

Electrolytic Manganese Dioxide From Australia and China

Investigation Nos. 731-TA-1124 and 1125 (Preliminary)

Publication 3955

October 2007

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-1124 and 1125 (Preliminary)

ELECTROLYTIC MANGANESE DIOXIDE FROM AUSTRALIA AND CHINA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Australia and China of electrolytic manganese dioxide, provided for in subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).²

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

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

BACKGROUND

On August 22, 2007, a petition was filed with the Commission and Commerce by Tronox LLC, Oklahoma City, OK, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of LTFV imports of electrolytic manganese dioxide from Australia and China. Accordingly, effective August 22, 2007, the Commission instituted antidumping duty investigation Nos. 731-TA-1124 and 1125 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 28, 2007 (72 FR 49309). The conference was held in Washington, DC, on September 12, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Commissioner Dean A. Pinkert recused himself to avoid any conflict of interest or appearance of a conflict.

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of electrolytic manganese dioxide (“EMD”) from Australia and China that are allegedly sold in the United States at less than fair value (“LTFV”).¹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.² In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”³

II. BACKGROUND

A. In General

The petition in these investigations was filed on August 22, 2007 by Tronox LLC (“Tronox” or “Petitioner”).⁴ Representatives from Tronox appeared at the conference, and Tronox filed a postconference brief.

The sole Australian producer of the subject merchandise, Delta EMD Australia (Pty) Limited (“Delta” or “Australian Respondent”), also appeared at the conference and submitted a questionnaire response and a postconference brief. Spectrum Brands, Inc. (“Spectrum”) and Panasonic Primary Battery Corporation of America (“Panasonic”), U.S. purchasers that oppose the petition, appeared at the conference, and Spectrum submitted a postconference brief. No producer or exporter of the subject merchandise from China appeared at the conference or submitted a postconference brief, and only two of 36 possible producers of EMD in China submitted questionnaire responses.⁵

¹ Commissioner Dean A. Pinkert has recused himself from these investigations.

² 19 U.S.C. § 1673b(a); see, e.g., Co-Steel Raritan, Inc. v. United States, 357 F.3d 1294 (Fed. Cir. 2004); American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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

⁴ Tronox accounts for approximately *** percent of reported U.S. production of EMD. Confidential Staff Report (“CR”) and Public Staff Report (“PR”) at Table III-1.

⁵ CR at VII-3, PR at VII-1.

B. Previous and Related Investigations⁶

EMD has been the subject of several antidumping duty investigations and reviews since the late 1980s.⁷ The most recent antidumping duty investigations involving EMD were initiated on August 27, 2003 with respect to imports from Australia, China, Greece, Ireland, Japan and South Africa in response to a petition filed by Kerr-McGee, Inc., predecessor to Tronox.⁸ The Commission reached affirmative determinations in the preliminary phase of the investigations with respect to imports from Australia, Greece, Ireland, Japan, and South Africa. The Commission also found that imports from China were negligible and terminated the investigation with respect to imports from China. However, before any final determinations were reached, the petition was withdrawn.

III. DOMESTIC LIKE PRODUCT

A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁹ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “[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.”¹⁰ 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”¹¹

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.¹² No single factor is dispositive, and the Commission

⁶ Each antidumping or countervailing duty investigation is *sui generis*, presenting unique interactions of the economic variables the Commission considers, and therefore is not binding on the Commission in subsequent investigations, even when the same subject country and merchandise are at issue. *E.g., Nucor Corp. v. United States*, 414 F.3d 1331, 1340 (Fed. Cir. 2005); *Ugine-Savoie Imphy v. United States*, 248 F. Supp. 2d 1208, 1220 (Ct. Int’l Trade 2002).

⁷ See *Electrolytic Manganese Dioxide from Greece and Japan*, Inv. Nos. 731-TA-406 and 408 (Final), USITC Pub. 2177 (April 1989); *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327 (Ct. Int’l Tr. 1999); *Electrolytic Manganese Dioxide from Greece and Japan*, Inv. Nos. 731-TA-406 and 408 (Review), USITC Pub. 3296 (May 2000) (“USITC Pub. 3296”) at 3 (a summary of these investigations/reviews appears at CR at I-4-I-6).

⁸ 68 Fed. Reg. 51551 (Aug. 27, 2003).

⁹ 19 U.S.C. § 1677(4)(A).

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(10).

¹² 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).

may consider other factors it deems relevant based on the facts of a particular investigation.¹³ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁴ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly sold at LTFV,¹⁵ the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁶ The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.¹⁷

B. Product Description

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

[a]ll manganese dioxide (MnO₂) that has been manufactured in an electrolytic process, whether in powder, chip or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD).¹⁸

Petitioner argues that the Commission should find one domestic like product consisting of EMD coextensive with Commerce's scope of the investigations.¹⁹ Respondents have not opposed the Petitioner's proposed definition of the domestic like product for purposes of the preliminary phase of these investigations.

EMD is a black powder (or plate or chip that will be ground into powder) that has a gamma crystalline structure and is used almost exclusively in dry-cell batteries.²⁰ There are three grades of EMD – alkaline, lithium and zinc-chloride – that are designed to be used in alkaline, lithium, and chloride batteries, respectively. All types and grades of EMD are produced by the same general process.²¹ The three grades differ primarily in particle size and pH or acidity/alkalinity (characteristics which are

¹³ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹⁴ 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 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.”).

¹⁵ See, e.g., USEC, Inc. v. United States, Slip Op. 01-1421 (Fed. Cir. April 25, 2002) at 9 (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), aff'd, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

¹⁶ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁷ Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int'l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

¹⁸ 72 Fed. Reg. 52850 (Sept. 17, 2007).

¹⁹ Petitioner's Postconference Brief at 6.

²⁰ CR at I-7, PR at I-6.

²¹ CR at I-7, I-12, PR at I-6, I-8.

imparted during the finishing process for EMD), but are essentially identical in all other physical characteristics.²²

Virtually all EMD produced and consumed in the United States is of the alkaline grade.²³ The zinc chloride grade has not been produced in the United States for a number of years.²⁴ Additionally, during the period of investigation, lithium grade EMD was manufactured by *** and in ***.²⁵ All three grades may be used in the production of dry-cell batteries.²⁶ Within each of the grades of EMD, the quality of EMD may vary.²⁷ Typically, higher quality EMD is used in AA/AAA type batteries, while lower quality grade may be used in C/D batteries. All new supplies of EMD must be qualified by the battery manufacturer before they can be used in a specific battery.²⁸ There is evidence in the record that higher-quality EMD may be blended with lower quality EMD for use in C/D cell batteries.²⁹ Almost all EMD is sold directly or indirectly through an importer or producers' sales representatives to end users (battery manufacturers).³⁰

In conclusion, we find no significant differences among the several grades of EMD with respect to physical characteristics, uses, production processes, or channels of distribution. Absent a clear dividing line between different grades of EMD, we define a single domestic like product as EMD, coextensive with the scope of these investigations.

IV. DOMESTIC INDUSTRY

The domestic industry is defined as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”³¹ 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.³² Based on our finding that the domestic like product is EMD, we find that the domestic industry consists of the three domestic producers of that product: Tronox, Erachem, and Energizer.

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B), which allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each investigation. In these investigations, *** imported subject merchandise during the period of investigation and ***. Thus, these domestic EMD producers qualify as “related parties” under 19 U.S.C. § 1677(4)(B).

²² CR at I-7-I-8, PR at I-6.

²³ CR at I-7, PR at I-6.

²⁴ ***. See USITC Pub. 3296 at I-7.

²⁵ ***.

²⁶ CR at I-7-I-8, PR at I-6.

²⁷ CR at I-8, PR at I-6.

²⁸ CR at I-10-11, PR at I-7.

²⁹ CR at I-9 n.17, II-27-II-28, Conference Transcript (Stevens) at 83, PR at I-6 n.18.

³⁰ CR/PR at II-1.

³¹ 19 U.S.C. § 1677(4)(A).

³² 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).

***.³³ ***.³⁴ According to ***, it ***.³⁵ ***.³⁶ In addition to ***, ***.³⁷ ***.³⁸ Based on these ratios, and given there are no other factors that indicate that appropriate circumstances exist to exclude *** and no party has argued for its exclusion, we find that appropriate circumstances do not exist to exclude *** from the domestic industry.

*** operations also present a related party issue. ***.³⁹ There is, however, no evidence in the record to indicate that *** was shielded from injury by its *** during the period of investigation. We note that no party has argued for *** exclusion from the domestic industry. We do not find that appropriate circumstances to exclude *** from the domestic industry.

Therefore, consistent with our definition of domestic like product, we define the domestic industry as consisting of all domestic producers of EMD.⁴⁰

V. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and the domestic like product in the U.S. market.⁴¹ In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁴²

³³ CR/PR at Table III-2.

³⁴ CR at III-5, PR at III-3.

³⁵ CR/PR at Table III-4.

³⁶ CR/PR at Table III-4. During the period of investigation, *** imported *** short tons of subject imports from ***, and the ratio of its subject imports to its production in that year was ***.

³⁷ CR/PR at Table III-4.

³⁸ CR/PR at Table III-4.

³⁹ CR/PR at III-8-III-9, PR at III-5.

⁴⁰ In line with 19 U.S.C. § 1677(24), we determine that negligibility is not an issue in these investigations. Subject imports from each of the subject countries were above three percent of total imports for the most recent 12-month period preceding the filing of the petition (August 2006 through July 2007). Specifically, subject imports from Australia accounted for 50.1 percent, and subject imports from China accounted for 33.7 percent, of total imports of the merchandise in that period. CR/PR at Table IV-4.

⁴¹ 19 U.S.C. § 1677(7)(G)(i).

⁴² See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l

(continued...)

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁴³ Only a “reasonable overlap” of competition is required.⁴⁴

B. Analysis

The threshold requirement for cumulation is satisfied because Petitioner filed a petition with respect to each of the subject countries on the same day. None of the statutory exceptions to cumulation is applicable.⁴⁵ We next examine the four factors that the Commission customarily considers in determining whether there is a reasonable overlap of competition.

While the evidence is somewhat mixed, subject imports from each country appear to be at least moderately interchangeable with each other and the domestic like product. Generally, domestic producers familiar with both the domestic product and EMD from Australia and China indicate that they are “always” or “frequently” interchangeable.⁴⁶ The importer/purchasers’ responses were mixed, with four of nine responses indicating that domestic product and EMD from Australia were “always” or “frequently” interchangeable and three of eight indicating the same for domestic product and EMD from China; the remainder indicated that the products were “sometimes” or “never” interchangeable. Three of seven responses indicated that EMD from Australia and China were “always” or “frequently” interchangeable; the remainder indicated they were “sometimes” or “never” interchangeable.⁴⁷ Domestic producers responded that non-price factors are “never” or “sometimes” significant.⁴⁸ Importer/purchaser responses were mixed, with three of eight responses indicating that non-price factors were “never” or “sometimes” significant when comparing domestic product and EMD from Australia, two of seven indicating the same comparing domestic product and EMD from China, and three of six indicating the same comparing EMD from Australia and China. The remaining importer/purchaser responses indicated that non-price differences were “frequently” or “always” important.⁴⁹

Of the four battery manufacturers that purchase EMD, ***.⁵⁰ ***.⁵¹ Finally, ***.⁵²

(...continued)

Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

⁴³ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

⁴⁴ The SAA states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA at 848 (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988)), aff'd 859 F.2d 915 (Fed. Cir. 1988). See Goss Graphic Sys., Inc. v. United States, 33 F. Supp. 2d 1082,1087 (Ct. Int'l Trade 1998) (“cumulation does not require two products to be highly fungible”); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁴⁵ See 19 U.S.C. § 1677(7)(G)(ii).

⁴⁶ CR/PR at Table II-3.

⁴⁷ CR/PR at Table II-3.

⁴⁸ CR/PR at Table II-4.

⁴⁹ CR/PR at Table II-4.

⁵⁰ CR/PR at Table II-4.

⁵¹ CR at II-34, PR at II-13.

⁵² CR at II-33, PR at II-13.

All EMD must go through a rigorous, costly, and lengthy qualification process which limits, to some extent, shifting among suppliers in the short run.⁵³ With the exception ***, domestic and subject EMD from Australia and China are generally produced to a particular customer's specifications.⁵⁴ Although all EMD must be qualified, the record shows that the domestic product and subject imports from both countries have been qualified by *** U.S. battery producers at various times during the period of investigation.⁵⁵

Both Delta and Spectrum argue that competition between the domestic like product and subject imports is at best attenuated, because domestic producers have focused their production on EMD for the AA/AAA battery market segment while subject imports are concentrated in the C/D battery market segment. The record, however, indicates that in 2006, domestic EMD and imported EMD were used for both C/D and AA/AAA battery production.⁵⁶

On balance, for purposes of the preliminary phase of these investigations, we find that the domestic product and subject imports from both countries are sufficiently fungible to indicate a reasonable overlap of competition. The other criteria appear to be met as well. The record indicates that domestically produced, Australian, and Chinese EMD are all sold to battery manufacturers that are located in the Midwest and Southeastern sections of the United States.⁵⁷ U.S. EMD producers sell directly to end users (battery manufacturers) and U.S. importers sell subject EMD directly or through their sales representatives to battery manufacturers.⁵⁸ Finally, imports from each of the subject countries and domestic shipments have been present in the U.S. market throughout the period of investigation. Specifically, subject imports from Australia and China were recorded in virtually every month of the period.⁵⁹

For the reasons discussed above, we find that there is a reasonable overlap of competition between subject imports from Australia and China, and among these subject imports and the domestic like product. Although short-run interchangeability between domestic and subject EMD is limited because all EMD must undergo a qualification process, the record indicates that there is a sufficient degree of fungibility among and between subject imports and the domestic like product to warrant a finding of a reasonable overlap of competition. The domestic like product and subject imports from both countries compete in the same geographic markets, are sold directly to end users (battery manufacturers), and have been simultaneously present in the U.S. market throughout the period of investigation.

Thus, we cumulate subject imports from both countries for purposes of our material injury analysis in the preliminary phase of these investigations.

⁵³ CR at II-26, PR at II-10.

⁵⁴ CR at I-9 n.17, PR at I-6 n.18.

⁵⁵ CR/PR at II-26-II-27.

⁵⁶ CR/PR at Table II-2.

⁵⁷ CR at V-4-V-5, PR at V-3.

⁵⁸ U.S. producers' and importers' questionnaire responses, sections IV-C, III-C-1 and III-C-2, CR/PR at Table I-2.

⁵⁹ CR/PR at Table IV-11.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁶⁰ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁶¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁶² In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁶³ 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.”⁶⁴

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

A. Conditions of Competition and the Business Cycle

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

⁶⁰ 19 U.S.C. §1673b(a).

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

⁶² 19 U.S.C. § 1677(7)(A).

⁶³ 19 U.S.C. § 1677(7)(C)(iii).

⁶⁴ 19 U.S.C. § 1677(7)(C)(iii).

1. Captive Production⁶⁵

The domestic industry consumes a significant portion of its EMD production in the manufacture of downstream products, namely batteries. We have considered whether the captive production provision requires us to focus our analysis primarily on the merchant market when assessing market share and factors affecting the financial performance of the domestic industry. We find that a significant amount of domestic production of EMD is both captively consumed and sold on the merchant market,⁶⁶ and thus the threshold requirement is met. However, the record indicates that EMD sold in the merchant market is used in the production of the same downstream products, batteries, for which EMD is captively consumed. Accordingly, we find that the third criterion of the captive production provision is not satisfied, and therefore the captive production provision does not apply in these investigations. We, however, take the captive production into account as a significant condition of competition.⁶⁷

2. Product Interchangeability

EMD is used almost exclusively in the production of dry-cell batteries.⁶⁸ As discussed earlier in cumulation, the interchangeability of domestic and imported EMD is limited somewhat by the fact that all purchases of EMD from new suppliers are required to undergo rigorous qualification procedures. The qualification process is both battery-specific and plant-specific, and can range from about *** to *** in duration.⁶⁹ While all EMD must be qualified, the domestic product and subject imports from both

⁶⁵ As amended by the URAA, the statute contains a provision on captive production at section 19 U.S.C. § 1677(7)(C)(iv), which provides:

(iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that –

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

19 U.S.C. § 1677(7)(C)(iv). The SAA indicates that where a domestic like product is transferred internally for the production of another article coming within the definition of the domestic like product, such transfers do not constitute internal transfers for the production of a “downstream article” for purposes of the captive production provision. SAA at 853.

⁶⁶ CR at III-6-III-7, PR at III-5.

⁶⁷ In any final phase of these investigations, we intend to evaluate possible benefits associated with captive production, including with respect to quality, blending, and surety of supply.

⁶⁸ CR/PR at I-3.

⁶⁹ CR at I-10-I-11, PR at I-7.

countries have been qualified by *** U.S. battery producers for at least some of their battery types at various times during the period of investigation.⁷⁰

As discussed earlier for our cumulation analysis, domestic EMD producers familiar with both the domestic product and EMD from Australia and China indicated that they are “always” or “frequently” interchangeable.⁷¹ Importer/purchasers’ responses were mixed, opining more frequently than U.S. producers that domestic EMD and EMD from Australia and China were “sometimes” or “never” interchangeable, with a substantial minority indicating they were “always” or “frequently” interchangeable.⁷² As for non-price factors, domestic producers responded that these differences are “never” or “sometimes” important.⁷³ While importers/purchasers generally responded that such differences were “always” or “frequently” important, referring specifically to performance, impurities, consistency, and the presence of EMD particulates, but a substantial minority indicated that non-price differences were “never” or “sometimes” important.^{74 75}

3. Demand Conditions

Demand for EMD is derived from the demand for dry-cell batteries, in particular alkaline batteries, which in turn is derived from demand for the electronic devices that utilize such batteries. Due to an increase in the consumer use of high-technology, portable consumer electronic devices, there has been an increase in demand for smaller size batteries (AA/AAA). Demand for EMD is not seasonal, but can be affected by increases in battery consumption during the holiday season and in response to natural disasters such as hurricanes.⁷⁶

Apparent U.S. consumption of EMD fluctuated over the period of investigation but decreased by 3.1 percent from 2004 to 2006.⁷⁷ Apparent U.S. consumption rose from 99,277 short tons in 2004 to 106,874 short tons in 2005, and then declined to 96,175 short tons in 2006. Apparent U.S. consumption was 3.6 percent lower in interim 2007 (44,208 short tons) than in interim 2006 (45,862 short tons).⁷⁸ Parties suggested that the fluctuations in apparent U.S. consumption over the period of investigation may

⁷⁰ CR at II-26-II-27, PR at II-10-II-11. In 2006, in C/D batteries, U.S. battery producers’ usage of domestically produced EMD totaled *** short tons, usage of EMD from Australia totaled *** short tons and usage of EMD from China totaled *** short tons. In AA batteries, U.S. battery producers’ usage of domestically produced EMD totaled *** short tons, usage of EMD from Australia totaled *** short tons, and usage of EMD from China totaled *** short tons. In AAA batteries, U.S. battery producers’ usage of domestically produced EMD totaled *** short tons and usage of EMD from Australia totaled *** short tons. In AAA batteries, there was *** reported usage by U.S. battery producers of EMD from China. CR/PR at Table II-2.

⁷¹ CR at II-30, PR at II-12.

⁷² CR at II-30, PR at II-12.

⁷³ CR/PR at Table II-4.

⁷⁴ CR at II-33-34, PR at II-13, CR/PR at Table II-4. In any final phase of these investigations, we intend to examine more fully the issue of attenuated competition in the U.S. market. In particular, we will be seeking information concerning (1) the number of formulations of EMD offered by each domestic producer and the types of batteries in which each formulation of EMD is used; (2) whether battery manufacturers offer different grades of products within a particular size, targeted at particular segments of the battery market; and (3) whether the EMD used in these products differs.

⁷⁵ In any final investigations, we will explore the extent to which any patents and patent licensing agreements affect competition in the U.S. market.

⁷⁶ CR at II-15, PR at II-7.

⁷⁷ CR at II-15, PR at II-6.

⁷⁸ CR/PR at Table IV-6.

be attributable to the varying hurricane activity over the same period.⁷⁹ In particular, some market participants attribute stronger demand in 2005 to Hurricane Katrina.⁸⁰

The alkaline EMD market in the United States is comprised of a small number of purchasers. There are only four major U.S. battery producers, Duracell, Energizer, Spectrum and Panasonic, all of which manufacture worldwide. Because of the lengthy and detailed qualification processes as well as the relatively limited number of suppliers, both Panasonic and Spectrum reported that they attempt to maintain long-term relationships with their EMD suppliers.⁸¹

4. Supply Conditions

There are only a limited number of EMD suppliers that were qualified by one or more of the four U.S. battery manufacturers during the period of investigation. These include ***.⁸² *** of its EMD production and ***.

The domestic industry was the largest supplier of EMD in the U.S. market throughout the period of investigation. The domestic industry's market share on a quantity basis decreased from 69.0 percent in 2004 to 64.3 percent in 2006.⁸³ In interim 2007, the domestic industry's market share was 62.0 percent, compared to 66.6 percent in interim 2006.⁸⁴ During the period of investigation, U.S. EMD production capacity ranged from 69,400 short tons to 70,100 short tons,⁸⁵ which was equivalent to a little more than two-thirds of total apparent U.S. consumption for the same period. While domestic production was less than apparent U.S. consumption throughout the period, the domestic industry had the ability to supply more of the U.S. market given sizeable inventories, which *** during the period of investigation.⁸⁶

The next largest source of supply to the U.S. market was subject imports.⁸⁷ Cumulated subject imports' share of the U.S. market by quantity increased from *** percent in 2004 to *** percent in 2006. In interim 2006 and interim 2007, cumulated subject imports' market share was *** percent and *** percent, respectively.⁸⁸ Nonsubject imports supplied the remainder of the U.S. market. Their market share fluctuated during the period of investigation, decreasing from *** percent in 2004 to *** percent in 2005, and then increasing to *** percent in 2006.⁸⁹ Nonsubject imports' market share was *** percent in interim 2006 and *** percent in interim 2007.⁹⁰

⁷⁹ CR at II-15 n.20; II-18, PR at II-7 n.20, II-7.

⁸⁰ ***; Petitioner's Postconference Brief Ex. 1.

⁸¹ CR at V-13 n.35, PR at V-8 n.35.

⁸² CR/PR at Table II-1 and I-9 n.17, PR at I-6 n.18.

⁸³ CR/PR at Table IV-7.

⁸⁴ CR/PR at Table IV-7.

⁸⁵ CR/PR at Table C-1.

⁸⁶ CR/PR at Table C-1.

⁸⁷ CR/PR at Table IV-7.

⁸⁸ CR/PR at Table IV-7.

⁸⁹ CR/PR at Table IV-7.

⁹⁰ CR/PR at Table IV-7.

5. Other Considerations

Both domestically produced and imported EMD are usually sold under annual contracts/agreements, with negotiations occurring in the fourth quarter of the previous year for shipments in the following year.⁹¹ Generally, the negotiation process involves competitive bids or quotes from a battery manufacturer's various qualified suppliers before the contract is awarded and may involve counteroffers and other terms of negotiation.⁹² There were mixed responses as to whether annual contracts are for fixed volumes and prices, the extent to which they are subject to renegotiation, and whether they typically include meet-or-release provisions.⁹³

EMD production involves substantial fixed and variable costs. EMD production is also capital-intensive and, as a result, EMD producers generally must keep their plants operating at or near full capacity to remain profitable.⁹⁴

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."⁹⁵

The volume of cumulated subject imports was significant during the period of investigation, and it increased from 2004 to 2006, both in absolute terms and relative to consumption and production in the United States. The volume of subject imports was *** short tons in 2004, *** short tons in 2005, and *** short tons in 2006.⁹⁶ In interim 2007, the volume of cumulated subject imports was *** short tons, compared to *** short tons in interim 2006.⁹⁷ Subject imports' share of apparent U.S. consumption rose from *** percent in 2004 to *** percent in 2006. In interim 2007, subject imports' share of apparent U.S. consumption was *** percent (their highest level during the period), compared with *** percent in interim 2006.⁹⁸ The ratio of cumulated subject imports to U.S. production rose *** from *** percent in 2004 to *** percent in 2005, and then fell to *** percent in 2006. The ratio of cumulated subject imports to U.S. production in interim 2007 was *** percent, compared to *** percent in interim 2006.⁹⁹

Subject imports' increase in market share came almost entirely at the expense of the domestic industry. The domestic industry's market share was 69.0 percent in 2004, 66.1 percent in 2005, and 64.3 percent in 2006; it was 62.0 percent in interim 2007 as compared to 66.6 percent in interim 2006.¹⁰⁰ Nonsubject imports, both in absolute terms and relative to U.S. consumption, remained at low levels throughout the period, typically amounting to approximately *** of total imports annually during the period of investigation.¹⁰¹ Nonsubject imports' market share was *** percent in 2004, *** percent in

⁹¹ CR at V-8, PR at V-6.

⁹² CR at V-10-V11, PR at V-7.

⁹³ CR at V-9-V-10, PR at V-7.

⁹⁴ CR at II-7-II-8, VI-7 n.9, PR at II-2-II-3, VI-2 n.9.

⁹⁵ 19 U.S.C. § 1677(7)(C)(i).

⁹⁶ CR/PR at Table IV-2.

⁹⁷ CR/PR at Table IV-2.

⁹⁸ CR/PR at Table IV-7.

⁹⁹ CR/PR at Table IV-8.

¹⁰⁰ CR/PR at Table IV-7.

¹⁰¹ CR/PR at Table IV-2.

2005, and *** percent in 2006; it was *** percent in interim 2007, compared to *** percent in interim 2006.^{102 103 104}

¹⁰² CR/PR at Table IV-7. Nonsubject imports were *** short tons in 2004, *** short tons in 2005, and *** short tons in 2006; they were *** short tons in interim period 2006 and *** short tons in interim period 2007. CR/PR at Tables IV-2 and IV-7.

¹⁰³ In any final phase investigations, we will seek information on the role of nonsubject imports of EMD in the U.S. market. We invite parties to comment in any final phase investigations on whether Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006) is applicable to the facts of these investigations. In particular, parties are encouraged to focus on whether the first triggering factor under Bratsk (whether EMD is a commodity product) is met. The Commission also invites parties to comment on what additional information the Commission should collect to address the issues raised by the Court and how that information should be collected, and to identify which of the various nonsubject sources should be the focus of additional information gathering by the Commission in any final phase investigations.

¹⁰⁴ Chairman Pearson and Commissioner Okun do not join the preceding footnote. The U.S. Court of Appeals for the Federal Circuit did not address the application of its mandate in Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006), to preliminary investigations. In that case the Court indicated that, in cases involving commodity products in which imports from non-subject countries are price-competitive and are a significant factor in the U.S. market, in order to establish a causal link between subject imports and material injury the Commission must evaluate whether the non-subject imports would replace subject imports and thereby eliminate the benefit to the domestic industry of an antidumping or countervailing duty order.

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury by reason of the allegedly unfairly traded imports. 19 U.S.C. §§ 1671b(a), 1673b(a) (2000). Thus, Chairman Pearson and Commissioner Okun conclude that they must conduct a *Bratsk* analysis as they would in any other type of causation analysis in a preliminary investigation. Consequently, in these investigations, having found that there is a reasonable indication that the domestic EMD industry is materially injured by reason of allegedly unfairly traded imports from Australia and China, as a threshold inquiry they proceed to assess whether the facts of these investigations trigger a *Bratsk* analysis.

Chairman Pearson and Commissioner Okun note that the *Bratsk* Court stated that “[t]he obligation under *Gerald Metals* is triggered whenever the antidumping investigation is centered on a commodity product, and price competitive nonsubject imports are a significant factor in the market. *Bratsk*, 444 F.3d at 1375. Thus, the *Bratsk* test purportedly is not required in every case, but only in cases involving a “commodity product” and where “price competitive nonsubject imports are a significant factor in the market.” With regard to the first prong of this analysis, the *Bratsk* Court referred to a “commodity product” as “meaning that it is generally interchangeable regardless of its source.” The record of these investigations does not lead Chairman Pearson and Commissioner Okun to conclude that EMD fits this definition of a commodity product. First, although some questionnaire respondents reported that EMD from various sources was interchangeable, all parties noted the existence of extensive and time-consuming procedures that are required before new suppliers can be qualified. CR/PR at Table II-3; CR at II-33-II-35, PR at II-13. Hence, interchangeability in the short run appears to be limited inasmuch as it may be difficult if not impossible for an EMD user to switch suppliers if the alternate supplier has not already been qualified by that particular user. Second, the record indicates that non-price factors, such as quality, availability, transportation network, product range, and technical support, may affect competition significantly. CR, PR at table II-4; CR at II-33-II-35, PR at II-13. Because such factors apparently exert significant influence over buying decisions, it is unlikely that EMD from various sources would be readily interchangeable.

Consequently, Chairman Pearson and Commissioner Okun conclude that the first prong of this threshold inquiry is not met, and are not required to reach the issues of whether nonsubject imports are price-competitive or whether such imports would replace subject imports in the event antidumping orders were imposed. For a complete statement of Chairman Pearson’s and Commissioner Okun’s interpretation of *Bratsk* in a preliminary investigation, see Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminum v. United States in Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Preliminary), USITC Pub. 3912 (Apr. 2007) at 19-25. In any final phase investigation, any party holding a contrary

(continued...)

For the foregoing reasons, we find for the purposes of the preliminary phase of these investigations that both the volume and increase in volume of cumulated subject imports are significant, both in absolute terms and relative to consumption and production in the United States.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁰⁵

As noted above, the domestic like product and subject imports appear to be at least moderately interchangeable. While respondents emphasize that quality is the most important factor in purchasing decisions, the record also reflects that price is an important factor in purchasing decisions.¹⁰⁶ As discussed earlier, U.S. producers and a substantial minority of importers/purchasers report that non-price factors were “never” or “sometimes” important in purchasing decisions. Each purchaser, however, has qualified ***, elevating the importance of price in competition for sales among eligible suppliers.¹⁰⁷ *** indicated that all EMD for standard grades of EMD was interchangeable and that price was a factor in purchasing decisions.¹⁰⁸

As noted previously, almost all sales of EMD are made on an annual contract/agreement basis, and negotiations typically occur in the fourth quarter of the year preceding that in which shipments are to occur.

According to quarterly selling price data collected in these investigations, there was significant price underselling by subject imports during the period of investigation.¹⁰⁹ Subject imports undersold the domestic like product in all but one of 23 possible price comparisons. Margins of underselling ranged from 1.5 percent to 13.0 percent.¹¹⁰

Domestic prices for the specified product increased irregularly from January-March 2004 through January-March 2006, and remained at the same level throughout 2006.¹¹¹ Domestic prices,

¹⁰⁴ (...continued)

view should so indicate, and provide a basis for its view, at the time written comments on the draft questionnaires are submitted.

¹⁰⁵ 19 U.S.C. § 1677(7)(C)(ii).

¹⁰⁶ Conference Transcript at 67 (Reilly), 121(McGrath).

¹⁰⁷ CR/PR at Table II-4 (supplier qualification) and at V-41, PR at V-8-V-9, (petitioner reporting that U.S. purchasers frequently use competing offers as leverage in price negotiations) but see CR at V-41, PR at V-13. (EMD purchasers Panasonic and Spectrum, ***).

¹⁰⁸ CR at II-34 ***, PR at II-13.

¹⁰⁹ CR at V-13-V-29; PR at V-8-V-9, Conference Transcript at 121. In the preliminary phase of these investigations, data were collected detailing U.S. producers’ and importers’ participation in bid events. We view comparisons of the prevailing bid prices with extreme caution, however, because they were made in varying terms, including f.o.b., landed duty-paid, and delivered. CR at V-13, PR at V-8. On average, subject imports underbid the domestic product in a number of instances. CR/PR at Table V-3. We plan to examine the bidding process and the circumstances surrounding the bidding process more fully in any final phase of these investigations.

¹¹⁰ CR/PR at Tables V-4 and V-5.

¹¹¹ CR/PR at Table V-4.

however, declined in interim 2007.¹¹² Prices for Australian subject imports fluctuated during January-March 2004 through October-December 2005, but increased in 2006, and remained at the same level throughout 2006. Prices for Australian subject imports declined in interim 2007. Prices for Chinese subject imports declined overall from January-March 2005 (the first period reported) through October-December 2005, then fluctuated in 2006. In interim 2007, prices for Chinese subject imports declined, and in April-June 2007, reached their lowest level of the period.¹¹³ Over the period of investigation, the domestic industry's ratio of costs of goods sold ("COGS") to net sales rose overall from 2004 to 2006, as did the ratio of raw material costs to net sales. The ratios of COGS to net sales and raw material costs to net sales were higher in interim 2007 than in interim 2006.¹¹⁴

The available data do not indicate that subject imports had a significant depressing effect on domestic prices as domestic prices generally rose throughout the period. There also does not appear to be strong evidence that subject imports had a significant price-suppressing effect from 2004 to 2006. Although the domestic industry's ratio of COGS to net sales rose from 92.9 percent in 2004 to 94.1 percent in 2006, the increase was irregular and relatively small.¹¹⁵ In interim 2007, however, prices were lower and costs higher than in interim 2006. Consequently, the ratio of COGS to net sales was higher in interim 2007, at 103.0 percent, than in interim 2006, when it was 95.0 percent.¹¹⁶ Thus, while the evidence of price suppression effects is not conclusive when the period 2004-2006 is considered alone, an incipient trend appears confirmed based on interim year data. Ordinarily, we are reluctant to place great weight on comparisons of partial-year periods. Here, however, those comparisons merit greater relevance because the record information that most sales contracts are annual and negotiated in the fourth quarter of each year. We conclude that the domestic industry is starting to experience a cost/price squeeze, and we will re-examine this issue in any final phase investigations.

Nevertheless, the record in this preliminary phase suggests that, in the face of widespread underselling by the subject imports, the domestic industry is sacrificing market share in order to maintain and/or increase its prices. Thus, the pervasive underselling not only has contributed to the domestic industry's declining market share but also to the declines in other volume-based indicators discussed below.

D. Impact of the Subject Imports¹¹⁷

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹¹⁸ These factors include: output, sales, inventories, capacity utilization, market

¹¹² CR/PR at Table V-4.

¹¹³ CR/PR at Table V-4.

¹¹⁴ The ratio of COGS to net sales decreased from 92.9 percent in 2004 to 87.5 percent in 2005, and then rose to 94.1 percent in 2006; it was 103.0 percent in interim 2007 as compared to 95.0 percent in interim 2006. The ratio of raw material costs to net sales increased from 22.5 percent in 2004 to 24.7 percent in 2005 and 29.2 percent in 2006; it was 31.9 percent in interim 2007, as compared to 27.8 percent in 2006. CR/PR at Table VI-5.

¹¹⁵ CR/PR at Table C-1. The ratio was 87.5 percent in 2005. CR/PR at Tables VI-5 and C-1.

¹¹⁶ CR/PR at Table VI-5.

¹¹⁷ In its notice of initiation of the antidumping duty investigations, Commerce estimated the dumping margin for subject imports from Australia to be 52.94 percent and the dumping margin for subject imports from China to be 133.76 percent. 72 Fed. Reg. 52850, 52854 (Sept. 17, 2007), CR at I-6, PR at I-5.

¹¹⁸ 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 (continued...)

share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹¹⁹

By most measures, the domestic industry’s performance indicators were positive in the first two years of the period of investigation. The indicators, however, showed a marked decline in 2006 and continued to worsen when the interim periods are compared as subject imports continued to capture market share from the domestic industry. Although overall industry capacity remained relatively stable throughout the period,¹²⁰ domestic producers’ total production and shipments of EMD increased from 2004 to 2005, but decreased in 2006, and were lower in interim 2007 compared with interim 2006.¹²¹ ¹²² Domestic producers’ capacity utilization increased irregularly from 2004 to 2006, and was lower in interim 2007 when compared to interim 2006.¹²³ Domestic producers’ end-of-period inventories

¹¹⁸ (...continued)

difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”) SAA at 885.

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

¹²⁰ Domestic production capacity was 69,400 short tons in 2004, 66,999 short tons in 2005, and 70,100 short tons in 2006. Production capacity was lower in interim 2007 (34,996 short tons) than in interim 2006 (35,193 short tons). CR/PR at Table C-1.

¹²¹ Production increased from 64,678 short tons in 2004 to 69,877 short tons in 2005 and 67,877 short tons in 2006. Production was lower in interim 2007 (30,917 short tons) than in interim 2006 (34,135 short tons). CR/PR at Table C-1, CR/PR at Table III-2. The domestic industry’s U.S. shipments increased from 68,472 short tons in 2004 to 70,685 short tons in 2005, and then decreased to 61,820 short tons in 2006. U.S. shipments were lower in interim 2007 (27,430 short tons) than in interim 2006 (30,564 short tons). CR/PR at Table C-1.

¹²² We note that respondents assert that domestic producers do not have the capacity to supply the entire U.S. EMD market. Although domestic producers’ existing production is less than U.S. apparent consumption, U.S. EMD producers appear capable of supplying a large share of the U.S. EMD market and experienced *** increase in inventories over the period of investigation. Moreover, as the Commission previously has noted, “there is no short supply provision in the statute” and “the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports.” Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Article 1904 NAFTA Remand) at 108, n. 310 (December 2003). See also, Certain Activated Carbon from China, Inv. No. 731-TA-1103 (Preliminary), USITC Pub. 3852 (May 2006) at 19, n. 134; Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 (March 2006) at 20 n. 143; Certain Lined Paper School Supplies, Inv. Nos. 701-TA-442-443 (Preliminary) and 731-TA-1095-1097 (Preliminary), USITC Pub. 3811 (October 2005) at 23, n. 155; Metal Calendar Slides from Japan, Inv. No. 731-TA-1094 (Preliminary), USITC Pub. 3792 (August 2005) at 9, n. 45 (“To the extent that Respondents claim that the Commission is legally unable to make an affirmative finding of material injury by reason of subject imports because the domestic industry is incapable of supplying domestic demand, they are incorrect.”).

¹²³ Capacity utilization increased from 93.2 percent in 2004 to 99.8 percent in 2005, and then declined to 96.8 percent in 2006. Capacity utilization was lower in interim 2007 (87.8 percent) than in interim 2006 (97.5 percent). CR/PR at Table C-1.

decreased from 2004 to 2005 but then *** in 2006. Such inventories were also *** higher in interim 2007 when compared to interim 2006.^{124 125}

The average number of production-related workers and hours worked remained fairly steady from 2004 to 2006, and when the interim periods are compared.¹²⁶ Wages paid increased from 2004 to 2006, and were higher in interim 2007 when compared to interim 2006.¹²⁷ While productivity increased irregularly from 2004 to 2006, it was lower in interim 2007 when compared with interim 2006.¹²⁸

The domestic industry's financial indicators were mixed in 2004 and 2005, and worsened in 2006 and when the interim periods are compared. The net sales value decreased by 3.7 percent from 2004 to 2006, and was 11.5 percent lower in interim 2007 than in interim 2006.¹²⁹ The domestic industry's

¹²⁴ End-of-period inventories declined from *** short tons in 2004 to *** short tons in 2005, then rose to *** short tons in 2005. End-of-period inventories were higher in interim 2007 (*** short tons) than in interim 2006 (*** short tons). CR/PR at Table C-1.

We note that the parties offered differing views as to the role of inventories in the U.S. market. In any final phase of these investigations, we intend to examine more fully the role of inventories.

¹²⁵ While we examine the domestic industry as a whole, see 19 U.S.C. §1677(4)(A), we take into account, as a condition of competition, Energizer's captive consumption. We note that the merchant market producers' indicators followed similar trends as those for the industry as a whole.

Specifically, U.S. merchant producers' U.S. commercial shipments increased from *** short tons in 2004 to *** short tons in 2005, and then decreased to *** short tons in 2006. U.S. commercial shipments were lower in interim 2007 *** than in interim 2006 ***. U.S. merchant producers' production increased from *** short tons in 2004 to *** short tons in 2005 and then decreased to *** short tons in 2006. Production was lower in interim 2007 (*** short tons) than in interim 2006 (*** short tons).

U.S. merchant producers' production capacity was *** short tons in 2004 and *** short tons in 2005 and 2006. Their production capacity in interim 2006 and in interim 2007 was *** short tons. Their capacity utilization increased from *** percent in 2004 to *** percent in 2005, and then declined to *** percent in 2006; capacity utilization was lower in interim 2007 *** than in interim 2006 ***. Merchant producers' end-of-period inventories declined from *** short tons in 2004 to *** short tons in 2005, then rose to *** short tons in 2006. End-of-period inventories were lower in interim 2007 (*** short tons) than in interim 2006 (*** short tons). CR/PR at Table C-2

¹²⁶ The domestic industry's average number of production workers decreased from 219 in 2004 to 216 in 2005, and then rose to 218 in 2006. The average number of workers was higher in interim 2007 (217) than in interim 2006 (215). Hours worked decreased from 472,000 in 2004 to 467,000 in 2005, then increased to 470,000 in 2006. Hours worked were lower in interim 2007 (234,000) than in interim 2006 (235,000). CR/PR at Table C-1.

U.S. merchant producers' average number of production workers decreased from *** in 2004 to *** in 2005, then rose to *** in 2006. The average number of workers was lower in interim 2006 *** than in interim 2007 ***. Hours worked decreased from *** in 2004 to *** in 2005, then increased to *** in 2006. Hours worked were higher in interim 2007 *** than in interim 2006 ***.

¹²⁷ The domestic industry paid wages of \$11.9 million in 2004, \$12.3 million in 2005, and \$13.0 million in 2006. Wages paid during the interim periods were higher in interim 2007 (\$6.5 million) in interim 2006 than in interim 2006 (\$6.4 million). CR/PR at Table C-1.

U.S. merchant producers paid wages of \$*** in 2004, \$*** in 2005, and \$*** in 2006. Wages paid were higher in interim 2007 (\$***) than in interim 2006 (\$***). CR/PR at Table C-2.

¹²⁸ The domestic industry's productivity increased from 137.0 tons/1,000 hours in 2004 to 149.6 tons/1,000 hours in 2005, and to 144.4 tons/1,000 hours in 2006. Productivity was lower in interim 2007 at 132.1 tons/1,000 hours worked, than in interim 2006, when it was 145.3 tons/1,000 hours worked. CR/PR at Table C-1.

U.S. merchant producers' productivity increased from *** in 2004 to *** in 2005, then declined to *** in 2004. Productivity was lower in interim 2007 *** than in interim 2006 ***. CR/PR at Table C-2.

¹²⁹ The domestic industry's net sales values were \$90.4 million in 2004, \$94.8 million in 2005, and \$87.1 million in 2006. They were lower in interim 2007 (\$37.9 million) than in interim 2006 (\$42.8 million). CR/PR at Table C-1.

U.S. merchant producers' net sales values were \$*** in 2004, \$*** in 2005, and \$*** in 2006. They were lower in interim 2007 *** than in interim 2006 ***. CR/PR at Table C-2.

industry's operating income fluctuated between 2004 and 2006, declining overall by 128.1 percent. The domestic industry's operating loss was higher in interim 2007, by 161.8 percent, compared to interim 2006.¹ The domestic industry's ratio of operating income to sales followed a similar pattern.²

Capital expenditures decreased from 2004 to 2005, then increased in 2006, and were higher in interim 2007 than in interim 2006. Research and development expenditures increased from 2004 to 2006, but were lower in interim 2007 than in interim 2006.³

For purposes of the preliminary phase of these investigations, we find a reasonable indication that cumulated subject imports had a significant negative impact on the condition of the domestic industry during the period of investigation. As discussed above, the absolute and relative volumes of subject imports are significant and their underselling was significant, leading subject imports to gain market share at the expense of the domestic industry. From 2004 to 2006, the domestic industry lost market share and its U.S. shipments fell in quantity, yet it continued production at high levels of capacity utilization. As a result, the domestic industry experienced a *** inventory buildup, finally causing the industry to cut production in interim 2007, resulting in higher unit COGS,⁴ even as inventories continued to build. Thus, subject imports had an adverse impact on the condition of the domestic industry, as exemplified by such indicators as declining capacity utilization rates, increasing inventories, and accompanying operating losses. We therefore find that subject imports had a significant negative impact on the performance of the domestic industry during the period examined.

CONCLUSION

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

¹ The domestic industry's operating income was negative \$1.5 million in 2004, positive \$3.6 million in 2005, and negative \$3.4 million in 2006. The domestic industry's operating losses were higher in interim 2007 (\$5.7 million) than in interim 2006 (\$2.2 million). CR/PR at Table C-1.

U.S. merchant producers' financial indicators followed similar trends as those for the industry as a whole. U.S. merchant producers' *** from \$*** in 2004 to \$*** in 2005, then *** to \$*** in 2006. Their *** was *** in interim 2007, compared to *** in interim 2006. CR/PR at Table C-2.

² The domestic industry's operating margin increased from negative 1.6 percent in 2004 to positive 3.8 percent in 2005, and then decreased to negative 3.9 percent in 2006. The operating margin was substantially lower in interim 2007 (negative 15.2 percent) than in interim 2006 (negative 5.1 percent). CR/PR at C-1.

U.S. merchant producers' operating margin increased from *** percent in 2004 to *** percent in 2005, and then decreased to *** percent in 2006. The operating margin was *** in interim 2007 *** than in interim 2006 ***. CR/PR at Table C-2.

³ The domestic industry's capital expenditures were \$*** in 2004, \$*** in 2005, and \$*** in 2006. Capital expenditures were higher in interim 2007 (***) than in interim 2006 (***). Research and development expenditures were \$*** in 2004, \$*** in 2005, and \$*** in 2006. These expenditures were lower in interim 2007 (\$***) than in interim 2006 (\$***). CR/PR at Table VI-9.

U.S. merchant producers' capital expenditures were \$*** in 2004, and were \$*** in 2005 and in 2006. They were higher in interim 2007 (\$***) than in interim 2006 (\$***). CR/PR at C-2. Research and development expenditures were \$*** in 2004, \$*** in 2005 and \$*** in 2006. These expenditures were lower than in interim 2007 (\$***) than in interim 2006 (\$***). CR/PR at Table VI-9.

⁴ CR/PR at Table C-1.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on August 22, 2007, by Tronox LLC (“Tronox”), Oklahoma City, OK, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of less-than-fair-value (“LTFV”) imports of electrolytic manganese dioxide (“EMD”)¹ from Australia and China. Information relating to the background of these investigations is provided below.²

Effective date	Action
August 22, 2007	Petition filed with Commerce and the Commission; Commission institutes investigations (72 FR 49309, August 28, 2007)
September 12, 2007	Commission’s conference (a list of witnesses that appeared at the conference is presented in appendix B)
September 17, 2007	Commerce’s notice of initiation (72 FR 52850, September 17, 2007)
October 5, 2007	Date of the Commission’s vote
October 9, 2007	Commission’s determinations transmitted to Commerce
October 16, 2007	Commission’s views transmitted to Commerce

STATUTORY CRITERIA AND ORGANIZATION OF THE 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 determination regarding whether there is material injury by reason of imports.

¹ A complete description of the imported product subject to these investigations is presented in *The Subject Product* section located in Part I of this report. The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (“HTS”) under subheading 2820.10.00. The normal trade relations tariff rate on EMD, applicable to imports from China, is 4.7 percent *ad valorem*. Imports of EMD from Australia are duty-free.

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

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 declines 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, alleged margins 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 U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury and the judicial requirements and information obtained for use in the Commission's consideration pursuant to *Bratsk* rulings.

U.S. EMD MARKET SUMMARY

U.S. apparent consumption for EMD totaled approximately \$131.1 million (96,175 short tons) in 2006. Three firms – Energizer Battery Manufacturing Inc. (“Energizer”), Erachem Comilog, Inc. (“Erachem”), and Tronox LLC (“Tronox”) – accounted for all known U.S. production in 2006. At least five firms have imported EMD from Australia and/or China since 2004. The three largest importers – *** – accounted for *** percent of reported U.S. imports from Australia and *** percent of reported U.S. imports from China in 2006. One firm, *** produces EMD in Australia and at least 14 firms produce EMD in China. The two largest producers in China – *** – accounted for approximately *** percent of reported Chinese production in 2006, approximately *** percent of reported Chinese exports to the United States in 2006, and *** percent of reported U.S. imports of EMD from China in 2006.

EMD is primarily used in the manufacture of alkaline batteries, but may also be used in some battery applications such as in military and other special purpose areas. Four purchasers of EMD -- Duracell, a division of The Procter & Gamble Co. (“Duracell”), Energizer Battery Manufacturing Inc. (“Energizer”), Panasonic Primary Battery Corp. of America (“Panasonic”), and Spectrum Brands, Inc. (formerly Rayovac Corp.) (“Spectrum”) -- accounted for virtually 100 percent of EMD consumption in 2006.

U.S. producers’ U.S. shipments of EMD totaled 61,820 short tons in 2006, and accounted for 64.3 percent of apparent U.S. consumption by quantity. U.S. imports from Australia totaled *** short tons in 2006, and accounted for *** percent of apparent consumption by quantity; U.S. imports from China totaled *** short tons in 2006, and accounted for *** percent of apparent U.S. consumption by quantity; and U.S. imports from all other sources combined totaled *** short tons in 2006, and accounted for *** percent of apparent U.S. consumption by quantity.

SUMMARY DATA

A summary of data collected in these investigations for the U.S. EMD market is presented in appendix C, tables C-1 (data on the total U.S. market) and C-2 (data on the U.S. merchant market). Table C-1 includes data submitted by all three U.S. producers. Table C-2 includes data for the two U.S. producers that sell EMD in the merchant market.³

Producer data are based on questionnaire responses of three firms that accounted for all U.S. production of EMD during the period examined. U.S. import data are based on questionnaire responses of ten importers that accounted for virtually all imports of EMD during the period examined. Data on U.S. consumption of imports were compiled using shipment data reported in the questionnaire responses of the ten firms that imported the subject product during the period examined.

PREVIOUS AND RELATED INVESTIGATIONS

On May 31, 1988, the Commission instituted antidumping investigations on EMD (defined as in the present investigations) from Greece, Ireland, and Japan.⁴ On April 10, 1989, the Commission issued

³ Tronox and Erachem sell EMD in the merchant market. Energizer internally consumes *** the EMD it produces in its battery manufacturing facilities.

⁴ *Notice of Institution of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Greece, Ireland, and Japan*, 53 FR 21530, June 8, 1988.

final affirmative determinations with regard to imports of EMD from Greece and Japan,⁵ and on April 17, 1989 Commerce issued antidumping duty orders on EMD from Greece and Japan.⁶

On May 26, 1998, Eveready (referred to as Energizer in this report) filed with the Commission a request for a changed circumstances review with regard to imports from Greece pursuant to section 751(b) of the Act.⁷ The Commission determined that the request did not show changed circumstances sufficient to warrant a review.⁸ Eveready appealed the Commission's determination to the Court of International Trade. The Commission moved to dismiss the appeal, which was granted on the basis that an upcoming five-year review of the orders would provide the equivalent relief Eveready sought.⁹

On May 3, 1999, the Commission instituted five-year reviews to determine whether revocation of the antidumping duty orders on imports of EMD from Greece and Japan would likely lead to the continuation or recurrence of material injury to the domestic EMD industry.¹⁰ On April 20, 2000, the Commission determined that revocation would not likely lead to continuation or recurrence of material injury to the U.S. industry, and the orders were subsequently revoked.¹¹

On July 31, 2003, the Commission instituted antidumping investigations on EMD from Australia, China, Greece, Ireland, Japan, and South Africa.¹² On September 15, 2003, the Commission made affirmative preliminary determinations on EMD from Australia, Greece, Ireland, Japan, and South Africa, and determined that imports from China were negligible, thus ending the investigation concerning China.¹³ On March 2, 2004, the Commission received notice from the Department of Commerce ("Commerce") stating that it had received a letter from petitioner Kerr-McGee Chemical LLC (now Tronox) withdrawing its petitions. As a result, Commerce and the Commission terminated their respective investigations.

NATURE AND EXTENT OF ALLEGED SALES AT LTFV

On September 17, 2007, Commerce published a notice in the *Federal Register* of the initiation of the antidumping investigations on EMD from Australia and China. The estimated weighted-average

⁵ *Electrolytic Manganese Dioxide from Greece and Japan, Invs. Nos. 731-TA-406 and 408 (Final)*, USITC Publication 2177 (April 1989), p. 1. Commerce determined that there were no LTFV imports of EMD from Ireland, and the investigation concerning Ireland was terminated.

⁶ 54 FR 15244, April 17, 1989.

⁷ In its request, Eveready alleged the following changed circumstances: (1) the addition of a third recognized type of EMD—"high drain" EMD, (2) structural changes in battery consumption (a shift from C and D size batteries to smaller AA and AAA size batteries), and (3) the impending unavailability of supply of regular and "high drain" EMD from U.S. producers and producers in countries not subject to antidumping duty orders.

⁸ 63 FR 43192, August 12, 1998.

⁹ *Eveready Battery Co., Inc. v. United States*, Slip. Op. 99-126 (CIT, November 23, 1999).

¹⁰ *Notice of Institution of Five-year Reviews: Electrolytic Manganese Dioxide from Greece and Japan*, 64 FR 23675, May 3, 1999. The Commission determined to conduct full five-year reviews on these orders. 64 FR 46407, August 25, 1999.

¹¹ *Electrolytic Manganese Dioxide from Greece and Japan, Invs. Nos. 731-TA-406 and 408 (Review)*, USITC Publication 3296 (May 2000), p. 1.

¹² *Notice of Institution of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa*, 68 FR 47607, August 11, 2003.

¹³ 68 FR 55062, September 22, 2003.

dumping margins (in percent *ad valorem*), as reported by Commerce (based on petitioner’s alleged margins, as adjusted) are presented in the following tabulation.¹⁴

Country	Estimated dumping margins (<i>percent ad valorem</i>)
Australia	52.94
China	133.76

THE SUBJECT PRODUCT

Commerce’s Scope

Commerce has defined the scope of these investigations as follows:

These investigations cover all manganese dioxide (MnO₂) that has been manufactured in an electrolysis process, whether in powder, chip or plate form.

Excluded from the scope of these investigations are natural manganese dioxide (“NMD”) and chemical manganese dioxide (“CMD”).

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) at subheading 2820.10.00. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

Tariff Treatment

The EMD that is the subject of these investigations is currently classifiable in the HTSUS at subheading 2820.10.00. The column 1-general (most-favored-nation) rate of duty for this subheading, applicable to the EMD from China subject to these investigations, is 4.7 percent *ad valorem*. Imports of EMD from Australia are eligible for a duty rate of free, provided that they are properly entered under the U.S.-Australia Free Trade Agreement; if not, they receive the general duty rate. Table I-1 presents the tariff treatment for EMD.

Table I-1
EMD: Tariff treatment, 2007

HTS provision	Article description	General ¹	Special ²	Column 2 ³
		Rates (<i>percent ad valorem</i>)		
2820 2820.10.00	Manganese oxides: Manganese dioxide	4.7%	Free (A, AU, BH, CA, CL, E, IL, J, JO, MA, MX, P, SG)	25%
¹ Normal trade relations, formerly known as the most-favored-nation duty rate. ² Special rates not applicable when General rate is free. “AU” is the symbol for the FTA; see general note 28 to the HTS. ³ Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.				
Source: Harmonized Tariff Schedule of the United States (2007).				

¹⁴ Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People’s Republic of China; 72 FR 52850, September 17, 2007.

THE DOMESTIC LIKE PRODUCT

Physical Characteristics and Uses

EMD is a black powder (or plate or chip that will be ground into powder) that has a gamma crystalline structure. The powder form is required for use in dry-cell batteries. Its gamma crystalline structure, as opposed to most other crystalline structures that manganese dioxide powder can assume, allows for the free transfer of hydrogen ions within the manganese dioxide crystal, thus resulting in the fullest possible utilization of the manganese dioxide in the production of electrical current within a dry-cell battery.¹⁵

There are three grades of EMD--alkaline, zinc chloride, and lithium grade; however, virtually all EMD produced in the United States is the alkaline grade.¹⁶ Alkaline grade EMD, because of particle size and pH (acidity level), qualifies for use in the manufacture of alkaline batteries; zinc chloride-grade qualifies for use in zinc chloride batteries; and lithium grade qualifies for use in rechargeable batteries and also can be used in some primary battery applications such as in military and other special purpose areas.¹⁷ The particle size (grind) and pH are achieved in the finishing process of the EMD. All other properties of the three grades of EMD are essentially identical, including the moisture content, sulfate content, other metallic element content, purity, and crystalline structure.

Within each of the grades of EMD, there is relatively higher and lower quality EMD. Higher quality EMD tends to have a higher discharge rate and longer shelf life than lower quality EMD in the same grade. Higher quality EMD is distinguished from lower quality EMD by its lower levels of impurities, superior flow characteristics of the materials in the battery, and higher energy capacity per unit weight. Features such as grain size, uniformity, abrasiveness, pH, and moisture levels are also important.¹⁸ Of course, the quality of EMD is only one factor out of many that contribute to the quality of a finished battery.¹⁹

In addition to EMD, there are two other types of manganese dioxide, both of which can be used in dry-cell batteries: natural manganese dioxide ("NMD") and chemical manganese dioxide ("CMD"). NMD consists of certain naturally occurring manganese ore, selected because of its high MnO₂ content, favorable electrochemical properties, and low level of impurities. The ore is often processed to remove impurities and improve its battery activity. NMD has a lower performance rate than EMD or CMD but may be blended with synthetic manganese dioxide for increased performance. Subsequent to the invention of the wet zinc/manganese dioxide primary cell (the precursor of the present-day dry-cell battery) in the 1860s, NMD was the only type of manganese dioxide used in dry-cell batteries. NMD is not produced in the United States today, only small amounts (if any) are imported, and NMD is not within the scope of these investigations.

CMD is chemically precipitated, battery-active manganese dioxide. CMD differs from EMD in three major respects: surface area, electrolyte absorption, and density. As a result, CMD generally exhibits lower discharge rates than does EMD. CMD is used outside the United States in lower-

¹⁵ Petition, pp. 7-9.

¹⁶ Petition, p. 8.

¹⁷ Conference transcript, p. 53 (Gutwald).

¹⁸ ***.

¹⁹ Tronox developed a patented "high drain" EMD in the late 1990s. This technology is designed to produce an EMD for batteries that can handle the next generation of electronic devices that have a higher drain capacity or higher power utilization requirement. However, "high drain" EMD has not been commercially successful during the period covered by these investigations. (Conference transcript, p. 43 (Gutwald) and p. 52 (Stater)).

performance batteries but is not known to be used domestically in batteries. CMD is not within the scope of these investigations.²⁰

As noted, of the three grades of EMD, alkaline-grade EMD is required for alkaline batteries. In an alkaline battery, the cathode consists of a high-density blend of EMD and graphite. The electrolyte is concentrated potassium hydroxide; potassium hydroxide is very alkaline or “basic” (the opposite of acidic). The anode is composed of powdered amalgamated zinc.

Before EMD can be used in a battery, a sample is tested extensively (“qualification”). The most important tests that an EMD producer or consumer uses to determine EMD quality are (1) discharge performance tests, (2) gassing tests, and (3) tests to measure the compressed density of the EMD. The discharge performance test measures how long a battery will maintain useful voltage for a given load and rate of discharge. This test essentially provides information on the number of hours of service a battery will provide. The gassing test measures how much gas is generated as a result of impurities in the EMD. The less gas that is generated, the purer the EMD and the longer the shelf life of the battery.²¹ Tests to measure the compressed density of a given sample of EMD determine how much EMD can be used in a battery within the space limitations of the battery. The more EMD that can be contained in a battery, the higher the electrical capacity of the battery.

Although a given sample of EMD may perform satisfactorily when subjected to standard tests such as the discharge performance test, it must be qualified before it can be used in a specific battery. The qualification process is both battery-specific and plant-specific, and can range from about *** to *** in duration.²² Qualification standards for EMD used in AA and AAA batteries are also reported to be more stringent than standards for EMD used in C and D batteries.^{23 24} In general, this is because smaller-battery performance is more dependent on EMD discharge quality than that of the larger batteries. The qualification process ensures that the processing equipment used to manufacture a given battery is compatible with the type of EMD to be used, so as to optimize battery performance. The qualification process entails chemical analysis of the EMD, followed by a series of test trials up to and including a limited plant run of about one week of production.²⁵ The time involved in the qualification process is described by Spectrum as lasting between ***.²⁶

Tronox contends that EMD has become a commodity-like product as producers from a number of countries have improved their production processes so as to better control EMD quality.²⁷ Respondents

²⁰ A Tronox official testified that he has no knowledge of any NMD or CMD production in the United States. Conference transcript, p. 52 (Stater).

²¹ The shelf life of a battery is a measure of how long a battery may be stored and still provide useful service. Alkaline batteries typically have a shelf life of several years.

²² *Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa, Investigations Nos. 731-TA-1048-1053 (Preliminary)*, Publication 3633, September 2003, pp. I-8-I-9.

²³ Conference transcript, p. 68 (Reilly).

²⁴ According to Spectrum, purchases of EMD under a single contract may be used in any number of different plants. “When Spectrum negotiates a contract for the supply of EMD, the EMD that is purchased under that contract may be used in battery production in either the United States or one of the Company’s foreign plants, or both.” Spectrum’s postconference brief, p. 2. However, *** indicated that qualification is not transferable among facilities in different geographic locations. ***.

²⁵ *Ibid.*, p. 11.

²⁶ *Ibid.*, app. 4.

²⁷ According to Tronox, “We also understand that EMD from Australia and China is routinely supplied into those large cells that account for a large part of the market. In addition, we have heard from customers and competitors that both Australian and Chinese EMD are suitable for use in the small cells. Now, we believe that we produce a first rate, high quality product. The reality is the subject imports are also of a high quality. As a result, EMD has
(continued...)

disagree that “commoditization” has occurred.²⁸ In any event, quality remains a source of concern in certain instances, not only for foreign suppliers but also for domestic suppliers. For example, Spectrum describes the Chinese EMD as having particulates added to it to “enhance deposit yields,” which produces “more manganese dioxide for a given applied current,” but results in reduced performance.²⁹ Spectrum reports ***.³⁰

Production Process

All types and grades of EMD, whether imported or domestically produced, are subject to the same general manufacturing process. There are three stages of EMD production: ore handling, electrolysis, and finishing.³¹ Ore handling involves the preparation of manganese dioxide for electrolysis. Currently, the only suitable ores contain either manganese dioxide or manganese carbonate. Manganese ore containing manganese dioxide is crushed and ground and then fed into reduction furnaces that convert manganese dioxide to the sulfuric acid-soluble manganese oxide (MnO) known as the reduced ore.³² The manganese is then “leached” by having the reduced ore digested continuously in spent electrolyte and sulfuric acid. Next, the resulting manganese sulfate solution is purified to remove, to the extent possible, such impurities as copper, nickel, cobalt, molybdenum, antimony, and arsenic (manganese dioxide for batteries should be essentially free of impurities that would deposit on a zinc anode).³³ Iron may be added to aid in the removal of impurities.³⁴

In electrolysis, the manganese sulfate solution is processed through a number of thickeners and filters and is fed to the electrolytic cell room. The purified manganese sulfate is then metered to the electrolytic cells, where hydrogen is liberated at carbon or lead cathodes and manganese dioxide is deposited on titanium anodes. The period of electrolysis lasts from two to four weeks.

In the finishing process, the anodes are removed from the cells and are immersed in hot water to remove the electrolyte solution. The EMD deposit is removed from the anodes, washed, and neutralized to remove traces of the electrolyte. Neutralization determines the final pH of the EMD. EMD is in plate or chip form when removed from the anodes and neutralized, but must be ground into a powder for use in batteries. It is usually ground and sold as a powder by the EMD producers. Prior to shipment, the EMD is dried and packed according to customer specification. Before EMD is shipped to a customer, relatively minor adjustments are made to meet the particular needs of the customer. Adjustments include modifying the particle-size distribution, compressed density, and abrasiveness of the EMD.

²⁷ (...continued)

increasingly become commoditized.” Conference transcript, p. 23 (Gutwald).

²⁸ Respondents testified “Unlike a commodity, EMD is not sold principally on the basis of price. Now, because of that in economist’s terms EMD from different manufacturers are imperfect substitutes. Now, the important nonprice characteristics include product quality, and quality features include grain size, uniformity, freedom from impurities, abrasiveness, compliance with customer specifications including pH moisture levels and so forth.” Conference transcript, p. 67 (Reilly) and Delta Australia’s postconference brief, p. 8.

²⁹ Spectrum’s postconference brief, p. 8.

³⁰ Ibid.

³¹ Petition, p. 9.

³² For ore containing manganese carbonate the reduction step is omitted.

³³ *Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa, Investigations Nos. 731-TA-1048-1053 (Preliminary)*, USITC Publication 3633, September 2003, p. I-7-I-8.

³⁴ Later removal of the iron is important because it would otherwise contaminate the product and affect efficiency in the electrolysis process, and because impurities such as arsenic and lead are co-precipitated when the iron is precipitated.

In response to questions on whether firms produced other products on the same equipment and machinery used in the production of EMD, and using the same production and related workers, ***.

Channels of Distribution

The Commission's questionnaire asked firms to report the quantity of U.S. shipments sold to distributors and end users. Data compiled in response to Commission questionnaires concerning these channels of distribution, by country, are presented in table I-2.

Table I-2

EMD: U.S. producers' and importers' shares of reported U.S. shipments, by sources and channels of distribution, 2004-06, January-June 2006, and January-June 2007

* * * * *

DOMESTIC LIKE PRODUCT ISSUES

Presented below is information related to the Commission's "domestic like product" finding.³⁵ No responding party has objected to the petitioner's definition of the domestic like product, "all EMD produced in the United States."³⁶ Information on interchangeability, customer and producer perceptions, and channels of distribution is presented in Part II of this report, and information on the pricing of EMD is presented in Part V.

³⁵ 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 (6) price.

³⁶ Petitioner's postconference brief, p. 6; see also Delta Australia's September 19, 2007 Responses to Supplemental Questions, p. 9, and Spectrum's postconference brief, pp. 6-7.

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

CHANNELS OF DISTRIBUTION AND MARKET CHARACTERISTICS

The reporting U.S. producers of EMD and U.S. importers of EMD from Australia, China, and nonsubject countries shipped their EMD nearly exclusively to U.S. battery producers during January 2004-June 2007. Table II-1 shows U.S. battery producers' reported purchases of EMD by supplier/country-of-origin and by year during January 2004-June 2007 and table II-2 shows U.S. battery producers' use of EMD by supplier/country-of-origin and by size/type of battery during 2006.¹

Table II-1

EMD: U.S. battery producers' purchase quantities of EMD, by country of origin and supplier, 2004-06 and January-June 2007

* * * * * * *

Table II-2

EMD: U.S. battery producers' usage of EMD, by country of origin, supplier, and size/type of battery, 2006

* * * * * * *

The properties of EMD make it particularly useful in the production of dry-cell batteries, particularly alkaline batteries, by far its principal use.² Depending on the size and characteristics of different dry-cell batteries, differing types of EMD may be used. Demand for EMD is derived almost exclusively from demand for alkaline batteries, which, in turn, is derived from the demand for the wireless/portable electronic devices that use these batteries.

EMD is purchased almost exclusively by four U.S. battery producers for the production of dry-cell batteries, whereas there are at least nine merchant market suppliers (including two U.S. EMD producers) of U.S.-produced and imported EMD to the U.S. market. According to the petitioner, purchasers reportedly have enough market power to pressure their suppliers to meet undisclosed lower prices from competing suppliers.³

¹ Letter/supplemental questionnaire response from ***, September 19, 2007; e-mail from ***, September 18, 2007; letter from ***, September 14, 2007; and Spectrum's postconference brief, attachments 2-4.

² Petition, p. 8. The EMD is used by U.S. battery producers to produce the cathode part of the battery, which includes EMD, graphite, and an electrolyte. This cathode formulation may be different from one battery cell size to another and from one battery producer to another (letter from ***, September 19, 2007).

³ Petition, p. 31.

SUPPLY AND DEMAND CONSIDERATIONS⁴

U.S. Supply⁵

U.S. Production

Based on available information, U.S. producers had an ability to respond to changes in U.S. demand with moderate changes in the quantity of shipments of U.S.-produced EMD to the U.S. market during January 2004-June 2007. Factors contributing to this degree of responsiveness of supply are discussed below.

Industry capacity

Based on the three U.S. producers' reported capacity and production, the domestic industry's annual capacity utilization for EMD fluctuated but remained high during 2004-06, averaging 96.9 percent during this period; capacity utilization was 87.8 percent during January-June 2007 compared to 97.5 percent during January-June 2006. These levels of capacity utilization indicate that U.S. producers of EMD generally had a limited amount of available capacity with which they could increase production of EMD in the short run in the event of a price change, particularly during 2004-06, but available capacity increased during January-June 2007. Tronox reported that the capital-intensive nature of the EMD production process requires the firm to operate the plant as fully as possible to minimize unit costs.⁶ U.S. producers' flexibility may be constrained by limited capability of specific U.S. plants to produce or to be qualified by end users to supply all the required types/grades of EMD.⁷

The two responding U.S. producers of EMD, ***, reported in their questionnaire responses their variable costs, which averaged, for both responding producers combined, *** percent of their costs to produce EMD during 2006, while fixed costs were *** percent.⁸ Although low output levels reportedly lead to increased unit costs, significant variable costs likely moderate, at least somewhat, such an increase in unit costs. In the short run, firms with high variable costs to total costs tend to reduce production and maintain prices when faced with a downturn in demand, whereas firms with high fixed costs tend to reduce selling prices and maintain production.

⁴ Short-run effects discussed in the supply and demand sections refer to changes that could occur within 12 months, unless otherwise indicated.

⁵ Data on U.S. EMD production, production capacity, capacity utilization, inventories, and exports are shown in detail in Part III.

⁶ Conference transcript, p. 17 (Stater).

⁷ According to the petitioner, supply relationships at different U.S. accounts are well-established (petition, p. 31).

⁸ U.S. producer questionnaire response, section IV-B-15a; the reported figures for variable and fixed costs were weighted by each responding firm's reported total EMD production costs to derive a weighted-average figure for the industry. The U.S. EMD producers were also requested to identify which costs they considered variable and which they considered fixed (Ibid.). The two responding U.S. EMD producers identified a number of variable cost items, such as ***, and a number of fixed cost items, such as ***. The primary raw material for all U.S. EMD producers was manganese dioxide, which, for the two responding U.S. producers, averaged *** percent of their costs to produce EMD in 2006; this weighted-average figure was developed by weighting each firm's response for the manganese dioxide cost share in 2006 by its reported total EMD production costs during this period.

According to petitioners, the economics of EMD production depend on high rates of capacity utilization. For this reason, all major producers must maintain enough volume at key accounts to keep their plants operating at or near full capacity, even at the expense of lower prices.⁹

Inventory levels

The three U.S. producers of EMD reported combined end-of-period inventory quantities that fluctuated but *** during 2004-06, from *** percent of U.S. producers' total shipments of the U.S.-produced EMD during 2004 to *** percent during 2006; these inventories were *** percent of annualized shipments during January-June 2007 and *** percent during January-June 2006. These levels of inventories suggest that U.S. producers had some ability to use inventories to respond to price changes in the short run. This flexibility may be restrained in the short run to the extent that U.S. producers' inventories consist of products that are not required by the increased demand, or consist of products already committed to customers in the U.S. and/or export markets. Tronox reported that its EMD inventories are generally available for sale, but it maintains consigned inventories for ***.¹⁰ Tronox stated further that the growth in its EMD inventories reflects reduction in demand for its EMD, and not any changes to its inventory-holding policies with its customers.¹¹ In addition, end-of-period inventories of EMD held by Energizer during January 2004-March 2007 averaged *** short tons annually during this period, or almost *** percent of all three U.S. EMD producers' combined average annual inventories of EMD during this period. Energizer's inventories of its U.S.-produced EMD is ***.

Alternate markets

The three U.S. producers' total reported exports of their U.S.-produced EMD averaged less than *** percent of the quantity of their total shipments of U.S.-produced EMD January 2004-June 2007. The *** level of exports during the period indicates that domestic producers of EMD are constrained in their ability to shift shipments between the United States and other markets in the short run in response to price changes. This flexibility may be further restrained in the short run to the extent that U.S. producers' sales of EMD exported to third-country markets were not used/acceptable in the U.S. market or vice versa, or to the extent that U.S. producers have binding supply agreements longer than 12 months with customers in the U.S. and/or export markets.

Production alternatives

***,¹² and ***.¹³ The ability of U.S. producers to shift production between EMD and other products would enhance their supply responsiveness in the short run in response to relative price changes between EMD and alternative production products.

⁹ Petition, p. 31.

¹⁰ Tronox' postconference brief, exh. 1, p. 4.

¹¹ Ibid.

¹² *** (U.S. producer questionnaire response, section II-3).

¹³ U.S. producer questionnaire responses, section II-3.

Imports from Australia

Based on available information, staff believes that the lone Australian producer of EMD, Delta, is likely to respond to changes in demand with relatively *** changes in shipments of Australian-produced EMD to the U.S. market. Factors contributing to this degree of responsiveness of supply are discussed below.

Industry capacity

Delta reported total capacity utilization for EMD in Australia that fluctuated but remained *** during 2004-06, averaging *** percent during this period; capacity utilization was *** percent during January-June 2007 compared to *** percent during January-June 2006. Delta's capacity utilization is expected to average *** percent during all of 2007 and *** percent during 2008, while its capacity levels are expected to ***. The *** capacity utilization level during January-June 2007 occurred as Delta *** its inventory level. The levels of capacity utilization indicate that Delta had *** ability to increase production of EMD in the short run during 2004-06, in the event of a price change, *** to do so during January-June 2007, and this ability is expected to continue throughout 2007, but may become *** less in 2008 based on the expected *** capacity utilization rates during 2008.

Inventory levels

Delta reported end-of-period inventory quantities of EMD in Australia that were *** during 2004-06, averaging *** percent of total shipments during this period; Delta's EMD inventories were *** percent of its total annualized shipments during January-June 2007,¹⁴ as it *** during the period.¹⁵ These data indicate that Delta had *** ability to use inventories as a means to increase shipments to the U.S. market in the short run. This flexibility may be restrained in the short run to the extent that Delta's Australian inventories consist of products not useable/acceptable in the U.S. market, or consist of products already committed to customers in third-country markets.

In addition, Delta also reported end-of-period inventory quantities of its Australian-produced EMD in the United States. These U.S. inventories of the imported EMD from Australia *** during 2004-06, or by a total of *** percent. Delta's U.S. inventory quantities of its imported EMD from Australia increased from *** percent of its U.S. shipment quantities of such imports in 2004 to *** percent in 2006; such inventory shares of annualized U.S. shipments were *** percent during January-June 2007, compared to *** percent during January-June 2006.

Alternate markets

Delta reported that its EMD produced in Australia was shipped *** to the United States and *** to third-country markets during January 2004-June 2007; there was no home-market demand for EMD. This shipment pattern *** in 2007 and 2008. During January 2004-June 2007, Delta's shipments of EMD to the U.S. market averaged *** percent of its total shipment quantities of EMD, and exports to third-country markets averaged the remaining *** percent of the total. These data for alternate markets indicate that Delta had *** third-country markets for its EMD from which it could shift shipments of EMD to the United States in the short run in the event of a price change in the U.S. market. This flexibility may be restrained in the short run to the extent that Delta's sales of EMD in third-country

¹⁴ In comparison, Delta's EMD inventories were *** percent of its total shipments during January-June 2006.

¹⁵ Delta's foreign producer questionnaire response, section II-1.

markets were not used/acceptable in the U.S. market, or to the extent that Delta has binding supply agreements longer than 12 months with customers in third-country markets.

Production alternatives

Delta reported producing *** EMD at its Australian facility, with ***.¹⁶ The ability of Delta to shift production between EMD and other products would enhance its supply responsiveness in the short run in response to relative price changes between EMD and alternative production products.

Imports from China

Based on available information, staff believes that Chinese producers of EMD are likely to respond to changes in demand with relatively *** changes in shipments of EMD to the U.S. market. Factors contributing to this degree of responsiveness of supply are discussed below.

Industry capacity

The two responding Chinese producers of EMD, ***, are believed to be the only two Chinese producers currently exporting EMD to the United States. Based on these Chinese producers' reported capacity and production, the Chinese industry's annual capacity utilization for EMD fluctuated but remained *** during 2004-06, averaging *** percent during this period; capacity utilization was *** percent during January-June 2007 compared to *** percent during January-June 2006. The two Chinese producers' expected capacity utilization levels are expected to increase to *** percent for all of 2007 and to *** percent during 2008, while capacity levels are expected to increase during both periods. These levels of capacity utilization indicate that Chinese producers of EMD had *** available capacity with which they could increase production of EMD in the short run in the event of a price change during 2004-06, *** ability to increase production of EMD during January-June 2007, when ***. This increased ability to increase production of EMD is expected to continue for the remainder of 2007 and for 2008, based on expected capacity utilization rates and higher projected capacity each year.

Inventory levels

The two responding Chinese producers of EMD reported that combined end-of-period inventories increased steadily during 2004-06, but as a share of total shipments such inventories fluctuated but increased from *** percent of total shipments during 2004 to *** percent during 2006; the Chinese producers' EMD inventories were *** percent of their annualized total shipments during January-June 2007, compared to *** percent during January-June 2006. These data indicate that the Chinese producers had an ability to use inventories as a means to increase *** shipments to the U.S. market in the short run. This flexibility may be restrained in the short run to the extent that the Chinese producers' inventories consist of products not useable/acceptable in the U.S. market, or consist of products already committed to customers in third-country markets.

In addition, U.S. importers of Chinese EMD also reported end-of-period inventory quantities of their Chinese-produced EMD in the United States. These U.S. inventories of the imported EMD from China increased steadily during 2004-06, by a total of *** percent. The U.S. inventory quantities of the imported EMD from China increased from *** percent of U.S. shipment quantities of such imports in 2004 to *** percent in 2006; such inventory shares of annualized U.S. shipments were *** percent during January-June 2007, compared to *** percent during January-June 2006.

¹⁶ Delta's foreign producer questionnaire responses, section II-3.

Alternate markets

The two responding Chinese producers of EMD reported that their products were shipped *** to their home market, *** to third-country markets, *** to the U.S. market, and the remainder was used for internal consumption/transfers during January 2004-June 2007; this shipment pattern was *** in 2007 and 2008. During January 2004-June 2007, Chinese producers' shipments of EMD to the home market averaged *** percent of their total shipment quantities of EMD; exports to third-country markets averaged *** percent of the total; exports to the U.S. market averaged *** percent of the total; and internal consumption/transfers accounted for the remaining *** percent. These data for alternate markets indicate that Chinese EMD producers had a strong home market and other non-U.S. export markets from which they could shift shipments of EMD to the United States in the short run in the event of a price change in the U.S. market. This flexibility may be restrained in the short run to the extent that Chinese producers' sales of EMD in their home market and/or exports to third-country markets were not used/acceptable in the U.S. market, or to the extent that Chinese producers have binding supply agreements longer than 12 months with customers in the home and/or third-country markets.

Production alternatives

The two responding Chinese producers of EMD reported that they produced ***. The ability of Chinese producers to shift production between EMD and other products would enhance their supply responsiveness in the short run in response to relative price changes between EMD and alternative production products.

Supply of Nonsubject Imports of EMD to the U.S. Market

Based on import statistics presented in Part IV, a total of five nonsubject countries exported EMD to the United States during January 2004-June 2007. Imports of EMD from nonsubject countries accounted for *** percent of the quantity of total U.S. imports of EMD during this period. The share of total U.S. imports of EMD from nonsubject countries decreased from *** percent in 2004 to *** percent in 2006, while the quantity of total U.S. imports of EMD increased by 71.5 percent. Japan was the principal nonsubject country supplier ***.

U.S. Demand

Demand for EMD, as measured by annual U.S. apparent consumption, fluctuated during 2004-06, decreasing by a total of 3.1 percent on a quantity basis during this period; U.S. apparent consumption was 3.6 percent lower in January-June 2007 than in January-March 2006.

EMD is used almost exclusively in the production of dry-cell batteries, with most of these batteries involving the production of alkaline batteries.¹⁷ As a result, U.S. demand for EMD is derived almost wholly from the downstream demand for U.S.-produced alkaline batteries,¹⁸ which, in turn, is

¹⁷ Petition, p. 8; and Tronox's postconference brief, exhibit 1, p. 3. In addition, lithium-grade EMD is used in the common 3-volt "coin" type batteries, but the volume of EMD used for this application reportedly is so small as to render it immaterial (Tronox's postconference brief, exh. 1, p. 6). According to Delta, ***. Delta also indicated that *** (Letter from ***, September 19, 2007).

¹⁸ North American alkaline battery demand reportedly is expected to increase *** percent over the next five years (letter from ***, September 19, 2007).

derived from demand for the wireless/portable electronic devices using these batteries,¹⁹ such as various remote controls, some cameras and MP3 players, wall clocks, smoke alarms, flashlights, radios, etc. Although EMD production is not seasonal, shipment volumes of batteries can be affected by increases in battery consumption at Christmas and in response to natural disasters, such as hurricanes.²⁰

Because U.S. demand for EMD is a derived from demand for alkaline batteries,²¹ four firms—Tronox, Delta, Duracell, and Spectrum—provided detailed responses concerning drivers for U.S. EMD/alkaline battery demand, which are shown in the following tabulation.²²

* * * * *

U.S. producers and importers provided a mix of responses when reporting how U.S. demand for EMD has changed since January 1, 2004.²³ One of the two responding U.S. producers of EMD, ***, reported an increase in demand, while the other U.S. producer, ***, reported a decrease in demand. Two of the nine responding U.S. importers/purchasers of EMD reported an increase in U.S. demand, two U.S. importers/purchasers reported a decrease, five U.S. importers/purchasers reported unchanged demand, one U.S. importer/purchaser reported fluctuating demand, and the remaining U.S. importer/purchaser did not know how U.S. demand changed. The two responding U.S. producers of EMD and six of the responding U.S. importers/purchasers provided additional comments, which are shown in the following tabulation by the type of change in U.S. demand for EMD.

* * * * *

Based on available information, U.S. end users of EMD, almost exclusively U.S. battery producers, are likely to respond to changes in the price of EMD with moderately small changes in their purchases of EMD, such that U.S. demand may be price inelastic. The main contributing factor to this level of responsiveness of demand is the apparent lack of any close substitutes for EMD and the relatively low-to-moderate cost share, whereas the existence of some substitutes in the downstream market for batteries, such as other types of batteries and imported alkaline batteries, and some ability of U.S. battery producers to shift U.S. production to their offshore facilities, tend to enhance the responsiveness of U.S. demand for EMD.

¹⁹ Conference transcript, p. 115 (Reilly) and p. 116 (McGrath).

²⁰ Tronox' postconference brief, exhibit 1, p. 5. In addition, Duracell reported that *** (importer questionnaire response, section III-B-15).

²¹ Delta asserted that there was a low cross-price elasticity of demand between AA/AAA cell sizes and C/D cell sizes because of different demand drivers for these two categories of battery sizes (conference transcript, p. 117 (Reilly)).

²² Tronox' postconference brief, exh. 1, p. 2; letter from ***, September 19, 2007; letter/supplementary questionnaire response from ***, September 19, 2007; and Spectrum's postconference brief, exh. 1, p. 3.

²³ U.S. producer and importer questionnaire responses, sections IV-B-16 and III-B-15, respectively.

Substitute Products

All three responding U.S. producers of EMD and 8 (includes the four U.S. battery producers) of 10 responding U.S. importers/purchasers reported that no substitutes exist for EMD, whereas the remaining 2 U.S. importers did not know if substitutes existed.²⁴ One of the responding U.S. importers/purchasers, ***, provided additional responses. Although *** believes that there are no substitutes for EMD (whether a manganese dioxide or not) that are suitable for use in consumer alkaline batteries, chemical manganese dioxide (CMD) and natural manganese dioxide (NMD) can be used but face the following difficulties. CMD has significantly lower performance than EMD in alkaline batteries, such that an alkaline battery made with CMD, rather than EMD, would never meet the market expectations for battery performance. NMD, while suitable for use in the acid electrolyte of zinc carbon batteries, is entirely too impure to even be considered for use with alkaline batteries, because alkaline batteries using NMD instead of EMD would exhibit an unacceptable and unworkable level of gassing/leakage.

Because demand for EMD is derived almost exclusively from the demand for alkaline batteries, it may be useful to consider the extent to which other types of batteries and/or imported alkaline batteries could substitute for U.S.-produced alkaline batteries, which could affect the demand for alkaline batteries, and, in turn, the demand for EMD. *** asserted that U.S. EMD demand has decreased, at least partially, because of the shift from alkaline batteries to rechargeable batteries.²⁵ Tronox reported that in low-drain applications there is no competition from other chemistries. According to Tronox, in high-drain applications, such as digital cameras,²⁶ rechargeable batteries with non-EMD chemistries are used as competing alternatives to disposable EMD-containing alkaline batteries. Tronox also reported that in the lithium segment of the battery market, various types that do not use EMD also compete with EMD-containing batteries.²⁷ Panasonic and Spectrum asserted that in the U.S. market no other types of batteries compete with the batteries that use EMD, primarily alkaline batteries.²⁸ A U.S. importer of EMD, ***, asserted that a non-alkaline battery, nickel oxy-hydroxide (NOH), is used in very high performance batteries, primarily for digital cameras. According to ***, NOH batteries are very expensive and really a separate niche market from standard or even premium alkaline batteries, hence at this stage there is little impact on the price or demand for EMD. Potentially, over the next three years, NOH batteries may

²⁴ U.S. producer and importer questionnaire responses, sections IV-B-17 and III-B-16, respectively. The producers and importers were requested to provide examples of the top two economic substitutes for EMD and this request was preceded by the following explanation: “Substitution in demand refers to products that can, based on market price considerations and consumer/industrial user preferences/technical requirements, reasonably be expected to substitute for each other when the price of one product changes vis-a-vis the price of the other product—some consumers/ industrial users may require greater price changes than others before they switch among the alternative products.”

²⁵ ***.

²⁶ According to Tronox, digital cameras are a relatively new part of the market, such that EMD demand growth from this segment has been fairly small, as the batteries are small cells and there is substantial competition from rechargeable batteries (Tronox’ postconference brief, exh. 1, p. 3). On the other hand, Panasonic asserted that market demand for rechargeable batteries is on the decrease versus alkaline batteries. For some reason, according to Panasonic, the U.S. market would rather use a disposable battery than a rechargeable battery, so the rechargeable battery demand has declined (conference transcript, p. 131 (Stevens)).

²⁷ Tronox’ postconference brief, exh. 1, p. 3.

²⁸ Conference transcript, p. 113 (Stevens) and (McGrath).

increase market share in the premium battery market, but it will depend upon the price of the NOH batteries, which is driven significantly by the price of nickel.²⁹

*** reported that U.S. demand for EMD has decreased, at least partially, because of increased U.S. imports of primary alkaline batteries.³⁰ Tronox asserted that it has not observed a major increase in U.S. demand for EMD used in small cell batteries, perhaps due to increasing volumes of imported small cell batteries, particularly from China.³¹ Spectrum reported that in 2006 ***. Spectrum believes that some of this production has resulted ***.³²

Cost Share

As noted earlier, EMD is used in the production of batteries, most notably alkaline batteries. The four U.S. battery producers reported in their importer/purchaser questionnaire responses the share of EMD costs to the total cost to produce batteries.³³ *** reported for all batteries combined, whereas, *** reported for specific battery sizes. The cost shares of EMD ranged from a low of *** percent for *** battery to *** percent for *** battery. The cost shares of EMD reported by the four U.S. battery producers are shown in the following tabulation.

* * * * *

Demand Outside the United States

U.S. producers and importers/purchasers of EMD were requested in their questionnaire responses to comment on demand for EMD outside of the United States since January 1, 2004.³⁴ The two responding U.S. producers of EMD and 4 of the 10 responding U.S. importers/purchasers reported that some foreign demand has increased (one of these U.S. producers also cited decreased foreign demand, two of these U.S. importers/purchasers also cited unchanged foreign demand, and another of these U.S. importers/purchasers also cited decreased and unchanged foreign demand), whereas two U.S. importers/purchasers reported that such demand fluctuated,³⁵ two U.S. importers/purchasers reported that such demand was unchanged,³⁶ and the two remaining importers/purchasers reported that they were unfamiliar with foreign EMD demand. Seven of the responding firms that reported on EMD demand outside of the United States provided additional comments, which are shown, by the various categories of demand change, in the following tabulation.

* * * * *

²⁹ U.S. importer questionnaire response, section III-B-16.

³⁰ ***.

³¹ Tronox' postconference brief, exh. 1, p. 3.

³² Spectrum's postconference brief, exh. 1, p. 3.

³³ U.S. importer questionnaire responses, section III-B-14.

³⁴ U.S. producer and importer questionnaire responses, sections IV-B-16 and III-B-15, respectively.

³⁵ One of these two importers/purchasers, ***, identified the European Union, Japan, and the rest of the world where EMD demand has fluctuated, but provided no further comments.

³⁶ The two responding U.S. importers/purchasers asserting that EMD demand outside the United States was unchanged, ***, identified Europe, China, Japan, Singapore, and Switzerland as the countries/areas to which they were referring, but provided no other comments.

SUBSTITUTABILITY ISSUES

The degree of substitution in demand between EMD produced in the United States and that imported from Australia and from China depends upon such factors as relative prices, conditions of sales (order lead times, payment terms etc.), purchaser supply requirements, qualified status of supplier, and product differentiation. Product differentiation depends on factors such as the range of products, quality (grade standards, defect rates, product consistency, etc.), availability, reliability of supply, product services, and the market perception of these factors. Based on the reported information in these investigations, there appears to be at least moderate substitution in demand between EMD produced domestically and that imported from Australia and possibly less substitution between U.S.-produced EMD and that imported from China.

EMD Qualification

U.S. producers and importers/purchasers of EMD reported that EMD suppliers must be qualified for each type/size of battery and for each of their producing locations.³⁷ *** reported that its standard alkaline grade EMD reportedly is qualified for use in all cell sizes with its current customers,³⁸ whereas, for ***, different types/grades of EMD are required for each size of battery.³⁹ In addition, Delta reported selling ***.⁴⁰ Qualification requirements may result in reduced substitutability among suppliers as EMD from a particular source may be the only EMD qualified for a certain size/type of battery.⁴¹ The extent to which U.S. battery producers are able to qualify EMD from different sources may depend on the production process of the battery producers.⁴² The *** qualify EMD from Tronox during January 2004-June 2007 and ***.⁴³ ***. On the other hand, the ***, qualified EMD from *** throughout January

³⁷ U.S. producer and importer questionnaire responses, sections IV-A.2-3 and III-A.2-3/III-A.4-2/3/4, respectively; conference transcript, pp. 102-103 (Stevens) and (McGrath); and Tronox's postconference brief, exhibit 1, p. 11.

³⁸ ***.

³⁹ Conference transcript, pp. 102-103 (Stevens) and (McGrath); and Tronox's postconference brief, exhibit 1, p. 11.

⁴⁰ Letter from ***, September 19, 2007.

⁴¹ As an example, *** (U.S. importer questionnaire response, section III-A.4-2).

⁴² Panasonic asserted that the production process that is used by one U.S. battery producer versus another is different, and in some cases contaminants that are in the EMD may still allow a particular U.S. battery producer to use that particular EMD. In Panasonic's case, those specific contaminants in its process are not allowed, otherwise it causes another problem, which is an impact on the actual quality of its battery. (Conference transcript, pp. 105-106 (Stevens)). In addition, Spectrum asserted that, in testing the Tronox product, Spectrum incurred significantly more tool wear than with other producers of EMD. Similarly, abrasion is the result of specific crystallinity in a given EMD, which causes accelerated wearing of cathode dyes and ultimately leads to out of specification cathode pellets. This requires frequent tooling changes and substantially increases the cost to the battery manufacturer. (Conference transcript, p. 92 (McGrath)).

⁴³ Importer questionnaire responses, sections III-A.-2/3; letter from ***, September 14, 2007; and Spectrum's postconference brief, attachment 3. In addition, Spectrum asserted that Duracell holds certain U.S. patents with respect to specific claims for batteries and battery electrodes with high power EMD that's based on example data from Tronox EMD material. Because of these intellectual property rights, Spectrum would have to bear additional costs of analysis and potential intellectual property claims were it to switch to using Tronox EMD (conference transcript, p. 95 (McGrath)). *** reported that *** (letter/supplemental questionnaire response from ***), September 19, 2007.

2004-June 2007. *** have qualified EMD from China during at least some portion of the period, January 2004-June 2007, and *** have qualified EMD from Australia during this period.

EMD Blending

*** blend their EMD from various sources,⁴⁴ while *** not blend EMD from various sources.⁴⁵ Such blending may suggest that EMD from several sources either exhibits no differences in physical and/or performance characteristics or is differentiated by these factors; if the former, the products may be substitutable and if the latter the products may also be complements. Duracell asserted that in its experience ***.⁴⁶ ***,⁴⁷ ***. As a result, the imported EMD from China that Spectrum purchases can qualify for uses in batteries, but only qualify in a limited fashion.⁴⁸

Changes in Product Range and Marketing of EMD

U.S. producers and importers/purchasers of the subject EMD were requested in their questionnaire responses to describe any significant changes in the product range or marketing of EMD in the United States since January 2004.⁴⁹ The two responding U.S. producers and six of the nine responding U.S. importers/purchasers reported some changes, while the three remaining U.S. importers/purchasers reported no such changes. The comments of the firms reporting changes in the marketing or product range of EMD in the U.S. market are shown in the following tabulation:

* * * * *

Factors Affecting Sales and Purchases

U.S. producers and importers/purchasers of EMD were requested in their questionnaires to report on the extent of interchangeability (products from different countries physically capable of being used in the same applications) of EMD produced domestically, imported from Australia, China, and from third countries.⁵⁰ They were also asked to report the extent of any non-price differences that would affect sales/purchases in the U.S. market among these various sources of EMD.⁵¹ Responses of the U.S. producers and importers/purchasers regarding the degree of interchangeability between domestic and imported EMD are summarized in table II-3, and their responses regarding differences other than price affecting competition are summarized in table II-4.

⁴⁴ ***; conference transcript, pp. 94-95 (McGrath).

⁴⁵ E-mail from ***; and letter from ***.

⁴⁶ ***. ***. Ibid.

⁴⁷ ***. (Spectrum's importer questionnaire response, section III-B-17.)

⁴⁸ Conference transcript, pp. 94-95 (McGrath).

⁴⁹ U.S. producer and importer questionnaire responses, sections IV-B-13 and III-B-13, respectively.

⁵⁰ U.S. producer and importer questionnaire responses, sections IV-B-18 and III-B-17, respectively. The importer questionnaire was sent to both importers and purchasers of EMD; both types of firms were requested to report the requested information for interchangeability.

⁵¹ U.S. producer and importer questionnaire responses, sections IV-B-19 and III-B-18, respectively. The importer questionnaire was sent to both importers and purchasers of EMD; both types of firms were requested to report the requested information for nonprice factors. Nonprice factors referred to in the questionnaire request included quality, availability, transportation network, product range, and technical support, but nonprice factors were not necessarily restricted to only these factors.

For responses regarding the degree of interchangeability, three U.S. producers of EMD and nine U.S. importers/purchasers of the Australian and Chinese products reported the requested information (table II-3). U.S. producers asserted most frequently that EMD produced in the United States and imported from Australia, China, and from third countries was always or frequently interchangeable among each other; whereas U.S. importers/purchasers asserted more frequently than U.S. producers that the EMD from these sources was sometimes or never interchangeable.

Table II-3

EMD: Perceived degree of interchangeability of EMD produced in the United States, and imported from Australia, China, and from third countries that was sold in the U.S. market

Country pair	Number of U.S. producer responses ¹					Number of U.S. importer/purchaser responses ²				
	A	F	S	N	O	A	F	S	N	O
United States vs.--										
Australia	***	***	***	***	-	3	1	4	1	-
China	***	***	***	***	-	2	1	3	2	-
Third countries	***	***	***	***	-	7	3	7	7	-
Australia vs.--										
China	***	***	***	***	-	2	1	2	2	-
Third countries	***	***	***	***	-	7	3	6	6	-
China vs.--										
Third countries	***	***	***	***	-	6	-	5	7	-
¹ All three U.S. producers responded, providing responses for specific third-countries and for third countries as a group (unspecified); all such responses are shown in the category of third countries. The third countries specified by one or more U.S. producers are Greece, Japan, South Africa, and Spain. ² The importer questionnaire was sent to both importers and/or purchasers of EMD. The responding U.S. importers/purchasers provided responses for specific third-countries, for third countries as a group (unspecified), and one purchaser, ***, provided separate responses for C/D batteries and for AA/AAA batteries; all such responses are shown in the table. The third countries specified by one or more firms are Colombia, Greece, India, Japan, South Africa, and Spain.										
Note.--A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity.										
Source: Compiled from data submitted in response to Commission questionnaires.										

For responses regarding differences in factors other than price affecting competition, two U.S. producers of EMD and nine U.S. importers/purchasers of the Australian and Chinese products reported the requested information (table II-4). The responding U.S. producers asserted most frequently that differences in nonprice factors among EMD produced in the United States, and imported from Australia, China, and from third countries were never or sometimes important among sales of the domestic and imported products, whereas the responding U.S. importers/purchasers asserted more frequently than U.S. producers that nonprice factors were always or frequently important.

Table II-4

EMD: Perceived importance of differences in factors other than price between EMD produced in the United States, and imported from Australia, China, and from third countries that was sold in the U.S. market

Country pair	Number of U.S. producer responses ¹					Number of U.S. importer/purchaser responses ²				
	A	F	S	N	O	A	F	S	N	O
United States vs.--										
Australia	***	***	***	***	-	3	2	1	2	-
China	***	***	***	***	-	4	1	-	2	-
Third countries	***	***	***	***	-	10	2	3	6	-
Australia vs.--										
China	***	***	***	***	-	3	-	1	2	-
Third countries	***	***	***	***	-	9	-	4	6	-
China vs.--										
Third countries	***	***	***	***	-	6	1	3	6	-
<p>¹ Two of the three U.S. producers responded and provided responses for specific third-countries and for third countries as a group (unspecified); all such responses are shown in the category of third countries. The third countries specified by one or more U.S. producers are Greece, Japan, South Africa, and Spain.</p> <p>² The importer questionnaire was sent to both importers and/or purchasers of EMD. The responding U.S. importers/purchasers provided responses for specific third-countries and for third countries as a group (unspecified); all such responses are shown in the category of third countries. The third countries specified by one or more U.S. importers/purchasers are Colombia, Greece, India, Japan, South Africa, and Spain.</p> <p>Note.--A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>										

U.S. producers and importers/purchasers were also requested in their questionnaires to provide any comments where products are sometimes or never interchangeable and where nonprice factors were always or frequently significant in competition between the domestic and imported EMD.⁵² The comments of the responding U.S. producers and U.S. importers/purchasers reporting on interchangeability and comments of the responding U.S. importers/purchasers commenting on nonprice factors are shown in the following two tabulations.⁵³

* * * * * * *

* * * * * * *

⁵² U.S. producer and importer questionnaire responses, sections IV-B-18/19 and III-B-17/18, respectively.

⁵³ U.S. producers of EMD did not provide any additional responses regarding nonprice factors.

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

Information presented in this section of the report is based on (except as noted) the questionnaire responses of three firms. These firms are believed to account for all of the U.S. production of EMD during the period examined (January 2004-June 2007).

U.S. PRODUCERS

The Commission sent producers' questionnaires to all three firms identified as U.S. producers of EMD in the petition. Table III-1 presents the list of U.S. producers with each company's production location, share of U.S. production in 2006, and position on the petition.

Table III-1

EMD: U.S. producers, U.S. production locations, shares of U.S. production in 2006, and positions on the petition

Firm	Production location	Share of production (percent)	Position on the petition	
			Australia	China
Energizer ¹	Westlake, OH	***	***	***
Erachem ²	New Johnsonville, TN	***	***	***
Tronox ³	Henderson, NV	***	Petitioner	Petitioner

¹ Energizer is primarily a U.S. producer of alkaline batteries headquartered in St. Louis, MO.
² Erachem is a wholly owned subsidiary of Comilog U.S., Inc. of Baltimore, MD.
³ Tronox is a wholly owned subsidiary of Tronox Inc. of Oklahoma City, OK.

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

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Data on U.S. producers' capacity, production, and capacity utilization are presented in table III-2. Total U.S. capacity increased from 2004 to 2006 by 1.0 percent, but is well below apparent U.S. consumption of EMD. Total U.S. production of EMD increased by 4.9 percent from 2004 to 2006 ***, but decreased for all three producers in January-June 2007 compared with their production levels in January-June 2006. Capacity utilization is high and increased by 3.6 percentage points from 2004 to 2006, although it decreased by 9.7 percentage points between the January-June periods.¹

***.

¹ Tronox stated that since EMD has a capital-intensive manufacturing process with high fixed costs, EMD producers need to operate at high levels of capacity utilization to reduce pre-unit fixed costs and operate profitably. Tronox's postconference brief, p. 13.

Table III-2
EMD: U.S. producers' capacity, production, and capacity utilization, 2004-06, January-June 2006,
and January-June 2007

Item	Calendar year			January-June	
	2004	2005	2006	2006	2007
Capacity (short tons)					
Energizer	***	***	***	***	***
Erachem	***	***	***	***	***
Tronox	***	***	***	***	***
Total	69,400	69,999	70,100	34,996	35,193
Production (short tons)					
Energizer	***	***	***	***	***
Erachem	***	***	***	***	***
Tronox	***	***	***	***	***
Total	64,678	69,877	67,877	34,135	30,917
Capacity utilization (percent)					
Energizer	\$***	\$***	\$***	\$***	\$***
Erachem	***	***	***	***	***
Tronox	***	***	***	***	***
Average	93.2	99.8	96.8	97.5	87.8
Source: Compiled from data submitted in response to Commission questionnaires.					

***.² Tronox was formed on May 17, 2005, in preparation for the contribution and transfer by Kerr-McGee of certain entities including those comprising substantially all of its chemical businesses, including the EMD business. The contribution was completed in November 2005.³ ***.⁴

***.⁵

***.⁶

***.⁷

² ***'s producers' questionnaire response (section II-2).

³ Tronox Inc.'s Form 10-K, fiscal year ended December 31, 2006, p. 2.

⁴ ***'s producers' questionnaire response (section II-2).

⁵ ***'s producers' questionnaire response (section II-2).

⁶ Ibid.

⁷ Ibid.

***.⁸

Constraints that set the limits on production capabilities were reported as follows: ***.⁹

***.¹⁰ *** produce EMD using titanium anodes.¹¹

The domestic producers reported *** toll agreements *** U.S. production of EMD in U.S. foreign trade zones.¹²

U.S. PRODUCERS' U.S. SHIPMENTS AND EXPORT SHIPMENTS

As detailed in table III-3, the volume of U.S. producers' U.S. shipments of EMD (*** of which were of alkaline-grade EMD) decreased irregularly by 9.7 percent from 2004 to 2006. The value of their U.S. shipments also decreased irregularly by 1.8 percent during the same time period. The volume and value of U.S. shipments also decreased between the January-June periods. *** of the internal consumption shipments are those of ***, which consumes *** of the EMD it produces in the production of its dry cell batteries.¹³ The *** volume of export shipments made by U.S. producers increased by *** percent between 2004 and 2006, while the value of those export shipments decreased *** percent during the same period. *** reported export shipments, which were made to ***. Energizer, which internally consumes *** the EMD it produces, ***. *** reported transfers at market prices. ***.

⁸ ***'s producers' questionnaire response (section II-2).

⁹ U.S. producers' questionnaire responses (section II-4).

¹⁰ U.S. producers' questionnaire responses (section II-3 and section II-5).

¹¹ U.S. producers' questionnaire responses (section II-11 and section II-12).

¹² U.S. producers' questionnaire responses (section II-6 and section II-7).

¹³ ***.

Table III-3

EMD: U.S. producers' shipments, by type, 2004-06, January-June 2006, and January-June 2007

Item	Calendar year			January-June	
	2004	2005	2006	2006	2007
Quantity (short tons)					
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	68,472	70,685	61,820	30,564	27,430
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
Value (\$1,000)					
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	90,016	94,824	88,438	43,494	38,737
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
Unit value (per short ton)					
Commercial shipments	\$***	\$***	\$***	\$***	\$***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	1,315	1,342	1,431	1,423	1,412
Export shipments	***	***	***	***	***
Average	***	***	***	***	***
Source: Compiled from data submitted in response to Commission questionnaires.					

CAPTIVE CONSUMPTION

Section 771(7)(C)(iv) of the Act states that—

If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that—

- (I) *the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,*
- (II) *the domestic like product is the predominant material input in the production of that downstream article, and*
- (III) *the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,*

*then the Commission, in determining market share and the factors affecting financial performance . . . , shall focus primarily on the merchant market for the domestic like product.*¹⁴

Captive consumption (internal shipments) accounted for *** percent of the volume of U.S. producers' U.S. shipments of EMD in each of the years 2004 and 2005, *** percent in 2006, *** percent in January-June 2006, and *** percent in January-June 2007; *** captive consumption was accounted for by Energizer. Commercial (merchant) shipments accounted for *** percent of U.S. producers' U.S. shipments in 2004, *** percent in 2005, *** percent in 2006, *** percent in January-June 2006, and *** percent in January-June 2007. Transfers to related firms accounted for *** percent of U.S. producers' U.S. shipments in each of the years 2004, 2005, and 2006 and in January-June 2006, and *** percent in January-June 2007.

The first requirement for application of the captive consumption provision is that the domestic like product that is internally transferred for processing into a downstream article not enter the merchant market for the domestic like product. *** captively consumed EMD was used in production of alkaline dry-cell batteries during the period for which data were collected in these investigations.

The second criterion of the captive consumption provision concerns whether the domestic like product is the predominant material input in the production of the downstream article that is captively produced. EMD amounts to between *** and *** percent of the total cost of manufacturing a battery, depending on the type of battery.¹⁵

The third criterion of the captive consumption provision is that the production of the domestic like product sold in the merchant market is generally not used in the production of the downstream article produced from the domestic like product that is internally transferred for processing (captively produced). Virtually all, if not all, U.S.-produced EMD, whether sold in the U.S. merchant market or captively consumed, is used in the production of dry-cell batteries.

U.S. PRODUCERS' IMPORTS AND PURCHASES OF IMPORTS

One of the three U.S. producers, ***, reported that it directly imported or purchased subject imports from third-party importers during the period examined ***. Table III-4 presents direct imports and purchases of imports and domestic product by ***, along with its U.S. production.

***,¹⁶

***.¹⁷

¹⁴ 19 U.S.C. § 1677(7)(C)(iv).

¹⁵ Firms were asked to provide the share of EMD in the total cost of producing batteries. Of the battery producers, Duracell responded that EMD accounted for ***, Energizer responded ***, Rayovac responded ***, and Panasonic responded ***. Firms other than battery producers responded *** (Erachem); *** (Tronox); and *** (Delta), based on ***.

¹⁶ ***'s producers' questionnaire response (section II-13).

¹⁷ ***'s producers' questionnaire response (section I-5 and section I-6).

Table III-4**EMD: *** production, imports, and purchases, 2004-06, January-June 2006, and January-June 2007**

* * * * *

U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of EMD for the period examined are presented in table III-5.

Table III-5**EMD: U.S. producers' end-of-period inventories, 2004-06, January-June 2006, and January-June 2007**

* * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. producers on the number of production and related workers ("PRWs") engaged in the production of EMD, the total hours worked by such workers, and wages paid to such workers during the period for which data were collected in these investigations are presented in table III-6.

Table III-6**EMD: Average number of production and related workers producing EMD, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 2004-06, January-June 2006, and January-June 2007**

Item	Calendar year			January-June	
	2004	2005	2006	2006	2007
PRWs (<i>number</i>)	219	216	218	215	217
Hours worked (<i>1,000</i>)	472	467	470	235	234
Hours worked per worker	2,155	2,162	2,156	1,093	1,078
Wages paid (<i>\$1,000</i>)	11,936	12,280	13,014	6,419	6,510
Hourly wages	\$25.29	\$26.30	\$27.69	\$27.31	\$27.82
Productivity (<i>short tons per 1,000 hours</i>)	137.0	149.6	144.4	145.3	132.1
Unit labor costs (<i>per short ton</i>)	\$184.54	\$175.74	\$191.73	\$188.05	\$210.56

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

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

U.S. IMPORTERS

The Commission sent importer questionnaires to 17 firms believed to be importers of EMD from the subject countries, as well as to all three U.S. producers.¹ Questionnaire responses were received from ten companies that are believed to account for virtually all U.S. imports of EMD.² Questionnaire respondents were located in Australia, California, Japan, New Jersey, New York (3), Ohio, Pennsylvania and Wisconsin.³ *** firms reported imports from nonsubject countries.

The Commission received importer questionnaires from virtually all importers of EMD. *** was discovered in Commerce statistics for the period for which data were gathered, and as a result, Commission staff elected to compile U.S. import data in this report from questionnaire responses.⁴

Table IV-1 lists all responding U.S. importers of EMD and their quantity of imports, by source, in 2006. *** U.S. importers entered the subject product into or withdrew it from foreign trade zones or bonded warehouses.

Table IV-1
EMD: Reported U.S. imports, by importer and by source of imports, 2006

* * * * *

U.S. IMPORTS

Table IV-2 shows that the volume of U.S. imports of EMD from subject countries combined fluctuated upward by *** percent from 2004 to 2006, and further increased by *** percent between January-June 2006 and January-June 2007. Taken separately, the volume of imports from Australia increased by *** percent and from China increased by *** percent from 2004 to 2006. The volume of U.S. imports from Australia *** short tons in 2004 to *** short tons in 2005 then declined by *** short tons in 2006. Interim period comparisons show that imports of EMD from Australia *** short tons in interim 2007 as compared to *** short tons in interim 2006. The volume of EMD imports from China decreased by *** short tons or *** percent between 2004 and 2005 before an increase of *** short tons or *** percent in 2006. A comparison of EMD imports from China for the interim periods *** to interim period EMD imports from Australia. Interim EMD imports from China decreased by *** short tons, from *** short tons in interim 2006 to *** short tons, or by *** percent, in interim 2007.

¹ The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by U.S. Customs and Border Protection (“Customs”) (formerly the U.S. Customs Service), may have imported EMD since 2004.

² In addition to the nine responses, the Commission received responses from ***. Further, the Commission received responses from *** indicating that it did not import EMD during the period examined. *** was sent an importers’ questionnaire by the Commission but did not respond; however, ***.

³ ***.

⁴ ***.

Table IV-2
EMD: U.S. imports, by source, 2004-06, January-June 2006, and January-June 2007

Source	Calendar year			January-June	
	2004	2005	2006	2006	2007
Quantity (short tons)					
Australia	***	***	***	***	***
China	***	***	***	***	***
Subtotal	***	***	***	***	***
All others	***	***	***	***	***
Total	21,915	42,124	38,514	16,311	14,882
Value (\$1,000)¹					
Australia	***	***	***	***	***
China	***	***	***	***	***
Subtotal	***	***	***	***	***
All others	***	***	***	***	***
Total	25,541	51,019	47,023	19,303	18,154
Unit value (per short ton)					
Australia	\$***	\$***	\$***	\$***	\$***
China	***	***	***	***	***
Average	***	***	***	***	***
All others	***	***	***	***	***
Average	1,165	1,211	1,221	1,183	1,220
Share of quantity (percent)					
Australia	***	***	***	***	***
China	***	***	***	***	***
Subtotal	***	***	***	***	***
All others	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0

Table continued on next page.

Table IV-2--Continued

EMD: U.S. imports, by source, 2004-06, January-June 2006, and January-June 2007

Source	Calendar year			January-June	
	2004	2005	2006	2006	2007
Share of value (percent)					
Australia	***	***	***	***	***
China	***	***	***	***	***
Subtotal	***	***	***	***	***
All others	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
¹ Landed, duty-paid. Source: Compiled from data submitted in response to Commission questionnaires.					

*** U.S. shipments of imports of EMD from Australia and China were alkaline grade EMD. U.S. shipments of imports of EMD from all other sources were *** alkaline-grade EMD; ***.

Nonsubject imports of EMD are presented in table IV-3. Three countries - Greece, Japan, and South Africa - accounted for all reported nonsubject imports of EMD during 2004-06.

Table IV-3

EMD: U.S. imports from nonsubject countries, by sources, 2004-06, January-June 2006, and January-June 2007

* * * * *

NEGLIGENCE

The Tariff Act provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition—in this case August 2006 through July 2007. The shares (in *percent*) of the total quantity of U.S. imports for each of the subject countries for the period of August 2006 through July 2007 are shown in table IV-4. The Commission did not collect monthly import data for the August 2006-July 2007 period; therefore, imports have been compiled using Commerce data.

Table IV-4

EMD: U.S. imports and shares of total imports, by source, August 2006-July 2007

Country	Imports (short tons)	Share of total imports (percent)
Australia	18,919	50.1
China	12,723	33.7
Subtotal	31,642	83.7
All other countries	6,157	16.3
Total	37,799	100.0

Source: Compiled from official Commerce statistics.

CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) fungibility, (2) presence of sales or offers to sell in the same geographical market, (3) common or similar channels of distribution, and (4) simultaneous presence in the market.

Fungibility

Tronox contends that all EMD from the two subject countries and domestically produced EMD is “generally fungible.”⁵ It states that Chinese EMD is unquestionably fungible with Australian EMD, such that Australian EMD has been replaced by Chinese EMD and vice-versa, in direct competition for sales to U.S. customers in 2006 and 2007.⁶ Australian EMD sold in the United States allegedly is used in all major cell sizes - AA, AAA, and C and D batteries, as is the EMD made by U.S. producer Tronox.⁷ Moreover, if EMD from a particular supplier does not meet the requirements of a specific battery manufacturer, the EMD can be blended with EMD from other sources in order to satisfy the battery manufacturer’s specifications.⁸ “Blending” is a process by which battery manufacturers may mix or blend EMD from various sources and various grades together to achieve a desired EMD grade.

Duracell said that ***.⁹

Energizer stated that “***.”¹⁰

Spectrum argued that EMD is not fungible.¹¹ It stated that EMD is produced for specific battery manufacturers and that it is not interchangeable between end users. Spectrum cannot use domestic EMD interchangeably with EMD imported from Australia and China.¹² Further, it contends that Chinese EMD is not directly substitutable for EMD originating in any other country for physical reasons, as Chinese

⁵ Petitioner’s postconference brief, p. 8.

⁶ Ibid., pp. 8-9.

⁷ Ibid., p. 9.

⁸ Ibid.

⁹ ***.

¹⁰ ***.

¹¹ Spectrum’s postconference brief, pp. 7 and 14.

¹² Ibid.

producers add EMD particulates to the electrolysis cell to enhance deposit yields. This produces more manganese dioxide for a given applied current, but results in a lower grade EMD with reduced performance. To address these performance issues, ***.¹³ *** and it does not believe that Chinese EMD is interchangeable with those of its other sources of EMD.¹⁴ It also stated that it does not believe that EMD imported from Australia and China compete directly with each other or with domestically produced EMD.¹⁵

Furthermore, Panasonic has stated that “it’s simply not correct to say that all EMD is the same.”¹⁶

Geographical Market Segmentation

No geographical market segmentation in the United States was reported by the parties to these investigations. EMD from all subject countries competes for end users without regard to geographical location in the United States.¹⁷ While imports of EMD from the subject countries may enter select customs districts, the product is then generally sold nationwide. Table IV-5 presents information on shares of U.S. imports of EMD entered by regions and customs districts during 2004-June 2007. Imports of EMD from Australia principally enter through the customs district of Norfolk, VA, while imports of EMD from China principally enter through the customs district of Los Angeles, CA.

Table IV-5
EMD: U.S. imports by sources and Customs districts, 2004-06

Region	Australia			China		
	2004	2005	2006	2004	2005	2006
Shares of total quantity (percent)						
Baltimore, MD	0.0	0.0	37.3	0.0	0.0	0.0
Chicago, IL	0.0	0.0	0.0	21.1	3.0	1.5
Los Angeles, CA	0.0	0.0	0.0	78.7	92.2	94.9
Norfolk, VA	94.9	100.0	62.7	0.1	0.0	0.0
Philadelphia, PA	5.1	0.0	0.0	0.0	0.0	0.0
Savannah, GA	0.0	0.0	0.0	0.0	4.9	3.7
Total	100.0	100.0	100.0	100.0	100.0	100.0

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

Source: Compiled from official Commerce statistics.

¹³ Ibid., p. 8.

¹⁴ Ibid., fn. 25.

¹⁵ Ibid., p. 14.

¹⁶ Conference transcript, p. 83 (Stevens).

¹⁷ ***. Tronox’ postconference brief, p. 17.

Common or Similar Channels of Distribution

All imports from all subject countries and domestic production of EMD are sold directly to end users, the battery manufacturers, by sales representatives of the producers or the importers.¹⁸

Simultaneous Presence in the Market

Imports generally have been simultaneously present in the U.S. market throughout the period examined. Imports of EMD from Australia and China entered the United States in virtually all months from January 2006 through July 2007, with the exceptions of March 2006 and January 2007 for EMD imports from Australia.

¹⁸ *Id.*

APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of EMD are presented in table IV-6.

Table IV-6

EMD: U.S. shipments of domestic product, U.S. imports by source, and apparent U.S. consumption, 2004-06, January-June 2006, and January-June 2007

Item	Calendar year			January-June	
	2004	2005	2006	2006	2007
Quantity (short tons)					
U.S. producers' U.S. shipments	68,472	70,685	61,820	30,564	27,430
U.S. shipments of imports from--					
Australia	***	***	***	***	***
China	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	30,805	36,189	34,355	15,298	16,778
Apparent U.S. consumption	99,277	106,874	96,175	45,862	44,208
Value (\$1,000)					
U.S. producers' U.S. shipments	90,016	94,824	88,438	43,494	38,737
U.S. shipments of imports from--					
Australia	***	***	***	***	***
China	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	38,448	44,134	42,683	18,768	20,116
Apparent U.S. consumption	128,464	138,958	131,121	62,262	58,853
Source: Compiled from data submitted in response to Commission questionnaires.					

U.S. MARKET SHARES

Data on market shares in the total U.S. market for EMD are presented in table IV-7.

Table IV-7

EMD: Apparent U.S. consumption and market shares, 2004-06, January-June 2006, and January-June 2007

Item	Calendar year			January-June	
	2004	2005	2006	2006	2007
Quantity (short tons)					
Apparent U.S. consumption	99,277	106,874	96,175	45,862	44,208
Value (\$1,000)					
Apparent U.S. consumption	128,464	138,958	131,121	62,262	58,853
Share of quantity (percent)					
U.S. producers' U.S. shipments	69.0	66.1	64.3	66.6	62.0
U.S. shipments of imports from--					
Australia	***	***	***	***	***
China	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	31.0	33.9	35.7	33.4	38.0
Share of value (percent)					
U.S. producers' U.S. shipments	70.1	68.2	67.4	69.9	65.8
U.S. shipments of imports from--					
Australia	***	***	***	***	***
China	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	29.9	31.8	32.6	30.1	34.2
Source: Compiled from data submitted in response to Commission questionnaires.					

RATIO OF IMPORTS TO U.S. PRODUCTION

Data on ratio of imports to total U.S. production of EMD are presented in table IV-8.

Table IV-8

EMD: U.S. production, U.S. imports, and ratios of imports to production, 2004-06, January-June 2006, and January-June 2007

Item	Calendar year			January-June	
	2004	2005	2006	2006	2007
Quantity (short tons)					
U.S. production	64,678	69,877	67,877	34,135	30,917
U.S. imports from--					
Australia	***	***	***	***	***
China	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	21,915	42,124	38,514	16,311	14,882
Ratio of imports to U.S. production (percent)					
U.S. imports from--					
Australia	***	***	***	***	***
China	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	33.9	60.3	56.7	47.8	48.1
Source: Compiled from data submitted in response to Commission questionnaires and adjusted Commerce statistics.					

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICING

U.S. prices of EMD can fluctuate based on demand factors such as overall U.S. economic activity, use of consumer electronic devices requiring batteries, and in catastrophic events, such as hurricanes, forest fires, etc., that require electronic devices such as flashlights and portable radios, which use batteries.¹ On the supply side, prices of EMD can also fluctuate based on the cost of manganese ore, natural gas, and other inputs, and possibly due to a number of product specifications, including, but not restricted to, grain size, uniformity, freedom from impurities, abrasiveness, and pH and moisture levels.² In addition, the prices of EMD can fluctuate due to quantities contracted and the relative bargaining strength between relatively few purchasers and suppliers.³

Raw Material Costs

Total raw material costs averaged 28.2 percent of the three U.S. producers' total costs of goods sold for EMD in the United States during January 2004-June 2007. The principal raw material input used to produce domestic EMD is manganese ore, while natural gas is also an important input cost, used for the energy required to produce EMD.⁴ Each of these inputs reportedly account for approximately 25 percent of the cost to produce EMD.⁵ Tronox stated that costs of manganese ore increased 20 percent during January 2004-June 2007,⁶ while costs of natural gas increased 23 percent during this period, but allegedly dumped EMD imports from Australia and China have prevented the firm from raising its prices enough to recover these significant increased costs.⁷

Quarterly natural gas prices to U.S. industrial users fluctuated but increased during January 2004-June 2007, and natural gas prices are expected to increase during July 2007-December 2008 (figure V-1). U.S. quarterly natural gas prices to industrial users began the period at \$6.21 per MMBtu during January-March 2004, generally increased to a period high of \$11.44 per MMBtu by October-December 2005, then decreased to \$6.92 per MMBtu by July-September 2006, before increasing to end the period of historical prices at \$7.86 per MMBtu during April-June 2007. Forecasted U.S. quarterly natural gas prices to industrial users begin at \$6.95 per MMBtu during July-September 2007, then are expected to

¹ Conference transcript, pp. 114-115 (Stevens) and pp. 115-116 (Reilly).

² Conference transcript, p. 67 (Reilly).

³ There do not appear to be readily available substitutes for EMD. In addition, there do not appear to be other types of batteries that would readily substitute for the batteries produced with EMD, although imported batteries using EMD may substitute for U.S.-produced batteries using EMD. As a result, relative price changes of potential substitute products for EMD do not appear to affect the price of EMD. Part II discusses in detail substitution between EMD and alternative input products and substitution among downstream products.

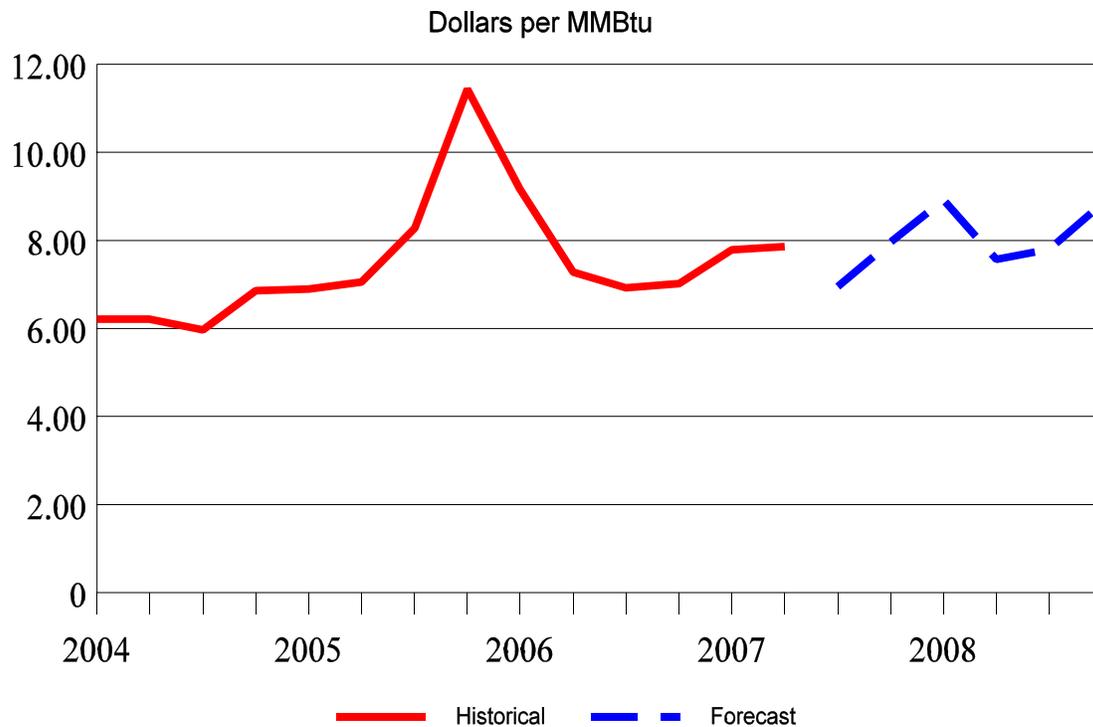
⁴ Conference transcript, p. 33 (Stater).

⁵ Conference transcript, p. 17 (Stater).

⁶ Erachem and Tronox reported in their questionnaire responses their annual contract prices for manganese ore during 2004-07 (U.S. producers' questionnaire responses, section IV-B-15). ***.

⁷ Conference transcript, p. 18 (Stater).

Figure V-1
Natural gas: U.S. prices of natural gas to industrial users, by quarters, January 2004-June 2007 for historical price data and July 2007-December 2008 for forecasted price data



Note: Natural gas is purchased in various units, including MMBtu; MMBtu refers to one million British thermal units, a measure of heat energy. Prices of the various units are readily calculated from one type of unit to another.

Source: U.S. Energy Information Administration, DOE, *Short-term Energy Outlook*, September 7, 2007; <http://tonto.eia.doe.gov/dnav/ng/hist/n3035us3m.htm>, retrieved September 16, 2007.

increase to \$8.92 per MMBtu by January-March 2008, and then are expected to fluctuate but end the forecast period at \$8.84 per MMBtu during October-December 2008.

Tariff Rates and Transportation Costs to the U.S. Market

The U.S. normal trade relations *ad valorem* import duty rate under HTS subheading 2820.10.00 was 4.7 percent for imports of EMD from Australia during 2004 and free during January 2005-June 2007, and 4.7 percent for imports from China during January 2004-June 2007. Transportation charges to ship EMD from Australia and from China to the U.S. ports of entry, as a ratio to the U.S. official customs value, averaged 5.1 percent and 12.9 percent, respectively, during January 2004-June 2007.⁸

⁸ As a ratio to the landed duty-paid value of EMD, these transportation charges averaged 4.8 percent for Australia and 11.0 percent for China during this period.

U.S. Inland Transportation Costs

Two responding U.S. producers of EMD, three responding U.S. importers of EMD from Australia, and one responding importer of EMD from China reported in their questionnaire responses the average U.S. freight costs to their U.S. customers' locations.⁹ U.S.-inland freight costs for the domestic products averaged *** percent of the delivered prices, U.S.-inland freight costs of the imported EMD from Australia averaged *** percent of the delivered prices, and U.S. inland freight costs of the imported EMD from China were 4.0 percent during January 2004-June 2007. Two U.S. producers of EMD, two U.S. importers of EMD from Australia, and one U.S. importer of EMD from China estimated their U.S. shipments of the domestic and subject imported EMD, during January 2004-June 2007, that were shipped to U.S. customers in three specified distance categories.¹⁰ The U.S. producers' and importers' reported shipment shares of the domestic and subject imported EMD, by distance categories from their U.S. selling locations, are shown in the following tabulation.

Distance shipped	Share of U.S. commercial shipments (percent)		
	U.S.-produced EMD	Imported Australian EMD	Imported Chinese EMD
Within 100 miles	***	***	-
101 to 1,000 miles	***	***	86.0
Over 1,000 miles	***	***	14.0
Total	100.0	100.0	100.0

Two U.S. producers of EMD, three U.S. importers of EMD from Australia, and one U.S. importer of EMD from China reported the U.S. geographic market area(s), during January 2004-June 2007, that were served by the firms' domestic and subject imported EMD;¹¹ some U.S. importers reported for more than a single geographic area. The two responding U.S. EMD producers, ***, reported selling their EMD nationally, whereas the responding U.S. importers of EMD from Australia and China reported selling their EMD to the Southeastern and Midwestern United States.¹² The market areas for the U.S.-produced and subject imported EMD are likely only to the U.S. regions where the U.S. battery production facilities are located, which is in the Southeastern and Midwestern United States. U.S. production facilities for batteries that use EMD are located in the following six states: ***. U.S. production facilities for EMD that enters the U.S. merchant market are located in Nevada (Tronox) and Tennessee (Erachem).¹³ It appears that Tronox is quite some distance from the majority of U.S. battery producers, ***.¹⁴

⁹ U.S. producers' and importers' questionnaire responses, sections IV-B-9 and III-B-9, respectively; the responding U.S. producers and importers of EMD all reported arranging U.S.-inland freight to their U.S. customers.

¹⁰ Ibid.

¹¹ U.S. producers' and importers' questionnaire responses, sections IV-B-10 and III-B-11, respectively.

¹² *** that commented on any changes in their U.S. market areas reported that no changes have occurred since January 2004 (Ibid.).

¹³ Energizer produces EMD ***.

¹⁴ *** reported that U.S.-inland freight costs averaged *** percent of the delivered price of its U.S. shipments of EMD during January 2004-June 2007, while *** reported U.S.-inland freight costs of *** percent during this period (continued...)

Exchange Rates

Figure V-2 shows quarterly nominal and real exchange rate indices (the latter are nominal exchange rates adjusted for relative rates of inflation) of the Australian dollar relative to the U.S. dollar during January 2004-June 2007,¹⁵ while figure V-3 shows the quarterly nominal exchange rate index of the Chinese yuan relative to the U.S. dollar during this period.¹⁶

The quarterly nominal value of the Australian dollar fluctuated against the U.S. dollar during January 2004-June 2007 by less than 8 percent around the level at the beginning of period, January-March 2004 (figure V-2). The quarterly real value of the Australian dollar fluctuated similarly against the U.S. dollar during January 2004-March 2007, by less than 7 percent around the level at the beginning of the period. By January-March 2007, the nominal value of the Australian dollar appreciated by 2.7 percent against the U.S. dollar, while the real value of the Australian dollar appreciated by 3.7 percent.

The nominal exchange rate for the Chinese yuan vis-a-vis the U.S. dollar remained stable during January 2004-June 2005, with appreciation (7.9 percent) of the Chinese yuan against the U.S. dollar by April-June 2007 (figure V-3).¹⁷

¹⁴ (...continued)

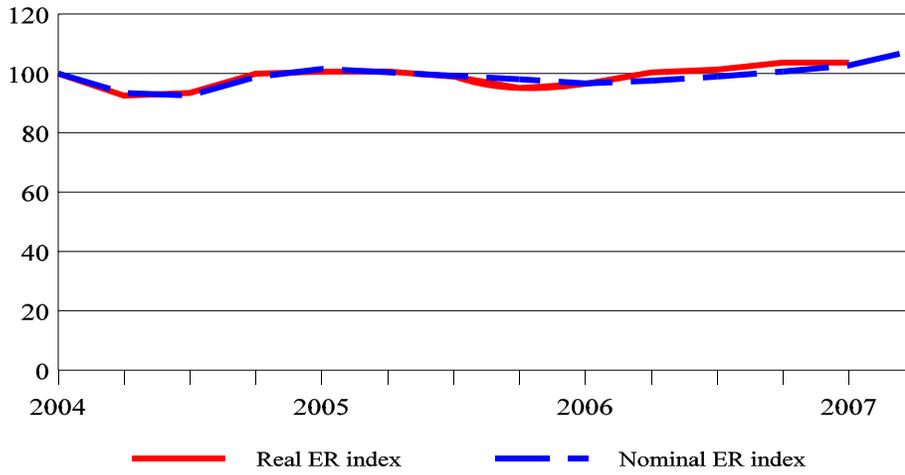
(U.S. producers' questionnaire responses, section IV-B-9).

¹⁵ The quarterly real exchange rate between the Australian and U.S. dollars is shown for the period January 2004-March 2007, because producer price data in Australia were not available during the second quarter of 2007 to calculate the real exchange rate during this latter period. Producer price data in China were not available to calculate real exchange rates of the yuan vis-a-vis the U.S. dollar during January 2004-June 2007.

¹⁶ The quarterly nominal and/or real exchange rates were calculated from quarterly-average nominal exchange rates and, for the real exchange rate, producer price indices reported by the IMF. The exchange rate indices were based on exchange rates expressed in U.S. dollars per unit of the foreign currency, such that index numbers below 100 represent depreciation and numbers above 100 represent appreciation of the foreign currency vis-a-vis the U.S. dollar.

¹⁷ The Chinese government effectively pegged the yuan to the U.S. dollar at 8.28 yuan per dollar during the early part of this period. On July 21, 2005, the Chinese government announced that it would no longer peg the yuan to the U.S. dollar but would tie the yuan to a basket of currencies. Within this new basket, the yuan was revalued upward against the U.S. dollar by 2.1 percent, or from 8.28 yuan per dollar under the old peg to 8.11 yuan per dollar under the new exchange rate policy. The Chinese government has not disclosed which currencies are in the new basket, but indicated that the weight of the U.S. dollar represented less than 50 percent of the new basket of currencies.

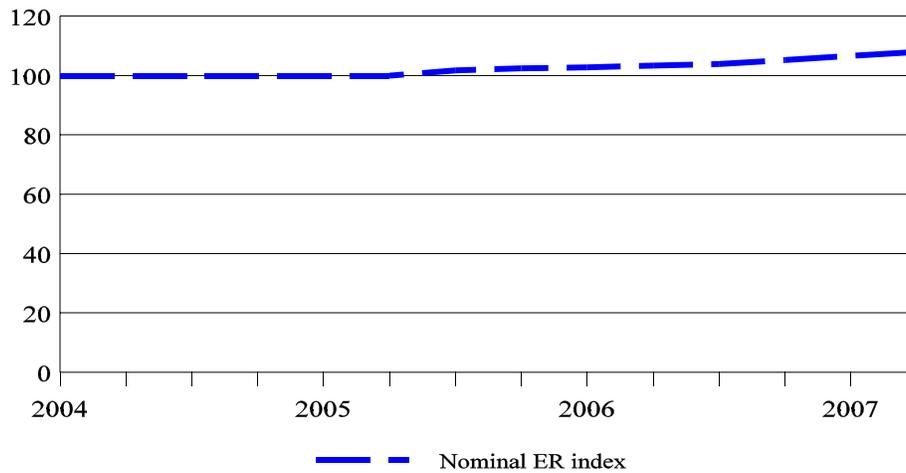
Figure V-2
Nominal and real exchange rate indices of the Australian dollar relative to the U.S. dollar, by quarters, January 2004-June 2007



Note: Index (Jan.-Mar. 2004=100). Exchange rates are in U.S. dollars per Australian dollar.

Source: International Monetary Fund, *International Financial Statistics*, February 2006 and August 2007.

Figure V-3
Nominal exchange rate index of the Chinese yuan relative to the U.S. dollar, by quarters, January 2004-June 2007



Note: Index (Jan.-Mar. 2004=100). Exchange rates are in U.S. dollars per Chinese yuan.

Source: International Monetary Fund, *International Financial Statistics*, February 2006 and August 2007.

PRICING PRACTICES¹⁸

U.S. producers and importers of EMD sell almost exclusively in the U.S. market directly to U.S. battery producers, which account for almost all U.S. consumption of EMD. The majority of U.S. sales of EMD is typically negotiated between the EMD suppliers and U.S. battery producers as annual contracts/agreements, with negotiations occurring in the fourth quarter of the previous year for shipments throughout the following year.¹⁹ Spot sales may also occur during the contract year when the purchaser requires an additional quantity beyond the contracted quantity. Two U.S. producers of EMD, one U.S. importer of EMD from Australia, and two U.S. importers of EMD from China reported their 2006 U.S. shipments by type of sale.²⁰ Shares of the 2006 U.S. commercial shipment quantities of the domestically produced and subject imported EMD, by type of sale, are shown in the following tabulation.²¹

Type of sale	Share of 2006 U.S. commercial shipments (percent)		
	U.S.-produced EMD	Imported Australian EMD	Imported Chinese EMD
Spot sales	***	***	-
Short-term sales	***	***	100.0
Long-term sales	***	***	-
Total	100.0	100.0	100.0
Source: Compiled from data submitted in response to Commission questionnaires.			

Short-Term Contracts/Agreements²²

U.S. producers and importers of EMD reported the terms of short-term contract/agreement sales and spot sales and described how prices were negotiated.²³ U.S. EMD producers and importers of the subject EMD reported that their short-term contracts typically were for 12 months, although an importer of EMD from Australia, ***, also reported that short-term contracts of *** sometimes occurred.

¹⁸ Information on pricing practices discussed in this section was based on questionnaire responses of the U.S. producers of EMD and importers of EMD from Australia and China, unless otherwise noted.

¹⁹ *** (U.S. producers' questionnaire response, section IV-B-2).

²⁰ U.S. producers' and importers' questionnaire responses, sections IV-B-1 and III-B-1, respectively.

²¹ Spot sales are usually one-time delivery, within 30 days of the purchase agreement; short-term sales are for multiple deliveries for up to 12 months after the purchase agreement; and long-term sales are for multiple deliveries for more than 12 months after the purchase agreement. Short-term and long-term sales can be arranged by contracts or verbal agreements.

²² U.S. battery producers provided detailed information on contract negotiations that are discussed later in Part V in the section entitled Questionnaire Bid-Price Data.

²³ U.S. producers' and importers' questionnaire responses, sections IV-B-3, 4, 5 and III-B-3, 4, 5, respectively; responding firms were two U.S. producers of EMD, three U.S. importers of EMD from Australia, and two U.S. importers of EMD from China.

There were mixed responses about whether prices could be renegotiated during the contract period. The two responding U.S. EMD producers reported that ***,²⁴ the three responding U.S. importers of EMD from Australia reported that prices ***, and one of the two responding U.S. importers of EMD from China reported that prices could not be renegotiated, while the remaining U.S. importer reported that prices could be renegotiated.

The responding U.S. producers and importers of EMD reported that short-term contracts/agreements typically fix quantity and price. However, one of the responding U.S. EMD producers, ***, also indicated that ***. In addition, one of the responding U.S. importers of EMD from Australia, ***, reported that ***. Also, one of the two responding U.S. importers of EMD from China, ***, indicated that quantity and price are not fixed.

***, one of the three responding U.S. importers of EMD from Australia,²⁵ and both of the responding U.S. importers of EMD from China reported that short-term contracts/agreements of 12 months either have meet-or-release provisions, or, at least sometimes, prices are flexible and can be renegotiated. The two remaining U.S. importers of EMD from Australia reported that short-term contracts/agreements do not have meet-or-release provisions.

The two responding U.S. producers of EMD, the two responding U.S. importers of EMD from Australia, and the one responding U.S. importer of EMD from China explained how they negotiate prices for short-term contracts/agreements for EMD.²⁶ ***,²⁷ ***.

The two responding U.S. importers of EMD from Australia, ***, and the single responding importer of EMD from China, ***, also described the process of negotiating prices for EMD in short-term contracts/agreements. ***.

Other Pricing Practices

U.S. producers of EMD and U.S. importers of EMD from Australia, China, and from nonsubject countries reported shipping *** their EMD to end users.²⁸ In addition, *** responding U.S. producers and importers of EMD reported that they did not sell their EMD over the internet.²⁹

The two responding U.S. producers of EMD reported quoting prices on a U.S. f.o.b. plant basis, whereas the three responding U.S. importers of EMD from Australia and the two responding U.S. importers of EMD from China reported quoting prices on a delivered basis.³⁰ The two responding U.S. producers of EMD reported offering payment terms of net 30 days and net 45 days, while the three responding importers of EMD from Australia and the two responding importers of EMD from China reported offering payment terms ranging from net 30 days to net 60 days.³¹

²⁴ ***.

²⁵ This importer, *** reported that, although 12-month contracts sometimes have meet-or-release provisions, *** do not have such provisions.

²⁶ U.S. producer and importer questionnaire responses, sections IV-B-4 and III-B-4, respectively. *** and *** also discussed how they determine prices in spot sales (U.S. producer questionnaire responses, section IV-B-5). ***.

²⁷ ***.

²⁸ U.S. producers' and importers' questionnaire responses, sections II-9 and II-5, respectively.

²⁹ U.S. producers' and importers' questionnaire responses, sections IV-B-12 and III-B-10, respectively.

³⁰ U.S. producers' and importers' questionnaire responses, sections IV-B-7 and III-B-7, respectively. All responding U.S. producers and importers reported arranging U.S.-inland freight to their U.S. customers (Ibid.).

³¹ U.S. producers' and importers' questionnaire responses, sections IV-B-6 and III-B-6, respectively.

The majority of responding U.S. producers and importers of the domestic and subject imported EMD reported that they have no set quantity discount policies, but most reported that in price negotiations discounts are made to larger-volume customers.³² *** provided some additional explanation.³³ ***.

*** and the one responding U.S. importer of EMD from Australia, ***, reported selling their EMD from U.S. inventory, but the two responding U.S. importers of EMD from China reported selling their products from Chinese production or inventory.³⁴ The two responding U.S. producers reported order lead times of *** days for *** and *** days for ***, whereas *** reported an order lead time of *** days for the imported Australian EMD. The two responding importers of EMD from China reported order lead times of *** and *** days for the EMD shipped from China. All of the responding firms reported that lead times have not changed since January 2004.

PRICE DATA

Questionnaire Bid-Price Data³⁵

U.S. battery producers that used EMD to produce alkaline batteries were requested in their importer/purchaser questionnaire responses to report details of bid prices of individual participating suppliers for each bid request for EMD shipments received by the U.S. battery producers during January 2004-June 2007.³⁶ The three U.S. battery producers responding with bid price data reported information on a total of 62 EMD bid offers, 53 of which were accepted bids.³⁷ The total number of bids accepted, the total quantity awarded, and the average price, by country of origin, are shown in the tabulation below for all contract years combined (2004-07). The average prices for the purchased EMD were based on awarded values that were reported on several bases, including f.o.b., landed duty-paid, and delivered.

* * * * *

The reported detailed bid-price information are shown by each of the three reporting U.S. battery producers in tables V-1 through V-3, respectively.

³² U.S. producers' and importers' questionnaire responses, sections IV-B-4 and 8 and III-B-4 and 8, respectively.

³³ ***.

³⁴ U.S. producers' and importers' questionnaire responses, sections IV-B-11 and III-B-12, respectively.

³⁵ Three of the four U.S. battery producers, ***, reported that their requests for price and quantity offers from their qualified suppliers does not exactly fit the normal bid process (***, importer questionnaire responses, sections III-A.4-1 and III-A.4, respectively; and conference transcript, p. 120 (Stevens)). Because of the lengthy and detailed qualification procedure and the relatively limited number of qualified suppliers, Panasonic and Spectrum reported that the firms do not conduct a re-bid across all suppliers of EMD, but strive to maintain a long-term relationship with their EMD suppliers. Conference transcript, pp. 120-121 (Stevens) and (McGrath).

³⁶ U.S. importer questionnaire response, section III-A.4.

³⁷ Duracell, Energizer, and Spectrum (Rayovac) reported bid price data, while Panasonic reported that ***. *** reportedly account for *** percent of U.S. production of alkaline batteries and reportedly *** (staff telephone interview with ***).

Table V-1

EMD: Bid price information reported by Duracell for its annual alkaline-grade EMD contracts awarded for use in its U.S. battery production during 2004-07

* * * * *

Table V-2

EMD: Bid price information reported by Energizer for its annual alkaline-grade EMD contracts awarded for use in its U.S. battery production during 2004-07

* * * * *

Table V-3

EMD: Bid price information reported by Spectrum for its annual alkaline-grade EMD contracts awarded for use in its U.S. battery production during 2004-07

* * * * *

The responding U.S. battery producers were requested to discuss in their importer/purchaser questionnaire responses the reason(s) why they awarded contracts to the winning bidders, and why any bidders that were not the lowest priced were awarded contracts.³⁸ The comments of the three U.S. battery producers providing bid-price data, and Panasonic’s explanation of its process of selecting EMD suppliers is shown in the tabulation below.³⁹

* * * * *

U.S. battery producers were also requested in their importer/purchaser questionnaire responses to identify the suppliers that were qualified to supply EMD to the battery producers during 2004-07 and the country of origin of the EMD.⁴⁰ The responses of each of the four responding U.S. battery producers are shown in the following tabulation.

* * * * *

In addition, U.S. battery producers were requested in their importer/purchaser questionnaire responses to identify which EMD suppliers, if any they were currently trying to qualify.⁴¹ ***.

U.S. battery producers reported in their importer/purchaser questionnaire response the extent to which qualification among their EMD suppliers is transferable among their different geographical locations using EMD.⁴² The responses of the four responding U.S. battery producers are shown in the tabulation below.

* * * * *

³⁸ U.S. importers’ questionnaire responses, section III-A.4-1.

³⁹ E-mail from ***, September 6, 2007.

⁴⁰ U.S. importers’ questionnaire responses, section III-A.4-2.

⁴¹ U.S. importers’ questionnaire responses, section III-A.4-3.

⁴² U.S. importer questionnaire responses, section III-A.4-4.

U.S. producers of EMD and U.S. importers of the Australian and Chinese EMD that sell their products to U.S. battery producers were requested to explain the bid process in the producer and importer questionnaire responses.⁴³ The responses of the two responding U.S. producers, Erachem and Tronox,⁴⁴ and the three responding U.S. importers, Chemalloy, Delta, and Mitsui (all importers of Australian and/or South African EMD--Mitsui also imported EMD from Japan) are shown in the following tabulation.

* * * * *

Questionnaire Quarterly Selling Price Data⁴⁵

U.S. selling value and quantity data were requested for sales to U.S. battery producers for the following EMD product category produced in the United States and imported from Australia and China.⁴⁶

Product category 1--Standard alkaline grade electrolytic manganese dioxide in powder form.

The price data were based on quarterly net U.S. f.o.b. selling price data of U.S. producers and importers for their shipments of the specified domestic and imported Australian and Chinese EMD product category 1 during January 2004-June 2007 to U.S. battery producer customers unrelated to the selling firms.⁴⁷ In addition, each U.S. importer was requested to provide the selling price data for the specified EMD product category that it imported from its largest nonsubject country source.

U.S. battery producers that imported their EMD directly were also requested to provide their quarterly purchase price data for these direct imports, but to supply the purchase values on a U.S. c.i.f., landed, duty-paid basis.⁴⁸

Two U.S. producers of EMD (Erachem and Tronox), one U.S. importer of EMD from Australia (Delta), and two U.S. importers of EMD from China (Chori and Shenzhen) reported useable selling price information, but not necessarily for all periods. In addition, a single U.S. importer of EMD also reported

⁴³ U.S. producer and importer questionnaire responses, sections IV-A.2-4 and III-A.2-4, respectively.

⁴⁴ Energizer reported that ***.

⁴⁵ Most of the selling price information discussed in this section of the report represents quarterly shipments reported by U.S. producers and importers of EMD and was based on their annual bid awards that were reported by the U.S. battery producers and that were just discussed in the previous section of this report.

⁴⁶ The petitioners suggested this product category and three additional product categories for collecting price data, but indicated that the standard alkaline EMD product category represents nearly the entire U.S. market for EMD (petition, p. 27).

⁴⁷ If the reporting firms sold their EMD on a delivered price basis, they were requested to estimate, to the extent possible, the net f.o.b. U.S. selling value (for instance, deduct from the U.S. delivered value the U.S.-inland freight cost (or an estimate of this cost) it charged, or otherwise arranged, to deliver the EMD to customers at their U.S. receiving location(s)). The firms were requested not to report sales transactions where they were unable to report values, either actual or adjusted, on a f.o.b. U.S. point of shipment basis.

⁴⁸ If the reporting U.S. battery producers imported their EMD on a delivered price basis, they were requested to estimate, to the extent possible, the U.S. c.i.f., landed, duty-paid values (for instance, deduct from the delivered price any U.S.-inland freight and shipping charges to the firm's U.S. location(s)/plant(s) and report the resulting effective U.S. c.i.f., landed, duty-paid value). The firms were requested not to report transactions where they were unable to report values, either actual or adjusted, on a U.S. c.i.f., landed, duty-paid value basis.

the requested quarterly selling price data for one nonsubject country, South Africa,⁴⁹ and *** reported quarterly purchase price data for its imported EMD from China.⁵⁰ The responding U.S. producers reported total sales quantities of the U.S.-produced EMD for pricing purposes during January 2004-June 2007 that amounted to *** short tons, or *** percent of their total reported U.S. commercial shipments of the U.S.-produced EMD during this period. The responding U.S. importers reported total sales quantities for pricing purposes during January 2004-June 2007 that amounted to *** short tons of EMD from Australia, which accounted for *** percent of total reported U.S. shipments of the imported EMD from Australia during this period; and *** short tons of EMD from China, which accounted for *** percent of total reported U.S. shipments of the imported EMD from China during this period.

Price Trends

Trends in weighted-average selling prices of the domestic, imported Australian, and imported Chinese EMD and comparisons of the weighted-average prices between the domestic and subject imported EMD are based on the individual firms' reported quarterly net f.o.b. U.S. selling price data to U.S. battery producer customers. Quarterly trends in weighted-average selling prices and quantities of the domestic and subject imported product category 1 are shown in table V-4; price comparisons between the domestic and the subject imported product category 1 are also shown in this table. The quarterly weighted-average selling prices and quantities of the domestic and subject imported EMD product category 1 are also shown in figure V-4. In addition, selling prices of the domestic EMD product category 1 and that imported from South Africa are shown in appendix D.

Table V-4
EMD: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported EMD product category 1 and margins of underselling/ (overselling), by quarters, January 2004-June 2007

* * * * *

Figure V-4
EMD: Net weighted-average U.S. f.o.b. selling prices and quantities of U.S.-produced and subject imported product category 1, by quarters, January 2004-June 2007

* * * * *

The weighted-average quarterly selling prices of the U.S.-produced and imported Australian EMD product category 1 tended to trend upward during January 2004-December 2006, before declining somewhat during January-June 2007 (table V-4 and figure V-4).⁵¹ The quarterly selling prices of the imported Chinese EMD product category 1 first declined from the initial-period price level, January-March 2005, then fluctuated without much trend during the remaining period for which price data were

⁴⁹ This U.S. importer reported total sales quantities for pricing purposes during January 2004-June 2007 that amounted to *** short tons of EMD from South Africa.

⁵⁰ *** reported total import quantities for purchase pricing purposes during January 2004-June 2007 that amounted to almost *** short tons of EMD from China. The reported quantity accounted for *** percent of total U.S. imports of EMD from China during this period. *** reported a landed, duty-paid, U.S. port of entry purchase price of \$*** per pound for this EMD during July-September 2004.

⁵¹ Selling prices of the U.S.-produced EMD showed less quarter-to-quarter fluctuation than selling prices of the EMD imported from Australia.

reported, July 2005-June 2007 (table V-4 and figure V-4). For the U.S.-produced and imported Australian EMD, selling prices reached their highest levels of the period during 2006, while selling prices of the imported Chinese EMD showed only a modest uptick during 2006. Price trends of the domestic EMD during January 2004-June 2007 may have been influenced, at least partially, by price fluctuations of manganese ore and natural gas.

Quarterly selling prices of the U.S.-produced EMD increased from \$*** per pound during January-March 2004 to a period high of \$*** per pound by ***, or by *** percent, and remained at this latter level throughout 2006, before decreasing somewhat to \$*** per pound during January-March 2007 and remaining at this level to end the period in April-June 2007, about *** percent higher than the initial-period value. Quarterly selling prices of the EMD imported from Australia fluctuated but increased from \$*** per pound during January-March 2004 to a period high of \$*** per pound by ***, or by *** percent, and remained at this latter level throughout ***, before decreasing somewhat to \$*** per pound by January-March 2007 and ending at \$*** per pound by April-June 2007, or *** the initial-period value. Quarterly selling prices of the EMD imported from China fluctuated but decreased from \$*** per pound during January-March 2005, the first period for which price data were reported, to match a period low of \$*** per pound ***, or by *** percent, then increased to \$*** per pound by July-September 2006, before decreasing to \$*** per pound in the following quarter, and ending at a period low of \$*** per pound by April-June 2007, or *** percent lower than the initial period value.

The generally higher U.S. quarterly selling prices of the imported EMD from Australia compared to prices of the EMD from China is also reflected in the higher U.S. average unit values for the imported EMD from Australia compared to that from China. Delta asserted that the higher average unit values for the imported EMD from Australia reflect ***.⁵² Delta explained that ***.

Total quarterly sales quantities reported by the U.S. producers and importers of the subject imported EMD product category 1 fluctuated during January 2004-June 2007, with the quantities of the domestic and imported Australian products trending downward during this period while quantities of the products imported from China trended upward (table V-4 and figure V-4). U.S. producers' quarterly shipment quantities of EMD increased from the initial-period level of almost *** million pounds during January-March 2004, to a period high of *** million pounds during ***,⁵³ or by *** percent, then decreased to a period low of almost *** million pounds by *** (**% percent lower than the period-high level), and ended at almost *** million pounds in April-June 2007.

U.S. importers' quarterly shipment quantities of EMD from Australia increased from the initial-period level of almost *** million pounds during January-March 2004, to a period high of *** million pounds during ***, or by *** percent, then fluctuated but decreased to end near a period low of *** million pounds by *** (**% percent lower than the period-high level).

U.S. importers' quarterly shipment quantities of EMD from China increased from the initial-period level of *** pounds during January-March 2005, the first period for which data were reported, to a period high of *** million pounds during ***, or by *** percent, then decreased to almost *** million pounds by January-March 2007 (**% percent lower than the period-high level), and ended the period at *** million pounds during April-June 2007 for the second-highest quarterly quantity reported for EMD imported from China.

⁵² Letter from ***, September 19, 2007.

⁵³ This was a period of violent hurricanes on the Gulf Coast; natural disasters reportedly result in an increase in demand for alkaline batteries and hence EMD (conference transcript, p. 48 (Gutwald), p. 40 (Boyce), and p. 114 (Stevens)).

Price Comparisons

A total of 23 quarterly net weighted-average U.S. f.o.b. selling price comparisons were possible between the domestic EMD product category 1 and that imported from Australia and China shipped to U.S. battery-producer customers during January 2004-June 2007. All 14 selling price comparisons involving the domestic and imported Australian specified EMD product category showed that the imported product was priced less than the domestic product. In eight of nine price comparisons involving the domestic and imported Chinese specified EMD product category, the imported product was priced less than the domestic product; the single remaining price comparison showed that the domestic and imported Chinese product were priced the same. The selling price comparisons involving the imported Australian and Chinese specified EMD product are shown by period in table V-5.

Table V-5

EMD: Number of quarterly net weighted-average U.S. f.o.b. selling price comparisons between U.S.-produced and imported Australian and Chinese EMD during January 2004-June 2007

* * * * *

LOST REVENUES AND LOST SALES

In the petition, Tronox reported seven lost revenue allegations and four lost sales allegations due to competition from imports of EMD from Australia and/or China during January 2004-June 2007. The seven lost revenue allegations involved a total value of *** for *** of EMD, while the four lost sales allegations involved a total value of *** for *** short tons of EMD. Tronox was unable to provide competing transaction-specific prices of the subject imported EMD, and noted in the petition that the four U.S. purchasers of EMD do not release information on prices they pay for their purchases of imported EMD,⁵⁴ although the purchasers will frequently ***. According to the petitioner, U.S. purchasers routinely use competitive offers from other suppliers as leverage in price negotiations with their principal suppliers.⁵⁵ On the other hand, Panasonic and Spectrum reported that the firms do not use prices of various qualified suppliers as leverage to obtain lower prices.⁵⁶

In producer questionnaire responses,⁵⁷ ***.⁵⁸ ***.

The responding U.S. producers, which supply EMD to ***, identified *** in their allegations;⁵⁹ as a result, some double-counting of lost revenue and lost sales may have occurred in the allegations involving these purchasers. The total of *** reported lost revenue allegations involved an aggregate value of *** for *** of EMD, while the total of *** lost sales allegations involved an aggregate value of *** for *** short tons of EMD.

⁵⁴ Petition, p. 17.

⁵⁵ Petition p. 31. *** were unable to report competing prices of EMD in their lost revenue and lost sales allegations, suggesting that purchasers do not disclose specific competing prices.

⁵⁶ Conference transcript, p. 121 (Stevens) and (McGrath); and Spectrum's postconference brief, exhibit 1, p. 4.

⁵⁷ U.S. producer questionnaire responses, sections IV-D (lost revenues) and IV-E (lost sales).

⁵⁸ In addition, another U.S. EMD producer, ***, responding in its questionnaire response for information regarding lost revenues and lost sales, reported that ***.

⁵⁹ In addition, *** also reported lost revenue and lost sales allegations involving ***. The lost sales and lost revenue allegations involved *** U.S. battery producers.

The U.S. purchasers cited in the lost revenue and lost sales allegations in the petition and in questionnaire responses, the transaction information supplied by the U.S. producers, and whether the responding purchasers agreed or disagreed with the allegations are shown in table V-6 for lost revenue allegations and table V-7 for lost sales allegations. Any additional comments of the responding purchasers are discussed below.

Table V-6
EMD: U.S. producers' lost revenue allegations

* * * * *

Table V-7
EMD: U.S. producers' lost sales allegations

* * * * *

*** disagreed with *** of the *** lost revenue allegations and *** of the *** lost sales allegations involving the firm and was not able to agree or disagree with the remaining *** lost revenue allegations and *** lost sales allegations (tables V-6 and V-7).^{60 61} In the *** lost revenue allegations with which *** disagreed (involving ***), *** provided the following explanation.

“***.”

In the *** lost sales allegations on which *** disagreed (involving ***), *** asserted that the reported volume was lost *** with equal or better pricing. In the remaining *** lost revenue allegations (involving ***) and *** lost sales allegations (involving ***), *** did not agree or disagree but provided the following explanation.

“***.”

*** disagreed with all *** lost revenue allegations and *** lost sales allegations involving the firm (tables V-6 and V-7).⁶² For the lost revenue and lost sales allegations, *** asserted that comparative pricing of other suppliers is not the determining factor for *** in accepting or rejecting offered prices. According to ***, each discussion with an EMD supplier is unique to that supplier's cost drivers and *** requirements.⁶³ In addition to these comments, *** also referred to its sourcing strategy, ***, which is discussed earlier in Part V in the discussion of bid prices.

*** disagreed with the *** lost revenue allegations and *** lost sales allegations involving the firm (tables V-6 and V-7).⁶⁴ For the lost revenue allegations, *** asserted that the reported price comparisons are not good estimates of the actual prices of EMD from Australia or China that *** paid. *** reported that it did not use the Chinese material (***) in ***. *** asserted that the loss alleged for the domestic *** during *** was due to poor performance of the domestic product vis-a-vis the product from Australia. *** asserted that the ***, cited for ***, has lower ***. For *** lost sales allegations

⁶⁰ E-mail from ***, September 14, 2007.

⁶¹ *** not only provided specific comments on the lost revenue and lost sales allegations where it disagreed, but it also referenced its importer questionnaire responses to sections III-A.4-2 and III-B-15 as additional comments. In its importer questionnaire responses, *** indicated that ***. In addition, *** discussed ***. *** indicated in these questionnaire responses that, if it is unsuccessful in maintaining a cost-effective manufacturing solution in the United States, then inevitably a strategic reassessment of *** manufacturing strategy will be necessary.

⁶² Fax from ***, September 4 and 7, 2007.

⁶³ ***. Ibid.

⁶⁴ Fax from ***, September 7, 2007.

involving ***, the U.S. battery producer asserted that the lost sales were due to poor quality and performance compared to ***. *** also asserted that prices of the domestic and imported *** were ***,

*** disagreed with the *** lost revenue allegations and *** lost sales allegations involving the firm (tables V-6 and V-7).⁶⁵ The *** lost revenue allegations involved ***. The *** lost sales allegations involved ***.

*** provided the following explanations for each lost revenue allegation. For the first lost revenue allegation (***), *** reported that--

“***.”

For the *** lost revenue allegation (***), *** reported that --

“***.”

*** provided the following explanations for each lost sales allegation. For the *** lost sales allegations involving ***, *** reported that--

“***.”

For the lost sales allegation involving ***, *** reported that--

“***.”

For the lost sales allegation involving ***, *** reported that--

“***.”

For the lost sales allegation involving ***, *** reported that--

“***.”

⁶⁵ Letter from ***, ***.

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

BACKGROUND

Three U.S. producers reported their EMD financial results on the basis of U.S. generally accepted accounting principles (“GAAP”).¹ Energizer reported on a fiscal year basis ending September 30, while Erachem and Tronox reported their financial results for calendar-year periods.

The majority of overall EMD revenue reflects commercial sales which were reported by Erachem and Tronox. The balance was accounted for by Energizer’s EMD internal consumption with ***.

MERCHANT-MARKET OPERATIONS ON EMD

Income-and-loss data for merchant-market operations on EMD are presented in table VI-1 and on an average unit basis in table VI-2.² Table VI-3 presents selected company-specific financial information for merchant-market operations on EMD. A variance analysis of the financial results for merchant-market operations on EMD is presented in table VI-4.

Table VI-1

EMD: Results of merchant-market operations, 2004-06, January-June 2006, and January-June 2007

* * * * *

Table VI-2

EMD: Results of merchant-market operations (per short ton), 2004-06, January-June 2006, and January-June 2007

* * * * *

Table VI-3

EMD: Results of merchant-market operations by firm, 2004-06, January-June 2006, and January-June 2007

* * * * *

Table VI-4

EMD: Variance analysis of merchant-market financial results of operations, 2004-06, January-June 2006, and January-June 2007

* * * * *

While average EMD sales value increased *** during the full-year periods as shown in table VI-2, changes in total EMD revenue were primarily the result of period-to-period changes in sales volume;

¹ ***.

Tronox was formed in May 2005 and primarily represents Kerr-McGee’s former chemical business segment. The initial public offering of Tronox’ common stock was completed in late November 2005. Tronox 2006 10-K, p. 30. According to a company official at the staff conference, Tronox’ EMD manufacturing and marketing operations were not affected by the divestiture from Kerr-McGee. Conference transcript, pp. 47-48 (Stater).

² Merchant-market operations represent the financial results of Erachem and Tronox.

e.g., the net sales variance section of table VI-4 shows that the 2004-06 full-year negative sales volume variance was *** and more than offset the corresponding 2004-06 full-year positive price variance. Although total EMD sales volume peaked in 2005, the increase in overall 2005 sales volume compared to 2004 was ***. As noted in Part III of this report, ***.

*** reported declines in EMD sales volume in 2006. In Erachem's questionnaire response and subsequent response to a staff question, the company indicated that ***.³ ***, Tronox stated in its 2006 10-K that "... sales {of manganese dioxide in 2006} declined primarily due to a decrease in volume of 17.4 percent which is the result of record volumes in 2005 brought about by hurricane Katrina."⁴ While a Tronox company official generally confirmed the accuracy of this statement at the staff conference,⁵ the company official also noted that information on the record shows that the above-referenced 2006 decline in EMD sales volume also coincided with increased subject imports.⁶ In its postconference brief, the company, in contrast with the above-referenced statement in its 2006 10-K, stated that "... subject imports were the primary cause {of lower EMD sales volume in 2006}."⁷

As noted above, average EMD sales values increased *** during the full-year periods and at a rate *** lower compared to the increase in average raw material costs. Under these circumstances it is notable that in interim 2007 and despite the absence of declining raw material and/or energy costs, ***. In response to a staff question regarding this trend, Tronox stated that ***.⁸

As shown in table VI-2, the *** increases in average revenue during the full-year periods were matched against larger positive and negative changes in average cost of goods sold ("COGS"), with the relative share of raw material and other factory costs shifting somewhat during the period. In 2004, average other factory costs, which represents a mix of variable, fixed and semi-fixed costs, was the largest component of average EMD COGS. While other items likely affected the level of average other factory costs in 2004, lower capacity utilization appears to be a primary factor.⁹ In 2005, when the industry's full-year capacity utilization reached its highest level, both average other factory costs and overall average COGS declined to their lowest levels. In 2006 and interim 2007, declines in capacity utilization and corresponding reduced fixed-cost absorption were exacerbated by continued increases in average raw material costs, as shown in table VI-2, and higher energy costs.^{10 11}

³ Letter from ***, September 16, 2007.

⁴ Tronox 2006 10-K, p. 33.

⁵ Conference transcript, p. 48 (Gutwald).

⁶ Ibid., p. 55 (Gutwald).

⁷ Tronox's postconference brief, exh. 1, p. 8.

⁸ E-mail with attachments from DLA Piper on behalf of Tronox, September 17, 2007.

⁹ At the staff conference, the Tronox plant manager stated that in addition to substantial variable costs "... EMD production is also a highly capital intensive manufacturing process with high fixed overhead costs. The company's profitability depends on using production assets as fully as possible in order to minimize per unit cost. Just to give you an example, in 2003 when we lost our market position and our capacity utilization dropped the impact was so severe that we were forced to idle the plant and furlough the workforce." Conference transcript, pp. 17-18 (Stater).

¹⁰ With respect to a typical EMD manufacturing operation, an industry witness at the staff conference stated that manganese ore and energy costs would each represent around a quarter of total EMD production costs. Conference transcript, p. 17 (Stater). ***. Exh. 27 of petition. ***. E-mail from DLA Piper on behalf of Tronox, September 13, 2007. E-mail from ***, September 13, 2007.

¹¹ With regard to the larger level of average other factory costs in interim 2006 compared to full-year 2006, as shown in table VI-2, Erachem and Tronox attributed this pattern ***. E-mail with attachments from DLA Piper on behalf of Tronox, September 17, 2007. ***. E-mail from ***, September 13, 2007.

As shown in table VI-3, ***. To the extent that company-specific differences in average revenue were generally *** appear to be due mostly to lower ***.^{12 13}

While absolute SG&A expenses increased somewhat during the period, SG&A expenses in general did not play a major role in terms of explaining period-to-period changes in operating income; e.g., as shown in table VI-4, the industry's *** at the end of the period was due primarily to the decline of gross profit to *** in interim 2007.¹⁴ The decline to *** in interim 2007 was in turn primarily due to a negative cost variance and to a lesser extent to the negative price variance noted previously.¹⁵

As shown in table VI-1, total estimated cash flow from operations, while positive throughout the full-year period, followed a pattern similar to operating income: peaking in 2005 and then declining *** in both 2006 and interim 2007.¹⁶

OVERALL OPERATIONS ON EMD

Income-and-loss data for overall operations on EMD are presented in table VI-5 and on an average unit basis in table VI-6.¹⁷ Table VI-7 presents selected company-specific financial information for overall operations on EMD. A variance analysis of the financial results for overall operations on EMD is presented in table VI-8.

The primary difference between the overall EMD operations and the previous merchant-market section is the inclusion of Energizer. As noted previously, Energizer consumes *** of its EMD in the production of batteries. Unlike Tronox or Erachem, whose sales volume *** during the period, Energizer's sales volume was ***.

¹² ***.

¹³ ***. Tronox and Erachem responses to question III-10 (U.S. producer questionnaire) and conference transcript, pp. 55-56 (Gutwald).

¹⁴ ***. E-mail with attachments from DLA Piper on behalf of Tronox, September 17, 2007. ***.

¹⁵ It should be noted that average COGS (particularly the other factory costs component) is affected by production volume and corresponding fixed cost absorption. In table VI-4, the positive or negative effect on average production costs due to changes in production volume is implicit in the cost variance, not the volume variance.

¹⁶ Depreciation expense, which is used in table VI-1 and table VI-5 to determine estimated cash flow from operations, declined during the period ***. ***. E-mail with attachments from DLA Piper on behalf of Tronox, September 17, 2007.

¹⁷ Overall operations on EMD represent the financial results of Energizer, Erachem, and Tronox.

Table VI-5

EMD: Results of overall operations, 2004-06, January-June 2006, and January-June 2007

Item	Calendar year			January-June	
	2004	2005	2006	2006	2007
Quantity (short tons)					
Commercial sales	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers	***	***	***	***	***
Total net sales quantity	68,718	70,835	62,209	30,582	27,448
Value (\$1,000)					
Commercial sales	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers	***	***	***	***	***
Total net sales value	90,437	94,808	87,136	42,823	37,888
Cost of goods sold:					
Raw materials	20,372	23,427	25,406	11,906	12,089
Direct labor	10,110	9,723	9,704	4,771	4,748
Other factory costs	53,538	49,820	46,884	24,012	22,204
Total cost of goods sold	84,020	82,970	81,994	40,689	39,041
Gross profit or (loss)	6,417	11,838	5,142	2,134	(1,153)
SG&A expenses	7,908	8,228	8,543	4,328	4,591
Operating income or (loss)	(1,491)	3,610	(3,401)	(2,194)	(5,744)
Interest expense	432	258	359	112	206
Other expenses	55	68	0	0	0
Other income items	0	3	43	22	1
Net income or (loss)	(1,978)	3,287	(3,717)	(2,284)	(5,949)
Depreciation/amortization	11,278	9,712	9,224	4,550	4,548
Estimated cash flow	9,300	12,999	5,507	2,266	(1,401)

Table continued on next page.

Table VI-5--Continued

EMD: Results of overall operations, 2004-06, January-June 2006, and January-June 2007

Item	Calendar year			January-June	
	2004	2005	2006	2006	2007
Ratio to net sales (percent)					
Raw material	22.5	24.7	29.2	27.8	31.9
Direct labor	11.2	10.3	11.1	11.1	12.5
Other factory costs	59.2	52.5	53.8	56.1	58.6
Cost of goods sold	92.9	87.5	94.1	95.0	103.0
Gross profit or (loss)	7.1	12.5	5.9	5.0	(3.0)
SG&A expenses	8.7	8.7	9.8	10.1	12.1
Operating income or (loss)	(1.6)	3.8	(3.9)	(5.1)	(15.2)
Net income or (loss)	(2.2)	3.5	(4.3)	(5.3)	(15.7)
Number of producers reporting					
Operating losses	***	***	***	***	***
Data	3	3	3	3	3
Source: Compiled from data submitted in response to Commission questionnaires.					

Table VI-6

EMD: Results of overall operations (per short ton), 2004-06, January-June 2006, and January-June 2007

Item	Calendar year			January-June	
	2004	2005	2006	2006	2007
Unit value (dollars per short ton)					
Commercial sales	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers	***	***	***	***	***
Total net sales	1,316	1,338	1,401	1,400	1,380
Cost of goods sold:					
Raw material	296	331	408	389	440
Direct labor	147	137	156	156	173
Other factory costs	779	703	754	785	809
Total cost of goods sold	1,223	1,171	1,318	1,330	1,422
Gross profit or (loss)	93	167	83	70	(42)
SG&A expenses	115	116	137	142	167
Operating income or (loss)	(22)	51	(55)	(72)	(209)
Source: Compiled from data submitted in response to Commission questionnaires.					

As shown in table VI-7, Energizer's average sales values (e.g., fair market values assigned by the company) were ***. As such and recognizing possible EMD grade differences between the three companies, the ***.¹⁸ ***.¹⁹

As shown in table VI-5, while the trend of financial results for overall EMD operations is generally the same as EMD merchant-market financial results (table VI-1), the ***.

Table VI-7

EMD: Results of overall operations by firm, 2004-06, January-June 2006, and January-June 2007

* * * * *

Table VI-8

EMD: Variance analysis of overall financial results of operations, 2004-06, January-June 2006, and January-June 2007

* * * * *

**CAPITAL EXPENDITURES, RESEARCH AND DEVELOPMENT EXPENSES,
ASSETS, AND RETURN ON INVESTMENT**

Data on capital expenditures, research and development ("R&D") expenses, assets, and return on investment are presented in table VI-9.

Both Erachem and Energizer reported ***.²⁰ ***.²¹

***.²² ***.²³ As shown in table VI-9, Erachem's R&D expenses were *** throughout the period. *** report R&D expenses.

Table VI-9

Overall EMD operations: Capital expenditures, R&D expenses, assets, and return on investment of, by firms, 2004-06, January-June 2006, and January-June 2007

* * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or anticipated negative effects of imports of EMD from Australia and China, respectively, on their firms' growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments.

¹⁸ ***. See *Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa*, Investigations Nos. 731-TA-1048-1053 (proprietary version of preliminary phase staff report), table VI-2, p. VI-4.

¹⁹ E-mail from ***, September 20, 2007.

²⁰ ***.

²¹ ***. E-mail with attachments from DLA Piper on behalf of Tronox, September 17, 2007.

²² Erachem's revised September 12, 2007 questionnaire response.

²³ E-mail with attachments from DLA Piper on behalf of Tronox, September 17, 2007.

Actual Negative Effects (Australia)

Energizer ***.
Erachem ***.
Tronox ***.

Anticipated Negative Effects (Australia)

Energizer ***.
Erachem ***.
Tronox ***.

Actual Negative Effects (China)

Energizer ***.
Erachem ***.
Tronox: ***.

Anticipated Negative Effects (China)

Energizer ***.
Erachem ***.
Tronox ***.

PART VII: THREAT CONSIDERATIONS AND BRATSK INFORMATION

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V, and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report are the statutory requirements and information obtained for use in the Commission's consideration pursuant to *Bratsk* rulings.

THE INDUSTRY IN AUSTRALIA

Table VII-1 presents data for reported production and shipments of EMD in Australia. The data were provided by the sole producer of EMD in Australia, Delta EMD Australia Pty, Ltd. ("Delta Australia").¹ The firm reported that *** percent of its total sales in the most recent fiscal year were sales of EMD. In 2006, *** percent of Delta Australia's total shipments were exported to the United States. Approximately *** percent of its shipments of EMD were to other export markets such as ***. From 2004 to 2006, Delta Australia's volume of shipments exported to the United States fluctuated upward by *** percent, and its volume of shipments exported to other world markets also fluctuated upward by *** percent. Delta Australia's capacity remained the same from 2004 to 2006. It reported that ***. It further reported that ***.² Its production decreased from 2004 to 2006 by *** percent and is projected to ***. *** imported EMD into the United States from Delta Australia ***.

Delta Australia projects its exports to the United States to ***. It stated that ***.³ ***.⁴

Table VII-1

EMD: Australia's reported production capacity, production, shipments, and inventories, 2004-06, January-June 2006, January-June 2007, and projections for 2007 and 2008

* * * * *

THE INDUSTRY IN CHINA

Table VII-2 presents data for reported production and shipments of EMD in China. The Commission sent questionnaires to 36 possible producers of EMD in China and received completed responses from two firms,⁵ which together estimated that in 2006 they accounted for approximately ***

¹ Another Australian firm, Hitec Energy Limited, has failed to successfully commercialize its EMD operations to date (petition, p. 10). It reportedly does not have an operational facility and is not an active producer of EMD (conference transcript, p. 129 (Moore)).

² Delta Australia's foreign producers' questionnaire (section II-9).

³ Delta Australia's postconference brief, p. 14.

⁴ ***.

⁵ These firms are: (1) Guizhou Redstar Developing Import & Export ("Redstar"); and (2) Xiangtan Electrochemical Scientific, Ltd. ("Xiangtan"). ***.

percent of all EMD production in China. *** Chinese producers that responded, Redstar and Xiangtan, exported EMD to the United States during the period examined.⁶

Table VII-2

EMD: China's reported production capacity, production, shipments, and inventories, 2004-06, January-June 2006, January-June 2007, and projections for 2007 and 2008

* * * * *

***.⁷

In 2006, *** percent of reported shipments of Chinese EMD were exported to the United States while *** percent of reported shipments were made in the Chinese home market. Producers of EMD in China reported that in 2006 *** percent of their shipments of EMD were to other export markets (***).⁸ From 2004 to 2006, Chinese EMD producers' volume of shipments exported to the United States increased by *** percent while their volume of shipments exported to other world markets increased irregularly by *** percent. Producers' capacity in China *** from 2004 to 2006 and is projected to ***.⁹ Production increased from 2004 to 2006 by *** percent and is projected to ***.

In June 2007, the Chinese Ministry of Finance and the State Administration of Taxation announced the elimination of the export rebate on multiple products, including EMD, effective in July 2007.¹⁰

THE INDUSTRIES IN AUSTRALIA AND CHINA COMBINED

Table VII-3 presents reported data on the EMD industries in Australia and China combined.

⁶ Foreign producers' questionnaire responses (section II-9). Xiangtian's web site states that Xiangtian produces 40,000 tons of EMD per year and that its EMD plant's production is the largest in the world. www.chinaemd.com, retrieved September 22, 2007.

⁷ Foreign producers' questionnaire responses (section I-3); Importers' questionnaire responses (section II-5).

⁸ Foreign producers' questionnaire responses (section II-9).

⁹ ***. Foreign producers' questionnaire responses (section II-9).

¹⁰ Spectrum's postconference brief, p. 32 and exh. 11.

Table VII-3

EMD: Australia and China's combined reported production capacity, production, shipments, and inventories, 2004-06, January-June 2006, January-June 2007, and projections for 2007 and 2008

Item	Actual experience					Projections	
	2004	2005	2006	January-June		2007	2008
				2006	2007		
Quantity (<i>short tons</i>)							
Capacity	85,980	97,003	108,026	54,012	59,524	119,049	125,663
Production	84,641	95,378	105,953	52,770	46,257	100,511	117,285
End-of-period inventories ¹	24,719	29,958	33,915	35,644	30,637	23,347	23,313
Shipments:							
Internal consumption	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to--							
The United States	18,103	31,257	29,302	14,921	16,258	33,441	36,376
All other markets	19,754	22,064	26,888	9,492	16,312	27,953	24,636
Total exports	37,858	53,321	56,189	24,413	32,570	61,393	61,012
Total shipments	72,591	90,138	101,995	47,084	49,535	111,080	117,318
Ratios and shares (<i>percent</i>)							
Capacity utilization	98.4	98.3	98.1	97.7	77.7	84.4	93.3
Inventories to production	29.2	31.4	32.0	33.8	33.1	23.2	19.9
Inventories to total shipments	34.1	33.2	33.3	37.9	30.9	21.0	19.9
Shares of total quantity of shipments:							
Internal consumption	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to--							
The United States	24.9	34.7	28.7	31.7	32.8	30.1	31.0
All other markets	27.2	24.5	26.4	20.2	32.9	25.2	21.0
Total exports	52.2	59.2	55.1	51.9	65.8	55.3	52.0
Source: Compiled from data submitted in response to Commission questionnaires.							

U.S. IMPORTERS' INVENTORIES

Reported inventories held by U.S. importers of subject merchandise from Australia and China are shown in table VII-4.

Table VII-4

EMD: U.S. importers' end-of-period inventories of subject imports, by source, 2004-06, January-June 2006, and January-June 2007

Source	Calendar year			January-June	
	2004	2005	2006	2006	2007
Imports from Australia:					
Inventories (<i>short tons</i>)	***	***	***	***	***
Ratio to imports (<i>percent</i>)	***	***	***	***	***
Ratio to U.S. shipments of imports (<i>percent</i>)	***	***	***	***	***
Imports from China:					
Inventories (<i>short tons</i>)	***	***	***	***	***
Ratio to imports (<i>percent</i>)	***	***	***	***	***
Ratio to U.S. shipments of imports (<i>percent</i>)	***	***	***	***	***
Imports from all subject countries:					
Inventories (<i>short tons</i>)	***	***	***	***	***
Ratio to imports (<i>percent</i>)	***	***	***	***	***
Ratio to U.S. shipments of imports (<i>percent</i>)	***	***	***	***	***
Imports from nonsubject countries:					
Inventories (<i>short tons</i>)	***	***	***	***	***
Ratio to imports (<i>percent</i>)	***	***	***	***	***
Ratio to U.S. shipments of imports (<i>percent</i>)	***	***	***	***	***
Imports from all sources:					
Inventories (<i>short tons</i>)	5,709	11,638	14,963	11,826	12,989
Ratio to imports (<i>percent</i>)	26.1	27.6	38.9	36.3	43.6
Ratio to U.S. shipments of imports (<i>percent</i>)	18.5	32.2	43.6	38.7	38.7
Note—January-June ratios are calculated using annualized import data. Also, all ratios were calculated only for firms that provided both import and inventory data.					
Source: Compiled from data submitted in response to Commission questionnaires.					

U.S. IMPORTERS' IMPORTS SUBSEQUENT TO JUNE 30, 2007

The Commission requested importers to indicate whether they imported or arranged for the importation of EMD from Australia or China after June 30, 2007. *** responding importers reported that they had arranged for the importation of EMD from a subject country subsequent to June 30, 2007. The tabulation below shows the importer, the quantity of EMD imported or arranged for importation subsequent to June 30, 2007, and the country of origin of the imports. Table VII-5 presents imports subsequent to June 30, 2007 by month of import.

* * * * *

Table VII-5
EMD: Subject U.S. imports scheduled for delivery after June 30, 2007

* * * * *

ANTIDUMPING INVESTIGATIONS IN THIRD-COUNTRY MARKETS

On April 27, 2007, Japan initiated antidumping investigations on EMD from Australia, China, South Africa, and Spain. According to Delta Australia, the investigations are ongoing and final determinations are expected by April 27, 2008.¹¹

On December 21, 2006, the European Commission ("EC") initiated an antidumping investigation on EMD from South Africa. On September 18, 2007, the EC imposed a 14.9-percent provisional antidumping duty on imports of "certain manganese dioxides" from South Africa. A final determination is expected to occur no later than March 21, 2008.¹²

INFORMATION ON NONSUBJECT SOURCES

"Bratsk" Considerations

As a result of the Court of Appeals for the Federal Circuit ("CAFC") decision in *Bratsk Aluminum Smelter v. United States* ("Bratsk"), the Commission is directed to:

undertake an "additional causation inquiry" whenever certain triggering factors are met: "whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market." The additional inquiry required by the Court, which we refer to as the Bratsk replacement / benefit test, is "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."¹³

¹¹ Delta Australia's September 19, 2007 Responses to Supplemental Questions, p. 9.

¹² Ibid.

¹³ *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

Nonsubject Source Information

During the preliminary phase of these investigations, the Commission sought pricing data from U.S. importers of electrolytic manganese dioxide from Australia, China, and from all other countries. Those data are presented in Part V (China and Australia) and appendix D (all other countries) of this report. With respect to foreign nonsubject industry data, the Commission sought publicly available information regarding international producers of EMD during 2002-06: Brazil, Colombia, India, Greece,¹⁴ Japan, Spain, and South Africa.¹⁵ The information obtained is presented in the following sections.

Overview

Although EMD is believed to be produced in substantial quantities in nonsubject countries Brazil, Greece, Japan, and South Africa, quantitative production data for global EMD production are not generally available.¹⁶ World production capacity for 2003 and 2006 is shown table VII-6.¹⁷

According to the petition, global EMD production capacity was estimated to be 367,800 metric tons (405,463 short tons) as of the end of 2006, with global demand for EMD in 2006 estimated at 310,000 metric tons (341,744 short tons). Tronox also cited a statement in Delta's July 2007 interim report to the effect that global production capacity for EMD more than satisfies existing demand.¹⁸

¹⁴ There are no trade data presented for Greece. The Global Trade Atlas reports Greece has declared trade of manganese dioxide as confidential.

¹⁵ Ireland was a major producer of EMD until its one plant was closed in 2003. According to Delta Industries, "In July 2003, a Japanese competitor, Mitsui Mining & Smelting Ltd., announced that they would close their plant in Ireland in September 2003 which has since taken place." *Delta Electrical Industries Limited - Audited Group Results for the Year Ended December 2003*, retrieved on Sept. 19, 2007 from <http://www.netassets.co.za/equities/naSens/nasensArticle.asp?sensID=19347>.

¹⁶ ***.

¹⁷ Citic Dameng Mining Industries Limited, *2006 EMD Market Review and Forecast*, March 30, 2007, retrieved on September 19, 2007 from <http://www.manganese.org/documents/2.IMnIEPD0307Tongqing.pdf>, (partially supplied in exh. 29 of the petition); *The Changing Patterns of the Global EMD Business* (exh. 32 of the petition); and *The Economics of Manganese*, 2003 (exh. 4 of the petition). According to Tronox Inc.'s Form 10-K for its fiscal year ended December 31, 2006 (p. 10), Tronox has approximately 8 percent of global EMD production capacity and Erachem has 7 percent. Other significant producers and their estimated global capacity shares include Delta (17 percent), Tosoh (15 percent), Xiangtan (11 percent), and Mitsui (7 percent), with the remainder essentially consisting of additional producers in China (Ibid.).

¹⁸ Tronox' postconference brief, pp. 10-11.

Table VII-6
EMD: World production capacity, 2003 and 2006, by country

Country	2003	2006
Quantity (short tons)		
Subject:		
Australia	25,353	29,762
China	55,115	220,460
Subtotal subject	80,468	250,222
Nonsubject:		
Brazil	(¹)	13,007
Colombia	(¹)	(¹)
India	661	1,102
Greece	19,841	20,944
Japan	82,893	37,478
Spain	(¹)	6,614
South Africa	36,376	33,070
United States	64,264	69,445
Subtotal nonsubject	204,035	181,660
Total	284,503	431,882
¹ Not available. Source: Citic Dameng Mining Industries Limited, <i>2006 EMD Market Review and Forecast</i> , March 30, 2007, complete and retrieved on September 19, 2007 from http://www.manganese.org/documents/2_IMnIEPD0307Tongqing.pdf , (partially supplied in petition exh. 29); <i>The Changing Patterns of the Global EMD Business</i> (petition exh. 32); and <i>The Economics of Manganese, 2003</i> (petition, exh. 4).		

According to Delta Australia, ***.¹⁹

Net trade data for the nonsubject EMD-producing countries is shown in table VII-7.

¹⁹ Delta Australia's September 19, 2007 Response to Supplemental Questions, p. 5.

Table VII-7

EMD: Net trade from major nonsubject producing countries, 2004-06

Country	Calendar year		
	2004	2005	2006
Quantity (short tons)			
Imports:			
Brazil	626	1,001	2,399
Colombia	1,495	1,488	2,037
India	4,553	5,401	8,198
Japan	7,695	14,770	15,487
South Africa	621	343	33
Spain	237	238	243
Exports:			
Brazil	10,038	9,022	2,867
Colombia	20	0	7
India	717	767	860
Japan	31,019	32,062	32,343
South Africa	28,456	35,613	28,331
Spain	2,543	2,674	4,176
Trade balance:			
Brazil	9,412	8,021	468
Colombia	(1,475)	(1,488)	(2,030)
India	(3,836)	(4,634)	(7,338)
Japan	23,324	17,292	16,856
South Africa	27,835	35,270	28,298
Spain	2,306	2,436	3,933
Source: World Trade Atlas, importer and exporter records (HTS subheading 2820.10).			

Brazil

Brazil is estimated to have accounted for about 3 percent of world production capacity of EMD at the end of 2006.²⁰ Two companies were producing in Brazil, SBEL and EML.²¹ The following tabulation shows Brazil's exports of EMD to its major markets:²²

Market	2004	2005	2006
	Quantity (<i>short tons</i>)		
United States	1,010	1,398	934
Italy	782	419	400
Colombia	917	685	283
Mexico	0	43	220
Pakistan	110	119	208
All other	7,220	6,359	820
Total	10,038	9,022	2,867

Colombia

One producer of EMD is located in Colombia, Quintal, S.A. ***.²³ The following tabulation shows Colombia's exports of EMD to its major markets:²⁴

Market	2004	2005	2006
	Quantity (<i>short tons</i>)		
Guatemala	0	0	7
Ecuador	0	0	(1)
Peru	20	0	0
United States	0	0	0
All other	0	0	0
Total	20	0	7
¹ Less than 0.5 short ton.			

²⁰ Citic Dameng Mining Industries Limited, *2006 EMD Market Review and Forecast*, March 30, 2007.

²¹ Ibid.

²² World Trade Atlas.

²³ ***.

²⁴ World Trade Atlas.

India

During 2004-06 there were several companies producing EMD in India.²⁵ As of 2006, Mitsui (Japan) discontinued its production in India, and the Eveready Industries India EMD facility in Thane was designated to discontinue production in 2007, citing that the facility had become “uneconomical and unviable.”²⁶ The remaining active producer of EMD in India is Manganese Ore of India Limited. The following tabulation shows India’s exports of EMD to its major markets:²⁷

Market	2004	2005	2006
	Quantity (short tons)		
Saudi Arabia	24	247	165
Kenya	3	23	146
Tanzania	77	104	140
Philippines	60	21	74
Thailand	6	33	57
All other	547	340	278
Total	717	767	860

Japan

During 2004-06, both Tosoh and Mitsui produced EMD in Japan; however, Mitsui ***.²⁸ Japan’s exports of EMD to its major markets are:²⁹

Market	2004	2005	2006
	Quantity (short tons)		
Indonesia	8,914	10,609	11,375
United States	2,278	5,438	6,980
China	3,954	2,885	5,403
South Korea	3,329	2,291	2,884
Singapore	6,045	7,639	2,442
All other	6,498	3,201	3,261
Total	31,019	32,062	32,343

²⁵ Citic Dameng Mining Industries Limited, *2006 EMD Market Review and Forecast*, March 30, 2007.

²⁶ “Audited Financial Results for the Year Ended March 31, 2006,” retrieved on September 19, 2007 from: http://www.evereadyindustries.com/financial_results_05-06.shtm.

²⁷ World Trade Atlas.

²⁸ Mitsui ***.

²⁹ World Trade Atlas.

South Africa

During 2004-06, Delta was the sole producer of EMD in South Africa. The following tabulation shows South Africa's exports of EMD to its major markets:³⁰

Market	2004	2005	2006
	Quantity (<i>short tons</i>)		
France	15,862	25,968	23,235
Japan	2,299	5,429	3,083
Brazil	442	421	750
Colombia	154	551	595
United States	697	0	2
All other	9,001	3,244	666
Total	28,456	35,613	28,331

***.³¹

Spain

During 2004-06 there was one company producing EMD in Spain, Cegassa. The following tabulation shows Spain's exports of EMD to its major markets:³²

Market	2004	2005	2006
	Quantity (<i>short tons</i>)		
Japan	13	606	2,293
Belgium	0	0	991
Poland	0	786	583
Colombia	0	69	93
United States	22	0	0
All other	2,508	1,213	216
Total	2,543	2,674	4,176

³⁰ Ibid.

³¹ Delta Australia's September 19, 2007 Response to Supplemental Questions, p. 5.

³² World Trade Atlas.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 731-TA-1124 and 1125
(Preliminary)]

**Electrolytic Manganese Dioxide From
Australia and China**

AGENCY: United States International
Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731-TA-1124 and 1125 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Australia and China of electrolytic manganese dioxide, provided for in subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by October 9, 2007. The Commission's views are due at Commerce within five business days thereafter, or by October 16, 2007.

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

EFFECTIVE DATE: August 22, 2007.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202-205-3354), 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://](http://www.usitc.gov)

www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on August 22, 2007, by Tronox LLC, Oklahoma City, OK.

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

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 12, 2007, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Cynthia Trainor (202-205-3354) not later than September 10, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A

nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 17, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 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). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the 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 § 207.12 of the Commission's rules.

By order of the Commission.

Issued: August 22, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-16962 Filed 8-27-07; 8:45 am]

BILLING CODE 7020-02-P

China (August 22, 2007) (Petitions). The petitioner is a domestic producer of EMD. On August 29, 2007, the Department issued a request for additional information and clarification of certain areas of the Petitions. On September 4, 2007, in response to the Department's request, the petitioner filed an amendment to the Petitions. See *Electrolytic Manganese Dioxide from Australia and the People's Republic of China; Petitioner's Response to the August 19, 2007, Questions from the U.S. Department of Commerce* (September 4, 2007) (Supplemental Responses).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of EMD from Australia and 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, an industry in the United States. The petitioner also alleges that sales of EMD by the Australian producer to Japan were made at prices below the cost of production (COP).

The Department finds that the petitioner filed these Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the initiation of the antidumping-duty investigations that the petitioner is requesting. See the "Determination of Industry Support for the Petitions" section below.

Period of Investigation

Because the Petitions were filed on August 22, 2007, the anticipated period of investigation (POI) for Australia is July 1, 2006, through June 30, 2007. The anticipated POI for the PRC is January 1, 2007, through June 30, 2007. See 19 CFR 351.204(b).

Scope of the Investigations

The merchandise covered by each of these investigations includes all manganese dioxide (MnO₂) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-806, A-570-919]

Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China

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

EFFECTIVE DATE: September 17, 2007.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla at (202) 482-3477 (Australia) or Eugene Degnan at (202) 482-0414 (People's Republic of China), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION

The Petitions

On August 22, 2007, the Department of Commerce (Department) received petitions concerning imports of electrolytic manganese dioxide (EMD) from Australia and the People's Republic of China (PRC) filed in proper form by Tronox LLC (the petitioner). See *Antidumping Duty Petitions on Electrolytic Manganese Dioxide from Australia and the People's Republic of*

description of the scope of these investigations is dispositive.

Comments on Scope of Investigations

We are setting aside a period for interested parties to raise issues regarding product coverage. See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of signature of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers 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 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 if there is a large number of producers in the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole 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 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 because the Department determines industry support at the time of initiation. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law. See *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), aff'd 865 F.2d 240 (CAFC 1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like-product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that EMD constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like-product analysis in these cases, see the *Antidumping Duty Investigation Initiation Checklist: Electrolytic Manganese Dioxide from Australia (Australia Initiation Checklist)* at Attachment II and the *Antidumping Duty Investigation Initiation Checklist: Electrolytic Manganese Dioxide from the People's Republic of China (PRC) (PRC Initiation Checklist)* at Attachment II, on file in the Central Records Unit, Room B-099 of the main Department of Commerce building.

Our review of the data provided in the Petitions, Supplemental Responses, and other information readily available to the Department indicates that the petitioner has established industry support. With regard to the Australia Petition, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers who support the Australia Petition account for at least 25 percent of the total production of the domestic like product. Second, the domestic producers have met the statutory criteria

for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers who support the Australia Petition account for 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 Australia Petition. Because the Petition established support from domestic producers accounting for more than 50 percent of the total production of the domestic like product, the Department is not required to take further action in order to evaluate industry support, e.g., polling. See section 732(c)(4)(D) of the Act. Accordingly, the Department determines that the Australia Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See *Australia Initiation Checklist* at Attachment II.

With regard to the PRC Petition, based on information provided in the Petition, we determine that the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers who support the PRC Petition account for at least 25 percent of the total production of the domestic like product. The Petition did not establish support from domestic producers accounting for more than 50 percent of the total production of the domestic like product, however, and the Department was required to take further action in order to evaluate industry support. See section 732(c)(4)(D) of the Act. In this case, the Department was able to rely on other information, in accordance with section 732(c)(4)(D)(i) of the Act, to determine industry support. See *PRC Initiation Checklist* at Attachment II. Based on information provided in the Petition and other submissions, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers who support the PRC Petition account for 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 PRC Petition. Accordingly, the Department determines that the PRC Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See *PRC Initiation Checklist* at Attachment II.

The Department finds that the petitioner filed the Petitions on behalf of the domestic industry in accordance with section 732(c)(4)(A) of the Act. The petitioner is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient

industry support in favor of the initiation of the antidumping duty investigations. See *Australia Initiation Checklist* at Attachment II and *PRC Initiation Checklist* at Attachment II.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value. The petitioner contends that the industry's injured condition is illustrated by reduced market share, lost sales, smaller production, reduced capacity, a lower capacity-utilization rate, fewer shipments, underselling, price depression or suppression, lost revenue, decline in financial performance, and increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See *Australia Initiation Checklist* at Attachment III and *PRC Initiation Checklist* at Attachment III.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate investigations of imports of EMD from Australia and the PRC. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in greater detail in the *Australia Initiation Checklist* and *PRC Initiation Checklist*. We corrected certain information in the petitioner's margin calculations and these corrections are set forth in detail in the *Initiation Checklists*. Should the need arise to use any of this information as facts available under section 776 of the Act, we will re-examine this information and may revise the margin calculations if appropriate.

Alleged U.S. Price and Normal Value: Australia

The petitioner calculated a single export price using the POI-average unit customs values (AUVs) for U.S. import data, as reported on the ITC's Dataweb for the POI. The petitioner deducted an amount for foreign inland-freight costs. See Petition at Exhibit 11, Supplemental Responses at Exhibit R, and *Australia Initiation Checklist*.

In calculating the export price, the petitioner relied exclusively on AUV data with respect to U.S. imports from Australia under the HTSUS number 2820.10.00.00. This HTSUS number is a "basket category" as it includes both subject EMD and non-subject chemical manganese dioxide (CMD) and natural manganese dioxide (NMD). The petitioner used PIERS data to demonstrate that the imports under HTSUS number 2820.10.00.00 are in fact overwhelmingly subject merchandise because PIERS provides more specific product-identification information than official U.S. Census data as reported on the ITC's Dataweb import statistics (Dataweb). See Petitions at Exhibit 10. In addition, the petitioner provided information that indicates that there are no producers of CMD or NMD in Australia and that the majority of imports under this HTSUS number are from a company that only produces EMD. See Petitions at Exhibit 3. Therefore, in this case, we find that the petitioner has provided information on the record that supports its position that the overwhelming percentage of the imports from Australia are, in fact, within the scope of the investigation. As such, we are able to conclude that most, if not all, of the imports from Australia under this HTSUS number are EMD and are, therefore, adequate figures upon which to base export prices for Australia.

With respect to normal value, the petitioner provided information that there were no sales in commercial quantities of EMD in the home market during the POI and that home-market prices were not reasonably available. *Id.* The petitioner proposed Japan as the largest third-country comparison market and demonstrated that Japan is a viable third-country market. See Petitions at Exhibit 15. The petitioner provided Global Trade Atlas EMD import data for exports from Australia into Japan and compared them with U.S. EMD import data for imports from Australia. According to these figures, the sales volume to Japan was greater than five percent of the sales volume to the United States. The petitioner compared third-country prices with an estimate of the cost of producing EMD in powder form by Delta EMD Australia Pty Ltd. (Delta). Because these data indicate that sales of EMD were made at prices below the product's COP, the petitioner requests that the Department initiate a cost investigation of Delta.

The petitioner has provided information demonstrating reasonable grounds to believe or suspect that sales of EMD from Australia to Japan were made at prices below the fully absorbed

COP within the meaning of section 773(b) of the Act and has requested that the Department conduct a country-wide sales-below-cost investigation. See our analysis of the allegation below. An allegation of sales below cost in a petition does not need to be specific to individual exporters or producers. See, e.g., Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103 316, Vol. 1, at 833 (1994). Thus, the Department will consider allegations of below-cost sales in the aggregate for a foreign country. *Id.* Further, section 773(b)(2)(A) of the Act requires that the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. See section 773(b)(2)(A)(i) of the Act.

The Department has calculated a country-specific COP for EMD in Australia. Based upon a comparison of sales prices of EMD in Japan and the country-specific cost of producing the product, we find reasonable grounds to believe or suspect that sales of EMD produced in Australia and sold in Japan were made at prices below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation with regard to sales of EMD from Australia to Japan. If we determine during the course of this investigation that the home market, *i.e.*, Australia, is viable or that Japan is not the appropriate third-country market upon which to base normal value, our initiation of a country-wide cost investigation with respect to sales to Japan will be rendered moot. Because the petitioner alleged sales below cost pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioner also based normal value for sales of EMD on constructed value.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), selling, general, and administrative expenses (SG&A), financial expenses, and packing expenses. To calculate the COM, the petitioner relied on its own costs during the 2006 fiscal year, adjusted for known differences between the costs in the United States and the costs in Australia. The petitioner obtained all of the cost differences between the United States and Australia that were used to calculate the COM from public sources. The petitioner used its own factory-

overhead costs (FOH) as a conservative estimate of the Australian FOH. This is because the petitioner's facilities are older than Delta's and would thus likely have lower depreciation. Also, the petitioner states that, according to Delta's annual report, it has limited production in Australia, which would increase Delta's actual per-unit cost of FOH.

Because Delta's unconsolidated financial statements were not reasonably available, the petitioner used the financial statements of an Australian zinc producer because, it asserts, zinc undergoes a production process similar to EMD. The petitioner calculated SG&A and profit ratios using the 2006 consolidated financial statements of Zinifex Ltd. (Zinifex), an Australian conglomerate that has mining, smelting, and alloy segments that produce zinc. The petitioner calculated a financial-expense ratio based on the 2006 consolidated financial statements of Delta's parent company, Delta PLC. Where the petitioner used constructed value to determine normal value, it added an amount for profit from Zinifex's financial statements.

We adjusted the petitioner's calculation of SG&A and profit ratios by using information from Delta PLC's consolidated financial statement pertinent to the Australian EMD segment of its business. We used Delta PLC's financial records because these records included Delta's actual costs of producing the merchandise under consideration. See *Australia Initiation Checklist* for a full description of the petitioner's methodology and the adjustments we made to those calculations.

Alleged U.S. Price and Normal Value: The People's Republic of China

The petitioner based its U.S. price calculation on the POI-AUVs of U.S. imports from the PRC under HTSUS number 2820.10.00.00, as reported on the ITC's Dataweb for the POI. As noted above in the "Alleged U.S. Price and Normal Value: Australia" subsection, the petitioner demonstrated, using PIERS data, that the overwhelming percentage of the imports into the United States from the PRC were of subject EMD. The petitioner calculated an average Net U.S. Price for PRC alkaline-grade EMD by subtracting an estimate of foreign inland-freight costs from the AUV of imports for the POI. See *PRC Initiation Checklist* at 5.

Because the Department considers the PRC to be a non-market-economy country (NME), the petitioner constructed normal value based on the factors-of-production methodology

pursuant to section 773(c) of the Act. Recently, the Department examined the PRC's market status and determined that NME status should continue for the PRC. See *Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, Regarding the People's Republic of China Status as a Non-Market Economy*, dated August 30, 2006. (This document is available online at <http://ia.ita.doc.gov/download/prc-nme-status/prc-lined-paper-memo-08302006.pdf>.) In addition, in two recent investigations, the Department also determined that the PRC is an NME country. See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007), and *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The presumption of the NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product is based appropriately on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. During the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

The petitioner asserts that India is the most appropriate surrogate country for the PRC because India is a significant producer of comparable merchandise and at a level of economic development comparable to the PRC. See Petition at 23. Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation. After the initiation of the investigation, we will solicit comments regarding surrogate-country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i), interested parties will be provided an opportunity to submit publicly available information to value the factors of production within 40 calendar days after the date of publication of the preliminary determination.

The petitioner provided dumping-margin calculations using the Department's NME methodology as

required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. The petitioner calculated normal value for the U.S. price discussed above based on its own consumption rates for producing alkaline-grade EMD which it stated should be similar to the consumption of PRC producers. The petitioner used its own consumption figures for the period covering July 1, 2006, through December 31, 2006. See Petitions at 23–24 and Exhibits 22 and 27, Attachment B. The petitioner states that, while the producer in the United States uses only manganese dioxide ore to produce EMD, producers in the PRC use both manganese dioxide ore and manganese carbonate ore to produce EMD. See Petitions at 23–24 and Exhibit 3. The petitioner explains, however, that, because it does not have reliable usage-rate data for PRC carbonate ore and because the petitioner reasonably believes that several producers/exporters in the PRC use manganese dioxide ore to manufacture EMD, the petitioner's allegations are based on its own usage rate for manganese dioxide ore. *Id.* The petitioner stated that it made no adjustments to the normal-value calculations because no known material differences exist between its production process in the United States and the manufacturing experience in the PRC. See Supplemental Responses at 8 and Exhibit A. Thus, the petitioner has assumed, for purposes of the Petitions, that producers in the PRC use the same inputs in the same quantities as those it uses.

For the normal-value calculations, pursuant to section 773(c)(4) of the Act, the petitioner used surrogate values from a variety of sources, including Monthly Statistics of Foreign Trade of India, Volumes I and II, Directorate General of Commercial Intelligence & Statistics (Monthly) (MSFTI), the Department's NME Wage Rate for the PRC, the Department's factor-valuation memoranda from other NME proceedings, and publicly available financial statements, to value the factor of production (FOP). See Petitions at 24 and Supplemental Responses at Exhibit G. The petitioner converted the inputs valued in Indian rupees to U.S. dollars based on the average rupee/U.S. dollar exchange rate for the POI, as reported on the Department's website at <http://ia.ita.doc.gov/exchange/index.html>. See Supplemental Responses at 4 and Exhibits F and G.

For manganese dioxide ore, the main raw material in the production of EMD, the petitioner provided a surrogate value based on the input price paid by Eveready Industries India, Ltd. (Eveready India), an Indian

manufacturer of the subject merchandise, as reflected in Eveready India's 2006 financial statements. See Petitions at 24, footnote 47. For other inputs, e.g., sulfuric acid, caustic soda, hydrogen sulfide, etc., the petitioner provided surrogate values based on pricing information from the World Trade Atlas. See Petitions at 24 and Supplemental Responses at Exhibits G and M. With regard to energy (electricity), the petitioner provided a surrogate value using the Department's *Factors of Production Valuation Memorandum for the Preliminary Results of Partial Rescission of the Fourth Antidumping Duty Administrative Review and Eighth New Shipper Review of Honey from the People's Republic of China* (December 21, 2006). See Petitions at Exhibit 21 and Supplemental Responses at Exhibit G. In addition, the petitioner provided a surrogate value for natural gas, a second energy source, using pricing information from the Gas Authority of India website. See Supplemental Responses at 5. Labor was valued using the expected wage rate for the PRC provided by the Department. See Petitions at 24 and Supplemental Responses at Exhibit G. Additionally, the petitioner explained that, where Indian surrogate values were not readily available and the costs of such factors were insignificant, it applied a "zero" value. See Petitions at 24 and Supplemental Responses at 5 and Exhibit G.

For the normal-value calculations, the petitioner derived the figures for FOH, SG&A, and profit from the financial ratios of Eveready India and Manganese Ore (India) Limited (MOIL), two Indian producers of merchandise that is either identical or similar to the domestic like product. The financial statements that the petitioner provided covered the period of April 2005 to March 2006. Additionally, the petitioner calculated a simple average of the two companies' financial ratios for purposes of the Petition. Further, because Eveready India did not earn a profit while MOIL earned a profit, the petitioner calculated normal value using the profit ratio of MOIL, not Eveready India. See Supplemental Responses at 7 and Exhibit G.

Since Eveready India's financial statement did not report a profit, we have determined not to use Eveready India in our calculation of surrogate financial ratios for purposes of this initiation. It is the Department's practice to disregard financial statements with zero profit when there are financial statements of other surrogate companies that have earned profit on the record.

See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and First New Shipper Review* (signed on September 5, 2007; expected publication on September 12, 2007, in the **Federal Register**) and the Accompanying Issues and Decision Memorandum at Comment 2, section B. Based on our review of the information contained in the Petitions, we recalculated the surrogate financial ratios for the PRC using MOIL's financial information for material, labor, and energy (ML&E), FOH, SG&A, and profit. Although the petitioner calculated MOIL's financial ratios based on MOIL's consolidated financial statement, we calculated the ML&E, FOH, and profit ratios using the financial statement of MOIL's EMD division. Because MOIL did not have specific information regarding SG&A, we continued to use the consolidated financial statement to calculate the surrogate SG&A expense. We then calculated the profit ratio using the EMD division values for ML&E and FOH (i.e., COM) plus the SG&A amount (calculated as the SG&A ratio times the COM), and the EMD division profit value. We did not make any other adjustment to the normal value as calculated by the petitioner.

Fair-Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of EMD from Australia and the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price to constructed value that we revised as discussed above and calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margin for EMD from Australia is 52.94 percent. Based on comparisons of export price to normal value that we revised as discussed above and calculated in accordance with section 773(c) of the Act, the estimated dumping margin for EMD from the PRC is 133.76 percent.

Initiation of Antidumping Investigations

Based upon the examination of the Petitions on EMD from Australia and the PRC, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of EMD from Australia and the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless

postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Separate Rates

The Department modified the process by which exporters and producers may obtain separate-rate status in NME investigations. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) (*Separate Rates and Combination Rates Bulletin*), available on the Department's website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. The process requires the submission of a separate-rate status application. Based on our experience in processing the separate-rate applications in the following antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See, e.g., *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China*, 72 FR 43591, 43594-95 (August 6, 2007) (*Tires from the PRC*). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application is due no later than November 9, 2007.

Respondent Selection and Quantity and Value Questionnaire

In prior NME investigations, it has been the Department's practice to request quantity and value information from all known exporters identified in the PRC Petition. See, e.g., *Tires from the PRC*, 72 FR at 43595. For this investigation, because the HTSUS number 2820.10.00.00, as discussed above in the "Scope of the Investigation," provides comprehensive coverage of imports of EMD, the Department expects to select respondents in this investigation based on U.S. Customs and Border Protection (CBP) data of U.S. imports under HTSUS number 2820.10.00.00 during the POI.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The

Separate Rates and Combination Rates Bulletin, at 6, explains that, while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the POI. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the POI. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the POI.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petitions has been provided to representatives of the governments of Australia and the PRC. We will attempt to provide a copy of the public version of the Petitions to all exporters named in the Petitions, as provided for in 19 CFR 351.203(c)(2).

ITC Notification

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

Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than October 9, 2007, whether there is a reasonable indication that imports of EMD from Australia and the PRC are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: September 11, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-18257 Filed 9-14-07; 8:45 am]

BILLING CODE 3510-DS-S

APPENDIX B
CALENDAR OF PUBLIC CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

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

Subject: Electrolytic Manganese Dioxide from Australia and China
Inv. Nos.: 731-TA-1124 and 1125 (Preliminary)
Date and Time: September 12, 2007 - 9:30 a.m.

The conference in connection with these investigations was held in the Main Hearing Room (room 101), 500 E Street, SW, Washington, DC.

OPENING REMARKS:

Petitioners (**Jack A. Levy**, DLA Piper US LLP)
Respondents (**David Malamed**, Gide Loyrette Nouel LLP)

In Support of the Imposition of Antidumping Duties:

DLA Piper US LLP
Washington, DC
on behalf of

Tronox LLC

Fredrick R. Stater, Plant Manager, EMD Operation, Tronox LLC
Paul Gutwald, General Manager, Electrolytic Division, Tronox LLC
Dr. Richard L. Boyce, Econometrica International Inc.

Jack A. Levy, Esq.)
Martin Schaefermeier, Esq.) – OF COUNSEL
James A. Earl, Esq.)

In Opposition to the Imposition of Antidumping Duties:

Gide Loyrette Nouel LLP
New York, NY
on behalf of

Delta EMD Australia (Pty) Limited

Ashley Moore, General Manager, Sales and Supply Chain,
Delta EMD Australia (Pty) Limited
Dr. John Reilly, Nathan Associates, Inc.

David Malamed, Esq.)
Erwan Berthelot, Esq.) – OF COUNSEL
Alison L. Moore, Esq.)

Barnes, Richardson & Colburn
Washington, DC
on behalf of

Spectrum Brands, Inc.

Matthew McGrath, Esq. – OF COUNSEL

Vinson & Elkins LLP
Washington, DC
on behalf of

Panasonic Primary Battery Corp. of America

William Stevens, Director - Materials Panasonic Primary Battery Corp. of America

James P. Durling, Esq. – OF COUNSEL

REBUTTAL/CLOSING REMARKS:

Petitioners (**Jack A. Levy**, DLA Piper US LLP)
Respondents (**David Malamed**, Gide Loyrette Nouel LLP)
Respondents (**Dr. John Reilly**, Nathan Associates, Inc.)

APPENDIX C
SUMMARY DATA

Table C-1

EMD: Summary data concerning the U.S. market, 2004-06, January-June 2006, and January-June 2007

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

Item	Reported data					Period changes			
	2004	2005	2006	January-June		2004-06	2004-05	2005-06	Jan.-June 2006-07
				2006	2007				
U.S. consumption quantity:									
Amount	99,277	106,874	96,175	45,862	44,208	-3.1	7.7	-10.0	-3.6
Producers' share (1)	69.0	66.1	64.3	66.6	62.0	-4.7	-2.8	-1.9	-4.6
Importers' share (1):									
Australia	***	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
All other sources	***	***	***	***	***	***	***	***	***
Total imports	31.0	33.9	35.7	33.4	38.0	4.7	2.8	1.9	4.6
U.S. consumption value:									
Amount	128,464	138,958	131,121	62,262	58,853	2.1	8.2	-5.6	-5.5
Producers' share (1)	70.1	68.2	67.4	69.9	65.8	-2.6	-1.8	-0.8	-4.0
Importers' share (1):									
Australia	***	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
All other sources	***	***	***	***	***	***	***	***	***
Total imports	29.9	31.8	32.6	30.1	34.2	2.6	1.8	0.8	4.0
U.S. shipments of imports from:									
Australia:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
China:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Subtotal:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All other sources:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All sources:									
Quantity	30,805	36,189	34,355	15,298	16,778	11.5	17.5	-5.1	9.7
Value	38,448	44,134	42,683	18,768	20,116	11.0	14.8	-3.3	7.2
Unit value	\$1,248	\$1,220	\$1,242	\$1,227	\$1,199	-0.5	-2.3	1.9	-2.3
Ending inventory quantity	5,709	11,638	14,963	11,826	12,989	162.1	103.9	28.6	9.8

Table continued on next page.

Table C-1--Continued

EMD: Summary data concerning the U.S. market, 2004-06, January-June 2006, and January-June 2007

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

Item	Reported data					Period changes			
	2004	2005	2006	January-June		2004-06	2004-05	2005-06	Jan.-June 2006-07
				2006	2007				
U.S. producers':									
Average capacity quantity	69,400	69,999	70,100	34,996	35,193	1.0	0.9	0.1	0.6
Production quantity	64,678	69,877	67,877	34,135	30,917	4.9	8.0	-2.9	-9.4
Capacity utilization (1)	93.2	99.8	96.8	97.5	87.8	3.6	6.6	-3.0	-9.7
U.S. shipments:									
Quantity	68,472	70,685	61,820	30,564	27,430	-9.7	3.2	-12.5	-10.3
Value	90,016	94,824	88,438	43,494	38,737	-1.8	5.3	-6.7	-10.9
Unit value	\$1,315	\$1,342	\$1,431	\$1,423	\$1,412	8.8	2.0	6.6	-0.8
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	219	216	218	215	217	-0.5	-1.4	0.9	0.9
Hours worked (1,000s)	472	467	470	235	234	-0.4	-1.1	0.6	-0.4
Wages paid (\$1,000s)	11,936	12,280	13,014	6,419	6,510	9.0	2.9	6.0	1.4
Hourly wages	\$25.29	\$26.30	\$27.69	\$27.31	\$27.82	9.5	4.0	5.3	1.9
Productivity (tons/1,000 hours)	137.0	149.6	144.4	145.3	132.1	5.4	9.2	-3.5	-9.0
Unit labor costs	\$184.54	\$175.74	\$191.73	\$188.05	\$210.56	3.9	-4.8	9.1	12.0
Net sales:									
Quantity	68,718	70,835	62,209	30,582	27,448	-9.5	3.1	-12.2	-10.2
Value	90,437	94,808	87,136	42,823	37,888	-3.7	4.8	-8.1	-11.5
Unit value	\$1,316	\$1,338	\$1,401	\$1,400	\$1,380	6.4	1.7	4.7	-1.4
Cost of goods sold (COGS)	84,020	82,970	81,994	40,689	39,041	-2.4	-1.2	-1.2	-4.1
Gross profit or (loss)	6,417	11,838	5,142	2,134	(1,153)	-19.9	84.5	-56.6	(2)
SG&A expenses	7,908	8,228	8,543	4,328	4,591	8.0	4.0	3.8	6.1
Operating income or (loss)	(1,491)	3,610	(3,401)	(2,194)	(5,744)	-128.1	(2)	(2)	-161.8
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	\$1,223	\$1,171	\$1,318	\$1,330	\$1,422	7.8	-4.2	12.5	6.9
Unit SG&A expenses	\$115	\$116	\$137	\$142	\$167	19.3	0.9	18.2	18.2
Unit operating income or (loss)	(\$22)	\$51	(\$55)	(\$72)	(\$209)	-152.0	(2)	(2)	-191.7
COGS/sales (1)	92.9	87.5	94.1	95.0	103.0	1.2	-5.4	6.6	8.0
Operating income or (loss)/ sales (1)	(1.6)	3.8	(3.9)	(5.1)	(15.2)	-2.3	5.5	-7.7	-10.0

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

(2) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

Table C-2
EMD: Summary data concerning the U.S. commercial market, 2004-06, January-June 2006, and
January-June 2007

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APPENDIX D

**QUESTIONNAIRE SELLING PRICE DATA
FOR THE SPECIFIED EMD PRODUCT CATEGORY 1
IMPORTED FROM NONSUBJECT COUNTRIES AND
PRODUCED IN THE UNITED STATES**

Table D-1

EMD: Net weighted-average U.S. f.o.b. selling prices and quantities of EMD product category 1 produced domestically and imported from South Africa, by quarters, January 2004-June 2007

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