

UNITED STATES INTERNATIONAL TRADE COMMISSION

UREA AMMONIUM NITRATE SOLUTIONS FROM BELARUS, LITHUANIA, RUSSIA,
AND UKRAINE

Investigations Nos. 731-TA-1006-1009 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3517, June 2002)

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Belarus, Russia, and Ukraine of urea ammonium nitrate solutions, provided for in subheading 3102.80.00 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). The Commission has determined that U.S. imports from Lithuania are negligible.²

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 with regard to Belarus, Russia, and Ukraine. 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 of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of these 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 investigation.

BACKGROUND

On April 19, 2002, a petition was filed with the Commission and Commerce by the Nitrogen Solutions Fair Trade Committee, an ad hoc coalition of U.S. producers of urea ammonium nitrate solutions, which consists of CF Industries, Inc. of Long Grove, IL; Mississippi Chemical Corp. of Yazoo City, MS; and Terra Industries, Inc. of Sioux City, IA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of urea ammonium nitrate solutions from Belarus, Lithuania, Russia, and Ukraine. Accordingly, effective April 19, 2002, the Commission instituted antidumping duty investigations Nos. 731-TA-1006-1009 (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 29, 2002 (67 FR 20994). The conference was held in Washington, DC, on May 10, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Commissioner Lynn M. Bragg, however, further finds that subject imports of urea ammonium nitrate solutions from Lithuania will imminently account for more than 3 percent of total import volume of all such merchandise, and determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Lithuania that are alleged to be sold at LTFV.

VIEWS OF THE COMMISSION

Based on the record in 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 urea ammonium nitrate solutions (“UAN”) from Belarus, Russia, and Ukraine that allegedly are sold in the United States at less than fair value (“LTFV”). We also find that imports of UAN from Lithuania that allegedly are sold at LTFV are negligible.¹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

II. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁴ 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.”⁵ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁶

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

¹ Commissioner Lynn M. Bragg finds that imports from Lithuania will imminently exceed the statutory negligibility threshold. She further finds that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports from Lithuania. *See supra* nn. 45, 65 & 79.

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

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

⁴ 19 U.S.C. § 1677(4)(A).

⁵ *Id.*

⁶ 19 U.S.C. § 1677(10).

characteristics and uses” on a case-by-case basis.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Product Description

Commerce has defined the imported merchandise within the scope of these investigations as: For purposes of these investigations, the product covered is all mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution, regardless of nitrogen content by weight, and regardless of the presence of additives, such as corrosion inhibitors. The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3102.80.00.00. Although the HTSUS subheading is provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the written description of the merchandise under investigation is dispositive.¹¹

The subject merchandise, UAN, is an aqueous solution of urea and ammonium nitrate that generally contains relatively equal proportions of both chemicals and is about 30 percent nitrogen by volume.¹² UAN is a fertilizer that delivers nitrogen, an important nutrient, to crops and is used primarily in the United States and Europe.¹³ UAN is becoming increasingly popular because of its safety and ease of handling and

⁷ 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).

⁸ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁹ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

¹¹ 66 Fed. Reg. 35492 (May 20, 2002).

¹² Confidential Staff Report (“CR”), INV-078, May 28, 2002 at I-4, Public Report (“PR.”) at I-3.

¹³ Transcript of Staff Conference (May 10, 2002) at 10 (“Tr.”); CR at I-4, PR at I-3.

application, compared to other nitrogen fertilizers.¹⁴ Because UAN is a liquid, it can be used in irrigation systems and for minimal-till and no-till farming.¹⁵

C. Domestic Like Product

1. Arguments of the Parties

Petitioners argue that the Commission should find the domestic like product to be coextensive with the scope of investigation. They argue that although other chemicals (urea, ammonium nitrate, and ammonia) can be used as nitrogen fertilizers, they should not be included in the domestic like product.

Respondents argue that the domestic like product should be expanded to include other chemicals that are used as nitrogen-based fertilizers: urea, ammonium nitrate, and ammonia.¹⁶ They maintain that UAN, urea, ammonium nitrate, and ammonia are all interchangeable, even though they differ chemically and in physical form, because they are used to deliver nitrogen to crops.¹⁷ The respondents contend that channels of distribution are the same for urea, ammonium nitrate, ammonia, and UAN,¹⁸ and that customers perceive these chemicals to be similar because they are substitutable.¹⁹ Respondents argue that all four chemicals share production facilities.²⁰ While respondents do not argue that these chemicals are similarly priced on a per unit of nitrogen basis, they contend that their prices move in tandem.²¹

Petitioners respond that the three other chemicals differ in physical properties, uses, and channels of distribution.²² They contend that interchangeability among the chemical fertilizers is limited because farmers cannot switch from using a solution to using a fertilizer in solid form, crop needs differ, and soil characteristics may preclude the use of certain fertilizers.²³ According to petitioners, UAN can be used only for no-till and minimum-till farming while urea, ammonium nitrate, and ammonia are inappropriate for these applications.²⁴ Petitioners assert that UAN is produced in dedicated plants, so there are no common manufacturing facilities or employees between UAN and the other chemicals.²⁵

2. Analysis

Based on the record in these preliminary investigations, we do not include the nitrogen-based chemicals other than UAN in the domestic like product.

¹⁴ CR at I-4, I-5, PR at I-4.

¹⁵ CR at I-5, PR at I-4.

¹⁶ See International Raw Materials' ("IRM") Postconference Brief at 2; J.R. Simplot's Postconference Brief at 1.

¹⁷ IRM's Postconference Brief at 4-5; J.R. Simplot's Postconference Brief at 3-4.

¹⁸ IRM's Postconference Brief at 10; J.R. Simplot's Postconference Brief at 5.

¹⁹ IRM's Postconference Brief at 11-12; J.R. Simplot's Postconference Brief at 6.

²⁰ IRM's Postconference Brief at 12-14; J.R. Simplot's Postconference Brief at 7.

²¹ IRM's Postconference Brief at 15-16; J.R. Simplot's Postconference Brief at 7.

²² Petitioners' Postconference Brief, Exh. 1, at 21.

²³ Petitioners' Postconference Brief, Exh. 1, at 22.

²⁴ Petitioners' Postconference Brief, Exh. 1, at 21-22.

²⁵ Petitioners' Postconference Brief, Exh. 1, at 26.

All four compounds, urea, ammonium nitrate, ammonia, and UAN, contain nitrogen, but the physical properties of the four chemicals differ significantly. UAN is a liquid while urea and ammonium nitrate are solid at room temperature.²⁶ Ammonia is a gas at room temperature, unless it is under pressure, and it is extremely caustic.²⁷ All four chemicals are used as fertilizers, but UAN is utilized almost exclusively as a fertilizer,²⁸ while urea, ammonium nitrate, and ammonia have a variety of uses in other industries.²⁹

Although there appears to be some degree of interchangeability among urea, ammonium nitrate, ammonia, and UAN when used as fertilizer, different application equipment is used with each chemical fertilizer, thus limiting interchangeability.³⁰ Further, because it is a liquid, UAN is superior for use with irrigated crops and in minimum or no-till farming.³¹ It can be mixed with other solutions, such as pesticides for a single application.³² Also, urea, ammonium nitrate, and ammonia have other non-agricultural uses for which UAN is inappropriate. Therefore, when the full-range of uses is considered, interchangeability among these chemicals and UAN is limited.

The most prevalent process used to manufacture UAN in the United States involves the diversion of urea and ammonium nitrate solutions from adjacent plants that manufacture these two inputs. Available information therefore suggests that, to a large extent, production of UAN occurs in dedicated manufacturing facilities, suggesting limited overlap of production facilities and employees.³³ With respect to channels of distribution, UAN, because of its weight, often is shipped by barge and rail, as are the other chemicals.³⁴ Farmers will pay a premium for UAN because it is superior to the other chemicals as a nitrogen fertilizer.^{35 36}

Based upon their significant differences, particularly their different physical properties, uses, prices, and limited interchangeability, we do not find it appropriate to include urea, ammonium nitrate, or ammonia in the definition of the domestic like product. We therefore define the domestic like product to be coextensive with the product described in the scope of these investigations, *i.e.*, UAN.

III. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Domestic Industry

The domestic industry is defined as “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total

²⁶ CR at I-12, I-13, PR at I-9.

²⁷ CR at I-13, PR at I-9.

²⁸ CR at I-13, PR at I-9.

²⁹ CR at I-12, I-13, PR at I-9.

³⁰ CR at I-11, PR at I-7.

³¹ CR at I-5, PR at I-4.

³² CR at I-5, PR at I-4.

³³ CR at I-8, PR at I-6. Solid urea and ammonium nitrate are not used as inputs. Id.

³⁴ CR at I-12, PR at I-8.

³⁵ CR at I-5, PR at I-7. “UAN typically commands a price premium on a cost per pound of nitrogen basis over urea and ammonia.” Tr. at 15.

³⁶ The record does not include information concerning customer perceptions in the marketplace of the four chemicals. In any final phase of these investigations, we will seek more information about competition among these other chemicals and UAN.

domestic production of the product.”³⁷ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³⁸

Based on our domestic like product finding, we determine that the domestic industry consists of all U.S. producers of UAN.

B. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute 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.³⁹ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.⁴⁰

We have determined to exclude producer *** as a related party. First, by virtue of its imports of subject merchandise from *** is a related party.⁴¹ It now ***, with its imports of subject merchandise *** in 2001.⁴² ***⁴³ suggesting that its interests lie in importation rather than domestic production. Because it appears to have benefitted from its importations of subject merchandise and it *** we find that appropriate circumstances exist to exclude this producer as a related party.⁴⁴

³⁷ 19 U.S.C. § 1677(4)(A).

³⁸ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F. 3d 1352 (Fed. Cir. 1996).

³⁹ 19 U.S.C. § 1677(4)(B).

⁴⁰ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

⁴¹ CR/PR at Table III-5.

⁴² See CR/PR at Table III-5.

⁴³ See CR/PR at Table VI-3.

⁴⁴ We also note that *** all purchased subject imports during the period of investigation. It is not clear whether any of these companies should be considered a related party based upon these purchases. However, each company’s purchases was less than *** percent of its U.S. shipments during the period of investigation. See CR/PR at Table III-3 & III-5. It is clear, therefore, that these companies are primarily domestic producers, and it is unlikely that these small purchases affected their financial results. Accordingly, we do not exclude any of these domestic producers.

IV. NEGLIGIBLE IMPORTS⁴⁵

Imports from a subject country corresponding to a domestic like product that account for less than three 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.⁴⁶ The statute further provides that imports from a single country that comprise less than three percent of total imports of such merchandise may not be considered negligible if there are several countries subject to investigation with negligible imports and the sum of such imports from all those countries in the aggregate accounts for more than seven percent of the volume of all such merchandise imported into the United States.⁴⁷

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States.⁴⁸ By

⁴⁵ Commissioner Bragg finds that the subject imports from Lithuania are negligible for purposes of present material injury analysis, given that the volume of such imports accounts for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available (April 2001 to March 2002).

However, Commissioner Bragg further finds that there is a potential that imports will imminently exceed the three percent negligibility threshold. First, Commissioner Bragg acknowledges that the volume of subject imports from Lithuania has trended downward since June 2001 and the sole Lithuanian producer, Achema, asserts that exports to the EU have increased recently; nonetheless, the record indicates that subject imports from Lithuania were *** percent of total UAN imports during the 12 months preceding the filing of the petition. Achema's Postconference Brief at 16 & 17; CR/PR at Tables IV-4 & VII-2. Second, Commissioner Bragg further notes that the United States and the EU are the two primary markets for UAN. A recent succession of antidumping investigations conducted by the EU involving related nitrogen-based fertilizers resulted in increased exports of those products to the U.S. market by third country producers. See e.g., Council Regulation ("EC") 663/1998, Mar. 23, 1998 (imposing an antidumping duties on imports of ammonium nitrate originating from Russia); EC 1995/2000, Sept. 18, 2000 (imposing antidumping and countervailing duties on imports of urea, ammonium nitrate, and UAN solutions from Belarus, Lithuania, Russia, and Ukraine); EC 132/2001, Jan. 22, 2001 (imposing an antidumping and countervailing duties on imports of ammonium nitrate originating from Ukraine); EC 901/2001, May 7, 2001 (imposing an antidumping duties on imports of urea originating from Russia); EC 92/2002, Jan. 17, 2001 (imposing an antidumping duties on imports of urea originating from Belarus, Lithuania, and Ukraine). Petitioner's Postconference Brief at Exhs. 3 & 4. These recent EU antidumping orders, which include Lithuanian UAN, suggest that exports to the EU will diminish and the United States would likely become the target market for Lithuanian UAN, as has occurred in the past with both urea and ammonium nitrate. CR/PR at VII-9-10; Petitioners' Postconference Brief at 42-46 & Exh. 38. Third, annual imports from Lithuania steadily increased over the POI in tandem with the other subject imports. CR/PR at Table IV-2. Moreover, Commerce has revised its estimate, and now indicates that U.S. imports from Lithuania are *** percent of total imports during the period, which further mitigates against an outcome dispositive determination regarding Lithuania at this preliminary stage of these investigations. CR/PR at IV-6, n.8. For these reasons, Commissioner Bragg determines that there is a potential that subject imports from Lithuania will imminently exceed the three percent negligibility threshold.

⁴⁶ 19 U.S.C. § 1677(24)(A)(i)(I).

⁴⁷ 19 U.S.C. § 1677(24)(A)(ii). Subject imports from the other three countries are well above the negligibility threshold. See CR/PR at Table IV-3.

⁴⁸ 19 U.S.C. § 1677(24)(A)(iv).

operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.⁴⁹

The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.⁵⁰

Negligibility is an issue in these investigations with respect to subject imports from Lithuania. The most recent 12-month period preceding the filing of the petition, April 2001 through March 2002, is the appropriate period for evaluating negligibility in these investigations.⁵¹ Total imports over the period were calculated using official U.S. import statistics for imports for consumption of UAN.⁵² Subject imports from Lithuania were calculated using information supplied by Achema, the sole Lithuanian producer of UAN. The Commission relied upon Achema's reported shipments rather than the official import statistics because Achema documented that several shipments that originated in Belarus or Russia were classified improperly as Lithuanian in official imports statistics.⁵³ Based on this information, subject imports from Lithuania during the relevant period were *** percent of total imports and are, therefore, negligible.⁵⁴

We also do not find that subject imports from Lithuania have the potential to imminently account for more than three percent of total imports of UAN.⁵⁵

During the period of investigation, subject imports from Lithuania entered in significant quantities only during the first six months of 2001.⁵⁶ While exports to the United States increased initially following the EU order, they were *** in the latter portion of 2001.⁵⁷ Indeed, although it may be true that *** of 2000 and 2001,⁵⁸ suggesting that imports from Lithuania predominantly enter during the first six months of the year, Achema and the Lithuanian Customs authorities report that ***.⁵⁹

⁴⁹ 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

⁵⁰ 19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) ("SAA").

⁵¹ The petitioners urge the Commission to look to the 12-month period ending in February 2002, which apparently was the period for which data were available when they filed the petition on April 19, 2002. The Commission has found that the 12-month period preceding the filing of the petition ends "with the last full month prior to the month in which the petition is filed, if those data are available." Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela, Inv. Nos. 701-TA-417-421 (Preliminary) and 731-TA-953-963 (Preliminary), USITC Pub. 3456 (October 2001) at 8, n. 37.

⁵² See CR at IV-6, PR at IV-4.

⁵³ Achema submitted certificates of origin from Lithuanian customs authorities and bills of lading that demonstrate that a number of shipments identified as Lithuanian were in fact from Russia or Belarus. Achema's Postconference Brief at Exh. 1-4. Achema also submitted declarations from key importers of Lithuanian UAN that indicate that UAN exporters from Russia and Belarus use a Lithuanian port and shipments of subject imports from those countries were misidentified as originating in Lithuania. Achema's Postconference Brief at 1-4; Id. at Exh.1.

⁵⁴ CR/PR at Table IV-3; Achema's Postconference Brief at 6; Id. at Exh. 2.

⁵⁵ Commissioner Bragg finds that subject imports from Lithuania have the potential to imminently exceed three percent of total imports. See supra n. 45.

⁵⁶ See CR/PR at Table VII-2.

⁵⁷ See CR/PR at Table VII-2.

⁵⁸ See CR/PR at Table VII-2.

⁵⁹ Achema's Postconference Brief, Exh.2.

There is *** excess capacity in Lithuania, as capacity has been *** stable, and capacity utilization was *** in the last half of 2001 (*** percent).⁶⁰ Achema's ratio of inventories to shipments also was ***.⁶¹ While *** Lithuanian production is exported, the bulk of these exports are to the EU, not the United States.⁶² The EU is a more attractive market for Achema given its geographic proximity. Although the EU imposed antidumping duties of 3.98 Euros per metric ton on Lithuanian shipments of UAN into the EU,⁶³ the vast majority of Lithuanian exports of UAN continued to be made to the EU, and in fact increased after imposition of the order in September 2000. Further, the Lithuanian producer was better placed to continue to serve the EU market than the other subject countries because the EU at the same time placed much higher antidumping duties on exports from Belarus, Russia, and Ukraine (17.86 Euros per metric ton, 17.8 to 20.11 Euros per metric ton, and 26.17 Euros per metric ton, respectively) to the EU.⁶⁴

We thus find that there is no potential that subject imports from Lithuania will imminently exceed three percent of total imports of UAN.

V. CUMULATION⁶⁵

A. In General

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.⁶⁶ In assessing whether subject imports compete with each other and with the domestic like product,⁶⁷ the Commission has generally considered four factors, including:

⁶⁰ CR/PR at Table VII-2.

⁶¹ See CR/PR at Table VII-2.

⁶² See CR/PR at Table VII-2.

⁶³ CR at VII-9, PR at VII-4.

⁶⁴ CR at VII-9, PR at VII-4. In fact, exports from the subject countries other than Lithuania to the EU fell from 299,043 metric tons during the first nine months of 2000 to 45,448 metric tons in the same period in 2001. Petition at Exh. 59. Exports from Lithuania to the EU increased from 341,340 metric tons to 409,574 metric tons over the same periods. Id.

⁶⁵ As noted, Commissioner Bragg finds that subject imports from Lithuania have the potential to imminently exceed the negligibility threshold. See infra n. 45. Commissioner Bragg further determines that cumulation of subject imports from Lithuania with subject imports from Belarus, Russia, and Ukraine is appropriate for purposes of analyzing the threat of material injury posed by imports from Lithuania. Specifically, the record indicates that the subject imports from Lithuania were present in the U.S. market over the POI, were reported sold throughout the United States, were distributed through the same channel, and maintained a high degree of fungibility with the subject imports and the domestic like product. Achema's Postconference Brief at 3, 12 & 13; Petition at 42-43; CR/PR at I-10-11, II-2, Tables II-1 & 2, IV-4, V-2 & 3. Accordingly, Commissioner Bragg finds a reasonable overlap of competition among all the subject imports and between the subject imports and domestic UAN.

⁶⁶ 19 U.S.C. § 1677(7)(G)(i).

⁶⁷ The SAA expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." 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).

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁶⁸

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.⁶⁹ Only a “reasonable overlap” of competition is required.⁷⁰

B. Analysis

The conditions for cumulating the subject imports have been satisfied. The petition was filed with respect to all subject countries⁷¹ on the same day, and based on the four factors that the Commission considers in analyzing cumulation, there is a reasonable overlap of competition.

Petitioners argue that the prerequisites for cumulation have been met in these investigations, and thus cumulation is appropriate. No respondent argues that subject imports from Belarus, Russia, or Ukraine should not be cumulated.

There are no physical or quality differences between UAN produced in the United States and that produced in the subject countries.⁷² U.S. producers and importers also agree that no quality differences exist among domestic UAN and the subject imports and that they all are highly interchangeable.⁷³ Therefore, there is a high degree of fungibility among the subject imports and between the subject imports and domestic UAN.

⁶⁸ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁶⁹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁷⁰ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁷¹ As noted above, subject imports from Lithuania are negligible and the investigation is terminated with respect to Lithuania. Therefore, we do not cumulate subject imports from Lithuania for purposes of material injury analysis. See 19 U.S.C. § 1677(7)(G)(ii)(II)

⁷² CR at II-11, PR at II-8.

⁷³ CR at II-11, PR at II-8 to II-9. See CR/PR at Tables II-1 & II-2.

In 2001, the subject imports from all three countries were sold on both coasts of the United States and in the Gulf Region.⁷⁴ Domestic UAN is sold throughout the United States.⁷⁵ Thus, the subject imports and domestic UAN are sold largely in the same geographical markets.

Channels of distribution are similar for the subject imports and domestic UAN. Both are sold to distributors and then retailers.⁷⁶ Both the subject imports and domestic UAN are transported by barge and rail.⁷⁷ Subject imports from Belarus, Russia, and Ukraine were offered for sale throughout the period of investigation.⁷⁸

Based upon the high degree of fungibility among the subject imports and between the domestic like product and the subject imports, the similar channels of distribution, overlap in geographic markets, and simultaneous presence in the marketplace, we conclude that there is a reasonable overlap of competition in the U.S. market. We, therefore, cumulate the subject imports from Belarus, Russia, and Ukraine for the purpose of analyzing whether there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS⁷⁹

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 or threatened with material injury by reason of the imports under investigation.⁸⁰ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of

⁷⁴ See CR/PR at Table IV-4; Petition at 18.

⁷⁵ See CR/PR at Table V-4 (sales in Baltimore, Corpus Christi, New Orleans and Brunswick, GA); Tr. at 161 (significant production in Washington State).

⁷⁶ CR/PR at II-1.

⁷⁷ CR/PR at II-1.

⁷⁸ See CR/PR at Tables V-2 & V-3.

⁷⁹ As noted, Commissioner Bragg engages in a cumulative analysis for purposes of analyzing the threat of material injury posed by subject imports from Lithuania. See *infra* nn. 45 & 65. To begin, Commissioner Bragg notes that she joins her colleagues in finding a reasonable indication that the domestic industry is materially injured by reason of cumulated imports of UAN from Belarus, Russia, and Ukraine. When assessed in conjunction with the reasonable indication of present material injury caused by these cumulated subject imports, Commissioner Bragg determines that future imports of UAN from Lithuania pose an imminent threat of material injury to the domestic industry. In particular, based on the subject imports' increased volume, negative price effects, and adverse impact (discussed in the material injury section), the record indicates that the domestic industry is vulnerable to the threat of material injury. Second, given that the United States and the EU are the only UAN markets, the imposition of the recent EU antidumping duties on imports of UAN from Lithuania, Belarus, Russia, and Ukraine leaves the United States as the only remaining market for these countries' exports. Thus, the EU duties are likely to result in increased imports into the United States from each of the subject countries, including Lithuania. CR/PR at VII-9-10. Fourth, although the capacity utilization for subject producers in Lithuania was *** in 2001 (***) percent), the record indicates that the volume of subject imports from Lithuania accounted for *** of total U.S. imports during the 12 months before the filing of the petition and that Lithuania reported *** end-of-period inventories of UAN in 2001, equal to *** of Lithuanian exports to the United States in 2001. CR/PR at Tables VII-2 & 4. Based on the entirety of the record, Commissioner Bragg determines there is a reasonable indication that subject imports from Lithuania pose an imminent threat of material injury to the domestic industry.

⁸⁰ 19 U.S.C. §§ 1671b(a), 1673b(a).

U.S. production operations.⁸¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁸² 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.⁸³ 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.”⁸⁴

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing UAN is materially injured by reason of subject imports from Belarus, Russia, and Ukraine that allegedly are sold in the United States at LTFV.

A. Conditions of Competition

The demand for UAN is derived from agricultural uses, in particular, acreage planted and application rates.⁸⁵ Primarily used in the United States and Europe,⁸⁶ UAN is a seasonal product that is applied mostly in the Spring planting season (April to June).⁸⁷ Consumption of UAN generally increased three percent a year in the 1990s as UAN increased in popularity.⁸⁸ Apparent U.S. consumption of UAN was greater in 2000 than 1999, but it fell in 2001.⁸⁹

As noted in our like product analysis, UAN has only limited interchangeability with the other nitrogen fertilizers because it is optimal for use with irrigation systems and minimal-till farming.⁹⁰ Farmers also use different equipment for applying UAN.⁹¹ UAN is mixed with other solutions, such as pesticides for a single application.⁹²

UAN is produced throughout the year because it is uneconomical to cease production, and thus, inventories are increased during periods of low demand.⁹³ Natural gas accounts for more than half of the cost of production of UAN.⁹⁴ Most domestic producers hedge the risk of natural gas price fluctuations

⁸¹ 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).

⁸² 19 U.S.C. § 1677(7)(A).

⁸³ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁵ CR at II-7, PR at II-5; Tr. at 74-75.

⁸⁶ Tr. at 10; CR at I-4, PR at I-3.

⁸⁷ CR at I-6, PR at I-4. Seventy percent to 80 percent of total UAN consumption occurs in the Spring. CR at II-7, PR at II-5.

⁸⁸ CR at I-3 to I-4, PR at I-3.

⁸⁹ Apparent consumption was 10.4 million short tons in 1999, 11.2 million short tons in 2000, and 9.7 million short tons in 2001. However, the value of U.S. apparent consumption increased from \$703 million in 1999 to \$976 million in 2000 to \$1.1 billion in 2001. CR/PR at Table IV-5.

⁹⁰ CR at I-5, II-6, II-8, PR at I-4, II-5, II-6.

⁹¹ CR at II-8, PR at II-5.

⁹² CR at I-5, PR at I-4.

⁹³ CR at I-6, PR at I-4.

⁹⁴ Tr. at 16; CR at V-1, PR at V-1

throughout the year by purchasing natural gas futures.⁹⁵ The futures contracts serve to dampen uncertainty in the cost of gas by offsetting higher or lower prices for natural gas.⁹⁶ When natural gas prices rose during late 2000 and early 2001 and peaked at nearly \$10 mmBTU (more than three times the historical price of natural gas), the production of UAN fell⁹⁷ and UAN prices rose dramatically.⁹⁸

As UAN is mostly water and is heavy, transportation costs account for 20 percent to 49 percent of the cost of the subject imports.⁹⁹ Transportation costs for shipment of domestic UAN also are significant and range up to 22.3 percent.¹⁰⁰ As noted above, the European Union imposed final antidumping duties on UAN from Belarus, Lithuania, Russia, and Ukraine in September 2000.¹⁰¹

Nonsubject imports, including negligible imports from Lithuania, have increased over the period of investigation, but still accounted for less than *** percent of apparent consumption by volume and value in 2001.¹⁰²

B. Volume of the Subject Imports

Section 771(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.”¹⁰³

The volume of cumulated subject imports increased almost five-fold over the period of investigation.¹⁰⁴ The subject imports captured only *** percent of the U.S. market in terms of volume in 1999, but by 2001 subject imports had increased their market share to *** percent.¹⁰⁵ In terms of value, the subject imports also increased their share of the market -- from *** percent of the market in 1999 to *** percent in 2001.¹⁰⁶ Notably, in 2001, when consumption declined, subject imports increased, capturing *** more percentage points of market share than in 2000. The subject imports’ gains came at the expense of

⁹⁵ Tr. at 21, 48; CR at VI-8 to VI-9, Table VI-4, nn. 2 & 3, PR at VI-4, Table VI-4 nn. 2 & 3..

⁹⁶ Tr. at 21, 48; CR at VI-8 to VI-9, Table VI-4, nn. 2 & 3, PR at VI-4, Table VI-4 nn. 2 & 3. It appears that producers sell the futures contracts for a particular month contemporaneously with the purchase of natural gas and the loss or gain on the sale of the futures contract offsets the deviation of the price of the natural gas from a particular price. Id.

⁹⁷ The extent of production cutbacks due to increased natural gas prices is unclear. See Petitioners’ Postconference Brief at Exh.14; INV-Z-081 at Table C-2 (revised to exclude ***).

⁹⁸ Tr. at 16, 31, 33, 36; CR at V-10, PR at V-7.

⁹⁹ CR at V-2, PR at V-1 to V-2.

¹⁰⁰ CR at V-2, PR at V-1 to V-2.

¹⁰¹ CR at VII-9, PR at VII-3. The United States also has antidumping duty orders on solid urea from Belarus, Russia, and Ukraine, as well as ammonium nitrate from Ukraine. CR/PR at I-2. A suspension agreement covers imports of ammonium nitrate from Russia. Id.

¹⁰² INV-Z-081 at Table C-2.

¹⁰³ 19 U.S.C. § 1677(7)(C)(I).

¹⁰⁴ Cumulated subject imports totaled *** short tons in 1999, *** short tons in 2000 and *** short tons in 2001. INV-Z-081 at Table C-2.

¹⁰⁵ INV-Z-081 at Table C-2.

¹⁰⁶ INV-Z-081 at Table C-2.

the U.S. producers as their share in terms of volume declined from *** percent in 1999 to *** percent in 2001.¹⁰⁷

For purposes of these preliminary determinations, we find the volume and increase in volume of cumulated subject imports, both in absolute terms and relative to apparent consumption in the United States, to be significant.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁰⁸

UAN is a commodity product, and UAN from different sources is made to the same specifications and is interchangeable.¹⁰⁹ Accordingly, price is an important factor in purchasing decisions.¹¹⁰

The Commission sought pricing data for five ports where subject imports and domestic UAN compete for sales, but the pricing data are incomplete.¹¹¹ The available data reflect mixed underselling and overselling.¹¹² Although underselling occurred in only *** possible comparisons, on a volume basis, the underselling accounted for *** percent of the reported sales.¹¹³ Underselling also increased at the end of the period of investigation.¹¹⁴

¹⁰⁷ INV-Z-081 at Table C-2 (revised to exclude ***). Similarly, in value terms, the domestic industry's market share declined from *** percent in 1999 to *** percent in 2001. Id.

¹⁰⁸ 19 U.S.C. § 1677(7)(C)(ii).

¹⁰⁹ CR at II-10, II-11, PR at II-7.

¹¹⁰ CR at II-10, PR at II-7; CR/PR at Table II-1. The majority of producers and importers indicated that factors other than price were never important in purchasing decisions. See CR/PR at Table II-1.

¹¹¹ See CR at V-8, PR at V-6. We note that this pricing data are incomplete. One of the largest U.S. producers, ***, does not sell at the ports where price data were collected so coverage of U.S. producers is limited. CR at V-9 n.14, PR at V-7 n.14. Also, no U.S. producer pricing data were available from one of the ports. We will seek more complete coverage in any final investigations.

¹¹² Commissioner Bragg notes that overall, pricing comparisons indicate underselling, in *** comparisons, for a *** percent incidence of underselling. This is not unexpected given the commodity nature of the product. Accordingly, Commissioner Bragg finds the record indicates significant price underselling by subject imports as compared with the price of the domestic like product.

¹¹³ INV-Z-081 at Table 1 (after excluding Lithuanian UAN). See CR/PR at Table V-4. However, pricing comparisons in New Orleans may be the most meaningful. CR at V-26, PR at V-12. In New Orleans, there were *** instances of underselling and *** instances of overselling. See CR/PR at Table V-4 (after excluding Lithuanian UAN).

¹¹⁴ CR/PR at Table V-4.

The available data show that domestic prices of UAN rose during 2000 and peaked in early 2001 before declining.¹¹⁵ As noted, exceptionally high natural gas prices were an important factor in the increase in UAN prices during this period.¹¹⁶ The record suggests price suppression, particularly at the end of the period, as the cost of goods sold as a percent of net sales surged to *** percent in the second half of 2001, compared to *** percent in the same period in 2000.^{117 118}

Based on the limited pricing data collected in these investigations, we find that the subject imports have had significant negative effects on prices of the domestic like product during the period of investigation, but intend to more closely examine the factors impacting domestic prices in any final phase of these investigations.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹¹⁹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{120 121 122}

¹¹⁵ CR/PR at Fig. V-5; CR/PR at Table V-1.

¹¹⁶ CR at V-10, PR at V-7. We intend to further explore the relationship between UAN selling prices and natural gas prices in any final phase of these investigations.

¹¹⁷ INV-Z-081 at Table VI-1.

¹¹⁸ Commissioner Bragg further notes that the ratio of COGS/Sales increased from *** percent in 2000 to *** percent in 2001.

¹¹⁹ 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.” Id. at 885).

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

¹²¹ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce reported that petitioners have alleged estimated dumping margins of 75.80 percent for UAN from Belarus and 331.40 percent for UAN from Russia. 67 Fed. Reg. at 35496 (May 20, 2002). For UAN from Ukraine, Commerce adjusted the petitioners’ calculations and reported that petitioners had an estimated margin of dumping of 144.70 percent. Id.

¹²² Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11, n.63.

Apparent U.S. consumption by quantity declined irregularly during the period of investigation,¹²³ yet the subject imports increased and captured an ever increasing share of the U.S. market¹²⁴ at the expense of the U.S. industry.¹²⁵ As the subject imports increased their share of the U.S. market, the domestic industry's production, sales, and shipments all declined.¹²⁶ The domestic industry *** increased its capacity over the period of investigation, yet overall ***.¹²⁷ While domestic producers temporarily curtailed production to some extent during the time period when natural gas prices increased at the end of 2000 and early 2001, the production cutbacks¹²⁸ do not appear to fully explain the increased volume of subject imports during this period.¹²⁹

The domestic industry reported losses throughout the period of investigation.¹³⁰ However, as subject imports reached their peak in terms of market share in the latter half of 2001,¹³¹ the domestic industry reported its worst results; its operating ratio was a negative *** percent -- considerably worse than the *** percent operating gain in the same period in 2000.¹³² Moreover, the domestic industry's employment, wages, capital expenditures and productivity all declined over the period of investigation.¹³³

The poor performance of the domestic UAN industry may be explained in part by the spike in natural gas prices that drastically increased the domestic industry's cost of production, a factor we will more fully explore in any final phase of these investigations. As noted above, the record indicates that prices for the domestic like product rose and then fell during the period of investigation, consistent with the

¹²³ Apparent consumption fell from 10.4 million short tons in 1999 to 9.7 million short tons in 2001. CR/PR at Table IV-6.

¹²⁴ While subject imports accounted for only *** percent of the U.S. market in terms of volume in 1999, in 2001 subject imports had captured *** percent of the market. INV-Z-081 at C-2.

¹²⁵ The U.S. producers' market share fell from *** percent in 1999 to *** percent in 2001. INV-Z-081 at C-2 (revised to exclude ***).

¹²⁶ Domestic production fell from *** million short tons in 1999 to *** million short tons in 2001. INV-Z-081 at C-2 (revised to exclude ***). The domestic industry's U.S. shipments fell from *** million short tons in 1999 to *** million short tons in 2001. Id. The industry's total net sales also declined from *** million short tons in 1999 to *** million short tons in 2001. INV-Z-081 at Table VI-1. However, on a value basis, total net sales increased from *** million in 1999 to *** million in 2001. INV-Z-081 at Table VI-1.

¹²⁷ Total domestic capacity was *** million short tons in 1999 and *** million short tons in 2001. INV-Z-081 at Table C-2 (revised to exclude ***). Capacity utilization fell from *** percent in 1999 to *** percent in 2001. Id.

¹²⁸ The Commission will further explore the size and duration of these curtailments in any final phase of these investigations. The domestic industry's inventories as a percentage of total shipments increased from *** percent in 1999 to *** percent in 2001, suggesting that domestic producers were not struggling to meet demand. INV-Z-081 at Table C-2 (revised to exclude ***).

¹²⁹ See CR at III-3 to III-5, PR at III-1.

¹³⁰ Operating income as a ratio to net sales was ***. INV-Z-081 at Table VI-1. Cash flow was also negative during two of the three years of the period of investigation. Id.

¹³¹ See INV-Z-081 at Table C-2 (*** percent).

¹³² INV-Z-081 at Table VI-1. *** domestic producers (excluding ***) reported losses during the last six months of 2001 as compared to only *** in the same period of 2000. Id.

¹³³ The number of production workers dropped from *** in 1999 to *** in 2001. INV-Z-081 at Table C-2 (revised to exclude ***). The domestic industry paid its workers *** million in 1999 and *** million in 2001. Id. The industry's productivity was *** short tons per 1,000 hours in 1999 and *** short tons per 1,000 hours in 2001. Id. Capital expenditures were *** million in 1999, but only *** million in 2001. See CR/PR at Table VI-6 and VI-7. The industry reported no R & D expenses during the period of investigation. CR/PR at Table VI-6.

trend in natural gas prices.¹³⁴ Thus, while the unit value of the domestic industry's net sales increased over the period of investigation, the gap widened between the unit value of cost of goods sold and the unit value of net sales reflecting the declining U.S. shipments levels.¹³⁵ Accordingly, we find that the subject imports had a significant adverse impact on the domestic industry.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing UAN is materially injured by reason of imports from Belarus, Russia, and Ukraine that allegedly are sold in the United States at less than fair value.

¹³⁴ CR/PR at Fig. V-5; CR/PR at Table V-1.

¹³⁵ The unit value of net sales increased from *** a short ton in 1999 to *** a short ton in 2001. INV-Z-081 at Table C-2 (revised to exclude ***). In the second half of 2001, the unit value of net sales was *** while in the first half of the year it was ***. Id. Despite the overall increase, the industry's unit value of cost of goods sold still exceeded the unit value of net sales in 2001. Id. In the second half of 2001, the industry's unit value of cost of goods sold exceeded the unit value of net sales by almost ***. Id.