

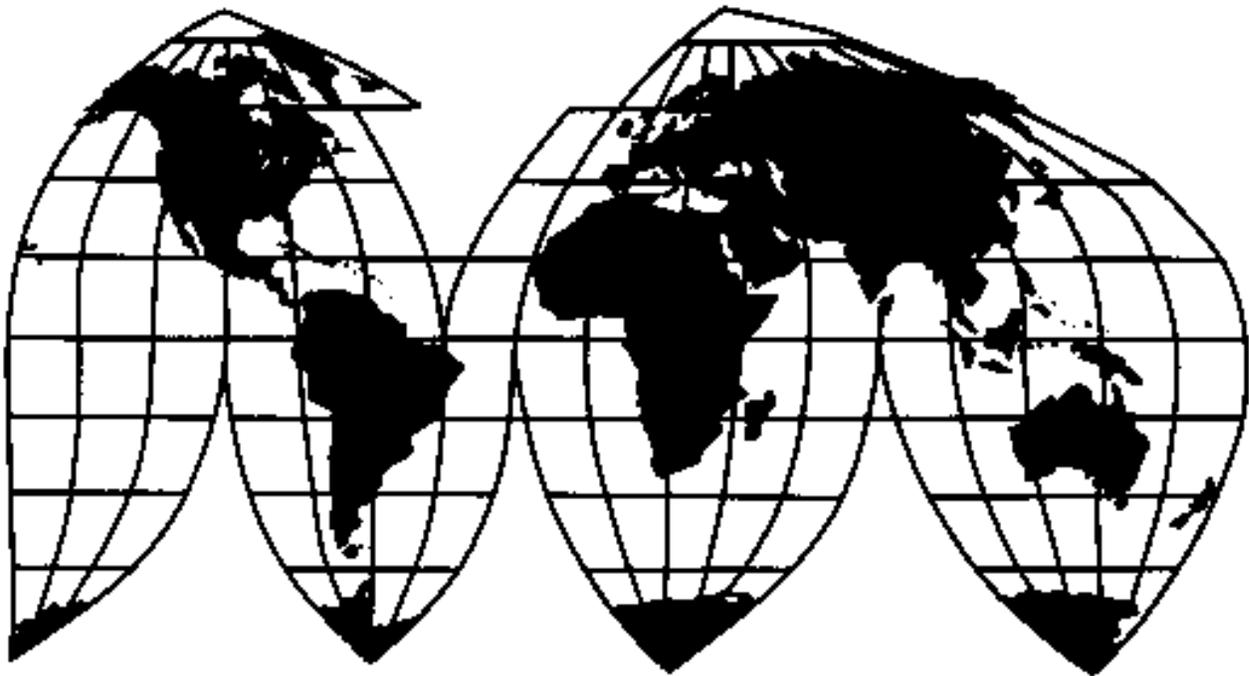
# Tetrahydrofurfuryl Alcohol from China

Investigation No. 731-TA-1046 (Final)

Publication 3709

July 2004

U.S. International Trade Commission



# **U.S. International Trade Commission**

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# U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

## GLOSSARY OF TERMS

ASTM	American Society for Testing and Materials
COGS	Cost of goods sold
Commerce	Department of Commerce
Commission	U.S. International Trade Commission
Customs	Bureau of Customs and Border Protection
EU	European Union
FA	Furfuryl alcohol
FR	<i>Federal Register</i>
HTS	Harmonized Tariff Schedule of the United States
LTFV	Less than fair value
PRWs	Production and related workers
PTMEG	Polytetramethylene ether glycol
R&D	Research and development
ROI	Return on investment
SG&A	Selling, general, and administrative
THF	Tetrahydrofuran
THFA	Tetrahydrofurfuryl alcohol

## GLOSSARY OF FIRMS

AllChem	AllChem Industries Holding Corp.
ARS	Advanced Resin Systems
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Hunan Sun-Yuan	Hunan Sun-Yuan Chemical Co., Ltd.
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Kyzen	Kyzen Corp.
***	
Penn	Penn Specialty Chemicals, Inc.
***	
***	
***	
Shandong Baofeng	Shandong Baofeng Chemicals Group Corp.
***	
Qingdao Wenkem	Qingdao Wenkem Trading Co., Ltd.
Taizhou Qingquan	Taizhou Qingquan Medical & Chemical Co., Ltd.
Zhucheng	Zhucheng Huaxiang Chemical Co.



# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1046 (Final)

## TETRAHYDROFURFURYL ALCOHOL FROM CHINA

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission (Commission) determines,<sup>2</sup> pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of tetrahydrofurfuryl alcohol (THFA), provided for in subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

### BACKGROUND

The Commission instituted this investigation effective June 30, 2003, following receipt of a petition filed with the Commission and Commerce by Penn Specialty Chemicals, Inc., Plymouth Meeting, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of THFA from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 9, 2004 (69 FR 6005). Subsequent to Commerce's postponement of its final determination, the Commission gave notice of the revised schedule for the final phase of its investigation and the related public hearing (69 FR 15380, March 25, 2004). The hearing was held in Washington, DC, on June 14, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

<sup>2</sup> Vice Chairman Okun and Commissioners Lane and Pearson dissenting.



## VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is materially injured by reason of imports of tetrahydrofurfuryl alcohol from China that is sold in the United States at less than fair value (“LTFV”).<sup>1</sup>

### I. BACKGROUND AND SUMMARY

The product within the scope of investigation is tetrahydrofurfuryl alcohol, or THFA. THFA is produced by the hydrogenation of furfuryl alcohol, or FA.<sup>2</sup> THFA is used mainly as a solvent. In agricultural applications, it is used as a solvent for biocides, pesticides, and herbicides. THFA is also used in a wide variety of cleaning products, from floor polish removers to cleansers for circuit boards.<sup>3</sup>

Two firms account for the majority of THFA produced worldwide. Penn Specialty Chemicals, Inc. (Penn), is the sole domestic producer and the petitioner. Chinese producer Zhucheng Huaxing Chemical Co. (Zhucheng) is the only other producer identified by the Commission’s investigation. Together Penn and Zhucheng produced all THFA consumed in the U.S. market.<sup>4</sup> A handful of firms account for the bulk of domestic consumption.<sup>5</sup>

Domestically produced THFA accounted for between \*\*\* and \*\*\* percent of the U.S. market for THFA during 2001-2003. The subject imports from China accounted for the remainder. There were no nonsubject imports in the U.S. market.<sup>6</sup>

A high degree of substitutability exists between the subject imports and domestically-produced THFA. Demand for THFA was lower in 2003 than in 2001, but both the market share and actual volume of subject imports were higher in 2003 than in 2001. Prices for the domestic like product generally declined during the period of investigation, and purchasers who either imported THFA from China or reported offers for subject THFA received significant price concessions from the domestic industry. The industry’s performance deteriorated as the market share and volume of subject imports increased and the price received by the industry, especially from its most significant customers, eroded. We therefore find, as explained below, that the domestic industry producing THFA is materially injured by reason of subject imports of THFA from China.

### II. DOMESTIC LIKE PRODUCT

To determine whether 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.”<sup>7</sup> 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

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<sup>1</sup> Vice Chairman Deanna Tanner Okun and Commissioners Charlotte R. Lane and Daniel R. Pearson dissenting. See Dissenting Views of Vice Chairman Deanna Tanner Okun and Commissioners Charlotte R. Lane and Daniel R. Pearson. They join in sections II and III of these Views.

<sup>2</sup> Confidential Staff Report (CR) at I-6, Public Staff Report (PR) at I-5.

<sup>3</sup> CR at I-6, PR at I-4.

<sup>4</sup> CR at I-3 and I-4, PR at I-3.

<sup>5</sup> CR at I-4, PR at I-3.

<sup>6</sup> CR/PR at table C-1.

<sup>7</sup> 19 U.S.C. § 1677(4)(A).

product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>8</sup> 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.”<sup>9</sup>

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.<sup>10</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>11</sup> The Commission looks for clear dividing lines among possible like products, and disregards minor variations.<sup>12</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise sold at less than fair value, the Commission determines what domestic product is like the imported articles that Commerce has identified.<sup>13</sup>

In its final determination with respect to subject imports from China, Commerce defined the imported merchandise within the scope of investigation as:

tetrahydrofurfuryl alcohol (C<sub>5</sub>H<sub>10</sub>O<sub>2</sub>) (“THFA”). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classified in the Harmonized Tariff Schedules of the United States (“HTSUS”) under subheading 2932.13.00.00. Although the HTSUS subheadings are provided for convenience and for the purposes of the U.S. Customs and Border Protection (“Customs”), the Department's written description of the merchandise under investigation is dispositive.<sup>14</sup>

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<sup>8</sup> Id.

<sup>9</sup> 19 U.S.C. § 1677(10).

<sup>10</sup> 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) 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).

<sup>11</sup> See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

<sup>12</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (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.”).

<sup>13</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find 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).

<sup>14</sup> 69 Fed. Reg. 34130, 34131 (June 18, 2004).

THFA is produced by the hydrogenation of FA; the primary raw materials are FA, hydrogen, and a catalyst. THFA may be produced by a vapor phase technology (used by Penn) or by a liquid phase (used by Zhucheng). However, THFA produced by either method is comparable with THFA produced by the other method.<sup>15</sup>

In the preliminary phase of this investigation, both Penn and respondent importer and purchaser Kyzen agreed that the Commission should define a single like product coextensive with the scope definition. The Commission adopted the proposed definition, noting that no evidence on the record suggested any other like product definition.<sup>16</sup> No party in the final phase of this investigation has asked the Commission to revisit its definition of the domestic like product.<sup>17</sup> Nor has any evidence come to light in this final phase to detract from the evidence referenced by the Commission in its preliminary determination. Accordingly, we find a single domestic like product, coextensive with the scope, consisting of all domestically-produced THFA.

### III. DOMESTIC INDUSTRY

The domestic industry is defined as “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.”<sup>18</sup> 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.<sup>19</sup>

In the Commission’s preliminary determination, it defined the domestic industry to include all domestic producers of THFA, which in this investigation is Penn.<sup>20</sup> No party has disputed this definition, and no evidence supporting a different definition is on the record in this final phase of the investigation. Based on our like product determination we find one domestic industry, consisting of all domestic producers of the domestic like product.

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<sup>15</sup> CR at I-6-I-7, PR at I-5. \*\*\*. *Id.*

<sup>16</sup> Tetrahydrofurfuryl Alcohol from China, Inv. No. 731-TA-1046 (Preliminary), USITC Pub. 3620 (Aug. 2003) at 5.

<sup>17</sup> Prehearing Brief of Penn Specialty Chemicals, Inc. (Penn Prehearing Brief) at 6-8; Prehearing Brief of Kyzen Corp. and Zhucheng Huaxing Chemical Co. Ltd. (Kyzen Prehearing Brief) at 2.

<sup>18</sup> 19 U.S.C. § 1677(4)(A).

<sup>19</sup> See 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).

<sup>20</sup> USITC Pub. 3620 at 5.

#### IV. MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS<sup>21 22</sup>

##### A. Conditions of Competition

Several conditions of competition are pertinent to our analysis.

##### 1. Demand

Apparent U.S. consumption of THFA fluctuated during the period. Apparent U.S. consumption in 2001 was \*\*\* million pounds. In 2002, apparent U.S. consumption declined \*\*\* percent to \*\*\* million pounds. In 2003, apparent U.S. consumption rose by \*\*\* percent to \*\*\* million pounds. Between 2001 and 2003, apparent U.S. consumption was down by \*\*\* percent. In interim 2004 (the first three months of 2004), apparent U.S. consumption was \*\*\* percent lower than in interim 2003.<sup>23</sup>

Demand for THFA is determined by the demand for the final products that require THFA. The primary end markets for THFA are agricultural chemicals, coatings, and cleaning solutions. Demand in each of these markets was sluggish during the period; some of these markets are also experiencing long-term weakness in demand.<sup>24</sup>

THFA is environmentally friendly and has distinct performance characteristics that make it suitable for “high-end” industrial solvents. There are no substitutes for THFA in most applications. Reformulating either in favor of using THFA or away from using THFA may involve significant time and testing expenses, and purchasers of the end product may resist any reformulation.<sup>25</sup> As a result, purchasers of THFA are not particularly sensitive to changes in the price of THFA, and lower prices for THFA are not likely to spur additional demand.<sup>26</sup>

The market for THFA is dominated by a handful of high-volume purchasers. Penn’s top five purchasers accounted for approximately \*\*\* percent of its shipments in 2003. \*\*\* were two of Penn’s leading purchasers in 2003.<sup>27</sup>

Transactions in this market appear to be conducted with a fair degree of informality. Penn reported selling \*\*\* percent of its sales by contract, but in fact during the POI \*\*\*.<sup>28</sup> Remaining sales were made on the spot market. Penn does have a price list, but negotiates prices for large-volume orders.<sup>29</sup>

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<sup>21</sup> We find that subject imports from China are not negligible under 19 U.S.C. § 1677(24). See CR/PR at table C-1.

<sup>22</sup> Vice Chairman Deanna Tanner Okun and Commissioners Charlotte R. Lane and Daniel R. Pearson do not join the remainder of these Views. See Dissenting Views of Vice Chairman Deanna Tanner Okun and Commissioners Charlotte R. Lane and Daniel R. Pearson.

<sup>23</sup> CR/PR at table C-1.

<sup>24</sup> CR at II-7, PR at II-4.

<sup>25</sup> CR at II-9, II-10, PR at II-6.

<sup>26</sup> CR at II-20, PR at II-10.

<sup>27</sup> CR at I-4 and table E-1; PR at I-3 and table E-1.

<sup>28</sup> CR at V-2 and n.3, PR at V-2 and n.3. Penn reported that \*\*\*. \*\*\*. However, according to \*\*\*. Id. at V-2 n.3.

<sup>29</sup> CR at V-2, PR at V-2.

## 2. Supply

Petitioner Penn is the only domestic producer of THFA. Penn acquired the THFA production facilities and other chemical production assets from Great Lakes in 1999.<sup>30</sup> THFA accounts for a relatively small share of Penn's total production.<sup>31</sup> Penn entered bankruptcy in the summer of 2001; Penn does not claim the bankruptcy was prompted by competition from subject imports or that it was driven in any way by conditions in the THFA market.<sup>32</sup> While some consumers expressed concerns about supply disruptions during the bankruptcy, Penn in fact continued to produce and deliver THFA on a timely basis.<sup>33</sup>

Subject imports are the only other source of THFA in the U.S. market. Three firms, Kyzen, Advanced Resin Systems (ARS), and AllChem, were responsible for all subject imports of THFA during the POI. Kyzen accounted for \*\*\* percent of all subject imports during the POI, including \*\*\* percent of subject imports in 2001 and \*\*\* percent in 2003. ARS imported subject merchandise \*\*\*, and AllChem imported \*\*\*.<sup>34</sup>

Only a modest amount of subject imports was sold on the merchant market. The vast majority of subject merchandise was imported directly by Kyzen for internal consumption.<sup>35</sup> As noted above, Kyzen is also one of Penn's major customers, and ranked \*\*\* in terms of volume purchased from Penn over the POI. Kyzen has consistently divided its THFA purchases between Penn and Zhucheng, a practice which began well before the period of investigation. Kyzen has indicated that its business is particularly dependent on THFA and that it sought out Zhucheng and lent it technical assistance in order to assure itself an additional THFA supply source.<sup>36</sup>

Kyzen has argued that maintaining a second source of supply is important to the THFA market. The record suggests that maintaining a second supply source is important to Kyzen, but not to the market at large. Only three of 10 responding purchasers reported having multiple sources of supply as "very important."<sup>37</sup> The record further indicates that most purchasers \*\*\*.<sup>38</sup>

## 3. Substitutability

A high degree of substitutability exists between subject imports and the domestic like product. Most purchasers require that THFA meet internal specifications, customer specifications, or industry standards, and purchasers may have qualification procedures.<sup>39</sup> However, three quarters of responding purchasers reported that subject imports were comparable to the domestic like product in terms of product

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<sup>30</sup> CR at III-1, PR at III-1.

<sup>31</sup> CR at III-2, PR at III-1.

<sup>32</sup> CR at III-1, PR at III-1.

<sup>33</sup> Penn Prehearing Brief at 3; Penn Posthearing Brief at 26 and at exh. 23, Statement of Robert Quinn.

<sup>34</sup> CR at IV-1, PR at IV-1.

<sup>35</sup> Kyzen also sold some of its imported THFA, but such sales accounted for \*\*\* percent of its purchases over the POI. CR at I-8 and n.20, PR at I-6 and n.20.

<sup>36</sup> CR at IV-1, PR at IV-1. See also CR at II-8, PR at II-5.

<sup>37</sup> CR/PR at table II-5.

<sup>38</sup> CR/PR at table II-4.

<sup>39</sup> CR at II-12-II-13, PR at II-7.

consistency and in meeting industry standards.<sup>40</sup> Price is an important consideration for THFA purchasers in selecting a supplier: half of the responding purchasers ranked price first. Further, purchasers indicated that price was an important factor more often than any other factor, including quality.<sup>41</sup>

## **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.”<sup>42</sup>

Shipments of subject imports increased by \*\*\* percent between 2001 and 2003, increasing from \*\*\* pounds in 2001 to \*\*\* pounds in 2003. Shipments in 2003 were actually down somewhat from 2002 levels, but the total for 2003 may not be representative of the longer-term trends, as no imported THFA entered the U.S. market after September 2003.<sup>43</sup>

The increase in subject import shipments occurred at a time when apparent U.S. consumption and domestic shipments were both trending downward. Apparent U.S. consumption in 2003 was \*\*\* million pounds, up slightly from 2002 but down by \*\*\* percent from the 2001 level of \*\*\* million pounds.<sup>44</sup> Shipments of the domestic like product followed a similar pattern. Shipments in 2003, at \*\*\* million pounds, represented a modest increase from 2002 but a decline of \*\*\* percent from the 2001 level of \*\*\* million pounds.<sup>45</sup>

The combination of rising import shipments and declining demand and domestic shipments resulted in a change in market share. Subject imports accounted for \*\*\* percent of the U.S. market in 2003, up from \*\*\* percent in 2001.<sup>46</sup> All of this gain in market share came at the expense of the domestic industry, as there were no nonsubject imports in the market. Shipments of the domestic like product accounted for \*\*\* percent of U.S. apparent consumption in 2003, down from \*\*\* percent in 2001.<sup>47</sup>

The volume of subject imports would thus appear to be significant. However, as we noted above, Kyzen plays a rather unique role in the U.S. market for THFA. Kyzen has been both the predominant importer and a significant consumer of the domestic like product since well before the POI. Kyzen accounts for \*\*\* subject imports, which it internally consumes rather than sells. At the same time, Kyzen purchases significant quantities of THFA from Penn. Kyzen’s purchasing practices have remained fairly consistent.<sup>48</sup>

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<sup>40</sup> CR/PR at table II-5.

<sup>41</sup> CR/PR at table II-1.

<sup>42</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>43</sup> CR/PR at table IV-4 and figure IV-1; see also Kyzen Posthearing Brief at exh. 2. This investigation was instituted as a result of a petition filed on June 23, 2003. CR at I-1, PR at I-1.

<sup>44</sup> CR/PR at table C-1.

<sup>45</sup> CR/PR at table C-1.

<sup>46</sup> CR/PR at tables IV-7 and C-1. Subject imports were equivalent to \*\*\* percent of domestic production in 2003, largely unchanged from 2001. CR/PR at table IV-8. The increase in this ratio was not as notable as the increase in the subject imports’ market share, because domestic production was higher in 2003 than in 2001. However, the increase in subject imports and a drop in apparent U.S. consumption meant that a far greater share of domestic production went to inventories, rather than commercial shipments, in 2003. CR/PR at tables IV-8 and III-3.

<sup>47</sup> CR/PR at table C-1.

<sup>48</sup> From 2001 to 2003, Kyzen purchased \*\*\* percent of its THFA from Zhucheng, the remainder from Penn.

(continued...)

There were other importers of THFA during the POI, but their activities were limited. AllChem imported THFA into the U.S. market \*\*\*, and ARS imported \*\*\*.<sup>49</sup> Given Kyzen's unique position, especially the stability and duration of its importing activities, we do not conclude that the volume or the increase in the volume of subject imports was significant. However, we note that subject volume generally rose over the POI, at a time when shipments of the domestic like product and apparent domestic consumption were both trending downward. Moreover, Kyzen's consistent substantial purchases of subject imports formed the backdrop for Penn's actions, described below, reducing its prices to several large customers in response to low-price offers of subject imports. We note further that Commerce's preliminary affirmative finding discouraged all subject imports in 2004, including those by Kyzen.<sup>50</sup> We therefore accord less weight to the interim 2004 data.

### **C. Price Effects of the Subject Imports**

Section 771(7)(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.<sup>51</sup>

Sales in the THFA market are typically made in the spot market. Sales contracts in various forms are also used and accounted for \*\*\* percent of Penn's sales.<sup>52</sup> Most prices are set through negotiation.<sup>53</sup> During the POI, prices for the domestic like product generally declined. Prices for domestically-produced product 1, THFA in 55-gallon drums, sold to end users were \*\*\* percent lower at the end of the POI than at the beginning, and prices for the domestically-produced product 1 sold to distributors were \*\*\* percent lower at the end of the POI than at the beginning.<sup>54</sup> Prices for domestically-produced product 2, THFA in bulk containers, were also generally lower at the end of the period than at the beginning, though no subject imports were sold in direct competition with the domestic like product.<sup>55</sup> Although the general

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<sup>48</sup> (...continued)

Kyzen Postconference Brief at 11; Kyzen Posthearing Brief at exh. 2. As we noted above, Kyzen has sold some of its imported THFA, but those sales accounted for \*\*\* percent of its total imports. CR at I-8 and fn. 20, PR at I-6 and fn. 20.

<sup>49</sup> CR/PR at table IV-1.

<sup>50</sup> Kyzen Posthearing Brief at exh. 1, p. 9.

<sup>51</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>52</sup> CR at V-2, PR at V-2.

<sup>53</sup> CR at V-2, PR at V-2.

<sup>54</sup> CR at V-4, PR at V-3.

<sup>55</sup> CR at V-10, PR at V-4. All other factors being equal, THFA sold in 55-gallon drums would be expected to  
(continued...)

trend for both products was downward over the POI, prices for the domestic like product were higher in the first quarter of 2004, when the Chinese product had exited the market, than in either the preceding quarter or the same period in 2003.<sup>56</sup>

Commercial sales of imported THFA, whether by Kyzen or by the other importers, were relatively rare in the U.S. market. Pricing data for commercial sales show mostly overselling by subject imports, which is likely explained by the fact that the import prices were based on a substantially lower quantities of subject imports as compared to the quantities on which the domestic prices were based.<sup>57</sup> Both parties suggested alternate ways of considering the pricing data, each of which has limitations.<sup>58</sup>

We also considered purchaser prices, which show underselling by subject imports as compared to the domestic like product. For most of the POI, subject imports undersold the domestic like product by margins up to or exceeding \*\*\* percent.<sup>59</sup> The underselling gap disappeared by the end of the POI, as Penn lowered its prices. This margin was not caused by volume differences, as prices paid by high-volume purchasers of the domestic like product were nearly as high, as was the gap between those prices and the prices paid by purchasers of subject imports.<sup>60</sup>

Subject imports did not affect domestic prices merely through underselling. As we noted, sales in the THFA market tend to be made informally; the market is small and dominated by a handful of large purchasers. In 2002, when Penn was emerging from bankruptcy, \*\*\*, were able to gain significant price concessions from Penn by citing lower-price quotes for subject imports.<sup>61</sup> Penn lost significant revenue from these concessions, and \*\*\* continued to purchase at reduced prices through 2002 and 2003.<sup>62</sup> Thus, subject imports had a significant adverse effect on the prices paid by these customers, and thus the revenue received by Penn. Penn's sales to \*\*\* represent a significant share of the price data Penn reported to the Commission. Thus, Penn's lower prices to these customers are a main reason why its overall prices declined in 2002 and 2003.

Similarly, throughout the POI, Kyzen received a lower price from Penn than did any other domestic purchaser, even though Kyzen was only Penn's \*\*\* biggest customer by volume.<sup>63</sup> Penn was,

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<sup>55</sup> (...continued)

command a higher price per pound than THFA sold in bulk containers. Penn Posthearing Brief at 22 n.70.

<sup>56</sup> CR/PR at Tables V-1-V-3; Hearing tr. at 125, 126.

<sup>57</sup> CR/PR at Tables V-1 and V-2; Penn Prehearing Brief at 17.

<sup>58</sup> Penn argued that the Commission should rely on a comparison of Kyzen's import prices to prices for Penn's sales to end users, Penn Prehearing Brief at Exh. 4, but this comparison ignores differences in the levels of trade. Kyzen argued the Commission should rely on a comparison of the unit value of Kyzen's direct imports to the price of Kyzen's purchases from Penn. Kyzen Posthearing Brief at Exh. 1, pp. 3-4. This comparison ignores differences in the product (shipped in 55-gallon drums versus bulk containers) and also ignores that Kyzen represents only a minority of the merchant market for THFA. We have also hesitated to rely on a comparison of average unit values, given the differences in product mix.

<sup>59</sup> CR/PR at Table G-1.

<sup>60</sup> CR/PR at Table G-2.

<sup>61</sup> CR/PR at Table V-6.

<sup>62</sup> CR/PR at Tables E-1-E-2. \*\*\* was able to gain similar price concessions from Penn in 2003. CR/PR at Table V-6.

<sup>63</sup> CR/PR at Table E-2.

however, aware of Kyzen's imports, and Kyzen's importing influenced the price concessions it received from Penn.<sup>64</sup>

Domestic prices generally declined throughout the POI, but rose once subject imports left the market; purchasers generally paid significantly more for the domestic like product; and the domestic producer lost significant revenues when purchasers threatened to buy lower-cost imports. We thus find that the subject imports have had significant price-depressing effects on the domestic like product.

We consequently conclude that there has been significant price underselling by the subject imports and that the effect of subject imports has been to depress prices for the domestic like product to a significant degree.

#### **D. Impact of the Subject Imports**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>65</sup> 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."<sup>66 67</sup>

Domestic production capacity was stable throughout the POI. Domestic production was actually higher in 2003 than in 2001, but the decline in shipments meant that much of the increase went to inventories. In fact, inventories were \*\*\* percent higher in 2003 than in 2001 and were equivalent to \*\*\* percent of shipments, up from \*\*\* percent in 2001. Domestic shipments actually declined somewhat faster than did overall apparent U.S. demand: demand in 2003 was down by \*\*\* percent but U.S. shipments of the domestic like product declined by \*\*\* percent, and the domestic industry lost market share.<sup>68</sup> The value of domestic shipments by U.S. producers declined by an even greater \*\*\* percent from 2001 to 2003.<sup>69</sup>

The declines in shipments and revenues were reflected in worsening industry performance by a number of measures. The number of employees dropped by \*\*\* percent between 2001 and 2003, hours worked declined by \*\*\* percent, and total wages paid declined by \*\*\* percent, though the hourly wage

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<sup>64</sup> Penn's price to Kyzen undersold subject imports for most of the POI. However, the price Penn granted to Kyzen remained far below the price paid by even higher-volume customers. CR/PR at Table G-2. The subject THFA imported by Kyzen was also packaged in 55-gallon drums, and should have commanded a higher price, while the domestic THFA purchased by Kyzen was in bulk containers. It is reasonable to conclude that Kyzen's import purchases gave it significant leverage to obtain lower prices from Penn.

<sup>65</sup> 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.").

<sup>66</sup> 19 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 (Feb. 1999) at 25, n.148.

<sup>67</sup> In its final affirmative determination, Commerce determined the dumping margin for subject imports from China to be 136.86 percent. <sup>69</sup> Fed. Reg. at 34132 (June 18, 2004).

<sup>68</sup> CR/PR at Table C-1.

<sup>69</sup> CR/PR at Table C-1.

rose by \*\*\* percent. Productivity improved significantly, rising \*\*\* percent between 2001 and 2003, and unit labor costs also improved, falling by \*\*\* percent.<sup>70</sup>

The industry's ability to cut costs lessened its \*\*\*. The cost of goods sold declined by \*\*\* percent between 2001 and 2003, and gross profit was actually \*\*\* percent higher in 2003 than in 2001, after being \*\*\* in 2002. But the value of the industry's net sales was down \*\*\* percent, due largely to lower prices, sales and general administration costs were up by \*\*\* percent, and the industry had net operating \*\*\* equal to \*\*\* percent of sales. Its performance in 2003 was better than in 2002, but still worse than in 2001.<sup>71</sup> Thus, lower prices were a main reason why the industry posted consistently poor operating results over the period.

The industry's performance generally worsened during a time when demand was down somewhat and also during a period when its only member, Penn, entered bankruptcy. However, the industry's loss of revenue resulted to a significant degree from the negative effects of subject imports on domestic prices. We do not attribute Penn's poor performance to its bankruptcy to any significant degree. No party has alleged that subject import competition in the THFA market prompted Penn's bankruptcy. During its time in bankruptcy, Penn maintained both production and deliveries, and the record does not indicate that Penn lost sales or revenue on THFA because of its bankruptcy.<sup>72</sup> Penn's emergence from bankruptcy actually contributed to the modest improvement seen in the domestic industry in 2003, primarily through reduced costs.<sup>73</sup> But subject imports depressed prices to a degree that could not be offset by the improved cost structure of Penn after its emergence from bankruptcy. In light of the significant adverse price effects of the subject imports, and the causal linkage between the subject imports and the domestic industry's declines in shipments, market share, employment indicators, and operating performance, we conclude that the subject imports have had a significant adverse impact on the domestic THFA industry. Accordingly, we have made an affirmative determination in this investigation.

## CONCLUSION

For the foregoing reasons, we find that the domestic THFA industry is materially injured by reason of LTFV imports from China.

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<sup>70</sup> CR/PR at Table C-1.

<sup>71</sup> CR/PR at Table C-1.

<sup>72</sup> Penn's bankruptcy may have led to a modest increase in subject imports in 2002. However, we note that \*\*\*.  
CR at IV-2, PR at IV-1.

<sup>73</sup> Penn argued at some length that the firm, which produces many products other than THFA, is particularly dependent on THFA for revenue. Penn Prehearing Brief at 13. However, we make our determination based on the industry producing the like product. 19 U.S.C. §1677(7)(B)(I); General Motors Corp. v. United States, 827 F. Supp. 744, 780 (Ct. Int'l Trade 1993).

**DISSENTING VIEWS OF VICE CHAIRMAN DEANNA TANNER OKUN, COMMISSIONER  
CHARLOTTE R. LANE, AND COMMISSIONER DANIEL R. PEARSON**

Based on the record in this investigation, we determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of tetrahydrofurfuryl alcohol (THFA) from China that is sold in the United States at less than fair value (LTFV).<sup>1 2</sup>

We join our colleagues' discussion regarding domestic like product and domestic industry. We write separately to discuss the conditions of competition pertinent to our analysis, and to provide our analysis of the statutory factors.

**I. NO MATERIAL INJURY BY REASON OF SALES OF SUBJECT IMPORTS AT LESS THAN FAIR VALUE**

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>3</sup> In making this determination, the Commission 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.<sup>4</sup> The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."<sup>5</sup> In assessing whether 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.<sup>6</sup> 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."<sup>7</sup>

For the reasons discussed below, we determine that the domestic industry producing THFA is not materially injured by reason of subject imports from China found to be sold at LTFV.

**A. Conditions of Competition**

The following conditions of competition for THFA are pertinent to our analysis in this investigation.

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<sup>1</sup> Commerce made an affirmative final determination of sales at LTFV and found a margin of 136.86 percent applicable to all Chinese producers of THFA. 69 Fed. Reg. 34130, Jun. 18, 2004.

<sup>2</sup> Material retardation is not an issue in this investigation.

<sup>3</sup> 19 U.S.C. § 1673d(b).

<sup>4</sup> 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 Angus Chemical Co., v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>5</sup> 19 U.S.C. § 1677(7)(A).

<sup>6</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>7</sup> *Id.*

## 1. Penn's Bankruptcy

A condition of competition that is unique to this case is that the petitioner and sole U.S. producer of THFA, Penn Specialty Chemicals, Inc. (Penn), both filed for bankruptcy and emerged from bankruptcy during the period of investigation. In July 2001, Penn entered bankruptcy, citing cash flow problems that made it difficult to service its debt.<sup>8</sup> Penn acknowledged that subject imports were not a significant factor in motivating it to file for bankruptcy.<sup>9</sup> Penn did not emerge from bankruptcy until July 2002. Consequently, for the year that Penn was in bankruptcy, Penn's ability to continue to produce THFA and supply its customers was uncertain. Indeed, importers of THFA alleged that it was Penn's bankruptcy that caused any increase in the volume of imports during the period examined, as those importers increased their imports from China because they were worried about the impact of Penn's bankruptcy on their future supplies of THFA.<sup>10</sup>

Another aspect of Penn's bankruptcy that informs our analysis is that, as part of the court-approved bankruptcy reorganization plan, Penn's senior secured lenders have been putting pressure on Penn either to sell the business unit that contains THFA or to enter into a contract with another company to produce THFA on a toll-processing basis.<sup>11</sup> The plan also provides for substantial cash bonuses to Penn's management in the event the THFA business is sold. These provisions, once made public, could reasonably be expected to foster uncertainty in the market and increase incentives for Penn's customers to look elsewhere for their supplies of THFA.

## 2. Demand Factors

Penn argues that the U.S. market is likely to expand at a healthy pace during the foreseeable future as new applications are developed for THFA. Penn claims that overall demand for THFA is cyclical in line with overall economic activity, and that as a result, demand for THFA in the near term is likely to pick up, both because of the general economic recovery and because new customers are reformulating to include THFA.<sup>12</sup> Respondents do not share these views. They claim that during the period examined, demand for THFA declined in line with the general contraction in the economy, and that because of Penn's bankruptcy, existing users have begun reformulating their products away from THFA.<sup>13</sup>

The record evidence demonstrates that, during the period examined, apparent consumption of THFA declined \*\*\* percent, and fell even more rapidly when the interim periods are compared.<sup>14</sup> Some of this decline may be attributed to the general economic slowdown but, at least in the period examined, demand for THFA does not seem to be reflecting the current economic recovery, which began in 2002. Penn argues that it is encouraging its customers to create new demand for THFA, so that the U.S. market will expand by 10 to 12 percent over the foreseeable future.<sup>15</sup> If this is so, this trend is not apparent from

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<sup>8</sup> CR/PR at III-1.

<sup>9</sup> Conference tr. at 17-18.

<sup>10</sup> Respondent's prehearing brief at 7-8.

<sup>11</sup> CR at III-2, PR at III-1.

<sup>12</sup> Penn's prehearing brief at 13.

<sup>13</sup> Respondents' prehearing brief at pp. 2, 8.

<sup>14</sup> CR/PR at Table C-1.

<sup>15</sup> Penn's prehearing brief at 13; Penn's posthearing brief at 6; hearing tr. at pp. 21-22, 28-29.

the data on the record. Moreover, the fact that Penn's lenders have, as part of Penn's bankruptcy reorganization plan, encouraged Penn to sell its THFA assets also fails to square with Penn's optimistic outlook for the THFA market.<sup>16</sup>

### 3. Kyzen's Two-Source Strategy

Kyzen, the largest importer of THFA from China, and a major customer of Penn, indicated that it imported THFA from China pursuant to a long-established strategy of obtaining THFA from more than one source.<sup>17</sup> This strategy was put into place in 1997, and continued to operate throughout the period examined. Prior to adopting this strategy, Kyzen had obtained all of its THFA from domestic sources.<sup>18</sup> Kyzen adopted this "two-source" strategy because THFA is its single most important raw material and it could not risk depending on a single source for THFA.<sup>19</sup> Its decision was stimulated by the decision of Penn's predecessor (Great Lakes Chemicals) to sell its THFA facility.<sup>20</sup>

Kyzen stated that, under this two-source strategy, it obtains approximately \*\*\* of its requirements from one supplier and the remaining \*\*\* from the other, so as to ensure that each supplier remains viable.<sup>21</sup> Over the period examined, Kyzen's purchases from Penn \*\*\*. These imports, though, \*\*\*.<sup>22</sup>

### 4. THFA as a Commodity Product

Penn claims that subject imports and its product are fungible and thus compete directly in the U.S. market, primarily on the basis of price. Respondents disagree, noting that THFA is a specialty product because purchasers enforce stringent requirements over the product's quality and purity. When considering purchasing THFA from a new source, purchasers consider quality to be more important than price.<sup>23</sup>

Based on the record evidence, Penn is probably correct that THFA is a commodity product in that Penn's product and the subject imports are chemically identical and interchangeable for nearly all applications. This argument, however, ignores the fact that there are significant qualification processes before a competing product reaches that stage.<sup>24</sup> In other words, once a THFA source is qualified, the product becomes a commodity, but not before that time. The record indicates that to a purchaser weighing a decision to buy from Penn versus buying from a new, unproven supplier, quality matters more than price.<sup>25</sup> A significant number of purchasers indicated that they required THFA suppliers to be certified or pre-qualified with respect to quality, and nearly all purchasers noted that THFA must meet

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<sup>16</sup> CR at III-2, PR at III-1.

<sup>17</sup> Respondent's prehearing brief at 7.

<sup>18</sup> In 1997, just as today, U.S. and Chinese producers were the only worldwide sources of THFA.

<sup>19</sup> Respondents' posthearing brief at 2-7. THFA represents \*\*\* percent of Kyzen's raw material costs. *Id.* at 2.

<sup>20</sup> Hearing tr., p. 167.

<sup>21</sup> Respondents' posthearing brief, Attachment 1, p. 12.

<sup>22</sup> CR/PR at Table IV-1; CR/PR at Table F-1.

<sup>23</sup> Respondents' posthearing brief at 5-7.

<sup>24</sup> CR at II-12-13, PR at II-7.

<sup>25</sup> *Id.*

either internal specifications, customer specifications, or industry standards.<sup>26</sup> Thus, THFA is a commodity only in the sense that once suppliers are qualified, price becomes the main purchasing criterion.

## **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.”<sup>27</sup>

The quantity of subject imports from China increased from \*\*\* pounds in 2001 to \*\*\* pounds in 2002, a \*\*\*-percent increase, then declined in 2003 to \*\*\* pounds, a \*\*\*-percent decline.<sup>28</sup> Subject import volumes had completely exited the market in January-March (interim) 2004, when compared to \*\*\* pounds in the comparable period of 2003. On a monthly basis, subject imports in 2003 peaked in February at 112,000 pounds, then declined steadily to a level of 35,000 pounds by June, when the petition was filed. Monthly subject imports then increased over the next two months (July and August) to 71,000 pounds, before declining again, eventually exiting the market completely in October 2003.<sup>29</sup>

As a share of domestic consumption, subject imports increased from \*\*\* percent of the market in 2001 to \*\*\* percent in 2002, then declined to \*\*\* percent in 2003.<sup>30</sup> Subject imports held a \*\*\*-percent share of the market in interim 2004, as opposed to \*\*\* percent in interim 2003.<sup>31</sup> Subject imports accounted for 100 percent of total imports throughout the period examined.

Although both the volume and market share of subject imports increased overall over the period examined, we do not consider those increases to be significant when viewed in the context of certain key conditions of competition. In reaching this conclusion, we take account of the fact that, throughout the period examined, the majority of subject imports were purchased by Kyzen for internal consumption as part of a pre-existing two-source strategy. Subject imports by Kyzen only increased moderately overall during the period examined, and did not account for the surge in imports in 2002.<sup>32</sup> Moreover, Kyzen did not decrease significantly its purchases from Penn over the period examined, and Kyzen actually bought THFA from Penn at a lower price than from China.<sup>33</sup> Consequently, it is difficult to conclude that imports by Kyzen had any real impact on Penn’s business during the period examined.

More generally, in light of developments during the period examined regarding Penn’s bankruptcy filing, we find the downward trend in imports in 2003 to be meaningful. Although Kyzen

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<sup>26</sup> Id.

<sup>27</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>28</sup> CR/PR at Table IV-3.

<sup>29</sup> CR/PR at Figure IV-1.

<sup>30</sup> CR/PR at Table C-1.

<sup>31</sup> We note that the staff’s market share calculations are based on shipments of imports. As subject imports were zero in interim 2004, shipments of imports in interim 2004 were likely related to imports made in 2003.

<sup>32</sup> Kyzen’s purchases of subject imports increased from \*\*\* pounds in 2001 to \*\*\* pounds in 2002, an \*\*\*-percent increase. Such purchases increased again in 2003 to \*\*\* pounds, by \*\*\* percent. CR/PR at Table F-1. In light of Penn’s bankruptcy and the fact that Kyzen’s purchases from Penn did not decline significantly, we do not find these increases to be significant.

<sup>33</sup> Kyzen’s purchases from Penn declined only slightly from \*\*\* pounds in 2001 to \*\*\* pounds in 2002, recovering to \*\*\* pounds in 2003. CR/PR at Table V-4; *see also* conference tr. at 67.

was likely somewhat affected as well, it is reasonable to assume that Penn's bankruptcy situation would have primarily affected the sourcing decisions of more transitory buyers such as AllChem Industries Holding Corp. (AllChem) and Advanced Resin Systems (ARS), who accounted for the remaining subject imports during 2002 and 2003. These firms' imports, however, declined sharply in 2003, and completely ceased by the end of the period examined.<sup>34</sup> The pattern of these firms' imports is consonant with the explanation that the importers were motivated by Penn's bankruptcy situation. Indeed, the record reflects the fact that by early 2003, once it became clear that Penn was committed to future supply of THFA, those importers returned to their usual sourcing pattern (*i.e.*, buying solely from Penn).<sup>35</sup>

With regard to the decline in subject imports in 2003, Penn argues that but for the filing of the petition, imports would have continued their upward trend in 2003. This argument is not supported by the record. Imports actually began to decline in March 2003, three months before the petition was filed. Moreover, imports did not exit the market until October 2003, long after the filing of the petition.<sup>36</sup> It is more likely that imports declined in response to changing perceptions of Penn's viability as a supplier upon emerging from bankruptcy, than in response to the filing of the petition in this investigation.<sup>37</sup>

Hence, although when viewed in isolation the volume and market share of subject imports may appear significant, when evaluated in the context of the conditions of competition unique to this industry – particularly Penn's bankruptcy filing and the pre-existing two-source strategy employed by Kyzen – the volume of subject imports and the increase in that volume are insufficient to demonstrate that the subject imports themselves contributed materially to any injury to the domestic industry.

### **C. Price Effects of the Subject Imports**

Section 771(7)(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.<sup>38</sup>

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<sup>34</sup> CR/PR at Table IV-1.

<sup>35</sup> Penn argues that imports peaked in early 2003, more than six months after it emerged from bankruptcy, and thus the import surge had little to do with its bankruptcy. Penn posthearing brief at 4. This argument is unpersuasive, because it was reasonable for Penn's customers to continue to source offshore for some time after Penn emerged from bankruptcy until they could see that it was safe to return to Penn as a supplier.

<sup>36</sup> CR/PR at Figure IV-1.

<sup>37</sup> Penn's argument would only have merit if importers had heard rumors of the filing of the petition in early 2003, and began to scale back their imports accordingly. Penn, however, did not advance this argument; in any event, the record lacks evidence of any such behavior by THFA importers.

<sup>38</sup> 19 U.S.C. § 1677(7)(C)(ii).

As noted in our discussion of the relevant conditions of competition, the record in this investigation indicates that THFA produced in the United States and in China is readily interchangeable, once suppliers are qualified.

Commission staff collected pricing data on two products: (1) THFA in 55-gallon drums, and (2) THFA in bulk containers, and collected data separately for sales to distributors and to end users. For product 1, imports from China sold to distributors undersold U.S. product in 3 of 7 quarters where comparisons were possible, with margins of underselling ranging from \*\*\* percent.<sup>39</sup> In the remaining quarters, imports were oversold, with margins ranging from \*\*\* percent. U.S. prices generally trended downward, with Chinese prices showing no particular trend. For product 1 sold to end users, imports from China oversold U.S. product in all quarters where comparisons were possible except for July-September 2002, with margins of overselling ranging from 6.0 to 26.9 percent.<sup>40</sup> Again, U.S. prices moved downward, with Chinese prices fluctuating randomly. For product 2, the Commission received data only from Penn, with sales to end users falling in price and sales to distributors demonstrating no particular pattern.<sup>41</sup>

These comparisons indicate that subject imports predominantly oversold domestic product, with overselling occurring in 11 of 15 comparisons.<sup>42</sup> Accordingly, we do not find sufficient evidence that subject imports have depressed domestic prices during the period examined.<sup>43</sup>

With regard to lost sales and revenues, the Commission was unable to confirm any alleged lost sales. Of 11 lost revenue allegations investigated, Commission staff was able to confirm three, with one firm not responding to the allegation.<sup>44</sup> Two of the three confirmed lost revenue allegations occurred in 2002, with the third occurring in 2003. The value of the confirmed lost revenues in 2002 was \$\*\*\*, representing \*\*\* percent of Penn's net sales in 2002, while the value of the confirmed lost revenues in 2003 was \$\*\*\*, representing \*\*\* percent of Penn's net sales in 2003.<sup>45</sup> Overall, during the period examined, confirmed lost revenues accounted for only \*\*\* percent of total net sales value.<sup>46</sup> We do not

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<sup>39</sup> CR/PR at Table V-1.

<sup>40</sup> CR/PR at Table V-2.

<sup>41</sup> CR/PR at Table V-3.

<sup>42</sup> We have also considered alternative price comparisons submitted by Penn and by the staff. Penn suggests alternatively that the Commission (1) compare the prices it sells to end-users generally to the price Kyzen pays for subject imports, or (2) compare the prices it sells THFA in drums to two large customers (\*\*\*) to the price Kyzen pays for subject imports. Penn's prehearing brief, Exh. 4; Penn's posthearing brief, pp. 6-9; Penn's final comments, Jul. 12, 2004, p. 4. We do not place significant weight on these price comparisons in that they do not reflect the same level of trade and appear to be based on the questionable premise that Kyzen's imports compete directly with Penn's sales to end users.

Similarly, we have taken into account in our analysis purchase price comparisons as presented by the staff. See INV-BB-093, Jul. 14, 2004. These comparisons suffer from the same deficiency as Penn's proffered comparisons in that they do not reflect transactions made at the same level of trade.

<sup>43</sup> We also find it significant that Penn had no competition from imports in sales of bulk product. Penn made sales of bulk product \*\*\*. Inasmuch as Chinese producers did not supply THFA in bulk containers (apparently for logistical reasons), this segment of Penn's business was substantially insulated from import competition.

<sup>44</sup> CR/PR at Table V-6.

<sup>45</sup> Id. It is noteworthy that Penn is \*\*\* for \*\*\*, which confirmed one of the lost revenue allegations. CR/PR at Table II-2.

<sup>46</sup> Penn's net sales were \$\*\*\* in 2002 and \$\*\*\* in 2003. For the 3-year period examined, Penn's total net sales were \$\*\*\*. CR/PR at Table VI-1.

find the value of these lost revenues to be significant. Moreover, we find it significant that even when subject imports had exited the market (by late 2003), domestic prices continued to decline.<sup>47</sup> This anomalous trend indicates that factors other than LTFV imports were leading THFA prices down toward the end of the period examined.

In addition, with regard to the issue of lost revenues, Penn claimed that 100 percent of its meet-or-release clauses had been triggered during the period examined. Commission staff, however, was able to confirm the operation of such a clause with \*\*\*.<sup>48</sup> Consequently, with regard to Penn's remaining customers there is no evidence on the record that meet-or-release clauses were activated during the period examined.

Finally, with regard to price suppression, it is true that domestic prices declined overall during the period examined, but given the fact that prices of subject imports appear to have fluctuated without any clear trend while for the most part overselling domestic product, it is difficult to conclude that subject import prices prevented Penn's prices from rising to levels that would enable Penn to recoup its rising production costs. Consequently, in light of the predominance of overselling by subject imports and the lack of evidence of price leadership by subject imports, lost sales, or significant lost revenues, we find that subject imports did not have a significant effect on domestic prices during the period examined.

#### **D. Impact of the Subject Imports**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>49</sup> 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."<sup>50 51</sup>

With respect to the impact of the subject imports, except for increases in production and capacity utilization, the domestic industry's performance deteriorated over the 3-year period examined. Year-over-year declines were generally confined to 2001 and 2002, however, as most indicators began to show improvement in 2003.<sup>52</sup> For example, the quantity of net sales first declined by \*\*\* percent in 2002, and then climbed slightly in 2003 to a level \*\*\* percent below its 2001 level. The value of net sales showed a

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<sup>47</sup> CR/PR at Table E-1.

<sup>48</sup> CR/PR at V-2, n.3. Penn provided copies of contracts with \*\*\* and \*\*\* that it alleged contained meet-or-release provisions. Penn's posthearing brief, Exhibit 20. Staff was able to confirm that prices \*\*\*.

<sup>49</sup> 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").

<sup>50</sup> 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851 and 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

<sup>51</sup> The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce calculated a final margin of 136.86 percent applicable to all Chinese producers of THFA. 69 Fed. Reg. 34130, Jun. 18, 2004.

<sup>52</sup> CR/PR at Table C-1.

similar pattern to quantity. Unit values fell steadily throughout the period.<sup>53</sup> Total number of workers and hours worked declined modestly during the 3-year period, while hourly wages and productivity increased.<sup>54</sup> Unit labor costs fell steadily over the period examined.

With regard to Penn's financial performance, Penn \*\*\* in all periods. The ratio of operating income to sales, however, \*\*\* in 2002, \*\*\* in 2003. The improving financial situation in 2003 appears to be related to a combination of a decline in average unit revenue offset by a larger reduction in Penn's \*\*\*, along with a modest increase in sales volume.<sup>55</sup>

Although it is clear that Penn's financial performance was not good during the period examined, we find that subject imports do not contribute importantly to Penn's current condition. Most of Penn's economic and financial indicators appear to have improved at around the time Penn was emerging from bankruptcy protection (*i.e.*, mid-2002). This is significant because the volume of subject imports peaked in late 2002 and early 2003.<sup>56</sup> There is no correlation between Penn's financial performance and subject imports, inasmuch as Penn's financial performance improved at the same time that imports reached their highest level. Even if such a link could be demonstrated, because the volume of imports was not significant and those imports had little, if any, effect on domestic prices, it would be difficult to conclude that Penn's \*\*\* were caused by subject imports. It is far more likely that Penn's troubles in THFA were caused by the same systemic company-wide issues that triggered its bankruptcy filing, coupled with a decline in demand for THFA.<sup>57</sup> Hence, on balance, we find that the impact of the subject imports is not significant.

Based on the record in the final phase of this investigation, and in light of our analysis of the significance of the volume, price effects, and impact of the LTFV sales of subject imports, we determine that an industry in the United States is not materially injured by reason of imports of the subject THFA from China that is sold in the United States at less than fair value.

## **II. NO THREAT OF MATERIAL INJURY BY REASON OF SALES OF SUBJECT IMPORTS AT LESS THAN FAIR VALUE**

Section 771(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."<sup>58</sup> The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.<sup>59</sup> In making our determination, we considered all statutory factors that are relevant to these investigations.<sup>60</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> CR at VI-4, PR at VI-1.

<sup>56</sup> CR/PR at Figure IV-1.

<sup>57</sup> In that regard, we note that, on an overall establishment basis, Penn has \*\*\*. CR/PR at IV-1, n.3.

<sup>58</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>59</sup> *Id.*

<sup>60</sup> 19 U.S.C. § 1677(7)(F)(i). Statutory threat factor (I) is inapplicable because Commerce made no subsidy findings. Statutory threat factor (VII) also is inapplicable because these investigations do not involve imports of

The record does not indicate a significant rate of increase of the volume or market penetration of the subject imports indicating the likelihood of substantially increased imports. Although subject import volume and market penetration did show large increases both in terms of volume and market penetration between 2001 and 2002, we found that these were due in large part to the uncertainty in the marketplace precipitated by Penn's bankruptcy. As discussed in section I.B. above, the volume of imports declined once Penn emerged from bankruptcy and its continued viability as a supplier became apparent to purchasers. These declines preceded the filing of the petition and were for reasons unrelated to the filing of the petition.

Chinese exports are projected to decline in 2004 and 2005. The one responding producer ships a significant portion to its home market and has established export markets in third countries.<sup>61</sup> The record also indicates that there is significant unused capacity in China for the production of THFA. We note, however, that unused capacity has been prevalent throughout the period of investigation. Although the record indicates that there is available capacity in China to increase exports to the United States, we conclude that it is unlikely that subject imports will increase to significant levels in light of the nature and magnitude of the subject import declines in the latter part of the period examined prior to the filing of the petition and the availability of other markets to the subject producer.

As discussed in Section I.C above, the subject imports did not have significant price-depressing or suppressing effects on the domestic like product during the period of investigation. Imports predominantly oversold the domestic like product, with overselling occurring in 11 of 15 price comparisons. The record indicates that domestic prices declined throughout the period, whereas subject import prices fluctuated randomly, indicating that subject imports were not the cause of the domestic price declines.<sup>62</sup> There were no confirmed lost sale allegations.<sup>63</sup> Although there were some lost revenue allegations confirmed, they represented only \*\*\* percent of total net sales value during the period examined.<sup>64</sup> It is noteworthy that Penn is \*\*\* for \*\*\*,<sup>65</sup> which confirmed one of the lost revenue allegations. It is therefore unlikely that additional revenue would be lost from that purchaser. Because we do not believe that there is a likelihood of substantially increased imports, we conclude that it is likely that the subject imports will continue not to have significant price effects in the imminent future.

U.S. importers' inventories of Chinese THFA increased absolutely, but remained stable relative to imports between 2001 and 2002 at a level representing between \*\*\* percent of imports. In 2003, inventories increased both absolutely and as a percent of imports, totaling \*\*\* percent of total U.S. imports of THFA. These inventories were drawn down in the first quarter of 2004.<sup>66</sup> Inventories in China fluctuated during the period examined, both absolutely and as a percentage of shipments. Chinese inventories as a percentage of shipments increased overall during the period examined. There is no indication, however, that the inventories will result in increased shipments to the United States, given our finding that imports are unlikely to increase substantially in the imminent future.

Finally, we have considered Penn's argument that the entire capacity of the Chinese furfuryl alcohol (FA) capacity is potentially available for diversion to the production of THFA, and that the

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both raw and processed agricultural products.

<sup>61</sup> CR/PR at Table VII-1.

<sup>62</sup> CR/PR at Tables V-1-V-3.

<sup>63</sup> CR/PR at Table V-5.

<sup>64</sup> CR/PR at Tables VI-1, V-6.

<sup>65</sup> CR/PR at Table II-2.

<sup>66</sup> CR/PR at Table VII-2.

existing antidumping duty orders on imports of FA from China into the United States and the European Union make such a shift an attractive possibility. The record, however, does not reflect such a trend. Capacity for THFA in China has been constant throughout the period examined, and capacity utilization is at fairly low levels.<sup>67</sup>

Accordingly, we find that material injury by reason of subject imports will not occur absent issuance of an antidumping order against the subject imports. We therefore conclude that the domestic THFA industry is not threatened with material injury by reason of the subject imports.

### **CONCLUSION**

For the foregoing reasons, we determine that the domestic THFA industry is neither materially injured nor threatened with material injury by reason of subject imports from China.

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<sup>67</sup> CR/PR at Table VII-1.

## PART I: INTRODUCTION

### BACKGROUND

This investigation results from a petition filed by Penn Specialty Chemicals, Inc. (“Penn”), Plymouth Meeting, PA, on June 23, 2003, 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 tetrahydrofurfuryl alcohol (“THFA”) from the People’s Republic of China. Information relating to the background of the investigation is provided below.<sup>1</sup>

<b>Date</b>	<b>Action</b>	<b>Federal Register citation</b>
June 23, 2003	Petition filed with Commerce and the Commission; institution of Commission investigation	68 FR 38721 (June 30, 2003)
July 18, 2003	Commerce’s notice of initiation	68 FR 42686
August 11, 2003	Commission’s preliminary determination	68 FR 48938 (August 15, 2003)
January 27, 2004	Commerce’s preliminary determination; scheduling of final phase of Commission investigation	69 FR 3887; 69 FR 6005 (February 9, 2004)
March 15, 2004	Commerce’s postponement of final determination; re-scheduling of final phase of Commission investigation.	69 FR 12127; 69 FR 15380 (March 25, 2004)
June 14, 2004	Commission’s hearing <sup>1</sup>	NA
June 18, 2004	Commerce’s final determination	69 FR 34130
July 15, 2004	Commission’s vote	NA
July 29, 2004	Commission determination to Commerce	NA

<sup>1</sup> A list of hearing witnesses is presented in appendix B.

### ORGANIZATION OF REPORT

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission—

*shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . . may consider such other economic factors as are relevant to the*

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<sup>1</sup> Federal Register notices cited in the tabulation since the Commission’s preliminary determination are presented in appendix A.

*determination regarding whether there is material injury by reason of imports.*

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that—

*In evaluating the volume of imports of merchandise, 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.*

...

*In evaluating the effect of imports of such merchandise on prices, 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.*

...

*In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to . . . (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in [an antidumping investigation], the magnitude of the margin of dumping.*

Information on the subject merchandise, margin of dumping, and domestic like product is presented in *Part I*. Information on conditions of competition and other relevant economic factors is presented in *Part II*. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. The volume and pricing of imports of the subject merchandise are presented in *Parts IV* and *V*, respectively. *Part VI* presents information on the financial experience of the U.S. producer. The statutory requirements and information obtained for use in the Commission’s consideration of the question of threat of material injury are presented in *Part VII*.

## **SUMMARY DATA**

A summary of data collected in the investigation is presented in appendix C, table C-1. U.S. industry data are based on the questionnaire response of Penn, which accounted for 100 percent of U.S. production of THFA over the period examined. U.S. import data are based on the questionnaire responses of Kyzen Corp. (“Kyzen”), AllChem Industries Holding Corp. (“AllChem”), and Advanced Resin Systems (“ARS”).

## RELATED INVESTIGATIONS

Furfuryl alcohol (“FA”) is the primary precursor chemical for THFA. In May 1994, an antidumping petition was filed against imports of FA from China, South Africa, and Thailand, on behalf of Quaker Oats Chemicals, the predecessor company to Penn, petitioner in the present investigation. In June 1995, the Commission made affirmative injury determinations for imports from all three countries. The Department of Commerce issued antidumping duty orders with margins ranging from 43.54 to 50.43 percent for China, and single margins of 7.82 percent and 11.55 percent for Thailand and South Africa, respectively. The antidumping duty order on FA from South Africa was revoked by Commerce in 1999. In 2001, the Commission determined that revocation of the antidumping duty orders on China and Thailand would be likely to lead to a continuation or recurrence of material injury, and the orders were continued.<sup>2</sup> The current deposit rates for FA imports from China and Thailand remain unchanged.

## MAJOR FIRMS INVOLVED IN THE U.S. THFA MARKET

Based on evidence in the record of this investigation, two firms account for the majority of THFA produced worldwide and 100 percent of THFA consumed in the United States. Petitioner Penn is the sole domestic producer of THFA, and accounted for \*\*\* percent of U.S. commercial shipments of THFA during the period examined. THFA represents a relatively small proportion of Penn’s annual sales, but, according to the company, accounts for a disproportionately high share of its profitability.<sup>3</sup> Chinese respondent Zhucheng Huaxiang Chemical Co. (“Zhucheng”) is the only other recognized producer of THFA world-wide identified during the course of this investigation.

Respondent Kyzen of Nashville, TN, is the largest importer of THFA in the United States, and, by its own estimate, accounts for 20 to 30 percent of the world market for THFA.<sup>4</sup> Kyzen was founded in 1990 by a former executive of Quaker Oats Chemicals, Penn’s predecessor firm. Kyzen uses THFA to manufacture chemical solutions used in cleaning electronic assemblies, semiconductors, and precision metal parts. THFA represents Kyzen’s largest single raw material cost. Aside from Kyzen, only two other U.S. firms, AllChem of Gainesville, FL, and ARS of Des Plaines, IL, imported THFA into the United States during the period examined. Combined, the two companies accounted for \*\*\* percent of reported U.S. imports of THFA between 2001 and 2003.

The customer base for the U.S. THFA industry is fairly concentrated, with five firms accounting for \*\*\* percent of Penn’s shipments in 2003. \*\*\* was Penn’s largest purchaser of THFA in the United States in 2003, followed by \*\*\*.

## NATURE AND EXTENT OF SALES AT LTFV

On June 18, 2004, the Commission received notification of Commerce’s determination that THFA from China is being, or is likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended.<sup>5</sup> Commerce’s weighted-average dumping margin for Qingdao

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<sup>2</sup> *Furfuryl Alcohol From China and Thailand, Invs. Nos. 731-TA-703 and 705 (Review)*, USITC Publication 3412, April 2001.

<sup>3</sup> Hearing transcript, p. 23. See also fn. 1, Part VI, *infra*.

<sup>4</sup> Conference transcript, p. 52.

<sup>5</sup> Commerce’s *Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People’s Republic of China*, 69 FR 34130 (June 18, 2004).

(F.T.Z.) Wenkem Trading Company Limited and PRC-wide producers of THFA is 136.86 percent *ad valorem*.<sup>6</sup>

### THE SUBJECT PRODUCT

Commerce has defined the scope of this investigation as follows:

*For the purpose of this investigation, the product covered is tetrahydrofurfuryl alcohol (C<sub>5</sub>H<sub>10</sub>O<sub>2</sub>) (“THFA”). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents.*<sup>7</sup>

THFA is provided for in subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (“HTS”), with a normal trade relations tariff rate of 3.7 percent *ad valorem*, applicable to imports from China.

### THE DOMESTIC LIKE PRODUCT

During the preliminary phase of this investigation, the petitioner argued that there is a single domestic like product<sup>8</sup> co-extensive with the scope of the investigation. None of the parties to this investigation has suggested any like product other than THFA. Information on the Commission’s domestic like product factors is set forth below.

#### Physical Characteristics and Uses

THFA is an environmentally acceptable and biodegradable specialty solvent. It is a member of the heterocyclic compounds known as furans, which are characterized by a nucleus consisting of an unsaturated ring of four carbon atoms and one oxygen atom. THFA has a high flash point, a high boiling point, a low freezing point, chemical and thermal stability, and a high solvency for organic and inorganic materials. There are no ASTM standards for THFA.<sup>9</sup>

The major use of THFA is as a solvent. In agricultural applications, THFA is used as a solvent for biocides, pesticides, and herbicides. It is also widely used as a solvent in a broad variety of cleaning products, from graffiti and floor polish removers to cleaners for printed circuit boards. THFA is also frequently used in the production of UV curables – adhesives, paints, coatings, and inks that bond chemically when exposed to ultraviolet light. Other applications in which THFA is used, though less commonly, include as an ingredient in paint and grime strippers for the automotive industry; as a coalescing agent for paints; as a solvent for epoxy resins; as a solvent for lacquers, shellac, and enamels;

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<sup>6</sup> Commerce’s preliminary LTFV margin was 31.33 percent. 68 FR 48938 (August 15, 2003). In its final determination of LTFV sales, Commerce made certain revisions to the data used in its final margin calculation. See Commerce’s *Issues and Decision Memorandum* (A-570-887).

<sup>7</sup> Commerce’s *Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People’s Republic of China*, 69 FR 34130 (June 18, 2004).

<sup>8</sup> 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.

<sup>9</sup> Petition, p. 4; and conference transcript, p. 14.

as a solvent in refining lubricating oils; as antifreeze in extremely cold temperatures; and as a chemical reactant in lysine, plasticizers, and pharmaceuticals.<sup>10</sup>

### **Manufacturing Facilities and Production Employees**

THFA is produced by the hydrogenation of FA. The raw materials required for the production of THFA are precursor FA, hydrogen, and a catalyst to facilitate the chemical reaction yielding THFA. There are two possible technologies for the production of THFA: vapor phase and liquid phase. The basic process by which THFA is produced is the same for both technologies: raw FA, in liquid or vapor form, is mixed with hydrogen and fed into a reactor; a catalyst is then added to the mixture, converting the FA to THFA; the resulting THFA is then dehydrated and distilled.<sup>11</sup> Based on evidence available in the record, Chinese producer Zhucheng employs liquid phase technology for the production of THFA. U.S. producer Penn has traditionally employed vapor phase technology for its THFA production. \*\*\*.<sup>12</sup> \*\*\*.<sup>13</sup> The production cost and quality of THFA produced by the two different technologies are comparable.<sup>14</sup>

### **Interchangeability**

Domestically produced and imported THFA are chemically identical, and, according to petitioner, interchangeable in all or almost all applications.<sup>15</sup> Respondents agree that the two products are broadly interchangeable, except for a very limited number of customers.<sup>16</sup> There is, according to industry representatives, no differentiation of THFA based on quality or grade – one grade fits all applications.<sup>17</sup> According to Kyzen, the primary difference between THFA sourced from China and that produced domestically relates to delivery timing and payment conditions. The lead time on THFA orders from China is typically between \*\*\*. U.S.-produced THFA, by contrast, is typically available \*\*\*.<sup>18</sup> U.S. importers ARS and AllChem both stated that U.S.-produced and imported THFA can be used interchangeably.

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<sup>10</sup> Petition, pp. 4 and 5; and staff fieldwork report, February 20, 2004, p. 4.

<sup>11</sup> Flow charts illustrating the production process for THFA, provided by petitioner, are presented in appendix D.

<sup>12</sup> Staff fieldwork report, February 20, 2004, p. 4; and email from D. Fannin, Penn VP of Operations, March 1, 2004.

<sup>13</sup> \*\*\*. *Id.*

<sup>14</sup> According to Kyzen, \*\*\*. Both products meet commercial specifications, however. Kyzen's Importers' Questionnaire response (final), p. 14A.

<sup>15</sup> Petitioner's postconference brief, p. 1.

<sup>16</sup> According to Kyzen, limits to the interchangeability of domestic and subject THFA are more the result of logistical difficulty than product variance. In certain applications for THFA, such as pesticides, re-certification of chemical content can be costly and time-consuming. In others, such as cleaning products for the space shuttle, customers are averse to any change in chemical content, even when only a change in the source of ingredients. Staff fieldwork report, February 19, 2004, p. 2.

<sup>17</sup> Hearing transcript, p. 32. \*\*\*. Email from M. Neff, Penn VP of Finance and CFO, June 29, 2004. \*\*\*.

<sup>18</sup> Kyzen's Importers' Questionnaire response (final), p. 14A.

## Channels of Distribution

Channels of distribution data for imported and U.S.-produced THFA are presented in table I-1. Domestically produced THFA is sold both through distributors and directly to end users. In 2003, \*\*\* percent of Penn's THFA was sold through distributors, with the remaining amount sold directly to end users. \*\*\*.<sup>19</sup> The \*\*\* of THFA imports from China are imported directly by end user Kyzen. In 2001, and in the interim 2003 and 2004 periods, Kyzen's internal consumption of imported THFA accounted for \*\*\* percent of U.S. shipments of THFA imported from China. In 2002 and 2003, Kyzen's internal consumption of its imports accounted respectively for \*\*\* and \*\*\* percent of total U.S. shipments of THFA imported from China. Kyzen sold imported THFA on the open market in only \*\*\* of the 13 quarters for which data were collected in this investigation.<sup>20</sup> THFA imported from China is otherwise sold in the United States by ARS and AllChem. There were no commercial sales of imported THFA in the United States in 2001, or in the first quarter of 2004.

**Table I-1**

**THFA: Channels of distribution, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

## Price

THFA is sold in 55-gallon drums and bulk containers of 20 metric tons (approximately 44,100 pounds). The average unit value of Penn's U.S. shipments of THFA varied from \$\*\*\* at the beginning of the period examined to \$\*\*\* at its end. The average unit value of U.S. shipments of THFA imported from China fluctuated between \$\*\*\* and \$\*\*\* during the period examined. Pricing practices and related data are discussed in Part V of this report.

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<sup>19</sup> Staff fieldwork report, February 20, 2004, p. 5.

<sup>20</sup> Kyzen's commercial sales of THFA represented only \*\*\* percent of its imports during the period examined.

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

### MARKET OVERVIEW

As previously mentioned, the domestic THFA industry is composed of one U.S. producer, the petitioner Penn, that maintains corporate offices in Plymouth Meeting, PA and manufacturing facilities in Memphis, TN.<sup>1</sup> Penn's three main business segments include polytetramethylene ether glycol (PTMEG), tetrahydrofuran (THF), and Fine Chemicals and Solvents. THFA, part of Penn's Fine Chemicals and Solvents segment, is a specialized product which is selected for use in a variety of chemical formulations due to its specific performance attributes and physical properties; such specialized applications range from pharmaceutical intermediate to inert solvent carrier in agricultural formulations. Due to its specialized nature, THFA is a small market, accounting for only \*\*\* percent of overall sales in the specialty chemicals sector during 2002.<sup>2</sup>

There are three importers of THFA in the United States: Kyzen, ARS, and AllChem. Kyzen directly imports Chinese THFA for internal consumption, while ARS and AllChem act as U.S. distributors for Chinese THFA.

### Market Segments

The customer base of the THFA industry in the United States is concentrated. For example, in 2003, Penn had a total of \*\*\* individual purchasers, with the top five purchasers accounting for \*\*\* percent of THFA purchases in terms of volume (adding the next two largest customers increases the total to \*\*\* percent). In 2003, Penn's top five customers, in terms of volume, were \*\*\*.

The primary end markets for THFA are agricultural chemicals, coatings, and cleaning solutions. During the period examined, agricultural chemicals accounted for the largest single use of THFA. \*\*\* purchased THFA for use in herbicides, pesticides, and biocides. In the coatings sector, \*\*\* purchased THFA for use in the production of reactive monomers used in ultraviolet coating systems. \*\*\* purchased approximately \*\*\* percent of domestically produced THFA, making it Penn's third largest customer during the period examined. Other low-volume applications include stripping and paint formulations, pharmaceuticals, epoxy resin diluents, adhesive formulations, chemical intermediates, and emulsion additives.<sup>3</sup>

Purchasers who identified themselves as distributors described the end market customers to whom they sell THFA. For example, \*\*\* sold THFA to manufacturers of adhesives, coatings, and cleaning compounders. Similarly, \*\*\* reported selling THFA to paint/coatings manufacturers and rubber/plastics manufacturers. \*\*\* reported selling to sealant manufacturers, \*\*\* reported selling to formulators, \*\*\* reported selling to other chemical companies, and \*\*\* reported selling THFA to manufacturers of agricultural chemicals. Regarding importers, \*\*\* reported that the Chinese THFA that it sells is used in cleaning solvents, while \*\*\* reported that its customers did not provide end-use information. \*\*\*.

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<sup>1</sup> Penn Specialty Chemicals' website, found at <http://www.pschem.com>, retrieved on April 30, 2004.

<sup>2</sup> The numerator in this ratio (Penn's THFA sales in 2002) was taken from table C-1; the denominator represents the American Chemistry Council's estimate of total sales in the specialty chemicals sector in 2002 (Standard & Poors Industry Surveys, *Chemicals: Specialty*, p. 6).

<sup>3</sup> Staff fieldwork report, February 20, 2004, p. 4.

## Channels of Distribution

THFA is sold in 55-gallon drums and bulk containers of 20 metric tons, or approximately 44,100 pounds.<sup>4</sup> In the U.S. market, domestic and imported THFA are sold to both distributors and end users.<sup>5</sup> During 2003, for example, data reported by Penn indicate that approximately \*\*\* percent of its THFA was sold through distributors, with the remaining \*\*\* percent sold to end users.<sup>6</sup> Penn sells THFA on a nationwide basis, reducing its exposure to an economic downturn in any one region.<sup>7</sup>

Importers, other than Kyzen, reported that \*\*\* percent of their Chinese-produced THFA was sold to distributors and \*\*\* percent was sold to end users in 2003.<sup>8</sup> The three responding importers, AllChem, ARS, and Kyzen, all reported selling their THFA on the spot market.<sup>9</sup> AllChem sold its imported THFA in \*\*\* while ARS sold imported THFA in the \*\*. Kyzen reported that the vast majority of its imported THFA is used in the manufacture of cleaning agents which are sold throughout the United States.

## SUPPLY AND DEMAND CONSIDERATIONS

### U.S. Supply

#### Domestic Production

Based upon available data, Penn is likely to respond to price changes in the domestic market with moderate to large changes in the quantity of shipments of U.S.-produced THFA. The main factors contributing to this supply responsiveness are substantial excess capacity, large and growing inventory levels, significant exports to foreign markets, and the ability to shift production from FA to THFA.

#### Industry Capacity

Penn's production capacity remained constant at \*\*\* pounds during the period January 2001-December 2003, and at \*\*\* pounds during the interim periods.<sup>10</sup> Production quantity, on the other hand, increased by \*\*\* percent from \*\*\* pounds in 2001 to \*\*\* pounds by the end of 2003. During the interim periods, however, production declined from \*\*\* pounds in interim 2003 to \*\*\* pounds in interim 2004. As a result, overall capacity utilization increased from \*\*\* percent in 2001 to \*\*\* percent in 2003, but declined to \*\*\* percent in interim 2004 when compared to \*\*\* percent in interim 2003. Thus, excess capacity exists from which to expand production of THFA in response to changes in price in the U.S. market.

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<sup>4</sup> In 2003, Penn sold \*\*\* percent of its THFA in bulk containers and \*\*\* percent in 55-gallon drums. Penn also sells \*\*\*.

<sup>5</sup> Penn does not sell THFA over the Internet, although THFA product information is available on the company website (<http://www.pschem.com>).

<sup>6</sup> In 2002, Penn sold \*\*\* percent of its THFA by volume to distributors and \*\*\* percent to end users. In 2001, Penn sold \*\*\* percent to distributors and \*\*\* percent to end users.

<sup>7</sup> In 2003, Penn shipped THFA to \*\*\* U.S. states, although \*\*\* percent of Penn's THFA sales were shipped to just \*\*. The top \*\*\* states (adding \*\*\* to the list) account for \*\*\* percent of Penn's THFA shipments.

<sup>8</sup> According to questionnaire responses, \*\*\* sell THFA over the Internet.

<sup>9</sup> Kyzen directly imports \*\*\* of its THFA purchases for internal consumption; during the period examined, Kyzen resold \*\*\* percent of its imports.

<sup>10</sup> According to Penn's questionnaire, \*\*\* is the main factor limiting the capacity to produce THFA.

### ***Alternative Markets***

Exports represented \*\*\* of Penn's total shipments during 2001-03. Penn's exports as a percentage of total shipments decreased from \*\*\* percent in 2001 to \*\*\* percent in 2003. This \*\*\* share of exports to total shipments indicates that Penn has the ability to divert shipments from international markets in response to price changes in the U.S. market. During the period investigated, Penn exported THFA to \*\*\*.<sup>11</sup>

### ***Inventory Levels***

While Penn's inventory levels as a percentage of total shipments varied during the period examined, the data indicate an ability to respond to price changes and meet demand with inventory on hand. Penn's ratio of inventories to total shipments was \*\*\* percent in 2001, \*\*\* percent in 2002, and \*\*\* percent in 2003. Data for January-March 2004 indicate that inventories as a percentage of total shipments increased to \*\*\* percent of total shipments from \*\*\* percent during January-March 2003.

### ***Production Alternatives***

Penn reported that it \*\*\* produce other chemicals on the same equipment and machinery used in the production of THFA.<sup>12</sup> According to Penn, however, FA capacity can be easily and quickly converted to THFA capacity, with minimal capital investment.<sup>13</sup> \*\*\*<sup>14</sup>

### ***Subject Imports***

The sole reporting Chinese producer of THFA is likely to respond to changes in demand with moderate to large changes in the quantity of THFA shipped to the U.S. market. The main factors contributing to Chinese producers' potential responsiveness include excess capacity, alternative markets, and the potential to convert FA capacity to THFA capacity.

### ***Industry Capacity***

The sole reporting Chinese producer's average capacity to produce THFA remained constant at \*\*\* pounds during the period examined; capacity also remained constant at \*\*\* pounds during the interim periods. Chinese production varied during the period investigated, increasing from \*\*\* pounds in 2001 to \*\*\* pounds in 2002, before falling to \*\*\* pounds in 2003. Overall, production was \*\*\* percent lower at the end of the 2001-03 period. Production also declined to \*\*\* pounds in interim 2004 as compared to \*\*\* pounds in interim 2003. As a result, Chinese THFA capacity utilization decreased from \*\*\* percent in 2001 to \*\*\* percent in 2003, and from \*\*\* percent during interim 2003 to \*\*\* percent during interim 2004. Thus, excess capacity exists from which to expand production in response to price changes in the U.S. market.

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<sup>11</sup> E-mail dated May 4, 2004 from petitioner's counsel, p. 1.

<sup>12</sup> Penn reported that it produces other products using the same production and related workers employed to produce THFA; the basis for allocation of employment data is \*\*\*.

<sup>13</sup> Conference transcript, p. 47.

<sup>14</sup> E-mail dated May 4, 2004 from petitioner's counsel, p. 2. According to Penn, \*\*\*.

### ***Alternative Markets***

Chinese home market shipments, relative to total shipments, decreased from \*\*\* percent in 2001 to \*\*\* percent in 2003. During the interim period, home market shipments, as a percentage of total shipments, increased to \*\*\* percent in interim 2004 when compared to \*\*\* percent during interim 2003. Chinese exports of THFA to countries other than the United States, relative to total shipments, increased from \*\*\* percent in 2001 to \*\*\* percent in 2003, but decreased from \*\*\* percent in interim 2003 to \*\*\* percent in the comparable period in 2004. This large percentage of total shipments that are either shipped domestically or exported to markets other than the United States indicates an ability on the part of Zhucheng to divert THFA to the U.S. market in response to changes in price or demand.

### ***Inventory Levels***

The ratio of Zhucheng's inventories to total shipments increased from \*\*\* percent in 2001 to \*\*\* percent in 2003, and also increased to \*\*\* percent during interim 2004 when compared to \*\*\* percent in interim 2003. These \*\*\* and increasing inventory levels indicate an ability on the part of reporting Chinese producers to respond to price and demand changes in the U.S. market with inventory on hand.

### ***Production Alternatives***

Zhucheng reported that it \*\*\* products other than THFA using the same equipment, machinery, and labor used in the production of THFA. Penn claims that Chinese companies could convert FA capacity to THFA capacity within \*\*\*, at an estimated cost of approximately \$\*\*\*.<sup>15</sup>

## **U.S. Demand**

### **Demand Characteristics**

Demand for THFA is determined by the demand for final products in which THFA is used. In this respect, the economic downturn in 2001, and subsequent slow growth, led to a weakening of demand for final products and, as a result, THFA. The primary end markets for THFA are agricultural chemicals, coatings, and cleaning solutions. During the period investigated, these markets experienced sluggish demand. Some of these end markets also experienced weak or flat demand as the result of long term, industry-specific trends.<sup>16</sup>

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<sup>15</sup> E-mail dated May 4, 2004 from petitioner's counsel, p. 2.

<sup>16</sup> For example, the electronics industry experienced a severe downturn starting in 2001 caused by slower economic activity and excess inventory in technology markets (S&P Industry Surveys, *Chemicals: Specialty*, p. 4). The agricultural chemicals sector also suffered from demand weakness resulting from not only the 2001 recession, but also from longer term industry trends. For example, the U.S. Department of Agriculture (USDA) estimates that more than 95 percent of corn, soybean, and cotton acreage in the major producing states is treated with herbicides. As a result, little long term growth is expected for herbicides in the United States. Similarly, the market for pesticides is generally mature as pesticides are applied to virtually all major U.S. crops. In addition, the use of new seeds developed through biotechnology as well as lower crop commodity prices are shifting or reducing farmers' demand for certain pesticides, reducing sales and profits for many major companies. According to Cropnosis, a research firm covering the crop protection industry, global pesticide sales have declined by an annual rate of 3.0 percent from their peak of \$32.4 billion in 1996 (S&P Industry Survey, *Chemicals: Specialty*, p. 11). Last, the paint and coatings market in the United States is generally considered mature, with long-term growth projections for the agricultural coatings segment estimated to be 1.0-2.0 percent range. The architectural coatings segment faces

(continued...)

Based upon Commission questionnaire responses, apparent U.S. consumption of THFA decreased by \*\*\* percent from approximately \*\*\* pounds in 2001 to approximately \*\*\* pounds in 2002, before increasing by \*\*\* percent by the end of 2003. Overall, apparent U.S. consumption was \*\*\* percent lower by the end of 2003 than at the beginning of the period examined. During the interim periods, apparent consumption decreased by \*\*\* percent from \*\*\* pounds during interim 2003 to \*\*\* pounds in interim 2004.

Both Penn and Kyzen reported that economic weakness during the period of investigation dampened demand for THFA during the period examined. At the hearing, Penn also attributed declining demand during the period examined to the seasonal variations in the markets of its end-use customers.<sup>17</sup> Regarding importers, \*\*\* reported that demand has not changed during the period examined. At the hearing, Kyzen described demand in the THFA market as “steady state demand” and “sleepy.”<sup>18</sup> On the other hand, \*\*\* reported that Penn’s lack of interest in the THFA market, combined with its 2001 bankruptcy, made purchasers concerned about the long-term supply of THFA, causing them to substitute other alcohols in their chemical formulations, impacting demand negatively.<sup>19</sup> Purchasers that classified themselves as “end-user” provided mixed responses. For example, \*\*\* reported that demand had decreased during the period examined.<sup>20</sup> \*\*\* reported that demand was variable during the period examined, causing fluctuations in the sales of its end products.

## Cost Share

As discussed above, THFA represents a significant portion of total production costs in THFA-based end products. \*\*\*, for example, reported that THFA represents approximately \*\*\* percent, \*\*\* percent, and \*\*\* percent of total costs for its top three THFA-based products.<sup>21</sup> Similarly, the cost of THFA as a percentage of total costs represents \*\*\* percent, \*\*\* percent, and \*\*\* percent of \*\*\* costs in its top three THFA-based products, and \*\*\* percent of \*\*\* two main THFA-based products. Smaller purchasers also report that THFA represents a high percentage of costs in their formulations. \*\*\*, for example, reports that THFA represents \*\*\* percent, \*\*\* percent, and \*\*\* percent of costs for its top three THFA products, while \*\*\* reports that THFA represents \*\*\* percent to \*\*\* percent of costs for its THFA products. The remaining purchasers, as well as \*\*\*, did not report cost share information.

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<sup>16</sup> (...continued)

competition from alternative materials such as aluminum and vinyl siding, interior wall coverings, wood paneling, and glass (S&P Industry Surveys, *Chemicals: Specialty*, p. 16).

<sup>17</sup> Hearing transcript, p. 53.

<sup>18</sup> Hearing transcript, p. 164.

<sup>19</sup> Purchasers, importers, and Penn were asked whether Penn’s bankruptcy affected the U.S. market for THFA. Of the 14 responding purchasers, four reported that Penn’s bankruptcy caused concern in the marketplace, four reported no impact on the market, four reported a lack of information, and two did not answer the question. Of the four purchasers reporting that Penn’s bankruptcy affected demand, other than Kyzen, \*\*\* reported: “minimal, if any,” \*\*\* reported: “Buyers of THFA were concerned with Penn’s financial stability and ability to perform,” and \*\*\* reported: “Caused concern as to the security of supply of THFA.” For importers, \*\*\*. Penn reported in its questionnaire that \*\*\*.

<sup>20</sup> \*\*\* reported that the decrease in overall demand for THFA had reduced demand for their end products, while \*\*\* reported that the overall decrease in demand had not reduced demand for their end products.

<sup>21</sup> According to Kyzen, THFA represented \*\*\* percent of company-wide raw material costs in 2003, \*\*\* percent in 2002, and \*\*\* percent in 2001. Respondents’ posthearing brief, p. 2; and email from Kyle Doyle, Kyzen President, June 23, 2004.

## Substitute Products

Penn reported that: “There is no substitute for THFA in most applications, because of THFA’s distinct performance characteristics at the ‘high-end’ of the range of industrial solvents.”<sup>22</sup> Regarding \*\*\*, \*\*\*, \*\*\*, reported that there are no substitutes for THFA, while \*\*\* did not answer the question. Kyzen stated at the conference that THFA is a unique product, but also reported that, \*\*\*.<sup>23</sup> Kyzen also claims that purchasers of THFA, fearing supply interruptions in the wake of Penn’s 2001 bankruptcy, are reformulating away from THFA.<sup>24</sup> Eight of 14 responding purchasers reported either “none” or “not applicable” in response to the question on substitutes, while four did not provide information; \*\*\* listed cyclic TMP, propoxylated THFA, and isobornyl acrylate as possible substitutes for THFA.

Switching costs,<sup>25</sup> however, can mitigate the substitution of THFA in the formulations of solvents and other products. For example, Kyzen explained why it continues to use THFA in its formulations, even though substitutes are available and, in its opinion, manufacturers have shown little interest in the THFA product for more than 15 years:

“\*\*\*”<sup>26</sup>

Similarly, at the conference, Kyzen described how switching costs likely played into the substitute-or-not decision at one of its largest customers:

“Thiokol, who spent years, literally years, approving this product at a cost that, I’m sure, exceeded six figures, I’m quite sure of that, it would be a tremendous discommode for them and a tremendous expense to replace it....”<sup>27</sup>

## SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported THFA depends upon such factors as relative prices, reliability of supply, quality (e.g., quantity of impurities, water content, visual clarity, color, odor, etc.), conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.), and the level of customer service. Based on information gathered during this investigation, there is likely a relatively high degree of substitutability between domestic and imported THFA.

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<sup>22</sup> Petitioner’s postconference brief, p. 2.

<sup>23</sup> Conference transcript p. 79, and Kyzen’s Purchasers’ Questionnaire (Final), p. 6.

<sup>24</sup> Conference transcript, pp. 57-58. Commission staff contacted Kyzen, requesting specific examples of companies that had reformulated away from THFA. Kyzen was unable to provide such information, stating that \*\*\* (e-mail from Kyle Doyle, President of Kyzen, dated May 7, 2004, p. 4).

<sup>25</sup> Switching costs are one-time costs of switching brands or switching from one competitor’s products to another. In general, switching costs may include such things as employee retraining costs, cost of new ancillary equipment, cost and time in testing or qualifying a new source, need for technical help as a result of reliance on seller engineering help, product redesign, or even psychological costs of severing a relationship (Michael Porter, *Competitive Strategy: Techniques For Analyzing Industries and Competitors*, 2<sup>nd</sup> ed. (New York: Free Press, 1998)).

<sup>26</sup> Email from Kyle Doyle, President of Kyzen, dated May 7, 2004, p. 4.

<sup>27</sup> Conference transcript. p. 99.

## Factors Affecting Purchasing Decisions

Commission staff sent questionnaires to 21 large purchasers, requesting information related to purchase practices and perceptions of the THFA marketplace. Fourteen purchasers returned completed questionnaires, four purchasers reported that they had not purchased THFA during the period investigated, and three purchasers did not reply.

Prior to purchasing THFA, \*\*\* reported contacting only Penn; the remaining purchasers contact two or three suppliers. However, only three of these purchasers utilized more than one supplier on a regular basis.<sup>28</sup> Moreover, seven of 11 purchasers that sourced THFA from a single supplier used Penn exclusively. Indeed, only four of 14 purchasers were aware that new suppliers, either foreign or domestic, had entered the U.S. market during the period examined. \*\*\* reported that Penn was the price leader in the THFA market. \*\*\* also reported that \*\*\*<sup>29</sup> \*\*\* were price leaders. According to these purchasers, price leadership was demonstrated by a willingness to raise and/or lower prices.

Purchasers were also asked to list the factors that were most important in selecting a supplier; the tabulated results are presented in table II-1.

Six purchasers reported that they required THFA suppliers to be certified or pre-qualified with respect to quality, chemistry, strength, or performance characteristics, and eight did not require pre-qualification.<sup>30</sup> The certification or qualification process typically involved physical testing and/or verification that the product meets required internal, customer, and/or industry specifications/standards. In addition to physical quality, purchasers also judged suppliers based upon various combinations related to reliability, availability, lead-time performance, payment terms, financial stability, reputation, and price. Depending upon the purchaser, certifications or pre-qualification could take between 1 business day and 2 years. Only one purchaser, \*\*\*, reported that a supplier had failed to obtain certification.<sup>31</sup>

Given the critical importance of THFA in many end-use applications, quality and purity are also very important. As a result, nearly all purchasers reported that THFA must meet either internal specifications, customer specifications, or industry standards. Common specifications included purity, assay, color, odor, water content, and furfuryl alcohol content. Purchasers were also asked whether certain grades of THFA were available from only a single source. Six purchasers responded “no” and seven responded “unknown/don’t know;” only \*\*\* reported that Penn was the only source for a grade of THFA referred to as sodium borohydride.<sup>32</sup>

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<sup>28</sup> \*\*\* reported that multiple sources of supply were “Very Important.” \*\*\* reported that multiple sources of supply were “Somewhat Important.” \*\*\* reported that multiple sources of supply were “Not Important”; \*\*\* did not provide information related to the importance of multiple sources of supply. Regarding firms that rated multiple sources of supply as “Very Important,” Kyzen stated at the conference, hearing, and in various briefs that it maintains a corporate policy of maintaining multiple sources of supply. \*\*\*. Regarding firms that rated multiple sources of supply as “Somewhat Important,” \*\*\*.

<sup>29</sup> Several purchasers listed Shandong Zhucheng Chemical Company as a producer of THFA. According to respondents’ counsel, “(Shangdong or Shandong) Zhucheng Huaxiang Chemical Company is a subsidiary of (Shangdong) Zhucheng Taisheng Chemical Co. Ltd. and (Shangdong) Zhucheng Taisheng Chemical Co. Ltd. was formerly known as (Shangdong) Zhucheng Chemical Co. Ltd.” (e-mail from respondent’s counsel, dated May 20, 2004).

<sup>30</sup> Kyzen argued in their posthearing brief that quality, not price, is the most important factor when purchasers consider buying THFA from a new source. Relatedly, Kyzen also argues that the difficulty of producing THFA to the quality standard required by purchasers acts as a barrier to entry for Chinese new entrant suppliers of THFA (Respondents’ posthearing brief, pp. 5-7).

<sup>31</sup> \*\*\*.

<sup>32</sup> During the period of investigation, Penn \*\*\*.

**Table II-1**  
**THFA: Most important factors in selecting a THFA supplier, as reported by U.S. purchasers<sup>1</sup>**

Factor	First	Second	Third	Total firms reporting factor in top 3
Price	6	2	4	12
Quality	1	5	1	7
Availability	3	3	1	7
Service	0	0	2	2
Traditional supplier	1	0	1	2
Reliability	1	0	1	2
Delivery lead time	0	0	1	1
Long-term relationship	0	1	0	1
Meets specs	0	1	0	1
Credit	0	0	1	1

<sup>1</sup> Two purchasers did not provide answers related to purchaser factors, citing Penn as their sole supplier.  
Source: Compiled from data submitted in response to Commission questionnaires.

Purchasers were asked to identify THFA countries of origin for which they had specific marketing and pricing knowledge. Five firms identified both the United States and China, six purchasers identified only the United States, one purchaser identified only China, and two purchasers did not provide information. Of the 14 responding purchasers, \*\*\* purchased only domestic THFA. \*\*\*<sup>33</sup> purchased THFA exclusively from Chinese sources.<sup>34</sup> \*\*\* purchased both U.S. and Chinese THFA. Purchasers were also asked whether the relative shares of their firm’s total purchases of THFA from different sources had changed in the past three years. Eleven of 14 purchasers did not provide information. Of the three firms that did provide information, \*\*\* reported that its relative share of total purchases remained steady, \*\*\* reported that it had decreased its purchases of U.S.-produced THFA because its own requirements had decreased, and \*\*\* reported that it had shifted its purchases between U.S. producers and Chinese producers based upon price. Purchasers were also asked whether they had purchased from only one country, and their reason for doing so. Their responses are detailed in table II-2.

**Table II-2: Purchasers’ responses to Commission question related to reasons for purchasing THFA from only one country**

\* \* \* \* \*

<sup>33</sup> \*\*\* both reported purchasing THFA from domestic sources only. However, they purchased their THFA from \*\*\*, which purchased THFA exclusively from China in 2002.

<sup>34</sup> The companies that purchased Chinese THFA were asked to describe the price point at which they would switch to U.S. sources. \*\*\* didn’t answer the question. \*\*\* reported that the price of imported THFA would have to be \*\*\* percent higher before it would switch U.S. sources.

Commission staff also asked purchasers several standardized, short answer questions related to market characteristics and purchase practices. These questions, and summarized responses, are presented in tables II-3 and II-4.

**Table II-3**

**THFA: Purchasers' responses to Commission questions related to purchase practices and market perceptions**

Question	Always	Usually	Sometimes	Never	Don't know or no response
Are you aware whether the THFA you are purchasing is U.S.-produced or imported?	10	1	1	2	0
Do you know the manufacturer of THFA that you purchase?	9	2	2	1	0
To your knowledge, are buyers aware of and/or interested in the country of origin of the goods you supply?	4	1	5	4	0
How often does domestic THFA meet minimum quality specifications for your uses or your customers' uses?	10	1	0	0	3
How often does subject THFA meet minimum quality specifications for your uses or your customers' uses?	4	1	0	1	8
How often does your firm purchase THFA that is offered at the lowest price?	3	5	3	3	0

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

**Table II-4**

**THFA: Purchasers' responses to Commission questions related to purchase practices and market perceptions**

\* \* \* \* \*

### Comparison of Domestic Product with Subject Imports<sup>35</sup>

Producers and importers were asked whether or not domestic and imported THFA were used interchangeably or differed in product characteristics or sales conditions. \*\*\* reported that U.S.-produced THFA was interchangeable with THFA imported from China.<sup>36</sup> Purchasers were also asked whether domestic and imported THFA were interchangeable. Of the 14 responding purchasers, six reported that domestic and Chinese THFA were interchangeable, while eight purchasers did not provide

<sup>35</sup> Penn reported that there are no known nonsubject imports (petitioner's postconference brief, p. 4); respondents have not disputed this statement.

<sup>36</sup> Penn reports that "domestically produced THFA is physically identical to the subject imports in all material respects. The two are fungible in almost all applications" (petitioner's postconference brief, p. 1).

information related to interchangeability. \*\*\* also reported that there were no differences in product characteristics or sales conditions during the period investigated.

Purchasers were also asked to rate the importance of factors affecting their purchase decisions, as well as compare U.S.-produced THFA with THFA imported from China. The results are compiled and presented in table II-5.

## **ELASTICITY ESTIMATES**

### **U.S. Supply Elasticity**

The domestic supply elasticity for THFA measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of THFA. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced THFA. The analysis of these factors earlier in this report indicates that the U.S. producer is likely to be able to appreciably increase or decrease shipments of THFA to the U.S. market in response to price changes in the U.S. market. Thus, the domestic supply elasticity is estimated to be relatively high, or in the range of 6 to 8.<sup>37</sup>

### **U.S. Demand Elasticity**

The U.S. demand elasticity for THFA measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of THFA. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of THFA in the production of downstream products. Based on available information, the demand elasticity for THFA is believed to be in the range of -0.25 to -0.75.<sup>38</sup> Purchasers would not likely be very sensitive to changes in the price of THFA and would continue to demand fairly constant quantities of this product over a considerable range of prices.

### **Substitution Elasticity**

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.<sup>39</sup> As discussed above, product differentiation for THFA depends upon such quality factors as the quantity of impurities, water content, visual clarity, color, and odor. Conditions of sale such as the availability of THFA, sales terms, and customer service are also important factors. Questionnaire data provided by Penn Specialty, U.S. importers, and U.S. purchasers indicate that

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<sup>37</sup> Petitioner recommends an elasticity of domestic supply in the range of 5-10, due to the underutilization of domestic capacity, the presence of unsold domestic inventory, and a significant volume of U.S. exports that could be diverted to the U.S. market. Petitioner also estimates that the elasticity of subject import supply is in the range of 10-20 (e-mail from petitioner's counsel, dated May 4, 2004, p. 3).

<sup>38</sup> Petitioner recommends an elasticity of demand in the range of -0.25 to -0.50, because THFA has no substitute as a furan-based solvent (e-mail from petitioner's counsel, dated May 4, 2004, p. 3).

<sup>39</sup> Substitution elasticity measures the responsiveness of relative U.S. consumption levels of domestic and imported THFA to changes in their relative prices. In essence, this reflects how easily purchasers switch from U.S.-produced THFA to subject THFA (or vice versa) when prices change.

**Table II-5**

**THFA: Importance of purchase factors and comparison of U.S. product with product from China, as reported by U.S. purchasers<sup>1</sup>**

Factor	Importance			U.S. vs China <sup>2</sup>		
	VI	SI	NI	S	C	I
	<i>Number of firms responding</i>					
Availability	11	1	0	2	2	0
Delivery terms	5	7	0	1	3	0
Delivery time	10	2	0	1	3	0
Discounts offered	4	6	1	0	3	1
Extension of credit	4	5	2	1	3	0
Price <sup>3</sup> /lower price	11	1	1	0	2	2
Minimum quantity requirements	2	6	2	1	3	0
Multiple sources of supply	3	4	3	0	0	0
Packaging	4	6	1	0	4	0
Product consistency	10	2	0	1	3	0
Quality meets industry standards	9	2	1	1	3	0
Quality exceeds industry standards	2	3	6	1	3	0
Product range	1	3	7	1	3	0
Reliability of supply	10	1	0	1	3	0
Technical support/service <sup>4</sup>	3	6	3	1	3	0
U.S. transportation costs/lower U.S. transportation costs	5	3	3	1	3	0

<sup>1</sup> Not all firms answered for all factors.

<sup>2</sup> This includes the responses for \*\*\* that compared products of U.S. producers with non-NAFTA producers.

<sup>3</sup> One firm reported that prices were both very important and not important but did not respond to the question on minimum quantity requirement.

<sup>4</sup> One firm reported that technical support was both very important and somewhat important but did not respond to the question on U.S. transportation costs.

Note.– VI=factor is very important; SI= factor is somewhat important; NI=factor is not important; S=U.S.'s product is superior; C=both countries' products are comparable; I=U.S.'s product is inferior.

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

domestic THFA and subject imports are, for most purposes, chemically identical, or fungible; questionnaire data also indicate similar levels of availability and customer service as well as competitive sales terms. Based upon this information, staff estimates that the elasticity of substitution between U.S.-produced THFA and THFA imported from China is likely to be in the range of 2 to 4.<sup>40</sup>

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<sup>40</sup> Petitioner recommends an elasticity of substitution in the range of 10-15, if not higher (e-mail from petitioner's counsel, dated May 4, 2004, p. 3).

## PART III: U.S. PRODUCER'S PRODUCTION, SHIPMENTS, AND EMPLOYMENT

### U.S. PRODUCER

Penn's Memphis, TN facility is the only plant currently producing THFA in the United States. The facility was originally commissioned by the U.S. government during the Second World War to produce furfural for the synthetic rubber industry. In 1946, the site was purchased by Quaker Oats Chemicals, and production expanded to include furan and THF. When Great Lakes Chemicals ("Great Lakes") purchased the facility in 1987, furfural production had been discontinued. Soon after its acquisition of the site, Great Lakes embarked on an expansion project that included the construction of a specialty chemicals plant. Great Lakes' capital expansion project was completed just prior to Penn's acquisition of the Memphis facility in July 1999.<sup>1</sup>

Penn Specialty Chemicals was formed in 1999 for the purpose of acquiring the furfural-based business assets of Great Lakes, which included the Memphis facility, as well as a furfural plant in Omaha, NE. Shortly after acquisition of the Memphis facility, Penn invested in the construction of a plant that would allow it to produce THF and PTMEG from a petroleum-based feedstock.<sup>2</sup> In December 1999, Penn shut down the furfural plant in Omaha.<sup>3</sup> As noted earlier, Penn's operation in Memphis is presently divided into three business segments: fine chemicals and solvents, THF, and PTMEG. THFA falls under the umbrella of fine chemicals and solvents.

Penn went into bankruptcy in July 2001 as a result of cash flow problems that compromised its ability to service its debt. The impact of subject THFA was not a significant factor in driving Penn to file for bankruptcy protection.<sup>4</sup> Penn emerged from bankruptcy in July 2002, and, as part of a court-approved plan, entered into a toll agreement with its largest raw material supplier and unsecured creditor to produce THF and PTMEG, products that account for more than half of Penn's sales revenue. The agreement provided Penn with needed fixed cost coverage, but increased its reliance on its value-added fine chemicals and solvents products, and THFA in particular.<sup>5</sup> As a result of the toll agreement, THFA, while accounting for only 14 percent of Penn's total revenue, accounts for 30 percent of Penn's non-toll, profit-generating revenue.<sup>6</sup>

According to Penn's bankruptcy reorganization plan, the company's Senior Secured Lenders are pushing Penn to either sell the fine chemicals and solvents business or enter it into a toll-processing

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<sup>1</sup> Email from W. Matthews, counsel to petitioner, July 11, 2003.

<sup>2</sup> Conference transcript, p. 54.

<sup>3</sup> Kyzen has argued that Penn's closure of the Omaha furfural plant, combined with its investment in new, petroleum-based chemical manufacturing, signaled to the market its intention to move away from the production of furfural-derived chemicals, including THFA. Conference transcript, *id.* Penn refutes this interpretation, and argues that its decision to shutter the Omaha facility was a matter of supply and cost; it was no longer economically feasible to transport to the Omaha facility the large quantities of biomass required to produce furfural. Petitioner's postconference brief, p. 16.

<sup>4</sup> Conference transcript, p. 18. Penn's bankruptcy agreement listed aggressive European competition, fluctuating exchange rates, and a threefold increase in natural gas prices as factors contributing to its bankruptcy filing. Respondents' postconference brief, exh. 2.

<sup>5</sup> According to B. Quinn, Penn's President and CEO, THFA is the "cornerstone of growth and profitability for {Penn's} non-toll products." Hearing transcript, p. 17.

<sup>6</sup> Hearing transcript, pp. 27-28. See also fn. 1, Part VI, *infra*.

agreement.<sup>7</sup> Kyzen approached Penn in July 2002 with a proposal that it toll-produce THFA from furfural provided by Kyzen and BrenChem, a broker for Zhucheng's furfural derivatives. No agreement was reached as a result of this meeting. The bankruptcy plan also stipulates that Penn's management is entitled to receive cash bonuses of up to \$500,000 each upon the sale of Penn's fine chemicals and solvents business.<sup>8</sup>

Only one other U.S. producer of THFA was identified in the preliminary phase of the investigation. Syntex, a start-up firm, produced small quantities of THFA in 2000 and went out of business shortly thereafter.<sup>9</sup>

### U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Penn's production, capacity, and capacity utilization are presented in table III-1. At \*\*\* pounds, Penn's THFA production capacity is more than adequate to meet U.S. apparent consumption and allow for Penn's export shipments. Capacity is limited only by equipment size, \*\*\*.<sup>10</sup> Penn's production increased throughout the period examined, from \*\*\* pounds in 2001 to \*\*\* pounds in 2002, and \*\*\* pounds in 2003. The growth represents an increase of \*\*\* percent between 2001 and 2002, and \*\*\* percent between 2002 and 2003. Penn's capacity utilization similarly increased though the period, from \*\*\* percent in 2001 to \*\*\* percent in 2002, and \*\*\* percent in 2003. Capacity utilization in the interim 2004 period was \*\*\* percentage points lower than in the corresponding 2003 period.

**Table III-1**  
**THFA: U.S. production capacity, production, and capacity utilization, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

The year 2000, included in the period examined in the preliminary phase of the investigation, was an atypical year as regards Penn's THFA operations. Anticipating a surge in demand, Penn produced \*\*\* pounds of THFA that year, representing a capacity utilization rate of \*\*\* percent. Penn also imported THFA in 2000, and purchased imported THFA on the open market, accounting for at least \*\*\* percent of total subject imports in that year.<sup>11</sup> At the end of 2000, Penn was left with over \*\*\* pounds of THFA inventory, which it drew down in 2001. \*\*\*.

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<sup>7</sup> Respondents' postconference brief, exh. 1, p. 28.

<sup>8</sup> *Id.*, p. 47.

<sup>9</sup> Email from W. Matthews, counsel to petitioner, June 20, 2003. Penn attributes the absence of other U.S. producers of THFA to two factors: (1) in order to produce THFA, a firm needs to be able procure large amounts of FA, and (2) although a modest capital investment is required to shift from FA to THFA production, it is far more difficult to master the technical art of manufacturing THFA to the high quality demanded by the market. Conference transcript, p. 47.

<sup>10</sup> Penn's Producers' Questionnaire response (final), question II-4; and email from D. Fannin, Penn VP of Operations, March 1, 2004.

<sup>11</sup> Penn reported that \*\*\*. Kyzen, however, which was the seller of the THFA purchased by Penn through an intermediary, claims that only half of the THFA Penn purchased was Chinese-produced. According to Kyzen, the remainder of the THFA it sold was Penn's own product, sold back to Penn at a profit. Conference transcript, p. 55.

## U.S. PRODUCER'S U.S. SHIPMENTS AND EXPORTS

Data on Penn's shipments of THFA during the period examined are presented in table III-2. Penn's U.S. shipments exhibited a mixed trend during the period examined. U.S. shipments declined by \*\*\* percent between 2001 and 2002, but then increased by \*\*\* percent between 2002 and 2003. Penn's U.S. shipments in the first quarter of 2004 were \*\*\* percent lower than its shipments in the same period in 2003. Penn consumed \*\*\* THFA internally, \*\*\* shipments of THFA to related parties, during the period examined.

**Table III-2**

**THFA: U.S. producer's shipments, by types, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

Penn's export shipments declined throughout the period examined, by \*\*\* percent between 2001 and 2002, and by \*\*\* percent between 2002 and 2003. Exports declined as a share of total shipments as well, from \*\*\* percent of total shipments in 2001 to \*\*\* percent in 2003. Average unit values for export shipments were \*\*\* than those for U.S. shipments throughout the period. Penn attributes the \*\*\* values to \*\*\*.<sup>12</sup> Penn's primary export markets are in \*\*\* and \*\*\*.<sup>13</sup>

The average unit value of Penn's U.S. shipments of THFA declined by \*\*\* cents, or roughly \*\*\* percent, from 2001 to 2002, and declined by a similar margin from 2002 to 2003. Penn attributes this decline to the impact of U.S. shipments of THFA imported from China.<sup>14</sup> The average unit value of Penn's U.S. shipments in the first quarter of 2004 was \*\*\* cents higher than in the corresponding 2003 period.

## U.S. PRODUCER'S INVENTORIES

Data on Penn's inventories of THFA during the period examined are presented in table III-3. Penn's inventories grew throughout the period, by \*\*\* percent between 2001 and 2002, and by \*\*\* percent between 2002 and 2003. Inventories grew relative to Penn's production, as well as relative to its total shipments of THFA.

**Table III-3**

**THFA: U.S. producer's end-of-period inventories, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

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<sup>12</sup> Staff telephone interview with Michael Neff, Penn VP of Finance & CFO, July 17, 2003.

<sup>13</sup> Penn's Producers' Questionnaire response (final), question II-9.

<sup>14</sup> Petitioner's postconference brief, pp. 5-7.

## U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Penn's employment-related data during the period examined are presented in table III-4. Penn uses the same production workers for both FA and THFA, and allocated the number of workers producing THFA by production volume. After a modest decline between 2001 and 2002, the number of production and related workers ("PRWs"), hours worked by PRWs, total wages paid to PRWs, and hourly wages remained stable between 2002 and 2003. Productivity increased \*\*\* between 2001 and 2003, while unit labor costs declined by \*\*\* percent. Productivity was lower in the first quarter of 2004, and unit labor costs higher, than in the corresponding period in 2003.<sup>15</sup>

**Table III-4**  
**THFA: U.S. producer's employment-related data, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

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<sup>15</sup> Penn generally considers \*\*\*. Petitioner's posthearing brief, p. 32.

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

### U.S. IMPORTERS

The Commission sent importers' questionnaires to eleven firms identified in proprietary U.S. Bureau of Customs and Border Protection ("Customs") data as potential importers of THFA.<sup>1 2</sup> Three firms – Kyzen, ARS, and AllChem – certified that they had imported THFA into the United States since January 1, 2001, and provided the Commission with import-related data. A summary of the three firms' import quantities and their share of total reported imports of THFA into the United States is presented in table IV-1. Kyzen was by far the largest importer in the period examined, accounting for \*\*\* percent of THFA imports in \*\*\*, \*\*\* percent of imports in \*\*\*, and \*\*\* percent of total imports over the 2001-03 period. AllChem imported THFA into the United States in \*\*\*.

**Table IV-1**

**THFA: U.S. imports from China, quantity and shares, by importing firm, 2001-03**

\* \* \* \* \*

Kyzen was co-founded in 1990 by Kyle Doyle, the company's current President and CEO. Prior to founding Kyzen, Mr. Doyle was the marketing manager for THFA at Great Lakes, Penn's predecessor firm.<sup>3</sup> With the assistance of ARS, Kyzen fostered the development of Chinese producer Zhucheng's THFA production capacity in the mid-1990s.<sup>4</sup> In response to staff questions, ARS \*\*\*.<sup>5</sup>

As stated above, AllChem is the only other firm to have reported importing THFA in the period examined.<sup>6</sup> In response to staff questions, AllChem \*\*\*.<sup>7</sup> \*\*\*.<sup>8</sup>

### U.S. IMPORTS

As noted earlier, the HTS subheading (2932.13.00) under which THFA is imported into the United States is a basket category, covering imports of both FA and THFA. Detailed analysis of

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<sup>1</sup> The HTS subheading upon which the Customs importers' list is based (2932.13.00) covers imports of both FA and THFA. Commission questionnaires were sent to all firms appearing as consignees for imports classified under this subheading between 2001 and 2003.

<sup>2</sup> The petition identified only one probable importer of THFA into the United States: WestPro Company, San Diego, CA. Although the company has a web site, no valid phone number or address is publicly available. Proprietary Customs import data indicate \*\*\*.

<sup>3</sup> Hearing transcript, p. 118.

<sup>4</sup> ARS' President, Dr. William McKillip, was Doyle's immediate superior at Great Lakes. ARS also employs the gentleman who succeeded Mr. Doyle as Great Lakes' marketing manager for THFA. Hearing transcript, p. 142.

<sup>5</sup> Email from B. McKillip, ARS President, June 16, 2004.

<sup>6</sup> At least one present employee at AllChem is personally known by Kyzen's Kyle Doyle, having been a sales representative for Great Lakes at the time of Doyle's employment there. Hearing transcript, p. 141.

<sup>7</sup> Email from \*\*\*, June 16, 2004.

<sup>8</sup> *Id.*

proprietary Customs import data, however, reveal that, \*\*\*<sup>9</sup> \*\*\*.<sup>10</sup>

Table IV-2 presents official Commerce statistics for the HTS subheading covering THFA. As shown, imports increased by 61 percent between 2001 and 2002, then declined 15 percent between 2002 and 2003. There were no imports of THFA in the first quarter of 2004.

**Table IV-2**

**THFA: U.S. imports from China, 2001-03, January-March 2003, and January-March 2004<sup>1</sup>**

Item	Calendar Year			January-March	
	2001	2002	2003	2003	2004
Quantity (1,000 pounds)	413	593	532	253	0
Value (\$1,000) <sup>2</sup>	382	562	505	238	0
Unit value (per pound)	\$0.93	\$0.95	\$0.95	\$0.94	<sup>(3)</sup>
<sup>1</sup> Import data are based on HTS subheading 2932.13.00. ***. <sup>2</sup> Landed, duty-paid. <sup>3</sup> Not applicable. Source: Compiled from official Commerce statistics, adjusted.					

Table IV-3 presents data on the volume and value of U.S. imports of THFA from China, based on the questionnaire responses of Kyzen, ARS, and AllChem. As shown, reported imports from China increased by \*\*\* percent between 2001 and 2002, from \*\*\* to \*\*\* pounds. In 2003, imports declined by \*\*\* percent to \*\*\* pounds. The average unit values for reported imports of THFA from China have remained stable over the period examined at \$\*\*\* per pound. There were no reported imports of THFA from China in the first quarter of 2004.

**Table IV-3**

**THFA: U.S. imports from China, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

Petitioner has argued that import data for 2003 and the first quarter of 2004 are artificially depressed as a result of the pendency of this investigation.<sup>11</sup> Data on the monthly imports of THFA in 2003, based on official Commerce statistics, are presented in table IV-4 and figure IV-1.<sup>12</sup> As shown, imports of THFA from China into the United States ceased in October 2003.

<sup>9</sup> \*\*\*.

<sup>10</sup> In addition, in its 2001 review of the antidumping orders on FA from China and Thailand, the Commission found that imports of FA from China had, by 2001, left the U.S. market entirely. *See Furfuryl Alcohol From China and Thailand, Invs. Nos. 731-TA-703 and 705 (Review)*, USITC Publication 3412, April 2001, p. 16.

<sup>11</sup> Petitioner's posthearing brief, p. 4.

<sup>12</sup> \*\*\*.

**Table IV-4**  
**THFA: Monthly imports from China, 2003<sup>1</sup>**

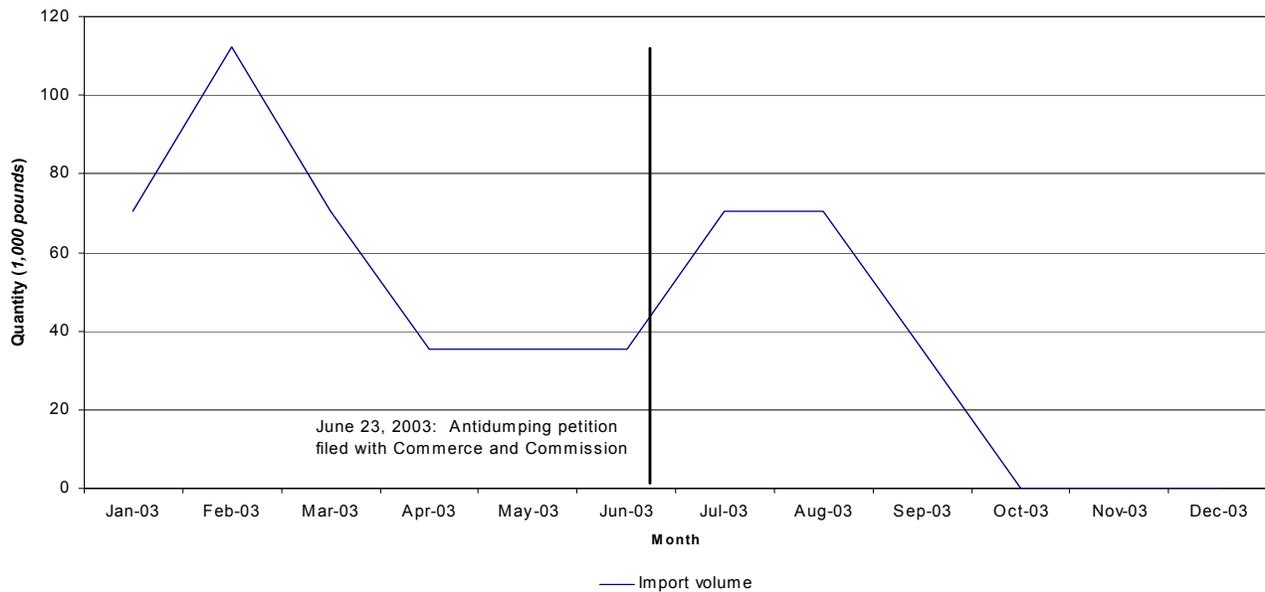
Item	January-June 2003					
	Jan.	Feb.	Mar.	Apr.	May	June
Quantity (1,000 pounds)	71	112	71	35	35	35
Value (\$1,000) <sup>2</sup>	66	106	66	33	33	33
Unit value (per pound)	\$0.94	\$0.94	\$0.94	\$0.94	\$0.94	\$0.94
Item	July-December 2003					
	July	Aug.	Sep.	Oct.	Nov.	Dec.
Quantity (1,000 pounds)	71	71	35	0	0	0
Value (\$1,000) <sup>2</sup>	67	67	34	0	0	0
Unit value (per pound)	\$0.95	\$0.95	\$0.96	(3)	(3)	(3)

<sup>1</sup> Import data are based on HTS subheading 2932.13.00.  
<sup>2</sup> Landed, duty-paid.  
<sup>3</sup> Not applicable

Note.—Because of rounding, unit values may not equal those inferred from quantity and value data in the table.

Source: Compiled from official Commerce statistics.

**Figure IV-1**  
**THFA: Monthly imports from China, 2003<sup>1</sup>**



<sup>1</sup> Import data are based on HTS subheading 2932.13.00.

Source: Table IV-4.

\*\*\* responding U.S. importers of THFA reported imports from any country other than China. Although U.S. purchasers of THFA alluded to the availability of THFA from sources other than the United States and China in the preliminary phase of the Commission's investigation, no third country suppliers have been positively identified.<sup>13</sup>

Data on U.S. shipments of THFA imported from China are presented in table IV-5. As shown, internal consumption by Kyzen accounted for \*\*\* percent of U.S. shipments of imported THFA over the 2001-03 period, ranging from \*\*\* percent of shipments in 2001 to \*\*\* percent in 2002. In both the interim 2003 and 2004 periods, Kyzen's internal consumption accounted for \*\*\* U.S. shipments of THFA imported from China.

**Table IV-5**  
**THFA: U.S. shipments of imports from China, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

### U.S. APPARENT CONSUMPTION

U.S. apparent consumption of THFA during the period examined, based on importers' and Penn's questionnaire responses, is presented in table IV-6. The quantity of THFA consumed in the United States remained fairly stable over the period examined, falling by a modest \*\*\* percent from \*\*\* pounds in 2001 to \*\*\* pounds in 2002, and increasing \*\*\* percent to \*\*\* pounds in 2003. Apparent consumption in the interim 2004 period was \*\*\* percent lower than in the corresponding period in 2003, reflecting a \*\*\* percent decline in U.S. producer shipments, and a \*\*\* percent decline in shipments of imports from China. The value of U.S. apparent consumption declined in every year of the period examined, and by a total of \*\*\* percent between 2001 and 2003.

**Table IV-6**  
**THFA: U.S. shipments of domestic product, U.S. shipments of imports from China, and apparent U.S. consumption, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

### U.S. MARKET SHARES

The shares of apparent U.S. consumption of THFA accounted for by shipments from Penn and by shipments of subject imports are presented in table IV-7. Penn lost \*\*\* percentage points of market share to imports from China between 2001 and 2002. In 2003, Penn recovered \*\*\* percentage points of market share, its U.S. shipments accounting for \*\*\* percent of apparent U.S. consumption in that year. In the interim 2004 period, Penn's shipments accounted for \*\*\* percent of U.S. apparent consumption, compared to \*\*\* percent in the corresponding 2003 period.

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<sup>13</sup> \*\*\*.

**Table IV-7**

**THFA: U.S. consumption and market shares, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

**IMPORTS AS A SHARE OF U.S. PRODUCTION**

The ratio of reported subject imports to U.S. production of THFA during the period examined is presented in table IV-8. Imports of THFA increased relative to U.S. production between 2001 and 2002, then declined in 2003 to just above the 2001 level.

**Table IV-8**

**THFA: U.S. production, U.S. imports from China, and ratio of imports to production, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*



## **PART V: PRICING AND RELATED INFORMATION**

### **FACTORS AFFECTING PRICES**

#### **Raw Material Costs**

In 2003, Penn's raw material costs accounted for approximately \*\*\* percent of the costs of goods sold, up from \*\*\* percent in 2001. The main raw material used in the production of THFA is furfuryl alcohol.

#### **Transportation Costs**

U.S. inland transportation costs constitute a relatively small share of the total cost of producing THFA. For Penn, transportation costs range from \*\*\* percent.<sup>1</sup> Penn reported that all THFA is shipped by truck; \*\*\* percent is shipped between 101 and 1,000 miles of its production facility, while an additional \*\*\* percent is shipped distances greater than 1,000 miles; Penn also reported that \*\*\* percent of its sales occur within 100 miles of its production facilities.

For importers, transportation costs of THFA for delivery within the United States range from \*\*\* percent to \*\*\* percent, with an average of approximately 2.8 percent. \*\*\* reported that \*\*\* percent of its sales occur within 100 miles of its storage facility or port of entry. \*\*\*, on the other hand, reported that \*\*\* percent of its sales of THFA-based products take place within 1,000 miles of its manufacturing facility, while \*\*\* reported that \*\*\* percent of its sales are within 101 and 1,000 miles and \*\*\* percent are shipped more than 1,000 miles.

According to Penn, the average lead time between a customer's order and the date of delivery is 4 days for domestic orders. For importers, delivery lead times were more varied. \*\*\* reported an average delivery time of 1 day, while \*\*\* reported 2-7 days and \*\*\* reported 5-10 days.<sup>2</sup>

#### **Tariff Rate**

THFA enters the United States under the HTS subheading 2932.13.00. In 2004, the normal trade relations tariff rate for THFA was 3.7 percent.

#### **Exchange Rate**

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese yuan remained unchanged relative to the U.S. dollar from January 2001 through March 2004. It is the policy of the Chinese government to peg the yuan to the U.S. dollar.

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<sup>1</sup> In the broad chemicals sector, U.S. inland transportation costs account for approximately 5-6 percent of the value of shipments (S&P Industry Surveys, *Chemicals: Specialty*, p. 15).

<sup>2</sup> At the hearing, Kyzen reported that lead times for delivery of Chinese THFA range from 6-8 weeks (Hearing transcript, p. 130).

## PRICING PRACTICES

### Pricing Methods

\*\*\* reported that sales of THFA are made on a transaction-by-transaction basis, with 100 percent of their sales taking place in the spot market. \*\*\*, on the other hand, reported that it uses a price list; negotiates contract prices for large-volume orders; and meets all competitive prices. Approximately \*\*\* percent of \*\*\*'s sales take place via contract, while the remaining \*\*\* percent take place in the spot market.

The average duration of Penn's contracts was \*\*\* years, during which both the quantity and price were fixed. While contracts are negotiated at expiration, Penn typically offered meet-or-release terms. According to Penn, it changed \*\*\* percent of its contract prices during the period examined as a result of its meet-or-release obligations.<sup>3</sup>

### Sales Terms and Discounts

The three responding importers and Penn all reported using net 30 pricing terms. Importers typically do not offer price discounts on THFA. Penn, however, offers bulk discounts for larger orders. Importers typically quote on an f.o.b. basis, while Penn quoted \*\*\* percent of its prices on an f.o.b. basis and \*\*\* percent on a delivered basis.

## PRICE DATA

The Commission requested U.S. producers and importers to provide quarterly f.o.b. data for the total quantity and value of sales of THFA for the period January 2001 through March 2004. These data were used to determine the weighted-average price in each quarter for this period. The products for which pricing data were requested are as follows:

**Product 1: Tetrahydrofurfuryl alcohol in 55-gallon drums**

**Product 2: Tetrahydrofurfuryl alcohol in bulk containers**

One U.S. producer and three importers provided usable pricing data for sales of THFA in the U.S. market, although not all firms reported pricing data for all products for all quarters. Pricing data reported by the Penn accounted for \*\*\* percent of the quantity of U.S. commercial shipments of domestic THFA in 2003; pricing data reported by importers accounted for \*\*\* percent of U.S. shipments from China. By contrast, imports by Kyzen for internal consumption represented \*\*\* percent of U.S. shipments from China.

### Price Trends and Comparisons

Quarterly data on selling prices and quantities of products 1 and 2 sold by Penn and U.S. importers of Chinese THFA are shown in tables V-1 through V-3 and figures V-1 and V-2, respectively. Quarterly weighted-average selling prices and quantities for Penn's sales of product 1 and product 2 to its top five customers are shown in appendix E. Quarterly data on delivered purchase prices of \*\*\* are shown in table V-4, and such data on a monthly basis are shown in appendix F. In addition, data regarding purchasers' prices are presented in appendix G.

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<sup>3</sup> According to Penn, \*\*\*.

**Table V-1**

**THFA : Weighted-average f.o.b. selling prices and quantities for product 1 sold to distributors, and margins of underselling/(overselling), by quarters, January 2001-March 2004**

\* \* \* \* \*

**Table V-2**

**THFA: Weighted-average f.o.b. selling prices and quantities for product 1 sold to end users, and margins of underselling/(overselling), by quarters, January 2001-March 2004**

\* \* \* \* \*

**Table V-3**

**THFA: Weighted-average f.o.b. selling prices and quantities for product 2 to distributors and to end users, by quarters, January 2001-March 2004**

\* \* \* \* \*

**Table V-4**

**THFA: Weighted-average delivered purchase prices and quantities for product 1 imported by \*\*\* and product 2 purchased from Penn, by quarters, January 2001-March 2004**

\* \* \* \* \*

**Figure V-1**

**THFA: Weighted-average f.o.b. prices for sales of product 1 to both distributors and end users, as reported by U.S. producers and importers, by quarters, January 2001-March 2004**

\* \* \* \* \*

**Figure V-2**

**THFA: Weighted-average f.o.b. prices for product 2 sold to distributors and end users, as reported by U.S. producers, by quarters, January 2000-March 2003**

\* \* \* \* \*

**Product 1**

Weighted-average prices for domestic and Chinese product 1 sold to both distributors and end users fluctuated during the period for which data were collected. Prices for U.S. product 1 sold to distributors increased irregularly from January-March 2001 to the same quarter of 2002, rising \*\*\* percent during that time. These prices then declined \*\*\* percent by January-March 2004; overall prices for domestic product 1 sold to distributors were \*\*\* percent lower at the end of the period than at the beginning.

Prices for Chinese product 1 sold to distributors are available for four quarters during 2002 and three quarters during 2003. During this period, prices increased irregularly from January-March 2002 to July-September 2002, rising \*\*\* percent during that time. Prices then declined \*\*\* percent by the third

quarter of 2003. Overall, these prices were \*\*\* percent higher at the end of the period than at the beginning.

As shown in table V-1 and figure V-1, price comparisons for product 1 (sold to distributors) between the United States and China are possible for a total of seven quarters during the period examined. During these quarters, the price of Chinese imports was below the price of U.S. goods in three quarters. Margins of underselling range from \*\*\* percent to \*\*\* percent. In the remaining four quarters, the Chinese product was priced above the domestic; margins of overselling range from \*\*\* percent to \*\*\* percent.

Prices for domestic product 1 sold to end users increased irregularly during January-March 2001 through October-December 2001, increasing \*\*\* percent during that time. Price then declined by \*\*\* percent by January-March 2004. Overall, prices were \*\*\* percent lower at the end of the period than at the beginning.

Prices for Chinese product 1 sold to end users are available for 2002 and 2003 only. Prices declined \*\*\* percent from January-March 2002 to April-June 2002, before increasing irregularly through the end of the period examined. Overall, the price of Chinese product 1 sold to end users was the same at the end of the period as at the beginning of the period.

As shown in table V-2 and figure V-1, price comparisons for product 1 (sold to end users) between the United States and China were possible for a total of eight quarters during the period examined. During these quarters, the prices of Chinese imports were above the U.S. price during seven quarters, with margins of overselling ranging from \*\*\* percent to \*\*\* percent. During July-September 2002, Chinese product 1 sold to end users was priced below the domestic product; the margin of underselling was \*\*\* percent.

## **Product 2**

Weighted-average prices for domestic product 2 sold to distributors and end users fluctuated during the period examined; pricing data for Chinese product 2 are not available for the period examined as no sales were reported. Prices for U.S. product 2 sold to distributors decreased irregularly between January-March 2001 and July-September 2002, falling \*\*\* percent during that time. Prices then increased irregularly by the end of period examined, increasing \*\*\* percent from July-September 2002 to January-March 2004. Overall, prices were \*\*\* percent lower at the end of the period examined than at the beginning. Since there were no reported sales of Chinese product, price comparisons between U.S. and Chinese product 2 sold to distributors are not possible during the period examined.

Prices for U.S. product 2 sold to end users increased irregularly from January-March 2001 through October-December 2001, rising \*\*\* percent during that time. Prices then declined \*\*\* percent by January-March 2004. Overall, prices were \*\*\* percent lower at the end of the period than at the beginning. Pricing data were not available for Chinese product 2 sold to distributors during the period examined as no sales were reported. As a result, price comparisons between U.S. and Chinese product 2 sold to distributors are not possible.

## **LOST SALES AND LOST REVENUES**

The Commission requested U.S. producers of THFA to report instances of lost sales or revenues they experienced due to competition from imports of THFA from China since January 2000. Penn reported that it had either lost sales or reduced prices to prevent losing sales. The reported allegations of lost sales and lost revenues total \$\*\*\* and \$\*\*\*, respectively, and are presented in tables V-5 and V-6.

**Table V-5  
THFA: Lost sales allegations**

\* \* \* \* \*

**Table V-6  
THFA: Lost revenue allegations**

\* \* \* \* \*

\*\*\*, the only company subject to lost sales allegations, disagreed on all counts.<sup>4</sup> Regarding lost revenues claims, \*\*\*,<sup>5</sup> \*\*\*,<sup>6</sup> and \*\*\* agreed with Penn’s allegations, although \*\*\* reported that its quoted price was actually \$\*\*\*. \*\*\*,<sup>7</sup> \*\*\*,<sup>8</sup> \*\*\*,<sup>9</sup> and \*\*\*<sup>10</sup> all disagreed with Penn’s lost revenue allegations. \*\*\* did not respond to the Commission’s requests for lost sales/lost revenue information.

Information collected during the course of the investigation indicates that THFA purchasers are gaining clout in negotiations in both the contract and spot markets. For example, \*\*\* and \*\*\* indicated on their lost revenue response forms that quotes from Chinese suppliers were used to re-negotiate with Penn.<sup>11</sup> Similarly, Penn described at the hearing how offers to sell THFA from Chinese producers increased the bargaining power of purchasers in the spot market, causing prices to fall:

“The way this happens is that our major customers outside Kyzen . . . came to us in the year 2002 with credible offer of Chinese THFA at very low prices, and they’ve told us very emphatically and clearly that we would lose most or all of our business if we didn’t match those prices or at least come close . . . we decided that we weren’t going to give up the volume so we didn’t literally meet the Chinese THFA prices, but we came close enough so that our major customers at least decided to stick with us.”<sup>12</sup>

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<sup>4</sup> At the hearing, Kyzen was asked whether its business decision to start importing from China, given that Penn and Great Lakes were the sole domestic source of THFA, could be characterized as a lost sale. In response, Kyzen replied: “Kyzen’s 1997 decision to develop a second source of supply. . .constitutes a sound and responsible business practice. . .Penn did not manufacture THFA at the time; it did not even exist. . .At the time Penn entered the THFA marketplace as a producer, Kyzen’s dual source business strategy thus represented a fundamental condition of competition that placed well-established limits on Penn’s ability to sell THFA to Kyzen. Therefore, Kyzen’s dual source strategy cannot be considered a ‘lost sale’ because the opportunity for Penn to replace all of Kyzen’s purchases of subject imports has never existed” (Hearing transcript, pp. 10-11). Kyzen’s comments from its lost sales forms: \*\*\*.

<sup>5</sup> \*\*\*.

<sup>6</sup> \*\*\*.

<sup>7</sup> \*\*\*.

<sup>8</sup> \*\*\*.

<sup>9</sup> \*\*\*.

<sup>10</sup> \*\*\*.

<sup>11</sup> \*\*\*.

<sup>12</sup> Hearing transcript, p. 25.

According to Penn, offers to sell THFA were also used by their contract customers<sup>13</sup> to negotiate down the price of THFA:

“Typically, a customer who received the lower-price quotes for the purpose of subject product would approach Penn, and give Penn the option to retain that business by meeting the lower price offered . . . Penn, in an effort to maintain market share and customer relationships, as you heard earlier, often chose to meet the lower price.”<sup>14</sup>

Penn also describes the domestic-or-import decision faced by many its customers:

“I think a smart purchaser says to himself or herself, I’ve been buying from Penn for years. They have always done what I needed. I would rather continue to purchase from them, buy from one source, but I want a lower price. So our argument is that Chinese THFA has been used many, many times to get a lower price from us, legitimately . . . the source of the subject imports resulted in offers of lower prices to customers who we ultimately defended and met the prices; and, therefore, there were no imports.”<sup>15</sup>

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<sup>13</sup> \*\*\*.

<sup>14</sup> Hearing transcript, p. 37.

<sup>15</sup> Hearing transcript, pp. 97 and 105.

## PART VI: FINANCIAL EXPERIENCE OF THE U.S. PRODUCER

### BACKGROUND

As reported previously, Penn is the sole U.S. producer of THFA with all of its related activity classified as commercial sales. Penn reported its financial results on U.S.-produced THFA on a calendar-year basis using U.S. GAAP. As noted in an earlier section of this report, the company entered chapter 11 bankruptcy in July 2001 and exited at the end of July 2002.<sup>1</sup>

A verification of Penn's questionnaire response took place on May 18 and 19, 2004.<sup>2</sup>

### OPERATIONS ON THFA

Income-and-loss data are presented in table VI-1 and on a unit basis in table VI-2. A variance analysis is presented in table VI-3.

**Table VI-1**

**THFA: Financial results for calendar years 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

**Table VI-2**

**THFA: Financial results (*per pound*) for calendar years 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

**Table VI-3**

**THFA: Variance analysis of financial results for calendar years 2001-03 and January-March 2003-04**

\* \* \* \* \*

Penn reported THFA \*\*\* in each full-year period. As shown in the variance analysis, both average unit revenue and cost of goods sold (COGS) represented important factors explaining the company's THFA financial results.<sup>3</sup>

In 2003, a reduction in Penn's average unit COGS offset the continued decline in average unit revenue. In conjunction with a modest increase in sales volume, a lower \*\*\* was reported in 2003 compared to 2002. As shown in table VI-2, despite generally \*\*\* per unit natural gas costs,<sup>4</sup> average unit COGS in 2003 and interim 2004 declined primarily due to lower average unit \*\*\*.<sup>5</sup>

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<sup>1</sup> Post-bankruptcy operations reflect \*\*\*.

<sup>2</sup> Changes resulting from verification were as follows: \*\*\*.

<sup>3</sup> On an overall-establishment basis, Penn has \*\*\*.

<sup>4</sup> \*\*\*.

<sup>5</sup> Penn's bankruptcy reorganization plan states “{t}he Debtor is uniquely positioned as a manufacturer of

(continued...)

Somewhat higher average unit revenue in interim 2004 was partially offset by a small increase in average unit COGS. The result was higher gross profit on a unit basis and a \*\*\* compared to the previous period.

The overall SG&A expense assigned to THFA moved within a relatively narrow range during the period examined. The selling component ranged from \*\*\* percent of Penn's total SG&A expenses.<sup>6</sup>

### CAPITAL EXPENDITURES AND INVESTMENT IN PRODUCTIVE FACILITIES

Data on capital expenditures, research and development (R&D) expenses, and property, plant, and equipment (PP&E) related to THFA are shown in table VI-4.<sup>7 8</sup>

**Table VI-4**  
**THFA: Capital expenditures, R&D expenses, and value of property, plant, and equipment, calendar years 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

### COMPARATIVE FINANCIAL RESULTS

No previous THFA investigation has been conducted by the Commission. Risk Management Association (RMA) financial information for North American Industry Classification System (NAICS) 325199 is presented in table VI-5.<sup>9 10</sup>

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<sup>5</sup> (...continued)

furfural- and furan-based fine chemicals due to its high degree of integration . . . this unique integration creates a situation in which multiple elements of the Plant need to be producing in order to cover fixed costs of the Plant's operations" (p. 18 of Penn's reorganization plan). As noted in the ITC verification report, \*\*\*. This is consistent with the increased 2004 THFA volume noted by company officials at the Commission's hearing. Hearing transcript, p. 28.

<sup>6</sup> \*\*\*. Verification report, p. 6.

<sup>7</sup> According to the company, \*\*\*. July 16, 2003 fax from Michael Neff, Penn.

<sup>8</sup> The company stated that \*\*\*. *Id.*

<sup>9</sup> Table VI-5 presents return on investment along with its sub-components: asset turnover and operating margin. Asset turnover, sales divided by (in this case) total period assets, is a measure of a firm's ability to generate sales from a specific investment in assets (Financial Reporting and Statement Analysis: A Strategic Perspective, p. 128).

<sup>10</sup> NAICS 325199 includes SIC 2869 and SIC 2899. SIC 2869 represents establishments primarily engaged in manufacturing industrial organic chemicals, not elsewhere classified, and includes the production of THFA. Since RMA does not identify respondents, whether the U.S. producer in this investigation is reflected in the RMA data is unknown.

**Table VI-5**

**Number of firms, sales, operating income, assets, and return on investment (ROI) on operations for NAICS 325199 (all other basic organic chemical manufacturing) for 5 one-year periods ending March 31, 1999 to March 31, 2003**

Period	Number of companies	Sales value (\$1,000)	Asset value (\$1,000)	Asset turnover <sup>1 2</sup>	Operating margin (percent)	ROI <sup>2</sup> (percent)
4/1/98 - 3/31/99	55	2,336,811	1,638,065	1.4	8.5	12.1
4/1/99 - 3/31/00	60	2,625,260	1,865,727	1.4	7.4	10.4
4/1/00 - 3/31/01	59	2,573,668	1,869,397	1.4	8.2	11.3
4/1/01 - 3/31/02	67	2,728,520	2,184,806	1.2	7.7	9.6
4/1/02 - 3/31/03	68	2,486,877	1,908,228	1.4	6.7	9.4

<sup>1</sup> Asset turnover is the ratio of sales to total assets.

<sup>2</sup> Asset turnover and ROI were calculated using RMA data.

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Since the company \*\*\*, THFA return on investment was by definition \*\*\* throughout the period. If Penn's THFA-specific asset turnover was similar to that reported for NAICS 325199 (i.e., around 1.4), THFA ROI was approximately \*\*\*.<sup>11</sup>

### **CAPITAL AND INVESTMENT**

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of THFA from China on their firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Penn's response is shown below.

#### **Actual Negative Effects**

\*\*\*.

#### **Anticipated Negative Effects**

\*\*\*.

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<sup>11</sup> For NAICS 325199, RMA data indicate that the percentage of net fixed assets to total assets ranged from 32.0 to 37.9 percent during the period presented in table VI-5. \*\*\*.



## PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making its threat determination (see 19 U.S.C. § 1677(7)(F)(i)). Information on the nature of sales at less than fair value was presented in Part I of this report; information on the volume and pricing of imports of the subject merchandise was presented in Parts IV and V, respectively; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts was presented in Part VI. Information on U.S. 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 INDUSTRY IN CHINA

The Commission sent foreign producer/exporter questionnaires to four Chinese firms identified in the petition, three firms identified in confidential Customs import data, and two firms identified by the U.S. Embassy in Beijing as potential producers/exporters of THFA in China.<sup>1</sup> Two of the nine firms, Taizhou Qingquan Medical & Chemical Co., Ltd. ("Taizhou Qingquan") and Zhucheng, submitted responses to the Commission, and only Zhucheng reported having produced or exported THFA since January 2001. In the preliminary phase of the Commission's investigation, two further Chinese firms identified in the petition, Hunan Sun-Yuan Chemical Co., Ltd. ("Hunan Sun-Yuan") and Shandong Baofeng Chemicals Group, Corp. ("Shandong Baofeng"), certified to the Commission that they had not produced THFA since January 1, 2000.<sup>2</sup> Petitioner contested the negative certifications of Hunan Sun-Yuan, Shandong Baofeng, and Taizhou Qingquan, citing references on each of the three companies' web sites indicating involvement in the sale and/or production of THFA.<sup>3</sup> Hunan Sun-Yuan and Shandong Baofeng did not respond to the Commission's foreign producers'/exporters' questionnaires during this final phase of the investigation.

\*\*\* identified Zhucheng as the sole producer of the THFA it imports into the United States from China. \*\*\* identified Qingdao Wenkem Trading Co., Ltd. ("Qingdao Wenkem") as the Chinese producer of its THFA imports. Commerce confirmed in its preliminary investigation that Qingdao Wenkem exports, in full, the THFA manufactured by Zhucheng.<sup>4</sup> \*\*\* did not identify the producer of the THFA it imported from China.<sup>5</sup> Petitioner acknowledges that Zhucheng is the primary manufacturer and exporter of THFA imported into the United States.<sup>6</sup>

As noted earlier in this report, Zhucheng's THFA production capability was established in 1996 with the assistance of ARS and the encouragement of Kyzen, who provided Zhucheng with quality

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<sup>1</sup> A list of potential Chinese THFA producers/exporters was submitted to Commerce by the U.S. Embassy in Beijing during Commerce's preliminary investigation. See Commerce's *Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from China* ("Preliminary Determination"), 69 FR 3887 (January 27, 2004).

<sup>2</sup> Proprietary Customs data indicate that \*\*\*.

<sup>3</sup> Petitioner's submission of July 17, 2003; and petitioner's posthearing brief, pp. 11-12, and exhs. 3-9.

<sup>4</sup> See Commerce's *Preliminary Determination*, 69 FR 3887 (January 27, 2004).

<sup>5</sup> Proprietary Customs data indicate that \*\*\*.

<sup>6</sup> Petition, p. 10.

advice, and tested its THFA through to market standard.<sup>7</sup> Kyzen began importing THFA produced by Zhucheng in significant quantities in 1997, with imports peaking in 1998 at about 1.3 million pounds.<sup>8</sup>

### Chinese Producer's Production and Shipments

In its response to the Commission's questionnaire, Zhucheng estimated that it accounted for \*\*\* percent of total Chinese production of THFA, and \*\*\* percent of THFA exported from China to the United States, in 2003.<sup>9</sup> Based on data provided by U.S. importers, Zhucheng's shipments of THFA to the United States accounted for \*\*\* percent of U.S. imports of THFA from China during the period examined.

Zhucheng's production and shipments data are presented in table VII-1. The company's production capacity has remained constant since 2001 at \*\*\* pounds. This capacity represented \*\*\* percent of apparent U.S. consumption in 2003. Capacity utilization fluctuated over the period examined, increasing from \*\*\* percent in 2001 to \*\*\* percent in 2002, then declining to \*\*\* percent in 2003. Zhucheng's capacity utilization rate in the interim 2004 period was \*\*\* percent, a decline of \*\*\* percentage points from the comparable 2003 period. Zhucheng expects that it will operate at a \*\*\* percent capacity utilization rate in calendar years 2004 and 2005.

**Table VII-1**  
**THFA: Chinese production capacity, production, shipments, and inventories, 2001-03, January-March 2003, January-March 2004, and projected 2004-05**

\* \* \* \* \*

As a proportion of its production, Zhucheng's exports of THFA increased steadily over the period examined, from \*\*\* percent of total shipments in 2001 to \*\*\* percent of shipments in 2003. Shipments to the United States accounted for the majority of Zhucheng's exports between 2001 and 2003. The volume of exports to the United States exhibited a mixed trend, however, \*\*\* from \*\*\* pounds in 2001 to \*\*\* pounds in 2002, then declining by \*\*\* in 2003 to \*\*\* pounds. Zhucheng reported \*\*\* exports of THFA to the United States in the first quarter of 2004. By comparison, shipments to the United States in the first quarter of 2003 accounted for \*\*\* percent of Zhucheng's total exports to the United States in that year. As a proportion of total shipments, home market shipments were at their highest level within the period examined in the first quarter of 2004. Zhucheng identified Japan and the EU as its primary other export markets.<sup>10</sup>

Zhucheng expects that home market shipments will account for \*\*\* percent of total shipments in 2004 and 2005, with exports to the United States accounting for a further \*\*\* percent, or \*\*\* pounds. Zhucheng bases its 2004 and 2005 projections on \*\*\*.<sup>11</sup>

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<sup>7</sup> Conference transcript, p. 84; and staff fieldwork report of February 20, 2004, p. 2.

<sup>8</sup> Conference transcript, p. 85.

<sup>9</sup> Zhucheng's Foreign Producers'/Exporters' Questionnaire response (final), question II-8.

<sup>10</sup> Zhucheng's Foreign Producers'/Exporters' Questionnaire response (final), question II-8.

<sup>11</sup> \*\*\*. Email from M. Jaffe, counsel to respondents, May 26, 2004.

## U.S. INVENTORIES OF THFA FROM CHINA

U.S. importers' inventories of THFA imported from China are presented in table VII-2. Importers' inventories of Chinese THFA increased absolutely, but remained stable relative to imports between 2001 and 2002, at a level representing between \*\*\* percent of imports. In 2003, importers built up \*\*\* pounds in inventory of THFA from China, equivalent to \*\*\* percent of total U.S. imports of THFA in that year. Inventories were drawn down in the first quarter of 2004 to \*\*\* pounds, a level \*\*\* percent lower than for the comparable period in 2003.

**Table VII-2**

**THFA: U.S. importers' end-of-period inventories, 2001-03, January-March 2003, and January-March 2004**

\* \* \* \* \*

## PRODUCT SHIFTING AND DUMPING IN THIRD-COUNTRY MARKETS

Penn has argued that the entire capacity of the Chinese FA industry (in excess of \*\*\* pounds) is potentially available for diversion to the production of THFA, and that the existing antidumping duty orders on imports of FA from China into the United States and the European Union make such a shift an attractive possibility.<sup>12 13</sup> Respondents refute this argument, observing that the U.S. order against Chinese FA has been in effect since 1995 with no discernible impact on the THFA market, and that the EU order is of an "insignificant" magnitude.<sup>14</sup>

There is no evidence on the record in this investigation to suggest that THFA exported from China is subject to antidumping findings or remedies in any third country markets.<sup>15</sup>

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<sup>12</sup> Petitioner's postconference brief, pp. 23-24.

<sup>13</sup> On October 27, 2003, the Council of the European Union imposed a definitive antidumping duty on imports of FA from China. The EU's antidumping duty rates range from 8.9 to 18.3 percent *ad valorem* for individual producers, and 32.1 percent *ad valorem* for "all others." A rate of 10.3 percent *ad valorem* applies to the exports of Zhucheng, with a specific duty of 97 euros per metric ton (approximately \$0.04 per pound). Council Regulation (EC) No. 1905/2003 (October 27, 2003).

<sup>14</sup> Respondent's postconference brief, pp. 2 and 23-24.

<sup>15</sup> Zhucheng, the only Chinese firm to report production or exports of THFA in the period examined, certified that \*\*\*. Zhucheng's Foreign Producers'/Exporters' Questionnaire response (final), question II-6.



**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate listed above for COGEMA/Eurodif will be the rate established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the 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 (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 19.95 percent, the "All Others" rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities 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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 20, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-1695 Filed 1-26-04; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-887]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China

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

**EFFECTIVE DATE:** January 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bertrand or Peter Mueller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3207 and (202) 482-5811 respectively.

#### SUPPLEMENTARY INFORMATION:

##### Preliminary Determination

We preliminarily determine that tetrahydrofurfuryl alcohol ("THFA") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

##### Case History

On June 23, 2003, the Department of Commerce ("Department") received a petition on THFA from the PRC filed in proper form by Penn Specialty Chemicals, Inc. ("petitioner"). See *Petition for the Imposition of Antidumping Duties: Tetrahydrofurfuryl Alcohol from the PRC*, dated June 23, 2003 ("Petition"). This investigation was initiated on July 18, 2003. See *Notice of Initiation of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 68 FR 42686 (July 18, 2003) ("Notice of Initiation"). The Department initiated the investigation using a non-market economy analysis. For a further discussion of the PRC's market analysis, please see the "Non-Market Economy Country Status" section below. For a detailed discussion of the comments regarding the scope of the merchandise under investigation, please see the "Scope of the Investigation" section below.

On August 11, 2003, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of THFA. See *Tetrahydrofurfuryl Alcohol from China*, 68 FR 48938 (August 15, 2003).

On July 23, 2003, the Department requested quantity and value ("Q&V") information from four PRC companies that were identified in the *Petition* and for which the Department was able to locate contact information.<sup>1</sup> On August

5, 2003, the Embassy of the United States, Beijing, submitted to the Department an additional list ("embassy list") of potential producers/exporters of THFA in the PRC.<sup>2</sup> Included in the embassy list were two companies that matched with two producers/exporters submitted in the petitioner's list.<sup>3</sup> After comparing the two lists, the Department concluded that seven companies in the PRC potentially exported, manufactured, or had the capability to manufacture THFA.<sup>4</sup> Shortly thereafter, using proprietary U.S. Bureau of Customs and Border Protection ("CBP") data, the Department identified an additional potential exporter, Qingdao Wenkem (F.T.Z.) Trading Co., Ltd. ("QWTC"), of subject merchandise during the period of investigation ("POI"). Therefore, in total, the Department identified eight potential producers/exporters of subject merchandise during the POI.<sup>5</sup>

On August 12, 2003, the Department requested Q&V information from the three PRC companies which were submitted as part of the embassy list, (*i.e.*, Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., Gaoping Chemicals Co., Ltd., and Taizhou Qianquan Medical and Chemicals Co., Ltd.), and to QWTC. On August 13, 2003, the Department also sent the Ministry of Commerce in the PRC and the Embassy of the PRC in Washington a letter requesting assistance in locating all known PRC producers/exporters of THFA who exported the subject merchandise to the United States during POI and the quantity and value information for all exports to the United States of the merchandise under investigation during the POI. In response, the Department received two submissions, one from

Corp., Taizhou Qianquan Medical and Chemicals Co., Ltd., and Zhucheng Huaxiang Chemical Company.

<sup>2</sup> Companies included: Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., and Gaoping Chemicals Co., Ltd., Zhucheng Huaxiang Chemicals Co., Ltd. and Taizhou Qianquan Medical and Chemicals Co., Ltd.

<sup>3</sup> Two matching companies: Zhucheng Huaxiang Chemicals Co., Ltd. and Taizhou Qianquan Medical and Chemicals Co., Ltd.

<sup>4</sup> Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., Gaoping Chemicals Co., Ltd., Zhucheng Huaxiang Chemicals Co., Ltd., Taizhou Qianquan Medical and Chemicals Co., Ltd., Hunan Sun-Yuan Chemical Co., Ltd., and Shandong Baofeng Chemicals Group Corp.

<sup>5</sup> Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., Gaoping Chemicals Co., Ltd., Zhucheng Huaxiang Chemicals Co., Ltd., Taizhou Qianquan Medical and Chemicals Co., Ltd., Hunan Sun-Yuan Chemical Co., Ltd., Shandong Baofeng Chemicals Group Corp., and Qingdao Wenkem (F.T.Z.) Trading Company Ltd.

<sup>1</sup> Companies include: Hunan Sun-Yuan Chemical Co., Ltd., Shandong Baofeng Chemicals Group

Zhucheng Huaxiang Chemical Co., Ltd. ("ZHC") on August 6, 2003 and the other from QWTC on August 26, 2003. The data from these responses indicated that ZHC manufactured the subject merchandise during the POI while QWTC exported, in full, ZHC's subject merchandise from the PRC to the United States during the POI.

On August 28, 2003, the Department issued to ZHC the Section A, C, D, and E of the Department's non-market economy antidumping duty questionnaire. On August 29, 2003, the Department issued to the other responding company, QWTC, Section A, C, D, and E of the Department's non-market economy antidumping duty questionnaire. In addition, on September 10, 2003, the Department sent the Ministry of Commerce in the PRC and the Embassy of the PRC in Washington a copy of the Section A, C, D, and E of the Department's non-market economy antidumping duty questionnaire.

On September 4, 2003, the Department requested comments on surrogate country and factor valuation information in order to have sufficient time to consider this information for the preliminary determination. On September 18, 2003, the petitioner submitted comments concerning the surrogate country selection.

On October 1, 2003, the Department received Section A responses from ZHC and QWTC. On October 10, 2003, the petitioner submitted comments concerning ZHC's and QWTC's Section A responses. On October 10, 2003, the Department received ZHC's Section C and D response and on October 14, 2003, the Department received QWTC's Section C response. On October 24, 2003, the petitioner submitted comments concerning ZHC's Section C and D response.

On October 27, 2003, the Department issued its respondent selection memorandum, selecting QWTC as the mandatory respondent to be investigated. *See Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated October 27, 2003 ("Respondent Selection Memo").

On October 30, 2003, the Department issued a supplemental Section A questionnaire to QWTC. On November 28, 2003, the Department received QWTC's response to the Department's supplemental Section A. On December 11, 2003, the petitioner submitted comments concerning QWTC's

November 28, 2003 supplemental Section A response.

On November 14, 2003 the Department issued to QWTC a supplemental containing additional Section A questions and also Section C questions. On December 5, 2003, the Department received QWTC's response to the Department's Section A and C questionnaire.

On November 10, 2003, the Department issued its surrogate country memorandum, selecting India as the surrogate country. *See Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated November 10, 2003 ("Surrogate Selection Memo").

On November 18, 2003, the Department issued a Section D supplemental questionnaire to QWTC. On December 3, 2003, the Department received QWTC's response to the Department's November 18, 2003 Section D supplemental. On December 11, 2003, the petitioner submitted comments concerning QWTC's December 3, 2003 Section D supplemental response.

On November 19, 2003 the Department issued an additional questionnaire to QWTC regarding QWTC's Section C and D responses. On December 10, 2003, the Department received QWTC's response to the Department's November 19, 2003 Section C and D questionnaire.

On November 19, 2003, the Department sent a cable to the United States Foreign Commercial Service ("FCS") posts in India, requesting that they provide publicly available financial statements for six manufacturers of furfural and furfuryl alcohol in India. On January 4, 2004, the Department received a cable from the FCS in India relaying that it had contacted six companies and that of the six only two manufacturers of furfural responded with their financial statements. Both sets of financials were sent by facsimile to the Department, the first set on December 16, 2003, and the second set on January 5, 2004. Of the two companies providing financial statements, only Delta Agro Chemical Co., Ltd., the company that submitted financials on January 5, 2004, had financial statements that were publicly available.

On November 20, 2003, the Department published a postponement of the preliminary antidumping duty determination on THFA from the PRC, postponing the preliminary determination from November 30, 2003

to January 19, 2004. *See Notice of Postponement of Preliminary Antidumping Duty Determination: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 68 FR 65437 (November 20, 2003) ("Notice of Prelim Postponement").

On December 15, 2003, the Department issued a further Section A, C, and D supplemental questionnaire to QWTC. On December 29, 2003, the Department received QWTC's response to the Department's December 15, 2003 Section A, C, and D supplemental questionnaire.

On December 16, 2003, the petitioner submitted comments concerning the valuation of the factors of production.

On December 19, 2003, the Department issued an additional supplemental Section D questionnaire. On January 6, 2004, the Department received QWTC's response to the Department's December 19, 2003 supplemental Section D questionnaire.

#### Period of Investigation

The POI is October 1, 2002 through March 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (June 23, 2003). *See* 19 CFR 351.204(b)(1).

#### Scope of Investigation

For the purpose of this investigation, the product covered is tetrahydrofurfuryl alcohol (C<sub>5</sub>H<sub>10</sub>O<sub>2</sub>) ("THFA"). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classified in the Harmonized Tariff Schedules of the United States ("HTSUS") under subheading 2932.13.00.00. Although the HTS subheadings are provided for convenience and for the purposes of the CBP, the Department's written description of the merchandise under investigation is dispositive.

#### Selection of Respondents

Section 777A(c)(1) of the Act, directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise.<sup>6</sup> In addition, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies.

<sup>6</sup> Regarding respondent selection in general *see* 19 CFR 351.204 (c).

The Department selected as the mandatory respondent the exporter QWTC, as it accounted for the largest volume of the subject merchandise pursuant to section 777(c)(2)(B) of the Act. See *Respondent Selection Memo* at 3.

The Department need not limit the number of respondents to be examined in this investigation, as the Department found that it had the resources available to investigate the one respondent, QWTC, in the above-captioned case.

#### Nonmarket Economy Country Status

For purposes of initiation, the petitioner submitted LTFV analysis for the PRC as a non-market economy. See *Notice of Initiation*, at 42687. The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping investigations. See e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000). A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. The respondent in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME country. When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below.

Furthermore, no interested party has requested that the THFA industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the THFA industry in the PRC as a market-oriented industry in this investigation.

#### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section

773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country; and, (2) are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the normal value section below and in *Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China: Factor Valuation, Memorandum from Peter Mueller, Case Analyst, through Edward C. Yang, Program Manager, Office IX, to the File*, dated January 19, 2004 ("Factor Valuation Memo").

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See *Memorandum from Ron Lorentzen to Robert Bolling: Antidumping Duty Investigation on Tetrahydrofurfuryl Alcohol from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, ("Policy Letter"), dated August 26, 2003. Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. For PRC cases, the primary surrogate country has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. See *Surrogate Selection Memo*.

The Department used India as the primary surrogate country, and, accordingly, has calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. Additionally, the Department has used Indonesia as the secondary surrogate country for certain factors of production. See *Surrogate Selection Memo and Factor Valuation Memo*. We have obtained and relied upon publicly available information wherever possible. See *Id.*

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

#### Separate Rates

In an NME proceeding, the Department presumes that all

companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. See *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996) ("Bicycles"). The exporter that the Department selected to investigate, QWTC, and the PRC producer of QWTC's exported goods, ZHC, each provided company-specific separate rates information and stated that they met the standards for the assignment of separate rates. In determining whether companies should receive separate rates, the Department focuses its attention on the exporter, in this case QWTC, rather than the manufacturer (*i.e.*, ZHC), as our concern is the manipulation of dumping margins. See *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995). Consequently, the Department analyzed whether the exporter of the subject merchandise, QWTC, should receive a separate rate. QWTC has provided the requested company-specific separate rates information and has indicated that there is no element of government ownership or control over their export operations. We have considered whether the mandatory respondent is eligible for a separate rate as discussed below.

The Department's separate rate test is not concerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61276 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test

arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, (May 6, 1991), as modified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. See *Silicon Carbide and Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) ("*Furfuryl Alcohol*").

#### 1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

The mandatory respondent has placed on the record statements and documents to demonstrate absence of *de jure* control. In its questionnaire responses, the respondent, QWTC reported that it has no relationship with any level of the PRC government. QWTC states that it has complete independence with respect to its export activities and that neither any PRC legislative enactments nor any other formal measures centralize any aspect of QWTC's export activities. QWTC reported that the subject merchandise is not subject to export quotas or export control licenses. Further, QWTC reported that the subject merchandise does not appear on any government list regarding export provisions or export licensing. Furthermore, QWTC stated that the local Chamber of Commerce in the PRC does not coordinate any export activities for QWTC.

QWTC reported that it is required to obtain a business license, which is issued by the Qingdao Industry and Commercial Administrative Bureau. According to QWTC, its business license allows a business entity, such as itself, to operate in the PRC and facilitates QWTC's export and import business based in the PRC. In addition, QWTC submitted the "Administration Regulations of Free Trade Zone, Qingdao, Shangong", ("*Administrative Regulation*"). The *Administrative Regulation* defines QWTC's rights as a business within a free trade zone. We

examined the *Administrative Regulation* and determine that it demonstrates an authority for establishing the *de jure* decentralized control over the export activities and evidence in favor of the absence of government control associated with its business license. See *Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated December 22, 2003 ("*Separate Rates Memo*").

#### 2. Absence of *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. QWTC has asserted the following: (1) it established its own export prices; (2) it negotiated contracts without guidance from any governmental entities or organizations; (3) it made its own personnel decisions; and (4) it retained the proceeds of its export sales and used profits according to its business needs. Additionally, QWTC's questionnaire responses indicate that it does not coordinate with other exporters in setting prices or in determining which companies will sell to which markets. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of QWTC. Consequently, we preliminarily determine that QWTC has

met the criteria for the application of separate rates.

The evidence placed on the record of this investigation by QWTC demonstrates an absence of government control, both in law and in fact, with respect to QWTC's exports of the merchandise under investigation. As a result, for the purposes of this preliminary determination, we are granting a separate, company-specific rate to QWTC, the exporter which shipped the subject merchandise, THFA, to the United States during the POI. For a full discussion of separate rates, please see the *Separate Rates Memo*.

#### PRC-Wide Rate

For a discussion of the PRC-Wide rate please see *Memorandum to the File From Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China: PRC-Wide Rate*, dated January 20, 2004.

#### Date of Sale

Section 351.401(i) of the Department's regulations state that "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." After examining the sales documentation placed on the record by the respondent, we preliminarily determine that invoice date is the most appropriate date of sale for the respondent. We made this determination because, at this time, there is not enough evidence on the record to determine whether the contracts used by the respondent establish the material terms of sale to the extent required by our regulations in order to rebut the presumption that invoice date is the proper date of sale. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79054 (December 27, 2002). The Department will examine the date of sale issue more fully after the preliminary determination.

#### Fair Value Comparisons

To determine whether sales of THFA to the United States by QWTC were made at less than fair value, we compared EP to normal value, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

### Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c) of the Act.

We calculated EP for QWTC based on delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, ocean freight, and marine insurance, where appropriate.

### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a factors-of-production methodology if: (1) the merchandise is exported from a non-market economy country; and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

As the basis for normal value, the respondents in this investigation provided integrated factors of production data from the raw material input stage to the final product stage (*i.e.*, the THFA production stage). In response to supplemental questionnaires, the respondent also provided factors of production information used in each of the earlier production stages, including the raw material input to furfural processing stage and the furfural to furfuryl alcohol production stage, separately. Although the respondent reported the factors of production for the feedstock inputs used to produce the main input to the processing stage (*i.e.*, furfuryl alcohol), for the purposes of this preliminary determination, we are not valuing those inputs when calculating the normal value of THFA. Rather, our normal value calculation begins with the factor value of the furfuryl alcohol used to produce the merchandise under investigation. The preliminary decision to calculate the normal value at the furfuryl alcohol stage is explained below.

Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject

merchandise. If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a fully integrated firm, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). See *Final Results Valuation Memorandum for Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001). If, on the other hand, the firm was not integrated, but simply a processor that purchased fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them. This policy has been applied to both agricultural and industrial products. See *e.g.*, *Persulfates From the People's Republic of China: Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003) and *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160 (February 28, 1997). Accordingly, our standard NME questionnaire asks respondents to report the factors used in the various stages of production.

There are, however, two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly.

Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in the *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002), we addressed whether we should value

the respondent's factors used in extracting iron ore an input to its wire rod factory. The Department determined that, if it were to use those factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead. See also *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001); *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964 (November 20, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995).

In this investigation, we preliminarily determine that the exceptions described above do not apply at this time. However, after carefully reviewing and analyzing the information submitted by the respondent, the Department has found that the data pertaining to the furfural and furfuryl alcohol stages of production cannot be used for purposes of the preliminary determination. In the original Section D questionnaire and in one subsequent supplemental questionnaire, the Department requested multi-stage input information from the respondent. In response, the Department received data which was inadequate for valuing the factors of production consumed in the earlier stages of the production processes (*i.e.*, the furfural and furfuryl alcohol production processes). Although these responses did clarify that the manufacturer was an integrated producer of furfural, furfuryl alcohol, and THFA, the responses did not provide factors of production that were sufficiently detailed, and therefore could not be used to quantify the factors of production from the earlier stages. Thereafter, the Department issued a second supplemental questionnaire, again requesting multi-stage input information and received a response on January 6, 2004, that was received too close to the preliminary date to allow the Department sufficient time to properly analyze (*i.e.*, the submission text and the corresponding data). Therefore, the Department's ability to analyze the inputs provided in the response to the supplemental

questionnaires was particularly constrained given the number of supplemental questionnaires issued in this case and the lack of sufficient time to fully evaluate the responses to those questionnaires. As this is the case, certain critical analysis regarding the data remain.

In light of these concerns, we have not used the multi-stage factor data for the preliminary determination and have incorporated, instead, the value of the furfuryl alcohol input used at the final stage of production. Subsequent to the preliminary determination, we will clarify the factors data for the furfural and furfuryl alcohol stages of production that the respondent has reported. If we make a change in the methodology and use the factor information for the various stages previous to the final determination, we will release to interested parties for comment a preliminary calculation sheet and analysis memorandum using that methodology.

The factors of production from the furfuryl alcohol stage to THFA includes: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; (4) costs associated with packing; and (5) representative capital costs. We calculated normal value based on factors of production, reported by the respondent, for materials, energy, labor, and packing. Where applicable, we deducted from the respondent's normal value the value of by-products sold during the POI. For a further discussion, please see *Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Analysis for the Preliminary Determination of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated January 19, 2004 ("Analysis Memo"). We valued the input factors using publicly available published information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

#### Factor Valuations

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine normal value using a factors of production methodology if: (1) the merchandise is exported from an NME, and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value, and no party has argued otherwise, we

calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate country factors of production prices to determine normal value, section 773(c)(4) of the Act requires that the Department use values from a market economy (surrogate) country. For this case we have selected India as the primary market economy (surrogate) country. See *Surrogate Country Memo*.

We selected, where possible, publicly available values from India which were: (1) average non-export values; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and, (4) tax-exclusive. Where necessary, we have excluded import data from an NME country (*i.e.*, the PRC) and from countries (*i.e.*, South Korea, Thailand, and Indonesia) that the Department has found to maintain broadly available, non-industry specific export subsidies, which the existence of, provide sufficient reason to believe or suspect that export prices from these countries are distorted. See *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying *Issues and Decision Memorandum*.

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by respondent for the POI. To calculate normal value, the reported per-unit factor quantities were multiplied by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. We selected information that represented cumulative values for the POI, for inputs classified according to the Harmonized Commodity Description and Coding System ("HTS"). For unit values initially reported in U.S. dollars ("USD") no conversion was necessary. For unit values initially reported in Indian rupees, we converted from rupees to USD using the average exchange rate for the POI. See *Factor Valuation Memo* at Attachment I. For values not contemporaneous with the POI, we adjusted the values for inflation/deflation.

To value furfuryl alcohol, we relied upon contemporaneous Indian import values of "furfuryl alcohol and tetrahydrofurfuryl alcohol" under the Indian Customs' heading of "29321300" obtained from the World Trade Atlas online, which notes that its data was

published by the DGCI&S, Ministry of Commerce of India, May 2003. This data was reported in USD. Consistent with the Department's practice, import data from both NMEs (*i.e.*, the PRC and Ukraine) and countries deemed to have generally-available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) were not included in our calculation. Because the HTS category used for furfuryl alcohol is a basket category which includes the subject merchandise, we are removing from the Indian import statistics the import data from the United States. We note also that the import data value for the United States for the basket category is substantially higher than the figures for most other countries. Therefore, we infer that the U.S. figures reported in the Indian import data may include the U.S. production quantities and values of the subject merchandise. Furthermore, we are removing the import data from Japan as it is a similar value to the U.S. value. We surmise that the Japanese data is a mixture of furfuryl alcohol and THFA due to possible transshipment of THFA from the PRC through Japan. We consider both the United States and Japan figures to be aberrational as they are significantly higher than the other countries included in this category. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. See *Factor Valuation Memo* at Attachment III.

As this basket category includes the subject merchandise, we recognize that a more appropriate surrogate value for furfuryl alcohol may be required. However, at the time of this preliminary determination, it is the most appropriate surrogate value that we can locate. Accordingly, we are requesting comments on issues concerning the calculation and selection of surrogate values. In particular, we request that parties provide comments on the calculations for furfuryl alcohol and any suggestions for alternative calculations. In accordance with 19 CFR 351.301(c)(3) of the Department's regulations, interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination.

For steam, the Department relied upon the values of the raw material inputs used to make steam, (*i.e.*, coal and water). The respondent reported the usage rate for steam in metric tons and further provided the raw material input usage rates required to produce the steam. When comparing the usage rate for steam used in the production process with the amount of water used

to create the steam, we found that there was one to one ratio between the reported amount of steam consumed and the reported amount of water consumed in making the steam. Although the respondents provided a usage rate for steam, we preliminary determine that the usage rates for inputs to steam, coal and water provide the most accurate factor valuation.

To value coal, we relied upon contemporaneous Indian import values of "other coal" under the Indian Customs' heading of "27011909" obtained from the *World Trade Atlas* online. This data was reported in USD. Consistent with the Department's practice, import data from both NMEs (*i.e.*, the PRC) and countries deemed to have generally-available export subsidies (*i.e.*, Indonesia, Korea, Ukraine, and Thailand) were not included in our calculation. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. We adjusted the surrogate value for coal to include freight costs incurred between the supplier and the factory. *See Factor Valuation Memo* at Attachment IV and Attachment VII. We adjusted the input price by including freight costs to make it a delivered price. Specifically, we added the surrogate freight cost to the surrogate value using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

To value hydrogen, we relied upon contemporaneous import values of "hydrogen," obtained from Indonesia Statistics, 2002 as published on *World Trade Atlas* online. The Department researched contemporaneous Indian hydrogen values and compared them to contemporaneous hydrogen values from other countries. As a result, we found the Indian values for hydrogen to be aberrational, in that they were significantly higher than the values from the other countries. Thereafter, we determined that Indonesian import statistics reported the most contemporaneous and non-aberrational hydrogen value. Therefore, we relied upon the contemporaneous Indonesian import values of "hydrogen" under the Indonesian Customs' heading of "280410000" obtained from the *World Trade Atlas*. Consistent with the Department's practice, import data from both NMEs (*i.e.*, the PRC) and countries deemed to have generally-available export subsidies (*i.e.*, Korea and

Thailand) were not included in our calculation. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. *See Factor Valuation Memo* at 3.

To value water, we used the water tariff rate, as reported on the Municipal Corporation of Greater Mumbai. This factor was reported in Indian rupees and converted into USD using the average exchange rate for the POI. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. *See Factor Valuation Memo* at 3.

To value electricity, we used the 2000 total average price per kilowatt hour (kwh) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Energy Prices and Taxes, Second Quarter, 2002*. This factor was reported in Indian rupees and converted into USD using the average exchange rate for the POI. We adjusted the average total surrogate cost of electricity to reflect inflation. We then multiplied the inflation factor by the surrogate value to derive the adjusted surrogate value. *See Factor Valuation Memo* at 4.

To value packing, we used a surrogate value, "Tank, ET 50–300 Liter, Others," derived from India import statistics as published by the *Monthly Statistics of Foreign Trade of India* ("Monthly Statistics"), covering the period April 2002 through January 2003. *World Trade Atlas* reported the packing in USD. We multiplied the surrogate value, which was for one kilogram of a packing drum by the weight of the drum in kilograms to obtain a surrogate value for one drum. We used the value that petitioner provided in the petition for the weight of the barrel. *See* June 23, 2003 at Exhibit 9, page 7. We then multiplied the surrogate value per drum by the amount of drums used to pack one metric ton of THFA. *See Factor Valuation Memo* at 5.

To value truck freight, we used an average truck freight cost based on Indian market truck freight rates on a rupees per-metric ton per kilometer basis published in the *Iron and Steel Newsletter*, April 2002. We then inflated the rate using the WPI published by the International Monetary Fund. We then divided by the POI average exchange rate to obtain a factor value for truck freight in USD. *See Factor Valuation Memo* at 5.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997), we added to surrogate values, as applicable, a surrogate freight cost using

the shorter of the reported distances from either the closest PRC port of exportation to the factory, or from the domestic supplier to the factory. *See Factor Valuation Memo* at 5.

To value factory overhead, selling, general and administrative expenses ("SG&A"), and profit, the Department did not use the data from the financial statements of an Indian company, Delta Agro Chemicals Ltd. ("Delta"), because although it appeared initially to produce the comparable merchandise furfuryl alcohol as one of its main products, the FCS's cable, received on January 4, 2004, and a previous email, received on December 30, 2003, reported that Delta only manufactured the feedstock product, furfural. For a copy of the cable and email, *See Factor Valuation Memo*, at Attachment X. As the Department prefers the use of financial data from a producer of the comparable merchandise, use of this source is less than ideal. Therefore, to value factory overhead, selling, general and administrative expenses ("SG&A"), and profit, we calculated surrogate financial ratios based on the financial information from the Reserve Bank of India ("RBI"). *See Factor Valuation Memo* at 4 and 5.

For labor, consistent with 19 CFR 351.408(c)(3), we used the regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003, (*see* <http://ia.ita.doc.gov/wages/corrected00wages/>). The source of the wage rate data on the Import Administration's Web site can be found in the Yearbook of Labour Statistics 2000, International Labor Office (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

### Catalyst

When determining whether an input should be treated as a factor of production or as an overhead item, the Department's practice is to consider inputs as part of overhead only when they are small in value relative to the total cost of manufacturing. *See Notice of Final Determination of Sales at Less Than Fair Value; Saccharin from the People's Republic of China*, 59 FR 58818, 58824, (November 15, 1994). The respondent reported that catalyst is used in the production process from furfuryl alcohol to THFA.<sup>7</sup> In determining how

<sup>7</sup> According to *The American Heritage Dictionary*, a catalyst is defined as a "substance, usually present in small amounts relative to the reactants, that modifies and especially increases the rate of a chemical reaction without being consumed in the

the catalyst should be classified when calculating the factors of production for the THFA investigation, we examined what percentage of the total cost of manufacturing the catalyst represented. Accordingly, based on the normal value summary information submitted by the petitioner for India, the value of the catalyst used in the production process is less than 0.5% of the total cost of manufacturing of THFA. *See Petitioner's Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China; Publicly Available Information to Value Factors of Production*, (December 16, 2003). Since the catalyst is an insignificant portion of the cost of manufacture, we maintain that it would typically be recorded as an overhead item in a company's books and records. Therefore, due to the insignificant cost impact of the catalyst, we are classifying this as overhead item rather than a separate factor of production.

Further, including the catalyst as a factor of production could, in this case, result in double counting the cost in one of two ways: (1) since the amount of the catalyst is insignificant, it is most likely accounted for as an indirect material and included in the surrogate company's overhead costs; or (2) if the surrogate company capitalizes the cost of the catalyst, then an allocated amount is already included in the overhead costs. If a company purchases property, plant or piece of equipment that benefits future periods, then it can capitalize the asset in accordance with its internal policy. Typically, companies set up an internal policy that dictates the threshold for capitalizing assets. Normally, if an asset is being depreciated, then it is considered to have a life in excess of one year and the cost is allocated over the life of the asset and is considered to be a part of fixed overhead. *See Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from Belarus and the Russian Federation: Classification of Catalysts as Overhead Expense, Memorandum from Paige Rivas, Team Leader, through Thomas F. Futtner, Program Manager, Group II, Office IV*, (September 26, 2002). Although we do not have information on the record to determine whether the catalyst cost for the surrogate companies data are included in overhead, record evidence indicates that this cost is included as an overhead cost by the respondent. In support of this, the Department points to the useful life of the catalyst as reported by the respondent, which

although below the one year threshold, indicates that the catalyst is being capitalized over a long-term time period. Therefore, to avoid any double counting, for the analysis of factor of production data submitted in this antidumping investigation of THFA from the PRC, we are preliminarily treating the reported catalyst as an overhead expense.

#### Weighted Average Dumping Margin

The weighted-average dumping margins are as follows:

Tetrahydrofurfuryl Alcohol from the PRC	
Producer/Manufacturer/Exporter	Weighted-Average Margin (Percent)
Qingdao Wenkem (F.T.Z.) Trading-Company, Ltd. ....	31.33
PRC - Wide Rate .....	31.33

#### Verification

As provided in section 782(I)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

#### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the CBP to suspend liquidation of all imports of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** with respect to QWTC. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds EP, as indicated above. With respect to all other PRC exporters, the Department will direct the CBP to suspend liquidation of all entries of THFA from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of our preliminary determinations in this investigation. CBP shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the **Federal Register**. The suspension of liquidation to be issued after our preliminary determination will remain in effect until further notice.

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination of sales at less than fair value. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of THFA, or sales (or the likelihood of sales) for importation, of the subject merchandise.

#### Public Comment

In accordance with 19 CFR 351.301(c)(3) of the Department's regulations, interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, whose content is limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs.

If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) the party's name,

process." *See The American Heritage Dictionary*, Houghton Mifflin Company, 1982

address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 20, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-1697 Filed 1-26-02; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 011204C]

#### Caribbean Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Caribbean Fishery Management Council's Habitat Advisory Panel (HAP), and the Scientific and Statistical Committee (SSC) will hold meetings.

**DATES:** The HAP/SSC meetings will be held on February 11-12, 2004. The HAP/SSC will convene on Wednesday, February 11, 2004, from 10 a.m. until 5 p.m., and will reconvene on Thursday, February 12, 2004, from 9 a.m. to 12 noon, approximately.

**ADDRESSES:** The meetings will be held at the Embassy Suites Hotel, #8000, Tartak St., Isla Verde, Carolina, Puerto Rico 00979.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-1920, telephone: (787) 766-5926.

**SUPPLEMENTARY INFORMATION:** The HAP and the SSC will meet to discuss the items contained in the following agenda:

1. Review draft response from the Caribbean Council and NOAA Fisheries to public comments, and recommend changes as appropriate to the essential fish habitat/environmental impact statement (EFH/EIS).
2. Review draft revisions to EIS, resulting from public comments and

internal review, and recommend changes as appropriate to the EFH/EIS.

3. Other.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/or other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918-1920, telephone (787) 766-5926, at least 5 days prior to the meeting date.

Dated: January 21, 2004.

**Peter H. Fricke,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04-1692 Filed 1-26-04; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 012104A]

#### New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Enforcement Oversight Committee and Advisory Panel in February, 2004. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Thursday, February 12, 2004 at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930; telephone: (978) 281-9300.

*Council address:* New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The panels will review and approve the Herring Enforcement Analysis and discuss other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 21, 2004.

**Peter H. Fricke,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04-1693 Filed 1-26-04; 8:45 am]

BILLING CODE 3510-22-S

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 04-C0002]

### E&B Giftware, LLC, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with E&B

date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 26, 2004, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on June 10, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 3, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 7, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

**Written submissions.**—Each party who is an interested party shall submit a prehearing brief to the Commission.

Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is June 3, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 17, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 17, 2004. On July 6, 2004, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 8, 2004, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

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

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2004.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-2659 Filed 2-6-04; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1046 (Final)]

### Tetrahydrofurfuryl Alcohol (THFA) From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of an antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-1046 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of THFA, provided for in subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States.<sup>1</sup>

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

**EFFECTIVE DATE:** January 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jai Motwane (202-205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—The final phase of this investigation is being scheduled as a result of an affirmative preliminary

<sup>1</sup> For purposes of this investigation, the Department of Commerce has defined the subject merchandise as: "tetrahydrofurfuryl alcohol (C<sub>5</sub>H<sub>10</sub>O<sub>2</sub>) ('THFA'). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents."

determination by the Department of Commerce that imports of THFA from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 23, 2003 by Penn Specialty Chemicals, Inc., Plymouth Meeting, PA.

**Participation in the investigation and public service list.**—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

**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 the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on March 30, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on April 13, 2004 at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 5, 2004. A nonparty who

has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 7, 2004 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

**Written submissions.**—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 6, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 20, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 20, 2004. On May 6, 2004, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 10, 2004, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's 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 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2004.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-2658 Filed 2-6-04; 8:45 am]

BILLING CODE 7020-02-P

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

February 2, 2003.

**TIME AND DATE:** 10 a.m., Thursday, February 12, 2004.

**PLACE:** Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

**STATUS:** Closed [pursuant to 5 U.S.C. 552b(c)(10)].

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in closed session:

In re Request for Relief Cases. (The Commission will discuss methods of disposing of the approximately 50 cases pending on the Commission's docket that involve requests for relief from final Commission orders.)

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 434-9950/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

[FR Doc. 04-2889 Filed 2-5-04; 3:25 pm]

BILLING CODE 6735-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 030-04783]

### Notice of Consideration of Amendment Request for the Dow Chemical Company and Release of Its Facility in Midland, MI

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of consideration of amendment request to Byproduct Material License No. 21-00265-06.

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear

Rich Talent Trading Ltd./Smartcord Int'l Co. Ltd.  
 Round-the-World (USA) Corp.  
 Round-the-World International Trade & Trans. Service (Tianjin) Co., Ltd.  
 Seven Seas Candle Ltd.  
 Shandong H&T Corp.  
 Shandong Native Produce International Trading Co., Ltd.  
 Shanghai Arts and Crafts Company  
 Shanghai Asian Development Int'l Tr  
 Shanghai Broad Trading Co. Ltd.  
 Shanghai Gift & Travel Products Import & Export Corp.  
 Shanghai Gifts & Travel  
 Shanghai Jerry Candle Co., Ltd.  
 Shanghai New Star Im/Ex Co., Ltd.  
 Shanghai Ornate Candle Art Co., Ltd.  
 Shanghai Shen Hong Corp.  
 Shanghai Sincere Gifts Designers & Manufacturers, Ltd.  
 Shanghai Success Arts & Crafts Factory  
 Shanghai Xietong Group O/B Asia 2 Trading Company  
 Shanghai Zhen Hua c/o Shanghai Light Industrial Int'l Corp., Ltd.  
 Silkroad Gifts  
 Simon Int'l Ltd.  
 Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (No. 339 East Baodai Road, Suzhou)  
 Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (Zhongxing City, Conghuan Rd., Suzhou)  
 T.H.I. (HK) Ltd.  
 Taizhou Int'l Trade Corp.  
 Taizhou Sungod Gifts Co., Ltd.  
 THI (HK) Ltd.  
 Thi Group Ltd. and THI (HK) Ltd.  
 Tianjin Native Produce Import & Export Group Corp., Ltd.  
 Tonglu Tiandi  
 Universal Candle Co., Ltd.  
 Weltach  
 World Way International (Xiamen)  
 World-Green (Shangdong) Corp., Ltd.  
 Xiamen Aider Import & Export Company  
 Xiamen C&D Inc.  
 Xietong (Group) Co., Ltd.  
 Zhejiang Native Produce & Animal By-Products Import & Export Corp.  
 Zhong Nam Industrial (International) Co., Ltd.  
 Zhongnam Candle  
 Zhongxing Shenyang Commercial Building (Group) Co., Ltd.  
 [FR Doc. 04-5802 Filed 3-12-04; 8:45 am]  
**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-825]

#### Sebacic Acid from the People's Republic of China: Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

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

**ACTION:** Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

**EFFECTIVE DATE:** March 15, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Patrick Connolly at (202) 482-1779, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

**SUPPLEMENTARY INFORMATION:** On August 22, 2003, the Department published in the *Federal Register* a notice of initiation of administrative review of the antidumping duty order on sebacic acid from the People's Republic of China. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750 (Aug. 22, 2003). The period of review is July 1, 2002 through June 30, 2003. The review covers two exporters of subject merchandise to the United States.

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. On March 9, 2004, the Department issued a revised surrogate country selection memorandum to interested parties in this proceeding, in which: 1) Pakistan had been eliminated as an acceptable surrogate country selection; 2) Egypt and Morocco had been added as acceptable surrogate country selections; and 3) economic indicators had been updated for all countries. We requested comments from interested parties for consideration in the preliminary results by April 8, 2004. In order to allow sufficient time for interested parties to comment and provide surrogate value information based on the revised surrogate country selection memorandum, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with section 751(a)(3)(A) of the Act, we have fully extended the deadline by 120 days until July 30, 2004.

Dated: March 9, 2004.

**Jeffrey May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 04-5801 Filed 3-12-04; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-887]

#### Notice of Postponement of Final Determination of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China

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

**ACTION:** Notice of postponement of final determination of antidumping duty investigation.

**EFFECTIVE DATE:** March 15, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Catherine Bertrand or Peter Mueller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3207 and (202) 482-5811 respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

This investigation was initiated on July 14, 2003. See *Notice of Initiation of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 68 FR 42686 (July 18, 2003). The period of investigation ("POI") is October 1, 2002 through March 31, 2003. On January 27, 2004, the Department of Commerce ("Department") published the notice of preliminary determination. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 69 FR 3887 (January 27, 2004).

##### Postponement of Final Determination

Section 735(a)(2) of the Tariff Act of 1930 ("the Act") provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made

by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months. *See* 19 CFR 351.210(e)(2).

On February 27, 2004, the respondent Qingdao Wenkem (F.T.Z.) Trading Company Limited ("QWTC") requested a nine-week extension of the final determination and also requested an extension of the provisional measures. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) QWTC accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are extending the due date for the final determination until no later than 135 days after the publication of preliminary determination in the **Federal Register**. Therefore, the final determination is now due on June 10, 2004. Suspension of liquidation will be extended accordingly.

This notice is published in accordance with section 735(a)(2) of the Act.

Dated: March 8, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-5799 Filed 3-12-04; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-894, A-570-895]

#### **Notice of Initiation of Antidumping Duty Investigations: Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China**

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

**EFFECTIVE DATE:** March 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Michael Ferrier at (202) 482-2667, Rachel Kreissl at (202) 482-0409, and Nazak Nikakhtar at (202) 482-9079 of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### **Initiation of Investigations The Petition**

On February 17, 2004, the Department of Commerce ("Department") received an antidumping duty petition ("Petition") filed in proper form by Seaman Paper Company of Massachusetts, Inc. ("Seaman"); American Crepe Corporation ("American Crepe"); Eagle Tissue LLC ("Eagle"); Flower City Tissue Mills Co. ("Flower City"); Garlock Printing & Converting, Inc. ("Garlock"); Paper Service Ltd. ("Paper Service"); Putney Paper Co., Ltd. ("Putney"); and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO, CLC ("PACE") (collectively "Petitioners"). Seaman, Eagle, Flower City, Garlock, Paper Service, and Putney are domestic producers of certain tissue paper products. Seaman and American Crepe are domestic producers of certain crepe paper products. On February 18, 2004, February 20, 2004, and February 24, 2004, the Department asked Petitioners to clarify certain aspects of the Petition. On February 23, 2004, February 24, 2004, and February 27, 2004, Petitioners submitted information to supplement the Petition ("First Supplemental Response," "Second Supplemental Response," and "Third Supplemental Response," respectively). On February 27, 2004, the Department requested that Petitioners provide publicly ranged data for the quantity and value of imports (*see Memorandum to the File: Request for Publicly Ranged Data for Volume and Value of Imports of Tissue Paper and Crepe Paper From the Peoples Republic of China*, dated February 27, 2004). On March 3, 2004, Petitioners filed their response to the Department's request ("Fourth Supplemental Response"). In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioners allege that both imports of certain tissue paper products and certain crepe paper products 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, or threatening material injury to, the respective U.S. industries.

The Department finds that Petitioners filed their Petition on behalf of each domestic industry because they are an interested party as defined in section 771(9)(C) of the Act, and Petitioners have demonstrated sufficient industry support with respect to the investigations they are presently

seeking. *See Determination of Industry Support for the Petition* section below.

#### **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 the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) 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. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce 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 a 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 like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (Ct. Int'l Trade 1988).

CA-RIV-4070 are located within the area traditionally occupied by the desert division of the Cahuilla tribe, represented today by the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Cahuilla Mission Indians, California; and Torres-Martinez Band of Cahuilla Mission Indians of California. However, the inferred antiquity of the human remains suggests that they represent an ancestral population of a more broadly defined Cahuilla tribe.

Officials of the University of California, Riverside have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the University of California, Riverside, have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can reasonably be traced between the Native American human remains and the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Cahuilla Mission Indians, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Philip J. Wilke, Department of Anthropology, University of California, Riverside, Riverside, CA 92521-0418, telephone (909) 787-5524, before April 26, 2004. Repatriation of these human remains to the Cahuilla Inter-Tribal Repatriation Committee may proceed after that date if no additional claimants come forward.

The University of California, Riverside is responsible for notifying the Cahuilla Inter-Tribal Repatriation Committee, Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Cahuilla Mission Indians, California; Cahuilla

Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California that this notice has been published.

Dated: February 10, 2004.

**John Robbins,**

*Assistant Director, Cultural Resources.*

[FR Doc. 04-6646 Filed 3-24-04; 8:45 am]

**BILLING CODE 4310-50-S**

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1046 (Final)]

### Tetrahydrofurfuryl Alcohol (THFA) From China

**AGENCY:** International Trade Commission.

**ACTION:** Revised schedule for the subject investigation.

**EFFECTIVE DATE:** March 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jai Motwane (202) 205-3176, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** On February 3, 2004, the Commission established a schedule for the conduct of the final phase of the subject investigation (69 FR 6005, February 9, 2004). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from April 9, 2004 to June 10, 2004 (69 FR 12127, March 15, 2004). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests

to appear at the hearing must be filed with the Secretary to the Commission not later than June 7, 2004; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 9, 2004; the prehearing staff report will be placed in the nonpublic record on May 28, 2004; the deadline for filing prehearing briefs is June 7, 2004; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 14, 2004; the deadline for filing posthearing briefs is June 21, 2004; the Commission will make its final release of information on July 8, 2004; and final party comments are due on July 12, 2004.

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

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 19, 2004.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-6692 Filed 3-24-04; 8:45 am]

**BILLING CODE 7020-02-P**

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Consistent with Departmental policy 28 CFR § 50.7, 38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on March 8, 2004, a proposed consent decree in *United States v. Atlantic Richfield Company, Inc.*, Civil Action No. 02-CV-0485E, was lodged with the United States District Court for the Western District of New York.

In this action, the United States sought recovery of response costs, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), incurred related to the Sinclair Refinery Superfund Site located in the Village and Town of Wellsville, Allegany County, New York. The Consent Decree requires settling defendant Atlantic Richfield Company to pay \$1,834,712 to the United States reimbursement of past response costs incurred with respect to the Site, and to pay all future oversight costs incurred

entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation (*i.e.*, January 26, 2004).

#### Notification Regarding APO

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 in accordance with 19 CFR 351.305. 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 determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 9, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

#### Appendix—Issues in the Decision Memorandum

1. All-Others Rate
2. Rejection of Bee Lian's Response and Application of Total Adverse Facts Available
3. Determination of Production and Sales Quantities
4. Offset to Cost of Manufacturing (COM) for the Sale of Recycled Resin Produced from Scrap and Misprinted Bags
5. Value of Recycled Resin Used in Production
6. Average Resin Cost by Type
7. Application of Auditors Year-End Adjustments
8. General, Administrative and Financial Expenses of Affiliated Companies
9. Treatment of Glue Spots as Cost of Materials Instead of Packing Cost
10. Billing Adjustments
11. Affiliation of Bee Lian and Certain U.S. Customers

[FR Doc. 04-13816 Filed 6-17-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-887]

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

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

**ACTION:** Notice of final determination of sales at less than fair value.

**EFFECTIVE DATE:** June 18, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Catherine Bertrand or Peter Mueller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3207 and (202) 482-5811, respectively.

#### Final Determination

We determine that tetrahydrofurfuryl alcohol from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margin of dumping is shown in the "Continuation of Suspension of Liquidation" section of this notice.

#### Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 27, 2004. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 69 FR 3887 (January 27, 2004) ("Preliminary Determination"). Since the publication of the *Preliminary Determination*, the following events have occurred.

On February 4, 2004, the respondent, Qingdao (F.T.Z.) Wenkem Trading Company, Ltd. ("QWTC"), submitted its Section D supplemental questionnaire response. Also on February 4, 2004, the Department received pre-verification comments from the petitioner.

From February 9 through 12, 2004, the Department conducted a factors of production verification at Zhucheng Huaxiang Chemical Co., Ltd. ("ZHC"). On February 13, 2004, the Department conducted a sales verification at QWTC.

On February 24, 2004, the petitioner submitted a request for a public hearing in accordance with 19 CFR 351.310(c). On April 28, 2004, the petitioner withdrew its request for a hearing. Because the petitioner was the only party to request a hearing, and because it was withdrawn in a timely manner, the Department did not conduct a hearing.

On February 27, 2004, the Department received a request from QWTC for a postponement of the final determination. On March 15, 2004, the Department postponed the final determination, in accordance with section 735(a)(2) of the Act by no later than 135 days after the publication of preliminary determination in the **Federal Register**. Therefore, the final determination was postponed until June 10, 2004. See *Notice of Postponement of Final Determination of Antidumping*

*Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 69 FR 12127 (March 15, 2004).

In the *Preliminary Determination*, we stated that if we made a change in our normal calculation methodology previous to the final determination, we would release to interested parties for comment a preliminary calculation sheet and analysis memorandum using that methodology. On March 9, 2004, the Department released to the interested parties its post-preliminary calculation, which included a factor value memorandum, an analysis memorandum with an attachment, and a print-out of the log for the margin calculation. See post-preliminary calculation.

On March 10, 2004, the Department released its factors of production and sales verification report to interested parties. See *Verification of Factors of Production for Zhucheng Huaxiang Chemical Co., Ltd. ("ZHC") and for the Sales of Qingdao Wenkem (F.T.Z.) Trading Co., Ltd. ("QWTC") in the Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China ("PRC") ("Verification Report")*.

On March 15, 2004, the petitioner requested an extension for the time limit for submitting the case briefs and rebuttal briefs. On March 16, 2004, the Department granted interested parties a sixteen-day extension for submission of the case briefs and explained that the rebuttal briefs would be due five days thereafter.

On March 19, 2004, QWTC submitted comments to the Department's post-preliminary calculation.

On March 23, 2004, the petitioner placed on the record public information for the purpose of providing the Department with additional information to be used in valuing the factors of production.

On April 5, 2004, the petitioner submitted its case brief with respect to the sales and factors of production verification and the Department's *Preliminary Determination*. On April 5, 2004, QWTC submitted its "Comments on the Calculation of Normal Value" with respect to the sales and factors of production verification and the Department's preliminary determination. On April 7, 2004, the Department placed a memorandum in the file explaining that the respondent's document titled, "Comments on the Calculation of Normal Value," was in fact the respondent's case brief. On April 7, 2004, the Department rejected both the petitioner's case brief and the respondent's case brief, concluding that the each contained new information that

was untimely filed in accordance with section 351.301(b)(1) of the Department's regulations. Also on April 7, 2004, the Department withdrew from the record all known copies of the case brief and returned them to the petitioner and respondent, in accordance with section 351.302(d)(2) of the Department's regulations.

On April 8, 2004, the petitioner submitted its revised case brief. On April 9, 2004, the respondent submitted its revised case brief.

On April 19, 2004, the petitioner submitted a rebuttal brief with respect to the sales and factors of production verification and the Department's *Preliminary Determination*. On April 19, 2004, the respondent requested an extension for submitting its rebuttal brief. On April 21, 2004, the Department received, via electronic-mail, a document containing the respondent's rebuttal brief. On April 22, 2004, the Department sent a letter to the respondent rejecting its request for an extension and rejecting the respondent's rebuttal brief. Following section 351.103(b) of the Department's regulations, the Department explained in its letter that the extension request and the rebuttal brief were both improperly filed, as they were not received in Import Administration's Dockets Center by close of business on April 19, 2004.

#### *Period of Investigation*

The period of investigation ("POI") is October 1, 2002 through March 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (June 23, 2003). See 19 CFR 351.204(b)(1).

#### *Scope of Investigation*

For the purpose of this investigation, the product covered is tetrahydrofurfuryl alcohol (C<sub>5</sub>H<sub>10</sub>O<sub>2</sub>) ("THFA"). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classified in the Harmonized Tariff Schedules of the United States ("HTSUS") under subheading 2932.13.00.00. Although the HTSUS subheadings are provided for convenience and for the purposes of the U.S. Customs and Border Protection ("Customs"), the Department's written description of the merchandise under investigation is dispositive.

#### *Analysis of Comments Received*

All issues raised in the case briefs by the parties to this investigation are addressed in detail in the *Memorandum to James J. Jochum, Assistant Secretary for Import Administration, from Jeffrey A. May, Deputy Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Less Than Fair Value Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, (June 10, 2004) ("*Final Decision Memorandum*"), which is hereby adopted by this notice. A list of the issues which parties raised, and to which we have responded, all of which are in the *Final Decision Memorandum*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in B-099. In addition, a complete version of the *Final Decision Memorandum* can be accessed directly on the World Wide Web at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the *Final Decision Memorandum* are identical in content.

#### *Non-Market Economy Country Status*

In our *Preliminary Determination*, we treated the PRC as a non-market economy ("NME") country. The Department has treated the PRC as a NME country in all past antidumping investigations. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000). A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. The respondent in this investigation has not requested a revocation of the PRC's NME status. We have, therefore, determined to continue to treat the PRC as an NME country. When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise.

Furthermore, no interested party has requested that the THFA industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the THFA industry in the PRC as a market-oriented industry in this investigation.

#### *Separate Rates*

In our *Preliminary Determination*, we found that the respondent met the criteria for the application of separate, company-specific antidumping duty rate. For the purpose of the final determination, we continue to grant a separate, company-specific rate to the respondent. For a complete discussion of the Department's determination that the respondent is entitled to a separate rate, please see *Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, (December 22, 2003).

#### *The PRC-Wide Rate*

We are continuing to apply the same methodology to our PRC-wide rate as used in the *Preliminary Determination*. For a discussion of our methodology for the PRC-wide rate, please see *Memorandum to the File From Peter Mueller, Case Analyst, to Edward C. Yang, Office Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China: PRC-Wide Rate*, (June 10, 2004).

#### *Surrogate Country*

For purposes of the final determination, we continue to find that India is the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection, see the Department's *Preliminary Determination*.

#### *Verification*

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent. For changes resulting from the results of verification and from the post-preliminary calculation see *Memorandum to the File, from Peter Mueller, Case Analyst, through Robert Bolling, Program Manager, Analysis for the Final Determination of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, (June 10, 2004) ("*Final Analysis Memo*").

#### *Facts Available*

For purposes of this final determination, we have determined that the use of facts available is appropriate for certain elements of the respondent's dumping margin calculations. Section

776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. For a further discussion of the facts available applied to the respondent, please see the *Final Decision Memorandum* at Comment 1.

#### *Adverse Facts Available*

For purposes of this final determination, we have determined that the use of adverse facts available is appropriate for certain elements of the respondent's dumping margin calculations. Section 776(b) of the Act provides that if the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from: (1) The petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753; or (4) any other information placed on the record.

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action at 870; *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221 (CIT 1998); *Mannesmannrohren-Werke AG v. United States*, 77 F. Supp. 2d 1302 (CIT 1999). The Court of Appeals for the Federal Circuit, in *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1380 (Fed. Cir. 2003), provided an explanation of the "failure to act to the best of its ability" standard, holding that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable

to conclude that less than full cooperation has been shown").

The record shows that QWTC, in part, failed to cooperate to the best of its ability, within the meaning of section 776(b) of the Act. In reviewing the evidence on the record, the Department finds that the respondent failed to provide requested information at the factor of production verification for the indirect inputs used to produce the respondent's self-produced inputs of electricity, steam, hydrogen, and catalyst. As a general matter, it is reasonable for the Department to assume that the respondent possessed the records necessary to participate in the factor of production verification. However, by not supplying the information the Department requested, the respondent failed to cooperate to the best of their ability. As the respondent has failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act to estimate the respondent's consumption of its self-produced hydrogen, steam, electricity, and catalyst. For a further discussion of the adverse facts available applied to the respondent, please see *Final Decision Memorandum*, at Comments 1, 5, 8, and 9.

#### *Changes Since the Preliminary Determination*

Based on our findings at verification, additional information placed on the record of this investigation, the post-preliminary calculation, and analysis of comments received, we have made adjustments to the methodology in calculating the final dumping margin in this proceeding. For discussions of the specific changes made since the *Preliminary Determination* to the final margin programs, please see *Final Analysis Memo*.

#### *Surrogate Values*

The Department made changes to the starting point and the surrogate values used to calculate the normal value from the *Preliminary Determination*. For a complete discussion of the starting point and the surrogate values, see *Memorandum to the File from Peter Mueller, Case Analyst, through Robert Bolling, Program Manager, and Edward C. Yang, Office Director, regarding Factor Valuations for the Final Determination* ("Final Factor Value Memo"), dated June 10, 2004.

#### *Disclosure*

We will disclose the calculations performed within five days of the date of publication of this notice to parties in

this proceeding in accordance with 19 CFR 351.224(b).

#### *Continuation of Suspension of Liquidation*

In accordance with section 735(c)(1)(B) of the Act, we are directing Customs to continue to suspend liquidation of all entries of subject merchandise from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination*. Customs shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. This suspension of liquidation instructions will remain in effect until further notice.

#### *Final Determination*

We determine that the following weighted-average dumping margins exist for the period October 1, 2002 through March 31, 2003:

#### TETRAHYDROFURFURYL ALCOHOL FROM THE PRC

Producer/manufacturer/exporter	Weighted-average margin (percent)
Qingdao (F.T.Z.) Wenkem Trading Company Limited .....	136.86
PRC—Wide Rate .....	136.86

#### *International Trade Commission Notification*

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

#### *Notification Regarding Administrative Protective Order ("APO")*

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance

with section 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 10, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

### Appendix: Issues in the Final Decision Memorandum

Comment 1: The Use of Adverse Facts Available

Comment 2: Starting Point for Calculation of Export Price

Comment 3: Freight Deduction to Calculation of Export Price

Comment 4: Surrogate Values for the Ocean Freight Deduction

Comment 5: Multi-Stage Factors of Production

Comment 6: THFA Production Starting Point

Comment 7: Furfural Value

Comment 8: Values for Dregs and Residue

Comment 9: Value for Hydrogen

Comment 10: Packing Value

[FR Doc. 04-13817 Filed 6-17-04; 8:45 am]

BILLING CODE 3510-25-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 061404E]

#### Proposed Information Collection; Comment Request; Tag Recapture Card

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).  
**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 17, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Eric Orbesen, 1-800-437-3936.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The primary objectives of a tagging program are to obtain scientific information on fish growth and movements necessary to assist in stock assessment and management. This is accomplished by the random recapture of tagged fish by fishermen and the subsequent voluntary submission of the appropriate data.

##### II. Method of Collection

The recapture cards will be sent out to the constituents who will fill out the cards with the pertinent information when and if they recapture a tagged fish and mail the cards as instructed on the card.

##### III. Data

*OMB Number:* 0648-0259.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 240.

*Estimated Time Per Response:* .033 hours (2 minutes).

*Estimated Total Annual Burden Hours:* 8 hours.

*Estimated Total Annual Cost to Public:* \$0.

##### IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 10, 2004.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04-13803 Filed 6-17-04; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 061504B]

#### Proposed Information Collection; Comment Request; Fishermen's Contingency Fund

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).  
**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 17, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Charles L. Cooper, Financial Services Division, F/MB5, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, phone 301-713-2396.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

U.S. commercial fishermen may file claims for compensation for losses of or damage to fishing gear or vessels, plus 50 percent of resulting economic losses, attributable to oil and gas activities on the U.S. outer continental shelf. To obtain compensation applicants must comply with requirements set forth in 50 CFR part 296. The requirements include a report within 15 days of the date the vessel first returns to port after the incident to gain a presumption of eligible causation and an application form.

**APPENDIX B**  
**HEARING WITNESSES**



## CALENDAR OF PUBLIC HEARING

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

**Subject:** Tetrahydrofurfuryl Alcohol from China  
**Inv. No.:** 731-TA-1046 (Final)  
**Date and Time:** June 14, 2004 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, SW, Washington, DC.

### **OPENING REMARKS:**

Petitioner (**William DeVinney**, Pillsbury Winthrop LLP)  
Respondents (**Matthew P. Jaffe**, Crowell & Moring LLP)

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

Pillsbury Winthrop LLP  
Washington, DC.  
on behalf of

Penn Specialty Chemicals

**Robert Quinn**, President and Chief Executive Officer,  
Penn Specialty Chemicals

**Michael Neff**, Vice President and Chief Financial Officer,  
Penn Specialty Chemicals

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

**Bruce Malashevich**, President, Economic Consulting  
Services

**Gregory Hogan**, Economist, Economic Consulting  
Services

**William DeVinney** )  
 ) – OF COUNSEL  
**William Matthews** )

**In Opposition to the Imposition of  
Antidumping Duties:**

Crowell & Moring LLP  
Washington, DC.  
on behalf of

Kyzen Corporation  
Zhucheng Huaxiang Chemical Co., Ltd.

**Kyle Doyle**, President and Chief Executive Officer,  
Kyzen Corporation

**Tom Forsythe**, Vice President and Chief Accounting  
Officer, Kyzen Corporation

**Matthew P. Jaffe** )  
 ) – OF COUNSEL  
**Rhonda M. Galaz** )

**REBUTTAL/CLOSING REMARKS**

Petitioners (**William DeVinney**, Pillsbury Winthrop LLP)  
Respondents (**Matthew P. Jaffe**, Crowell & Moring LLP)

**APPENDIX C**  
**SUMMARY DATA**



**Table C-1**  
**THFA: Summary data concerning the U.S. market, 2001-03, January-March 2003, and January-March 2004**

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**APPENDIX D**  
**MANUFACTURING PROCESSES FOR THFA**



# THFA - Vapor

Memphis  
Plant

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# THFA - Liquid

Memphis  
Plant

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**APPENDIX E**

**PENN'S QUARTERLY PRICING DATA**



**Table E-1**

**THFA: Weighted-average f.o.b. selling prices and quantities for product 1<sup>1</sup> sold to Penn's top-five customers, by quarters, January 2001-March 2004**

\* \* \* \* \*

**Table E-2**

**THFA: Weighted-average f.o.b. selling prices and quantities for product 2<sup>1</sup> sold to Penn's top-five customers, by quarters, January 2001-March 2004**

\* \* \* \* \*

**Figure E-1**

**THFA: Weighted-average quarterly f.o.b. prices for Penn's top five customers, by product type, January 2001-March 2004**

\* \* \* \* \*



**APPENDIX F**  
**KYZEN'S MONTHLY THFA PURCHASES**



**Table F-1**

**THFA: Weighted-average purchase prices and quantities as reported by Kyzen, purchases from Penn and Zhucheng for products 1 and 2, by month, January 2001- March 2004**

\* \* \* \* \*



**APPENDIX G**  
**PURCHASERS' PRICES**



**Table G-1**

**THFA: Weighted-average delivered prices and quantities for product 1 purchased by U.S. purchasers, and margins of underselling/(overselling), by quarters, January 2001-December 2003**

\* \* \* \* \*

**Table G-2**

**THFA: Weighted-average delivered purchase prices and quantities for domestic product 1 purchased by \*\*\* compared to delivered purchase prices and quantities for product 1 imported directly by \*\*\* , and margins of underselling/(overselling), by quarters, January 2001-December 2003**

\* \* \* \* \*

