

Creatine Monohydrate From the People's Republic of China

Investigation No. 731-TA-814 (Preliminary)

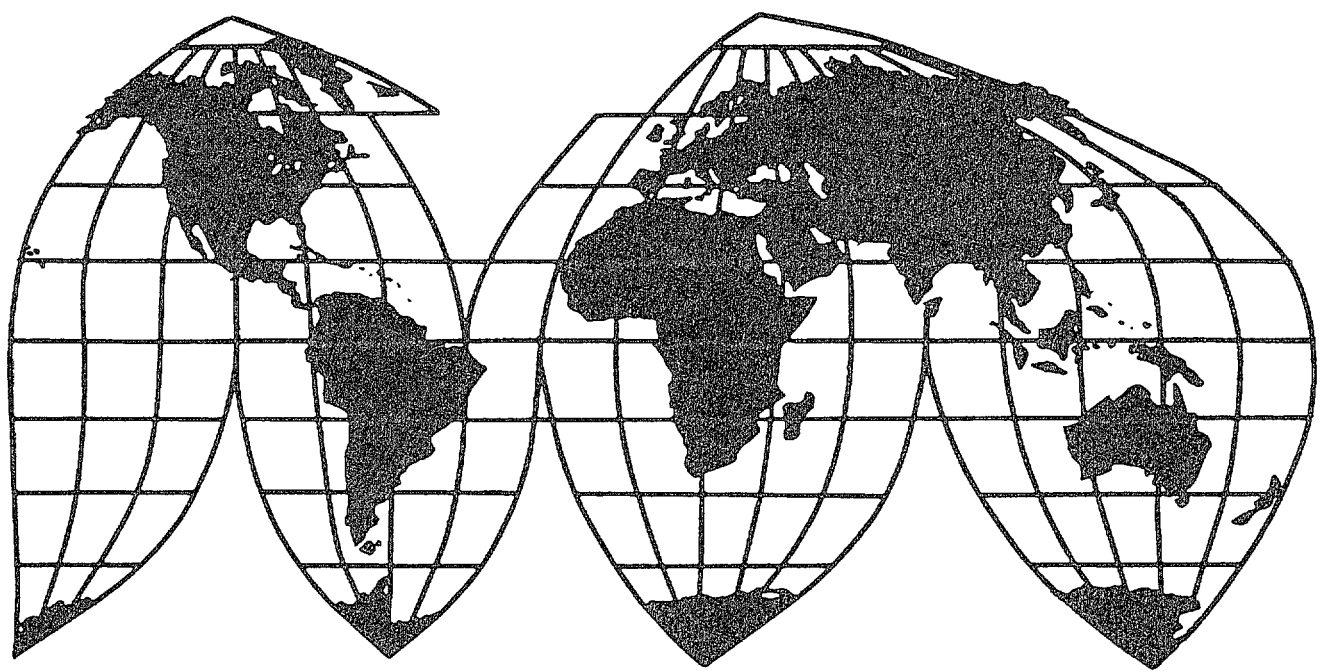
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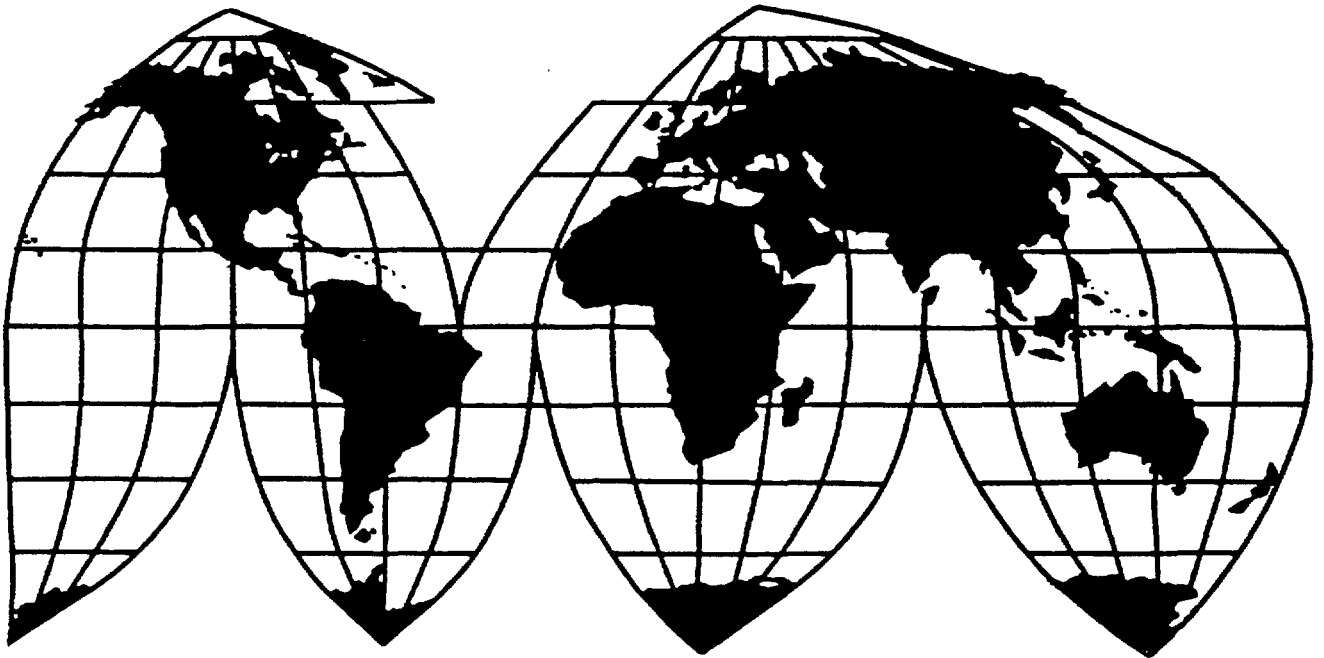
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April 1999

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Note: Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-814 (Preliminary)

CREATINE MONOHYDRATE FROM THE PEOPLE'S REPUBLIC OF CHINA

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of creatine monohydrate, provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATION

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

BACKGROUND

On February 12, 1999, a petition was filed with the Commission and the Department of Commerce by Pfanstiehl Laboratories, Inc., Waukegan, IL, alleging that an industry in the United States is materially injured and is threatened with material injury by reason of LTFV imports of creatine monohydrate from the People's Republic of China. Accordingly, effective February 12, 1999, the Commission instituted antidumping investigation No. 731-TA-814 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 22, 1999 (64 FR 8629). The conference was held in Washington, DC, on March 8, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

IEWS OF THE COMMISSION

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

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

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

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

¹19 U.S.C. §§ 1671b(a) and 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT __, Slip Op. 96-51 at 4-6 (March 11, 1996).

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

³19 U.S.C. § 1677(4)(A).

⁴19 U.S.C. § 1677(4)(A).

⁵19 U.S.C. § 1677(10).

⁶See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability, (3) channels of distribution; (4)

(continued...)

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

B. Product Description

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

creatine monohydrate or creatine. The chemical name for creatine covered under this investigation is N-(aminoiminomethyl)-N-methylglycine monohydrate. The Chemical Abstracts Service (CAS) registry numbers for this product are 57-00-1 and 6020-87-7. Pure creatine is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue.¹⁰

Creatine monohydrate (hereinafter "creatine," unless otherwise indicated) is an amino acid produced in the human body that plays a role in replenishing the energy supply to muscle cells.¹¹ Creatine is usually produced to a purity of 99.5 percent or higher.¹² Until recently, the primary use for creatine was as a laboratory reagent, demand for which was relatively limited.¹³ In the early 1990's, however, weight trainers and other athletes began using creatine in the belief that it stimulates muscle growth and reduces muscle fatigue.¹⁴

⁶(...continued)

customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

⁷See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁸Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

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

¹⁰64 Fed. Reg. 11834, 11834 (March 10, 1999).

¹¹Confidential staff report ("CR") at I-3 to I-4, public staff report ("PR") at I-2 to I-3.

¹²CR at I-3, PR at I-2.

¹³Transcript of conference held March 8, 1999 ("tr.") at 15-17, 56 (testimony of Edward S. Holstein, Executive Vice President for Petitioner Pfanstiehl Laboratories, Inc.).

¹⁴Petition at 7; tr. at 15-17 (Holstein), 68-69 (Leo Cullen, Vice President of Sales and Marketing for MW International ("MW")); and Postconference Brief of MW and GCI Nutrients, Inc. ("GCI") at Appendix 1, p. 3.

B. Domestic Like Product Issues

Petitioner asserts that the domestic like product should consist of creatine only.¹⁵ Respondents argue that the domestic like product should include five other nutritional supplements that promote muscle growth. The other supplements fall into two groups: supplements made using creatine (the “downstream products”) and supplements not chemically related to creatine (HMB and glutamine). As discussed below, we determine for purposes of this preliminary phase of the investigation that the domestic like product consists of creatine only.¹⁶

1. Downstream products

The Commission has generally determined in past investigations that the domestic like product should not include downstream products that are made using the product subject to investigation, unless those downstream products are also themselves included in the scope of the subject merchandise.¹⁷ As the Commission has explained previously, if downstream products are included in the domestic like product, the domestic industry must then include companies that do not produce the product, but rather only purchase it in order to make a downstream product.¹⁸ The interests of these companies may be different from those of the producers of the product, and their inclusion could thus skew the Commission’s evaluation of the condition of industry.^{19 20}

The downstream creatine products at issue in this investigation are creatine liquid, creatine phosphate, and creatine citrate. Creatine liquid (also known as “creatine serum”) contains creatine, honey,

¹⁵Petitioner also argued that the domestic like product should include creatine of all purity levels. Petitioner’s Postconference Brief at 6-10. Respondents did not oppose Petitioner on the issue of purity and, in fact, the record indicates that nearly all creatine is produced to purities of 99.5 percent or higher. CR and PR at I-3. Customers do not differentiate among purity levels in this range. Tr. at 48-49 (Holstein). For purposes of this preliminary phase of the investigation, we define the domestic like product to include creatine of all purity levels.

¹⁶For the reasons set out in footnote 42, *infra*, Commissioner Crawford finds that the downstream products should be included in the domestic like product.

¹⁷See, e.g., Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Inv. Nos. 701-TA-376-379 (Preliminary) and 731-TA-788-793 (Preliminary), USITC Pub. 3107 at 5 (May 1998); Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Preliminary), USITC Pub. 2955 at 3-6 (April 1996); and Tungsten Ore Concentrates from the People’s Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 at 7 (March 1991). Similarly, the Commission has in past investigations declined to apply the semi-finished/finished product analysis to a downstream product that is not within the scope of the investigation. Beryllium Metal and High-Beryllium Alloys from Kazakhstan, 731-TA-746 (Final) USITC Pub. 3019 at 5 (Feb. 1997), and Manganese Metal from the People’s Republic of China, Inv. No. 731-TA-724 (Final), USITC Pub. 2939 at 4 (Dec. 1995).

¹⁸Bulk Ibuprofen from India, Inv. Nos. 701-TA-308 and 731-TA-526 (Preliminary), USITC Pub. 2428 at 10, (Sept. 1991) and Tungsten Ore Concentrates from the People’s Republic of China at 9.

¹⁹Bulk Ibuprofen from India at 10, and Tungsten Ore Concentrates from the People’s Republic of China at 9.

²⁰Commissioner Crawford notes that the statutory definition of like product requires an analysis of what domestic product(s) is “like” the subject imports. Thus, the interests of domestic producers of the like product are not part of the like product analysis, but rather a consequence of it. Therefore, Commissioner Crawford does not base her like product finding on an analysis of the interests of any particular group of domestic companies or whether the inclusion or exclusion of any company or companies would “skew” the Commission’s evaluation of the “condition of the industry.”

and other ingredients.²¹ Some creatine liquid may contain a stabilizing agent, the stated purpose of which is to prevent the creatine from breaking down into a different chemical prior to consumption by the purchaser.²² The available record information indicates that the second downstream creatine product, despite being marketed as “creatine phosphate,” does not contain the chemical creatine phosphate, but is instead a mixture of creatine and either sodium phosphate or calcium phosphate.²³ In contrast to both creatine liquid and creatine phosphate, creatine citrate contains no creatine in the monohydrate form, but is instead a different chemical compound produced from a reaction of creatine and citric acid.²⁴

We evaluate the possible inclusion of these downstream products in the domestic like product using the six traditional like product factors. In some instances, however, the record evidence pertaining to some of these factors is limited.

Physical Characteristics and Uses. Creatine citrate differs from creatine in physical characteristics because it is chemically distinct, although it is produced from a reaction involving creatine.²⁵ Creatine liquid and creatine phosphate are similar to creatine because they contain creatine, yet they also differ in physical characteristics because they contain other ingredients as well.²⁶ All three downstream products have the same use as creatine: to replenish energy to muscle cells.²⁷

Interchangeability. Record information on the interchangeability of the downstream products with creatine is limited. Creatine liquid is billed in product advertisements as more convenient to use, which, if true, suggests that some users would not consider it interchangeable with creatine for reasons of convenience.²⁸ Some creatine liquid may lack the allegedly important stabilizing agent, which would further limit interchangeability with creatine.²⁹ The record also indicates that the creatine content of creatine liquid may be far lower than creatine in its powdered form, constituting a further possible limitation on interchangeability.³⁰

Product advertising makes contradictory claims regarding whether creatine phosphate or creatine citrate provides energy to the muscle cell more rapidly than creatine.³¹ The limited record information does not allow us to evaluate these claims, or to draw a clear conclusion as to any limits on interchangeability of creatine with either creatine phosphate or creatine citrate.

²¹CR at I-5 and PR at I-3.

²²Postconference Brief of MW and GCI at Appendix 1, pages 1-2.

²³CR at I-5 and PR at I-3, tr. at 56-57 (James K. Thomson, Vice President for Scientific Affairs for Petitioner) and 87 (Leo Cullen, Vice President of Sales and Marketing for MW International).

²⁴CR at I-5 and PR at I-3.

²⁵CR at I-5 and PR at I-3.

²⁶CR at I-5 and PR at I-3.

²⁷Postconference Brief of MW and GCI at App. 1, pages 1-2, 5-7.

²⁸*Id.* at App. 1, pages 1-2.

²⁹*Id.* at App. 1, pages 2, 8.

³⁰*Id.* at App. 1, page 8.

³¹*Id.* at App. 1, pages 4-10.

Customer and Producer³² Perceptions. The parties generally contend that customers view the products as substitutes.³³ Product advertising, however, claims that the downstream products deliver creatine to the muscle more rapidly, or may be more convenient to use than creatine, suggesting that customers may view creatine and the downstream products differently.³⁴ Still other product advertising indicates that creatine is superior.³⁵ Although we do not have direct evidence of their perceptions, customers appear to prefer creatine over downstream products, because the latter account for only about ten percent of creatine consumption.³⁶

Common Manufacturing Processes,³⁷ Facilities, and Employees. None of the downstream products is produced in significant quantities by any of the domestic producers of creatine, indicating that creatine and the downstream products are not produced using common manufacturing facilities or employees.³⁸

Price. The record contains little information on the price of the downstream products. One product advertisement claims that creatine and creatine liquid are priced comparably.³⁹ Although not necessarily reflective of price, the downstream products may cost more to produce than creatine, because creatine represents only 50 to 80 percent of the cost of the downstream products.⁴⁰

Although our analysis is limited by a lack of information pertaining to some of the six like product factors,⁴¹ we find that the information available indicates a clear dividing line between creatine and the downstream products. Accordingly, we decline to include the downstream creatine products in the definition of the like product. In the event of a final investigation, however, we intend to gather additional information on this issue.⁴²

2. HMB and Glutamine

The Respondents also urge that the Commission should include beta-hydroxyl-beta-methylbutyrate (“HMB”) and glutamine in the domestic like product. These nutritional supplements do not contain and are

³²There is insufficient record evidence to permit a comparison of producer perceptions of creatine and the downstream products.

³³Tr. at 56 (Holstein) (downstream products “probably” interchangeable) and Postconference Brief of MW and GCI at 3-5.

³⁴Postconference Brief of MW and GCI at App. 1 at pages 1-2, 5-6.

³⁵Id. at App. 1, pages 4, 7-10.

³⁶CR at II-4 and PR at II-3.

³⁷There is insufficient record evidence to allow a comparison of the processes used to make creatine and the downstream products.

³⁸CR at I-6 to I-7 text and n.23 and PR at I-4 to I-5 text and n.23.

³⁹Postconference Brief at MW and GCI at Appendix 1, page 1.

⁴⁰CR at II-4 and PR at II-3.

⁴¹There is insufficient information pertaining to the channels of distribution through which the downstream products are sold to allow a comparison to creatine on this factor.

⁴²Commissioner Crawford includes the derivative products in the same like product as creatine. She finds that these products all use creatine to replenish energy to the muscle cells. As such, these products are simply different forms of creatine or an alternative method of delivering creatine to the muscle. Given the lack of data on these forms of creatine, Commissioner Crawford bases her determination on the record evidence for creatine.

not derived from creatine.⁴³ As in the case of the downstream creatine products, the factual record is not highly developed as to HMB and glutamine for each of the six like product factors.

Physical Characteristics and Uses. Both HMB and glutamine are chemically distinct from creatine.⁴⁴ Available record information indicates that creatine acts differently on the muscle cell than does either HMB or glutamine. Creatine aids in replenishing energy to the cell, whereas HMB and glutamine aid in the metabolism of proteins.⁴⁵ HMB is also described as a “fat burner,” a claim not made in connection with creatine or glutamine.⁴⁶ The limited record evidence indicates that, because they act in different ways, creatine and HMB have complementary uses but not the same use.⁴⁷

Interchangeability. The limited available evidence indicates only a limited degree of interchangeability between creatine and either HMB or glutamine, because creatine differs from the other two products both in physical characteristics and, to a lesser degree, in uses.^{48 49}

Customer and Producer Perceptions. The record contains little information on customer and producer perceptions of creatine compared to HMB or glutamine. Although the record does not indicate why, customers purchase much more creatine than HMB or glutamine.⁵⁰

Common Manufacturing Processes, Facilities and Employees. Although the record does not indicate the processes by which HMB and glutamine are manufactured, their distinct chemical composition indicates that they are not made by the same processes used to make creatine. Moreover, creatine and the other two products are not made in the same facilities, or by the same employees, because none of the domestic producers of creatine make HMB or glutamine.⁵¹

Price. Creatine is priced significantly lower than HMB or glutamine.⁵²

Based on the foregoing, we find a clear dividing line between creatine and HMB and glutamine, and therefore decline to include these products in the definition of the domestic like product.⁵³

⁴³See CR at I-5 and PR at I-3 to I-4.

⁴⁴See CR at I-5 and PR at I-3 to I-4.

⁴⁵Postconference Brief at MW and GCI at Appendix 2.

⁴⁶Id. at Appendix 2, page 4, and tr. at 37 (Holstein).

⁴⁷Tr. at 35-37 (Holstein, Thomson). See CR at II-3 to II-4 and PR at II-3.

⁴⁸See CR at I-5, II-3 to II-4 and PR at I-3 to I-4, II-3; and tr. at 35-37 (Holstein, Thomson).

⁴⁹Information on channels of distribution is too limited to allow a comparison of creatine to HMB or glutamine.

⁵⁰Tr. at 37 (Holstein) and 84 (Cullen), and Postconference Brief of TSI at Exhibit 1, page 1

⁵¹CR at I-6 to I-7 text and n.23 and PR at I-4 to I-5 text and n.23.

⁵²CR at I-8 n.34 and PR at I-6 n.34, and tr. at 84 (Cullen)

⁵³In investigations of products with medicinal applications, the Commission generally has not included in the domestic like product other products with the same general therapeutic purpose, based on its analysis of the six like product factors. Bulk Ibuprofen from India, at 12, Generic Cephalexin Capsules from Canada, 731-TA-423 (Final), USITC Pub. 2211 at 9-10 (Aug. 1989), and Certain Acetylsalicylic Acid (Aspirin) from Turkey, Inv. Nos. 701-TA-283, 731-TA-364 (Final), USITC Pub. 2001 at 4, n.5 (Aug. 1987). Although creatine is not a medicine, we believe that analysis of the six factors leads to the same result in this investigation. Of course, the Commission must base its domestic like product determination on the record in this investigation and is not bound by prior determinations Nippon Steel, 19 CIT at 454-55; Asociacion Colombiana de Exportadores de Flores v. United

(continued...)

3. Conclusion

For the reasons described above, we define the domestic like product to include only creatine for purposes of this preliminary phase of the investigation.

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product”⁵⁴ In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁵⁵ Based on our finding that the domestic like product consists of creatine, for purposes of this preliminary phase of the investigation we find that the domestic industry consists of all domestic producers of creatine.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.^{56 57} In making this determination, the Commission

⁵³(...continued)

States, 693 F. Supp. 1165, 1169, n.5 (Ct. Int'l Trade 1988) (“Asocoflores”)(particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

⁵⁴19 U.S.C. § 1677(4)(A).

⁵⁵See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int'l Trade 1994), aff'd, 96 F. 3d 1352 (Fed. Cir. 1996).

⁵⁶19 U.S.C. §§ 1671b(a) and 1673b(a).

⁵⁷Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford's analytical framework, see Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), (continued...)

must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵⁸ The statute defines “material injury” as “harm which is not inconsequential, immaterial or unimportant.”⁵⁹ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁰ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁶¹

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing creatine is materially injured by reason of subject imports from China.

A. Conditions of Competition

The first condition of competition pertinent to our analysis in this investigation is the evolution of creatine from a small-volume “niche market” product to a high-volume “mass market” product.⁶² This change began in approximately 1993 as sales moved beyond specialized applications, such as use as a laboratory reagent, to more general use predominantly as a nutritional supplement for an “elite” group of weight trainers and other athletes.⁶³ Beginning around 1996, use spread beyond this group to the more general population.⁶⁴ Before creatine’s transition to a mass market product, Petitioner supplied almost all the demand for the product.⁶⁵ In the course of the transition, Petitioner encountered increasing competition both from imports and new domestic producers, although it remains the largest domestic producer.⁶⁶ Despite competing with it for sales, Petitioner obtained a license from *** production process. Petitioner also *** from ***.⁶⁷ The impact of this relationship on the industry, if any, is unclear.⁶⁸ Petitioner also

⁵⁷(...continued)

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

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

⁵⁹19 U.S.C. § 1677(7)(A).

⁶⁰19 U.S.C. § 1677(7)(C)(iii).

⁶¹19 U.S.C. § 1677(7)(C)(iii).

⁶²Postconference Briefs of Petitioner at 17-18, MW and GCI at 16-19, and TSI at 2.

⁶³Postconference Briefs of Petitioner at 17, MW and GCI at 16, and TSI at 3.

⁶⁴Postconference Briefs of Petitioner at 17-18, MW and GCI at 16, TSI at 3.

⁶⁵Petitioner’s Postconference Brief at 17, tr. at 38 (Holstein) and 78 (Chris Johnson, counsel for MW and GCI).

⁶⁶Postconference Briefs of Petitioner at 18, MW and GCI at 17-19, and TSI at 4 (greater competition from imports and new domestic producers); and Tr. at 7 (Craig Redinger, counsel for petitioner) (Petitioner remains the largest domestic producer).

⁶⁷CR at III-3 and PR at III-1, Petitioner’s Postconference Brief at 2.

⁶⁸In the event of a final phase investigation, we intend to gather more information about the relationship between Petitioner and ***. As noted below, however, for purposes of the preliminary phase of the investigation we find no
(continued...)

encountered greater competition from existing producers, which, like Petitioner, expanded production both by dedicating a greater share of multi-use facilities to creatine production and by adding dedicated equipment and facilities.⁶⁹ It appears that the production investments and greater economies of scale resulted in lower production costs in 1998 compared to 1997.⁷⁰ The transition has been marked by falling prices, which began prior to the entry of the subject imports.⁷¹ It has also been marked by the entry and exit of various producers.^{72 73}

A second condition of competition is the presence of significant volumes of non-subject merchandise. The non-subject imports held an approximately *** percent market share in each year during the period of investigation.⁷⁴ The non-subject imports generally are priced *** than the domestic product.⁷⁵

A third condition of competition is the divergent reaction of some creatine purchasers to the relatively sudden presence in the market of significant volumes of the subject merchandise beginning in 1997, some of which was of lower quality or perceived to be of lower quality than the domestic product or the non-subject imports.⁷⁶ Most consumers were apparently willing to purchase the less expensive subject merchandise despite the real or perceived quality differences, but some were willing to pay a higher price for the domestic product and the non-subject imports.⁷⁷

Purchasers do not always know where the creatine they purchase is manufactured, however, because some creatine packages do not indicate the country of origin.⁷⁸ Moreover, even where producers market creatine to quality-sensitive customers, the pricing of that creatine is still apparently affected by the subject merchandise, as the prices of creatine from all sources has declined.⁷⁹ Additionally, the proportion of purchasers that are quality-sensitive is diminishing as the quality of the subject merchandise, and perception of that quality, appear to have improved.⁸⁰

⁶⁸(...continued)

evidence that Petitioner ***.

⁶⁹Tr. at 30 (Kaplan)(increased volume of non-subject imports), 38 (Holstein)(new domestic producers), 15-19 (Holstein)(expansion by Petitioner and other existing producers), CR at III-4 to III-6 (including table III-4) and PR at III-1 to III-4 (including table III-4).

⁷⁰Tr. at 22 (Holstein), and CR at VI-6 and PR at VI-2.

⁷¹Tr. at 31 (Kaplan), 68-69 (Cullen), Postconference Briefs of Petitioner at 18, and TSI at 4.

⁷²CR at III-3 to III-5 and PR at III-2 to III-3.

⁷³Following a period of steady growth, apparent consumption of creatine fell in the latter two quarters of 1998.

Table IV-4, CR at IV-5 and PR at IV-3. In the event of a final phase investigation, the Commission intends to gather more information that would confirm whether apparent consumption varies seasonally and/or is in decline.

⁷⁴Table IV-5, CR at IV-6 and PR at IV-4. The market share held by the non-subject imports was *** percent in the last quarter of 1998, although it was at or near *** percent during the first three quarters of 1998. Table IV-6, CR at IV-7 and PR at IV-5.

⁷⁵Compare table III-5, CR at III-7 and PR at III-4 (unit values of U.S. shipments of domestic product) with table IV-1, CR at IV-2 and PR at IV-1 (unit values of imports from countries other than China).

⁷⁶Postconference Briefs of Petitioner at Exhibit 2, MW and GCI at 26-27, and TSI at 11-12; and tr. at 48 (Holstein), 72-73, 79-80 (Cullen).

⁷⁷CR and PR at II-1, Postconference Briefs of Petitioner at Exhibit 2, and MW and GCI at 26-28.

⁷⁸Tr. at 28 (Seth T. Kaplan, economic consultant on behalf of Petitioner).

⁷⁹Table V-1, CR at V-6 and PR at V-4.

⁸⁰Tr. at 48 (Holstein) and 73-74, 79-81 (Cullen). See CR at II-1, II-5 and PR at II-1 and II-3 to II-4.

B. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁸¹

The absolute volume of imports of the subject merchandise increased rapidly, and accounted for a significant share of apparent consumption by the end of the period of investigation. The subject imports were *** kilograms (kg.) in 1996, *** kg. in 1997, and *** kg. in 1998.⁸² That rapid increase continued through 1998, as indicated by quarter-by-quarter data for that year.^{83 84 85} In market share, the subject merchandise also increased rapidly, accounting for a *** percent of apparent consumption in 1996, *** percent in 1997, and *** percent in 1998.⁸⁶ The market share increase was even more dramatic when measured on a quarter-by-quarter basis in 1998.⁸⁷

Based on the foregoing, we find that the volume of imports of the subject merchandise from China, and their increase, are significant both in absolute terms and relative to consumption.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁸⁸

Several factors resulted in greater price competition during the course of the period of investigation. During this time, creatine completed the transition from a niche to a mass market product. The number of suppliers and customers increased, and many of the new customers in the emerging mass

⁸¹19 U.S.C. § 1677(7)(C)(i).

⁸²Table IV-1, CR at IV-2 and PR at IV-1.

⁸³Table IV-2, CR at IV-3 and PR at IV-1.

⁸⁴As in past investigations, the Commission views quarterly data with caution. Data for a particular quarter may be aberrational. Also, such data may not be a reliable indicator as it may instead reflect factors such as seasonality. Still, the Commission frequently examines quarterly data in its analysis, such as in price comparisons and in considering changes in interim periods of less than one year at the end of the period of investigation. In this investigation, yearly data may obscure significant shorter term market events because of the very rapid increase in the volume of the subject imports, and the resulting rapid changes in market conditions. We thus give some weight to quarterly data in this investigation.

⁸⁵Commissioner Crawford does not rely on quarterly data in her determination.

⁸⁶Table IV-5, CR at IV-6 and PR at IV-4.

⁸⁷Table IV-6, CR at IV-7 and PR at IV-5 (showing market shares of the subject merchandise as *** percent for the four quarters, respectively).

⁸⁸19 U.S.C. § 1677(7)(C)(ii).

market were more price-conscious.⁸⁹ Price information became readily available over the Internet.⁹⁰ Moreover, creatine is essentially a commodity-like product. Although some of the earlier imports of subject merchandise were of lower quality than the domestic product or the non-subject imports, quality differences and perceptions of quality differences have greatly diminished.⁹¹ Another factor influencing prices is that domestic producers have lowered production costs by investing in new equipment and greater capacity.^{92 93}

The record indicates significant price underselling by the subject merchandise. The subject merchandise undersold the domestic product in seven out of nine quarterly price comparisons, by an average margin of 17.2 percent.⁹⁴ Moreover, price underselling was most pronounced when the volume and market share of the subject imports were highest. During 1998, the year accounting for the great bulk of

⁸⁹Postconference Briefs of Petitioner at 18 and at Exhibit 2, MW and GCI at 17-19, 26-28, and TSI at 4. CR and PR at II-1.

⁹⁰Tr. at 58 (Kaplan).

⁹¹CR at II-5 and PR at II-3 to II-4, and tr. at 19, 21 (Holstein).

⁹²Tr. at 22 (Holstein) and CR at VI-6 and PR at VI-2.

⁹³Commissioner Crawford finds that the subject imports likely are not having significant effects on domestic prices, and thus does not join the remainder of this discussion. To evaluate the effects of dumping on domestic prices, Commissioner Crawford compares the domestic prices that existed when the imports were allegedly dumped with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In this investigation, the alleged dumping margins are very large, exceeding 120 percent. Thus, prices for the subject imports likely would have increased significantly if they had been priced fairly, and most, if not all, of the demand for them likely would have shifted away from the subject imports. In this investigation, nonsubject imports held a market share of *** percent in 1998 and thus appear to represent substantial competition for the domestic product. As discussed above, creatine is essentially a commodity-like product, and thus the subject imports, the domestic product, and the nonsubject imports likely are all fairly good substitutes for each other. Therefore, demand for the subject imports likely would have shifted to both the domestic product and the nonsubject imports had the subject imports been fairly traded. The domestic industry's market share is more than *** times that of the nonsubject imports in 1998, and thus a substantial portion of the demand for the subject imports likely would have shifted to the domestic product. Although the market share of the subject imports is only moderately large, *** percent in 1998, the shift in demand toward the domestic product likely would have been significant had the subject imports not been dumped. Nonetheless, the significant shift in demand likely would not have allowed the domestic industry to raise its prices. The nonsubject imports have a large presence in the market, and thus appear to represent substantial competition for the domestic industry that likely would have prevented price increases. However, in this market Petitioner dominates the domestic industry and operates under a licensing agreement with ***. Thus, the licensing arrangement and petitioner's dominance *might* have allowed it to raise its prices. Notwithstanding these facts, for purposes of this preliminary determination Commissioner Crawford finds that there is substantial competition between the nonsubject imports and the domestic product. In addition, the domestic industry's capacity utilization was only *** percent in 1998, and therefore it had substantial unused production capacity available, as well as inventories, that would have been available to satisfy the increase in demand. Thus, available capacity and inventories, combined with substantial competition from the nonsubject imports, likely would have enforced price discipline in the market. In these circumstances, any effort by a domestic producer to raise its prices would have been beaten back by the competition. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of the subject imports. Consequently, Commissioner Crawford finds that the subject imports from China are not having significant effects on prices for domestic creatine.

⁹⁴CR at V-5, PR at V-4.

the subject imports, there was price underselling in all four quarterly comparisons, and by progressively greater volumes and margins in each quarter.⁹⁵

The increased volumes of subject imports together with underselling by progressively greater margins depressed prices for domestically produced creatine to a significant degree. Prices for domestic creatine fell significantly from 1996 to 1997, and from 1997 to 1998.⁹⁶ We do not attribute a significant proportion of the 1996-97 price decline to the subject imports, because of their relatively small volume and market share in those years. Moreover, some decline in price is to be expected in light of the development of the "mass market," the increase in supply and, therefore, competition in the market, and the fungible nature of the product. From 1997 to 1998, however, the subject imports increased by a factor of *** in absolute volume, and from *** to *** percent in market share.⁹⁷ The non-subject imports, by contrast, increased by a factor of less than *** in absolute volume, and from *** to *** in market share.⁹⁸ Thus, although we do not attribute all of the price decline from 1997 to 1998 to the subject imports, we find that they contributed to the decline to a significant degree.⁹⁹ For the reasons given above, we find that the subject imports are having significant adverse price effects on domestically produced creatine.

D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry." These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."^{100 101}

Consistent with our finding that the volume, and increase in volume, of the subject imports were significant, and that the subject imports contributed in significant part to the decline in prices for

⁹⁵Table V-1, CR at V-6 and PR at V-4.

⁹⁶Table V-1 and Figure V-2, CR at V-6 to V-7 and PR at V-4.

⁹⁷Table IV-5, CR at IV-6 and PR at IV-4.

⁹⁸Table IV-5, CR at IV-6 and PR at IV-4.

⁹⁹We are cognizant that prices for domestically produced creatine appeared to stabilize in the last two quarters of 1998, despite increased volumes of subject imports. In the face of the lower prices of subject imports, it appears that the Petitioner and other domestic producers decided not to reduce prices further in the latter part of 1998, and instead accepted declining sales and market share. Tr. at 46 (Holstein). See Table V-1, CR at V-6 and PR at V-4 (prices) and Table IV-6, CR at IV-7 and PR at IV-5 (market share).

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

¹⁰¹As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider "the magnitude of the margin of dumping" in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V) In its notice of initiation, Commerce identified estimated dumping margins for China ranging from 120.9 to 153.7 percent. 64 Fed. Reg. 11834, 11835 (March 10, 1999).

domestically produced creatine from 1997 to 1998, we find that the subject imports are having a significant adverse impact on domestic producers.¹⁰²

Various indicators of the condition of the domestic industry fell from 1997 to 1998, and these declines appear to have intensified during 1998, based on available quarterly information. Shipments of the domestic product rose from *** kg. in 1997 to *** kg. in 1998, but the value of those shipments fell from \$*** to \$***.¹⁰³ Quarterly data from 1998 indicate lower production volumes at the end of that year, and an even steeper decline in production values. The volume of U.S. shipments of domestically produced creatine increased *** from *** kg. in the first quarter, to *** kg. in the second quarter.¹⁰⁴ These shipments fell thereafter, however, to *** kg. in the third quarter, and further to *** kg. in the fourth quarter.¹⁰⁵ The value of the shipments fell in each successive quarter, from \$*** to \$***, then to \$***, and finally to \$***.¹⁰⁶

Other indicators show declines as well. After holding steady at *** percent in 1996 to *** percent in 1997, the market share for domestically produced creatine fell to only *** percent in 1998.¹⁰⁷ A steeper decline is shown by quarterly data, as the market share of domestically produced creatine fell from *** percent to *** percent, then to *** percent, and finally to *** percent in the successive quarters in 1998.¹⁰⁸

¹⁰²Commissioner Crawford does not base her determination on an analysis of the trends in the statutory impact factors, and thus does not join the remainder of this discussion. However, she concurs in her colleagues' conclusion that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of allegedly dumped imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices, sales and overall revenues is critical, because the impact on the other industry indicators (e.g., employment, wages, etc.) is derived from this impact. As she noted earlier, Commissioner Crawford finds that the domestic industry would not have been able to increase its prices had the subject imports been priced fairly. Therefore, any impact of the allegedly dumped imports on the domestic industry would have been on the domestic industry's output and sales. Even though there is substantial competition from nonsubject imports, a significant amount of the demand satisfied by the subject imports likely would have shifted to the domestic product had the subject imports not been dumped. The increase in demand for the domestic product would have been substantial, and the domestic industry could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for the subject imports that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been dumped. Therefore, the domestic industry likely would have been materially better off if the subject imports had been fairly traded. Consequently, Commissioner Crawford determines that there is a reasonable indication that the domestic industry is materially injured by reason of the allegedly dumped imports of creatine from China.

¹⁰³Table IV-3, CR at IV-4 and PR at IV-2.

¹⁰⁴Table IV-4, CR at IV-5 and PR at IV-3.

¹⁰⁵Table IV-4, CR at IV-5 and PR at IV-3.

¹⁰⁶Table IV-4, CR at IV-5 and PR at IV-3.

¹⁰⁷Table IV-5, CR at IV-6 and PR at IV-4.

¹⁰⁸Table IV-6, CR at IV-7 and PR at IV-5.

Capacity utilization by the domestic industry declined from *** to *** percent from 1997 to 1998.¹⁰⁹ This decline at first reflected increased capacity rather than reduced production, but after the second quarter of 1998 capacity utilization declined also as a result of lower production.¹¹⁰

These declines in production and market share are reflected in the negative trends in the financial results for the domestic industry. The very high operating income of the domestic industry as a percentage of net sales in 1996, (***) percent, was tempered by the greater competition from the new domestic producers and non-subject imports in 1997, when operating income fell to *** percent.¹¹¹ From 1997 to 1998, operating income again fell, to *** percent, as competition from the subject imports increased both in volume and margins of underselling, while the market share of the non-subject imports essentially held steady.¹¹² The operating income of the domestic industry fell from \$*** in 1996, to \$*** in 1997, to \$*** in 1998.¹¹³ Quarterly data show that in the first three quarters of 1998 operating income fell from \$*** to \$*** to \$***, and then turned to an operating loss of \$*** in the fourth quarter.¹¹⁴ This progressive deterioration in operating income coincided with the sharp increase in the volume and market share of the subject imports over the period of investigation, which occurred even as the market share of the non-subject imports essentially held steady.

The domestic industry first cut prices in response to the subject imports (and thus experienced a decline in the net sales value of its sales), although it maintained and even expanded production. In the second half of 1998, however, the domestic industry attempted to halt price erosion, but then experienced sharp losses in market share and production volumes, as well as the consequent deterioration in revenue and operating income, due to increasing volumes of lower-priced subject imports.¹¹⁵ We thus find that the subject imports are having an adverse impact on the domestic industry.¹¹⁶

E. Conclusion

For the reasons stated above, we find that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from China.

¹⁰⁹Table III-2, CR at III-6 and PR at III-4.

¹¹⁰Table III-2, CR at III-6 and PR at III-4 (showing an increase in capacity from *** kg. in 1997 to *** kg. in 1998, and an increase in production from *** kg. to *** kg. in the same years, respectively), and table III-3, CR at III-6 and PR at III-4 (showing lower production volumes after the second quarter of 1998, and capacity utilization rates of *** percent, *** percent, *** percent, and *** percent for the four quarters of 1998, respectively).

¹¹¹Table VI-2, CR at VI-4 and PR at VI-1.

¹¹²Table VI-2, CR at VI-4 and PR at VI-1. Although the volume of the non-subject imports was greater than the subject imports in 1997 and 1998, their market share essentially held steady, rising from *** percent to *** percent, in those years, respectively). Meanwhile, the subject imports rose sharply from *** to *** percent in market share. Table IV-5, CR at IV-6 and PR at IV-4. Also, the domestic industry did not lose market share from 1996 to 1997, when it faced competition from the non-subject imports only.

¹¹³Table VI-1, CR at VI-2 and PR at VI-1.

¹¹⁴Table VI-3, CR at VI-7 and PR at VI-3.

¹¹⁵See tr. at 46 (Holstein).

¹¹⁶We have considered the argument of Respondents that Petitioner was injured because it voluntarily incurred high costs, both in the *** creatine production process, and in agreeing to ***. The record, however, does not bear out Respondents' argument. Petitioner states that it ***. Petitioner's Postconference Brief at 2. Moreover, Petitioner's ***. CR at table VI-2, CR at VI-4 and PR at VI-1. Respondents offered no evidence to support their argument.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed by Pfanstiehl Laboratories, Inc. (Pfanstiehl), Waukegan, IL, on February 12, 1999, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of creatine monohydrate (creatine) from the People's Republic of China (China). Information relating to the background of the investigation is provided below.¹

<i>Date</i>	<i>Action</i>
Feb. 12, 1999	Petition filed with Commerce and the Commission; institution of Commission investigation (64 FR 8629, Feb. 22, 1999)
March 8, 1999	Commission's conference ²
March 10, 1999	Commerce's notice of initiation (64 FR 11834, Mar. 10, 1999)
March 26, 1999	Commission's vote
March 29, 1999	Commission determination transmitted to Commerce

SUMMARY DATA

A summary of data collected in this investigation is presented in appendix C. Except as noted, U.S. industry data are based on questionnaire responses of five firms that accounted for the vast majority of U.S. creatine production during 1996-98.³ U.S. imports are based on responses to Commission questionnaires (see the section on U.S. Tariff Treatment).

PREVIOUS INVESTIGATIONS

The Commission has not conducted any previous investigations concerning creatine.

U.S. TARIFF TREATMENT

Imports of creatine are classified in HTS subheading 2925.20.90 (statistical reporting number 2925.20.9000). The normal trade relations (NTR) tariff rate, applicable to imports from China, for the subheading identified is 3.7 percent ad valorem during 1999, as set forth in the general rates of duty column. This subheading is a residual or "basket category" that includes chemical products other than creatine. Accordingly, for the purposes of presentation in this report, questionnaire responses will be used to supply import statistics rather than the official statistics of the U.S. Department of Commerce

¹ *Federal Register* notices cited in the tabulation are presented in app. A. The alleged LTFV margins, as listed by Commerce, ranged from 120.9 to 153.7 percent.

² A list of witnesses appearing at the conference is presented in app. B.

³ Two U.S. producers, ***, did not respond to the Commission's questionnaires. ***.

THE PRODUCT

In the “Scope of Investigation” section of its notice of initiation, Commerce stated that--

For purposes of this investigation, the product covered is commonly referred to as creatine monohydrate or creatine. The chemical name for creatine covered under this investigation is N-(aminoiminomethyl)-N-methylglycine monohydrate. The Chemical Abstracts Service (CAS) registry numbers for this product are 57-00-1 and 6020-87-7. Pure creatine is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. The merchandise subject to this investigation is classifiable under subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

The following sections present information on both imported and domestically produced creatine,⁴ as well as information related to the Commission’s “domestic like product” determination.⁵

Petitioner states that there is only one like product in this investigation, encompassing creatine of all purity levels, and that there are no substitutes for creatine.⁶ Respondents argue that possible substitutes for creatine are other creatine derivatives, creatine phosphate and creatine citrate, as well as nutritional food products such as HMB, tribulus, andro, and glutamine.⁷ These potential like products are discussed in detail below.

Physical Characteristics and Uses

The subject creatine is produced as a dry, white crystalline powder, with a slightly sweetish taste. Creatine is usually of very high purity, 99.5 percent or higher, when sold to end users. It has a stable shelf life, and is sold in bulk containers (i.e., sealed plastic bag inside a cardboard container) without any preservatives. Creatine may also be available to consumers in this pure form repackaged into smaller containers.

Chemically, creatine, also called N-methylaminoiminomethylglycine, is a non-essential amino acid. Non-essential amino acids are produced inside living organisms, and in humans creatine is produced by the liver, pancreas, and kidneys. Creatine is transported in the bloodstream to muscle cells, where it is stored as both creatine and creatine phosphate. The presence of creatine phosphate serves to replenish phosphate groups when energy, provided in muscle cells by the reduction of adenosine tri-phosphate (ATP) to adenosine diphosphate (ADP), is needed.

⁴ In this report, the term “creatine” refers only to creatine monohydrate.

⁵ The Commission’s decision regarding the appropriate domestic products that are “like” the subject imported products is based on a number of factors, including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price.

⁶ Conference transcript, p. 55, and Pfanstiehl’s post-conference brief, pp. 5-8.

⁷ Conference transcript, p. 74; and MW International and GCI Nutrients’ post-conference brief, pp. 4-5.

Information on three grades of purity was requested for the purposes of the investigation. Three of the five responding domestic producers have stated that they produce only 99.5 percent pure or higher creatine, while *** indicated that approximately 10 percent of its total production is 99.0-99.4 percent pure.⁸ None of the domestic producers that submitted questionnaire responses indicated any production of grades with less than 99.0 percent purity. The petitioner states that there is complete interchangeability among the different levels of purity of creatine.⁹

Creatine is used as a nutritional or dietary supplement, and to formulate some specialty weight-gain products. It also is used to a comparatively minor extent in laboratory research. In most instances, creatine monohydrate is repackaged and sold to athletes, bodybuilders, and occasional sports participants as a pure product in powdered form.

Exercise depletes creatine phosphate stored in muscle tissue. As it is being used, creatine is gradually converted into creatinine, an unusable by-product. Large ingested doses (known as "loading") of creatine are widely believed to help replenish the available creatine and creatine phosphate in muscle tissue, helping the individual to regain or maintain muscle strength during workout.¹⁰

Distributors and retailers of creatine typically re-package creatine purchased in bulk. They also formulate some dietary supplements and other nutritional products that contain creatine. Creatine-containing supplements can consist of amounts of creatine with other amino acids, sugars, flavoring, or other adjuncts. Typical products include pills, capsules, nutritional drink mixes, chewing gum, and energy bars. According to ***, the second largest U.S. producer in 1998, the vast majority of creatine is sold as a pure product in medium-sized (1 kg) containers. ***, the third largest U.S. producer, also states that most creatine production is sold as the pure product.¹¹

There are seven like products mentioned by respondents. These are creatine serum, creatine phosphate, and creatine citrate, as well as HMB, tribulus, andro, and glutamine. All are products that, along with proper diet and exercise, are supposed to assist in the buildup of lean muscle and promote general well-being.

Derivatives of creatine identified by the respondents are creatine serum, creatine phosphate, and creatine citrate.¹² Creatine serum is a mixture of creatine, honey, and other ingredients that uses creatine as a starting material. The product "creatine phosphate" is a misnomer. It is not the chemical creatine phosphate but is instead a mixture of creatine and either sodium or calcium phosphate. Creatine citrate is a pure chemical product produced by the reaction of creatine and citric acid.¹³

The other named substitutes can be briefly described. HMB, or β -hydroxy- β -methylbutyrate, is a chemical compound that purportedly has effects similar to creatine in increasing both strength and lean

⁸ *** did not complete the questions regarding product purity in its questionnaire response.

⁹ Pfanstiehl's post-conference brief, p. 7.

¹⁰ Although studies have shown that "loading" of creatine tends to increase the available amount of creatine in the muscle cell, not all studies have reported ergogenic benefits.

¹¹ Telephone interviews with ***, Mar. 10, 1999.

¹² MW International and GCI Nutrients' post-conference brief, pp. 5-7.

¹³ Telephone conversation with Mr. Peter Meehan, Stella Laboratories, Inc., on Mar. 15, 1999.

muscle mass.¹⁴ Tribulus is an extract of steroid saponins of the aerial (above-ground) portions of *Tribulus Terrestris* L., or common puncture vine, used as an herbal remedy to stimulate testosterone production.¹⁵ Andro, also called 4-androstene or 4-androstene-3,17-dione, is a chemical used as a precursor to testosterone, and is used to enhance testosterone production.¹⁶ Glutamine is a non-essential amino acid and the most commonly found amino acid in the human body. It has been suggested that supplements of glutamine increase cell volume and promote muscle protein synthesis.¹⁷

Manufacturing Facilities and Production Employees

Creatine has been produced domestically for at least the past 40 years. Because of low demand for creatine in biochemical research as a laboratory standard, specialty chemical companies produced creatine on an as-needed basis in small batches. In recent years, however, creatine has formed the essential part of many weight-gain and muscle-building formulations sold in health food stores.

Petitioner states that creatine is manufactured using dedicated equipment. ***.¹⁸ According to information obtained from Commission questionnaires, all of the responding Chinese producers have stated that they do not produce products other than creatine on the same equipment used to produce creatine.¹⁹

The manufacturing process for creatine is described in many publications.²⁰ Creatine is produced by a batch process from the reaction of sodium sarcosinate and cyanamide under controlled conditions. ***. The process begins as sarcosine is introduced as a solution into a stainless steel reactor and alkaline conditions are maintained (pH 10-11). Cyanamide is then slowly introduced as a solution in water, and the reaction mixture is cooled by means of a water jacket surrounding the tank. The reaction is complete in about 8 hours. During this period, crystals of creatine form in the reaction mix. The mixture is centrifuged to separate the creatine crystals from the mixture, and the crystals are washed with water to remove any impurities. Finally, the product is dried using a hot air dryer, screened, and packed into bulk plastic bags for shipment or storage.

The petitioner states that it recently constructed a highly automated facility exclusively to produce creatine, and the equipment could not be used to produce any other product.²¹ Responses to Commission questionnaires indicate that similar equipment is used by other producers of creatine. Petitioner states that production workers are dedicated to creatine production, although *** state that production workers are

¹⁴ KiloSports, Inc., "HMB," found at <http://www.kilosports.com/hmb.html>, retrieved Mar. 1, 1999.

¹⁵ KiloSports, Inc., "Tribulus Terrestris," found at <http://www.kilosports.com/tribulus.html>, retrieved Mar. 11, 1999.

¹⁶ KiloSports, Inc., "Androstenedione," found at <http://www.kilosports.com/andro.html>, retrieved Mar. 11, 1999.

¹⁷ KiloSports, Inc., "Glutamine," found at <http://www.kilosports.com/glutamine.html>, retrieved Mar. 11, 1999.

¹⁸ Telephone interview with Chattem Chemicals, Inc., and Stella Laboratories, Inc., on Mar. 9, 1999.

¹⁹ *** questionnaires.

²⁰ Merck Index, 9th ed., Entry no. 2556 ("Creatine"), p. 34 (Rahway, NJ: Merck & Co., Inc., 1976).

²¹ Conference transcript, p. 34.

also used to produce products other than creatine.²² In general, domestic creatine manufacturers do not produce the potential like products mentioned by the respondents.²³

Interchangeability

The petitioner states that creatine does not compete with any other product, and that there are no known legal substitutes for creatine.²⁴ However, respondents state that creatine is similar in its lean muscle-building properties to such products as HMB, tribulus, andro, and glutamine. Respondents state that HMB and glutamine compete with creatine to the extent that they are exactly like creatine.²⁵ Petitioner contends that there are many products that are used in health food and body building that are used in a fashion similar to creatine, and that instead of competing with creatine, products such as HMB are complimentary in their usage.²⁶

Customer and Producer Perceptions

Petitioner states that creatine producers are generally classified as fine chemical manufacturers or food intermediate manufacturers.²⁷ Petitioner further states that producers and end users perceive creatine to be a single product regardless of purity level, and that customers view creatine as a distinct product similar to a brand name.²⁸

There are developed product perceptions among distributors and consumers with regard to the imported product. Respondents state that imports from Chinese producers originally contained impurities that resulted in an objectionable bitter taste.²⁹ By contrast, although produced to the same purity levels as the imported product, domestic creatine was free of any such impurities. Respondents state that because of the perceived difference in quality, U.S. importers simply cannot sell Chinese creatine at the same price level as petitioner.³⁰ Respondents also contend that advertising campaigns have been developed to discourage domestic purchases of the Chinese creatine through allegations of product impurity.³¹

Channels of Distribution

Creatine is typically sold to retail outlets, distributors, and packagers in plastic bulk bags weighing approximately 25 kg each. It is generally shipped directly to firms that re-sell the pure product in a smaller (1 kg) package, although some creatine is repackaged as capsules or tablets, or blended to make flavored

²² *** questionnaire, p. 4; and *** questionnaire, p. 4.

²³ Telephone interviews by Commission staff with *** Mar. 19, 1999. However, ***.

²⁴ Although the petitioner originally indicated that anabolic steroids were a substitute for creatine, this was clarified at the conference (conference transcript, pp. 43-45).

²⁵ MW International and GCI Nutrients' post-conference brief, p. 7.

²⁶ Conference transcript, p. 35.

²⁷ Petition, p. 8.

²⁸ Pfanstiehl's post-conference brief, p. 8.

²⁹ Conference transcript, p. 73.

³⁰ Ibid., p. 74.

³¹ Ibid., p. 73.

nutritional drinks, drink mixes, food supplements, or gums.³² Creatine-based mixes, including creatine serum and creatine phosphate, are produced using creatine. Creatine is also reacted with citric acid to form creatine citrate.³³

Price

According to responses to Commission questionnaires, prices for creatine are set based on competition in the open market. In 1996, the price (unit value) for creatine in the U.S. market was an average of \$*** per kg. Unit values decreased to an average of \$*** per kg. in 1997 and an average of \$*** per kg. in 1998.³⁴ Actual transaction prices in each of the years tended to be within a range of prices above or below the averages cited above, depending to some extent on the purity of creatine and the type of transaction (spot sale or formula sales contract). More detailed information on prices is presented in part V of this report.

³² Telephone conversation with ***, Mar. 9, 1999.

³³ Telephone conversation with ***, Mar. 15, 1999.

³⁴ In March 1998, KiloSports, Inc., listed the retail price of its creatine monohydrate at \$29.95 per kg. In comparison, KiloSports' retail prices for some of the other products mentioned by the respondents were as follows (per kg.): 4-Androstenedione, \$395.95; tribulus terrestris, \$139.95; L-glutamine, \$59.95; and HMB, \$149.95. All prices were advertised by KiloSports on its internet web site found at <http://www.kilosports.com/products.html>, retrieved Mar. 22, 1998.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

CHANNELS OF DISTRIBUTION AND MARKET SEGMENTATION

Sales of creatine in the U.S. market by U.S. producers and importers take place primarily through three channels: distributors, retailers, and packagers. Sales from the supplier can go directly to any of these three channels. Distributors generally buy in large quantities and then resell to either packagers or retailers. Packagers primarily buy, blend, and process the product for sale to customers, generally retailers, who supply their own labels. Retailers generally purchase from producers, importers, distributors, and packagers and then resell to consumers.¹

Available information indicates that the majority of 1998 sales by U.S. producers were made to retailers, while the majority of sales by importers were made to packagers. During 1998, data reported by U.S. producers indicate that approximately *** percent of their domestic creatine shipments went to retailers, *** percent to distributors, and *** percent to packagers. Data from importers indicate that approximately *** percent of their domestic creatine shipments went to packagers, *** percent to distributors, and *** percent to retailers.

Market segmentation is claimed to exist based on perceived quality differences in creatine produced in the United States and Europe versus China. A two-tier market consisting of (1) consumers primarily concerned with quality and (2) consumers primarily concerned with price evolved in the United States after pronounced market entry of Chinese creatine in the third quarter of 1997. According to petitioner, the quality-conscious market segment, which prefers U.S. and European creatine, is dissipating as consumers are becoming increasingly price-sensitive.²

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. creatine producers are likely to respond to changes in demand with considerable changes in the quantity of shipments of U.S.-produced creatine. The main factors contributing to the likely significant responsiveness of supply are excess industry capacity and relatively high inventory levels. Additional factors are potential growth in export markets and the ability to produce creatine in multi-use facilities.

Industry Capacity

Data reported by U.S. producers indicate that there is available capacity with which to expand production. Domestic capacity utilization declined from *** percent in 1996 to *** percent in 1998 as

¹ Information was obtained during staff interviews with ***, ***, and ***. *** stated that packagers/manufacturers is a more appropriate description for this channel, and he also noted that some firms operate within more than one channel. For example, some retailers perform packaging operations.

² Conference transcript, p. 33.

capacity expanded greatly. Further, the ability to switch from production of other chemicals to creatine implies that total capacity may be greater than that reported.³

Inventory Levels

The relatively high inventories at the end of the period of investigation indicate that U.S. producers have considerable ability to immediately respond to changes in demand. Inventories rose from *** kilograms in 1996 to *** kilograms in 1998, representing *** percent of annual shipments in 1996 and *** percent in 1998. Relative to U.S. consumption, inventories represented *** percent of demand in 1996 and *** percent in 1998.⁴

Export Markets

Available data indicate that U.S. producers have increased their exports of creatine since 1996. As a share of total shipments, exports accounted for *** percent in 1996 and rose to *** percent in 1998. These data indicate that U.S. producers have some, albeit a limited, ability to respond to changes in prices in the U.S. market by diverting creatine to or from the U.S. market.

Production Alternatives

Currently, U.S. producers use either dedicated or multi-use facilities in the production of creatine. *** report having dedicated facilities and equipment,⁵ while *** reports having a multi-use facility. While it may be possible for producers to use the facilities and equipment in the production of other chemical products, there is not enough information at this preliminary phase of the investigation to specify feasible production options.⁶

U.S. Demand

Demand Characteristics

U.S. producers and importers were in agreement that overall demand for creatine in the United States increased significantly during the period for which data were collected. Available data indicate that U.S. consumption of creatine rose from nearly 1.4 million kilograms in 1996 to nearly 4 million kilograms in 1998. U.S. producers and importers reported that the increased demand was caused by heightened consumer awareness of the performance benefits of creatine and a resultant broader usage from strictly a body-building supplement to a mainstream sports supplement.

³ Petition, p. 38. While the notion of Chinese product shifting is cited by petitioner as a threat to the U.S. creatine industry, in theory this could also occur in the United States and thus augment the domestic industry's ability to quickly respond to changes in creatine demand.

⁴ *** reported that a favorable inventory level within the industry equates to 3 weeks of average weekly production.

⁵ *** produced creatine in a multi-use facility prior to 1997.

⁶ At the Mar. 8, 1999, conference, Pfanstiehl noted that equipment in their dedicated facility would be scrapped if the company ceased creatine production. However, other U.S. producers noted that most of their equipment used for creatine production is standard in many chemical batch processes, and thus can be reused for other purposes.

Substitute Products

Based on questionnaire responses from U.S. producers and importers, there are no direct substitutes for creatine. Among producers, *** cited anabolic steroids as a potential, albeit illegal, substitute product. Among importers, *** stated that nutritional supplements in various combinations may provide similar performance benefits, and *** mentioned competing performance enhancers such as androstenedione and HMB. Contrary to respondents' allegations of substitutability,⁷ *** believes that such performance enhancers are not substitute products for creatine.⁸

Other derivatives of creatine, such as creatine citrate and creatine phosphate, are purported by respondents to be interchangeable with creatine.⁹ In contrast, *** believes these are not interchangeable products.¹⁰

Cost Share

Most creatine is sold as such, in powder form, to consumers and is therefore not used as an intermediate product in the production of another product.¹¹ Several exceptions include creatine serum, creatine citrate, and creatine phosphate, which account for approximately 10 percent of overall creatine usage. Creatine as an input relative to total cost equates to approximately 50 percent for creatine citrate, 60 percent for creatine serum, and 80 percent for creatine phosphate.¹² Thus, changes in the price of creatine may have a moderate to high impact on demand for these downstream products.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported creatine depends upon such factors as relative prices, quality (e.g., level of impurities), and conditions of sale (e.g., price discounts/rebates, payment terms, product support, etc.). Based on available data at this preliminary phase of the investigation, staff believes that there is a moderate to high degree of substitution between domestic creatine and creatine imported from China.

Factors Affecting Purchasing Decisions

While price is an important factor in the sale of creatine, other factors such as quality and product availability may also be equally important considerations in purchase decisions. Quality was mentioned by *** and several purchasers as the most important factor when purchasing creatine. Suppliers compete on price only if they offer comparable quality products. Several purchasers noted that the quality of Chinese creatine has significantly improved over the past 1 to 2 years and is now completely substitutable with U.S. creatine, whereas former quality differences resulted in purchase decisions heavily favoring U.S. and

⁷ Post-conference brief of ***, pp. 5-7.

⁸ Conference transcript, p. 37, and ***.

⁹ Post-conference brief of ***, p. 4.

¹⁰ Post-conference brief of ***.

¹¹ There appears to be growing use of creatine in such products as sports drinks and sports bars. However, there is not enough information at this preliminary phase of the investigation to specify creatine's significance in these products' cost structures.

¹² Staff interview with ***.

European creatine. Similarly, reliability of supply was mentioned as being more important than price. In contrast, U.S. producers state that price has become the dominant factor in the vast majority of creatine purchase decisions.

Comparison of Domestic Product, Subject Imports, and Nonsubject Imports

Four U.S. producers¹³ and 9 of 10 importers believe that U.S. and Chinese creatine are used interchangeably. Similarly, all responding U.S. producers and seven importers believe that U.S. and nonsubject imported creatine are used interchangeably, as well as subject and nonsubject imported creatine. Importers who did not answer with the majority reported having no knowledge of product interchangeability for the two relevant categories cited in the particular questions.

*** believe U.S. and Chinese creatine are not always interchangeable due to less consistent quality in the Chinese product. According to ***, the Chinese product is more likely to have impurities that cause unpleasant characteristics such as bitterness of taste. According to ***, U.S. producers have successfully marketed their creatine as a superior product relative to Chinese creatine, with resultant downward pressure on Chinese creatine prices.¹⁴

¹³ *** provided no answers to qualitative parts of the questionnaire.

¹⁴ Post-conference brief of ***, pp. 22-23.

PART III: CONDITION OF THE U.S. INDUSTRY

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margins of dumping was presented earlier in this report (see page I-1) and information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V. Information on the other factors specified is presented in this section and/or part VI and (except as noted) is based on the questionnaire responses of five firms that accounted for the vast majority of all known U.S. production of creatine during 1996-98.

U.S. PRODUCERS

Overview of the Industry

The Commission sent producers' questionnaires to the three firms identified as producers in the petition as well as to four other firms believed to have produced creatine in the United States during some portion of the 1996-98 period. According to questionnaire responses, five firms produced creatine in the United States during at least part of this period.¹ Responding producers are believed to account for virtually all current U.S. creatine production. Table III-1 presents a list of U.S. producers, with each company's position on the petition, its share of reported 1998 production of creatine, and U.S. production locations.

Overview of Companies²

Pfanstiehl Laboratories, Inc.

Pfanstiehl, Waukegan, IL, is the petitioner. Petitioner is a U.S. producer of a variety of chemical products such as pharmaceuticals and intermediates, biological chemicals, cosmetic chemicals, and dietary supplements.³ Pfanstiehl has reportedly been a U.S. producer of creatine since the 1960s. Until the early 1990s, Pfanstiehl produced creatine on non-dedicated equipment in a multi-use facility. Creatine was produced in relatively small amounts and sold as a fine chemical for research purposes.⁴ In response to growth in the use of creatine as a dietary sports supplement, Pfanstiehl ramped up production during the early 1990s. Petitioner invested in dedicated equipment which was employed in a multi-use facility. Further rapid growth in the market led Pfanstiehl to build a dedicated facility with dedicated equipment used solely in the production of creatine, which it opened in August 1997.⁵ Pfanstiehl is a licensee of a process patent for producing creatine.⁶ The patent holder is ***.⁷ ***.⁸

¹ As noted earlier, two U.S. producers did not respond to the Commission's questionnaires. ***. In addition, one U.S. producer, ***, submitted only a partial response.

² According to questionnaire data, none of the responding U.S. producers are ***.

³ Pfanstiehl, "Pfanstiehl-Our Products," found at <http://www.pfanstiehl.com/produ2/default.html>, retrieved Mar. 13, 1999.

⁴ Conference transcript, p. 15.

⁵ Ibid., pp. 15-18.

⁶ Ibid., p. 60.

⁷ Petitioner's post-conference brief, p. 2.

⁸ Memo to record, Mar. 16, 1999.

Table III-1

Creatine: U.S. producers, positions on the petition, shares of 1998 U.S. production on a quantity basis, and U.S. production locations

Firm	Position on petition	Share of 1998 U.S. production (percent)	U.S. production location
Pfanstiehl	Petitioner	***	Waukegan, IL
All American ¹	(²)	(³)	Billings, MT
AMT ¹	***	***	North Salt Lake, UT
Chattem	***	***	Chattanooga, TN
Larchmont	***	***	Danville, VA
NATRX ¹	(⁴)	(³)	Salt Lake City, UT
Stella	***	***	New Orleans, LA
<p>1 *** 2 *** 3 *** 4 ***</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>			

All American Pharmaceutical & Natural Foods⁹

All American Pharmaceutical & Natural Foods (All American) is located in Billings, MT. ***¹⁰

AMT Laboratories, Inc.¹¹

AMT Laboratories, Inc. (AMT) is located in North Salt Lake, UT. AMT began producing creatine ***¹² ***¹³ ***¹⁴

⁹ ***

¹⁰ Telephone interview by Commission staff, Feb 17, 1999

¹¹ ***

¹² AMT questionnaire response, p. 6.

¹³ Telephone interview by Commission staff with ***, March 19, 1999.

¹⁴ AMT questionnaire, p. 8.

Chattem Chemicals, Inc.

Chattem, Chattanooga, TN, is a wholly owned subsidiary of ELCAT, Inc., Warren, NJ. Chattem is a producer of a variety of fine and specialty chemicals, including pharmaceuticals, nutraceuticals, catalysts, printing inks, greases, coatings, and plastic additives.¹⁵ Chattem began producing creatine ***.¹⁶

Larchmont Technologies, LC

Larchmont is located in Danville, VA. Larchmont began production of creatine ***.

NATRX Laboratories, Inc.¹⁷

NATRX Laboratories, Inc. (NATRX) is located in Salt Lake City, UT.

Stella Laboratories, LLC

Stella is located in New Orleans, LA. Stella began producing ***.¹⁸ ***.¹⁹

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

U.S. producers' capacity, production, and capacity utilization data for creatine are presented in table III-2 for 1996-98. Similar information and certain additional data on employment are presented on a quarterly basis for 1998 in table III-3. U.S. production data, by firms, are presented in table III-4 for 1996-98.

U.S. PRODUCERS' SHIPMENTS

Data on U.S. producers' shipments of creatine for 1996-98 are presented in table III-5.

U.S. PRODUCERS' INVENTORIES

Data on U.S. producers' inventories of creatine are presented in table III-6.

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

U.S. producers' employment data for creatine are presented on an annual basis, 1996-98, in table III-7.

¹⁵ Chattem Fine Chemicals, "Welcome to Chattem Chemicals," found at <http://www.chattemchemicals.com/>, retrieved Mar. 14, 1999.

¹⁶ Chattem questionnaire response, p. 4.

¹⁷ ***. However, the company's web site, <http://www.natrx.com>, lists NATRX as a creatine producer. ***.

¹⁸ Stella questionnaire, p. 6.

¹⁹ Ibid., p. 4.

Table III-2

Creatine: U.S. producers' capacity, production, and capacity utilization, 1996-98

* * * * *

Table III-3				
Creatine: U.S. producers' capacity, production, capacity utilization, average number of production and related workers (PRWs), and hours worked by such employees, by quarters, 1998				
Item	Jan.-Mar.	Apr.-June	July-Sept.	Oct.-Dec.
Capacity (<i>kilograms</i>)	***	***	1,500,600	***
Production (<i>kilograms</i>)	448,577	***	***	***
Capacity utilization (<i>percentage</i>)	***	***	***	***
PRWs (<i>number</i>)	27	23	30	24
Hours worked (<i>1,000</i>)	14	16	16	10
Source: Compiled from data submitted in response to Commission questionnaires.				

Table III-4

Creatine: U.S. production, by firms, 1996-98

* * * * *

Table III-5

Creatine: U.S. producers' shipments, by types, 1996-98

* * * * *

Table III-6

Creatine: U.S. producers' end-of-period inventories, 1996-98

* * * * *

Table III-7**Creatine: Average number of production and related workers (PRWs) producing creatine, hours worked by and wages paid to such employees, and hourly wages, productivity, and unit labor costs, 1996-98**

Item	1996	1997	1998
PRWs (<i>number</i>)	33	38	32
Hours worked (<i>1,000</i>)	44	64	55
Wages paid (<i>\$1,000</i>)	466	777	629
Hourly wages	\$10.58	\$12.20	\$11.38
Productivity (<i>kilograms per hour</i>)	***	***	***
Unit labor costs (<i>per kilogram</i>)	***	***	***

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



PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent importer questionnaires to over 50 companies (including U.S. producers) that were believed to have possibly imported creatine during any part of the 1996-98 period.¹ Ten companies provided the Commission with data on U.S. imports for the period.²

U.S. IMPORTS, CONSUMPTION, AND MARKET SHARES

U.S. import data presented in this report are based on data compiled from questionnaires of the Commission. Official statistics are not used because creatine is classified along with other unrelated chemical products in a basket HTS subheading.

Table IV-1 presents U.S. imports of creatine on an annual basis, 1996-98, as reported by respondents to the Commission's questionnaires. Table IV-2 presents similar data on a quarterly basis for 1998. Table IV-3 presents shipments of domestic and imported product on an annual basis, 1996-98, and table IV-4 presents similar data for 1998 on a quarterly basis. Table IV-5 presents apparent U.S. consumption and market shares of creatine on an annual basis, 1996-98, and table IV-6 presents similar data for 1998 on a quarterly basis.

Table IV-1

Creatine: U.S. imports, by sources, 1996-98

* * * * *

Table IV-2

Creatine: U.S. imports, by sources and by quarters, 1998

* * * * *

¹ The Commission received a high percentage of negative responses. As stated earlier, the HTS subheading for creatine is a basket category which includes a variety of unrelated chemical products. Using the net import file to generate a listing of potential creatine importers did not allow for the segregation of creatine importers and importers of other unrelated chemicals products. As such, Commission staff sent questionnaires to all significant importers listed for the subheading expecting that many would not be applicable.

² In an attachment to the petition, the petitioner included a list of 39 potential importers of creatine. Only one of the companies listed appears to have imported creatine during the period of investigation. The remaining companies identified by the petitioner appear to be freight forwarders and shipping companies, and not importers.

Table IV-3**Creatine: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, 1996-98**

Item	1996	1997	1998
	Quantity (kilograms)		
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
China	***	***	***
Other sources	***	***	***
Total import shipments	***	***	***
Apparent consumption	1,368,822	2,424,950	3,916,459
	Value (1,000 dollars)		
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
China	***	***	***
Other sources	***	***	***
Total import shipments	***	***	***
Apparent consumption	38,380	48,753	50,028
Source: Compiled from data submitted in response to Commission questionnaires.			

Table IV-4**Creatine: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, by quarters, 1998**

Item	Jan.-Mar.	Apr.-June	July-Sept.	Oct.-Dec.
	Quantity (kilograms)			
U.S. producers' shipments	***	***	***	***
U.S. shipments of imports from--				
China	***	***	***	***
Other sources	***	***	***	***
Total import shipments	***	***	***	***
Apparent consumption	987,491	1,256,700	928,680	738,914
	Value (\$1,000)			
U.S. producers' shipments	***	***	***	***
U.S. shipments of imports from--				
China	***	***	***	***
Other sources	***	***	***	***
Total import shipments	***	***	***	***
Apparent consumption	13,794	16,098	11,505	8,560
Source: Compiled from data submitted in response to Commission questionnaires.				

Table IV-5

Creatine: Apparent U.S. consumption and market shares, 1996-98

Item	1996	1997	1998
	Quantity (kilograms)		
Apparent consumption	1,368,822	2,424,950	3,916,459
	Value (\$1,000)		
Apparent consumption	38,380	48,753	50,028
	Share of quantity (percentage)		
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
China	*** 1	***	***
Other sources	***	***	***
Total import shipments	***	***	***
	Share of value (percentage)		
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
China	*** 1	***	***
Other sources	***	***	***
Total import shipments	***	***	***
1 ***.			
Source: Compiled from data submitted in response to Commission questionnaires.			

Table IV-6**Creatine: Apparent U.S. consumption and market shares, by quarters, 1998**

Item	Jan.-Mar.	Apr.-June	July-Sept.	Oct.-Dec.
	Quantity (kilograms)			
Apparent consumption	987,491	1,256,700	928,680	738,914
	Value (\$1,000)			
Apparent consumption	13,794	16,098	11,505	8,560
	Share of quantity (percentage)			
U.S. producers' shipments	***	***	***	***
U.S. shipments of imports from--				
China	***	***	***	***
Other sources	***	***	***	***
Total import shipments	***	***	***	***
	Share of value (percentage)			
U.S. producers' shipments	***	***	***	***
U.S. shipments of imports from--				
China	***	***	***	***
Other sources	***	***	***	***
Total import shipments	***	***	***	***

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

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

The two main raw materials used in the production of creatine are cyanamide and sodium sarcosinate. The significance of raw material costs in the overall cost structure varies among U.S. producers, but such costs accounted for an average of *** percent of the total 1998 cost of creatine production. One U.S. producer, ***, reported that there are few suppliers of the two main raw materials, and as a result raw material prices are relatively inflexible.

U.S. Inland Transportation Costs

Transportation costs for delivery of creatine within the United States vary from firm to firm but tend to account for a minimal percentage of the total cost of the product. For the four U.S. producers that responded to this question, these costs accounted for between *** of the total cost of creatine, with an average of approximately *** percent. For the five importers that provided usable responses to this question, these costs accounted for between *** of the total cost of creatine, with an average of approximately *** percent.

All U.S. producers reported a geographic market area encompassing the entire United States. For the seven importers that provided usable responses to this question, two reported a market area encompassing the entire continental United States, and one reported sales to various states in the western, midwestern, and eastern parts of the country. Three importers reported market areas on the East Coast and the remaining response indicated sales concentrated in western states.

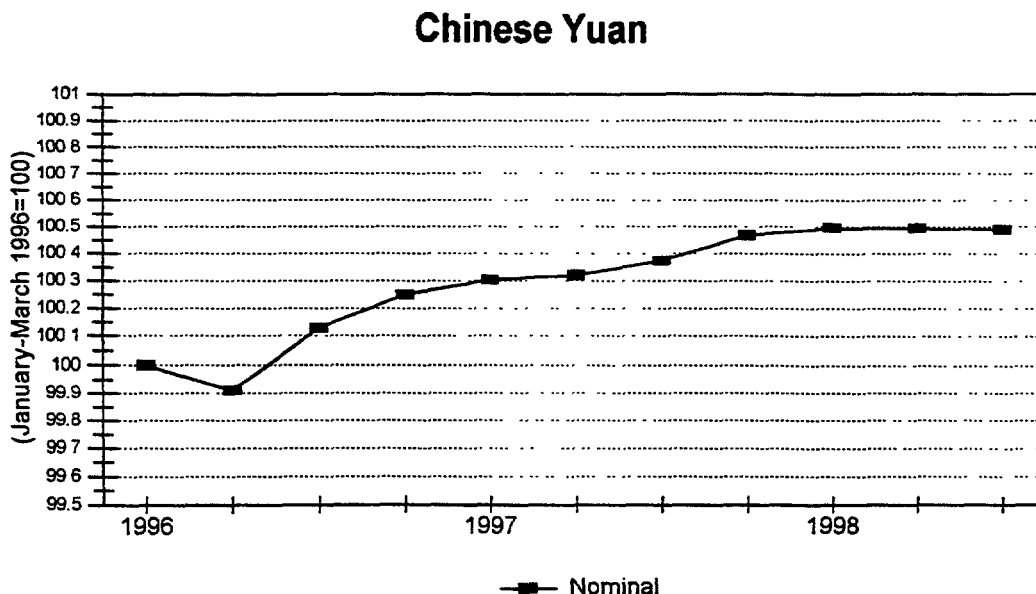
Producers and importers were also requested to provide estimates of the percentages of their shipments that were made within specified distance ranges. Among the four U.S. producers that provided usable responses to this question, an average of *** percent of shipments occurred within 100 miles, and *** percent occurred within 1,000 miles. Among the six importers that provided usable responses to this question, an average of *** percent of shipments occurred within 100 miles, and *** percent occurred within 1,000 miles.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese yuan appreciated 0.5 percent relative to the U.S. dollar from January 1996 to September 1998 (figure V-1). Real exchange rates cannot be calculated due to the unavailability of Chinese producer price information.

Figure V-1

Exchange rates: Index of the nominal value of the Chinese yuan relative to the U.S. dollar, by quarters, Jan. 1996-Sept. 1998



Source: International Monetary Fund, *International Financial Statistics*, Jan. 1999.

PRICING PRACTICES

Pricing Methods

Most sales of creatine in the United States are made on a transaction-by-transaction basis, with prices quoted based on current market conditions. Available information indicates that the majority of U.S. producers' and importers' sales are on a spot basis. One U.S. producer, ***, reported that 75 percent of its sales were on a contract basis. Similarly, only one importer, ***, reported that most of its sales were on a contract basis.

In those instances where suppliers use contracts to sell creatine, these contracts vary in duration from 1 month to 1 year. Reported contract terms were similar, with *** reporting that price and quantity were fixed while *** reported that price was fixed, with quantity fixed to a lesser extent. *** reported that its contract agreement does contain a meet-or-release provision, while *** reported in the negative. Both suppliers stated that there are no standard quantity requirements.

Sales Terms and Discounts

The vast majority of creatine producers and importers did not report having either price lists or fixed discount policies. However, some importers reported that price discounting based on quantity may occur during negotiations with individual customers. U.S. producers and importers further showed near

unanimity on the issue of payment terms, with all but two importers of Chinese creatine reporting that payment is required within 30 days. U.S. producers and importers were somewhat mixed with regard to how prices are quoted in the creatine market. Two U.S. producers, ***, report that price quotes occur on both an f.o.b. and delivered basis, while *** quote prices on an f.o.b. basis, and *** quotes prices on a delivered basis. All importers report that price quotes occur on a delivered basis.

PRICE DATA

The Commission requested U.S. producers and importers of creatine to provide quarterly data for the total quantity and value of certain creatine products that were shipped to distributors.¹ These data were used to determine the weighted-average price in each quarter. Data were requested for the period January 1996 through December 1998. The products for which pricing data were requested are as follows:

Product 1: Creatine Monohydrate - 99.5% pure or greater

Product 2: Creatine Monohydrate - 99.0 to 99.4% pure

Product 3: Creatine Monohydrate - less than 99.0% pure

The product break-outs by purity were combined for analytical purposes based on collective agreement among reporting U.S. producers and importers that all creatine above 99-percent purity is similarly priced in the market. As a result, data for products 1 and 2 were combined. No price data were reported for product 3. Reported data for different distribution channels were also combined for analytical purposes based on agreement among U.S. producers and importers that insignificant pricing differences exist between these distribution channels.²

Five U.S. producers and six importers provided usable pricing data for sales of the requested products in the U.S. market, although not necessarily for all quarters over the period of investigation.³ Usable pricing data are estimated to account for virtually all U.S. shipments of domestic creatine and U.S. shipments of creatine imported from China in 1998.

Price Trends

Questionnaire Data

Weighted-average prices reported by U.S. producers and importers of the Chinese product all showed overall declines during the period January 1996 through December 1998. Prices for Chinese creatine during this time frame showed more volatility and more significant declines (table V-1 and figure V-2).

¹ Information contained in the petition indicated that sales to distributors accounted for the majority of sales in the U.S. creatine market. Information obtained during this preliminary phase of the investigation indicates that retailers and packagers are also significant purchasers.

² Staff interviews with U.S. producers and importers.

³ Of the reporting importers, *** import from nonsubject countries, *** imported but never actually sold Chinese creatine, and *** never provided usable price data. *** and *** provided pricing data on nonsubject imports from Austria and Germany, respectively. Based on these limited sources, nonsubject average annual unit values per kilogram are as follows: Austria - \$*** (1996), \$*** (1997), \$*** (1998); Germany - \$*** (1996), \$*** (1997), \$*** (1998).

Table V-1

Creatine: Weighted-average delivered prices and quantities as reported by U.S. producers and importers, and margins of underselling/(overselling), by quarters, Jan. 1996-Dec. 1998

* * * * *

Figure V-2

Weighted-average delivered prices for creatine, by sources and by quarters, Jan. 1996-Dec. 1998

* * * * *

Prices for creatine reported by U.S. producers and importers fell 51 percent and 57 percent, respectively, from the fourth quarter of 1996 to the fourth quarter of 1998.⁴ According to petitioner, price declines in the creatine market prior to 1998 are considered a normal result of increased competition from nonsubject producers.⁵

Price Comparisons

Price comparisons between the domestic and Chinese product, based on questionnaire data, were possible in a total of 9 quarters. In seven of these instances, the Chinese product was priced below the U.S. product, with margins ranging from 7.9 to 27.7 percent. In the other two quarters, the Chinese product was priced above the domestic product, with margins ranging from 5.7 to 13.0 percent. The average margin of underselling between U.S. and Chinese prices was 17.2 percent, with an upward trend occurring at the end of the period of investigation.

LOST SALES AND LOST REVENUES

Three of the five responding U.S. producers provided information on alleged lost sales and/or lost revenues due to imports of creatine from China.⁶ U.S. producers reported seven firms to which they allegedly lost sales, but provided no specific information on lost revenues. Of the seven specific lost sales

⁴ No usable price data were reported for Chinese creatine in the first 3 quarters of 1996.

⁵ At the Mar. 8, 1999, conference and in its post-conference brief, petitioner provides its explanation of the U.S. creatine market and how it has evolved over the past 5 years. During the initial phase of increased demand, three events occurred: (1) German imports entered the market at fairly traded prices, (2) production costs fell due to improved technology and dedicated facilities, and (3) price sensitive consumers entered the market. This initial phase is considered natural by petitioner, where a single producer (Pfanstiehl) faced market entry by fairly traded imports as demand for creatine surged. According to petitioner, market entry by the Chinese caused a substantial shift in the U.S. creatine market because the Chinese entered at significantly lower prices. Both petitioner and respondents agree that a two-tier market consisting of (1) consumers primarily concerned with quality and (2) consumers primarily concerned with price evolved. According to petitioner, the quality-conscious market segment, which prefers U.S. and European creatine, is dissipating as consumers are becoming increasingly price sensitive (see conference transcript, pp. 22, 30-33, and petitioner's post-conference brief, exhibit 2).

⁶ *** did not wish to provide specific allegations due to customer relations and confidentiality issues. However, the company does believe it has lost sales because of lower-priced creatine from China. *** did not provide any lost sales/lost revenues information.

allegations, four were confirmed or partially confirmed by the purchasers, one was denied by the purchaser, and in two instances it was impossible to obtain adequate information. *** were the only producers that provided enough information to calculate total values for lost sales. The reported allegations for lost sales totaled approximately \$6 million and involved approximately 433,000 kilograms of creatine. Comments obtained by staff are detailed below.

*** named *** in a lost sales allegation totaling \$*** and involving *** kilograms of creatine. *** confirmed the specific lost sales data provided by *** and further stated that price was the determining factor in switching from U.S. creatine to the Chinese product. According to ***, price is the most important factor in supply decisions for creatine. The market for creatine is highly competitive, with Chinese producers competing among themselves and further depressing prices for the Chinese product, which is consistently \$2 to \$4 per kilogram lower than U.S. creatine. When asked about purity differences between U.S. and Chinese creatine, *** stated that both products are marketed as equally pure, but pharmaceutical companies offer the best procedures and best manufacturing facilities, and thus tend to have a more consistently high-quality product. He stated that it is a "buyer beware" market for many chemical products originating from China, where quality may start off at a relatively low level and then become better over time.

*** named *** in a lost sales allegation totaling \$*** and involving *** kilograms of creatine. *** of *** did not confirm or deny the allegation, and stated that company policy prohibits comment on this type of inquiry.

*** named *** in a lost sales allegation totaling \$*** and involving *** kilograms of creatine.⁷ *** of *** confirmed the allegation. *** believes that U.S. producers are upset because quality differences between U.S. and Chinese creatine no longer exist. The Chinese now produce a good product at a much lower price than the domestic producers. According to ***, this is a case of pure, fair competition. *** stated that he originally bought U.S. creatine exclusively because the Chinese product's quality was inconsistent. However, with Chinese creatine now being equal in quality, he cannot afford to pay more for creatine than his competitors. Quality, not price, is the most important concern for ***. However, with quality no longer an issue, producers compete on price.

*** named *** in a lost sales allegation totaling \$*** and involving *** kilograms of creatine. *** of ***, for which *** is a customer, partially confirmed the allegation. *** could not remember the specific incident, but did state that there have been instances where he has turned down the U.S. product because of the high price relative to Chinese creatine. *** stated that his customers are very price sensitive, and that the quality of Chinese creatine has improved and is now equal to the U.S. product. Quality, not price, is the primary concern for *** when purchasing creatine.

*** named *** in a lost sales allegation totaling \$*** and involving *** kilograms of creatine. *** of *** denied the allegation, stating that *** has not purchased Chinese creatine. *** speculated that the allegation may have actually been an effort by *** to extract a better price from a U.S. producer by using Chinese creatine prices as leverage. *** favors U.S. creatine, stating that the Chinese product is inferior. He reports telling customers that U.S. creatine is a better product, and believes that the true competition for U.S. producers lies with European creatine because they are more comparable in quality. Pfanstiehl, SKW

⁷ With the exception of *** lost sales allegation concerning ***, all of its other allegations involved ***.

(Germany), and Chemiline (Austria) are all comparable in price and quality. According to ***, quality is more important than price in purchasing decisions. *** needs to deliver a consistent product in order to maintain and expand its customer base, so it will not buy Chinese creatine.

*** named *** in a lost sales allegation totaling \$*** and involving *** kilograms of creatine. *** of *** partially confirmed the allegation by saying that he was receiving creatine price quotes below \$10 per kilogram in November 1998 as stated by the U.S. producer, and that all sources would have to compete against that price. *** noted that the order of precedence for factors affecting creatine purchasing decisions is (1) quality, (2) availability, and (3) price. If quality passes *** laboratory tests and availability is satisfactory, then *** will definitely buy the lowest priced creatine. In some cases, this has been the Chinese product.

*** named *** in a lost sales allegation. *** of *** was unable to confirm or deny the allegation. *** noted that *** used to be in a joint venture with *** whereby *** provided creatine at cost to ***, and *** would then market the product. This partnership is no longer in existence, and *** is no longer in the creatine market. *** believes that Chinese creatine is being dumped in the U.S. market, and stated that even if *** purchased the raw materials at prices paid by Chinese producers, the firm still could not compete against Chinese prices. *** believes the Chinese government pays a rebate to creatine producers, which acts as a subsidy and allows the Chinese producers to sell at such low prices.

PART VI: FINANCIAL EXPERIENCE OF THE U.S. PRODUCERS

BACKGROUND

Five producers (AMT, Chattem, Larchmont, Pfanstiel, and Stella), accounting for the vast majority of all known U.S. production of creatine during 1996-98, supplied financial data on their creatine operations. ***. In 1997, Pfanstiehl completed a new 10,000 square foot facility next to its main plant in Waukeegan, IL, which is solely dedicated to creatine production. It accounted for *** percent of reported production in 1998.

OPERATIONS ON CREATINE

The aggregate results of operations of the creatine industry are presented in table VI-1. Aggregate net sales volume increased sharply between 1996 and 1998. However, aggregate operating income ***. Pfanstiehl accounted for *** percent of reported net sales dollars in 1998.

Selected financial data, by firm, is presented in table VI-2. ***.¹ Chinese imports increased sharply in 1998 from quarter to quarter.

Table VI-1

Results of operations of U.S. producers on their operations producing creatine, fiscal years 1996-98

* * * * *

Table VI-2

Selected financial data of U.S. producers, by firms, on their operations producing creatine, fiscal years 1996-98

* * * * *

In 1998, raw material costs for the reporting producers were in the range of \$*** to \$*** per kilogram. The cost of raw materials is the major cost element for producing creatine. There are several raw materials used in creatine production. They include ***.² However, the latter two are dominant and account for over *** percent of the total raw material costs.³ There are few worldwide producers of these two major raw materials. The sources of the producers' key raw materials are summarized in the tabulation below:

¹ ***.

² ***.

³ See exhibit 10 in the petition; data for Pfanstiehl only. ***.

<u>Company</u>	<u>Cyanamide Producer/Country</u>	<u>Sodium Sarcosinate Producer/Country</u>
AMT ⁴	***	***
Chattem ⁵	***	***
	***	***
	***	***
Larchmont ⁶	***	***
	***	***
	***	***
Pfanstiehl	***	***

On a per-unit cost basis, raw materials accounted for *** percent of the cost of goods sold in 1996, 1997, and 1998, respectively. ***.⁷ The aggregate unit cost of goods (COGS), on a dollar per kilogram basis, is shown in the tabulation below:

	<u>1996</u>	<u>1997</u>	<u>1998</u>
Raw materials.	***	***	***
Direct labor.	***	***	***
Factory overhead.	***	***	***
Total COGS.	***	***	***

As previously indicated in table VI-2, the aggregate raw material cost for the industry was *** per kilogram in 1998. During the conference, an attorney for the petitioner indicated that the Chinese have their own source of cheap raw materials:

“One of the Chinese producers has made the statement that he could *sell the creatine for \$4 a kilo and still make money*. A fairly traded price, as I’m sure you recognize, would exceed that probably by four times. This illustrates the gravity of the situation for the U.S. industry because behind that statement lie the facts of production in China.

As I said, cyanamide is the basic, one of the basic raw materials of this product and it is a chemical used in the fertilizer business, a business that is at the heart of a concerted effort by the Chinese, obviously, to feed their more than one billion people. And its creatine facilities in China are located very near cyanamide producers that can provide cyanamide to the creatine producers for next to nothing. Indeed, one of the Chinese creatine manufacturers controls a cyanamide manufacturer. The combination of these

⁴ ***.

⁵ ***.

⁶ ***.

⁷ Refer to exhibit 6, item 5 of the post-conference brief of Fulbright and Jaworski.

factors is the backdrop against which import prices will continue the downward trend the industry has experienced throughout 1997, 1998, and the beginning of this year, as we will demonstrate in more detail in our post-conference brief.”⁸

The creatine production process produces waste which has no practical usage. It cannot be reused or sold and ***.

Quarterly financial data were provided by three producers (Chattem, Pfanstiehl, and Stella). *** In this industry there could be seasonal factors that affect the data, and fourth quarter financial data often contain year end adjustments that may not reflect the true operations of the quarter. Selected financial data are presented in table VI-3.

Table VI-3
Selected financial data for creatine producers, by quarters, fiscal year 1998

* * * * *

A variance analysis is presented in table VI-4. The analysis shows that unfavorable price variance was the cause of the decline in operating income during 1996-98.

Table VI-4
Variance analysis for creatine, fiscal years 1996-98

* * * * *

INVESTMENT IN PRODUCTIVE FACILITIES, CAPITAL EXPENDITURES, AND RESEARCH AND DEVELOPMENT EXPENSES

The value of fixed assets (property, plant, and equipment), capital expenditures, and research and development costs for creatine are shown in table VI-5. During 1996 and 1997 facilities were completed, then there was decline in expenditures.

Table VI-5
Value of assets, capital expenditures, and research and development expenses for producers of creatine, fiscal years 1996-98

* * * * *

⁸ Conference transcript, pp. 9-10.

CAPITAL AND INVESTMENT

The Commission requested the producers to describe any actual or potential negative effects of imports of creatine from China on their growth, investment, ability to raise capital, and/or their development efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are in appendix D.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V, and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in part VI. The available information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

The Commission sent foreign producer's questionnaires directly to the five companies cited in the petition as probable Chinese creatine producers or exporters. Responses received indicate that none of the firms identified by the petitioner produce creatine in China. However, the China Chamber of Commerce of Medicines & Health Products Importers & Exporters also distributed copies of the Commission's foreign producer questionnaire to Chinese producers and exporters of creatine, and the Commission has since received responses from six Chinese creatine producers. These responses were received directly from the producers or on their behalf from Chinese trading companies that act as exporters of their products.¹

THE INDUSTRY IN CHINA

The number of Chinese creatine producers is in dispute. According to information provided by the respondents, there are *** Chinese producers of creatine and another *** trading companies that export the product.² The Commission received responses from an additional two producers not identified by the respondents. The petitioner stated at the conference that as many as 20 producers of creatine now exist in China.³

In general, Chinese creatine producers are not involved in the export of their product. Instead, there are a number of Chinese trading companies that purchase creatine from the Chinese producers and proceed to export and market the product abroad. ***⁴

Volume Chinese creatine production reportedly began in 1997.⁵ Initially, Chinese creatine was considered to be of poor quality, including taste and color. According to respondents, current production from certain Chinese factories is believed to be equivalent in quality to U.S. and European product while the quality of product from other Chinese factories is still believed to be inferior. Petitioner has contended

¹ Assistance in gathering information was also solicited from the U.S. Embassy in China. However, no response was received.

² Post-conference brief on behalf of MW International and GCI Nutrients, app. 10.

³ Conference transcript, p. 59. At the conference, petitioner stated that subsequent to the filing of the petition, they had come to learn that as many as 20 creatine producers exist in China rather than the 5 listed in the petition. However, names of these 20 Chinese producers were not provided.

⁴ Memo to record, Mar. 3, 1999.

⁵ Memo to record, Mar. 3, 1999, and questionnaire responses of Chinese producers.

that, during 1998, Chinese producers moved along a production learning curve to the point where quality differences between Chinese and domestically produced creatine are imperceptible.⁶

According to petitioner, Chinese producers have significant flexibility in product shifting into creatine production.⁷ In fact, petitioner states that Chinese producers likely increased creatine production capacity during the period of investigation by shifting resources in multi-product facilities.⁸ Petitioner argues that because creatine production requires no special machinery or equipment and can account for a small portion of a firm's total sales, it would be relatively simple for Chinese producers to increase creatine production by reallocating capacity in their multi-product facilities. Foreign producer questionnaire responses indicate that, for most Chinese producers, creatine accounts for a *** percentage of sales. Respondents assert that Chinese producers do not have the ability to quickly product-shift into creatine production.⁹ They also contend that much of the Chinese production occurs with *** and that certain Chinese manufacturers are already producing in ***. As such, there would be limited opportunity to product shift and any capacity increases would require significant time and capital investments.¹⁰

Chinese capacity to produce creatine increased substantially during the period for which data were collected. Starting from essentially zero in 1996, capacity grew from 312,000 kilograms in 1997 to 1,688,000 kilograms in 1998 and is projected at 2,100,000 kilograms in 1999.¹¹ According to questionnaire responses, Chinese producers *** to projected 1999 capacity.¹² Petitioner argues that Chinese capacity is increasing and that Chinese producers are targeting the U.S. market, asserting that the United States accounts for over 80 percent of the global creatine market.¹³ Respondents claim that non-U.S. markets for creatine such as *** are growing and that Chinese producers are likely to divert product from the United States into these other markets.¹⁴

Table VII-1 presents China's capacity, production, shipments and inventories during 1996-98 and projections for 1999-2000, as reported by respondents to the Commission's questionnaires.

U.S. IMPORTERS' INVENTORIES

End-of-period inventories held by U.S. importers of creatine are shown in table VII-2.

⁶ Conference transcript, p. 48.

⁷ Petition, p. 38.

⁸ Conference transcript, p. 42, and petitioner's post-conference brief, p. 22.

⁹ Post-conference brief of Technical Sourcing International, Inc., p. 13.

¹⁰ Ibid.

¹¹ Questionnaire responses of Chinese producers.

¹² Ibid.

¹³ Petitioner's post-conference brief, p. 21 and "Part Two: Answers to Commission Staff Questions," p. 6.

¹⁴ Post-conference brief of Technical Sourcing International, Inc., p. 14.

Table VII-1
Creatine: China's capacity, production, capacity utilization, inventories, and shipments, 1996-98, and projections for 1999-2000

Item	Actual experience--			Projections--	
	1996	1997	1998	1999	2000 ¹
	<i>Quantity (kilograms)</i>				
Capacity	0	312,000	1,688,000	2,100,000	2,100,000
Production	0	179,123	1,166,016	950,000	950,000
End-of-period inventories	0	***	***	***	***
Shipments:					
Internal consumption/transfers	0	0	0	***	***
Home market	0	***	***	***	***
Exports to:					
United States	0	***	***	***	***
All other markets	0	***	***	***	***
Total exports	0	***	***	***	***
Total shipments	0	174,509	1,146,380	593,750	595,000
	<i>Ratios and shares (percentage)</i>				
Capacity utilization	-	57.4	69.1	45.2	45.2
Inventories/production	-	***	***	***	***
Inventories/shipments	-	***	***	***	***
Share of total shipments:					
Internal consumption/transfers	-	0.0	0.0	***	***
Home market	-	***	***	***	***
Exports to:					
United States	-	***	***	***	***
All other markets	-	***	***	***	***
Total exports	-	***	***	***	***

¹ Certain Chinese producers provided projections for 1999, but did not provide them for 2000. In those instances, Commission staff attributed their 1999 projections to 2000.

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

Table VII-2**Creatine: U.S. importers' end-of-period inventories of imports from China, 1996-98**

Item	1996	1997	1998
Inventories (<i>kilograms</i>)	0	21,599	***
Ratio to imports (<i>percent</i>)	0	***	***
Ratio to U.S. shipments of imports (<i>percent</i>)	0	***	***

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

APPENDIX A
FEDERAL REGISTER NOTICES

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR Part 872, Abandoned mine reclamation funds; and (2) Form OSM-74 which incorporates the requirements of 30 CFR 955, Certification of Blasters in Federal program States and on Indian lands. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Abandoned mine reclamation funds, 30 CFR Part 872.

OMB Control Number: 1029-0054.

Summary: 30 CFR 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribe's decision not to submit reclamation plans, and therefore, will not be granted AML funds.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Title: Certification of blasters in Federal program States and on Indian lands—30 CFR 955.

OMB Control Number: 1029-0083.

Summary: This information is being collected to ensure that the applicants

for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement to conduct blasting on Indian lands or in Federal primacy States.

Bureau Form Number: OSM-74.

Frequency of Collection: On occasion.

Description of Respondents: Individuals intent on being certified as blasters in Federal program States and on Indian lands.

Total Annual Responses: 33.

Total Annual Burden Hours: 57.

Dated: February 16, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99-4240 Filed 2-19-99; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-814 (Preliminary)]

Creatine Monohydrate From The People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-814 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) of creatine monohydrate (creatine), provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by March 29, 1999. The Commission's views are due at the Department of Commerce within five

business days thereafter, or by April 5, 1999.

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

EFFECTIVE DATE: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carr (202-205-3402), 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>).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on February 12, 1999, by Pfanstiehl Laboratories, Inc., Waukegan, Illinois.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as

defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 8, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Robert Carr (202-205-3402) not later than March 4, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 11, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain 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.

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

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: February 17, 1999

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-4311 Filed 2-19-99; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Policy; Agency Information Collection Activities: Proposed Collection, Comment Request; the National Agricultural Workers Survey Questionnaire Form

AGENCY: Office of the Assistant Secretary for Policy (OASP), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently the Office of the Assistant Secretary for Policy is soliciting comments concerning two supplements to be used by the National Agricultural Workers Survey (NAWS). This survey has been conducted under the Office of Management and Budget (OMB) clearance since October, 1988. It is at this time conducting approximately 4,500 interviews per year. The focus has been on demographic, employment and health data. The NAWS information collection request will consist of two supplements. The first supplement will be administered to children farmworkers less than 19 years of age. The second and complementary supplement will be administered to farmworkers who are parents of U.S. based children. The purpose of these supplements is to gather in depth data on the educational barriers and labor market conditions faced by children farmworkers. This data collection was mandated by Congress.

The sampling frame and estimation procedures will not be altered by the supplements. However, adaptations may

need to be made to enhance estimations of children farmworkers.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper functioning of government agencies charged with protecting the well being of the farmworker population, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond.

DATES: Written comment must be submitted by April 23, 1999.

ADDRESSES: Comments are to be submitted to the U.S. Department of Labor, Room S-2312, (200 Constitution Ave. NW, Washington, D.C. 20210, telephone (202) 219-6197. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 219-9216.

FOR FURTHER INFORMATION CONTACT: Richard Mines, Economist and Program Officer for the National Agricultural Workers Survey, Office of the Assistant Secretary of Labor, U.S. Department of Labor, Room S-2312, 200 Constitution Ave., NW, Washington, D.C. 20210. Telephone: (202) 219-6197. Copies of the referenced information collection request are available for inspection and copying and will be mailed to persons who request copies by telephoning Richard Mines at (202) 219-6197. For more information about the NAWS, consult the NAWS home page at: <http://www.dol.gov/dol/asp/public/programs/agworker/naaws.htm>.

SUPPLEMENTARY INFORMATION:

I. Background

The NAWS began surveying farm workers in 1988, it has collected information from over 22,000 workers. The survey samples all crop farm workers in three cycles each year in order to capture the seasonality of the work. The NAWS locates and samples workers at their work sites, avoiding the well-publicized undercount of this difficult-to-find population. During the initial contact, arrangements are made to interview the respondent at home or at another convenient location.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate for that firm as stated above; (2) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 19.32 percent. This is the "all others" rate from the amended final determination in the LTFV investigation. See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 61 Fed. Reg. 47871 (September 11, 1996). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with sections 751(a)(1) and 771(i)(1) of the Act and sections 351.213 and 351.221 of the Department's regulations.

Dated: March 3, 1999.

Robert S. LaRussa,
Assistant Secretary for Import
Administration
[FR Doc. 99-5945 Filed 3-9-99; 8:45 am]
BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration [A-570-852]

Initiation of Antidumping Duty Investigation: Creatine From the People's Republic of China

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

EFFECTIVE DATE: March 10, 1999.

FOR FURTHER INFORMATION CONTACT:
Marian Wells, Blanche Ziv or Rosa
Jeong, Import Administration,
International Trade Administration,
U.S. Department of Commerce, 14th
Street and Constitution Avenue, NW,
Washington, DC 20230; telephone: (202)
482-6309, (202) 482-4207, or (202) 482-
3853, respectively

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

The Petition

On February 12, 1999, the Department received a petition filed in proper form by Pfanstuehl Laboratories, Inc., referred to hereinafter as "the petitioner." The petitioner filed supplemental information to the petition on March 1, 1999.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of creatine from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it represents, at a minimum, the required proportion of

the United States industry (see Determination of Industry Support for the Petition section below).

Scope of Investigation

For purposes of this investigation the product covered is commonly referred to as creatine monohydrate or creatine. The chemical name for creatine covered under this investigation is N-(aminoiminomethyl)-N-methylglycine monohydrate. The Chemical Abstracts Service (CAS) registry numbers for this product are 57-00-1 and 6020-87-7. Pure creatine is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. The merchandise subject to this investigation is classifiable under subheading 2925.20.90 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a

domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.¹ Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

On February 19, 1999, the ITC presented us with information indicating that there are three additional producers of the domestic like product that were not included in the petition. Subsequently, our research also revealed one additional producer of the domestic like product not included in the petition. To determine whether the petitioner met the statutory requirement cited above, we contacted all companies identified by the ITC and the Department as well as the two companies included in the petition. Based on production data supplied by the petitioner and collected by the

Department and now on the record, we determine that the petition has been filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Initiation Checklist dated March 4, 1999 (public version on file in the Central Records Unit of the Department of Commerce, Room B-099) ("Initiation Checklist").

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioner identified five potential PRC exporters and producers of creatine. The petitioner based export price on offers for sale of the subject merchandise to U.S. purchasers by PRC exporters in November 1998 and January 1999. From these starting prices, the petitioner deducted international freight, marine insurance, and foreign brokerage and handling. The petitioner based international freight and marine insurance fees on current quotations from a U.S. freight forwarding company. In order to calculate foreign brokerage and handling, the petitioner used the value of Indian brokerage and handling charges, claiming that the petitioner does not have information on the costs associated with brokerage and handling incurred in the PRC prior to export to the United States. The foreign brokerage and handling charges, which were based on the Department's "Index of Factor Values for Use in Antidumping Duty Investigations Involving Products From the PRC," dated June 1996 ("Index of Factor Values"), were adjusted for inflation using the Indian Wholesale Price Index (WPI).

Because the PRC is considered a nonmarket economy (NME) country under section 771(18) of the Act, the petitioner based normal value (NV) on the factors of production valued in a surrogate country, in accordance with section 773(c)(3) of the Act. The petitioner selected India as the most appropriate surrogate market economy. For the factors of production, the petitioner used its own factor inputs and consumption data for materials, labor and energy, based on the production process that the petitioner employed in 1993 and 1994. The petitioner did not include an amount for representative capital costs, including depreciation, as provided in subsection

773(c)(3)(D) of the Act. Thus, petitioner potentially understated costs, thereby providing a conservative calculation of the alleged dumping. According to information presented by the petitioner, the operation of the PRC producers of the subject merchandise has not reached the level of technology and efficiency represented by the petitioner's present manufacturing process. As such, the petitioner alleged that its production process of 1993 and 1994 most closely approximates that currently being utilized by the PRC producers of the subject merchandise. Where the 1993 and 1994 consumption data were unavailable (i.e., electricity and water), the petitioner used its current data.

Materials were valued based on Indian prices obtained from the petitioner's market research of publicly available information and published price lists. Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). The values for water and electricity were obtained from international publications containing the prices applicable to India. The natural gas value was based on the Department's Index of Factor Values. The petitioner also valued the cost of disposing the waste generated in the production process using its own cost information. The petitioner used its own cost of waste disposal as facts available because it has no direct knowledge of the actual means of disposing of waste by the PRC producers. For factory overhead, selling, general and administrative expenses, and profit, the petitioner applied rates derived from information gathered from the Reserve Bank of India Bulletin. Packing factors were based on the Department's Index of Factor Values.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of creatine from the PRC are being, or are likely to be, sold at less than fair value. Based on a comparison of EP to NV, the petitioner's calculated dumping margins range from 120.9 percent to 153.7 percent.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The

¹ See *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988), *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination, Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist.

Allegation of Critical Circumstances

The petitioner has alleged that critical circumstances exist and has asked the Department to make an expedited finding. To support its allegation, the petitioner has provided evidence in the petition in the form of PIERS data showing, among other things, a trend of increased imports of the subject merchandise from the third to the fourth quarter of 1998. Specifically, petitioner contends that creatine imports from the PRC surged more than 150 percent from the third to the fourth quarter. The petitioner also provided evidence suggesting the person by whom, or for whose account, the merchandise is imported knew or should have known that the merchandise was being sold at less than fair value and that there was likely to be material injury as a result. Petitioner argues that its January 25, 1999 press release regarding alleged dumping of creatine in the United States provides the basis for this knowledge, and that the Department has accepted similar evidence of knowledge in other cases. See *Preliminary Determination of Critical Circumstances: Certain Flat-Rolled Carbon Quality Steel Products from Japan and the Russian Federation*, 63 FR 65750, 65751 (November 30, 1998). We find that the petitioner has alleged the elements of critical circumstances and supported them with reasonably available information. For these reasons, we will investigate this matter further and will make a preliminary determination based on available information at the appropriate time in accordance with 19 CFR 351.206. See Initiation Checklist.

Initiation of Antidumping Investigation

Based on our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of creatine from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination by July 22, 1999.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been

provided to the representatives of the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by March 29, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury by reason of imports of creatine from the PRC. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i) of the Act.

Dated: March 4, 1999.

Robert S. LaRussa,
Assistant Secretary for Import Administration.

[FR Doc. 99-5943 Filed 3-9-99, 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412-803]

Industrial Nitrocellulose From the United Kingdom, Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of amended final results of antidumping duty administrative review

SUMMARY: On February 10, 1999, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom. The review covers 1 manufacturer/exporter, and the period July 1, 1996, through June 30, 1997. Based on our analysis of a clerical error comment received, we determine the dumping margin for the reviewed manufacturer/exporter, Imperial Chemical Industries PLC (ICI), has changed.

EFFECTIVE DATE: March 10, 1999.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-4195, or 482-3814, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Background

On February 10, 1999, the Department published the final results (64 FR 6609) of its administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom. The Department has now amended its final results in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

After publication of our final results, we received an allegation of ministerial error from the respondent that the Department agrees is a ministerial error and has corrected. According to the respondent, the Department's coding of a variable cost of manufacture in the SAS model match program did not function as intended which resulted in an improper calculation of adjustments for differences in merchandise. See memorandum to the file dated March 3, 1999, for a detailed description of the adjustment made.

APPENDIX B

LIST OF WITNESSES APPEARING AT THE CONFERENCE

CALENDAR OF THE PUBLIC CONFERENCE

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

CREATINE MONOHYDRATE FROM CHINA

Investigation No. 731-TA-814 (Preliminary)

March 8, 1999 - 9:30 am

The conference was held in the Main Hearing Room (room 101) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

IN SUPPORT OF THE IMPOSITION OF ANTIDUMPING DUTIES:

Fullbright & Jaworski LLP
Washington, DC
on behalf of

Pfanstiehl Laboratories, Inc.
Edward S. Holstein, Executive Vice President and Treasurer
James Kenneth Thomson, Vice President for Scientific Affairs

Charles River Associates, Inc.
Seth T. Kaplan, Vice President

Craig T. Redinger--OF COUNSEL

IN OPPOSITION TO THE IMPOSITION OF ANTIDUMPING DUTIES:

Williams Mullen Christian & Dobbins
Washington, DC
on behalf of

MW International
Leo Cullen, Vice President Sales and Marketing

Albert Lo)
Chris Johnson) --OF COUNSEL

APPENDIX C
SUMMARY TABLE

Table C-1
Creatine: Summary data concerning the U.S. market, 1996-98

(Quantity=kilograms, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per kilogram,
period changes=percent, except where noted)

Item	Reported data			Period changes		
	1996	1997	1998	1996-98	1996-97	1997-98
U.S. consumption quantity:						
Amount	1,368,822	2,424,950	3,916,459	186.1	77.2	61.5
Producers' share (1)	***	***	***	***	***	***
Importers' share (1):						
China	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total imports	***	***	***	***	***	***
U.S. consumption value:						
Amount	38,380	48,753	50,028	30.3	27.0	2.6
Producers' share (1)	***	***	***	***	***	***
Importers' share (1):						
China	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total imports	***	***	***	***	***	***
U.S. shipments of imports from:						
China:						
Quantity	***	***	***	(2)	(2)	***
Value	***	***	***	(2)	(2)	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	(3)	(3)	(2)
Other sources:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
All sources:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
U.S. producers':						
Average capacity quantity	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***
Capacity utilization (1)	***	***	***	***	***	***
U.S. shipments:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Export shipments:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***

Table continued on next page.

Table C-1--Continued

Creatine: Summary data concerning the U.S. market, 1996-98

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

Item	Reported data			Period changes		
	1996	1997	1998	1996-98	1996-97	1997-98
U.S. producers':						
Ending inventory quantity	***	***	***	***	***	***
Inventories/total shipments (1) . . .	***	***	***	***	***	***
Production workers	33	38	32	-1.5	16.9	-15.8
Hours worked (1,000s)	44	64	55	25.6	44.8	-13.2
Wages paid (\$1,000s)	466	777	629	35.1	66.9	-19.0
Hourly wages	\$10.58	\$12.20	\$11.38	7.6	15.3	-6.7
Productivity (kilograms per hour)	***	***	***	***	***	***
Unit labor costs	***	***	***	***	***	***
Net sales:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***
Unit operating income or (loss) . .	***	***	***	***	***	***
COGS/sales (1)	***	***	***	***	***	***
Operating income or (loss)/ sales (1)	***	***	***	***	***	***

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) ***.

(3) ***.

Note.—Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis.

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

APPENDIX D

**EFFECTS OF IMPORTS ON PRODUCERS'
EXISTING DEVELOPMENT AND PRODUCTION
EFFORTS, GROWTH, INVESTMENT, AND
ABILITY TO RAISE CAPITAL**

The Commission asked U.S. producers to describe any actual or potential negative effects of imports of creatine monohydrate from China on their growth, investment, ability to raise capital, and/or development efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are as follows:

Actual Negative Effects

Chattem ***.

Larchmont ***.

Pfanstiehl ***.

Stella ***.

Anticipated Negative Effects

Chattem ***.

Larchmont ***.

Pfanstiehl ***.

Stella ***.