Chlorinated Isocyanurates From China and Spain

Investigation Nos. 731-TA-1082 and 1083 (Final)

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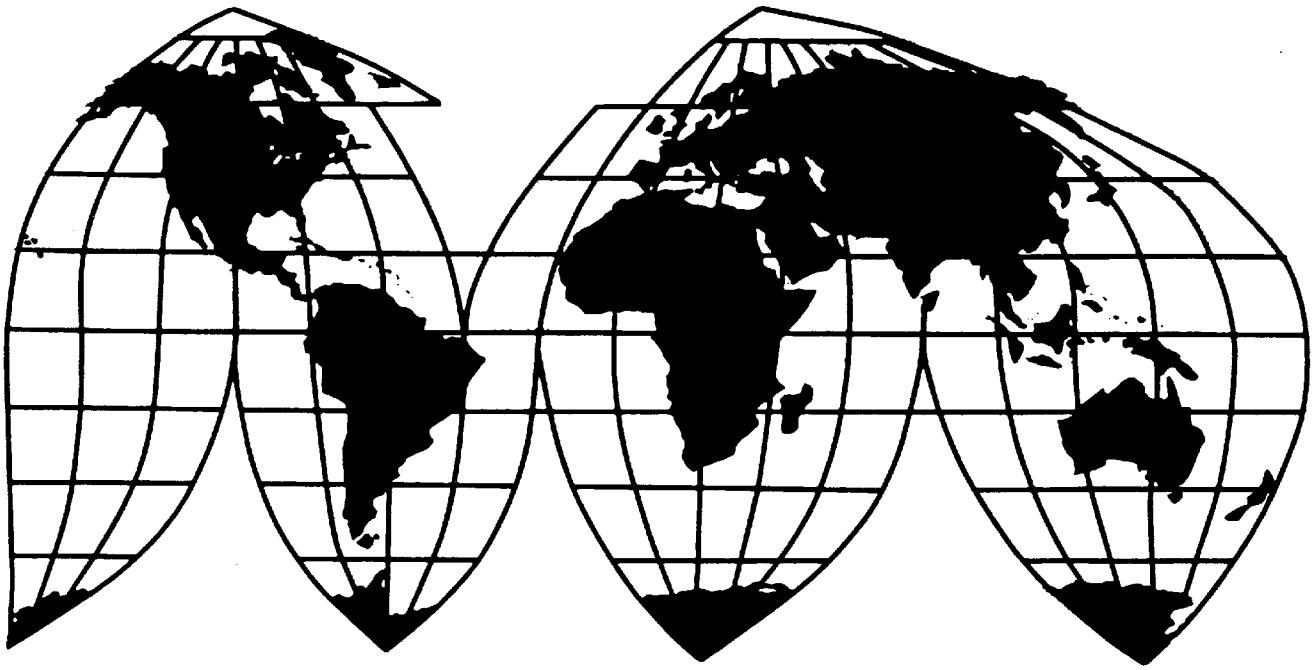
U.S. International Trade Commission



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Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-1082-1083 (Final)

CHLORINATED ISOCYANURATES FROM CHINA AND SPAIN

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China and Spain of chlorinated isocyanurates, provided for in subheading 2933.69.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). With regard to U.S. imports from China, the Commission also makes a negative finding of critical circumstances.

BACKGROUND

The Commission instituted these investigations effective May 14, 2004, following receipt of a petition filed with the Commission and Commerce by Clearon Corp. ("Clearon"), Fort Lee, NJ, and Occidental Chemical Corp. ("OxyChem"), Dallas, TX. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of chlorinated isocyanurates from China and Spain were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 5, 2005 (70 FR 916). The hearing was held in Washington, DC, on May 5, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that an industry in the United States is materially injured by reason of imports of chlorinated isocyanurates ("chlorinated isos") from China and Spain that are sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to the subject imports from China covered by Commerce's critical circumstance determination.

I. BACKGROUND

Chlorinated isos are chemical compounds used primarily as sanitizing agents for swimming pools, spas, and industrial water, and as disinfecting and bleaching agents for detergents, bleaches, and cleansers. The active ingredient for sanitizing purposes is chlorine. Chlorinated isos are produced in granular form (as trichloroisocyanuric acid, or trichlor, and as sodium dichloroisocyanurate, or dichlor), in powder form, and in tablet form.[1] These products are usually sold to end-users as a solid, commonly in granular, tablet, or stick form.

On May 14, 2004, a petition was filed with the Commission and Commerce by Clearon Corp. of Fort Lee, New Jersey ("Clearon"), and Occidental Chemical Corp. of Dallas, Texas ("OxyChem"), alleging that an industry in the United States is materially injured by reason of less than fair value imports of chlorinated isocyanurates from China and Spain.[2] There are three domestic integrated producers that produce chlorinated isos from raw materials: the petitioning firms and BioLab, Inc. of Lawrenceville, Georgia, ("BioLab"). In addition, Clearon and BioLab convert the granular form into tablets; OxyChem ***, for conversion of its granular product into tablets. There are also several firms that have or may have tableting operations for chlorinated isos, six of which responded to the Commission's questionnaires.[3]

Domestic production accounted for a majority of the U.S. market for chlorinated isos over the period examined.[4] The next largest source was imports from the two subject countries, China and Spain. Also present in the market were imports from nonsubject sources, including Italy, Japan, Mexico, and South Africa.[5]

II. DOMESTIC LIKE PRODUCT

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[6] 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."[7] In turn, the Act defines "domestic like

[1] CR at I-6-7; PR at I-4-5.

[2] CR/PR at I-1 & Table III-1.

[3] CR at I-3, PR at I-2; CR/PR at III-1; Table III-1 & n.5, as revised, OINV Memorandum INV-CC-080.

[4] Table C-1, as revised, OINV Memorandum INV-CC-080.

[5] CR/PR at IV-1.

[6] 19 U.S.C. § 1677(4)(A).

[7] Id.

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."[8]

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.[9] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[10] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[11] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise sold at less than fair value, the Commission determines what domestic product is like the imported articles that Commerce has identified.[12]

In its final determinations with respect to subject imports from China and Spain, Commerce defined the imported merchandise within the scope of investigation as:

> [C]hlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) Trichloroisocyanuric acid (Cl_3 $(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2$ $(NCO)_3$ $(2H_2O)$, and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2$ $(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This investigation covers all chlorinated isocyanurates.[13]

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[8] 19 U.S.C. § 1677(10).

[9] See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

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

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

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

[13] 70 Fed. Reg. 24503, 24503 (May 10, 2005) (China); 70 Fed. Reg. 24506, 24507 (May 10, 2005) (Spain). Importer Arch Chemicals, Inc. ("Arch") has a patented chlorinated isocyanurates tablet that is included in the scope of these investigations.

Chlorinated isos are chemical compounds used primarily as sanitizing agents for swimming pools, spas and industrial water treatments, and as bleaching agents for detergents, bleaches and cleansers.[14]

There are three primary chemical compositions of chlorinated isos (all of which are within Commerce's scope of investigation), which vary with respect to the amount of available chlorine: (1) trichloroisocyanuric acid ("trichlor") which has 90 percent available chlorine; (2) sodium dichloroisocyanurate ("dichlor") in anhydrous form, which has 63 percent available chlorine; and (3) dichlor in dihydrate form, which has 56 percent available chlorine.[15]

In the preliminary phase of these investigations, the Commission applied its traditional six factor like product analysis and found a single domestic like product of chlorinated isos, coextensive with Commerce's scope of investigation. It indicated in its preliminary determination that it would continue to consider whether chlorinated isos should be divided into two separate domestic like products: either trichlor and dichlor; or blended multifunctional tablets ("blended tablets") and all other chlorinated isos.[16] At the Commission's May 5, 2005 hearing, Enviro Tech, a non-party, raised the issue whether powdered chlorinated isos should be considered a separate domestic like product from other chlorinated isos.[17]

In these final investigations, Petitioners Clearon and OxyChem (collectively referred to as "Petitioners"), as well as BioLab continue to advocate a single domestic like product consisting of all chlorinated isos, coextensive with the scope of investigation.[18] Chinese Respondents[19] argue that trichlor and dichlor are separate domestic like products. Arch argues that blended tablets are a separate domestic like product from other chlorinated isos.

Thus, we have considered whether trichlor and dichlor are separate domestic like products; whether blended tablets and all other chlorinated isos are separate domestic like products; and whether powdered chlorinated isos and all other chlorinated isos are separate domestic like products.[20] We have analyzed the first two issues by applying the Commission's traditional six factor like product analysis, and the last issue by applying both the six factor like product analysis and our semifinished like product analysis.[21]

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[14] CR at I-6; PR at I-4.

[15] CR at I-5; PR at I-4. We refer to both forms of dichlor collectively as "dichlor."

[16] Chlorinated Isocyanurates from China and Spain, Inv. Nos. 731-TA-1082-1083 (Preliminary), USITC Pub. 3705 (July 2004) ("Preliminary Determination") at 6-9.

[17] Transcript of Commission Hearing held May 5, 2005 ("Tr."). at 198-203.

[18] Petitioners' Prehearing Brief at 3. BioLab Prehearing Brief at 4.

[19] The Chinese Respondents are the following Chinese producers/exporters: Nanning Chemical Industry Co., Ltd. and Changzhou Clean Chemical Co., Ltd.; and the following tableters: Alden Leeds, Cadillac Chemical Corp. ("Cadillac"), and N. Jonas and Co., Inc. ("N. Jonas"), as well as importer Wego Chemical and Mineral Corporation ("Wego"). Another Chinese producer, Hebei Jiheng Chemical Co., was also a respondent, but did not join the Chinese Respondents' briefs. CR at I-4, n.10; PR at I-2, n.10.

[20] In the preliminary phase of the investigation, Arch attempted to distinguish the granular chlorinated isos made by Petitioners and its trichlor tablets (blended and non-blended); the Commission did not find a clear dividing line between granular and tableted trichlor. Preliminary Determination at 9. None of the parties, including Arch, raised this issue in the final phase of this investigation; therefore, we do not address it further.

[21] Enviro Tech's representative presented arguments at the Commission's hearing based on his application of the Commission's six-factor like product analysis to powdered chlorinated isos. Tr. at 199-202. We have also applied the semifinished analysis to powdered chlorinated isos because it is used in producing a downstream product that is also included in the scope of investigation - granular and tableted chlorinated isos. In a semifinished 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

(continued...)

1. Whether Trichlor and Dichlor Should Be Separate Domestic Like Products.

Physical Characteristics and Uses. Trichlor and dichlor have a similar chemical structure, and high chlorine content. Trichlor has a higher level of available chlorine than dichlor because dichlor has one less chlorine atom in the cyanuric ring than trichlor,[22] and trichlor is more acidic than dichlor.[23] While trichlor is commonly sold in tablet form, dichlor, which is more soluble than trichlor, is generally sold in granular form.[24]

Trichlor and dichlor are used primarily in pool sanitization. Trichlor is widely used as a routine water sanitizer in tablet or stick form, while dichlor is more commonly used in granular form for "shock" treatment in pools.[25]

Both forms also are used in the production of industrial cleansers. However, dichlor more commonly is used in this application due to its solubility.[26] Due to its slower release into the water, trichlor commonly is used in industrial wastewater treatments.[27]

Interchangeability. Trichlor and dichlor are at least somewhat interchangeable. Trichlor and dichlor both are used in pool sanitization applications. However, trichlor often is preferred to maintain consistent levels of chlorine due to the fact that it releases chlorine more slowly into the water than dichlor. Dichlor is preferred for "shock" treatments in pools due to its more rapid release of chlorine. However, these distinctions are not absolute. Dichlor is used for routine pool sanitization in the Midwest and Northwest, and BioLab markets a trichlor product for use in pool shock treatments.[28] Similarly, dichlor more commonly is used in industrial cleansers but trichlor also is used in those applications.[29]

Although dichlor and trichlor are somewhat interchangeable in pool and cleanser applications, a particular consumer may prefer one over the other due to differences in solubility, acidity, and available chlorine levels.[30]

Channels of Distribution. Trichlor and dichlor are sold in similar channels of distribution. Granular trichlor generally is tableted and repackaged, whereas granular dichlor generally is only repackaged because it dissolves easily.[31] Both products are then sold to distributors, which in turn sell the chlorinated isos to mass merchant retailers, large pool chains, pool service companies and smaller retailers, or are sold directly to such firms.[32]

Customer and Producer Perceptions. The record is mixed with respect to customer and producer perceptions. Petitioners consider both trichlor and dichlor to be similar products, and assert that their

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[21] (...continued)
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. E.g., Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Preliminary), USITC Pub. 3533 (August 2002) at 7.

[22] CR at I-11; PR at I-7.

[23] Chinese Respondents' Prehearing Brief at 8.

[24] CR at I-6-7; PR at I-4-5.

[25] CR at I-6; PR at I-4.

[26] CR at I-12 & n.36; PR at I-8 & n.36.

[27] CR at I-6; PR at I-4.

[28] CR at I-11& n.35; PR at I-8& n.35.

[29] CR at I-12 & n.36; PR at I-8 & n.36.

[30] CR at I-11-12; PR at 7-8.

[31] CR at I-12; PR at I-8.

[32] CR at I-12; PR at I-8.

customers consider the two compounds related products that work on an integrated basis to provide pool sanitization.[33] Chinese Respondents disagree, maintaining that customers view trichlor and dichlor as different products due to differences in solubility, acidity, and available chlorine levels.[34] As discussed above with respect to interchangeability, there is evidence of some overlap in perception on the part of consumers.

Common Manufacturing Facilities, Production Processes, and Production Employees. Both granular trichlor and granular dichlor are manufactured in the United States by ***.[35] ***.[36] Trichlor and dichlor are produced from a similar chemical reaction of caustic soda, chlorine gas and cyanuric acid.[37] Cyanuric acid, which U.S. chlorinated isos producers make and derive from urea, is refined and purified and then neutralized with caustic soda to become trisodium cyanurate, the basic feedstock for both trichlor and dichlor.[38] As trichlor and dichlor are produced from a common feedstock, they share certain manufacturing facilities, production processes and production employees. Producing the feedstock accounts for a significant proportion of total manufacturing costs. Trichlor and dichlor are produced from that common feedstock on separate production lines, but using similar processes.[39]

Price. U.S. producers' prices for dichlor were generally higher on a per-pound basis than the prices for trichlor in each quarter for which data were collected.[40] This price differential may be due to the larger market for trichlor, given its use in pool and spa applications.[41]

Conclusion. Taking all factors into consideration, we do not find that there is a "clear dividing line" between trichlor and dichlor, and find that there are more similarities than differences. Trichlor and dichlor have similar chemical compositions and similar uses, but only moderate interchangeability, due to the fact that consumers generally prefer one over the other in any given application. They are sold in the same channels of distribution, and produced in common manufacturing facilities, by common production employees, using similar production processes. We acknowledge that granular dichlor is higher-priced than granular trichlor. In light of the record as a whole, we do not find that trichlor and dichlor are separate domestic like products.

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[33] CR at I-13; PR at I-8.

[34] Chinese Respondents' Prehearing Brief at 8.

[35] CR at I-12; PR at I-8.

[36] CR at I-12; PR at I-8.

[37] CR at I-7, I-12; PR at I-5, I-8.

[38] CR at I-7; PR at I-5.

[39] CR at I-12; PR at I-5.

[40] CR at I-13; PR at I-8.

[41] Trichlor accounts for the bulk of U.S. production and consumption due to the relatively larger market for water treatment applications. Trichlor's slower solubility rate in the water, as compared to dichlor, results in its widespread use in water treatment applications. CR at I-6; PR at I-4.

2. Whether Blended Tablets and All Other Chlorinated Isos Should Be Separate Domestic Like Products.

Certain domestically produced blended tablets are marketed as having enhanced features not possessed by other chlorinated isos. They are reputed not only to sanitize water, but also to clarify it, and kill algae.[42] Arch has argued that these "multifunctional" blended tablets are a separate domestic like product from other chlorinated isos. We address this issue below.

Physical Characteristics and Uses. Blended tablets are similar in physical characteristics and uses to other chlorinated isos, in particular trichlor tablets. Blended tablets primarily are made of trichlor, although they also may be made using dichlor.[43] Blended tablets are a small share of U.S. production of tableted chlorinated isos.[44] Domestically produced blended tablets are very similar in physical appearance to regular trichlor tablets.[45]

BioLab, Petitioners, and Arch all agree that both blended tablets and regular trichlor tablets are used in pool sanitization.[46] Arch argues that blended tablets have enhanced features and may contain copper sulfate, which provides extended algae protection, or aluminum sulfate, which clarifies water.[47] Petitioners and BioLab maintain that all chlorinated isos kill algae and clarify water.[48] Petitioners cite to ***.[49]

Interchangeability. Regular trichlor tablets and other chlorinated isos are interchangeable in that both are used in pool sanitization.[50]

Channels of Distribution. Blended tablets are sold in the same channels of distribution as other chlorinated isos.[51]

Customer and Producer Perceptions. BioLab and its customers view blended tablets and all other chlorinated isos as water sanitizers.[52] Arch argues that customers view blended tablets differently and are willing to pay a price premium for them.

Common Manufacturing Facilities, Production Processes, and Production Employees. ***.[53]

Price. Domestically produced blended tablets were sold at higher prices than domestically produced regular trichlor tablets.[54]

Conclusion. We do not find a clear dividing line between blended tablets and other chlorinated isos. The record is mixed regarding the benefits of blended tablets compared to other chlorinated isos.

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[42] CR at I-15; PR at I-10. Arch Prehearing Brief at 4, n.6.

[43] Petitioners' Prehearing Brief at 16. Arch Final Comments at 3.

[44] Compare domestic production in 2004 of blended tablets, *** short tons, CR/PR at Table C-8, with domestic production of all tableted chlorinated isos, *** short tons, CR/PR Tables C-7.

[45] Arch's imported blended tablets contain blue specks from the addition of copper sulfate to provide enhanced algae protection, Arch Prehearing Brief at 9, but BioLab reports that blended trichlor tablets are "virtually identical" in physical characteristics to regular trichlor tablets, BioLab Prehearing Brief at 7.

[46] Arch Prehearing Brief at 11; Petitioners' Prehearing Brief at 17; BioLab Prehearing Brief at 7.

[47] Arch Posthearing Brief at 10.

[48] BioLab Prehearing Brief at 8. Petitioners' Prehearing Brief at 20-21.

[49] Petitioners' Prehearing Brief at 20-21.

[50] Arch Prehearing Brief at 3 & n.2.

[51] CR at I-17; PR at I-11.

[52] BioLab Prehearing Brief at 9.

[53] CR at I-17 ; PR at I-11.

[54] CR at I-18; PR at I-11. Sales prices for domestically produced blended tablets were 8 percent to 43 percent higher in price than domestically produced regular trichlor tablets. Compare CR/PR at Table V-6 to Table V-7.

However, even assuming that the domestically produced blended tablets provide enhanced features, we do not find that such differences warrant finding that blended tablets are a separate domestic like product.

Blended tablets are very similar to regular trichlor tablets. They differ physically only in the fact that blended tablets have relatively small amounts of additives that may provide some enhanced features. They differ in production process only to the extent that these specific additives are mixed in with the chlorine before the tableting stage. The record reflects that these blended tablets compete directly against regular trichlor tablets. Both types of tablets sanitize pools, and all chlorinated isos kill algae and clarify water to some degree. Even if the blended tablets are of slightly higher functionality with a higher price, this is not sufficient to find them to be a separate domestic like product. In sum, we do not find that blended tablets are a separate domestic like product from other chlorinated isos.

3. Whether the Commission Should Find Powdered Chlorinated Isos and Other Chlorinated Isos To Be Separate Domestic Like Products.

At the Commission's hearing, Enviro Tech, a non-party, raised the issue of whether powdered chlorinated isos should be a separate domestic like product from other chlorinated isos. Enviro Tech argues that powdered chlorinated isos differs from other chlorinated isos in that it has to be converted to those forms to be used in pool and spa applications, and that it is less expensive to produce than granular chlorinated isos and tablets.[55] Enviro Tech's representative explained in its written testimony that powdered chlorinated isos are the initial product out of the reactor after drying, that granular chlorinated isos are a downstream product from powdered chlorinated isos, and that powdered chlorinated isos have to be turned into granular chlorinated isos before being tableted.[56] Enviro Tech's representative testified at the hearing that powdered chlorinated isos are not compacted like granular chlorinated isos, and that they have different uses, because Enviro Tech must use trichlor powder in its bromax production.[57]

We do not find that powdered chlorinated isos are a separate domestic like product from other chlorinated isos under either our traditional six factor like product analysis, or our semifinished like product analysis. As a preliminary matter, we note that the record on this issue is limited due to the lateness of Enviro Tech's arguments.

Applying our traditional analysis, we find that powdered chlorinated isos have the same chemistry as granular chlorinated isos; they differ only in the fineness of the particles.[58] Both powdered and granular chlorinated isos are used in the production of similar downstream products, namely tablets (and powdered chlorinated isos are used in the production of granular chlorinated isos). Powdered and granular chlorinated isos have the same manufacturing process through the powder stage. As for customer and producer perceptions, the domestic industry considers powdered chlorinated isos an intermediate product in the production of granular trichlor, while Enviro Tech, a customer of the domestic producers, considers it a separate domestic like product.

Applying the semifinished like product analysis, BioLab produces powdered chlorinated isos almost exclusively as an intermediate product in the production of granular trichlor. Powdered chlorinated isos have no independent uses or separate markets, with the exception of the ***.[59] Powdered chlorinated isos have the same chemistry as granular chlorinated isos. We do not have information on the

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[55] Transcript from Commission hearing held May 5, 2005 ("Tr.") at 198-203.

[56] CR at I-18-19; PR at I-11-12.

[57] Tr. at 200-201.

[58] CR at I-17-19; PR at I-10-12.

[59] CR at I-19-20; PR at I-12. BioLab Posthearing Brief, Attachment at 2, Question 2, n.2. Petitioners' Posthearing Brief at Q-36-38.

record to address value added or the extent of the process used to transform the powdered chlorinated isos into the downstream product, tablets.

In conclusion, we do not find that powdered chlorinated isos are a separate domestic like product from other chlorinated isos.

We define the domestic like product in these investigations as all chlorinated isos, coextensive with Commerce's scope of investigation.

III. DOMESTIC INDUSTRY AND RELATED PARTIES

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."[60] 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.[61]

A. Views of Chairman Koplan and Commissioners Miller and Hillman Concerning Sufficient Production-Related Activities.

Clearon, OxyChem and BioLab are domestic producers of chlorinated isos, sometimes referred to as the "integrated domestic producers." None of the parties have questioned their inclusion in the domestic industry. These three domestic producers produce granular chlorinated isos. Clearon and BioLab also internally consume granular chlorinated isos in their production of chlorinated isos tablets. OxyChem *** some of the granular chlorinated isos it manufactures.

Chinese Respondents have argued that the domestic industry is not only comprised of these three integrated producers, but also companies that tablet and repackage chlorinated isos (referred to herein as "tableters").[62] The integrated domestic producers disagree, and argue that the tableters are not engaged in sufficient production-related activities to be included in the domestic industry.[63]

We have analyzed whether to include the tableters in the domestic industry by applying the six factors that the Commission generally considers in analyzing whether a firm's production-related activities are sufficient to constitute domestic production.[64]

Source and Extent of the Firm's Capital Investment: The capital investment necessary for tableting operations is substantial, although less than that required for production of granular product.

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[60] 19 U.S.C. § 1677(4)(A).

[61] 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).

[62] Chinese Respondents' Prehearing Brief at 11-12. The tableters that have submitted questionnaires, or otherwise filed submissions or appeared in these investigations, are Alden Leeds, Cadillac, Aqua Tri, LPM Manufacturing, Inc. ("LPM"), N. Jonas, and Stellar Manufacturing Co. ("Stellar").

[63] Petitioners' Prehearing Brief at 27-28. BioLab Prehearing Brief at 13.

[64] In deciding whether a firm's production related activities are sufficient to for it to be considered part of the domestic industry, the Commission generally has analyzed the overall nature of a firm's production-related activities in the United States. 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).

Alden Leeds reported that replacing its tablet presses would cost $***, and replacing its blending equipment, $***.[65] It reported capital investment in ***. Chinese Respondents stated that Alden Leeds reported, in the aggregate, equipment with a replacement value of $*** million for tableting, repackaging, and safety.[66] Stellar reported that its capital investment for equipment and engineering was $*** and total investment, including its plant, was $***.[67] Chinese Respondents stated that Cadillac's tableting and packaging equipment has a replacement value of more than $***.[68] BioLab stated that ***. It reported that ***.[69] Other tableters similarly reported that tableting and packaging involved considerable capital investment. We note that there is variability in the reported capital investment necessary to tablet chlorinated isos.[70]

Technical Expertise Involved in U.S. Production Activities. Tableting involves heavy machinery and hazardous materials. Therefore, it requires a moderate degree of technical expertise, although less than the production of granular isos. N. Jonas reported that ***.[71]

Value Added to the Product in the United States: We note that there is significant reported variability in the data on how much value is added to the final product by the tableting operations. *** stated that the domestic value added by tableting foreign granular chlorinated isos is *** percent of the total cost of producing tableted chlorinated isos.[72] *** stated that the domestic value added by tableting trichlor from *** is *** percent, and from *** is *** percent, excluding SG&A.[73] *** reports that the domestic value added to its granular trichlor in the United States is *** percent for granular trichlor sourced in ***, and *** percent for granular dichlor sourced in *** or ***, excluding SG&A.[74] Clearon executive Antony Hand stated in an affidavit that tableting adds less than *** to the sales price of its granular trichlor.[75]

Employment Levels: Tableters that responded to the Commission's questionnaire reported in the aggregate *** production and related workers (PRWs) in 2002, *** in 2003 and *** in 2004.[76]

Quantity and Type of Parts Sourced in the United States: Tableters Alden Leeds, Cadillac, and N. Jonas acknowledged in their brief that they rely on imported chlorinated isos for the raw material used in their tableting operations, and that they have increased their purchases of subject imports.[77] However, the record reflects that *** tablet domestically produced chlorinated isos as well.[78] Furthermore, even when *** tablets granular chlorinated isos from ***.[79]

Other Costs and Activities in the United States Leading to Production of the Like Product. The tableters reported significant employment of personnel that are not directly involved in tableting

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[65] CR at E-3; PR at E-3.

[66] Chinese Respondents' Prehearing Brief at 11-12.

[67] CR at E-4; PR at E-3.

[68] Chinese Respondents' Prehearing Brief at 11-12.

[69] CR at E-3-4; PR at E-3.

[70] CR at E-3-4; PR at E-3.

[71] CR at E-4-5; PR at E-3.

[72] CR at E-6; PR at E-3.

[73] CR at E-6-7; PR at E-3.

[74] CR at VI-17; PR at VI-7.

[75] Petitioners' Prehearing Brief, Exhibit 9, Affidavit by Antony Hand.

[76] CR/PR at Table C-3. The integrated domestic producers had *** production related workers in 2002, *** in 2003, and *** in 2004. CR/PR at Table III-9.

[77] Chinese Respondents' Prehearing Brief at 3, 32.

[78] CR at II-6, E-10-11; PR at II-4, E-3.

[79] CR at E-9; PR at E-3.

production, but are involved in support positions, or in repackaging positions, that lead to the firm's production of the like product.[80] They also reported other significant costs incurred in the United States, including registration, engineering, legal fees, machinery repair, and utility costs.[81]

The record is mixed on this issue. There is variability in the reported capital investment necessary for tableting, and the value added by tableting. However, in general, the capital investment necessary for tableting is significant, and the value added is generally reported to be in the range of 15 to 35 percent. A moderate level of technical expertise is necessary, due to the heavy machinery and hazardous materials involved. Tableters employ a significant number of personnel in their tableting operations. Although some tableters rely heavily on subject merchandise for their raw materials, others rely on domestic raw materials, or a mix of subject, nonsubject, and domestic raw materials. Tableters also employ additional support personnel and incur additional costs. On balance, we include the tableters in the domestic industry.

B. Views of Vice Chairman Okun and Commissioners Lane and Pearson Concerning Sufficient Production-Related Activities

On the basis of the record compiled in the final phase of these investigations, Vice Chairman Okun and Commissioners Lane and Pearson define the domestic industry as all of the domestic integrated producers of chlorinated isos, namely Clearon, OxyChem and BioLab. We do not include those companies that merely tablet and repackage chlorinated isos (referred to herein as "tableters") in the domestic industry.

Clearon, OxyChem and BioLab are domestic producers of chlorinated isos, sometimes referred to as the "integrated domestic producers." None of the parties has questioned these producers' inclusion in the domestic industry. These three domestic producers produce granular chlorinated isos. Clearon and BioLab also internally consume granular chlorinated isos in their production of chlorinated isos tablets. OxyChem contracts on a toll basis with *** to tablet some of the granular chlorinated isos it manufactures.

Chinese Respondents have argued that the domestic industry is comprised not only of these three integrated producers, but also tableters.[82] The integrated domestic producers disagree, and argue that the tableters are not engaged in sufficient production-related activities to be included in the domestic industry.[83]

We have analyzed whether to include the tableters in the domestic industry by applying the six factors that the Commission generally considers in analyzing whether a firm's production-related activities are sufficient to constitute domestic production.[84]

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[80] Chinese Respondents' Prehearing Brief at 14-15.

[81] Chinese Respondents' Prehearing Brief at 15-16. Aqua Tri reported that ***. CR at E-3; PR at E-3. N. Jonas reported that it ***. CR at E-5; PR at E-5.

[82] Chinese Respondents' Prehearing Brief at 11-12; Chinese Respondents' Posthearing Brief at 4-7. The tableters that have submitted questionnaires, or otherwise filed submissions or appeared in these investigations are Alden Leeds, Aqua Tri, Cadillac, LPM Manufacturing, Inc. ("LPM"), N. Jonas and Stellar Manufacturing Co. ("Stellar").

[83] Petitioners' Prehearing Brief at 27-28; Petitioners' Posthearing Brief at 3-5. BioLab Prehearing Brief at 13.

[84] In deciding whether a firm's production related activities are sufficient to for it to be considered part of the domestic industry, the Commission generally has analyzed the overall nature of a firm's production-related activities in the United States. 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

(continued...)

Source and Extent of the Firm's Capital Investment: While the capital investment necessary for tableting operations is not insubstantial, it is much less than that required for production of granular product. At the high end, Alden Leeds reported that replacing its tablet presses would cost $***, and replacing its blending equipment, $***.[85] It reported capital investment in ***. In the aggregate, Chinese Respondents report that Alden Leeds reported equipment with a replacement value of $*** million for tableting, repackaging, and safety.[86] Most tableters, however, reported values ranging from ***. Stellar reported that its capital investment for equipment and engineering was $*** and total investment, including its plant, was $***.[87] Chinese Respondents stated that Cadillac's tableting and packaging equipment has a replacement value of more than $***.[88] BioLab stated that ***. It reported that ***.[89]

In that regard, these amounts contrast with the capital investment necessary to establish an integrated operation to produce chlorinated isos. The three integrated producers reported values for original cost of their fixed assets, ***, and the current book value of those assets, ***.[90] Comparing the capital investment necessary to establish a chlorinated isos production facility to that of even that of the largest tableter, the ratio is approximately ***.

Technical Expertise Involved in U.S. Production Activities. While tableting involves heavy machinery and hazardous materials, only a moderate degree of technical expertise is required to convert granular chlorinated isos into tablet form on a tablet press machine. Tableter *** reports that the tablet press and related machinery must be monitored constantly for jams and breakdowns. Tablet press operators must be trained for one to two months before they are allowed to operate the tablet press. Respirators must be worn by employees at all times due to the fine particles of chlorinated isos that are emitted during the process, even with dust collectors.[91] In contrast, the production of granular chlorinated isos requires that chemical operators receive extensive training over long periods of time to operate the complex equipment and processes.[92] Moreover, the wage differential between production workers that produce granular chlorinated isos and those that operate tableting presses is substantial. Workers producing the granular product are paid approximately *** per hour (with OxyChem's workers receiving *** per hour), whereas tableting packaging workers are paid approximately *** per hour.[93]

Value Added to the Product in the United States: We note that there is significant variability in the value added data, as reported. *** stated that the domestic value added by tableting foreign granular chlorinated isos is *** percent to *** percent of the total cost of producing tableted chlorinated isos.[94] *** stated that the domestic value added by tableting trichlor from *** is *** percent, and from *** is

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[84] (...continued)
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).

[85] CR at E-3; PR at E-3.

[86] Chinese Respondents' Prehearing Brief at 11-12.

[87] CR at E-3-4; PR at E-3.

[88] Chinese Respondents' Prehearing Brief at 11-12.

[89] CR at E-3; PR at E-3.

[90] CR/PR at Table VI-9.

[91] CR at E-4-5; PR at E-3.

[92] Petitioners' Postconference Brief, Answers to Staff Questions at 3.

[93] Petitioners' Prehearing Brief at 29.

[94] CR at E-6-7; PR at E-3.

*** percent, excluding SG&A.[95] *** reports that the domestic value added to its granular trichlor in the United States is *** percent for granular trichlor sourced in ***, and *** percent for granular dichlor sourced in ***, excluding SG&A.[96] Clearon executive Antony Hand stated in an affidavit that tableting adds less than *** percent to the sales price of its granular trichlor.[97]

Employment Levels: Tableters that responded to the Commission's questionnaire reported in the aggregate *** production and related workers (PRWs) in 2002, *** in 2003 and *** in 2004.[98] In contrast, producers of chlorinated isos reported in the aggregate *** PRWs in 2002, *** in 2003 and *** in 2004.[99]

Quantity and Type of Parts Sourced in the United States: Tableters Alden Leeds, Cadillac, and N. Jonas acknowledge in their brief that they rely on imported chlorinated isos for the raw material used in their tableting operations, and that they have increased their purchases of subject imports.[100] However, the record reflects that *** tablet domestically produced chlorinated isos ***.[101] Furthermore, even when *** tablets granular chlorinated isos from ***.[102]

Other Costs and Activities in the United States Leading to Production of the Like Product. The tableters report significant employment of personnel that are not directly involved in tableting production, but are involved in support positions, or in repackaging positions, that lead to the firm's production of the like product.[103] They also report other significant costs incurred in the United States, including registration, engineering, legal fees, machinery repair, and utility costs.[104]

Conclusion. There is variability in the reported capital investment necessary for tableting, and the value added by tableting. However, in general, the capital investment necessary for tableting is not significant in comparison to the capital investment necessary to establish an integrated chlorinated isos operation. The value added generally is reported to be in the range of 10 percent to 40 percent, but with most producers reporting in the range of *** percent to *** percent. For tableting, a moderate level of technical expertise is necessary, due to the heavy machinery and hazardous materials involved, although such expertise does not compare with that necessary in the upstream processes. Moreover, the wage differential between production workers that produce granular chlorinated isos versus tableting packaging workers is approximately ***. Tableters employ a significant number of personnel in their tableting operations; however, producers of chlorinated isos employ *** times as many. Although some tableters rely heavily on subject merchandise for their raw materials, others rely on domestic raw materials, or a mix of subject, nonsubject, and domestic raw materials. Tableters also employ additional support personnel and incur additional costs. On balance, Vice Chairman Okun and Commissioners Lane and Pearson conclude that tableters do not engage in sufficient production-related activity to qualify as domestic producers.

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[95] CR at E-6-7; PR at E-3.

[96] CR at VI-17; PR at VI-7.

[97] Petitioners' Prehearing Brief, Exhibit 9, Affidavit by Antony Hand.

[98] CR/PR at Table C-3.

[99] CR/PR at Table III-9.

[100] Chinese Respondents' Prehearing Brief at 3, 32.

[101] CR at II-6, E-10-11; PR at II-4, E-3.

[102] CR at E-9; PR at E-3.

[103] Chinese Respondents' Prehearing Brief at 14-15.

[104] Chinese Respondents' Prehearing Brief at 15-16. Aqua Tri reported that ***. CR at E-3; PR at E-3. N. Jonas reported that it ***. CR at E-5; PR at E-5.

C. 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. The rationale for the related parties provision is the concern that domestic producers who are related parties may be shielded from any injury that may be caused by the subject imports. The Commission considers whether the domestic producer accrued a substantial benefit from its importation of the subject merchandise, as well as other factors.[105]

In its preliminary determination, the Commission did not reach the issue of whether any of the tableters should be excluded from the domestic industry based on the related party provision of the statute, because it did not determine whether the tableters should be included in the industry. ***, the Commission did not find that appropriate circumstances existed to exclude BioLab from the domestic industry based on the related party provision.[106] [107]

Because we have included the tableters in the domestic industry, we next consider whether appropriate circumstances exist to exclude from the domestic industry certain tableters that either import subject merchandise (Alden Leeds and Cadillac)[108] or purchase significant volumes of subject merchandise from U.S. importers (***).[109] Tableters *** are not affected by the related party provision because they tablet only domestically produced chlorinated isos.[110] In addition, BioLab is a related party because it imported *** of subject merchandise over the period examined.[111] We consider each company in turn.

Alden Leeds. Alden Leeds, a tableter, imported *** short tons of subject merchandise in 2004[112] and *** short tons of subject merchandise over the period examined (2002 to 2004).[113] Therefore, Alden Leeds is a related party under the statute. Alden Leeds produced *** short tons of chlorinated isos tablets in 2004, accounting for *** percent of reported U.S. production by tableters.[114] The ratio of Alden Leeds' imports *** of subject merchandise to its U.S. production in 2004 was *** percent. Alden Leeds *** the petition, and jointly filed a brief with Chinese Respondents.[115] Alden Leeds appears as interested in

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[105] See Allied Mineral Products, Inc. v. United States, –Fed. Supp. 2d. – , Slip Op. 04-139 (Ct. Int'l Trade November 12, 2004 at 5; USEC, Inc. v. United States, 132 F. Supp. 2d 1, 12 (Ct. Int'l Trade 2001); see also 19 U.S.C. § 1677(4)(B).

[106] Preliminary Determination at 12, n.62.

[107] Vice Chairman Okun and Commissioners Lane and Pearson do not join the remainder of this section, with the exception of the analysis concerning BioLab, because they do not include tableters in the domestic industry.

[108] CR/PR at Table III-1.

[109] ***; ***.

[110] CR at III-4; PR at III-3.

[111] CR/PR at Table III-1.

[112] CR/PR at Table III-1.

[113] CR/PR at Table IV-1. Alden Leeds also *** in 2004. ***.

[114] CR/PR at Table III-1.

[115] CR/PR at Table III-1.

importation as in production, as imports provide *** Alden Leeds' raw materials for its domestic production.[116]

We do not find that appropriate circumstances exist to exclude Alden Leeds from the domestic industry.[117] Alden Leeds may be deriving some benefit from its importation and purchases of subject granular merchandise, given that it uses subject imports of granular chlorinated isos to produce tablets. Alden Leeds did not provide financial data,[118] however, so we are unable to determine whether its financial results indicate that it is benefitting from its imports of subject merchandise, and the decision to exclude its data as a related party is somewhat moot. Moreover, Alden Leeds' tablets compete against subject imports of tablets which increased over the period of investigation and which, as discussed below, have generally undersold domestic product. ***.[119] Thus, we conclude that Alden Leeds is not shielded from injury caused by imports of subject tablets, and we include Alden Leeds in the domestic industry.

Aqua Tri. Aqua Tri, a tableter, ***.[120] Aqua Tri ***.[121]

We do not have sufficient information on the record as to whether Aqua Tri exercises or can exercise control over its importers, ***.[122] ***.[123] However, ***. Therefore, ***. As for ***, they supply subject imports to several tableters ***[124] and their imports accounted for only ***.[125] The record does not indicate that Aqua Tri controls ***.

Therefore, based on the record before us, we do not find that Aqua Tri is a related party, and we include it in the domestic industry

BioLab. BioLab is a major integrated producer of chlorinated isos, accounting for *** percent of integrated domestic production in 2004.[126] It imported *** of subject merchandise over the period of investigation, so it is a related party.[127]

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[116] As stated above, Alden Leeds also imports chlorinated isos from ***. CR/PR at Table IV-1. It has purchased isos from domestic suppliers in the past, although its representative emphasized at the hearing that Alden Leeds "has never been a significant customer of the Petitioners." Tr. at 188-89. See also CR/PR at Table III-12.

[117] Chairman Koplan does not join in this paragraph. He finds that appropriate circumstances exist to exclude Alden Leeds from the domestic industry. He finds that Alden Leeds has received a substantial benefit from its imports of subject merchandise. In its *** at II-2. It ***, and joined in the Chinese Respondents' brief. In that brief, Alden Leeds indicated that it was a *** importer, and that it had ***. Chinese Respondents' Prehearing Brief at 32-33. Alden Leeds' ***, and its *** to the imposition of antidumping duties in these investigations, indicates that it is deriving a significant benefit from subject imports. Given that Alden Leeds did not provide financial data, or usable domestic producer pricing data, Chairman Koplan's exclusion of Alden Leeds from the domestic industry does not affect the data he relied upon for his determination, except that unlike Commissioners Miller and Hillman, he does not consider ***.

[118] ***

[119] Chinese Respondents' Posthearing Brief, Attachment 5.

[120] CR /PR at Table III-1; *** at 7.

[121] *** at 3.

[122] See, e.g., Foundry Coke from China, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 (September 2001) at 8-9.

[123] *** at 24.

[124] ***. ***. Importer *** ***.

[125] *** at 7, 24.

[126] CR/PR at Table III-1.

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

We do not find that appropriate circumstances exist to exclude BioLab from the domestic industry. It supports the petition.[128] Its interests lie primarily in domestic production rather than importation, and it does not appear to have substantially benefitted from its *** subject imports. Its imports of subject merchandise in 2004 constituted *** percent of its production.[129] Additionally, BioLab's ***.[130] Thus, there is no potential that the inclusion of BioLab's data would skew the domestic industry data set.

Cadillac. Cadillac, also referred to as "Qualco," is a tableter. It imported *** short tons of subject merchandise in 2004, and *** short tons of subject merchandise during the period examined.[131] Cadillac is therefore a related party.

We do not find that appropriate circumstances exist to exclude Cadillac from the domestic industry.[132] Cadillac did not provide financial data,[133] so we are unable to determine whether its financial results indicate that it is benefitting from its imports of subject merchandise, and the decision to exclude its data as a related party is somewhat moot. Similar to Alden Leeds, although Cadillac uses subject imports of granular chlorinated isos to produce tablets, it also competes against imports of subject tablets from China, and ***.[134] We therefore do not find that Cadillac is shielded from the effects of injury caused by imports of subject tablets, and include it in the domestic industry.

N. Jonas. N. Jonas, a tableter, *** of subject trichlor from China *** in 2002, ***.[135] ***.[136]

We find that it is a close question as to whether N. Jonas exercises control over ***. ***. However, ***, and ***. On balance, the evidence on this record does not lead us to find that N. Jonas exercises sufficient control over *** to be a related party. We note, however, that even if we did find N. Jonas to be a related party, we would not exclude it from the domestic industry. N. Jonas' profitability ***.[137] N. Jonas has stated that ***.[138] Thus, the record reflects that although N. Jonas may be deriving a benefit from its imports of subject granular merchandise, subject imports of tablets have also been a source of its ***. In other words, N. Jonas' imports of subject granular merchandise, and the benefits it derives from those imports, *** by reason of subject tablet imports. We therefore include N. Jonas in the domestic industry.

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[128] CR/PR at Table III-1.

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

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

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

[132] Chairman Koplan finds that appropriate circumstances exist to exclude Cadillac from the domestic industry. Cadillac *** the petition, and joined in the Chinese Respondents' brief. All three of the tableters that joined the Chinese Respondents' brief stated that they "primarily used imported granular isos from Spain and/or China" as raw material for their tableting production. Chinese Respondents' Posthearing Brief, Attachment 1. Cadillac's representative appeared at the hearing and testified that its company could not continue to exist "without a Chinese source" of chlorinated isos (emphasis added). Tr. at 185. The testimony of Cadillac's representative, statements in its joint brief, and its *** to the imposition of antidumping duties in these investigations, indicate that it is deriving a significant benefit from subject imports. He notes that Cadillac did not provide the Commission with either production or financial data, but only capacity data, which were not included in the tableter data. CR/PR at Table III-1, n.8, CR/PR at Table III-4, CR at VI-1, n.2; PR at VI-_, n.2. Therefore, excluding Cadillac from the domestic industry did not have any effect on the data Chairman Koplan considered in making his determination.

[133] CR/PR at VI-1.

[134] ***.

[135] CR at III-4; PR at III-3. *** at 16.

[136] *** Importer Questionnaire at 5.

[137] CR/PR at Table VI-4. We note that N. Jonas' sales ***. Id.

[138] ***.

We therefore define the domestic industry in these investigations as all of the domestic integrated producers of chlorinated isos, namely Clearon OxyChem, and BioLab, as well as all domestic tableters of chlorinated isos, namely Alden Leeds, Aqua Tri, Cadillac, N. Jonas, LPM, and Stellar.[139] [140] [141]

VI. CUMULATION[142]

A. In General

For purposes of evaluating the volume and price effects for a 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 products in the United States market.[143] In assessing whether subject imports compete with each other and with the domestic like product,[144] 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;

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[139] Given that we have found that the production of tablets in the United States represents sufficient production related activity to constitute domestic production, tablets produced domestically, even from subject imports of granular chlorinated isos, would be considered domestically produced chlorinated isos tablets. See Certain Wax and Wax/Wax Resin Thermal Transfer Ribbons from France, Japan and Korea, 731-TA-1039-1041 (Final) USITC Pub. 3683 (April 2004) at 23. We have considered sales pricing data for the domestic product provided by tableters that we have included in the domestic industry. We have also considered some production data for tableters that are included in the domestic industry, and that primarily tablet imported chlorinated isos.

[140] Chairman Koplan notes that he did not include Alden Leeds or Cadillac in the domestic industry.

[141] Vice Chairman Okun and Commissioners Lane and Pearson define the domestic industry as all of the domestic integrated producers of chlorinated isos, namely Clearon, OxyChem and BioLab.

[142] The negligibility provision of the Act, 19 U.S.C. § 1677(24), provides that imports from a subject country that are less than three percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition shall be deemed negligible. The petition was filed on May 14, 2004. In 2003 subject imports from China were *** percent, and subject imports from Spain *** percent, of all imports of chlorinated isos. In 2004, subject imports from China were *** percent, and subject imports from Spain *** percent, of all imports of chlorinated isos. CR/PR at Table IV-2. Therefore we find that imports from neither of the subject countries in these investigations are negligible under the statutory provision. 19 U.S.C. §1677(24).

[143] 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).

[144] 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).

(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.[145]

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.[146] Only a "reasonable overlap" of competition is required.[147]

In this case, the antidumping petitions for China and Spain were both filed on May 14, 2004, and none of the cumulation exceptions applies. Subject imports from China and Spain are thus eligible for cumulation. We consequently examine whether there is a reasonable overlap of competition between subject imports from China and Spain, as well as between subject imports from the two countries and the domestic like product. Petitioners argue that the Commission should cumulate imports from the subject countries because there is a significant overlap of competition among chlorinated isos from all subject countries, and between chlorinated isos from both subject countries and the domestic product.[148] None of the respondents made specific arguments that subject imports from China and subject imports from Spain should not be cumulated for purposes of our material injury analysis.[149]

B. Analysis

Degree of fungibility. A majority of producers, importers, and purchasers reported that chlorinated isos from the United States, from China, and from Spain were always or frequently interchangeable.[150]

Some importers reported, however, that subject imports from China were of lower quality. They reported that the subject imports from China were "powdery," hard to tablet, and that they have a stronger chlorine odor than chlorinated isos from other sources.[151] However, ***.[152]

The majority of purchasers (11 out of 15) reported that U.S. product and subject imports from China were comparable with respect to whether the quality of the products meet industry standards, although about half of the responding purchasers (7 out of 15) considered the U.S. products superior to subject imports from China with respect to whether the quality of the products exceed industry

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[145] See 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).

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

[147] See 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.").

[148] Petitioners' Prehearing Brief at 34-36.

[149] We note, however, that some respondents made arguments on related issues. Chinese Respondents and Florida Pool/Sun argued that subject imports from China were of lower quality. Chinese Respondents' Prehearing Brief, Attachment 2; Florida Pool/Sun Prehearing Brief at 5-6. Arch argued that the domestic product and subject imports do not directly compete because they are sold in different channels of distribution. Arch Prehearing Brief at 21-22, 38-39.

[150] CR at II-21; PR at II-14. CR/PR at Table II-6.

[151] CR at II-21; PR at II-14. See also Chinese Respondents' Posthearing Brief, Attachment 2.

[152] ***.

standards.[153] The domestically produced product and subject imports from Spain were considered comparable in both categories.[154]

Almost all of the purchasers reported that domestically produced chlorinated isos, as well as the subject imports from China and Spain, always or usually met minimum quality specifications, with only a few purchasers stating that subject imports sometimes or never met these standards.[155] Some producers, importers and purchasers reported that as long as the product is registered with the EPA, regardless of where it is produced, it is always interchangeable.[156]

The presence of sales or offers to sell in the same geographic markets. Domestic integrated producers, several tableters and several large importers (including ***) reported that they sell their products to national markets.[157]

The existence of common or similar channels of distribution. Although there are differences, the channels of distribution between subject imports from China, subject imports from Spain, and the domestic product overlap. As an initial matter, we note that the customers for the integrated domestic producers and the responding importers overlap.[158] The domestic product and subject imports from China were both distributed in the mass market retailer channel in 2003 and 2004, and in the tableter/repackager channel throughout the period examined.[159] The domestic product and subject imports from Spain were both shipped in the distributor channel, and the pool-related retailer channel throughout the period examined, and were both distributed in the tableter/repackager channel in 2003 and 2004. Subject imports from China and subject imports from Spain were both distributed in the repackager/tableter channel in 2003 and 2004, but were not distributed in the same channels in 2002.[160]

Whether the imports are simultaneously present in the market. The data indicate that subject imports from China, subject imports from Spain, and the domestic product were simultaneously present in the U.S. market throughout the period examined.[161]

We find that there is a reasonable overlap of competition between subject imports from China and Spain and the domestic like product, as we did in our preliminary determinations.[162] We cumulatively assess the volume and effects of the subject imports from China and subject imports from Spain in these investigations.[163]

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[153] CR/PR at Table II-4.

[154] CR/PR at Table II-5.

[155] CR at II-19; PR at II-13.

[156] CR at II-21; PR at II-14.

[157] CR at V-1,V-3; PR at V-1.

[158] CR at II-6-II-7; PR at II-4-5.

[159] CR/PR at Table II-1.

[160] CR/PR at Table II-1. *** of the subject imports from Spain was shipped through the repacker/tableter channel in 2002, where one hundred percent of subject imports from China were shipped. Id.

[161] CR/PR at Table II-1.

[162] Preliminary Determination at 12-14.

[163] For purposes of the Commission's present injury determinations, Commissioner Pearson joins his colleagues in cumulating imports from Spain with those from China. He notes, however, that during the period examined, subject imports from these two sources exhibited substantially different trends in their volumes and prices. For example, the rate of increase in the volume of subject imports from Spain is only *** that of imports from China, and imports actually declined in 2004 over their 2003 level. CR at IV-3; PR at IV-1. CR/PR at Table IV-2. Moreover, the unit values of imports from Spain were *** than those for imports from China, and margins of underselling were lower. CR at IV-3; PR at IV-1. CR/PR at Table IV-2. CR at V-22-V-23; PR at V-12. CR/PR at Tables V-10 and V-11. Imports from Spain were priced *** than those from China. See, e.g., CR at V-20-V-21; PR

(continued...)

V. MATERIAL INJURY BY REASON OF CUMULATED LESS THAN FAIR VALUE IMPORTS[164]

In the final phase of an antidumping duty investigation, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[165] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[166] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[167] In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[168] 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."[169] For the reasons discussed below, we determine that the domestic industry producing chlorinated isos is materially injured by reason of subject imports from China and Spain found to be sold at less than fair value.[170]

A. Conditions of Competition

Several conditions of competition are pertinent to our analysis.

1. Demand

Demand, as measured by the volume of apparent U.S. consumption, increased in every year of the period of investigation, from 125,166 short tons in 2002 to 127,912 short tons in 2003, and to 148,251

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[163] (...continued)
at V-11-12. CR/PR at Tables V-8 and V-9.

[164] We have not discounted postpetition data pursuant to 19 U.S.C. 1677 (7) (I). None of the parties argued in favor of our discounting any postpetition data. Petitioners argued that it was not the filing of the petition in May 2004, but rather the imposition of provisional duties in 2005, that affected the market for chlorinated isos. Our period of investigation does not extend into 2005. Tr. at 135-37. Petitioners' Posthearing Brief at Q-24.

[165] 19 U.S.C. § 1673d(b).

[166] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B); see also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[167] 19 U.S.C. § 1677(7)(A).

[168] 19 U.S.C. § 1677(7)(C)(iii).

[169] 19 U.S.C. § 1677(7)(C)(iii).

[170] Vice Chairman Okun and Commissioners Lane and Pearson define the domestic industry as all of the domestic integrated producers of chlorinated isos, namely Clearon, OxyChem and BioLab. They do not include any tableters in the domestic industry. Few of the tableters have provided usable financial and employment data. Thus, the data corresponding to the two separately defined domestic industries do not vary to any significant degree and the trends do not differ. Therefore, Vice Chairman Okun and Commissioners Lane and Pearson join the remainder of the opinion except as otherwise noted.

short tons in 2004.[171] The U.S. market for chlorinated isos is the largest market in the world. Petitioners estimate that the U.S. market accounts for well over 50 percent of global demand for chlorinated isos.[172]

Pool sanitization generates by far the most demand for chlorinated isos.[173] Purchasers also use chlorinated isos in the production of cleansers and in industrial water treatments.[174] Although U.S. demand for chlorinated isos generally tracks overall economic activity, market participants report that it is dependent on new home construction, installation of new pools and weather conditions.[175] Demand for chlorinated isos is seasonal, peaking in the spring and summer months.[176]

As discussed above, purchasers for chlorinated isos as a pool sanitizer often prefer trichlor tablets for routine pool maintenance, and dichlor for "shocking" pools.[177] Purchasers for pool applications range from mass market retailers such as Costco, Home Depot and Wal-Mart, and large pool retail stores such as Leslie's, to small pool specialty stores, professional pool service companies, and hardware stores.[178] Shipments to the industrial market for detergents and cleansers were only a minor share of the market, and none of the importers shipped subject merchandise to this market.[179] Purchasers may buy from both domestic and imported sources. For example, *** listed domestic companies and Chinese and Spanish companies as their suppliers.[180]

2. Supply

The U.S. market for chlorinated isos is supplied by three large integrated domestic producers, several tableters/repackers, distributors, importers, and a variety of retailers. These market participants often have dual roles and overlapping customers.

The three large integrated producers of chlorinated isos are Clearon, OxyChem and BioLab. These firms manufacture granular chlorinated isos, and subsequently tablet the product (or contract to have it tableted, in the case of OxyChem).[181] ***.[182] The domestic integrated producers either sell their granular chlorinated isos to the tableters/repackers, or directly to retailers. The domestic integrated

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[171] CR/PR at Table C-1, revised, OINV Memorandum INV-CC-080. Our data on apparent U.S. consumption are based on domestic producers' U.S. shipments of granular chlorinated isos and importers' U.S. shipments of both granular and tableted chlorinated isos. U.S. shipments of tableted chlorinated isos were not included in domestic producers' U.S. shipments to prevent double-counting domestic granular product transformed into tablets. CR at IV-5; PR at IV-3.

We have measured apparent consumption and import volume by quantity in these investigations. In our discussion of subject import volume below, we address respondents' arguments that we should instead measure imports and consumption by value.

[172] Petitioners' Prehearing Brief at 37.

[173] CR/PR at II-1.

[174] CR at II-11; PR at II-7.

[175] CR at II-11-12; PR at II-7-8.

[176] Petitioners' Prehearing Brief at 37.

[177] CR at I-11-12; PR at I-7-8.

[178] CR at II-5; PR at II-3-4.

[179] CR/PR at Table II-1.

[180] CR at II-6; PR at II-4.

[181] CR at II-3, II-5, III-2-3; PR at II-2, II-4, III-2-3; CR/PR at Table III-1. .

[182] CR at III-2-3 & n.2.

producers have some of the same distributor, retail and mass market customers as the tableters/repackers, thereby competing downstream with companies that they supply with granular product.[183]

Chinese Respondents and Arch argue that the U.S. producers damaged their business relationships by competing against their own customers.[184] Arch specifically identifies Clearon's price increases for its sales of product to tableters/repackers, and Clearon's attempts to sell directly to mass merchant retailers, as prompting Arch to find new and diversified sources of supply.[185] In response, *** but that this step was a reaction to losing Arch, its largest customer, and that this strategy became necessary to regain volume lost to subject imports.[186]

Tableters/repackers tablet and package granular chlorinated isos and sell them to distributors and retailers.[187] As discussed above, ***, tablet only domestically produced chlorinated isos. Several tableters, namely ***, rely primarily on subject merchandise for their raw materials, although some of them also buy non-subject imports or domestically produced chlorinated isos.[188] Tableters sell to large and small specialty retail stores as well as to mass merchandisers.[189]

Alden Leeds and Cadillac are importers as well as tableters. *** but is a major importer and distributor of chlorinated isos.[190]

Thus, the U.S. market is supplied by domestic integrated producers, subject and non-subject imports and tableters/repackers. These market participants are sometimes suppliers and sometimes customers of each other. They may be both integrated producers and tableters, or both tableters and importers.

Another important condition of competition that has affected the supply of chlorinated isos in the U.S. market are recent changes in the application of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") to chlorinated isos. Pool products containing chlorinated isos are treated as pesticides and must be registered under FIFRA. Since 1986, FIFRA has required in-depth studies to determine the environmental safety of the product.[191] Therefore, any firm that wished to obtain a license to sell chlorinated isos in the United States had to file an application with the Environmental Protection Agency ("EPA") citing to studies regarding the environmental safety of the product.[192] Performing these studies individually was time consuming and costly, so individual producers were permitted to rely on studies that had already been done by an Ad Hoc Committee in 1986. The three integrated domestic producers, several non-subject suppliers of chlorinated isos to the U.S. market, and Spanish producer Delsa were members of the Ad Hoc Committee. The Committee charged $400,000 to non-member applicants for using the studies.[193]

In 2001, the fifteen-year time period during which the Ad Hoc Committee could charge this fee expired.[194] This meant that starting in 2001, importers of subject imports could use the Ad Hoc

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[183] CR at II-6-7; PR at II-4-5.

[184] Chinese Respondents' Prehearing Brief at 21. Arch's Prehearing Brief at 20-21.

[185] Arch's Prehearing Brief at 16-21.

[186] Petitioners' Prehearing Brief at 82-88.

[187] CR at II-5; PR at II-2.

[188] CR at II-6-7; PR at II-4-5. CR/PR at Table IV-1.

[189] CR at II-5; PR at II-2.

[190] CR at I-10; PR at I-7. ***. Staff Phone notes with ***.

[191] CR at II-3; PR at II-2.

[192] CR at II-3; PR at II-2.

[193] CR at II-3; PR at II-2.

[194] CR at II-3; PR at II-2.

Committee research to obtain U.S. licenses without first paying the costly research fee.[195] In 2001, Cadillac became the first U.S. importer after expiration of the fee requirement to obtain an EPA registration for chlorinated isos, followed quickly by N. Jonas, Alden Leeds, and Arch.[196] Both Petitioners and Respondents agree that the change in the application of the EPA regulations for approving U.S. sales of chlorinated isos sales has made it easier for importers to sell subject imports of chlorinated isos in the United States.[197]

The share of the U.S. market supplied by domestic producers declined steadily and significantly by *** percentage points from 2002 to 2004, while the share supplied by subject imports increased by *** percentage points, and the share held by nonsubject imports increased by *** percentage points.[198]

3. Substitutability

A majority of producers, importers, and purchasers reported that chlorinated isos from the United States, from China, and from Spain were always or frequently interchangeable. Moreover, the majority of purchasers reported that the quality of the domestic product and the subject imports from China and from Spain were comparable with respect to meeting minimum quality standards, although several reported that the domestic product was superior to subject imports from China in exceeding industry quality standards.[199] Some producers, importers and purchasers reported that as long as the product is registered with the EPA, regardless of where it is produced, it is always interchangeable.[200] Some importers reported that subject imports from China were of lower quality.[201]

4. Pricing Considerations

Purchasers reported that price is second only by a small margin to quality as a factor in purchasing chlorinated isos.[202] Prices in this market often are affected by current market conditions, even if the chlorinated isos are sold by contract.[203]

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[195] Chinese Respondents' Prehearing Brief at 18.

[196] Petitioners' Prehearing Brief at 40.

[197] Petitioners' Prehearing Brief at 39-41. Arch's Prehearing Brief at 23-24. Chinese Respondents' Prehearing Brief at 16-17. The easing of these requirements improved access to the U.S. market only for subject imports from China, as the only exporter of subject imports from Spain, Delsa, was a member of the Ad Hoc Committee when it issued the original studies.

[198] Table C-1, as revised, OINV Memorandum INV-CC-080.

[199] CR at II-21, PR at II-14; CR/PR at Table II-5 and Table II-6. Almost all of the purchasers reported that domestically produced chlorinated isos as well as the subject imports from China and from Spain, always or usually met minimum quality specifications, with only a few purchasers stating that subject imports sometimes or never met these standards. CR at II-19; PR at II-13.

[200] CR at II-21; PR at II-14. We reject Arch's arguments that subject imports and the domestic like product do not directly compete against each other. Arch's Prehearing Brief at 21, 38-39. Domestic integrated producers, tableters and importers have common customers and compete in many of the same channels of distribution as subject imports, including repackers/tableters, distributors and mass market retailers. CR at II-7, PR at II-4-5; CR/PR at Table II-1.

[201] CR at II-21, PR at II-14; See also Chinese Respondents' Posthearing Brief, Attachment 2.

[202] CR/PR at Table II-3.

[203] CR at V-4-5; PR at V-4.

B. Volume of the Subject Imports

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

Cumulated subject imports increased from *** short tons in 2002 to *** short tons in 2003 and further to *** short tons in 2004.[204] We find the increase in the absolute volume of subject imports over the period examined to be significant. Although the absolute volume of subject imports was at relatively low levels in 2002, the volume rose sharply from 2002 to 2003 and remained at high levels in 2004. In contrast, nonsubject import volume increased by only approximately *** overall.[205]

Further, we find the increase in subject import volume significant relative to consumption. Subject import market share increased dramatically between 2002 and 2004, with the largest increase in market share occurring in 2003. Cumulated subject imports' share of the U.S. market increased from *** percent of the market in 2002 to *** percent in 2003, an increase of *** percentage points, before falling slightly to *** percent of the market in 2004.[206]

The domestic industry's share of apparent U.S. consumption fell from 89.2 percent in 2002 to 78.6 percent in 2003, and further to 77.9 percent in 2004, for an overall decrease in market share of 11.3 percentage points from 2002 to 2004.[207] The market share of nonsubject imports increased by only *** percentage points over the period examined.[208] Thus, the domestic industry lost market share primarily to subject imports over the period of investigation.

The increase in subject import volume is also significant relative to production. The ratio of subject imports to domestic production increased from *** percent in 2002 to *** percent in 2003 and further to *** percent in 2004.[209]

The significant increase in subject import volume prevented the domestic industry from benefitting fully from the large increase in apparent U.S. consumption over the period examined, particularly in 2004. In 2004, apparent U.S. consumption increased by 15.9 percent, but the domestic industry increased production only by 2.3 percent, not even recovering to 2002 production levels.[210]

Despite the rapid and substantial increase of subject imports and their market share, respondents argue that the increase in subject import volume is not injurious because it was caused by the changes in

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[204] CR/PR at Table IV-2. In accordance with our standard practice, we have measured volume and apparent U.S. consumption in these investigations by quantity rather than value. We disagree with Arch's argument that we should measure volume by value in these investigations. In the past, we have measured volume by value, or by both quantity and value, only when the products subject to investigation and included in the domestic like product have a broad range of unit values. See, e.g., Outboard Engines from Japan, 731-TA-1069 (Final) USITC Pub. 3752 (February 2005) at 24 & n.175 (Commission measured volume using both value and quantity where outboard engines ranging from $1,000 to $20,000 were included in Commerce's scope of investigation and the domestic like product). That is not the case here. Prices per pound for granular chlorinated isos and tableted chlorinated isos only differ from approximately $1.00 to $2.00 per pound. CR/PR at Tables V-1 to V-18.

[205] Table IV-3, revised, OINV Memorandum INV-CC-080.

[206] Table C-1, revised, OINV Memorandum INV-CC-080.

[207] Table C-1, revised, OINV Memorandum INV-CC-080.

[208] Table C-1, revised, OINV Memorandum INV-CC-080.

[209] Table IV-5, revised, OINV Memorandum INV-CC-080.

[210] Table C-1, revised, OINV Memorandum INV-CC-080. We have measured production and shipments in these investigations using data provided by the integrated domestic producers, because of the potential for double-counting if the production and shipment data for the tableters are added to the integrated producer data.

Chairman Koplan, Commissioner Miller and Commissioner Hillman have also considered production by tableters that they have included in the domestic industry.

the application of the FIFRA regulations that allowed subject imports from China easier access to the U.S. market.[211] We consider the reasons such imports entered the U.S. market as a condition of competition, but nonetheless must examine the effects and impact of the subject imports on the U.S. industry. As discussed below, the increasing subject imports had significant adverse price effects, and had an adverse impact on the domestic industry. The changes in the FIFRA regulations do not detract from these injurious effects.

We find the increase in cumulated subject import volume to be significant, absolutely, and relative to production and consumption in the United States.

C. Price Effects of the Subject Imports

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

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[212]

As stated above, domestic chlorinated isos and subject imports are generally highly interchangeable, price is a very important factor in purchasing decisions, and prices for chlorinated isos can respond quickly to changes in market conditions.

The Commission collected pricing data on six products, including three granular products (Products 1-3) and three tableted products (Products 4-6). The Commission gathered sales price data[213] and purchaser price data[214] for these products.[215] These pricing data accounted for *** of U.S. producers' shipments of chlorinated isos in 2004, *** percent of U.S. imports from China in 2004, and *** of U.S.

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[211] Arch's Prehearing Brief at 25.

[212] 19 U.S.C. § 1677(7)(C)(ii).

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

[214] Our purchaser price data are contained in Tables V-8 to V-18, and are referenced as "purchase prices" in those tables. As these prices are reported by the purchasers of the products, whether importers or other purchasers, we have referred to them as "purchaser prices" in these Views.

[215] CR/PR at Tables V-8 to V-18. We have considered both sales price data and purchaser price data in these investigations. Out of six products, the Commission could obtain only one set of sales price data from importers of subject imports from Spain, and those data only provided information beginning in the first quarter of 2003. As for subject imports from China, the Commission could obtain only one almost complete set of sales price data from importers of subject imports from China, and four incomplete data sets, containing only a few quarter's worth of data, or only beginning in 2003. Sales price data for the domestic product were comprehensive. CR/PR at Tables V-1 to V-7.

In contrast, the purchaser price data is more comprehensive with respect to the coverage of subject import prices. The Commission collected purchaser price data from importers and purchasers on six products. The purchaser price data contain four complete purchaser price data sets for subject imports from Spain, and four complete, or almost complete purchaser price data sets for subject imports from China. Purchaser price data for the domestic product were comprehensive. CR/PR at Tables V-8 to V-16, 18.

imports from Spain in 2004.[216] The sales price data collected reflect a high prevalence of underselling of the domestic product by subject imports, with margins of underselling ranging from low to high margins.[217] [218] The purchaser price data reflect that *** with respect to all products surveyed, except for Product 5. The margins of underselling varied within a broad range.[219] In the aggregate the pricing data reflect underselling in 78.6 percent of the available comparisons.[220] [221]

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[216] CR at V-8-9; PR at V-6-7.

[217] For Product 1, subject imports undersold domestic product in 10 of 11 quarters, with margins ranging from 0.2 percent to 22.5 percent. CR/PR at Table V-1, revised to include data submitted by tableter ***.

For Product 2, subject imports undersold domestic product in all six quarters, with margins ranging from 22.4 percent to 32.6 percent. CR/PR at Table V-2, revised to include data submitted by tableter ***.

For Product 3, subject imports undersold domestic product in two quarters, with margins ranging from 40.4 percent to 42.5 percent. CR/PR at Table V-3. Importers did not submit sales price data for Product 4.

For Product 5, subject imports from China undersold domestic product in seven out of eight quarters, with margins ranging from 10.3 percent to 27.9 percent. CR/PR at Table V-5, revised to include data submitted by tableter ***. Subject imports from Spain oversold the domestic product in five of the seven quarters. Data for the fourth quarter of 2003 were reported to be unreliable due to returns. CR/PR at Table V-6.

For Product 6, subject imports from China undersold the domestic product in four out of five quarters, with margins ranging from 7.5 percent to 23.6 percent. CR/PR at Table V-7.

[218] Commissioner Miller and Commissioner Hillman note that the data submitted by tableter *** were an estimate, and not usable.

[219] CR at V-11-12. For Product 1 purchaser prices, subject imports undersold domestic product in 16 of 17 quarters, with margins ranging from 5.7 percent to 32.9 percent. CR/PR at Table V-10 and Table V-11.

For Product 2 purchaser prices, subject imports undersold domestic product in 16 of 17 quarters with margins ranging from 8.0 to 42.8 percent. CR/PR at Table V-12 and Table V-13.

For Product 3 purchaser prices, subject imports undersold domestic product in all nine quarters, with margins ranging from 4.5 percent to 36.4 percent. CR/PR at Table V-14.

For Product 4 purchaser prices, subject imports undersold domestic product in all four quarters, with margins ranging from 53.6 percent to 66.5 percent. CR/PR at Table V-15.

For Product 5 purchaser prices, subject imports oversold the domestic product in all 12 quarters. CR/PR at Table V-16.

For Product 6 purchaser prices, subject imports undersold domestic product in 4 of 5 quarters, with margins ranging from 2.4 percent to 15.8 percent. CR/PR at Table V-18.

[220] Derived from sales and purchaser pricing data. CR/PR at Tables V-1-V-16, V-18. We note that price comparisons for Product 5 indicate overselling by the subject imports. Overall, however, subject imports undersold the domestic like product significantly.

[221] Vice Chairman Okun and Commissioners Lane and Pearson have analyzed the underselling data of the domestic like product produced by Clearon, OxyChem and BioLab. These data are contained in CR/PR at Tables V-1-V-7. They find that these data are not materially different from the underselling data that includes the data reported by the tableters, and they join in the findings by Chairman Koplan, and Commissioners Miller and Hillman. Based on the data for the domestic industry defined as Clearon, OxyChem, and BioLab, subject imports undersold the domestic like product in 77.7 percent of all comparisons.

Confirmed lost sales and lost revenues,[222] as well as purchaser questionnaire responses indicating that subject imports from China were lower-priced than the domestic product,[223] provide further confirmation of the widespread underselling reflected in the pricing data.

We find this underselling to be significant, particularly in view of the large influx of subject import volumes beginning in 2003, and the high degree of interchangeability of subject imports and the domestic product.

We further find that the increasing volumes of subject imports that consistently undersold the domestic product depressed domestic prices to a significant degree. The pricing data reflect downward price pressure by subject imports that forced domestic prices lower over the period surveyed.

Reported weighted-average sales prices for domestically produced chlorinated isos declined sharply.[224] [225] Reported weighted-average sales prices for subject imports declined, and were at price levels consistently below that of the domestic product.[226]

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[222] ***. CR/PR at Table V-19. CR at V-47-49; PR at V-13.
***. CR/PR at Table V-20; CR at V-47-48; PR at V-13

[223] CR/PR at Table II-4. Thirteen out of 15 purchasers reported that the prices for the domestic product were higher than prices for subject imports from China, while the remaining purchasers stated that the prices were comparable. Id. Two out of seven purchasers reported that the prices for the domestic product were higher than the prices for subject imports from Spain, and the remaining five purchasers reported that the prices were comparable. CR/PR at Table II-5.

[224] Sales prices for domestically produced Product 1 fell by *** percent over the period surveyed, and by *** percent in 2004. CR/PR at Table V-1, revised to include data from ***.

Sales prices for domestically produced Product 2 fell by *** percent over the period surveyed, and did not change in 2004. CR/PR at Table V-2, revised to include data from ***.

Sales prices for domestically produced Product 3 fell by *** percent over the period surveyed, and by *** percent in 2004. CR/PR at Table V-3.

Sales prices for domestically produced Product 4 fell by *** percent over the period surveyed, and by *** percent in 2004. CR/PR at Table V-4, revised to include data from ***.

Sales prices for domestically produced Product 5 fluctuated, but fell overall by *** percent over the period surveyed, and by *** percent in 2004. CR/PR at Table V-5, revised to include data from ***.

Sales prices for domestically produced Product 6 fell by *** percent over the period surveyed, and by *** percent in 2004. CR/PR at Table V-7.

[225] Vice Chairman Okun and Commissioners Lane and Pearson have analyzed the sales pricing data reported by the U.S. producers of chlorinated isos that they have included in the domestic industry, which does not include the tableters. These data are contained in CR/PR at Tables V-1-V-7. They find that these data are not materially different from the sales pricing data that includes the data reported by the tableters, and they join in the findings by Chairman Koplan, and Commissioners Miller and Hillman based on the data set forth in Tables V-1-V-7.

[226] Sales prices for subject imports from Spain for Product 5 declined by *** percent from first quarter 2003 to fourth quarter 2004. CR/PR at Table V-6.

Sales prices for subject imports from China for Product 1 declined by *** percent in the period surveyed, and were much lower than domestic prices until the final quarter of 2004, when domestic prices had fallen to just below prices for subject imports from China. CR/PR at Table V-1.

Sales prices for subject imports from China for Product 2 declined by *** percent in the period surveyed, and were much lower than domestic prices. CR/PR at Table V-2.

Sales prices for subject imports from China for Product 3 declined by *** percent in the period surveyed, and were much lower than domestic prices. CR/PR at Table V-3.

There were no reported sales price data for subject imports from China for Product 4.

Sales prices for subject imports from China for Product 5 declined by *** percent from first quarter 2003 to the fourth quarter of 2004, and were much lower than domestic prices, with the exception of first quarter 2003. CR/PR at Table V-5.

(continued...)

Reported weighted-average purchaser prices for the domestic product also fell in all product categories over the period surveyed. For many of the products, most of the price decrease occurred in 2004, notwithstanding a significant *** percent increase in apparent U.S. consumption in the same year.[227] [228] Reported weighted-average purchaser prices for subject imports either fell over the period examined,[229] or fluctuated, at lower price levels than the reported weighted-average purchase prices for the domestic product, with the exception of Product 5.[230]

We therefore find, based on the product-specific purchaser price data and selling price data collected by the Commission, that subject imports have exerted downward pressure on prices throughout the period examined, and that subject imports have depressed domestic prices to a significant degree.

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[226] (...continued)

Sales prices for subject imports from China for Product 6 declined by *** percent from the fourth quarter of 2003 to the fourth quarter of 2004, and were much lower than domestic prices, with the exception of fourth quarter 2003. CR/PR at Table V-7.

[227] Table C-1, Memorandum INV-CC-080. Purchaser prices for domestically produced Product 1 fell by *** percent over the period surveyed, and by *** percent in 2004. CR/PR at Table V-10.

Purchaser prices for domestically produced Product 2 fell by *** percent over the period surveyed, and by *** percent in 2004. CR/PR at Table V-12.

Purchaser prices for domestically produced Product 3 fell by *** percent over the period surveyed, and increased by *** percent in 2004. CR/PR at Table V-14.

Purchaser prices for domestically produced Product 4 fluctuated, but fell overall by *** percent over the period surveyed, and by *** percent in 2004. CR/PR at Table V-15

Purchaser prices for domestically produced Product 5 fell by *** percent over the period surveyed, and by *** percent in 2004. CR/PR at Table V-16.

Purchaser prices for domestically produced Product 6 fluctuated, but fell overall by *** percent over the period surveyed, and by *** percent in 2004. CR/PR at Table V-18.

[228] Vice Chairman Okun and Commissioners Lane and Pearson have analyzed the purchaser pricing data reported by the U.S. producers of chlorinated isos that they have included in the domestic industry, which does not include the tableters. These data are contained in CR/PR at Tables V-10-V-18. They find that these data are not materially different from the purchaser pricing data that includes the data reported by the tableters, and they join in the findings by Chairman Koplan, and Commissioners Miller and Hillman based on the data set forth in Tables V-10-V-18.

[229] Importer purchaser prices for subject imports from China for Product 1 fluctuated, but fell overall by *** percent in the period surveyed (first quarter 2002 to fourth quarter 2004). Importer purchaser prices for Product 1, subject imports from Spain, fell by *** percent in the period surveyed CR/PR at Table V-8.

Importer purchaser prices for subject imports from China for Product 2 fluctuated, but fell overall by *** percent in the period surveyed. Importer purchaser prices for Product 2, subject imports from Spain, fell by *** percent in the period surveyed. CR/PR at Table V-9.

U.S. purchaser prices for subject imports from Spain for Product 1 fell by *** percent in the period surveyed. CR/PR at Table V-11.

U.S. purchaser prices for subject imports from Spain for Product 2 fell by *** percent in the period surveyed. CR/PR at Table V-13.

U.S. purchaser prices for subject imports from China for Product 3 fell by *** percent in the period surveyed. CR/PR at Table V-14.

U.S. purchaser prices for subject imports from China for Product 4 fell by *** percent in the period surveyed. CR/PR at Table V-15.

[230] U.S. purchaser prices for subject imports from China for Product 1 fluctuated, and increased overall by *** percent over the period surveyed, but at levels far below purchaser prices for the domestic product. CR/PR at Table V-10.

Similarly, U.S. purchaser prices for subject imports from China for Product 2 fluctuated, and were level over the period surveyed, but at levels far below domestic prices. Table V-12.

U.S. purchaser prices for subject imports from China for Product 5 oversold domestic prices. CR/PR at Table V-16.

We also find evidence that subject imports suppressed domestic prices (that is, prevented price increases that otherwise would have occurred) over the period examined, to a significant degree. The record indicates that the domestic industry faced a "cost/price squeeze"- rising costs that could not be covered by higher prices. Unit raw material costs for the domestic industry steadily increased over the period examined, from $775 per short ton in 2002 to $858 per short ton in 2003, and further to $876 per short ton in 2004.[231] Unit cost of goods sold steadily increased over the period examined.[232] [233] The domestic industry's cost of goods sold ("COGS") as a share of net sales steadily increased from 76.4 percent in 2002 to 81.0 percent in 2003 and then to 90.7 percent in 2004.[234] [235]

These data indicate that, even though costs were increasing and demand was increasing, the domestic industry was not able to raise its prices, as would be expected under such market conditions. Instead, the domestic industry experienced a cost/price squeeze - rising costs that could not be covered by higher prices, due to competition from subject imports in the U.S. market. The domestic industry did not raise prices even in 2004 when demand and costs were at their highest levels; instead, prices declined.

We find that competition from the substantial volume of lower-priced subject imports in the U.S. market prevented the domestic industry from increasing its prices, even as demand and raw material costs increased. The cost/price squeeze faced by the industry was caused in significant part by the strong downward pressure on prices exerted by increasing volumes of lower-priced subject imports in the U.S. market.

We have examined, and rejected, respondents' arguments as to why prices for chlorinated isos have declined in the U.S. market. Chinese Respondents argue that certain integrated domestic producers, in ***, sell granular chlorinated isos to tableters at higher prices than they sell products to other downstream customers (in particular, mass merchandisers) in order to gain an advantage in the market place ("two-tiered" pricing).[236] However, the record reflects that domestic prices have declined across the board, that subject imports generally have undersold domestic product to a significant degree, and that tableters and their suppliers have switched to subject sources of chlorinated isos for price reasons, not because certain domestic integrated producers have offered granular chlorinated isos only at higher prices.[237] Moreover, the record indicates that Clearon did not start its attempts to sell to retailers until the second half of 2003, and that it did not sell *** to retailers over the period examined.[238]

Respondents argue that it is now easier for new entrants to obtain EPA registrations to sell chlorinated isos in the U.S. market,[239] and that the increased supply of chlorinated isos in the U.S. market has caused prices to decline. The fact that changes in the EPA registration requirements may have made entry by the subject imports easier to accomplish simply does not address the questions posed by the

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

[232] Unit cost of goods sold rose from $1,604 per short ton in 2002 to $1,682 in 2003 and to $1,696 in 2004. Table C-1, revised, OINV Memorandum INV-CC-080.

[233] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note the following trends: Unit cost of goods sold rose from *** per short ton in 2002 to *** in 2003 and to *** in 2004. CR/PR at Table VI-2.

[234] Table C-1, revised, OINV Memorandum INV-CC-080.

[235] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note the following trends: The domestic industry's COGS as a share of net sales steadily increased from *** percent in 2002 to *** percent in 2003 and then to *** percent in 2004. CR/PR at Table VI-2.

[236] Chinese Respondents' Posthearing Brief at 3.

[237] ***. Tr. at 185, 217.

[238] Petitioners' Posthearing Brief at Q-32 & Exhibit 18.

[239] Chinese Respondents' Prehearing Brief at 34-35.

statute, namely whether the volume of these subject imports is significant, whether they have significant adverse price effects, and whether they have a material adverse impact on the domestic industry.

Respondents Florida Pool/Sun have argued that subject imports from China are lower-priced than the domestic product due to quality differences.[240] As we have already discussed, purchasers do not report significant differences in quality between subject imports from China and the domestic like product, particularly with respect to meeting minimum quality standards. Indeed, *** has stated that after working with its Chinese supplier to improve the quality of the subject imports, it no longer has a problem with the quality of the chlorinated isos it purchases from China.[241]

Respondents also argued that mass merchant retailers have brought prices down by demanding lower prices for chlorinated isos, and in particular that the intense competition between *** for mass merchant customers has brought prices down.[242] However, we note that mass merchandisers are not new entrants to the U.S. market. Mass merchandisers, as well as Arch and BioLab, were participating in the U.S. market for years before the domestic industry's financial performance began to deteriorate. There is no evidence that their role in the market changed dramatically over the period examined. In any event, even if the role of mass merchandisers had changed, we still would consider the effect and impact of imports under the existing conditions of competition.[243]

Finally, respondents argued that bad weather in 2003 in the Northeastern United States, and resulting large inventories held by domestic producers, created a "buyer's market" that brought prices down in 2004.[244] However, the record does not indicate that 2003 was a particularly bad year for the industry; to the contrary, apparent consumption rose by 2.2 percent.[245] Chlorinated isos are sold nationally, and the record does not indicate that the weather in the summer of 2003 was inclement throughout the United States. In addition, while the domestic industry's inventory increased by approximately *** short tons from 2002 to 2003, this was less than *** of both apparent consumption and the domestic industry's production in 2003; the increase in apparent consumption in 2004, over 20,000 short tons, was far greater than this increased inventory.[246] We also note that, over the entire period examined, the domestic industry lowered its prices, and experienced ***, regardless of the weather or inventory levels.

We conclude, in view of the foregoing, that there has been significant price underselling by the cumulated subject imports and that the effect of such imports has been to depress prices for the domestic like product to a significant degree.

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[240] Florida Pool/Sun Prehearing Brief at 5-6.

[241] ***.

[242] Chinese Respondents' Prehearing Brief at 39.

[243] Chinese Respondents have characterized the falling domestic prices over the period examined as merely an extension of earlier price declines that were unrelated to subject imports. Chinese Respondents' Prehearing Brief at 39-42. However, the fact that domestic prices may have declined prior to the period examined, when subject imports were not yet in the market, does not mean that increasing volumes of lower-priced subject imports had no effect on declining domestic prices during the period examined. As previously discussed, the record indicates that subject imports generally have undersold and depressed domestic prices over the period of investigation to a significant degree. Further, these price declines contributed to the financial deterioration of the domestic industry. We also note Petitioners' argument that much of the prior price decline was a natural decline that followed introduction of a new product, trichlor tablets. Petitioners' Posthearing Brief at 11-12.

[244] Chinese Respondents' Prehearing Brief at 24-26; Arch's Prehearing Brief at 37.

[245] CR/PR at Table C-1, revised, OINV Memorandum INV-CC-080.

[246] CR/PR at Table C-1, revised, OINV Memorandum INV-CC-080.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[247] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[248] [249]

Despite a substantial increase in demand (apparent consumption rose by 18.4 percent from 2002 to 2004), the domestic industry's production was relatively level over the period examined.[250] [251] [252] At the same time, the industry's capacity increased slightly and capacity utilization fell slightly.[253] [254] [255] The industry's share of the U.S. market fell from 89.2 percent in 2002 to 78.6 percent in 2003 and 77.9 percent in 2004; most of this loss was to subject imports. The domestic industry's end-of-period inventories increased from 2002 to 2003, before falling below 2002 levels in 2004.[256]

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[247] 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.").

[248] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

[249] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677 (7)(C) (iii) (V). In its notices of final determination, Commerce found dumping margins for imports of subject merchandise from China ranging from 75.78 percent to 285.63 percent, and it found dumping margins for imports of subject merchandise from Spain to be 24.83 percent. 70 Fed. Reg. 24,502, 24,505-06 (May 10, 2005) (China); 70 Fed. Reg. 24,506, 24,510 (May 10, 2005) (Spain).

[250] Production of chlorinated isos for the domestic industry decreased from 122,518 short tons in 2002 to 119,272 short tons in 2003, then recovered to 122,061 short tons in 2004. CR/PR at Table III-2.

[251] Commissioner Miller and Commissioner Hillman have also taken into consideration the aggregate tablet production, capacity and capacity utilization data of Alden Leeds, Aqua Tri, and N. Jonas. Most of the raw materials that they use to produce tablets are not domestically produced chlorinated isos, and therefore consideration of their data involves only a low degree of double-counting. In the aggregate their domestic production of tablets increased by *** short tons from 2002 to 2004, from *** short tons in 2002 to *** short tons in 2003 and further to *** short tons in 2004. Derived from CR/PR at Table III-4.

[252] Chairman Koplan has taken into consideration the production of Aqua Tri and N. Jonas over the period examined. Their production *** short tons. Derived from CR/PR at Table III-4.

[253] Production capacity for the domestic industry increased slightly from 150,850 short tons in 2002, to 152,000 short tons in 2003, and to 152,720 short tons in 2004. Average capacity utilization decreased from 81.2 percent in 2002 to 78.5 percent in 2003, and then increased slightly to 79.9 percent in 2004. CR/PR at Table III-2.

[254] Commissioner Miller and Commissioner Hillman find that Alden Leeds, Aqua Tri and N. Jonas' capacity increased ***, and their capacity utilization increased, but remained at approximately *** percent. Derived from CR/PR at Table III-4.

[255] Chairman Koplan has taken into consideration the capacity, and capacity utilization data of Aqua Tri and N. Jonas over the period examined. Their capacity increased ***, and their capacity utilization ranged from *** to *** percent. Derived from CR/PR at Table III-4.

[256] CR/PR at Table III-7.

Most of the industry's employment indicators have deteriorated. The average number of production and related workers decreased by *** percent between 2002 and 2004,[257] [258] and the hours they worked decreased by *** percent.[259] [260] Hourly wages increased irregularly over the period examined.[261] [262] However, productivity per short ton increased and unit labor cost decreased over the period examined.[263] [264]

The domestic industry has lost revenue as its prices and sales values have declined, even though its production and shipments measured in quantity have been relatively stable, and demand has increased. Although net sales measured in quantity increased by 4.5 percent from 2002 to 2004, the value of net sales declined by 6.8 percent.[265] [266] Domestic producer shipments increased by 3.5 percent by quantity, but fell by 17.1 percent by value.[267] This decline in value occurred as costs increased; the unit raw materials cost rose from $775 per short ton in 2002 to $876 per short ton in 2004, and the total unit COGS rose from $1,604 per short ton in 2002 to $1,696 per short ton in 2004.[268] Thus, during the period of investigation, as lower-priced subject import volume increased, the industry experienced a cost/price squeeze, with the COGS to sales ratio increasing from 76.4 percent to 90.7 percent, and prices for the

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[257] The average number of production and related workers fell from 638 in 2002 to 563 in 2003, then to 513 in 2004. CR/PR at Table C-1, revised, OINV Memorandum INV-CC-080.

[258] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note the following trends: The average number of production and related workers fell from *** in 2002 to *** in 2003 and to *** in 2004, for an aggregate decline of *** percent. Supplementary Table 1 (Table C-1, revised, minus data provided by the tableters).

[259] Total hours worked by production and related workers declined from 1.35 million in 2002 to 1.21 million in 2003, then to 1.10 million in 2004. CR/PR at Table C-1, revised, OINV Memorandum INV-CC-080.

[260] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note the following trends: Total hours worked by production and related workers declined from *** in 2002 to *** in 2003, then to *** in 2004, for an aggregate decline of *** percent. Supplementary Table 1 (Table C-1, revised, minus data provided by the tableters).

[261] Hourly wages increased irregularly from $22.05 in 2002, to $24.59 in 2003, and then to $24.26 in 2004. CR/PR at Table C-1, revised, OINV Memorandum INV-CC-080.

[262] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note the following trends: Hourly wages increased irregularly from $*** in 2002, to $*** in 2003, and then to $*** in 2004. Supplementary Table 1 (Table C-1, revised, minus data provided by the tableters).

[263] Productivity (short ton produced per 1,000 hours) increased from 143.0 in 2002 to 155.7 in 2003 and then to 171.7 in 2004. Unit labor costs decreased irregularly from 2002 to 2004, increasing from $164.13 per short ton in 2002 to $172.35 per short ton in 2003, before decreasing to $149.77 per short ton in 2004. CR/PR at Table C-1, OINV Memorandum INV-CC-080.

[264] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note the following trends: Productivity (short ton produced per hour) increased from *** in 2002 to *** in 2003 and then to *** in 2004. Unit labor costs decreased irregularly from 2002 to 2004, increasing from $*** per short ton in 2002 to $*** per short ton in 2003, before decreasing to $*** per short ton in 2004. Supplementary Table 1 (Table C-1, revised, minus data provided by the tableters).

[265] CR/PR at Table VI-1. Table C-1, as revised, OINV Memorandum INV-CC-080.

[266] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note the following trends: Although net sales measured in quantity increased by *** percent from 2002 to 2004, net sales measured by value declined by *** percent. Supplementary Table 1 (Table C-1, revised, minus data provided by the tableters).

[267] Table C-1, as revised, OINV Memorandum INV-CC-080.

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

domestic product declining.[269] [270] Although subject import volume stabilized in 2004, it was at high absolute levels in that year, and there is some evidence of intensified negative price effects by subject imports at that time. Our pricing data reflect that purchaser prices for the domestic product fell *** in 2004 for several surveyed products.

As a result of these trends, the industry's financial indicators eroded substantially between 2002 and 2004. Gross profit declined by 63.1 percent from 2002 to 2004, with most of the decline in 2004.[271] [272] Operating income also fell sharply from positive operating income in 2002 to an operating loss in 2004.[273] [274] The domestic industry had a positive and relatively healthy operating margin (operating income as a ratio of sales) of 12.5 percent in 2002, which quickly fell to an operating margin of 7.1 percent in 2003, before deteriorating further into an operating loss of 2.5 percent in 2004.[275] [276] We note that the deterioration of the domestic industry's financial performance in 2004 occurred at the same time as apparent U.S. consumption rose by a healthy 15.9 percent. The domestic industry's capital expenditures and research and development expenses also declined.[277] Thus, instead of making profits in a time of increased demand, the domestic industry was facing higher costs and *** even though production and capacity utilization were relatively stable. The industry lowered employment levels, and eschewed capital expenditures, but continued to ***.

We attribute the deterioration in the condition of the domestic industry to significant increases in subject import volume that took market share from the domestic industry and forced it to cut prices, despite increasing costs.[278] [279]

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[269] Table C-1, as revised, OINV Memorandum INV-CC-080.

[270] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note that during the period of investigation, the COGS to sales ratio increased from *** percent to *** percent. Supplementary Table 1 (Table C-1, revised, minus data provided by the tableters).

[271] CR at Table VI-1, Table C-1, as revised, OINV Memorandum INV-CC-080.

[272] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note the following trends: Gross profit declined by *** percent from 2002 to 2004, with most of the decline occurring in 2004. Supplementary Table 1 (Table C-1, revised, minus data provided by the tableters).

[273] CR at Table VI-1, Table C-1, as revised, OINV Memorandum INV-CC-080.

[274] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note that operating income also fell sharply from *** in 2002 to *** in 2004. Supplementary Table 1 (Table C-1, revised, minus data provided by the tableters).

[275] CR at Table VI-1, Table C-1, as revised, OINV Memorandum INV-CC-080.

[276] Based on their definition of the domestic industry, Vice Chairman Okun and Commissioners Lane and Pearson note the following trends: The domestic industry had a positive and *** operating margin (operating income as a ratio of sales) of *** percent in 2002, which quickly fell to an operating margin of *** percent in 2003, before deteriorating into an operating *** percent in 2004. Supplementary Table 1 (Table C-1, revised, minus data provided by the tableters).

[277] CR/PR at Table VI-8.

[278] Tableters have argued that they need to purchase subject imports to produce tablets for the U.S. market. Chinese Respondents' Posthearing Brief, Attachment 1. However, the record reflects other sources of chlorinated isos, namely domestic and nonsubject sources. CR/PR at Table IV-3, as revised. The record reflects that tableters want subject imports from China because of their lower price. ***. Wego, an important supplier of chlorinated isos from China to tableters, stated that it began to source chlorinated isos from China rather than nonsubject sources because the products were "more competitive." Tr. at 217.

[279] Chinese Respondents and Arch have argued that large inventories in 2004, after bad weather in 2003 in the Northeast, created a "buyer's market" that lowered prices for negotiations the following year. Chinese Respondents' Prehearing Brief at 24-26, Arch's Prehearing Brief at 37. As discussed earlier, in our price effects analysis, the

(continued...)

Chinese Respondents and Arch argued that the domestic industry created its own problems by competing against its customers.[280] Arch maintains that it began importing subject imports from China only because of this downstream competition, and because Clearon raised prices in March 2003, at the threshold of the pool season, when Arch had no time to renegotiate prices with its customers.[281]

It is not unusual in this industry for suppliers to compete with their customers. Fourteen of the 21 responding purchasers reported competing for sales with manufacturers or importers from whom they purchase chlorinated isos.[282] With respect to Arch's arguments regarding Clearon, the record indicates that Clearon did not start its attempts to sell to retailers until later in 2003, and that Clearon did not sell *** to retailers over the period examined.[283] The evidence clearly shows that Arch contemplated importing product from China well before Clearon's March 2003 price increase. ***.[284] In addition, petitioners submitted PIERS data showing that Arch was importing trichlor from Chinese producers throughout the first six months of 2003.[285] Given the lag time between order and entry, much if not all of these imports would have been ordered before Clearon's price increase.

In light of the significant increases in the volume and market penetration of the subject imports between 2002 and 2004, the significant adverse price effects of the subject imports, and the causal linkage between the subject imports and the domestic industry's declines in market share, employment, and operating performance, we conclude that the subject imports have had a significant adverse impact on the domestic chlorinated isos industry. Accordingly, we reach an affirmative determination in these investigations.

V. CRITICAL CIRCUMSTANCES

On May 10, 2005, Commerce made a final determination that critical circumstances existed with respect to subject imports of chlorinated isos from Shanghai Tian Yuan International Trading Co., Ltd. ("Tian Yuan) and for all other producers/exporters in China, except for the following Chinese producers: Changzhou Clean Chemical Co., Ltd.; Hebei Jiheng Chemical Co., Ltd.; Liaocheng Huaao Chemical Industry Co., Ltd.; Nanning Chemical Industry Co., Ltd., Sinochem Hebei Import & Export Corp.; and Sinochem Shanghai Import & Export Corp.[286]

Because we have determined that the domestic chlorinated isos industry is materially injured by reason of subject imports, we must further determine "whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect

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[279] (...continued)
record does not support this argument.

[280] Chinese Respondents' Prehearing Brief at 21.

[281] Arch Prehearing Brief at 17-19.

[282] CR at II-6-7; PR at II-4-5.

[283] Petitioners' Posthearing Brief at Q-32 & Exhibit 18. Clearon sold only a ***. Id at Exhibit 18. See also Clearon's Producer Questionnaire at 6 (Question II-10) (total shipments of all chlorinated isos to pool retailers in 2003 of *** and in 2004 of ***). Clearon's shipments to retailers constituted ***. Furthermore, Clearon's *** to retailers occurred long after ***, and several months after ***. Arch Posthearing Brief at 5; Petitioners' Prehearing Brief, Exhibit 21.

Moreover, Clearon reports that it did not sell any chlorinated isos to mass merchandisers, ***, from 2002 to 2004. Petitioners' Posthearing Brief at Q-31-32 & Exhibit 17.

[284] Arch Posthearing Brief, Attachment 6 at 5, n. 14 & Attachment 10.

[285] Petitioners' Prehearing Brief, Exhibit 21.

[286] CR at IV-10; PR at IV-6.

of the antidumping duty order to be issued."[287] The SAA indicates that the Commission is to determine "whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order."[288]

The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant:

> (I) the timing and the volume of the imports,
> (II) a rapid increase in inventories of the imports, and
> (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.[289]

Consistent with Commission practice,[290] in considering the timing and volume of subject imports, we have considered import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding imports of chlorinated isos from Chinese producers or exporters that are subject to Commerce's critical circumstances finding. In these investigations, we have considered data for the six months prior to and including the month in which the petition was filed (May 2004) and data for the six months following that month.

We have two record sources for such data. Commerce has provided one source of data, but it is overinclusive. Only two firms, Hebei Jiheng Chemical Co. and Nanning Chemical Industry Co., provided export data to Commerce that could be used in making its critical circumstances determination. Commerce subtracted those two firms' data from import statistics to derive residual data for all other producers/exporters in China. Although this would include Tian Yuan, it would also include firms that were excluded from Commerce's critical circumstances finding, (for example, Changzhou).[291]

We have compared this subject import volume data provided by Commerce (which includes some subject imports not covered by Commerce's critical circumstances determination) for the six-month period prior to and including May 2004 (December 2003 to May 2004) to the volume of those subject imports for the six-month period following the filing of the petition (June 2004 to November 2004). The admittedly overinclusive import volume was *** short tons for the six-month period prior to the filing of the petition, and *** short tons for the six-month period following the filing of the petition, a decrease of *** percent.[292] Given that the subject import volume shown in these data decreased following the filing of the petition, rather than increased, they do not support an affirmative finding of critical circumstances.

We have also considered information and data provided by importer Florida Pool. It states that ***. Further, Florida Pool ***. Florida Pool reported that ***.[293]

The volume of chlorinated isos covered by Commerce's affirmative critical circumstances determination for the twelve-month period December 2003 to November 2004, according to Florida Pool, is *** short tons, which is an amount equal to only *** percent of total subject imports of chlorinated isos

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[287] 19 U.S.C. § 1673d(b)(4)(A)(i).

[288] SAA at 877.

[289] 19 U.S.C. § 1673d(b)(4)(A)(ii).

[290] See, e.g., Folding Metal Tables and Chairs from China, Inv. No. 731-TA-932 (Final), USITC Pub. 3515 (June 2002) at 20-21 (chairs) and 25-26 (tables), for purposes of its critical circumstances finding, the Commission compared import data six months prior to and including the month in which the petition was filed, and six months after that month.

[291] CR at IV-10-11, Memorandum INV-CC-080.

[292] CR at IV-11, Memorandum INV-CC-080.

[293] CR at IV-11-12, Memorandum INV-CC-080.

in 2004, and only *** percent of apparent U.S. consumption of chlorinated isos in 2004.[294] We determine that critical circumstances do not exist with respect to the subject imports of chlorinated isos covered by Commerce's affirmative critical circumstances determination, because the absolute level of subject imports of chlorinated isos covered by Commerce's critical circumstances determination is not sufficiently large that it is likely to undermine seriously the remedial effect of the antidumping order.[295]

VI. CONCLUSION

For the foregoing reasons, we find that the domestic industry producing chlorinated isos is materially injured by reason of less than fair value imports from China and Spain. We also determine that critical circumstances do not exist with respect to the subject imports from China covered by Commerce's critical circumstance determination.

[294] Calculated from CR/PR at Table IV-2; and Table C-1, revised, Memorandum INV-CC-080. We have no pricing data or inventory data specific to the subject imports covered by Commerce's affirmative critical circumstances determination.

[295] We note that neither Petitioners nor BioLab made any arguments regarding critical circumstances in their briefs or hearing testimony.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on May 14, 2004, with the Commission and the Department of Commerce ("Commerce") on behalf of Clearon Corp. ("Clearon"), Fort Lee, NJ, and Occidental Chemical Corp. ("OxyChem"), Dallas, TX, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of less-than-fair-value ("LTFV") imports of chlorinated isocyanurates ("chlorinated isos")[1] from China and Spain. Information relating to the background of these investigations is provided below.[2]

Effective date	Action	Federal Register citation
May 14, 2004	Petition filed with Commerce and the Commission; institution of Commission investigations	69 FR 29328, May 21, 2004
June 10, 2004	Initiation of investigations by Commerce	60 FR 32488
July 2, 2004	Commission's preliminary determinations	69 FR 40417
December 16, 2004 and December 20, 2004	Commerce's preliminary determinations	69 FR 75294 (China), December 16, 2004; 69 FR 75902 (Spain), December 20, 2004
January 5, 2005	Scheduling of final phase of Commission investigations	70 FR 916
February 24, 2005	Commerce's amended preliminary determination on China	70 FR 9035
April 11, 2005	Commerce's preliminary determination of critical circumstances on China	70 FR 18362
May 10, 2005	Commerce's final determinations	70 FR 24502 (China), 70 FR 24506 (Spain)
May 5, 2005	Commission's hearing[3]	NA
June 3, 2005	Date of the Commission's vote	NA
June 17, 2005	Commission's determinations sent to Commerce	NA

[1] The chlorinated isocyanurates subject to these investigations are derivatives of cyanuric acid, described as chlorinated s-triazine triones, and include trichloroisocyanuric acid ("trichlor") and sodium dichloroisocyanurate ("dichlor") in dihydrate and anhydrous forms. They are available in powder, granular, and tableted forms, all of which are covered in the scope of the investigations. The scope and the products are described in more detail in the section of this part of the report entitled "The Subject Product."

[2] Selected *Federal Register* notices cited in the tabulation, beginning with the scheduling of the final phase of the Commission's investigations, are presented in app. A.

[3] App. B shows the list of witnesses at the hearing.

PREVIOUS INVESTIGATIONS

In 1984, the Commission and Commerce conducted an antidumping investigation on cyanuric acid (a raw material used in the production of chlorinated isos) and its chlorinated derivatives, including the subject products, that resulted in an antidumping duty order on such products from Japan.[4] In the absence of any review request or objection from a domestic interested party, Commerce revoked the order in 1995 (60 FR 28576, June 1, 1995).

SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C, tables C-1 through C-9. U.S. producers' data are based on the questionnaire responses of three integrated producers of chlorinated isos and six firms that performed tableting operations on chlorinated isos in the period examined (2002-04). U.S. imports from China, Spain, and nonsubject countries are from questionnaire responses of U.S. importers that account for most imports of chlorinated isos. Data for producers in China and Spain are from questionnaire responses of four producers in China and one producer in Spain.

MAJOR FIRMS INVOLVED IN THE U.S. CHLORINATED ISOS MARKET

Three firms (petitioners Clearon and OxyChem,[5] and non-petitioner BioLab, Inc.,[6] Lawrenceville, GA) ("BioLab")) are integrated U.S. producers of chlorinated isos in that they produce granular and/or powdered chlorinated isos from raw materials of cyanuric acid, caustic soda, and chlorine gas, and also convert the granular chlorinated isos into tablets.[7] In addition, there are 11 firms that only have tableting operations for chlorinated isos; six of these firms (Alden Leeds, S. Kearney, NJ ("Alden Leeds"); Aqua Tri, Irvine, CA ("Aqua Tri"); Cadillac Chemical Corp. ("Cadillac," also known as Qualco, Inc., Passaic, NJ ("Qualco")); LPM Manufacturing, Inc., Phoenix, AZ ("LPM"); N. Jonas and Co., Inc., Bensalem, PA ("N. Jonas"); and Stellar Manufacturing Co., Sauget, IL ("Stellar")) also completed the Commission's producers' questionnaire.[8] Twelve importers of chlorinated isos responded to the Commission's importer questionnaire; the 12 firms account for most imports from China and Spain and for a lesser share of imports from countries from other than China and Spain.[9] There are 22 known producers of chlorinated isos in China and two producers in Spain.[10] U.S. purchasers of chlorinated isos consist of a wide variety of firms: tableters, swimming pool and spa market distributors and retailers (e.g., service companies, pool

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[4] *Cyanuric Acid and its Chlorinated Derivatives from Japan*, USITC Pub. 1513, April 1984.

[5] Clearon and OxyChem are represented in these investigations by the law firm of Gibson, Dunn & Crutcher, LLP.

[6] BioLab is represented by the law firm of DLA Piper Rudnick Gray & Cary, LLP.

[7] ***.

[8] ***.

[9] The importers are Alden Leeds, Arch Chemicals, ***. Importers Alden Leeds, Cadillac, N. Jonas, and Wego are represented by the law firm of Garvey Schubert Barer. Importer Arch Chemicals ("Arch") is represented by the law firms of Wilmer, Cutler, Pickering, Hale & Dorr, LLP and Arent Fox, PLLC. Importer Florida Pool Products, Inc. is represented by the law firm of Barnes, Richardson & Colburn.

[10] Chinese producers Changzhou Chemical Co., Ltd. and Nanning Chemical Industry Co., Ltd. are represented by the law firm of Garvey Schubert Barer, and Chinese producer Hebei Jiheng Chemical Co. is represented by the law firms of Wilmer, Cutler, Pickering, Hale & Dorr, LLP and Arent Fox, PLLC. The Spanish producer Aragonesas Delsa, S.A. is represented by the law firm of Cameron & Hornbostel, LLP.

specialty stores, and mass merchant retailers), makers of detergents and cleaners, and water treatment plants.[11]

NATURE AND EXTENT OF SALES AT LTFV

On May 10, 2005, Commerce published in the *Federal Register* its affirmative final determinations on China and Spain concerning sales at LTFV.[12] Commerce's final weighted-average dumping margins for chlorinated isos from China and Spain are presented in the following tabulation.

Country/exporter	Weighted average margin (*percent*)
China	
Hebei Jiheng Chemical Co., Ltd.	75.78
Nanning Chemical Industry Co., Ltd.	285.63
Section A respondents[13]	137.69
All others	285.63
Spain	
Aragonesas Delsa, S.A.	24.83
All others	24.83

THE SUBJECT PRODUCT

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

> Chlorinated isocyanurates or "chlorinated isos." Chlorinated isos are derivatives of cyanuric acid, described as chlorinated s-triazinetriones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3 \cdot 2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isos are available in powder, granular and tableted forms. These investigations cover all chlorinated isos.[14]

[11] Purchaser Sun Wholesale Supply, Inc. is represented by the law firm of Barnes, Richardson & Colburn.

[12] 70 FR 24502 (China), May 10, 2005; 70 FR 24506 (Spain), May 10, 2005.

[13] Changzhou Clean Chemical Co., Ltd.; Liaocheng Huaao Chemical Industry Co., Ltd.; Shanghai Tian Yuan International Trading Co., Ltd.; Sinochem Hebei Import and Export Corp.; and Sinochem Shanghai Import and Export Corp.

[14] 69 FR 32488, 32488, June 10, 2004. As of January 1, 2005, sodium dichloroisocyanurate (anhydrous and dihydrate) and trichloroisocyanuric acid are currently provided for in subheading 2933.69.60 of the Harmonized Tariff Schedule of the United States (HTS). The normal trade relations duty rate for HTS subheading 2933.69.60, applicable to both China and Spain, is 3.5 percent *ad valorem*.

Commerce's scope of investigation includes all chemical and physical forms (powder, granules, or tablets) of chlorinated isos. There are three primary chemical compositions of chlorinated isos, depending upon the amount of available chlorine, all of which are within Commerce's scope of investigation: (1) trichloroisocyanuric acid or "trichlor," which has 90 percent available chlorine; (2) sodium dichloroisocyanurate or "dichlor" in anhydrous form, which has 63 percent available chlorine; and (3) dichlor in dihydrate form, which has 56 percent available chlorine.[15]

Trichlor dissolves more slowly than dichlor, is used for long-term pool maintenance, and is predominantly sold in tablet form.[16] In contrast, dichlor dissolves more quickly than trichlor, is used for rapid pool sanitization or industrial uses, and is largely sold in granular form.[17] Certain patented, domestically produced "blended" tablets contain trichlor and other additives consisting of an algicide and a water clarifier.[18]

In addition, the powdered form of chlorinated isos has been produced in the United States. One firm, Enviro Tech, stated at the Commission's hearing that it would like powdered trichlor to be treated as a separate domestic like product.[19]

Physical Characteristics and Uses

Chlorinated isos are chemical compounds used primarily as sanitizing agents for swimming pools, spas, and industrial water, and as disinfecting and bleaching agents for detergents, bleaches, and cleansers. For actual application, these products are sold as a solid, usually in granular, tablet, or stick form. The active ingredient for sanitizing purposes is chlorine. Trichlor and dichlor differ mainly in the percentage of chlorine each has available for sanitizing and the rate of release of that chlorine in water. Trichlor, containing 90 percent available chlorine, has the highest chlorine content, but its chlorine is released relatively slowly in water and therefore it is more widely used for water treatment applications. Dihydrate and anhydrous dichlor contain less available chlorine, 56 percent and 63 percent, respectively, but the chlorine is released relatively quickly, making them more widely used in detergents, bleaches, and cleansers and as "shock" treatments to quickly instill chlorine in swimming pools. Although trichlor and dichlor generally perform the same function, one slower and one faster, one or the other is usually specified for any specific application. Owing to the relatively larger market for water treatment applications (pool and spa sanitation), trichlor accounts for the bulk of U.S. production and consumption and is generally priced somewhat lower per pound than dichlor.

Some of the trichlor tablets produced in the United States and China contain active ingredients other than chlorine that provide functions other than sanitizing, and are called "blended" tablets. The ingredients in these tablets include aluminum sulfate, which acts as an algicide, and copper sulfate, which acts as a water clarifier.

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[15] Petitioners' postconference brief, p. 3.

[16] "Most trichlor is ultimately sold as tablets or sticks . . .", transcript of the Commission's June 4, 2004 conference in the preliminary phase of these investigations ("conference transcript"), p. 30 (Johnson).

[17] "With dichlor, the dissolution rate is so fast that if you made a tablet, it falls apart," conference transcript, pp. 93-94 (Hand).

[18] ***. Staff telephone conversation with *** (June 22, 2004).

[19] Hearing transcript (Howarth), p. 209.

The Production Process

The raw materials for the production of both trichlor and dichlor are cyanuric acid, caustic soda, and chlorine gas. Cyanuric acid, which U.S. chlorinated isos producers make and derive from urea, is refined and purified and then neutralized with caustic soda to become sodium cyanurate, the basic feedstock for both trichlor and dichlor. Both trichlor and dichlor are produced in the same kilns to mix the cyanuric acid and caustic soda to form the sodium cyanurate feedstock, using the same equipment and the same employees.[20] It then goes through dedicated production lines to produce either trichlor or dichlor. To produce trichlor, chlorine gas is introduced into the feedstock and carefully controlled, resulting in a granular solid that is either packaged in 2,205-pound sacks or 300-pound drums and sold as such, or further processed into tablets or sticks and packaged in 10- to 50-pound pails. The bulk of trichlor is ultimately consumed as tablets. To produce dichlor, a smaller amount of chlorine gas is introduced into the feedstock, resulting in an acid that is neutralized with caustic soda to produce the dichlor salt. This product can be further dried at higher temperatures to produce the anhydrous forms. Most dichlor is sold and used in granular form and is packaged in sacks or drums. For the most part production is continuous, and the equipment and production workers used in the production of chlorinated isos are specific to that purpose.

A number of byproducts result from the production process, including ammonia gas and nitrogen- and chlorine-containing compounds, but virtually all are either waste products and must be subjected to further treatment prior to disposal to comply with government environmental regulation, or are used as a source of energy in the production process. The exception is a relatively small quantity of excess cyanuric acid, which is either sold or traded.

Three firms in the United States produce the subject product from raw materials. However, several other firms convert granular trichlor into tablets and package the product for sale. They acquire the granular product produced by U.S. and/or foreign producers.[21] Petitioners assert that the investment required for equipment to press granular trichlor into tablets is minor in comparison to the overall investment in a plant that produces trichlor from raw materials[22] and that firms that solely tablet the product are not U.S. producers of chlorinated isocyanurates. Respondents contend that firms that transform granular product into tablets and package them are part of the U.S. industry. They contend that those firms' capital investments, value added, technical expertise, employment levels, and materials sourced warrant their inclusion in the U.S. industry.[23] In the preliminary phase of these investigations, the Commission made no determination on whether to include tableters in the domestic industry (data from tableters were limited), and stated its intent to examine this issue further in any final phase of the investigations.[24] Petitioners contend that tableters should not be considered part of the domestic industry, citing the low initial capital investment necessary for tableting production and the "substantial benefit" tableters received from subject imports.[25] Petitioners argue that U.S. integrated producers' tableting production should be included in the domestic industry because of "their status as primary

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[20] ***.

[21] Six tableters provided data in response to Commission questionnaires. Five other firms (***) that may have tableting operations did not respond to the Commission's producer's questionnaire.

[22] Petitioners' postconference brief, responses to questions from the Commission's conference, pp. 2-3.

[23] E.g., Chinese respondents'/tableters' postconference brief, pp. 6-10.

[24] *Chlorinated Isocyanurates from China and Spain*, Investigations Nos. 731-TA-1082 and 1083 (Preliminary), USITC Publication 3705, July 2004, pp. 10-12.

[25] Petitioners' posthearing brief, p. 4.

manufacturers."[26]

Respondents argue that the tableters have significant capital investments in their tableting operations and that the value added by the tableters by blending, tableting, and repackaging chlorinated isos make them part of the domestic industry. "Most importantly, the tableters employ a large number of U.S. citizens in their companies in direct tableting, blending and repackaging operations and additional persons are employed in support and management positions."[27]

U.S. producers were asked in the Commission's questionnaire whether they produce other products on the same equipment and machinery and/or using the same production workers as those used in the production of chlorinated isos. *** responded "No." *** responded with a qualified "Yes."[28]

Distribution and Market Segments

According to the Commission's questionnaire data, swimming pool and spa applications account for the great majority of the U.S. chlorinated isos market. Industrial applications, e.g., industrial water treatment and use in cleansers, detergents, etc., account for most of the remainder. For U.S. and foreign producers, the pool and spa segment of the market consists mostly of (1) converting and repackaging distributors, which buy not only tablets and a stick form of the product but also granular product that they convert to tablets and package for sale to commercial users, such as hotels and public pools, and to retailers, such as pool retail stores, pool service companies, mass merchants, and grocery and hardware stores; and (2) non-converting and repackaging distributors that sell to the same types of commercial users and retailers. To supplement their needs, U.S. producers and distributors may also buy product from each other. The industrial segment consists largely of manufacturers of cleansers, bleaches, and detergents, and a few distributors that serve the market independently.

In the United States, sanitizing agents such as trichlor and dichlor are statutorily controlled pesticides and must be approved by the Environmental Protection Agency ("EPA") for public use. Accordingly, any chlorinated isos destined for use in the pool and spa market must be tested and approved prior to sale. The EPA testing and approval process, known as registration, is specific to each producer's product and is obtained by the U.S. producer for its own production or by the importer for the Chinese-produced product. The Spanish producer Delsa possesses the registration for the Spanish product.

DOMESTIC LIKE PRODUCT ISSUES

In the preliminary phase of these investigations, the Commission found "one domestic like product, consisting of all chlorinated isos, coextensive with Commerce's scope of investigation."[29] In making its finding, the Commission addressed three domestic product issues: (1) whether there is a clear

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[26] Petitioners' posthearing brief, responses to Commissioners' questions, p. Q-11.

[27] Chinese respondents'/tableters' posthearing brief, p. 7.

[28] ***. ***.

[29] *Chlorinated Isocyanurates from China and Spain*, Invs. Nos. 731-TA-1082 and 1083 (Preliminary), USITC Publication 3705, July 2004, p. 6. The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price.

dividing line between trichlor and dichlor,[30] (2) whether there is a clear dividing line between granular chlorinated isos and tableted chlorinated isos, including blended tablets, and (3) whether there is a clear dividing line between blended tablets and other forms of chlorinated isos.[31] These issues are addressed separately below, as generally discussed in the Commission's views in the preliminary phase of the investigations, supplemented by other information in the record.

Also discussed below is information concerning powdered chlorinated isos as a potential separate domestic like product.

Trichlor vs. Dichlor

Physical Characteristics

Trichlor and dichlor have similar physical characteristics and uses in that they both principally contain chlorine and both work by instilling chlorine into swimming pools and other end uses for sanitizing purposes. However, trichlor and dichlor also differ in certain respects. The differences are in (1) the available chlorine (trichlor, which has three atoms of chlorine on the cyanuric acid ring, has 90 percent available chlorine, whereas dichlor, which has two atoms of chlorine on the cyanuric acid ring (one having been replaced with sodium), has only 56-63 percent available chlorine); and (2) solubility--dichlor dissolves more easily than trichlor and is generally sold in granular form, while trichlor dissolves more slowly and is usually sold in tablet form.[32] Moreover, tableted trichlor lasts days in water while tableted dichlor lasts minutes in water.[33]

End Uses and Interchangeability

Both trichlor and dichlor can be substituted for each other to sanitize spas and pools, and as cleansers and sanitizers for industrial uses. However, they are usually not used as substitutes for each other in the U.S. market due to consumer preferences for dichlor in granular form for rapid, short-term "shock" pool treatments, and trichlor in tablet or stick form for long-term, routine pool maintenance.[34]

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[30] Chinese respondents'/tableters' postconference brief, pp. 1-6. These respondents contend that there are sufficient differences between trichlor and dichlor, including physical characteristics, uses, production methods, and price, to consider them to be separate domestic like products.

[31] Arch Chemicals' ("Arch") postconference brief, pp. 6-13. Arch, a large converting and repackaging distributor, contends that its proprietary blended 3-in-1 tableted product (and a similar product patented by U.S. producer BioLab) should be considered a separate domestic like product on the grounds that, unlike chlorinated isos in general, it is a patented, multi-function formulation that contains algicides and water clarifiers in addition to chlorine; as such, it is not a "pure" chlorinated isos product. Arch also asserts that the domestic 3-in-1 product is produced on separate equipment and in different facilities than pure chlorinated isos, is perceived differently by customers, and has different channels of distribution and pricing from those of pure chlorinated isos.

[32] Producer and importer questionnaire responses.

[33] ***.

[34] Chinese respondents'/tableters' postconference brief (p. 4) indicated that dichlor dissolves quickly and is used to rapidly disinfect water, whereas trichlor dissolves more slowly and provides long-term water treatment, and that trichlor is purchased by consumers who would rather treat their pools weekly instead of daily. It also indicated that dichlor is usually used in pools with vinyl liners because it dissolves before hitting the bottom of the pool, whereas trichlor does not dissolve as quickly and remains on the bottom of the pool long enough to bleach the liner.

Although trichlor is not normally used to shock a pool, it can be used to routinely sanitize a pool.[35] Thus, dichlor and trichlor overlap in their application in the swimming pool market, with preferences of usage based on solubility. Similarly, although dichlor is more commonly used than trichlor in the industrial cleanser market, trichlor also is used in that market.[36]

Manufacturing Processes

Trichlor and dichlor are produced from a similar chemical reaction of caustic soda and chlorine with cyanuric acid. These steps include feed make-up preparation with caustic soda, chlorination, liquid/solid preparation, solid drying, compaction, granulation, screening, and loading into bulk containers.[37] Their common feedstock (trisodium cyanurate) accounts for a measurable proportion of total manufacturing costs. From that common feedstock, they are manufactured on separate production lines, but using similar processes.

Channels of Distribution

Trichlor and dichlor move through like channels of distribution. Both granular trichlor and granular dichlor are manufactured in the United States by ***. Granular trichlor is generally tableted and repackaged, whereas granular dichlor is generally only repackaged because it dissolves easily. Both products are then sold to distributors, which in turn sell the chlorinated isos to mass merchant retailers, large pool chains, pool service companies and smaller retailers, or are sold directly to such firms.[38]

Customer and Producer Perceptions

Both trichlor and dichlor are purchased by customers for their water sanitation (to kill bacteria and algae). Customers prefer dichlor over trichlor for "shock" treatments, when the chlorine level of the pool water needs to be raised quickly. Petitioners contend that their customers consider dichlor and trichlor to be related products that work on an integrated basis to provide pool sanitization.[39] However, respondents argue that dichlor and trichlor are perceived as different products with different end uses.[40]

Price

Price data collected by the Commission on dichlor, trichlor, and other chlorinated isos in the final phase of these investigations is presented in Part V of this report. The data show that U.S. producers' prices of dichlor are generally higher on a per-pound basis than the prices of trichlor in each quarter for which data were collected. This concords with anecdotal and other evidence on the record that the price of dichlor tends to be somewhat higher than that of trichlor.

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[35] BioLab sells a granular trichlor tableted product called "Chlorinated Granules Plus" that is also used for shock treatment of pools.

[36] ***. ***.

[37] ***.

[38] *** it produces and sells dichlor tablets ***.

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

[40] ***.

Granular Chlorinated Isos vs. Tableted Chlorinated Isos

Physical Characteristics

Trichlor is available in both granular and tableted forms, whereas dichlor is generally available only in granular form. Granular and tableted trichlor have identical chemical properties. Tableted chlorinated isos generally consist of granular trichlor that has been pressed into tablets, sticks, pucks, or other shapes. Tableted chlorinated isos have a slower dissolution rate than granular chlorinated isos due to the lower surface-area-to-volume ratio.[41]

End Uses and Interchangeability

The parties differ on whether the end uses for granular chlorinated isos and tableted chlorinated isos are the same. Petitioners contend that the end uses for both granular and tableted chlorinated isos are essentially the same because both forms of chlorinated isos are used for water sanitization. Arch contends that the granular product is sold (or transferred in-house) to tableters/repackers for use in the pool supply industry or is sold to industrial producers for use in cleansers and similar products, whereas tablets are used exclusively in the pool segment for sanitization treatment and are not further processed.[42]

Manufacturing Processes

Tableted chlorinated isos are granular chlorinated isos (believed to be almost always trichlor) that have been compacted or pressed into forms for convenience of the user. *** contends that "the cost of tableting is significantly less than the cost of producing granular trichlor and that the cost of producing granular trichlor accounts for approximately *** percent of the total cost of trichlor tablets."[43] *** argues that "the two have very different manufacturing processes."[44] Tableted trichlor requires an additional process of taking granular trichlor, sorting it, then tableting it into shapes, typically into 1-inch or 3-inch diameters.[45] Information obtained by Commission staff from U.S. integrated producers and tableters on their domestic value added in the production of tablets from domestically produced granular dichlor and granular trichlor is presented in detail in Part VI and appendix E of this report. Firms' reported percentages of value added varied substantially depending on the firm, on the source of the granular product tableted, and on whether repackaging and/or selling, general, and administrative ("SG&A") expenses are included.

Channels of Distribution

The parties also differ on the channels of distribution for granular chlorinated isos versus tableted chlorinated isos. Petitioners contend that the channels of distribution for both granular and tableted chlorinated isos are essentially the same. Arch notes that granular trichlor is sold (or used in-house) for further manufacturing while tableted chlorinated isos are typically sold to distributors or retailers.[46]

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[41] ***.

[42] ***.

[43] ***.

[44] ***.

[45] ***.

[46] ***.

Customer and Producer Perceptions

Most consumers in the United States use a tableted form of chlorinated isos due to the ease of handling as compared to granular chlorinated isos. The water sanitization functions remain the same for both granular and tableted chlorinated isos.

Price

Based on data collected by the Commission and presented in Part V of this report, the market prices for tableted trichlor chlorinated isos are higher than those of granular trichlor, but this may be partially explained by differences in packaging. The price data obtained for the tableted product are for the product in 24- to 26-pound bags, whereas the price data for the granular product are for bulk (one metric ton bag) purchases. Nevertheless, differences in price between the tableted and granular products are likely due to the additional processing required for tableting.

Blended Chlorinated Isos Tablets vs. All Other Chlorinated Isos

Physical Characteristics

Blended chlorinated isos and all other chlorinated isos have similar physical and chemical properties, but the blended product is also a clarifier and algicide and thus has (or is advertised as having) enhanced features compared with other chlorinated isos tablets.[47] Blended tablets contain trichlor, a clarifier and copper salt, which may affect the color of the tablets. In the case of blended dichlor, the additional components are used to change the rate of dissolution, such as adding an effervescent to cause the tablet to dissolve faster.[48]

End Uses and Interchangeability

The end uses are essentially the same for blended chlorinated isos and all other chlorinated isos. The available chlorine is the active material in all chlorinated isos, and all require EPA-approved registration labels.[49] Blended tablets are used for water clarification whereas non-blended tablets are not. Petitioners and one importer reported that the blended chlorinated isos tablets are a marketing tool which does not affect the products' end use or effectiveness.[50]

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[47] BioLab's blended tablet contains about *** percent chlorine; *** blended tablet contains *** percent chlorine. ***.

[48] ***.

[49] ***.

[50] ***.

Manufacturing Processes

Blended chlorinated isos tablets require an additional step of placing the granular chlorinated isos and additives into a mixer and blending them.[51] ***.[52]

Channels of Distribution

The channels of distribution are essentially the same for both types of products. BioLab's blended tablets (and those of Arch) are branded products, whereas chlorinated isos in granular form are bulk, unbranded products. However, blended tablets do not have a Department of Transportation 5.1 oxidizer (yellow triangle) warning label, whereas regular trichlor tablets are shipped with that label.[53]

Customer and Producer

Both blended and all other chlorinated isos meet the same customer requirements as a water sanitizer.[54] [55]

Price

Based on data collected by the Commission from U.S. producers and presented in Part V of this report, blended chlorinated isos tablets produced in the United States were sold at *** higher prices than the prices of U.S.-produced regular trichlor tablets. *** noted that *** blended products are sold at unit prices higher than those of pure trichlor tablets.[56]

Powdered Chlorinated Isos

The issue of finding powdered trichlor as a separate domestic like product was raised by Mr. John Howarth of Enviro Tech Chemical Co., Modesto, CA, at the hearing. BioLab ***.[57] Mr. Howarth contended the "powdered and granulated forms of chlorinated isos differ greatly in production, packaging and usages."[58]

Mr. Howarth stated that "powder is the initial product out of the reactor after drying. Granules are a downstream product made by mechanical compaction of the power into a compressed sheet. This sheet can be broken up into smaller pieces. The pieces are then sieved to specific sizes, and 'cuts' of these are taken to form the granules. Granules which pass through the smallest screen are considered unsuitable for commercial use and are recycled back into the front-end mechanical compaction process."[59] Mr. Horwath contended that with regard to physical characteristics and uses, powder is not compacted and is as fine as talc, whereas granules and tablets are compacted and range from particles the size of sand

[51] However, *** reported that "there is no significant difference between the production of blended trichlor tablets and pure trichlor tablets." ***.

[52] ***.

[53] BioLab's posthearing brief, p. 14.

[54] ***.

[55] ***.

[56] ***.

[57] BioLab's posthearing brief, exhibits 6 and 7.

[58] Enviro Tech's submitted written testimony, p. 1.

[59] Ibid., p. 3.

grains up to 3-inch tablets; that trichlor powder is not sold to pool owners, is too dusty for chemical feeders, and cannot be tableted directly; and that his firm's production process can only use trichlor powder. He acknowledged that granules and tablets may be produced at the same manufacturing facilities as powder, but that there are differences in the production process. Moreover, he contended that powder is significantly less expensive to produce than granules or tablets; that customer and producer perceptions of trichlor powder and granular product differ, as do the channels of distribution; and that the products are not interchangeable.[60] Enviro Tech summarizes the differences in usage between powder and granular forms of chlorinated isos by stating that "powder is too dusty and fine to merit its use in automatic feeding equipment, or by manual broadcasting in the treatment of recreational water. Only forms that are compacted into tablets or granules are considered suitable. Another essential difference lies in the fact that powder cannot be directly compressed into tablets; only granules can be employed in tablet-making. The small particle size distribution of powder is an essential aspect to its use in the process Enviro Tech employs to make its product. The high surface area of trichlor powder makes it highly reactive so that its reaction proceeds smoothly, and quickly to completion with good yield. By contrast, the lower surface area of trichlor granules makes for a sluggish reaction, which is difficult to complete."[61]

BioLab disagrees with Enviro Tech, contending that trichlor powder should be treated as part of the same domestic like product as all chlorinated isos. Powdered trichlor is produced by BioLab as an intermediate product and BioLab used the Commission's semi-finished product analysis to argue that powder should be included in the same domestic like product as all isos. It notes that "almost 100 percent of trichlor powder is dedicated to the production of granular trichlor and trichlor powder has virtually no independent uses; there is perceived to be no separate market for trichlor powder; the physical characteristics of trichlor powder and granular trichlor are virtually identical; there is no information on the record regarding differences in the cost of trichlor powder and trichlor granules and no information about its market value during the period of investigation; and the further processing of trichlor powder into granular trichlor is limited to the mechanical granulation process to transform the fine powder particles into free-flowing granules."[62]

According to the petitioners, "Clearon produces dichlor with a wide range of different particle distributions, it does not consider any of these products to be powder."[63] OxyChem produces a ***.[64] All three U.S. producers of chlorinated isos state that powdered chlorinated isos are part of the domestic like product as all chlorinated isos, and that it is produced using the same equipment and workers and the rest of chlorinated isos.

BioLab produces powdered trichlor ***. It produced ***. Clearon reported that it ***. OxyChem reported that it ***.

[60] Ibid., p. 3.

[61] Ibid., p. 3.

[62] BioLab's posthearing brief attachment, pp. 3 and 4.

[63] E-mail from petitioners' counsel, May 13, 2005.

[64] Ibid.

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

U.S. MARKET SEGMENTS

Chlorinated isos are used primarily by the swimming pool and spa market to maintain chlorine levels in pools and spas, although there is also demand from makers of detergents and cleansers for industrial and institutional use and for uses such as cooling tower applications for water treatment at commercial plants. Chlorinated isos are generally used in residential pools rather than commercial pools, which tend to use other types of sanitizers.[1]

Chlorinated isos are commonly sold in two forms, trichlor and dichlor, with dichlor being further differentiated between dihydrous (56 percent chlorine) and anhydrous (63 percent chlorine). The cleansers and sanitizers market generally uses dichlor, although there is some use of trichlor for toilet bowl cleansers, while the pool and spa market uses both dichlor and trichlor.[2] The industrial water treatment segment generally uses trichlor.

Trichlor dissolves more slowly in water than dichlor and is generally sold to the final user as a tablet or stick.[3] Dichlor dissolves more quickly and is used in the pool and spa market to "shock" a pool by raising the level of chlorine quickly to kill off algae or other organisms that may have developed at lower chlorine levels. However, dichlor also may be used to maintain a pool's chlorine level, although such use would be daily rather than weekly, and trichlor (in the granular form) can be used to shock treat a pool.[4] Dichlor is sold primarily in granular form, as it would dissolve too quickly as a tablet, although it can be tableted for some uses.[5] Thirteen of 21 responding purchasers said that dichlor and trichlor are not at all or not very substitutable. Other purchasers said that customers buy one if the other is unavailable; that some customers do not know the difference between the two, so will buy both; and that there are many options for sanitizing a pool so customers switch between the two types.

In addition, Arch and BioLab sell a "blended" tablet that mixes trichlor with other chemicals (e.g., anti-algae and water-clarifying chemicals such as aluminum sulfate and copper sulfate). These blended tablets are proprietary and patented products. ***.[6] *** reported that trichlor represents over 90 percent of active ingredients in the blended tablets, and thus, blended tablets have a lower level of available chlorine than straight trichlor tablets.[7] *** also reported producing types of blended chlorinated isos tablets, citing soda ash and a flame retardant as inputs into the blend.

Twenty-one purchasers reported purchasing granular dichlor; 19 reported purchasing granular trichlor; 16 reported purchasing trichlor tablets; and 4 reported purchasing blended tablets. Twenty purchasers reported that the main end use for the chlorinated isos they purchase is for use in swimming pools; 6 for tablet production; 4 for machine dishwashing detergents; 3 for water treatment applications; 3 for bleaches/scouring powders; 2 for toilet bowl cleaners; and 4 for other reasons that included use in spas and hot tubs and commercial laundry.

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[1] Conference transcript, pp. 96-97 (Hand).

[2] In their purchaser questionnaire responses, *** reported that trichlor cannot be used in vinyl pools, and *** reported that dichlor is primarily used in spas and above-ground pools, while trichlor can be used in all pools and spas.

[3] *** reported that 90 percent or more of trichlor is tableted.

[4] Hearing transcript, p. 51 (Schobel).

[5] *** reported that both trichlor and dichlor can be tableted.

[6] Hearing transcript, pp. 173-177 (Hitchens).

[7] *** reported that blended tablets are basically a product of marketing. The same EPA-approved labels go on the blended tablet containers and the straight trichlor tablet containers. In addition, since blended tablets have lower available chlorine, the end user needs to use more product to get the same effect. ***.

Until 2001, many companies did not sell chlorinated isos to the U.S. pool market due to high entry barriers in the form of EPA registrations.[8] Such pool products are treated as pesticides and therefore must be registered under FIFRA, the Federal Insecticide, Fungicide, and Rodenticide Act. FIFRA required in-depth studies to determine the environmental safety of the product.[9] From 1986 to 2001, a coalition of domestic and foreign producers (the so-called "Ad Hoc Committee" that includes petitioners, Spanish producer Delsa, and certain other foreign producers) had secured licenses to sell chlorinated isos in the United States by jointly paying for the required research. Any new entrant to the market before 2001 would either need to pay for its own research or compensate the Ad Hoc Committee by paying a fee of roughly $400,000.[10] However, in 2001, the mandatory compensation for using the Ad Hoc Committee's research expired. Chinese chlorinated isos entered the U.S. market, with importers using that research to obtain EPA licenses. However, according to importers, no Chinese producer has yet obtained a license; rather, the U.S. importers of Chinese chlorinated isos hold the licenses.[11] One importer described the licensing process as taking approximately one year. (The detergent/cleanser segment does not have any EPA licensing requirement because it does not make any claims about ability to kill organisms.)

U.S. CHANNELS OF DISTRIBUTION[12]

There are three integrated manufacturers of chlorinated isos in the United States. Clearon and OxyChem make dichlor and trichlor, while BioLab manufactures ***. Each producer has the capability to tablet and package, and Clearon and OxyChem have both sold chlorinated isos in one-metric-ton sacks to tableters and repackagers. OxyChem manufactures granulated dichlor and trichlor ***. Its chlorinated isos are then sold into the retail market under a brand or private label by the tableter or packaging company. Thus, in addition to petitioners and BioLab, there are several merchant tableters and repackagers who buy granular chlorinated isos and form them into tablets and/or package them in smaller containers.[13] Imports into the United States are in either granular or tableted form, and can be sold to either tableters, repackagers, or distributors.

At the consumer level, chlorinated isos are sold through mass merchant retailers such as Costco, Home Depot, and Wal-Mart, through "mom and pop" pool specialty stores, through the large pool products chain Leslie's, through pool service companies, and to a lesser degree through grocery and hardware stores. Tableters tend to supply the professional pool service companies.[14] According to ***, pool retail stores tend to buy from tableters and repackagers, and the larger mass merchandiser retailers and Leslie's tend to buy from integrated producers, tableters, and repackagers. Mass merchandiser

[8] *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary),* USITC Publication 3705, July 2004, p. II-1 and hearing transcript, p. 178 (Abramson).

[9] These studies include subchronic and chronic mammalian toxicology tests as well as mutagenicity, metabolism, and other toxicology tests. Ibid., p. II-2.

[10] Ibid., p. II-2 and hearing transcript, p. 113 (Hand).

[11] Ibid.

[12] Data on channels of distribution for U.S. integrated producers and for product from China and Spain are presented in table II-1.

[13] Alden Leeds, AquaTri, LPM Manufacturing (owned by Leslie's), N. Jonas, and Qualco submitted producer questionnaires. Stellar Manufacturing also submitted a producer questionnaire, ***.

[14] Hearing transcript, p. 178 (Perry) and p. 181 (Jonas).

Table II-1
Chlorinated isos: Reported channels of distribution for domestic product and subject imports sold in the U.S. market (as a percent of total shipments), by year and by country, 2002-04

	2002	2003	2004
	Share of quantity (*percent*)		
Domestic integrated producers:			
Shipments to repackagers/tableters	9.2	7.6	11.6
Shipments to distributors	53.5	52.3	51.0
Shipments to mass market retailers	14.2	15.7	14.9
Shipments to pool-related retailers	17.5	18.8	16.7
Shipments to the industrial market	5.6	5.3	4.4
Shipments to other[1]	0.0	0.3	1.4
Total	100.0	100.0	100.0
China:			
Shipments to repackagers/tableters	100.0	56.6	55.7
Shipments to distributors	0.0	2.7	0.0
Shipments to mass market retailers	0.0	34.6	41.7
Shipments to pool-related retailers	0.0	1.3	0.7
Shipments to the industrial market	0.0	0.0	0.0
Shipments to other[1]	0.0	4.8	1.9
Total	100.0	100.0	100.0
Spain:			
Shipments to repackagers/tableters	***	***	***
Shipments to distributors	***	***	***
Shipments to mass market retailers	***	***	***
Shipments to pool-related retailers	***	***	***
Shipments to the industrial market	***	***	***
Shipments to other[1]	***	***	***
Total	100.0	100.0	100.0

[1] Other includes sales to competing firms, both domestic and subject.

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

retailers offer less expertise and a more narrow range of products to consumers than pool specialty stores but often sell chlorinated isos at a lower price.[15]

Twenty-five purchasers responded to the Commission's purchaser questionnaire. Allowing for multiple selections, there were nine tableters, seven distributors, four mass-market retailers, three pool-related retailers, and one other retailer; nine classified themselves as "other" and then characterized themselves as repackagers, pool-related formulators, and dishwasher detergent producers.[16] The firms who distribute or resell chlorinated isos reported selling primarily to mass-market and specialty-pool stores.

As a result of the varied methods of distribution in the chlorinated isos market, producers sometimes end up competing with companies that they have supplied. Petitioners characterized the decision as to whether to supply an end user directly or through a distributor as varying on a case-by-case basis. Some importers stated that petitioners had begun to try to cut tableters out of the distribution chain by directly supplying their largest customers.[17] In one example, Arch mentioned Clearon, previously its largest supplier, positioning itself as a direct competitor to Arch by attempting to sell to Arch's customers directly.[18] Fourteen of the 21 responding purchasers reported competing for sales with manufacturers or importers from which they purchase chlorinated isos. Those purchasers were asked when they first became aware of this competition, and responses ranged from "in the last 12 months" to "at least 10 years ago."

In addition, there appears to be some overlap in terms of purchasers buying from both U.S. producers of chlorinated isos and from imported sources. For instance, *** listed domestic, Chinese, and Spanish companies among their suppliers. There also are instances of purchasers listed as suppliers for other purchasers. *** purchases chlorinated isos from *** and supplies ***; *** purchases from *** and supplies ***; and *** purchases from U.S., Chinese, and Spanish sources and supplies ***. Because of the structure of the industry, with producers, tableters, repackagers, and distributors, this does not seem to be a rare occurrence. The top 10 customers of the integrated producers and the responding importers are presented below. Those firms that are customers of both the U.S. producers and the responding importers are shown in bold.[19]

Clearon's top ten customers

* * * * * * *

OxyChem's top ten customers

* * * * * * *

[15] Staff telephone conversation with ***.

[16] *** described themselves as repackagers (not distributors or tableters), and *** described themselves as distributors (not repackagers or tableters).

[17] Hearing transcript, pp. 186-187 (Ferentinos) and p. 189 (Epstein).

[18] Conference transcript, pp. 119-123 (Johnson). Clearon asserts that it never sold chlorinated isos directly to mass market retailers and only minimal amounts directly to pool dealers, and that it made contact with such firms to sell chlorinated isos only after Arch began reducing purchases from Clearon in favor of subject imports. Petitioners' postconference brief, p. 43 and exh. 18. In addition, ***, in its purchaser questionnaire response, also cited Clearon's actions in 2002 as competing not only with purchasers but also with other U.S. producers.

[19] Four of the 12 responding importers submitted information on customer identification.

BioLab's top ten customers

* * * * * * *

Responding importers' top ten customers

* * * * * * *

Purchasers were asked what other products they distribute, tablet, or repackage in addition to chlorinated isos. Purchasers cited other pool and spa chemicals; goods, parts, toys, and accessories for pools and spas; cleaning products; recreational water products; and industrial and fine chemicals.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. chlorinated isos producers are likely to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced chlorinated isos to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the availability of unused capacity, some export shipments, and moderate levels of inventories.

When asked if there had been any changes in the product range of chlorinated isos, 1 integrated producer, 1 tableter, and 3 of the 11 responding importers said yes. One tableter and two importers said that blended tablets produced by Arch and BioLab were new on the market, and one integrated producer said that technology improvements have led to a shift from calcium hypochlorite to trichlor due to improved quality. One importer said that the EPA data becoming public in 2001 changed U.S. producer pricing and product availability.

When asked if there had been any changes in the marketing of chlorinated isos, one integrated producer and one tableter said yes; the producer explained that there has been a large increase in product from China and Spain the last three years, and the tableter reported that domestic manufacturers had gone downstream to sell to the traditional customers of repackagers and tableters. Four importers said that there have been changes in marketing, specifically that Clearon approached mass marketers in 2003 with the intention of competing with distributors, including some of whom they supplied.

One integrated producer, one tableter, and one importer said that they have instituted marketing initiatives to reach out to the mass dealers or other segments of the market in the last three years. *** reported a new brand for local sales and meeting with a sales consultant. *** cited patented formulas and new devices to feed chlorinated isos into pools and a new toilet bowl cleanser. *** said that its initiative involved new packaging, in-store signs, and a direct-mail campaign.

Industry capacity

U.S. integrated producers' reported capacity utilization decreased for both granular and tableted chlorinated isos from 2002 to 2004 (see tables III-2 and III-3). In addition, respondents were under the impression that OxyChem did not have the ability to make additional sales.[20] *** noted a problem of raw

[20] *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary),* USITC Publication 3705, July 2004, p. II-3 and hearing transcript, p. 186 (Ferentinos).

material availability in its production process. BioLab had a recent fire at its plant, but it said that damage was minimal and supply was only briefly interrupted.[21]

Alternative markets

Alternative markets globally for isocyanurates include Australia, Brazil, Europe, Mexico, and South Africa. However, the United States is the largest market for pool products and chlorinated isos globally, and U.S. prices are reportedly higher than global prices.[22] U.S. integrated producers' export shipments fell slightly to *** percent of total shipments in 2004 (see table III-5), and this relatively low level of exports during the period indicates that domestic producers may be somewhat constrained in their ability to shift shipments between the United States and other markets in response to price changes.

Inventory levels

Because chlorinated isos sales are seasonal, companies in this industry build their capacity for several months in order to supply enough for the entire pool season which runs from Memorial Day to Labor Day. Therefore, most sales of chlorinated isos take place in the second and third quarters of the calendar year. If weather is poor during the season, such as in 2003, inventory levels tend to increase.[23] U.S. integrated producers' inventories, as a share of total shipments, rose from *** percent in 2002 to *** percent in 2003 but fell to *** percent in 2004 (see table III-7).

Production alternatives

*** of the three integrated producers and all four tableters reported that they do not produce other products on the same equipment and machinery used in the production of chlorinated isos. *** said that one of its facilities has shared equipment for all powder fill operations and that products produced on the same equipment included liquid pool accessory products, other solid pool products, and home care products.

Subject Imports

China

Based on available information, the Chinese producers are likely to respond to changes in demand with moderate-to-large changes in the quantity of shipments of chlorinated isos to the U.S. market. The main contributing factors to the moderately high degree of responsiveness of supply are the availability of unused capacity and the existence of alternate markets.

According to petitioners, the Chinese industry's capacity is 171,000 metric tons, while global demand is 200,000 metric tons annually.[24] Respondents stated that only approximately 15,000 to 20,000

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[21] http://www.e1.greatlakes.com/corp/news/jsp/recent_news_detail.jsp?contentfile=05252004_Conyers_fire.htm, retrieved on March 28, 2005.

[22] *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary),* USITC Publication 3705, July 2004, p. II-4 and hearing transcript, p. 179 (Abramson).

[23] Hearing transcript, p. 166 (Reilly).

[24] *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary),* USITC Publication 3705, July 2004, p. II-3.

metric tons are of high enough quality for use in the U.S. market.[25] Chinese producers' reported capacity utilization decreased for granular chlorinated isos but increased for tableted chlorinated isos from 2002 to 2004 (see tables VII-1 and VII-2).

The Chinese market for swimming pool products is not very large; therefore many producers are export-oriented. Antidumping duties have been placed on Chinese trichlor in Mexico, and the European Union recently imposed provisional antidumping duties on both Chinese and U.S. producers.

Spain

Based on available information, the reporting Spanish producer (Delsa) is likely to respond to changes in demand with moderate changes in the quantity of shipments of chlorinated isos to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the availability of unused capacity and the existence of alternate markets.

Delsa recently opened a new factory, which petitioners said substantially increased its capacity from its old facility. Delsa disputed that its new capacity is as large as petitioners said, and maintained that it needed to move its factory from a populated area in Barcelona and that the increased capacity made economic sense as it is cheaper to add capacity in a new factory than to add on at a later date.[26]

Delsa's shipments of both granular and tableted chlorinated isos to its home market decreased from 2002 to 2004 while export shipments to the U.S. market and to all other markets increased (see tables VII-3 and VII-4).

Nonsubject Imports

Imports of chlorinated isos are also available from Japan, Italy, and, to a lesser extent, Mexico. In 2001, French chlorinated isos producer AZF's factory burned in an explosion, and thus it no longer produces. AZF had been a supplier to some U.S. tableters. Delsa stated that the increased capacity in Delsa's new factory is the same size as the French factory that is no longer producing.[27]

U.S. Demand

Demand Characteristics

Demand for chlorinated isos consists of three major segments: residential pool sanitizers; detergents and cleansers (i.e., bleaches, toilet bowl cleansers, industrial and institutional detergents); and industrial water treatment (i.e., cooling tower applications). Demand for all end uses generally tracks overall economic activity. According to producers and importers, demand increases for chlorinated isos at a rate of 3 to 6 percent per year as the number of pools in the United States increases. However, both producers and importers have stated that weather is sometimes the most important condition affecting demand in a particular year.[28]

*** integrated producers, 5 of the 6 responding tableters, and 7 of the 11 responding importers said that demand for chlorinated isos had increased in the last three years, with most citing the growth in the number of pools and increased demand for pool use. *** stated that increases in demand also can be

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[25] Ibid.

[26] *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary),* USITC Publication 3705, July 2004, p. II-3 and hearing transcript, pp. 191-198 (James).

[27] Ibid.

[28] Both producers such as *** and importers such as *** reported that 2002 and/or 2003 were years of reduced demand due to cooler and wetter weather than normal.

attributed to increases in technology and the resulting efficiency of the trichlor product, replacing calcium hypochlorite use. *** added that the industrial segment is static or declining as the dishwashing detergent market moves away from chlorinated isos to enzymes.

Substitute Products

Some producers and importers reported that chlorinated isos captured market share from their past substitutes, although this was more of a long-term development than a recent event. Substitute products for chlorinated isos cited by producers, importers, and purchasers include calcium hypochlorite,[29] sodium hypochlorite, lithium hypochlorite, enzymes, liquid bleach, sodium percarbonate, bromine, biguanide, salt generators, and bacquacil. All of these products can be used as replacements as pool shock treatments, pool sanitizers, and for cleaning and bleaching stains. However, even with the large number of substitute products, no purchasers and only one tableter and four importers described any change in the price of chlorinated isos due to the use of these products.

Cost Share

Producers, importers, and purchasers were asked to provide information on the cost share of chlorinated isos relative to the end products in which it is used. Reported cost shares varied widely, some depending on the market segment; the range was from 13 to 50 percent for dishwasher detergents, toilet bowl cleansers, powdered bleaches, and other cleaning compounds; 30 to 100 percent for industrial water treatment products; and 50 to 100 percent for various pool and spa sanitizers.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported chlorinated isos depends upon such factors as relative prices, quality, and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that there may be some differences between domestic and imported chlorinated isos, specifically from China, so there is a moderate degree of substitution between chlorinated isos produced in the United States and China and a higher degree of substitution between the U.S. product and products from Spain and other import sources.

Factors Affecting Purchasing Decisions

Petitioners describe U.S.-produced chlorinated isos as competing with those produced in China and Spain mostly or entirely on price.[30] While petitioners acknowledge that their product has advantages over Chinese chlorinated isos in delivery and reliability, they reported that the increased subject imports are competing with U.S. chlorinated isos entirely on a price basis. According to importers, while the products imported from Spain are of the same quality and similar price as U.S.-produced product, the Chinese product often has a lower quality level and a lower price.

Purchasers were asked to identify the three major factors considered by their firm in deciding from whom to purchase chlorinated isos (table II-2). Price was the most commonly cited factor overall. Eight of the 23 responding purchasers reported that quality was the most important factor, and 7 reported that price was the most important factor. The next most commonly cited factor was reliability of supply.

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[29] Calcium hypochlorite was the most frequently cited substitute for chlorinated isos. However, drawbacks of use include scaling or a cloudy water appearance. Staff conversation with ***.

[30] Hearing transcript, p. 40 (Napoles).

Other factors reported by more than one firm were availability, product consistency, their relationship/partnership with the supplier, and on-time delivery and service.

Table II-2
Chlorinated isos: Most important factors in selecting a supplier, as reported by purchasers

Factor	First	Second	Third
Quality	8	4	3
Price	7	8	4
Availability	3	5	4
Reliability	3	4	7
Other	2	1	3

Note.–"Other" category includes pre-arranged contract/existing vendor, partnership with supplier, capacity, extension of credit, product consistency, on-time delivery and service, and marketing.

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

Purchasers were asked what factors determined the quality of chlorinated isos. Factors cited include chlorine content, gassing potential, odor, consistent granulation, low moisture content, color, solubility, tabletability, hardness of tablets, the pH level, and density. Several purchasers cited the necessity of meeting the firm's specs or industry/marketplace standards.

Purchasers were asked if they always, usually, sometimes, or never purchased the lowest-priced chlorinated isos. Eight purchasers reported usually purchasing the lowest-priced product and ten sometimes purchased the lowest-priced chlorinated isos. Five purchasers reported never purchasing the lowest-priced product; the other two purchasers did not answer the question. Purchasers also were asked if they purchased chlorinated isos from one source although a comparable product was available from another source at a lower price. Eighteen purchasers responded, reporting reasons why they purchased from a source that might be more expensive. Reasons provided included immediate availability, reliability of supply, product quality, contractual obligations, the importance of having more than one source, proximity of supplier to company locations, and loyalty/valued relationships.

In rating the importance of 15 factors in their purchasing decisions (table II-3), all 25 responding purchasers rated quality meets industry standards as very important; 24 reported that price, product consistency, and reliability of supply were very important; 23 reported that availability was very important; and 18 reported that delivery time was very important.

Purchasers were asked for a country-by-country comparison of the same 15 factors. Fifteen purchasers completed this comparison for the United States and China (table II-4),[31] with only one reporting that the products were comparable in all categories. Half or more of the responding purchasers reported that the U.S. product was superior to the Chinese product in delivery time, technical support/service, and reliability of supply. Thirteen of the 15 purchasers reported that the Chinese product was superior to the U.S. product with regard to a lower price. The great majority of purchasers stated that the products were comparable for minimum quantity requirements, product range, and quality meets industry standards.

[31] Additionally, two purchasers compared the United States to Italy, and one compared the United States to Mexico. For both comparisons, purchasers rated the products as comparable or the U.S. product being superior.

Table II-3
Chlorinated isos: Importance of purchase factors, as reported by purchasers

Factor	Very important	Somewhat important	Not important
	Number of firms responding		
Quality meets industry standards	25	0	0
Lower price	24	1	0
Product consistency	24	1	0
Reliability of supply	24	1	0
Product availability	23	2	0
Delivery time	18	7	0
Discounts offered	14	10	1
Delivery terms	13	10	2
Lower U.S. transportation costs	13	7	5
Quality exceeds industry standards	12	11	2
Extension of credit	12	6	7
Product range	10	10	5
Packaging	9	12	4
Technical support/service	9	11	5
Minimum quantity requirements	9	10	6

Note.--Not all purchasers responded for each factor.

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

Seven purchasers completed this comparison for the United States and Spain (table II-5), with two saying that the products were comparable in all categories. Three purchasers reported that the U.S. product is superior to the Spanish product for delivery time, and two purchasers reported that the Spanish product is superior to the U.S. product for a lower price.

Eight of the 23 responding purchasers reported specifically ordering chlorinated isos from one country in particular over other possible sources of supply.[32] Reasons cited for buying from one country in particular included quality, consistency, supplier relationship, lower prices, supply chain advantages, and customer requests.[33]

[32] All 12 responding purchasers reported never mixing granular chlorinated isos from different countries in one tablet, and all 13 purchasers reported never mixing tablets of chlorinated isos from different countries in the same pail or other package.

[33] *** reported that a domestic supplier is requested on some government orders.

Table II-4
Chlorinated isos: Comparisons of the U.S. and Chinese products, as reported by purchasers

Factor	U.S. vs China		
	S	C	I
	Number of firms responding		
Product availability	6	9	0
Delivery terms	5	10	0
Delivery time	11	4	0
Discounts offered	1	8	5
Extension of credit	4	10	0
Lower price[1]	0	2	13
Minimum quantity requirements	1	13	0
Packaging	4	10	1
Product consistency	7	8	0
Quality meets industry standards	4	11	0
Quality exceeds industry standards	7	8	0
Product range	3	12	0
Reliability of supply	8	7	0
Technical support/service	9	6	0
Lower U.S. transportation costs	5	10	0

[1] A rating of superior means that the price of the first-listed country's product is generally lower. A rating of inferior means that the first-listed country's product is generally higher.

Note.--S=first-listed country's product is superior; C=both countries' products are comparable; I=first-listed country's product is inferior.
Note.--Not all purchasers responded for every factor.

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

Purchasers also were asked if certain grades, types, or sizes of chlorinated isos were available from only a single source. Three purchasers reported that there were certain chlorinated isos available from only a single source. *** reported that Arch and BioLab offer blended trichlor tablets, *** reported that the dual-action blended trichlor tablets are only available from Arch, and *** reported that sodium dichloro-S-triazinetriane dihydrate is only available from Clearon.

Purchasers were asked if they required certification or prequalification for suppliers of chlorinated isos. Sixteen purchasers required it for all of their purchases. Nine purchasers reported requiring samples for testing and three reported requiring EPA registration. Responding firms reported that it can take anywhere from one day to six months to certify a supplier.

Table II-5
Chlorinated isos: Comparisons of the U.S. and Spanish products, as reported by purchasers

Factor	U.S. vs Spain		
	S	C	I
	Number of firms responding		
Product availability	2	5	0
Delivery terms	1	6	0
Delivery time	3	4	0
Discounts offered	0	7	0
Extension of credit	0	7	0
Lower price[1]	0	5	2
Minimum quantity requirements	0	7	0
Packaging	0	7	0
Product consistency	1	6	0
Quality meets industry standards	0	7	0
Quality exceeds industry standards	0	7	0
Product range	1	6	0
Reliability of supply	2	5	0
Technical support/service	1	6	0
Lower U.S. transportation costs	1	5	1

[1] A rating of superior means that the price of the first-listed country's product is generally lower. A rating of inferior means that the first-listed country's product is generally higher.

Note.--S=first-listed country's product is superior; C=both countries' products are comparable; I=first-listed country's product is inferior.

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

Twenty-two purchasers reported factors they considered in qualifying a new supplier. Factors considered primarily included quality, price, reliability, lead time, tabletability, consistency, low dust, low moisture, and packaging. The time required to qualify a new supplier was reported by 12 purchasers and ranged from several days to over a year.

Purchasers were asked if any suppliers had failed to qualify their product or lost their approved status. Five of the 24 responding firms reported that suppliers had failed to qualify. Three purchasers cited Chinese firms[34] that failed to qualify due to quality concerns as well as health and safety concerns. *** was cited as having failed for not meeting product specs and lead time requirements. Unnamed Italian sources were cited as having failed due to poor quality.

[34] ***.

Purchasers were asked whether their purchasing patterns for chlorinated isos from subject and nonsubject sources had changed since 2002. Seven purchasers reported that the relative share of their total purchases of chlorinated isos from China increased, four said that their purchases from U.S. producers increased, and two stated that their purchases from Spain increased. Two purchasers reported increases in their purchases from Japan and Italy, and three said that there had been no significant change in their purchasing patterns. Four purchasers reported a decrease in their purchases from U.S. producers, citing price pressures, replacing a product line, and the end of a supplier relationship. Two purchasers reported decreased purchases from suppliers in Mexico because of reduced availability.

Purchasers were asked how often they are aware of the country of origin of the chlorinated isos they purchase, how often they know the manufacturer, and how often their buyers are interested in the country of origin of the goods they supply. Their responses are summarized in the following tabulation:

Factor	Always	Usually	Sometimes	Never
Aware of product's country of origin?	15	5	2	2
Know manufacturer of the product?	14	7	3	1
Buyers aware of/interested in product's country of origin?	7	3	7	8

Purchasers also were asked how often domestically produced, subject imports, and nonsubject imports of chlorinated isos meet minimum quality specifications. Their responses are summarized in the following tabulation:

Source	Always	Usually	Sometimes	Never
Domestically produced	17	5	0	0
Subject imports - China	6	7	2	1
Subject imports - Spain	4	5	0	1
Nonsubject imports - Japan	7	2	0	0
Nonsubject imports - Italy	1	2	0	0
Nonsubject imports - Mexico	1	0	0	0

Eight purchasers reported purchasing chlorinated isos from only one country, and six cited contractual obligations or their supplier relationship as the reason. One purchaser reported that it only has one supplier, and one said that it only purchases from firms who manufacture in the United States.

Five purchasers reported contacting one supplier, 15 purchasers reported contacting two to five suppliers, and one purchaser reported contacting six suppliers before making a purchase. Thirteen of the 25 responding purchasers reported changing suppliers in the last three years. Five reported adding Chinese suppliers, three reported changing suppliers because a firm in Mexico shut down, and two reported dropping Japanese and/or Italian suppliers. Two purchasers reported dropping *** as a supplier, one reported adding *** as a supplier, and one reported adding *** as a supplier. Of the 15 purchasers who reported being aware of new suppliers in the market in the last three years, 14 cited Chinese companies having entered the market and 1 cited a Spanish entry.

Lead Times

Among integrated producers, *** reported selling more than half from inventories, with lead times ranging from 5 to 10 days. Three of the five responding tableters reported selling half or more from inventories, with lead times ranging from one to five days.[35] Lead times for product produced to order ranged from three days to three weeks for both producers and tableters. Four importers reported selling all product produced to order and two reported selling all product from inventory. Importers reported lead times of two to four days for product from inventory and one to three months for product produced to order.[36]

Comparisons of Domestic Products, Subject Imports, and Nonsubject Imports

Producers, importers, and purchasers were asked to assess how interchangeable chlorinated isos from the United States are with chlorinated isos from both subject and nonsubject countries. Their answers are summarized in table II-6. Generally, producers, importers, and purchasers reported that chlorinated isos from the United States and from other countries are always or frequently interchangeable. One tableter reported that presses need to be adjusted frequently when tableting Chinese trichlor, and another tableter reported that the Chinese product is more powdery, produces more gas, and thus is harder to tablet, adding that those properties led to health and safety concerns for its employees. One importer stated that Chinese product is typically of lower quality than the U.S. product, and that Chinese tablets may have an appearance that is less desirable, as well as a stronger chlorine odor. However, one importer reported preferring imports from China due to a higher quality product than those provided domestically, and one importer reported that the product imported from China is patented with enhanced performance and so is not interchangeable with domestic products or other imported products. Some producers, importers, and purchasers reported that as long as the product is registered with the EPA, regardless of where it is produced, it is always interchangeable.

Producers and importers were asked to assess how often differences other than price were significant in sales of chlorinated isos from the United States, subject countries, and nonsubject countries (table II-7). Generally, importers said differences other than price were always or frequently significant, while producers said differences other than price were sometimes or never significant. Both producers and importers reported a lower price for imports from China and Spain; however, some importers reported that the lower quality of Chinese product was the reason for its lower price,[37] while some producers reported that purchasers were making purchasing decisions entirely on price.

According to importers, the supply of Chinese product is not always reliable due to shipping and quality concerns. Because of the hazardous nature of chlorinated isos, the product often will be delayed in China due to safety concerns of the shippers.[38] Importers also stated that the Chinese product often is low in quality, with problems of granulation, distribution, and minor impurities. On the other hand, *** stated that many pool supply companies want to purchase a full line of products from a single source and that domestic producers do not supply products like calcium hypochlorite.

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[35] *** reported a lead time of 45 days for both product from inventory and product produced to order.

[36] *** reported a lead time of 8 weeks, and *** reported a lead time of one to five days, but neither firm specified the share of sales from inventory vs. produced to order.

[37] *** reported that long lead times, variable shipping times, inferior quality, and minimal technical support all cause its customers to spend more to use the Chinese product, and therefore the company must sell at a discount to prices offered by domestic producers.

[38] *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary),* USITC Publication 3705, July 2004, p. II-8.

Table II-6
Chlorinated isos: U.S. producers', importers', and purchasers' perceived degree of interchangeability of products produced in the United States and in other countries[1]

	U.S. producers					U.S. importers					U.S. purchasers				
Country comparison	A	F	S	N	0	A	F	S	N	0	A	F	S	N	0
U.S. vs. China	***	***	0	0	0	4	3	3	1	0	7	3	3	2	3
U.S. vs. Spain	***	***	0	0	0	6	2	1	0	2	7	1	2	1	4
U.S. vs. other countries	***	***	0	0	0	2	2	1	0	4	6	2	2	1	4
China vs. Spain	***	***	0	0	0	4	2	2	1	2	6	0	1	2	6
China vs. other countries	***	***	0	0	0	2	1	1	1	4	4	1	1	2	7
Spain vs. other countries	***	***	0	0	0	2	2	1	0	4	4	1	1	1	7

[1] Producers, importers, and purchasers were asked if chlorinated isos produced in the United States and in other countries are used interchangeably.

Note.--"A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never, and "0" = No familiarity.

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

Table II-7
Chlorinated isos: U.S. producers' and importers' perceived importance of factors other than price in sales of product produced in the United States and in other countries[1]

	U.S. producers					U.S. importers				
Country comparison	A	F	S	N	0	A	F	S	N	0
U.S. vs. China	0	0	***	***	0	6	2	0	2	1
U.S. vs. Spain	0	0	***	***	0	3	2	1	1	4
U.S. vs. other countries	0	0	***	***	0	2	1	0	1	5
China vs. Spain	0	0	***	***	0	4	2	0	1	4
China vs. other countries	0	0	***	***	0	2	1	0	1	5
Spain vs. other countries	0	0	***	***	0	2	1	0	1	5

[1] Producers and importers were asked if differences other than price between chlorinated isos produced in the United States and in other countries are a significant factor in their sales of the products.

Note.--"A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never, and "0" = No familiarity.

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

ELASTICITY ESTIMATES

U.S. Supply Elasticity

The domestic supply elasticity for chlorinated isos measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of chlorinated isos. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced chlorinated isos. Earlier analysis of these factors indicates that the U.S. industry is likely to be able to moderately increase or decrease shipments to the U.S. market; an estimate in the range of 3 to 5 is suggested.

U.S. Demand Elasticity

The U.S. demand elasticity for chlorinated isos measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of chlorinated isos. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products. As noted earlier, over half of responding firms stated that there are potential substitute products for chlorinated isos, primarily calcium hypochlorite, sodium hypochlorite, bromine, etc., but these products have been used less in favor of chlorinated isos. Based on the available information, the aggregate demand for chlorinated isos is likely to be in a range of -0.3 to -0.5.[39]

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.[40] Product differentiation, in turn, depends upon such factors as quality and conditions of sale. Based on available information, the elasticity of substitution between domestic and subject chlorinated isos is likely to be in the range of 2 to 4 for products from China and 3 to 5 for products from Spain.[41]

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[39] Respondents suggested using a higher elasticity of demand due to the availability of calcium hypochlorite as a substitute. Staff telephone conversation with ***. However, according to questionnaire responses, calcium hypochlorite has been losing market share to chlorinated isos, and none of the 25 purchasers and only one tableter and four importers described any change in the price of chlorinated isos due to the use of any of the available substitute products.

[40] The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

[41] Several questionnaire responses cited the general lower quality of the Chinese product, whereas few reported quality issues with the Spanish product.

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 final 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 in Part VI.

U.S. PRODUCERS

Data presented herein for U.S. integrated producers are from the questionnaire responses of three firms, Clearon, OxyChem, and BioLab, that accounted for 100 percent of integrated production of chlorinated isos (in granular form and tablets) in the United States during 2002-04. In addition, data are presented for six U.S. tableters (firms that purchase domestically produced and/or imported granular chlorinated isos and form these into tablets).[1] Plant locations, positions on the petition, and individual shares of U.S. production for the integrated producers and responding tableters are presented in table III-1.

[1] There are several other firms believed to be tableters that have not responded to the Commission's questionnaires.

Table III-1
Chlorinated isos: U.S. producers, locations of production facilities, positions with respect to the petition, production, shares of U.S. production, and imports, 2004

Producer	Locations of production facilities	Position with respect to the petition	U.S. production[1] *(short tons)*	Share of U.S. production *(percent)*	Imports from subject countries *(short tons)*	Imports from other countries *(short tons)*
Integrated producers						
Clearon[2]	Charleston, WV	Petitioner	***	***	***	***
OxyChem[3]	Sauget, IL Luling, LA	Petitioner	***	***	***	***
BioLab[4]	Lake Charles, LA Lawrenceville, GA	Support	***	***	***	***
Total			122,061	100.0	***	***
Tableters[5] of chlorinated isocyanurates						
Alden Leeds[6]	South Kearny, NJ	***	***	***	***	***
Aqua Tri	Irvine, CA	***	***	***	***	***
Cadillac[7]	Passaic, NJ	***	***	***	***	***
LPM[8]	Phoenix, AZ	***	***	***	***	***
N. Jonas	Bensalem, PA	***	***	***	***	***
Stellar	Sauget, IL	***	***	***	***	***
Total			29,396	100.0	***	***

[1] Production of granular product for integrated producers, and production of tablets for tableters.
[2] Clearon is wholly owned by Israel Chemicals Limited, Tel-Aviv, Israel.
[3] Occidental is a wholly owned subsidiary of Occidental Petroleum Corp., Los Angeles, CA.
[4] BioLab is wholly owned by Great Lakes Chemical Corp., Indianapolis, IN.
[5] Additional firms that may have tableting facilities in the United States, but did not submit a producer questionnaire, include AllChem, ChemLab, Florida Pool, Haviland, and ProPackaging. Importers Shikoku and Wego do not tablet any granular material.
[6] Alden Leeds' data were calculated from conversations and emails with ***.
[7] Cadillac returned a producer questionnaire, but only reported capacity data. As such, its tableting data are not presented.
[8] LMP is fully owned by Leslie's Poolmart, Inc.

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

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

Overview of U.S. Integrated Producers of Chlorinated Isos

BioLab, a party to these investigations, produces *** granular trichlor and ***.[2] However, BioLab ***. BioLab supports the petition.

Clearon, a petitioner in these investigations, produces granular trichlor, granular dichlor, and tableted trichlor at its facility in South Charleston, WV. This facility is capable of producing a combined *** short tons of granular chlorinated isos annually. Clearon's trichlor production was shut down for a prolonged period in 2004 ***. In addition, Clearon has had two workforce reductions since 2002,

[2] BioLab accounts for a *** larger proportion of U.S. producers' sales than ***. *** *** U.S. commercial shipments of trichlor, and over *** percent of *** trichlor shipments in the period examined, ***. ***.

allegedly due to lower market prices and lower sales, from over *** employees to the current level of ***. It reported that ***.

OxyChem, a petitioner in these investigations, produces granular trichlor and granular dichlor at its facilities in Sauget, IL and Luling, LA. OxyChem ***.

Overview of U.S. Tableters of Chlorinated Isos

Alden Leeds, an importer and a tableter of chlorinated isos at its S. Kearny, NJ and Enid, OK facilities, *** the petition. Alden Leeds does not produce chlorinated isos from raw material and instead imports granular trichlor and granular dichlor from ***, and then processes the granular material into tablets for sale into the retail market. It also reported ***.

Aqua Tri, a purchaser and tableter of chlorinated isos at its Irvine, CA facility, *** the petition. Aqua Tri buys chlorinated isos from other U.S. importers, such as ***, and then further processes granular trichlor into tablets for sale in the retail market. ***.

Cadillac (also known as "Qualco"), an importer, tableter, and repacker of chlorinated isos at its Passaic, NJ facility, *** the petition. Cadillac imports granular trichlor, granular dichlor, *** from ***. It further processes the granular trichlor into tablets for sale in the retail market.

N. Jonas, a tableter and repacker of chlorinated isos at its Bensalem, PA facility, *** the petition. It purchases granular trichlor, granular dichlor, *** from ***. N. Jonas ***.

LPM, a tableter and repacker of chlorinated isos at its facility in Phoenix, AZ, *** petition. It purchases chlorinated isos from ***.

Stellar, a tableter and repacker of chlorinated isos at its facility in Sauget, IL, *** petition. Stellar is *** and obtains all its granular trichlor, granular dichlor, ***. It reported production constraints from ***.

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

U.S. integrated producers' capacity, production, and capacity utilization data for granular chlorinated isocyanurates are presented in table III-2. Their capacity to produce all granular chlorinated isos increased slightly in both 2003 and 2004; their capacity to produce granular trichlor also increased slightly, whereas capacity to produce granular dichlor remained constant.

U.S. integrated producers' and tableters' capacity, production, and capacity utilization for tableting operations are presented in tables III-3 and III-4, respectively.

Table III-2
Granular chlorinated isos: U.S. integrated producers' capacity, production, and capacity utilization, by types, 2002-04

Item	Calendar year		
	2002	2003	2004
	Capacity (*short tons*)		
Granular dichlor:			
BioLab	***	***	***
Clearon	***	***	***
OxyChem	***	***	***
Total	***	***	***
Granular trichlor:			
BioLab	***	***	***
Clearon	***	***	***
OxyChem	***	***	***
Total	***	***	***
All granular chlorinated isos:			
BioLab	***	***	***
Clearon	***	***	***
OxyChem	***	***	***
Total	150,850	152,000	152,720
	Production (*short tons*)		
Granular dichlor:			
BioLab	***	***	***
Clearon	***	***	***
OxyChem	***	***	***
Total	***	***	***
Granular trichlor:			
BioLab	***	***	***
Clearon	***	***	***
OxyChem	***	***	***
Total	***	***	***
All granular chlorinated isos:			
BioLab	***	***	***
Clearon	***	***	***
OxyChem	***	***	***
Total	122,518	119,272	122,061

Table continued on next page.

Table III-2--*Continued*
Granular chlorinated isos: U.S. integrated producers' capacity, production, and capacity utilization, by types, 2002-04

Item	Calendar year		
	2002	2003	2004
	Capacity utilization (*percent*)		
Granular dichlor:			
BioLab	***	***	***
Clearon	***	***	***
OxyChem	***	***	***
Average	***	***	***
Granular trichlor:			
BioLab	***	***	***
Clearon	***	***	***
OxyChem	***	***	***
Average	***	***	***
All granular chlorinated isos:			
BioLab	***	***	***
Clearon	***	***	***
OxyChem	***	***	***
Average	81.2	78.5	79.9

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

Table III-3
Tableted chlorinated isos: U.S. integrated producers' capacity, production, and capacity utilization, by types, 2002-04

* * * * * * *

Table III-4
Tableted chlorinated isos: U.S. tableters' capacity, production, and capacity utilization, by types, 2002-04

Item	Calendar year		
	2002	2003	2004
	Capacity (*short tons*)		
Tableted trichlor:			
Alden Leeds	***	***	***
Aqua Tri	***	***	***
Cadillac	***	***	***
LPM	***	***	***
N. Jonas	***	***	***
Stellar	***	***	***
Total	***	***	***
Blended tablets:			
Alden Leeds	***	***	***
Aqua Tri	***	***	***
Cadillac	***	***	***
LPM	***	***	***
N. Jonas	***	***	***
Stellar	***	***	***
Total	***	***	***
All tablets:			
Alden Leeds	***	***	***
Aqua Tri	***	***	***
Cadillac	***	***	***
LPM	***	***	***
N. Jonas	***	***	***
Stellar	***	***	***
Total	***	***	***

Table continued on next page.

Table III-4--*Continued*
Tableted chlorinated isos: U.S. tableters' capacity, production, and capacity utilization, by types, 2002-04

Item	Calendar year		
	2002	2003	2004
	Production (*short tons*)		
Tableted trichlor:			
Alden Leeds	***	***	***
Aqua Tri	***	***	***
Cadillac	***	***	***
LPM	***	***	***
N. Jonas	***	***	***
Stellar	***	***	***
Total	***	***	***
Blended tablets:			
Alden Leeds	***	***	***
Aqua Tri	***	***	***
Cadillac	***	***	***
LPM	***	***	***
N. Jonas	***	***	***
Stellar	***	***	***
Total	***	***	***
All tablets:			
Alden Leeds	***	***	***
Aqua Tri	***	***	***
Cadillac	***	***	***
LPM	***	***	***
N. Jonas	***	***	***
Stellar	***	***	***
Total	24,346	26,467	29,396

Table continued on next page.

Table III-4--*Continued*
Tableted chlorinated isos: U.S. tableters' capacity, production, and capacity utilization, by types, 2002-04

Item	Calendar year		
	2002	2003	2004
	Capacity utilization (*percent*)		
Tableted trichlor:			
Alden Leeds	***	***	***
Aqua Tri	***	***	***
Cadillac	***	***	***
LPM	***	***	***
N. Jonas	***	***	***
Stellar	***	***	***
Average	***	***	***
Blended tablets:			
Alden Leeds	***	***	***
Aqua Tri	***	***	***
Cadillac	***	***	***
LPM	***	***	***
N. Jonas	***	***	***
Stellar	***	***	***
Average	***	***	***
All tablets:			
Alden Leeds	***	***	***
Aqua Tri	***	***	***
Cadillac	***	***	***
LPM	***	***	***
N. Jonas	***	***	***
Stellar	***	***	***
Average	***	***	***

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

U.S. PRODUCERS' AND TABLETERS' DOMESTIC SHIPMENTS, COMPANY TRANSFERS, AND EXPORT SHIPMENTS

Data on U.S. integrated producers' shipments, by types, are presented in table III-5 and data on U.S. tableters' shipments, by types, are presented in table III-6.

Table III-5
Chlorinated isos: U.S. integrated producers' shipments, by types, 2002-04

* * * * * * *

Table III-6
Tableted chlorinated isos: U.S. tableters' shipments, by types, 2002-04

* * * * * * *

U.S. PRODUCERS' INVENTORIES

Data on U.S. inventories of domestically produced chlorinated isos are presented in tables III-7 and III-8.

Table III-7
Chlorinated isos: U.S. integrated producers' end-of-period inventories, by types, 2002-04

* * * * * * *

Table III-8
Chlorinated isos: U.S. tableters' end-of-period inventories, by types, 2002-04

* * * * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Employment data for U.S. producers of chlorinated isos are presented in tables III-9 and III-10.

Table III-9
Chlorinated isos: U.S. integrated producers' employment-related indicators, 2002-04

* * * * * * *

Table III-10
Chlorinated isos: U.S. tableters' employment-related indicators, 2002-04

* * * * * * *

U.S. PRODUCERS' IMPORTS, PURCHASES, AND RELATIONSHIPS WITH PRODUCERS AND EXPORTERS IN CHINA AND SPAIN

*** imported or purchased chlorinated isos. Table III-11 shows U.S. integrated producers' imports of chlorinated isos from 2002 to 2004. One tableter, ***, reported imports of chlorinated isos from *** while another tableter, ***, reported imports of chlorinated isos from ***. Table III-12 presents U.S. tableters' imports and purchases of chlorinated isos.

Table III-11
Chlorinated isos: U.S. integrated producers' imports of chlorinated isos from China and Spain, 2002-04

* * * * * * *

Table III-12
Chlorinated isos: U.S. tableters' imports and purchases of chlorinated isos, 2002-04

* * * * * * *

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

The Commission sent questionnaires to the 30 possible importers identified in the petition and by U.S. Customs and Border Protection ("Customs"), and received data from 12 firms.[1] Twelve of the remaining 18 firms responded by stating that they did not import the subject product during the period covered by these investigations or that they imported a product other than chlorinated isos under the same HTS classification. The 12 firms that provided usable data include virtually all known large importers of chlorinated isos from China and Spain, but coverage is less complete for imports from countries other than China and Spain. A list of U.S. importers of the subject merchandise responding to the Commission's questionnaires is presented in table IV-1.

U.S. IMPORTS

U.S. import data presented in this report are from responses to Commission questionnaires. Sources of U.S. imports of chlorinated isos other than China and Spain include Japan, Taiwan, Canada, and Italy. U.S. imports of chlorinated isos are presented in table IV-2. The data show a large increase in the share of total imports accounted for by subject country imports, particularly from China, from 2002 to 2004. Japan accounts for most of the product imported from nonsubject countries. Although there are several countries from which chlorinated isos have been imported in recent years, only a few countries–including Italy, Mexico, and South Africa--are known to be producing the product other than the United States, the subject countries, and Japan.

Table IV-1
All chlorinated isos: Responding U.S. importers, company locations, and imports, by sources, 2002-04

* * * * * * *

Table IV-2
All chlorinated isos:[1] U.S. imports, by product type and source, 2002-04

Type and source	Calendar year		
	2002	2003	2004
	Quantity (*short tons*)		
Subject:			
China	***	***	***
Spain[2]	***	***	***
Subtotal, subject	***	***	***
Nonsubject:			
All other sources	***	***	***
Total, all chlorinated isos	13,536	29,395	33,039

Table continued on next page.

[1] ***.

Table IV-2--*Continued*
All chlorinated isos:[1] U.S. imports, by product type and source, 2002-04

Type and source	Calendar year		
	2002	2003	2004
	Value (*1,000 dollars*)		
Subject:			
China	***	***	***
Spain[3]	***	***	***
Subtotal, subject	***	***	***
Nonsubject:			
All other sources	***	***	***
Total, all chlorinated isos	19,734	36,782	42,603
	Unit value (*dollars per short ton*)[2]		
Subject:			
China	***	***	***
Spain[4]	***	***	***
Subtotal, subject	***	***	***
Nonsubject:			
All other sources	***	***	***
Total, all chlorinated isos	1,532	1,333	1,378
	Share of quantity (*percent*)		
Subject:			
China	***	***	***
Spain	***	***	***
Subtotal, subject	***	***	***
Nonsubject:			
All other sources	***	***	***
Total, all chlorinated isos	100.0	100.0	100.0
	Share of value (*percent*)		
Subject:			
China	***	***	***
Spain	***	***	***
Subtotal, subject	***	***	***
Nonsubject:			
All other sources	***	***	***
Total, all chlorinated isos	100.0	100.0	100.0

[1] ***.
[2] ***.
[3] Value was calculated by multiplying quantity by unit value.
[4] ***.

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

APPARENT U.S. CONSUMPTION, MARKET SHARES, AND RATIO OF SUBJECT IMPORTS TO U.S. PRODUCTION

U.S. apparent consumption, and market shares for chlorinated isos are shown in table IV-3. Apparent consumption data in table IV-3 were calculated by adding U.S. producers' U.S. shipments of the granular product and U.S. importers' U.S. shipments of all integrated chlorinated isos (granular plus tablets). U.S. shipments of firms that are tableters only are not included in the consumption data because of the real possibility of double-counting between their shipments of tablets and the shipments of granular product that they purchased from U.S. producers.

Data on U.S. producers' and importers' market shares are presented in table IV-4, and data on the ratios of imports to U.S. production are presented in table IV-5.

Table IV-3
Chlorinated isos: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption[1], 2002-04

Item	Calendar year		
	2002	2003	2004
	Quantity (*short tons*)		
U.S. producers' shipments:			
Dichlor	***	***	***
Trichlor	***	***	***
All granular	111,681	100,520	115,539
U.S. importers' shipments:			
China --			
Dichlor	***	***	***
Trichlor	***	***	***
All granular	***	***	***
Trichlor tablets	***	***	***
Blended tablets	***	***	***
All tablets	***	***	***
Total	***	***	***

Table continued on next page.

Table IV-3--*Continued*
Chlorinated isos: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption[1], 2002-04

Item	Calendar year		
	2002	2003	2004
Total subject countries	***	***	***
All other countries:			
Dichlor	***	***	***
Trichlor	***	***	***
All granular	***	***	***
Trichlor tablets	***	***	***
Blended tablets	***	***	***
All tablets	***	***	***
Total, nonsubject countries	***	***	***
Total imports	13,485	27,392	32,712
Apparent consumption[1]	125,166	127,912	148,251

[1] Apparent U.S. consumption data were calculated by adding U.S. producers' U.S. shipments of the granular product and U.S. importers' U.S. shipments of imported chlorinated isos (granular plus tablets).
[2] ***.

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

Table IV-4
All chlorinated isos: U.S. producers' and importers' market shares, 2002-04

Item	Calendar year		
	2002	2003	2004
	Share of quantity (*percent*)		
U.S. producers' shipments:			
Dichlor	***	***	***
Trichlor	***	***	***
All granular	89.2	78.6	77.9

Table continued on next page.

Table IV-4--*Continued*
All chlorinated isos: U.S. producers' and importers' market shares, 2002-04

Item	Calendar year		
	2002	2003	2004
U.S. importers' shipments:			
China --			
Dichlor	***	***	***
Trichlor	***	***	***
All granular	***	***	***
Trichlor tablets	***	***	***
Blended tablets	***	***	***
All tablets	***	***	***
Total	***	***	***
Spain --			
Dichlor	***	***	***
Trichlor	***	***	***
All granular	***	***	***
Trichlor tablets	***	***	***
Blended tablets	***	***	***
All tablets	***	***	***
Total	***	***	***
Total subject countries	***	***	***
All other countries:			
Dichlor	***	***	***
Trichlor	***	***	***
All granular	***	***	***
Trichlor tablets	***	***	***
Blended tablets	***	***	***
All tablets	***	***	***
Total nonsubject countries	***	***	***
Total imports	10.8	21.4	22.1

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

Table IV-5
All chlorinated isos: Ratio of U.S. imports[1] to U.S. production,[2] by sources, 2002-04

Source	Calendar year		
	2002	2003	2004
	Ratio of U.S. imports to production (*percent)*		
China	***	***	***
Spain	***	***	***
Subject countries	***	***	***
Nonsubject countries	***	***	***
All countries	11.0	24.6	27.1

[1] Imports consist of granular dichlor, granular trichlor, tableted trichlor and blended tablets.
[2] Production was reported by integrated producers for granular dichlor and granular trichlor.

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

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

CRITICAL CIRCUMSTANCES

On May 10, 2005, Commerce made a final determination that critical circumstances exist with regard to imports of chlorinated isos from Shanghai Tian Yuan International Trading Co., Ltd. and for all producers/exporters in China (the "PRC-wide entity") other than Changzhou Clean Chemical Co., Ltd.; Hebei Jiheng Chemical Co., Ltd.; Liaocheng Huaao Chemical Industry Co., Ltd.; Nanning Chemical Industry Co., Ltd.; Sinochem Hebei Import & Export Corp.; and Sinochem Shanghai Import & Export Corp.[2] Since only Hebei Jiheng Chemical Co. and Nanning Chemical Industry Co. provided export data to Commerce that could be used in making its critical circumstances determination, Commerce subtracted these two firms' combined data from official Commerce import statistics to derive residual data for all other producers/exporters in China (i.e., Changzhou Clean Chemical Co., Liaocheng Huaao Chemical Industry Co., Shanghai Tian Yuan International Trading Co., Sinochem Hebei Import & Export Corp., Sinochem Shanghai Import & Export Corp., and all others).[3] Data for the periods December 2003-May 2004 (the petition was filed on May 14, 2004) and June-November 2004 are presented in table IV-6.

[2] 70 FR 24502, May 10, 2005, presented in app. A. When petitioners file timely allegations of critical circumstances, Commerce examines whether there is a reasonable basis to believe or suspect that (1)(a) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (1)(b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales; and (2) there have been massive imports of the subject merchandise over a relatively short period.

[3] For the "Section A" respondents that voluntarily submitted questionnaire responses to Commerce and received separate antidumping duty rates, Commerce did not request monthly export information for use in its critical circumstances determination. However, as Shanghai Tian Yuan International Trading Co. refused to participate in Commerce's verification, Commerce made an affirmative critical circumstances determination (after examination of the residual data that were available) on that firm as well as on the "PRC-wide entity" firms.

Table IV-6
All chlorinated isos: U.S. imports from China, by source, December 2003-May 2004 and June 2004-November 2004

Source	Periods and percent changes		
	December 2003-May 2004 (*Short tons*)	June 2004-November 2004 (*Short tons*)	Increase or (decrease) (*Percent*)
Total imports from China, based on official Commerce import statistics	20,283	10,604	(47.7)
Imports from two responding firms for which Commerce made negative critical circumstances determinations	***	***	***
Net imports from China[1]	***	***	***

[1] Imports from firms for which Commerce made an affirmative critical circumstances determination (Shanghai Tian Yuan International Trading Co. and the PRC-wide entity) and from three firms for which Commerce made negative critical circumstances determinations.

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

In their posthearing and final comments briefs, Florida Pool Products, Inc. and Sun Wholesale Supply, Inc. state that ***.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Materials

Urea and natural gas are both inputs into cyanuric acid, which, with further processing, yields chlorinated isos.[1] Prices of both urea and natural gas were higher at the end of 2004 than in 2002 (figures V-1 and V-2). Urea prices trended upward during the period, while natural gas prices followed a more erratic trend. Natural gas prices ended 2004 higher than in 2002, but not as high as the most recent peak in early 2003.

Transportation Costs to the U.S. Market

Transportation costs for chlorinated isos to the United States (excluding U.S. inland costs) are estimated to be equivalent to 19.2 percent of the total port-of-exportation cost for chlorinated isos from China and 19.6 percent of the total port-of-exportation cost for chlorinated isos from Spain. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value. Transportation costs (both to the U.S. market and inland) are significant because of the hazardous nature of chlorine.[2]

U.S. Inland Transportation Costs

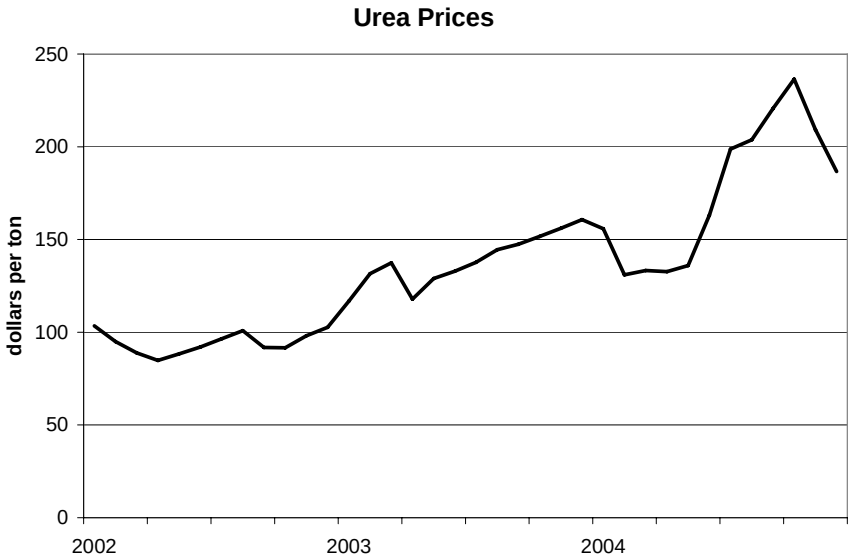
Producers, tableters, and importers estimated that U.S. inland transportation costs ranged from 1 to 5 percent of their costs of chlorinated isos.[3] *** integrated producers reported that they arranged delivery and shipped the vast majority of their chlorinated isos between 101 and 1,000 miles throughout the United States. Among importers, nine of the eleven responding firms reported that they arranged sales, and six shipped 80 percent or more of their chlorinated isos less than 100 miles, even though *** claimed national markets. *** shipped 75 percent or more of their chlorinated isos less than 1,000 miles. *** all said that they had national or nearly national markets.

[1] There is no public source for pricing data on other inputs, including caustic soda and chlorine. Petitioners' prehearing brief indicates prices for these inputs have increased from 2002 to 2004 as well.

[2] *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary),* USITC Publication 3705, July 2004, p. V-1.

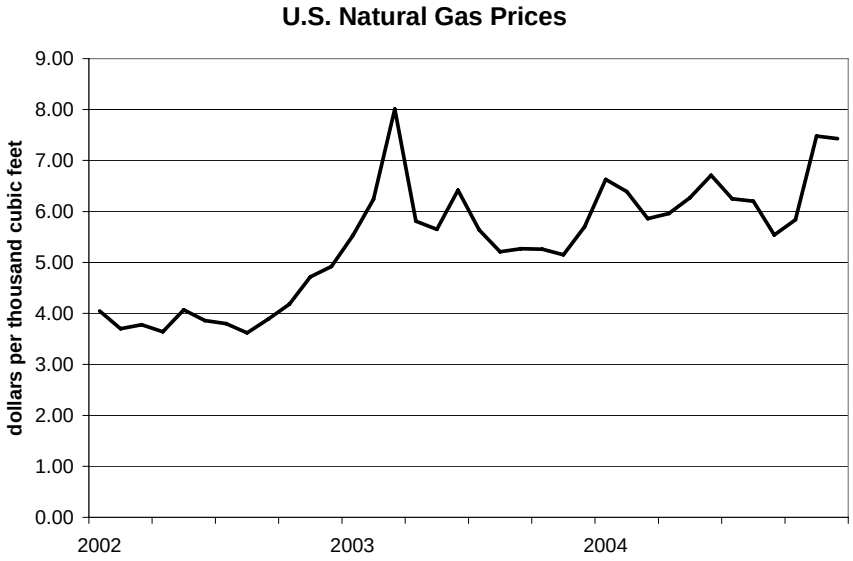
[3] *** reported inland transportation costs of 11 percent, *** reported costs of 10 percent, and *** reported zero cost.

Figure V-1
Urea: F.o.b. bulk, Eastern Europe,[4] price in dollars per ton, January 2002-December 2004



Source: Fertilizer Advisory, Development, and Information Network for Asia and the Pacific, a United Nations interagency network, retrieved from http://www.fadinap.org/int_prices/index.html on March 15, 2005.

Figure V-2
Natural gas: Price in dollars per thousand cubic feet, January 2002-December 2004



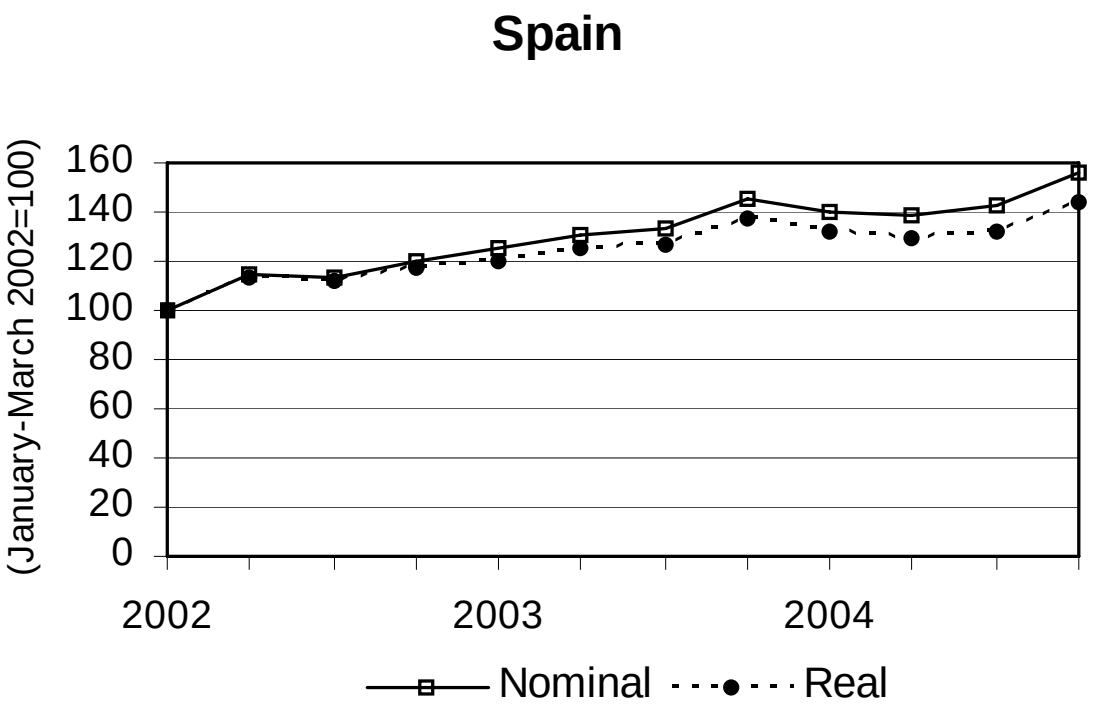
Source: Energy Information Administration, retrieved from http://tonto.eia.doe.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm on March 15, 2005.

[4] F.o.b. bulk, U.S. Gulf urea prices are not publically available. However, according to the petitioners' prehearing brief, prices show a similar increase throughout the 2002 to 2004 period.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese yuan remained constant relative to the U.S. dollar from January 2002 to December 2004, while the real and nominal values of the euro appreciated relative to the U.S. dollar (figure V-3). Real values for the Chinese yuan were not available.

Figure V-3
Exchange rates: Indices of the nominal and real exchange rates of the Spanish currency relative to the U.S. dollar, by quarters, January 2002-December 2004



Source: International Monetary Fund, *International Financial Statistics*, retrieved from http://ifs.apdi.net/imf/about.asp on March 9, 2005.

PRICING PRACTICES

Pricing Methods

Producers, tableters, and importers generally reported that pricing of chlorinated isos involves negotiations based on prevailing market conditions. *** stated that the main selling season is from March through September, with purchasers building inventory in February and March. Among integrated producers, *** reported that its prices are negotiated with customers and revised on a case-by-case basis based on prices charged by its competitors. *** said that the swimming pool and spa market generally has verbal agreements for a season based on negotiations in August to December of the previous year. However, *** added that customers will renegotiate prices or buy from alternate suppliers at any time if they see lower prices in their markets. *** also said that the industrial market generally has annual pricing agreed upon at the end of each year for the subsequent year. *** stated that its multi-year contracts often have meet-or-release provisions, and that customers have been using lower-priced subject imports to trigger the release.[5] *** also reported that its pricing was generally based on transaction-by-transaction negotiations. It said that *** percent of its contracts were short-term and that virtually all included changes in price due to market pricing.

Among importers, eight reported some sort of transaction-by-transaction negotiation or pricing based on current market conditions.[6] ***.[7]

Sales Terms and Discounts

Among integrated producers, *** reported no discounts, and *** reported a pre-season discount and some quantity discounts. *** reported some volume discounts where customers are shared between suppliers, but prices were still subject to further renegotiation. Among importers, four reported some sort of quantity discounts, although they did not always use that terminology, preferring sometimes to say that discounts vary by customers. The other importers reported no discount policy.

When asked what percentage of their sales are on a contract or spot basis, integrated producers offered seemingly varied responses. (It should be noted, though, that *** producers reported revising prices even on sales under contract.) *** reported that *** percent of its sales were short-term contracts, with *** percent long-term contracts and *** percent spot. *** reported that *** percent of its sales were long-term contracts, *** percent were short-term contracts, and *** percent were spot sales. *** reported that *** of its sales were under short-term contracts. Among importers, five of the seven responding importers reported that all of their sales were under short-term contracts, while one reported that all of its sales were spot and one reported a relatively even split between long-term contracts and spot sales.

Most integrated producers and importers reported that both long- and short-term contracts lasted one year/season, although *** reported one contract for two years, and *** reported having four- and 15-year contracts.[8] Among integrated producers, *** said that its contracts are for a customer's requirements, not fixed on price. *** said that contracts fix price and estimate quantity, while *** said that contracts fix neither price nor quantity. Among importers, four said that contracts fix both price and quantity, while three reported that contracts fix price only.

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[5] Among integrated producers, *** reported that *** had meet-or-release provisions with *** customers. Among importers, *** reported renegotiations and/or meet-or-release provisions.

[6] *** reported first determining the domestic producers' price and then giving a 5-percent discount for its imported product.

[7] ***. *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary),* USITC Publication 3705, July 2004, p. V-3 and hearing transcript, pp. 174-177 (Hitchens).

[8] An importer, ***, said that contracts are for two months.

Purchasers were asked how often they sell and price chlorinated isos in a "bundle" with other products. Fourteen of the 22 responding purchasers reported never bundling the chlorinated isos they resell with other products. Of the purchasers who responded always, usually, or sometimes, examples of other products they bundle with chlorinated isos included proprietary feeding systems, pre-kitted pool supplies, and cross-category promotions. Seventeen of the 20 responding purchasers reported never purchasing chlorinated isos in a bundle with other products. Those other products are often where they make a profit, as they often do not make a profit on their sales of chlorinated isos (even though chlorinated isos are the staple product at pool retail stores as they are the product that draws customers back to the stores for repeated visits).[9]

Price Trends

Petitioners said that price reductions are forced on them both by their customers buying imported chlorinated isos instead of their product or by customers losing business to other purchasers who have bought imported material.[10] Petitioners also stated that retail prices are transparent at mass merchandiser retailers, since other customers can easily observe what the chlorinated isos are being sold at there.[11] They said that in 2004, prices continued to fall as subject imports rose. Petitioners added that rising raw material and energy costs should be forcing chlorinated isos prices higher right now, but for imports of lower-priced subject imports.[12]

Respondents stated that U.S. prices for chlorinated isos had been falling long before 2001, or before the entrance of imports from China into the U.S. market. They described U.S. prices as falling from $1.65 per pound in the mid-1980s to $0.80 per pound in 2000-01 due to increased competition between ***,[13] pressure from mass-market retailers and pool supply distributors, and attempts by one or more U.S. producers to sell directly to end users (i.e., the customers of their traditional distributor and tableter customers).[14]

Respondents also described U.S. prices of chlorinated isos as higher than world prices, in part because of the regulations required in the United States.[15] Both Spanish producer Delsa and petitioners described Chinese chlorinated isos putting pressure on prices in Europe. Delsa also described U.S. prices

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[9] *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary)*, USITC Publication 3705, July 2004, p. V-4 and ***.

[10] Ibid.

[11] Hearing transcript, p. 40 (Napoles).

[12] Petitioners stated that they tried to raise prices as a result of higher raw material costs, but were unable to do so. Clearon specifically mentioned trying to raise prices in April 2003 and then rescinding the increase after it failed. *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary)*, USITC Publication 3705, July 2004, p. V-4 and hearing transcript, p. 35 (Hand) and p. 41 (Napoles).

[13] *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary)*, USITC Publication 3705, July 2004, p. V-4; staff telephone conversation with ***; and hearing transcript, p. 182 (Jonas) and pp. 209-210 (Ferentinos).

[14] In particular, N. Jonas described rising costs for chlorinated isos while its sales prices remained the same, before it began to import from subject countries. It said it was able to make a profit while its sales prices remained the same because it was able to import from China after 2001. *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary)*, USITC Publication 3705, July 2004, p. V-4.

[15] Specifically, they said that tablets sell for 90 cents per pound in the United States and 60 cents per pound in Europe and other global markets. *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary)*, USITC Publication 3705, July 2004, p. V-4 and hearing transcript, p. 179 (Abramson).

of Spanish chlorinated isos as higher than U.S. prices of Chinese chlorinated isos.[16] Delsa described itself as a price taker in the U.S. market. Petitioners described Delsa as lowering its U.S. prices even as the euro appreciated.

Respondents stated that Chinese prices are lower than U.S. prices because of quality differences and Chinese suppliers' demands that payment arrive early, sometimes even before beginning production, as opposed to U.S. producers, who may allow payment months after delivery.[17] They also stated that prices have fallen because of the expiration of the formerly prohibitive cost of obtaining FIFRA registration of the product for sale to the U.S. market.

With regard to price differences in the pool and industrial markets, *** stated that prices for chlorinated isos sold to the industrial segment were sometimes slightly higher than prices for chlorinated isos sold to the pool and spa market and attributed the premium to the higher profit margins that industrial purchasers earn, allowing them to pay more.[18] However, while petitioners also stated that prices were sometimes higher in the industrial market than in the pool and spa market, they explained that this premium was due to the industrial market having higher quality requirements.[19]

PRICE DATA

The Commission requested U.S. producers and importers of chlorinated isos to provide quarterly data for the total quantity and f.o.b. value[20] of chlorinated isos that were shipped to unrelated customers in the U.S. market. Importers also were asked to report the quantity and value for direct import purchases of granular chlorinated isos from China[21] and Spain.[22] Purchasers were asked to report the delivered quantity and value for purchases of U.S.-produced and imported[23] chlorinated isos from China and Spain. Data were requested for the period January 2002 to December 2004. The products for which pricing data were requested are as follows:

[16] Hearing transcript, pp. 191-192 (James).

[17] The quality differences cited include granulation and impurities. In addition, *** said that Spanish and U.S. prices are sometimes similar, but that U.S. product is offered in drums rather than supersacks (for Delsa product), making U.S. product less expensive to use. *Chlorinated Isocyanurates from China and Spain, Investigations Nos. 731-TA-1082 and 1083 (Preliminary)*, USITC Publication 3705, July 2004, p. V-5.

[18] Staff telephone conversation with ***.

[19] Staff telephone conversation with ***.

[20] In the narrative section of the questionnaires, two of the three producers and three of the four tableters reported quoting prices on a delivered basis. One producer reported quoting prices on both f.o.b. and delivered bases, and one tableter reported a warehouse basis. Five importers reported quoting prices on a delivered basis, and three reported an f.o.b. basis.

[21] Importers reported usable selling prices only for products 1, 2, 3, 5, and 6 and purchase prices only for products 1 and 2 from China.

[22] Importers reported usable selling prices only for product 5 and purchase prices only for products 1 and 2 from Spain. In addition, purchasers reported usable pricing data only for products 1 and 2 from Spain.

[23] Purchases either directly from manufacturers located in China or Spain (by importers) or from U.S. importers of the subject products (by purchasers).

***Product 1*.–Granular tricholoroisocyanuric acid with approximately 90 percent available chlorine content (similar to ACL®90 or CDB®), sold in 2,205-pound polypropylene bags**

***Product 2*.–Granular sodium dichloroisocyanurate (dihydrate) with approximately 56 percent available chlorine content (similar to ACL®56 or CDB®56), sold in 2,205-pound polypropylene bags, for repackaging for pool treatment use**

***Product 3*.–Granular sodium dichloroisocyanurate (dihydrate) with approximately 56 percent available chlorine content (similar to ACL®56 or CDB®56), sold in 300-pound drums, for use in cleanser and/or sanitizer applications**

***Product 4*.–Trichlor tablets in 1 metric ton containers**

***Product 5*.–Trichlor tablets in 24-26 pound containers**

***Product 6*.–Blended 3-inch tablets with approximately 85 to 90 percent available chlorine content, in 24-26 pound containers**

Three U.S. producers, 3 tableters,[24] 9 importers,[25] and 21 purchasers provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. Pricing data reported by these firms, shown in tables V-1 to V-18 and figures V-4 to V-14, accounted for *** of U.S. producers' shipments of chlorinated isos in 2004, *** percent of U.S. imports from China in 2004, and *** of U.S. imports from Spain in 2004.

Among Commission pricing products, U.S. and Spanish prices generally fell from January 2002 to December 2004 while Chinese prices fluctuated, albeit at mostly lower levels than U.S. prices.[26] Some of the products had lower unit values in the fourth quarter of each year, and both importers and purchasers have explained this is due to product returns in the fourth quarter, or after the swimming pool season is over.

Selling Price Comparisons

Product 1 is a standard trichlor product in granular form. Imports from China undersold U.S. product in 9 of 11 quarters where comparisons were possible, with margins of underselling ranging from 8.0 to 20.8 percent (table V-1). (In two quarters, imports from China oversold U.S. product by 1.4 and 4.3 percent.) Margins of underselling for the Chinese product generally increased through 2002 and 2003 and then dropped in 2004 as U.S. prices moved down toward Chinese prices.

Product 2 is a standard dichlor product for the pool market. Imports from China undersold U.S. product in all six quarters where comparisons were possible, with margins of underselling ranging from 21.3 to 31.8 percent (table V-2).

Product 3 is a dichlor product for the industrial and sanitizer market. Little data were submitted by importers, but in the two quarters where comparisons were possible, imports from China undersold U.S. product by 42.5 and 40.4 percent. U.S. producers' prices showed a *** decline over January 2002 to December 2004 (table V-3).

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[24] ***.

[25] ***.

[26] In addition to anecdotal evidence about price increases of chlorinated isos in late 2004 and early 2005, ***, a news report about BioLab raising prices in February 2005, and ***.

Products 4 and 5 are trichlor tablets. Importers did not submit sales price data for product 4. U.S. producers' prices showed a *** decline over January 2002 to December 2004 (table V-4). For product 5, imports from China undersold U.S. product in seven of eight quarters where comparisons were possible, with margins of underselling ranging from 10.8 to 28.0 percent (table V-5). Importers of Spanish product 5 reported that price data submitted for the fourth quarter of 2003 took into account returns and thus does not fit the trend. In the other quarters available for comparison, imports from Spain oversold U.S. product in five of the seven quarters (table V-6). In the two quarters where Spanish product undersold U.S. product, the margins were 9.5 percent and 26.8 percent.

Product 6 is the blended 3-inch trichlor tablet, and prices generally declined from January 2002 to December 2004. Imports from China undersold U.S. product in four of five quarters where comparisons were possible, with margins of underselling ranging from 7.5 to 23.6 percent (table V-7).

Purchase Price Comparisons

Importers reported direct import purchase prices that were generally lower than U.S. importers' selling prices, ranging up to 24 cents per pound lower (tables V-8 and V-9).

In examining the data submitted by purchasers[27] for product 1, purchase prices for imports from China were lower than those for the domestic product in all five quarters where comparisons were possible; margins of underselling ranged from 13.9 to 32.9 percent (table V-10). Purchase prices for imports from Spain were below prices for U.S. product 1 in 11 of 12 quarters where comparisons were possible, with margins ranging from 5.7 to 25.2 percent (table V-11).

With regard to product 2, purchase prices for imports from China were below those for the U.S. product in four of the five quarters where comparisons were possible, with margins of underselling ranging from 8.0 to 40.9 percent (table V-12). (In one quarter, purchase prices for imports from China were higher than those for the U.S. product by 3.0 percent.) Purchase prices for imports of product 2 from Spain were below the U.S. price in all 12 quarters, with margins of underselling ranging from 19.1 to 42.8 percent (table V-13).

For product 3, purchase prices for imports from China were lower than the prices for U.S. product in all nine quarters where comparisons were possible, with margins of underselling ranging from 4.5 to 36.4 percent (table V-14).

With regard to product 4, purchase prices for imports from China were below those for the U.S. product in all four quarters where comparisons were possible, with margins of underselling ranging from 53.6 to 66.5 percent (table V-15).

The purchase prices for imports from China[28] of product 5 were higher than the U.S. product in all 12 quarters, with margins ranging from 21.0 to 92.3 percent (table V-16). However, in comparing purchase prices submitted by the mass marketers for product 5, prices are more comparable (table V-17). Mass marketer purchase prices for imports from China of product 5 were lower than the U.S. product in 8 of 12 quarters, with margins of underselling ranging from 0.3 to 4.4 percent.

For product 6, purchase prices for imports from China[29] were lower than those for the U.S. product in four of five quarters where comparisons were possible, with margins ranging from 2.4 to 15.8 percent (table V-18). In one quarter, purchase prices for imports from China were 1.4 percent above those for the U.S. product.

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[27] ***, the mass-market retailers, submitted pricing data that were significantly higher for all products than other purchasers' pricing data. This may be a reflection of the petitioner's claim that purchase prices are dependent on where in the distribution chain, or from whom, the product is being purchased.

[28] ***.

[29] ***.

Table V-1
Chlorinated isos: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers of product 1, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-2
Chlorinated isos: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers of product 2, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-3
Chlorinated isos: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers of product 3, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-4
Chlorinated isos: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers of product 4, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-5
Chlorinated isos: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers from China of product 5, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-6
Chlorinated isos: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers from Spain of product 5, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-7
Chlorinated isos: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers of product 6, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-8
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. importers of product 1, January 2002-December 2004

* * * * * * *

Table V-9
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. importers of product 2, January 2002-December 2004

* * * * * * *

Table V-10
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. purchasers of U.S.-produced and Chinese product 1, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-11
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. purchasers of U.S.-produced and Spanish product 1, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-12
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. purchasers of U.S.-produced and Chinese product 2, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-13
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. purchasers of U.S.-produced and Spanish product 2, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-14
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. purchasers of U.S.-produced and Chinese product 3, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-15
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. purchasers of U.S.-produced and Chinese product 4, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-16
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. purchasers of U.S.-produced and Chinese product 5, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-17
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. mass marketer purchasers of U.S.-produced and Chinese product 5, and margins of underselling/(overselling), by quarters, January 2002-December 2004

* * * * * * *

Table V-18
Chlorinated isos: Weighted-average delivered purchase prices and quantities as reported by U.S. purchasers of U.S.-produced and Chinese product 6, and margins of underselling/(overselling), by quarters, January 2002-December 2004

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Figure V-4
Chlorinated isos: Weighted-average f.o.b. selling prices per pound as reported by U.S. producers and importers of product 1, by quarters, January 2002-December 2004

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Figure V-5
Chlorinated isos: Weighted-average f.o.b. selling prices per pound as reported by U.S. producers and importers of product 2, by quarters, January 2002-December 2004

* * * * * * *

Figure V-6
Chlorinated isos: Weighted-average f.o.b. selling prices per pound as reported by U.S. producers and importers of product 5, by quarters, January 2002-December 2004

* * * * * * *

Figure V-7
Chlorinated isos: Weighted-average f.o.b. selling prices per pound as reported by U.S. producers and importers of product 6, by quarters, January 2002-December 2004

* * * * * * *

Figure V-8
Chlorinated isos: Weighted-average delivered purchase prices per pound as reported by U.S. purchasers of product 1, by quarters, January 2002-December 2004

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Figure V-9
Chlorinated isos: Weighted-average delivered purchase prices per pound as reported by U.S. purchasers of product 2, by quarters, January 2002-December 2004

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Figure V-10
Chlorinated isos: Weighted-average delivered purchase prices per pound as reported by U.S. purchasers of product 3, by quarters, January 2002-December 2004

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Figure V-11
Chlorinated isos: Weighted-average delivered purchase prices per pound as reported by U.S. purchasers of product 4, by quarters, January 2002-December 2004

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Figure V-12
Chlorinated isos: Weighted-average delivered purchase prices per pound as reported by U.S. purchasers of product 5, by quarters, January 2002-December 2004

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Figure V-13
Chlorinated isos: Weighted-average delivered purchase prices per pound as reported by U.S. mass marketer purchasers of product 5, by quarters, January 2002-December 2004

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Figure V-14
Chlorinated isos: Weighted-average delivered purchase prices per pound as reported by U.S. purchasers of product 6, by quarters, January 2002-December 2004

* * * * * * *

LOST SALES AND LOST REVENUES

The Commission requested that U.S. producers of chlorinated isos report any instances of lost sales and lost revenues they experienced due to competition from imports from China and Spain since January 1, 2001. All the lost sales and lost revenue allegations are presented in tables V-19 and V-20 and are discussed in more detail below. There were *** lost sales allegations totaling over $*** and involving over *** pounds of chlorinated isos. In addition, there were *** lost revenue allegations totaling over $*** and involving over *** pounds of chlorinated isos. Staff contacted the listed purchasers to confirm or deny the allegations. In addition to summary information provided in tables V-19 and V-20, more detailed descriptions of the allegations follow.

Purchasers also were asked if, since January 2001, their firm had switched purchases of chlorinated isos from U.S. producers to chlorinated isos imported from China and/or Spain. Four purchasers (***) responded that they had switched, while three (***) responded that they had not.[30] If purchasers responded that they had switched purchases from U.S. producers to importers from China and/or Spain, they were asked if price was the reason for this shift. Of the four responses, two (***) replied that they had switched because of price, one (***) responded that it had not switched because of price, and one (***) responded that it switched for a variety of reasons. Purchasers also were asked if since January 2001, U.S. producers reduced their prices of chlorinated isos in order to compete with chlorinated isos imported from China and/or Spain. Four purchasers (***) responded that U.S. producers had reduced their prices in order to compete with Chinese and/or Spanish prices, while two (***) responded that U.S. producers had not reduced their prices. Additional information is summarized in the individual responses below.

Table V-19
U.S. producers' lost sales allegations

* * * * * * *

Table V-20
U.S. producers' lost revenue allegations

* * * * * * *

[30] ***.

PART VI: FINANCIAL CONDITION OF U.S. PRODUCERS

BACKGROUND

Three integrated U.S. producers (***) provided financial data on their product-specific and overall operations on chlorinated isos during the period examined. In addition, three tableters (***) provided financial data on their tableting operations during the period examined.[1] These data accounted for the vast majority of known U.S. production of chlorinated isos during 2002-04.[2] ***. Company transfers represent a small portion of the combined companies' net sales quantity and value in all periods and are not shown separately.

OPERATIONS ON CHLORINATED ISOS

Results of the U.S. producers on their chlorinated isos operations are presented in tables VI-1 through VI-3. Selected financial data, by firm, are presented in tables VI-4 through VI-6. Financial data are presented as follows:

Tables VI-1, VI-4– Chlorinated isos: Results of operations of integrated U.S. producers and tableters
Tables VI-2, VI-5– Chlorinated isos: Results of operations of integrated U.S. producers
Tables VI-3, VI-6– Chlorinated isos: Results of trichlor tablet operations of U.S. tableters

Overall, net sales quantity and value declined from 2002 to 2003, then increased from 2003 to 2004 (table VI-1). The unit value of net sales declined continuously from 2002 to 2004 while the unit cost of goods sold ("COGS") increased; unit selling, general, and administrative expenses ("SG&A") increased in 2003 and declined in 2004. In combination, these trends in revenues and expenses led to a decrease in operating profit from 2002 to 2003 and to an operating loss in 2004.

While operations on granular isos generally followed the aforementioned trends, operations on tableted isos experienced reduced profitability from 2002 to 2004 due to declines in total and per-unit values that were greater than declines in COGS (due primarily to declines in raw material costs)[3] and SG&A. Separate financial data on granular chlorinated isos and tableted chlorinated isos are presented in appendix C.

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[1] ***.

[2] Tableters *** did not provide financial data on their chlorinated isos operations in their U.S. producers' questionnaire responses. Staff has contacted *** either directly or through counsel regarding the lack of such data. ***.

[3] The main raw material for tableted chlorinated isos is granular chlorinated isos; therefore, the reported declines in sales value for the granular product resulted in declines in raw material input costs for the tableted product.

Table VI-1
Chlorinated isos: Results of operations of integrated U.S. producers and tableters Aqua Tri, BioLab, Clearon, N. Jonas, OxyChem, and Stellar, fiscal years 2002-04

Item	Fiscal year		
	2002	2003	2004
	Quantity (*short tons*)		
Net sales[1 2 3]	141,114	130,565	147,501
	Value (*$1,000*)		
Net sales[1 2 3]	296,204	270,917	275,953
COGS[3]	226,317	219,552	250,155
Gross profit	69,887	51,365	25,798
SG&A expenses[3]	32,860	32,187	32,686
Operating income (loss)	37,027	19,178	(6,888)
Other income/(expense), net[3 4]	(3,687)	(1,458)	(10,496)
Net income (loss)	33,340	17,720	(17,384)
Depreciation/amortization[3]	20,575	20,779	22,207
Cash flow	53,915	38,499	4,823
	Ratio to net sales (*percent*)		
COGS	76.4	81.0	90.7
Gross profit	23.6	19.0	9.3
SG&A expenses	11.1	11.9	11.8
Operating income (loss)	12.5	7.1	(2.5)

Table continued.

Table VI-1–*Continued*
Chlorinated isos: Results of operations of integrated U.S. producers and tableters Aqua Tri, BioLab, Clearon, N. Jonas, OxyChem, and Stellar, fiscal years 2002-04

Item	Fiscal year		
	2002	2003	2004
	Unit value *(per short ton)*		
Net sales	$2,099	$2,075	$1,871
COGS:			
Raw materials	775	858	876
Direct labor	188	211	185
Other factory costs	641	613	635
Total cost of goods sold	1,604	1,682	1,696
Gross profit	495	393	175
SG&A expenses	233	247	222
Operating income (loss)	262	147	(47)
	Number of firms reporting		
Operating losses	0	2	3
Data	6	6	6

[1] For each product category (granular chlorinated isos and tableted chlorinated isos), revenue, COGS, and operating expenses were combined. Although the same underlying product could be reported more than once using this approach (e.g., a sale of granular trichlor from an integrated producer to a tableter or other integrated producer and then again as a sale of trichlor tablets by a tableter or other integrated producer), the effect is reflected in both revenue and COGS and therefore results in a fair presentation of the industry's operations.

[2] Company transfers are less than *** percent of the combined companies' net sales quantity and value in all periods and are not shown separately.

[3] ***.

[4] ***.

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

Table VI-2
Chlorinated isos: Results of operations of integrated U.S. producers *, ***, and ***, fiscal years 2002-04**

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Table VI-3
Chlorinated isos: Results of trichlor tablet operations of U.S. tableters *, fiscal years 2002-04**

* * * * * * *

Table VI-4
Chlorinated isos: Results of operations of integrated U.S. producers and tableters, by firm, fiscal years 2002-04

* * * * * * *

Table VI-5
Chlorinated isos: Results of operations of integrated U.S. producers, by firm, fiscal years 2002-04

* * * * * * *

Table VI-6
Chlorinated isos: Results of trichlor tablet operations of U.S. tableters, by firm, fiscal years 2002-04

* * * * * * *

A variance analysis for chlorianted isos is presented in table VI-7. The information for this variance analysis is derived from table VI-1. The variance analysis provides an assessment of changes in profitability as it relates to changes in pricing, cost, and volume. The analysis shows that the decrease in operating income from 2002 to 2004 is attributable to the higher unfavorable price and net cost/expense variances compared to a smaller favorable volume variance (in other words, unit costs increased while unit sales prices declined, and volume increased).[4]

[4]A variance analysis for only the integrated U.S. producers of chlorinated isos (BioLab, Clearon, and OxyChem) reveals a 2002-04 price variance of $(32.5) million, a net cost/expense variance of $(12.6) million, and a net volume variance of $1.6 million.

Table VI-7
Chlorinated isos: Variance analysis on operations of integrated U.S. producers and tableters, fiscal years 2002-04

Item	Fiscal year		
	2002-04	2002-03	2003-04
	Value (*$1,000*)		
Net sales: Price variance	(33,658)	(3,144)	(30,106)
Volume variance	13,407	(22,143)	35,142
Total net sales variance	(20,251)	(25,287)	5,036
COGS: Cost variance	(13,595)	(10,153)	(2,124)
Volume variance	(10,243)	16,918	(28,479)
Total COGS variance	(23,838)	6,765	(30,603)
Gross profit variance	(44,089)	(18,522)	(25,567)
SG&A: Expense variance	1,661	(1,783)	3,676
Volume variance	(1,487)	2,456	(4,175)
Total SG&A variance	174	673	(499)
Operating income variance	(43,915)	(17,849)	(26,066)
Summarized as:			
Price variance	(33,658)	(3,144)	(30,106)
Net cost/expense variance	(11,933)	(11,937)	1,552
Net volume variance	1,676	(2,768)	2,488

Note.-- Unfavorable variances are shown in parentheses; all others are favorable.

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

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' aggregate data on capital expenditures and research and development expenses ("R&D") are shown in table VI-8. ***, which represents *** percent of the overall capital expenditures in 2004, only reported capital expenditures for all chlorinated isos and not for the specific product breakouts. According to ***, the company's capital expenditure records are not allocated to products and/or grades of products. The majority of its capital expenditures are for ***, and such expenditures have decreased to ***. *** did not report any R&D expenses, and stated that this is due to the mature nature of the chlorinated isos business.[5] ***, which represents *** percent of the overall capital expenditures and *** percent of the overall R&D expenses in 2004, reported that its capital expenditures include ***. R&D expenses reported by *** primarily reflect ***.[6]

[5] E-mail response from *** of ***, April 1, 2005.

[6] E-mail response from ***, counsel for ***, April 6, 2005.

Table VI-8
Chlorinated isos: Capital expenditures and R&D expenses of integrated U.S. producers and tableters, fiscal years 2002-04

Item	Fiscal year		
	2002	2003	2004
	Value (*$1,000*)		
Chlorinated isos (integrated producers and tableters):			
Capital expenditures	10,955	8,400	6,374
R&D expenses	***	***	***
Chlorinated isos (integrated producers only):			
Capital expenditures	***	***	***
R&D expenses	***	***	***
Tableters of trichlor tablets:			
Capital expenditures	***	***	***
R&D expenses	***	***	***

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

ASSETS AND RETURN ON INVESTMENT

The Commission's questionnaire requested data on assets used in the production, warehousing, and sale of all chlorinated isos to compute return on investment ("ROI"). Although ROI can be computed in many different ways, a commonly used method is income divided by total assets. Therefore, ROI has been calculated as operating income divided by total assets used in the production, warehousing, and sale of chlorinated isos.

Data on integrated U.S. producers' and tableters' total assets and their ROI are presented in table VI-9. The total assets utilized in the production, warehousing, and sale of chlorinated isos declined irregularly from $288 million in 2002 to $275 million in 2004. The ROI declined from 12.9 percent in 2002 to a negative 2.5 percent in 2004. The trend of ROI was similar to the trend in the operating income margin in table VI-1 during the reporting period.[7]

CAPITAL AND INVESTMENT

The Commission requested integrated U.S. producers of chlorinated isos, as well as tableters, to describe any actual or potential negative effects of imports of chlorinated isos from China or Spain 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 presented in appendix D.

[7] ROI calculations for only the integrated U.S. producers of chlorinated isos (BioLab, Clearon, and OxyChem) are as follows: 2001–13.1 percent, 2002–6.5 percent, 2003–(2.6) percent.

Table VI-9
Chlorinated isos: Value of assets and return on investment of integrated U.S. producers and tableters, fiscal years 2002-04

Item	Fiscal year		
	2002	2003	2004
	Value (*$1,000*)		
Value of assets:			
Total current assets	113,307	126,661	120,391
Property, plant, and equipment:			
Original cost	298,296	311,797	307,219
Less: Accumulated depreciation	134,036	152,668	164,173
Book value	164,260	159,129	143,046
Other non-current assets	9,967	13,899	11,131
Total assets	287,534	299,689	274,568
Operating income or (loss)	37,027	19,178	(6,888)
	Ratio to total assets (*percent*)		
Return on investment	12.9	6.4	(2.5)

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

VALUE ADDED

The Commission asked integrated U.S. producers and tableters a series of questions regarding the tableting, blending, and repackaging operations for chlorinated isos. Their responses are shown in appendix E. Several firms answered the Commission's question regarding domestic value added for granular chlorinated isos purchased from a foreign source, then tableted, blended and/or repackaged in the United States. According to ***. Most integrated U.S. producers and tableters responded to the narrative question regarding value added for domestically sourced chlorinated isos. These firms' answers were quite varied, and are presented by company in appendix E. Staff requested additional quantitative value added data regarding the tableting of domestically sourced granular chlorinated isos at the hearing as well as in posthearing requests to parties. BioLab provided additional data to staff (presented in appendix E), while petitioners provided additional value added data in their posthearing brief. According to ***.[8]

[8] Petitioners' posthearing brief, pp. Q-8–Q-9.

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 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

The exact number of chlorinated isos producers in China is unknown. However, four are believed to account for most exports to the United States: Changzhou Clean Chemical Co., Ltd., Jiangsu Province; Hebei Jiheng Chemical Co., Ltd., Hebei Province; Nanning Chemical Industry Co., Ltd., Guanxi Province; and Sinochem Hebei Import and Export Corp., Hebei Province. Their combined data for granular chlorinated isos are shown in table VII-1 and their combined data for tableted chlorinated isos are shown in table VII-2 (granular and tableted chlorinated isos cannot be added together because of double-counting of the granular product used in the tableted product).[1] Both capacity and production for the four responding producers combined increased noticeably in the period examined, although current levels are projected to remain constant through 2005. Exports were large relative to home market sales and accounted for an increasing share of total shipments during the period examined. As a share of total shipments, exports to the United States increased from 2002 to 2004. Export markets other than the United States include a number of countries in Asia and Europe (including Spain), as well as Australia, Canada, Mexico, and several countries in South America.

Table VII-1
Granular chlorinated isos: China's production capacity, production, shipments, and inventories, by type, 2002-04, and projections for 2005-06

* * * * * * *

Table VII-2
Tableted chlorinated isos: China's production capacity, production, shipments, and inventories, by type, 2002-04, and projections for 2005-06

* * * * * * *

[1] Questionnaires were sent to all 22 known producers of chlorinated isos in China via fax and e-mail. Changzhou Clean Chemical Co., Ltd., represented by Garvey Schubert Barer; Hebei Jiheng Chemical Co., Ltd., represented by Wilmer Cutler Pickering Hale and Dorr; Nanning Chemical Industry Co., Ltd., represented by Garvey Schubert Barer; and Sinochem Hebei Import and Export Corp. returned Commission questionnaires.

THE INDUSTRY IN SPAIN

The Spanish industry consists of two firms: Aragonesas Delsa S.A. ("Delsa") and Inquide Flix, S.A. ("Inquide Flix"). Only Delsa exports to the United States. Data for Delsa are shown in tables VII-3 (granular chlorinated isos) and VII-4 (tableted chlorinated isos).[2] By mid-2003, Delsa shut down a 10,000-tons-per-year trichlor plant and now operates a ***-tons-per-year trichlor plant and a ***-tons-per-year dichlor plant. After the commissioning of the new dichlor plant, Delsa ***. Both the new trichlor and dichlor plants should reach their full combined capacity of *** tons per year by 2005. Exports accounted for a *** of Delsa's total shipments in the period examined, with *** going to the United States. Other principal export markets for Delsa include ***.

Table VII-3
Granular chlorinated isos: Spain's production capacity, production, shipments, and inventories, 2002-04, and projections for 2005-06

* * * * * * *

Table VII-4
Tableted chlorinated isos: Spain's production capacity, production, shipments, and inventories, 2002-04, and projections for 2005-06

* * * * * * *

THE INDUSTRIES IN CHINA AND SPAIN

Tables VII-5 and VII-6 present data for the granular chlorinated isos operations and the tableting chlorinated isos operations, respectively, in China and Spain combined.

Table VII-5
Granular chlorinated isos: China and Spain's combined production capacity, production, shipments, and inventories, 2002-04, and projections for 2005-06

* * * * * * *

Table VII-6
Tableted chlorinated isos: China and Spain's combined production capacity, production, shipments, and inventories, 2002-04, and projections for 2005-06

* * * * * * *

U.S. INVENTORIES OF IMPORTED PRODUCT

U.S. importers' aggregate end-of-period inventory data for imports of chlorinated isos from China and Spain are shown in table VII-7.

[2] Although complete data for the second producer, Infquide Flix S.A. are not available, it reportedly began operating in 2001 and was slated to have a production capacity of over 7,700 short tons (http://www.asofap.com/eng/boletines/01_j.htm, downloaded June 18, 2004).

Table VII-7
All chlorinated isos:[1] U.S. importers' end-of-period inventories of imports, by sources, 2002-04

Item	Calendar year		
	2002	2003	2004
	Quantity *(short tons)*		
Subject:			
China	***	***	***
Spain	***	***	***
Subtotal, subject imports	77	1,378	2,391
Nonsubject	***	***	***
Total	***	***	***
	Ratio to imports *(percent)*		
Subject:			
China	***	***	***
Spain	***	***	***
Subtotal, subject imports	***	***	***
Nonsubject	***	***	***
Average	***	***	***

[1] ***.

Note: Ratios are calculated using data from firms that provided both numerator and denominator information (inventories and imports).

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

U.S. IMPORTERS' OUTSTANDING ORDERS

U.S. importers responding to the Commission's questionnaires reported a combined total of 6,500 short tons of chlorinated isos from China and *** short tons of chlorinated isos from Spain on order for 2005.

REMEDIES IN THIRD-COUNTRY MARKETS

In addition to the United States, China and Spain have exported the subject products to Asia, Europe, Australia, South America, Canada, and Mexico. On December 20, 2003, Mexico issued a final antidumping duty order on imports of trichlor from China; the antidumping duty currently being assessed reportedly is equivalent to $0.269 per pound. In addition, on June 1, 2004 Delsa filed an antidumping duty petition with the European Commission on chlorinated isos from China, and on August 30, 2004 filed a petition on chlorinated isos from the United States.[3] On April 8, 2005, the European Union published notice of the imposition of provisional antidumping duties on imports of trichloroisocyanuric

[3] Petitioners' postconference brief, pp. 47-48.

acid and preparations thereof from China and the United States.[4] The rates of the provisional antidumping duties are listed below.

Country	Company	Dumping margin *(percent)*	Antidumping duty rate *(percent)*
China	Hebei Jiheng Chemical Co. Limited	16.8	16.8
	Nanning Chemical Industry Co. Limited	39.0	39.0
	Changzhou Clean Chemical Co. Limited	39.0	39.0
	Zhucheng Taisheng Chemical Co.	39.0	39.0
	Puyang Cleanway Chemicals Limited	17.4	17.4
	Heze Huayi Chemical Co. Limited	9.2	9.2
	All other companies	40.3	40.3
United States	BioLab Inc.	68.4	20.8
	Clearon Inc.	69.8	28.5
	All other companies	98.5	33.8

[4] *Official Journal of the European Union,* April 8, 2005, pp. L 89/4-35.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1082 and 1083 (Final)]

Chlorinated Isocyanurates From China and Spain

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–1082 and 1083 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether 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 less-than-fair-value imports from China and Spain of chlorinated isocyanurates, provided for in subheading 2933.69.60 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 C (19 CFR part 207).

EFFECTIVE DATE: December 16, 2004.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), 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.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of chlorinated isocyanurates from China and Spain are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on May 14, 2004 by Clearon Corporation, Fort Lee, New Jersey and Occidental Chemical Corporation, Dallas, Texas.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to

[1] For purposes of these investigations, the Department of Commerce has defined the subject imported merchandise as chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3 \bullet 2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. The scope of these investigations covers all chlorinated isocyanurates, including Arch Chemicals, Inc.'s patented chlorinated isocyanurates tablet.

section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 20, 2005, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 5, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 25, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to held at 9:30 a.m. on April 29, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the headline for filing is April 27, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 12, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before May 12, 2005. On May 26, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 31, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Additional written submissions to the Commission, Including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's 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 207.21 of the Commission's rules.

Issued: December 29, 2004.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–152 Filed 1–4–05; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–898

Partial Affirmative Preliminary Determination of Critical Circumstances: Chlorinated Isocyanurates from the People's Republic of China

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

EFFECTIVE DATE: April 11, 2005.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or Brian C. Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC 20230; telephone: (202) 482–3797 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

Based on allegations contained in the Petitioners'[1] March 4, 2005, amendment to the May 14, 2004 petition, we preliminarily find, pursuant to section 733(e) of the Tariff Act of 1930, as amended (''the Act''), and section 351.206 of the Department of Commerce (''Department'') regulations, that critical circumstances exist with regard to imports of chlorinated isocyanurates from the PRC for the PRC–wide entity and Shanghai Tian Yuan International Trading Co., Ltd. (''Tian Yuan''), one of the Section A Respondents.[2] Critical circumstances do not exist with regard to imports of chlorinated isocyanurates from the PRC for the following entities: Hebei Jiheng Chemical Co., Ltd. (''Jiheng''), Nanning Chemical Industry Co., Ltd. (''Nanning''), and the remaining four Section A Respondents.

Background

The Petitioners filed a timely allegation of critical circumstances on March 4, 2005 (''critical circumstances petition''), in accordance with section 733(e)(1) of the Act and section 351.206(c)(1) of the Department's regulations. On March 8 and 14, 2005, the Department requested that Jiheng and Nanning report their monthly shipment data of subject merchandise to the United States for 2002 through 2005. Nanning and Jiheng provided the requested information. In its March 14, 2005, response, pursuant to section 351.301(c) of the Department's regulations, Jiheng argued that the evidence on the record does not support an affirmative finding of critical circumstances with respect to Jiheng.

Period of Investigation

The period of investigation (''POI'') is October 1, 2003, through March 31, 2004. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (May 14, 2004). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s–triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid (''TCCA'') ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3 \bullet 2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This investigation covers all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive. Arch's patented chlorinated isocyanurates tablet is also included in the scope of this investigation. *See Preliminary Determination*[3] and *Amended Preliminary Determination*.[4]

Critical Circumstances

On March 4, 2005, the Petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of chlorinated isocyanurates from the PRC. Because the Petitioners submitted critical circumstances allegations more than 30 days before the scheduled date of the final determination but later than 20 days before the preliminary determination, the Department must issue a preliminary determination of critical circumstances within 30 days after the Petitioners submitted the allegation. *See* Section 351.206(c)(2)(ii) of the Department's regulations. Section 733(e)(1) of the Act provides that, upon receipt of a timely allegation of critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine (i) the volume and value of the imports, (ii) seasonal trends, and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that, ''In general, unless the imports during the 'relatively short period' . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.''

Section 351.206(i) of the Department's regulations defines ''relatively short period'' as generally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section provides further that, if the Department ''finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,'' then the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined the following information: (1) the evidence presented in the Petitioners' March 4, 2005, submission; (2) evidence obtained since the initiation of the less–than-fair–value (''LTFV'') investigation (*i.e.*, import statistics released by the U.S. Census Bureau); and (3) the International Trade Commission's (''ITC'') preliminary material injury determination. *See*

[1] The petitioners in this antidumping duty investigation are Clearon Corporation and Occidental Chemical Corporation (''the Petitioners'').

[2] The five Section A respondents include: Liaocheng Huaao Chemical Industry Co., Ltd. (''Huaao''); Shanghai Tian Yuan International Trading Co., Ltd., (''Tian Yuan''); Changzhou Clean Chemical Co., Ltd. (''Clean Chemical''); Sinochem Hebei Import & Export Corporation (''Sinochem Hebei''); and Sinochem Shanghai Import & Export Corporation (''Sinochem Shanghai'') (collectively ''Section A Respondents'').

[3] *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75293 (December 16, 2004) (''*Preliminary Determination*'').

[4] *Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 9035 (February 24, 2005) (''''').

Chlorinated Isocyanurates from China and Spain, 69 FR 40417 (July 2, 2004) (''*ITC Preliminary Determination*'').In determining whether a history of dumping and material injury exists, the Department generally considers current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of chlorinated isocyanurates from the PRC. In their March 4, 2005, submission, the Petitioners made no statement concerning a history of dumping chlorinated isocyanurates from the PRC. However, we are aware of an antidumping order in Mexico on trichloroisocyanuric acid from the PRC dated December 20, 2002. *See* WTO Committee on Anti–Dumping Practices, *Semi–Annual Report Under Article 16.4 of the Agreement*, G/ADP/N/126/MEX at 7 (Feb. 25, 2005).[5] As discussed in the ''scope of investigation'' section of the accompanying **Federal Register** notice, TCCA (*i.e.*, one of three primary chemical compositions of chlorinated isocyanurates) is included in the scope of this investigation. Therefore, the Department finds that there is a history of injurious dumping of chlorinated isocyanurates from the PRC pursuant to section 733(e)(1)(A)(i) of the Act. *See, e.g., Initiation of Antidumping Duty Investigation: Certain Steel Concrete Reinforcing Bar From Turkey*, 61 FR 15039, 15040 (April 4, 1996).

Having satisfied Section 733(e)(1)(A)(i) of the Act, the first prong of the test is met. However, for these preliminary findings, we have also examined the applicability of Sections 733(e)(1)(A)(ii) and 733(e)(1)(B) as discussed below.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV, the Department must rely on the facts before it at the time the determination is made. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary antidumping duty determination.

The Department normally considers margins of 25 percent or more for export price (''EP'') sales and 15 percent or more for constructed export price (''CEP'') sales sufficient to impute importer knowledge of sales at LTFV. *See e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002). *See also Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 5606 (February 3, 2005). Our *Amended Preliminary Determination* found margins of 86.79 percent and 179.48 percent for the two mandatory respondents, Jiheng and Nanning, respectively. The five Section A Respondents received a separate rate margin of 111.03 percent based on the weighted–average margins of Jiheng and Nanning, the mandatory respondents in this investigation. *See Amended Preliminary Determination*. The PRC–wide entity received a margin of 179.48 percent. *See Amended Preliminary Determination; see also Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China (the ''PRC'') - Partial Affirmative Preliminary Determination of Critical Circumstances* (''*Preliminary Critical Circumstances Memorandum*'') at Attachment II, dated April 4, 2005, from James C. Doyle, Office Director, AD/CVD Operations, Office 9, to Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. *See Final Determination of Sales at Less Than Fair Value: Certain Cut–To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997). In the present case, the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of chlorinated isocyanurates from the PRC. *See ITC Preliminary Determination*.

Based on the ITC's preliminary determination of material injury and the preliminary dumping margins for Jiheng, Nanning, the Section A Respondents, and the PRC–wide entity, the Department preliminarily finds that there is a reasonable basis to believe or suspect that the importers knew or should have known that there was likely to be material injury by reason of sales at LTFV of subject merchandise from the PRC from these exporters.

Pursuant to section 351.206(h) of the Department's regulations, we will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent during a relatively ''short period'' over imports in the base period. The Department normally considers a ''relatively short period'' as the period beginning on the date the proceeding begins and ending at least three months later. *See* 19 C.F.R. 351.206(I). According to section 351.206(i) of the Department's regulations, ''if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time.'' The Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.*, the ''comparison period''). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. *See* 19 C.F.R. 351.206(c)(2).

Based on information contained in an e–mail dated March 2004, the Petitioners maintain that there was an awareness in both the United States and China of an impending antidumping proceeding prior to the May 14, 2004, filing of the petition. Accordingly, the Petitioners requested that the Department use an eight-month base period and eight-month comparison period, and use March 2004 as the knowledge month.

Our analysis shows that we obtain the same conclusion regarding whether there are massive imports for Jiheng, Nanning, the Section A Respondents, and the China–wide entity, regardless of whether we use March 2004 as the knowledge month, as suggested by the Petitioners, or use May 2004 as the knowledge month, in which this proceeding was filed.

According to section 351.206(i) of the Department's regulations, the comparison period normally should be at least three months. In this case, we determine that a seven-month period is appropriate to be used as the ''relatively short period.'' The Department requested that the respondents in this

[5] We also note that the European Communities reported to the WTO that an investigation on trichloroisocyanuric acid (TCCA) was initiated in July 2004. See WTO Committee on Anti-Dumping Practices, *Semi-Annual Report Under Article 16.4 of the Agreement*, G/ADP/N/126/EEC at 39 (Mar. 8, 2005). The existence of this investigation is not a factor in our conclusion that there is a history of injurious dumping of chlorinated isocyanurates from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

investigation provide monthly shipment data for 2002 through 2005. *See* Letters to Jiheng and Nanning dated March 8 and 14, 2005, respectively. In addition, the Department obtained U.S. import data for subject merchandise for 2002, 2003, and 2004 as reported at the ITC's website, http://dataweb.usitc.gov.

On March 14, 15, and 17, 2005, the Department received company–specific data from Jiheng and Nanning. When we compared these companies' import data during the base period with the comparison period, we found that the volumes of imports of chlorinated isocyanurates from Jiheng and Nanning decreased over the base period, regardless of whether we used March or May 2004 as the knowledge month. *See Preliminary Critical Circumstances Memorandum* at Attachment I. Therefore, we find no massive imports from Jiheng and Nanning.

Because the PRC NME entity did not respond to the Department's antidumping questionnaire, we were unable to obtain shipment data from the PRC NME entity for purposes of our critical circumstances analysis and there is therefore no verifiable information on the record with respect to its export volumes. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Furthermore, Section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department may apply an adverse inference.

The PRC NME entity did not respond to the Department's request for information. Thus, we are using facts available, in accordance with section 776(a) of the Act, in preliminarily determining whether there were massive imports of merchandise from the PRC NME entity. In accordance with section 776(b) of the Act, we also find that an adverse facts available is warranted.

In this case, the only source of available data from which to measure whether imports from the PRC entity were massive are the aggregate import statistics from the PRC, as reported on the ITC DataWeb site (http://dataweb.usitc.gov). Therefore, we have used these statistics to determine whether imports from the PRC entity were massive during the comparison period. We made adjustments for shipments reported by the mandatory respondents. Section 776(c) of the Act provides that, when the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (''SAA''), accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870. The aggregate import statistics from the ITC DataWeb are publicly available data by which the Department can determine import volumes of chlorinated isocyanurates into the United States on a month–by-month basis. Furthermore, this data is reported on a U.S. government website, enhancing its reliability.

Our analysis of the import statistics, adjusted for shipments by the mandatory respondents, indicates that shipments in the comparison period increased over those for the base period. In comparing import statistics from the base period to the comparison period, imports of chlorinated isocyanurates have increased by more than 15 percent,[6] regardless of whether we used March or May 2004 as the knowledge month. *See Preliminary Critical Circumstances Memorandum* at Attachment IV. This comparison is based on the HTSUS number identified in the scope of the *Preliminary Determination*, HTSUS 2933.69.6050.[7] As a result of our analysis, we determine that there were massive imports from the PRC–wide entity during the applicable relatively short period of time.

For the five Section A Respondents that voluntarily submitted information (Section A questionnaire responses) and received a separate rate, we did not request the monthly shipment information necessary to determine if there were massive imports. Tian Yuan, one of the Section A Respondents in this investigation, refused to participate in the Department's verification. Therefore, for the reasons expressed above with respect to the PRC–wide entity, we determine that imports from Tian Yuan were ''massive'' within the meaning of the Act during the applicable relatively short period of time and, as such, justify a preliminary determination of critical circumstances.

As the basis for determining whether massive imports existed for the remaining four Section A Respondents, we calculated a weighted–average increase/decrease in import volume based on the mandatory respondents' import volumes. When we compared these companies' import data during the base period with the comparison period, we found that the volume of imports of chlorinated isocyanurates decreased over the base period. Therefore, for all Section A respondents except for Tian Yuan, we find no massive imports during the applicable relatively short period of time.

We will issue a final determination concerning critical circumstances for all producers/ exporters of subject merchandise from the PRC when we issue our final determination in this investigation, which will be no later than May 2, 2005.

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than three days after the publication of the preliminary determination of critical circumstances in this proceeding. Rebuttal briefs limited to issues raised in the aforementioned case briefs will be due no later than two days after the deadline date for case briefs.

Suspension of Liquidation

With respect to Tian Yuan and the PRC–wide entity for chlorinated isocyanurates, we will direct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all unliquidated entries of chlorinated isocyanurates from the PRC that were entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination in these investigation. In accordance with section 733(d) of the Act, with respect to Jiheng, Nanning, and all Section A Respondents other than Tian Yuan for chlorinated isocyanurates, we will make no changes to our instructions to the CBP with respect to the suspension of liquidation of all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of our preliminary determination in the **Federal Register**.

[6] *See Prelimniary Critical Circumstances Memorandum* at Attachment III.

[7] There were no shipments under the two additional HTSUS numbers identified in the scope of the *Amended Preliminary Determination* investigation, HTSUS 2933.69.6015 and 2933.69.6021.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 4, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1664 Filed 4–8–05; 8:45 am]

BILLING CODE 3510–DS–S

Dated: May 4, 2005.

Glendon D. Deal,

Director, Engineering and Environmental Staff, Water and Environmental Programs, Rural Utilities Service.

[FR Doc. 05–9241 Filed 5–9–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China

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

DATES: *Effective Date:* May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or Brian C. Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3797 or (202) 482–1766, respectively.

Final Determination

We determine that chlorinated isocyanurates from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV'') as provided in section 735 of Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

SUMMARY: On December 16, 2004, the Department of Commerce (''Department'') published its preliminary determination and postponement of the final determination in this case. On February 24, 2005, the Department published an amended preliminary determination in this case. On April 11, 2005, the Department published its partial affirmative preliminary critical circumstances determination in this case.

This investigation covers two exporters of chlorinated isocyanurates that are Mandatory Respondents [1] and five Section A Respondents.[2] We invited interested parties to comment on our preliminary determination, amended preliminary determination, and preliminary critical circumstances determination. Based on our analysis of the comments we received, we have made changes to our calculations for the two Mandatory Respondents. As a result of those changes, the rate assigned to the Section A Respondents has also changed.

Case History

The Department published its preliminary determination in this investigation on December 16, 2004. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75293 (December 16, 2004) (''*Preliminary Determination*''). On February 24, 2005, the Department published an amended preliminary determination. *See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 9035 (February 24, 2005) (''*Amended Preliminary Determination*''). On April 11, 2005, the Department published its partial affirmative preliminary critical circumstances determination. *See Partial Affirmative Preliminary Determination of Critical Circumstances: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 18362 (April 11, 2005) (''*Preliminary Critical Circumstances Determination*'').

Since the publication of the *Preliminary Determination*, the following events have occurred. The Department conducted verification of the two Mandatory Respondents: Jiheng on January 17 through 21, 2005; Nanning on January 24 through 28, 2005; and a Section A Respondent: Sinochem Hebei on January 27 and 28, 2005. *See* ''Verification'' Section below for additional information.

On January 13, 2005, Clearon Corporation and Occidental Chemical Corporation (the ''Petitioners''), Jiheng, and Arch Chemicals, Inc. (''Arch''), an importer of subject merchandise, requested that the Department convene a hearing in this proceeding. On March 4, 2005, the Department informed all interested parties of the hearing date and location.

On February 24, 2005, the Department published the *Amended Preliminary Determination.*

On March 4, 2005, the petitioners filed a critical circumstances allegation.

On March 15, 2005, the Petitioners, BioLab Inc.,[3] and the two Mandatory Respondents submitted case briefs.

On March 17, BioLab requested a one-day extension to submit rebuttal briefs until March 22, 2005. The Department granted the request, and received the rebuttal briefs from parties on March 22, 2005. On March 24, 2005, the Department convened a public hearing in accordance with 19 CFR 351.310(d)(l). Representatives for the two Mandatory Respondents, the Petitioners, and BioLab were in attendance. On March 29, 2005, Jiheng submitted its revised rebuttal brief.

On April 11, 2005, the Department published the *Preliminary Critical Circumstances Determination.* On April 14, 2005, the Petitioners submitted a case brief on the Department's *Preliminary Critical Circumstances Determination.*

Mandatory Respondents

On December 10, 2004, Jiheng and Nanning submitted sales reconciliation documentation. Jiheng also submitted its response to a question addressed in the Department's November 12, 2004, letter concerning its reported sulfuric acid data. On December 17, 2004, the Department sent a supplemental questionnaire for sales and cost reconciliations to Jiheng and Nanning. On December 21, 2004, the Department sent another supplemental questionnaire to Jiheng addressing certain deficiencies in its November 23, 2004, submission. On December 22, 2004, Arch Chemicals, an interested party in this proceeding, submitted a copy of its July 30, 2004, rebuttal scope comments, ''Respondent's Reply to Petitioners' Scope Comments,'' which are applicable to the dual PRC and Spain antidumping proceedings: *Antidumping Duty Investigation of Chlorinated Isocyanurates from People's Republic of China and Spain, Case Nos. A–570–898 and A–469–814.*

On December 20, 2004, Jiheng and Nanning submitted ministerial error allegations.

On January 4, 2005, Jiheng submitted its response to the Department's December 21, 2004, supplemental questionnaire. On January 5 and 12, 2005, Jiheng and Nanning submitted their responses to the Department's December 17, 2004, sales and cost reconciliations questionnaire, respectively.

On January 10, 2005, Jiheng submitted a revised sales listing and factors of

[1] Hebei Jiheng Chemical Co., Ltd. (''Jiheng'') and Nanning Chemical Industry Co., Ltd. (''Nanning'').

[2] Liaocheng Huaao Chemical Industry Co., Ltd. (''Huaao''); Shanghai Tian Yuan International Trading Co., Ltd., (''Tian Yuan''); Changzhou Clean Chemical Co., Ltd. (''Clean Chemical''); Sinochem Hebei Import & Export Corporation (''Sinochem Hebei''); and Sinochem Shanghai Import & Export Corporation (''Sinochem Shanghai'').

[3] On January 27, 2005, BioLab, Inc. (BioLab), a U.S. producer of chlorinated isocyanurates, submitted a letter of appearance as an interested party.

production database to correct its date of payment and consumption for coal and water, respectively. On January 10, 2005, Nanning also submitted a revised factors of production listing to replace Attachment 1 of its November 17, 2004, submission.

On January 10 and 13, 2005, the Department issued verification outlines to Jiheng and Nanning, respectively. On January 14, 2005, the Petitioners submitted pre-verification comments regarding Jiheng. On January 18, 2005, the Petitioners submitted a letter requesting the Department's verification team to examine a company, ''Dry Chlorine Corp,'' which they claimed was possibly related to Jiheng. On January 19, 2005, Jiheng submitted rebuttal comments on the Petitioners' January 13, 2005, pre-verification comments. On January 21, 2005, Jiheng submitted a revision to its rebuttal comments.

On January 24, 2005, the Department issued a clerical error memorandum. *See Memorandum to the File, dated January 24, 2005, from the team to James C. Doyle, Office Director, Regarding Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China (''China''): Analysis of Allegations of Ministerial Errors* (''*Clerical Error Memo*'').

On January 21, 2005, Jiheng and Nanning requested a 17-day extension until February 11, 2005, for Nanning and other interested parties to submit surrogate value information for consideration in the final determination. The Department granted the request on January 24, 2005.

On January 27, 2005, Jiheng filed a second ministerial error allegation. On January 31, 2005, the petitioners submitted rebuttal comments to Jiheng's January 27, 2005, allegation. On February 4, 2005, Jiheng submitted a letter requesting that the Department strike from the record the petitioners' January 31, 2005, comments. The Department amended its *Preliminary Determination* on February 24, 2005.

On February 15, 2005, the Petitioners, BioLab, and the two Mandatory Respondents submitted surrogate value data. On February 25, 2005, the petitioners filed additional data.

On February 16, 2005, the Department received a request from U.S. Customs and Border Protection (''CBP'') to update the HTS numbers in the AD/CVD Module associated with this proceeding. *See Memorandum to James Doyle, Office 9, dated February 16, 2005, from Tom Futtner, Liaison w/ Customs, Customs Unit, Regarding Request for HTS Number Update(s) to AD/CVD Module Chlorinated Isos (A–570–898).*

On March 2, 2005, the Department released the verification report for Jiheng. On March 7, 2005, the Department released the verification report for Nanning.

On March 4, 2005, the Petitioners filed a timely allegation of critical circumstances (''critical circumstances petition''). On March 8 and 14, 2005, the Department requested that Jiheng and Nanning report their shipment data of subject merchandise to the United States on a monthly basis for 2002, 2003, 2004, and 2005. On March 13, 14, and 17, 2005, Nanning and Jiheng provided the requested information. On April 4, 2005, the Department issued its preliminary determination on critical circumstances. *See Critical Circumstances Preliminary Determination.*

Section A Respondents

On December 20, 2004, the Department sent the verification outlines to the two selected Section A Respondents, Sinochem Hebei and Tian Yuan. On January 3, 2005, Sinochem Hebei submitted a minor correction to its quantity and value. On January 13, 2005, Tian Yuan informed the Department that it would not participate in verification. On February 24, 2005, the Department released the verification report for Sinochem Hebei.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, dated May 2, 2005, which is hereby adopted by this notice (''*Decision Memorandum*''). A list of the issues which parties raised and to which we respond in the *Decision Memorandum* is attached to this notice as an Appendix. The *Decision Memorandum* is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov/.* The paper copy and electronic version of the memorandum are identical in content.

Scope Comments

In the *Preliminary Determination*, we found that Arch's patented chlorinated isocyanurate tablet is included within the scope of this antidumping duty investigation. *See Preliminary Determination.* We received no further comments from any interested party regarding our preliminary finding. Therefore, for this final determination, we continue to find that Arch's patented chlorinated isocyanurate tablet is included within the scope of this antidumping duty investigation.

Scope of Investigation

The products covered by this investigation are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3(2H_2O)$, and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This investigation covers all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[4] The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that includes chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive. Arch's patented chlorinated isocyanurates tablet is also included in the scope of this investigation. *See Scope Comments* section, above. *See also Partial Affirmative Preliminary Determination of Critical Circumstances: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 18362 (April

[4] In the scope section of the Department's initiation and in its preliminary determination notices, chlorinated isocyanurates were classified under subheading 2933.69.6050 of the HTSUS. (*See Initiation of Antidumping Duty Investigations: Chlorinated Isocyanurates From the People's Republic of China and Spain*, 69 FR 32,488 (June 10, 2004), and *Preliminary Determination.* Effective January 1, 2005, chlorinated isocyanurates are also currently classifiable under subheadings 2933.69.6015 and 2933.69.6021 of the HTSUS. The new subheading 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous & dihydrate forms) and trichloroisocyanuric acid, and subheading 2933.69.6021 covers all other chlorinated isos used as pesticides (bactericides). The subheading 2933.69.6050 covers all other chlorinated isos not used as pesticides. *See Memorandum to James Doyle, Office 9, dated February 16, 2005, from Tom Futtner, Liaison w/ Customs, Customs Unit, regarding Request for HTS Number Update(s) to AD/CVD Module Chlorinated Isos (A–570–898).*

11, 2005) (''*Critical Circumstances Preliminary Determination*'').

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the Mandatory Respondents and Sinochem Hebei (*i.e.,* one of the Section A Respondents) for use in our final determination. *See* the Department's verification reports on the record of this investigation in the CRU with respect to Jiheng, Nanning, and Sinochem Hebei. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Period of Investigation

The period of investigation (''POI'') is October 1, 2003, through March 31, 2004. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (May 14, 2004). *See* 19 CFR 351.204(b)(1).

Surrogate Country

In the *Preliminary Determination,* we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) India is at a level of economic development comparable to that of the PRC; (2) Indian manufacturers produce comparable merchandise, specifically are significant producers of calcium hypochlorite; [5] (3) India provides the best opportunity to use appropriate, publicly available data to value the factors of production. *See Preliminary Determination,* 69 FR at 75297; and *see Memorandum to James Doyle, Program Manager, dated July 10, 2004, from Ron Lorentzen, Acting Director, Office of Policy, Re: Antidumping Duty Investigation on Chlorinated Isocyanurates from the People's Republic of China* (''*Surrogate Country Memo*''), which is on file in CRU. We received no comments from interested parties concerning our selection of India as the surrogate country. Therefore, we have continued to use India as the surrogate country in the final determination and, accordingly, have calculated normal value using Indian prices to value the respondents' factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. For a detailed description of the surrogate values that have changed as a result of comments the Department has received, see the May 2, 2005, *Final Surrogate Value Memorandum.*

Separate Rates

In the *Preliminary Determination* and the *Amended Preliminary Determination* the Department found that all five companies which provided responses to Section A of the antidumping questionnaire were eligible for a rate separate from the PRC-wide rate. For the final determination, we have determined that Tian Yuan is no longer qualified for separate-rate status. For a complete listing of all the companies that received a separate rate, see ''Final Determination Margins'' section below.

With respect to Tian Yuan, as discussed below, the Department applied adverse facts available, because it refused to allow the Department to conduct verification of its submitted information. Accordingly, Tian Yuan has not overcome the presumption that it is part of the PRC-wide entity and its entries will be subject to the PRC-wide rate. *See Final Separate Rates Memorandum. See also Critical Circumstances Preliminary Determination.*

The margin we calculated in the *Amended Preliminary Determination* for the companies receiving a separate rate was 111.03 percent. Because the rates of the selected Mandatory Respondents have changed since the *Preliminary Determination* and the *Amended Preliminary Determination,* we have recalculated the rate for Section A Respondents that are eligible for a separate rate. The rate is 137.69 percent. *See Memorandum to the File from the Team, Calculation of Section A Rates,* dated May 2, 2005.

Critical Circumstances

For this final determination, we have made no changes to our *Preliminary Critical Circumstances Determination* based on the comments received from the Petitioners on this matter. As such, the Department continues to find that critical circumstances exist for the PRC-wide entity, which includes Tian Yuan. Additionally, for this final determination, we continue to find that critical circumstances do not exist with regard to imports of chorinated isocyanurates from the PRC for Jiheng, Nanning, and for the following Section A Respondents: Huaao, Clean Chemical, Sinochem Hebei and Sinochem Shanghai. For further details regarding the Department's critical circumstances analysis from the *Preliminary Critical Circumstances Determination,* see *Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, dated April 4, 2005, from James C. Doyle, Office Director, AD/CVD Operations, Office 9, Import Administration, Regarding the Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China -Partial Affirmative Preliminary Determination of Critical Circumstances.*

On April 14, 2005, the Petitioners submitted a case brief on the Department's *Preliminary Critical Circumstances Determination.* The Petitioners contest the Department's *Preliminary Critical Circumstances Determination* on the following grounds: (1) March 2004 should be included in the comparison period instead of the base period because the respondents and other U.S. importers had knowledge that an antidumping petition was likely to be filed well before mid-March; (2) the Department should consider seasonality in its critical circumstances analysis because the consumption of the subject merchandise shows a pattern of seasonality; (3) certain off-season months (*i.e.,* July to September) should be excluded from both the base period and the comparison period because of no-shipments or low-shipments in those months; (4) the base period and comparison period should consist of a four-month period rather a seven-month period; and (5) the Department should determine massive shipments for the Section A Respondents by using the same formula used for deriving the massive shipments for the PRC-wide entity.

We disagree with the Petitioners' argument that seasonality exists in this instant case. In this instance, imports of chlorinated isocyanurates are not necessarily dominated by seasonality. Our analysis of the shipment data for Jiheng, Nanning, and PRC as a whole show no clear seasonal patterns for the three year period between 2002 and 2004. In certain circumstances, the peak month of shipment in one year coincided with the trough month of shipment in another year. Therefore, we continued not to consider seasonal trend as a factor in the final determination. We also did not

[5] For purposes of the final determination, we have determined that calcium hypochlorite and stable bleaching powder are both comparable to the subject merchandise. The record contains financial reports of Indian manufacturers which are significant producers of comparable merchandise. *See Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China, October 1, 2003, through March 31, 2004, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated May 2, 2005.*

eliminate any ''off-peak'' months from our analysis, as suggested by the Petitioners.

After considering the Petitioners' arguments concerning the appropriate comparison period, our analysis shows that we obtain the same conclusion regarding whether there are massive imports for Jiheng, Nanning, the Section A Respondents, and the China-wide entity, regardless of whether we use March 2004 as the knowledge month, as suggested by the Petitioners, or use May 2004 as the knowledge month, in which this proceeding was filed.

Finally, we disagree with the Petitioners that massive shipments for the Section A Respondents should be determined using the same formula as used for deriving the massive shipments for the PRC-wide entity. As discussed below, the PRC-wide entity refers to those exporters of subject merchandise from the PRC that did not respond to our antidumping questionnaire and therefore have received an adverse facts available margin and an adverse inference with respect to critical circumstances. By contrast, all Section A Respondents, except Tian Yuan (*see* Facts Available Section below), have cooperated with the Department and therefore the use of adverse inferences is inappropriate. Therefore, for the final determination, we have continued to use the same methodology as stated in the *Preliminary Critical Circumstances Determination.*

The PRC-Wide Rate

Because we begin with the presumption that all companies within a non market-economy (''NME'') country are subject to government control and because only the companies listed under the ''Final Determination Margins'' section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706 (May 3, 2000). *See also PRC Shrimp.* The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the ''Final Determination Margins'' section below (except as noted). The information used to calculate this PRC-wide rate is based on a calculated margin derived from information obtained in the course of the investigation and placed on the record of this proceeding. In this case, we have applied a rate of 285.63 percent, which is equal to the actual, calculated rate for one of the mandatory respondents, Nanning.

Facts Available

For the final determination, the Department is applying adverse facts available to Tian Yuan because Tian Yuan decided to terminate its participation in this investigation and declined verification of its Section A responses. *See* Tian Yuan's letter dated January 13, 2005.

Section 776(a)(2) of the Act provides that, if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Furthermore, Section 776(b) of the Act provides that, if a party has failed to act to the best of its ability to comply with the Department's request for information, the Department may apply an adverse inference.

In this case, Tian Yuan unilaterally decided to terminate its participation in this investigation and declined verification of its Section A responses shortly before the Department's scheduled verification. Tian Yuan's failure to participate in the Department's verification disallowed the Department to examine the accuracy and completeness of its Section A responses and, therefore, has significantly impeded this proceeding. Thus, we are using facts available, in accordance with section 776(a) of the Act. Furthermore, Tian Yuan has failed to act to the best of its ability by refusing the Department's scheduled verification. Therefore, in accordance with section 776(b) of the Act, we also find that the use of adverse facts available is warranted. For purposes of this final determination, we find that Tian Yuan does not qualify for a separate rate and will be subject to the PRC-wide rate, which is based on adverse facts available.

Changes Since the Preliminary Determination

Based on our findings at verification, additional information placed on the record of this investigation, and analysis of comments received, we have made adjustments to the calculation methodology for the final dumping margins in this proceeding. For discussion of the company-specific changes made since the preliminary determination to the final margin programs, see *Final Analysis Memorandum for Jiheng* and *Final Analysis Memorandum for Nanning.*

Margins for Cooperative Exporters Not Selected

For those exporters who responded to Section A of the Department's antidumping questionnaire, established their claim for a separate rate, and had sales of the merchandise under investigation, but were not selected as Mandatory Respondents in this investigation, the Department has calculated a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available. Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China,* 64 FR 24101 (May 11, 2001).

Surrogate Values

The Department made changes to the surrogate values used to calculate the normal value from the *Preliminary Determination.* For a complete discussion of the surrogate values, see *Issues and Decisions Memorandum* at Comments 1, 2, 3, 4, 5, 6, 8, 14, 15, 16, 17, and 18.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

Manufacturer/exporter	Weighted-average margin (percent)
Chlorinated Isocyanurates from the PRC Mandatory Respondents	
Hebei Jiheng Chemical Co., Ltd.	75.78
Nanning Chemical Industry Co., Ltd.	285.63
PRC-Wide Rate	285.63
Chlorinated Isocyanurates from the PRC Section A Respondents	
Changzhou Clean Chemical Co., Ltd.	137.69
Liaocheng Huaao Chemical Industry Co., Ltd.	137.69

Manufacturer/exporter	Weighted-average margin (percent)
Sinochem Hebei Import & Export Corporation	137.69
Sinochem Shanghai Import & Export Corporation	137.69

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the CBP to continue to suspend liquidation of all entries of subject merchandise from Jiheng, Nanning, the four remaining Section A Respondents (*i.e.*, Huaao, Clean Chemical, Sinochem Hebei and Sinochem Shanghai), that are entered, or withdrawn from warehouse, for consumption on or after the December 16, 2004, the date of publication of the *Preliminary Determination.* However, with respect to Tian Yuan, and all other PRC exporters, the Department will continue to direct CBP to suspend liquidation of all entries of chlorinated isocyanurates from the PRC that are entered, or withdrawn from warehouse, on or after 90 days before the December 16, 2004, the date of publication of the *Preliminary Determination.* These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 2, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

I. General Comments

Comment 1: Surrogate Value for Cyanuric Acid.

Comment 2: Production of Comparable Merchandise for Surrogate Financial Ratios.

Comment 3: Comparability in Level of Integration for Surrogate Financial Ratios.

Comment 4: Methodology for Valuing Caustic Soda and Chlorine Gas.

Comment 5: Surrogate Value for Electricity.

Comment 6: Intermediary Input By-products: Hydrogen Gas, Chlorine Gas, Sulfuric Acid, and Ammonia Gas.

Comment 7: Reclassification and Adjustments to Certain Financial Data.

Comment 8: Timeliness of the Petitioners' Submission on Grasim's Annual Report.

II. Company-Specific Comments

Jiheng

Comment 9: Jiheng's Allocation Methodology for Caustic Soda and Chlorine Gas.

Comment 10: Jiheng's Consumption of Certain Customer-Provided Factors of Production.

Comment 11: Revision to Jiheng's Reported Data for Certain Inputs.

Comment 12: The Petitioners' January 31, 2005, Comment on the Treatment of Jiheng's By-Products.

Comment 13: The Petitioners' January 31, 2005, Comment on Jiheng's Packing Labor.

Nanning

Comment 14: Surrogate Value for Sodium Sulfite.

Comment 15: Adjustment to Surrogate Values Used for Calcium Chloride and Sulfuric Acid.

Comment 16: Valuation of Hydrogen Gas.

Comment 17: Subtracting By-Product Offsets in the Normal Value Calculation.

Comment 18: Treatment of Chlorine Tail Gas.

Comment 19: Nanning's Indirect Labor Calculation.

Comment 20: Nanning's Shipment Date.

[FR Doc. E5–2235 Filed 5–9–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–814]

Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (''the Department'') has determined that chlorinated isocyanurates from Spain are being sold, or are likely to be sold, in the United States at less than fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination of Investigation'' section of this notice.

DATES: *Effective Date:* May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Martin and Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On December 20, 2004, the Department published the preliminary determination of sales at LTFV in the antidumping investigation of chlorinated isocyanurates from Spain. *See Chlorinated Isocyanurates From Spain: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 69 FR 75902 (December 20, 2004) (''*Preliminary Determination*''). Since the *Preliminary Determination,* the following events have occurred.

On January 12, 2005, the petitioners [1] submitted a request for a public hearing. We conducted verification of the sales and cost questionnaire responses of Aragonesas Delsa S.A. (''Delsa''), the sole respondent in this investigation, from January 31, 2005, through February 11, 2005. On February 17, 2005, Delsa submitted revised sales data resulting

[1] The petitioners in this investigation are Clearon Corporation and Occidental Chemical Corporation (collectively, the ''petitioners'').

from corrections made at verification. We gave interested parties an opportunity to comment on our *Preliminary Determination* and our findings at verification. On March 15, 2005, the petitioners and respondent submitted case briefs, and on March 22, 2005, these parties submitted rebuttal briefs. The Department held a public hearing on March 29, 2005.

Period of Investigation

The period of investigation (''POI'') is April 1, 2003, through March 31, 2004. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3$ $2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This investigation covers all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[2] The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

On July 1, 2004, Arch Chemicals, Inc. (''Arch''), an importer, argued that its patented, formulated, chlorinated isocyanurates tablet is not covered by the scope of this investigation. In the *Preliminary Determination,* we found that Arch's patented chlorinated isocyanurates tablet is included within the scope of this antidumping duty investigation.

See Preliminary Determination, and Memorandum from Holly A. Kuga, Senior Office Director, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, ''Scope of the Antidumping Duty Investigations of Chlorinated Isocyanurates from the People's Republic of China and Spain,'' dated December 10, 2004. We received no further comments from any interested party regarding our preliminary decision on this issue. Therefore, for this final determination, we find that Arch's patented chlorinated isocyanurates tablet is included within the scope of this antidumping duty investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Determination in the Antidumping Investigation of Chlorinated Isocyanurates from Spain,'' (''*Issues and Decision Memorandum*'') dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Department of Commerce building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/summary/list.html.* The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Partial Adverse Facts Available

A. Use of Facts Available

As further discussed below, pursuant to sections 776(a)(2)(B) and (C), and 776(b) of the Act, the Department determines that the application of partial adverse facts available (''AFA'') is warranted for Delsa's home market (''HM'') inland freight and U.S. market movement expenses. Section 776(a)(2) of the Act, provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that the Department must inform the interested party of the nature of any deficiency in its response and, to the extent practicable, allow the interested party to remedy or explain such deficiency. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

We find that pursuant to sections 776(a)(2)(B) and (C) of the Act, we should apply facts available to Delsa's HM inland freight and U.S. market movement expenses (consisting of foreign inland freight, foreign brokerage and handling, international freight, and U.S. brokerage and handling) because (1) Delsa failed to accurately and timely report these expenses; (2) Delsa took action that further impeded the Department's ability to conduct the proceeding; and (3) Delsa provided information that could not be verified.

With respect to HM inland freight, Delsa stated in its initial and first supplemental section B questionnaire responses that it reported its HM inland freight using an allocation methodology. *See* August 23, 2004, Section B submission at 11 and September 29, 2004, first supplemental Section B submission at 7. In our second

[2] In the scope section of the Department's initiation and in its *Preliminary Determination,* chlorinated isocyanurates were classified under subheading 2933.69.6050 of the HTSUS. *See Initiation of Antidumping Duty Investigations: Chlorinated Isocyanurates From the People's Republic of China and Spain,* 69 FR 32488 (June 10, 2004). Effective January 1, 2005, chlorinated isocyanurates are also currently classifiable under new subheadings 2933.69.6015 and 2933.69.6021 of the HTSUS. The new subheading 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid, while subheading 2933.69.6021 covers all other chlorinated isocyanurates used as pesticides (bactericides). Subheading 2933.69.6050 covers all other chlorinated isocyanurates not used as pesticides. *See* Memorandum to James Doyle, Office 9, dated February 16, 2005, from Tom Futtner, Liaison w/Customs, Customs Unit, regarding Request for HTS Number Update(s) to AD/CVD Module Chlorinated Isos (A–570–898) (added to the record of the instant investigation in Memorandum from Thomas Martin to the File, dated April 25, 2005).

supplemental questionnaire, we instructed Delsa to provide a full explanation of the allocation methodology and explain why it represents a reasonable allocation. Delsa provided a one sentence answer in its second supplemental response: ''We have revised our home market sales file with the *actual amount of freight for each transaction.''* See November 22, 2004, second supplemental Section B submission at 3. (Emphasis added). Furthermore, Delsa reiterated in its third supplemental questionnaire response that it reported actual HM inland freight expenses. See December 2, 2004, third supplemental questionnaire submission at 4. Given that Delsa stated that it reported the actual amount of freight for each transaction, the Department concluded that Delsa no longer used an allocation methodology.

However, at verification, Delsa stated that it had incorrectly reported to the Department that it was submitting actual transaction-specific freight cost data for its HM sales, and instead submitted a worksheet that provided a limited overview of its allocation methodology. At verification, the Department tested the results of this allocation methodology against actual costs in selected sales and found the discrepancies between the actual and allocated freight to be so great as to indicate that the allocation methodology does not result in per-unit expenses that reasonably approximate the actual expenses. At no point in this investigation, prior to verification, did Delsa notify the Department that it had any difficulties complying with the Department's requests for information. Delsa did not seek guidance on the applicable reporting requirements as contemplated by section 782(c)(1) of the Act. Instead, Delsa only reported at the start of verification that it had reported its HM inland freight expenses using an allocation methodology, after reporting in its last two supplemental questionnaire responses that it was providing actual HM inland freight expenses for each sale. Based on the above, we find that Delsa failed to provide accurate and timely information in the form and manner requested by the Department, within the meaning of section 776(a)(2)(B) of the Act.

See Issues and Decision Memorandum at Comment 3.

In addition, Delsa's failure to provide accurate and timely information concerning its HM freight expenses prevented the Department from requesting supplemental information regarding these expenses. Without this information, we were unable to satisfy ourselves that the information reported was complete and accurate. Since the Department does not accept new information at verification, and this allocation methodology was new information, we were precluded from verifying the specifics of how Delsa allocated its freight costs. Delsa thus took specific action to prevent the Department from determining the reliability of central elements of its responses, thereby impeding the proceeding. This action warrants the application of facts available pursuant to section 776(a)(2)(C) of the Act.

In regard to Delsa's U.S. movement expenses, Delsa reported to the Department in its questionnaire responses that it reported the actual costs that it was charged by its freight forwarder. The Department made supplemental requests for information regarding these movement expenses, and Delsa made corrections and provided explanations. *See, e.g.*, September 29, 2004, supplemental section C submission at Exhibits C–7a and C–7b. However, Delsa reported at the beginning of the Department's verification that it made multiple errors affecting three reported movement expenses (foreign inland freight, foreign brokerage and handling, and international freight), with an undetermined, varying impact on each sale. Specifically, the errors were (1) failure to take account of containers that were only partially filled; (2) failure to take account of the decrease in freight charges on larger volume transactions; (3) failure to report the costs from another freight forwarding company that was used during the POI; (4) failure to account for changes that took place in the freight fee schedules; (5) failure to report the correct foreign inland freight for sales that originated from one of its factories; and (6) failure to account for weight differences in allocating costs to containers that held a mix of products that vary by weight. These errors affect a large number of U.S. sales and have an overlapping effect, so that the Department is unable to separately analyze the errors on an individual basis. Moreover, these errors have a large impact on the reported per-unit expenses for each variable. *See Issues and Decision Memorandum* at Comment 4. Furthermore, Delsa reported its U.S. brokerage and handling expenses for the first time at verification, even though Delsa denied having the ability to report this expense in its initial and first supplemental questionnaire responses. Delsa did not seek guidance concerning this expense on the applicable reporting requirements, as contemplated by section 782(c)(1) of the Act.

Based on the above, for its U.S. movement expenses (consisting of foreign inland freight, foreign brokerage and handling, international freight, and U.S. brokerage and handling), we find that Delsa failed to provide requested information before the established deadlines and in the form and manner requested by the Department, within the meaning of section 776(a)(2)(B) of the Act.

We further find that Delsa has significantly impeded the proceeding by providing changes to all of its U.S. movement expenses at the start of verification that significantly affect a large quantity of U.S. sales and have a large impact on the reported per-unit expenses. Calculation of U.S. movement expenses is necessary to the Department's calculation of net U.S. prices, which is in turn necessary to calculate accurate dumping margins. The information is in the respondent's possession and cannot otherwise be obtained by the Department. Therefore, we find that Delsa has significantly impeded the proceeding within the meaning of section 776(a)(2)(C) of the Act.

Furthermore, with respect to both HM inland freight and U.S. market movement expenses, Delsa has not met the requirements of sections 782(d) and (e) of the Act. Section 782(d) of the Act is not applicable because Delsa did not provide enough information to the Department to indicate that its reporting methodology for these HM and U.S. movement expenses might be deficient until the start of verification. It was not until verification that the Department was aware of the use of an allocation methodology for HM inland freight and the extent of the errors (*i.e.*, in terms of quantity and volume) in Delsa's reported U.S. movement expenses. By this time, it was too late to notify Delsa of any deficiencies, obtain the allocation methodologies and possibly new data, and examine such methodologies and data for deficiencies.

Similarly, section 782(e) of the Act has also not been satisfied because Delsa failed to submit before the deadlines established by the Department reasonably accurate HM inland freight and U.S. movement expenses. In its response to the Department's second supplemental questionnaire, when the Department requested detailed information regarding Delsa's HM inland freight expense and U.S. movement expense reporting methodologies, Delsa reported that it provided actual HM expenses and U.S. market movement expenses based upon its freight schedules. At that time, Delsa did not acknowledge that its HM inland

freight costs were, in fact, reported on an allocated basis. For U.S. movement expenses, Delsa reported significantly inaccurate U.S. movement expenses, due to its failure to go beyond the freight schedules, and take into account divergences from the scheduled fees. These statements by Delsa prevented the Department from asking additional questions about the methodology that Delsa actually did use. Thus, Delsa has failed to satisfy the requirements of subsections (1) and (2) of section 782(e).

B. Adverse Inferences

Once the Department determines that the use of facts available is warranted, the Department must then determine whether an adverse inference is warranted pursuant to section 776(b) of the Act, which permits the Department to apply an adverse inference if it makes the additional finding that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information.

In determining whether a respondent has failed to cooperate to the best of its ability, the Department need not make a determination regarding the willfulness of the respondent's conduct. *Nippon Steel Corp.* v. *United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). Instead, the courts have made clear that the Department must articulate its reasons for concluding that a party failed to cooperate to the best of its ability, and explain why the missing information is significant to the review. In determining whether a party failed to cooperate to the best of its ability, the Department considers whether a party could comply with the request for information, and whether a party paid sufficient attention to its statutory duties. *Pacific Giant, Inc.* v. *United States*, 223 F. Supp. 2d 1336, 1342 (CIT 2002); *see also Tung Mung Dev. Co.* v. *United States*, 2001 Ct. Intl. Trade LEXIS 94 at 89 (July 3, 2001). The Department also considers whether there is at issue a ''pattern of behavior.'' *Borden, Inc.* v. *United States*, 22 C.I.T. 1153 (CIT 1998)

As discussed below, we determine that, within the meaning of section 776(b) of the Act, Delsa failed to cooperate by not acting to the best of its ability to comply with the Department's request for information by not providing it with timely and accurate HM inland freight and U.S. movement expenses, and that the application of partial AFA is therefore warranted. On more than one occasion, Delsa failed to provide information when requested to do so by the Department. Specifically, Delsa misrepresented the nature of its HM inland freight data in its last two supplemental questionnaire responses by reporting to the Department that for its HM sales, it reported actual, transaction-specific inland freight costs. This precluded the Department from making supplemental requests for information regarding the allocation methodology that it did use. Delsa's misrepresentation prevented the Department from issuing supplemental questions that might otherwise have resulted in changes to the methodology, to make the methodology reasonable, such that the Department could have accepted it. In its questionnaire responses, Delsa did not provide evidence to support its allocation methodology, as it is required to do pursuant to 19 CFR 351.401(g)(2). Delsa failed to fully demonstrate that it could not provide its HM freight on an actual, transaction-specific basis. Moreover, Delsa failed to demonstrate that its allocation methodology did not yield distortive or inaccurate results. Without accurately reported expenses and costs, the Department is unable to calculate accurate net HM prices, which prevents the Department from calculating accurate dumping margins. We find that Delsa did not act to the best of its ability in reporting HM inland freight expenses, and therefore an adverse inference is warranted. As partial AFA, we are applying the lowest verified inland freight cost to all HM sales made by Delsa during the POI, except for those sales examined at verification and sales of a particular CONNUM for which Delsa provided actual, invoiced freight expenses during verification (and the Department successfully tested for accuracy). A complete explanation of the selection and application of partial AFA can be found in the *Issues and Decision Memorandum* at Comment 3.

Delsa also failed to accurately report its U.S. movement expenses (consisting of foreign inland freight, foreign brokerage and handling, and international freight), despite having three opportunities to do so in response to the Department's initial and supplemental questionnaires. Delsa reported corrections to multiple errors with respect to these variables at the Department's verification. Since each of these errors affect more than one movement variable, the overall impact of these errors on the reported variables is actually a net change resulting in increases and decreases of Delsa's reported U.S. movement expenses. Because (1) There were six errors affecting three variables, (2) the separate effect of each individual error cannot be determined with information on the record, as Delsa only provided the Department with the net effect of all of the errors, (3) the errors affect a large quantity of U.S. sales, and (4) the impact of these errors on the reported per-unit expense is also large, the corrections for these errors cannot be considered as minor corrections to the U.S. sales database. In addition, U.S. brokerage and handling was an expense that Delsa reported that it did not have until the Department's verification, even though the Department asked supplemental questions on this topic. The Court of International Trade has found that the ''respondent bears the burden of creating a complete and adequate record upon which the Department can make its determination.'' *See NSK Ltd.* v. *United States*, 919 F. Supp. 442, 449 (CIT 1996). *See also Tianjin Mach. Imp. & Exp. Corp.* v. *United States*, 353 F. Supp. 2d 1294, 1305 (CIT 2004) (''Although the standard does not demand perfection, it censures inattentiveness and carelessness.''). Therefore, the Department determines that Delsa failed to act to the best of its ability, and thus determines that partial adverse facts is warranted in this case. As partial AFA, we have selected the highest non-aberrational reported freight cost for all four U.S. freight variables. We have applied these per-unit expenses to all U.S. sales made by Delsa during the POI, except for those sales that were examined at verification. A complete explanation of the selection and application of partial AFA can be found in the *Issues and Decision Memorandum* at Comment 4.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Delsa for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made certain adjustments to the margin calculations used in the *Preliminary Determination.* These adjustments are discussed in detail in the *Issues and Decision Memorandum* and are listed below:

1. We corrected a clerical error with respect to our recalculation of HM credit expense.

2. We corrected a clerical error regarding the customer code used to allocate certain freight expenses incurred by Delsa for defective

merchandise returned from the United States. In addition, although not a clerical error, we changed the allocation methodology to ensure a more appropriate allocation of these expenses. Lastly, we added U.S. brokerage and handling expenses to this calculation.

3. We applied partial AFA to Delsa's HM inland freight for sales that are not based upon actual, transaction-specific costs, and which have not been specifically verified.

4. We applied partial AFA to Delsa's foreign inland freight, foreign brokerage and handling, and international freight for all U.S. sales that have not been specifically verified.

5. We applied AFA to Delsa's U.S. brokerage and handling expenses that were reported for the first time during verification.

6. We revised the interest rate used in calculating U.S. credit expenses to the correct POI-average Federal Reserve rate.

7. We eliminated the second rebate variable from Delsa's HM price adjustments, pursuant to a minor correction that Delsa submitted at verification.

8. We recalculated Delsa's packaging costs to equal the packaging and packing costs reported for the *Preliminary Determination* less the packing expenses identified at verification. Accordingly, we revised the reported packing expenses to equal the packing expenses identified at verification. Since Delsa packs its products in an identical manner regardless of the market to which they are sold, we used the same values for packing in the home and U.S. markets.

9. We recalculated the adjustments to certain raw material costs based on the comparison of Delsa's reported transfer prices and market prices obtained at verification.

10. We adjusted the startup period for purposes of determining the amount, if any, of the startup adjustment.

11. We recalculated Delsa's financial expense ratio to include net foreign exchange losses in the numerator.

Final Determination of Investigation

We determine that the following weighted-average dumping margins exist for the period April 1, 2003, through March 31, 2004:

Manufacturer/exporter	Weighted-Average Margin (percent)
Aragonesas Delsa S.A	24.83
All Others	24.83

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of chlorinated isocyanurates from Spain that are entered, or withdrawn from warehouse, for consumption on or after December 20, 2004, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for each entry equal to the weighted-average dumping margins in the chart above. These instructions suspending liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(I) of the Act.

Dated: May 2, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues and Decision Memorandum

Part I: Corrections to the Preliminary Calculations:
Comment 1: Corrections to the Preliminary Calculations.
Part II: Home Market (''HM'') Sales Issues:
Comment 2: Whether Delsa's Allocation Methodology for HM Inland Freight Results in Unreliable Allocations.
Comment 3: Whether the Department Should Apply Partial Adverse Facts Available (''AFA'') to Delsa's HM Inland Freight.
Part III: United States Sales Issues:
Comment 4: Whether the Department Should Apply Partial AFA to Delsa's Foreign Inland Freight, Foreign Brokerage and Handling, International Freight Expenses, and U.S. Brokerage and Handling Expenses.
Comment 5: Whether the Department Should Apply the Calculated U.S. Average Short-Term Borrowing Rate to All U.S. Sales.
Part IV: Cost of Production (''COP'') Issues:
Comment 6: Whether the Department Double Counted Delsa's Reported Packaging and Packing Costs in the Preliminary Determination.
Comment 7: Whether the Packaging and Packing Service Provider is an Affiliated Party and, as Such, Whether the Department Should Adjust the Price of the Services Provided by a Affiliated Party.
Comment 8: Whether Certain Raw Material Inputs Should be Adjusted in Accordance with the Department's Major Input Rule.
Comment 9: Whether the Department Should Allow Delsa's Claimed Startup Adjustment.
Comment 10: Whether the Department Should Adjust Delsa's Financial Expense Ratio for Foreign Exchange Gains and Losses.
Comment 11: Whether the Department Should Make Certain Adjustments to Delsa's General and Administrative Expense Ratio.

[FR Doc. E5–2236 Filed 5–9–05; 8:45 am]

BILLING CODE 3510–DS–P

APPENDIX B

HEARING CALENDAR

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject:	Chlorinated Isocyanurates from China and Spain
Inv. Nos.:	731-TA-1082 and 1083 (Final)
Date and Time:	May 5, 2005 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room, 500 E Street, SW, Washington, DC.

Congressional Witness:

The Honorable Shelley Moore Capito, U.S. Congresswoman, 2nd District, State of West Virginia

Opening Remarks:

Petitioners (**Joseph H. Price**, Gibson, Dunn & Crutcher LLP)
Respondents (**Peggy A. Clarke**, Wilmer Cutler Pickering Hale and Dorr;
William E. Perry, Garvey Schubert Barer; and
Dennis James, Jr., Cameron & Hornbostel LLP)

In Support of the Imposition of Antidumping Duties:

Gibson, Dunn & Crutcher LLP
Washington, DC
on behalf of

Clearon Corp.
Occidental Chemical Corp.

Michael Moore, Vice President, Marketing Advantis Technologies, Inc.
Antony Hand, Vice President, Sales and Marketing, Clearon Corp.
Scott Johnson, Vice President, Manufacturing, Clearon Corp.
Julio Napoles, General Manager, ACL Isocyanurates Division, Occidental Chemical Corp.
David Stephenson, Director, Sales and Marketing, ACL Isocyanurates, Occidental Chemical Corp.

Joseph H. Price–OF COUNSEL
J. Christopher Wood
Gergory C. Gerdes

In Support of the Imposition of Antidumping Duties:–*Continued*

DLA Piper Rudnick Gray Cary US LLP
Washington, DC
on behalf of

BioLab, Inc.

Charlie Schobel, Executive Vice President and General Manager, BioGuard and International

William D. Kramer–OF COUNSEL
Martin Schaefermeier

In Opposition to the Imposition of Antidumping Duties:

Wilmer Cutler Pickering Hale and Dorr
Washington, DC
on behalf of

Arch Chemicals, Inc. ("Arch")
Hebei Jiheng Chemical Co., Ltd. ("Hebei")

Christine Kennedy, In-House Attorney, Arch
Stephen Johnson, Director, Strategic Sourcing, Arch
Randall Hitchens, Vice President, Arch
Sherry Duff, Director, Research and Development, Arch
John Reilly, Economist, Nathan Associates, Inc.

Peggy A. Clarke–OF COUNSEL
Gary N. Horlick

Barnes, Richardson & Colburn
Washington, DC
on behalf of

Sun Wholesale Supply, Inc. ("Sun Wholesale")

James P. Eisch, Chief Operating Officer, Sun Wholesale

Matthew T. McGrath–OF COUNSEL
Stephen W. Brophy

In Opposition to the Imposition of Antidumping Duties:–*Continued*

Garvey Schubert Barer
Washington, DC
on behalf of

Wego Chemical and Minerals Corp.
Cadillac Chemical Corp.
N. Jonas & Co.
Alden Leeds Inc.
Nanning Chemical Industry Co., Ltd.
Changzhou Chemical Co.

Frank Abramson, Product Manager, Wego Chemical and Mineral Corp.
Peter Ferentinos, President, Cadillac Chemical Corp.
Andy Epstein, Vice President, Alden Leeds Inc.
Stephan Jonas, President, N. Jonas & Co.
Edward Wexler, Executive Vice President, N. Jonas & Co.
Ed Lax, Director, Shipping, N. Jonas & Co.

William E. Perry–OF COUNSEL
Ronald M. Wisla

Cameron & Hornbostel LLP
Washington, DC
on behalf of

Aragonesas Delsa, S.A. ("Delsa")

Pedro Balcells, Commercial Director, Delsa

Dennis James, Jr.–OF COUNSEL

Enviro Tech Chemical Services, Inc.
Modesto, CA

Jonathan Howarth, Senior Vice President, Technology

REBUTTAL/CLOSING REMARKS:

Petitioners (**J. Christopher Wood**, Gibson, Dunn & Crutcher LLP)
Respondents (**Peggy A. Clarke**, Wilmer Cutler Pickering Hale and Dorr;
William E. Perry, Garvey Schubert Barer; and
Dennis James, Jr., Cameron & Hornbostel LLP)

APPENDIX C

SUMMARY DATA

Chlorinated Isos Summary Tables

Table C-1 - Chlorinated isos: Summary data on the U.S. market, 2002-04

U.S. producers: BioLab, Clearon, and OxyChem's data on granular dichlor plus granular trichlor plus U.S. integrated producers and tableters' employment and financial data on all tablets (dichlor tablets, trichlor tablets, and blended tablets)

Imports:

For China: Importers' data on granular dichlor, granular trichlor, and all tablets (dichlor tablets, trichlor tablets, and blended tablets)

For Spain:

Quantity: Delsa's reported granular dichlor, granular trichlor, and all tablets exported to the United States

Value: The unit value of importers' (from Spain) granular dichlor, granular trichlor, and all tablets multiplied by the quantity of Delsa's reported granular dichlor, granular trichlor, and all tablets exported to the United States

Unit value: The unit value of importers' (from Spain) granular dichlor, granular trichlor, and all tablets

For all others: Importers' reported granular dichlor, granular trichlor, and all tablets

Table C-2 - Chlorinated isos: Summary data on U.S. integrated producers' operations, 2002-04

U.S. producers: BioLab, Clearon, and OxyChem's data on "all chlorinated isos," as reported

Imports:

For China: Importers' data on granular dichlor, granular trichlor, and all tablets

For Spain:

Quantity: Delsa's reported granular dichlor, granular trichlor, and all tablets exported to the United States

Value: The unit value of importers' (from Spain) granular dichlor, granular trichlor, and tablets multiplied by the quantity of Delsa's reported granular dichlor, granular trichlor, and all tablets exported to the United States

Unit value: The unit value of importers' (from Spain) granular dichlor, granular trichlor, and all tablets

For all other: Importers' reported granular dichlor, granular trichlor, and all tablets

Table C-3 - Chlorinated isos: Summary data on U.S. tableters' operations, 2002-04

U.S. producers: Tableters' data on trichlor tablets, dichlor tablets, and blended tablets combined

Imports:

For China: Importers' data on all tablets (dichlor tablets, trichlor tablets, and blended tablets)

For Spain:

Quantity: Delsa's reported all tablets exported to the United States

Value: The unit value of importers' (from Spain) all tablets multiplied by the quantity of Delsa's reported all tablets exported to the United States

Unit value: The unit value of importers' (from Spain) all tablets

For all others: Importers' reported all tablets

Table C-4 - Granular dichlor: Summary data concerning the U.S. market, 2002-04

U.S. producers: Clearon and OxyChem's data on granular dichlor combined

Imports:

For China: Importers' data on granular dichlor and dichlor tablets

For Spain:

Quantity: Delsa's reported granular dichlor and dichlor tablets exported to the United States

Value: The unit value of importers' (from Spain) granular dichlor and dichlor tablets multiplied by the quantity of Delsa's reported granular dichlor tablets exported to the United States

Unit value: The unit value of importers' (from Spain) granular dichlor and dichlor tablets

For all others: Importers' reported granular dichlor and dichlor tablets

Table C-5 - Trichlor: Summary data concerning the U.S. market, 2002-04

U.S. producers: BioLab, Clearon, and OxyChem's data on granular trichlor combined

Imports:

For China: Importers' data on granular trichlor and trichlor tablets

For Spain:

Quantity: Delsa's reported granular trichlor, trichlor tablets, and blended tablets exported to the United States

Value: The unit value of importers' (from Spain) granular trichlor, trichlor tablets, and blended tablets multiplied by the quantity of Delsa's reported exports of those products to the United States

Unit value: The unit value of importers' (from Spain) granular trichlor, trichlor, tablets, and blended tablets combined

For all others: Importers' reported granular trichlor and trichlor tablets

Table C-6 - Granular chlorinated isos: Summary data concerning the U.S. market, 2002-04

U.S. producers: BioLab, Clearon, and OxyChem's data on granular dichlor and granular trichlor combined

Imports:

For China: Importers' data on granular dichlor and granular trichlor combined

For Spain:

Quantity: Delsa's reported granular dichlor and granular trichlor exported to the United States

Value: The unit value of importers' (from Spain) granular dichlor and granular trichlor multiplied by the quantity of Delsa's reported granular dichlor and granular trichlor tablets exported to the United States

Unit value: The unit value of importers' (from Spain) granular dichlor and granular trichlor

For all others: Importers' reported granular dichlor and granular trichlor combined

Table C-7 - All tableted chlorinated isos: Summary data for U.S. tableters, 2002-04

U.S. producers: BioLab, Clearon, and OxyChem's data on trichlor tablets, dichlor tablets, and blended tablets plus U.S. tableters' data on trichlor tablets, dichlor tablets, and blended tablets

Imports:

For China: Importers' data on all tablets (dichlor tablets, trichlor tablets, and blended tablets)

For Spain:

Quantity: Delsa's reported all tablets exported to the United States

Value: The unit value of importers' (from Spain) all tablets multiplied by the quantity of Delsa's reported all tablets exported to the United States

Unit value: The unit value of importers' (from Spain) all tablets

For all others: Importers' reported all tablets

Table C-8 - Blended tablets: Summary data on the U.S. market, 2002-04

U.S. producers: BioLab, Clearon, and OxyChem's blended tablets plus U.S. tableters' data on blended tablets

Imports:

For China: Importers' data on blended tablets

For Spain:

Quantity: Delsa's reported blended tablets exported to the United States

Value: The unit value of importers' (from Spain) blended tablets multiplied by the quantity of Delsa's reported blended tablets exported to the United States

Unit value: The unit value of importers' (from Spain) blended tablets

For all others: Importers' reported blended tablets

Table C-9 - Chlorinated isos other than blended tablets: Summary data on the U.S. market, 2002-04

U.S. producers: BioLab, Clearon, and OxyChem's data on "all chlorinated isos," as reported, minus their blended tablets

Imports:

For China: Importers' data on granular dichlor, granular trichlor, and all tablets (other than blended tablets)

For Spain:

Quantity: Delsa's reported granular dichlor, granular trichlor, and all tablets (other than blended tablets) exported to the United States

Value: The unit value of importers' (from Spain) granular dichlor, granular trichlor, and tablets (other than blended tablets) multiplied by the quantity of Delsa's reported granular dichlor, granular trichlor, and all tablets (other than blended tablets) exported to the United States

Unit value: The unit value of importers' (from Spain) granular dichlor, granular trichlor, and all tablets (other than blended tablets)

For all others: Importers' reported granular dichlor, granular trichlor, and all tablets (other than blended tablets)

Table C-1
Chlorinated isos: Summary data on the U.S. market, 2002-04

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

	Reported data			Period changes		
Item	2002	2003	2004	2002-04	2002-03	2003-04
U.S. consumption quantity:						
Amount	125,166	127,912	148,251	18.4	2.2	15.9
Producers' share (1)	89.2	78.6	77.9	-11.3	-10.6	-0.7
Importers' share (1):						
China	***	***	***	***	***	***
Spain	***	***	***	***	***	***
Subtotal (subject)	***	***	***	***	***	***
All other sources	***	***	***	***	***	***
Total imports	10.8	21.4	22.1	11.3	10.6	0.7
U.S. consumption value:						
Amount	214,221	210,770	219,504	2.5	-1.6	4.1
Producers' share (1)	89.6	76.4	72.5	-17.1	-13.2	-3.9
Importers' share (1):						
China	***	***	***	***	***	***
Spain	***	***	***	***	***	***
Subtotal (subject)	***	***	***	***	***	***
All other sources	***	***	***	***	***	***
Total imports	10.4	23.6	27.5	17.1	13.2	3.9
U.S. shipments of imports from:						
China:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Spain:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Subtotal (subject):						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	77	1,378	2,391	3,005.2	1,689.6	73.5
All other sources:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
All sources:						
Quantity	13,485	27,392	32,712	142.6	103.1	19.4
Value	22,181	49,737	60,281	171.8	124.2	21.2
Unit value	$1,666	$1,828	$1,943	16.7	9.7	6.3
Ending inventory quantity	***	***	***	***	***	***

Table continued on next page.

Table C-1--Continued
Chlorinated isos: Summary data on the U.S. market, 2002-04

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

	Reported data			Period changes		
Item	2002	2003	2004	2002-04	2002-03	2003-04
U.S. producers':						
Average capacity quantity	150,850	152,000	152,720	1.2	0.8	0.5
Production quantity	122,518	119,272	122,061	-0.4	-2.6	2.3
Capacity utilization (1)	81.2	78.5	79.9	-1.3	-2.8	1.5
U.S. shipments:						
Quantity	111,681	100,520	115,539	3.5	-10.0	14.9
Value	192,040	161,033	159,223	-17.1	-16.1	-1.1
Unit value	$1,720	$1,602	$1,378	-19.9	-6.8	-14.0
Export shipments:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***
Production workers	638	563	513	-19.6	-11.8	-8.8
Hours worked (1,000s)	1,354	1,208	1,104	-18.4	-10.8	-8.6
Wages paid ($1,000s)	29,852	29,699	26,795	-10.2	-0.5	-9.8
Hourly wages	$22.05	$24.59	$24.26	10.0	11.5	-1.3
Productivity (tons/1,000 hours)	143.0	155.7	171.7	20.1	8.9	10.3
Unit labor costs	$164.13	$172.35	$149.77	-8.7	5.0	-13.1
Net sales:						
Quantity	141,114	130,565	147,501	4.5	-7.5	13.0
Value	296,204	270,917	275,953	-6.8	-8.5	1.9
Unit value	$2,099	$2,075	$1,871	-10.9	-1.1	-9.8
Cost of goods sold (COGS)	226,317	219,552	250,155	10.5	-3.0	13.9
Gross profit or (loss)	69,887	51,365	25,798	-63.1	-26.5	-49.8
SG&A expenses	32,860	32,187	32,686	-0.5	-2.0	1.6
Operating income or (loss)	37,027	19,178	(6,888)	(2)	-48.2	(2)
Capital expenditures	10,955	8,400	6,374	-41.8	-23.3	-24.1
Unit COGS	$1,604	$1,682	$1,696	5.7	4.8	0.9
Unit SG&A expenses	$233	$247	$222	-4.8	5.9	-10.1
Unit operating income or (loss)	$262	$147	($47)	-117.8	-44.0	-131.8
COGS/sales (1)	76.4	81.0	90.7	14.2	4.6	9.6
Operating income or (loss)/ sales (1)	12.5	7.1	-2.5	-15.0	-5.4	-9.6

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

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Financial data are for U.S. integrated producers' granular and tabeleting operations, plus tableters' tableted trichlor operations. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures. Ratios are calculated on the basis of companies which submitted data for both the numerator and the denominator.

U.S. producers' trade data consist of BioLab's, Clearon's, and OxyChem's data on granular dichlor plus granular trichlor. The employment data also include data on their production and tableters' production of trichlor and blended tablets. Financial data are for U.S. integrated producers and tableters' aggregate operations on chlorinated isos. Import data for China and all other sources consist of importers' reported granular dichlor, granular trichlor, and all tablets. Import quantity for Spain consists of Delsa's reported granular trichlor, and all tablets exported to the United States, taken from the company's foreign producer questionnaire. Value consists of the unit value of these products reported by importers, multiplied by Delsa's quantity.

Table C-2
Chlorinated isos: Summary data on U.S. integrated producers' operations, 2002-04

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Table C-3
Chlorinated isos: Summary data on U.S. tableters' operations, 2002-04

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Table C-4
Granular dichlor: Summary data concerning the U.S. market, 2002-04

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Table C-5
Trichlor: Summary data concerning the U.S. market, 2002-04

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Table C-6
Granular chlorinated isos: Summary data concerning the U.S. market, 2002-04

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Table C-7
All tableted chlorinated isos: Summary data for U.S. tableters, 2002-04

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Table C-8
Blended tablets: Summary data on the U.S. market, 2002-04

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Table C-9
Chlorinated isos other than blended tablets: Summary data on the U.S. market, 2002-04

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APPENDIX D

ALLEGED EFFECTS OF SUBJECT IMPORTS ON U.S. PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, OR THE SCALE OF CAPITAL INVESTMENTS

Responses of U.S. producers to the following questions:

1. Since January 1, 2002, has your firm experienced any actual negative effects on its return on investment or its growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of subject imports from China or Spain?

Alden Leeds ***

Aqua Tri ***

BioLab ***

Clearon ***

LPM ***

N. Jonas ***

OxyChem ***

Qualco ***

Stellar ***

2. Does your firm anticipate any negative impact of imports of chlorinated isos from China or Spain?

Alden Leeds ***

Aqua Tri ***

BioLab ***

Clearon ***

LPM ***

N. Jonas ***

OxyChem ***

Qualco ***

Stellar ***

APPENDIX E

QUESTIONNAIRE RESPONSES CONCERNING TABLETING, BLENDING, AND REPACKAGING OPERATIONS

Responses of U.S. producers to the following questions:

1. For tableters, please discuss the capital investment required to begin tableting and blending operations ((if applicable), e.g., the cost of a tablet press, equipment for blending, and/or repackaging equipment).

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2. For tableters, please discuss the main cost components associated with tableting, blending (if applicable), and repackaging as well as such components' percent of overall tableting, blending (if applicable), or repackaging costs.

* * * * * * *

3. Please provide data for domestic value added for granular chlorinated isos purchased from foreign countries, then tableted, blended (if applicable), and repackaged by your firm in the U.S. for fiscal year 2004.

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4. Please provide the percentage of value added to the total production cost of tableted chlorinated isos by tableting, blending (if applicable), and repackaging granular chlorinated isos from domestic sources.

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