UNITED STATES INTERNATIONAL TRADE COMMISSION

CHLORINATED ISOCYANURATES FROM CHINA AND SPAIN
Investigations Nos. 731-TA-1082 and 1083 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3705, July 2004)

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and Spain of chlorinated isocyanurates, provided for in subheading 2933.69.60 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 INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. 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 affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 investigations.

BACKGROUND

On May 14, 2004, a petition was filed with the Commission and Commerce by Clearon Corp., Fort Lee, NJ, and Occidental Chemical Corp., Dallas, TX, alleging that an industry in the United States is materially injured by reason of LTFV imports of chlorinated isocyanurates from China and Spain. Accordingly, effective May 14, 2004, the Commission instituted antidumping duty investigations Nos. 731-TA-1082 and 1083 (Preliminary).

Notice of the institution of the Commission's investigations 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 May 21, 2004 (69 FR 29328). The conference was held in Washington, DC, on June 4, 2004, 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)).

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 28, 2004. The views of the Commission are contained in USITC Publication 3705 (July 2004), entitled *Chlorinated Isocyanurates from China and Spain: Investigations Nos. 731-TA-1082 and 1083 (Preliminary)*.

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of chlorinated isocyanurates ("chlorinated isos") imported from China and Spain that are allegedly sold at less than fair value.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty 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 or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[2] 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."[3]

II. BACKGROUND

Chlorinated isos are used primarily as sanitizing agents for swimming pools, spas, and industrial water, and as disinfecting and bleaching agents for detergents, bleaches and cleansers. Chlorinated isos are sold in granular, tablet or stick form. The active ingredient for sanitizing purposes is chlorine.[4]

The antidumping duty petitions in these investigations were filed on May 14, 2004, by domestic producers Clearon Corporation ("Clearon") and Occidental Chemical Corporation ("OxyChem"). BioLab, another domestic producer, is not a petitioner, but supports the petition.[5]

Several Chinese producers and exporters of chlorinated isos, as well as several importers of subject merchandise from China (collectively "Chinese Respondents"), participated in these investigations and filed a joint brief.[6] Arch Chemicals, Inc. ("Arch"), an importer of subject merchandise from China, filed a separate brief. Aragonesas Delsa, S.A., ("Delsa" or "Spanish Respondent"), a Spanish producer of chlorinated isos and the only exporter of chlorinated isos from Spain to the United States, filed a separate brief.

---

[2] 19 U.S.C. §§ 1671b(a), 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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

[4] Confidential Report ("CR") at I-3; Public Report ("PR") at I-2.

[5] CR/PR at Table III-1.

[6] Chinese Respondents include Chinese producers and exporters of chlorinated isos: Changzhou Clean Chemical Co., Ltd.; Hebei Jiheng Chemical Co., Ltd.; and Nanning Chemical Industry Co., Ltd. Chinese Respondents also include several importers of subject merchandise from China: Wego Chemical and Mineral Corp. ("Wego Chemical"); Alden Leeds Inc. ("Leeds"); N. Jonas and Company ("Jonas"); Cadillac Chemical Corp. ("Cadillac"); and Special Materials Company.

III. DOMESTIC LIKE PRODUCT

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."[7] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[8] 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. . . . "[9]

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.[10] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[11] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[12] Although the Commission must accept the determination of the U.S. Department of Commerce ("Commerce") as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.[13] The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.[14]

---

[7] 19 U.S.C. § 1677(4)(A).

[8] Id.

[9] 19 U.S.C. § 1677(10).

[10] See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); 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) consumer 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).

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

[12] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 249 at 90-91 (Congress has indicated that the domestic 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.")

[13] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission's determination of six domestic like products in investigations where Commerce found five classes or kinds).

[14] Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp.2d 1298, 1304-05 (Ct. Int'l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Asociacion Colombiana de Exportadores de Flores v. United

(continued...)

B. Product Description

Commerce's notice of initiation defines the imported merchandise within the scope of these investigations as follows –

> Chlorinated isocyanurates or "chlorinated isos." Chlorinated isos are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid ($Cl_3 (NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2 (NCO)_3$) • $2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2 (NCO)_3$). Chlorinated isos are available in powder, granular and tableted forms. These investigations cover all chlorinated isos.[15]

Commerce's scope of investigation includes all chemical and physical forms (powder, granules or tablets) of chlorinated isos. There are three primary chemical compositions of chlorinated isos, depending upon the amount of available chlorine, all of which are within Commerce's scope of investigation: (1) trichloroisocyanuric acid or "trichlor," which has 90 percent available chlorine; (2) sodium dichloroisocyanurate or "dichlor" in anhydrous form, which has 63 percent available chlorine; and (3) dichlor in dihydrate form, which has 56 percent available chlorine.[16]

Trichlor dissolves more slowly than dichlor, is used for long-term pool maintenance, and is predominantly sold in tablet form.[17] In contrast, dichlor dissolves more quickly than trichlor, is used for rapid pool sanitization or industrial uses, and is largely sold in granular form.[18] Certain patented, domestically produced "blended" tablets contain trichlor and other additives consisting of an algicide and a water clarifier.[19]

---

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

[15] Chlorinated Isocyanurates from the People's Republic of China and Spain, 69 FR 32488, 32488-89 (June 10, 2004) (initiation of antidumping duty investigations). Chlorinated isos currently are classifiable under subheading 2933.69.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification represents a basket category that includes chlorinated isos and other compounds. Id.

[16] Petitioners' Postconference Brief at 3.

[17] CR at II-1-2; PR at II-1; ("Most trichlor is ultimately sold as tablets or sticks,. . . . "), Transcript of Commission Staff Conference held June 4, 2004 ("Tr.") at 30 (Johnson, Clearon).

[18] CR at II-1-2; PR at II-1 ("With dichlor, the dissolution rate is so fast that if you made a tablet, it falls apart") Tr. at 93-94 (Testimony of Antony Hand, Clearon).

[19] CR at II-1, n.2; PR at II-1, n.2. ***. ***.

C. Domestic Like Product

Chinese Respondents advocate that the Commission find trichlor and dichlor to be separate domestic like products. Arch advocates that the Commission find blended tablets and other chlorinated isos to be separate domestic like products.[20]

For the reasons set forth below, based on the record in these preliminary phase investigations, we find one domestic like product consisting of all chlorinated isos, coextensive with Commerce's scope of investigation.

(1) Whether There is a Clear Dividing Line between Trichlor and Dichlor

Based on the Commission's traditional six factor like product analysis, we find that there is no clear dividing line between trichlor and dichlor that would warrant treating them as separate domestic like products.

Physical Characteristics and Uses. Trichlor and dichlor have similar physical characteristics and uses. They are similar in chemical composition,[21] although trichlor has a higher level of chlorine.[22] Dichlor dissolves more easily than trichlor and is generally sold in granular form, while trichlor dissolves more slowly and is usually sold in tablet form.[23]

Interchangeability. Both trichlor and dichlor can be substituted for each other to sanitize a pool. The record reflects, however, that they are usually not used as substitutes for each other in the U.S. market due to consumer preferences for dichlor in granular form for rapid, short term "shock" pool treatments, and trichlor in tablet or stick form for long term, routine pool maintenance.[24] Although trichlor cannot be used to shock a pool,[25] dichlor can be used to routinely sanitize a pool.[26] Thus, dichlor and trichlor overlap in their application in the swimming pool market. Similarly, although dichlor is more commonly used than trichlor in the industrial cleanser market, trichlor also is used in that market.[27] Therefore, there appears to be at least a moderate degree of interchangeability between trichlor and dichlor.

Channels of Distribution. The record reflects that trichlor and dichlor are sold in common channels of distribution. Both granular trichlor and granular dichlor are manufactured by Clearon and OxyChem. BioLab only manufactures trichlor. Granular trichlor is generally tableted and repackaged. Granular dichlor is generally only repackaged because it dissolves easily.[28] This tableting and repackaging may be performed by a domestic producer of the granular chlorinated isos or by a separate

---

[20] Spanish Respondent Delsa did not make any domestic like product arguments.

[21] Petitioners' Postconference Brief at 5.

[22] Chinese Respondents' Postconference Brief at 4.

[23] CR at II-1-2; PR at II-1; Tr. at 30, 93-94.

[24] CR at I-3, II-1-2; PR at I-2, II-1.

[25] CR at II-2, n.8; PR at II-1, n.8.

[26] CR at II-1 & n.6; PR at II-1 & n.6.

[27] CR at II-1 & n.3; PR at II-1 & n.3.

[28] CR at II-1-2; PR at II-1.

tableter/packager. [29] Both products are then generally sold to distributors, which in turn sell the chlorinated isos to mass merchant retailers, large pool chains, pool service companies and smaller retailers.[30]

Common Manufacturing Facilities, Production Processes, and Production Employees. Trichlor and dichlor are produced on separate production lines, from a common feedstock, using common production processes. Their common feedstock - trisodium cyanurate, accounts for a significant proportion of total manufacturing costs. From that common feedstock, they are manufactured on separate production lines, but using similar processes. Trichlor and dichlor are sometimes manufactured in the same plant, using common production employees.[31]

Customer and Producer Perceptions. The record is mixed with respect to this factor. Petitioners perceive dichlor and trichlor as chlorinated isos, a single domestic like product. They contend that their customers consider them related products that work on an integrated basis to provide pool sanitization.[32] However, Chinese Respondents argue that they are perceived as very different products with different uses.[33]

Price. The prices for trichlor are somewhat lower than those for dichlor. The Commission's pricing data reflect that in 2003 and interim (January to March) 2004, a pound of granular trichlor (Product 1) ranged from $*** to $*** per pound, whereas a pound of dichlor, in the same size bag, sold in the same period, ranged from $*** to $*** per pound, based on reported weighted-average prices. Prices for trichlor were below those of dichlor in each of the specific quarters for which data were collected.[34] Trichlor accounts for the bulk of U.S. production and shipments, due to its dominant use in pool sanitization. The economies of scale associated with the large quantities of trichlor production may help explain its lower price vis-a-vis dichlor.[35]

Conclusion. Based on the Commission's traditional like product analysis, we do not find that trichlor and dichlor are separate domestic like products. Trichlor and dichlor have similar chemical compositions, similar chemical properties and are used primarily for the same application - - to sanitize pools. Their markets overlap, although there are limitations on their interchangeability and some perceived differences between them. Trichlor and dichlor are produced from common feedstock, and share common production processes and sometimes common production facilities and production workers. The two products also have similar prices, although trichlor is generally lower priced. We do not find that a clear dividing line exists between trichlor and dichlor for purposes of the preliminary phase of these investigations. We intend, however, to explore this issue further in any final phase investigations.

---

[29] CR at II-1, n.4, II-3; PR at II-1, n.4, II-2. Tr. at 65-69.

[30] CR at II-3-4; PR at II-2. Petitioners' Conference Exhibit at 12.

[31] CR at I-4; PR at I-3. Petitioners' Postconference Brief at 7.

[32] Petitioners' Postconference Brief at 6.

[33] Tr. at 140-142.

[34] CR/PR at Tables V-2 and V-3.

[35] CR at I-3; PR at I-2.

(2) Whether There is a Clear Dividing Line between Blended Tablets and other Chlorinated Isos

Based on the Commission's traditional six factor like product analysis, we do not find that certain blended tablets are a separate domestic like product from other chlorinated isos.

Physical Characteristics and Uses. Other chlorinated isos, in particular regular trichlor in tablet form, and the blended tablets appear to be similar in physical characteristics and uses. The blended tablets are primarily made of trichlor.[36] They also contain additives that reportedly clarify the water and control algae growth.[37] Other chlorinated isos and the blended tablets are both used to sanitize pools.

Interchangeability. Blended tablets and regular trichlor tablets are generally interchangeable, and compete directly against each other in the swimming pool market.[38] The blended tablets and the regular trichlor tablets are highly interchangeable with respect to pool sanitization and algae control. The only difference in application between regular trichlor tablets and blended tablets are that the blended tablets are used for water clarification and regular trichlor tablets are not.[39] As with regular trichlor, the blended tablets have more limited interchangeability with dichlor, which is usually in granular form, although both products can be used to sanitize pools.

Channels of Distribution. Regular trichlor tablets and blended tablets apparently share common channels of distribution. BioLab, the only known domestic producer of blended tablets, sells a range of products under a brand name, including its blended products. BioLab has its own distribution network,[40] and there is no indication that it distributes its blended tablets separately from its other pool products.[41]

Manufacturing Facilities, Production Processes and Production Employees. The blended product is primarily trichlor. Most domestically produced granular trichlor is converted into tableted trichlor.[42] There is no indication that BioLab's production of its blended products differs significantly in terms of manufacturing facilities, production processes and production employees, from its production of regular trichlor tablets.

Customer and Producer Perceptions and Pricing. The parties disagree over whether there are differences in customer and producer perceptions and pricing between the blended tablets and other chlorinated isos.[43]

Conclusion. For purposes of the preliminary phase of these investigations, based on our six like product factor analysis, we do not find that there is a clear dividing line between the blended tablets and

---

[36] Arch's Postconference Brief, Exhibit 4 (BioLab patent for multi-functional sanitizer and clarifier that preferably includes about 63 percent to 80 percent trichlor).

[37] Arch's Postconference Brief at 9.

[38] Petitioners' Postconference brief at 12, citing to Tr. at 187-188.

[39] Petitioners' Postconference Brief at 13-14.

[40] Petitioners' Postconference Brief at 22.

[41] Arch indicates that BioLab distributes a number of brands for dichlor and trichlor "to different market channels," but does not specify these channels or why BioLab would distinguish between them in marketing its products. Arch's Postconference Brief at 17.

[42] CR at II-1-2; PR at II-1; Tr. at 30 (Johnson, Clearon).

[43] Arch's Postconference Brief at 9; Petitioners' Postconference Brief at 12-13.

other chlorinated isos sufficient to find them to be separate domestic like products. The blended products largely share physical characteristics and uses with the regular trichlor tablets, and compete directly against regular trichlor tablets. They also appear to share channels of distribution and production facilities and processes. The parties disagree with respect to differences in customer and producer perception and prices between the products. We intend to examine this issue more fully in any final phase of these investigations.

(3) Whether There is a Clear Dividing Line between Granular Trichlor and Tableted Trichlor, Including Blended Tablets

In its arguments, Arch has attempted to distinguish blended tablets from bulk granular chlorinated isos.[44] As we discussed above, blended trichlor tablets are similar to regular trichlor tablets, and we have found them to be part of the same domestic like product. We also have considered whether granular trichlor, an upstream product, should be included in the same domestic like product as the downstream tableted trichlor, both regular and blended tablets,[45] based on our semi-finished like product analysis.[46] We conclude that granular trichlor should be included in the same domestic like product as tableted trichlor.

Most granular trichlor has no significant market other than to be converted into tableted trichlor, whether regular trichlor tablets or blended tablets, for the swimming pool and spa market. However, small amounts may be sold in granular form that are not ultimately converted into tablets, or sold to the industrial cleanser market.[47] Granular and tableted trichlor have the same chemical structure, and granular trichlor imparts to regular tableted trichlor all of its chemical properties.[48]

The cost to convert granular trichlor into tablets is not as great as the cost to produce the granular trichlor, but it is not insignificant, and the same may be said about the processes used to transform granular trichlor into tablets.[49] The prices of granular trichlor and tableted trichlor are similar, although tableted trichlor is more expensive.[50]

---

[44] Tr. at 118-119.

[45] Virtually all chlorinated isos tablets are made primarily of trichlor because dichlor dissolves so easily. ("With dichlor, the dissolution rate is so fast that if you made a tablet, it falls apart.") Tr. at 93-94 (Testimony of Antony Hand, Clearon). Therefore, the issue before us is whether granular trichlor should be in the same domestic like product as tableted trichlor.

[46] In a semi-finished product analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. E.g., Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Preliminary), USITC Pub. 3533 (August 2002) at 7.

[47] Petitioners' Postconference Brief at 8. CR/PR at II-1 & n.3.

[48] Petitioners' Postconference Brief at 9.

[49] Petitioners' Postconference Brief at 9.

[50] A Clearon representative testified that "processing granular trichlor into tablets accounts for less than *** of Clearon's sales price to ***, and cost *** per pound, depending on packaging. Petitioners' Postconference Brief, Exhibit 6. Mr. Abramson of Wego Chemical, a distributor of chlorinated isos, and a Chinese Respondent, testified that the relative difference in value between granular and tableted trichlor is approximately $0.10 per pound. Tr. at 132. Petitioners assert that therefore, production of granular trichlor accounts for approximately 90 percent of the total cost of tableted trichlor. Petitioners' Postconference Brief at 9.

For purposes of the preliminary phase of these investigations, based on our semi-finished like product factor analysis, we do not find that there is a clear dividing line between granular and tableted trichlor sufficient to find them to be separate domestic like products. Granular trichlor has no significant market other than to be converted into tableted trichlor, whether regular trichlor tablets or blended tablets. Granular and tableted trichlor have the same chemical structure, and granular trichlor imparts to regular tableted trichlor all of its chemical properties.

In sum, we find one domestic like product, consisting of all chlorinated isos, co-extensive with Commerce's scope of investigation.

IV. DOMESTIC INDUSTRY

The domestic industry is defined 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."[51] In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[52] Based on our finding that the domestic like product consists of all chlorinated isos within the scope of these investigations, for purposes of these preliminary determinations, we find that the domestic industry consists of all known domestic producers of these products (i.e., BioLab, Clearon, and OxyChem). We also consider whether the production of chlorinated isos includes the operation of domestic firms that further process granular chlorinated isos into tablets ("tableters").

In deciding whether a firm qualifies as a domestic producer, the Commission often has analyzed the overall nature of a firm's production-related activities in the United States. Production-related activity at minimum levels could be insufficient to constitute domestic production.[53] Commission practice has not clearly established a specific level of U.S. value added, or product finished value, required to qualify as a domestic producer.[54] No single factor is determinative and the Commission may consider any other

---

[51] 19 U.S.C. § 1677(4)(A).

[52] United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

[53] The Commission generally considers six factors:

(1) source and extent of the firm's capital investment;
(2) technical expertise involved in U.S. production activities;
(3) value added to the product in the United States;
(4) employment levels;
(5) quantity and type of parts sourced in the United States; and
(6) any other costs and activities in the United States directly leading to production of the like product.

See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA-736 and 737 (Final), USITC Pub. 2988 (Aug. 1996) at 7-8 ; Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) at I-11 n.37.

[54] See Certain Wax and Wax/Wax Resin Thermal Transfer Ribbons from France, Japan and Korea, 731-TA-1039-1041 (Final) USITC Pub. 3683 (April 2004) at 11-12; See Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 (June 1994) at I-8-9 & n.34 ("no single factor -- including value added -- is determinative and . . . value added information becomes more meaningful when other production activity indicia are taken into account"); Low Fuming Brazing Copper Wire and Rod from New Zealand, Inv. No. 731-TA-246 (Final), USITC Pub. 1779 (Nov. 1985) (the Commission concluded

(continued...)

factors it deems relevant in light of the specific facts of any investigation.[55] Chinese Respondents argue that the tableters should be included in the domestic industry for chlorinated isos.[56] Petitioners argue to the contrary.[57]

We note at the outset that limited information on the tableters is available in this preliminary phase of these investigations. Given the limited data available, we find that the record in these investigations supporting inclusion of tableters in the domestic industry is mixed.[58] Tableters appear to invest a significant amount of capital in somewhat complex processing operations.[59] However, the complexity of the processing, the capital investment and the value added by tableting is low relative to the more sophisticated manufacturing process, the substantial capital investment, and the significant value added involved in the basic manufacture of the granular chlorinated isos.[60] The tableters appear to account for a significant share of overall employment in the U.S. industry. However, it is unclear whether these employees solely work on tablet production, whether they are also involved in the tableting of other products, or are engaged in types of work other than tableting.[61] In this preliminary phase of these

---

(...continued)
that twenty percent value added by flux coaters was sufficient); see also Low Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-246 (Final), USITC Pub. 1790 (Jan. 1986) (value added in the United States was ten to twenty percent).

The Commission has also stated that a "modest percentage of domestically sourced parts or raw materials as a percentage of cost does not necessarily mean that a firm is not a domestic producer." Certain All Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (Mar. 1989) at 13-14. Conversely, the Commission has decided not to include a firm in the domestic industry where its operations contributed only a "minor percentage of the total value" of the product. Certain Radio Paging and Alerting Devices from Japan, Inv. No. 731-TA-102 (Final), USITC Pub. 1410 (Aug. 1983) (operations involved assembly and soldering of foreign-sourced parts involving little technical skill); see also Color Television Receivers from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 and 135 (Final), USITC Pub. 1514 (Apr. 1984) at 7-8 (Commission emphasized for the first time that no single factor--including value added--is determinative).

[55] See Silicon Carbide from The People's Republic of China, Inv. No. 731-TA-651 (Final), USITC Pub. 2779 (June 1994) at I-11 n.49.

[56] Chinese Respondents' Postconference Brief at 6.

[57] Petitioners' Postconference Brief at 14.

[58] Vice Chairman Okun refers to her dissenting views in Pure Magnesium from China and Israel, Inv. Nos. 701-TA-403 and 731-TA-895-896 (Final), USITC Pub. 3467 (November 2001) at 29-30.

[59] Chinese Respondents' Postconference Brief at 7-8, & Exhibits 2, 3 & 4. Petitioners' Postconference Brief, Answers to Staff Questions at 2-3 (description of tableting operations).

[60] Petitioners' Postconference Brief at 16, Answers to Staff Questions at 3. Petitioners did not provide a joint estimate on value added, stating that it varies based on tablet size and shape. Id, Answers to Staff Questions at 3. However, Mr. Abramson of Wego Chemical, a distributor of chlorinated isos, and a Chinese Respondent, testified that the relative difference in value between granular and tableted trichlor is approximately $0.10 per pound. Tr. at 132. Petitioners assert, therefore, that production of granular trichlor accounts for approximately 90 percent of the total cost of tableted trichlor. Petitioners' Postconference Brief at 9. Therefore, the value added by the tableting process would be approximately ten percent. *** the estimate by a Clearon representative that "processing granular trichlor into tablets accounts for less than *** of Clearon's sales price to ***, and cost *** per pound, depending on packaging. Petitioners' Postconference Brief, Exhibit 6. *** , Leeds, an importer and a Chinese Respondent gave a *** estimate. It stated that tableting chlorinated isos added value of from $*** to $*** per pound in the United States. Chinese Respondents' Postconference Brief at 8 & Exhibit 15, unnumbered page 7.

[61] Qualco states that it employs 76 people in production-related positions. Jonas states that it has ***. Leeds has *** "involved directly in tabletizing." It is unclear whether these employees only produce chlorinated isos tablets. Moreover, it is unclear whether there are any employees from other firms that produce tablets. Chinese

(continued...)

investigations, we have no industry data on tableters, so the determination whether to include them in the industry would essentially have no effect. We intend to examine this issue further in any final phase of these investigations.[62]

We base our determination in the preliminary phase of these investigations on the data we have obtained from the three known producers of chlorinated isos: Clearon, OxyChem and BioLab.[63]

V. CUMULATION[64]

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.[65] In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
(2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
(4) whether the subject imports are simultaneously present in the market.[66]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject

---

[61] (...continued)
Respondents' Postconference Brief at 8-9, & Exhibits 2, 3 & 4.

[62] We note that if we find in any final investigations that the tableters have engaged in sufficient production-related activity to be included in the domestic industry, we may still find that one or more of the tableters should be excluded from the domestic industry based on the related parties provision. 19 U.S.C. § 1677(4). The record reflects that Leeds, Wego Chemical and Cadillac are importers of subject merchandise that tablet chlorinated isos or have a close relationship with a tableter. CR at IV-1 & n.1; PR at IV-1 & n.1.

[63] ***. For all of the foregoing reasons, we do not find that "appropriate circumstances" exist to exclude *** from the domestic industry.

[64] Negligibility is not an issue in these investigations. Subject imports from China and Spain, measured by quantity, based on data from importer questionnaires, exceeded the statutory negligibility threshold in the most recent twelve-month period for which data were available preceding the filing of the petition. 19 U.S.C. § 1677(24). Subject imports from China accounted for *** of all U.S. imports in both 2003 and interim (January to March) 2004, while subject imports from Spain accounted for *** percent and *** percent of all U.S. imports, respectively. CR at IV-1, n.2; PR at IV-1, n.2. Thus, we do not find that subject imports from China or Spain are negligible for purposes of the preliminary phase of these investigations.

[65] 19 U.S.C. § 1677(7)(G)(i).

[66] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

imports compete with each other and with the domestic like product.[67] Only a "reasonable overlap" of competition is required.[68] None of the statutory exceptions to the general cumulation rule apply to these investigations.[69]

A. Fungibility

We find that the domestic product, subject imports from China and subject imports from Spain are generally fungible, particularly with respect to chlorinated isos in tablet form.

Subject merchandise from Spain generally enters the United States in granular form. Subject merchandise from China enters the United States in both granular form and tablet form.[70] Domestic product is sold in both granular and tablet form.[71]

Petitioners maintain that subject imports from China, subject imports from Spain, and the domestic product are fully interchangeable with each other, and therefore compete on the basis of price.[72] Some importers, however, maintain that subject imports from China are of lower quality than domestic product and subject imports from Spain, and therefore are not fully fungible with them.[73]

Questionnaire responses from both producers and importers generally reflect a relatively high level of fungibility between the domestic product and subject imports from Spain, but some questionnaire responses from importers reflect a lower level of fungibility between subject imports from China and the domestic product and subject imports from Spain.[74]

We note, however, that although some imports of chlorinated isos enter the United States in tablet form, to a large extent the responding importers in these investigations purchase granular chlorinated isos and press it into tablets.[75] Some importers report differences in the products due to the "clumping" of the

---

[67] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[68] The SAA (at 848) expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." Citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd 859 F.2d 915 (Fed. Cir. 1988). See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082,1087 (Ct. Int'l Trade 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[69] 19 U.S.C. § 1677(7)(G) (ii).

[70] Tr. at 70 (Testimony of Antony Hand, Clearon).

[71] CR at II-3; PR at II-2.

[72] CR at II-9; PR at II-6.

[73] CR at II-9; PR at II-6.

[74] U.S. producers responded that subject imports from China and Spain were "always" or "frequently" interchangeable with each other and the domestic product. Similarly, the majority of importers responded that subject imports from China and Spain were "always" or "frequently" interchangeable with each other and the domestic product. However, one importer response indicated that subject imports from China were only "sometimes" interchangeable with the domestic product. One response indicated that subject imports from China were "never" interchangeable with the domestic product. Further, one importer response indicated that subject imports from China were "never" interchangeable with subject imports from Spain. CR/PR at Tables II-1 and II-2.

[75] Most of the chlorinated isos imported into the United States from all sources other than Japan, including the subject countries, are imported by seven distributors that also process granular chlorinated isos into tablet form. They comprise Leeds, Arch, Cadillac, Haviland Consumer Products, Inc., SCP Distributors, Special Materials Co., and Wego Chemical. CR/PR at IV-1. Cadillac sells its subject imports to Qualco which tablets the product at the same location. CR at IV-1, n.1; PR at IV-1, n.1.

subject imports from China.[76] Granular chlorinated isos from different sources may be easily combined in the tableting process.[77] Adjustments to the tableting press may be necessary to accommodate tableting chlorinated isos from China, but once that is accomplished, the products are generally considered fully fungible. Subject merchandise and domestic product may even be sold together in the same pail of tableted chlorinated isos.[78]

B. Same Geographical Markets

Chlorinated isos are sold throughout the United States by both domestic producers and importers. ***. *** of the responding importers reported that they serve national or nearly national markets. ***.[79]

C. Simultaneous Presence

Subject imports from China and Spain and the domestic like product were present in the U.S. market in each year of the period of investigation, as well as in interim 2003 and interim 2004.[80]

D. Channels of Distribution

Subject merchandise as well as domestic product can enter the United States market in either granular or tablet form, and can be sold to either tableters/repackagers or to distributors.[81] Granular chlorinated isos generally are delivered to a manufacturer's tableting and packaging facilities or to tableters and packagers in one-metric ton "supersacks" that are not yet branded.[82] After tableting and packaging, the product then is sold to distributors who brand the product and sell it to pool retail stores, the big "box" stores like Home Depot and Wal-Mart, pool service companies and other retail outlets.[83] BioLab is an exception. It manufactures, tablets, and distributes its own chlorinated isos under its own brand name, but it distributes its product to the same retail outlets as other distributors.[84] We conclude that domestic product and subject imports of chlorinated isos are sold in similar channels of distribution.

---

[76] Chinese' Respondents Postconference Brief at 27-28 & Exhibit 8.

[77] Granular chlorinated isos from different sources may be combined when they are poured into the tablet press. CR at V-7, n.23; PR at V-6, n.23.

[78] CR at V-7, n.23; PR at V-6, n.23; Tr. at 162-63. We note that one importer states that tablets containing subject imports from China may not have as aesthetic an appearance, and may have a stronger chlorine odor, than other tableted chlorinated isos. Tr. at 124-25.

[79] CR at V-1, n.2; PR at V-1, n.2.

[80] CR/PR at Table III-2 and Table IV-1.

[81] CR at II-3; PR at II-2. Tr. at 70 (Testimony of Antony Hand, Clearon).

[82] Petitioners' Postconference Brief, Answers to Staff Questions at 2.

[83] Petitioners' Conference Exhibit at 12.

[84] Petitioners' Conference Exhibit at 12. Petitioners' Postconference Brief at 22. BioLab's direct customers reportedly include both distributors and mass merchandisers. Arch's Postconference Brief at 17.

E. Conclusion

Based on the record in the preliminary phase of these investigations, we find a reasonable overlap of competition between subject imports from China and Spain and the domestic product sufficient to support cumulation.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS FROM CHINA AND SPAIN

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.[85] In making this determination, the Commission must consider the volume of subject 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.[86] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[87] 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.[88] 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."[89]

A. Conditions of Competition and the Relevant Business Cycle

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of the subject imports.

Demand Conditions

Chlorinated isos are a sanitizing agent used in two markets: (1) swimming pool and spa sanitization, the principal market, and (2) industrial applications, including use as a disinfectant and bleaching agency in cleansers and detergents.[90] Questionnaire responses reflect that swimming pool and spa sanitization demand accounts for 95 percent of the total U.S. chlorinated isos market, and industrial applications account for the remaining five percent of the market.[91] As noted earlier, there are two

[85] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[86] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor ... [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B); see also, e.g., Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[87] 19 U.S.C. § 1677(7)(A).

[88] 19 U.S.C. § 1677(7)(C)(iii).

[89] 19 U.S.C. § 1677(7)(C)(iii).

[90] CR at I-2-3, II-1; PR at 1-2, II-1.

[91] CR at I-5; PR at 1-3.

primary chemical forms of chlorinated isos: trichlor and dichlor.[92] Trichlor dominates the market for chlorinated isos in the United States due to its popularity as a routine pool sanitizer.[93]

The U.S. market is the largest market in the world for chlorinated isos. Demand for chlorinated isos in the United States is linked to demand for pool sanitization, which is based on new swimming pool construction and weather conditions. Weather can play a larger role than construction in any particular year.[94] According to producers and importers, demand increases for chlorinated isos at a rate of two percent to six percent per year, as the number of pools in the United States increases.[95] Demand is seasonal, peaking in the summer months.[96] ***, price negotiations are carried out from August to December for the following spring and summer season.[97]

Commission data reflect that demand for chlorinated isos in the U.S. market increased over the period of investigation.[98] Despite these data, both producers and importers reported that 2003 was a year of reduced demand due to cooler and wetter weather than normal.[99]

Supply Conditions and the Structure of the Domestic Industry

1. *Manufacturing Granular Chlorinated Isos.*

OxyChem, BioLab, and Clearon are the three manufacturers of granular chlorinated isos in the United States. Clearon and OxyChem produce both dichlor and trichlor.[100] BioLab produces only trichlor.[101] Even though demand is seasonal, domestic producers spread production over the course of the year to maintain optimal operating efficiencies. To have profitable operations, chlorinated isos producers need to operate at a high level of capacity. Therefore, they build up inventories in the fall and winter months, from which they sell in the high demand summer months.[102]

2. *Tableting and Packaging.*

As noted earlier, most trichlor is tableted, and both trichlor and dichlor are packaged into smaller containers for further distribution by tableters/packagers. The three domestic granular manufacturers carry out these processes differently. OxyChem has a tolling arrangement with a dedicated contract packager. Oxychem manufactures the trichlor, and pays the contract tableter for tableting and packaging

[92] CR at II-1-2; PR at II-1.

[93] CR at I-3; PR at 1-2. Tableters *** estimated that 10-15 times as much trichlor as dichlor is sold within the pool and spa segment of the U.S. market. CR at II-2; PR at II-1.

[94] CR at II-8; PR at II-5. Chinese Respondents' Postconference Brief at 15-16. Delsa Postconference Brief at 5.

[95] CR at II-8; PR at II-5.

[96] Petitioners' Postconference Brief at 22.

[97] CR at V-3; PR at V-3.

[98] Total U.S. market demand for chlorinated isos, measured by the quantity of apparent U.S. consumption, increased by 16.8 percent from 2001 to 2002, and then further increased by 7.2 percent from 2002 to 2003, for an overall increase of 25.2 percent from 2001 to 2003. In addition, apparent U.S. consumption measured by quantity was 2.1 percent higher in interim 2004 than in interim 2003. CR/PR at Table C-1.

[99] CR at II-8, n.48; PR at II-6, n.48.

[100] CR at II-3; PR at II-2.

[101] CR at II-3; PR at II-2.

[102] Petitioners' Postconference Brief at 22.

it for them.[103] BioLab does most of its own tableting, and is a net buyer of chlorinated isos.[104] BioLab purchases *** granular trichlor from ***, converts it into tablets and packages it for sale.[105] Clearon manufactures granular trichlor and then tablets and packages it, as appropriate, in its own dedicated tableting and packaging facility. It also does some tableting and packaging for other firms.[106]

In addition to the tableting and packaging done by the domestic producers, there are merchant repackers that tablet and package trichlor and repackage dichlor.[107] They tablet and package both domestically produced and imported chlorinated isos, including subject merchandise.[108]

Both Arch and the Chinese Respondents argue that they have been forced to source their chlorinated isos overseas because the domestic suppliers are their competitors, or because the domestic producers are not willing or able to supply them with chlorinated isos.[109]

3. *Distribution*.

After tableting and packaging, the product is sold to distributors who brand the product and sell it to pool retail stores, the big "box" stores like Home Depot and Wal-Mart, pool service companies and other retail outlets.[110] As noted previously, BioLab has its own retail distribution network and brands its products.[111]

4. *EPA Statutory Registration Requirements*.

Due to changes in FIFRA requirements, several U.S. importers and distributors have recently obtained registrations from the Environmental Protection Agency ("EPA") to purchase and sell chlorinated isos from China for swimming pool and spa sanitization in the United States. These changes allow registration applicants to use research funded by previous licensees in their applications, without

[103] Tr. at 66-67 (Testimony of David Stephenson, OxyChem).

[104] Petitioners' Postconference Brief at 22.

[105] The amount BioLab purchased from *** accounted for *** of U.S. commercial shipments of trichlor and *** of *** shipments in the period examined, making BioLab ***. CR at III-1; PR at III-1.

[106] Petitioners' Postconference Brief, Answers to Staff Questions at 2-3; Tr. at 68 (Testimony of Johnson).

[107] Tr. at 68-69 (Testimony of Johnson). See Petitioners' Conference Exhibit at 12.

[108] CR at I-4; PR at I-3.

[109] Chinese Respondents' Postconference Brief at 17-18. Arch's Postconference Brief at 2-6.

[110] Petitioners' Conference Exhibit at 12.

[111] Petitioners' Postconference Brief at 22. Arch Postconference Brief at 17.

having to pay compensation to use the research.[112] One firm described the licensing process as taking approximately one year.[113]

5. Nonsubject Imports.

The share of the U.S. market held by nonsubject imports, measured in quantity, was relatively stable over the period of investigation, and never exceeded 9.4 percent of the market.[114]

Pricing

Petitioners maintain that chlorinated isos, whether in granular or tablet form, are essentially a commodity product. Therefore, price is the single most important factor in contract negotiations.[115] Chinese Respondents argue that although that may be true for sales to mass merchandisers, it is not true for sales of granular merchandise in bulk. They maintain that subject imports from China are lower-priced because they are of lower quality.[116] Importers argue that there are increased costs, delays and risks in purchasing subject imports from China due to the hazardous nature of chlorinated isos.[117] Chinese Respondents assert that U.S. prices are higher than world prices for chlorinated isos.[118]

B. Volume of 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."[119]

The volume of cumulated subject imports measured in quantity and value increased significantly over the period of investigation, both in absolute terms and relative to production and consumption in the United States.

The volume of subject imports measured by quantity increased from 5,848 short tons in 2001 to 8,667 short tons in 2002 and further to 25,705 short tons in 2003. The volume of subject imports was

---

[112] Petitioners' Postconference Brief at 23 & Exhibit 16. FIFRA, the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § § 136 *et seq.*) governs the sale of chlorinated isos in the United States. This law prohibits the distribution or sale of pesticides that have not been registered with EPA. Registering under FIFRA required extensive and very expensive testing to ensure that the product was safe and would not have any adverse effects on humans or the environment. Petitioners' Postconference Brief at 23.

A coalition of domestic producers and foreign producers (the "Ad Hoc Committee") jointly paid for the research required to secure licenses to sell chlorinated isos in the United States. The Ad Hoc Committee includes petitioners, Spanish Respondent Delsa, and other foreign producers (but no foreign producers from China). Prior to 2001, any new importer of chlorinated isos to the U.S. market would either need to pay for its own research or compensate the Ad Hoc Committee by paying a fee of approximately $400,000. In 2001, this requirement expired. CR at II-2-3; PR at II-2.

The industrial segment does not have any EPA licensing requirement because it does not make any claims about abilities to kill organisms. CR at II-3; PR at II-2.

[113] Tr. at 137.

[114] CR/PR at Table C-1.

[115] Petitioners' Postconference Brief at 21.

[116] Chinese Respondents' Postconference Brief at 23.

[117] CR at II-12; PR at II-8.

[118] Chinese Respondents' Postconference Brief at 13-14.

[119] 19 U.S.C. § 1677(7)(C)(i).

higher, 9,401 short tons, in interim (January to March) 2004, as compared to 6,779 short tons in interim 2003. The volume of subject imports increased by 339.6 percent from 2001 to 2003. In fact, the volume of subject imports was higher in interim 2004, which only included one quarter's worth of data, than in full calendar years 2001 or 2002.[120] Subject import volume measured by value reflected similar trends.[121]

Subject import U.S. market share rose steadily over the period of investigation, from a relatively small share of the market in 2001 to a fifth of the market in 2003. Subject imports' share of the U.S. market measured by quantity steadily increased from 5.5 percent in 2001 to 7.0 percent in 2002 and further increased to 19.3 percent in 2003. It was 24.5 percent in interim 2004 as compared to 18.1 percent in interim 2003.[122]

In contrast, the domestic industry lost market share over the period of investigation, as the industry's shipments did not keep pace with the increase in apparent domestic consumption. The domestic industry's share of the U.S. market measured by quantity fell irregularly by 12.8 percentage points from 2001 to 2003, and was lower in interim 2004 than in interim 2003.[123] The domestic industry lost market share in the context of a 25.2 percent increase in apparent domestic consumption between 2001 and 2003 and a slight increase in consumption in interim 2004 as compared to interim 2003.[124]

As stated previously, the U.S. market share of nonsubject imports never exceeded 9.4 percent of the market, and stayed relatively stable over the period of investigation.[125] Therefore, subject imports gained market share almost entirely at the expense of the domestic industry.

The ratio of subject imports to domestic production of chlorinated isos steadily increased from 2001 to 2003, and was higher in interim 2004 than in interim 2003.[126]

Accordingly, we find for purposes of the preliminary phase of these investigations that both the volume and increase in subject import volume were significant during the period examined, both in absolute terms and relative to consumption and production in the United States.[127]

---

[120] CR/PR at Table C-1.

[121] The value of subject imports increased from $9.8 million in 2001 to $12.0 million in 2002 and further to $31.9 million in 2003. It increased by 226 percent from 2001 to 2003. The value of subject imports was higher, $11.3 million in interim 2004, as compared to $8.2 million in interim 2003. CR/PR at Table C-1.

[122] CR/PR at Table C-1.

[123] The domestic industry's share of the U.S. market measured by quantity increased slightly from 86.9 percent in 2001 to 87.1 percent in 2002, and then decreased to 74.1 percent in 2003. It was 67.1 percent in interim 2004 as compared to 72.6 percent in interim 2003. CR/PR at Table C-1.

[124] CR/PR at Table C-1.

[125] CR/PR at Table C-1.

[126] The ratio of subject imports to domestic production of chlorinated isos increased from 4.9 percent in 2001, to 7.0 percent in 2002, and further to 21.4 percent in 2003. It was 30.4 percent of domestic production in interim 2004 as compared to 21.4 percent in interim 2003. CR/PR at Table IV-1.

[127] Chinese Respondents argue that the volume of subject imports has increased in large part because importers are no longer required to compensate the Ad Hoc Committee for its research under FIFRA, prior to obtaining licenses to sell chlorinated isos. Chinese Respondents' Postconference Brief at 12. While this may be the case, the lifting of the requirement to pay compensation is in place for the foreseeable future, and we see no reason to discount the significance of the increased imports due to that event. We do not find that the lifting of the FIFRA requirement detracts from the significance of the large increase in subject import volume in these investigations.

C. Price Effects of the Subject Imports

> Section 771(C)(ii) of the Act[128] provides that, in evaluating the price effects of 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.

As discussed above, there is a high degree of substitutability between domestic product and subject imports, although some importers have reported that subject imports from China are of lower quality, and that other factors besides price enter into their purchasing decisions.[129]

In these investigations, U.S. producers and importers provided quarterly pricing data for three granular chlorinated isos products: trichlor sold in 2,205-pound bags ("Product 1"); dichlor in dihydrate form sold in 2,205 pound bags ("Product 2"); and dichlor in dihydrate form sold in 300-pound drums ("Product 3"). Three U.S. producers and four importers provided usable pricing data.[130] Pricing data reported by these firms accounted for approximately 12.9 percent of U.S. producers' shipments of chlorinated isos and 36.2 percent of U.S. imports from China in 2003.[131]

We note that the pricing data in these investigations do not include pricing data for tablets.[132] If granular product is imported into the United States, and then converted into tablets by importers, those sales would also not be covered by our current pricing data. We were not able to gather pricing data from certain importers of subject imports from Spain, due in part to their conversion of granular product to tablet form prior to its sale, and due in part to firms not responding to the questionnaires.[133] We intend to increase our coverage of pricing data with respect to sales of tablets, and of subject imports from Spain, in any final phase of the investigations.[134]

With respect to the pricing data in this preliminary phase of these investigations, subject imports undersold the domestic product in 22 out of 23 price comparisons.[135] The margins of underselling for Products 1 and 2 were almost all in double digits, and ranged as high as 43.9 percent.[136] Pricing data regarding Product 3 were consistent with the other pricing data, but limited data were available.[137] For

---

[128] 19 U.S.C. § 1677(7)(C)(ii).

[129] CR at II-9, II-12; PR at II-6, II-8.

[130] CR at V-7; PR at V-5.

[131] CR at V-8; PR at V-6. We were unable to gather usable pricing data with respect to subject imports from Spain. Id, n.25.

[132] CR at V-7; PR at V-.5.

[133] CR at V-8; PR at V-6.

[134] Gathering these data may be further complicated if we find that the production of tablets in the United States represents sufficient production related activity to constitute domestic production. Under those circumstances, tablets produced domestically, even from subject imports of granular chlorinated isos, would be considered domestically produced chlorinated isos tablets. See Certain Wax and Wax/Wax Resin Thermal Transfer Ribbons from France, Japan and Korea, 731-TA-1039-1041 (Final) USITC Pub. 3683 (April 2004) at 23 ("[O]ur finding that the activities of domestic converters are domestic production means that their shipments are domestic shipments.").

[135] CR at V-8-9; PR at V-6; CR/PR at Table V-3.

[136] CR/PR at Tables V-1 and V-2.

[137] There were only two Product 3 price comparisons between subject imports and the domestic product. CR/PR at Table V-3.

purposes of these preliminary investigations, we find that there has been significant price underselling of the domestic like product by subject imports.

We also find that subject imports have depressed domestic prices to a significant degree. Our pricing data show that domestic prices fell sharply toward subject import prices with respect to all three pricing products over the period examined. For Product 1, domestic prices fluctuated downward from $*** per pound in the first quarter of 2001 to $*** per pound in the first quarter of 2004.[138] For Product 2, domestic prices fluctuated downward with an isolated spike in the third quarter of 2001, from $*** in first quarter 2001 to $*** in the first quarter of 2004.[139] Finally, for Product 3, domestic prices fluctuated downward from $*** in first quarter 2001 to $*** in the first quarter of 2004.[140]

While domestic prices fell over the period of investigation, prices for subject imports remained relatively stable or increased, but remained well below domestic prices, except for one instance of overselling. The margins of underselling by subject imports for Products 1 and 2 decreased over the period of investigation as domestic prices sharply declined.[141] The limited data available for Product 3 are consistent with the pricing data for the other two products.

Confirmed lost sales and lost revenues provide further support for our finding that subject imports have depressed domestic prices to a significant degree.[142] *** reported that *** had meet-or-release provisions with *** customers. ***, but that contracts were subject to renegotiations.[143] Several importers also acknowledged that contracts could be renegotiated or that there were meet-or-release clauses in the contracts.[144] Therefore, contracts in this industry can be affected by changes in market prices. Petitioners assert that over the past two years their purchasers have used meet-or-release clauses to force domestic producers to lower their prices due to low prices offered for subject imports.[145] These assertions are supported by record evidence of confirmed lost sales and lost revenues.[146]

We find for purposes of the preliminary phase of these investigations, that there has been significant price underselling of the domestic like product by subject imports, and that subject imports have depressed domestic prices to a significant degree.

---

[138] CR/PR at Table V-1.

[139] CR/PR at Table V-2.

[140] CR/PR at Table V-3.

[141] CR/PR at Tables V-1 and V-2.

[142] We note that Chinese Respondents argue that certain domestic producers have caused prices to fall by targeting business with the large retailers. Chinese Respondents' Postconference Brief at 16-20. To the extent practicable, we intend to explore this matter further in any final investigations.

[143] CR/PR at V-3 & n.4.

[144] CR/PR at V-3, n.4.

[145] Petitioners' Postconference Brief at 21.

[146] *** confirmed lost sales allegations by Petitioners covering ***. CR at V-25; PR at V-8; CR/PR at Table V-4. ***. CR at V-24; PR at V-8.

D. Impact of the Subject Imports[147]

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."[148] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. 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."[149]

We have examined performance indicators in trade and financial data for the domestic industry producing chlorinated isos.[150] These data indicate declining overall trends in the condition of the domestic industry, which are most evident in its financial data.

Regarding trade data, we note that performance indicators were stable or showed small increases over the three year period. U.S. producers' production and total domestic shipments of chlorinated isos increased somewhat from 2001 to 2003 but were lower in interim 2004 than in interim 2003.[151] Capacity and capacity utilization by the domestic industry were relatively stable over the period of investigation, at approximately 80 percent.[152] The average number of production related workers and hours worked for chlorinated isos fell steadily from 2001 to 2003, and were lower in interim 2004 than in interim 2003. Wages paid increased from 2001 to 2003, but were lower in interim 2004 than in interim 2003. Productivity, however, increased both in the annual years surveyed, and in interim 2004 as compared to interim 2003.[153]

---

[147] In its notice of initiation, Commerce estimated margins for subject imports from China of 109.14 percent to 157.82 percent, and margins of 29.68 percent to 42.36 percent for subject imports from Spain. Chlorinated Isocyanurates from the People's Republic of China and Spain, 69 Fed. Reg. 32488, 32491 (June 10, 2004).

[148] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.") SAA at 885.

[149] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[150] CR/PR at Table III-2 and Table VI-1.

[151] Production increased from 119,385 short tons in 2001, to 124,414 short tons in 2002 and then fell to 120,163 short tons in 2003. Production was slightly lower (30,891 short tons), in interim 2004 than in interim 2003 (31,640 short tons). U.S. commercial shipments increased from 92,524 in 2001, to 108,411 in 2002, and then fell to 98,812 in 2003. U.S. commercial shipments were slightly lower (25,690 short tons) in interim 2004 than in interim 2003 (27,215 short tons). CR/PR at Table III-2.

[152] Domestic production capacity increased steadily from 149,650 short tons in 2001, to 150,850 short tons in 2002, to 152,000 short tons in 2003. Capacity was slightly higher (38,848 short tons) in interim 2004, as compared to interim 2003 (38,663 short tons). Capacity utilization increased from 79.8 percent in 2001, to 82.5 percent in 2002, and then decreased to 79.1 percent in 2003. Capacity utilization was lower in interim 2004 (79.5 percent) than in interim 2003 (81.8 percent). CR/PR at Table III-2.

[153] The average number of production workers decreased steadily from 336 in 2001 to 325 in 2002 and further to 317 in 2003. The average number of workers was lower in interim 2004 (279) than in interim 2003 (328). Hours worked also decreased steadily from 774,000 in 2001, to 749,000 in 2002, and further to 720,000 in 2003. Hours worked were lower in interim 2004 (150,000) than in interim 2003 (190,000). Productivity steadily increased from 154.2 tons per 1,000 hours in 2001 to 166.2 tons per 1,000 hours in 2002 and further to 166.9 tons per 1,000 hours in 2003. Productivity was higher (205.5 tons per 1,000 hours) in interim 2004 as compared to interim 2003 (166.9 tons per 1,000 hours.). CR/PR at Table III-2.

In contrast, many of the domestic industry's consolidated financial indicators declined irregularly over the period of investigation. In general, these indicators improved from 2001 to 2002, then declined below 2001 levels in 2003. Operating income, net sales measured by value, operating margins, capital expenditures and cost of goods sold as a ratio to sales all followed these trends. In interim 2004, the downward trends experienced in the annual years surveyed continued. Research and development expenditures and inventories exhibit downward trends in the interim periods.[154]

Operating income fell irregularly by 46.9 percent from 2001 to 2003, and the domestic industry experienced an operating loss in interim 2004 as compared to operating income in interim 2003.[155] Net sales measured by value decreased irregularly by 5.8 percent between 2001 and 2003, and were 15.1 percent lower in interim 2004 than in interim 2003.[156]

The domestic industry's ratio of operating income to sales fell by 5.1 percentage points from 2001 to 2003. Operating margins increased from 11.6 percent in 2001 to 14.0 percent in 2002, but then decreased to 6.6 percent in 2003. In interim 2004, operating margins were 13.4 percentage points lower than in interim 2003, and the domestic industry experienced a negative margin of 3.3 percent.[157]

Cost of goods sold ("COGS") as a ratio to sales increased irregularly from 2001 to 2003. COGS was 81.8 percent of sales in 2001, increasing to 88.0 percent of sales in 2003. The ratio of COGS to sales was higher in interim 2004 (97.7 percent) than in interim 2003 (84.4 percent). In interim 2004, COGS approached one hundred percent of net sales value, indicating that revenues were not keeping pace with costs.[158]

Capital expenditures decreased irregularly from 2001 to 2003 and were lower in interim 2004 than in interim 2003. Research and development expenditures were relatively stable from 2001 to 2003, but lower in interim 2004 than in interim 2003.[159] End-of-period inventories decreased somewhat from 2001 to 2003, but were 22 percent higher in interim 2004 as compared to interim 2003.[160]

These declines occurred as subject imports entered the U.S. market in increased and significant volumes, and gained market share almost exclusively at the expense of the domestic industry,

---

[154] CR/PR at Table VI-1, Table VI-6.

[155] CR/PR at Table C-1. Operating income increased from $23.5 million in 2001, to $31.2 million in 2002, then fell to $12.5 million in 2003. The domestic industry had an operating loss of $1.5 million in interim 2004 as compared to an operating income of $5.5 million in interim 2003. CR/PR at Table VI-1.

[156] CR/PR at Table C-1. Net sales measured by value decreased irregularly from 2001 to 2003. They increased from $202 million in 2001, to $223 million in 2002, and then decreased to $190 million in 2003. Net sales measured by value were $46 million in interim 2004 as compared to $54 million in interim 2003. CR/PR at Table VI-1.

Net sales measured in quantity, increased irregularly from 2001 to 2003, but were lower in interim 2004 than in interim 2003. Net sales measured by quantity increased from 109,763 short tons in 2001, to 127,444 short tons in 2002 and then decreased to 114,772 in 2003. Net sales measured by quantity were 30,971 short tons in interim 2004 as compared to 32,549 short tons in interim 2003. CR/PR at Table VI-1.

[157] CR/PR at Table C-1 and Table VI-1. These declines in operating income are primarily attributable to falling prices. CR/PR at VI-5; CR/PR at Table VI-5. As we found above, subject imports depressed domestic prices to a significant degree.

[158] CR/PR at Table VI-1.

[159] CR/PR at Table VI-6. Capital expenditures for the domestic industry increased from $8.9 million in 2001, to $9.9 million in 2002 before decreasing below 2001 levels to $8.1 million in 2003. Capital expenditures were lower in interim 2004 ($675,000) than in interim 2003 ($1.9 million). Research and development expenses decreased from $*** in 2001, to $*** in 2002 before increasing to $*** in 2003. Research and development expenses were lower in interim 2004 ($***) than in interim 2003 ($***). Id.

[160] CR/PR at Table C-1. End-of-period inventories decreased from 26,648 short tons in 2001, to 21,312 short tons in 2002, then increased to 25,457 short tons in 2003. End-of-period inventories were higher (24,808 short tons) in interim 2004 than in interim 2003 (20,335 short tons).

notwithstanding increased apparent domestic consumption. At the same time, subject imports undersold domestic product, typically by double digit margins, and depressed domestic prices to a significant degree.

Both Chinese Respondents and Arch have raised causation issues related to the business strategies of certain domestic producers. They allege that these strategies have forced distributors to source chlorinated isos overseas, and have caused domestic prices to fall, contributing in large part to any injury that the domestic industry may be experiencing.[161] We intend to examine this issue more closely in any final phase of these investigations.

For purposes of these preliminary determinations, we conclude that subject imports had an adverse impact on the condition of the domestic industry during the period of investigation. As discussed above, we find both the absolute and relative increase in volume of subject imports, as well as the underselling by the subject imports, to be significant. As subject imports captured market share, they depressed domestic prices to a significant degree, causing declines in domestic industry performance particularly at the end of the period of investigation. Operating income, operating margins, net sales measured by value, and capital expenditures all declined as the domestic industry lost market share. Downward trends evident in the annual periods surveyed accelerated in interim 2004.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of chlorinated isos from China and Spain that are allegedly sold in the United States at less than fair value.

[161] Chinese Respondents' Postconference Brief at 15, 16-18. Arch's Postconference Brief at 2-6.