer and Producer Perceptions⁴⁰

In considering the different forms of U.S.-produced chlorinated isos, the Commission found that dichlor and trichlor overlap in their application in the swimming pool market and industrial cleanser market, with preferences of usage based on solubility, acidity, and available chlorine levels. For example, dichlor and trichlor can be substituted for one another to sanitize spas and pools, and as cleansers and sanitizers for industrial uses. The Commission also found powdered chlorinated isos to have the same chemistry, and to be used in the same applications, as granulated chlorinated isos, while noting that producers and at least one customer differed in their perceptions of the powdered form as an intermediate product. Finally, the Commission found trichlor tablets (blended and regular) to be interchangeable, as both are used in pool sanitation.

³⁸ Unless indicated otherwise, the discussion in this section is based on information contained in *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, p. I-5.

³⁹ Tableted chlorinated isos are granular chlorinated isos (believed to be almost always trichlor) that have been compacted or pressed into forms for convenience of the user. Tableted trichlor requires an additional process of taking granular trichlor, sorting it, then tableting it into shapes, typically into 1-inch or 3-inch diameters. *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, p. I-9.

⁴⁰ Unless indicated otherwise, the discussion in this section is based on information contained in *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, pp. 6-10, 24, I-11-I-15, I-17-I-18.

With respect to U.S.-produced and imported chlorinated isos, the Commission noted that market participants found such products to be always or frequently interchangeable; indeed, some indicated that so long as the product was registered with the Environmental Protection Agency (“EPA”), it was always interchangeable.⁴¹

Channels of Distribution⁴²

According to data collected from questionnaires in the original investigations, swimming pool and spa applications account for the great majority of the U.S. chlorinated isos market. Industrial applications, e.g., industrial water treatment and use in cleansers, detergents, etc., account for most of the remainder. For U.S. and foreign producers, the pool and spa segment of the market consists mostly of (1) converting and repackaging distributors, which buy not only tablets and a stick form of the product but also granular product that they convert to tablets and package for sale to commercial users, such as hotels and public pools, and to retailers, such as pool retail stores, pool service companies, mass merchants, and grocery and hardware stores; and (2) non-converting and repackaging distributors that sell to the same types of commercial users and retailers. To supplement their needs, U.S. producers and distributors may also buy product from each other. The industrial segment consists largely of manufacturers of cleansers, bleaches, and detergents, and a few distributors that serve the market independently.

According to data collected in the original investigations, the channels of distribution for chlorinated isos varied for different suppliers during 2002 to 2004. In general, the largest shares of product were to repackagers/tableters, distributors, and pool-related retailers, but specific shares of quantity fluctuated from year to year, as shown in table I-6.

⁴¹ In the United States, sanitizing agents such as trichlor and dichlor are statutorily controlled pesticides and must be approved by the EPA for public use. Accordingly, any chlorinated isos destined for use in the pool and spa market must be tested and approved prior to sale. The EPA testing and approval process, known as registration, is specific to each producer's product and is obtained by the U.S. producer for its own production or by the importer for the Chinese-produced product. The Spanish producer Aragonesas possesses the registration for the Spanish product. *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, p. I-6.

⁴² Unless indicated otherwise, the discussion in this section is based on information contained in *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, p. I-6.

Table I-6

Chlorinated isos: Reported channels of distribution for domestic product and subject imports sold in the U.S. market (as a percent of total shipments), by year and by country, 2002-04

	2002	2003	2004
Share of quantity (percent)			
Domestic integrated producers:			
Shipments to repackagers/tableters	9.2	7.6	11.6
Shipments to distributors	53.5	52.3	51.0
Shipments to mass market retailers	14.2	15.7	14.9
Shipments to pool-related retailers	17.5	18.8	16.7
Shipments to the industrial market	5.6	5.3	4.4
Shipments to other ¹	0.0	0.3	1.4
Total	100.0	100.0	100.0
China:			
Shipments to repackagers/tableters	100.0	56.6	55.7
Shipments to distributors	0.0	2.7	0.0
Shipments to mass market retailers	0.0	34.6	41.7
Shipments to pool-related retailers	0.0	1.3	0.7
Shipments to the industrial market	0.0	0.0	0.0
Shipments to other ¹	0.0	4.8	1.9
Total	100.0	100.0	100.0
Spain:			
Shipments to repackagers/tableters	***	***	***
Shipments to distributors	***	***	***
Shipments to mass market retailers	***	***	***
Shipments to pool-related retailers	***	***	***
Shipments to the industrial market	***	***	***
Shipments to other ¹	***	***	***
Total	100.0	100.0	100.0
¹ Other includes sales to competing firms, both domestic and subject.			
Source: <i>Staff Report on Chlorinated Isocyanurates From China and Spain, Investigation Nos. 731-TA-1082 and 1083 (Final)</i> , May 20, 2005 (INV-CC-069), table II-1.			

Pricing⁴³

In its Views, the Commission noted that domestic and imported chlorinated isos are generally highly interchangeable, that price is a very important factor in purchasing decisions, and that prices for chlorinated isos can respond quickly to price changes. Irrespective of their definition of the domestic industry, Commissioners found underselling in more than three-quarters of the price comparisons.

The Commission found that data collected in the original investigations showed a ‘high prevalence’ of underselling of the domestic product by the subject imports. It also noted that the rising cost of inputs coupled with the increase in volume of products sold at less-than-fair-value created a “cost/price squeeze” that prevented the domestic industry from adjusting to these changes and reduced profit margins. The Commission found that price is a very important factor in purchasing decisions, and prices for chlorinated isos respond quickly to changes in market conditions.

In their response to the notice of institution of the five-year reviews, the domestic interested parties noted that the antidumping duty orders currently in place have had a “significant effect in arresting what had become an ongoing, steep decline in prices to the extreme detriment of the domestic industry...In the years following the entry of the antidumping duty orders, the domestic industry has faced historically high prices for key material and energy inputs such as urea and natural gas. Had the domestic industry been subject to these cost shocks in an environment in which import pricing was unconstrained...the situation would have {been} extremely dire...Although import volumes have remained high even after the order, U.S. prices have exhibited some recovery following the orders and have not returned to pre-order levels.” This is consistent with comments by purchaser ***, which stated that prices have been higher since 2005 and there has been less competition in the market.⁴⁴

THE INDUSTRY IN THE UNITED STATES

U.S. Producers

U.S. industry data collected in the original investigations were based on the questionnaire responses of three domestic producers that accounted for 100 percent of U.S. integrated production of chlorinated isos during 2002 to 2004.⁴⁵ The three U.S. producers that participated in the original investigations and their shares of total domestic production during 2004 were as follows: Clearon (***) percent), OxyChem (***) percent), and BioLab (***) percent). In addition, the Commission collected data for six U.S. tableters (firms that purchase domestically produced and/or imported granular chlorinated isos and form these into tablets). Their shares of tableting operations were as follows: Alden Leeds (***) percent), Aqua Tri (***) percent), Cadillac (no information available), LPM (***) percent), N. Jonas (***) percent), and Stellar (***) percent).⁴⁶

The domestic interested parties participating in this proceeding did not indicate in their response to the Commission’s notice of institution that there have been any changes to the structure of the domestic industry since the Commission’s original investigations. Rather, Clearon and Oxychem reported in their response that there are currently three domestic producers of chlorinated isos: Clearon, OxyChem, and

⁴³ Unless indicated otherwise, the discussion in this section is based on information contained in *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, pp. 26-31.

⁴⁴ Purchaser survey response of ***.

⁴⁵ *Staff Report on Chlorinated Isocyanurates From China and Spain, Investigation Nos. 731-TA-1082 and 1083 (Final)*, May 20, 2005 (INV-CC-069), pp. III-1.

⁴⁶ *Ibid.*

BioLab.⁴⁷ Details regarding each firm’s location(s) and company shares of 2004 and 2009 total domestic production of chlorinated isos are presented in table I-7.

Table I-7
Chlorinated isos: U.S. integrated producers, locations, related companies, and company shares of 2004 and 2009 total domestic production

Firm	Location	Related Companies	Share of 2004 total production (percent)	Estimated share of 2009 total production (percent)
Clearon	Charleston, WV	Wholly owned by Israel Chemicals Limited, Tel-Aviv, Israel	***	***
OxyChem	Sauget, IL Luling, LA	Wholly owned subsidiary of Occidental Petroleum Corp., Los Angeles, CA	***	***
BioLab ¹	Lake Charles, LA Lawrenceville, GA	Wholly owned by Great Lakes Chemical Corp., Indianapolis, IN	***	*** ²
Total			100.0	100.0
¹ During the period of the original investigations, BioLab ***. ² Estimate. Note.—Because of rounding, figures may not add to the totals shown. Source: <i>Staff Report on Chlorinated Isocyanurates From China and Spain, Investigation Nos. 731-TA-1082 and 1083 (Final)</i> , May 20, 2005 (INV-CC-069), p. III-3, and table III-1; <i>Response of domestic interested parties</i> , June 2, 2010, p. 24.				

BioLab

According to the domestic producers’ response to the notice of institution, BioLab, owned by Great Lakes Chemical (now Chemtura), entered the business when it acquired the Lake Charles, LA trichloroisocyanurate plant in 1995.⁴⁸

At the time of the original investigations, BioLab produced *** granular trichlor and ***. However, BioLab ***.

BioLab was in a position to announce broad price increases over a wide variety of pool and spa products that included chlorinated isocyanurates in November 2005 and again in July 2008.⁴⁹ However, on March 18, 2010, Chemtura announced via its website that it had filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code. Chemtura’s chairman explained that Chemtura’s order volumes “have declined markedly in recent months due to the impact of the global economic recession on {its} customers and the industries they serve.” The press release also noted that Chemtura is working on completing a successful financial restructuring to become a stronger and more profitable competitor in the specialty chemicals marketplace.⁵⁰

⁴⁷ *Response of domestic interested parties*, June 2, 2010, pp. 19-20.

⁴⁸ ***.

⁴⁹ BioLab news release, November 9, 2005; Chemtura news release, June 6, 2008.

⁵⁰ Chemtura news release, March 18, 2010.

Clearon

According to the domestic producers' response to the notice of institution, Clearon became a domestic producer in 1994 with the purchase of the sodium dichloroisocyanurate plant and related packaging operations in South Charleston, WV, from Olin, which was forced to find a buyer by the Federal Trade Commission ("FTC") due to its dominance in the calcium hypochlorite business (a competing swimming pool sanitizer). In 1995, Clearon started operation of a *** metric ton-per-year trichloroisocyanurate plant in South Charleston. Clearon is a joint venture of Israel Chemicals and its subsidiary, Dead Sea Bromine.⁵¹

At the time of the original investigations, Clearon produced granular trichlor, granular dichlor, and tableted trichlor at its facility in South Charleston, WV, although Clearon's trichlor production was shut down for a prolonged period in 2004, ***. In addition, Clearon had two workforce reductions, allegedly due to lower market prices and lower sales, from over *** employees to the current level of ***. It reported that ***.⁵²

OxyChem

According to the domestic producers' response to the notice of institution, Occidental Chemical entered the chlorinated isos business in 1992 when it purchased Monsanto's ACL® chlorinated isos business. In 1997, it debottlenecked the dichlorinated isocyanurates capacity from *** metric tons per year and boosted its trichlorinated isocyanuric acid capacity from *** metric tons per year.⁵³

At the time of the original investigations, OxyChem produced granular trichlor and granular dichlor at its facilities in Sauget, IL and Luling, LA. OxyChem ***.⁵⁴

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

Table I-8 presents data reported by U.S. integrated producers of chlorinated isos in the Commission's original investigations and in response to its five-year review institution notice. Data presented for the period examined in the final phase of the original investigations were provided by three producers (Clearon, OxyChem, and BioLab) that were believed to represent all of U.S. integrated production of chlorinated isos during January 2002-December 2004. Data presented for 2009 were provided by Clearon and OxyChem (believed to represent *** percent of chlorinated isos production in 2004 and *** percent of chlorinated isos production during 2009), but not BioLab, which accounted for *** percent of total U.S. production in 2004 and an estimated *** percent in 2009.

⁵¹ ***.

⁵² *Staff Report on Chlorinated Isocyanurates From China and Spain, Investigation Nos. 731-TA-1082 and 1083 (Final)*, May 20, 2005 (INV-CC-069), p. III-3.

⁵³ ***.

⁵⁴ *Staff Report on Chlorinated Isocyanurates From China and Spain, Investigation Nos. 731-TA-1082 and 1083 (Final)*, May 20, 2005 (INV-CC-069), p. III-3.

Table I-8
Chlorinated isos: U.S. integrated producers' trade, employment, and financial data, 2002-04 and 2009¹

(Quantity=short tons; unit values and unit labor costs=\$/short ton)

Item	2002	2003	2004	2009
Capacity ¹	150,850	152,000	152,720	***
Production	122,518	119,272	122,061	***
Capacity utilization (percent)	81.2	78.5	79.9	***
U.S. shipments:				
Quantity	111,681	100,520	115,539	***
Value (\$1,000)	192,040	161,033	159,223	***
Unit value	\$1,720	\$1,602	\$1,378	***
Exports:				
Quantity	16,759	14,053	15,863	(²)
Value (\$1,000)	22,068	19,067	22,045	(²)
Unit value	\$1,317	\$1,357	\$1,390	(²)
Total shipments:				
Quantity	128,440	114,573	131,402	(²)
Value (\$1,000)	214,108	180,100	181,268	(²)
Unit value	\$1,667	\$1,572	\$1,379	(²)
End-of-period inventories	17,469	22,168	12,827	(²)
Production and related workers (number)	***	***	***	(²)
Hours worked (1,000 hours)	***	***	***	(²)
Wages paid (\$1,000)	***	***	***	(²)
Hourly wages	***	***	***	(²)
Productivity ³ (tons/1,000 hours)	***	***	***	(²)
Unit labor costs ³	***	***	***	(²)
Net sales (\$1,000)	***	***	***	***
Cost of goods sold (\$1,000)	***	***	***	***
Gross profit or (loss) (\$1,000)	***	***	***	***
SG&A expenses (\$1,000)	***	***	***	***
Operating income or (loss) (\$1,000)	***	***	***	***
Operating income (loss)/sales (percent)	***	***	***	***

¹ Data presented for 2002-04 were provided by three producers (Clearon, OxyChem, and BioLab). These three firms were believed to have represented all of U.S. integrated production of chlorinated isos (in granular form and tablets) during the period for which data were collected. Data presented for 2009 were provided by two producers (Clearon and OxyChem) that are believed to represent *** percent of chlorinated isos production during 2009.

² Not available.

³ Data as originally tabulated. Not derivable from data presented.

Note.—U.S. shipments of tableted chlorinated isos were not included in domestic producers' U.S. shipments to prevent double-counting domestic granular product transformed into tablets. *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, p. 22 n. 171.

Source: Supplementary table I; Response of domestic interested parties, June 2, 2010, p. 24.

As shown in table I-8, the domestic industry's capacity increased during the period examined in the original investigations. Production and capacity utilization decreased between 2002 and 2003 then increased in 2004. U.S. shipment volume decreased by 10.0 percent from 2002 to 2003 then increased by 14.9 percent from 2003 to 2004. Unit values of U.S. shipments decreased from 2002 to 2004 by 19.9 percent. Production workers and their hours worked decreased throughout the period. Hourly wages increased by *** percent from 2002 to 2004. The operating income margin decreased throughout the period examined from *** percent in 2002 to a loss of *** percent in 2004. Total net sales decreased from 2002 to 2003 then recovered in 2004. Gross profit and operating income decreased throughout the period.

During the period examined in these five-year reviews, production capacity, production volume, capacity utilization, U.S. shipment quantity, value, unit value, net sales, cost of goods sold, gross profit, SG&A expenses, and operating income for calendar/fiscal year 2009 are the only industry indicators available. Staff notes that BioLab, a major producer in the original investigations, did not respond to the Commission's notice of institution in these five-year reviews. Even taking into consideration BioLab's estimated production, however, volume indicators were lower in 2009 than in 2002-04, although unit values and operating income were higher.⁵⁵

Related Party Issues⁵⁶

Chairman Koplán and Commissioners Miller and Hillman included tableters (firms that convert purchased granulated chlorinated isocyanurates into tablets) in the domestic industry, although only Chairman Koplán found that appropriate circumstances existed to exclude tableters *** and *** from the domestic industry as related parties. On the other hand, Vice Chairman Okun and Commissioners Lane and Pearson concluded that tableters did not engage in sufficient production-related activity to qualify as domestic producers and included only domestic integrated producers Clearon, OxyChem, and BioLab in the domestic industry. Integrated producers of chlorinated isocyanurates produce granular and/or powdered chlorinated isocyanurates from raw materials of cyanuric acid, caustic soda, and chlorine gas, and also convert the granular chlorinated isocyanurates into tablets. During the original investigations, OxyChem's conversion into tablets took place under a toll arrangement with tableter Stellar.⁵⁷

Domestic interested parties Clearon and OxyChem did not identify themselves as related producers in their supplemental response to the notice of institution.⁵⁸ With respect to BioLab, the domestic interested parties were silent as to related party considerations, but did not identify the company as an importer of the subject merchandise. With respect to tableters, to the extent that they might be considered part of the domestic industry, domestic interested parties Clearon and OxyChem identified the following as U.S. importers of the subject merchandise: Alden Leeds, Aqui Tri, Cadillac, N. Jonas, and Haviland.⁵⁹

⁵⁵ Assuming BioLab accounted for *** percent of both U.S. production and U.S. shipments, the aggregate 2009 volumes for these measures would have been *** short tons and *** short tons, respectively.

⁵⁶ Unless indicated otherwise, the discussion in this section is based on information contained in *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, pp. I-5-I-6.

⁵⁷ Confidential Views of the Commission, pp. 20-26.

⁵⁸ Response to Commission's Letter Regarding Domestic Producers' Substantive Response, July 2, 2010, p. 3.

⁵⁹ Response of domestic interested parties, June 2, 2010, pp. 20-22.

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

In the original investigations, subject imports from China and Spain were eligible for cumulation. The Commission examined whether there was a reasonable overlap of competition between subject imports from China and Spain, as well as between subject imports from the two countries and the domestic like product. Based on its analysis, the Commission found that there was a reasonable overlap of competition between subject imports from China and Spain and the domestic like product. The Commission thus cumulatively assessed the volume and effects of the subject imports from China and Spain in the final-phase of the original investigations.⁶⁰

In response to the Commission's notice of institution, the domestic interested parties indicated that the factors examined in the original investigations regarding cumulation remained substantially unchanged.⁶¹ Based on official import statistics, U.S. imports of chlorinated isos from China and Spain have been present in the United States during 2005-09, entering in 39 and 48 months, respectively, of this 60-month period. U.S. imports from China were largely through New York and Los Angeles, while those from Spain were largely through New York, Savannah, and Houston.

U.S. Imports

During the original investigations, the Commission sent questionnaires to 30 firms identified as possible importers in the petition and by U.S. Customs and Border Protection. Twelve firms provided requested trade data to the Commission, while twelve of the remaining eighteen firms responded that they did not import chlorinated isos during the period for which data were collected or that they imported a product other than chlorinated isos under the same HTS classification. The twelve firms that provided usable data included virtually all known large importers of chlorinated isos from China and Spain, but coverage was less complete for imports from countries other than China and Spain. Subject imports made by Shikoku International Corporation and Arch Chemicals Inc. (***) accounted for *** percent of reported imports during 2002-04. ***, Alden Leeds Inc. and Wego Chemical and Mineral Corp., accounted for *** percent and *** percent, respectively, of total reported imports during 2002-04. Arch Chemicals imported *** quantity of imports from China during this period, Alden Leeds imported the *** subject product from Spain, and Shikoku imported the *** subject product from nonsubject countries. Other companies providing import data were ***.⁶²

In their response to the Commission's notice of institution in this review, the domestic interested parties listed the following thirteen companies that they believe to be importers of subject merchandise from China: Alden Leeds Inc., Aqua Tri, Arch Chemical, Inc., Cadillac Chemical Group, Haviland Consumer Products, Inc., MLS Technology, Inc., N. Jonas & Co., Inc., Qualco, Inc., RBF International Ltd., Ryte Products, SCP Pool Corp., Special Materials Company, and Wego Chemical and Mineral Corp.⁶³ The domestic interested parties also submitted PIERS import data for 2005-09.⁶⁴ These data are markedly higher than official U.S. import statistics for HTS statistical reporting number 2933.69.6015, potentially indicating that U.S. import data presented in this report may be understated. Staff did not include statistical reporting numbers 2933.69.6021 or 2933.69.6050 in the data set as they represent

⁶⁰ *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, pp. 18-20.

⁶¹ *Response* of domestic interested parties, June 2, 2010, p. 7.

⁶² *Staff Report on Chlorinated Isocyanurates From China and Spain, Investigation Nos. 731-TA-1082 and 1083 (Final)*, May 20, 2005 (INV-CC-069), pp. IV-2-IV-3.

⁶³ *Response* of domestic interested parties, June 2, 2010, pp. 21.

⁶⁴ *Ibid.*, exh. 1.

basket categories which include merchandise not subject to these reviews. PIERS import data did not align even with the inclusion of the basket categories, which was *** as much in comparison.

The following tabulation presents the PIERS import data (in short tons) for China, Spain, and all other included countries⁶⁵ for 2005-09.

* * * * *

Chlorinated isos import data for annual periods 2002-09 are presented in table I-9. The quantity of the subject imports increased from 2002 to 2004 and then dropped noticeably in 2005. Quantity increased in 2006 and fluctuated between 2007 and 2008, until increasing (for China, although not Spain) again in 2009. Quantity reached its peak in 2004 and fell to its lowest level in 2005. The unit value of the subject imports fluctuated throughout the entire period of data collected, with no clear trend being shown. Subject imports from China fell by *** percent from *** short tons in 2004 to 45 short tons in 2005, before increasing to 6,713 short tons in 2006. Subject imports from Spain fell by *** percent from *** short tons in 2004 to 1,152 short tons in 2005, before increasing to 2,050 short tons in 2006.

Leading Nonsubject Sources of Imports

During the period examined by the Commission in the final phase of the original investigations (2002-04), the total quantity of imports of chlorinated isos from all nonsubject sources increased from *** short tons in 2002 to *** short tons in 2004. During the period for which data were collected in these reviews, imports of chlorinated isos entered the United States from a variety of sources. Japan was the single largest nonsubject source of imports between 2008 and 2009, accounting for between 14.3 percent and 25.1 percent of imported chlorinated isos in 2008 and 2009, respectively. Vietnam was second, accounting for 6.6 percent of imported chlorinated isos in 2009. PIERS import data submitted by the domestic interested parties indicate that the U.S. import data used in this report may be substantially understated, especially for Japan. The substantial increase of nonsubject imports, particularly from Japan, was specifically noted by the domestic interested parties.⁶⁶

⁶⁵ ***.

⁶⁶ *Response* of domestic interested parties, June 2, 2020, p. 10.

Table I-9
Chlorinated Isocyanurates: U.S. imports, by source, 2002-09¹

Source	2002	2003	2004	2005	2006	2007	2008	2009
	Quantity (short tons)							
China	***	***	***	45	6,713	6,425	5,373	10,797
Spain	***	***	***	1,152	2,050	1,146	4,627	2,149
Subtotal, subject	***	***	***	1,197	8,763	7,572	10,001	12,947
Japan	(²)	(²)	(²)	0	0	0	1,750	4,811
Vietnam	(²)	(²)	(²)	0	79	951	418	1,271
All other	(²)	(²)	(²)	0	0	75	33	102
Subtotal, nonsubject	***	***	***	0	79	1,027	2,201	6,184
Total, all countries	13,536	29,395	33,039	1,197	8,843	8,598	12,202	19,130
	Value (\$1,000)							
China	***	***	***	63	8,585	7,666	7,236	15,900
Spain	***	***	***	2,053	4,239	2,231	10,060	5,232
Subtotal, subject	***	***	***	2,116	12,823	9,897	17,296	21,131
Japan	(²)	(²)	(²)	0	0	0	3,665	10,432
Vietnam	(²)	(²)	(²)	0	87	2,128	858	2,662
All other	(²)	(²)	(²)	0	0	203	98	247
Subtotal, nonsubject	***	***	***	0	87	2,331	4,621	13,340
Total, all countries	19,734	36,782	42,603	2,116	12,911	12,228	21,917	34,472
	Unit value (per short ton)							
China ³	***	***	***	1,391	1,279	1,193	1,347	1,473
Spain	***	***	***	1,782	2,068	1,947	2,174	2,434
Subtotal, subject	***	***	***	1,768	1,463	1,307	1,730	1,632
Japan	(²)	(²)	(²)	0	0	0	2,094	2,168
Vietnam	(²)	(²)	(²)	0	1,102	2,237	2,052	2,094
All other	(²)	(²)	(²)	0	0	2,688	3,968	2,094
Subtotal, nonsubject	***	***	***	0	1,102	2,270	2,099	2,157
Total, all countries	1,532	1,333	1,378	1,768	1,460	1,422	1,796	1,802

Table continued on the following page.

Table I-9--Continued
Chlorinated Isocyanurates: U.S. imports, by source, 2002-09¹

Source	2002	2003	2004	2005	2006	2007	2008	2009
Share of quantity (percent)								
China	***	***	***	3.8	75.9	74.7	44.0	56.4
Spain	***	***	***	96.2	23.2	13.3	37.9	11.2
Subtotal, subject	***	***	***	100.0	99.1	88.1	82.0	67.7
Japan	(²)	(²)	(²)	0.0	0.0	0.0	14.3	25.1
Vietnam	(²)	(²)	(²)	0.0	0.9	11.1	3.4	6.6
All other	(²)	(²)	(²)	0.0	0.0	0.9	0.3	0.5
Subtotal, nonsubject	***	***	***	0.0	0.9	11.9	18.0	32.3
Total, all countries	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Share of value (percent)								
China	***	***	***	3.0	66.5	62.7	33.0	46.1
Spain	***	***	***	97.0	32.8	18.2	45.9	15.2
Subtotal, subject	***	***	***	100.0	99.3	80.9	78.9	61.3
Japan	(²)	(²)	(²)	0.0	0.0	0.0	16.7	30.3
Vietnam	(²)	(²)	(²)	0.0	0.7	17.4	3.9	7.7
All other	(²)	(²)	(²)	0.0	0.0	1.7	0.4	0.7
Subtotal, nonsubject	***	***	***	0.0	0.7	19.1	21.1	38.7
Total, all countries	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

¹ Data presented for 2002-04 are based on data from importer questionnaire responses received in the Commission's original investigations. Data presented for 2005-09 are based on official U.S. import statistics.

² Not available.

³ Unit values for China during the original investigations as originally tabulated. Not derivable from data presented.

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

Note.—Mexico and India entered the U.S. market in 2009, accounting for the majority of nonsubject imports after Japan and Vietnam, a quantity of 247 short tons combined.

Note.—As noted previously, quantity data tabulated by the domestic interested parties suggest that imports of chlorinated isos may be substantially greater than quantity of imports entering the United States under HTS statistical reporting number 2933.69.6015.

Source: *Staff Report on Chlorinated Isocyanurates From China and Spain, Investigation Nos. 731-TA-1082 and 1083 (Final)*, May 20, 2005 (INV-CC-069), table IV-2 (2002-04), official Commerce statistics, HTS statistical reporting number 2933.69.6015.

Ratio of Imports to U.S. Production

Information concerning the ratio of U.S. imports to U.S. production of chlorinated isos is presented in table I-10. Subject imports of chlorinated isos from China were equivalent to *** percent of U.S. production in 2002, increased to *** percent during 2003, and then further increased to *** percent in 2004. Subject imports of chlorinated isos from China were equivalent to *** percent of U.S. production in 2009, a slight increase when compared with the period examined in the original investigations. Subject imports of chlorinated isos from Spain were equivalent to *** percent in 2002, increased to *** percent in 2003, then decreased slightly to *** percent in 2004. Based on directly reported 2009 domestic data and “clean” U.S. import data, subject imports of chlorinated isos from Spain were equivalent to *** percent of U.S. production. Subject imports of chlorinated isos combined amounted to *** percent of domestic production in 2009, decreasing less than half a percentage point when compared with 2004. The ratio of nonsubject imports to domestic production increased from *** percent in 2004 to *** percent in 2009.

Staff notes that the exclusion of major producer BioLab in the 2009 data set understates U.S. production. The “clean” U.S. import data may also be potentially understated. Assuming the higher values for both production and importation, the ratio of imports from China to U.S. production in 2009 would be *** percent, while the ratio of imports from Spain to U.S. production would be *** percent.

Table I-10
Chlorinated isos: Ratio of U.S. imports¹ to U.S. production, by sources, 2002-04 and 2009²

Item	2002	2003	2004	2009
Quantity (short tons)				
U.S. production	122,518	119,272	122,061	***
U.S. imports from--				
China	***	***	***	10,797
Spain	***	***	***	2,149
All subject countries	***	***	***	12,946
Other	***	***	***	6,184
All countries	13,536	29,395	33,039	19,130
Ratio of U.S. imports to production (percent)				
China	***	***	***	***
Spain	***	***	***	***
All subject countries	***	***	***	***
Other	***	***	***	***
All countries	11.0	24.6	27.1	***
<p>¹ Import data presented for 2002-04 are based on data from importer questionnaire responses received in the Commission's original investigations and consist of granular dichlor, granular trichlor, tableted trichlor, and blended tablets. Import data presented for 2009 are based on official U.S. import statistics and consist of only granular dichlor and trichlor.</p> <p>² Production data presented for 2002-04 were provided by three producers believed to have represented 100 percent of the U.S. integrated production of chlorinated isos during 2004 and includes granular dichlor and granular trichlor. Data presented for 2009 were provided by two producers believed to have represented *** percent of U.S. production of chlorinated isos during 2004 and *** percent during 2009.</p> <p>Note.—As noted previously, quantity data tabulated by the domestic interested parties suggest that imports of chlorinated isos may be substantially greater than quantity of imports entering the United States under HTS statistical reporting number 2933.69.6015.</p> <p>Source: <i>Staff Report on Chlorinated Isocyanurates From China and Spain, Investigation Nos. 731-TA-1082 and 1083 (Final)</i>, May 20, 2005 (INV-CC-069), tables IV-2 and IV-5; Supplementary table I (2002-04); official Commerce statistics, HTS statistical reporting number 2933.69.6015 (for 2009 U.S. import data); and <i>Response of domestic interested parties</i>, June 2, 2010, p. 24 (for 2009 production data).</p>				

Apparent U.S. Consumption and Market Shares

Apparent U.S. consumption and market shares are presented in table I-11. U.S. shipments of domestically produced chlorinated isos decreased from 2002 to 2003, then increased in 2004. U.S. shipments of chlorinated isos from China increased throughout the original period of investigation, while U.S. shipments of chlorinated isos from Spain increased from 2002 to 2003 then decreased from 2003-04. U.S. imports from China increased by *** percentage points in market share based on quantity from 2002 to 2004 Spain's market share remained more stable, increasing slightly from *** percent in 2002 to *** percent in 2004. The domestic industry's share of apparent U.S. consumption based on quantity fell from 89.2 percent in 2002 to 77.9 percent in 2004.

The quantity of apparent U.S. consumption in 2009 was lower than at any time during the original investigations, but higher in terms of value when compared with 2004.⁶⁷ The domestic chlorinated isos industry held an estimated *** percent of apparent U.S. consumption on the basis of quantity in 2009 and an estimated *** percent on the basis of value in that year. U.S. imports from China held a *** percent share of the U.S. market in 2009 on the basis of quantity and *** percent on the basis of value, while Spain held a *** percent share on the basis of quantity and *** percent share on the basis of value. Apparent U.S. consumption shares for U.S. shipments of subject imports combined amounted to *** percent on the basis of quantity and *** percent on the basis of value.

The exclusion of BioLab from the data set underestimates 2009 domestic production and market share of U.S. consumption and overestimates import market share of U.S. consumption. In addition, quantity data submitted by the domestic interested parties indicate that “clean” U.S. import statistics may also be understated. Assuming both values were maximized, U.S. shipments of *** short tons would constitute *** percent of apparent U.S. consumption of *** short tons. U.S. imports from China and Spain of *** and *** short tons, respectively, would constitute *** and *** percent of apparent U.S. consumption, respectively, or *** short tons (*** percent) cumulatively. Imports for identified nonsubject countries would constitute *** short tons, or *** percent of apparent U.S. consumption.

Table I-11
Chlorinated isos: U.S. integrated producers’ U.S. shipments, U.S. shipments of imports, and apparent U.S. consumption, 2002-04, and 2009

Item	2002	2003	2004	2009 ¹
Quantity (short tons)				
U.S. integrated producers’ U.S. shipments	111,681	100,520	115,539	***
U.S. shipments of imports from--				
China	***	***	***	10,797
Spain	***	***	***	2,149
Subtotal (subject)	***	***	***	12,947
All other sources ²	***	***	***	6,184
Total import shipments	13,485	27,392	32,712	19,130
Apparent U.S. consumption	125,166	127,912	148,251	***

Table continued on the following page.

⁶⁷ As mentioned previously, BioLab, which accounted for approximately *** percent of total U.S. production, is missing from the data set.

Table I-11—Continued

Chlorinated isos: U.S. integrated producers' U.S. shipments, U.S. shipments of imports, and apparent U.S. consumption, 2002-04, and 2009¹

Item	2002	2003	2004	2009 ¹
Value (1,000 dollars)				
U.S. integrated producers' U.S. shipments	192,040	161,033	159,223	***
U.S. shipments of imports from-- China	***	***	***	15,900
Spain	***	***	***	5,232
Subtotal (subject)	***	***	***	21,131
All other sources	***	***	***	13,340
Total import shipments	22,181	49,737	60,281	34,472
Apparent U.S. consumption	214,221	210,770	219,504	***
Share of consumption based on quantity (percent)				
U.S. integrated producers' U.S. shipments	89.2	78.6	77.9	***
U.S. shipments of imports from-- China	***	***	***	***
Spain	***	***	***	***
Subtotal (subject)	***	***	***	***
All other sources	***	***	***	***
Total import shipments	10.8	21.4	22.1	***
Apparent U.S. consumption	100.0	100.0	100.0	100.0
Share of consumption based on value (percent)				
U.S. integrated producers' U.S. shipments	89.6	76.4	72.5	***
U.S. shipments of imports from-- China	***	***	***	***
Spain	***	***	***	***
Subtotal (subject)	***	***	***	***
All other sources	***	***	***	***
Total import shipments	10.4	23.6	27.5	***
Apparent U.S. consumption	100.0	100.0	100.0	100.0
¹ Consumption during the period examined in the original investigations was calculated using import shipments as reported by U.S. importers while consumption during 2009 was calculated using official Commerce statistics.				
Source: Supplementary table I; <i>Response</i> of domestic interested parties, June 2, 2010, p. 24; and official Commerce statistics, HTS statistical reporting number 2933.69.6015.				

The domestic swimming pool chemical market is strongly linked to activity in the U.S. housing industry. The domestic interested parties indicated in their response to the Commission's notice of institution in this review that "hot summers tend to lead to increased demand" which they contend explains trends observed from the 2002-04 period during the final-phase of the original investigations. They reason that "with the overall decline in the U.S. housing market for the last few years and the weak economy, growth in the number of new swimming pools has slowed and overall consumption probably

has not increased substantially since the original investigations.” However, purchaser *** believes that as the U.S. housing market and the economy continues to improve, consumer demand will increase.⁶⁸

In their response to the notice of institution, the domestic producers assert that “the underlying market dynamics for chlorinated isos” noted by the Commission in the original investigations have not changed. The domestic producers note that “there is still intense competition among producers for business...and low price offers are quickly communicated throughout the market and exert downward pressure across all major segments...hav{ing} the effect of depressing or suppressing domestic prices of U.S. producers in the event of revocation of the orders.”

Additionally, the domestic interested parties reported that the domestic industry has lost U.S. market share since the imposition of the antidumping duty orders. OxyChem and Clearon are currently operating at a combined *** percent capacity utilization, which is *** than at any point in the original investigations. The domestic producers also believe that BioLab is “operating at much less than its full production capacity.”⁶⁹ They conclude that “while the domestic industry has experienced some beneficial improvement in terms of pricing, the orders have not allowed the domestic industry to retake any of the market share that was lost to subject imports during the period of the original investigations. This loss of share also makes the domestic industry highly vulnerable to any deterioration in current pricing levels.”⁷⁰

In the original investigations, “almost all” producer responses to Commission questionnaires stated that imports from China and Spain satisfied minimum quality specifications and were therefore interchangeable with the domestic product. However, in its purchaser survey response, *** reported that “there is a limited amount of higher quality product” in the United States due to the small number of domestic producers, while China and Spain are producing lower quality product. Purchaser *** also notes that Spanish product is even lower quality than Chinese product and is failing quality control. For example, the company has tested some product that have had less than 70 percent chlorine content even though containers stated chlorine content of 99 percent.⁷¹ Recent events such as the bankruptcy of domestic producer BioLab’s parent company, Chemtura, and a major Spanish company’ reported refusal to export to the United States due to the antidumping duty orders potentially raises concern over supply shortages in the future, at least according to certain customers. For example, *** alleges that with each passing year, “some of the big U.S. vendors fear that there will be a shortage.”⁷² However, the domestic interested parties noted an increase in import supply available from China and from nonsubject countries such as Japan and Vietnam.⁷³

Another factor impacting the supply of chlorinated isos in the U.S. market reflects changes in the application of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) to chlorinated isos. Pool products containing chlorinated isos are treated as pesticides and must be registered under FIFRA. Since 1986, FIFRA has required in-depth studies to determine the environmental safety of the product. Therefore, any firm that wished to obtain a license to sell chlorinated isos in the United States had to file an application with the EPA citing to studies regarding the environmental safety of the product. Performing these studies individually was time consuming and costly, so individual producers were permitted to rely on studies that had already been done by an Ad Hoc Committee in 1986. The three integrated domestic producers, several non-subject suppliers, and Spanish producer Aragonesas were

⁶⁸ Purchaser survey response of ***.

⁶⁹ *Response* of domestic interested parties, p. 9. BioLab’s parent company Chemtura is undergoing bankruptcy proceedings. *Response* of domestic interested parties, p. 9.

⁷⁰ *Response* of domestic interested parties, pp. 6-10 and 18.

⁷¹ Purchaser survey response of ***.

⁷² Purchaser survey responses of ***. Purchaser *** has also expressed concern about “the future effects on capacity from a major U.S. supplier operating under Chapter 11 bankruptcy.” Purchaser survey response of ***.

⁷³ *Response* of domestic interested parties, June 2, 2010, pp. 25-26.

members of the Ad Hoc Committee. The Committee charged \$400,000 to non-member applicants for using these studies.

In 2001, the fifteen-year period during which the Ad Hoc Committee could charge this fee expired. This meant that starting in 2001, importers of subject imports could use the Ad Hoc Committee research to obtain the U.S. licenses without first paying the costly research fee. In 2001, Cadillac became the first U.S. importer after the expiration of the fee requirement to obtain an EPA registration for chlorinated isos, followed quickly by N. Jonas, Alden Leeds, and Arch. Both Petitioners and Respondents in the original investigations agreed that the change in application of the EPA regulations for approving U.S. sales of chlorinated isos made it easier for importers to sell subject imports of chlorinated isos in the United States.⁷⁴

ANTIDUMPING ACTIONS OUTSIDE THE UNITED STATES

In 2005, an antidumping duty order on trichloroisocyanuric acid (“TCCA”) products from China and the United States was enacted by the European Union (“EU”). The duties imposed on TCCA from China and the United States was 46.6 percent and 25.0 percent respectively. On April 23, 2010, the European Commission published notice of “impending expiry” of the antidumping duty orders from China and the U.S. unless a review was initiated. The antidumping duty orders are due to expire on October 8, 2010.⁷⁵

In addition, an antidumping order on imports of trichloroisocyanuric acid from China was imposed by Mexico in December 2002. These Mexican duties remained in effect until December 2007, when they were revoked pursuant to a notice published by the Mexican Ministry of Economics.⁷⁶ There are no antidumping measures for sodium dichloroisocyanuric acid and no other antidumping actions concerning chlorinated isos outside the United States were identified in the domestic interested parties’ response to the Commission’s notice of institution in this review nor were any other actions identified in public searches for information.⁷⁷

THE WORLD MARKET

Total worldwide capacity of chlorinated isos was estimated to be approximately 373,000 short tons in 2006 (but this includes over 110,000 short tons per year of capacity in China that reportedly produces product of inferior quality). Close to half of this capacity is located in China (which again may include inferior product only suitable for domestic consumption).⁷⁸ Table I-12 presents information on major producers of chlorinated isos, excluding China and Spain.

Table I-12
Chlorinated isos: Major world producers (excluding China and Spain)

* * * * *

⁷⁴ *Chlorinated Isocyanurates From China and Spain: Inv. Nos. 731-TA-1082 and 1083 (Final)*, USITC Pub. 3782, June 2005, pp. 23-24.

⁷⁵ *European Commission*. “Notice of the impending expiry of certain anti-dumping measures (2010/C 104/08),” April 23, 2010, <http://trade.ec.europa.eu/tdi/notices.cfm>.

⁷⁶ *Response of domestic interested parties*, June 2, 2010, pp. 15-16.

⁷⁷ ***.

⁷⁸ *Ibid.*, p. 5.

3V Italia is a privately owned company which started production in Italy in 1986. It is self-sufficient in cyanuric acid and is downstream-integrated into the production and marketing of final-use form such as tablets and small buckets of granules. 3V Italia is an important manufacturer of cyanuric acid-based optical brighteners (i.e. triazinylaminostilbene), for which the company has a significant market share.⁷⁹

All Japanese companies produce chlorinated isocyanurates from urea via cyanuric acid. Nissan Chemical and Shikoku have been supplying product since the 1960s. Nippon Soda started production in 1982 and provides trichlorocyanuric acid mainly to the septic tank market. Nankai began production in 1999. Nippon Soda and Nankai also produce calcium hypochlorite, which competes with chlorinated isocyanurates in the swimming pool market.⁸⁰

THE SUBJECT INDUSTRY IN CHINA

The Commission reported in the original investigations that there were believed to be at least 22 producers of chlorinated isocyanurates in China at the time, although the exact number was unknown. The following four producers in China that provided questionnaire responses in the original investigations were believed to have accounted for most of the exports of the subject merchandise to the United States during 2004: (1) Changzhou Clean Chemical Co., Ltd.; (2) Hebei Jiheng Chemical Co., Ltd.; (3) Nanning Chemical Industry Co., Ltd.; and (4) Sinochem Hebei Import and Export Corp.⁸¹ Those companies, who are believed to be the leading producers in China, are listed in Table I-13.

The Commission did not receive a response to its notice of institution in these reviews from any Chinese producer of chlorinated isos. However, the domestic interested parties identified in their response six producers of chlorinated isos in China that have or may have exported the subject merchandise to the United States after the order was imposed. According to information published by *** and included as an exhibit to the domestic interested parties' response, there are at least 22 producers of chlorinated isos in China.⁸²

⁷⁹ ***.

⁸⁰ ***.

⁸¹ *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, p. VII-1.

⁸² *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082-1083 (Review)*-- Recommendation on Adequacy of Responses to Notice of Institution.

Table I-13
Chlorinated isos: Major Chinese producers

Firm	Capacity (short tons)	Location
***	(¹)	***
China Salt Changzhou Chemical Co., Ltd.	33,069.3	Changzhou, Jiangsu
***	(¹)	***
Hebei Jiheng Chemical Co., Ltd.	60,627.1	Hengshui, Hebei
Heze Huayi Chemical Co., Ltd.	17,637.0	Qingdao, Shandong
***	(¹)	***
***	(¹)	***
***	(¹)	***
Liaocheng London Chemical Co., Ltd.	6,613.9	Liaocheng, Shandong
Nanning Chemical Industry Co., Ltd.	16,534.7	Nanning, Guangxi Zhuang A.R.
Puyang Cleanway Chemicals Ltd.	27,557.8	Henan, Puyang
Shandong Juancheng Kangtai Chemical Co.	55,115.6	Juancheng County, Shandong
Sino-Korea Anhui Suzhou SDF Chemical Industry Co.	9,920.8	Putuo, Shanghai
Zhucheng Taisheng Chemical Co., Ltd.	5,511.6	Zhucheng, Shandong
¹ ***.		
Source: <i>Response of domestic interested parties</i> , June 2, 2010, exh. 2 and 4.		

The foreign producers' data from the period examined in the original investigations for granular chlorinated isos are shown in table I-14 and their data for tableted chlorinated isos are shown in table I-15 (granular and tableted chlorinated isos cannot be added together because of double-counting of the granular product used in the tableted product). Both capacity and production for the four responding producers increased overall in the period examined. Exports accounted for a substantial and increasing share of total shipments during the period examined. As a share of total shipments, exports to the United States increased from 2002 to 2004. The only data available for 2009 was derived from official import statistics. However, this is an inadequate comparison since granular and tableted chlorinated isos were not added together in the original investigations in order to avoid double-counting.

Table I-14
Granular chlorinated isos: China's production capacity, production, shipments, and inventories, by type, 2002-04, and projections for 2005-06

* * * * *

Table I-15
Tableted chlorinated isos: China's production capacity, production, shipments, and inventories, by type, 2002-04, and projections for 2005-06

* * * * *

The main uses of chlorinated isos in China are swimming pool sanitation and disinfection of drinking water and industrial circulating water. Dichloroisocyanurate can be used for disinfection in raising silkworms, livestock, poultry, and fish. It is also used as bleach for cotton, hemp, and chemical fibers and as a wool antishrinkage agent. The Chinese market for swimming pool products is not very large; therefore, many producers are export-oriented. Total Chinese exports were believed to be *** short tons in recent years, with most exports going to Europe and North America.⁸³

According to the domestic producers, the United States is, “by a very wide margin,” the largest market in the world for chlorinated isos. The domestic producers also note that Chinese producers “must” export their chlorinated isos because, in 2006, Chinese total domestic consumption of chlorinated isos was *** metric tons (or *** short tons), while their production was *** metric tons (*** short tons). “This export imperative is why the surge of Chinese imports into the U.S. market in the 2002-2004 time period...resulted in a precipitous decline in U.S. prices.” Finally, domestic producers highlight that the Chinese industry exports almost its entire production of chlorinated isos, and that production “appears to be rising rapidly with every year.”

THE SUBJECT INDUSTRY IN SPAIN

At the time of the Commission’s original investigations, the Spanish industry consisted of two firms: Aragonesas Delsa S.A. (“Aragonesas”) and INQUIDE Flix, S.A. (“INQUIDE”). Aragonesas, the sole exporter of the subject merchandise to the United States during the original investigations, was the only producer in Spain that provided a questionnaire response to the Commission.

The Commission did not receive a response to its notice of institution of these reviews from any Spanish producer, but Clearon and OxyChem’s response indicates that today the Spanish industry still consists of two active producers of chlorinated isos: Aragonesas (acquired by Ercros in 2005) and INQUIDE. Table I-16 presents information regarding the Spanish producers listed in the domestic producers’ response and the Commission’s original investigations.

Table I-16
Chlorinated isos: Major Spanish producers

* * * * *

Based on information submitted by the domestic interested parties, Aragonesas is the leading European producer of trichloroisocyanuric acid and commenced production in 1973. The chlorinated isos that are produced are sold in the form of granules, powder, blocks, and tablets.⁸⁴

Regarding Spanish production, domestic producers contend that the Spanish industry is highly-export oriented and has substantial incentives to sell into the United States. Of the two producers in Spain, the *** (included in the domestic producers’ response to the notice of institution) indicates that Aragonesas and INQUIDE exported *** percent and *** percent of their total production respectively in 2006. The domestic interested parties note that with the spread of Chinese imports in Europe, Spanish producers have the incentive to seek out export markets, such as the United States, for an increasing share of their production.⁸⁵

Production goes to both the industrial and professional markets and about *** percent of production is exported. The raw materials for production of chlorinated isos are supplied from a newly erected plant at the same site (Sabiñánigo); before 2005, the raw materials were transferred from

⁸³ ***.

⁸⁴ ***.

⁸⁵ *Response* of domestic interested parties, June 2, 2010, p. 12.

Aragonesas's chlorine plant at Les Franqueses del Vallès, which was shut down after the new plant was erected in Sabiñánigo. In 2005 Aragonesas was acquired by Ercros from Uralita SA, Spain for ***.

INQUIDE is a part of the Neokem Group, which together with AstralPool, are part of Aquaria Group. About *** percent of INQUIDE's production is for the Spanish market and the remaining *** percent is exported to other Western European countries, South America, and the Middle East. Since May 1997, the company has been producing isocyanuric acid in a factory at La Pobla de Claramunt, with a capacity of *** short tons per year which is intended primarily for captive consumption, with smaller volumes available for export. In 1999, INQUIDE entered into a joint venture with Ercros, that called for the construction of a new plant to produce trichloroisocyanurate in Flix (Tarragona), which started production in 2001, capable of producing *** short tons. The Flix plant uses the isocyanuric acid from the INQUIDE plant in La Pobla de Claramunt, chlorine gas and caustic soda piped in from the adjacent Ercros plant. Ercros claims to be the leading supplier of sodium hypochlorite in Spain and has a *** percent share of the domestic market. INQUIDE is not involved in non-swimming pool markets of isos.

Data for Aragonesas compiled during the original investigations are shown in tables I-17 (granular chlorinated isos) and I-18 (tableted chlorinated isos).⁸⁶ By mid-2003, Aragonesas shut down a ***-tons-per-year trichlor plant and now operates a ***-tons-per-year trichlor plant and a ***-tons-per-year dichlor plant. After the commissioning of the new dichlor plant, Aragonesas ***. Exports accounted for a *** of Aragonesas' total shipments in the period examined, with *** going to the United States. Other principal export markets for Aragonesas include ***. The only data available for 2009 was derived from official import statistics. However, this is an inadequate comparison since granular and tableted chlorinated isos were not added together in the original investigations in order to avoid double-counting.

Table I-17

Granular chlorinated isos: Spain's production capacity, production, shipments, and inventories, 2002-04, and projections for 2005-06

* * * * *

Table I-18

Tableted chlorinated isos: Spain's production capacity, production, shipments, and inventories, 2002-04, and projections for 2005-06

* * * * *

⁸⁶ Although complete data for the second producer, INQUIDE, are not available, it reportedly began operating in 2001 and was reported to have a production capacity of over 7,700 short tons. *Chlorinated Isocyanurates From China and Spain: Investigation Nos. 731-TA-1082 and 1083 (Final)*, USITC Publication 3782, June 2005, p. VII-2 n. 2.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 731-TA-1082-1083
(Review)]

**Chlorinated Isocyanurates From China
and Spain**

AGENCY: United States International
Trade Commission.

ACTION: Institution of five-year reviews
concerning the antidumping duty orders
on chlorinated isocyanurates from
China and Spain.

SUMMARY: The Commission hereby gives
notice that it has instituted reviews
pursuant to section 751(c) of the Tariff
Act of 1930 (19 U.S.C. 1675(c)) (the Act)
to determine whether revocation of the
antidumping duty orders on chlorinated
isocyanurates from China and Spain
would be likely to lead to continuation
or recurrence of material injury.
Pursuant to section 751(c)(2) of the Act,
interested parties are requested to
respond to this notice by submitting the
information specified below to the
Commission;¹ to be assured of
consideration, the deadline for

¹ No response to this request for information is
required if a currently valid Office of Management
and Budget (OMB) number is not displayed; the
OMB number is 3117-0016/USITC No. 10-5-213,
expiration date June 30, 2011. Public reporting
burden for the request is estimated to average 15
hours per response. Please send comments
regarding the accuracy of this burden estimate to
the Office of Investigations, U.S. International Trade
Commission, 500 E Street, SW., Washington, DC
20436.

responses is June 2, 2010. Comments on
the adequacy of responses may be filed
with the Commission by July 16, 2010.
For further information concerning the
conduct of these reviews and rules of
general application, consult the
Commission's Rules of Practice and
Procedure, part 201, subparts A through
E (19 CFR part 201), and part 207,
subparts A, D, E, and F (19 CFR part
207), as most recently amended at 74 FR
2847 (January 16, 2009).

DATES: *Effective Date:* May 3, 2010.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Background.—On June 24, 2005, the
Department of Commerce issued
antidumping duty orders on imports of
chlorinated isocyanurates from China
and Spain (70 FR 36561-36563). The
Commission is conducting reviews to
determine whether revocation of the
orders would be likely to lead to
continuation or recurrence of material
injury to the domestic industry within
a reasonably foreseeable time. It will
assess the adequacy of interested party
responses to this notice of institution to
determine whether to conduct full or
expedited reviews. The Commission's
determinations in any expedited
reviews will be based on the facts
available, which may include
information provided in response to this
notice.

Definitions.—The following
definitions apply to these reviews:

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

(2) The *Subject Countries* in these
reviews are China and Spain.

(3) The *Domestic Like Product* is the
domestically produced product or
products which are like, or in the
absence of like, most similar in
characteristics and uses with, the

Subject Merchandise. In its original determinations, the Commission defined the *Domestic Like Product* as all chlorinated isocyanurates, coextensive with Commerce's scope of investigation.

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

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is June 24, 2005.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

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

rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

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

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 2, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's

rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

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

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

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

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

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

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

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

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

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

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

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in

place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

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

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

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

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

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

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

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

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on

an aggregate basis, for the firms which are members of your association.

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

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

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

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

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

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

Issued: April 22, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010-9817 Filed 4-30-10; 8:45 am]

BILLING CODE 7020-02-P

Year Review which covers the same orders.

DATES: *Effective Date:* May 3, 2010.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

SUPPLEMENTARY INFORMATION:

Background

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

Initiation of Review

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

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

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

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

DOC case No.	ITC case No.	Country	Product	Department contact
A-570-898	731-TA-1082 ...	PRC	Chlorinated Isocyanurates	Jennifer Moats, (202) 482-5047.
A-469-814	731-TA-1083 ...	Spain	Chlorinated Isocyanurates	Jennifer Moats, (202) 482-5047.
A-570-101	731-TA-101	PRC	Greige Polyester Cotton Printcloth (3rd Review).	Jennifer Moats, (202) 482-5047.
A-570-001	731-TA-125	PRC	Potassium Permanganate (3rd Review).	Jennifer Moats, (202) 482-5047.
A-351-503	731-TA-262	Brazil	Iron Construction Castings (3rd Review).	Dana Mermelstein, (202) 482-1391.
A-122-503	731-TA-263	Canada	Iron Construction Castings (3rd Review).	Dana Mermelstein, (202) 482-1391.
A-570-502	731-TA-265	PRC	Iron Construction Castings (3rd Review).	Dana Mermelstein, (202) 482-1391.
C-351-504	701-TA-249	Brazil	Heavy Iron Construction Castings (3rd Review).	Brandon Farlander, (202) 482-0182.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the

public on the Department's Internet Web site at the following address: "<http://ia.ita.doc.gov/sunset/>." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

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

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

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

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

concerning antidumping and countervailing duty proceedings at the Department.

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

Dated: April 19, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10258 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–DS–P

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

351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping, at the levels indicated in the “Final Results of Sunset Review” section of this notice, *infra*.

EFFECTIVE DATE: August 13, 2010.

FOR FURTHER INFORMATION CONTACT:

Brandon Petelin or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-8173 or (202) 482-0650, respectively.

SUPPLEMENTARY INFORMATION: On June 24, 2005, the Department published the antidumping duty orders on chlorinated isos from Spain and the PRC.¹ On May 3, 2010, the Department published the notice of initiation of the first sunset reviews of the antidumping duty orders on chlorinated isos from Spain and the PRC, pursuant to section 751(c) of the Act.² On May 18, 2010, pursuant to 19 CFR 351.218(d)(1), the Department received timely and complete notices of intent to participate in the sunset reviews from Clearon Corporation and Occidental Chemical Corporation, domestic producers of chlorinated isos (collectively “Petitioners”). On June 2, 2010, pursuant to 19 CFR 351.218(d)(3), Petitioners filed timely and adequate substantive responses within 30 days after the date of publication of the *Sunset Initiation*. The Department did not receive substantive responses from any respondent interested party with respect to the orders on chlorinated isos from Spain or the PRC. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the antidumping duty orders on chlorinated isos from Spain and the PRC.

SCOPE OF THE ORDERS:

The products covered by the orders are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid (Cl₃(NCO)₃), (2) sodium dichloroisocyanurate (dihydrate) (NaCl₂(NCO)₃(2H₂O)), and (3) sodium dichloroisocyanurate

(anhydrous) (NaCl₂(NCO)₃). Chlorinated isos are available in powder, granular, and tableted forms. The orders cover all chlorinated isos. Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.50.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”).³ The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

ANALYSIS OF COMMENTS RECEIVED:

A complete discussion of all issues raised in these sunset reviews is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. See “Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Chlorinated Isocyanurates from Spain and the People’s Republic of China,” from Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice (“I&D Memo”). The issues discussed in the I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can obtain a public copy of the I&D Memo from the Central Records Unit, room 1117, of the main Commerce building. In addition, a complete public version of the I&D Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the I&D Memo are identical in content.

FINAL RESULTS OF REVIEW:

The Department determines that revocation of the antidumping duty orders on chlorinated isos from Spain and the PRC would be likely to lead to continuation or recurrence of dumping

DEPARTMENT OF COMMERCE

International Trade Administration

A-469-814, A-570-898

Chlorinated Isocyanurates from Spain and the People’s Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On May 3, 2010, the Department of Commerce (“the Department”) initiated sunset reviews of the antidumping duty orders on chlorinated isocyanurates (“chlorinated isos”) from Spain and the People’s Republic of China (“PRC”) pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). Based on the notices of intent to participate and adequate responses filed by the domestic interested parties, and the lack of response from any respondent interested party, the Department conducted expedited (120-day) sunset reviews of the antidumping duty orders on chlorinated isos from Spain and the PRC, pursuant to section 751(c)(3)(B) of the Act and 19 CFR

¹ See *Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 36561 (June 24, 2005) (“PRC Order”); see also *Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order*, 70 FR 36562 (June 24, 2005) (“Spain Order”).

² See *Initiation of Five-Year (“Sunset”) Review*, 75 FR 23240 (May 3, 2010) (“Sunset Initiation”).

³ The Spain Order currently covers HTSUS subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050, while the PRC Order currently covers

HTSUS subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.50.00.

at the following weighted-average margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
<i>Spain.</i>	
Argonesas Delsa S.A.	24.83
All-Others Rate	24.83
<i>PRC.</i>	
Hebei Jiheng Chemical Co., Ltd.	75.78
Nanning Chemical Industry Co., Ltd.	285.63
Changzhou Clean Chemical Co., Ltd.	137.69
Liaocheng Huaao Chemical Industry Co., Ltd.	137.69
Sinochem Hebei Import & Export Corporation	137.69
Sompcje, Shanghai Import & Export Corp.	137.69
PRC-Wide Rate	285.63

**NOTIFICATION REGARDING
ADMINISTRATIVE PROTECTIVE
ORDER:**

This notice also 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 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: August 9, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-20074 Filed 8-12-10; 8:45 am]

BILLING CODE 3510-DS-S

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on chlorinated isocyanurates from China and Spain would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective Date: August 6, 2010.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. On August 6, 2010, the Commission determined that the domestic interested party group response to its notice of institution (75 FR 23303, May 3, 2010) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on September 2, 2010, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter,

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 731–TA–1082 and 1083
(Review)]

**Chlorinated Isocyanurates From China
and Spain**

AGENCY: United States International
Trade Commission.

ACTION: Scheduling of expedited five-
year reviews concerning the
antidumping duty orders on chlorinated
isocyanurates from China and Spain.

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before September 8, 2010, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 8, 2010. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (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: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 12, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010-20349 Filed 8-17-10; 8:45 am]

BILLING CODE 7020-02-P

² The Commission has found the joint response submitted by Clearon Corp. and Occidental Chemical Corp. to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

APPENDIX B
COMMISSION'S STATEMENT ON ADEQUACY

EXPLANATION OF COMMISSION DETERMINATIONS ON ADEQUACY
in
Chlorinated Isocyanurates from China and Spain,
Inv. Nos. 731-TA-1082-1083 (Review)

On August 6, 2010, the Commission determined that it should conduct expedited reviews in the subject five-year reviews pursuant to section 751(c)(3)(B) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)(B)).

The Commission received a single response filed jointly by domestic integrated producers Clearon Corporation (“Clearon”) and Occidental Chemical Corporation (“OxyChem”). Clearon and OxyChem estimate that they represent two-thirds of all domestically-produced chlorinated isocyanurates. The Commission found the joint response of the domestic producers adequate. The Commission also determined that the domestic interested party group response to its notice of institution was adequate.

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

The Commission did not find any circumstances that would warrant conducting full reviews of the orders. The Commission, therefore, determined to conduct expedited reviews of the orders.

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

