UNITED STATES INTERNATIONAL TRADE COMMISSION

UREA AMMONIUM NITRATE SOLUTIONS FROM BELARUS, RUSSIA, AND UKRAINE
Investigations Nos. 731-TA-1006, 1008, and 1009 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
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DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belarus, Russia,[2] and Ukraine of urea ammonium nitrate solutions, provided for in subheading 3102.80.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted these investigations effective April 19, 2002, following receipt of a petition filed with the Commission and Commerce by the Nitrogen Solutions Fair Trade Committee, an ad hoc coalition of U.S. urea ammonium nitrate solutions producers, consisting of CF Industries, Inc., Long Grove, IL; Mississippi Chemical Corp., Yazoo City, MS; and Terra Industries, Inc., Sioux City, IA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of urea ammonium nitrate solutions from Belarus, Russia, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of October 23, 2002 (67 FR 65143). Pursuant to Commerce's notice of extension of the time limits for its final antidumping determinations (67 FR 67823, November 7, 2002), the Commission published a notice of revised schedule in the *Federal Register* of November 20, 2002 (67 FR 70093). The hearing was held in Washington, DC, on February 20, 2003, 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] On February 19, 2003, Commerce signed a suspension agreement concerning UAN from Russia; however, pursuant to petitioners' request on the following day, Commerce continued its investigation and published notices of suspension, continuance, and completion of the investigation in the *Federal Register* of March 3, 2003 (68 FR 9977-9984). The Commission thus continued its investigation of subject imports from Russia pursuant to 19 U.S.C. § 1673c(g).

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of urea ammonium nitrate solutions from Belarus, Russia, and Ukraine that are sold in the United States at less than fair value ("LTFV").[1]

I. DOMESTIC LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[2] 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."[3] 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 . . . ."[4]

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.[5] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[6] The

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[1] Whether the establishment of an industry is being materially retarded is not an issue in these investigations.

[2] 19 U.S.C. § 1677(4)(A).

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(10).

[5] 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).

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

Commission looks for clear dividing lines among possible like products and disregards minor variations.[7] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[8]

B. Product Description

Commerce's final determinations defined the imported merchandise within the scope of these investigations as:

> For purposes of this investigation, 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 this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3102.80.00.00. Although the HTSUS item number is provided for convenience and U.S. Customs Service (the Customs Service) purposes, the written description of the merchandise under investigation is dispositive.[9]

The subject merchandise, urea ammonium nitrate solutions ("UAN"), is an aqueous solution of urea and ammonium nitrate. UAN generally contains relatively equal proportions of urea and ammonium nitrate and ranges from 28 to 32 percent nitrogen by weight.[10] It is one of the four principal nitrogen-based fertilizers; the other three are urea, ammonium nitrate, and anhydrous ammonia.[11] UAN is produced and used as a fertilizer in several countries,[12] although 84 percent of world consumption occurs in Europe and

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

[8] 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 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[9] 68 Fed. Reg. 9055 (Feb. 27, 2003) (Belarus); 68 Fed. Reg. 9057 (Feb. 27, 2003) (Ukraine); 68 Fed. Reg. 9977, 9978 (March 3, 2003) (Russia).

[10] INV-AA-031, March 11, 2003, Confidential Staff Report ("CR") at I-4; Public Report ("PR") at I-3.

[11] CR at I-4, PR at I-3.

[12] CR at I-3, PR at I-3.

North America.[13]

C. Domestic Like Product

In the preliminary phase of these investigations, petitioners argued that the Commission should find only one domestic like product consisting of UAN, co-extensive with the scope of investigation. Respondents argued that the domestic like product should be expanded to include other chemicals that are used as nitrogen-based fertilizers: urea, ammonium nitrate, and anhydrous ammonia.[14] The Commission found significant differences in physical and chemical properties, uses, and prices, as well as limited interchangeability among these other chemicals and UAN.[15] Accordingly, the Commission defined the domestic like product coextensively with the product described in the scope of these investigations, *i.e.*, UAN.[16]

In the final phase of these investigations, petitioners maintain their position that the other nitrogen-based fertilizers differ significantly from UAN and should not be included in the domestic like product.[17] Respondents no longer argue for the expansion of the definition of the domestic like product.

Based upon their significant differences, particularly their different physical properties, uses, prices, and limited interchangeability as outlined in our preliminary determination,[18] and the lack of relevant new facts in the final phase of these investigations, we do not find it appropriate to include urea, ammonium nitrate, or anhydrous 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.

II. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Domestic Industry

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

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13 CR at II-1, PR at II-1.

14 See IRM's Postconference Brief at 2; J.R. Simplot's Postconference Brief at 1.

15 Urea Ammonium Nitrate Solutions from Belarus, Lithuania, Russia, and Ukraine, Inv. No. 731-TA-1006-1009 (Preliminary) (June 2002) USITC Pub. 3517 at 5-6.

16 Urea Ammonium Nitrate Solutions from Belarus, Lithuania, Russia, and Ukraine, Inv. No. 731-TA-1006-1009 (Preliminary) (June 2002) USITC Pub. 3517 at 6.

17 Petitioners' Prehearing Brief at 12-19.

18 Urea Ammonium Nitrate Solutions from Belarus, Lithuania, Russia, and Ukraine, Inv. No. 731-TA-1006-1009 (Preliminary) (June 2002) USITC Pub. 3517 at 6.

total domestic production of the product."[19] 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.[20]

Based on our domestic like product finding, we find that the domestic industry consists of all domestic 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.[21] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[22]

As in the preliminary phase, we exclude *** from the domestic industry.[23] First, as an importer of the subject merchandise, it is a related party. During the period of investigation ("POI"), it imported ***.[24] It appears to have ***.[25] ***, suggesting its interests lie in importation rather than domestic

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[19] 19 U.S.C. § 1677(4)(A).

[20] 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).

[21] 19 U.S.C. § 1677(4)(B).

[22] 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.

[23] The parties did not address the issue of related parties in their briefs or at the hearing in this final phase.

[24] *** Questionnaire Response (indicating ***).

[25] See CR/PR at Table VI-3.

production.[26] Although *** produced less than *** percent of U.S. production during the POI, and excluding it will not change the financial picture of the industry, it is appropriate to exclude *** because it appears to have benefitted from importing subject merchandise.

*** also is a related party by virtue of having imported *** UAN from *** during 2001.[27] It imported *** short tons but its domestic production was *** short tons during the period of investigation, making its imports equivalent to approximately *** of its domestic production during the period.[28] Its financial results were *** than the industry average and it reported its *** in 2001, the year it imported the subject merchandise.[29] Given the limited quantity of its imports of subject merchandise and the lack of evidence that it was shielded from the effects of the subject imports, we do not exclude *** from the definition of the domestic industry.[30]

III. CUMULATION OF THE SUBJECT IMPORTS

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess

[26] ***.

[27] CR at III-1 n.2, PR at III-1 n.2.

[28] CR at III-1 n.2, PR at III-1 n.2.

[29] See CR/PR at Table VI-3.

[30] *** domestic producers purchased subject imports during the POI. CR at III-1 n.2, PR at III-1 n.2 (***). These domestic producers did not import subject merchandise nor have corporate relationships with producers, exporters or importers of the subject merchandise. However, operational control within the meaning of the related party provision can occur, when, for example, a domestic producer purchases the majority of an importer's imports or controls a large volume of imports, and thus can justify treating a domestic producer as a related party on this basis.

For domestic producer ***, the available information does not indicate that it purchased a majority of an importer's total imports or controlled large volumes of imports relative to total subject imports during the POI of ***. ***. See *** Importer Questionnaire.

For the other domestic producer, ***, it is unclear whether it purchased a majority of an importer's total imports during the POI, but it also does not appear that it would be appropriate to exclude it from the industry if it were considered a related party. Information concerning the size of *** purchases relative to the importers' imports is unavailable because the importers from which it purchased did not respond to the Commission questionnaires. However, available information indicates that, even if we were to consider it a related party, it would be inappropriate to exclude it from the definition of the domestic industry. *** purchased *** tons of subject imports during the POI which would be less than *** percent of its production of *** tons during the POI. CR at III-1 n.2, PR at III-1 n.2. Moreover, *** performed *** over the POI in terms of operating income relative to net sales than other domestic producers, suggesting no benefit from these purchases. See CR/PR at Table VI-3. Therefore, we do not find that it would be appropriate to exclude this company as a related party.

Accordingly, we do not exclude any domestic producers from the domestic industry under the related parties provision based on purchases of the subject imports.

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.[31] In assessing whether subject imports compete with each other and with the domestic like product,[32] the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[33]

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.[34] Only a "reasonable overlap" of competition is required.[35]

B. Analysis

Petitioners argue that the prerequisites for cumulation have been met in these investigations, and cumulation is appropriate. They note that the petition was filed with respect to all subject countries on the same day and they argue that there is a reasonable overlap of competition. No respondent argues that subject imports from Belarus, Russia, or Ukraine should not be cumulated.

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[31] 19 U.S.C. § 1677(7)(G)(i).

[32] 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).

[33] 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).

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

[35] 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.").

U.S. producers and importers agree that no quality differences exist among domestic UAN and the subject imports and that they all are highly interchangeable.[36] Essentially there are no significant physical differences between UAN produced in the United States and that produced in the subject countries.[37] In fact, UAN from different sources is often commingled after the initial sales by U.S. producers and importers to dealers and distributers.[38] Therefore, there is a high degree of fungibility among the subject imports and domestic UAN.

During the period of investigation, although competition was somewhat limited geographically, subject imports from the three countries competed sufficiently with domestic UAN for sales on both coasts of the United States and in the Gulf Region for purposes of finding a reasonable overlap of competition.[39] Channels of distribution are similar for the subject imports and domestic UAN. Subject imports and domestic UAN are sold to distributors and then retailers.[40] They also are both transported by barge on the Mississippi River system.[41] Subject imports from Belarus, Russia, and Ukraine were offered for sale during the majority of the POI, although subject imports were minimal during 1999, increased during 2000 and most of 2001, and then declined for the rest of the period of investigation.[42]

Based on the four factors that the Commission considers in analyzing cumulation, there is a reasonable overlap of competition. Accordingly, the conditions for cumulating the subject imports have been satisfied.

We, therefore, cumulate the subject imports from Belarus, Russia, and Ukraine for the purpose of analyzing whether the domestic industry has been materially injured by reason of the subject imports.

IV. NO MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an

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[36] CR at II-28 n.64, PR at II-19 n.64; CR at II-28, PR at II-19.

[37] CR at I-3, PR at I-3; Transcript of February 20, 2003 Public Hearing ("Tr.") (Giesler) at 19.

[38] CR at II-28 n.64, PR at II-19 n.64; CR at V-20 n.41, PR at V-15 n.41.

[39] See CR/PR at Table V-6. Imports from all three subject countries entered in *** and competed with domestic UAN for sales. See Id. While only minimal quantities of subject imports entered the United States in the Gulf of Mexico ports (New Orleans and Houston) in 1999, they were present in significant quantities during 2000 and 2001 and able to supply the Midwest via the Mississippi River system. See Petitioners' Prehearing Brief at Exhibit 6. See also Petition at 18 (subject imports were primarily present only on the East and West Coasts until recently).

[40] CR at II-1, PR at II-1.

[41] CR at II-1, PR at II-1.

[42] See CR/PR at Table V-6. However, subject imports from Belarus began entering the United States in the fourth quarter of 2000. Petitioners' Prehearing Brief at Exh. 8; CR/PR at Table IV-1.

industry in the United States is materially injured by reason of the imports under investigation.[43] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[44] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[45] In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[46] 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."[47]

For the reasons discussed below, we determine that the domestic industry is not materially injured by reason of subject imports from Belarus, Russia, and Ukraine found to be sold in the United States at LTFV.

A. Conditions of Competition

We find the following conditions of competition relevant to our analysis of material injury and threat of material injury.[48]

UAN is a liquid fertilizer that supplies nitrogen to crops.[49] In the United States, it is primarily used

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[43] 19 U.S.C. § 1673d(b).

[44] 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).

[45] 19 U.S.C. § 1677(7)(A).

[46] 19 U.S.C. § 1677(7)(C)(iii).

[47] Id.

[48] The Russian producer and exporter Nevinka entered into a suspension agreement with Commerce on February 19, 2003. Suspension of Antidumping Duty Investigation: Urea Ammonium Nitrate Solutions from the Russian Federation, 68 Fed. Reg. 9980 (March 3, 2003). The next day, pursuant to 19 U.S.C. § 1673c(g), petitioners requested that Commerce and the Commission continue their investigations and Commerce issued a Final Determination of Sales at Less than Fair Value of UAN from Russia on March 3, 2003. Notice of Final Determination Sales at Less than Fair Value: Urea Ammonium Nitrate Solutions from the Russian Federation, 68 Fed. Reg. 9977 (March 3, 2003). The suspension agreement has no effect on the Commission's analysis because all of the Commission's data predate the suspension agreement. As a result of the negative determination in this investigation, the suspension agreement will not be effective.

[49] CR at II-15, PR at II-10.

as a pre-planting fertilizer for row crops such as corn, wheat, cotton, soybeans, and sugar cane.[50] UAN is a seasonal product and demand is generally strongest in anticipation of the planting season. Farmers generally apply UAN in the spring planting season, except in the Southwest, where it can be used several times during the year because crops are grown there year-round.[51] The demand for UAN is determined by acreage planted and application rates.[52] Apparent U.S. consumption of UAN was greater in 2000 than 1999, but it fell in 2001 to a level below 1999 consumption.[53] The primary consuming region for UAN is the Midwest. In 2001, 17 states accounted for 76 percent of the U.S. UAN consumption: of these, California on the West Coast accounted for 6.3 percent; Florida, on the East Coast, accounted for 0.2 percent; Texas, on the Gulf Coast accounted for 6.8 percent.[54] The remaining states in the Farmbelt accounted for 63 percent of UAN consumption: Nebraska, Iowa, Ohio, Illinois, Kansas, Indiana, Missouri, Michigan, Wisconsin, South Dakota, Minnesota, Arkansas, Kentucky, and North Dakota.

UAN is a commodity product and UAN from different sources is commingled in inventory. [55] However, UAN has only limited interchangeability with the other nitrogen fertilizers because it is optimal for use with irrigation systems and minimal-till farming.[56] Farmers use different equipment for applying UAN[57] and it can be mixed with other solutions, such as pesticides for a single application.[58]

Although UAN is generally consumed seasonally, it is produced throughout the year because it is inefficient to cease production, and domestic producers typically increase their inventories during the fall and winter months.[59]

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[50] CR at I-3, PR at I-3; CR at II-15, PR at II-10.

[51] CR at I-3, PR at I-3.

[52] CR at II-16, PR at II-10.

[53] Apparent consumption was 10.3 million short tons in 1999, 11.0 million short tons in 2000, and 9.9 million short tons in 2001. U.S. apparent consumption was relatively unchanged in the interim period comparison (the first three quarters of 2002 versus the first three quarters of 2001) at 7.4 million short tons. However, the value of U.S. apparent consumption increased from $722 million in 1999 to $990 million in 2000 to $1.1 billion in 2001. U.S. apparent consumption declined in the interim period comparison, from $875 million to $608 million. CR/PR at Table IV-1.

[54] See CR at II-17 to II-18 n.40, PR at II-11 n.40.

[55] Tr. at 19 (Giesler).

[56] Tr. at 18 (Giesler); Tr. at 99-102 (Buckley).

[57] CR at II-23, PR at II-10.

[58] CR at II-23, PR at II-10.

[59] CR at I-6, PR at I-4.

Natural gas is an important feedstock for production of UAN. It accounts for more than half of the cost of production of UAN.[60] Domestic producers accounting for the bulk of U.S. UAN production hedge the risk of natural gas price fluctuations throughout the year by purchasing natural gas futures.[61] The futures contracts decrease uncertainty as to the cost of natural gas by partially offsetting high spot prices for natural gas.[62] Natural gas prices in the United States were under $2 per MMBtu in early 1999, yet they rose sharply during late 2000 and early 2001 and peaked at nearly $10 per MMBtu (more than three times the historical price of natural gas).[63] As a result, during the same period -- late 2000 through early 2001 -- U.S. producers curtailed production,[64] and UAN prices rose dramatically.[65] U.S. natural gas prices in 2003 are once again at high levels and domestic producers have once again announced production cutbacks.[66]

Average transportation costs account for 24 percent to 49 percent of the cost of the subject imports due to the weight of UAN, which is mostly water.[67] Average transportation costs for shipment of domestic UAN also are significant and range from 9.2 percent up to 23.3 percent.[68] Consequently, 82 percent of the subject imported product is sold to customers within 100 miles of the port of entry, and 31 percent of domestic UAN is shipped similar distances.[69] Some suppliers use swaps to minimize the effects of the high transportation costs, yet no UAN suppliers reported selling nationwide, but rather in

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[60] CR at V-1, PR at V-1; Tr. at 21 (Giesler).

[61] CR at VI-7 to VI-8, PR at VI-4 to VI-5; CR/PR Table VI-5, CR/PR at Appendix F.

[62] See CR at V-4 n.7, PR at V-2 n.7; CR/PR at F-3.

[63] See Petitioners' Prehearing Brief at Exhibit 15 (natural gas prices over the POI).

[64] Of the 28 purchasers that responded to the Commission's questionnaires 17 reported that their suppliers of U.S. produced and imported UAN were able to fully provide their requirements during the POI, while 11 reported supply problems, particularly during the period of the natural gas price spikes. Eight of the 11 purchasers identified U.S. producers as the suppliers that could not supply their needs, including CF Industries, Farmland, Mississippi Chemical, PCS and Terra. CR at II-9, PR at II-6. Petitioners admitted at the hearing that during the natural gas price spikes, there were perceived if not real supply shortages. Tr. at 21-22, 70 (Giesler).

[65] Tr. at 21 (Giesler); CR at V-2, PR at V-1; CR/PR at Fig. V-1; CR/PR at Fig. V-5. See also Petitioners' Prehearing Brief at Exhibit 15.

[66] CR at III-5, PR at III-4; CR at V-4 to V-5, PR at V-3.

[67] CR at V-5, PR at V-4. Transportation costs for subject imports from Russia, which were the majority of subject imports, averaged almost 50 percent. Id.

[68] CR at V-7, PR at V-4.

[69] CR at V-7, PR at V-5; CR at II-27, PR at II-18. Thus, importers typically sold their UAN in or near the coastal areas while domestic UAN was sold further inland. CR at II-26, PR at II-18.

specific market areas.[70]

Imports generally have not competed on the Gulf Coast where they would be able to supply the Cornbelt states, which account for a significant percentage of UAN consumption in the United States.[71] Petitioners stated in their petition that, "until very recently, imports of UAN were sold primarily on the East Coast, arriving at such ports as Wilmington, Baltimore, and Norfolk and West Coast ports such as Stockton, CA. Beginning in 2001, however, imported UAN began to appear in substantial quantities at Gulf Coast ports, particularly New Orleans, Corpus Christi, and Houston."[72] The Gulf Coast is the entry point for sales up the Mississippi River to the Midwest, the primary consuming region for UAN.

Nonsubject imports increased over the period of investigation and in interim (Jan.-Sept.) 2002 accounted for a larger share of the U.S. market than the subject imports.[73] The European Union imposed final antidumping duties on UAN from Belarus, Russia, and Ukraine in September 2000.[74]

B. Volume

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."[75]

The volume of cumulated subject imports increased during the period of investigation, both absolutely and as a share of the U.S. market, although subject import volume declined in interim 2002 as compared to interim 2001. Subject imports were 276,743 short tons in 1999, 967,890 short tons in 2000 and 1,334,207 short tons in 2001. In the interim periods the subject imports were 1,017,809 short tons in interim 2001 and 391,242 short tons in interim 2002.[76] The value of these imports was $15.6 million in 1999, $75.5 million in 2000, and $120.5 million in 2001. In the interim periods, the value of the subject

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[70] CR at V-10, PR at V-7; CR at II-2, PR at II-2.

[71] As already noted, subject imports began entering on the Gulf Coast in 2000, indicating that they could supply the Cornbelt via the Mississippi River system. See CR at II-1, PR at II-1 (Mississippi River important for distribution of UAN); J.R. Simplot's Posthearing Brief at Exhibit 7.

[72] CR at II-1 n.2, PR at II-1 n.2.

[73] CR/PR at Table IV-1. Nonsubject imports captured 3.8 percent of the market in 1999, 4.3 percent in 2000, 8.5 percent in 2001, 10.5 percent in interim 2001, and 6.3 percent in interim 2002.

[74] CR at VII-5, PR at VII-2. The United States also has antidumping duty orders on solid urea from Belarus, Russia, and Ukraine, as well as solid agricultural grade ammonium nitrate from Ukraine. A suspension agreement covers imports of solid agricultural grade ammonium nitrate from Russia. CR at I-2, PR at I-2.

[75] 19 U.S.C. § 1677(7)(C)(i).

[76] CR/PR at Table IV-1.

imports was $98.0 million in interim 2001 and $28.2 million in interim 2002.[77]

Subject imports increased their share of the U.S. market from 1999 through 2001, although their market share declined when the interim periods are compared. They accounted for 2.7 percent of the volume of U.S. apparent consumption in 1999, 8.8 percent in 2000, and 13.5 percent in 2001. In the interim period comparison, subject imports captured 13.7 percent of the U.S. market in interim 2001 and 5.3 percent in interim 2002. In terms of the value, subject imports accounted for 2.2 percent of the value of U.S. apparent consumption in 1999, 7.6 percent in 2000 and 11.2 percent in 2001. In the interim periods subject imports were equivalent to 11.2 percent of the value of U.S. apparent consumption in interim 2001 but only 4.6 percent in interim 2002.[78]

U.S. producers lost market share during the POI, declining from 93.5 percent of U.S. apparent consumption in 1999 to 78.0 percent in 2001. U.S. producers' market share was 88.4 percent in interim 2002, compared with 75.9 percent in interim 2001.[79] U.S. producers' market share based on the value of domestic consumption followed similar trends.[80]

The increase in volume of the subject imports both absolutely and relative to domestic consumption over the period of investigation was significant. However, the increase in subject import volume must be viewed in the context of prevailing market conditions. The increase in subject imports came at a time of extraordinarily high U.S. natural gas prices, resulting in increased UAN costs, production cutbacks by the U.S. producers,[81] and high UAN prices, which made subject imports (as well as nonsubject imports) able to compete despite high transportation costs.[82] The volume of subject imports was significantly higher in the second half of 2000 than during the first half of 2000 and remained high into the first half of 2001, coincident with the spike in U.S. natural gas prices.[83] As natural gas prices and

[77] CR/PR at Table IV-1.

[78] CR/PR at Table IV-1.

[79] CR/PR at C-1.

[80] CR/PR at Table IV-1. The market share data based upon value may understate the share of subject imports because the data for subject imports reflected c.i.f., duty-paid, port of entry prices while domestic producers' data were net f.o.b. sales values.

[81] U.S. producers' production of UAN declined by *** percent from 2000 to 2001. CR/PR at C-2.

[82] Nonsubject imports increased from 387,724 short tons in 1999 to 469,978 short tons in 2000, and to 842,264 short tons in 2001. CR at IV-1, PR at IV-1. They declined from 777,755 short tons in interim 2001 to 471,282 short tons in interim 2002. CR/PR at Table IV-1.

[83] Imports of other nitrogen-based products also increased in response to elevated natural gas prices. See J.R. Simplot's Posthearing Brief at 9.

UAN prices returned to their historical levels,[84] the volume of subject imports and nonsubject imports declined.[85] [86] Shipments of subject imports into the Gulf Coast ports, the entry point for Midwestern markets traditionally served by U.S. producers, also increased during the period of the high natural gas prices and then subsided as natural gas prices fell in late 2001.[87]

C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[88]

The record in these investigations indicates that the domestic like product and subject imports are substitutable[89] and that availability and price are both important factors in purchasing decisions.[90]

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[84] See CR/PR at Figs. V-1 and V-5.

[85] Prior to the filing of the petition in April 2002, subject imports were declining. Subject imports totaled *** short tons in the first quarter of 2001 and *** short tons in the first quarter of 2002. Petitioners' Posthearing Brief at Exhibit 15. Moreover, subject imports entering at the Gulf of Mexico ports dropped to only *** metric tons in the first half of 2002 while they had been *** metric tons in the first half of 2001 and *** metric tons in the second half of 2001. See Petitioners' Prehearing Brief at Exhibit 6. Because the decline in subject imports predated the filing of the petition and appear related to natural gas prices and domestic industry decisions on production levels, we find that factors in addition to the filing of the petition contributed to the drop in subject imports toward the end of the POI. See 19 U.S.C. § 1677(7)(I).

[86] Petitioners argued that after natural gas prices and UAN prices normalized, nonsubject imports promptly exited the U.S. market in contrast to subject imports. Petitioners' Final Comments at 5. As noted above, however, subject import volumes did decline from previous levels after natural gas prices normalized and before the petition was filed, even if not as "promptly" as nonsubject imports. Moreover, we have found the increase in subject import volume to be significant during the POI.

[87] See Petitioners' Prehearing Brief at Exhibit 6.

[88] 19 U.S.C. § 1677(7)(C)(ii).

[89] Tr. at 19 (Giesler); CR at II-32, PR at II-22.

[90] CR/PR at Table II-1. Twenty of 22 purchasers ranked availability as very important. Twelve of 22 purchasers ranked lowest price as very important. Id.

In gathering data for price comparisons, the Commission used two pricing products: 32 percent UAN and 28 percent UAN.[91] At petitioners' suggestion, the Commission collected pricing data in six areas where they believed the initial and most significant competition occurred between domestic UAN and subject imports.[92] The data collected for price comparisons, as suggested by petitioners, are for sales made by importers and U.S. producers located in the specified area to customers located in the specified area.[93] The way in which the data were collected in this final phase provides a reliable basis for assessing the price effects of the subject imports. The pricing data in the six specified areas reflect 8.8 percent of domestic producers' sales, although coverage of importers' sales was close to 50 percent.[94]

Overselling occurred in 66 of the 95 monthly price comparisons and involved 327,212 short tons of subject imported UAN versus 254,522 short tons of subject imported UAN that undersold domestic UAN.[95] Based upon the pricing comparisons, 726,964 short tons of domestic UAN was oversold by the subject imports and 286,994 short tons was undersold.[96] At the Gulf Coast port of New Orleans, where the petitioners argued that subject imports increased their presence during the POI and placed the most pressure on domestic prices,[97] the incidence of overselling by subject imports was overwhelming,

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[91] CR at V-20, PR at V-15. The two products could not be directly compared in that 28-percent UAN has additional costs of production because it is produced from 32-percent UAN.

[92] Data were collected for sales at Baltimore, MD, Brunswick, GA, Corpus Christi, TX, Cincinnati, OH, New Orleans LA, and San Francisco, CA. CR at V-54, n.54, PR at V-29 n.54. Sales at these locations occur early in the chain of distribution before U.S. importers and some U.S. producers incur significant overland transportation costs. After the initial sale by importers or U.S. producers to distributors and dealers, the product is often commingled as it moves further along the distribution chain and country of origin of the UAN is lost. CR at V-20 n.41, PR at V-17 n.41. For this reason, purchasers were generally not able to report net delivered purchase price data for the subject imported product. CR at V-23 n.48, PR at V-17 n.48.

[93] Pricing data in the preliminary phase of these investigations was generally collected for specific areas as well. See INV-Z-078 at V-8 to V-10. However, in the final phase, at the urging of petitioners, only sales to customers in or near the specified cities were used in order to obtain pricing data that minimized transportation costs. See CR at V-20, PR at V-17; CR at V-20 n.41, PR at V-17 n.41. Price comparisons were available at Baltimore, MD, Brunswick, GA, New Orleans LA, and San Francisco, CA. CR at V-54 n.54, PR at V-29 n.54..

[94] CR at V-22, PR at V-16. The pricing comparisons only involved 3.7 percent of domestic producers' shipments. CR at V-61 n.56, PR at V-29 n.61. The selected cities are coastal locations where importers' sales are more prevalent. Some domestic UAN producers, such as *** made no sales at the selected coastal locations. CR at V-22 n.46, PR at V-16 n.46.

[95] CR at V-54, PR at V-29; CR at V-6, PR at V-5; CR/PR at Table V-5b. Price comparisons were available for four of the six cities for which the Commission sought data. Id.

[96] CR/PR at Table V-5b.

[97] Petitioners' Prehearing Brief at 35-37.

occurring in 30 of 32 comparisons.[98] Given the high incidence of overselling and the fact that it occurred in geographic areas argued by petitioners to be the most significant, we do not find that there has been significant price underselling by the subject imports.

Petitioners argue that the picture of underselling/overselling would be more "mixed" had the Commission included sales of a different domestic product (30-percent UAN solution) and sales by *** to customers more than 200 miles away from New Orleans in the price comparisons.[99] We find that it is not appropriate to include these sales in our price comparisons. The 30-percent solution is a different product which generally sold at a higher price than the 32-percent product on which our price comparisons are based.[100] The *** do not meet the parameters for our price comparisons that petitioners themselves urged as the most reliable. We also have considered *** but because of the way in which the product is sold, these sales do not provide valid comparisons.[101]

We also do not find evidence of significant negative price effects by reason of the subject imports. Prices for the domestic like product, which were generally lower than those of the subject imports, rose during 2000 and early 2001, in tandem with natural gas prices. As described earlier, natural gas is the principal raw material in the manufacture of UAN and constitutes the majority of the cost of production for UAN. When natural gas prices rose in late 2000 and early 2001, public data indicate that prices for domestic UAN and other nitrogen-based fertilizers also rose, reflecting the higher costs of production.[102] The Commission's pricing data also confirm the sharp rise in prices for domestic UAN, indicating that its price doubled during this period of high natural gas prices, before receding to early 2000

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[98] CR/PR at Table V-6.

[99] See Petitioners' Final Comments at 6-9.

[100] CR at V-54 n.55, PR at V-29 n.55. See also CR at V-11, PR at V-8 and CR at V-11 n.31, PR at V-8 n.31 (explaining why 28-percent and 30-percent UAN are higher priced than 32-percent UAN).

[101] See CR at V-62 to V-63 and Appendix E, PR at V-32. The *** by *** involved UAN that was ***. The comparisons based on these sales, which are contained in Appendix E, generally do not involve comparable quantities of domestic UAN and subject imports because the *** were generally much larger than the sales of domestic UAN.

Despite petitioners' suggestion that *** provided incomplete pricing data (Petitioners' Prehearing Brief at 45-46; Petitioners' Posthearing Brief, Exhibit 1, at 12; Petitioners' Final Comments at 6-12), the Commission staff received a verified questionnaire response from *** and followed up with the company on numerous occasions to verify the completeness and accuracy of its response. See Telephone notes of G. Benedick's conversations with ***, dated 12/2/02, 12/16/02, 12/19/02, 12/30/02, 2/13/03, 2/27/03, 3/3/03, 3/04/03, and 3/12/03. Petitioners also have argued that "serious procedural irregularities" occurred in these investigations. Petitioners' Letter of March 14, 2003 at 3. We do not view any of the concerns cited by petitioners as depriving the petitioners of an opportunity to present relevant arguments and comment on the information collected in these investigations.

[102] See CR/PR at Fig. V-1 and Fig. V-5. The price of UAN in the U.S. market actually exceeded that of all other nitrogen-based fertilizers during a portion of 2001. This had not occurred during the previous seven years. See CR/PR at Fig. II-1.

levels in the latter part of 2001 as natural gas prices normalized.[103] This increase in the price of UAN occurred in 2000 and early 2001 while subject imports were entering the United States and being shipped in the U.S. market in large quantities.[104] Domestic prices for UAN were slightly higher at the end of the POI than at the beginning of the period, despite the decline in the amount of UAN consumed.[105] [106] The record indicates that domestic UAN prices tracked U.S. natural gas prices. Therefore, the record does not indicate that prices were depressed as a result of the increase in subject imports.

Domestic producers were able to increase their prices for UAN as their costs rose due to the increase in U.S. natural gas prices. Domestic prices for UAN at the end of the period were higher than at the beginning, and domestic UAN prices peaked in 2001 at approximately double their 1999 level.[107] From 1999 to 2001, the domestic producers' net sales unit values increased more than their unit cost of goods sold, indicating that prices were not being suppressed by the subject imports relative to costs.[108] We also note that none of the petitioners' lost sales or lost revenue allegations was confirmed.[109]

Accordingly we do not find significant underselling by the subject imports or that subject imports depressed or suppressed prices for domestic UAN to any significant degree.

D. Impact

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[103] See CR/PR at Table V-1a and Fig. V-6a. Prices for UAN appear to track closely the cost of natural gas as prices for UAN peaked just after prices for natural gas peaked, and then declined as gas prices declined. Compare CR/PR at Fig. V-1 (UAN prices) with CR/PR at Fig. V-6a (cost of natural gas to domestic industry).

[104] See CR at IV-4, PR at IV-4; CR/PR at Table IV-1.

[105] See CR/PR at Fig. II-1; CR/PR at Table IV-1.

[106] Average unit values (AUVs) of subject imports and domestic UAN followed similar paths: rising and then falling during the period of investigation. See CR/PR at Table C-1; Petitioners' Posthearing Brief at Exhibit 20. While the average unit values may be useful for discerning trends, they are not a surrogate for price comparisons. See Tr. at 92 (Klett) (mostly useful for examining price trends and can be distorted by transportation costs). The record in this investigation shows AUVs for U.S. shipments of imports as well as U.S. imports. The AUVs for U.S. shipments of imports are generally higher than those of the imports and theoretically more comparable to the AUVs of U.S. producers' commercial shipments, but because they represent a wide range of transactions for many locations by several importers, they are not a valid surrogate for price comparisons. See CR at IV-4, PR at IV-4.

[107] CR/PR at Fig. II-1; CR/PR at Fig. V-6a.

[108] The industry's unit cost of goods sold (COGS) as percentage of net sales was lower in 2001 than in 1999. CR/PR at Table C-2 (*** percent in 2001 versus *** percent in 1999). The domestic industry reported COGS of *** per short ton in 1999, *** per short ton in 2000, and *** per short ton in 2001. CR/PR at Table C-2. The unit value of its net sales was *** per short ton in 1999, *** per short ton in 2000 and *** per short ton in 2001. Between the interim periods, both the unit value of net sales and the unit value of COGS fell by similar amounts. Id.

[109] See CR/PR at Table V-7; CR/PR at Table V-8.

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.[110] 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."[111] [112] [113]

As discussed above, the subject imports initially increased significantly and gained market share during the POI, though subject imports have since declined.[114] However, the increase in subject imports came at a time of domestic production curtailments due to unusually high natural gas prices. Unscheduled production curtailments were approximately 154,000 tons per month during September 2000 to March 2001, when natural gas prices peaked.[115] Reported in the press, these cutbacks appear to have

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[110] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 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.).

[111] 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 (Feb. 1999) at 25 n.148.

[112] 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 final determinations, Commerce reported dumping margins of 226.82 percent for UAN from Belarus and 193.57 percent for UAN from Ukraine. 68 Fed. Reg. 9055, 9056 (Feb. 27, 2003); 68 Fed. Reg. 9057, 9058 (Feb. 27, 2003). The primary Russian exporter to the United States, Nevinka, received a margin of 106.98 percent and Commerce set the "all others" dumping margin at 239.14 percent for other producers in Russia. 68 Fed. Reg. 9977, 9979 (March 3, 2003).

[113] We have excluded *** from the definition of the domestic industry but this has an *** on the data because its ***. See CR at III-3 n.4, PR at III-1 n.4.

[114] The domestic producers accounted for 93.5 percent of the volume of U.S. apparent consumption in 1999, 87.0 percent in 2000, and 78.0 percent in 2001. In the interim period comparison, they supplied 75.9 percent in interim 2001 and 88.4 percent in interim 2002. CR/PR at Table IV-1. In terms of the value, the domestic producers accounted for 92.6 percent of the value of U.S. apparent consumption in 1999, 87.2 percent in 2000 and 78.7 percent in 2001. Id. In the interim periods, domestic producers supplied 77.1 percent of the value of U.S. apparent consumption in interim 2001 and 87.8 percent in interim 2002. Id.

[115] CR at III-3 to III-5, PR at III-4. Domestic production was *** million short tons in 1999, *** million short tons in 2000, but production curtailments resulted in production of only *** million short tons in 2001. CR/PR at Table C-2. Domestic production was *** million short tons in interim 2001 and *** million short tons in interim 2002. CR/PR at C-2. Capacity utilization increased from *** percent in 1999 to *** percent in 2000 before falling to *** percent in 2001. Id. In the interim periods, capacity utilization was *** percent in interim 2001 and *** percent in interim 2002. Id. The domestic producers' capacity was *** million short tons in 1999, *** million short tons in 2000 and *** million short tons in 2001. Id. It was *** million short tons in interim 2001 and interim 2002. Id. The domestic producers' inventories were *** million short tons in 1999, *** million short tons in 2000, and *** million short tons

created at least a perception in the marketplace (if not a reality) that domestic supply was unreliable and purchasers should find alternative sources of supply.[116] Subject imports and nonsubject imports increased during this period and both peaked in interim 2001.[117]

As we discussed, despite the increase in the volume of subject imports, subject imports did not have significant adverse effects on industry prices. Subject imports did not prevent domestic producers' prices from rising so as to offset increasing costs due to rising U.S. natural gas prices, and prices for domestic UAN actually doubled during 2000 and early 2001, before declining to a level slightly higher than the price level in the period before subject imports entered.[118] As we observed, the trends in domestic UAN prices tracked the trends in natural gas prices during the period, and subject imports generally oversold the domestic product.

While the domestic industry generally reported losses during the period of investigation, the losses are not attributable to any significant degree to the subject imports.[119] When subject imports were at their lowest level in 1999 (2.7 percent of apparent U.S. consumption),[120] the industry's condition was the worst, due, according to petitioners, to capacity over-expansion.[121] In 2000 when subject imports increased in the U.S. market, the industry's condition improved somewhat and its losses were not as severe as in 1999, when subject imports had a minimal presence and the domestic industry had 93 percent of the market.[122]

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in 2001. In interim 2001, inventories were *** million short tons, but in interim 2002, the industry reported inventories of only *** short tons. CR/PR at Table C-2.

[116] Tr. at 22, 70 (Giesler). See also CR at II-9, PR at II-6 (8 of 28 purchasers reported that they could not obtain their requirements of UAN from domestic producers); CR at V-70 to V-72, PR at V-35 to V-37 (purchasers reporting domestic supply was unavailable). As noted earlier, some domestic producers imported and purchased UAN during the period of investigation. See CR at III-1 n.2, PR at III-1 n.2.

[117] See CR/PR at Table C-1.

[118] The ratio of cost of goods sold (COGS) to net sales was lower in 2001 than in 1999. See CR/PR at Table C-2 (*** percent in 1999, *** percent in 2000 and *** percent in 2001). The domestic industry's revenues increased from *** million in 1999, to *** million in 2000, and to *** million in 2001. Its revenues fell from *** in interim 2001 to *** million in interim 2002. CR/PR at Table C-2. However, the industry's shipments were *** million short tons in 1999 and 2000 and then declined to *** million short tons in 2001. CR/PR at Table C-2. In interim 2001 they were *** million short tons, yet they were *** million short tons in interim 2002. Id.

[119] The industry's operating loss as a percentage of net sales was *** percent in 1999, and it improved to *** percent in 2000 but then worsened to *** percent in 2001. In interim 2001, it was *** percent and it increased to *** percent in interim 2002. Id.

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

[121] Petitioners' Prehearing Brief at 51-52.

[122] The industry's operating margins improved from 1999 to 2001 due to higher average net sales values per short ton even though the industry's costs were increasing. CR at VI-12, PR at VI-5. Capital expenditures declined

Subject import volumes and market share continued to increase from 2000 to 2001, and although the industry's profitability declined,[123] we do not attribute the decline to subject imports, but to the effects of the natural gas price spike. U.S. producers' costs rose and production and shipments were cut back. Domestic prices also rose in 2001, but not enough to offset increasing costs in 2001.[124] Subject import prices, meanwhile, were higher than U.S. prices and there is no evidence that they suppressed U.S. prices during the period. Moreover, the industry's operating margins were slightly lower in interim 2002 than interim 2001 despite the fact that subject import volumes sharply declined and U.S. producers gained market share.[125]

The petitioners argue that the domestic industry's condition continued to deteriorate after U.S. natural gas prices normalized by the second half of 2001 and that subject imports remained a significant presence in the U.S. market.[126] However, subject import volumes declined between the third and fourth quarters of 2001 and continued to decline in the first quarter of 2002 before the petition was filed.[127] The proportion of subject imports into Gulf Coast ports declined noticeably in the fourth quarter of 2001 and the first quarter of 2002 following the decline in U.S. natural gas prices that occurred during 2001.[128] Moreover, subject import prices continued generally to be higher than U.S. prices, including at the New Orleans location, the Gulf Coast entry point to the important Midwest market area. Thus, we find that the

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from *** million in 1999 to *** million in 2000 to *** million in 2001. CR/PR at Table C-2. They were *** million in interim 2002 due to the ***. CR/PR at Table V1-3 n.5; CR at VI-7, PR at VI-4.

The industry's employment of production related workers declined from *** in 1999, to *** in 2000, to *** in 2001. CR/PR at Table C-2. The number of workers was *** in interim 2001 and *** in interim 2002. Id. Wages paid declined from *** million in 1999, to *** million in 2000 and then rose to *** million in 2001. The industry paid wages of *** million in interim 2001 and *** million in interim 2002. CR/PR at Table C-2.

Productivity declined from *** tons per 1,000 hours in 1999 to *** tons per 1,000 hours in 2000 to *** tons per 1,000 hours in 2001. It was *** tons per 1,000 hours in interim 2001 and *** tons per 1,000 hours in interim 2002. Id.

[123] The startup expenses of one company in 2001 affected the overall industry's operating margin. ***. CR/PR at Table VI-3 n.5.

[124] CR at VI-1 to VI-3, PR at VI-1.

[125] See CR/PR at Table C-2. Subject imports declined from 1,017,809 short tons in interim 2001 to 391,242 short tons in interim 2002. CR/PR at Table C-1. The domestic industry's share of the U.S. market increased from 75.9 percent in interim 2001 to 88.4 percent in interim 2002. CR/PR at Table C-1.

[126] See Petitioners' Posthearing Brief at 11.

[127] See Petitioners' Posthearing Brief at Exhibit 15. It is possible that some UAN imports that entered in the second half of 2001 were ordered during the period of high U.S. natural gas prices and real or perceived UAN shortages, given the long lead times between orders and deliveries, ranging from 40 to 120 days. CR at II-28, PR at II-19.

[128] See Petitioners' Prehearing Brief at Exhibit 6. Subject imports entering into Gulf Coast ports totaled *** in the third quarter of 2001, but they declined to *** short tons in the fourth quarter of 2001. Id.

condition of the domestic industry was not affected in significant part by the subject imports.[129]

Accordingly, we do not find that the subject imports have had a significant adverse impact on the domestic industry.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS

A. Cumulation for Purposes of Analyzing Threat of Material Injury

Cumulation for threat analysis is treated in Section 771(7)(H) of the Act.[130] This provision leaves to the Commission's discretion the cumulation of imports in analyzing threat of material injury. Based on an evaluation of the relevant criteria as well as our analysis supporting cumulation in the context of assessing present material injury, we exercise our discretion to cumulate imports from Belarus, Russia, and Ukraine for purposes of assessing threat of material injury.

B. Analysis of the Statutory Factors

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."[131] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.[132] In making our

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[129] See Petitioners' Prehearing Brief at Exhibit 16 (indicating that subject imports accounted for *** percent of the market in the first half of 2000, *** percent of the market in the second half of 2000, *** percent in the first half of 2001, and *** percent in the second half of 2001). Petitioners' data indicate that the domestic industry was *** in the first half of 2000, and then became *** in the second half of 2000 and the first half of 2001 when the subject imports achieved greater penetration of the U.S. market. See Petitioners' Posthearing Brief at Exhibit 3. The industry also was more profitable in interim 2001 than in interim 2002, despite the fact that subject import volumes were considerably less in interim 2002. See CR/PR at Table C-1. Petitioners urge the Commission to not regard 1999 as a "base year" because the domestic industry did very poorly for other reasons. Petitioners' Prehearing Brief at 51-52. However, we see no reason to discard our three-year plus interim period of investigation. Moreover, regardless of whether the Commission considers 1999 (when imports were minimal) a base year, the data do not indicate that the performance of the domestic industry during the period of investigation was affected in significant part by the presence of the subject imports in the U.S. market.

[130] 19 U.S.C. § 1677(7)(H).

[131] 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

[132] 19 U.S.C. § 1677(7)(F)(ii).

determination, we have considered all statutory factors that are relevant to this investigation,[133] including the rate of the increase in the volume and market penetration of subject imports, unused production capacity in the subject countries, whether subject imports are entering at prices that are likely to have significant depressing or suppressing effects on domestic prices, the inventories of the subject merchandise, the potential for product-shifting, and the actual and potential negative effects of subject imports on the existing development and production efforts of the domestic industry.

For the reasons discussed below, we determine that the domestic industry is not threatened with material injury by reason of cumulated subject imports. As outlined in our discussion of material injury above, we find that record data depict an industry that is in a weakened condition. It generally reported negative profitability during the period of investigation with declining production, shipments, and capacity utilization.[134] However, we did not find that the poor performance of the domestic industry was due to the presence of subject imports in the market.

Later in the POI and before the petition was filed, subject import volumes began to decline as U.S. natural gas prices normalized. Subject imports increased significantly in 2000 and 2001 when U.S. natural gas prices rose and UAN producers' costs rose and domestic producers curtailed production. Purchasers responded to real or perceived shortages of UAN by turning to subject imports.[135] During the latter portion of the period of investigation, however, as domestic prices for natural gas and UAN moderated, subject imports steadily declined and U.S. producers regained market share, although they continued to perform poorly.[136]

In early 2003, U.S. natural gas prices once again rose to very high levels and three domestic producers idled several plants, resulting in a 50-percent reduction in U.S. production capacity for UAN as of March 2003. This reduction in capacity occurred even though subject imports in the market declined in the latter part of 2002.[137] While subject imports may again increase due to limited supply of UAN from the domestic producers, we cannot thereby conclude that it is likely that such an increase will materially injure the domestic industry in the imminent future given that the record does not indicate that rising volumes of subject imports during the POI's natural gas price spike materially injured the domestic industry.

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[133] 19 U.S.C. § 1677(7)(F)(i). Factor VII is inapplicable in these investigations because they do not involve imports of a raw agricultural product. Factor I is not applicable because there is no countervailable subsidy in these investigations.

[134] See CR/PR at Table C-2.

[135] See CR/PR at Table IV-1. In interim 2002, subject imports supplied only 5.3 percent of the domestic market while nonsubject imports were responsible for 6.3 percent. CR/PR at Table IV-1

[136] The quarterly import data reflect the decline, as subject imports fell between the third and fourth quarters of 2001. Subject imports in the first quarter of 2002, before the petition was filed, continued to decline. See Petitioners' Posthearing Brief at Exhibits 2 and 15.

[137] CR at III-5 to III-6, PR at III-4; Tr. at 147 (Tvinnereim); Petitioners' Posthearing Brief at Exhibit 15.

Given the absence of significant negative price effects by the subject imports during the POI, we do not find it likely that subject imports will have adverse price effects in the imminent future. As outlined in our discussion of material injury, the record does not indicate that the subject imports depressed or suppressed domestic prices for UAN. Overselling by the subject imports predominated and the significant increase in subject imports did not prevent UAN prices from rising. Domestic UAN prices rose and fell in tandem with U.S. natural gas prices.[138] While the industry's profitability fluctuated, it was not affected negatively to a significant degree by increased subject imports. The evidence does not indicate that subject imports are likely to be sold at price depressing or suppressing levels in the imminent future as the limited underselling that occurred during the period of investigation did not increase toward the end of the period. Accordingly, we do not find it likely that adverse price effects will occur in the imminent future due to the subject imports.

We also consider the capacity and unused capacity in the subject countries for our threat analysis. We note that while capacity in the subject countries totaled 2.5 million short tons in 2001,[139] excess capacity was estimated by the producers in Belarus and Russia to be *** short tons in 2001.[140] Similarly, the information on the record indicates that excess capacity in Ukraine is limited.[141] Excess capacity in the subject countries in 2001 was therefore equivalent to only *** percent of U.S. apparent consumption in that year.[142] During 2001, approximately *** of production in Belarus and Russia combined, and perhaps even a greater share from Ukraine, was already exported to the United States.[143] Thus, there is a limited amount of production that can be diverted to the United States. Overall production capacity in the three countries is expected to decline because ***.[144]

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[138] Petitioners claim that low natural gas prices in Russia suggest that subject imports from Russia will continue to enter the U.S. market at low prices. Petitioners' Prehearing Brief at 82. Notwithstanding low prices for natural gas in Russia, there was no significant underselling by the subject imports during the POI.

[139] See CR/PR at Table VII-2 (as revised by INV-AA-036); CR/PR at Table VII-1; CR at VII-3, PR at VII-1. Our most recent full year of data is 2001.

[140] See CR/PR at Table VII-2 (as revised by INV-AA-036); CR/PR at Table VII-1.

[141] See CR/PR at Table VII-1; CR/PR at Table VII-2.

[142] See CR/PR at Table C-1. Even assuming excess capacity in the Ukraine, one third of the total capacity in Ukraine would only be equivalent to another *** percent of domestic apparent consumption. See CR at VII-3, PR at VII-2; CR/PR at Table C-1.

[143] See CR/PR at Table VII-1; CR/PR at Table VII-2. Russian producers exported most of their UAN production to the United States during the POI, although the proportion exported to the United States declined in interim 2002. The reporting producer in Belarus shipped *** of its production to its home market during the POI, ***. The Ukrainian producers did not respond to the Commission's questionnaires, but petitioners estimate that production capacity for UAN in the Ukraine is *** short tons. It appears that the *** production in Ukraine was directed to the United States as subject imports from Ukraine totaled 347,254 short tons in 2001. See CR at VII-3, PR at VII-2; CR/PR at Table IV-1.

[144] See CR/PR at Table VII-2.

While the European Union (EU) has antidumping orders on UAN from the three countries, those duties have been in place since 2000.[145] Notwithstanding the EU orders, subject import volumes in the U.S. market dropped during the latter part of 2001 and interim 2002. Similarly, while the EU has antidumping orders on imports of upstream products, namely, solid urea from Belarus, Russia, and Ukraine and ammonium nitrate from Russia and Ukraine,[146] the evidence does not indicate that product-shifting from those products to UAN is more likely to occur now than previously.[147] Furthermore, inventories in the subject countries are small[148] and importers' inventories appear to have declined along with subject imports in interim 2002, though the data have inconsistencies.[149] [150]

Therefore, given these circumstances, it is unlikely that producers in the subject countries are likely to export significantly more UAN to the United States than occurred during the period of investigation.[151] Moreover, subject country producers are at a disadvantage vis-a-vis U.S. producers in their ability to directly supply the U.S. market, given the long lead times between orders and deliveries (ranging from 40 to 120 days), high transportation costs,[152] and the importance of supply availability to

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[145] CR at VII-5, PR at VII-2.

[146] Petitioners' Prehearing Brief at 77; INV-Z-078 at VII-10 (May 28, 2002). There also are U.S. antidumping orders on urea from Belarus, Russia and Ukraine and solid agricultural grade ammonium nitrate from Ukraine as well as a suspension agreement on solid agricultural grade ammonium nitrate from Russia. CR at I-2, PR at I-2. Subject imports declined in the fourth quarter of 2001 and the first quarter of 2002 despite the order and suspension agreement on ammonium nitrate. In addition, any shift in production in the subject countries due to the antidumping orders on urea would have likely already occurred since these orders have been in place for several years. See CR at I-2 n.5, PR at I-2 n.5.

[147] The EU order on urea from Russia was continued after a sunset review in 2001, so any shift would have already occurred. The EU order on ammonium nitrate from Russia also would have already had an impact because it was imposed in 1998. The EU orders on urea from Belarus and Ukraine were imposed in January 2002, and the EU order on ammonium nitrate from Ukraine was imposed in January 2001. See INV-Z-078 at VII-10 (May 28, 2002).

[148] See CR/PR at Table VII-1; CR/PR at Table VII-2 (86,599 short tons in 2001).

[149] CR at VII-5, PR at VII-3.

[150] The U.S. producers' inventories declined from *** percent of their U.S. shipments in interim 2001 to *** percent in interim 2002, suggesting that subject imports have not filled the distribution channels, as petitioners have alleged. CR/PR at C-2. See Petitioners' Prehearing Brief at 82.

[151] At petitioners' urging, we have considered the ***. See INV-AA-032; INV-AA-034. ***. See INV-AA-034, Attachment 1 at 1-2. Therefore, these contracts do not change our analysis of likely volume of subject imports.

[152] Significant transportation costs for UAN limit competitive market areas for U.S. suppliers. The high ratio of U.S. transportation costs to product value and low nitrogen content to product weight lead to relatively high UAN shipping costs, especially to customers more than 100 miles from suppliers. As a result, UAN importers have transportation advantages on the East and West Coasts, whereas U.S. producers have transportation advantages in many areas of the United States, including the important UAN consumption states in the U.S. farm belt. This pattern

purchasers.[153]

The domestic industry reported losses throughout the POI but its condition was the worst in 1999 when subject import volumes were lowest, improved somewhat when subject import volumes increased, and deteriorated again toward the end of the POI despite a significant gain in U.S. producers' market share and a significant reduction in subject import volume and market share. Many of the industry's financial and performance indicators were lower in interim 2002 as compared to interim 2001; capital expenditures, however, increased *** when the interim periods are compared. While the domestic industry is in poor health, we do not find it likely that any increased subject imports would have a material adverse impact on the domestic industry when significant adverse price effects are not likely to occur.[154] Based upon our finding that there are unlikely to be significant price effects from the subject imports and the absence of any significant adverse impact on the domestic industry during the period of investigation when significant volumes of subject imports were present, we do not find that the domestic industry is threatened with material injury by reason of imports of UAN from Belarus, Russia, and the Ukraine.

CONCLUSION

For the reasons stated above, we determine that the domestic UAN industry is neither materially injured nor threatened with material injury by reason of UAN imports from Belarus, Russia, and Ukraine sold in the United States at less than fair value.

of supply advantages is likely to continue.

[153] CR at II-28, PR at II-19; CR at V-5, PR at V-4.

[154] In the most recent period, as already discussed, the data indicate that subject imports declined, yet the domestic industry's financial performance did not improve.