Citric Acid and Certain Citrate Salts from Canada and China

Investigation Nos. 701-TA-456 and 731-TA-1151-1152 (Preliminary)

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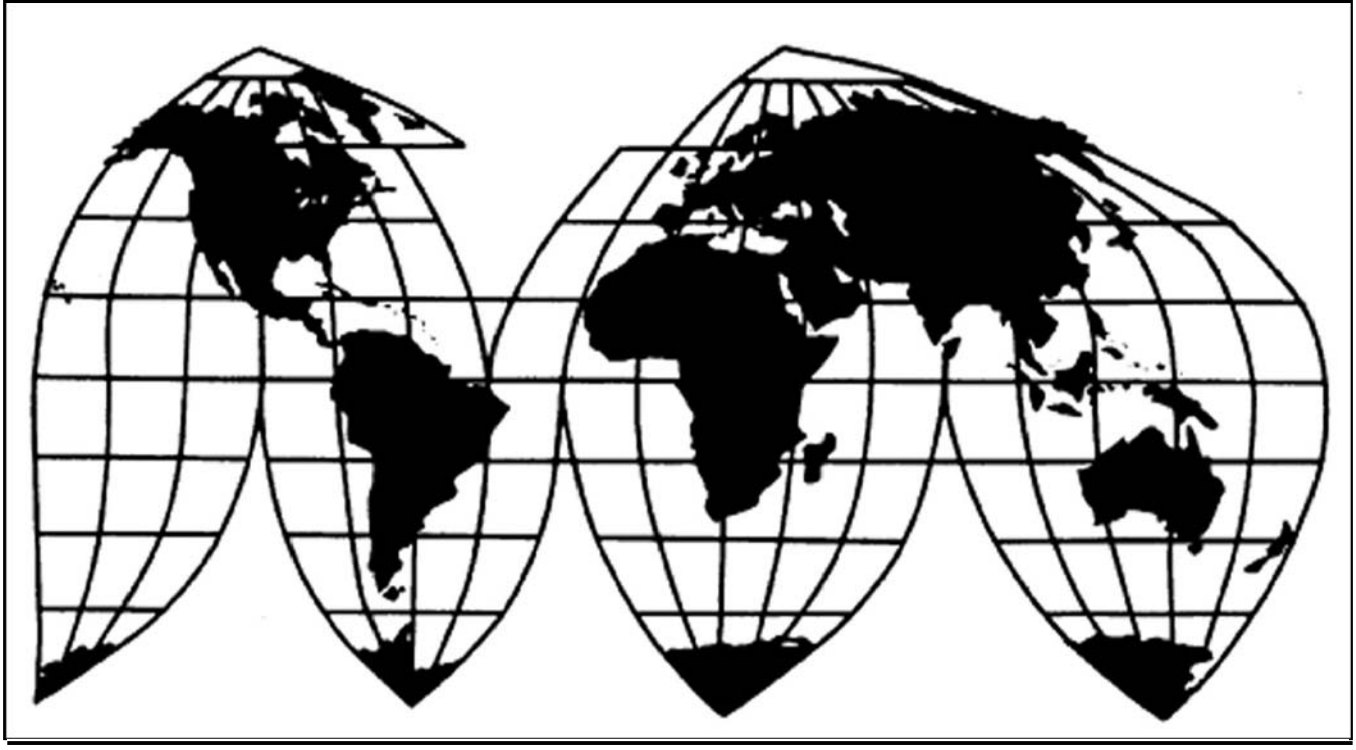
U.S. International Trade Commission



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U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-456 and 731-TA-1151-1152 (Preliminary)

CITRIC ACID AND CERTAIN CITRATE SALTS FROM CANADA AND CHINA

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured[2] by reason of imports from Canada and China of citric acid and certain citrate salts, provided for in subheading 2918.14.00 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) and subsidized by the Government of China.

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 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 April 14, 2008, a petition was filed with the Commission and Commerce by Archer Daniels Midland Co., Decatur, IL; Cargill, Inc., Wayzata, MN; and Tate & Lyle Americas, Inc., Decatur, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of imports of citric acid and certain citrate salts from Canada and China that are alleged to be sold in the United States at LTFV and subsidized by the Government of China. Accordingly, effective April 14, 2008, the Commission instituted antidumping and countervailing duty investigations Nos. 701-TA-456 and 731-TA-1151-1152 (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 April 22, 2008 (73 FR 21650). The conference was held in Washington, DC, on May 7, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[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] Chairman Daniel R. Pearson and Commissioners Charlotte R. Lane and Dean A. Pinkert determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Canada and China of citric acid and certain citrate salts.

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 citric acid and certain citrate salts from Canada and the People's Republic of China ("China") that are allegedly sold in the United States at less than fair value and imports of citric acid and certain citrate salts from China that are allegedly subsidized by the Government of China.[1]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the U.S. International Trade Commission ("the Commission") to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured or 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

The petitions in these investigations were filed by three domestic producers of citric acid and certain citrate salts: Archer Daniels Midland Company ("ADM") of Decatur, IL; Cargill, Inc. ("Cargill") of Wayzata, MN; and Tate & Lyle Americas, Inc. ("Tate & Lyle") of Decatur, IL.[4] Representatives from each petitioning company appeared at the staff conference accompanied by counsel, and they filed a joint postconference brief.

In December 1999, the same petitioners sought antidumping duty relief against imports of citric acid and sodium citrate from China but only alleged that the domestic industry was threatened with material injury and made no allegation of present material injury. The Commission made a negative

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[1] Chairman Daniel R. Pearson, Commissioner Charlotte R. Lane, and Commissioner Dean A. Pinkert find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports from Canada and China. Except as otherwise noted, they join parts I through VIII.A. of this opinion. See Dissenting Views of Chairman Pearson, Commissioner Lane, and Commissioner Pinkert.

[2] 19 U.S.C. §§ 1671b(a), 1673b(a); see also, 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 alleged that there is a reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject 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] ADM's production facility is in Southport, North Carolina whereas Cargill and Tate & Lyle have production facilities in Eddyville, Iowa and in Dayton, Ohio, respectively. See, e.g., Petitions, Vol. I at 2, 3; Transcript of May 7, 2008, Preliminary Staff Conference ("Confer. Tr.") at 7 (Ellis for Petitioners); Confidential Staff Report, Mem. INV-FF-060 at I-1 (May 22, 2008) ("CR"); Public Staff Report, Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China, Invs. Nos. 701-TA-456 and 731-TA-1151 to 1152 (Prelim.), USITC Pub. 4008 at I-1 (June 2008) ("PR"); CR/PR at Table III-1.

preliminary determination in which it found that subject imports from China were largely confined to the industrial segment of the U.S. market and were at least two to three years away from qualifying to supply the food and beverage segment, a segment which reportedly accounted for two-thirds of the U.S. market at that time. The Commission also found that fairly traded non-subject imports (primarily from Israel and Austria), then accounting for a majority of imports into the United States, had a significant and growing presence in the U.S. market and were perceived to be of equal quality to domestically produced products.[5]

In the current proceedings, in addition to petitioners, several respondents also participated in the preliminary phase of these investigations. Counsel for Jungbunzlauer Technology GmbH & Co. KG ("JBL"), a producer and exporter of subject merchandise from Canada, appeared at the staff conference and submitted a postconference brief. Counsel representing a number of producers/exporters of the subject merchandise from China appeared at the conference and submitted a postconference brief.[6] A representative from Procter & Gamble Co. ("P&G"), a U.S. purchaser and industrial user of citric acid, appeared at the conference accompanied by counsel and estimated that the company is one of the largest U.S. industrial users of citric acid (accounting for more than 10 percent of U.S. citric acid consumption) and is one of the top four purchasers of the product.[7] P&G also submitted a postconference brief. A representative of United Food Corporation, a distributor of various food products in the United States that imports subject merchandise from China and purchases from the domestic industry, also appeared at the conference, but did not file a postconference brief.[8]

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 "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."[10] In turn, the Act defines

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[5] See, e.g., Citric Acid and Sodium Citrate from China, Inv. No. 731-TA-863 (Prelim.), USITC Pub. 3277 (Feb. 2000) (Commissioners Hillman and Koplan dissented, finding a reasonable indication that the domestic industry was threatened with material injury by reason of the subject imports, and Chairman Bragg recused herself from the investigation).

[6] They consisted of: Shandong TTCA Biochemistry Co., Ltd.; Yixing-Union Biochemical Co., Ltd.; RZBC Group; Anhui BBCA Biochemical Co., Ltd.; Wiefang Ensign Industry Co., Ltd., High Hope International Group Jiangsu Native Product Imp & Exp Corp., Ltd.; Huangshi Xinghua Biochemical Co., Ltd.; Huozhou Coal Electricity Shanxi Fenhe Biochemistry Co., Ltd.; Shihezi City Changyun Biochemical Co., Ltd.; A.H.A. International Co., Ltd.; Laiwu Taihe Biochemistry Co., Ltd.; Gansu Xuejing Biochemical Co., Ltd.; Jiali International Corp.; Hunan Dongting Citric Acid Chemicals Co., Ltd.; Lianyungang Shuren Scientific Creation Import & Export Co., Ltd.; Jiangsu Gadot Nuobei Biochemical Co., Ltd.; Changsha Shenghai Biochemical Co., Ltd.; Nantong Feiyu Fine Chemical Co., Ltd., and Penglai Marine Bio-Tech Co., Ltd. (hereinafter "Chinese Respondents").

[7] See, e.g., Confer. Tr. at 102 (Smith for P&G); P&G's Postconf. Br. at 1.

[8] See, e.g., Confer. Tr. at 108-09, 159 (Hsu for United Food Corp.).

[9] 19 U.S.C. § 1677(4)(A).

[10] 19 U.S.C. § 1677(4)(A).

"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 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 the U.S. Department of Commerce ("Commerce") as to the scope of the imported merchandise that is allegedly subsidized and sold at less than fair value,[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 domestic like product issues.[17]

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[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).

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

[14] Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (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, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) (unpublished opinion) ("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 the Commission's determination of six like products in investigations where Commerce found five classes or kinds).

[17] See, e.g., Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int'l Trade 2000); Nippon, 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); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

B. Product Description

In its notices of initiation, Commerce defined the imported merchandise within the scope of these investigations as:

> all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the investigation also includes all forms of unrefined calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of this investigation includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.10000 of the Harmonized Tariff Schedule of the United States ("HTSUS"), respectively. Potassium citrate and calcium citrate are classifiable under 2918.15.5000 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.92.90 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.[18]

Unlike the previous investigation, the scope of these investigations includes unrefined calcium citrate, an intermediate product that results when one of three particular production processes is used to produce citric acid.[19] Although they are unaware of any unrefined calcium citrate imports into the U.S. market at this time, petitioners report including it in the scope for circumvention reasons because in other parts of the world, unrefined calcium citrate is shipped elsewhere for conversion into its only possible use, citric acid.[20] Also due to circumvention considerations, the scope includes certain blends, although petitioners are unaware of any domestic production or imports of these blends.[21]

Potassium citrate also was not included in the scope of the previous investigation, although the staff report corresponding to that investigation did include some information about potassium citrate.[22] The Commission's negative preliminary opinion defined a single domestic like product consisting of citric acid and sodium citrate, as requested in that petition.[23] Because the Commission included sodium citrate in the same domestic like product as citric acid in the last investigation and because they argue that sodium citrate and potassium citrate are closer to each other than sodium citrate and citric acid, petitioners

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[18] 73 Fed. Reg. 26960, 26960 (May 12, 2008) (initiation of countervailing duty investigation); 73 Fed. Reg. 27492, 27493 (May 13, 2008) (initiation of antidumping duty investigations).

[19] Domestic producer ***. See, e.g., Petitions, Vol. I at 2, 3 n.2.

[20] See, e.g., Petitions, Vol. I at 8-9; Confer. Tr. at 58-59 (Ellis for Petitioners), 86-87 (Oakley for ADM).

[21] See, e.g., Confer. Tr. at 61-63 (Ellis for Petitioners).

[22] See, e.g., USITC Pub. 3277 at I-2 to I-4, III-1, Table C-6.

[23] See, e.g., USITC Pub. 3277 at 3-7.

urge the Commission here to include potassium citrate in the same domestic like product as citric acid and sodium citrate. Because all unrefined calcium citrate is consumed in the process of making citric acid and has no other purpose, petitioners also urge the Commission to include unrefined calcium citrate in the same domestic like product.[24] Respondents do not dispute petitioners' proposed domestic like product for purposes of the preliminary phase of these investigations.[25]

C. Analysis

No party asks the Commission to define the domestic like product broader than the scope of these investigations. Unrefined calcium citrate is an intermediate product in the production of citric acid, and citric acid is used to make both sodium citrate and potassium citrate. Thus, one question presented is whether there are clear lines dividing citric acid, sodium citrate, potassium citrate, and unrefined calcium citrate and/or dividing different grades and/or chemical or physical forms of these products such that there are two or more domestic like products corresponding to the scope of these investigations.[26] For purposes of the preliminary phase of these investigations, and based on the factors normally considered, we define a single domestic like product consisting of citric acid, sodium citrate, potassium citrate, and unrefined calcium citrate, regardless of chemical or physical form or grade.

Physical Characteristics and Uses. Citric acid and citrate salts may be produced in several chemical forms, varying mainly by the number, if any, of attached water molecules.[27] Unrefined calcium citrate is an intermediate product that is internally consumed for the production of citric acid,[28] and citric acid is used to produce sodium citrate and potassium citrate, so they all have similar physical and chemical characteristics.[29] Petitioners argue that minor molecular modifications do not change the essential character and use of these products.[30]

In their dry form as odorless, translucent crystals, citric acid, sodium citrate, and potassium citrate are sold as either granular or fine granular products, with only a very small amount sold in powder form.[31] A water solution form of citric acid (normally a 50-percent citric acid solution) is produced and sold in

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[24] See, e.g., Petitions, Vol. I at 4-18; Confer. Tr. at 59-60 (Anderson for Petitioners); Petitioners' Postconf. Br. at 4-5.

[25] See, e.g., Confer. Tr. at 137 (Porter for Chinese respondents, Waite for JBL); Chinese respondents' Postconf. Br. at 5-6.

[26] As we have stated in previous investigations, we normally do "'not find separate like products based on different grades of chemicals or mineral products.'" Liquid Sulfur Dioxide from Canada, Inv. No. 731-TA-1098 (Prelim.), USITC Pub. 3826 at 6 (Dec. 2005) quoting Bulk Acetylsalicylic Acid (Aspirin) from China, Inv. No. 731-TA-828 (Final), USITC Pub. 3314 at 5-6 (June 2000); Sulfanilic Acid from Hungary and Portugal, Invs. Nos. 701-TA-426 and 731-TA-984 to 985 (Final), USITC Pub. 3554 at 7 n.34 (Nov. 2002); Barium Carbonate from China, Inv. No. 731-TA-1020 (Prelim.), USITC Pub. 3561 at 7 n.28 (Nov. 2002).

[27] Citric acid may be produced as citric acid anhydrous ($C_6H_8O_7$) or as citric acid monohydrate ($C_6H_8O_7 \cdot H_2O$). Sodium citrate may be produced in an anhydrous or trisodium anhydrous form ($Na_3C_6H_5O_7$), in a dihydrate or trisodium dihydrate form ($Na_3C_6H_5O_7 \cdot 2H_2O$), and as a monosodium ($NaH_2(C_3H_5O(COO)_3)$. Potassium citrate may be produced as potassium citrate monohydrate or tripotassium citrate monohydrate ($K_3C_6H_5O_7 \cdot H_2O$) and monopotassium citrate ($KH_2C_6H_5O_7$). Unrefined calcium citrate may be produced as tricalcium citrate ($Ca_3(C_6H_5O_7)_2$), dicalcium citrate ($Ca_2H_2(C_3H_5O)(COO)_3 \cdot H_2O$), and tricalcium citrate tetrahydrate ($Ca_3(C_6H_5O_7)_2(COO)_3 \cdot 4H_2O$). See, e.g., Petitions, Vol. I at 6.

[28] See, e.g., Petitions, Vol. I at 2, 8.

[29] See, e.g., Petitions, Vol. I at 14.

[30] See, e.g., Petitions, Vol. I at 6, n.9.

[31] See, e.g., Petitions, Vol. I at 5-6; Confer. Tr. at 17 (Oakley for ADM); CR at -5; PR at V-4.

the United States, and the solution form can be reversed to a dry form.[32] The dry versions of citric acid are soluble in water, and petitioners report that domestic purchasers sometimes buy the dry form and put it into solution at their own facilities or at the facilities of an independent converter.[33]

Citric acid, sodium citrate, and potassium citrate must meet Food Chemical Codex ("FCC") standards for use in beverage and food products in the United States and U.S. Pharmacopoeia ("USP") standards for use in pharmaceutical products in the United States. Non-conforming products, however, may be used in industrial applications.[34]

Citric acid is used in foods and beverages (such as carbonated and non-carbonated drinks, dry powdered beverages, wines and wine coolers, jams, jellies, preserves, gelatin desserts, candies, frozen foods, and canned fruits and vegetables) as an acidulant, preservative, and flavor enhancer because of its tartness, high solubility, acidity, and buffering capabilities.[35] Citric acid is also used in pharmaceuticals and cosmetics, and in household detergents, metal finishers and cleaners, durable press textile finishing treatments, and numerous other industrial applications, of which the largest is detergents.[36]

Like citric acid, sodium citrate is used for carbonated beverages, dry beverage mixes, fruit drinks, jams, jellies, preserves, gelatin desserts, and candies, and in household cleaner products (to act as a buffering agent and metal ion sequestrant) and pharmaceuticals (as a diuretic and as an expectorant in cough syrups). Sodium citrate is also used in cheeses and dairy products (to improve emulsifying properties, texture, and melting properties, and to act as a preservative and aging agent).[37]

Potassium citrate can also be used for many of the same food and beverage applications as sodium citrate, particularly for no- or low-sodium content products.[38] Potassium citrate may also be used as an emulsifying salt in cheese and as a source of a potassium ion for nutritional supplements or to maximize gelation. Because potassium citrate has greater solubility than sodium citrate, petitioners report that it "is the buffering salt of choice" and is "added to ... candy after the cook."[39] Potassium citrate can also be used as an antacid, as a diuretic, as an expectorant in cough syrups, and as a systemic and urinary alkalizer. Potassium citrate is also used for industrial purposes in electropolishing.[40]

Interchangeability. In terms of chemical differences, petitioners assert that the anhydrous and monohydrate forms of citric acid are completely interchangeable notwithstanding the extra water molecule in the monohydrate form.[41] Some record evidence suggests that certain end users in the U.S. market, particularly beverage manufacturers, may prefer citric acid in anhydrous form due to their production equipment.[42] Some end users prefer a monohydrate form because their production facilities

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[32] See, e.g., Petitions, Vol. I at 6.

[33] See, e.g., Petitions, Vol. I at 6.

[34] See, e.g., Petitions, Vol. I at 7; Confer. Tr. at 19-20 (Oakley for ADM), 52-54 (Oakley for ADM); CR at II-1; PR at II-1.

[35] See, e.g., Petitions, Vol. I at 7; Confer. Tr. at 18 (Oakley for ADM); CR at I-11; PR at I-9.

[36] See, e.g., Petitions, Vol. I at 7-8; Confer. Tr. at 18 (Oakley for ADM); CR at I-11; PR at I-9.

[37] See, e.g., Petitions, Vol. I at 8; CR at I-11; PR at I-9.

[38] See, e.g., Petitions, Vol. I at 8; Confer. Tr. at 59-61 (Anderson for Petitioners, Staloch for Cargill); Petitioners' Postconf. Br. at Exh. 1 at 2-3; CR at I-11; PR at I-9.

[39] See, e.g., Petitioners' Postconf. Br. at Exh. 1 at 2-3.

[40] See, e.g., Petitions, Vol. I at 8; CR at I-11; PR at I-9.

[41] See, e.g., Petitions, Vol. I at 6, n.9.

[42] See, e.g., Confer. Tr. at 30 (Oakley for Cargill); CR at IV-5 to IV-6; PR at IV-3 to IV-4.

are set up to receive the product in that form, but others prefer a solution form.[43] For example, P&G purchases citric acid in monohydrate, anhydrous, and solution forms, and one of its plants can use citric acid in monohydrate and anhydrous forms, but a different plant uses the solution form. The dry forms can be converted into solution, but that adds additional costs and complexity.[44] With respect to differences in granulation, petitioners assert that granular and fine granular products are used for overlapping applications, although the powder form might be preferred for specific spice applications in food or pharmaceutical uses.[45] Some evidence suggests that certain purchasers are more particular in their granulation requirements.[46] Petitioners assert that the dihydrate and anhydrous forms of sodium citrate are completely interchangeable, notwithstanding the two water molecules in the dihydrate form.[47]

Unrefined calcium citrate is only used to make citric acid, and it is not otherwise interchangeable with citric acid, sodium citrate, or potassium citrate.[48] Although citric acid, sodium citrate, and potassium citrate are not substitutable in all applications, they share some of the same end uses as buffers, acidulants, and preservatives, and are used in an overlapping manner in some of the same types of products, as noted above.[49]

With respect to differences in grades, domestic producers calibrate their machines to meet FCC/USP standards and thus generally supply even industrial users with food-grade quality. Off-spec product, such as that with higher levels of impurities or inconsistent granulation, is produced only inadvertently but can be sold in dry or solution form for industrial uses, even if it may not be sold for food-grade or pharmaceutical applications.[50]

Channels of distribution. During the period of investigation, *** percent of domestic producers' shipments of citric acid and certain citrate salts were to end users, and *** percent were to distributors.[51] Dry forms are typically packaged in 50-pound or 25-kilogram polyethylene lined bags or in super sack bags typically containing up to one metric ton.[52] Citric acid sold in solution form is not packaged, but is instead shipped in 200- to 275-pound drums, or in rail cars or tank trucks.[53]

Common Manufacturing Facilities, Production Processes, and Production Employees. In the United States, citric acid, sodium citrate, and potassium citrate are produced at overlapping manufacturing facilities by the same employees, at least for the early production stages.[54] At the first manufacturing stage, domestic producers ferment a starch or sugar base (usually corn or molasses) using a fermenting organism (normally a specific mold or yeast) in a deep tank.[55] At the second stage, domestic producers recover the crude citric acid produced by fermentation and refine it by one of three processes: the lime

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[43] See, e.g., CR at II-18; PR at II-12; Confer. Tr. at 142-45 (Lafave and Smith for P&G).

[44] See, e.g., Confer. Tr. at 103, 105, 141-45 (Smith for P&G); CR at IV-5; PR at IV-3.

[45] See, e.g., Confer. Tr. at 85-86 (Staloch for Cargill).

[46] See, e.g., CR at II-17 to II-18, IV-6 to IV-7; PR at II-11 to II-12, IV-3 to IV-4.

[47] See, e.g., Petitions, Vol. I at 6 & n.9.

[48] See, e.g., Petitions, Vol. I at 2, 8.

[49] See, e.g., Petitions, Vol. I at 14.

[50] See, e.g., Petitions, Vol. I at 12-13; Confer. Tr. at 19-20 (Oakley for ADM), 52-54 (Christianson for Cargill).

[51] See, e.g., CR/PR at Table II-1; Petitions, Vol. I at 13, 15.

[52] See, e.g., Confer. Tr. at 17-18 (Oakley for ADM).

[53] See, e.g., Petitions, Vol. I at 13; Confer. Tr. at 18 (Oakley for ADM).

[54] See, e.g., CR at I-12 to I-15; PR at I-10 to I-11.

[55] See, e.g., Petitions, Vol. I at 9-10; Confer. Tr. at 22 (Oakley for ADM).

sulfuric acid method; the solvent-extraction method; or the ion-exchange method.[56] All three methods yield citric acid dissolved in water, and producers produce hydrous or anhydrous citric acid by adjusting the temperatures of the crystallization process, using the same or separate equipment to do so.[57] Citric acid can be sold as is or converted into "salts" such as sodium citrate or potassium citrate.[58]

Whereas Tate & Lyle only produces citric acid, both ADM and Cargill produce citric acid, sodium citrate, and potassium citrate.[59] ADM and Cargill produce sodium citrate and potassium citrate at the same plants used to produce citric acid by diverting a stream of unrefined citric acid slurry to a reactor, where it is converted into sodium citrate when reacted with sodium hydroxide or sodium carbonate and then crystallized; alternatively, the slurry is converted into potassium citrate when reacted with potassium hydroxide or potassium carbonate.[60] The same equipment is used to produce both sodium citrate and potassium citrate, and petitioners report that only minimal costs and a few hours are needed to switch the equipment from producing sodium to potassium citrate or *vice versa*. Petitioners assert that the capital equipment used to convert citric acid into sodium or potassium citrate is relatively inexpensive and that independent converters can and do produce these citrates using finished citric acid as the input.[61]

Producer/Customer Perceptions. Whereas some end users prefer citric acid in solution, some end users reportedly can only use citric acid in anhydrous or monohydrate form.[62] Some purchasers purchase citric acid in monohydrate or anhydrous form and put it into solution themselves or have independent entities do the conversion for them. P&G explains that some producers increase their output and reduce scrap by dissolving anhydrous citric acid that does not meet mandated particle sizes and shipping the solution to P&G. The producers benefit from shorter drying time for citric acid batches, lower overall costs of production, and the ability to dissolve off-spec particles for sale to P&G, whereas P&G benefits from lower prices than it might otherwise obtain.[63]

Petitioners assert that the product literature for all three domestic producers treats citric acid, sodium citrate, and potassium citrate as within a single product line, and all three are treated as part of a single industry in studies such as the August 2006 *Chemical Economics Handbook Marketing Research Report on Citric Acid* conducted by SRI Consulting.[64]

Price. The pricing data on domestic shipments indicate that fine granular citric acid is priced somewhat higher than granular citric acid, and citric acid is somewhat higher priced than sodium citrate but somewhat lower priced than potassium citrate.[65] The record in the preliminary phase of these investigations further suggests that the powder form of citric acid ***, and that citric acid sold in an industrial-grade solution that is 50 percent citric acid and 50 percent water is usually priced at about 50

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[56] See, e.g., Petitions at 9-11. During the lime sulfuric acid refining process used by ***, unrefined calcium citrate is produced, but this product's sole purpose is to be converted into citric acid. See, e.g., CR at I-16, III-2 at n.2; PR at I-12, III-2 n.2.

[57] See, e.g., Petitions, Vol. I at 11-12.

[58] See, e.g., Petitions, Vol. I at 12.

[59] See, e.g., Petitions, Vol. I at 2.

[60] See, e.g., Petitions, Vol. I at 12, 15; Confer. Tr. at 23 (Oakley for ADM).

[61] See, e.g., Confer. Tr. at 23 (Oakley for ADM), 85 (Staloch for Cargill).

[62] See, e.g., Confer. Tr. at 142-43 (Smith for P&G).

[63] See, e.g., Confer. Tr. at 103-06 (Smith for P&G).

[64] See, e.g., Petitions, Vol. I at 15.

[65] See, e.g., Petitions, Vol. I at 15; Confer. Tr. at 24 (Oakley for ADM); CR/PR at Tables V-1 to V-6.

percent of the equivalent dry price.[66] Anhydrous citric acid costs about nine percent more than the monohydrate form due to the presence of nine percent more water in the monohydrate version.[67]

D. Conclusion

The evidence on the record in the preliminary phase of these investigations indicates that there is a continuum of domestically produced products corresponding to the scope of these investigations, and no clear dividing lines based on chemical or physical form, grade, or product type[68] Whether in an intermediate form as unrefined calcium citrate, as citric acid, or transformed into sodium citrate or potassium citrate, citric acid and its citrate salts come in a variety of chemical and physical forms and grades for a variety of end uses, and physical appearance varies accordingly. All have similar chemical composition. Whereas unrefined calcium citrate is only used to produce citric acid, and some citric acid is used to produce sodium citrate or potassium citrate, citric acid, sodium citrate, and potassium citrate are all used as buffers, acidulants, and preservatives. Although citric acid, sodium citrate, and potassium citrate are not substitutable in all applications, they are used in an overlapping manner in some of the same types of end-use products. There are some limitations in interchangeability among grades (such as for use in food, beverage, or pharmaceutical applications) and chemical or physical forms (e.g., to the extent that particular end users prefer citric acid in anhydrous or monohydrate form yet others prefer citric acid in solution form due to limitations in their production processes). But, as we have found in other investigations where the domestic like product, like the scope, encompassed a wide variety of products, a lack of interchangeability among types of products comprising a continuum is not unexpected.[69] The three petitioning domestic producers assert that citric acid, sodium citrate, potassium citrate, and unrefined calcium citrate are part of the same domestic like product. Some customers purchase more than one chemical or physical form, and others have handling requirements developed over time but could switch between forms or grades in some situations. Most of the domestically produced citric acid, sodium citrate, and potassium citrate is sold to end users, although unrefined calcium citrate is solely consumed in the process of making citric acid. There are also some differences in price based on the form, grade, or type. There are differences in how the dry and solution forms are packaged and some differences in the manufacturing processes for the various forms, grades, and types, but considerable overlap as well.

In light of these facts and in the absence of any contrary arguments, for purposes of the preliminary phase of these investigations, we define one domestic like product consisting of citric acid

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[66] See, e.g., CR at V-5; PR at V-4.

[67] See, e.g., Confer. Tr. at 104 (Smith for P&G).

[68] See, e.g., Softwood Lumber from Canada, Invs. Nos. 701-TA-404 and 731-TA-928 (Final), USITC Pub. 3509 at 6-15 (May 2002); Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA- 571 (Final), USITC Pub. 2658 at 8-10, 49-51 (Jul. 1993) (Commission found two like products based on operating element – cutting tool and sanding/grinding tool – refusing to further subdivide more narrowly into 28 families of tools); Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea ("PET Film"), Invs. Nos. 731-TA-458 to 459 (Final), USITC Pub. 2383 at 8, 10 (May 1991) ("a continuum product without clear dividing lines between the multiple like products ... {a}lthough there are many distinct end uses for different types of PET film ... essential characteristics are common to all PET Film").

[69] See, e.g., Carbon and Certain Alloy Steel Wire Rod from China, Germany, and Turkey, Invs. Nos. 731-TA-1099 & 1101 (Prelim.), USITC Pub. 3832 at 10 (Jan. 2006); Outboard Engines from Japan, Inv. No. 731-TA-1069 (Prelim.), USITC Pub. 3673 at 7-8 (Mar. 2004).

(whether in crude form as unrefined calcium citrate or in finished form), sodium citrate, and potassium citrate in all chemical and physical forms.[70]

IV. DOMESTIC INDUSTRY

The domestic industry is defined as the domestic "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."[71] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

In the United States, ADM produces citric acid, sodium citrate, potassium citrate, and unrefined calcium citrate ***. Cargill produces citric acid, sodium citrate, and potassium citrate. Tate & Lyle produces only citric acid in the United States.[72] Petitioners request that the Commission define the domestic industry as all U.S. producers of citric acid and certain citrate salts.[73] For purposes of the preliminary phase of these investigations, respondents do not argue otherwise.[74] Consistent with our definition of the domestic like product and in the absence of any contrary arguments, for purposes of the preliminary phase of these investigations, we define the domestic industry as including all domestic producers of citric acid, sodium citrate, and potassium citrate (i.e., ADM, Cargill, and Tate & Lyle).[75]

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[70] For convenience, we use the term "citric acid and certain citrate salts" hereinafter to refer to citric acid, sodium citrate, and potassium citrate.

[71] 19 U.S.C. § 1677(4)(A).

[72] See, e.g., Petitions, Vol. I at 2.

[73] See, e.g., Petitioners' Postconf. Br. at 5-6.

[74] See, e.g., Confer. Tr. at 138 (Porter for Chinese respondents, Waite for JBL); Chinese respondents' Postconf. Br. at 6. In the last investigation, although respondents did not raise the issue, the Commission considered whether companies that converted citric acid into sodium citrate were engaged in sufficient production-related activities to include them in the domestic industry. The Commission declined to include converters in the domestic industry because conversion operations involved limited capital investment, limited technical expertise (akin to "dropping an Alka-Seltzer into water"), little value added and low costs, limited equipment and employees ("only a warehouse worker and 'a big old tank'"), and limited research and development. See, e.g., USITC Pub. 3277 at 8. Petitioners assert that the facts have not changed significantly, and argue that the Commission should reach the same conclusion here. See, e.g., Petitions, Vol. I at 2 n.1; Confer. Tr. at 65-66 (Poulos for Tate & Lyle, Christiansen for Cargill), 91 (Ellis for Petitioners, Staloch for Cargill, Oakley for ADM); Petitioners' Postconf. Br. at 5-6. Respondents do not argue otherwise for purposes of the preliminary phase of these investigations. See, e.g., Confer. Tr. at 138 (Porter for Chinese respondents, Waite for JBL); Chinese respondents' Postconf. Br. at 6. Absent any indication that the relevant facts have changed or a request by any party to the contrary, for purposes of the preliminary phase of these investigations, we do not include converters in the domestic industry.

[75] We considered whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision 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. 19 U.S.C. § 1677(4)(B). Although no party made any related party arguments, the record indicates that domestic producer *** purchased subject merchandise imported from ***. See, e.g., CR at III-6; PR at III-5. In some circumstances where a domestic producer was not formally an importer of subject merchandise but purchased large quantities of subject merchandise, the Commission has found the producer to be a related party. Nevertheless, we do not find that *** is a related party in these investigations. The company purchased an amount equivalent to *** dry pounds of subject merchandise imported from ***. See, e.g., CR/PR at Table III-4 n.1. *** was the importer of record for *** subject merchandise imported from *** during the period of

(continued...)

V. NEGLIGIBLE IMPORTS

Pursuant to Section 771(24) of the Act, imports from a subject country of merchandise corresponding to a domestic like product that account for less than 3 percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.[76] By operation of law, a finding of negligibility terminates the Commission's investigation with respect to such imports.[77] The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.[78]

No party argued that subject imports from Canada or China are negligible, although the parties did submit arguments concerning the data to use to make this assessment. Before reaching the issue of whether subject imports from Canada and China are negligible, we must first decide which data to use to measure subject and non-subject imports into the U.S. market. Citric acid is classified under HTSUS statistical reporting number 2918.14.0000, sodium citrate is classified under 2918.15.1000, and potassium citrate is classified under 2918.15.5000.[79] These statistical reporting numbers are not believed to include products outside the scope of these investigations.[80] Respondents ask the Commission to measure imports from Canada using JBL's importer questionnaire response rather than official import statistics from Commerce because JBL accounted for all imports of subject merchandise during the period of investigation,[81] and because JBL and P&G believe that for imports of subject merchandise in solution form from Canada, the import statistics reflect the weight of citric acid in solution rather than the anhydrous equivalent weight reported in the questionnaires.[82] Petitioners do not object to this request.[83]

Respondents also caution that at least some of the imports from China consisted of product in monohydrate form, and they were uncertain whether these imports were reported using the monohydrate

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[75] (...continued)
investigation, and *** purchases from *** were relatively small, equivalent to *** percent of the subject merchandise imported from *** that year. See, e.g., CR at III-6, IV-1; PR at III-5, IV-1; CR/PR at Tables IV-1, C-1. There is no indication that *** had a controlling relationship by virtue of its purchases *** from the importer. For all of these reasons, we do not find that *** is a related party.

[76] 19 U.S.C. §§ 1671b(a), 1673b(a), 1677(24)(A)(i)(I).

[77] 19 U.S.C. §§ 1671b(a)(1), 1673b(a)(1).

[78] 19 U.S.C. § 1677(24)(C); see also Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Rep. 103-316, Vol. 1 at 856 (1994) ("SAA").

[79] According to Commerce, the scope also includes unrefined calcium citrate, which is also classifiable under 2918.15.5000, but petitioners were not aware of any imports of unrefined calcium citrate into the United States during the period of investigation. See, e.g., Confer. Tr. at 54 (Ellis for Petitioners); Petitioners' Postconf. Br. at Exh. 1 at 3; CR at I-8 to I-9; PR at I-7 to I-8. Finally, the scope also includes certain citric acid blends that are reportedly classified under HTSUS statistical reporting number 3824.90.9290, but petitioners are not aware of any subject imports entering under this category. See, e.g., Confer. Tr. at 62-63 (Ellis for Petitioners); Petitioners' Postconf. Br. at Exh. 1 at 3; CR at I-8 n.15; PR at I-7 n.15.

[80] See, e.g., CR at I-8 to I-9 & nn.15-16; PR at I-7 & nn.15-16.

[81] P&G began importing some subject merchandise from Canada but only in the last several weeks. See, e.g., Confer. Tr. at 125-27 (Waite for JBL, Smith for P&G).

[82] See, e.g., Confer. Tr. at 127-130 (Waite for JBL, Lafave for P&G); P&G's Postconf. Br. at 22 n.37; JBL's Postconf. Br. at Exh. 2.

[83] See, e.g., Petitioners' Postconf. Br. at 23, Exh. 1 at 5.

dry form or the anhydrous equivalent weight.[84] Petitioners argue that there is a wide disparity between the data in the import statistics for China and the data in the questionnaire responses received from importers of subject merchandise from China, so they ask the Commission not to rely on the importer questionnaire data that they believe underestimate the subject imports from China.[85] Petitioners also argue that the exact proportion of monohydrate to anhydrous citric acid imported from China is unclear but could be estimated using PIERS data. Any such adjustment, however, would not take into consideration fluctuations over time. Petitioners assert that over time, an increasing portion of subject imports from China are in anhydrous form and a lesser portion is in monohydrate form, so they argue that any distortion caused by monohydrate imports is relatively minor.[86] Although the 17 Chinese companies providing foreign producer questionnaire responses estimated that they accounted for 90 percent of Chinese export shipments to the United States in 2007, their reported export shipments to the United States were equivalent to 85.5 percent of U.S. imports from China in 2007, as measured by official Commerce statistics.[87] Moreover, the record in the preliminary phase of these investigations does not indicate that a large volume of the subject imports from China were in monohydrate rather than anhydrous form.[88]

For purposes of negligibility, imports, and apparent U.S. consumption in the staff report, we measure imports from China and non-subject countries based on official Commerce statistics on imports for consumption, and we measure imports from Canada based on JBL's importer questionnaire response.[89] Based on these data and given our definition of the domestic like product, there is no question that subject imports from Canada and China were well above three percent of total imports for the most recent 12-month period preceding the filing of the petitions (April 2007 to March 2008). Subject imports from Canada accounted for *** percent, and subject imports from China accounted for *** percent, of total imports of citric acid and certain citrate salts in that period.[90] Consequently, we find that subject imports from Canada and China are not negligible.

VI. CUMULATION

A. Legal Framework and the Parties' Arguments

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.[91] In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

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[84] See, e.g., Confer. Tr. at 128-31 (Lafave for P&G, Porter for Chinese respondents).

[85] See, e.g., Petitioners' Postconf. Br. at 23-24, Exh. 1 at 4-5.

[86] See, e.g., Petitioners' Postconf. Br. at 23-24, Exh. 1 at 4-5.

[87] See, e.g., CR at I-4 & n.5, IV-1; PR at I-3 & n.5, IV-1; Chinese respondents' Postconf. Br. at 1.

[88] See, e.g., CR at V-8 to V-9 at n.19; PR at V-6 at n.19.

[89] See, e.g., CR at I-4, IV-1; PR at I-3, IV-1.

[90] (Derived from CR/PR at Table IV-5).

[91] 19 U.S.C. § 1677(7)(G)(i).

(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;[92]
(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.[93]

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.[94] Only a "reasonable overlap" of competition is required.[95] Subject imports from Canada and China are eligible for cumulation because the petitions concerning these subject countries were filed on the same day and none of the statutory exceptions to cumulation are applicable.

Petitioners argue that producers in Canada and China, like the domestic industry, are world-class and use similar production equipment and technology. As a result, petitioners assert, products from all three sources meet the same standards and are otherwise fungible with one another and are sold for overlapping end uses to many of the same end users. Petitioners argue that these facts more than meet the requirement of a "reasonable overlap of competition."[96]

Purchaser P&G, Canadian producer JBL, and the Chinese respondents disagree that subject imports from China are fungible with subject imports from Canada and the domestic like product. JBL does not produce any sodium citrate or potassium citrate, and JBL alleges that its citric acid is a "premium" food-grade product with consistent purity, color, and quality. JBL concedes that it competes with the domestic industry for sales to large-volume distributors and end users and asserts that the domestic industry treats JBL as one of its own, even having ***. In contrast, respondents argue that subject imports from China are often sold in small quantities to smaller "mom and pop" establishments that the domestic industry has no interest in serving. Moreover, respondents argue that it is not cost-effective for Chinese producers to ship their product to the United States in solution form, and that in dry form, subject imports from China also cannot compete against the domestic industry and subject imports

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

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

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

[95] 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 also, e.g., 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.").

[96] See, e.g., Petitioners' Postconf. Br. at 2-3, 6-15.

from Canada in the large soft-drink sector. Respondents concede that facilities in China are capable of producing product that meets FCC and USP standards, but they argue that the anhydrous product "cakes" due to moisture exposure when shipped overseas from China. Respondents argue that end users that use vacuum conveyer systems (such as soft-drink manufacturers) do not want "clumpy" Chinese product that would "clog" their production machines. Respondents further assert that subject imports from China are not qualified for other end uses, such as for P&G's oral care products (including Crest and Scope) and beauty care products (including Pantene and Head & Shoulders).[97]

B. Analysis

We find there is a reasonable overlap of competition among the domestic like product, subject imports from Canada, and subject imports from China.

Fungibility. There are some differences in the chemical and physical forms supplied to the U.S. market by the domestic industry and producers in the subject countries. Canadian producer JBL does not produce sodium citrate or potassium citrate,[98] but there were shipments in the U.S. market of sodium citrate and potassium citrate produced by both the domestic industry and producers in China.[99] Sodium citrate and potassium citrate, however, account for a small share of the U.S. market because citric acid accounted for the vast majority of sales of citric acid and citrate salts throughout the period of investigation.[100] Although there are some applications or end uses where sodium citrate or potassium citrate are preferred, as noted above in the domestic like product section, there are a number of applications and end uses where citric acid could be used instead of sodium citrate or potassium citrate.

In contrast to the case with respect to sodium citrate and potassium citrate, the domestic industry as well as subject producers in both Canada and China *all* supplied large quantities of citric acid to the U.S. market throughout the period of investigation.[101] The record in the preliminary phase of these investigations suggests that the domestic industry and the Canadian producer do not supply citric acid in monohydrate form, although the domestic industry indicates that it could supply monohydrate form to the few customers that want it.[102] Thus, subject imports of citric acid in monohydrate form from China do not directly compete with subject imports from Canada or the domestic like product. Furthermore, due to the transportation costs associated with ocean shipment, Chinese producers do not supply the U.S. market with citric acid in solution. Due to its geographical proximity to U.S. customers, JBL does supply citric acid in solution form to the U.S. market in rail cars and thus competes with the domestic industry in that

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[97] See, e.g., Confer. Tr. at 12 (Waite for JBL), 14-15 (Porter for Chinese Respondents), 102-03 (Smith for P&G), 109-114 (Hsu for United Food Corp.), 152-53 (Porter for Chinese Respondents), 153-54 (Hsu for United Food Corp.), 162-67 (Waite for JBL); P&G's Postconf. Br. at 4, 25-30; JBL's Postconf. Br. at 2-3, 8-13 & n.3; Chinese respondents' Postconf. Br. at 2, 6-13.

[98] See, e.g., JBL's Postconf. Br. at 1, 3 n.3.

[99] See, e.g., CR/PR at Tables V-4, V-5, C-3, and C-4.

[100] Compare, e.g., CR/PR at Table C-2 (citric acid) with, e.g., CR/PR at Table C-1 (citric acid and certain citrate salts).

[101] See, e.g., CR/PR at Tables V-1 to V-3, C-2.

[102] See, e.g., Confer. Tr. at 30 (Christiansen for Cargill), 89-90 (Oakley for ADM, Staloch for Cargill, Ellis for Petitioners), 103-05 (Smith for P&G), 116 (Waite for JBL); JBL's Postconf. Br. at 11 n.42; CR at II-18; PR at II-12. Petitioners also caution that it would be easy to use citric acid in monohydrate form for a wide range of applications, so the limited current use of monohydrate does not mean that it could not be substituted in a far greater amount in applications and end uses currently using citric acid in anhydrous or solution form. See, e.g., Confer. Tr. at 90 (Anderson for Petitioners).

respect.[103] On the other hand, the domestic industry, subject producers in Canada, and subject producers in China all supplied citric acid in anhydrous form to the U.S. market during the period of investigation.[104] Moreover, although some end users prefer to use citric acid in monohydrate, anhydrous, or in solution form due to constraints in their production facilities and/or production process, as noted above in the domestic like product discussion, they may be able to convert the dry forms into solution, or have third parties do the conversion for them. Thus, for example, there appears to be some overlap among the domestic like product and subject imports from China and Canada for sales to P&G for detergent applications, notwithstanding differences in the forms of citric acid supplied from these sources to the U.S. market.[105]

The record in the preliminary phase of these investigations also indicates some overlap in the grades, end uses, and even customers served in the U.S. market by the domestic industry, subject imports from Canada, and subject imports from China. The data on the current record indicate that the largest segment of the U.S. market is for food and beverage applications (particularly for soft drink beverages), with industrial applications (particularly for household detergents and cleaners) as the next largest segment, followed by pharmaceutical applications (including for beauty and oral hygiene/cosmetics).[106] The domestic like product as well as subject imports from Canada and China are all sold to the industrial and household cleaner segments of the U.S. market.[107] The parties disagree about whether there is overlap between subject imports from China and the other two sources in the food, beverage, and pharmaceutical segments of the U.S. market.

Chinese respondents concede that they produce citric acid products that meet FCC and USP requirements for sale in food, beverage, and pharmaceutical applications, but they argue that the product is not suitable for or is not used for these applications by the time it reaches U.S. shores because it is no longer a free-flowing fine granular or powdered product.[108] Petitioners challenge these arguments. First, petitioners insist that any "caking" by subject imports from China is greatly exaggerated because packing the product at the correct temperatures and moisture levels in bags with proper moisture barriers will

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[103] See, e.g., Confer. Tr. at 65-66 (Christiansen for Cargill, Poulos for Tate & Lyle), 103-05 (Smith for P&G), 141 (Lafave for P&G); JBL's Postconf. Br. at 10; P&G's Postconf. Br. at 4, 28-30; Chinese respondents' Postconf. Br. at 8-9.

[104] See, e.g., Confer. Tr. at 43 (Anderson), 67 (Christiansen), 103-05 (Smith), 133 (Hsu), 141 (Lafave); 182 (Ellis).

[105] See, e.g., Confer. Tr. at 103-05 (Smith), 142-44 (Smith); P&G's Postconf. Br. at 28-29.

[106] Based on data reported by questionnaire respondents on their 2007 U.S. shipments by end-use market segment, which may not be representative with respect to U.S. shipments of subject merchandise from China, *** percent of all U.S. shipments of citric acid and certain citrate salts were for food and beverage applications (*** percent for soft drinks), *** percent were for industrial applications (*** percent for household detergents and cleaners), *** percent were for pharmaceutical applications (*** percent for beauty and oral hygiene/cosmetics), and *** percent were for all other or unknown applications. (Derived from CR/PR at Table IV-3). According to the *Chemical Economic Handbook*, U.S. consumption of citric acid and citrate salts in 2005 fell into four major categories: food and beverages (*** percent); household detergent and cleaners (*** percent); pharmaceuticals (*** percent); and industrial or other (*** percent). See, e.g., CR at II-10; PR at II-8; see also, e.g., JBL's Postconf. Br. at 3-4.

[107] See, e.g., CR/PR at Table IV-3.

[108] See, e.g., Confer. Tr. at 110-12 (Hsu for United Food Corp.), 132-33 (Hsu for United Food Corp.), 161-70 (Hsu for United Food Corp.); Chinese Respondents' Postconf. Br. at 7-10, 33-35, Exh. 5. Mr. Hsu testified that the caking problem also affects sales of Chinese product to other food and beverage users that use anhydrous fine granular or powdered citric acid. See, e.g., Confer. Tr. at 133 (Hsu for United Food Corp.).

prevent caking.[109] Petitioners also point out that the volume of subject imports from China is much greater than the relatively smaller industrial segment of the U.S. market, and they argue that subject imports from China have made great inroads since the last investigation.[110] In addition to showing overlap for industrial applications, reported data on U.S. shipments of the domestic like product and subject imports from Canada and China in 2007 also show overlap among the three sources for food applications and to a lesser degree, beauty and oral hygiene/cosmetic applications.[111] Although the data received by the Commission regarding U.S. shipments by end-use segment for 2007 indicate *** U.S. shipments of subject imports from China for soft-drink applications, these figures may not be representative for subject imports from China.[112] Indeed, petitioners point to other evidence that subject imports from China were sold for beverage or even soft-drink applications to ***.[113] The record indicates that soft-drink manufacturer *** (which also purchases products from the domestic industry and Canada) purchased subject merchandise from China in ***.[114] Furthermore, ***.[115] Although *** agrees that caking is a problem with products sourced from China, ***.[116]

With respect to Chinese respondents' argument that subject imports from China serve the smaller "mom and pop" establishments in the United States that domestic producers do not bother or decline to serve,[117] there is some overlap in the "top-ten customers" reported by the domestic industry and subject imports from Canada and subject imports from China, and we find additional evidence of overlap in the data collected from purchasers named in the domestic industry's lost sales/lost revenue allegations.[118]

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[109] See, e.g., Petitioners' Postconf. Br. at 11-12, Exh. 1 at 23-24, 27, 29, Exh. 13.

[110] See, e.g., Confer. Tr. at 8-10 (Ellis for Petitioners), 24-26 (Oakley for ADM), 42 (Anderson for Petitioners); Petitioners' Staff Conference Power-point Presentation at 12.

[111] See, e.g., CR at IV-7; PR at IV-4; CR/PR at Table IV-3 (showing overlap among the three sources for food applications, household detergents and cleaners, and to a lesser degree, beauty and oral hygiene/cosmetic applications). *Food and beverage*: *** percent of the domestic industry's U.S. shipments in 2007 were to the food and beverage market segment (*** percent for soft drinks and *** percent for food) as compared to *** percent of U.S. shipments of subject imports from Canada (*** percent for soft drinks and *** percent for food) and *** percent of reported U.S. shipments of subject imports from China (*** percent for soft drinks and *** percent for food). *Industrial*: *** percent of the domestic industry's U.S. shipments in 2007 as compared to *** percent of U.S. shipments of subject imports from Canada and *** percent of reported U.S. shipments of subject imports from China. *Pharmaceutical*: *** percent of the domestic industry's U.S. shipments in 2007 as compared to *** percent of U.S. shipments of subject imports from Canada and *** percent of reported U.S. shipments of subject imports from China.

[112] They are based on the responses filed by all three domestic producers, the sole importer of subject merchandise from Canada, but only *** importers of subject merchandise from China (***) whose imports accounted for only approximately *** percent of U.S. imports from China in 2007. See, e.g., CR/PR at Table IV-3. Indeed, one of these *** importers of subject merchandise from China, ***, reported *** dry pounds of U.S. shipments of subject merchandise from China in 2007 for "food and beverage" end uses, but did not specify which portion was for "beverage end uses." See, e.g., CR/PR at Table IV-3 n.1.

[113] See, e.g., Petitioners' Postconf. Br. at 3, 11, Exh. 1 at 23-25, 27.

[114] See, e.g., CR at IV-6; PR at IV-4.

[115] See, e.g., CR/PR at Table IV-1 n.8.

[116] See, e.g., CR at IV-6 to IV-7; PR at IV-4.

[117] See, e.g., Confer. Tr. at 112-14 (Hsu for United Food Corp.); Chinese respondents' Postconf. Br. at 3, 10-13; Petitioners' Postconf. Br. at 2-3, Exh. 1 at 24-25.

[118] See, e.g., CR at II-11 & n.38; PR at II-8 & n.38. For example, Canadian importer JBL included the following customers in its "top-ten list" that were also included in one or more of the domestic producers' lists: ***. Thirteen

(continued...)

On the other hand, products from particular sources may not be qualified for specific end users. For example, P&G reports that subject imports from China are not certified for its beauty products (for which the certification process takes six to nine months) and oral care products (for which the certification process may require two years and goes beyond FCC and USP standards). P&G asserts that subject imports from China are only qualified for detergent and fabric care products (that nonetheless account for 90 percent of P&G's citric acid consumption) and about *** percent of reported U.S. shipments of citric acid and certain citrate salts in 2007.[119] In addition to some concerns about the granulation of subject imports from China,[120] some other importers and purchasers reported that among the three countries at issue, only producers in China use non-genetically-modified ("GMO") raw materials; the industries in the United States and Canada use GMO-corn.[121] The domestic industry and the Canadian producer do benefit from shorter lead times than subject imports from China, but there are U.S. inventories of Chinese product available.[122] Furthermore, the vast majority of responding importers and *** domestic producers reported that subject imports from Canada and China are at least frequently if not always interchangeable with one another and with the domestic like product.[123]

In short, although there are some differences in terms of the chemical and physical forms and grades sold by domestic, Canadian, and Chinese producers in the U.S. market, there is also at least some overlap, particularly for anhydrous citric acid. Moreover, all three sources competed for sales of food, beverage, pharmaceutical, and industrial-grade products in the U.S. market during the period of investigation (including for soft drink applications). Based on the facts on the record in the preliminary phase of these investigations, we find that subject imports from Canada and China are sufficiently fungible with one another and with the domestic like product to warrant cumulation, although we acknowledge that there appears to be greater fungibility between subject imports from Canada and the domestic like product than between subject imports from China and either of the other two sources.

Geographic Overlap. The domestic like product and imports from each subject country are marketed nationally.[124] Thus, we find that subject imports from Canada and China and the domestic like product are sold in the same geographical markets.

Channels of Distribution. The record in the preliminary phase of these investigations indicates that the domestic like product and subject imports from both Canada and China are sold predominantly to

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[118] (...continued)
of the twenty-four importers of subject merchandise from China named at least one top-ten customer that was also named by at least one domestic producer in their top-ten list or in a lost sales/lost revenue allegation. No importer of subject merchandise from China, however, had more than three top-ten customers that met such a qualification, and six listed no firms that were also named by domestic producers in their top-ten lists or in their lost sales/lost revenue allegations. Five importers of subject merchandise from China did not respond to the question about their top-ten customers. Additionally, *** importers of subject merchandise from China named at least one customer that was also named by JBL in its top-ten customer list, although *** that met such a qualification. *** importers of subject merchandise from China listed no firms that were also named by JBL in its top-ten customer list, and as noted *** importers of subject merchandise from China did not respond to the question about their top-ten customers. See, e.g., CR at II-11 & n.38; PR at II-8 & n.38.

[119] See, e.g., Confer. Tr. at 102-03 (Smith for P&G); CR at II-16; PR at II-10; CR/PR at Table IV-3.

[120] See, e.g., CR at II-17 to II-18; PR at II-11 to II-12.

[121] See, e.g., CR at II-17 to II-19; PR at II-11 to II-12; questionnaire responses of ***.

[122] See, e.g., CR at II-15 to II-16, II-19; PR at II-10.

[123] See, e.g., CR/PR at Table II-3.

[124] See, e.g., CR at IV-9; PR at IV-4 to IV-5.

end users, but also to distributors,[125] and as noted above, even to some of the same customers. Therefore, we find an overlap in the channels of distribution for subject imports from Canada and China and the domestic like product.

Simultaneous Presence in Market. The record indicates that the domestic like product and subject imports from Canada and China were simultaneously present in the U.S. market throughout the period of investigation.[126]

C. Conclusion

For the reasons discussed above, we conclude that there is a reasonable overlap of competition among subject imports from Canada and China and the domestic like product. We therefore cumulatively assess the volume and effects of subject imports from Canada and China for determining whether there is a reasonable indication of material injury or threat thereof by reason of these subject imports.

VII. CONDITIONS OF COMPETITION

Several conditions of competition inform our analysis in the preliminary phase of these investigations.

Demand and Business Cycle: Demand for citric acid and certain citrate salts is derived from the demand of the downstream industries that consume the products, such as for food, beverage, pharmaceutical, household detergents and cleaners, and other industrial applications.[127] The data on the record in the preliminary phase of these investigations indicate that the largest segment of the U.S. market is for food and beverage applications (particularly for soft drink beverages), with industrial applications (particularly for household detergents and cleaners) as the next largest segment, followed by pharmaceutical applications (including for beauty and oral hygiene/cosmetics).[128]

During the period of investigation, demand, as measured by total apparent U.S. consumption (the sum of the domestic industry's U.S. shipments and imports from subject and non-subject countries of citric acid and certain citrate salts) increased from *** dry pounds in 2005 to *** dry pounds in 2006 and *** dry pounds in 2007, but was *** dry pounds in interim 2008 as compared to *** dry pounds in interim 2007.[129] [130] Petitioners report that demand for citric acid and certain citrate salts has been fairly

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[125] See, e.g., CR/PR at Table II-1.

[126] See, e.g., CR/PR at Tables V-1 to V-5; CR at IV-9; PR at IV-5.

[127] See, e.g., Confer. Tr. at 40 (Anderson for Petitioners); JBL' Postconf. Br. at 3.

[128] Based on data reported by questionnaire respondents on their 2007 U.S. shipments by end-use market segment, which may not be representative with respect to U.S. shipments of subject merchandise from China, *** percent of all U.S. shipments of citric acid and certain citrate salts were for food and beverage applications (*** percent for soft drinks), *** percent were for industrial applications (*** percent for household detergents and cleaners), *** percent were for pharmaceutical applications (*** percent for beauty and oral hygiene/cosmetics), and *** percent were for all other or unknown applications. (Derived from CR/PR at Table IV-3). According to the *Chemical Economic Handbook*, U.S. consumption of citric acid and citrate salts in 2005 fell into four major categories: food and beverages (*** percent); household detergent and cleaners (*** percent); pharmaceuticals (*** percent); and industrial or other (*** percent). See, e.g., CR at II-10; PR at II-8; see also, e.g., JBL's Postconf. Br. at 3-4. JBL estimates that on a global basis, about 40 percent of all citric acid is for beverages, 20 percent is for food applications, about 25 percent is for detergent and related cleaners, and pharmaceuticals make up an additional but small percentage of total global consumption. See, e.g., Confer. Tr. at 118-19 (Waite for JBL).

[129] See, e.g., CR/PR at Table C-1. Throughout these views, we place only limited weight on all data for interim

(continued...)

constant, growing at the same rate as the overall economy, with no new major markets or applications during the period of investigation.[131] United Food Corp. asserts that total demand in the United States grew by at least 10 percent since 2005, with the largest demand driver being the increased crackdown on the use of hazardous materials such as phosphoric acid in water treatment applications and the substitution of citric acid in those applications.[132] Petitioners agree that the use of citric acid in laundry detergents has increased somewhat to replace phosphate-based formulations and because of growth in the sales of ultra-concentrated detergents, which contain greater quantities of citric acid than powdered detergents.[133] JBL estimates that global and U.S. consumption increased during the period of investigation.[134]

According to JBL, demand for citric acid used in the beverage market, including soft drinks, shows seasonal fluctuations. With the highest consumption for beverages during April to August, shipments to beverage manufacturers peak in this period. Beverage manufacturers account for such a large amount of citric acid that more citric acid reportedly is shipped by suppliers during the second and third calendar quarters than during the first and fourth quarters of the year.[135]

The domestic producers report that they negotiate contracts for approximately 80 percent of their output in November and December of each year, which they argue gives purchasers a lot of leverage to force producers to meet their prices at some point in order to book sufficient orders for the coming year.[136] P&G argued that the end-of-year contracting practices are due to petitioners' preference because large purchasers like itself would prefer to stagger their purchases over the year.[137]

The prevalence of short-term contracts (up to one year in length), long-term contracts (greater than one year in length), and spot sales varied somewhat by producer in the domestic industry. For domestic producer ***, long-term contracts accounted for *** percent of its sales in 2007, compared to *** percent for short-term contracts, and *** percent for spot sales. Domestic producer *** had *** percent long-term contracts that year, but *** percent short-term contracts, and *** percent spot sales whereas domestic producer *** had *** percent long-term contracts, *** percent short-term contracts, and *** percent spot sales.[138] Among importers, short-term contracts and spot sales were more common than long-term contracts; only *** had long-term contracts of two to three years.[139]

In any final phase investigations, we intend to examine more closely the sales practices in this industry, including how much supply is allocated at the end of the calendar year, on what sales terms, and to whom, and how much is sold in the spot market, at what prices, when, and to whom. As noted below,

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[129] (...continued)
2007 and interim 2008, because they reflect only three months and correspond to a period in which the parties agree that seasonal demand for citric acid and certain citrate salts used in beverage applications was not at its peak.

[130] Chairman Pearson, Commissioner Lane, and Commissioner Pinkert rely on interim 2008 data as reflected in their Dissenting Views, and they do not join the text of the preceding footnote.

[131] See, e.g., Confer. Tr. at 41 (Anderson for Petitioners).

[132] See, e.g., Confer. Tr. at 114-15, 168 (Hsu for United Food Corp.).

[133] See, e.g., Petitions, Vol. I at 8; Petitioners' Postconf. Br. at Exh. 1 at 28-29, Exhs. 38-39.

[134] See, e.g., Confer. Tr. at 118 (Waite for JBL); JBL's Postconf. Br. at 4-5.

[135] See, e.g., JBL's Postconf. Br. at 4; Confer. Tr. at 147-52.

[136] See, e.g., Confer. Tr. at 28-29 (Christiansen).

[137] See, e.g., Confer. Tr. at 151-52 (Smith).

[138] See, e.g., CR at V-6; PR at V-4.

[139] See, e.g., CR at V-6 to V-7; PR at V-4 to V-5.

we also intend to collect more information on bidding practices in this industry and any differences in sales to end users versus distributors.

Whether domestically produced or imported into the United States from Canada or China, the majority of citric acid and certain citrate salts is sold to end users, with a smaller share sold to distributors, although the percentages vary by source.[140] The parties agree that approximately 75 percent of all citric acid and certain citrate salts is sold in the U.S. market to about 25 end users, either directly or indirectly through distributors.[141] Petitioners argue that these sales are not based on the intended end use for the product but rather on volume, with smaller-volume purchasers buying from distributors and larger end users buying directly from producers and importers.[142] As we found earlier, some of the same U.S. customers purchase products from the domestic industry and producers in Canada and China.

Supply: There are three sources of supply in the U.S. market: domestic shipments, imports of subject merchandise from Canada and China, and imports from non-subject countries.

The three petitioners accounted for 100 percent of the domestic industry's production and shipments throughout the period of investigation.[143] As we explained in our domestic like product discussion, all three domestic producers use deep-tank fermentation technology, and to recover and refine the citric acid, *** uses the lime/sulfuric acid process through which it also produces unrefined calcium citrate, whereas *** uses the solvent-extraction process.[144] Whereas both ADM and Cargill produced citric acid, sodium citrate, and potassium citrate during the period of investigation, Tate & Lyle produced only citric acid.[145]

Petitioners argue that in this high fixed-cost industry, their manufacturing facilities are "finely-tuned to operate non-stop" and that a "decline in capacity utilization of even a few points is a sign of severe financial distress."[146] *** increased its production capacity during the period of investigation,[147] and there were *** in the capacity-utilization levels reported by the three domestic producers, with ***.[148] As a whole, the domestic industry's average capacity-utilization levels declined from 95.3 percent in 2005 to 85.9 percent in 2006 but increased to 88.2 percent in 2007.[149] We intend to examine capacity in this industry in any final phase investigations, including the apparent *** as well as the optimal capacity-utilization levels in this industry given technological, raw material, and other constraints.

The domestic industry exported an appreciable quantity of its production throughout the period of investigation at average unit values ***.[150] Even factoring in its export shipments, the domestic industry has insufficient capacity to satisfy U.S. demand. The domestic industry's capacity to produce citric acid

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[140] See, e.g., CR/PR at Table II-1 (indicating that during the period of investigation, the domestic industry sold *** percent of its products to end users and *** percent to distributors, *** percent of subject imports from Canada were sold to end users and *** percent were sold to distributors, and *** percent of subject imports from China were sold to end users and *** percent were sold to distributors).

[141] See, e.g., Petitions, Vol. I at 13; Confer. Tr. at 20-21 (Oakley for ADM), 113 (Hsu), 119-20 (Waite), 145-46 (Waite), 152-53 (Porter); JBL's Postconf. Br. at 6-7.

[142] See, e.g., Confer. Tr. at 74-75 (Oakley).

[143] See, e.g., CR at III-1; PR at III-1.

[144] See, e.g., CR at I-13 to I-14; PR at I-10 to I-11.

[145] See, e.g., CR at III-2 n.2; PR at III-2 n.2; Petitions at 2.

[146] See, e.g., Petitioners' Postconf. Br. at 16.

[147] See, e.g., CR/PR at Table III-2.

[148] See, e.g., CR/PR at Table III-2.

[149] See, e.g., CR/PR at Table III-2.

[150] See, e.g., CR/PR at Table III-3.

and certain citrate salts in 2007 was equivalent to only *** percent of total apparent U.S. consumption that year.[151]

Only one producer, JBL, produces subject merchandise in Canada.[152] Jungbunzlauer has been selling citric acid in the U.S. market since the 1970s when it supplied the market from its plant in Austria. In 1999, it decided to build a plant in Canada in order to supply its customers in the United States and western hemisphere from a more localized facility.[153] When the Canadian facility became operational, the company essentially ceased shipping citric acid to the U.S. market from Austria in favor of JBL's Canadian production.[154] JBL located its production facility in Port Colborne, Ontario near Buffalo, New York to be adjacent to its main supplier, Corn Products International and within 800 miles of the largest consumers of citric acid in North America, and because the facility was near ample water supply and serviced by its own water treatment facility.[155]

Seventeen foreign producers of subject merchandise in China submitted questionnaire responses in the preliminary phase of these investigations, and they are believed to account for *** percent of Chinese export shipments to the United States in 2007.[156] The largest five reporting Chinese producers (***) accounted for approximately 90 percent of reported production in 2007.[157] Chinese respondents assert that the industry in China has rapidly consolidated in recent years, with the number of major producers in China falling from over 100 in 2002 to about 20 today.[158] Petitioners assert that construction of new capacity has far outweighed the closure of a modest amount of obsolete capacity in China.[159]

Petitioners assert that non-subject imports had a much larger presence in the U.S. market in the time covered by the previous 1999/2000 investigation than today.[160] There were imports from non-subject countries in the U.S. market throughout the period of investigation, including those from Austria, Belgium, Colombia, Germany, Israel, and Thailand.[161] As a share of the total U.S. market for citric acid and certain citrate salts, non-subject imports declined throughout the period of investigation, accounting for *** percent of the market in 2005, *** percent in 2006, *** percent in 2007.[162]

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[151] See, e.g., CR at III-2; PR at III-1; CR/PR at Table III-2.

[152] See, e.g., Confer. Tr. at 10 (Ellis for Petitioners), 116 (Waite); JBL's Postconf. Br. at 1.

[153] See, e.g., Confer. Tr. at 116 (Waite for JBL); JBL's Postconf. Br. at 1-2.

[154] See, e.g., Confer. Tr. at 118 (Waite for JBL).

[155] See, e.g., Confer. Tr. at 117-18 (Waite for JBL).

[156] See, e.g., CR at I-4 & n.5, IV-1; PR at I-3 & n.5, IV-1; Chinese respondents' Postconf. Br. at 1. In contrast, as noted earlier, data for U.S. imports from China were based on official U.S. statistics from Commerce. Questionnaire responses for importers of subject merchandise from China accounted for 79.0 percent of U.S. imports from China, and supplemental questionnaire responses regarding reported U.S. shipments by end-use sector for 2007 were received from *** importers that only accounted for *** percent of U.S. shipments of subject merchandise from China in that year. See, e.g., CR at IV-1; PR at IV-1; CR/PR at Table IV-3.

[157] See, e.g., CR at VII-5; PR at VII-3.

[158] See, e.g., Chinese respondents' Postconf. Br. at 47-49.

[159] See, e.g., Petitioners' Postconf. Br. at 43.

[160] See, e.g., Confer. Tr. at 8-10 (Ellis for Petitioners).

[161] See, e.g., CR at IV-3 n.4; PR at IV-1 n.4.

[162] See, e.g., CR/PR at Table C-1.

Interchangeability and Other Product Considerations: The parties contend that these investigations involve a commodity product.[163] They agree that JBL's exports of subject merchandise from Canada compete with the domestic like product for sale to many of the same end users in the U.S. market. The record in the preliminary phase of these investigations suggests, however, that there are some variations in the chemical and physical forms of products supplied to the U.S. market by the domestic industry and the subject producer in Canada as compared to those supplied by the producers in China (including due to "caking" of the Chinese product), but considerable overlap as well. The domestic industry (mostly ***) and Canadian producer JBL both directed similar shares of their total U.S. shipments to *** segments of the U.S. market, whereas reported data on U.S. shipments by end-use markets for 2007 indicates that ***.[164] Based on these facts and the more extensive discussion in our cumulation analysis, we find the domestic like product to be highly interchangeable with subject imports from Canada, and we find that subject imports from China are at least moderately interchangeable with the domestic like product and with subject imports from Canada, although we acknowledge that there may be some differences in their end uses. We intend to examine this issue more closely in any final phase investigations. We also find that there are limited substitutes for citric acid and certain citrate salts, and that these products represent a fraction of the total cost of the products in which they are used.[165]

Other considerations: The principal raw materials used to produce citric acid and certain citrate salts are the starch (or sugary "substrate" base that is fermented at the beginning of the manufacturing process) and energy.[166] The costs of substrates and energy have both been rising since January 2005.[167] Corn starch is the principal substrate used in the United States, Canada, and China.[168] U.S. corn prices have more than doubled since 2005, from approximately $2 per bushel in 2005 to more than $4 per bushel in 2007.[169] Domestic producers hedge corn prices to some degree, and, as a result, the full impact of increased corn prices on the prices of citric acid and certain citrate salts may not have been felt yet.[170] In any final phase investigations, we intend to more closely examine the role of corn prices in this industry, including the domestic industry's hedging practices and the role of corn futures in price negotiations.

VIII. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF IMPORTS OF SUBJECT MERCHANDISE FROM CANADA AND CHINA[171]

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

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[163] See, e.g., Confer. Tr. at 10 (Ellis for Petitioners), 27-28 (Christiansen for Cargill), 72 (Ellis for Petitioners); Chinese respondents' Postconf. Br. at 38.

[164] See, e.g., CR/PR at Table IV-3.

[165] See, e.g., Confer. Tr. at 40-41 (Anderson for Petitioners); CR at II-14 to II-15; PR at II-9.

[166] See, e.g., CR at V-1; PR at V-1.

[167] See, e.g., CR at V-1 to V-2; PR at V-1.

[168] See, e.g., CR at I-14; PR at I-11.

[169] See, e.g., CR/PR at Figure V-1.

[170] See, e.g., CR at V-1; PR at V-1; Confer. Tr. at 79 (Poulos).

[171] Although Chairman Pearson, Commissioner Lane, and Commissioner Pinkert join section VIII.A. of the following discussion, they reach a different conclusion. They conclude that there is no reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of subject imports from Canada and China.

injured by reason of the imports under investigation.[172] 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.[173] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[174] 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.[175] 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."[176]

For the reasons stated below, we find that there is a reasonable indication that the domestic industry producing citric acid and certain citrate salts is materially injured by reason of subject imports from Canada and China that are allegedly sold at less than fair value in the United States and imports of subject merchandise from China that are allegedly subsidized by the Government of China.

A. Volume of Cumulated Subject Imports from Canada and China

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."[177]

In absolute terms, the volume of cumulated subject imports from Canada and China increased from *** dry pounds in 2005 to *** dry pounds in 2006 and to *** dry pounds in 2007.[178]

Apparent U.S. consumption increased from *** dry pounds in 2005 to *** dry pounds in 2006 and *** dry pounds in 2007.[179] The share of apparent U.S. consumption held by cumulated subject imports, by quantity, increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007.[180] The share held by the domestic industry fell from *** percent in 2005 to *** percent in 2006, and remained at that level in 2007.[181] Non-subject imports declined in absolute terms throughout the period of investigation, and as a share of apparent U.S. consumption accounted for *** percent in 2005, *** percent in 2006, *** percent in 2007.[182]

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[172] 19 U.S.C. §§ 1671b(a), 1673b(a).

[173] 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 ... {and} 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).

[174] 19 U.S.C. § 1677(7)(A).

[175] 19 U.S.C. § 1677(7)(C)(iii).

[176] 19 U.S.C. § 1677(7)(C)(iii).

[177] 19 U.S.C. § 1677(7)(C)(i).

[178] See, e.g., CR/PR at Table C-1.

[179] See, e.g., CR/PR at Table C-1.

[180] See, e.g., CR/PR at Table C-1.

[181] See, e.g., CR/PR at Table C-1. The domestic industry's production declined from 520.2 million dry pounds in 2005 to 475.6 million dry pounds in 2006 before increasing to 488.6 million dry pounds in 2007. See, e.g., CR/PR at Table C-1. Therefore, as a ratio to domestic production, cumulated subject imports from Canada and China increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007. See, e.g., CR/PR at Table IV-6.

[182] See, e.g., CR/PR at Table C-1.

For purposes of the preliminary phase of these investigations, we find the absolute volume of cumulated subject imports from Canada and China is significant.

B. Price Effects of the Cumulated Subject Imports from Canada and China

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.[183]

As we found above, there is a high degree of interchangeability between the domestic like product and subject imports from Canada, and citric acid and certain citrate salt products from these two sources are at least moderately interchangeable with subject imports from China. Although there are some instances where subject imports from China are not qualified for particular applications for specific purchasers, most questionnaire respondents reported that products from all three sources were always or frequently interchangeable, particularly if they met industry standards.[184] According to the record in the preliminary phase of these investigations, differences other than price are relatively unimportant factors in purchasing decisions.[185] Nevertheless, there are some differences in concentration in terms of the end-use applications where the products were directed, and there are differences among the three sources and even among the domestic producers in terms of the use of long-term contracts, short-term contracts, and spot sales.[186] As we explain below, it is not clear what effect such differences had on the pricing data reported by questionnaire respondents in the preliminary phase of these investigations.

Three domestic producers, one importer of subject merchandise from Canada, and twenty importers of subject merchandise from China provided usable quarterly net U.S. f.o.b. selling price data for five products.[187] Pricing data reported in the preliminary phase of these investigations by these firms accounted for approximately 57.6 percent of the domestic industry's U.S. shipments of citric acid and certain citrate salts, *** percent of U.S. shipments of subject imports from Canada, and 58.4 percent of U.S. shipments of subject imports from China in 2007.[188] These pricing data show pervasive overselling by subject imports from Canada and China throughout the period.[189] Based on these data, we do not find

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[183] 19 U.S.C. § 1677(7)(C)(ii).

[184] See, e.g., CR/PR at Table II-3; CR at II-16 to II-19; PR at II-10 to II-12.

[185] See, e.g., Petitions, Vol. I at 13; Confer. Tr. at 10 (Ellis for Petitioners); CR/PR at Table II-4.

[186] See, e.g., CR/PR at Table IV-3; CR at V-6 to V-7; PR at V-4 to V-5.

[187] These products are: (1) citric acid, granular, in dry form in 25 kilogram and 50 pound bags; (2) citric acid, fine granular, in dry form in 25 kilogram and 50 pound bags; (3) citric acid, granular, in dry form packed in bulk sacks ("supersacks"); (4) sodium citrate, granular, in dry form in 25 kilogram and 50 pound bags; and (5) potassium citrate, granular, in dry form in 25 kilogram and 50 pound bags. See, e.g., CR at V-8; PR at V-6.

[188] See, e.g., CR at V-8 to V-9; PR at V-6.

[189] See, e.g., CR/PR at Tables V-1 to V-5. Subject imports from Canada oversold the domestic like product in 39 of 39 comparisons, and subject imports from China oversold the domestic like product in 53 of 65 comparisons. See, e.g., CR at V-9; PR at V-6. For product 1, subject imports from Canada oversold the domestic like product in all thirteen comparisons, with the margins of overselling ranging from *** to *** percent. See, e.g., CR/PR at Table V-1. For product 2, subject imports from Canada oversold the domestic like product in 13 of 13 comparisons, at margins of overselling that ranged from *** to *** percent. See, e.g., CR/PR at Table V-2. For product 3, subject imports from Canada oversold the domestic like product in 13 of 13 comparisons, with the margins of overselling ranging from *** to *** percent. See, e.g., CR/PR at Table V-3. For product 1, subject imports from China

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for purposes of the preliminary phase of these investigations that there has been significant underselling of the domestic like product by subject imports from Canada and China.

We have also considered movements in the prices of citric acid and certain citrate salts over the period of investigation. Based on the questionnaire data submitted in the preliminary phase of these investigations, prices for all five products were generally flat until the end of 2007 and beginning of 2008, when prices rose ***.[190] Given these trends in the domestic industry's prices, we do not find for purposes of the preliminary phase of these investigations that cumulated subject imports from Canada and China significantly depressed prices of the domestic like product in the U.S. market.

Petitioners have argued that, in their experience, subject merchandise from both Canada and China was priced lower than the domestic like product, so the pricing data in these investigations that show widespread overselling may be flawed to the extent that they reflect delivered and not f.o.b. prices.[191] We note that Commission staff conducted follow-up inquiries to confirm the basis of the reported prices to ensure valid comparisons.[192]

The pricing data reported in the questionnaires, however, are inconsistent with some other evidence on the record in the preliminary phase of these investigations. For example, the ***.[193] It is also unusual to find such large price differentials for what the parties appear to agree are commodity products and given that there is at least some overlap in the customers served by the domestic industry and subject imports from Canada and China.[194] In the responses to some of the lost sales/lost revenue allegations, some of the respondents have reported that prices for the domestic like product are similar to prices for the subject merchandise imported from Canada and China, and others have indicated that the domestic industry lost some sales or revenues due to price competition with the subject merchandise.[195] On the other hand, others responding to the lost sales/lost revenue allegations reported that subject imports from Canada and China are priced higher than the domestic like product, some reported that domestic producers lost sales and/or revenues due to competition with one another, and one reported that Canadian producer JBL produces a "premium" product.[196] ***, and petitioners point out that when sales

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[189] (...continued)
oversold the domestic like product in all thirteen comparisons, with the margins of overselling ranging from *** to *** percent. See, e.g., CR/PR at Table V-1. For product 2, subject imports from China undersold the domestic like product in 2 of 13 comparisons, at margins of underselling of *** percent in the first quarter of 2005 and *** percent in the fourth quarter of 2006, whereas the margins by which subject imports from China oversold the domestic like product ranged from *** to *** percent. See, e.g., CR/PR at Table V-2. For product 3, subject imports from China undersold the domestic like product in 9 of 13 comparisons, with the margins of underselling ranging from *** to *** percent; in ***. See, e.g., CR/PR at Table V-3. For product 4, subject imports from China oversold the domestic like product in 13 of 13 comparisons, with the margins of overselling ranging from *** to *** percent. See, e.g., CR/PR at Table V-4. For product 5, subject imports from China oversold the domestic like product in 12 of 13 observations, at generally high margins of overselling that ranged from *** to *** percent. See, e.g., CR/PR at Table V-5.

[190] See, e.g., CR/PR at Tables V-1 to V-5.

[191] See, e.g., Confer. Tr. at 76 (Oakley for ADM and Poulos for Tate & Lyle), 99 (Anderson for Petitioners); Petitioners' Postconf. Br. at 27-33.

[192] See, e.g., CR at V-8 to V-9 at n.19; PR at V-6 at n.19.

[193] See, e.g., CR at V-10; PR at V-7.

[194] See, e.g., CR/PR at Tables II-2, V-1 to V-5; CR at II-11 to II-12; PR at II-8.

[195] See, e.g., CR at V-20 to V-31; PR at V-8 to V-9.

[196] See, e.g., CR at V-20 to V-31; PR at V-8 to V-9.

to specific purchasers are compared, the data show underselling by subject imports from Canada and China.[197]

In light of this mixed evidence, in any final phase investigations, we intend to seek more information about pricing practices in this industry. This will include information on possible price differences on sales to distributors versus end-users. It will also include more information about long and short-term contracts, the mechanics of the bidding process for contracts and for spot sales, how the process differs from purchaser to purchaser or from sector to sector, and the volumes and timing involved. We also intend to seek more information about alleged differences in products, such as the extent to which "caking" is a problem, how widespread the problem is, what happens to products that do not meet required specifications, and to the extent that there are "work-arounds" to the "caking" problem, at what cost, and how quickly.[198] We also intend to seek more information from purchasers about their qualification procedures, the extent to which producers in the United States, Canada, and China are qualified to supply them, and the need for additional sources of supply in this market.

Regarding possible suppression of prices, although prices increased during the period of investigation, the domestic industry's average unit cost of goods sold ("COGS") declined from $0.43 per dry pound in 2005 to $0.42 per dry pound in 2006 but then increased to $0.45 per dry pound in 2007.[199] The domestic industry's COGS as a share of net sales declined from 96.3 percent in 2005 to 94.8 percent in 2006 before increasing to 101.1 percent in 2007.[200] We, therefore, find some evidence that the domestic industry's prices have been suppressed, at least at the end of the period of investigation, but the relationship of this cost-price squeeze to the subject imports from Canada and China is not clear. We intend to further explore the issue of price suppression by subject imports from Canada and China in any final phase investigations.

C. Impact of the Cumulated Subject Imports from Canada and China[201]

Section 771(7)(C)(iii) of the Act 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."[202] These factors include output, sales, inventories, capacity

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[197] See, e.g., Petitioners' Postconf. Br. at 27-30, Exh. 26.

[198] For example, ***. See, e.g., CR at IV-6 to IV-7; PR at IV-4. It is unclear if other purchasers have done or are going to do the same.

[199] See, e.g., CR/PR at Table C-1.

[200] See, e.g., CR/PR at Table C-1.

[201] In its notice of initiation, Commerce estimated the dumping margin for subject imports from Canada to range from 22.91 to 111.83 percent and the dumping margin for subject imports from China to be 156.87 percent ad valorem, based on a comparison of constructed export price and constructed value, and 237 percent based on a comparison of export price and constructed value. See, e.g., 73 Fed. Reg. 27492, 27496 (May 13, 2008). In its notice of initiation, Commerce indicated that it was going to investigate 38 programs alleged in the petitions to have provided countervailable subsidies to producers of citric acid and certain citrate salts in China. Commerce grouped the programs into the following categories: preferential lending; grant programs; income tax programs; indirect tax programs and import tariff program; and provincial/local subsidy programs, including groups of programs associated with specific cities or provinces (Anhui Province, Guangdong Province, Jiangsu Province, Liaoning Province, Shandong Province, Shanxi Province, Shenzhen City, and Zhejiang Province). See, e.g., 73 Fed. Reg. 26960, 26962 (May 12, 2008).

[202] 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

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utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[203]

We have examined the performance indicia for the domestic industry producing citric acid and certain citrate salts. Overall, the record in the preliminary phase of these investigations indicates that a number of the domestic industry's performance indicators (including production, capacity utilization, and employment) declined over the period of investigation notwithstanding a *** percent increase in demand in the U.S. market between 2005 and 2007.[204] The domestic industry had operating losses throughout the period of investigation, as further explained below.

The domestic industry's production of citric acid and certain citrate salts decreased from 520.2 million dry pounds in 2005 to 475.6 million dry pounds in 2006, but then increased to 488.6 million dry pounds in 2007.[205] Its total U.S. shipments of citric acid and certain citrate salts increased by 3.1 percent from 2005 through 2007.[206] Exports, which were an appreciable share of the domestic industry's total shipments, increased by 3.4 percent over this same period.[207]

The domestic industry's end-of-period inventories of citric acid and certain citrate salts decreased by 23.9 percent from 2005 through 2007.[208] The domestic industry's average production capacity increased from 545.9 million dry pounds in 2005 to 553.9 million dry pounds in 2006 and remained stable thereafter.[209] The domestic industry's capacity utilization levels declined steadily over the period of investigation.[210] This decline of 7.1 percentage points in capacity utilization between 2005 and 2007 is striking given the reported increases in demand in the U.S. market at this time.[211] In any final phase investigations, we intend to explore the extent to which raw material or other constraints on the domestic industry may explain this phenomenon. We also intend to examine the role of annual contracts entered

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[202] (...continued)
some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.")

[203] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386, 731-TA-812-813 (Prelim.), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[204] As noted above, apparent U.S. consumption increased from *** dry pounds in 2005 to *** dry pounds in 2006 and *** dry pounds in 2007.

[205] See, e.g., CR/PR at Table C-1.

[206] The domestic industry's U.S. shipments of citric acid and certain citrate salts decreased from 387.2 million dry pounds in 2005 to 370.6 million dry pounds in 2006 and then increased to 399.2 million dry pounds in 2007. See, e.g., CR/PR at Table C-1.

[207] U.S. export shipments of citric acid and certain citrate salts declined from 111.2 million dry pounds in 2005 to 95.7 million dry pounds in 2006 and then increased to 114.9 million dry pounds in 2007. See, e.g., CR/PR at Table C-1.

[208] The domestic industry's end-of-period inventories of citric acid and certain citrate salts increased from 68.8 million dry pounds in 2005 to 77.6 million dry pounds in 2006 but then declined to 52.3 million dry pounds in 2007. See, e.g., CR/PR at Table C-1.

[209] See, e.g., CR/PR at Table C-1.

[210] The domestic industry's capacity utilization levels declined from 95.3 percent in 2005 to 85.9 percent in 2006 and to 88.2 percent in 2007. See, e.g., CR/PR at Table C-1.

[211] The average number of production and related workers declined between 2005 and 2007, and the domestic industry's productivity increased between 2005 and 2007, after a decline between 2005 and 2006. Hourly wages increased between 2005 and 2006 but then declined between 2006 and 2007. See, e.g., CR/PR at Table C-1.

into at the end of the year to supply customers with citric acid and certain citrate salts during the following year.

The domestic industry's net sales increased by 7.2 percent from 2005 to 2007 when measured by quantity, and increased by 5.9 percent over the same period when measured by value.[212] As discussed previously, the domestic industry's COGS as a share of net sales declined from 96.3 percent in 2005 to 94.8 percent in 2006 before increasing to 101.1 percent in 2007.[213] Based on the limited information available in the preliminary phase of these investigations, it appears that the domestic industry's ability to raise prices sufficiently to keep pace with large cost increases at the end of the period declined even though demand was increasing. In any final phase investigations, we intend to explore the effect of hedging on raw material contracts and the effects of futures contracts on prices. We also intend to take a closer look at how domestic producers allocate raw material supplies that can be used in more than one production operation.

The domestic industry posted operating losses in each full year from 2005 to 2007. The domestic industry's financial indicators improved between 2005 and 2006 before declining in 2007, for an overall decline. The domestic industry's $9.7 million operating loss in 2005 improved to a $4.8 million operating loss in 2006 before deteriorating to a $17.9 million operating loss in 2007.[214] The domestic industry's ratio of operating income to sales decreased by 3.4 percentage points from 2005 to 2007. The domestic industry's operating income margin improved from a 4.6 percent loss in 2005 to a 2.3 percent loss in 2006 before declining to a 8.0 percent loss in 2007.[215] Capital expenditures were low and less than depreciation in every period, an indication that the domestic industry is not expanding or improving its productive facilities, but is at best maintaining them.[216]

Given our findings concerning the significant absolute volume of cumulated subject imports from Canada and China and some evidence of a cost-price squeeze, and our findings concerning some declines in the domestic industry's performance during the period of investigation, we cannot find for purposes of our preliminary determinations in these investigations that cumulated subject imports from Canada and China are not having a sufficient adverse impact on the domestic industry producing citric acid and certain citrate salts to warrant affirmative preliminary determinations.[217] [218]

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[212] See, e.g., CR/PR at Table C-1.

[213] See, e.g., CR/PR at Table C-1.

[214] See, e.g., CR/PR at Table C-1.

[215] See, e.g., CR/PR at Table C-1.

[216] See, e.g., CR at VI-9; PR at VI-3.

[217] Vice Chairman Shara L. Aranoff and Commissioner Irving A. Williamson note that there is limited information on the record regarding the role of non-subject imports of citric acid and certain citrate salts in the U.S. market. In any final phase investigations, they will seek information on the role of non-subject imports of citric acid and certain citrate salts in the U.S. market. They 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. They also invite parties to comment on what additional information the Commission should collect to address the issues raised by the Court, how that information should be collected, and which of the various non-subject sources should be the focus of additional information gathering by the Commission in any final phase investigations.

[218] Commissioner Okun notes that in two Federal Circuit decisions, Bratsk Aluminum Smelter et al. v. United States, 444 F.3d 1369 (Fed. Cir. 2006) ("Bratsk"), and Caribbean Ispat, Ltd. v. United States, 450 F.3d 1346 (Fed. Cir. 2006) ("Caribbean Ispat"), the Court reaffirmed that the requisite causal link to subject imports is not demonstrated if such imports contributed only "'minimally or tangentially to the material harm.'" Bratsk, 444 F.3d at 1373 (Fed. Cir. 2006), quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997). Under

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[218] (...continued)
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." Bratsk, 444 F.3d at 1375. The additional inquiry required by the Court, which the Commission refers 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." Id.

As a threshold matter, it is not immediately clear how the Commission should interpret the Bratsk opinion in terms of its effect on our analysis of causation in Title VII investigations. I discern at least two possible interpretations that differ substantially. The first interpretation is that Bratsk mandates application of an additional test apparently not contemplated by the statute (the so-called "replacement/benefit test"). Under this interpretation, Bratsk appears to require that the Commission apply an extra-statutory causation test with respect to non-subject imports and determine if the domestic industry will benefit from the anti-dumping duty or countervailing duty order. In response to the Federal Circuit's instructions in Caribbean Ispat, the Commission majority applied this test in the Carribean Ispat remand and reversed its original decision, thereby reaching a negative determination, based on Bratsk. The Court of International Trade affirmed the Caribbean Ispat remand results in Mittal Steel Point Lisas, Ltd. v. United States, 495 F. Supp. 2d 1374 (Ct. Int'l Trade 2007), which has been appealed to the Federal Circuit. While I respectfully disagree with the Court that such a causation analysis is legally required, I perform the Bratsk replacement/benefit analysis below based on the record in these preliminary investigations.

The second interpretation is that Bratsk is a further development of the causation approach prescribed by Gerald Metals. Under this interpretation, I am required to identify and assess the competitive effects of subject imports to ensure that they contribute more than "minimally or tangentially to the material harm" of the domestic industry. To the extent that the relevant information was available on the record in the preliminary phase of these investigations, the Commission evaluated this issue in its material injury analysis. See, e.g., CR at II-9, PR at II-7; CR/PR at Tables II-3, II-4, IV-2, IV-5; CR at VII-10 to VII-14; PR at VII-7 to VII-9. I will re-examine this issue in any final phase of these investigations once the Commission has collected further relevant information (e.g., information about the market from purchasers). For a complete statement of my interpretation of Bratsk in a preliminary phase 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 at 19-25 (Apr. 2007).

In applying the replacement/benefit test, I note that the parties agree that citric acid is a commodity product. See, e.g., Confer. Tr. at 10 (Ellis for Petitioners), 27-28 (Christiansen for Cargill), 72 (Ellis for Petitioners); Chinese respondents' Postconf. Br. at 38. Given our determination that subject imports and the domestic like product are fungible, for purposes of the preliminary phase of these investigations, I find that citric acid is a commodity product, and, therefore, the first predicate of the test provided for in Bratsk is satisfied.

The second predicate of the Bratsk test requires that non-subject imports are price-competitive and a significant factor in the U.S. market. There were imports from non-subject countries in the U.S. market throughout the period of investigation. In descending order of import volume in 2007, non-subject sources included Israel, Belgium, Germany, Colombia, Austria, and Thailand. As a share of total imports into the U.S. market, non-subject imports declined from *** percent in 2005 to *** percent in 2006 and *** percent in 2007. See, e.g., CR/PR at Table IV-2. Their share of the U.S. market declined from *** percent in 2005 to *** percent in 2007. See, e.g., CR/PR at Table C-1. Their market share was ***, and was ***. See, e.g., CR/PR at Table C-1.

With respect to whether non-subject imports are price-competitive, the Commission lacks product-specific pricing data for non-subject imports in the preliminary phase of these investigations. However, average unit values of non-subject imports were higher than average unit values of subject imports and the domestic like product. See, e.g., CR/PR at Table C-1. While average-unit-value data may have limited value due to product mix considerations, I have concluded that citric acid is a commodity product, and these data are the best information available on the record. On balance, it appears that non-subject imports are not price-competitive with the domestic like product or with subject imports. Hence, I conclude, for purposes of the preliminary phase of these investigations, that the second predicate of the Bratsk test is not satisfied. Consequently, I need not evaluate whether, if orders were

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CONCLUSION

For the reasons stated above, and 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 subject imports from Canada and China that are allegedly sold in the United States at less than fair value and imports of citric acid and certain citrate salts from China that are allegedly subsidized by the Government of China.

[218] (...continued)
imposed on subject imports, non-subject imports would negate any benefit of the orders to the domestic industry.

DISSENTING VIEWS OF CHAIRMAN DANIEL R. PEARSON, COMMISSIONER CHARLOTTE R. LANE AND COMMISSIONER DEAN A. PINKERT

Based on the record in these preliminary phase investigations, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of citric acid and certain citrate salts from Canada and China that are allegedly sold in the United States at less than fair value ("LTFV") and by reason of imports of citric acid and certain citrate salts from China that are allegedly subsidized by the Government of China.

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 determinations, whether there is a reasonable indication that a domestic industry is materially injured by or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[1] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation." The United States Court of Appeals for the Federal Circuit has held that "the statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry."[2]

II. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS FROM CANADA AND CHINA[3]

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.[4] 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.[5] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[6] 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

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[1] 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F.Supp.2d 1353, 1368-69 (CIT 1999); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996).

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

[3] We join the Commission's Views with respect to domestic like product, domestic industry, negligibility, cumulation for purposes of the Commission's material injury analysis, and conditions of competition.

[4] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[5] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[6] 19 U.S.C. § 1677(7)(A).

bear on the state of the industry in the United States.[7] 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."[8]

For the reasons discussed below, we find that there is no reasonable indication that the domestic industry producing citric acid and certain citrate salts is materially injured by reason of subject imports from Canada and China.

A. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[9]

We concur with the Commission majority that the absolute volume of cumulated subject imports is significant. We note, however, that the increased subject import volume took market share equally from the domestic industry and from nonsubject imports. The shift in market share from the domestic industry was modest, and the domestic industry operated at high levels of capacity utilization throughout the period of investigation ("POI").[10] In addition, the record suggests some limit to the overlap of competition between the domestic like product and subject imports. We therefore find that the increase in the volume of subject imports is significant in absolute, but not relative, terms.

B. 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.[11]

Producers and importers gave mixed responses as to the importance of price in purchasing decisions. *** domestic producers responded that factors other than price were never a significant factor in their sales of subject product. A majority of importers indicated that factors other than price were either seldom or never a significant factor in their sales of subject product, but several importers found non-price factors to be significant.[12]

Product-specific pricing data were gathered on five products. These products were as follows:

Product 1 - Citric acid, granular, in dry form in 25 kilogram and 50 pound bags.
Product 2 - Citric acid, fine granular, in dry form in 25 kilogram and 50 pound bags.
Product 3 - Citric acid, granular, in dry form packed in bulk sacks ("supersacks").
Product 4 - Sodium citrate, granular, in dry form in 25 kilogram and 50 pound bags.

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[7] 19 U.S.C. § 1677(7)(C)(iii).

[8] 19 U.S.C. § 1677(7)(C)(iii).

[9] 19 U.S.C. § 1677(7)(C)(i).

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

[11] 19 U.S.C. § 1677(7)(C)(ii).

[12] CR/PR at Table II-4. Four out of 11 importers indicated that factors other than price were either always or frequently significant for purchasing decisions between the U.S. product and the Canadian subject product. Nine out of 21 importers indicated that factors other than price were either always or frequently significant for decisions between the U.S. product and the Chinese subject product. Id.

Product 5 - Potassium citrate, granular, in dry form in 25 kilogram and 50 pound bags.

The pricing data cover a large percentage of U.S. shipments. The Commission received useable pricing information from all three U.S. producers, one importer of Canadian product, and 20 importers of Chinese product. The product-specific pricing data accounted for 57.6 percent of U.S. producers' domestic shipments, *** percent of subject imports from Canada, and 58.4 percent of subject imports from China in 2007.[13]

Pricing data for Products 1, 2 and 3, which are citric acid products, covered the largest quantity of sales of both U.S. product and subject imports. The Commission did not receive pricing data on sales of subject imports of Products 4 and 5 from Canada; it received pricing data on these products with respect to sales of subject imports from China, but the sales quantities were low.[14]

Subject imports were consistently priced higher than the domestic like product in the U.S. market, at substantial margins, with very limited exceptions. In 104 price comparisons, the subject producers undersold the domestic like product in only 12 instances, all of which pertained to subject imports from China. The overselling margins were considerable, with Chinese products overselling by more than ten percent in 32 quarters, with overselling margins ranging from 0.1 percent to 120.6 percent. In the limited number of underselling instances by the Chinese subject imports, the underselling margins were much more modest, ranging from 1.1 to 10.2 percent.[15]

Petitioners argued that freight could be a significant factor in the price paid by end users of citric acid and speculated that the higher prices reported for subject imports may be misreported to include inland shipping.[16] Commission staff reported that it had followed up on the pricing data and determined that some of the prices had originally been misreported on a delivered basis. However, staff corrected those reported prices to exclude inland transportation costs.[17] Thus, the domestic and subject import prices for the various pricing products as summarized in the Staff Report, and discussed above, are comparably exclusive of inland transportation costs. We find that the record in these preliminary investigations indicates that there has not been significant underselling by the imported product. In fact, there has been a preponderance of overselling by both Canadian and Chinese imports in the pricing products examined by the Commission.

Petitioners alleged 64 lost sales instances, representing over $*** in lost sales on *** pounds of citric acid. Petitioners further alleged 30 instances of lost revenue, representing nearly $*** in lost revenue on *** pounds of citric acid. Staff attempted to obtain verification of the reported lost sales and lost revenue, but received responses on only 28 of the allegations. In those limited instances, seventeen of the 28 responses disagreed with the allegations. Eight responses either partially disagreed with the allegations or neither agreed nor disagreed.[18] Only three responses agreed with the allegations, and these

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[13] CR/PR at V-8 and V-9; PR at V-6.

[14] CR/PR at Tables V-1 through V-5. JBL only produces citric acid, and not sodium citrate or potassium citrate. JBL Postconference Brief at 1, 3, n.3.

[15] CR/PR at Tables V-1 - V-5; Table V-7. In 39 price comparisons, the Canadian subject product oversold the domestic like product in each and every instance, at overselling margins ranging from 5.0 to 17.0 percent. In 65 instances, the Chinese subject product oversold the domestic like product in 53 instances, at overselling margins ranging from 0.1 to 120.6 percent. Id.

[16] Petitioners' Postconference Brief at 28-31.

[17] CR at V-8-9, n.19.; PR at V-6, n.19.

[18] One purchaser, *** indicated that it could not respond without knowing which supplier had made the allegation, but that it would "likely dispute the allegation" if the names of the parties were provided to it. This qualified response from one purchaser applied to *** pounds, or *** percent, of the lost sales allegations and *** pounds, or *** percent, of the lost revenue allegations.

were related to a relatively small percentage of the claimed volumes.[19] Although the claimed instances of lost sales and revenue are significant and the Commission has not received responses on a large percentage of those allegations, we note that the allegations are inconsistent with the pricing data, which indicate a preponderance of overselling by both Canadian and Chinese imports.

We do not find a reasonable indication that subject imports either depressed prices or suppressed price increases. The following table shows the quarterly values for domestic prices of each product.[20]

* * * * * * *

Domestic prices for pricing products 1, 2, 3 and 4 were relatively flat for the full years data from 2005 through 2007. Annual prices reflected little variability when viewed on a quarterly basis. This price stability is consistent with the pricing practices of the industry. U.S. producers report that 80 percent of their production is contracted at the end of each year, for the following year's deliveries. The contracts for the following year's deliveries generally set prices for those deliveries. Prices are fixed by contract without provisions for price renegotiation or "take or pay" clauses. The majority of sales contracts are on a short-term basis, with a term of one year.[21] Thus, it would not be unexpected to see price changes generally impacting the first quarter of each year, with little variability in prices during the rest of the year.

Although prices are relatively flat for most products, the trend of the pricing data is upward, and in all cases, prices in the first quarter of 2008 reflect a significant increase. These pricing data do not indicate price depression.

There is no indication that the practice of entering into short-term fixed-price contracts, which impacts prices beginning near the first quarter of each calendar year, has changed in 2008. Thus, we find that the increases in the first quarter of 2008 should not be discounted as reflecting only one quarter of data. These data, when considered together with the pricing data from the first quarter of 2005 through 2007, reflect a trend of increasing prices.

Our finding that there is not a reasonable indication of price depression is further supported by relatively flat, but upward trending, average unit values of domestic shipments which are reported as 44 cents per pound in 2005, 45 cents per pound in 2006, 45 cents per pound in 2007, and 50 cents per pound in the first quarter of 2008.[22]

There is some indication of price suppression between 2005 and 2007 as the ratio of the cost of goods sold to net sales went from 96.3 percent to 101.1 percent. This ratio changed significantly in the first quarter of 2008, however, dropping to 92.8 percent. The COGS/sales ratio improved due to an average sales value increase of $.05 per pound in the first quarter of 2008 compared to fiscal year 2007 levels, while the average unit value of cost of goods sold increased by only $.01. On a direct quarter to quarter comparison, the average unit value of cost of goods sold in the first quarter of 2008 actually dropped by 2 cents per pound as compared to the first quarter of 2007, while the average sales value increased by 5 cents per pound.[23]

Since subject imports were overselling domestic prices, competition from subject imports should not have prevented the domestic industry from increasing its prices in response to cost increases. Moreover, since the domestic industry tends to contract at the end of each year for the following year's deliveries, and further tends to fix prices for one year in advance pursuant to short-term contracts, it has

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[19] The responses that agreed with the allegations of lost sales and lost revenue represented only *** pounds of the claimed lost sales volumes and *** pounds of the lost revenue allegations.

[20] CR/PR at Tables V-1 - V-5.

[21] CR at V-5-V-6; PR at V-4.

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

[23] CR/PR at Table VI-1, Table C-1.

limited opportunities to adjust prices to respond to changing costs. Even though the annual data indicates that there was some lag for the domestic industry between cost increases and price increases, we do not attribute that lag to competition from subject imports. We find it much more likely that the intense price competition between the domestic producers in this industry, discussed further in our impact analysis, are keeping domestic prices down, not pricing pressure from subject imports.

The record shows that subject imports overwhelmingly oversold the domestic like product, at substantial margins. We do not find that the limited underselling that occurred at relatively small margins was significant. The record also indicates that subject import prices neither depressed nor suppressed prices for the domestic like product. We therefore find that subject imports from Canada and China did not have significant adverse price effects on the domestic industry.

C. Impact of the Subject Imports[24]

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."[25] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[26]

Throughout most of the period of investigation, the domestic industry operated at relatively high rates of capacity utilization, operating at 95.3 percent in 2005 and 88.2 percent in 2007. In interim 2008, the domestic industry operated at 89.7 percent. The sole exception was 2006, when the industry operated at 85.9 percent.[27] For citric acid production alone, however, the domestic industry operated at *** rates of capacity utilization throughout the period of investigation, at *** percent in 2005, *** percent in 2006, and *** percent in 2007. In interim 2008, capacity utilization was at *** percent.[28] *** operated consistently at capacity utilization rates at or above *** percent throughout most of the period of investigation; *** operated at similarly high rates in 2005, but experienced a significant drop thereafter, filling only about *** of its productive capacity in 2006 and 2007, and even in interim 2008, *** operated at rates *** below the rest of the domestic industry.[29]

U.S. shipments of the domestic like product declined by 4.3 percent in 2006, but rose 7.7 percent in 2007, for an overall increase between 2005 and 2007 of 3.1 percent. The domestic industry's market share declined slightly in 2006, to *** percent, and remained at that level in 2007. U.S. shipments of the domestic like product in interim 2008 were slightly lower compared to interim 2007 shipments; in interim

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[24] In its notice of initiation, Commerce calculated estimated alleged dumping margins for Canada ranging from 22.91 percent to 111.83 percent, and for China at 156.87 percent. 73 Fed. Reg. 27492 (May 13, 2008).

[25] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.") SAA at 885.

[26] 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).

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

[28] CR/PR at Table C-2.

[29] CR/PR at Table III-2.

2008, the domestic industry accounted for *** percent of apparent U.S. consumption.[30] Export shipments of the domestic like product were 3.4 percent higher in 2007 than in 2005, and in interim 2008 export shipments were 19.4 percent higher than in interim 2007.[31]

Although the domestic industry operated at high levels of capacity utilization and was able to increase its shipments, it lost money throughout the POI. Operating losses as a share of sales were 4.6 percent in 2005, 2.3 percent in 2006, and 8.0 percent in 2007. Only in interim 2008 did the domestic industry show an operating profit, and that was a modest 0.2 percent of sales.[32] Other indicators also trended downwards for most of the POI. The ratio of operating income to total assets was negative throughout the POI and at its lowest point in 2007.[33] The number of production-related workers fell by 10.6 percent between 2005 and 2007 and hours worked declined by a similar percentage. Total wages paid declined by 7.6 percent.[34] The industry, however, continued to invest and to make expenditures on research and development[35] and made fairly significant productivity gains between 2005 and 2007.[36]

The domestic industry thus experienced losses and some weakening in other indicators at a time when subject import volume was increasing at a fairly significant absolute rate. Nevertheless, we do not find a reasonable indication that subject imports are a cause of material injury to the domestic industry. As we noted above, the increase in subject import volume occurred at a time when the domestic industry was operating at very high rates of capacity utilization. The domestic industry's market share loss was quite modest and appeared to have reversed late in the POI. The domestic industry's performance does not correlate with shifts in import volume. Subject import volume increased most sharply, both absolutely and relatively, between 2005 and 2006, at a time when the domestic industry's market share declined. The domestic industry's losses were significantly smaller, however, in 2006 than in 2005. In 2007, the rate of increase in subject imports slowed and the domestic industry held onto market share and increased domestic shipments, but its losses were significantly higher.[37]

Furthermore, as we noted above, the pricing data gathered in these investigations do not support a conclusion that subject imports depressed prices for the domestic like product. Overselling by subject imports was consistent across the board, for subject imports from both Canada and China, for high volume products and low volume products, and throughout the POI.[38] Prices for the domestic like product rose over the POI, especially late in the period. In 2007 it appeared that prices for the domestic like product did not rise sufficiently to cover significant increases in raw material costs.[39] The record strongly suggests, however, that any cost-price squeeze was a result of the industry's preference for longer-term contracts rather than the presence of subject imports in the market. The significant increase in prices in interim 2008, which would reflect price increases in longer-term contracts negotiated in late

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

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

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

[33] CR/PR at Table VI-5.

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

[35] CR/PR at Table VI-4.

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

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

[38] CR/PR at Tables V-1-V-5.

[39] Respondents argue that any cost-price squeeze seen in 2007 was a result of the domestic industry's failure to adequately hedge against rising raw material costs. The record suggests that the domestic industry's raw material costs, while significant, were nonetheless substantially less than general price increases for corn in the U.S. This suggests that the domestic industry was successful in limiting its exposure to sharp shifts in raw material costs. CR at VI-4 n.2, PR at VI-1, n.2.

2007, indicates that the domestic industry was able to obtain price gains in its most recent bargaining period.[40]

The record also indicates significant competition between the members of the domestic industry for high-volume contracts with the U.S.'s most substantial users. Although some of these users also purchased subject merchandise, and there was some degree of overlap in large customers for all domestic like product and subject merchandise from both countries, the record also indicates that the domestic industry's primary goal was to fill most of its productive capacity through the smallest number of high-volume contracts possible. These high-volume purchasers have significant price leverage, and the domestic producers compete intensely for these contracts; purchasers indicated that *** was generally the price leader, and that domestic producers mistakenly blamed some lost sales and revenues on subject imports when in fact the sales went to other domestic producers.[41]

The record indicates significant differences in costs between the three domestic producers. In particular, ***.[42] *** had *** operating losses ***, while *** had operating profits ***. ***.[43] ***.[44] AUVs for *** domestic shipments were *** the AUVs for subject imports from Canada in every year and *** the AUVs for subject imports from China for every year except 2006.[45]

Therefore, although the record indicates that the increase in subject import volume was significant in absolute terms, the record does not show a reasonable indication of significant adverse price effects from subject imports. Nor does the record indicate a connection between subject import trends and the domestic industry's performance. Rather, the record indicates that subject imports generally oversold the domestic like product at a time when the domestic industry experienced significant intra-industry competition and that its preference for high-volume, longer-term contracts meant the domestic industry could not quickly recoup sharp increases in raw material costs. Therefore, we find no reasonable indication that the domestic industry is materially injured by reason of subject imports from Canada and China.

III. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CANADA AND CHINA

A. Legal Standards

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[46] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether

[40] CR/PR at Tables V-1-V-5, C-1.

[41] P&G Postconference Brief at 19-21. CR at V-9; PR at V-6. Tr. at 107 (Smith, P&G). CR at V-28-30 ***.

[42] CR/PR at Table VI-2.

[43] *** U.S. producer questionnaire at 6.

[44] CR at V-6, PR at V-4.

[45] *** U.S. producer questionnaire at 6.

[46] 19 U.S.C. §1677(7)(F)(ii).

material injury by reason of subject imports would occur unless an order is issued.[47] In making our determination, we consider all statutory threat factors that are relevant to this investigation.[48]

B. Cumulation

For purposes of determining if a threat of material injury exists, cumulation is discretionary. Under section 771(7)(H) of the Act, the Commission may cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation for material injury analysis are satisfied.[49]

As we have already found in our material injury cumulation analysis, in which we joined the Commission's Views, none of the cumulation exceptions apply to these investigations, and there is a reasonable overlap of competition among subject imports from subject imports from Canada and China and the domestic like product.

In addition, for purposes of assessing whether we should cumulate subject imports from Canada and China for purposes of our threat of material injury analysis, we have considered the volume and pricing trends exhibited by the subject imports. We have found significant similarities in those trends. Subject imports from both Canada and China increased over the period of investigation, and gained market share, although subject imports from China decreased in interim (January to March) 2008 from interim 2007 levels. As for pricing trends, prices for subject imports from both countries increased over the periods surveyed, with respect to all five pricing products. Further, subject imports from both Canada and China consistently oversold the domestic like product, with limited exceptions.[50] We exercise our discretion to cumulate subject imports from Canada and China for purposes of our threat of material injury analysis.

C. Analysis of Statutory Threat Factors

The absolute volume of the cumulated subject imports, and the absolute increase in that volume, as discussed above, was significant, but we do not find a likelihood of substantially increased imports in the imminent future. Cumulated subject imports increased in tandem with apparent U.S. consumption during the POI. Some of this demand increase derived from increased use of citric acid in laundry detergents to replace phosphates and growth in ultra-concentrated detergents. Notwithstanding these trends, which only appear to have marginally supported slow growth during the POI, there are no new significant markets or applications for citric acid or certain citrate salts which would attract increases in cumulated subject import volume in the imminent future. Moreover, as demand decreased in interim 2008, so did the volume of cumulated subject imports. Market penetration by the cumulated subject imports followed similar trends, increasing during the POI, and decreasing in interim 2008 from interim 2007 levels.[51] Thus, notwithstanding that we find there was a significant absolute increase in subject import volume during the POI, we do not anticipate a likelihood of substantially increased imports from

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[47] 19 U.S.C. §1677(7)(F)(ii).

[48] 19 U.S.C. §1677(7)(F)(ii). Statutory threat factor (VII) is inapplicable, as no imports of agricultural factors are involved. Id.

[49] 19 U.S.C. § 1677(7)(H).

[50] CR/PR at Tables V-1 to V-7.

[51] Apparent U.S. consumption for citric acid and certain citrate salts increased by *** percent from 2005 to 2007 and then decreased by *** percent in interim 2008 as compared to interim 2007. Cumulated subject import volume increased by *** percent from 2005 to 2007, and then decreased by *** percent in interim 2008 as compared to interim 2007. The decrease in cumulated subject import volume in interim 2008 was due to a 21.7 percent decrease in subject imports from China. CR/PR at Table IV-2, and C-1.

the subject countries in the imminent future. Although cumulated subject imports increased during the POI, in tandem with slow growth in the market, there are no new markets or applications on the horizon, and demand, cumulated subject import volume, and market share decreased in interim 2008.

Furthermore, we do not find that the capacity and export trends of the industries in the subject countries would support a significant increase in cumulated subject import volume in the imminent future. As a preliminary matter, we note that the Commission's data covers a high percentage of subject foreign production. Our data covers one hundred percent of subject production in Canada and approximately 90 percent of 2007 production in China.[52] According to that data, the Canadian and Chinese citric acid and certain citrate salts industries report *** capacity utilization rates. Although capacity and production in these countries increased, and the Canadian industry is highly focused on the U.S. market, there have been shifts in the export trends for both countries toward non-U.S. markets that are not projected to change in 2008 and 2009.

The Canadian producer reported a capacity utilization rate of *** percent in 2007, *** percent in interim 2008, and projections of *** percent and *** percent, respectively, in 2008 and 2009. Therefore, ***. Production and capacity increased *** from 2005 to 2007.[53] Exports to the United States, however, decreased as a share of total Canadian shipments by approximately *** percentage points from 2005 to 2007 as Canadian exports to other markets increased. Exports to the United States decreased from *** percent of total Canadian shipments in 2005, to *** percent of total shipments in 2007; that share is projected to decrease further to *** percent and *** percent of total shipments, respectively, in 2008 and 2009. [54]

Similarly, Chinese producers reported *** capacity utilization rates for their industry, reporting rates of 90.6 percent in 2007, 91.6 percent in interim 2008, and projected rates of 90.2 percent and 90.6 percent, respectively, in 2008 and 2009. Although it is substantially larger than the Canadian industry, the Chinese industry is not as focused on the U.S. market as the Canadian industry; U.S. exports only accounted for 12.3 percent of Chinese shipments at its highest share of total shipments in 2005. Chinese production and capacity also increased from 2005 to 2007.[55] Again, however, there has been a switch away from the U.S. market by the Chinese producers that is not projected to change in 2008 and 2009. Exports to the United States decreased as a share of total Chinese shipments, from 12.3 percent of total shipments in 2005 to 9.3 percent of total shipments in 2007. That share is projected to decrease further to 7.3 percent and 7.0 percent of total shipments, respectively, in 2008 and 2009.[56]

Canadian end-of-period inventories of subject merchandise are ***; at their highest point in *** dry pounds.[57] Chinese inventories are substantial in absolute terms, peaking at 110 million dry pounds in interim 2008, but they are low as a share of production and shipments, and they are projected to drop below 2005 levels in 2008 and 2009.[58] There is no indication of potential product-shifting in either

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[52] CR at VII-2, VII-5; PR at VII-2, VII-3.

[53] The Canadian producer reported production capacity of *** dry pounds in 2005, and *** dry pounds in 2007; it is projected to be *** dry pounds in 2008 and 2009. Production increased from *** dry pounds in 2005 to *** dry pounds in 2007; it is projected to be at *** dry pounds in 2008 and at *** dry pounds in 2009. CR/PR at Table VII-1.

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

[55] Chinese producers reported production capacity of 1,088 million dry pounds in 2005, and 1,829 million dry pounds in 2007; it is projected to be 1,898 million and 1,899 million dry pounds, respectively in 2008 and 2009. Production increased from 933 million dry pounds in 2005 to 1,657 million dry pounds in 2007; it is projected to be at 1,712 million dry pounds in 2008 and at 1,720 million dry pounds in 2009. CR/PR at Table VII-2.

[56] CR/PR at Table VII-2.

[57] CR/PR at Table VII-1.

[58] CR/PR at Table VII-2.

subject country. In addition, available information on orders placed for delivery after March 31, 2008, did not indicate that significant additional volumes were expected.[59] We note that the European Union has initiated an investigation on imports of citric acid from China which is currently ongoing, but there is nothing to indicate that subject import volumes from China to the U.S. market will be impacted by that investigation in the imminent future.[60]

Petitioners alleged various countervailable subsidies with respect to subject imports from China, including alleging that some of them are export subsidies.[61] Commerce has decided not to investigate some of the programs alleged to be subsidies. Further, it has only initiated its countervailing duty investigations, so it has not yet designated any of the subsidies as export subsidies.[62] At the conference, Petitioners emphasized that these subsidies have allowed Chinese producers to improve the quality of their citric acid and citrate salts production, and enter into the food and beverage sector of the market.[63] We note that caking still limits Chinese participation in the soft drink segment of the market.[64] Further, even if these subsidies would encourage exports in general, they would not necessarily encourage exports to the United States. As discussed above, the Chinese industry focused more on non-U.S. markets during the POI, and Chinese imports into the United States decreased by 21.7 percent in interim 2008 from interim 2007 levels.[65] Thus, we do not find that subject imports from China are likely to increase in the imminent future due to the alleged subsidies, and we conclude for all of the reasons set forth above that there is no likelihood of a substantial increase in subject imports from Canada and China to the U.S. market in the imminent future.

Next, we consider whether cumulated subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports. As discussed above, with some exceptions, subject imports oversold the domestic like product, and we see no reason why that would change in the imminent future. Given that subject imports are entering the U.S. market at prices higher than domestic prices, they are unlikely to increase demand for further imports. Further, subject imports are not depressing U.S. prices – U.S. prices rose over the period of investigation.[66]

Subject imports are also not entering at prices that are likely to suppress domestic prices. We acknowledge that the unit COGS to net sales ratio for the domestic industry increased over the period of investigation.[67] An increase in this ratio is an indication that prices are not keeping up with increases in costs. In the conditions of competition of this industry, however, the domestic industry has entered into short- and long- term contracts in a market in which costs are rising rapidly, especially corn costs.[68] We conclude that the increase in the COGS to sales ratio in this industry is due to the industry's inability to recoup the increases in costs, not price pressure brought by the subject imports. Further, we find it likely

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[59] CR/PR at Table VII-4.

[60] CR at VII-10; PR at VII-7.

[61] Petitioner alleged subsidies by the Government of China to the Chinese industry in the form of preferential loans and interest rates, direct grants, preferential income tax programs, provincial and local income tax preferences, VAT and duty exemptions, and provision of goods and services for less than adequate remuneration. Petition at 11. Petitioner has alleged that the VAT and duty exemptions on exports is an export subsidy, and other subsidies also appear to be related to exports. Petition at 30, 42, 43, 46. Postconference Brief at 40-42.

[62] 73 Fed. Reg. 26960, 26962-3 (May 12, 2008).

[63] Transcript from Commission Conference at 9 (Ellis, Petitioners' counsel), and 30 (Christiansen, Cargill).

[64] CR/PR at Table IV-3.

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

[66] CR/PR at Table V-1 to V-6.

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

[68] CR/PR at V-1.

that the intense competition between the domestic producers in this industry will continue to be the factor that keeps prices from rising in tandem with rising costs. Our analysis is strengthened by the overselling by the subject imports and the small number of confirmed lost sales and lost revenues.[69] We do not find that subject imports are entering the U.S. market at prices that are likely to have a significant depressing or suppressing effect on domestic prices, or at prices that are likely to increase demand for further imports.

Finally, certain conditions of competition limit the degree to which the subject imports and the domestic like product compete in the U.S. market and thus the degree to which they could threaten the domestic industry. Imports are needed to supply the U.S. market. The U.S. market for citric acid and certain citrate salts stands at approximately *** dry pounds, and the domestic industry's production capacity is approximately 554 million dry pounds.[70] Even at full capacity, the domestic industry could not supply every pound of citric acid and certain citrate salts the market demands.

Subject imports do not fully compete in all segments of the U.S. market for citric acid and certain citrate sales. Subject imports from China do not threaten the soft drink segment of the U.S. market. As discussed above, caking limits the use of the Chinese product in soft drink applications, and the Chinese product is largely absent from this market.[71] ***.[72] Subject imports from Canada, in contrast, are largely absent from the industrial segment of the U.S. market.[73]

Accordingly, based on the record in these preliminary phase investigations, we determine that there is no reasonable indication that the domestic industry producing citric acid and certain citrate salts is threatened with material injury by reason of subject imports from Canada and China.

IV. CONCLUSION

For the reasons stated above, we do not find a reasonable indication that the domestic industry producing citric acid and certain citrate salts is materially injured or threatened with material injury by reason of subject imports from Canada and China that are allegedly sold at LTFV and subject imports from China that are allegedly subsidized by the Government of China.

[69] CR/PR at Tables V-1-V-7 (overselling), Tables V-8 -V-9 (lost sales and lost revenues).

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

[71] CR/PR at Table IV-3.

[72] CR at IV-6; PR at IV-4.

[73] CR/PR at Table IV-3.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on April 14, 2008, by Archer Daniels Midland Co. of Decatur, IL ("ADM"); Cargill, Inc. of Wayzata, MN ("Cargill"); and Tate & Lyle Americas, Inc. of Decatur, IL ("Tate & Lyle"), alleging that an industry in the United States is materially injured and is threatened with continued material injury by reason of imports from Canada and China of citric acid and certain citrate salts[1] that are allegedly sold in the United States at less than fair value ("LTFV") and subsidized by the government of China. Information relating to the background of these investigations is provided below.[2]

Effective date	Action
April 14, 2008	Petition filed with Commerce and the Commission; Commission institutes investigations (73 FR 21650, April 22, 2008)
May 7, 2008	Commission's conference[1]
May 12, 2008	Initiation of countervailing duty investigation by Commerce (73 FR 26960)
May 13, 2008	Initiation of antidumping investigations by Commerce (73 FR 27492)
May 28, 2008	Commission's vote
May 29, 2008	Commission's determinations transmitted to Commerce
June 5, 2008	Commission's views transmitted to Commerce
[1] A list of witnesses that appeared at the conference is presented in app. B.	

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

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 section entitled *The Subject Product* located in Part I of this report.

[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.*

Organization of the Report

Information on the subject merchandise, alleged margins of dumping and subsidies, 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. Information obtained for use in the Commission's consideration of the question of threat of material injury is presented in *Part VII*.

U.S. MARKET SUMMARY

The U.S. market for citric acid and certain citrate salts totaled *** dry pounds and approximately $*** in 2007. Currently, three firms produce citric acid and certain citrate salts in the United States. These firms are the petitioners and consist of ADM, Cargill, and Tate & Lyle. Only one firm, Jungbunzlauer Technology GmbH & Co. ("JBL"), imports citric acid from Canada.[3] At least 27 firms have reported importing citric acid and certain citrate salts from China since 2005.

U.S. producers' U.S. shipments of citric acid and certain citrate salts totaled *** million dry pounds valued at $*** million in 2007, and accounted for *** percent of apparent U.S. consumption by quantity (*** percent by value). U.S. imports from Canada totaled *** dry pounds valued at *** in 2007, and accounted for *** percent of apparent U.S. consumption by quantity (*** percent by value). U.S. imports from China totaled 180 million dry pounds valued at $76.6 million in 2007, and accounted for *** percent of apparent U.S. consumption by quantity (*** percent by value). U.S. imports from all other sources combined totaled 65.6 million dry pounds valued at $38.8 million in 2007, and accounted for *** percent of apparent U.S. consumption by quantity (*** percent by value). Citric acid and certain citrate salts are generally used as an acidulant, preservative, and flavor enhancer in food and beverage end uses as well as an ingredient in many household and industrial detergents and cleaners.

SUMMARY DATA AND DATA SOURCES

A summary of data collected in these investigations is presented in appendix C, table C-1.[4] U.S. industry data are based on the questionnaire responses of the three petitioning firms that accounted for all U.S. production of citric acid and certain citrate salts in 2007. Data for U.S. imports from Canada are compiled using the reported U.S. imports of JBL, the sole U.S. importer of Canadian product. Data for U.S. imports from China and nonsubject countries are compiled using official Commerce statistics. Data regarding the Canadian industry are based on one foreign producer questionnaire, Jungbunzlauer Technology GmbH & Co. ("JBL Canada"), which accounted for all Canadian export shipments to the United States in 2007. Data regarding the Chinese industry are based on 17 foreign producer questionnaires. The responding foreign producers believe that they accounted for more than 90 percent of Chinese export shipments to the United States in 2007.[5]

PREVIOUS AND RELATED INVESTIGATIONS

Citric acid and certain citrate salts have been the subject of a previous Commission investigation.[6] In 2000, in investigation No. 731-TA-863 (Preliminary), the Commission determined that there was no reasonable indication that an industry in the United States was materially injured or threatened with

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[3] JBL does not import sodium citrate or potassium citrate from Canada. JBL Canada, the sole Canadian producer, did not produce these citrate salts during the period of investigation.

[4] Appendix C, table C-2 displays data compiled regarding the U.S. citric acid market, table C-3 displays data regarding the sodium citrate market, and table C-4 displays data regarding the potassium citrate market. Finally, appendix C, table C-5 displays data compiled from *** regarding its unrefined calcium citrate operations. ***. The parties have stated that they are unaware of any U.S. imports of UCC during the period of investigation. Petitioners' postconference brief, exh. 1, p. 3.

[5] Chinese respondents' postconference brief, p. 1 and exh. 11. Export shipments reported by responding Chinese producers were equivalent to 85.5 percent of U.S. imports from China in 2007.

[6] The scope of the 2000 investigation consisted of citric acid and sodium citrate. The current investigation's broader scope consists of those products, potassium citrate, and unrefined calcium citrate.

material injury by reason of imports from China that were allegedly sold at LTFV.[7] The Commission determined that the volume of U.S. imports from China was not significant, stating that "Chinese imports have not made significant inroads into sales made by the domestic industry to U.S. food and beverage manufacturers {by far the largest market segment in the United States at the time}. Rather, the large majority of subject imports compete with the domestic product only in the industrial use market, where the subject imports have already increased their market share without a significant adverse impact on the industry."[8] Further, the Commission determined that the record did not indicate price depression or suppression and that the U.S. industry was not adversely impacted by reason of U.S. imports from China.[9] Finally, the Commission determined that there was no reasonable indication that the U.S. industry was threatened with material injury by reason of the subject imports, noting that "Chinese producers of citric acid and sodium citrate are currently operating at a high capacity utilization level" and that "Chinese home market and third country market shipments have risen each year since 1996."[10] [11]

NATURE AND EXTENT OF ALLEGED SALES AT LTFV

On May 13, 2008, Commerce published a notice in the *Federal Register* of the initiation of its antidumping investigations on citric acid and certain citrate salts from Canada and China. The estimated weighted-average dumping margins (in percent *ad valorem*) for Canada, as reported by Commerce (based on petitioners' comparisons of the export price to normal value), ranged from 22.91 percent to 111.83 percent. Commerce reported the estimated weighted-average dumping margin for China to be 156.87 percent.[12]

NATURE OF ALLEGED COUNTERVAILABLE SUBSIDIES

On May 12, 2008, Commerce published a notice in the *Federal Register* of the initiation of its countervailing duty investigation on citric acid and certain citrate salts from China.[13] In its notice,

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[7] *Citric Acid and Sodium Citrate From China, Inv. No. 731-TA-863 (Preliminary)*, USITC Pub. 3277, February 2000.

[8] Ibid. at p. 12.

[9] Ibid., pp. 14-15.

[10] Ibid., pp. 16-17.

[11] Also mentioned in the Commission's prior investigation was a price-fixing conspiracy in the citric acid industry that took place in the 1990s. ADM and Haarmann & Reimer pled guilty in October 1996 and January 1997, respectively, to participation, along with two European producers, in a price-fixing conspiracy which the U.S. Justice Department found to be in place as early as 1991. The guilty plea resulted in total fines of $100 million for the four firms. ***. Also, several U.S. civil class action law suits were filed in 1996 and 1997 in which ADM agreed to pay $85 million and Haarmann & Reimer agreed to pay $46 million to bottlers and food processors. In all, fines paid out on the cases totaled over $200 million. In 1998, Haarmann & Reimer sold its entire worldwide citric acid business to Tate & Lyle. Ibid., p. III-1, fn. 3. The Commission explicitly stated that it gave the price fixing "little weight" in its determination since "as it may have affected prices only for the early part of the investigation." Ibid., p. 13 n.88.

[12] *Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Initiation of Antidumping Duty Investigations;* 73 FR 27492, May 13, 2008.

[13] Commerce has determined that the current nature of the economy in China does not create obstacles to applying the necessary criteria in the countervailing duty law and initiated a countervailing duty investigation against China. *See Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484, 17486 (April 9, 2007).

Commerce listed the following programs alleged in the petition to have provided countervailable subsidies to producers of citric acid and certain citrate salts in China:[14]

Preferential Lending

1. Government Policy Lending Program
2. Funds provided for the rationalization of the citric acid industry
3. Discounted loans for export–oriented industries
4. Loans provided pursuant to the Northeast Revitalization Program

Grant Programs

5. State Key Technology Renovation Program Fund
6. National level grants to loss–making state–owned enterprises
7. "Famous Brands" Program

Income Tax Programs

8. "Two Free, Three Half" program
9. Reduced income tax rates for foreign–investment enterprises based on location
10. Income tax exemption program for export–oriented foreign–investment enterprises
11. Tax benefits to foreign–investment enterprises for certain reinvestment of profits
12. Reduced income tax rate for high or new technology enterprises
13. Reduced income tax rate for technology or knowledge intensive foreign–investment enterprises
14. Preferential income tax rate for research and development at foreign–investment enterprises
15. Preferential tax programs for encouraged industries
16. Preferential tax policies for township enterprises
17. Income tax credits on purchases of domestically produced equipment

Indirect Tax Programs and Import Tariff Program

18. Value added tax rebate for purchases by foreign–investment enterprises of domestically produced equipment
19. Value added tax and duty exemptions on imported equipment
20. Excessive value added tax rebates on exports

Provincial/Local Subsidy Programs

21. Provincial level grants to loss–making state–owned enterprises
22. Local income tax exemption and reduction program for "productive" foreign–investment enterprises

Anhui Province:
23. Reduced income tax rates for encouraged industries in Anhui Province

[14] *Citric Acid and Certain Citrate Salts from the People's Republic of China: Initiation of Countervailing Duty Investigation;* 73 FR 26960, May 12, 2008.

24. Provision of land for less than adequate remuneration in Anhui Province

Guangdong Province:
25. Funds for "outward expansion" of industries in Guangdong Province

Jiangsu Province:
26. Income tax exemption for foreign–investment enterprises located in Jiangsu Province
27. Preferential tax programs for enterprises located in the Su Qian Economic Development Zone
28. Provision of land for less than adequate remuneration in the Su Qian Economic Development Zone
29. Provision of electricity for less than adequate remuneration in the Su Qian Economic Development Zone

Liaoning Province:
30. Loans and interest subsidies pursuant to the Liaoning Province's five-year framework

Shandong Province:
31. Local and income tax exemptions and reductions for firms located in Qilu Chemicals Industry Park

Shanxi Province:
32. Preferential tax program for enterprises located in Shanxi Province
33. Funding for enterprises under the Shanxi Province 10th Five-year Plan

Shenzhen City:
34. Export interest subsidy funds for enterprises located in Shenzhen City

Zhejiang Province:
35. Export interest subsidy funds for enterprises located in Zhejiang Province
36. Exemptions and reductions in taxes and fees for chemical research and development institutions located in Zhejiang Province
37. Provision of land for less than adequate remuneration for enterprises located in Hangzhou Bay Fine Chemical Park
38. Provision of electricity for less than adequate remuneration for enterprises located in Hangzhou Bay Fine Chemical Park

THE SUBJECT PRODUCT

Commerce's Scope

Commerce has defined the scope of these investigations as follows:

> All grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of these investigations also includes all forms of unrefined calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate.
>
> The scope of these investigations includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.
>
> Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States ("HTSUS"), respectively. Potassium citrate and calcium citrate are classifiable under 2918.15.5000 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS.[15] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Tariff Treatment

During the period of investigation, citric acid has been classifiable in the Harmonized Tariff Schedule of the United States ("HTS") under subheading 2918.14.00, sodium citrate under HTS subheading 2918.15.10, and potassium citrate under HTS subheading 2918.15.50.[16] Table I-1 depicts the HTS subheadings under which citric acid and certain citrate salts are classified and their tariff treatment.

[15] The parties to these investigations stated that they were unaware of any citrate blends being imported into the United States during the period of investigation. Petitioners added a reference to citrate blends in the scope language to prevent circumvention of any future antidumping or countervailing duty orders. Petitioners' answers to Commerce's questions, April 22, 2008, vol. 1, p. 1.

[16] Although HTS subheading 2918.15.50 is a residual or "basket" subheading covering salts and esters of citric acid other than sodium citrate, petitioners contend that the vast majority of U.S. imports entering under it are potassium citrate. In the event that unrefined calcium citrate were imported into the United States, it may be classified under this subheading. However, the parties to these investigations are unaware of any U.S. imports of unrefined calcium citrate. Conference transcript, p. 54 (Ellis).

Table I-1
Citric acid and certain citrate salts: Tariff treatment, 2008

HTS provision	Article description	General[1]	Special[2]	Column 2[3]
		Rates *(percent ad valorem)*		
2918	Carboxylic acids with additional oxygen function and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:			
2918.14.00	Citric acid.....	6.0%	Free	39.5%
2918.15	Salts and esters of citric acid:			
2918.15.10	Sodium citrate.....	6.5%	Free	42.0%
2918.15.50	Other.....	3.7%	Free	25.0%

[1] Normal trade relations, formerly known as the most-favored-nation duty rate.
[2] Special rates are applicable to originating goods of Canada under the NAFTA. Other special rates apply to nonsubject countries.
[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 (2008).

Description and Applications

The imported products subject to these investigations are citric acid and certain citrate salts, specifically sodium citrate, potassium citrate, and unrefined calcium citrate ("UCC").

Citric acid, sodium citrate, and potassium citrate are all available as odorless, translucent crystals.[17] These crystals are normally sold in three granulations: granular, fine granular, and powder.[18] Citric acid is also available in solution.[19] Purchasers can buy the dry product and put it into solution or have an independent converter do it.[20] Petitioners argue that the products have only minor molecular differences which do not significantly alter their essential characteristics or uses.[21]

UCC is an intermediate form in the production of citric acid via the lime/sulfuric acid process.[22] UCC can be shipped to another facility for further processing into refined citric acid.[23]

Citric acid is produced and sold in the U.S. market in both its dry and solution forms, and can be easily and reversibly converted between these two forms. Whether dry or dissolved in water, the product's chemical properties are the same.[24] The petitioners stated that the bulk of their shipments are in the dry form, but they do ship as much as 25 percent in solution.[25] Sodium citrate and potassium citrate are sold in dry forms.[26] According to the petitioners, the three products are used basically for the same purposes, sold in the same markets, and produced in the same production facilities.[27]

[17] Petition, pp. 5-6.
[18] Petition, p. 6.
[19] Petition, p. 6.
[20] Petition, p. 6.
[21] Petition, p. 6.
[22] Petition, p. 8.
[23] Petition, pp. 8-9.
[24] Petition, p. 6.
[25] Conference transcript, p. 65 (Poulos and Christiansen).
[26] Petition, p. 6.
[27] Conference transcript, p. 60 (Anderson).

Citric acid is produced as a white granular or crystalline powder with a strong acidic taste. It is produced by the fermentation of glucose from a substrate such as corn, molasses, sweet potato, tapioca, or wheat.[28] Citric acid is produced both in anhydrous form and as a monohydrate. Both forms are isolated and purified through successive recrystallizations.

Sodium citrate is a white, granular crystalline powder with a pleasant acidic taste. Sodium citrate is produced by mixing citric acid slurry with sodium hydroxide (or sodium carbonate) and then crystallizing the resulting sodium citrate.[29] Potassium citrate is produced by reacting citric acid slurry with potassium hydroxide (or potassium carbonate).[30]

Citric acid, sodium citrate, and potassium citrate are chemical products used in the production and formulation of a wide variety of foods, beverages, pharmaceuticals, and cosmetics as well as commercial and household products including detergents, metal cleaners, textile finishing treatments, and other industrial applications. Citric acid is used in the food and beverage industry as an acidulant, preservative, and flavor enhancer because of its tart flavor, high solubility, acidity, and buffering capabilities.[31] It is commonly used in carbonated and non-carbonated drinks, dry powdered beverages, wines and wine coolers, jams, jellies, preserves, gelatin desserts, candies, frozen foods, and canned fruits and vegetables.[32] The use of citric acid in laundry detergents has increased because it has replaced phosphate-based formulations and because more concentrated liquid detergents, which are increasing in popularity, require more citric acid than do powdered detergents.[33]

Sodium citrate, in addition to similar applications as citric acid, is used in cheese and dairy products to improve emulsifying properties, texture, and melting properties and to act as a preservative and aging agent.[34] It also has pharmaceutical applications such as a diuretic and an expectorant in cough syrup.[35]

Potassium citrate is used as an antacid, a diuretic, an expectorant, and as a systemic and urinary alkalizer. In industrial applications, potassium citrate can be used in electropolishing and as a buffering agent. In food and beverage applications, potassium citrate has been replacing sodium citrate as a means of reducing sodium content in low- or no-salt products.[36]

Both petitioners and respondents state that citric acid and certain citrate salts are produced to meet very high purity U.S. Pharmacopoeia ("USP") or Food Chemical Codex ("FCC") standards. The Canadian and Chinese producers sometimes certify their products as complying with the British Pharmacopoeia ("BP") standards, which are very similar to those of the USP.[37] The products must meet these standards to be used in food and beverage or pharmaceutical applications. Both petitioners and respondents stated that most of the world-class producers try to produce the highest quality product so that it will pass USP or FCC standards since some of the largest customers are in the food and beverage business. A respondent stated that in addition to high purity standards, other quality factors in the product such as color, acidity level, consistency of pH level, and granulation or clumping play an important role in the sale of the product. According to this witness, these factors, in addition to the FCC and USP

[28] Petition, p. 9.

[29] Petition, p. 12.

[30] Petition, p. 12.

[31] Petition, p. 7.

[32] Conference transcript, p. 18 (Oakley).

[33] Petition, p. 8.

[34] Petition, p. 8.

[35] Petition, p. 8.

[36] Petition, p. 8.

[37] Petition, p. 7.

standards, determine in what market segment the subject product will be used.[38] At the staff conference, both petitioners and respondents referred to quality tiers in end-use markets for citric acid and certain citrate salts. End uses in foods, beverages, and pharmaceuticals constitute an upper tier, while detergent formulation and industrial uses make up a lower tier.

Jungbunzlauer ("JBL"), the sole Canadian producer, manufactures only citric acid at its plant in Canada. It does not produce any of the salts. It ships citric acid in both dry and solution forms.

The Chinese producers manufacture primarily citric acid. Mr. Hsu stated at the conference that China's limited resources of the sodium and potassium compounds used to make the subject salts render Chinese-produced salts less competitive in the U.S. market.[39]

Manufacturing Processes

Citric acid is produced in a two-stage process. In the first stage, sugars are fermented using a fermenting organism such as molds or yeasts. In the second stage, the crude citric acid is recovered and refined. Sodium citrate and potassium citrate are produced by reacting citric acid slurry with a solution containing certain sodium or potassium compounds (e.g., sodium hydroxide or potassium hydroxide).[40] The domestic producers stated during the conference that they produce sodium citrate and potassium citrate using the same equipment and workers that are used for citric acid.[41]

Modern, large-scale production of citric acid is achieved through fermentation.[42] The fermentation process involves the action of specific strains of organisms such as the *Aspergillus niger* mold or the *Candida lipolytica* or *Candida guilliermondii* yeast upon a substrate.[43] Once the substrate is turned into glucose, it is fermented into crude citric acid by the organism.[44] The yield of citric acid can be optimized through the careful control of fermentation conditions, such as temperature, acidity or alkalinity, dissolved air or oxygen, and the rate of stirring of the mixture. Each fermentation reaction is done in batch in large tanks which hold several thousand gallons and takes approximately *** to achieve a citric acid yield of *** percent, based on the weight of the sugar.[45]

Producers ferment the substrate by one of three different methods: "shallow pan," "deep tank," or solid-state.[46] Citric acid was originally produced using a shallow pan or liquid surface culture technology, where microbial fermentation occurred on the surface of the liquid. Some smaller, older Chinese plants may still use this technology.[47] Most modern production of citric acid uses a deep tank or a submerged culture process, where the reaction is constantly agitated or stirred with air in order to allow the organism to grow throughout the mixture. The petitioners use only the deep tank method ***.[48] The submerged culture process is favored due to the economics of increased yields, although reaction

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[38] Conference transcript, p. 161 (Hsu).

[39] Conference transcript, p. 171 (Hsu).

[40] Petition, p. 12.

[41] Conference transcript, pp. 84-85 (Oakley and Staloch).

[42] "Citric acid," Kirk-Othmer Encyclopedia of Chemical Technology (John Wiley & Sons, New York, 1979), Vol. 6, pp. 156-159.

[43] Petition, p. 9.

[44] Petition, p. 9.

[45] Petition, exh. I-2, *Chemical Economics Handbook*, "Citric Acid," August 2006, pp. 10-11.

[46] Petition, p. 9.

[47] Petition, p. 10.

[48] Petition, p. 10. Staff telephone interview with ***. Email from ***.

conditions must be more tightly controlled.[49] According to petitioners, solid-state fermentation is used only in Japan.[50]

Corn starch is the principal substrate in the United States, Canada, and China. U.S. producers also use molasses.[51] Some Chinese producers also use cassava, sweet potato, or wheat.[52]

The second stage of production, recovery and refining, is normally performed by one of three common processes: the lime/sulfuric acid method, the solvent extraction method, or the ion exchange method. All three of these processes are compatible with either the shallow pan or deep tank fermentation processes.[53]

In the lime/sulfuric acid refining process, calcium hydroxide (lime) is added to the fermentation broth to precipitate out calcium citrate slurry, the UCC that is also part of the scope. After the calcium citrate is separated by filtration, it is washed to remove soluble impurities. The citrate is then mixed with sulfuric acid to produce a citric acid/charcoal slurry and gypsum (calcium sulfate). The citric acid is then purified through evaporation, crystallization, centrifugation, and drying. This process is used by ***.[54]

The second common refining method, used by ***, is the solvent extraction process. This process does not involve the production of calcium citrate or gypsum. Instead, solvents separate the citric acid slurry from spent biomass. The subsequent processes of evaporation, crystallization, centrifugation, and drying are similar to those used in the lime/sulfuric acid process.

The third refining method, ion exchange, is a recent development. In this method, the slurry is passed through a bed of polymer-based resin. Ionic mineral elements such as calcium and magnesium adhere to the resin, thus removing them from the citric acid slurry. The subsequent steps are similar to the other two processes.[55] *** use the ion exchange method. ***.[56]

All three refining methods produce citric acid that is dissolved in water. The temperature used for the crystallization process determines whether the anhydrous or hydrous form is produced.[57]

Producers can either sell the citric acid or convert it into salts. Petitioners produce dihydrate sodium citrate and anhydrous sodium citrate by diverting some of the citric acid slurry to a line dedicated to citric salt production, where the slurry is reacted with sodium hydroxide or sodium carbonate. Similarly, potassium citrate is produced by reacting citric acid slurry with potassium hydroxide or potassium carbonate.[58]

The dry forms of the subject merchandise are packaged in polyethylene-lined paper bags, typically holding 50 pounds or 25 kilograms. "Super sacks" containing 500 to 2,000 pounds are also used. When preferred in solution form, the subject product is shipped in drums, railcars, or tank trucks. Drums are usually 200 to 275 pounds.[59]

Sodium citrate and potassium citrate can also be produced by some distributors that are known as "converters." Converters can provide either citric acid as purchased from the manufacturer, or have the

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[49] "Citric acid," Kirk-Othmer Encyclopedia of Chemical Technology (John Wiley & Sons, New York, 1979), Vol. 6, pp. 156-157.

[50] Petition, p. 10.

[51] Petition, p. 9.

[52] Petition, p. 9.

[53] Petition, p. 10.

[54] Petition, pp. 10-11.

[55] Petition, p. 11.

[56] Staff telephone interview with ***. Email from ***.

[57] Petition, p. 11.

[58] Petition, p. 12.

[59] Petition, p. 13.

equipment on hand to blend sodium hydroxide or potassium hydroxide with citric acid, thus producing sodium citrate or potassium citrate, respectively.[60]

INTERMEDIATE PRODUCT

UCC is an intermediate product of producers that use the lime/sulfuric acid refining method.[61] Petitioners asserted that UCC has only one function - to be converted into citric acid.[62] Respondents did not contradict this assertion. Petitioners stated that there is not a separate UCC market in the United States or anywhere else around the globe, but they have been aware of instances when UCC was shipped from one country to another for further processing.[63] Although there are no known imports of UCC,[64] petitioners said that they included it in the scope of the subject product to avoid circumvention.[65]

DOMESTIC LIKE PRODUCT ISSUES

In the Commission's 2000 investigation, the scope of which included only citric acid and sodium citrate, the Commission defined a single domestic like product that included both, finding that "although specific end product formulations limit the actual interchangeability of citric acid and sodium citrate, the record indicates that they are physically and chemically similar, are sold through the same channels of distribution at similar prices and share the same manufacturing processes, as well as common production facilities and employees . . . even though there are a few end uses unique to each of them, citric acid and sodium citrate can be used for similar purposes in a wide variety of food, beverage and industrial products." The scope of these investigations includes citric acid, sodium citrate, and additionally, potassium citrate. The petitioners contend that the Commission should find one domestic like product that is co-extensive with the scope of merchandise subject to the investigations as identified by Commerce.[66] They claim that potassium citrate, much like sodium citrate, has many of the same end uses as citric acid, is derived from the citric molecule, produced in the same production facilities, and sold in the same markets.[67] Respondents have agreed with petitioners' proposed definition of the domestic like product for purposes of the preliminary phase of these investigations.[68]

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[60] Conference transcript, pp. 23-24 (Oakley).

[61] Conference transcript, p. 19 (Oakley).

[62] Conference transcript, p. 19 (Oakley) and p. 87 (Ellis).

[63] Conference transcript, pp. 19 and 87 (Oakley).

[64] Conference transcript, p. 54 (Ellis).

[65] Conference transcript, p. 59 (Ellis).

[66] Petitioners' postconference brief, p. 4.

[67] Ibid., exh. 1, p. 2.

[68] E.g., Chinese respondents' postconference brief, p. 6; Conference transcript, p. 137 (Porter, Waite).

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

U.S. MARKET SEGMENTS

Citric acid and certain citrate salts have three primary end-use markets: foods and beverages (especially carbonated beverages and newer health drinks), industrial (detergents and cleaners), and pharmaceuticals.[1]

In the food and beverage segment, citric acid and certain citrate salts must meet the purity standards of the U.S. Food and Drug Administration's ("FDA") Food Chemical Codex ("FCC") for sale in the U.S. market. Likewise, in the pharmaceutical segment, citric acid and certain citrate salts must meet the standards of the U.S. Pharmacopoeia ("USP").[2] Citric acid and certain citrate salts that meet FCC and USP standards are called "food grade," a standard higher than that required for the industrial segment. However, U.S. producers typically manufacture citric acid and certain citrate salts to meet the same FCC/USP standards regardless of end use, and they sell "food grade" product to the industrial segment as well as to the food and drug segment.[3] Petitioners stated that there is no price premium for product sold into the food and beverage segment.[4]

Petitioners stated that subject imports from both Canada and China compete with U.S. product across all the market segments for citric acid and certain citrate salts.[5] JBL described purchasers as viewing JBL as interchangeable with the three U.S. producers.[6] Importer United Foods stated that Chinese product does not compete in the soft drink segment, as Chinese product is prone to "caking" (i.e., absorbing moisture) en route to the United States, and thus becomes more difficult to use in soft drink manufacturers' production process[7] (see Part IV). United Foods added that Chinese product is more available in the smaller food product segments, where the smaller volumes make the market less interesting to U.S. producers accustomed to larger shipment volumes.[8]

*** sell citric acid and/or certain citrate salts to a national market.[9] Among other importers, 11 sold to a national market or to more than four regions, three sold to two or three regions, and eight sold to only one region. For a more detailed discussion, see Part IV.

CHANNELS OF DISTRIBUTION

Petitioners stated that all major domestic and foreign producers compete for critical large volume accounts across the food, beverage, and detergent industries. According to petitioners, approximately 75 percent of all citric acid and certain citrate salts sold in the United States are sold to about 25 end

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[1] See Part IV for data on the relative sizes of these markets.

[2] Petition, p. 7.

[3] Petition, p. 12, and conference transcript, p. 20 (Oakley).

[4] Conference transcript, p. 54 (Staloch).

[5] Conference transcript, pp. 8-9 (Ellis).

[6] Conference transcript, p. 162 (Waite).

[7] ***.

[8] Conference transcript, pp. 110-114 (Hsu).

[9] *** submitted both producers' and importers' questionnaires in these investigations. For purposes of this chapter, their answers were the same for both questionnaires submitted by their firm. Thus, in this chapter, their responses have been counted only among producers.

users.[10] [11] Petitioners added that citric acid and certain citrate salts are not sold to end users or distributors based on what end use is intended for the product, but rather on volume, with smaller-volume purchasers buying from distributors and larger end users buying directly from producers and importers.[12]

Table II-1 presents information on channels of distribution for U.S. producers as well as for U.S. importers of subject product from Canada and China and nonsubject product from other countries. U.S. producers ship somewhat more of their product to end users than subject and nonsubject importers do, although U.S. product and subject imports were always shipped to end users more than to distributors over the period examined.

Table II-1
Citric acid and certain citrate salts: U.S. producers' and U.S. importers' U.S. shipments of subject product, by channels of distribution, 2005-07, January-March 2007, and January-March 2008

* * * * * * *

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. citric acid and certain citrate salts producers have the ability to respond to changes in demand with moderate-to-small changes in the quantity of shipments of U.S.-produced citric acid and certain citrate salts to the U.S. market. There are no alternate products produced using the same equipment used to produce citric acid and certain citrate salts, and capacity utilization is high. Nonetheless, utilization is down from 2005 levels, and there are substantial exports that could be diverted to the U.S. market.

Industry capacity

U.S. producers use deep tank fermentation to produce citric acid and certain citrate salts. This method is more productive and has lower labor costs than the shallow pan process used by some Chinese plants, but has higher energy costs.[13] U.S. producers stated that because of the high fixed costs in the industry, slowing production has "substantial" costs.[14]

U.S. capacity is unchanged since 2006, after a small rise from 2005 to 2006. Capacity utilization fell from high levels in 2005 to more moderate (though still high) levels in 2006, and then recovered somewhat in 2007 and the first three months of 2008. The Chemical Economics Handbook, or CEH, ***.[15]

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[10] Petition, p. 13.

[11] Conference transcript, pp. 20-21 (Oakley). Petitioners added that these 25 end users typically purchase through fixed-price, fixed-quantity contracts, and that typically these end users focus on price (after ensuring that product meets FCC/USP specifications) during contract negotiations.

[12] Conference transcript, pp. 74-75 (Oakley).

[13] Petition, p. 10.

[14] Conference transcript, p. 35 (Poulos).

[15] CEH report, p. 8.

United Foods stated that U.S. capacity is not sufficient to supply the entire U.S. market, and as a result, U.S. producers focus on larger accounts.[16] JBL noted that it had recently produced for a U.S. producer (under that producer's brand name) when that producer's production had been disrupted, and that Cargill has announced supply allocations through September 2008 (see Part III for a discussion of petitioners' responses to each of these arguments).[17]

Among U.S. producers, *** stated that there had been no changes in the product range or marketing of citric acid and certain citrate salts since January 1, 2005. ***, however, said that marketing had become more price-focused because of large volumes of available imported material.[18]

Alternative markets

Between January 2005 and March 2008, U.S. producers have exported between 20.1 percent of production (in 2006) and 29.3 percent of production (in the first three months of 2008). U.S. producers said that they could divert export shipments to the U.S. market if circumstances warrant.[19]

Inventory levels

U.S. producers' inventories fell from 13.2 percent of production in 2005 to 10.7 percent of production in 2007, and accounted for 9.0 percent of production in the first three months of 2008.

Production alternatives

U.S. producers reported that they *** produce any other products on the equipment used to produce citric acid and certain citrate salts.

Subject Imports

Canada

Based on available information, the Canadian producer has the ability to respond to changes in demand with moderate changes in the quantity of shipments of citric acid and certain citrate salts to the U.S. market. ***, the Canadian producer has *** inventories, *** exports, and *** capacity utilization. However, ***, the Canadian producer showed *** in capacity from 2005 to the first three months of 2008.

*** reported that it had not observed any changes in the product range and marketing of citric acid and certain citrate salts.

[16] Conference transcript, pp. 112-114 (Hsu).

[17] Conference transcript, pp. 121-122 (Waite).

[18] *** and 25 importers said that they did not sell citric acid and certain citrate salts over the internet.

[19] Conference transcript, p. 77 (Anderson).

Industry capacity

***, the Canadian producer uses *** to produce citric acid and certain citrate salts. This method is ***.[20] Petitioners believe that the Canadian producer uses an ion-exchange method of refining (rather than the solvent extraction or lime/sulphuric methods used by U.S. producers).[21]

JBL is the only known Canadian producer of citric acid. JBL's capacity rose by *** percent from ***. JBL projects that its capacity *** percent in 2008, but that its capacity ***.

JBL produces only citric acid, not certain citrate salts, in its Canadian plant. It reported that it chose its Canadian location because of the proximity to customers, its main raw material supplier (Corn Products International), and its water supply. It also said that it has replaced supplying the U.S. market from its Austrian plant with production from its Canadian plant.[22] It added that 100 percent of its Canadian citric acid is food grade.[23]

Alternative markets

JBL's exports to the United States accounted for *** percent of JBL's production in 2007, down from *** percent of production in 2005. ***.

Inventory levels

***.

China

Based on available information, Chinese producers have the ability to respond to changes in demand with large changes in the quantity of shipments of citric acid and certain citrate salts to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are the demonstrated growth in capacity, large alternate markets, and the potential for the imposition of antidumping duties on exports from China to the EU market.

Twenty importers of Chinese product noted that they had not observed any changes in the product range or marketing of citric acid and certain citrate salts. However, *** stated that increased import prices had reduced import supply, with *** adding that Chinese citric acid prices are increasing and are currently higher than U.S. prices.

Industry capacity

Petitioners stated their belief that large Chinese producers used the deep tank fermentation process (also used by ***), but that some smaller and older Chinese producers may still use the shallow pan production process.[24] Petitioners described the equipment used by the five largest Chinese producers

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[20] ***.

[21] Petition, p. 11.

[22] U.S. Census data on the customs value of U.S. imports for consumption show that, over the last ten years, U.S. imports of Austrian product fell from a high of $18.9 million in 2001 to $2.4 million in 2003, and rose slowly to $3.0 million in 2007. U.S. imports of Canadian product rose from $0.1 million in 2001 to $25.7 million in 2003 and then $48.3 million in 2007.

[23] Conference transcript, pp. 117-119 (Waite).

[24] Petition, p. 10.

as "world class."[25] Petitioners also stated that most Chinese product is anhydrous now (unlike during the previous investigation in 2000).[26] Petitioners also described Chinese capacity as having undergone massive expansion (subsidized by the Chinese government) in order to increase exports, as the Chinese market for citric acid is much smaller than Chinese capacity to produce citric acid.[27]

CEH has estimated Chinese citric acid production at ***, accounting for *** percent of 2006 world citric acid production. CEH has also estimated 2005 Chinese consumption of citric acid and salts at ***, and CEH projects Chinese consumption to grow at an annual rate of ***[28]. ***.[29]

Importers of product from China increased their U.S. shipments of citric acid and certain citrate salts by 41 percent between 2005 and 2007. According to data supplied in these investigations, Chinese capacity rose by 68 percent from 2005 to 2007, and by an additional 17 percent from January-March 2007 to January-March 2008.

Alternative markets

Chinese exports to the United States accounted for 12.3 percent of total Chinese shipments in 2005, and fell to 9.3 percent of total Chinese shipments in 2007. Chinese shipments to the Chinese market ranged from 24.2 percent of total Chinese shipments in 2005 to 29.2 percent of total Chinese shipments in 2007. Chinese shipments to non-U.S., non-Chinese markets are even larger, ranging from 62.3 to 59.7 percent of total Chinese shipments over 2005 to 2007.

Chinese citric acid is currently undergoing an antidumping duty investigation in the EU. Petitioners described imports from China into the EU as forcing the closure of an ADM plant in Ireland and a Tate & Lyle plant in England.[30] Petitioners also described 2007 Chinese exports to the EU as "triple" the levels sent to the United States.[31] See Part VII for more information on the EU investigation.

Inventory levels

Chinese inventories as a percent of production were relatively low and declining at 9.8 and 6.4 percent in 2005 and 2007, respectively.

Nonsubject Imports

Citric acid and certain citrate salts have been imported into the United States from Israel, Belgium, Germany, Colombia, Austria, and Thailand, listed in descending order of 2007 volume. Petitioners described Belgium as substantially below Canada and China in terms of production, and all other nonsubject countries as even further below Belgium.[32]

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[25] Conference transcript, p. 25 (Oakley).

[26] Conference transcript, p. 43 (Anderson).

[27] Petition, pp. 33-34.

[28] CEH Handbook, pp. 6-7.

[29] CEH Handbook, p. 35.

[30] Conference transcript, p. 26 (Oakley) and p. 36 (Anderson).

[31] Conference transcript, pp. 46-47 (Szamosszegi).

[32] Conference transcript, pp. 73-74 (Ellis and Anderson).

U.S. Demand

Based on the available information it is likely that changes in the price level of citric acid and certain citrate salts will result in a small change in the quantity of citric acid and certain citrate salts demanded. The main contributing factor to the small degree of responsiveness of demand is the very low cost share of citric acid and certain citrate salts in most of its end uses.

End Uses

In the food and beverage industry, citric acid is used as an acidulant, preservative, and flavor enhancer, especially in beverages (including carbonated, non-carbonated, dry powdered, and wine), jams, desserts, frozen foods, and canned fruits and vegetables. Citric acid is also used in pharmaceuticals and cosmetics, as well as in household laundry detergents, metal finishers, cleaners, textile treatments, and other industrial applications.[33]

Sodium citrate is used in the same products (and for the same reasons) as citric acid, but has additional uses in cheese and other dairy products, household cleaner products, and pharmaceuticals. Potassium citrate is used in pharmaecutical products as an antacid, a diuretic, and an expectorant. It is also useful in electropolishing and as a buffering agent, and can be used in place of sodium citrate in food and beverage products when it is important to reduce sodium content.[34]

According to the CEH, U.S. consumption of citric acid in 2005 comprises ***.[35] JBL estimated that, on a global basis, demand for citric acid comprises 40 percent beverage end uses, 20 percent food end uses, 25 percent detergent end uses, and the remainder pharmaceuticals.[36]

Importers also reported a variety of end uses, from beverages to food additives to cleaning chemicals and plastic blowing systems. *** named beverages as an end use, with *** also naming food additive as an end use. *** indicated that cleaning chemicals were another end use of citric acid and related citrate salts. Importers also named pet food, emulsifiers, and plastic additives as end uses.

Demand Characteristics

CEH reports that 2005 U.S. consumption of citric acid and salts was *** metric tons out of world consumption of *** metric tons. CEH projected 2010 U.S. consumption to rise to *** metric tons. CEH's estimates place the United States market as smaller than *** but ahead of ***.

Demand from beverage manufacturers is highest from April to August of each year.[37] However, a large portion of contracting is performed near the end of each year (see Part V).

Customers

Domestic producers and importers were asked to name their top 10 customers in 2007. Domestic producers also named a longer list of customers in their lost sales/lost revenues ("LSLR") allegations (discussed in more detail in Part V). Among domestic producers, *** named ***, *** named ***, *** named ***, and *** named ***. Other customers receiving one citation as a top 10 customer of a U.S.

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[33] Petition, p. 8.

[34] Petition, p. 8.

[35] CEH Handbook, p. 8 and staff calculations.

[36] Conference transcript, pp. 118-119 (Waite).

[37] Conference transcript, p. 122 (Waite).

producer and also a top ten customer of an importer include ***. Producers also named additional customers that did not appear on each other's lists or importers' lists.

Customers named by the Canadian importer JBL include ***.

Thirteen of the 24 Chinese importers named at least one customer that was also named by U.S. producers in either their top 10 customer list or in the LSLR allegations. However, no Chinese importer had more than three top 10 customers that met such a qualification. Six importers listed no firms that were also named by U.S. producers in either their top 10 customer list or in the LSLR allegations. Five importers left the section blank.[38]

For both producers and importers, the top 10 purchasers generally represented a large share of total sales in 2007, as shown in table II-2.

Table II-2
Citric acid and certain citrate salts: Producers' and importers' sales to their ten largest purchasers as a percentage of total 2007 sales

* * * * * * *

Demand Trends

*** reported that U.S. demand had increased since January 1, 2005. *** reported demand growth of three to five percent due to population growth. Similarly, *** described demand growth of two to four percent per year due to population growth and increases in per capita income. *** added that the growth of key demand segments (such as beverages) has closely approximated overall economic growth.

Twelve importers reported that demand had increased. *** cited general demand increases for downstream products, due to a growing population and new product introductions, as a reason for increased demand for citric acid and certain citrate salts. *** cited dishwasher cleaner as a growing end-use segment, but noted that it had lost that business (supplied by its Chinese product) to *** due to ***. *** noted a slight increase in demand due to an increase in cheese demand. *** stated that demand had increased due to increased detergent and beverage consumption. *** reported increased demand for use in specialty beverages and associated with the elimination of phosphates in laundry detergents. However, importer *** saw decreased demand from its one customer, and two importers did not know if demand had increased or decreased. Nine other importers had seen no change in demand for citric acid and certain citrate salts, but two of those noted that as importers of other products, they were not closely aware of trends in demand specifically for citric acid.

United Foods estimated that demand for citric acid and certain citrate salts had increased by 10 percent since 2005, and attributed that growth to increased state regulation of phosphoric acid in water treatment facilities, paper mills, sewage plants, and other industrial uses. According to United Foods, those users are switching to citric acid as a substitute.[39]

Petitioners ***[40] reported in the petition that the use of citric acid in laundry detergents has increased as citric acid has replaced phosphate-based formulations and because of the growth in sales of ultra-concentrated liquid detergents, which contain more citric acid than powdered detergents.[41] Petitioners also described demand for potassium citrate as increasing due to the rise in demand for low-

[38] ***.

[39] Conference transcript, p. 167 (Hsu).

[40] ***.

[41] Petition, p. 8.

sodium food and beverages, but later characterized detergent manufacturers as not having yet switched their formulas to incorporate citric acid.[42]

CEH reports that the main driver for citric acid demand growth is ***.[43]

Substitute Products

*** reported that there are substitutes for citric acid and certain citrate salts, and named phosphoric acid, phosphate, malic acid, and fumaric acid as such substitutes in beverages (phosphoric and malic acid), confectionary (phosphoric acid), and liquid detergents. However, *** noted that these alternatives have different chemical and taste properties, and that malic and fumaric acid are more expensive than citric acid and certain citrate salts. Thus, *** stated that changes in the prices of substitutes had not had any effect on the price of citric acid and certain citrate salts.

Fifteen importers stated that there were no substitutes for citric acid and certain citrate salts. However, six did note substitutes, including EDTA (ethylene diamine tetraacetic acid), HCA (hydroxycitric acid), acetic acid, fumaric acid, lactic acid, malic acid, phosphoric acid, potassium chloride, potassium phosphate, azocarbonamide, sodium bicarbonate, sulfuric acid, and tartaric acid. As *** noted, though, substitution depends on the customer's applications. For example, HCA can also lower the pH of a solution, while lactic acid, acetic acid, fumaric acid, malic acid, phosphoric acid, and tartaric acid can be used as substitute food and beverage additives, and sulfuric acid can be used as an industrial acidulant. Nevertheless, 11 importers stated that changes in the prices of substitutes had not had any effect on the price of citric acid and certain citrate salts.

Cost Share

Producers and importers were asked about the end uses of the citric acid and certain citrate salts produced or imported by their firms, and what percent of their customers' end use products' costs was accounted for by citric acid and certain citrate salts. *** U.S. producers reported that citric acid and certain citrate salts were one percent or less of beverage and food end uses.[44] For detergent end uses, *** stated that citric acid and certain citrate salts were less than one percent of the cost of detergent, while *** estimated the same number as one to five percent, and *** estimated that citric acid and certain citrate salts were four to six percent of the weight of liquid detergents. Most importers either did not know their customers' end use products' cost share accounted for by citric acid and certain citrate salts, or did not report it.[45] Among those answering, *** reported that citric acid and certain citrate salts were less than one percent of soft drinks, *** indicated that citric acid and certain citrate salts were less than one percent of detergents, and *** said that citric acid and certain citrate salts were about one to two percent of emulsifiers.

[42] Conference transcript, p. 61 (Staloch), and petitioners' postconference brief, exh.1, p. 29.

[43] CEH report, p. 9.

[44] *** answered the question as asked, i.e., by cost. *** answered the question by weight, but also estimated one percent for liquid beverages, although three to thirty percent for powdered beverages.

[45] Many importers reported numbers that either were exactly 100 percent or summed to 100 percent, likely indicating that they did not understand the question.

SUBSTITUTABILITY ISSUES

Lead Times

Among U.S. producers, *** said that 100 percent of sales were from inventory with a lead time of one week, while *** had 98 percent of sales from inventory with a lead time of 10 days. For *** sales produced to order (*** percent of *** sales), lead time was two weeks.

Fourteen importers reported that 95 to 100 percent of their sales were from inventory, four indicated that 30 to 73 percent of their sales were from inventory, and six indicated that zero to 10 percent of their sales were from inventory. Sales not from inventory were produced to order. Eight importers reported that lead times for sales from inventory were one to three days, seven reported lead times of one to two weeks, and two reported lead times of longer than two weeks. For sales produced to order, eight importers reported lead times of six to ten weeks, with three importers reporting shorter lead times of two days to two weeks.

Factors Affecting Purchasing Decisions

Certification

Purchasers will typically have a qualification process for their purchases of citric acid and certain citrate salts, but that process may range from simply checking whether the product meets FCC standards to qualifying producers' facilities.[46] Petitioners said that while some purchasers may have different requirements than others, these requirements are not for higher purity or any other characteristic that makes one source not acceptable.[47] However, citric acid purchaser Procter & Gamble, which uses citric acid in the production of detergents, beauty care, and oral care products, said that its qualification process takes at least six to nine months and involves repeated testing of the product. It added that the Chinese product is not certified for its beauty and oral care products (which can require a two-year certification process that goes beyond FCC and USP standards), only for detergent and fabric care (90 percent of its consumption).[48]

Comparisons of Domestic Products and Imports

Producers and importers were asked to assess how interchangeable citric acid and certain citrate salts from the United States were with product from subject and nonsubject countries. Their responses are summarized in table II-3 and the discussion below.

[46] Conference transcript, pp. 88-89 (Poulos).

[47] Conference transcript, p. 92 (Staloch and Christiansen).

[48] Conference transcript, pp. 102-103, 134 (Smith).

Table II-3
Citric acid and certain citrate salts: Perceived degree of interchangeability of product produced in the United States and in other countries[1]

Country comparison	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. Canada	***	***	***	***	7	4	2	1
U.S. vs. China	***	***	***	***	6	8	6	0
U.S. vs. other countries	***	***	***	***	5	3	2	0
Canada vs. China	***	***	***	***	6	4	5	0
Canada vs. other countries	***	***	***	***	5	3	2	0
China vs. other countries	***	***	***	***	5	4	1	0

[1] Producers and importers were asked if citric acid and certain citrate salts produced in the United States and in other countries is used interchangeably.

Note.--"A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never.

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

Among U.S. producers, *** stated that citric acid that meets standards is completely interchangeable, and added that citric acid and certain citrate salts is sold in a limited number of grades. Among importers, *** said that in some applications for dry blending, Chinese product is not interchangeable with domestic or Canadian product due to granulation differences. *** added that *** is only completely happy with ***. *** reported that the material that it buys from China is of a technical grade used in the plastics industry, but that U.S. material is food grade. *** described U.S. and Canadian product as containing genetically-modified ("GMO") raw materials even though some food companies now demand GMO-free material. It added that some customers demand "non-Chinese" or "U.S. material only," or even specify manufacturing plants. *** also noted that process and material approval is important. *** indicated that the only producers of *** are *** producers.

Producers and importers were also asked to assess the importance of factors other than price in competition between citric acid and certain citrate salts from the United States and product from subject and nonsubject countries. Their responses are summarized in table II-4 and the discussion below.

Table II-4
Citric acid and certain citrate salts: Differences other than price between products from different sources[1]

Country comparison	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. Canada	***	***	***	***	2	2	6	1
U.S. vs. China	***	***	***	***	5	4	8	4
U.S. vs. other countries	***	***	***	***	1	0	4	1
Canada vs. China	***	***	***	***	4	2	5	1
Canada vs. other countries	***	***	***	***	1	0	4	2
China vs. other countries	***	***	***	***	0	0	4	3

[1] Producers and importers were asked if differences other than price between citric acid and certain citrate salts produced in the United States and in other countries are a significant factor in their firms' sales of citric acid and certain citrate salts.

Note.--"A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never.

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

Among U.S. producers, *** described citric acid and certain citrate salts as a "real commodity," and added that the annual contracting of large volumes around the same time of each year gives substantial market power to customers, who use that power to obtain the lowest possible prices.

Among importers, *** said that it had also imported from *** before 2005, but that *** producers and Cargill are currently sold out, so that its only available source is China. *** stated that other significant differences between countries include monohydrate versus anhydrous, grind size, package size, and availability. *** cited the Chinese product as having much higher availability than the U.S. product. ***, however, said that price was the only difference between products. *** cited GMO concerns as a "large factor" in U.S. versus China comparisons, but not as much in U.S. versus Canada comparisons. It added that transportation costs make it easier to ship Chinese product to the western United States and domestic product to the eastern United States. *** described U.S. product as coming with technical support from U.S. producers (unlike Chinese product), as having higher quality assurance, and not being prone to supply disruptions that affect Chinese suppliers. ***, describing itself as a ***, said that it preferred to offer Chinese product to its customers because China could offer the largest amount of product and "arguably the highest quality," as opposed to the limited options available in the non-Chinese supply chain. *** said that some U.S. companies view non-Chinese product (produced in North America or Europe) as "safer" to buy.

In other comparisons, Procter & Gamble described differences between U.S., Canadian, and Chinese citric acid. It said that Canadian citric acid has shorter lead times (i.e., more comparable to U.S. lead times as product is shipped by rail) than Chinese citric acid, which Procter & Gamble said has lead times of 60 days and must be warehoused at additional expense. It also stated that it uses neither Canadian nor Chinese citric acid in its oral products, such as Crest and Scope.[49]

[49] Conference transcript, p. 105 (Smith).

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 which accounted for all U.S. production of citric acid and certain citrate salts in 2007.

U.S. PRODUCERS

The Commission sent producer's questionnaires to three firms identified as U.S. producers of citric acid and certain citrate salts in the petition. All U.S. producers submitted responses.[1] Table III-1 presents the list of U.S. producers with each company's U.S. production location, share of U.S. production in 2007, and position on the petition.

Table III-1
Citric acid and certain citrate salts: U.S. producers, U.S. production locations, shares of U.S. production in 2007, and positions on the petition

Firm	Production location	Share of production (*percent*)	Position on the petition
ADM[1]	Southport, NC	***	Petitioner
Cargill[2]	Eddyville, IA	***	Petitioner
Tate &Lyle[3]	Decatur, IL	***	Petitioner

[1] ***.
[2] ***.
[3] ***.

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 2005 to 2007 by 1.5 percent and remained steady between January-March 2007 and January-March 2008. ***. U.S. capacity volume accounted for only *** percent of apparent U.S. consumption of citric acid and certain citrate salts in 2007. Total U.S. production of the subject product decreased by 6.1 percent from 2005 to 2007, but increased by 6.9 percent between January-March 2007 and January-March 2008.[2] Capacity utilization ranged from 84.0 percent in

[1] In the 2000 investigation, the Commission determined that U.S. firms that purchased citric acid and converted it into sodium citrate solution did not engage in sufficient production-related activities to warrant inclusion in the domestic industry, finding that conversion costs and technical expertise required in the conversion process were minimal. *Citric Acid and Sodium Citrate From China, Inv. No. 731-TA-863 (Preliminary)*, USITC Pub. 3277, February 2000, p. 8. Petitioners contend that the nature of these converters has not changed since 2000, and that they should again be excluded from the domestic industry. Petitioners' postconference brief, p. 5. No respondent advocates including converters in the domestic industry. Chinese respondents' postconference brief, p. 6. Commission staff did not collect data regarding converting operations.

[2] Both ADM and Cargill produced citric acid, sodium citrate, and potassium citrate during the period of investigation. Tate & Lyle produced only citric acid. ***.

January-March 2007 to 95.3 percent in 2005.[3] None of the three U.S. producers reported any events that occurred during the period of investigation that would have materially affected its production or capacity.[4] *** of the three U.S. producers reported that they produced other products using the same manufacturing equipment and/or production employees that were used to produce citric acid and certain citrate salts.

Table III-2
Citric acid and certain citrate salts: U.S. producers' capacity, production, and capacity utilization, 2005-07, January-March 2007, and January-March 2008

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
Capacity *(1,000 dry pounds)*					
ADM	***	***	***	***	***
Cargill	***	***	***	***	***
Tate & Lyle	***	***	***	***	***
Total	545,913	553,913	553,913	138,478	138,478
Production *(1,000 dry pounds)*					
ADM	***	***	***	***	***
Cargill	***	***	***	***	***
Tate & Lyle	***	***	***	***	***
Total	520,222	475,570	488,625	116,301	124,272
Capacity utilization (*percent*)					
ADM	***	***	***	***	***
Cargill	***	***	***	***	***
Tate & Lyle	***	***	***	***	***
Average	95.3	85.9	88.2	84.0	89.7

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

[3] Petitioners argue that citric acid manufacturing facilities are "finely-tuned to operate non-stop" and that in a high-fixed cost industry, such as this, "a decline in capacity utilization of even a few points is a sign of severe financial distress." Petitioners' postconference brief, p. 16.

[4] After the filing of the petition, ***. Petitioners' postconference brief, exh. 37.

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 citric acid and certain citrate salts increased by 3.1 percent from 2005 to 2007 and decreased by 1.5 percent between January-March 2007 and January-March 2008. The value of U.S. shipments also increased by 5.8 percent and 9.7 percent, respectively, during the same time period. ***. *** volumes that were transfers to related firms during the period of investigation. ***. *** reported export shipments ***. Export shipments from U.S. producers increased by 3.4 percent from 2005 to 2007 and by 20.1 percent from 2006 to 2007.[5] ***. *** reported export shipments to ***. *** reported export shipments to ***.

[5] A number of respondents contend that given the recent depreciation of the U.S. dollar against other world currencies, U.S. producers have an economic incentive to increase exports, thereby exacerbating the gap between U.S. capacity and U.S. consumption and increasing the need for imports. Chinese respondents' postconference brief, pp. 15-16; Respondent P&G's postconference brief, p. 9.

Table III-3
Citric acid and certain citrate salts: U.S. producers' shipments, by types, 2005-07, January-March 2007, and January-March 2008

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
			Quantity (*1,000 dry pounds*)		
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	387,237	370,621	399,222	96,871	95,384
Export shipments	111,179	95,665	114,939	30,517	36,432
Total shipments	498,416	466,286	514,161	127,388	131,816
			Value (*$1,000*)[1]		
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	169,599	165,570	179,483	43,706	47,962
Export shipments	47,162	40,487	48,016	12,379	17,209
Total shipments	216,761	206,057	227,499	56,085	65,171
			Unit value (*dollars per dry pound*)		
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	0.44	0.45	0.45	0.45	0.50
Export shipments	0.42	0.42	0.42	0.41	0.47
Average	0.43	0.44	0.44	0.44	0.49
			Share of shipment quantity (*percent*)		
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	77.7	79.5	77.6	76.0	72.4
Export shipments	22.3	20.5	22.4	24.0	27.6
Total	100.0	100.0	100.0	100.0	100.0

[1] F.o.b. U.S. point of shipment.

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

U.S. PRODUCERS' IMPORTS AND PURCHASES OF IMPORTS

*** U.S. producers, ***, reported that it directly imported or purchased from U.S. importers citric acid or certain citrate salts from Canada or China during the period of investigation. Table III-4 presents *** direct imports of subject product from ***, its U.S. production, and the ratio of its U.S. imports to its U.S. production.

Table III-4
Citric acid and certain citrate salts: U.S. producers' subject imports and purchases of subject imports, 2005-07, January-March 2007, and January-March 2008

* * * * * * *

U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of citric acid and certain citrate salts for the period of investigation are presented in table III-5.

Table III-5
Citric acid and certain citrate salts: U.S. producers' end-of-period inventories, 2005-07, January-March 2007, and January-March 2008

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
Inventories (*1,000 dry pounds*)	68,757	77,639	52,333	67,087	44,767
Ratio to production (*percent*)	13.2	16.3	10.7	14.4	9.0
Ratio to U.S. shipments (*percent*)	17.8	20.9	13.1	17.3	11.7
Ratio to total shipments (*percent*)	13.8	16.7	10.2	13.2	8.5

Note.--January-March ratios are calculated using annualized production and shipment data.

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

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 citric acid and certain citrate salts, the total hours worked by such workers, and wages paid to such PRWs during the period for which data were collected in these investigations are presented in table III-6. From 2005 to 2007, the number of PRWs decreased by 10.6 percent and decreased by 3.1 percent between January-March 2007 and January-March 2008, hours worked decreased by 10.5 percent, but increased by 0.5 percent between the interim periods, wages paid decreased by 7.6 percent (decreased by 0.8 percent between the interim periods), hourly wages increased by 3.2 percent (decreased by 1.3 percent between the interim periods), productivity increased by 4.9 percent (increased by 6.3 percent between the interim periods), and unit labor costs decreased by 1.6 percent (decreased by 7.2 percent between the interim periods).

Table III-6
Citric acid and certain citrate salts: Average number of production and related workers, hours worked, hours worked per worker, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 2005-07, January-March 2007, and January-March 2008

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
PRWs (*number*)	330	306	295	294	285
Hours worked (*1,000*)	740	701	662	155	156
Hours worked per worker	2,242	2,291	2,244	527	547
Wages paid (*$1,000*)	23,674	23,446	21,869	5,577	5,530
Hourly wages	$32.01	$33.47	$33.03	$35.89	$35.41
Productivity *(pounds per hour)*	703.4	678.8	738.0	748.4	795.6
Unit labor costs (*per pound*)	$0.05	$0.05	$0.04	$0.05	$0.04

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 42 firms believed to be U.S. importers of citric acid and certain citrate salts, as well as to all three U.S. producers.[1] Usable questionnaire responses were received from 28 firms, which accounted for 100 percent of U.S. imports from Canada, 79.0 percent of U.S. imports from China, and 29.2 percent of U.S. imports from nonsubject countries in 2007.[2] Data for U.S. imports from Canada are compiled using the reported U.S. imports of Jungbunzlauer Technology GmbH & Co. ("JBL"), the sole U.S. importer of Canadian product.[3] Data for U.S. imports from China and nonsubject countries are compiled using official Commerce statistics.

Table IV-1 lists all responding U.S. importers of citric acid and certain citrate salts from Canada and China, their U.S. locations, and their quantities of imports, by source, in 2007.

Table IV-1
Citric acid and certain citrate salts: Reported U.S. imports, by importers and by sources of imports, 2007

* * * * * * *

U.S. IMPORTS

Table IV-2 shows that the volume of U.S. imports of citric acid and certain citrate salts from Canada increased by *** percent from 2005 to 2007 and by *** percent from January-March 2007 to January-March 2008. The value of U.S. imports from Canada increased by *** percent from 2005 to 2007 and by *** percent between January-March 2007 and January-March 2008. The volume of U.S. imports of citric acid and certain citrate salts from China increased by 40.1 percent from 2005 to 2007, but decreased by 21.7 percent from January-March 2007 to January-March 2008. The value of U.S. imports from China increased by 32.7 percent from 2005 to 2007 and decreased by 8.8 percent between January-March 2007 and January-March 2008. The volume of U.S. imports from nonsubject countries decreased by 18.9 percent from 2005 to 2007 and decreased again by 23.4 percent from January-March 2007 to January-March 2008.[4]

[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"), may have imported citric acid or certain citrate salts since 2005.

[2] In addition to the 28 usable responses (those respondents are shown in table IV-1), the Commission received responses from *** indicating that they did not import citric acid or certain citrate salts during the period examined.

[3] U.S. import volume data reported by JBL in its U.S. importer's questionnaire are lower than the proprietary U.S. import data reported by Customs because JBL ***. E-mail from Fred Waite, Counsel to JBL, May 15, 2008.

[4] The following countries, listed in descending order of reported import volume, accounted for approximately 95 percent of U.S. imports from nonsubject countries in 2007: Israel, Belgium, Germany, Colombia, Austria, and Thailand.

Table IV-2
Citric acid and certain citrate salts: U.S. imports, by sources, 2005-07, January-March 2007, and January-March 2008

Source	Calendar year			January-March	
	2005	2006	2007	2007	2008
Quantity (*1,000 dry pounds*)					
Canada	***	***	***	***	***
China	128,558	158,906	180,108	41,884	32,792
Subtotal	***	***	***	***	***
All others	80,954	68,584	65,634	17,770	13,616
Total	***	***	***	***	***
Value (*$1,000*)[1]					
Canada	***	***	***	***	***
China	57,705	65,542	76,571	17,201	15,693
Subtotal	***	***	***	***	***
All others	43,154	39,174	38,802	10,174	8,661
Total	***	***	***	***	***
Unit value *(dollars per dry pound*)					
Canada	***	***	***	***	***
China	0.45	0.41	0.43	0.41	0.48
Subtotal	***	***	***	***	***
All others	0.53	0.57	0.59	0.57	0.64
Average	***	***	***	***	***
Share of quantity (*percent*)					
Canada	***	***	***	***	***
China	***	***	***	***	***
Subtotal	***	***	***	***	***
All others	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
Share of value (*percent*)					
Canada	***	***	***	***	***
China	***	***	***	***	***
Subtotal	***	***	***	***	***
All others	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0

[1] Landed, duty-paid.

Source: U.S. imports from Canada are compiled using the U.S. importer questionnaire response of JBL. U.S. imports from China and nonsubject countries are compiled from official Commerce statistics.

CUMULATION CONSIDERATIONS

Petitioners argue that the Commission should cumulate U.S. imports from Canada and China.[5] All respondents urge the Commission not to cumulate these imports.[6] In assessing whether imports should be cumulated, the Commission determines whether U.S. imports from the subject countries compete with each other and with the domestic like product and has generally considered four factors: (1) fungibility, (2) presence of sales or offers to sell in the same geographical markets, (3) common or similar channels of distribution, and (4) simultaneous presence in the market. Issues concerning channels of distribution are addressed in *Part II* of this report. The remaining factors are addressed below.

Fungibility

Petitioners maintain that citric acid and certain citrate salts, whether originating from Canada, China, or the United States, are a very fungible, commodity product produced to the same grades and standards.[7] Respondents argue that U.S. imports from Canada are not fungible with those from China because despite being a commodity product, certain characteristics prevent the two products from actually being interchangeable in the U.S. market.[8] Among these characteristics, respondents cite the fact that the proximity of JBL to the United States allows it to ship citric acid in solution form with short lead times to large customers such as Procter & Gamble, which uses citric acid solution in its production of detergents.[9] Chinese respondents also argue that U.S. imports from China, although not entirely excluded from the large U.S. food and beverage market, are effectively excluded from the large U.S. soft drink market.[10] They claim that subject product shipped from China in anhydrous (dry powder) form will generally "cake" by the time it reaches the U.S. market as a result of the moisture it absorbs from its trans-Pacific shipping.[11] Chinese respondents claim that the resulting caked product is not usable in the conveying

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[5] Petitioners' postconference brief, p. 6.

[6] Chinese respondents' postconference brief, p. 6; Respondent JBL's postconference brief, p. 7; Respondent P&G's postconference brief, p. 25.

[7] Petitioners' postconference brief, pp. 8-9.

[8] Chinese respondents' postconference brief, pp. 7-10.

[9] Ibid; JBL's postconference brief, pp. 9-10. A direct rail line between JBL's production facility and P&G's production facilities in Lima, OH and Alexandria, LA, allows JBL to economically ship citric acid in solution form. P&G claims that shipping citric acid in solution form from China would be economically unfeasible due to high transportation costs. Respondent P&G's postconference brief, p. 29. P&G stated that it also purchases and uses citric acid in monohydrate and anhydrous forms in the production of its detergents; however, it must first convert them to solutions, requiring additional time and cost. Conference transcript, p. 103 (Smith).

[10] P&G stated that no producer of citric acid in China is qualified to supply product for its oral care or beauty care products nor does it use imported product in any of its potentially ingestible products such as Crest and Scope. Conference transcript, pp. 102, 105 (Smith).

[11] Chinese respondents' postconference brief, pp. 9-10. Asked at the preliminary conference, a witness for Chinese respondents had no knowledge of any shipping methods that would prevent the caking of anhydrous citric acid. Conference transcript, p. 132 (Hsu). Petitioners argue that the caking issue is being greatly exaggerated by respondents and would not occur with proper packaging, such as packing at correct temperatures and moisture levels into bags with proper moisture barriers. Petitioners' postconference brief, exh. 1, p. 23 & exh. 13 (statement of L. Martin Hurt, Senior Product Manager, Tate & Lyle).

systems used by the large U.S. soft drink manufacturers to feed product into tanks, which require granular, free-flowing citric acid.[12] They also provide a statement from U.S. importer, ***.[13]

When asked to comment on the issue of any caking problems with imports from China, ***.[14]

JBL argued that its citric acid does not compete with U.S. imports from China because its products are perceived in the U.S. market as a "premium product" in terms of purity, color, grade, and customer and technical assistance[15] relative to the Chinese product and, unlike product from China, is currently being used in the U.S. soft drink market.[16]

End-Use Market Segments

Table IV-3 shows estimated 2007 U.S. shipment data grouped by end-use market segment. The domestic industry reported that of its share of the total U.S. 2007 shipments, *** percent were estimated to be used in the food and beverage market segment (*** percent for the soft drink sub-segment), *** percent to the industrial segment, *** percent to the pharmaceutical segment, and *** percent were unknown or were sold to general distributors. For U.S. shipments of imports from Canada, *** percent were estimated to be used in the food and beverage segment (*** percent for the soft drink sub-segment), *** percent to the industrial segment, *** percent to the pharmaceutical segment, and *** percent were unknown or were sold to general distributors. For U.S. shipments of imports from China, *** percent were estimated to be used in the food and beverage segment (*** percent for the soft drink sub-segment), *** percent to the industrial segment, *** percent to the pharmaceutical segment, and *** percent were unknown or were sold to general distributors.

Table IV-3
Citric acid and certain citrate salts: Estimated 2007 U.S. shipments, by end-use market segment and by firm

* * * * * * *

Geographical Markets

With regard to geographical market overlap, U.S. imports of citric acid and certain citrate salts from China entered multiple U.S. ports of entry, dispersed across the nation. The five U.S. ports of entry with the most volume were: (1) Los Angles, CA; (2) New Orleans, LA; (3) Chicago, IL; (4) San Francisco, CA; and (5) New York, NY.[17] Petitioners argue that the Chinese product is available nationwide.[18]

U.S. imports of citric acid and certain citrate salts from Canada generally enter the United States through one of two ports of entry, namely Buffalo, NY or Detroit, MI because of their proximity to JBL's

[12] Ibid., p. 10. ***. Respondent JBL's postconference brief, exh. 1, p. 2.

[13] Chinese respondents' postconference brief, pp. 34-35 and exh. 5.

[14] U.S. importer's questionnaire of ***.

[15] ***. Petitioners' postconference brief, exh. 36, p. 1 (Statement of John Oakley, Business Director, Food Additives, ADM).

[16] Both citric acid from Canada and China generally meet the FCC/USP standards; however, JBL argues that its consistency both in quality product and customer service make its "brand" premium. Conference transcript, p. 124 (Waite). Petitioners counter by stating that technical assistance and customer service add very little value in a commodity product.

[17] Petitioners' postconference brief, exh. 15.

[18] Ibid., p. 12.

manufacturing facility in Port Colborne, Ontario. Petitioners and respondent JBL both observe that although product from Canada enters through two U.S. ports of entry, when transported by freight or rail, it competes nationwide with U.S. and Chinese product.[19]

Simultaneous Presence in the Market

With regard to simultaneous presence in the market, both petitioners and respondents state that imported citric acid and certain citrate salts from both Canada and China have been simultaneously present in the U.S. market along with domestic product during the period of investigation.[20] Commerce statistics show that imports from China entered the United States in every month of the period of investigation. Respondent JBL stated that it imported citric acid into the United States throughout the period of investigation and throughout each year of the period.[21]

NEGLIGIBILITY

The Tariff Act of 1930 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.[22] The shares (in *percent*) of the total quantity of U.S. imports from Canada and China for the period of April 2007 through March 2008 using U.S. import data compiled from the Commission's questionnaire responses (in the case of U.S. imports from Canada) and data compiled from Commerce statistics (in the case of China and nonsubject countries) were well above the 3 percent negligibility threshold.

APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of citric acid and certain citrate salts are presented in table IV-4. The quantity of apparent U.S. consumption of the subject product increased by *** percent from 2005 to 2007, but decreased by *** percent between January-March 2007 and January-March 2008. The value of apparent U.S. consumption increased by *** percent from 2005 to 2007, and increased by *** percent between the interim periods.

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[19] Ibid.; Respondent JBL's postconference brief, p. 11. ***. Respondent P&G's postconference brief, p. 29.

[20] Petitioners' postconference brief, p. 15; Respondent JBL's postconference brief, p. 11.

[21] Respondent JBL's postconference brief, p. 11.

[22] 19 U.S.C. § 1677(24)(A)(ii).

Table IV-4
Citric acid and certain citrate salts: U.S. shipments of domestic product, U.S. imports by sources, and apparent U.S. consumption, 2005-07, January-March 2007, and January-March 2008

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
	Quantity (*1,000 dry pounds*)				
U.S. producers' U.S. shipments	387,237	370,621	399,222	96,871	95,384
U.S. imports from--					
Canada	***	***	***	***	***
China	128,558	158,906	180,108	41,884	32,792
Subtotal	***	***	***	***	***
All other countries	80,954	68,584	65,634	17,770	13,616
Total imports	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
	Value (*$1,000*)				
U.S. producers' U.S. shipments	169,599	165,570	179,483	43,706	47,962
U.S. imports from--					
Canada	***	***	***	***	***
China	57,705	65,542	76,571	17,201	15,693
Subtotal	***	***	***	***	***
All other countries	43,154	39,174	38,802	10,174	8,661
Total imports	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***

Source: Data regarding the U.S. industry compiled from data submitted in response to Commission questionnaires. U.S. imports from Canada are compiled using the U.S. importer questionnaire response of JBL. U.S. imports from China and nonsubject countries are compiled from Commerce statistics.

U.S. MARKET SHARES

Data on U.S. market shares for citric acid and certain citrate salts are presented in table IV-5. From 2005 to 2007, U.S. producers lost *** percentage points of market share based on quantity and *** percentage points based on value. Between January-March 2007 and January-March 2008, U.S. producers gained *** percentage points of U.S. market share based on volume and *** percentage points based on value. U.S. imports from Canada gained *** percentage point of U.S. market share during 2005-07 based on quantity and *** percentage point based on value. Between the interim periods, U.S. imports from Canada gained *** percentage points of U.S. market share based on quantity and *** percentage points based on value. U.S. imports from China gained *** percentage points of U.S. market share during 2005-07 based on quantity and *** percentage points based on value. Between the interim periods, U.S. imports from China lost *** percentage points of U.S. market share based on quantity and *** percentage points based on value. From 2005 to 2007, U.S. imports from nonsubject countries lost

*** percentage points of U.S. market share based on quantity and *** percentage points based on value. Between the interim periods, U.S. imports from nonsubject countries lost *** percentage points of U.S. market share based on quantity and *** percentage points based on value.

Table IV-5
Citric acid and certain citrate salts: Apparent U.S. consumption and market shares, 2005-07, January-March 2007, and January-March 2008

* * * * * * *

RATIO OF IMPORTS TO U.S. PRODUCTION

Data on the ratio of imports to U.S. production of citric acid and certain citrate salts are presented in table IV-6.

Table IV-6
Citric acid and certain citrate salts: U.S. production, U.S. imports, and ratios of imports to production, 2005-07, January-March 2007, and January-March 2008

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
	Quantity (*1,000 dry pounds*)				
U.S. production	520,222	475,570	488,625	116,301	124,272
U.S. imports from--					
Canada	***	***	***	***	***
China	128,558	158,906	180,108	41,884	32,792
Subtotal	***	***	***	***	***
All other countries	80,954	68,584	65,634	17,770	13,616
Total imports	***	***	***	***	***
	Ratio of imports to U.S. production (*percent*)				
U.S. imports from--					
Canada	***	***	***	***	***
China	24.7	33.4	36.9	36.0	26.4
Subtotal	***	***	***	***	***
All other countries	15.6	14.4	13.4	15.3	11.0
Total imports	***	***	***	***	***

Source: Data regarding the U.S. industry compiled from data submitted in response to Commission questionnaires. U.S. imports from Canada are compiled using the U.S. importer questionnaire response of JBL. U.S. imports from China and nonsubject countries are compiled from official Commerce statistics.

PART V: PRICING AND RELATED INFORMATION

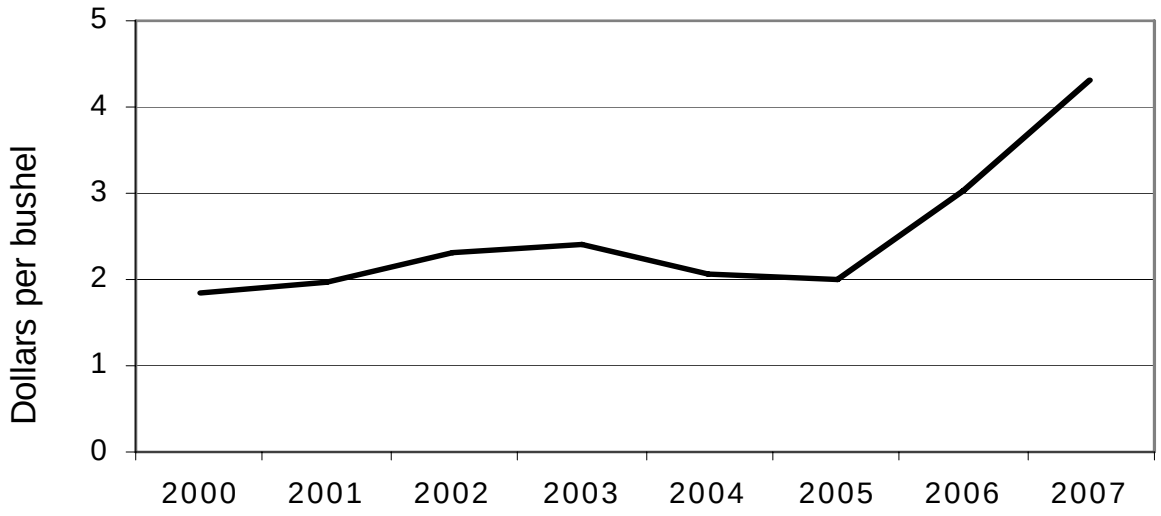
FACTORS AFFECTING PRICES

Raw Material Costs

The principal raw materials used for producing citric acid and certain citrate salts are the "substrate," (a starch or sugary base that ferments into citric acid) and energy. The costs of both substrates and energy have been rising since January 2005. U.S. producers hedge corn prices to some degree, and as a result, the full impact of increased corn prices on the prices of citric acid and certain citrate salts may not have been felt yet.[1]

U.S. and Canadian producers use corn (and sometimes other feedstocks such as molasses) as the substrate. Chinese producers, on the other hand, use a variety of bases including sweet potato powder, tapioca, wheat, and corn.[2] U.S. corn prices are shown in figure V-1.

Figure V-1
U.S. corn prices



Source: United States Department of Agriculture, Economic Research Service, at http://www.ers.usda.gov/Data/feedgrains/StandardReports/YBtable1.htm.

In addition to rising corn prices, the prices of electric power generation, transmission, and distribution rose by 23.5 percent from December 2003 to December 2007.[3]

[1] Conference transcript, p. 79 (Poulos).

[2] Petition, p. 10. Importer United Foods estimated that Chinese production is based half on corn and half on tapioca, and indicated that Chinese tapioca prices have quadrupled. Conference transcript, p. 160 (Hsu).

[3] See Bureau of Labor Statistics Producer Price Index PCU2211--2211–, "Electric power generation, transmission, and distribution." The series begins in December 2003.

Transportation Costs to the U.S. Market

Transportation costs for citric acid and certain citrate salts from Canada to the United States (excluding U.S. inland costs) are estimated to be approximately 4.2 percent of the total cost for citric acid and certain citrate salts. For China, transportation costs for citric acid and certain citrate salts are estimated to be approximately 14.4 percent of the total cost for citric acid and certain citrate salts. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.

U.S. Inland Transportation Costs

Among U.S. producers,[4] U.S. inland transportation costs ranged from *** percent to *** percent[5]. *** arrange transportation for their customers. *** had *** of their sales between 100 and 1,000 miles of *** production facilities, while *** had *** percent of *** sales between 100 and 1,000 miles of its production facilities. *** had over *** percent of sales more than 1,000 miles from *** production facilities, while *** had *** percent of its sales within 100 miles of *** production facilities.

Thirteen importers indicated that U.S. inland transportation costs were five to ten percent, and eight importers indicated that such costs were zero to four percent.[6] Nineteen importers said that they arranged transportation for their customers, but five said that their customers arrange transportation (with one importer indicating that transportation arrangements were split between it and its customers). Twenty importers noted that zero to 15 percent of their sales were more than 1,000 miles from their warehouse, and only three indicated that such sales amounted to between 20 and 45 percent of their sales. Fourteen importers had over 60 percent of their sales within 100 miles of their warehouse, and eight importers had over 55 percent of their sales between 100 and 1,000 miles of their warehouse.

Exchange Rates

The nominal and real values of the Canadian dollar and Chinese yuan are presented in figure V-2. From January-March 2005 to January-March 2008, the Canadian dollar appreciated 22.3 percent in nominal terms, but in real terms, it appreciated 10.0 percent from January-March 2005 to October-December 2007. Over the same periods, the Chinese yuan appreciated 15.6 percent in nominal terms, but appreciated 38.5 percent in real terms.

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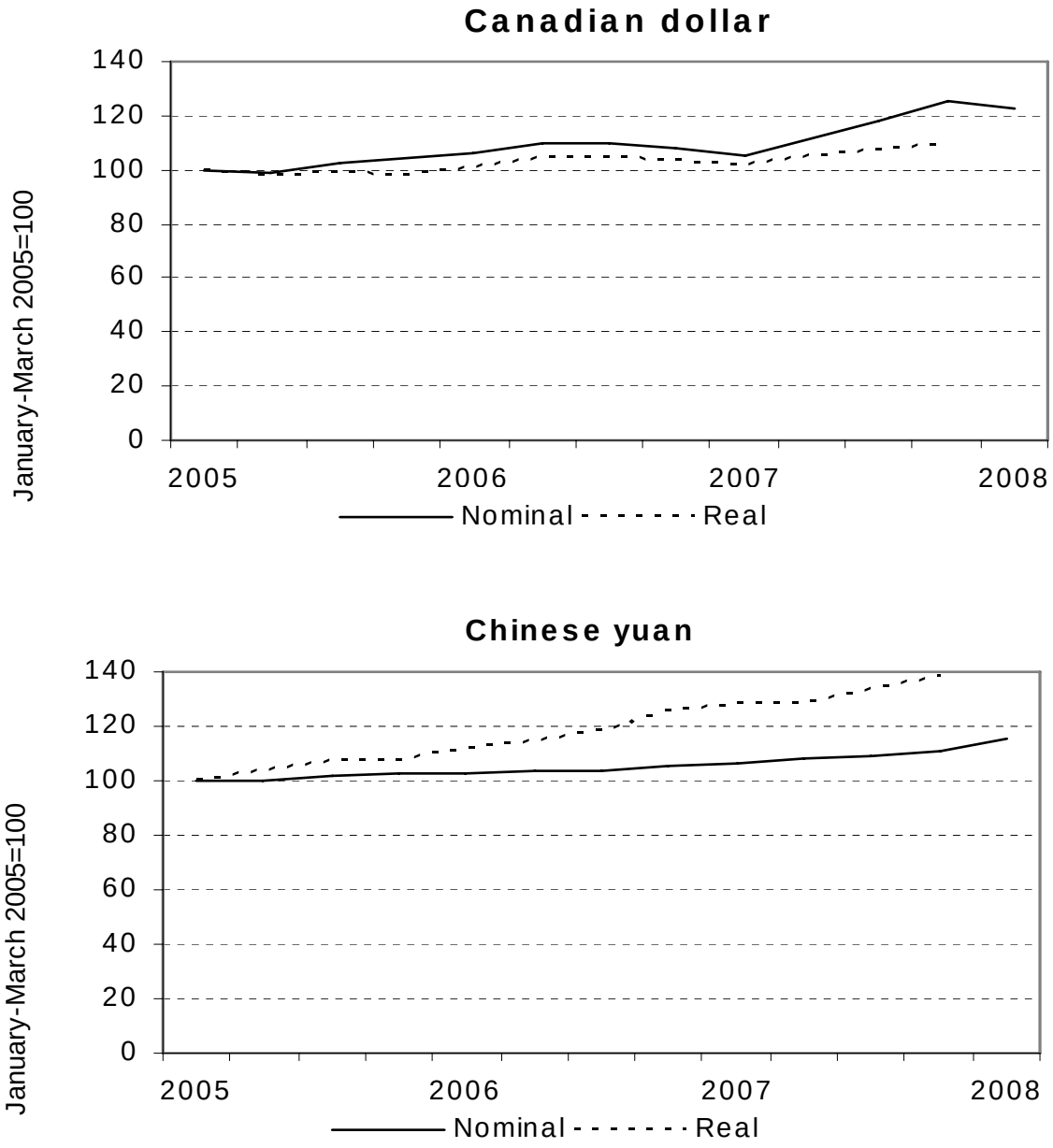
[4] *** submitted both producers' and importers' questionnaires in these investigations. For purposes of this chapter, their answers (with the exception of pricing data and lost sales/lost revenues allegations) were the same for both questionnaires submitted by their firm. Thus, in this chapter, their responses have been counted only among producers.

[5] *** had inland transportation costs of *** percent, *** had *** percent, and *** had *** percent.

[6] Two importers reported transportation costs of over 60 percent, likely indicating that they did not understand the question.

Figure V-2
Exchange rates: Indices of the nominal and real exchange rates between the currencies of Canada and China and the U.S. dollar, by quarters, January 2005-March 2008



Source: International Monetary Fund, *International Financial Statistics* online, www.imfstatistics.org/imf/ retrieved May 5, 2008, and staff calculations.

PRICING PRACTICES

Pricing Methods

Citric acid is sold dry in powder, fine granulated, and granulated forms. ***.[7] As a liquid, citric acid can be sold in an industrial grade that is 50 percent citric acid and 50 percent water, with the price usually being about 50 percent of the equivalent dry price.[8] Similarly, anhydrous material costs about nine percent less than monohydrate due to the presence of nine percent more water in the monohydrate version.[9]

Cargill described U.S. producers as contracting for approximately 80 percent of their output in November and December of each year. It added that "because we must sell our output to a few large customers within a very short window, the customers have tremendous negotiating leverage. It is almost like a reverse auction. At some point, Cargill and other U.S. producers must meet customers' price requirements in order to book sufficient orders for the coming production year."[10]

However, purchaser Procter & Gamble stated that the reason contracting is done at the end of each year is because U.S. producers decided to do so. Procter & Gamble continued that it, like other large purchasers, would prefer to have staggered purchases throughout the year.[11]

Among producers, *** reported using customer-by-customer negotiations to determine price, while *** reported determining price by "what the market will bear." *** reported using price lists. Similarly, importers reported using a variety of methods including transaction-by-transaction negotiations and contracts for multiple shipments. Six importers reported using a cost-up method, adding profits of three to ten percent. Three other importers reported basing prices on what competitors were charging or what the market would bear. Among importers, only *** reported using a price list.[12]

U.S. producers reported a diverse mix of contract lengths, as shown in the following tabulation.

* * * * * * *

For long-term contracts, *** said that typical contract length was ***, and typically did not allow price renegotiation. However, *** contracts fixed both price and quantity and did not have meet-or-release provisions, while *** contracts fixed only price and typically did have meet-or-release provisions.

For short-term contracts, *** had one-year contracts that did not allow price negotiation nor have meet-or-release provisions. *** contracts fixed both price and quantity, while *** contracts fixed only price and *** contracts fixed price with an estimated volume.

Among importers, short-term contracts and spot sales were more common than long-term contracts.[13] Seventeen importers reported no long-term contracts. However, one reported that long-term contracts were five percent of sales, one reported 30 percent, one reported 65 percent, and one reported

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[7] CEH report, p. 35.

[8] Conference transcript, pp. 103-104 (Smith).

[9] Staff conversation with ***; petition, p. 9.

[10] Cargill continued that losing one or two large contracts early in that season would dramatically increase pressure on the U.S. producers to make sure that they won subsequent sales. It also said that in such an environment, non-price factors were not important. Conference transcript, pp. 28-29 (Christiansen).

[11] Conference transcript, pp. 150-151 (Button and Smith).

[12] ***.

[13] ***.

100 percent.[14] For short-term contracts, seven importers reported no short-term contracts while one reported that short-term contracts were one percent of sales, three reported 10 to 25 percent, six reported 45 to 80 percent, and five reported 95 to 100 percent. For spot sales, six importers indicated no spot sales, four indicated that spot sales accounted for 10 to 39 percent of sales, four indicated 45 to 80 percent, and eight indicated 85 to 100 percent.

Among importers, only *** had long-term contracts of two to three years, with the only other importers who reported long-term contracts indicating that such contracts were six months to one year (less than the minimum specified as a long-term contract in Commission questionnaires). *** does not renegotiate its long-term contracts, which set both price and quantity and do not have a meet-or-release provision.

Importers' short-term contracts ranged from three months to one year. For thirteen importers, short-term contracts did not allow for price renegotiation, but for *** they did. Sixteen importers indicated that contracts fixed both price and quantity. Ten importers said that contracts rarely or never had meet-or-release provisions, but six importers said that contracts did.

United Foods stated that smaller customers buy on a spot basis only.[15] It added that smaller customers will buy from distributors that sell citric acid and certain citrate salts along with a pallet of different products that may influence the price of the citric acid and certain citrate salts as well.[16]

Producers and importers agreed that they learn about competitors' pricing not through being shown competing offers directly, but rather from intelligence gathered during the negotiating process with purchasers.[17]

Sales Terms and Discounts

*** and 21 importers stated that their typical sales terms were net 30 days delivered. Of those 20 importers, eight quoted prices on a delivered basis, nine quoted prices on an f.o.b. warehouse basis, and four used some combination of delivered and f.o.b. warehouse quotations. Two importers had sales terms of net 60 days delivered. An additional importer reported "no" sales terms, but quoted prices delivered.

*** reported that they did not have a discount policy, although *** did report having price supports for distributors.[18] Among importers, six used discounts, with five of those basing discounts on volume and one basing discounts on competitive conditions. Eighteen importers do not use discounts.

PRICE DATA

The Commission requested U.S. producers and importers of citric acid and certain citrate salts to provide quarterly data for the total quantity and net f.o.b. value of citric acid and certain citrate salts that were shipped to unrelated customers in the U.S. market. Data were requested for the period January 2005-March 2008**,** and values and quantities were requested on an anhydrous-equivalent basis. The products for which pricing data were requested are as follows:

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[14] However, as noted below, only *** contracts met the Commission definition of long-term contracts. *** reported that its long-term contracts covered 30 percent of its sales.

[15] Conference transcript, p. 153 (Hsu).

[16] Conference transcript, pp. 153 and 176 (Hsu).

[17] Conference transcript, pp. 95 (Oakley) and 146 (Waite).

[18] However, at the conference, petitioners clarified that while they do not offer volume-based discounts or rebates, volume does play a role in price negotiation. Conference transcript, p. 97.

***Product 1*.—Citric acid, granular, in dry form in 25 kilogram and 50 pound bags.**

***Product 2*.—Citric acid, fine granular, in dry form in 25 kilogram and 50 pound bags.**

***Product 3*.—Citric acid, granular, in dry form packed in bulk sacks ("supersacks").**

***Product 4*.—Sodium citrate, granular, in dry form in 25 kilogram and 50 pound bags.**

***Product 5*.—Potassium citrate, granular, in dry form in 25 kilogram and 50 pound bags.**

Three U.S. producers, one importer of Canadian product, and 20 importers of Chinese product provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters.[19] Pricing data reported by these firms accounted for approximately 57.6 percent of U.S. producers' U.S. shipments of citric acid and certain citrate salts, *** percent of U.S. shipments of subject imports from Canada, and 58.4 percent of U.S. shipments of subject imports from China in 2007.

Price Trends and Comparisons

Pricing data are presented in tables V-1 to V-7 and figure V-3. Overall, U.S. product undersold Canadian product in 39 of 39 comparisons and undersold Chinese product in 53 of 65 comparisons. This result is at odds with the impressions of petitioners, who stated that, in their experience, both Canadian and Chinese product was less expensive than U.S. product.[20] However, Procter & Gamble reported that it has found U.S. producers to be offering lower prices than importers of Chinese and Canadian product over 2006 and 2007. It added that it found a different U.S. producer each year to be the price leader, and said that it would like to order more product from U.S. producers, but those producers have imposed volume constraints.[21] JBL also stated that it sold a "premium product at a premium price," had increased prices each year recently, but had been consistently undersold by U.S. producers.[22]

Products 1, 2, and 3 are citric acid products. *** sold *** three products. Sixteen Chinese importers provided data for product 1, ten for product 2, and six for product 3. The data generally show flat prices until the end of 2007 and beginning of 2008, when prices rose sharply.

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[19] Staff contacted 15 importers that reported that they quoted their prices on a delivered basis. Staff asked these importers to confirm that they had submitted pricing data on an f.o.b. warehouse basis, as requested in the questionnaire. Staff also asked those importers to confirm that their data had been submitted on an anhydrous equivalent basis. Six of the importers responded that they had provided the pricing data correctly (on both an f.o.b warehouse and anhydrous basis) in the questionnaire. Five of the contacted importers reported that their pricing data had been reported originally on a delivered basis, but supplied an estimated correction for inland transportation costs (***), as requested by staff. Staff corrected the data for those companies to reflect the transportation cost deduction. Additionally, one importer, ***, reported that some of its product 3 data were reported on a monohydrous basis, and it provided annual data for product 3. Staff used the ratios in those data to correct *** product 3 data. See staff correspondence with ***. Additionally, staff contacted ***. On an unrelated issue, staff asked ***.

[20] Conference transcript, p. 76 (Oakley and Poulus). The result may also be at odds with the lost sales/lost revenues responses of importers ***, but consistent with responses from ***. See the "Lost Sales and Lost Revenues" section below.

[21] Conference transcript, pp. 107-108 (Smith). Likewise, importer *** characterized Chinese prices as being higher than U.S. prices. See Part II.

[22] Conference transcript, pp. 120 and 123 (Waite).

Product 4 is a sodium citrate product sold by ***. Ten Chinese importers provided data for product 4. The data show the same pattern as for products 1-3, i.e., mostly flat prices until a rise in the last two quarters. Product 5 is a potassium citrate product sold by ***. Four Chinese importers provided data for product 5.

Other Price Data

***[23]. ***.[24]

Table V-1
Citric acid and certain citrate salts: Weighted-average f.o.b. prices and quantities of domestic and imported product 1, and margins of (overselling)/underselling by quarters, January 2005-March 2008

* * * * * * *

Table V-2
Citric acid and certain citrate salts: Weighted-average f.o.b. prices and quantities of domestic and imported product 2, and margins of (overselling)/underselling by quarters, January 2005-March 2008

* * * * * * *

Table V-3
Citric acid and certain citrate salts: Weighted-average f.o.b. prices and quantities of domestic and imported product 3, and margins of (overselling)/underselling by quarters, January 2005-March 2008

* * * * * * *

Table V-4
Citric acid and certain citrate salts: Weighted-average f.o.b. prices and quantities of domestic and imported product 4, and margins of (overselling)/underselling by quarters, January 2005-March 2008

* * * * * * *

Table V-5
Citric acid and certain citrate salts: Weighted-average f.o.b. prices and quantities of domestic and imported product 5, and margins of (overselling)/underselling by quarters, January 2005-March 2008

* * * * * * *

[23] ***.

[24] ***.

Table V-6
Citric acid and certain citrate salts: Summary of weighted-average f.o.b. prices for products 1-5, by country, January 2005-March 2008

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Table V-7
Citric acid and certain citrate salts: Instances of underselling/(overselling) and the range and average of margins for products 1-5, January 2005-March 2008

Country	Underselling		Overselling	
	Number of instances	Range (*percent*)	Number of instances	Range (*percent*)
Canada	0	--	39	-5.0 to -17.0
China	12	1.1 to 10.2	53	-0.1 to -120.6
Total[1]	**12**	**1.1 to 10.2**	**92**	**-0.1 to -120.6**

[1] Total number of instances for all cited products and range of margins for all cited products.

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

Figure V-3
Citric acid and certain citrate salts: Weighted-average f.o.b. prices of products 1-5, January 2005-March 2008

* * * * * * *

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of citric acid and certain citrate salts to report any instances of lost sales or revenues they experienced due to competition from imports of citric acid and certain citrate salts from Canada or China during January 2005 to March 2008. All three U.S. producers reported that they had to either reduce prices or roll back announced price increases. The 64 lost sales allegations totaled $*** and involved *** pounds of citric acid; the 30 lost revenue allegations totaled $*** and involved *** pounds of citric acid. Staff contacted the listed purchasers, and 18 such purchasers, covering 28 allegations, responded. A summary of the information obtained follows in tables V-8 and V-9 and the text descriptions below.

In addition to details regarding the allegations, purchasers were asked if, since January 2005, their firm switched purchases of citric acid and certain citrate salts from U.S. producers to suppliers of citric acid and certain citrate salts imported from Canada and/or China, and if so, if price was the reason for the shift. Eight answered that they had made such a switch, and ten answered that they had not. Of the eight that said that they had switched sources, six said that price was part of the reason, and two said that price was not the reason for the shift.

Purchasers were also asked if U.S. citric acid suppliers had reduced their prices in order to compete with prices of citric acid and certain citrate salts imported from Canada and China. One responded in the affirmative and 12 in the negative. Many respondents (including ***) indicated that they did not have sufficient knowledge to answer this question with confidence or at all.

Table V-8
Citric acid and certain citrate salts: U.S. producers' lost sales allegations

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Table V-9
Citric acid and certain citrate salts: U.S. producers' lost revenue allegations

* * * * * * *

* * * * * * *

***[25] ***.

* * * * * * *

[25] ***.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

All three U.S. producers provided useable financial data. ADM presented full-year financial data for its fiscal years ending June 30, 2005-07, Cargill for its years ending May 31, 2005-07, and Tate & Lyle for its years ending March 31, 2006-08. Thus, the full-year financial data generally lag the full-year trade data presented in Part III. Consistent with the presentation in other parts of this report, the only data presented in this section are the producers' combined operations on citric acid and certain citrate salts; separate data on citric acid, sodium citrate, potassium citrate, and unrefined calcium citrate are contained in appendix C.

In addition to commercial sales, *** reported transfers to related parties, and *** reported internal consumption. These transfers and internal consumption,[1] which accounted for *** percent of the industry's sales quantities in every period, were made at prices generally consistent with commercial sales.

OPERATIONS ON CITRIC ACID AND CERTAIN CITRATE SALTS

Aggregate income-and-loss data for the producers on their total operations producing citric acid and certain citrate salts are presented in table VI-1. Despite increases (moderate though they were) in net sales quantities and values from period to period, the domestic industry was less profitable in 2007 than it was in 2005. From 2005 to 2007 the positive earnings at the gross profit level turned to negative, the operating and net losses deepened, and the positive cash flow became negative. Central to this decline in profitability was the decrease in unit sales price ($0.005 per pound) and simultaneous increase in unit operating costs – unit cost of goods sold increased by $0.016 per pound while unit SG&A expenses decreased by $0.006 per pound, for a net increase of $0.010 per pound. As shown in table VI-1, the increase in unit cost of goods sold was entirely driven by increases in raw materials,[2] as direct labor remained constant while other factory costs decreased. Other factory costs, the single largest operating

[1] These related party transfers are to *** foreign affiliates. Staff telephone conversation with Chuck Anderson, Capital Trade, May 20, 2008. Since the trade (shipment) section of the U.S. producer questionnaire instructs producers to report *** shipments, *** are properly classified as *** and not *** in table III-3.

[2] Procter & Gamble maintained in its postconference brief that petitioners could have avoided these cost increases if they had hedged their corn costs. Procter & Gamble postconference brief, pp. 10-12. While petitioners were not specifically asked if they did or did not hedge their corn costs, it appears they did so at least to some extent. See ADM's 2007 form 10-K at 33 and Tate & Lyle's 2007 Annual Report at 47. Moreover, staff notes that the approximate *** percent increase in the U.S. producers' unit raw material costs (which are predominantly corn) from 2005 to 2007 was considerably less than the 69-percent increase in the market price of Central Illinois No. 2 yellow corn from 2005 to 2007 presented in petitioners' brief. Petitioners' postconference brief, exhibit 3, p. 6 and USITC staff worksheet.

cost component,[3] [4] consists of many different costs, such as energy, depreciation, maintenance, repairs, engineering, indirect labor, and property costs (taxes, leases). Petitioners noted at the conference that their energy costs in particular have increased,[5] and, on a per-unit basis, energy costs ranged from between $*** and $*** per pound per producer in fiscal year 2007.[6]

Net sales quantities and values continued to increase during January-March 2008 relative to January-March 2007, but this time the domestic industry grew more profitable instead of less so. The negative earnings at the gross profit level turned positive, the operating loss became an operating profit (minimal as it was), and, absent the effects of ***, the net loss would have become a net profit and the negative cash flow would have become positive. Although unit operating costs decreased slightly between the two periods, the increase in profitability was largely the result of a $0.051 per pound increase in the unit net sales price. Petitioners maintain that this increase in profitability is the result of a decrease in imports from China which is in turn the result of a European Union antidumping investigation and rumors about a possible U.S. case.[7]

[3] Petitioners noted several times at the staff conference that theirs was a capital intensive industry with high fixed costs. Conference transcript, pp. 22-23 (Oakley); pp. 34-35 and 37 (Poulos); and, p. 41 (Anderson). While there is no exact definition of a capital intensive or a high fixed cost industry, staff notes that other factory costs (generally considered fixed costs) accounted for *** percent of the domestic industry's total cost of goods sold from fiscal year 2005 through March 31, 2008, and that this percentage was *** the 32 percent value reported by U.S. producers in the 2007 review of hot-rolled steel (steel acknowledged to be a capital intensive industry). *Hot-Rolled Steel Products From Argentina, China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine, Inv. Nos. 731-TA-404-408 and 731-TA-898-902 and 904-908 (Review)*, USITC Publication 3956, October 2007, p. 171.

[4] The U.S. producers *** per pound to dispose of the byproducts of their citric acid production. Petitioners' postconference brief, exhibit 1, pp. 16-17. This *** in other factory costs.

[5] Conference transcript, pp. 33-34 (Poulos).

[6] Petitioners' postconference brief, exhibit 1, pp. 19-20.

[7] Conference transcript, pp. 31-32 (Christiansen).

Table VI-1
Citric acid and certain citrate salts: Results of U.S. producers on their operations, fiscal years 2005-07, January-March 2007, and January-March 2008

Item	Fiscal year			January-March	
	2005	2006	2007	2007	2008
	Quantity (*1,000 pounds*)				
Net sales quantities:					
Commercial[2]	***	***	***	***	***
Non-commercial[2 3]	***	***	***	***	***
Total net sales quantities[2]	470,388	488,349	504,399	127,388	131,817
	Value (*1,000 dollars*)				
Net sales values:					
Commercial[2]	***	***	***	***	***
Non-commercial[2 3]	***	***	***	***	***
Total net sales values[2]	210,445	214,031	222,794	56,425	65,086
Cost of goods sold:					
Raw materials	48,513	50,815	66,455	16,067	17,706
Direct labor	17,107	17,729	18,158	4,718	4,477
Other factory costs	137,091	134,385	140,617	40,158	38,187
Total cost of goods sold	202,711	202,929	225,230	60,943	60,370
Gross profit/(loss)	7,734	11,102	(2,436)	(4,518)	4,716
SG&A expenses	17,414	15,920	15,481	2,578	4,611
Operating income/(loss)	(9,680)	(4,818)	(17,917)	(7,096)	105
Other expense/(income), net:					
Interest expense	5,305	6,574	6,811	1,834	1,032
All other expenses[4]	39	2,886	25,422	20	24,738
All other income	170	0	0	2,865	4,615
Net all other expense/income	5,174	9,460	32,233	(1,011)	21,155
Net (loss) before income taxes	(14,854)	(14,278)	(50,150)	(6,085)	(21,050)
Depreciation/amortization	19,404	17,655	15,380	3,968	3,575
Cash flow	4,550	3,377	(34,770)	(2,117)	(17,475)
	Number of firms reporting				
Operating losses	***	***	***	***	***
Data	3	3	3	3	3

Table continued on next page.

Table VI-1--*Continued*
Citric acid and certain citrate salts: Results of U.S. producers[1] on their operations, fiscal years 2005-07, January-March 2007, and January-March 2008

Item	Fiscal year			January-March	
	2005	2006	2007	2007	2008
	Unit value (*per pound*)				
Net sales values					
Commercial[2]	$0.451	$0.439	$0.446	$0.449	$0.495
Non-commercial [2]	***	***	***	***	***
Total net sales values[2]	0.447	0.438	0.442	0.443	0.494
Cost of goods sold:					
Raw materials	0.103	0.104	0.132	0.126	0.134
Direct labor	0.036	0.036	0.036	0.037	0.034
Other factory costs	0.291	0.275	0.279	0.315	0.290
Total cost of goods sold	0.431	0.416	0.447	0.478	0.458
Gross profit/(loss)	0.016	0.023	(0.005)	(0.035)	0.036
SG&A expenses	0.037	0.033	0.031	0.020	0.035
Operating income/(loss)	(0.021)	(0.010)	(0.036)	(0.056)	0.001
	Ratio to net sales (*percent*)				
Cost of goods sold:					
Raw materials	23.1	23.7	29.8	28.5	27.2
Direct labor	8.1	8.3	8.2	8.4	6.9
Other factory costs	65.1	62.8	63.1	71.2	58.7
Total cost of goods sold	96.3	94.8	101.1	108.0	92.8
Gross profit/(loss)	3.7	5.2	(1.1)	(8.0)	7.2
SG&A expenses	8.3	7.4	6.9	4.6	7.1
Operating income/(loss)	(4.6)	(2.3)	(8.0)	(12.6)	0.2

[1] The producers are ADM, Cargill, and Tate & Lyle.
[2] The sales quantities, sales values, and resulting sales average unit values differ from shipment values presented in part III because (1) all three producers have fiscal year ends other than December 31, and (2) ***.
[3] Non-commercial sales are internal consumption and transfers to related parties combined. The *** of these sales every period were ***.
[4] The large other expenses in FY-2007 and interim 2008 are attributable to ***.

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

Selected company-by-company data are presented in table VI-2. ***, the ***, reported decreasing sales quantities and *** in every period. *** citric acid using the solvent extraction process, *** uses the lime/sulphuric acid method; it is not known if the different processes contribute to the ***. *** reported capacity utilization rates (approximately *** percent in 2006 and 2007 and *** percent in interim 2008) were ***,[8] and this almost surely contributed to ***. While *** also generally had the ***, the disparity between its unit revenues and the other producers' unit revenues *** between its unit costs and the unit costs of the other producers. ***, on the other hand, reported increasing sales quantities and values in every period. That company's unit revenues and unit costs were generally very much in line with the average. Its operating profitability alternated between losses and break-even as its unit revenues continually increased while its unit costs decreased and then increased. ***.

The variance analysis showing the effects of prices and volume on the producers' revenues, and of expenses, costs, and volume on their total cost, is shown in table VI-3. The analysis illustrates that from 2005 to 2007 the decrease in profitability was predominantly because of a negative net cost/expense variance (unit costs increased) and a negative price variance (per-unit revenues decreased). On the other hand, the increase in profitability in January-March 2008 relative to January-March 2007 was because unit revenues increased (a positive price variance) and unit costs decreased (a positive net cost/expense variance).

Table VI-2
Citric acid and certain citrate salts: Selected financial data of producers on their operations, fiscal years 2005-07, January-March 2007, and January-March 2008

* * * * * * *

[8] *See* table III-2.

Table VI-3
Citric acid and certain citrate salts: Variance analysis of U.S. producers' operations, fiscal years 2005-07, January-March 2007, and January-March 2008

Item	Between fiscal years			Between Jan-Mar
	2005-07	2005-06	2006-07	2007-08
	Value (*$1,000*)			
Net sales:				
Commercial sales:				
Price variance	***	***	***	***
Volume variance	***	***	***	***
Subtotal	***	***	***	***
Non-commercial sales:				
Price variance	***	***	***	***
Volume variance	***	***	***	***
Subtotal	***	***	***	***
Total sales:				
Price variance	(2,867)	(4,449)	1,729	6,699
Volume variance	15,216	8,035	7,034	1,962
Total net sales variance	12,349	3,586	8,763	8,661
Cost of goods sold:				
Cost variance	(7,862)	7,522	(15,632)	2,692
Volume variance	(14,657)	(7,740)	(6,669)	(2,119)
Total COGS variance	(22,519)	(218)	(22,301)	573
Gross profit variance	(10,170)	3,368	(13,538)	9,234
SG&A expense:				
Expense variance	3,192	2,159	962	(1,943)
Volume variance	(1,259)	(665)	(523)	(90)
Total SG&A variance	1,933	1,494	439	(2,033)
Operating income variance	(8,237)	4,862	(13,099)	7,201
Summarized as:				
Price variance	(2,867)	(4,449)	1,729	6,699
Net cost/expense variance	(4,670)	9,681	(14,669)	748
Volume variance	(700)	(370)	(158)	(247)

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

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Domestic citric acid producers' capital expenditures and research and development (R&D) expenses are presented in table VI-4. *** accounted for approximately *** of the capital expenditures from 2005 through the first quarter of 2008. The overall level of expenditures was generally low, being less than depreciation expense (table VI-1) in every period. This is an indication that the domestic industry is not expanding or improving its productive facilities, but is at best maintaining them.

*** R&D expenses, the overall level was low.

Table VI-4
Citric acid and certain citrate salts: U.S. producers' capital expenditures and research and development expenditures, fiscal years 2005-07, January-March 2007, and January-March 2008

* * * * * * *

ASSETS AND RETURN ON INVESTMENT

Data on the domestic citric acid and certain citrate salts producers' assets and their return on investment (defined as operating income divided by total assets) are presented in table VI-5. The value of total assets decreased by a fair amount in 2007 as ***. The return on investment approximated the operating income margins in table VI-1.

Table VI-5
Citric acid and certain citrate salts: U.S. producers' assets and return on assets, fiscal years 2005-07

Item	Fiscal year		
	2005	2006	2007
	Value (*1,000 dollars*)		
Total assets:			
Current assets:			
Cash	0	0	0
Accounts receivable	21,253	27,819	26,180
Inventories (total)	40,524	51,603	44,105
All other current assets	417	180	90
Total current assets	62,194	79,602	70,375
Non-current assets:			
Property, plant, and equipment at cost	525,036	534,398	552,759
Less: accumulated depreciation	398,572	411,383	453,368
Equals: book value	126,464	123,015	99,391
Other non-current assets	13	0	0
Total non-current assets	126,477	123,015	99,391
Total assets	188,671	202,617	169,766
Operating income	(9,680)	(4,818)	(17,917)
	Ratio of operating income to total assets (percent)		
Return on investment	(5.1)	(2.4)	(10.6)

[1] ADM, Cargill, and Tate & Lyle all reported asset data.

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

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual negative effects since January 1, 2004, on their return on investment, 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 as a result of imports of citric acid and certain citrate salts from Canada or China. Their responses are as follows:

ADM ***.
Cargill ***.
Tate & Lyle ***.

The Commission also requested U.S. producers to describe any anticipated negative impact of imports of citric acid and certain citrate salts from Canada or China. Their responses are as follows:

ADM ***.
Cargill ***.
Tate & Lyle ***.

PART VII: THREAT CONSIDERATIONS

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors[1]--

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

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[1] Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "The Commission shall consider [these factors] . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition."

> (VIII) the 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
>
> (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).[2]

Information on the nature of the alleged subsidies was presented in Part I of this report; 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.

THE INDUSTRY IN CANADA

The Commission requested and received data from one firm, Jungbunzlauer Technology GmbH & Co. KG ("JBL Canada"), which was listed in the petition and accounted for all the citric acid production in Canada during the period of investigation. JBL Canada reported that it does not produce sodium citrate, potassium citrate, or unrefined calcium citrate at its production facility in Canada.

During the 2000 investigation, U.S. imports from nonsubject countries included imports from Jungbunzlauer Austria AG's citric acid production facility in Vienna, Austria. In 1999, JBL began planning to build an additional citric acid production facility in North America to better supply that geographical market. In 2002, JBL Canada's production facility began production of food and beverage grade citric acid.

During the period of these investigations, JBL Canada reported that *** percent of its total sales in the most recent fiscal year were sales of citric acid. In 2007, *** percent of JBL Canada's total shipments of citric acid were exported to the United States, *** percent of its shipments were to its home market, and *** percent of its shipments were to ***. JBL Canada reported a ***-percent increase in capacity from 2005 to 2006 as a ***. Its capacity is projected to *** percent from 2007 to 2008 ***. It has stated that it ***.[3] JBL Canada reported that ***. As with capacity, JBL Canada's production increased by *** percent between 2005 and 2007, and is projected to *** from 2007 to 2009 ***. JBL Canada reported that it acted as its exclusive U.S. importer of record of citric acid during the period of investigation. Table VII-1 presents data for reported production and shipments of citric acid for JBL Canada.

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[2] Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

[3] Respondent JBL's postconference brief, p. 19.

Table VII-1
Citric acid and certain citrate salts: Canada's reported production capacity, production, shipments, and inventories, 2005-07, January-March 2007, January-March 2008, and projections for 2008 and 2009

* * * * * * *

THE INDUSTRY IN CHINA

The Commission requested data from approximately 100 firms which were listed in the petition and believed to produce citric acid and certain citrate salts in China during the period of investigation.[4] The Commission received 19 responses. Data regarding the Chinese industry are based on 17 foreign producer questionnaires,[5] which are believed to account for more than 90 percent of Chinese export shipments to the United States in 2007.[6] The largest five reporting Chinese producers accounted for approximately 90 percent of reported 2007 production. These companies include: ***.[7]

Table VII-2 presents data for capacity, production, and shipments of citric acid and certain citrate salts from all reporting producers in China. Chinese producers' capacity increased by 68.1 percent from 2005 to 2007 and by an additional 17.4 percent between January-March 2007 and January-March 2008.[8] Capacity is projected to increase further by 3.8 percent from 2007 to 2009.[9] The production of Chinese producers increased by 77.5 percent from 2005 to 2007, and by an additional 21.3 percent between the interim periods, and they project a further increase of 3.8 percent from 2007 to 2009.[10]

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[4] Petition, exh. 8.

[5] The Commission received questionnaire responses from the following producers in China: (1) A.H.A. International Co., Ltd.; (2) Anhui BBCA Biochemical Co., Ltd.; (3) Gansu Xuejing Biochemical Co., Ltd.; (4) High Hope International Group; (5) Huangshi Xinghua Biochemical Co., Ltd.; (6) Huozhou Coal Electricity Shanxi Fenhe Biochemistry Co., Ltd.; (7) Hunan Dongting Critic Acid Chemicals Co., Ltd.; (8) Laiwu Taihe Biochemistry Co., Ltd.; (9) Lianyungang Shuren Scientific Creation Imp & Exp Co., Ltd.; (10) Nantong Feiyu Fine Chemical Co., Ltd.; (11) Penglai Marine Bio-Tech Co., Ltd.; (12) RZBC Group; (13) Shandong TTCA Biochemistry Co., Ltd.; (14) Shihezi City Changyun Biochemical Co., Ltd.; (15) Weifang Ensign Industry Co., Ltd.; (16) Yixing-Union Biochemical Co., Ltd.; and (17) Zhenjiang Inter-China Import & Export Co., Ltd.

The Commission also received responses from *** reporting that they did not produce or export the subject product to the United States during the period of investigation.

[6] Chinese respondents' postconference brief, p. 1 and exh. 11. Export shipments reported by responding Chinese producers accounted for 85.5 percent of U.S. imports in 2007. According to ***.

[7] Chinese respondents state that there has been rapid consolidation of Chinese citric acid producers; and since 2002, the number of major producers of citric acid in China has fallen from over 100 to just below 20. They claim that the driving force behind this consolidation is the government of China's new environmental protection policies, which forced the closure of many obsolete citric acid manufacturing facilities and may slow or prevent the addition of more capacity. Chinese respondents' postconference brief, pp. 47-49. China is slated to close 80,000 metric tons (176 million pounds) of citric acid capacity by 2010 ("China to stick to strict energy-saving environment-protection plans"), Xinhua News Agency, June 3, 2007. Petitioners argue that the current construction of new capacity far outweighs the closure of a modest amount of obsolete Chinese capacity. Petitioners' postconference brief, p. 43.

[8] According to ***. Petitioners' postconference brief, exh. 32, p. 1. Petitioners observe that this excess capacity *** annual U.S. apparent consumption during the period of investigation. Ibid., p. 42.

[9] Only one responding Chinese producer, ***, reported that it intends to increase capacity and projected ***.

[10] Only one responding Chinese producer, ***, reported that it produced products other than citric acid on the same equipment and stated that it produced ***.

Table VII-2
Citric acid and certain citrate salts: China's reported production capacity, production, shipments, and inventories, 2005-07, January-March 2007, January-March 2008, and projections for 2008 and 2009

Item	Actual experience					Projections	
				January-March			
	2005	2006	2007	2007	2008	2008	2009
	Quantity (*1,000 dry pounds*)						
Capacity	1,087,904	1,333,438	1,828,758	417,862	490,711	1,897,934	1,898,686
Production	933,015	1,150,414	1,656,547	370,513	449,544	1,711,771	1,720,027
End-of-period inventories	91,393	78,455	106,265	104,631	110,034	79,716	62,626
Shipments:							
Internal consumption	10,624	10,359	28,063	9,010	8,957	20,900	20,900
Home market	214,788	298,544	482,262	110,686	119,864	434,948	462,573
Exports to--							
The United States	109,039	133,822	153,989	30,707	34,430	129,442	122,717
All other markets	553,674	742,224	985,568	197,268	288,329	1,178,271	1,157,529
Total exports	662,713	876,046	1,139,557	227,975	322,759	1,307,713	1,280,245
Total shipments	888,125	1,184,949	1,649,882	347,671	451,580	1,763,561	1,763,718
	Ratios and shares (*percent*)						
Capacity utilization	85.8	86.3	90.6	88.7	91.6	90.2	90.6
Inventories to production	9.8	6.8	6.4	7.1	6.1	4.7	3.6
Inventories to total shipments	10.3	6.6	6.4	7.5	6.1	4.5	3.6
Shares of total quantity of shipments:							
Internal consumption	1.2	0.9	1.7	2.6	2.0	1.2	1.2
Home market	24.2	25.2	29.2	31.8	26.5	24.7	26.2
Exports to--							
The United States	12.3	11.3	9.3	8.8	7.6	7.3	7.0
All other markets	62.3	62.6	59.7	56.7	63.8	66.8	65.6
Total exports	74.6	73.9	69.1	65.6	71.5	74.2	72.6

Note.–January-March inventory ratios are calculated using annualized production and shipments data.

Source: Compiled from data submitted in Commission questionnaire responses.

Chinese producers reported capacity utilization rates ranging from 85.8 percent in 2005 to 91.6 percent in interim 2008.[11]

During the period of investigation, the volume of Chinese producers' export shipments to the United States increased by 41.2 percent from 2005 to 2007, but decreased as a share of China's total shipments from 12.3 percent of their total shipments in 2005 to 9.3 percent in 2007. Meanwhile, the volume of Chinese producers' shipments to the Chinese home market increased by 124.5 percent from 2005 to 2007 and increased as a share of total shipments during the period from 24.2 percent of total shipments in 2005 to 29.2 percent in 2007. From 2005 to 2007, Chinese shipments to other countries increased by 78.0 percent. Throughout the period of investigation, the majority of the Chinese producers' shipments went to other markets, ranging from 56.7 percent of total shipments in interim 2007 to 63.8 percent of total shipments in interim 2008. The top four Chinese producers reported that *** are their principal export markets.[12]

[11] Petitioners observe that the capacity utilization rates reported to the Commission and those published by *** do not conform. Petitioners urge the Commission to rely on *** data for its determinations and offers two explanations for the data discrepancy, namely, that the Commission does not have a complete data set and that those Chinese producers that reported to the Commission inflated their capacity utilization rates relative to the data they supplied ***. Petitioners' postconference brief, p. 30.

[12] Chinese respondents' postconference brief, p. 44.

U.S. IMPORTERS' INVENTORIES

Reported inventories held by U.S. importers of subject merchandise from Canada, China, and nonsubject countries are shown in table VII-3.

Table VII-3
Citric acid and certain citrate salts: U.S. importers' end-of-period inventories of subject and nonsubject imports, by sources, 2005-07, January-March 2007, and January-March 2008

Source	Calendar year			January-March	
	2005	2006	2007	2007	2008
Imports from Canada:					
Inventories (*1,000 dry pounds*)	***	***	***	***	***
Ratio to imports (*percent*)	***	***	***	***	***
Ratio to U.S. shipments of imports (*percent*)	***	***	***	***	***
Imports from China:					
Inventories (*1,000 dry pounds*)	15,488	13,434	23,396	15,096	16,412
Ratio to imports (*percent*)	16.7	10.5	16.7	9.7	15.3
Ratio to U.S. shipments of imports (*percent*)	18.6	11.7	21.6	11.5	14.1
Imports from Canada and China:					
Inventories (*1,000 dry pounds*)	***	***	***	***	***
Ratio to imports (*percent*)	***	***	***	***	***
Ratio to U.S. shipments of imports (*percent*)	***	***	***	***	***
Imports from nonsubject countries:					
Inventories (*1,000 dry pounds*)	3,117	4,272	2,815	3,525	2,603
Ratio to imports (*percent*)	11.7	19	13	21	12
Ratio to U.S. shipments of imports (*percent*)	12.0	21.3	13.0	18.0	12.6
Imports from all sources:					
Inventories (*1,000 dry pounds*)	***	***	***	***	***
Ratio to imports (*percent*)	***	***	***	***	***
Ratio to U.S. shipments of imports (*percent*)	***	***	***	***	***

Note.–January-March ratios are calculated using annualized import data.

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

U.S. IMPORTERS' CURRENT ORDERS

The Commission requested U.S. importers to indicate whether they imported or arranged for the importation of citric acid or certain citrate salts after March 31, 2008. Eighteen of the 28 reporting U.S. importers stated that they had imported or arranged for importation since March 31, 2008. Table VII-4 presents the 18 U.S. importers which indicated that they had imported or arranged for the importation of the subject product from Canada or China and the quantity of those U.S. imports.

Table VII-4
Citric acid and certain citrate salts: U.S. importers' orders of subject imports from Canada and China subsequent to March 31, 2008, by firm

* * * * * * *

ANTIDUMPING AND COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

Imports of citric acid and trisodium citrate dihydrate from China are the subject of an ongoing antidumping duty investigation being conducted in the European Union. The EU initiated its investigation on September 4, 2007 and has 15 months from that date to complete its investigation (9 months from that date to impose provisional duties).[13] In 2005, the government of India conducted an antidumping duty investigation on its imports of citric acid from China and Ukraine. On August 25, 2005, it determined that the Indian citric acid industry was not materially injured and did not impose antidumping duties.[14] There is no indication that citric acid and certain citrate salts from Canada or China have been the subject of any import relief investigations in any other countries.

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:[15]

> *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] *Official Journal of the European Union*, (2007/C 205/08).

[14] See the India's Ministry of Commerce and Industry website retrieved on May 6, 2008 http://commerce.nic.in/traderemedies/ad_casesinindia.asp?id=2. In 2003, the government of India imposed antidumping duties on citric acid from Indonesia and Thailand. In 2007, the government of South Africa terminated an antidumping duty investigation on citric acid from China for reasons unrelated to its domestic industry's material injury.

[15] *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.

The parties agree that *Bratsk* may be applicable to these investigations because citric acid and certain citrate salts are commodity products.[16] They disagree whether imports from nonsubject countries are price competitive in the U.S. market. They also disagree as to whether U.S. imports from nonsubject countries are capable of replacing U.S. imports from Canada and China or whether the domestic industry would benefit from the imposition of antidumping or countervailing duty orders on subject imports. Petitioners argue that U.S. imports from nonsubject countries, because they account for such a small share of U.S. imports (approximately *** percent in 2007), are incapable of replacing the *** percent of U.S. imports from Canada and China. Petitioners further argue that although the capacity to produce subject product in nonsubject countries is one factor the Commission may consider in its *Bratsk* analysis, it should not be outcome-determinative.[17] Finally, petitioners state that if a portion of U.S. imports from subject countries were removed from the U.S. market they could meet demand by increasing their capacity utilization rates, redirecting their export shipments to the U.S. market, and investing in capital projects to increase their own capacity.[18]

Chinese respondents argue that U.S. imports from nonsubject countries are easily capable of replacing subject imports in the U.S. market. They observe that the Commission in its 2000 investigation found as a condition of competition that fairly traded imports from nonsubject countries, namely Austria and Israel, compete with the U.S. product for sale in the large U.S. food and beverage market and that these countries are still able to produce vast quantities of subject product.[19] Moreover, Chinese respondents highlight that JBL at the Commission's preliminary conference stated that JBL built its manufacturing facility in Canada in order to be able to service the U.S. market and to replace its export shipments from Austria.[20] Finally, Chinese respondents argue that U.S. imports from nonsubject countries are capable of replacing subject imports on the basis of price, observing that the average unit values of U.S. imports from Canada generally exceeded those from nonsubject countries and were competitive with those from China.[21]

Based on U.S. Government official trade statistics, the following nonsubject countries exported substantial amounts of citric acid, sodium citrate, or other salts and esters of citric acid to the U.S. market during the period of investigation: Israel, Belgium, Germany, Colombia, Austria, and Thailand (listed in descending order of import volume in 2007).

Table VII-5 presents estimates from the *Chemical Economics Handbook* report on citric acid and included in exhibit I-2 of the petition, which show January 2006 capacities and full-year 2005 production.

Table VII-5
World capacity (January 2006) and production (2005) of citric acid, by country/region

* * * * * * *

In Western Europe, there are three operating citric acid plants. JBL, the parent of the Canadian respondent, owns the largest plant with a capacity of *** in Austria. At the time of the last investigation, Austria and Israel were the two largest sources of nonsubject imports in the U.S. market. Citrique Belge

[16] Petitioners' postconference brief, exh. 1, p. 5; Chinese respondents' postconference brief, p. 39.

[17] Ibid., exh. 1, pp. 5-6. Petitioners have provided a computation of what they consider to be excess capacity in nonsubject countries. They compute that there exists 148.7 million pounds of excess capacity (capacity minus 2005 home market consumption), an amount they allege is insufficient to replace subject imports. Ibid., exh. 1, p. 8.

[18] Ibid., exh. 1, pp. 7-8.

[19] Chinese respondents' postconference brief, p. 40 citing *Citric Acid and Sodium Citrate From China, Inv. No. 731-TA-863 (Preliminary)*, USITC Pub. 3277, February 2000, p. 11.

[20] Conference transcript, p. 118 (Waite); Chinese respondents' postconference brief, p. 40.

[21] Chinese respondents' postconference brief, p. 42.

operates the ***, which has a capacity of ***. Tate & Lyle had a plant in the United Kingdom that has a capacity of ***, but closed the facility permanently in 2007.[22] JBL used to operate an additional citric acid plant in Germany but closed this plant in 1991 due to logistical issues and currently converts purchased citric acid into citrate salts at this facility. ADM used to operate a plant in Ireland but it permanently closed the facility in 2005. Both ADM and Tate & Lyle assert that imports from China were the reasons for the closures.

All of the capacity listed for Central and South America is controlled by the petitioners. *** own the plants in Brazil which have a combined capacity of ***.[23] *** has *** in the lone plant in Colombia, which has a capacity of ***.[24]

An Israeli company, Gadot Biochemical Industries LTC ("GBI") with a capacity of ***, is the largest producer in the Middle East.[25] Two Iranian companies have the balance of the capacity in the region.

*** capacity in Japan ***, Showa Kako, with a capacity of ***, ***.[26]

The three countries included in "Other Asia" are India, Indonesia, and Thailand. Their capacities as of January 2006 were ***, ***, and ***, respectively.[27]

According to SRI Consulting, the price for citric acid imports was ***.[28] ***.[29]

The trade estimates provided in the *Chemical Economics Handbook* showed ***.

[22] *Chemical Economics Handbook*, "Citric Acid," August 2006, p. 55; conference transcript, p. 74 (Poulos).

[23] *Chemical Economics Handbook*, "Citric Acid," August 2006, pp. 47-48.

[24] Ibid., p. 49.

[25] GBI and Jiangsu Nuobei Biochemical reportedly have partnered to build a new citric acid plant in Jiangsu, China. "Gadot-Best Biochemical's 60,000 t/a citric acid project under construction," *China Corn Products News*, December 2007.

[26] *Chemical Economics Handbook*, "Citric Acid," August 2006, pp. 89-91.

[27] Ibid., pp. 98.

[28] Ibid., pp. 63-64.

[29] Ibid., p. 85.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–456 and 731–TA–1151–1152 (Preliminary)]

Citric Acid and Certain Citrate Salts From Canada and China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–456 and 731–TA–1151–1152 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 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 Canada and China of citric acid and certain citrate salts, provided for in subheadings 2918.14.00 and 2918.15.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by May 29, 2008. The Commission's views are due at Commerce within five business days thereafter, or by June 5, 2008.

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: April 14, 2008.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these 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 April 14, 2008, by Archer Daniels Midland Co., Decatur, IL; Cargill, Inc., Wayzata, MN; and Tate & Lyle Americas, Inc., Decatur, IL.

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 sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping 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 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 section 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 May 7, 2008, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202–708–5408) not later than May 2, 2008, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing 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 sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 12, 2008, 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 sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the 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 section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 16, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–8649 Filed 4–21–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–938)

Notice of Initiation of Countervailing Duty Investigation: Citric Acid and Certain Citrate Salts from the People's Republic of China

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

EFFECTIVE DATE: May 12, 2008

FOR FURTHER INFORMATION CONTACT: David Neubacher, Scott Holland, and Shelly Atkinson, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5823, (202) 482–1279, and (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 14, 2008, the Department of Commerce (the ''Department'') received a petition filed in proper form by Archer Daniels Midland Company, Cargill, Inc., and Tate and Lyle Americas, Inc. (the ''petitioners''), domestic producers of citric acid and certain citrate salts (''citric acid''). On April 22, 2008, the Department received a supplement to the petition alleging several additional subsidy programs. In response to the Department's requests, the petitioners provided timely information supplementing the petition on April 24, 2008 and April 28, 2008.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (''the Act''), the petitioners allege that manufacturers, producers, or exporters of citric acid in the People's Republic of China (the ''PRC''), receive countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and the petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation (*see* ''Determination of Industry Support for the Petition'' section below).

Period of Investigation

The period of investigation is January 1, 2007, through December 31, 2007.

Scope of the Investigation

The scope of this investigation includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of this investigation also includes all forms of unrefined calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of this investigation includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (''HTSUS''), respectively. Potassium citrate and calcium citrate are classifiable under 2918.15.5000 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (''CRU''), Room 1117, 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.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the PRC for consultations with respect to the countervailing duty petition. The Department held these consultations in Beijing, China, with representatives of the Government of the PRC on April 28, 2008. *See* the Memorandum to The File, entitled, ''Consultations with Officials from the Government of the People's Republic of China'' (April 28, 2008) on file in the CRU of the Department of Commerce, Room 1117.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (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 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers 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 and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (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 subtitle.'' 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 petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that citric acid and certain citrate salts (unrefined calcium citrate, sodium citrate, and potassium citrate) constitute 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 this case, *see* the *Countervailing Duty Investigation Initiation Checklist: Citric Acid and Certain Citrate Salts from the People's Republic of China (PRC)*, Industry Support at Attachment II (*PRC Initiation Checklist*) on file in the Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that the petitioners have established industry support. First, the petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Section 702(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the 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 petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See PRC Initiation Checklist at Attachment II (Industry Support).

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. *See PRC Initiation Checklist* at Attachment II (Industry Support).

Injury Test

Because the PRC, is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of citric acid and certain citrate salts from the PRC are benefitting from countervailable subsidies and that such imports are causing or threatening to cause, material injury to the domestic industry producing citric acid and certain citrate salts. The petitioners contend that the industry's injured condition is illustrated by the reduced market share, reduced production and capacity utilization, reduced employment, underselling and price depressing and suppressing effects, lost revenue and sales, a decline in financial performance, and an increase in import penetration. The Department has assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and the Department determines that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See*

PRC Initiation Checklist at Attachment III.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

Preferential Lending

1. Government Policy Lending Program

2. Funds provided for the rationalization of the citric acid industry

3. Discounted loans for export–oriented industries

4. Loans provided pursuant to the Northeast Revitalization Program

Grant Programs

5. State Key Technology Renovation Program Fund

6. National level grants to loss–making state–owned enterprises

7. ''Famous Brands'' Program

Income Tax Programs

8. ''Two Free, Three Half'' program

9. Reduced income tax rates for foreign–investment enterprises based on location

10. Income tax exemption program for export–oriented foreign–investment enterprises

11. Tax benefits to foreign–investment enterprises for certain reinvestment of profits

12. Reduced income tax rate for high or new technology enterprises

13. Reduced income tax rate for technology or knowledge intensive foreign–investment enterprises

14. Preferential income tax rate for research and development at foreign–investment enterprises

15. Preferential tax programs for encouraged industries

16. Preferential tax policies for township enterprises

17. Income tax credits on purchases of domestically produced equipment

Indirect Tax Programs and Import Tariff Program

18. Value added tax rebate for purchases by foreign–investment enterprises of domestically produced equipment

19. Value added tax and duty exemptions on imported equipment

20. Excessive value added tax rebates on exports

Provincial/Local Subsidy Programs

21. Provincial level grants to loss–making state–owned enterprises

22. Local income tax exemption and reduction program for ''productive'' foreign–investment enterprises

Anhui Province:

23. Reduced income tax rates for encouraged industries in Anhui Province

24. Provision of land for less than adequate remuneration in Anhui Province

Guangdong Province:

25. Funds for ''outward expansion'' of industries in Guangdong Province

Jiangsu Province:

26. Income tax exemption for foreign–investment enterprises located in Jiangsu Province

27. Preferential tax programs for enterprises located in the Su Qian Economic Development Zone

28. Provision of land for less than adequate remuneration in the Su Qian Economic Development Zone

29. Provision of electricity for less than adequate remuneration in the Su Qian Economic Development Zone

Liaoning Province:

30. Loans and interest subsidies pursuant to the Liaoning Province's five-year framework

Shandong Province:

31. Local and income tax exemptions and reductions for firms located in Qilu Chemicals Industry Park

Shanxi Province:

32. Preferential tax program for enterprises located in Shanxi Province

33. Funding for enterprises under the Shanxi Province 10th Five-year Plan

Shenzhen City:

34. Export interest subsidy funds for enterprises located in Shenzhen City

Zhejiang Province:

35. Export interest subsidy funds for enterprises located in Zhejiang Province

36. Exemptions and reductions in taxes and fees for chemical research and development institutions located in Zhejiang Province

37. Provision of land for less than adequate remuneration for enterprises located in Hangzhou Bay Fine Chemical Park

38. Provision of electricity for less than adequate remuneration for enterprises located in Hangzhou Bay Fine Chemical Park

For further information explaining why the Department is investigating these programs,

see *China Initiation Checklist.*

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

Provision of Goods and Services- for Less Than Adequate Remuneration by the GOC

1. Water

The petitioners allege that through the program of rationalization, the GOC has promoted differential water rates to favored citric acid producers within the Chinese chemicals industry, despite China's limited water resources and the water–intensive nature of the citric acid industry. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

2. Land

The petitioners allege that the GOC provides citric acid producers with land grants and/or reduced land costs. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

3. Electricity and natural gas

The petitioners allege that Chinese citric acid producers benefit from government–provided electricity and natural gas at subsidized prices. The GOC controls and sets prices for electricity and natural gas. The petitioners note that the GOC acknowledged in its WTO accession documents that it provides subsidies on energy inputs to ''special industry sectors.'' The government has also recently identified the citric acid industry as a high polluting industry and non–backward producers as ''preferred,'' and has committed to ending preferential policies to those companies. Thus, the petitioners allege that the remaining citric acid producers will continue to receive energy subsidies available to certain sectors. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

Income Tax Programs

4. Preferential tax program for enterprises in Beijing Municipality

Petitioners allege that the Beijing Municipality provides subsidies to develop the fine chemical industry, which includes the citric acid industry.

Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

5. Preferential tax program for enterprises in Chongqing Municipality

In accordance with the West Revitalization Project, the GOC offers encouraged industries in the Chongqing Municipality a preferred tax rate of 15%. Petitioners allege further that fine chemical companies located in the Chongqing Chemical Industrial Park are eligible for additional benefits. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

6. Preferential tax program for enterprises in Shandong Province

Petitioners allege that municipal governments encourages the development of the chemical industry by granting tax reductions and exemptions for companies located in chemical parks such as Qilu Chemical Industry Park. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as a non–market economy (''NME'') country in all past AD investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and 10 Unfinished, (''TRBs'') From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–1 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001–2002 Administrative Review*, 68 FR 70488, 70488–89 (December 18, 2003).

In the final affirmative CVD determination on coated free sheet paper from the PRC, the Department determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the CVD law. *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and the accompanying Issues and Decision Memorandum at Comment 1. Therefore, because Petitioners have provided sufficient allegations and support of their allegations to meet the statutory criteria for initiating a CVD investigation of citric acid from the PRC, initiation of a CVD investigation is warranted in this case. For further information, see *CVD Initiation Checklist*.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection data for U.S. imports during the POI. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the Government of the PRC. As soon as and to the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is a reasonable indication that imports of subsidized citric acid from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

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

Dated: May 5, 2008.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E8–10516 Filed 5–9–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–853, A–570–937]

Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Initiation of Antidumping Duty Investigations

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

DATES: *Effective Date:* May 13, 2008.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova (Canada) or Hallie Zink (People's Republic of China), AD/CVD Operations, Office 2 and China/NME Group, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–6907, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On April 14, 2008, the Department of Commerce (the Department) received petitions concerning imports of citric acid and certain citrate salts from Canada (Canada petition) and the People's Republic of China (PRC) (PRC petition) filed in proper form by Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Americas, Inc. (collectively, the petitioners). *See* the Petitions on Citric Acid and Certain Citrate Salts from Canada and the PRC filed on April 14, 2008. On April 17, 2008, the Department issued a request for additional information and clarification of certain areas of the petitions. Based on the Department's request, the petitioners filed supplements to the petitions for both countries on April 22, 2008 (Supplement to the Petition). The Department requested further clarifications from the petitioners by phone. *See* Memorandum to the File: Conference Call Regarding Scope Language, Petition for the Imposition of Antidumping and Countervailing Duties: Citric Acid and Certain Citrate Salts from Canada and the PRC, dated April 28, 2008. On May 1, 2008, the petitioners filed a revised scope. *See Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China; Revision of Scope Definition*, dated May 1, 2008.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of citric acid and certain citrate salts from Canada and the 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 materially injure, or threaten material injury to, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the investigations that they are requesting the Department to initiate (*see* ''Determination of Industry Support for the Petitions'' below).

Scope of Investigations

The scope of these investigations includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of these investigations also includes all forms of unrefined calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of these investigations includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and calcium citrate are classifiable under 2918.15.5000 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Comments on Scope of Investigations

During our review of the petitions, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by May 27, 2008, the next business day after 20 calendar days from the date of signature of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, 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.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of citric acid and certain citrate salts to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe citric acid and certain citrate salts, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by May 27, 2008. Additionally, rebuttal comments must be received by June 3, 2008.

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 or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers 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 and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v.

United States, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (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 subtitle.'' 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 petitioners do 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 citric acid and certain citrate salts (unrefined calcium citrate, sodium citrate, and potassium citrate) constitute 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 this case, *see* Antidumping Duty Investigation Initiation Checklist: Citric Acid and Certain Citrate Salts from Canada (Canada Initiation Checklist), and Antidumping Duty Investigation Initiation Checklist: Citric Acid and Certain Citrate Salts from the PRC (PRC Initiation Checklist) at Attachment II (Industry Support), on file in the Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

Our review of the data provided in the petitions, supplemental submissions, and other information readily available to the Department indicates that the petitioners have established industry support. First, the petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, 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. Second, 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 (or workers) who support the petitions account for at least 25 percent of the total production of the domestic like product. Finally, 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 (or workers) who support the petitions 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 petitions. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Canada Initiation Checklist and PRC Initiation Checklist at Attachment II (Industry Support).

The Department finds that the petitioners filed the petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigations that they are requesting the Department initiate. *See* Canada Initiation Checklist and PRC Initiation Checklist at Attachment II (Industry Support).

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured by reason of the imports of the subject merchandise sold at less than normal value (NV). The petitioners contend that the industry's injured condition is illustrated by the reduced market share, reduced production and capacity utilization, reduced employment, underselling and price depressing and suppressing effects, lost revenue and sales, a decline in financial performance, and an increase in import penetration. The Department has assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and the Department determines that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Canada Initiation Checklist and PRC Initiation Checklist at Attachment III.

Period of Investigations

In accordance with 19 CFR 351.204(b), because these petitions were filed on April 14, 2008, the anticipated period of investigation (POI) is April 1, 2007, through March 31, 2008, for Canada, and October 1, 2007, through March 31, 2008, for the PRC.

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 has based its decision to initiate investigations with respect to Canada and the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Canada Initiation Checklist and the PRC Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculations, if appropriate.

Canada

Export Price

The petitioners calculated export price (EP) based on a POI price quote for subject merchandise produced by Jungbunzlauer Canada Inc. (JBL Canada), a potential Canadian respondent. The petitioners made adjustments for U.S. inland freight and brokerage and handling expenses. To calculate the transportation charges, the petitioners obtained freight estimates for transporting the subject merchandise by truck from the location of JBL Canada to the location of JBL Canada's U.S. customer. The petitioners obtained an estimate for brokerage fees related to crossing the border, by truck, from Canada to the United States. See Petition, Volume II at pages 10 through 13, and Exhibits II–6 and II–7; and Supplement to the Petition.

Normal Value

The petitioners calculated NV based on: (1) A published POI list price for citric acid in eastern Canada from a Canadian chemical industry publication; and (2) a POI price quote from a Canadian purchaser of subject merchandise, adjusted for a distributor mark-up amount. The petitioners adjusted both starting prices for freight expenses, calculated using a rate obtained from a trucking company that operates in Canada. The petitioners made a circumstance-of-sale (COS) adjustment to the home market prices for differences in imputed credit expenses between the Canadian and U.S. markets. The petitioners' calculated home market and U.S. imputed credit expenses using prime rates from the Bank of Canada and the U.S. Federal Reserve, respectively. We revised the petitioners' margin calculations to correct certain errors in the application of the COS adjustment for credit expenses. See Petition, Volume II, Supplement to the Petition, Volume II and Canada Initiation Checklist and Checklist Attachment V: Revised Margin Calculations.

Sales-Below-Cost Allegation

The petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of citric acid in the Canadian market were made at prices below the fully absorbed cost

of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. The Department's practice is to consider allegations of below-cost sales in the aggregate for a foreign country. *See Sodium Metal from France: Notice of Initiation of an Antidumping Duty Investigation,* 72 FR 65295, 65297 (November 20, 2007).

Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COM and packing based on a U.S. producer's cost experience, adjusted for known differences to manufacture citric acid in Canada using publicly available data since actual Canadian cost information was not reasonably available to the petitioners. To calculate an SG&A rate, including financial expenses, the petitioners relied on cost data for a U.S. producer of citric acid. We recalculated SG&A and interest expenses using the 2007 financial statements for Corn Products International (CPI), a company with substantial operations in Canada and in the same general industry as JBL Canada. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made 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.

Constructed Value (CV)

Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A expenses, financial expenses, packing expenses and profit.

Consistent with their calculation of COP above, the petitioners calculated COM and packing based on a U.S. producer's cost experience, adjusted for known differences to manufacture citric acid in Canada using publicly available data. See Canada Initiation Checklist for details of the calculation of COM. To calculate an SG&A rate, including financial expenses, the petitioners relied on cost data for a U.S. producer of citric acid. To calculate profit, the petitioners relied on the financial statements of CPI because it has substantial operations in Canada and is in the same general industry as JBL Canada. See Volume II of the Petition at pages 9 and 10, and Exhibit II–18, dated April 14, 2008. To be consistent with the calculation of CV profit, we recalculated SG&A and financial expenses using CPI's financial statements. See Canada Initiation Checklist.

PRC

Export Price

The petitioners calculated the EP based on official U.S. import unit values for citric acid from the PRC during October 2007–February 2008, imported under the HTS subheading 2918.14.0000 (citric acid).[1] *See* Petition, Volume III, at page 12, Supplement to the Petition, at Revised Exhibit III–22, and PRC Initiation Checklist. Official U.S. import unit values for subject merchandise imported under HTS 2918.14.0000 do not differentiate between anhydrous and monohydrate forms of citric acid. Using PIERS data for the same time period, the petitioners were able to determine that the majority of citric acid imported under HTS 2918.14.0000, entered in the form of anhydrous citric acid. Because, however, some of the subject merchandise entered as citric acid monohydrate, the petitioners explain that it is necessary to adjust the unit vale to reflect that citric acid monohydrate is relatively cheaper than the anhydrous form of the merchandise. *See* Petition, Volume III, at page 12, and PRC Initiation Checklist. Therefore, the petitioners converted the official U.S. import unit values for citric acid, imported under HTS 2918.14.0000, from the monohydrate form of citric acid to the anhydrous equivalent and used that figure to calculate an average unit, free on board (''FOB''), value. *See* Supplement to the Petition, at Revised Exhibit III–17, and PRC Initiation Checklist.

The petitioners calculated foreign brokerage and handling using Indian data because Indonesian data was not readily available. See Petition, Volume III, at page 14, and Supplement to the Petition, at Revised Exhibit III–18, and PRC Initiation Checklist. The petitioners inflated their calculated foreign brokerage and handling rate to the POI using the Wholesale Price Index (WPI) for India from the International Financial Statistics (IFS) of the International Monetary Fund (IMF) and converted imports valued in Rupees/kilogram (Rs/Kg) to U.S. Dollars/kilogram (US$/Kg) using the exchange rates on the Department's Web site at: *http://ia.ita.doc.gov/exchange/index.html. See* Supplement to the Petition, Volume III, at pages 2–3, and Revised Exhibits III–18–21, and PRC Initiation Checklist. The petitioners then deducted the foreign brokerage and handling charge from the anhydrous equivalent average unit value. *See* Supplement to the Petition, Volume III, at Revised Exhibit III–21, and PRC Initiation Checklist. The petitioners did not adjust EP for inland freight charges in China. *See* Petition, Volume III, at page 14, and PRC Initiation Checklist.

Normal Value

The petitioners note that the Department's long-standing treatment of the PRC as a non-market economy (NME) country remains in effect until revoked by the Department, and notes that no such revocation determination has been made to date. *See* Volume III of the Petition, at page 1, and PRC Initiation Checklist. The Department has previously 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 May 15, 2006.[2] In addition, in recent investigations, the Department has continued to determine that the PRC is an NME country. *See 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); *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).

In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (Act), the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In 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

[1] As reflected in the official U.S. import unit values, the bulk of U.S. imports of citric acid from the PRC (*i.e.,* citric acid (HTS 2918.14.0000), sodium citrate (HTS 2818.15.1000), and other salts and esters of citric acid (2918.15.5000)), entered under HTS subheading 2918.14.0000 (citric acid). *See* Petition, Volume I, at Exhibit I–10.

[2] This document is available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf.*

the granting of separate rates to individual exporters.

The petitioners assert that of the five countries normally considered as alternative surrogate market economies for the PRC, *i.e.*, India, Egypt, Indonesia, the Philippines and Sri Lanka, only Indonesia appears to have production of subject merchandise. *See* Petition, Volume I, at Exhibit I–2, and Volume III, at page 2, and PRC Initiation Checklist. The petitioners note that although the Department has regularly used India as its preferred surrogate country for determining the NV of merchandise from the PRC, they were unable to identify any current producers of subject merchandise in India. *See* Petition, Volume III, at page 2, Supplement to the Petition, Volume III, at pages 3–4, and Revised Exhibit III–22, and PRC Initiation Checklist.

According to the petitioners, however, Indonesia is a significant producer of subject merchandise. Further, a significant producer of subject merchandise in Indonesia, Budi Acid Jaya PT (Budi Jaya), employs similar manufacturing techniques, equipment and economics to that of a large Chinese producer of subject merchandise. *See* Petition, Volume III, at page 4, Supplement to the Petition, Volume III, at pages 4–6, and PRC Initiation Checklist. In addition, the petitioners contend that Indonesia is a regular importer of corn (which, the petitioners state, is the principal input of the subject merchandise in China), and information on raw materials, energy inputs and import data for additional bulk chemicals are readily available for Indonesia. *See* Petition, Volume III, at pages 4–5, and PRC Initiation Checklist. Thus, the petitioners have used Indonesia as the surrogate country for China. However, after initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

The petitioners 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. *See* Petition, Volume III, at page 5, and PRC Initiation Checklist. The petitioners calculated NV, with adjustments made for known differences, based on their own experience and knowledge, which the petitioners state, reflects the experience of a large Chinese producer of subject merchandise. *See* Petition, Volume III, pages at 5–7, and PRC Initiation Checklist. As noted above, the petitioners made adjustments in their calculation of NV to take into account known differences in the PRC production process, which included adjustments related to corn usage, labor hours and usage factors for calcium carbonate and sulphuric acid. *See* Petition, Volume III, at page 6, Supplement to the Petition, Volume III, at page 12 and Revised Exhibits III–6 and III–7, and PRC Initiation Checklist.

The petitioners valued the factors of production based on reasonably available, public surrogate country data, including Indonesian government import statistics. *See* Petition, Volume III, at page 8, and PRC Initiation Checklist. The petitioners sourced the Global Trade Atlas for the latest available six-month period, *i.e.*, July 2007–December 2007, excluding values from countries previously determined by the Department to be NME countries, as well as imports into Indonesia from India, the Republic of Korea, and Thailand because they maintain broadly available, non-industry specific, export subsidies. Where the petitioners were unable to find imports into Indonesia for a particular input during that time period, they used imports during the next most recent time period. *See* Supplement to the Petition, Volume III, at Revised Exhibit III–8, and PRC Initiation Checklist.

The petitioners also relied on Global Trade Atlas data to value packing inputs. *See* Petition, Volume III, at page 11 and Exhibit III–16, Supplement to the Petition, Volume III, at page 10, and Revised Exhibit III–8, and PRC Initiation Checklist. The petitioners valued electricity using a World Bank publication, *Electricity for All: Options for Increasing Access in Indonesia.* Specifically, the petitioners used the Batam and Tarakan average electricity tariffs from 2004, the most recent time period for which data is available. *See* Petition, Volume III, at pages 9–10, and Exhibit III–12, Supplement to the Petition, at Revised Exhibit III–12, and PRC Initiation Checklist. The petitioners valued steam using a methodology developed in *Hot-Rolled Steel from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 66 FR 22183 (May 3, 2001), and accompanying Factors of Production Memorandum at Exhibit 7, and used in *Tissue Paper from the PRC.* [3] *See* Petition, Volume III, at page 10, Supplement to the Petition, at Revised Exhibit III–13, and PRC Initiation Checklist. The petitioners valued water based on information contained in a United Nations Report from 2006 which discusses the average water tariff in Jakarta for large factories. *See* Petition, Volume III, at page10, Supplement to the Petition, at Revised Exhibit III–14, and PRC Initiation Checklist.

The petitioners valued labor using US$ 0.83/hour labor rate for the PRC currently available for 2004 on the Department's Web site. *See* Supplement to the Petition, Volume III, at pages 8–9, and Revised Exhibit III–11, and PRC Initiation Checklist. For the surrogate financial expenses for factory overhead, SG&A, and profit, the petitioners relied on the financial ratios of Budi Jaya, a significant producer of subject merchandise in Indonesia. *See* Petition, Volume I, at Exhibit I–2, Volume III, at page 4, and Exhibit III–3 at 30, 41, 42, and PRC Initiation Checklist.

Where the petitioners were unable to find input prices contemporaneous with the POI, they adjusted for inflation using the WPI for Indonesia, as published in IFS by the IMF. *See* Supplement to the Petition, at page 11, and Revised Exhibit III–9, and PRC Initiation Checklist. For exchange rates to convert Indonesian rupiah to U.S. dollars, the petitioners averaged the foreign currency exchanges rates, as provided on the Department's Web site, for each day of the POI. Monetary conversions were applied only after having first applied a rupiah-based inflator to the original source rupiah value, as necessary. *Id.*, at 11 and Revised Exhibit III–10, and PRC Initiation Checklist.

Fair-Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of citric acid and certain citrate salts from Canada and the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV that we revised as discussed above, the estimated dumping margins for Canada are 22.91 percent (EP-to-NV comparison where NV is based on a home market price quote), 111.83 percent (EP-to-NV comparison where NV is based on a published list price), and 57.06 percent (EP-to-CV comparison). Based on a comparison of EP to NV, the estimated

[3] *Certain Tissue Paper Products and Certain Crepe Paper Products From the People's Republic of China: Notice of Preliminary Determinations of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination for Certain Tissue Paper Products,* 69 FR 56407 (September 21, 2004) (''*Tissue Paper from the PRC*'').

dumping margin for the PRC is 156.87 percent.

Initiation of Antidumping Investigations

Based upon the examination of the petitions on citric acid and certain citrate salts from Canada and the PRC and other information reasonably available to the Department, the Department finds that these petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of citric acid and certain citrate salts from Canada 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, unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

Canada

For Canada, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. import during the POI. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice, and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo.*

PRC

For the PRC, the Department will request quantity and value information from all known exporters and producers identified, with complete contact information, in the petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008); and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005). Appendix I of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters/producers no later than May 27, 2008. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site, at *http://ia.ita.doc.gov/ia-highlights-and-news.html.* The Department will send the quantity and value questionnaire to those PRC companies identified in the petition, Volume I, at Exhibit I–8.

Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. *See Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea and the People's Republic of China: Initiation of Antidumping Duty Investigations,* 73 FR 23188, 23193 (April 29, 2008) (*Certain Circular Welded Carbon Quality Steel Line Pipe from the PRC*). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, available on the Department's Web site 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 will be due sixty (60) days from the date of publication of this initiation notice in the **Federal Register**.

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/Combination Rates Bulletin states:

> [w]hile 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 period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. 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 period of investigation.

See Certain Circular Welded Carbon Quality Steel Line Pipe from the PRC.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the petitions have been provided to the representatives of the Governments of Canada and the PRC. Because of the particularly large number of producers/exporters identified in the petitions, the Department considers the service of the public version of the petitions to the foreign producers/exporters satisfied by the delivery of the public version to the Governments of Canada and the PRC, consistent with 19 CFR 351.203(c)(2).

International Trade Commission (ITC) Notification

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

Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than May 27, 2008, whether there is a reasonable indication that imports of citric acid and certain citrate salts from Canada and the PRC materially injure, or threaten material injury to, a U.S. industry. A negative ITC determination covering all classes or kinds of merchandise covered by the petitions would result in the investigations being terminated. 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: May 5, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Where it is not practicable to examine all known exporters/producers of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930, as amended, permits us to investigate (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume and value of the subject

merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (see ''Scope of Investigation'' section of this notice), produced in the PRC, and exported/shipped to the United States during the period October 1, 2007, through March 31, 2007.

Market	Total quantity in metric tons	Terms of sale	Total value
United States			
1. Export Price Sales 2. a. Exporter Name b. Address c. Contact d. Phone No. e. Fax No. 3. Constructed Export Price Sales			
4. Further Manufactured Total Sales			

Total Quantity:

• Please report quantity on a metric ton basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales:

• Please report all sales on the same terms (e.g., free on board at port of export).

Total Value:

• All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

Export Price Sales:

• Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated customer occurs before importation into the United States.

• Please include any sales exported by your company directly to the United States.

• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

• Please do not include any sales of subject merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales:

• Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated customer occurs after importation. However, if the first sale to the unaffiliated customer is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.

• Please include any sales exported by your company directly to the United States;

• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

• Please do not include any sales of subject merchandise manufactured in Hong Kong in your figures.

Further Manufactured:

• Sales of further manufactured or assembled (including re-packaged) merchandise is merchandise that undergoes further manufacture or assembly in the United States before being sold to the first unaffiliated customer.

• Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E8–10515 Filed 5–9–08; 8:45 am]

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APPENDIX B

LIST OF CONFERENCE WITNESSES

CALENDAR OF PUBLIC CONFERENCE

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

Subject:	Citric Acid and Certain Citrate Salts from Canada and China
Inv. Nos.:	701-TA-456 and 731-TA-1151-1152 (Preliminary)
Date and Time:	May 7, 2008 - 9:30 a.m.

The conference was held in connection with these investigations in the Main Hearing Room (Room 101), U.S. International Trade Commission, 500 E Street, S.W., Washington, DC.

OPENING STATEMENTS

Petitioner: **Neil R. Ellis**, Sidley Austin LLC
Respondents: **Frederick P. Waite**, Vorys, Sater, Seymour, and Pease LLP and **Daniel Porter**, Heller Ehrman LLP

IN SUPPORT OF THE IMPOSITION OF ANTIDUMPING AND COUNTERVAILING DUTIES:

Sidley Austin LLP
Washington, DC
on behalf of

Archer Daniels Midland Co.
Cargill, Inc.
Tate & Lyle Americas, Inc.

John Oakley, Business Director, Food Additives Group, Archer Daniels Midland Co.

Mark Christiansen, Acidulant Sales Manager, Cargill, Inc.

Jack Staloch, Vice President, Acidulants Product Line Manager, Cargill, Inc.

Curtis Poulos, Commercial Director, Acidulants, Tate & Lyle Americas, Inc.

L. Martin Hurt, Senior Product Manager, Food Ingredients, Tate & Lyle Americas, Inc.

Charles Anderson, Principal, Capital Trade, Inc.

Andrew Szamosszegi, Managing Consultant, Capital Trade, Inc.

Neil R. Ellis)
Yvonne M. Hilst)–OF COUNSEL
Geoffrey D. Antell)

IN OPPOSITION TO THE IMPOSITION OF ANTIDUMPING AND COUNTERVAILING DUTIES:

Heller Ehrman LLP
Washington, DC
on behalf of

Shandong TTCA Biochemistry Co., Ltd.
Yixing-Union Biochemical Co., Ltd.
RZBC Group
Anhui BBCA Biochemical Co., Ltd.
Weifang Ensign Industry Co., Ltd.
High Hope International Group
Jiangsu Native Product Imp & Exp Corp., Ltd.
Huangshi Xinghua Biochemical Co., Ltd.
Huozhou Coal Electricity Shanxi Fenhe Biochemistry Co., Ltd.
Shihezi City Changyun Biochemical Co., Ltd.
A.H.A. International Co., Ltd.
Laiwu Taihe Biochemistry Co., Ltd.
Gansu Xuejing Biochemical Co., Ltd.
Jiali International Corp.
Hunan Dongting Citric Acid Chemicals Co., Ltd.
Lianyungang Shuren Scientific Creation Import & Export Co., Ltd.
Jiangsu Gadot Nuobei Biochemical Co., Ltd.
Changsha Glorysea Biochemicals Co., Ltd.
Nantong Feiyu Fine Chemical Co., Ltd.
Penglai Marine Bio-Tech Co., Ltd.

Jimmy Hsu, President, United Foods Corp.

Daniel Porter)–OF COUNSEL
Valerie Ellis)

Vorys, Sater, Seymour, and Pease LLP
Washington, DC
on behalf of

Jungbunzlauer Technology GmbH & Co. KG

Frederick P. Waite)–OF COUNSEL
Kimberly R. Young)

IN OPPOSITION TO THE IMPOSITION OF ANTIDUMPING AND COUNTERVAILING DUTIES–*Continued*:

Lafave Associates
Washington, DC
on behalf of

The Procter & Gamble Co.

James M. Hodges, Jr., Purchasing Group Manager of Global Chemical Purchases, The Procter & Gamble Co.

A. Matthew Smith, Senior Purchasing Manager, The Procter & Gamble Co.

Kenneth R. Button, Senior Vice President, Economic Consulting Services, LLC

Arthur J. Lafave III)–OF COUNSEL

CLOSING STATEMENTS

Petitioner: **Neil R. Ellis**, Sidley Austin LLC
Respondents: **Frederick P. Waite**, Vorys, Sater, Seymour, and Pease LLP and **Daniel Porter**, Heller Ehrman LLP

APPENDIX C

SUMMARY DATA

Table C-1
Citric acid and certain citrate salts: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

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

	Reported data					Period changes			
				January-March					Jan.-Mar.
Item	2005	2006	2007	2007	2008	2005-07	2005-06	2006-07	2007-08
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
Canada	***	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
All other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
Canada	***	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
All other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. imports from:									
Canada:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
China:									
Quantity	128,558	158,906	180,108	41,884	32,792	40.1	23.6	13.3	-21.7
Value	57,705	65,542	76,571	17,201	15,693	32.7	13.6	16.8	-8.8
Unit value	$0.45	$0.41	$0.43	$0.41	$0.48	-5.3	-8.1	3.1	16.5
Ending inventory quantity	15,488	13,434	23,396	15,096	16,412	51.1	-13.3	74.2	8.7
Subtotal:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All other sources:									
Quantity	80,954	68,584	65,634	17,770	13,616	-18.9	-15.3	-4.3	-23.4
Value	43,154	39,174	38,802	10,174	8,661	-10.1	-9.2	-0.9	-14.9
Unit value	$0.53	$0.57	$0.59	$0.57	$0.64	10.9	7.1	3.5	11.1
Ending inventory quantity	3,117	4,272	2,815	3,525	2,603	-9.7	37.1	-34.1	-26.2
All sources:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
U.S. producers':									
Average capacity quantity	545,913	553,913	553,913	138,478	138,478	1.5	1.5	0.0	0.0
Production quantity	520,222	475,570	488,625	116,301	124,272	-6.1	-8.6	2.7	6.9
Capacity utilization (1)	95.3	85.9	88.2	84.0	89.7	-7.1	-9.4	2.4	5.8
U.S. shipments:									
Quantity	387,237	370,621	399,222	96,871	95,384	3.1	-4.3	7.7	-1.5
Value	169,599	165,570	179,483	43,706	47,962	5.8	-2.4	8.4	9.7
Unit value	$0.44	$0.45	$0.45	$0.45	$0.50	2.7	2.0	0.6	11.4
Export shipments:									
Quantity	111,179	95,665	114,939	30,517	36,432	3.4	-14.0	20.1	19.4
Value	47,162	40,487	48,016	12,379	17,209	1.8	-14.2	18.6	39.0
Unit value	$0.42	$0.42	$0.42	$0.41	$0.47	-1.5	-0.2	-1.3	16.4
Ending inventory quantity	68,757	77,639	52,333	67,087	44,767	-23.9	12.9	-32.6	-33.3
Inventories/total shipments (1)	13.8	16.7	10.2	13.2	8.5	-3.6	2.9	-6.5	-4.7
Production workers	330	306	295	294	285	-10.6	-7.3	-3.6	-3.1
Hours worked (1,000s)	740	701	662	155	156	-10.5	-5.3	-5.5	0.5
Wages paid ($1,000s)	23,674	23,446	21,869	5,577	5,530	-7.6	-1.0	-6.7	-0.8
Hourly wages	$32.01	$33.47	$33.03	$35.89	$35.41	3.2	4.6	-1.3	-1.3
Productivity (pounds per hour)	703.4	678.8	738.0	748.4	795.6	4.9	-3.5	8.7	6.3
Unit labor costs	$0.05	$0.05	$0.04	$0.05	$0.04	-1.6	8.3	-9.2	-7.2
Net sales:									
Quantity	470,388	488,349	504,399	127,388	131,817	7.2	3.8	3.3	3.5
Value	210,445	214,031	222,794	56,425	65,086	5.9	1.7	4.1	15.3
Unit value	$0.45	$0.44	$0.44	$0.44	$0.49	-1.3	-2.0	0.8	11.5
Cost of goods sold (COGS)	202,711	202,929	225,230	60,943	60,370	11.1	0.1	11.0	-0.9
Gross profit or (loss)	7,734	11,102	(2,436)	(4,518)	4,716	(2)	43.5	(2)	(2)
SG&A expenses	17,414	15,920	15,481	2,578	4,612	-11.1	-8.6	-2.8	78.9
Operating income or (loss)	(9,680)	(4,818)	(17,917)	(7,096)	104	-85.1	50.2	-271.9	(2)
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	$0.43	$0.42	$0.45	$0.48	$0.46	3.6	-3.6	7.5	-4.3
Unit SG&A expenses	$0.04	$0.03	$0.03	$0.02	$0.03	-17.1	-11.9	-5.9	72.9
Unit operating income or (loss)	($0.02)	($0.01)	($0.04)	($0.06)	$0.00	-72.6	52.1	-260.0	(2)
COGS/sales (1)	96.3	94.8	101.1	108.0	92.8	4.8	-1.5	6.3	-15.3
Operating income or (loss)/ sales (1)	(4.6)	(2.3)	(8.0)	(12.6)	0.2	-3.4	2.3	-5.8	12.7

(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
Citric acid: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

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Table C-3
Sodium citrate: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

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Table C-4
Potassium citrate: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

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Table C-5
Unrefined calcium citrate: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

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