Carbazole Violet Pigment 23 From China and India

Investigations Nos. 701-TA-437 and 731-TA-1060 and 1061 (Preliminary)

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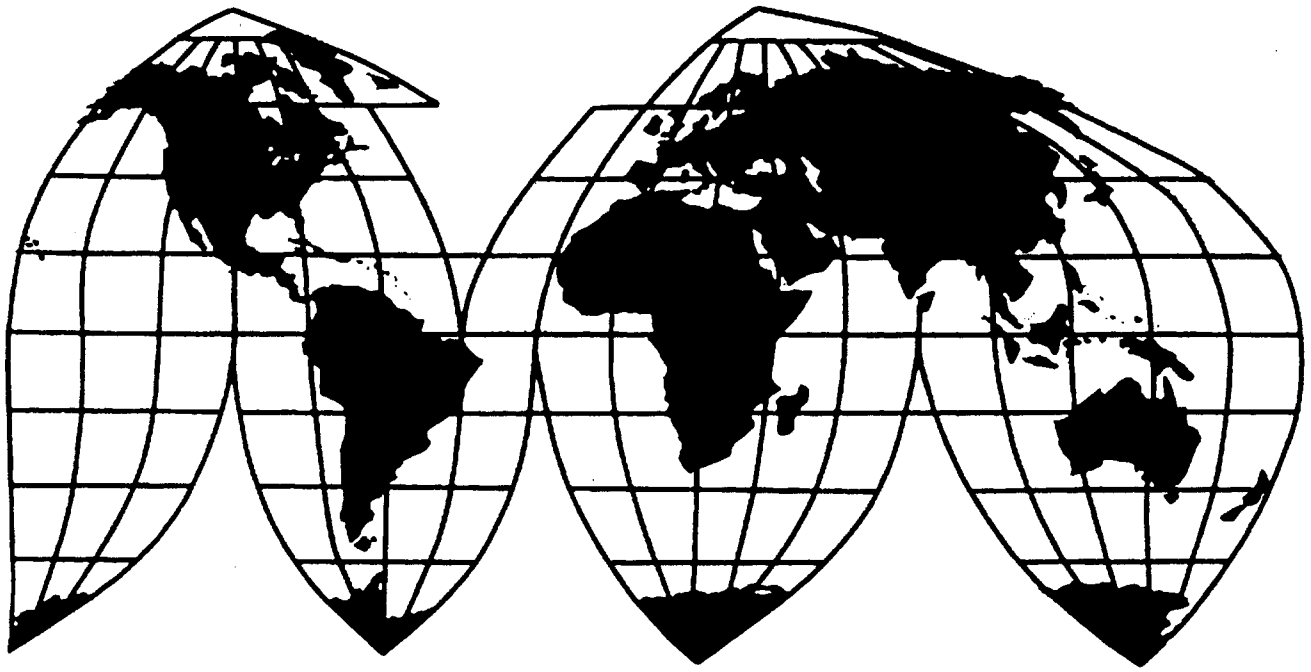
U.S. International Trade Commission



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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-437 and 731-TA-1060 and 1061 (Preliminary)

CARBAZOLE VIOLET PIGMENT 23 FROM CHINA AND INDIA

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 703(a) and 733 (a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and India of carbazole violet pigment 23, provided for in subheading 3204.17.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under section 703(b) and 733 (b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in these investigations under section 705(a) and 735 (a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On November 21, 2003, petitions were filed with the Commission and Commerce by Nation Ford Chemical Co., Fort Mill, SC, and Sun Chemical Corp., Cincinnati, OH, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of carbazole violet pigment 23 from India and LTFV imports of carbazole violet pigment 23 from China and India. Accordingly, effective November 21, 2003, the Commission instituted countervailing duty and antidumping investigations Nos. 701-TA-437 and 731-TA-1060 and 1061 (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 November 28, 2003 (68 FR 66851). The conference was held in Washington, DC, on December 12, 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)).

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of carbazole violet pigment 23 ("violet 23") imported from India that is allegedly subsidized and sold at less than fair value and violet 23 imported from China that is allegedly sold at less than fair value.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

II. BACKGROUND

Violet 23 is a type of synthetic organic chemical used as a colorant or pigment to color inks, textiles, plastics, coatings, and other materials. Its crude form, "crude violet 23," has no use or intended purpose other than to produce "finished violet 23" in the finished forms of "presscake" or "dry color." Presscake consists of approximately 30 to 40 percent solids and 60 to 70 percent water, and dry color is pure pigment. Presscake can be used to make pigment dispersions or processed (dried) into dry color. There are numerous end uses for finished violet 23, including plastics, printing inks, textiles, and coatings.[3] During 2002, data reported by domestic producers and importers indicated that the majority of their domestic shipments of violet 23 were commercial sales, primarily to the ink and textile industries.[4]

The antidumping and countervailing duty petitions were filed on November 21, 2003, by Nation Ford Chemical Co. ("NFC") and Sun Chemical Corp. ("Sun").[5] There were seven firms involved in the production of violet 23 (either crude or finished) in 2002, six of which provided questionnaire responses to the Commission.[6] Sun is located in Ohio, and accounted for approximately *** percent of domestic

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[1] 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). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

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

[3] See, e.g., Confidential Staff Report, Mem. INV-AA-194 (Dec. 30, 2003) ("CR") at I-4 to I-5, II-1; Public Staff Report ("PR") at I-3 to I-4 , II-1; Petitions at Exh. 4.a.

[4] *** domestic producers' shipments of finished violet 23 was internally consumed. See, e.g., CR/PR at Table III-4.

[5] See, e.g., CR at I-1; PR at I-1.

[6] See, e.g., CR at III-1; PR at III-1; CR/PR at Table III-1. Five firms, believed to account for *** percent of U.S. finished violet 23 production over the period examined, provided usable trade data on their U.S. operations producing violet 23, and three firms, accounting for approximately *** percent of U.S. finished violet 23 production, provided financial data. NFC, the sole producer of crude violet 23, provided both trade and financial data. See, e.g., (continued...)

production of finished violet 23 in 2002.[7] NFC, located in South Carolina, toll-produces crude violet 23 for Sun and is the only domestic producer of crude violet 23. Sun and the other domestic producers (besides NFC) produce finished violet 23 from crude violet 23. ***.[8]

Domestic production accounted for *** percent of the U.S. market for crude violet 23 in 2000, *** percent in 2001, *** percent in 2002, and *** percent in interim 2003 as compared to *** percent in interim 2002.[9] Domestic production accounted for *** percent of the U.S. market for finished violet 23 in 2000, *** percent in 2001, *** percent in 2002, and *** percent in interim 2003 as compared to *** percent in interim 2002.[10] By the latter part of the period of investigation, subject imports from China and India accounted for approximately *** of apparent domestic consumption of crude violet 23, and approximately *** of apparent domestic consumption of finished violet 23.[11] Imports from non-subject sources, including from France, Germany, and Japan, were also present in the market during the period of investigation.[12]

III. 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."[13] 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."[14] 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 ... ."[15]

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.[16] No single factor is dispositive, and the Commission

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[6] (...continued)
CR at III-1, VI-1 n.2; PR at III-1, VI-1, n.2.

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

[8] See, e.g., CR at III-1 to III-6.

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

[10] See, e.g., CR/PR at Table C-2.

[11] See, e.g., CR/PR at Tables IV-7 and IV-10.

[12] See, e.g., CR/PR at Table IV-1.

[13] 19 U.S.C. § 1677(4)(A).

[14] Id.

[15] 19 U.S.C. § 1677(10).

[16] 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'"). In its semi-finished like product analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream
(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.[17] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[18] Although the Commission must accept the determination of the U.S. 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.[19] The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.[20]

B. Product Description

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

> carbazole violet pigment 23, identified as Color Index No. 51319 and Chemical Abstract No. 6358-30-1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5, 15 5,15-diethy-5,15-dihydro-*, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$. The subject merchandise includes the crude pigment in any form (e.g., dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment

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[16] (...continued)
articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. See, e.g., Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Prelim.), USITC Pub. 3533 at 7 (Aug. 2002); Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom, Invs. Nos. 701-TA-409-412 (Prelim.) and 731-TA-909-912 (Prelim.), USITC Pub. 3388 at 5-6 (Jan. 2001); Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 at 6 n.23 (Jul. 1999). Applying the traditional factors, 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, e.g., Nippon Steel, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[17] See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess., at 90-91 (1979).

[18] See, e.g., Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 249 at 90-91 (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.")

[19] See, e.g., Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a 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).

[20] See, e.g., Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp.2d 1298, 1304-05 (Ct. Int'l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

dispersions in any form (e.g., pigments dispersed in oleoresins, flammable solvents, and water) are not included within the scope of these investigations.[21]

Thus, Commerce's scope includes both the semifinished violet 23 product (crude violet 23) as well as certain violet 23 finished products. The finished products are referred to hereinafter as "finished violet 23" or by name (i.e., "presscake" or "dry color"). Presscake consists of approximately 30 to 40 percent solids and 60 to 70 percent water, whereas dry color pigments are pure pigment. Commerce's scope does not include downstream products such as dispersions or oleoresins.[22]

Violet 23 is a type of synthetic organic chemical used as a colorant or pigment to color inks, textiles, plastics, coatings, and other materials.[23] According to petitioners, violet 23 has outstanding tinctorial strength and brightness, excellent heat and bleed resistance, and good lightfastness. Petitioners assert that these superior qualities tend to offset its relatively high cost. As a result, they argue, this very strong blue shade of violet finds broad utility in many applications. It is commonly employed for shading (reddening) phthalocyanine blue while maintaining good lightfastness. It can be used as the sole colorant for a violet hue and even in pale shades exhibits satisfactory "fastness" to weathering. They also assert that at low concentrations, violet 23 is used for "correcting" the white color of white coatings and plastics.[24]

C. Domestic Like Product

Petitioners and Clariant argue that the Commission should find one domestic like product, coextensive with the scope of these investigations.[25] Chinese Respondents argue that the Commission should find two domestic like products, crude violet 23 and finished violet 23.[26] For the reasons discussed below, we find for purposes of the preliminary phase of these investigations a single domestic like product that is coextensive with the scope and consists of both crude and finished violet 23.

Whether the Upstream Article is Dedicated to Production of the Downstream Article. The record indicates, and Chinese Respondents concede, that crude violet 23 has no independent uses from the

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[21] See, e.g., Carbazole Violet Pigment 23 from India, 68 FR 70778 (Dec. 19, 2003) (initiation of countervailing duty investigation); Carbazole Violet Pigment 23 from India and the People's Republic of China, 68 Fed. Reg. 70761 (Dec. 19, 2003) (initiation of antidumping duty investigations). Violet 23 is classifiable in the Harmonized Tariff Schedule of the United States ("HTS") under statistical reporting number 3204.17.9040, at a column 1-General duty rate of 7.8 percent ad valorem applicable to imports from China and India. It appears that there is a typographical error in Commerce's Federal Register notices to the extent that the chemical name for violet pigment 23 is in fact *diindolo[3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5,15-diethyl-5,15-dihydro-*. See, e.g., Petitions at Exh. 2.b at 7 (containing excerpts from the Chemical Abstracts Service Registry).

[22] Dispersions are finely divided solids dispersed in a liquid or in another solid. Examples are pigments dispersed in oleoresins ("flush colors"), flammable solvents and water, concentrates, and other pigment preparations. See, e.g., Petitions at 3, 4.

[23] See, e.g., CR at I-4; PR at I-3.

[24] See, e.g., Petitions at Exh. 2.c; Conference Tr. at 23-24.

[25] See, e.g., Petitions at 4-5, 32-33; Petitioners' Postconference Brief at 2-5; Clariant's Postconference Brief at 3-12; Conference Tr. at 45-48.

[26] See, e.g., Chinese Respondents' Postconference Brief at 3-7. Chinese Respondents did not argue that the Commission should find three domestic like products consisting of crude violet 23, presscake, and dry color, just that a clear dividing line existed between crude violet 23 and finished violet 23. In addition to arguing that there is no clear dividing line between crude violet 23 and finished violet 23, petitioners and Clariant also argued that there is no clear dividing line between presscake and dry color. See, e.g., Petitioners' Postconference Brief at 3-4; Clariant's Postconference Brief at 4-5.

downstream articles, presscake and dry color. All domestically-produced crude violet 23 is used in the production of these downstream articles.[27]

Whether There are Perceived to be Separate Markets for the Upstream and Downstream Articles. The record indicates that there are no independent uses or markets for crude violet 23 other than to produce presscake and dry color. NFC is the only producer of crude violet 23 in the United States, and *** of NFC's crude violet 23 is sold to Sun for use in the production of presscake and dry color.[28] The market for finished violet 23 consists of firms that produce downstream products such as inks, coatings, and textiles.[29] Chinese Respondents make certain arguments concerning how imported crude violet is marketed,[30] but their arguments concerning how imported crude violet 23 is marketed have no bearing on the domestic like product analysis.[31]

Differences in Physical Characteristics and Functions of the Upstream and Downstream Articles. The record indicates that crude violet 23 has a very hard texture, low strength, and poor brightness compared to finished violet 23, indicating the presence of coarse pigment particles that are difficult to disperse. Crude and finished violet 23, however, share the same chemical structure and crude violet 23 embodies and imparts to presscake and dry color essential characteristics and functions that can be achieved in no other way.[32]

Differences in Cost or Value of the Vertically Differentiated Articles. The record indicates that the value added for crude violet 23 production (the sum of raw materials supplied by the toller and tollee, direct labor, and other factory costs, plus SG&A divided by total COGS) was *** percent in 2000, *** percent in 2001, *** percent in 2002, and was *** percent in interim 2003 as compared to *** percent in interim 2002.[33] The value added to convert crude violet 23 into finished violet 23 (the sum of direct labor plus other factory costs (i.e., conversion costs) divided by total COGS) was *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in interim 2002, and *** percent in interim 2003. An alternative calculation for value added to convert crude violet 23 into finished violet 23, the sum of conversion costs and SG&A divided by the sum of total COGS and SG&A, results in value added of *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in interim 2002, and *** percent

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[27] See, e.g., CR at I-4 to I-5; PR at I-3; Petitions at 32; Clariant's Postconference Brief at 7; Chinese Respondents' Postconference Brief at 4.

[28] See, e.g., CR at I-9, III-1; PR at I-6, III-1. ***.

[29] See, e.g., CR at I-9; PR at I-6; Petitions at 33; Clariant's Postconference Brief at 7-8.

[30] See, e.g., Chinese Respondents' Postconference Brief at 4.

[31] See, e.g., Torrington Co. v. United States, 747 F. Supp. 744, 749 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991); Certain Structural Steel Beams from China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan, Invs. Nos. 731-TA-935 to 942 (Prelim.), USITC Pub. 3438 at 5 n.15 (July 2001) ("Hoesch's information regarding practices in Germany is not relevant to the Commission's definition of the U.S.-produced product"); Certain Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, Invs. Nos. 731-TA-864 to 867 (Prelim.), USITC Pub. 3281 at 5, n.13 (Feb. 2000).

[32] See, e.g., CR at I-9; PR at I-6; Petitions at 33, Exh. 2.c; Conference Tr. at 29; Clariant's Postconference Brief at 8-9; Chinese Respondents' Postconference Brief at 4-5.

[33] Derived from questionnaire response.

in interim 2003.[34] Clariant alleges that imported crude and finished violet 23 prices are now converging,[35] but the price for finished violet 23 still exceeds the price for crude violet 23.[36]

Significance and Extent of the Processes Used to Transform the Upstream into the Downstream Articles. Converting crude violet 23 into presscake or dry color is necessary in order to give it coloring properties; on its own, the crude violet 23 has little coloring value.[37] There are five separate chemical reactions required to synthesize the crude violet 23.[38] The reactions use several vessels, each designed and constructed for the specific reactions and operations to be performed. In addition to the reaction chemistry, there are several other chemical unit operations required to produce the pigment, including washing, purification, filtering, solvent recovery, waste water treatment, and trying. Support facilities include steam production, cooling water, vacuum service, waste-water treatment, environmental venting, and capability for the safe handling of hazardous chemicals used to produce the pigment.[39] Crude violet 23 is converted to presscake in an attrition process referred to as "salt grinding," which does not involve any chemical synthesis.[40] Presscake consists of approximately 30-40 percent solids and 60-70 percent water. Some presscake is dried to make dry color, the most common form of the pigment used in the U.S. market. Dry color is produced from presscake by slurrying the presscake in water and then atomizing that slurry into an 800 degree Fahrenheit airstream, which instantly flashes off the water, leaving a dry powder. This process is known as spray drying.[41] The finished violet 23 has a much higher nitrogen surface area with stronger and brighter shades than the corresponding crude violet 23. The conditions of milling, the temperature, the processing time, and the addition of surfactants, modifiers, solvents, and lubricants all have a bearing on the strength and brightness of the end product.[42]

Under the semi-finished like product analysis, crude violet 23 has no use other than to be converted into finished violet 23. Crude and finished violet 23 have the same chemical structure, and crude violet 23 imparts to finished violet 23 essential coloring properties, although the conversion process is necessary to make the product useable. The cost to convert crude violet 23 into presscake or dry color is not as great as the cost to produce the crude violet 23, but also is not insignificant. Crude violet 23 production involves a chemical synthesis. Finished violet 23 production does not, but the processes used to produce finished violet 23 are not insignificant.

On balance, based on this preliminary record, we find that there is not a sufficiently clear dividing line between crude and finished violet 23 to warrant finding two like products in the preliminary

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[34] See, e.g., CR at VI-9 n.7; PR at VI-3 n.7. The reductions in the cost of crude violet 23 (imported), tolling raw materials, and tolling fee resulted in an increase in the relative value added represented by the finishing process.

[35] See, e.g., Clariant's Postconference Brief at 9-10.

[36] See, e.g., CR at I-10; PR at I-6.

[37] See, e.g., CR at I-6, I-9; PR at I-4, I-6; Petitions at 5, 7, 32, Exh. 2.c.; Clariant's Postconference Brief at 11.

[38] Carbazole, which is a coal tar-derived chemical that is imported from Europe and Japan, is reacted with diethylsulfate and potassium hydroxide to produce ethyl carbazole ("EC") (the ethylation reaction) that is then reacted with nitric acid to produce nitro-ethyl-carbazole ("NEC") (the nitration reaction). NEC is then reduced with either sodium sulfide/sulfur or hydrogen/catalyst to form amino-ethyl-carbazole ("AEC") (the reduction reaction). AEC is then reacted with chloranil to form "di-anil" (the condensation reaction) that is heat-treated with a catalyst, either p-toulen-sulfonyl-chloride or benzene-sulfonyl-chloride, to form the crude violet 23 (the ring closure reaction).

[39] See, e.g., Petitions at Exh. 3.

[40] Petitions at 7. ***.

[41] Petitions at 10, Exhs. 1, 4.a.; Conference Tr. at 23-24; Clariant's Postconference Brief at 4. Clariant's production process ***. CR at III-3 to III-4; PR at III-2.

[42] Petitions at 10, Exh. 1, 2.c.

phase of these investigations.[43] Accordingly, for purposes of the preliminary phase of these investigations, we find that the domestic like product is carbazole violet pigment 23, whether in crude or finished form, coextensive with the scope of these investigations.[44] [45]

IV. DOMESTIC INDUSTRY

The domestic industry is defined as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[46] 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.[47]

A. Sufficient Production-Related Activities

NFC is the only producer of crude violet 23 remaining in the United States.[48] There are several companies that convert crude violet 23 into finished violet 23 (e.g., presscake and dry color), including Sun, Clariant, Allegheny Color Corporation ("Allegheny"),[49] Barker Fine Color, Inc. ("Barker"),[50] and Bayer.[51] No party argued that the activities associated with the production of either crude or finished

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[43] Absent any party arguments or evidence on the preliminary record in these investigations in favor of doing so, we do not find a clear dividing line between presscake and dry color warranting defining separate domestic like products. In particular, there appears to be a continuum of production processes used to make these domestically-produced products.

[44] Examination of the traditional domestic like product factors does not lead to a contrary conclusion. There are significant commonalities in physical characteristics between crude and finished violet 23, although the conversion process is necessary to make the product useable. All domestically-produced crude violet 23 is converted into presscake, and some is then further processed into dry color, so there is some commonality in production processes, employees, and facilities at least during the production of crude violet 23. *** domestically-produced crude violet 23 is toll-produced by NFC for Sun for conversion into presscake or dry color, whereas some domestically-produced presscake and some domestically-produced dry color is internally consumed and some is sold to end users. Presscake can be processed into dry color or used to make pigment dispersions. Dry color can be sold for numerous end uses, including for paints and coatings, plastics, printing inks, and can be used to produce pigment dispersions. Without conversion, crude violet 23 is not interchangeable with presscake or dry color. Although the gap between prices for crude violet 23 and finished violet 23 may be narrowing, finished violet 23 still commands a higher price due to the additional processing required to produce presscake or dry color. See, e.g., CR at I-4 to I-9, III-1; PR at I-3 to I-6; CR/PR at Table V-1 & n.1; Petitions at 32-33, Exh. 2.c, 4.a; Conference Tr. at 24-25, 28-29; Clariant's Postconference Brief at 3-12; December 3, 2003, Amendment to Petitions at 7; Chinese Respondents' Postconference Brief at 6.

[45] For purposes of the preliminary phase of these investigations, Commissioner Hillman relies on the semi-finished domestic like product factors. She does not join in the preceding footnote.

[46] 19 U.S.C. § 1677(4)(A).

[47] See, e.g., 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).

[48] See, e.g., CR at III-1; PR at III-1; Conf. Tr. at 16; Petitions at 10.

[49] Allegheny is ***. See, e.g., CR at III-1; PR at III-1.

[50] Barker is a small, privately held company that was ***. See, e.g., CR at III-3; PR at III-2.

[51] Sun acquired Bayer's Bushy Park plant in February 2003. See, e.g., CR at III-5 to III-6; PR at III-3.

violet 23 were insufficient to warrant treating U.S. firms engaging in these activities as domestic producers.[52]

The record indicates that both crude and finished violet 23 production require capital investment and research and development.[53] Both involve some level of technical expertise, although the production process for crude violet 23 involves five chemical reactions and is somewhat more complex and idiosyncratic than the production processes used to make finished violet 23.[54] The value added by crude violet 23 production is higher than for finished violet 23, but the value added by the conversion operations is not insignificant.[55] Neither the production of crude violet 23 nor the production of finished violet 23 is labor-intensive.[56] The quantity and type of raw material inputs sourced in the United States vary by producer.[57] Based on these considerations, evidence available at this stage of these investigations, and in the absence of party arguments to the contrary, we find that NFC and all of the companies that produce finished violet 23 in the United States are engaged in sufficient production-related activities to qualify as domestic producers.

B. Related Parties

We also must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). 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.

Although the record in these investigations does not indicate that any domestic producer directly imported subject merchandise from China or India, several domestic producers purchased violet 23 that was imported from China or India, including ***. No party argued, and based on the current record, we do not find, that any domestic producers are "related parties" under the statute by virtue of these activities.[58] Accordingly, for purposes of the preliminary phase of these investigations, we define the

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[52] In deciding whether a firm qualifies as a domestic producer, the Commission generally has analyzed the overall nature of a firm's production-related activities in the United States, although production-related activity at minimum levels could be insufficient to constitute domestic production. The Commission generally considers six factors: (1) source and extent of the firm's capital investment; (2) technical expertise involved in U.S. production activities; (3) value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. See, e.g., DRAMs and DRAM Modules from Korea, Inv. No. 701-TA-431 (Final), USITC Pub. 3616 at 7-11 (Aug. 2003).

[53] See, e.g., CR/PR at Table VI-7.

[54] See, e.g., CR at I-5 to I-6, III-3 to III-4, III-16; PR at I-4, III-2, III-6; Petitions at 7-8, 10, Exhs. 1, 3, 4.a; Conference Tr. at 17-18, 23-24; Petitioners' Postconference Brief at 6; Clariant's Postconference Brief at 4.

[55] See, e.g., CR at VI-9 n.7; PR at Vi-3 n.7; Petitioners' Postconference Brief at 6; Clariant's Postconference Brief at 9-10, 13-14.

[56] See, e.g., CR/PR at Tables III-6, III-7.

[57] See, e.g., CR at III-2 to III-6; PR at III-1 to III-3; Petitioners' Postconference Brief at 6; Conference Tr. at 65; Clariant's Postconference Brief at 13-14; Petitions at 7.

[58] See, e.g., CR at III-1 to III-6. We note that in other investigations, the Commission has concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of subject imports. For example, the Commission has found such control to exist when the domestic producer was responsible for a predominant

(continued...)

domestic industry as all producers of crude or finished violet 23, but we may re-examine this finding in any final phase investigations.

V. NEGLIGIBLE IMPORTS

The statute provides that in antidumping duty investigations, subject imports from one country that correspond to a domestic like product and account for less than 3 percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petitions, shall be deemed negligible.[59] By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.[60] The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.[61]

The statute also provides that, in antidumping duty investigations, 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 3 percent of all such merchandise imported into the United States.[62]

We have considered which set of import data to use in these investigations to analyze the negligibility issue: official import statistics obtained from Commerce (which include a separate subheading for the product under investigation) or importer questionnaire responses. Chinese Respondents argued that Commerce's import statistics, particularly for 2003, are unreliable for purposes of quantifying subject imports from China because the quantities for certain imports of presscake from China were misreported in terms of their "wet" rather than their "dry" weight, resulting in an

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[58] (...continued)
proportion of an importer's purchases and these purchases were substantial. See, e.g., Foundry Coke from China, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 at 8-9 (Sept. 2001); Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387 to 392 & 731-TA-815-822 (Prelim.), USITC Pub. 3181 at 12 (Apr. 1999); Certain Brake Drums and Rotors from China, Inv. No. 731–TA-744 (Final), USITC Pub. 3035 at 10 n.50 (Apr. 1997); see also, e.g., Statement of Administrative Action for the Uruguay Round Agreements Act ("URAA SAA"), H.R. Rep. 316, 103rd Cong., 2d Sess., vol. 1 at 858 (1994). The record in the preliminary phase of these investigations does not contain sufficient information about *** or the identity and quantity of subject imports purchased by domestic producers that would permit us to assess the significance of particular domestic producers' purchases of subject merchandise from particular importers, foreign producers, or exporters of the subject merchandise. We intend to revisit this issue in any final phase investigations.

[59] See, e.g., 19 U.S.C. § 1677(24)(A)(i)(I). In countervailing duty investigations involving developing countries, the statute provides that subject imports from one country that correspond to a domestic like product and account for less than 4 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 petitions, shall be deemed negligible. See, e.g., 19 U.S.C. §§ 1677(24)(A)(i)(I), 1677(24)(B).

[60] See, e.g., 19 U.S.C. § 1671b(a)(1); 19 U.S.C. § 1673b(a)(1).

[61] 19 U.S.C. § 1677(24)(C); see also, e.g., SAA at 186.

[62] See, e.g., 19 U.S.C. § 1677(24)(A)(iv). In countervailing duty investigations involving developing countries, the statute 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 4 percent of all such merchandise imported into the United States. See, e.g., 19 U.S.C. §§ 1677(24)(A)(iv), 1677(24)(B).

overstatement of the quantity of subject imports from China.[63] The Minister of Commerce from the Embassy of India in Washington, D.C. read a prepared statement at the preliminary staff conference in which the Government of India asserted that, based on Commerce's official import statistics, subject imports from India are below the negligibility thresholds for both antidumping and countervailing duty investigations.[64] Petitioners concede that based on the official Commerce statistics, subject imports from India are negligible, but petitioners argue that the Commission could reasonably conclude that the possibility of adjustments to the official import statistics warrants a preliminary finding that India's imports are not negligible for purposes of its present material injury analysis. They also argue that ***.[65]

We have decided to use import data (for both subject and non-subject imports) from importer questionnaire responses in these investigations for several reasons. First, there is a distinct possibility that the quantity of some imports was overstated because the imports were reported on a "wet" rather than a "dry" basis. Second, the data for India may suffer from underreporting. Third, non-subject dispersions are also included in the same HTS subheading as crude and finished violet 23.[66] Finally, the questionnaire data appear to be nearly complete, with responding firms' imports of violet 23 accounting for an average during the period of investigation of approximately 93 percent of the value of official violet 23 import statistics from China, an average of approximately 75 percent of the value of official violet 23 import statistics from India, and an average of more than 100 percent of the value of official violet 23 import statistics from all other sources.[67]

Based on importer questionnaire data, subject imports from China and India each accounted for more than 3 percent of the volume of all violet 23 imported into the United States in the most recent twelve-month period for which data are available preceding the filing of the petitions, the negligibility threshold applicable in antidumping duty investigations.[68] Subject imports from India also exceeded the 4 percent negligibility threshold applicable to developing countries such as India in countervailing duty investigations.[69] As such, we find that subject imports from these countries are not negligible under 19 U.S.C. § 1677(24). In any final phase investigations, we intend to revisit this issue and to examine further the reliability of importer questionnaire responses compared to information reflected in official import statistics.

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[63] See, e.g., Conference Tr. at 9, 87-89, 100-01, 109-13; Chinese Respondents' Postconference Brief at 12-15.

[64] See, e.g., Conference Tr. at 85, 106-07, 126-27.

[65] Petitioners' Postconference Brief at 7-11, Exhibit 2.

[66] See, e.g., CR at IV-3; PR at IV-1 to IV-2. We note that the parties testified that dispersions may account for only a small portion of imports, and from only one or two non-subject countries. See, e.g., Conference Tr. at 60, 61.

[67] See, e.g., CR at IV-3; PR at IV-2.

[68] See, e.g., CR/PR at Table IV-2 (indicating that subject imports from China accounted for 49.19 percent and subject imports from India accounted for 6.05 percent of the volume of all violet 23 imported into the United States in the most recent twelve-month period for which data are available preceding the filing of the petitions). To the extent that the questionnaire data account for only 75 percent of the value of official import statistics from India, this negligibility calculation for India is conservative, and India's share of total violet 23 imports may be even higher.

[69] See, e.g., CR/PR at Table IV-2.

VI. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a present material injury determination, section 771(7)(G)(I) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like product in the U.S. market.[70] In assessing whether subject imports compete with each other and with the domestic like product,[71] 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 geographical 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.[72]

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.[73] Only a "reasonable overlap" of competition is required.[74]

B. Analysis

We find that the criteria for cumulating subject imports from China and India have been met in these preliminary investigations. The petitions covering subject imports from China and India were filed on the same day.[75] We find that there is a reasonable overlap of competition between subject imports from China and India and between subject imports and the domestic like product.

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[70] See, e.g., 19 U.S.C. § 1677(7)(G)(I). There are four exceptions to the cumulation provision, none of which applies to these investigations. See id. at § 1677(7)(G)(ii).

[71] The SAA (at 848) 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. 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).

[72] See, e.g., Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. 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).

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

[74] See, e.g., Goss Graphic Sys., Inc. v. United States, 33 Fed. Supp. 2d 1082, 1087-88 (Ct. Int'l Trade 1988) ("[C]umulation does not require two products to be highly fungible" (quoting BIC Corp. v. United States, 964 F. Supp. 391, 400 (Ct. Int'l Trade 1997)); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.")

[75] See, e.g., CR at I-1; PR at I-1.

The degree of substitution between domestic and imported violet 23 depends upon such factors as relative prices, quality, and conditions of sale. Based on available data in the preliminary phase of these investigations, we find that there is at least a moderate degree of substitution between domestic violet 23 and subject imports.[76] Although crude violet 23 was not imported from India,[77] there were subject imports from China and domestic shipments of crude violet 23, subject imports from China and India and domestic shipments of presscake, and subject imports from China and India and domestic shipments of dry color.[78] Thus, we find that subject imports from China and India are sufficiently fungible with one another and with the domestic like product.

The current record also indicates a substantial geographic overlap between subject imports from China and India and between subject imports from each country and the domestic like product.[79] Subject imports from China and India and the domestic like product were present in the U.S. market in each year of the period of investigation, as well as in interim 2002 and interim 2003.[80] We also find that subject imports from China and India and the domestic like product are generally sold in the same channels of distribution. For crude violet 23, both NFC and importers of the subject merchandise reported tolling for or selling exclusively to end users until interim 2003, when importers began to sell to distributors to some extent. For commercial shipments of finished violet 23, U.S. producers and importers of the Chinese product are selling exclusively to end users, and subject imports of the Indian product were mainly sold to end users, although *** to *** of the subject imports from India were reportedly sold to distributors in 2000 and 2001, respectively.[81] Accordingly, we cumulate subject imports from China and India for purposes of our analysis of whether there is a reasonable indication of material injury by reason of the subject imports.

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[76] U.S. producers reported in their questionnaire responses that domestically-produced violet 23 is frequently or always interchangeable with both Chinese and Indian violet 23, and most reporting U.S. importers indicated that domestically-produced violet 23 is sometimes or frequently interchangeable with the Chinese and Indian products. See, e.g., CR at I-7, II-4; PR at I-5, II-3; CR/PR at Tables II-1, II-2.

[77] See, e.g., Conference Tr. at 19; Petitions at 34.

[78] See, e.g., CR/PR at Tables III-3, III-4, and IV-2; Conference Tr. at 25.

[79] Most producers involved in the production or shipment of finished violet 23 reported selling to a geographical market area encompassing the entire United States, whereas *** reported selling finished violet 23 to the Midwest. NFC reported that it ships ***. The twenty importers that responded to this question generally reported regional market areas, with the Northeast, Southeast, and Midwest cited most frequently. See, e.g., CR at V-1; PR at V-1. Of the seventeen responding importers of Chinese violet 23, two firms reported a national market area, seven firms reported sales to the Midwest, six firms reported sales to the Southeast, four firms reported sales to the Northeast, two firms reported sales to the West, and one firm reported sales to the Mid-Atlantic (with some firms reporting more than one market area). Of the four responding importers of Indian violet 23 (one of which also imports violet 23 from China), one firm reported a national market area, two firms reported sales to the Northeast, and one firm reported sales to the Midwest. See, e.g., CR at V-1 n.2. Based on official U.S. import statistics, the principal U.S. Customs districts of entry for violet 23 imported from China during the period of investigation were New York, NY; Charlotte, NC; Cleveland, OH; and Chicago, IL. The principal U.S. Customs districts of entry for violet 23 imported from India were Charleston, SC and Charlotte, NC. There was at least some overlap in imports of violet 23 from both China and India in the U.S. customs districts of Charleston, SC; Charlotte, NC; Chicago, IL; Cleveland, OH; Los Angeles, CA; New York, NY; and Philadelphia, PA. See, e.g., CR at IV-8; PR at IV-2.

[80] CR/PR at Tables III-3, III-4, IV-2; see also CR at IV-9; PR at IV-2 (indicating that based on official U.S. import statistics, there were U.S. imports of violet 23 from China in each month in 2002 through September 2003, and U.S. imports of violet 23 from India in each of those months except for October 2002, November 2002, January 2003, and September 2003) (the importer questionnaires did not collect monthly import data).

[81] See, e.g., CR at I-7; PR at I-5 (also indicating that some domestically-produced violet 23 is internally consumed).

VII. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED IMPORTS FROM INDIA AND ALLEGEDLY LESS THAN FAIR VALUE IMPORTS FROM CHINA AND INDIA

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[82] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[83] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[84] 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.[85] 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."[86]

Based on an evaluation of the relevant statutory factors, we find that there is a reasonable indication that the domestic industry producing violet 23 is materially injured by reason of subject imports from India that are allegedly subsidized and sold at less than fair value and imports from China that are allegedly sold at less than fair value.

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[82] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[83] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor ... [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B); see also, e.g., Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[84] 19 U.S.C. § 1677(7)(A).

[85] 19 U.S.C. § 1677(7)(C)(iii).

[86] 19 U.S.C. § 1677(7)(C)(iii).

A. Captive Production[87]

The domestic industry internally consumes a significant portion of the domestic like product in the production of downstream articles. Some presscake is sold commercially for the production of pigment dispersions, and some is internally consumed to produce dry color or dispersions.[88] Some dry color is sold commercially for use in plastics, printing, inks, textiles, dispersions, coatings, and other applications, and some dry color is consumed internally to produce inks and dispersions. On the basis of quantity, such internal shipments of presscake represented between *** and *** percent of U.S. producers' U.S. shipments of presscake over the period of investigation, and internal shipments of dry color represented between *** percent and *** percent of U.S. producers' U.S. shipments of dry color over the period of investigation.[89] It thus appears that the threshold criterion of the captive production provision is met, and we have therefore considered whether the captive production provision requires us to focus our analysis primarily on the merchant market when assessing the market share and the factors affecting the financial performance of the domestic industry. Having defined a single domestic like product coextensive with the scope of these investigations that consists of crude and finished violet 23 (i.e., presscake and dry color), we do not find that the captive production provision applies in these investigations because neither the second nor the third statutory criteria appears to be met, based on currently available information.

First statutory criterion: The first statutory criterion is whether the domestic like product that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product. There is no evidence at this time to suggest that any of the violet 23 that is transferred internally for further processing is in fact sold on the merchant market in the form of violet 23,[90] so this criterion appears to be satisfied.

Second statutory criterion: The second statutory criterion of the captive production provision requires the Commission to determine whether "the domestic like product is the predominant material

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[87] The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), which was added to the statute by the URAA, provides:

> (iv) CAPTIVE PRODUCTION – If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that –
>
> (I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,
>
> (II) the domestic like product is the predominant material input in the production of that downstream article, and
>
> (III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,
>
> then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

The SAA indicates that where a domestic like product is transferred internally for the production of another article coming within the definition of the domestic like product, such transfers do not constitute internal transfers for the production of a "downstream article" for purposes of the captive production provision. SAA at 853.

[88] See, e.g., Petitions at 3.

[89] See, e.g., CR/PR at Table III-4.

[90] See, e.g., CR at III-13; PR at III-5.

input in the production of that downstream article."[91] In these investigations, the principal downstream products for which violet 23 is captively consumed are ***. The share of the raw material cost of *** accounted for by presscake is not known. According to ***, finished violet 23 accounts for approximately *** percent of the total cost of coatings, *** to *** percent of the total cost of inks, and approximately *** percent of the total cost of plastics.[92] Based on the information available in the preliminary phase of these investigations, it appears that the second statutory criterion is not met.

Third statutory criterion: The third statutory criterion is met if "the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article." Although actual volume data are not available on this issue, it is known that, for example, presscake is used to produce dry color and flush color at Sun's Cincinnati Ohio plant. Presscake is also sold to the merchant market reportedly primarily for the production of aqueous dispersions. Dry color is sold to the merchant market and used internally by Sun Color's affiliated Sun business unit, Group Printing Ink. Dry color is used to produce solvent-based packaging inks, plastics, and consumer paints.[93] Based on the information available in the preliminary phase of these investigations, it appears that this statutory criterion is not met because presscake and dry color are sold in the merchant market for the production of the same downstream products as internally consumed presscake and dry color.[94]

B. Conditions of Competition and the Relevant Business Cycle

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

Demand conditions: Demand for violet 23 is derived from the demand for other products such as printing inks, plastics, coatings, and textiles, which in turn depend on such industries as advertising, packaging, and clothing. The largest use of violet 23 is in the production of printing inks. U.S. demand for inks decreased over the period of investigation as demand for printed products contracted, although Sun argues that there has been a slight upswing in demand in 2003 due to a somewhat improved U.S. economy.[95]

According to questionnaire responses, domestic producers and importers generally agree that, due to the recent economic downturn, overall demand for violet 23 in the United States has remained essentially unchanged during the period examined.[96] Apparent domestic consumption of crude violet 23 declined from *** pounds in 2000 to *** pounds in 2001 to *** pounds in 2002 and was *** pounds in interim 2003 as compared to *** pounds in interim 2002.[97] Apparent domestic consumption of finished

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[91] 19 U.S.C. § 1677(7)(C)(iv)(II).

[92] See, e.g., CR at II-3 to II-4, III-13; PR at II-2 to II-3, III-5.

[93] See, e.g., Petitions at Exh. 4.a; Conference Tr. at 24-25; CR at III-12, III-13 to III-14; PR at III-4 to III-5.

[94] Commissioners Lane and Pearson find that the captive production provision does not apply in these investigations, as it appears that the second statutory criterion is not met. They take no position as to whether the first or third criteria are met.

[95] See, e.g., CR at II-2 to II-3; PR at II-2.

[96] See, e.g., CR at II-2; PR at II-2. Petitioners argue that domestic consumption of violet 23 has remained fairly stable over the last three years and increased slightly in 2003 due to the recent upswing in the U.S. economy. See, e.g., Conference Tr. at 26, 80. Chinese Respondents argue that although some of the end-user industries, such as textiles, have been declining over the period of investigation, the lower price of the Chinese material has enabled violet 23 to be used for new applications. See, e.g., Conference Tr. at 128-33.

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

violet 23 increased irregularly from approximately *** pounds in 2000 to *** pounds in 2002, and was *** pounds in interim 2003 as compared to *** pounds in interim 2002.[98]

Supply conditions and the structure of the domestic industry: As indicated above, NFC is the only known producer of crude violet 23 in the United States. Several domestic producers convert imported or domestically-produced crude violet 23 into finished violet 23 (i.e., presscake and dry color), including Sun, Clariant, Allegheny, Barker, and Bayer.[99] In addition to subject imports from China and India, there were also non-subject imports present in the U.S. market throughout the period of investigation.[100]

We note several important aspects of the U.S. industry structure in these investigations. First, *** domestically-produced crude violet 23 is toll-produced by NFC for Sun. NFC began toll production of crude violet 23 in 1987 when Clariant Corporation, then known as Sandoz, discontinued production of crude violet 23 at its Fair Lawn, New Jersey plant. Sun helped NFC to develop the production process, provided financing for additional equipment, and provided on-site technical help during the start-up phase.[101] The toll agreement between NFC and Sun ***.[102]

Second, *** of the crude violet 23 toll-produced by NFC is used by Sun to produce finished violet 23, but domestic converters also use imported crude violet 23.[103] ***.[104] ***.[105] It is not clear what the effect of *** will be given that (1) ***; (2) ***; (3) ***;[106] and (4) ***.

Third, as noted above, a significant volume of finished violet 23 is internally transferred by Sun ***.[107]

Fourth, several domestic producers are related to ***. ***.[108]

Substitutability issues: As we noted above in our cumulation discussion, we find that there is at least a moderate degree of substitution between domestic violet 23 and subject imports.[109]

Chinese Respondents argued that alkaloid blue, vinyl cyanine blue, and methyl violet, including violet 1 and violet 3, may be alternatives to violet 23.[110] Petitioners assert that no other pigments are as

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[98] See, e.g., CR/PR at Table IV-6.

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

[100] The volume of non-subject crude violet 23 imports decreased from *** pounds in 2000 to *** pounds in 2002, and was *** pounds in interim 2003 as compared to *** pounds in interim 2002. The volume of non-subject presscake imports declined from *** pounds in 2000 to *** pounds in 2002 and was *** by interim 2003. The volume of non-subject dry color imports declined from *** pounds in 2000 to *** pounds in 2002 but was *** pounds in interim 2003 as compared to *** pounds in interim 2002. See, e.g., CR/PR at Table IV-2.

[101] See, e.g., Conference Tr. at 16.

[102] See, e.g., Petitions at 10.

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

[104] As indicated above in the related party discussion, *** purchased subject imports from China, and ***. See, e.g., CR at III-1 to III-6; PR at III-1 to III-3.

[105] See, e.g., CR at III-6; PR at III-3.

[106] See, e.g., CR at III-2 n.1, III-3; PR at III-2 n.1, III-2.

[107] See, e.g., Petitioners' Postconference Brief at 14-17.

[108] See, e.g., CR at III-3 to III-6; PR at III-2 to III-3.

[109] See, e.g., CR at II-4; PR at II-3.

[110] Chinese Respondents argue that low-priced violet 23 from China has led to increased consumption of violet 23 in the United States and that the traditional end use industries for violet 23 (ink and textiles) have been hit hard by the economic recession and by intense competition in their downstream markets. They argue that if violet 23 prices increase, consumption will decline and consumers will look for alternatives, move offshore, or change colors. See,

(continued...)

blue, bright, or clean as violet 23, and that substitution is not practical in most applications. They note that these proposed substitute products are much lower in price, so any substitution based on price should already have occurred.[111] Three U.S. producers and nine importers indicated in questionnaire responses that there are no direct substitute products for violet 23.[112]

Data considerations: All crude violet 23 (whether imported or domestically-produced) is used in the production of finished violet 23, and some presscake is used in the production of dry color. Commission staff endeavored to minimize double-counting. As discussed above, we rely on importer questionnaire responses rather than official import statistics because official import statistics may include erroneous reporting of some import volume, may understate subject imports from India, and may include some non-subject dispersions. Moreover, official statistics do not provide separate break-outs for crude violet 23, presscake, and dry color that would be needed to avoid double-counting of apparent domestic consumption of violet 23.[113] Staff contacted domestic producers and confirmed that none reported as "presscake" any presscake that was used to produce dry color, so there appears to be no double-counting when domestic producers' data for presscake and dry color are combined. The extent to which imported presscake is used to produce dry color is unknown. Staff was unable to contact all importers or foreign producers to determine the extent to which imported presscake is used to produce dry color. At the staff conference, however, Chinese Respondents testified that presscake imported from China is used by textile end users who prefer this wet form.[114] We intend to explore these and related data issues in any final phase investigations. For purposes of our analysis in the preliminary phase of these investigations, to avoid problems that may be associated with any double-counting, we examine, when appropriate, compiled data as well as data that are broken out in terms of crude violet 23, presscake, and dry color. Compilations of data concerning crude and finished violet 23 were calculated assuming that there is approximately a ***.[115]

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[110] (...continued)
e.g., Chinese Respondents' Postconference Brief at 26-30; Conference Tr. at 11, 97-98.

[111] See, e.g., CR at II-3; PR at II-2; Petitions at Exh. 1; Conference Tr. at 21-22, 38-40, 47. Petitioners contend that violet 23 is the workhorse organic pigment for the coloring of printing inks and plastics because of its unique color, shade, high strength, and good resistance properties. In the printing industry, it is used extensively in publication, packaging, label and textile inks; it is in magazines, and on snack food bags, beverage labels, and clothes. In the plastics industry, it is used in most non-engineering resins. It is very strong in ink and can look black in mass tone. Most of its use is in oleofins and PVC. Petitioners also note that violet 23 is often used at low levels to provide a clean, pastel violet and is added in small quantities to blue end fibers to provide a clean, red shade of blue. They observe that violet 23 is used in toys, carpets, insulation in wires, shampoo bottles, and specialty applications such as contact lenses and sutures. They assert that its major use in paints is as a shading agent for blues to make them redder and to brighten white paint. See, e.g., Conference Tr. at 21-22.

[112] See, e.g., CR at II-3; PR at II-2. *** reported that quin-acridone violet and PTMA violet may be used in niche applications. *** reported that violet 3 and violet 19 are possible substitutes. Regarding violet 3, *** reported that it could be used as a substitute in ink production, but has poor technical properties and is a different shade. Regarding violet 19, *** reported that it could be used as a substitute in coatings and plastics production, but is a different shade. See, e.g., CR at II-3.

[113] See, e.g., CR at IV-3; PR at IV-1 to IV-2.

[114] See, e.g., Conference Tr. at 124.

[115] See, e.g., CR at III-2; PR at III-2.

C. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[116]

The cumulated volume of subject imports increased significantly over the period of investigation, both in absolute terms and relative to production and consumption in the United States. The volume of cumulated subject imports increased from *** pounds in 2000 to *** pounds in 2001 and to *** pounds in 2002, and was *** pounds in interim 2003 as compared to *** pounds in interim 2002.[117]

Subject import market share rose steadily over the period of investigation. Apparent domestic consumption of violet 23 increased irregularly over the period of investigation from *** pounds in 2000 to *** pounds in 2001 and to *** pounds in 2002 but was *** pounds in interim 2003 as compared to *** pounds in interim 2002. Subject imports' share of the U.S. market increased from *** percent in 2000 to *** percent in 2001 and *** percent in 2002, and was *** percent in interim 2003 as compared to *** percent in interim 2002.[118] Similarly, the record indicates increases in market share for subject imports of crude violet 23,[119] presscake,[120] and dry color.[121]

As a ratio to U.S. production, subject imports of crude violet 23 increased from *** percent in 2000 to *** percent in 2001 and to *** percent in 2002, but was *** percent in interim 2003 as compared to *** percent in interim 2002.[122] Subject import shipments of finished violet 23 were equivalent to *** percent of U.S. finished violet 23 production (by volume) in 2000, *** percent in 2001,

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[116] 19 U.S.C. § 1677(7)(C)(i).

[117] See, e.g., CR/PR at Table IV-2. More specifically, the cumulated volume of crude violet 23 from subject countries increased from *** pounds in 2000 to *** pounds in 2001 and *** pounds in 2002, although it was *** pounds in interim 2002 and *** pounds in interim 2003. The cumulated volume of presscake from subject countries declined from *** pounds in 2000 to *** pounds in 2001 but then increased to *** pounds in 2002, and was *** pounds in interim 2002 and *** pounds in interim 2003. The cumulated volume of dry color from subject countries increased from *** pounds in 2000 to *** pounds in 2001 and *** pounds in 2002, and it was *** pounds in interim 2003 as compared to *** pounds in interim 2002. See, e.g., CR/PR at Table IV-2.

[118] See, e.g., CR/PR at Table C-2.

[119] Apparent domestic consumption of crude violet 23 declined from *** pounds in 2000 to *** pounds in 2001 and *** pounds in 2002, and was *** pounds in interim 2003 as compared to *** pounds in interim 2002. Subject crude violet 23 imports increased their market share on a quantity basis from *** percent in 2000 to *** percent in 2001 to *** percent in 2002 and their market share was *** percent in interim 2003 as compared to *** percent in interim 2002. See, e.g., CR/PR at Tables IV-3, IV-7, C-1.

[120] Apparent domestic consumption of presscake declined over the period of investigation from *** pounds in 2000 to *** pounds in 2001 before increasing somewhat to *** pounds in 2002, and was *** pounds in interim 2003 as compared to *** pounds in interim 2002. See, e.g., CR/PR at Table IV-4. Subject imports of presscake increased their market share on a quantity basis from *** percent in 2000 to *** percent in 2001 and *** percent in 2002, and their market share was *** percent in interim 2003 as compared to *** percent in interim 2002. See, e.g., CR/PR at Table IV-8.

[121] Apparent domestic consumption of dry color increased over the period of investigation, from *** pounds in 2000 to *** pounds in 2001 and then *** pounds in 2002, and was *** pounds in interim 2003 as compared to *** pounds in interim 2002. See, e.g., CR/PR at Table IV-5. Subject imports of dry color increased their market share on a quantity basis from *** percent in 2000 to *** percent in 2001 and *** percent in 2002, and their market share was *** percent in interim 2003 as compared to *** percent in interim 2002. See, e.g., CR/PR at Table IV-9.

[122] See, e.g., CR/PR at Table IV-11.

and *** percent in 2002, and were equivalent to *** percent of U.S. finished violet 23 production (by volume) in interim 2002 and *** percent in interim 2003.[123]

Accordingly, we find for purposes of the preliminary phase of these investigations that subject import volume was significant during the period examined,[124] both in absolute terms and relative to consumption and production in the United States.

D. Price Effects of the Subject Imports

> Section 771(C)(ii) of the Act[125] provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

As noted above, we find that subject imports and the domestic like product are at least moderately substitutable.[126] Petitioners assert that price is the most important factor in purchasing decisions, whereas some importers reported that quality is the main factor and that only when the quality of violet 23 from competing sources is equal or close to equal does price become a factor.[127]

In the preliminary phase of these investigations, the Commission asked U.S. producers and importers to provide quarterly pricing data for the total quantity and value of sales of three violet 23 products to unrelated U.S. customers: crude violet 23, presscake, and dry color. Four U.S. producers and 17 importers provided usable pricing data for sales of the requested products in the U.S. market, although not all firms reported pricing data for all products for all quarters. Pricing data reported by the U.S. importers accounted for virtually all of the quantity of their commercial U.S. shipments of crude violet 23 and of finished violet 23 from China and India in that year. Pricing data reported by U.S. producers accounted for approximately *** percent of the quantity of U.S. producers' commercial U.S. shipments of finished violet 23 in 2002.[128]

Price data collected in the preliminary phase of these investigations indicate significant underselling and price depression by subject imports. In all fifteen quarters for which price comparisons were possible, subject imports of presscake undersold the domestic like product, with underselling margins ranging from 23.4 to 53.2 percent. Domestic prices for presscake declined throughout the period of investigation from $*** per pound in the first quarter of 2000 to $*** per pound in the third quarter of 2003, and prices for subject imports also declined over the period of investigation from $*** per pound in the first quarter of 2000 to $*** per pound in the third quarter of 2003.[129] Likewise, in all fifteen quarters for which price comparisons were possible, subject imports of dry color undersold the domestic like product, with underselling margins ranging from 25.6 percent to 51.7 percent. Domestic prices for

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[123] See, e.g., CR/PR at Table IV-12.

[124] We note that petitioner Sun ***. We also note that at least some of the market share gained by subject imports appears to be at the expense of non-subject imports. See, e.g., CR/PR at Tables IV-7, IV-8, IV-9, IV-10, C-2. We intend to examine these issues further in any final phase investigations.

[125] 19 U.S.C. § 1677(7)(C)(ii).

[126] See, e.g., CR at II-4; PR at II-3.

[127] See, e.g., CR at II-6; PR at II-3.

[128] See, e.g., CR at V-4; PR at V-3.

[129] See, e.g., CR/PR at Table V-2.

dry color also declined over the period of investigation from $*** in the first quarter of 2000 to $*** in the third quarter of 2003, after dropping to a period low of $*** in the second quarter of 2003.[130]

NFC's reported price data for crude violet 23 do not reflect market prices and thus cannot be used to calculate margins of underselling or overselling with respect to subject imports.[131] However, using *** as a proxy for domestic prices for crude violet 23, the price of domestic crude violet 23 shipments declined over the period of investigation, and the price of subject imports of crude violet 23 was lower than the price of domestic shipments of crude violet 23.[132]

The current record contains conflicting information as to whether there are some quality differences between the domestic like product and subject imports from China and India. *** reported that while all violet 23 products may appear to be similar, the imports from China and India may have some environmental defects. Some importers stated in their questionnaire responses that the Chinese and Indian products may differ in shade and strength from the domestically-produced product.[133] ***[134] ***.[135] We intend to explore in any final phase investigations the extent to which there are quality differences between subject imports and the domestic like product and the extent to which subject imports and domestic producers are qualified for specific applications or purchasers. We also intend to seek information regarding possible market segmentation for applications such as inks, textiles, plastics, coatings, and other materials. We also will explore whether different shades of violet 23 command different prices, ***.

The record also contains information on allegations of lost sales and lost revenues that total approximately $*** and involve approximately *** pounds of violet 23. Of these, $*** and *** pounds were confirmed or partially confirmed by purchasers. In addition, comments by some purchasers that disagreed with specific lost sales or lost revenue allegations provided further evidence of the price-depressing effect of subject imports.[136]

Based on the record in the preliminary phase of these investigations and in light of the significant underselling and price depression by subject imports and confirmed lost sales and lost revenue allegations, we find that the subject imports have had significant adverse price effects.

E. Impact of the Subject Imports[137]

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on

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[130] See, e.g., CR/PR at Table V-3.

[131] ***. See, e.g., CR at V-4 n.4; PR at V-3 n.4.

[132] Derived from CR at V-4, n.4; PR at V-3 n.4; CR/PR at Table V-1.

[133] See, e.g., CR at II-4; PR at II-3.

[134] See, e.g., ***.

[135] According to *** See, e.g., ***.

[136] See, e.g., CR at V-10, V-13 to V-15; PR at V-4 to V-5, V-5; CR/PR at Tables V-4 to V-5. For example, *** agreed that domestic producers have reduced prices since January 2000 in order to compete with prices of violet 23 imported from China. The firm stated that violet 23 made in foreign countries, including China, was offered at much lower prices than domestic sources; therefore domestic producers lowered prices to remain competitive. *** agreed that since January 2000 U.S. producers have reduced their prices of violet 23 in order to compete with violet 23 from China.

[137] In its notice of initiation, Commerce estimated dumping margins for subject imports from China of 370.06 percent ad valorem, and 147.59 percent ad valorem for subject imports from India. See, e.g., 65 Fed. Reg. 70761 (Dec. 19, 2003).

the state of the industry."[138] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[139]

We have examined the performance indicators of the domestic industry and its components, including consolidated trade and financial results for the domestic industry producing carabazole violet 23, and the separate data on trade and financial performance of producers of crude and finished violet 23.[140] These data all indicate downward overall trends in the condition of the domestic industry.

We note that several domestic producers did not submit questionnaire responses or submitted incomplete responses in the preliminary phase of these investigations,[141] so their data are not included in our analysis. We further note that certain adjustments were made to information regarding domestic producer Sun's internal consumption of violet 23. We will further consider this issue in any final phase investigations.[142]

With respect to the domestic industry's performance indicators in the preliminary phase of these investigations, we note that as the quantity of subject imports rose over the period examined, the quantity of domestic shipments of finished violet 23 decreased. The quantity of domestic shipments of finished violet 23 decreased from *** pounds in 2000 to *** pounds in 2001, then increased to *** pounds in 2002, and was *** pounds in interim 2003 as compared to *** pounds in interim 2002.[143] Domestic producers' market share declined from *** percent in 2000 to *** percent in 2001 before increasing somewhat to *** percent in 2002, and it was *** percent in interim 2003 as compared to *** percent in interim 2002.[144] At the same time, apparent U.S. consumption was increasing irregularly, declining from *** pounds in 2000 to *** pounds in 2001 and then increasing to *** pounds in 2002 and was *** pounds in interim 2003 as compared to *** pounds in interim 2002.[145]

Domestic producers' average production capacity for crude violet 23 increased from *** pounds in 2000 to *** pounds in 2001 and *** pounds in 2002,[146] and domestic producers' average production capacity for finished violet 23 increased from *** pounds in 2000 to *** pounds in 2001 and remained at

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[138] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.") SAA at 885.

[139] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[140] See, e.g., CR/PR at Tables VI-6, C-1, C-2. In particular, we are mindful that consumption of domestically-produced crude violet 23 affects not only production quantities for crude violet 23 and tolling prices but also affects performance factors for finishing operations.

[141] In particular, we received incomplete or no questionnaire responses from Clariant, Sun's Bushy Park facility, and Barker.

[142] Sun's internal consumption was reported as ***. ***. See, e.g., CR at VI-6 n.6. ***. See, e.g., CR at VI-6 to VI-7 n.6, VI-10 n.10; PR at VI-3 n.6, VI-3 n.10.

[143] See, e.g., CR/PR at Table C-2.

[144] See, e.g., CR/PR at Table C-2.

[145] See, e.g., CR/PR at Table C-2.

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

that level in 2002.[147] Capacity utilization for crude violet 23 declined over the period of investigation from *** percent in 2000 to *** percent in 2002, and was *** percent in interim 2002 and *** percent in interim 2003.[148] Capacity utilization for finished violet 23 remained at low levels throughout the period of investigation, declining from *** percent in 2000 to *** percent in 2002, and was *** percent in interim 2003 as compared to *** percent in interim 2002.[149] The number of production related workers for crude and finished violet 23 fell over the period of investigation, although the number of production related workers for crude violet 23 was higher in interim 2003 than in interim 2002.[150]

Many of the domestic industry's consolidated financial indicators declined as well over the period of investigation, and these declines occurred as subject imports increased their volume and market share and depressed U.S. prices.[151] Net sales declined over the period of investigation, from *** pounds in 2000 to *** pounds in 2001, before increasing to *** pounds in 2002, and then were *** pounds in interim 2002 as compared to *** pounds in interim 2003.[152] *** in 2000 were followed by *** in 2001 and *** in 2002, but *** in interim 2002 were followed by *** in interim 2003 of ***.[153] Operating income followed the same trend, with the domestic industry's operating income as a ratio to net sales decreasing from *** percent in 2000 to *** percent in 2001 and to *** percent in 2002, but was *** percent in interim 2002 and *** percent in interim 2003.[154] As a ratio to net sales, cost of goods sold increased from *** percent in 2000 to *** percent in 2001 and to *** percent in 2002, and was *** percent in interim 2003 as compared to *** percent in interim 2002.[155] There were capital expenditures

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

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

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

[150] See, e.g., CR/PR at Tables C-1, C-2. Operating income for domestic producers of crude violet 23 declined from $*** in 2000 to *** in 2001 and *** in 2002 and was *** in interim 2002 and *** in interim 2003. Capacity utilization for domestic producers of crude violet 23 declined from *** percent in 2000 to *** percent in 2001 and to *** percent in 2002 and was *** percent in interim 2003 as compared to *** percent in interim 2002. The number of production-related workers for crude violet 23 declined from *** in 2000 to *** in 2001 and to *** in 2002, and was *** in interim 2003 as compared to *** in interim 2002. The number of production hours worked also declined over this period for crude violet 23 production, from *** hours in 2000 to *** in 2001 and to *** hours in 2002, and was *** hours in interim 2003 as compared to *** hours in interim 2002. See, e.g., CR/PR at Table C-1.

Operating income for domestic producers of finished violet 23 declined from $*** in 2000 to *** in 2001 before improving somewhat to *** in 2002 and was *** in interim 2002 and *** in interim 2003. Capacity utilization for domestic producers of finished violet 23 declined from *** percent in 2000 to *** percent in 2001 and to *** percent in 2002 and was *** percent in interim 2003 as compared to *** percent in interim 2002. The number of production-related workers for finished violet 23 declined from *** in 2000 to *** in 2001 and to *** in 2002, and was *** in interim 2003 as compared to *** in interim 2002. The number of production hours worked also declined over this period for finished violet 23 production, from *** hours in 2000 to *** in 2001 and to *** hours in 2002, and was *** hours in interim 2003 as compared to *** hours in interim 2002. See, e.g., CR/PR at Table C-2.

[151] We note that ***. We will further examine the correlation between subject imports and the industry's performance in any final phase investigations.

[152] See, e.g., CR/PR at Table VI-6.

[153] See, e.g., CR/PR at Table VI-6.

[154] See, e.g., CR/PR at Table VI-6.

[155] See, e.g., CR/PR at Table VI-6.

and research and development expenditures throughout the period of investigation that varied by producer and in terms of crude versus finished violet 23 production operations.[156]

As indicated above, we intend to explore in any final phase investigations the extent to which domestic producers are not qualified for certain applications or end users. Although Chinese Respondents argued that subject imports from China created new uses for violet 23 and thus did not displace domestic sales, the record in the preliminary phase of these investigations does not indicate any substantial new uses. Rather, the record shows that the level of subject imports increased faster than the rate of apparent domestic consumption over the period of investigation.

For purposes of these preliminary determinations, we conclude that subject imports had a negative impact on the condition of the domestic industry during the period of investigation. As discussed above, we find both the absolute and relative volume of subject imports and the negative price effects of the subject imports to be significant. As subject imports captured market share and depressed U.S. prices, U.S. producers' sales volumes and values declined, contributing to shrinking operating income and profitability. In light of the negative volume and price effects of subject imports and the worsening condition of the domestic industry, we find that subject imports adversely affected the performance of the domestic industry during the period of investigation.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of violet 23 from India that are allegedly subsidized and of violet 23 from China and India that are allegedly sold in the United States at less than fair value.

[156] See, e.g., CR/PR at Table VI-7.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed by Nation Ford Chemical Co. (NFC) and Sun Chemical Corp. (Sun), on November 21, 2003, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of carbazole violet pigment 23 (violet 23)[1] from India and less-than-fair-value (LTFV) imports of violet 23 from China and India. Information relating to the background of the investigations is provided below.[2]

Effective date	*Action*
November 21, 2003 .	Petition filed with Commerce and the Commission; institution of Commission investigations (68 FR 66851, November 28, 2003)
December 12, 2003 .	Commission's conference[3]
December 19, 2003 .	Commerce's notice of initiation (68 FR 70761, December 19, 2003)
January 5, 2004	Date of the Commission's vote
January 5, 2004	Commission's determinations sent to Commerce
January 12, 2004 ...	Commission's views sent to Commerce

MAJOR FIRMS INVOLVED IN THE VIOLET 23 MARKET

Violet NFC is the only U.S. producer of crude violet 23. The U.S. industry producing finished violet 23 is dominated by Sun, which accounted for *** percent of U.S. production of the finished product in 2002.[4] There are also several other U.S. producers of finished violet 23, including Clariant Corp.[5]

The major known U.S. importer of crude violet 23 from China in 2002 was ***, which accounted for *** percent of the volume of such imports from China. The major known U.S. importers of finished violet 23 from China in 2002 were ***, which accounted for *** percent of such imports.[6] The major known U.S. importer of the finished pigment from India was ***, which accounted for about *** percent of such imports in 2002.[7]

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[1] For purposes of these investigations, violet 23 is in the forms of crude pigment and finished pigment (presscake and dry color), but does not include pigment dispersions or other pigment preparations. Violet 23 is one of several organic pigments used to color inks, paints, plastics, and other materials. A complete description of the imported product subject to the investigations is presented in the section entitled *The Subject Product* of this report.

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

[3] A list of witnesses who appeared at the conference is presented in app. B.

[4] NFC and Sun are represented by the law firm of Pepper Hamilton LLP.

[5] Clariant is a party to the investigations, represented by the law firm of Barnes, Richardson & Colburn.

[6] ***.

[7] ***. There were no reported imports of crude violet 23 from India by U.S. importers.

The *** reporting exporters of crude violet 23 to the United States from China in 2002 and *** reporting exporters of finished violet 23 from China to the United States in 2002 were ***.[8] The only Indian producer reporting data in response to Commission questionnaires was ***.

Major purchasers of violet 23 consist of firms in the ink, coatings, textiles, and packaging industries.[9]

SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C, tables C-1-C-3. Table C-1 contains industry data for crude violet 23, table C-2 consists of industry data for finished violet 23, and table C-3 contains data for all violet 23. Except as noted, U.S. industry data are based on the questionnaire responses of six U.S. producers, which accounted for virtually all known U.S. production during the period examined. Data on U.S. imports are based on importer questionnaire responses submitted by 22 U.S. importers, accounting for virtually all of the value of subject imports from China in 2002 and for most of the value of subject imports from India. Chinese industry data are from questionnaire data submitted by 11 firms accounting for virtually all Chinese production of violet 23 in 2002. Indian industry data are from questionnaire data submitted by one firm accounting for *** percent of Indian production of the subject product in 2002.

NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

In its notice of initiation, Commerce advised that it is investigating the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers, and exporters of the subject merchandise in India:

1. The Duty Entitlement Passbook Scheme/Post-Export Credits
2. Export Promotion Capital Goods Scheme
3. Export Processing Zones/Export-Oriented Units Programs
4. Income Tax Exemption Scheme (Sections 10A, 10B, and 80 HHC)
5. Pre-Shipment Export Financing
6. Exemption of Export Credit from Interest Taxes
7. Market Development Assistance
8. Special Imprest Licenses
9. Central Value Added Tax Scheme

The estimated dumping margins as reported by Commerce are 370.06 percent *ad valorem* for China and 147.59 percent *ad valorem* for India.

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[8] Chinese firms Hangshou Baihe Chemical Co., Ltd.; Hangzhou Trust Chemical Co., Ltd.; Jiangsu Haimen Industrial Chemicals Factory; Nantong Haidi Chemicals Co., Ltd.; Nantong Lonteng Chemical Co., Ltd.; and Wuxi Xinguang Chemical Industry Co., Ltd. are parties to the investigations, represented by the law firm of Garvey Schubert Barer.

[9] A representative of INX International Ink Co. testified in opposition to the petition at the Commission's conference.

THE SUBJECT PRODUCT

Commerce has defined the scope of these investigations as:
The merchandise covered by these investigations is carbazole violet pigment 23, identified as Color Index No. 51319 and Chemical Abstract No. 6358-30-1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5, 15 5,15-diethy-5,15-dihydro-*, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$. The subject merchandise includes the crude pigment in any form (e.g., dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (e.g., pigments dispersed in oleoresins, flammable solvents, water) are not included in these investigations.[10]

THE DOMESTIC LIKE PRODUCT

The Commission's determination regarding the appropriate domestic products that are "like" the subject imported product is based on a number of factors, including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price.

Petitioners and Clariant contend that there is one domestic like product consisting of crude violet 23 plus finished (presscake and dry color) violet 23, coextensive with the scope of the investigations.[11] They contend that crude and finished violet 23 have identical physical properties, although the presscake form of the finished product contains water. They contend, for example, that the crude and finished products are each referred to as violet 23 by customers and producers and that both products are priced similarly on the basis of their active pigment content.

Respondents contend that there are two domestic like products: crude violet 23 and finished violet 23. They contend that the crude and finished products have different physical characteristics and that the uses for each are entirely different. They contend that crude violet 23 is sold to converters who finish the crude into presscake or dry powder, whereas finished pigment is sold commercially as presscake or dry powder for use as a colorant; that customer and producer perceptions of the crude and finished products are different and that they are not manufactured in the same facilities; and that the products are sold at different price points.[12]

Physical Characteristics and Uses

Violet 23 is a type of synthetic organic chemical used as a colorant or pigment to color inks, textiles, plastics, coatings, and other materials. Crude violet 23 has no use or intended purpose other than to produce finished violet 23 in the forms of presscake or dry color. Dry color violet 23 is pure pigment,

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[10] Notice of Initiation of Antidumping Duty Investigations: Carbazole Violet Pigment 23 from China and India, 68 FR 70761, December 19, 2003. Violet 23 is imported under Harmonized Tariff Schedule of the United States (HTS) statistical reporting number 3204.17.9040, at a column 1-general duty rate of 7.8 percent *ad valorem* applicable to imports from China and India; the general rate starting on January 1, 2004, is 6.5 percent *ad valorem.*

The chemical name as identified by the Chemical Abstracts Service ("CAS"), a division of the American Chemical Society, is slightly different from the chemical name in Commerce's scope definition. The CAS' name is *diindolo[3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5,15,-diethyl-5,15-dihydro-.*

[11] E.g., petitioners' postconference brief, pp. 2-4, and Clariant's postconference brief, pp. 6-12; conference transcript, p. 48.

[12] Respondents' postconference brief, pp. 6-7.

and presscake has varying degrees of pigment diluted with water. Dry color can be sold for numerous end uses, including plastics, printing inks, textiles, and to produce dispersions. Presscake can be processed into dry pigment powder, among other applications, or used to make pigment dispersions.

Manufacturing Process

There are five separate chemical reactions required to synthesize the crude pigment.[13] Carbazole is reacted with diethylsulfate and potassium hydroxide to produce ethyl carbazole (EC) (the ethylation reaction) that is reacted with nitric acid to produce nitro-ethyl-carbazole (NEC) (the nitration reaction). NEC is then reduced with either sodium sulfide/sulfur or hydrogen/catalyst to form amino-ethyl-carbazole (AEC) (the reduction reaction). AEC is then reacted with chloranil to form "di-anil" (the condensation reaction) that is heat-treated with catalyst, either p-toluene-sulfonyl-chloride or benzene-sulfonyl-chloride, to form the crude pigment (the ring closure reaction). All of these reactions are carried out in solvents, such as xylene and o-dichlorobenzene. Other solvents, such as methanol and isopropyl alcohol, are used to displace the reaction solvents in the final purification steps and to facilitate water washing of the crude pigment.

Crude pigment is produced in the United States only by NFC. As mentioned above, the reactions used to produce it are carried out in solvents and use several different vessels, each designed and constructed for the specific reactions and operations to be performed. In addition to the reaction chemistry, there are several other chemical unit operations required to produce the pigment, including washing, purification, filtering, solvent recovery, waste water treatment, and drying. Support facilities include steam production, cooling water, vacuum service, waste-water treatment, environmental venting, and capability for the safe handling of hazardous chemicals used to produce the pigment.

The production processes used in China and India are believed to be similar to that of NFC. One major exception, however, is ***.[14]

Crude violet 23 is converted to presscake and dry color in an attrition process referred to as "salt grinding."[15] The physical inputs required to produce presscake are water, salt, ***. This process results in a presscake that can be dried and pulverized to produce dry color.[16]

Interchangeability and Customer and Producer Perceptions

Domestically produced, Chinese, and Indian violet 23 appear to be interchangeable in many applications. Petitioners and Clariant argue that domestic crude, presscake, and dry color are fungible with imports of the crude, presscake, and dry color from China and India.[17] Respondents argue that the quality of the Chinese material is higher and therefore is not fungible with the domestic product.[18] As mentioned in the section entitled *Channels of Distribution* in this part of the report, U.S. and Chinese finished violet 23 appear to be competing in at least the ink market, and domestic producers have complained about import competition in terms of losing sales.

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[13] The synthesis of crude violet 23 is discussed in the *Pigments Handbook*, petition exh. 2-c, pp. 2-3.

[14] Petition, pp. 8-9.

[15] The production of presscake and dry color is discussed in the *Pigments Handbook,* exh. 2-c, pp. 2, 3, 6, and 7.

[16] Ibid, p. 10.

[17] Clariant's postconference brief, p. 26, and petitioners' postconference brief, p. 12.

[18] Respondents' postconference brief, response to Commission's staff questions, response by ***, p. 4. ***. However, the petitioners maintain that the ***. Petitioners' postconference brief, exhibit 1, p. 7.

U.S. producers reported in their questionnaire responses that domestically produced violet 23 is frequently or always interchangeable with both Chinese and Indian violet 23, and most reporting U.S. importers indicated that domestically produced violet 23 is sometimes or frequently interchangeable with the Chinese and Indian products. Additional information received on the issue of interchangeability is presented in the section entitled *Substitutability Issues* in Part II of this report.

Channels of Distribution

U.S. producers and importers sold crude violet 23 exclusively to end users until January-September 2003, when some imports from China were sold to distributors. For finished violet 23, U.S. producers sold exclusively to end users and imports of the Chinese product were virtually all sold to end users. Imports of the Indian product were sold mainly to end users, although *** to *** of the imports from India were reportedly sold to distributors in 2000 and 2001, respectively.

Firms appearing at the conference were requested to provide estimates of the channels of distribution to end-use markets of sales of finished violet 23. Textiles accounted for *** percent of Sun's sales and *** percent of Clariant's sales. Printing ink accounted for about *** percent of Sun's sales and *** percent of Clariant's sales. Coatings accounted for about *** percent of Sun's sales and *** percent of Clariant's sales. Plastics accounted for *** percent of Sun's sales and *** percent of Clariant's sales. Finally, other applications accounted for *** percent of Sun's sales and *** percent of Clariant's sales.[19]

For importers of the Chinese finished pigment, *** and *** estimate that *** percent of sales go to textiles and *** percent go to ink applications, *** percent to plastics, and the remainder to other applications.[20]

Price

Prices of domestically produced (and imported) violet 23, based on responses to Commission questionnaires, are presented in part V. Prices of domestically produced finished violet 23 are well above those for crude violet 23. With regard to unit values, presented in Part III, unit values for U.S. producers' commercial shipments of crude violet 23 declined from $*** per pound in 2000 to $*** per pound in 2002, then increased to $*** per pound in January-September 2003. Average unit values for U.S. producers' commercial domestic shipments of finished violet 23 declined from $*** per pound in 2000 to $*** per pound in 2002, and declined again to $*** per pound in January-September 2003.

SEMI-FINISHED DOMESTIC LIKE PRODUCT ANALYSIS

A "semi-finished" product analysis may be used in determining whether products at different stages of processing should be included in the same domestic like product. In a semi-finished products analysis, the Commission currently examines: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. In this investigation, crude violet 23 is an upstream product that is further processed into the downstream products of presscake and dry color violet 23.

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[19] Email from ***.

[20] Email from ***.

Petitioners and Clariant contend that crude violet 23 has no independent uses from presscake and dry color violet 23. Indeed, all domestically produced crude violet 23 is used in the production of presscake and dry color. NFC is the only U.S. producer of crude violet 23, and *** of its crude violet 23 has been for Sun for use in the production of presscake and dry color.[21] Chinese respondents acknowledge that crude violet 23 is only used for the production of finished violet 23.[22]

Chinese respondents state that whereas crude violet 23 is a chemical intermediate used in the conversion to finished violet 23, presscake and dry color are marketed as finished products to the industries that incorporate violet 23 as colorant into their downstream products. Thus, they argue, crude and finished violet 23 have separate markets, even though they share ultimate end uses as a colorant. The market for domestically produced crude violet 23 consists *** of Sun, whereas the market for finished violet 23 consists of firms that produce downstream products such as inks, coatings, and textiles.

Petitioners and Clariant contend that crude violet 23 embodies and imparts to presscake and dry color essential characteristics and functions that can be achieved in no other way, although they concede that crude violet 23 has very hard texture, low strength, and poor brightness compared to finished violet 23, indicating the presence of coarse pigment particles that are difficult to disperse.[23] Chinese respondents concede that crude and finished violet 23 have the same chemical structure, but argue that they have different physical characteristics due to their physical form. They argue that crude violet 23 is an intermediate input whereas presscake and dry color are finished colorant products that can be incorporated into coloring processes.[24]

Clariant contends that although substantial value is added in the production phase between crude and finished violet 23, crude violet 23 is the most costly input used to produce finished violet 23, accounting for approximately *** percent of the final value of commercial shipments of presscake and more than *** percent of the final value of dry color. However, as Chinese respondents contend, finished violet 23 sells at much higher prices than crude violet 23 because the multi-stage production process for finished violet 23 involves substantial costs above the cost of acquiring or producing crude violet 23.[25]

Crude violet 23 is subjected to a process known as "salt grinding" that, after washing and filtration, produces presscake. Some presscake is dried to make dry color, the most common form of the pigment used in the U.S. market. Petitioners note that the grinding of crude to finished violet 23 in the forms of presscake and dry color is strictly a physical process that reduces the particle size of the pigment, making it useful for coloring paints, inks, plastics and other materials. Clariant contends that the process of transforming crude violet 23 into finished violet 23 is more than simple physical processing, to the extent that ***. It contends that this process, like the transformation of crude indigo slurry into indigo, is part of the continuum of processes in the production of the final product.[26] Chinese respondents contend that the production of finished violet 23 involves a multi-stage production process.[27]

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[21] ***.

[22] Respondents' postconference brief, p. 4.

[23] Petition, p. 33, exh. 2.c; conference transcript, p. 29; Clariant's postconference brief, pp. 8-9.

[24] Respondents' postconference brief, pp. 4-5; conference transcript, pp. 86-87.

[25] Respondents' postconference brief, p. 5.

[26] Clariant's postconference, p. 11.

[27] Respondents' postconference brief, p. 5.

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

CHANNELS OF DISTRIBUTION AND MARKET SEGMENTATION

In the U.S. market, the majority of domestic and imported violet 23 is sold to end users. During 2002, data reported by U.S. producers and importers indicate that the majority of their domestic shipments of violet 23 were commercial sales, primarily to the ink and textile industries.

Violet 23 is sold in three forms - crude, presscake, and dry color. The crude form is used to produce the presscake form of violet 23. The presscake form is used to produce the dry color form of violet 23 as well as to produce aqueous dispersions used in the packaging and textile industries. The dry color form is also used to produce dispersions, as well as inks, paints, and plastic articles.

SUPPLY AND DEMAND CONSIDERATIONS[1]

U.S. Supply

Based on available information, U.S. producers of violet 23 have the ability to respond to changes in prices with moderate-to-large changes in the quantity of shipments of U.S.-produced violet 23 to the U.S. market. The main factors contributing to this degree of responsiveness are excess capacity and substantial inventories of finished violet 23. These factors are detailed next.

Industry Capacity

Data reported by U.S. producers indicate that there is excess capacity with which to expand production of violet 23 in the event of price changes. Domestic capacity utilization for both crude and finished violet 23 declined during the period examined to approximately *** percent in 2002. Capacity utilization for the crude form improved in interim 2003, while capacity utilization remained stable for the finished form in the same time period.

Inventory Levels

While U.S. producers' inventories of crude violet 23 as a ratio to total shipments were *** during the period examined, inventories of finished violet 23 ranged from *** percent to *** percent. These data indicate that U.S. producers have the ability to use inventories of finished violet 23 as a source of increased shipments to the U.S. market.

Export Markets

While there were no reported exports of crude violet 23 during the period examined, exports represented a moderate share of the quantity of total shipments of finished violet 23, accounting for between *** and *** percent. These numbers suggest that U.S. producers may have some ability to divert shipments to or from alternate markets in response to changes in the prices of violet 23.

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[1] Reported data on Chinese and Indian production capacity, production, capacity utilization, inventories, and exports of violet 23 are shown in detail in Part VII of this report.

U.S. Demand

Based on available information, the overall demand for violet 23 is unlikely to change significantly in the short run in response to changes in price. The main factor contributing to the low degree of price sensitivity is the lack of directly substitutable products.

Demand Characteristics

Questionnaire responses reveal that U.S. producers and importers generally agree that, due to the economic downturn, overall demand for violet 23 in the United States has remained essentially unchanged during the period examined. Available information indicates that U.S. consumption of finished violet 23 increased irregularly from *** pounds in 2000 to *** pounds in 2002. Interim data reveal a *** decrease in consumption in the first nine months of 2003 as compared to the same period in 2002.

Demand for violet 23 is derived from the demand for printing inks, plastics, and textiles which in turn depends on such industries as advertising, packaging, and clothing. The largest use of violet 23 is in the production of printing inks. During the period examined, U.S. demand for inks decreased as demand for printed products contracted.[2] According to Sun, there has been a slight upswing in demand in 2003 due to a somewhat improved U.S. economy.[3]

Substitute Products

Questionnaire responses from U.S. producers and importers reveal that all three U.S. producers and all nine importers that responded to the relevant questions believe there are no direct substitute products for violet 23. *** reported that quin-acridone violet and PTMA violet may be used in niche applications. *** reported that violet 3 and violet 19 are possible substitutes. Regarding violet 3, *** reported that it could be used as a substitute in ink production, but has poor technical properties and is a different shade. Regarding violet 19, *** reported that it could be used as a substitute in coatings and plastics production, but is a different shade.

At the conference, respondents mentioned several alternatives to violet 23, such as alkaloid blue, vinyl cyanine blue, and methyl violet, including violet 1 and violet 3. Respondents assert that an increase in the price of violet 23 will cause purchasers to switch to these alternative pigments and thus reduce overall demand for violet 23 in the U.S. market.[4] According to petitioners, no pigments are as blue, bright, or clean as violet 23, and substitution is not practical in most applications.[5] Further, petitioners stated that these proposed substitute products are much lower in price, therefore any substitution based on price should have already occurred.[6]

Cost Share

According to responding U.S. producers and importers, the violet 23 that they sell in the U.S. market is used in the production of various types of coatings, inks, and plastics. According to ***, the

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[2] Respondents' postconference brief, p. 39.

[3] Conference transcript, p. 26.

[4] Conference transcript, pp. 9-10.

[5] Conference transcript, pp. 21 and 38.

[6] Conference transcript, pp. 39-40.

crude form of violet 23 accounts for approximately *** percent of the value of the finished presscake form.[7] According to ***, finished violet 23 accounts for approximately *** percent of the total cost of coatings, *** to *** percent of the total cost of inks, and approximately *** percent of the total cost of plastics.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported violet 23 depends upon such factors as relative prices, quality, and conditions of sale. Based on available data in the preliminary phase of these investigations, staff believes that there is a moderate-to-high degree of substitution between domestic violet 23 and subject imports. Table II-1 summarizes U.S. producers' and importers' responses regarding the perceived degree of interchangeability between violet 23 produced in the United States and in other countries. Table II-2 summarizes U.S. producers' and importers' responses regarding the perceived importance of differences in factors other than price between violet 23 produced in the United States and in other countries.

In its questionnaire response, *** stated that while all violet 23 products may appear to be similar, the imports from India and China may have environmental defects. Some importers also stated in their questionnaire responses that the Chinese and Indian products may differ in shade and strength from the U.S.-produced product.[8]

While the petitioners assert that price is the most important factor in purchase decisions, some importers stated that quality is the main factor and that only when the quality of violet 23 from competing sources is equal or close to equal does price become a factor.

At the conference ***, the importer Alpha Source stated that its primary customers (***) have not used Sun's violet 23 for more than a decade due to quality and performance issues, not lower prices for imported violet 23. ***. *** substituting Chinese violet 23 for these other imported sources.[9] [10]

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[7] According to Clariant, crude violet 23 accounts for approximately *** percent of the final value of the presscake form and more than *** percent of the final value of the dry color form of the product (Clariant's postconference brief, p. 10).

[8] Petitioners stated that the quality of the Chinese and Indian violet 23 products is mixed and depends upon the supplier, but that the quality from both countries has generally improved over the last four or five years (conference transcript, p. 84).

[9] Conference transcript, pp. 96-97. Bracketed information is from ***. ***.

[10] ***.

Table II-1
Violet 23: Perceived degree of interchangeability between violet 23 produced in the United States and in other countries in sales of violet 23 in the U.S. market

Country pair	Number of U.S. producers reporting					Number of U.S. importers reporting				
	A[1]	F	S	N	O	A	F	S	N	O
U.S. vs. China	1	4	---	---	---	1	3	8	1	7
U.S. vs. India	1	4	---	---	---	---	3	2	1	14
China vs. India	1	4	---	---	---	---	4	1	---	15
U.S. vs. nonsubject	1	4	---	---	---	---	3	1	1	15
China vs. nonsubject	1	3	---	---	1	---	3	2	---	15
India vs. nonsubject	1	2	---	---	2	---	3	1	---	16

[1] Responses of "Always" refer only to the crude form.

Note – A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity.

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

Table II-2
Violet 23: Perceived importance of differences in factors other than price between violet 23 produced in the United States and in other countries in sales of violet 23 in the U.S. market

Country pair	Number of U.S. producers reporting					Number of U.S. importers reporting				
	A	F	S	N	O	A	F	S	N	O
U.S. vs. China	---	1	2	2	---	4	2	4	2	8
U.S. vs. India	---	1	2	1	1	2	1	1	1	15
China vs. India	---	---	2	1	2	1	---	1	1	17
U.S. vs. nonsubject	---	2	3	---	---	2	1	1	1	15
China vs. nonsubject	---	1	2	---	2	2	---	1	1	16
India vs. nonsubject	---	1	2	---	2	---	---	1	1	18

Note -- A = Always, F = Frequently, S = Sometimes, N = Never, O = No familiarity.

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

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

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged subsidies and margins of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of six U.S. producers of violet 23.

U.S. PRODUCERS

Table III-1 lists the seven known U.S. firms involved in the production of violet 23, their plant locations, positions on the petition, and shares of reported 2002 production. The crude violet 23 industry is comprised of NFC alone. The finished violet 23 producers are dominated by Sun at *** percent of 2002 production, and also consist of three smaller producers (Allegheny, Barker, and Clariant), one *** producer, Bayer, and ***, Summit.

Table III-1
Violet 23: U.S. producers, their positions on the petition, their production locations, and their shares of reported U.S. production, 2002

Firm	Position on the petition	Production location(s)	Share of crude production (*percent*)	Share of finished production (*percent*)
Allegheny Color Corp. (Allegheny)	Support	Ridgway, PA	***	***
Barker Fine Color (Barker)[1]	Support	Ludlow, KY	***	***
Bayer Corp. (Bayer, now owned by Sun Chemical Corp.)[2]	Petitioner	Goosecreek, SC	***	***
Clariant Corp. (Clariant)[3]	Support	Coventry, RI	***	***
Nation Ford Chemical Co. (NFC)	Petitioner	Fort Mill, SC	***	***
Summit Specialty Chemicals, LLC (Summit)[4]	***	Fort Lee, NJ	***	***
Sun Chemical Corp. (Sun)	Petitioner	Cincinnati, OH	***	***

1 ***.
2 ***.
3 ***.
4 ***.

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

Allegheny is ***. Allegheny began production in 2001. It produced mainly *** during the period examined. Beginning in 2002 it had ***. The trend for Allegheny during the period examined was to ***, as would be expected with a start-up firm.

Allegheny purchases ***.[1] Allegheny purchases about ***.[2] There were no reported relationships between Allegheny and ***.

Barker is a small, privately held company that is ***. Barker purchases ***.[3] The volume of Barker's purchases was ***. Barker produced only *** during the period examined. Barker is ***. Barker also believes that ***.[4]

Clariant is owned by ***. Clariant produced crude violet 23 in its plant in Fair Lawn, NJ, prior to 1987 when the firm was known as Sandoz. It exited the crude segment of the industry but continued to produce the finished violet 23 at its Rhode Island facility. Clariant is unable to supply ***.[5] Clariant directly ***.

Clariant's production process ***. ***.[6]

Clariant's ***.[7] Dry color production accounted for about *** percent of Clariant's production during 2002.

NFC is a small, privately held producer of organic chemicals. It produces three main products at its plant in Fort Mill, SC. These are sulfanilic acid, solvent dyes, and violet 23 in the form of crude pigment. NFC toll-produces the crude for Sun, which uses it to produce finished pigment in the form of presscake and dry color.

NFC was asked by Sun to begin production of the crude pigment in 1987 when Clariant (then known as Sandoz) discontinued production at its plant in Fair Lawn, NJ. NFC lacked the resources needed to begin production, so Sun helped in developing the production process, provided financing for additional equipment, and provided on-site technical help during the startup phases. Sun also purchases the key raw materials used by NFC at no cost to NFC.[8] Currently NFC operates under a ***.[9] NFC is the only producer of crude violet 23 in the United States. Because of a secrecy agreement with Sun, its product has not been available for sale on the open market.[10]

Summit is a privately held company which sells presscake that is *** to ***. Summit ***.[11] Summit ***. Summit claims that it sees ***.[12]

Sun is one of the world's leading producers of organic pigments and dispersions for use in the coloring of printing inks, plastics, paints, cosmetics, and textiles. The Colors Group, headquartered in Cincinnati, OH, operates five pigment manufacturing sites in the United States -- Cincinnati, OH; Staten Island, NY; Newark, NJ; Muskegon, MI; and Bushy Park, SC. Two other facilities located in Amelia, OH and New Brunswick, NJ, are dedicated to the production of pigment dispersions.[13] Violet 23 is produced at the Cincinnati, OH and Bushy Park, SC plants.

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[1] Staff conversation with ***.

[2] Ibid.

[3] ***.

[4] Staff conversation with ***.

[5] Fax transmission from counsel for Clariant, December 15, 2003. Clariant stated that it will "***."

[6] Staff conversation with ***.

[7] Email from ***.

[8] Conference transcript, pp. 15-16.

[9] Petition, p. 10.

[10] Conference transcript, pp. 49-50.

[11] Staff conversation with ***.

[12] Ibid.

[13] Conference transcript, pp. 20-21.

Sun is ***. Sun is also affiliated through ***.[14] Sun acquired the Bushy Park, SC, facility in February 2003 from Bayer Corp. (Bayer) and was ***.[15] The Bushy Park plant produces both presscake and dry color pigment at *** unit values (ranging from ***). The Bushy Park data are ***.

Sun produces both presscake and dry color, with about *** percent of its 2002 U.S. finished shipments being ***. Sun ***. Sun also had ***. In 2001, its ***. According to Sun, it made a decision in ***.[16]

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

The U.S. industry's production, capacity, and capacity utilization data are presented in table III-2.

Table III-2
Violet 23: U.S. production capacity, production, and capacity utilization, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Crude production decreased in 2002 as ***. Crude production increased in January-September 2003 when ***.[17]

Capacity utilization varied among firms producing the finished pigment. Allegheny began in 2001 with a ***. Barker began the period with a ***. Clariant's rate ***. Sun's capacity utilization rate experienced a ***.

Allegheny produces ***. ***. Clariant reported constraints on its capacity as ***. NFC reported that ***. Sun produces ***. The only downtime incurred when changing production between products ***. The limits on production capabilities are ***.

U.S. PRODUCERS' U.S. SHIPMENTS AND EXPORTS

Tables III-3 and III-4 present data on the U.S. industry's shipments during the period examined.[18] The unit values for crude and finished violet 23 were very different, but experienced a similar decline during the period examined. The increase in crude unit values in January-September 2003 represents ***.[19]

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[14] Petitioners' postconference brief, p. 7.

[15] Various emails from ***.

[16] Email from ***.

[17] Ibid, and email from ***.

[18] The manner in which the data were obtained and presented eliminates any double-counting of presscake used in the production of dry color, and eliminates any double-counting of toller/tollee shipments.

[19] Email from *** and petitioners' postconference brief, p. 16.

Table III-3
Crude violet 23: U.S. producer's U.S. shipments, by types, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table III-4
Finished violet 23: U.S. producers' U.S. shipments, by types, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Among the firms producing finished pigment, *** unit values were similar in 2002, and *** unit values were about ***. Clariant's unit values were ***. ***.[20]

***. It ships ***.[21] ***.[22]

The *** decline in export shipments in 2002 was attributed by Sun to intense competition with Chinese violet 23 in Europe.[23]

CAPTIVE CONSUMPTION

Section 771(7)(C)(iv) of the relevant statute states that–

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

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

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

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

then the Commission, in determining market share and the factors affecting financial performance . . ., shall focus primarily on the merchant market for the domestic like product.[24]

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[20] Conference transcript, pp. 52-53 and email from ***.

[21] Email from ***.

[22] For a more detailed discussion, see part VI of this report.

[23] Conference transcript, p. 44.

[24] 19 U.S.C. § 1677(7)(C)(iv).

Over the period of investigation, internal shipments of presscake accounted for between *** and *** percent of the volume of U.S. producers' total shipments of presscake and between *** and *** percent of the volume of U.S. producers' total shipments of dry color.

The First Statutory Criterion

The first criterion of the captive consumption provision concerns whether the domestic like product that is internally transferred for processing into that downstream article enters the merchant market for the domestic like product. No violet 23 transferred internally for further processing is known to have been sold in the merchant market in the form of violet 23.

The Second Statutory Criterion

The second criterion of the captive consumption provision concerns whether the domestic like product is the predominant material input in the production of the downstream article that is captively produced. Principal downstream products for which violet 23 is captively consumed are ***. The share of the raw material cost of *** accounted for by presscake is not known. According to Sun, finished violet 23 accounts for approximately *** percent of the cost of coatings, *** percent of the total cost of inks, and approximately *** percent of the total cost of plastics.

The Third Statutory Criterion

The third criterion of the captive consumption provision concerns whether the production of the domestic like product sold in the merchant market is generally used in the production of the downstream article that is internally transferred for processing (captively produced). Although actual volume data are not available on this issue, it is known that, for example, presscake is used to produce dry color and flush color at Sun's Cincinnati, OH plant, where it is converted into aqueous dispersions. Dry color is sold to the merchant market and used internally by Sun Color's affiliated Sun business unit, Group Printing Ink. Dry color is used to produce solvent-based packaging inks, plastic articles, and consumer paints.

U.S. PRODUCERS' INVENTORIES

Table III-5 presents data on the U.S. industry's inventories during the period. The *** finished inventories are accounted for by ***. ***.[25]

Table III-5
Violet 23: U.S. producers' end-of-period inventories, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

[25] Email from ***.

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Tables III-6 and III-7 show the U.S. industry's employment-related data during the period examined. Employment data were not provided by ***. The production processes for the crude and the finished pigment are not labor intensive. For crude pigment, ***.[26]

Table III-6
Crude violet 23: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table III-7
Finished violet 23: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Productivity improved during the period examined for finished violet 23 because ***.[27]

Allegheny's labor used to produce violet 23 is ***. The firm used *** labor to produce ***. Barker uses *** employees to produce *** as it uses to produce violet 23. The level of expertise needed to produce violet 23 is ***. The level of technical expertise needed to produce violet 23 at Clariant is ***. Clariant reported producing ***. The level of technical expertise required to manufacture crude violet 23 at NFC is ***. The level of technical expertise needed to produce violet 23 at Sun ranges from ***.

[26] Email from ***.

[27] Emails from ***.

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

U.S. IMPORTERS

The Commission sent questionnaires to 49 firms believed to be importers from China or India of violet 23 in crude, presscake, or dry color form, as well as to eight U.S. producing firms. Questionnaire responses were received from 22 companies, including from most of the large importers from China (based on information provided by the Bureau of Customs and Border Protection (Customs)).[1] Nineteen firms imported the subject merchandise during January 2000-September 2003. Sixteen firms imported from China,[2] three imported from India,[3] and five imported from other sources.[4]

Table IV-1 lists all responding U.S. importers and their quantity of imports, by source, in 2002.[5] Questionnaire respondents were located in California, Connecticut, Georgia, Illinois (2), Massachusetts, Michigan, North Carolina (2), New Jersey (6), New York (3), Ohio, Rhode Island, South Carolina, and Texas. One U.S. importer entered the subject product into or withdrew it from foreign trade zones and three importers entered the subject product into or withdrew it from bonded warehouses.[6]

Table IV-1
Violet 23: Reported U.S. imports, by importer and by source of imports, 2002

* * * * * * *

U.S. IMPORTS

Data on U.S. imports of violet 23 presented in this section of the report are from responses to Commission questionnaires. Although violet 23 is provided for separately in official U.S. import statistics, respondents contend that the volume data reported in those statistics may be overstated.[7]

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[1] In addition to the 22 responses, the Commission received responses from *** indicating that they did not import violet 23 during the period examined.

[2] *** imported crude violet 23 from China; *** imported finished violet 23 from China; and *** imported both crude and finished violet 23 from China.

[3] *** imported *** violet 23 from India.

[4] *** imported crude violet 23 from nonsubject sources; *** imported finished violet 23 from nonsubject sources; and *** imported both crude and finished violet 23 from nonsubject sources.

[5] Based on responding importers' data, *** percent of the volume of U.S. shipments of imports from subject countries in 2002 was to distributors and *** percent was to end users; U.S. shipments of reported 2002 imports from countries other than China and India (in this case Germany, France, and Japan) were ***.

[6] *** enters subject product into or withdraws it from foreign trade zones; *** enter the subject product into or withdraw it from bonded warehouses. Importers' questionnaire responses, p. 3.

[7] Respondents contend that quantity figures are overstated in official import statistics, which results in an understatement of per-unit values. Official statistics cumulate data for violet 23 crude, presscake, and dry color. Presscake is a paste that is suspended in water, and may be approximately 40 percent dry weight and 60 percent water. It is industry practice to report the dry weight of merchandise in sales documentation; however, shipping documents, such as packing lists and bills of lading, may report total weight. Shanco's conference testimony confirmed the misreporting of the total weight of shipments (presscake pigment plus water) on its Customs forms, rather than just the weight of the dry presscake. Conference transcript, pp. 88-89, and respondents' postconference brief, pp. 15-17.

Because of this possibility, coupled with the fact that questionnaire data enable (1) crude and finished (presscake and dry color) violet 23 to be presented separately (which is not possible using official statistics) and (2) the use of importers' U.S. shipment data to calculate apparent U.S. consumption, questionnaire data are used for imports of violet 23 crude, presscake, and dry color. Responding firms' imports of violet 23 account for an average of approximately 93 percent of the value of official violet 23 import statistics from China, an average of approximately 75 percent of the value of official violet 23 import statistics from India, and an average of more than 100 percent of the value of official violet 23 import statistics from all other sources. Official Commerce statistics are presented in appendix D for comparison.

Table IV-2 presents data on U.S. imports of violet 23 crude, presscake, and dry color. Table IV-2 shows that both the volume and value of U.S. imports of violet 23 from China and India increased throughout the period examined. Both volume and value of imports of violet 23 from nonsubject countries decreased during the period for which data were gathered.

Based on official statistics, India's share of the volume of total imports for the period November 2002 through October 2003, compared with total imports for the period, was 2.85 percent. Based on questionnaire data, the last full year of data for which is October 2002 through September 2003, the ratio of the volume of imports from India as compared to total imports for the period is 6.05 percent.

Table IV-2
Violet 23: U.S. imports, by sources and type, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Based on official U.S. import statistics, the principal U.S. customs districts of entry for violet 23 imported from China during January 2000-September 2003 were New York, NY; Charlotte, SC; Cleveland, OH; and Chicago, IL. The principal U.S. customs districts of entry for violet 23 imported from India were Charleston, SC, and Charlotte, NC. There was at least some overlap in imports of violet 23 from both China and India in the U.S. customs districts of Charleston, SC; Charlotte, NC; Chicago, IL; Cleveland, OH; Los Angeles, CA; New York, NY; and Philadelphia, PA.

Based on official U.S. import statistics, there were U.S. imports of violet 23 from China in each month in 2002 through September 2003, and U.S. imports of violet 23 from India in each of those months except for the months of October 2002, November 2002, January 2003, and September 2003.

APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of violet 23 are based on U.S. producers' and importers' shipments as reported in the Commission's questionnaires. Tables IV-3, IV-4, IV-5, and IV-6 present data on apparent U.S. consumption of violet 23 crude, finished presscake, finished dry color, and total finished, respectively.

Table IV-3
Crude violet 23: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent consumption, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table IV-4
Finished violet 23 (presscake only): U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent consumption, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table IV-5
Finished violet 23 (dry color only): U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent consumption, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table IV-6
Finished violet 23 (presscake and dry color): U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent consumption, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

U.S. MARKET SHARES

Data on market shares in the U.S. market for violet 23 crude, finished presscake, finished dry color, and total finished (presscake and dry color) are presented in tables IV-7, IV–8, IV-9, and IV-10, respectively.

Table IV-7
Crude violet 23: Apparent consumption and market shares, by sources, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table IV-8
Finished violet 23 (presscake only): U.S. consumption and market shares, by sources, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table IV-9
Finished violet 23 (dry color only): Apparent consumption and market shares, by sources, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table IV-10
Finished violet 23 (presscake and dry color): Apparent consumption and market shares, by sources, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

RATIO OF SUBJECT IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of subject imports to U.S. production of violet 23, crude and finished, is presented in tables IV-11 and IV-12. Aggregate subject crude imports (all from China) were equivalent to *** percent of U.S. production during 2000. This level increased to *** percent during 2002 and then decreased to *** percent during January-September 2003. Aggregate subject finished (presscake and dry color) imports were equivalent to *** percent of U.S. production during 2000. This level increased to *** percent during 2002 and further to *** percent during the January-September 2003. U.S. imports from China accounted for the bulk of the increase in the aggregate ratio from 2000 to 2002.

Table IV-11
Violet 23 (crude): Ratio of U.S. imports to U.S. production, by sources, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table IV-12
Violet 23 (finished (presscake and dry color)): Ratio of U.S. imports to U.S. production, by sources, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

U.S. Inland Transportation

Transportation costs of violet 23 for delivery within the United States vary from firm to firm but tend to account for a small percentage of the total cost of the product. For the five U.S. producers that responded to this question, these costs accounted for between 0.5 and 3.5 percent of the total cost of violet 23, with an average of 1.3 percent. For the 17 importers that provided usable responses to this question, these costs accounted for between 0.5 and 5.0 percent of the total cost of the product, with an average of 1.5 percent.

Most responding U.S. firms involved in the production or shipment of violet 23 reported a geographic market area encompassing the entire United States, while *** reported that its market area is the Midwest and NFC reported that it ships *** of its violet 23 product to Sun in Cincinnati, OH.[1] The 20 importers that responded to this question generally reported regional market areas, with the Northeast, Southeast, and Midwest cited most frequently.[2]

Producers and importers were also requested to provide information on average lead times and estimates of the percentages of their shipments that were made within specified distance ranges. Firms' responses regarding average lead times varied depending on whether 2002 sales were produced to order or were from inventory, but in general the lead time for produced-to-order sales was two months and the lead time for inventory sales was less than one week. For the five U.S. producers that provided usable responses regarding shipment distances, an average of 22.0 percent of shipments occurred within 100 miles, 64.0 percent occurred within 101 to 1,000 miles, and 14.0 percent occurred at distances over 1,000 miles. For the 19 importers that provided usable responses regarding shipment distances, an average of 49.7 percent of shipments occurred within 100 miles, 36.9 percent occurred within 101 to 1,000 miles, and 13.4 percent occurred at distances over 1,000 miles.

Exchange Rates

The nominal value of the Chinese yuan relative to the U.S. dollar has remained virtually unchanged since the first quarter of 1997 at 8.28 yuan per dollar. Producer price data for China are not available; therefore, real exchange rates cannot be calculated.

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Indian rupee depreciated approximately seven percentage points relative to the U.S. dollar during the period examined, while the real value depreciated approximately five percentage points through the first quarter of 2001 before appreciating irregularly through the second quarter of 2003 by approximately eight percentage points (figure V-1).

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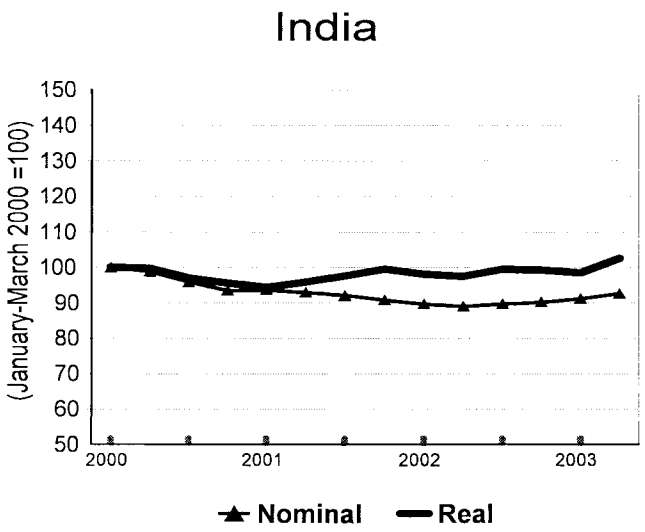
[1] ***.

[2] Of the 17 responding importers of Chinese violet 23, two firms reported a national market area, seven firms reported sales to the Midwest, six firms reported sales to the Southeast, four firms reported sales to the Northeast, two firms reported sales to the West, and one firm reported sales to the Mid-Atlantic (note that some firms reported more than one market area). Of the four responding importers of Indian violet 23 (one of which also imports violet 23 from China), one firm reported a national market area, two firms reported sales to the Northeast, and one firm reported sales to the Midwest.

Figure V-1
Exchange rates: Indexes of the nominal and real values of the Indian rupee relative to the U.S. dollar, by quarters, January 2000-June 2003



Source: International Monetary Fund, *International Financial Statistics*, October 2003.

PRICING PRACTICES

Pricing Methods

Questionnaire responses reveal that most U.S. producers and importers of violet 23 in the United States determine prices on a transaction-by-transaction basis based on current market conditions, with the majority of firms reportedly selling on a spot basis.[3] Those suppliers that did report the use of contracts to sell violet 23 generally reported using short-term (multiple deliveries for up to 12 months) contracts. Responding firms' answers regarding whether price and quantity are fixed, the existence of meet-or-release provisions, and whether prices can be renegotiated during the contract period were mixed with no clear trends.

Sales Terms and Discounts

The majority of responding firms reported no formal discount policy; however, several firms did report some volume-based discounts for individual customers. U.S. producers and importers showed general consistency on the issue of payment terms and price basis, with most firms reporting that payment is required within 30 days and price quotes are typically on a delivered basis.

[3] Two U.S. producers and six importers reported at least some contractual sales during 2002. Among U.S. producers, *** sales involved long-term contracts and *** reported that some of its sales (less than ***) involved short-term contracts. Among importers, ***, ***, ***, ***, ***, and *** reported that at least some sales involved short-term contracts during 2002.

PRICE DATA

The Commission requested U.S. producers and importers to provide quarterly data for the total quantity and value of sales of three violet 23 products to unrelated U.S. customers. These data were used to determine the weighted-average price in each quarter. Data were requested for the period January 2000 through September 2003. The products for which pricing data were requested are as follows:

Product 1. - Carbazole violet pigment 23 in crude pigment form

Product 2. - Carbazole violet pigment 23 in presscake form

Product 3. - Carbazole violet pigment 23 in dry powder pigment (dry color) form

Four U.S. producers and 17 importers provided usable pricing data for sales of the requested products in the U.S. market, although not all firms reported pricing data for all products for all quarters. Pricing data reported by U.S. importers accounted for virtually all of the quantity of U.S. shipments of imports of both crude and finished violet 23 from China and India in 2002. ***'s inability to provide usable price data for these investigations is a factor in the lower price data coverage for U.S.-produced finished violet 23. Pricing data reported by U.S. producers accounted for approximately *** percent of the quantity of U.S. producers' commercial U.S. shipments of finished violet 23 in 2002.

Price Comparisons

Data on f.o.b. selling prices and quantities of products 1 through 3 sold by the U.S. producers and importers of Chinese and Indian violet 23 are shown in tables V-1 through V-3 and figures V-2 through V-4, respectively.

Product 1

As shown in table V-1 and figure V-2, no price comparisons for crude violet 23 between the United States and subject countries were possible. NFC's reported price data do not reflect market prices and thus cannot be used to calculate margins of underselling or overselling with respect to price data for the Chinese product.[4] There were no reported price data for product 1 from India.

Product 2

As shown in table V-2 and figure V-3, price comparisons for product 2 between the United States and China were possible in a total of 15 quarters. In all quarters the Chinese product was priced below the U.S. product, with margins ranging from 23.4 to 53.2 percent and averaging 38.9 percent. Price comparisons for product 2 between the United States and India were possible in one quarter. The Indian product was priced above the U.S. product, with a margin of *** percent.[5]

[4] ***. Thus, margins of underselling/(overselling) for product 1 between the domestic product and subject imports are not shown in this report. ***. NFC stated at the conference that despite a sharp reduction in its tolling fee, Sun was still able to buy Chinese and Indian crude violet 23 for less than the total of NFC's tolling fee and Sun's cost of raw material (conference transcript, p. 18).

[5] ***.

Table V-1
Product 1: Weighted-average f.o.b. prices and quantities as reported by U.S. producers and importers, and margins of underselling/(overselling), by quarters, January 2000-September 2003

* * * * * * *

Table V-2
Product 2: Weighted-average f.o.b. prices and quantities as reported by U.S. producers and importers, and margins of underselling/(overselling), by quarters, January 2000-September 2003

* * * * * * *

Table V-3
Product 3: Weighted-average f.o.b. prices and quantities as reported by U.S. producers and importers, and margins of underselling/(overselling), by quarters, January 2000-September 2003

* * * * * * *

Figure V-2
Tolling fees reported by the U.S. producer NFC and weighted-average f.o.b. import prices for product 1, by quarters, January 2000-September 2003

* * * * * * *

Figure V-3
Weighted-average f.o.b. prices for product 2, as reported by U.S. producers and importers, by quarters, January 2000-September 2003

* * * * * * *

Figure V-4
Weighted-average f.o.b. prices for product 3, as reported by U.S. producers and importers, by quarters, January 2000-September 2003

* * * * * * *

Product 3

As shown in table V-3 and figure V-4, price comparisons for product 3 between the United States and China were possible in a total of 15 quarters. In all quarters the Chinese product was priced below the U.S. product, with margins ranging from 25.6 to 51.7 percent and averaging 42.0 percent.

Price comparisons for product 3 between the United States and India were possible in a total of 14 quarters. In all quarters the Indian product was priced below the U.S. product, with margins ranging from 27.2 to 48.4 percent and averaging 40.3 percent.[6]

LOST SALES AND LOST REVENUE

*** provided information on alleged lost sales and lost revenue due to imports of violet 23 from China. No allegations were reported against product from India. The reported allegations of lost sales and lost revenue total approximately $*** and involve approximately *** pounds of violet 23, of which

[6] ***.

$*** and *** pounds were confirmed or partially confirmed by purchasers.[7] The lost revenue and lost sales allegations are reported in tables V-4 and V-5, respectively. Additional information provided by purchasers follows.

***.

Table V-4
Violet 23: Lost revenue allegations against China by *

* * * * * * *

Table V-5
Violet 23: Lost sales allegations against China by *

* * * * * * *

[7] ***.

PART VI: FINANCIAL EXPERIENCE AND CONDITION OF U.S. PRODUCERS

BACKGROUND

Financial results on violet 23 were reported in usable form by Allegheny, NFC, Summit, and Sun's plant in Cincinnati (referred to here as Sun (Cincinnati)) and are presented in this section of the report.[1] Because financial results reported by Sun (Bushy Park), Clariant, and Barker were missing and/or incomplete, they are not presented here.[2]

The financial information presented in this section of the report is based on U.S. GAAP and represents calendar-year periods.

Crude Violet 23

Income-and-loss data on crude violet 23 are presented in table VI-1 and on a unit basis in table VI-2. NFC is the only U.S. producer that converts primary raw materials into crude violet 23 and is therefore the only company included in the above-referenced tables.

*** NFC's crude violet 23 was consumed by Sun pursuant to a tolling agreement. ***. NFC has no commercial sales of the product.

Table VI-1
Crude violet 23: Financial results for calendar years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table VI-2
Crude violet 23: Financial results (*per pound*) for calendar years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

The *** operating margin generated by NFC in 2000 *** in 2001 due to higher allocated selling, general, and administrative (SG&A) expenses and a *** decline in per pound tolling revenue which was partially offset by a *** average cost of tolling.[3] The result was *** for NFC in 2001. The *** in NFC's financial results accelerated in 2002 with *** in tolling volume, per-pound tolling revenue, and higher average costs. In interim 2003, *** was reduced somewhat compared to the previous period as tolling volume, per pound tolling revenue, and average tolling costs improved.

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[1] ***.

[2] Staff made follow-up requests for all missing and incomplete data. ***. December 15, 2003 letter from Matthew McGrath, Barnes, Richardson and Colburn, to Olympia Hand, ITC investigator.

[3] An examination of NFC's schedule of S&A expenses (included as supplemental information to its audited financial statements) indicated that the primary reason for the increase in NFC's overall 2001 SG&A was ***. ***. Staff conversation with John Dickson, NFC, December 16, 2003. Notwithstanding this revision, the examination indicated that the allocation of NFC's SG&A expenses to violet 23 was generally consistent with the company's reported value-added allocation methodology.

Changes in NFC's average cost of tolling are consistent with variations in fixed cost absorption as the company's tolling volume declined in 2002 and then increased in interim 2003.[4]

Finished Violet 23

Income-and-loss data on finished violet 23 are presented in table VI-3 and on a unit basis in table VI-4. Table VI-5 presents selected company-specific data on finished violet 23.

Table VI-3
Finished violet 23: Financial results for calendar years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table VI-4
Finished violet 23: Financial results (*per pound*) for calendar years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table VI-5
Finished violet 23: Selected financial information, by firms, for calendar years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Allegheny and Summit reported *** of finished violet 23, while Sun (Cincinnati) reported ***.[5] Several aspects regarding Sun (Cincinnati)'s internal consumption values should be noted. The volume of internal consumption was *** relative to commercial sales throughout the period. As reported to the

[4] NFC's other factory costs include all manufacturing costs except labor and the limited raw materials that NFC directly provides. At the staff conference, NFC's CEO stated that ". . . the chemical manufacturing business, especially chemical reactions, et cetera, is a highly capital intensive business, so we have a huge amount of fixed cost. So the volume of business that we have, the quantity, determines the ultimate cost more than any other single factor . . ." Conference transcript, pp. 82-83. An examination of NFC's schedule of cost of sales (included as supplemental information to its audited financial statements) indicated that *** also increased during the period examined. At the staff conference, NFC's CEO acknowledged that reduced fixed cost absorption was not the only factor negatively affecting the cost of violet 23: "During the period of investigation we've had significant increases in energy costs. We use natural gas as a clean fuel, as an alternative to number 2 fuel oil. And, as it's well known in the industry, there's been a significant spike. We're paying about twice the price for natural gas than we did three years ago and that in turn reflects on the cost of all the products that we make and especially the carbazole violet pigment because it's energy intensive. There's a lot of energy that goes into the chemical reactions, a lot of energy that's required to recover the solvents so that we can reuse them and recycle them. So it's an energy intensive process, so that would have some effect and that would be a variable cost. But notwithstanding the energy, the main thing is the fixed cost associated with that manufacturing process in the form of the financing, the leased equipment, the invested capital, and even to some degree the lack of flexibility that we have with the labor force." Conference transcript, pp. 82-83.

[5] ***. Email from ***.

Commission by Sun (and subsequent to revisions made by Commission staff), the average internal consumption and transfer unit sales values for Sun (Cincinnati) were both ***.[6]

Financial results on finished pigments reported to the Commission were characterized by a reduction in overall volume and average unit revenue in 2001 which resulted in *** for that period. Despite a continued decline in average unit revenue, higher volume in 2002 and lower average unit costs resulted in a *** compared to the previous period.[7]

While average unit revenue for interim 2003 was lower compared to interim 2002, average costs were also lower. As a result, the industry reported ***.[8] [9] [10]

Consolidated (Crude and Finished) Violet 23

Consolidated income-and-loss data on crude violet 23 are presented in table VI-6. The consolidation represents activity on finished violet 23 with a deduction for NFC's profit or loss on tolling activity.

Table VI-6
Consolidated (crude and finished) violet 23: Financial results for calendar years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

CAPITAL EXPENDITURES, RESEARCH AND DEVELOPMENT EXPENSES, AND INVESTMENT IN PRODUCTIVE FACILITIES

Data on capital expenditures, research and development (R&D) expenses, and property, plant, and equipment related to crude and finished violet pigments are shown in table VI-7.

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[6] ***.

[7] The reduction in the cost of crude violet 23 (imported), tolling raw materials, and tolling fee resulted in an increase in the relative value added represented by the finishing process. Value added for converting crude violet 23 into finished violet 23 (the sum of direct labor plus other factory costs (i.e., conversion costs) divided by total cost of goods sold (COGS)) was ***.

[8] The changes in 2002 average cost correspond to ***. With respect to the observed reduction in the cost of raw materials provided to NFC (and converted to crude violet 23), a Sun official stated that "generally chemical prices globally have been falling for the last several years . . . one other reason it went down is we did make some technology changes that increased the yield so the actual unit cost of raw material per pound dropped because of improved yield in the process." Conference transcript, pp. 64-65. ***, Sun (Cincinnati) ***.

[9] When considering the absolute level of finished violet 23 financial results, it should be noted again that the financial results of Barker, Clariant, and Sun (Bushy Park) were not provided to the Commission; i.e., the level of profitability generated by *** might be greater than their share of volume alone would suggest and *** on its violet 23 operations. ***. Email from ***. ***.

Because the information was not reported to the Commission, it is unknown whether *** operating margin was representative of previous periods and, by extension, what the industry's overall financial results would be had their data been included. With respect *** it is likely that the industry's overall financial results would be *** if that company's data were included.

[10] ***.

Table VI-7
Violet 23: Capital expenditures, R&D expenses, and value of property, plant, and equipment, calendar years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

The petition noted that "{t}he production of finished pigment is less capital intensive than crude production. No chemical synthesis is required and the equipment required is commonly available in the market and can be used to produce a variety of other pigments."[11] Crude production was characterized in the petition as ". . . highly specialized because the chemical process required for each crude pigment is completely different from the others."

NFC's 2000 and 2001 capital expenditures primarily represented ***.[12] According to NFC, this was originally to be ***. At the conference, NFC's CEO stated that the reduction in average cost would have been around 5 percent (if the entire investment had taken place).[13]

As noted previously, Sun (Cincinnati) reportedly had ***.[14] Sun's interim 2003 capital expenditure reflected an allocated portion of ***.[15]

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of crude and finished violet pigment 23 from China and India on their firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are shown in appendix E.

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[11] Petition, p. 7.

[12] NFC's CEO stated at the conference that the investment that it made was not required for environmental compliance reasons. Conference transcript, pp. 69-70.

[13] Conference transcript, p. 69.

[14] A Sun company official confirmed that ***. Email from ***.

[15] According to a Sun company official, " . . . the capital expenditure is the waste water upgrade we had to make at our Cincinnati plant and the primary mission of that upgrade was we had to meet local copper regulations that had been put on by the Cincinnati MSD, which is the local Metropolitan Sewer District." Conference transcript, p. 70.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the nature of the alleged subsidies was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE INDUSTRY IN CHINA

Tables VII-1 and VII-2 present data for reported production and shipments of crude and finished violet 23, respectively. The Commission requested data from seven Chinese firms believed to produce violet 23 (all seven of which were listed in the petition).[1] The Commission received questionnaire responses from five producers of violet 23 in China (Hangzhou Baihe Chemical Co.; Ltd., Jiangsu Haimen Industrial Chemicals Factory; Nantong Haidi Chemicals Co., Ltd.; Nantong Longfeng Chemical Co., Ltd.; and WuXi Xinguang Chemical Industry Co., Ltd.) and from five non-producing exporters (Goldlink Industries Co., Ltd.; JECO Pigment China Co. Ltd.; Oriental Color Corp., Ltd.; Sinochem Ningbo Import/Export Co., Ltd.; and Trust Chem Co., Ltd.); some of these firms were not known to be producers or exporters and were not sent questionnaires, but nonetheless sent in completed responses. ***. The Chinese producers also reported violet 23 exports to markets throughout the world, including Europe, Japan, Korea, South America, and Southeast Asia.[2] The five responding producers indicated that they accounted for approximately *** percent of the production of violet 23 in China in 2002.

Table VII-1
Crude violet 23: Data for the industry in China, 2000-02, January-September 2002, January-September 2003, and projected 2003-04

* * * * * * *

Table VII-2
Finished violet 23 (presscake and dry color): Data for the industry in China, 2000-02, January-September 2002, January-September 2003, and projected 2003-04

* * * * * * *

[1] The Commission requested data from: (1) Hangzhou Baihe Chemical Co., Ltd. ("Baihe"); (2) Hangzhou Star-up Pigment Co., Ltd. ("Star-up"); (3) JECO Pigment China Co.; Ltd. (JECO Pigment China"); (4) Jiangsu Haimen Industrial Chemicals Factory ("Haimen"); (5) Nantong Xinying Chemical Industry Co., Ltd. ("Xinying"); (6) WuXi XinGuang Chemical Industry Co., Ltd. ("WuXi"); and (7) Yancheng Jianghai Chemical Group Co. ("Yancheng"), all of which are believed to be producers of violet 23 in China. The Commission did not receive questionnaire responses from Star-up, Xinying, or Yancheng.

[2] Foreign producer questionnaires, pp. 5 and 7.

THE INDUSTRY IN INDIA

Tables VII-3 and VII-4 present data for reported production and shipments of violet 23 in India. The Commission requested data from six firms believed to produce violet 23 (all of which were listed in the petition).[3] The Commission received a questionnaire response from one producer of violet 23 in India (Alpanil Industries) which reported that it accounted for *** percent of crude and *** percent of finished violet 23 production in India and for *** percent of all *** and *** percent of all *** exports to the United States of violet 23 from India in 2002 (in fact, it accounted for approximately *** percent of the volume of U.S. imports of violet 23 in 2002 as reported in the official statistics of the Department of Commerce (see app. D)).[4] In addition to exports to the United States, the responding Indian producer also reports violet 23 exports to markets in ***.

Table VII-3
Crude violet 23: Data for the industry in India, 2000-02, January-September 2002, January-September 2003, and projected 2003-04

* * * * * * *

Table VII-4
Finished violet 23 (presscake and dry color): Data for the industry in India, 2000-02, January-September 2002, January-September 2003, and projected 2003-04

* * * * * * *

Alpanil reported that *** percent of its total sales in the most recent fiscal year were sales of violet 23. *** percent, by 2004. Alpanil only exported presscake to the United States in 2000, and does not ***. Alpanil's exports of presscake to all other markets increased by *** percent from 2000 to 2001 before returning to 2000 levels in 2002. Alpanil projects *** during 2003-2004. From 2000-02, Alpanil's exports of dry color to the United States increased by approximately *** percent, before declining by *** percent during the interim periods. Alpanil's exports of dry color to the United States are projected to *** 2004. Alpanil's exports of dry color to all other markets increased ***, by ***

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[3] The Commission attempted to contact 12 Indian producers of violet 23 listed in the petition and was successful in contacting six Indian producers of violet 23 (Adhik Chemicals Pvt. Ltd. ("Adhik"); Alpanil Industries ("Alpanil"); Deepak Chemicals Group ("Deepak"); Meghmani Organics Ltd. ("Meghmani"); Navpad Pigments, Pvt. Ltd. ("Navpad"); and the Ratnavir Group of Companies ("Ratnavir")). Of the remaining six firms, two firms (AMI Pigments Pvt. Ltd. (part of the Ratnavir Group of Companies) and Western Chemicals Industries (P) Ltd.) had no fax or email contact information and four firms (P.G. Chemicals Pvt. Ltd.; Pidilite Industries Ltd. (whose website states that the firm is the "largest manufacturer of Carbazole Violet Pigment in India"); Hemani Group of Industries; and Nirvip Dyes & Chemicals Pvt. Ltd.) could not be contacted from information provided in the petition or from the companies' websites. The Commission established email communications with Alpanil, Meghmani Organics, and Navpad. Alpanil responded to the Commission's questionnaire, and Meghmani responded that ***. Fax correspondence, ***, Meghmani Organics Ltd., December 1, 2003. On November 27, 2003, Navpad requested electronic files to have clear pages; electronic pdf files for the foreign producers'/exporters' questionnaire and instructions for same were sent to Navpad as email attachments on November 28, 2003 and a follow up email, again with electronic files attached, was sent to Navpad on December 16, 2003. Navpad Pigments is part of the Mahavir Group. Petition, exh. 8-b, p. 14.

[4] Alpanil Industries states its annual capacity of violet 23 as ***. Alpanil states that it exports "***" and further cites its use of "***." Alpanil is part of the Meghmani Group of Industries which includes Meghmani Industries Limited. Petition, exh. 8-b, p. 4.

percent, from 2000-02, and by *** percent during the interim periods. Alpanil projects its exports of dry color to *** 2004.

From 2000 to 2002, Alpanil's share of its total violet 23 shipments being exported to the United States increased by *** percentage points as its share of its total shipments being exported to the other world markets decreased by *** percentage points. During this period its home market sales of violet 23 decreased by *** pounds, a decrease of *** percent. Alpanil's total violet 23 capacity increased throughout the period examined, increased *** from 2000 to 2002, and is projected to *** 2004. Its total production of violet 23 increased *** percent during 2000-02, and it is projected to *** 2004. Alpanil did not describe the basis for its projections. ***.

U.S. IMPORTERS' INVENTORIES

Reported inventories held by U.S. importers of violet 23 from China and India are shown in table VII-5.

Table VII-5
Violet 23: U.S. importers' end-of-period inventories of imports, by source and type, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

U.S. IMPORTERS' IMPORTS SUBSEQUENT TO SEPTEMBER 30, 2003

The Commission requested importers to indicate whether they imported or arranged for the importation of violet 23 from China or India after September 30, 2003. Of the 22 responding importers, 13 reported imports of violet 23 from China or India subsequent to September 30, 2003. Importers and the quantity of violet 23 imported subsequent to September 30, 2003, are shown in the tabulation below.

* * * * * * *

DUMPING IN THIRD-COUNTRY MARKETS

There are no known violet 23 third-country market import relief investigations or extant antidumping duty orders on the product from China or India.[5]

[5] Importers' questionnaire responses, p. 3; conference transcript, pp. 62 and 133.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–437 and 731–TA–1060 and 1061 (Preliminary)]

Carbazole Violet Pigment 23 From China and India

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations No. 701–TA–437 and 731–TA–1060 and 1061 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) and 733(a) of the Act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and India of carbazole violet pigment 23,[1] provided

[1] The merchandise covered by these investigations is carbazole violet pigment 23, identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5,15-diethyl-5,15-dihydro-, and molecular formula of $C_{34}H_{22}C_{12}N_4O_2$. The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigments dispersed in

Continued

for in subheading 3204.17.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by January 5, 2004. The Commission's views are due at Commerce within five business days thereafter, or by January 12, 2004.

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

EFFECTIVE DATE: November 21, 2003.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on November 21, 2003, by Nation Ford Chemical Co., Fort Mill, SC, and Sun Chemical Corp., Fort Lee, NJ.

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

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

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 12, 2003, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202–205–3182) not later than December 9, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 17, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules (19 CFR 201.18) (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

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

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: November 21, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–29647 Filed 11–26–03; 8:45 am]

BILLING CODE 7020–02–P

oleoresins, flammable solvents, water) are not included in these investigations.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-892, A-533-838]

Notice of Initiation of Antidumping Duty Investigations: Carbazole Violet Pigment 23 from India and the People's Republic of China

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

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482-0371 or Chris Welty at (202) 482-0186, AD/CVD Enforcement Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATIONS:

The Petition

On November 21, 2003, the U.S. Department of Commerce (the Department) received a petition filed in proper form by Sun Chemical Corporation (Sun) and Nation Ford Chemical Company (collectively, the petitioners). The Department received supplemental information from the petitioners on December 4, 2003.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of carbazole violet pigment 23 (CVP-23) from India and the People's Republic of China (PRC) are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from India and the PRC are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petition."

Periods of Investigation

The anticipated period of investigation (POI) for India is October 1, 2002, through September 30, 2003, and for the PRC it is April 1, 2003, through September 30, 2003. *See* section 351.204(b)(1) of the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27385 (May 19, 1997)).

Scope of Investigations

The merchandise covered by these investigations is carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358-30-1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-*

dichloro-5, 15 5,15-diethy-5,15-dihydro-, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the investigations.

The merchandise subject to these investigations is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

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

In this case, the petition covers a single class or kind of merchandise, CVP-23, as defined in the "Scope of Investigations" section, above. The petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Further, based on our analysis of the information presented to the Department by the petitioners, we have determined that there is a single domestic like product which is consistent with the definition of the "Scope of the Investigation" section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that the petitioners have established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met.

Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Office 5 AD/CVD Enforcement, Initiation Checklist: Carbazole Violet Pigment 23 (CVP-23) from India and the People's Republic of China (December 11, 2003) (Initiation Checklist) at Attachment II, on file in the Central Records Unit, Room B-099 of the Department of Commerce.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and home market prices and factors of production are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

[1] Please note that the bracketed section of the product description, *[3,2-b:3',2'-m]*, is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* December 4, 2003, amendment to petition at 8.

[2] *See USEC, Inc., v. United States*, 132 F. Supp. 2d 1,8 (CIT 2001), citing *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988). *See also High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

India

Export Price

The petitioners based export price (EP) on average unit values of CVP-23 imports from India for the POI. The petitioners derived such values from import statistics under the HTSUS subheading 3204.17.9040.

Normal Value

With respect to normal value (NV), the petitioners provided a home market price for CVP-23 based on a price list obtained during the POI. The price was quoted in Indian rupees per kilogram on an ex-warehouse basis with the Central Excise and Sales Tax included. The petitioners adjusted this price by deducting the Central Excise and Sales Tax and converting the Indian value to U.S. dollars per pound using the exchange rates from the Department's website.

The estimated dumping margin for subject merchandise from India, based on a comparison of EP and NV based on a home market price quote, is 147.59 percent.

PRC

Export Price

The petitioner based EP on average unit values of CVP-23 imports from the PRC during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 3204.17.9040.

Normal Value

The petitioner alleges that the PRC is a NME country, and notes that in all previous investigations the Department has determined that the PRC is a NME. *See, e.g., Notice of Final Determination in the Less Than Fair Value Investigation of Barium Carbonate From the People's Republic of China*, 68 FR 46577, 46577–46578 (August 6, 2003). In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered a NME shall remain in effect until revoked. Therefore, the PRC will continue to be treated as a NME country unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as a NME remains in effect, the petitioner determined the dumping margin using a NME analysis.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) at a level of economic development comparable to the PRC in terms of per-capita gross national income; and (3) a commercial producer of the subject merchandise. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation.

With respect to NV, the petitioners calculated a NV based on the constructed values for crude and finished CVP-23, which were then weight-averaged based on the relative quantity of crude and finished color pigment imported during the POI. The petitioners provided constructed values based on Indian surrogate values and factors of production from the production processes of Indian and U.S. producers of CVP-23. Most of the Indian material inputs for the production of CVP-23 are taken from a schedule published by the Government of India and used to calculate import credits in a program called the Duty Entitlement Passbook Scheme. The import credits are based on the quantity of physical inputs used to produce crude CVP-23 and other products covered by the program. For those inputs not reported by the Indian government, the petitioners relied on their own experience in producing crude and finished CVP-23, and they adjusted for any known differences between their production process, the Indian production process, and the Chinese CVP-23 production process. Petitioners were unable to obtain publicly available prices for two material inputs, chloranil and para toluene sulphonyl chloride, in India or any other surrogate country and, therefore, submitted price quotes from Indian suppliers. We determined these prices were sufficient for initiation purposes.

Where applicable, the petitioners adjusted values to be exclusive of excise and sales taxes. Indian values were converted to U.S. dollars using the exchange rates from the Department's website. Where surrogate values were not contemporaneous with the POI, the petitioners adjusted such values using wholesale price indices for all commodities from India.

For selling, general and administrative expenses, profit and packaging, the petitioners relied upon amounts reported in the 2001–2002 financial reports of Pidilite Industries Ltd., which according to its website is the largest producer of CVP-23 in India.

The estimated dumping margin for the PRC, based on a comparison of EP and NV based on a weight-averaged constructed value, is 370.06 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of CVP-23 from India and the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the cumulated imports from India and the PRC of the subject merchandise sold at less than NV.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information.

The Department has assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklist.

Initiation of Antidumping Investigations

Based upon our examination of the petition, we have found that it meets the requirements of section 732 of the Act. *See* the Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of CVP-23 from India and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Distribution of Copies of the Petition

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

ITC Notification

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

Preliminary Determinations by the ITC

The ITC will determine no later than January 5, 2004, whether there is a reasonable indication that imports of

CVP-23 from India and the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits. This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 11, 2003.

James Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00596 Filed 12–18–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-839]

Notice of Initiation of Countervailing Duty Investigation: Carbazole Violet Pigment 23 From India

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

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482-3964, Office of AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigation

The Petition

On November 21, 2003, the U.S. Department of Commerce (the Department) received a petition filed in proper form by Sun Chemical Corporation and Nation Ford Chemical Company (collectively, the petitioners). The Department received supplemental information to the petition from the petitioners on December 5, 2003.

In accordance with section 702(b)(1) of the Act, petitioners allege that producers or exporters of carbazole violet pigment 23 (CVP-23) in India receive countervailable subsidies within the meaning of section 701 of the Act, and that imports from India are materially injuring, or are threatening material injury, to an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petition."

Period of Investigation

The anticipated period of investigation (POI) is January 1, 2002 through December 31, 2002.

Scope of Investigation

The merchandise covered by this investigation is carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358-30-1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5, 15 5,15-diethy-5,15-dihydro-*, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the investigation.

[1] Please note that the bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* December 4, 2003, amendment to petition (supplemental petition) at 8.

The merchandise subject to this investigation is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Tariff Act of 1930, we held consultations with the Government of India ("GOI") regarding this petition on December 9, 2003. *See Memorandum to the File from Sean Carey: Consultations with the Government of India Regarding the Countervailing Duty Petition on Carbazole Violet Pigment 23*, dated December 10, 2003.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the

domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

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

In this case, the petition covers a single class or kind of merchandise, CVP-23, as defined in the "Scope of Investigation" section, above. The petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Further, based on our analysis of the information presented to the Department by the petitioners, we have determined that there is a single domestic like product which is consistent with the definition of the "Scope of the Investigation" section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that the petitioners have established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 702(c)(4)(D) of the Act. In addition, the Department received no opposition to the petitions from domestic producers of the like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 702(c)(4)(A)(ii) of the Act also are met.

Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Countervailing Duty Investigation Initiation Checklist: Carbazole Violet Pigment 23 (CVP-23) in the Forms of Crude Pigment, Presscake and Dry Color Pigment from India* (December 11, 2003) (Initiation Checklist) at Attachment II, on file in the Central Records Unit, Room B-099 of the Department of Commerce.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India are materially injuring, or are threatening material injury to, an industry in the United States.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that; (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *CVD Initiation Checklist*):

1. The Duty Entitlement Passbook Scheme (DEPS)/ Post-Export Credits
2. Export Promotion Capital Goods Scheme (EPCGS)
3. Export Processing Zones (EPZ)/ Export-Oriented Units (EOU) Programs
4. Income Tax Exemption Scheme (Sections 10A, 10B, and 80 HHC)
5. Pre-Shipment Export Financing
6. Exemption of Export Credit from Interest Taxes
7. Market Development Assistance (MDA)
8. Special Imprest Licenses
9. Central Value Added Tax (CENVAT) Scheme

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of subsidized imports from India of the subject merchandise.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information.

The Department has assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist.*

Initiation of Countervailing Duty Investigation

Based on our examination of the petition on CVP-23, and petitioners' responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether

[2] *See USEC, Inc., v. United States*, 132 F. Supp. 2d 1,8 (CIT 2001), citing *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988). *See also High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

manufacturers, producers, or exporters of CVP-23 from India receive countervailable subsidies. Unless the deadline is extended, we will make our preliminary determination no later than 65 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 702(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than January 5, 2004, whether there is a reasonable indication that imports of CVP-23 from India are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 11, 2003.

James Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00597 Filed 12–19–03; 8:45 am]

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APPENDIX B

CALENDAR OF THE PUBLIC CONFERENCE

CALENDAR OF THE PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the following investigations:

Subject: Carbazole Violet Pigment 23 from China and India
Investigations Nos.: 701-TA-437 and 731-TA-1060-1061 (Preliminary)
Date and Time: December 12, 2003 - 9:30 a.m.

The conference was held in Room 101 (Main Hearing Room) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

In Support of the Imposition of Antidumping Duties:

Pepper Hamilton LLP
Washington, DC
on behalf of

Nation Ford Chemical Company (NFC) and Sun Chemical Corp. (Sun)

John A. Dickson, Chief Executive Officer, NFC
Edwin B. Faulkner, Director of Communications & Regulatory Affairs, Colors Group, Sun
Stephen J. Schmidt, Global Director of Purchasing, Colors Group, Sun

Gregory C. Dorris - OF COUNSEL

Barnes, Richardson & Colburn
Washington, DC
on behalf of

Clariant Corp.

Andrew Zamoyski, Manager, Pigments and Additives, Clariant Corp.

Matthew T. McGrath - OF COUNSEL

In Opposition to the Imposition of Antidumping Duties:

Garvey Schubert Barer
Washington DC
on behalf of

Hangshou Baihe Chemical Co., Ltd.
Hangshou Trust Chemical Co., Ltd.
Jiangsu Haimen Industrial Chemicals Factory
Nantong Haidi Chemicals Co., Ltd.
Wuxi Xinguang Chemical Industry Co., Ltd.

Lilly Lee, President, Alpha Source
Jinli Qi, Vice President, Jeco Pigments (USA) Inc.
James Wang, President, Shanco International
Rick Westrum, Vice President of Strategic Sourcing, INX International Co.

William E. Perry - OF COUNSEL

The Embassy of India
Washington DC
on behalf of

The Government of India

V.S. Seshadri, Minister of Commerce, Embassy of India

APPENDIX C

SUMMARY TABLES

Table C-1
Crude violet 23: Summary data concerning the U.S. market, 2000-02, January September 2002, and January September 2003

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Table C-2
Finished violet 23: Summary data concerning the U.S. market, 2000-02, January September 2002, and January September 2003

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Table C-3
Finished violet 23: Summary data concerning the U.S. market, 2000-02, January September 2002, and January September 2003

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APPENDIX D

COMMERCE DATA

Table D-1

Violet 23: U.S. imports, by source, 2000-2002, January-September 2002, and January-September 2003

Source	2000	2001	2002	January-September 2002	January-September 2003
	Quantity (1,000 pounds)				
China	142	361	501	408	614
India	51	59	61	60	21
Subtotal	193	420	562	468	634
All other	736	524	544	449	260
Total	929	944	1,106	917	894
	Value (1,000 dollars) (1)				
China	1,409	3,535	4,636	3,747	3,710
India	1,090	964	801	781	287
Subtotal	2,499	4,498	5,438	4,527	3,997
All other	14,911	9,446	6,572	5,472	3,231
Total	17,410	13,945	12,009	9,999	7,227
	Unit value (dollars/pound)				
China	9.93	9.80	9.25	9.18	6.05
India	21.19	16.36	13.07	13.01	13.79
Average	12.93	10.72	9.67	9.67	6.30
All other	20.26	18.03	12.08	12.20	12.42
Average	18.73	14.78	10.86	10.91	8.08

(1) Landed, duty-paid.

Source: Compiled from official statistics of the U.S. Department of Commerce (HTSUS 3204.17.9040).

APPENDIX E

EFFECTS OF IMPORTS OF VIOLET 23 FROM CHINA AND INDIA ON U.S. PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

The Commission requested U.S. firms to describe any actual or anticipated negative effects, since January 1, 2000, of imports of violet 23 from China and India on their growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Responses are shown below.

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