

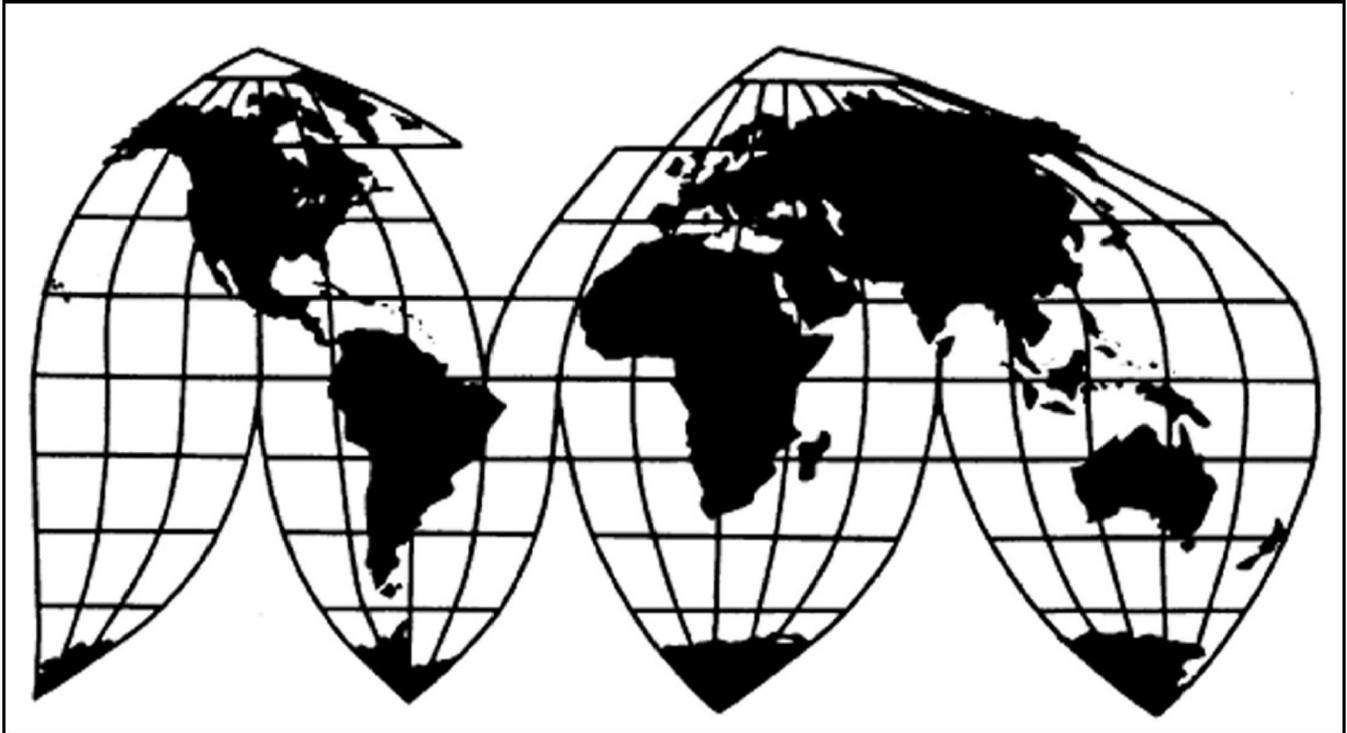
Sodium Nitrite from China and Germany

Investigation Nos. 701-TA-453 (Final) and 731-TA-1136-1137 (Final)

Publication 4029

August 2008

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Mary Jane Alves, Attorney
William Trencher, Attorney
Douglas Corkran, Supervisory Investigator

Special assistance from

Craig Anthony Rychel, Investigations Intern

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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COMPANY GLOSSARY

<u>Company name</u>	<u>Short form</u>
Allied Chemical & Dye Corporation	Allied
BASF Aktiengesellschaft	BASF AG
BASF Corporation	BASF Corp.
Chemtura Corp.	Chemtura
Deepak Nitrite Ltd.	Deepak
E.I. duPont de Nemours and Company, Inc.	DuPont
Flint Group Pigments	Flint Group
General Chemical LLC.	General Chemical
GenTek, Inc.	GenTek
Hualong Ammonium Nitrite Co., Ltd.	Hualong
PMC Specialties	PMC Specialties
Repauno Products LLC	Repauno
U.S. Salt Holdings	U.S. Salt
Zakłady Azotowe Kędzierzyn SA	ZAK

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-453 and 731-TA-1136-1137 (Final)

SODIUM NITRITE FROM CHINA AND GERMANY

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) & 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China and Germany of sodium nitrite, provided for in subheading 2834.10.10 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) and by imports from China of sodium nitrite found by Commerce to be subsidized by the Government of China.

BACKGROUND

The Commission instituted these investigations effective November 8, 2007, following receipt of a petition filed with the Commission and Commerce by General Chemical LLC of Parsippany, NJ. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of sodium nitrite from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and that imports of sodium nitrite from China and Germany 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 May 5, 2008 (73 FR 24610). The hearing was held in Washington, DC, on July 2, 2008, 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 the final phase of these investigations, we find that an industry in the United States is materially injured by reason of imports of sodium nitrite from the People's Republic of China ("China") that have been found by the U.S. Department of Commerce ("Commerce") to be subsidized and sold in the United States at less than fair value as well as imports from the Federal Republic of Germany ("Germany") that have been found by Commerce to be sold in the United States at less than fair value.

I. BACKGROUND

The sole petitioner and only known manufacturer that is currently producing sodium nitrite in the United States, General Chemical LLC ("General Chemical"), which is headquartered in Parsippany, New Jersey, filed the petitions in these investigations with the Commission and Commerce on November 8, 2007.¹ In addition to participating in the preliminary phase of these investigations, representatives from General Chemical appeared at the hearing on July 2, 2008, accompanied by counsel and filed prehearing and posthearing briefs.

Representatives for BASF Aktiengesellschaft ("BASF AG"), a producer of the subject merchandise from Germany, and BASF Corporation, an importer of subject merchandise from Germany, ("collectively BASF") participated in the preliminary phase of these investigations, appeared with counsel at the hearing on July 2, 2008, and filed both a prehearing and posthearing brief. BASF AG is the only known producer of subject merchandise in Germany, and BASF's imports of sodium nitrite from Germany into the U.S. market account for *** U.S. imports of subject merchandise from Germany by quantity during the period of investigation (full years 2005, 2006, 2007, and the first three months of 2007 and 2008 ("interim 2007" and "interim 2008")).²

No producer or exporter of the subject merchandise from China submitted a questionnaire response or participated in the Commission's proceedings.³ Several importers of subject merchandise from China submitted questionnaire responses, and their reported imports of subject merchandise from China account for *** percent of total U.S. imports from China by quantity in 2007.⁴

II. DOMESTIC LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the

¹ General Chemical's parent company, Gen-Tek, Inc. ("GenTek") acquired the only other domestic producer, Repauno Products LLC ("Repauno"), in July 2006. See, e.g., Confidential Staff Report, Mem. INV-FF-086 (Jul. 28, 2008), as amended by Mem. INV-FF-093 (Aug. 4, 2008) and Mem. INV-FF-100 (Aug. 7, 2008) ("CR") at III-2; Public Staff Report, Sodium Nitrite from China and Germany, Invs. Nos. 701-TA-453 and 731-TA-1136 to 1137 (Final), USITC Pub. 4029 (Aug. 2008) ("PR") at III-2.

² See, e.g., CR at IV-1; PR at IV-1. *** and *** reported imports from Germany ***, and BASF reported importing sodium nitrite from Germany ***. See, e.g., CR at VII-6; PR at VII-4 to VII-5.

³ See, e.g., CR at VII-2 to VII-3; PR at VII-2.

⁴ See, e.g., CR at IV-1; PR at IV-1.

“domestic like product” and the “industry.”⁵ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a whole 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.”⁶ In turn, the Tariff Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁷

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.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁹ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁰ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise subsidized or sold at less than fair value,¹¹ the Commission determines what domestic product is like the imported articles Commerce has identified.¹²

⁵ 19 U.S.C. § 1677(4)(A). No party has alleged that the establishment of a domestic industry was materially retarded by reason of subject imports from China and Germany.

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

⁸ See, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); 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).

⁹ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹⁰ Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹¹ See, e.g., USEC, Inc. v. United States, Slip Op. 01-1421 at 9 (Fed. Cir. Apr. 25, 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

¹² Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298, n.1 (“Commerce’s {scope} finding does not control the Commission’s {like product} determination.”); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

B. Product Description

In its final determinations on sodium nitrite from China and Germany, Commerce defined the imported merchandise within the scope of these investigations as follows:

Sodium nitrite in any form, at any purity level. {Sodium nitrite} may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO_2 and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The American Chemical Society Chemical Abstract Service (“CAS”) has assigned the name “sodium nitrite” to sodium nitrite. The CAS registry number is 7632-00-0.¹³

Sodium nitrite’s uses include the following: (1) as an active oxidizing agent;¹⁴ (2) as a reducing agent;¹⁵ (3) as the principal source of nitrous acid in a number of organic syntheses;¹⁶ (4) to form organic nitrites when reacted with organic alcohols in an acid medium;¹⁷ (5) as an ingredient in the manufacture of inks, dyes, and other chemicals;¹⁸ (6) for curing meat products such as hot dogs;¹⁹ (7) as an additive in the manufacture of synthetic rubbers;²⁰ (8) in wastewater treatment;²¹ and (9) in human and veterinary

¹³ As Commerce noted, “While the HTSUS subheading, CAS registry number, and CAS registry are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.” 73 Fed. Reg. 38981, 38981 (Jul. 8, 2008) (final affirmative countervailing duty determination for China); 73 Fed. Reg. 38984, 38984-85 (Jul. 8, 2008) (final affirmative antidumping duty determination for China); 73 Fed. Reg. 38986, 38986 (Jul. 8, 2008) (final affirmative antidumping duty determination for Germany).

¹⁴ As an oxidizing agent, sodium nitrite is used for corrosion inhibition in liquids having contact with metals (such as automobile antifreeze and paints), alkaline de-tinning of scrap tin plate, and in phosphating metals. See, e.g., Petitions at 4.

¹⁵ Sodium nitrite is used as a reducing agent toward oxidizing agents such as dichromate, permanganate, chlorate, and chlorine. See, e.g., Petitions at 4.

¹⁶ In the presence of acids, sodium nitrite forms nitrous acid. Due to its instability, nitrous acid is not commercially available, so sodium nitrite serves as the principal source of nitrous acid in a number of organic syntheses. Petitioner asserts that two of the more important uses of nitrous acid in organic syntheses are in the diazotization and nitrosation of organic amines. See, e.g., Petitions at 4-5.

¹⁷ When reacted with organic alcohols in an acid medium, sodium nitrite forms organic nitrites such as amyl nitrite and amine nitrite (cyclohexylamine nitrite). According to petitioner, these derivatives are utilized to some extent as diesel fuel additives and volatile corrosion inhibitors. See, e.g., Petitions at 5.

¹⁸ See, e.g., Petitions at 5, 30; Confer. Tr. at 11 (McFarland).

¹⁹ See, e.g., Petitions at 5; Confer. Tr. at 11 (McFarland).

²⁰ See, e.g., Petitions at 5.

²¹ See, e.g., Petitions at 5.

medicine as a vasodilator, a bronchodilator, an intestinal relaxant or laxative, and as an antidote for cyanide poisoning.²²

Whether in dry or liquid form, sodium nitrite is an industrial inorganic chemical with a chemical formula of NaNO_2 that is primarily used as an intermediate or process chemical.²³ In terms of dry sodium nitrite products, General Chemical dries and packages the hygroscopic product directly out of its centrifuge for sale to some customers as high purity granular sodium nitrite.²⁴ For other customers, General Chemical adds an anti-caking agent such as Petro AG to high purity granular sodium nitrite to yield granular free-flowing technical grade sodium nitrite.²⁵ Because not all of General Chemical's customers want even small traces of an anti-caking agent, General Chemical compresses high purity granular product into a thin cake using compression rollers and then breaks it up to produce a free-flowing high purity flake sodium nitrite product that does not have anti-caking agent impurities.²⁶ General Chemical asserts that its technical and food-grade sodium nitrite dry products are basically the same. General Chemical does not change its production process to produce food-grade sodium nitrite. Products that are for sale as food grade are segregated for inspection and certification as meeting food grade requirements; the vast majority of what General Chemical sells as technical grade sodium nitrite meets food grade standards, but is not certified.²⁷ When in granular or flake form, sodium nitrite is a white to slightly yellowish crystalline material that is hygroscopic and very soluble in water, but relatively insoluble in most organic solvents.²⁸

Because it uses a soda ash-based production process,²⁹ General Chemical begins with high purity granular product and then adds water and some heat agitation. When dissolved in water, sodium nitrite forms a clear to slightly yellow solution (referred to as its "liquid" or "liquor" form).³⁰ Different customers have different specifications or concentrations for their sodium nitrite liquid, so General Chemical makes it to their requirements.³¹

²² See, e.g., Petitions at 31; Confer. Tr. at 11 (McFarland). General Chemical reports that researchers are currently investigating using sodium nitrite for the treatment of specific diseases. Id.

²³ See, e.g., Petitions at 4; Confer. Tr. at 29 (Nelson); CR at I-3, I-8 to I-9; PR at I-3, I-7; CR/PR at Table I-3; Petitioner's Postconference Br. at 4; Hearing Tr. of July 2, 2008 ("Hearing Tr.") at 13 (McFarland).

²⁴ See, e.g., Confer. Tr. at 10, 47 (McFarland); Petitioner's Sodium Nitrite Process Flow Conference Exhibit.

²⁵ See, e.g., Confer. Tr. at 10, 18 (McFarland).

²⁶ See, e.g., Confer. Tr. at 10, 28, 56-62 (McFarland and Nelson); Petitioner's Postconference Br. at Exh. 1 at 1-2.

²⁷ The company's plant is certified to the Food and Drug Administration ("FDA") food chemical codex ("FCC") standards, meaning that the company must maintain certain records, follow current Good Manufacturing Practice ("cGMP"), and be regularly audited by the FDA. See, e.g., Confer. Tr. at 27-28, 55, 75-76 (McFarland).

²⁸ See, e.g., Petitions at 4; CR at I-8; PR at I-7.

²⁹ When it was operating, domestic producer Repauno had a caustic soda-based production process that yielded pure liquor sodium nitrite at an earlier stage of the production process, as the product came through the absorption tower into the liquor tubs. The concentration of General Chemical's solution is not suitable for commercial sale at this stage without additional processing. See, e.g., Petitions at 11, 32-33; Confer. Tr. at 9-10, 17, 44-45 (McFarland), Sodium Nitrite Process Flow Conference Exhibit.

³⁰ See, e.g., Petitions at 4; CR at I-8; PR at I-7.

³¹ See, e.g., Petitions at 4; Confer. Tr. at 9-10, 17, 84-85 (McFarland), 50-51 (Nelson); Petitioner's Sodium Nitrite Process Flow Conference Exhibit. General Chemical reports that sodium nitrite liquor with a 40 percent sodium nitrite concentration is a common standard. See, e.g., CR at I-9; PR at I-7.

C. Analysis

In the preliminary phase of these investigations, petitioner General Chemical proposed a single domestic like product consistent with the scope,³² and German respondent BASF did not disagree with petitioner's definition.³³ In the preliminary phase of these investigations, although no party raised the issue, the Commission considered but did not find clear dividing lines between different grades and/or forms of sodium nitrite.³⁴ It defined a single domestic like product corresponding to the scope of these investigations.³⁵ In the final phase of these investigations, petitioner asks the Commission to define the domestic like product as it did in the preliminary determinations.³⁶ Although BASF asserts that granular and liquid sodium nitrite are not interchangeable, it does not challenge the Commission's domestic like product finding from the preliminary determinations.³⁷

Based on the evidence on this record and the factors we normally consider in making like product determinations, for the same reasons discussed in our preliminary determinations, we find that there is a continuum of sodium nitrite products of different grades and/or forms, with no clear dividing lines based on grade and/or form.³⁸ Sodium nitrite is produced in varying forms and grades for a variety of end uses, and its physical appearance varies accordingly.³⁹ All varieties of sodium nitrite, however, share the same chemical composition, oxidizing properties, and potential to decompose into nitrous acid.⁴⁰ There are some limitations in interchangeability among varieties of sodium nitrite (such as between technical-grade and food-grade sodium nitrite for use in food-grade applications or between dry and liquid forms of sodium nitrite for specific applications), but as the Commission has indicated in other investigations where the domestic like product, like the scope, encompassed a variety of products, a lack of

³² See, e.g., Petitions at 30-34; Petitioner's Postconference Br. at 1-9.

³³ See, e.g., Confer. Tr. at 93-95, 114 (McGrath).

³⁴ We note that the Commission previously has stated that it "normally does not find separate like products based on different grades of chemicals or mineral products." Liquid Sulfur Dioxide from Canada, Inv. No. 731-TA-1098 (Prelim.), USITC Pub. 3826 at 6 (Dec. 2005) quoting Bulk Acetylsalicylic Acid (Aspirin) from China, Inv. No. 731-TA-828 (Final), USITC Pub. 3314 at 5-6 (Jun. 2000); Sulfanilic Acid from Hungary and Portugal, Invs. Nos. 701-TA-426 and 731-TA-984 to 985 (Final), USITC Pub. 3554 at 7 n.34 (Nov. 2002); Barium Carbonate from China, Inv. No. 731-TA-1020 (Prelim.), USITC Pub. 3561 at 7 n.28 (Nov. 2002).

³⁵ See Sodium Nitrite from China and Germany, Invs. Nos. 701-TA-453 and 731-TA-1136 to 1137 (Prelim.), USITC Pub. 3979 at 4-9 (Jan. 2008).

³⁶ See, e.g., CR at I-7 to I-8; PR at I-6; Petitioner's Prehearing Br. at 3-11.

³⁷ See, e.g., Prehearing Brief of BASF (BASF's Prehearing Br.) at 6-7; Hearing Tr. at 189-90; CR at I-8 n.19; PR at I-6 n.19.

³⁸ See, e.g., Softwood Lumber from Canada, Invs. Nos. 701-TA-404 and 731-TA-928 (Final), USITC Pub. 3509 at 6-15 (May 2002); Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA- 571 (Final), USITC Pub. 2658 at 8-10, 49-51 (Jul. 1993) (finding two like products based on operating element (cutting tool and sanding/grinding tool) but refusing to further subdivide more narrowly into 28 families of tools); Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea ("PET Film"), USITC Pub. 2383 at 8, 10 (May 1991) (finding "a continuum product without clear dividing lines between the multiple like products ... {a}lthough there are many distinct end uses for different types of PET film ... essential characteristics are common to all PET film.").

³⁹ See, e.g., CR at I-8 to I-9; PR at I-7.

⁴⁰ See, e.g., CR at I-8 to I-9; PR at I-7.

interchangeability among forms or grades of products comprising a continuum is not unexpected.⁴¹ The only domestic producer asserts that all sodium nitrite is part of the same domestic like product,⁴² and the record shows that different forms of sodium nitrite may be used for some of the same end use applications.⁴³ Some customers purchase more than one form of sodium nitrite, and others have handling requirements developed over time but could switch (and in some instances have switched) between forms or grades in some situations.⁴⁴ There are some differences in price based on the form or grade of sodium nitrite and some differences in packaging and manufacturing processes for the various forms and grades, but there is also considerable overlap.⁴⁵ In light of these facts, we define a single domestic like product consisting of sodium nitrite, regardless of form or grade, coextensive with the scope of these investigations.

III. DOMESTIC INDUSTRY

The domestic industry is defined as the domestic “producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴⁶ In defining the domestic industry, the Commission’s general practice has been to include in the industry all producers of the domestic like product, whether the domestic like product is toll-produced, captively consumed,⁴⁷ or sold in the domestic merchant market.

In the preliminary phase of these investigations, General Chemical requested that the Commission define the domestic industry as General Chemical.⁴⁸ German respondent BASF did not argue otherwise. No party discussed this issue in the final phase of these investigations. Consistent with our definition of

⁴¹ See, e.g., Carbon and Certain Alloy Steel Wire Rod from China, Germany, and Turkey, Invs. Nos. 731-TA-1099 and 1101 (Prelim.), USITC Pub. 3832 at 10 (Jan. 2006); Outboard Engines from Japan, Inv. No. 731-TA-1069 (Prelim.), USITC Pub. 3673 at 7-8 (Mar. 2004).

⁴² See, e.g., Petitions at 30-34; Petitioner’s Prehearing Br. at 3-11.

⁴³ See, e.g., CR/PR at Table I-3.

⁴⁴ See, e.g., Petitions at 33-34; CR at II-14, V-19 to V-24; PR at II-7, V-9 to V-10; CR/PR at Tables II-2, II-3.

⁴⁵ Prices for sodium nitrite vary depending on the product grade and form. See, e.g., CR/PR at Tables V-2 and V-3. The dry forms of sodium nitrite are sold in bags as well as in drums and super sacks, and the liquid form is sold in tank trucks and rail cars. See, e.g., Petitions at 4, Exh. V-1; CR at I-8, II-1; PR at I-7, II-1. To produce sodium nitrite, producers oxidize liquid ammonia with air at high temperatures in a catalytic bed to form nitrogen oxides (NO and NO₂). Either caustic soda or soda ash in solution is then reacted with the nitrogen oxides in an absorption tower to form a sodium nitrite solution. The solution is next concentrated and purified in an evaporator-crystallizer to form sodium nitrite crystals and then centrifuged to separate the sodium nitrite crystals. The crystals then are either (1) dried and packed for shipment, (2) dried and blended with an anti-caking agent such as silicon dioxide and packed for shipment, (3) dried, compacted, flaked, and packed for shipment, or (4) if produced via a soda ash production process, then dissolved in water to form sodium nitrite in a liquid form. General Chemical uses the same production facilities and employees to produce sodium nitrite of different grades and physical forms, although some sodium nitrite is treated with an anti-caking agent, some is compressed into flake form, some is sprayed, and some is certified for a particular end use. See, e.g., Petitions at 13, 32-33, Exh. II-7, III-9, V-1; Confer. Tr. at 9; Petitioner’s Postconference Br. at 6-7; CR at I-9, I-11 to I-12; PR at I-7 to I-9; CR/PR at Figure I-1.

⁴⁶ 19 U.S.C. § 1677(4)(A).

⁴⁷ General Chemical ***. See, e.g., CR at III-8; PR at III-4.

⁴⁸ See, e.g., Petitions at 3, 34; Petitioner’s Postconference Br. at 9.

the domestic like product, we define the domestic industry as including all domestic producers of sodium nitrite (*i.e.*, General Chemical and Repauno when it was operating during the period of investigation) consistent with our finding in the preliminary determinations.⁴⁹

IV. CUMULATION⁵⁰

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(I) of the Tariff 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 the domestic like product in the U.S. market.⁵¹ In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality-related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.^{52 53}

⁴⁹ We also considered whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. No party argues, and there is no evidence on the current record that either General Chemical or Repauno is related to any producer, exporter, or importer of subject merchandise in China or Germany or that either imported or purchased any subject merchandise during the period of investigation. *See, e.g.*, CR at III-16; PR at III-6. Accordingly, we do not find either to be a related party.

⁵⁰ Before considering the issue of whether subject imports from China and Germany are negligible, we first decided the appropriate data to use to measure subject and nonsubject imports into the U.S. market. For purposes of negligibility, imports, and apparent U.S. consumption, imports from each subject and nonsubject country are based on official Commerce statistics on imports for consumption reported under HTSUS statistical reporting number 2834.10.1000, as revised to exclude imports from Canada, Chile, Greece, Japan, the Netherlands, and Norway that were found to have been incorrectly classified. *See, e.g.*, CR at IV-1 n.2; PR at IV-1 n.2; Petitions at 38, Exhibit V-5; Confer. Tr. at 52-53 (McFarland), 89-90 (Nelson, McFarland); BASF's Postconference Br. at Answers to Staff Questions at 2, 6, 12.

No party argued that subject imports from China or Germany are negligible. Subject imports from China and Germany were well above three percent of total imports for the most recent 12-month period preceding the filing of the petitions (November 2006 to October 2007). Based on the adjusted data, subject imports from China accounted for 12.7 percent, and subject imports from Germany accounted for 83.2 percent, of total imports of the merchandise in that period. *See, e.g.*, CR at IV-9; PR at IV-7. Consequently, we find that subject imports from China and Germany are not negligible. 19 U.S.C. §§ 1671b(a), 1673b(a), 1677(24)(A)(i)(I).

⁵¹ 19 U.S.C. § 1677(7)(G)(i).

⁵² *See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Invs. Nos. 731-TA-278 to 280 (Final), USITC Pub. 1845 (May 1986), *aff'd*, *Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898 (Ct. Int'l (continued...))

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.⁵⁴ Only a “reasonable overlap” of competition is required.⁵⁵

As it argued in the preliminary phase of these investigations, petitioner General Chemical again argues that the Commission should cumulate subject imports from China and Germany.⁵⁶ BASF does not make any arguments regarding cumulation for purposes of the Commission’s present material injury analysis but does argue that there is attenuated competition between subject imports from China and Germany and the domestic like product, as discussed in more detail below.⁵⁷

B. Analysis

In these investigations, the threshold criterion is satisfied because the antidumping and countervailing duty petitions with respect to both of the subject countries were filed on the same day, November 8, 2007. No statutory cumulation exception applies.⁵⁸ Subject imports from China and Germany thus are eligible for cumulation. We now examine whether there is a reasonable overlap of competition between subject imports from China and Germany as well as between subject imports and the domestic like product based on the factors the Commission customarily considers.

⁵² (...continued)
Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁵³ Commissioner Lane notes with respect to the first factor that her analysis does not require such similarity of products that a perfectly symmetrical fungibility is required and that this factor would be better described as an analysis of whether subject imports from each country and the domestic like product could be substituted for each other. See Separate Views of Commissioner Charlotte R. Lane in Certain Lightweight Thermal Paper from China, Germany, and Korea, Invs. Nos. 701-TA-451 and 731-TA-1126 to 1128 (Prelim.), USITC Pub. 3964 (Nov. 2007).

⁵⁴ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁵⁵ The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. I at 848 (1994) (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA at 848 (citing Fundicao Tupy, 678 F. Supp. at 902, aff’d, 859 F.2d 915); see also, e.g., Goss Graphic Systems, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Wieland Werke, 718 F. Supp. 50.

⁵⁶ See, e.g., Petitions at 4, 31-32, 35-36; Confer. Tr. at 19-21 (Nelson), 41-42 (Nelson), 45-46 (Nelson, McFarland), 59-60 (McFarland), 69-71 (Nelson), 86-89 (Nelson, McFarland); Petitioner’s Postconference Br. at 7-10, 15-16, Exh. 1 at 3; Petitioner’s Prehearing Br. at 20-23.

⁵⁷ See, e.g., Confer. Tr. at 137-38 (McGrath); BASF’s Postconference Br. at Answers to Staff Questions at 6-7; BASF’s Prehearing Br. at 6-7; Hearing Tr. at 189-90 (McGrath); CR at I-8 n.19; PR at I-6 n.19.

⁵⁸ See 19 U.S.C. § 1677(7)(G)(ii).

1. Fungibility

As discussed above, sodium nitrite is sold in two primary grades: food grade and technical grade. While a customer could purchase food grade sodium nitrite and use it in a technical application, the reverse is not true.⁵⁹ Throughout the period of investigation, sodium nitrite shipped in the U.S. market by the domestic industry and producers in China and Germany was *** sold as technical grade sodium nitrite.⁶⁰ Whereas the domestic industry shipped some food-grade sodium nitrite to the U.S. market ***, there were *** U.S. shipments of food-grade sodium nitrite from Germany *** and *** U.S. shipments of food-grade sodium nitrite from China ***.⁶¹

There were primarily four forms of sodium nitrite sold in the U.S. market during the period of investigation: granular, flake, prill, and liquid.⁶² Granular sodium nitrite is a powder that may or may not be treated with an anti-caking agent, but if it is not treated with an anti-caking agent, the sodium nitrite will harden over time into a brick-like mass.⁶³ The prilled form is supplied by Chinese producers as a spherical product that does not cake even though it does not contain an anti-caking agent.⁶⁴ Customers generally view sodium nitrite in granular and prill form interchangeably.⁶⁵ The flake form of sodium nitrite, as indicated above, does not contain an anti-caking agent but has been fed through a compactor and then broken into flakes by a screen to yield a product that does not cake.⁶⁶ The liquid form of sodium nitrite sold in the U.S. market either was manufactured directly in Repauno's caustic soda-based production facility during the period of time that facility was operating or was produced by dissolving sodium nitrite in dry form in water, typically to form a 40 percent solution.⁶⁷

Although there are differences among the domestic like product and subject imports from China and Germany in terms of the forms and grades sold in the U.S. market,⁶⁸ there is considerable overlap,

⁵⁹ See, e.g., CR at I-11, I-12, and II-1; PR at I-8, I-9, and II-1.

⁶⁰ See, e.g., CR/PR at Tables III-5 and V-2.

⁶¹ See, e.g., CR/PR at Table V-3. Record evidence indicates that at least one large Chinese producer advertises food-grade sodium nitrite. See, e.g., CR at VII-3; PR at VII-3; see also BASF's Postconference Br. at 7; Petitioner's Posthearing Br. at 41-44.

⁶² See, e.g., CR/PR at Table IV-3.

⁶³ See, e.g., CR at I-8 to I-9; PR at I-7.

⁶⁴ Not all Chinese producers have been able to add an anti-caking agent successfully. See, e.g., CR at I-16; PR at I-12. In order to produce a product that does not cake (particularly when shipped overseas), these Chinese producers instead perform an additional production step by re-dissolving the sodium nitrite and putting it through a "prilling" tower to form small pellets that are similar in form to tapioca (*i.e.*, small spherical-shaped pieces that do not clump together or harden). See, e.g., Petitions at 12, 23-24, 33, Exh. III-9; Confer. Tr. at 21-23 (McFarland), 123-24 (Work); CR at I-9, I-16; PR at I-7, I-12.

⁶⁵ See, e.g., Hearing Tr. at 20-21, 181; CR at II-13 to II-14; PR at II-7.

⁶⁶ See, e.g., CR at I-9; PR at I-7.

⁶⁷ See, e.g., CR at I-9, I-11 to I-16; PR at I-7, I-8 to I-12. General Chemical produces sodium nitrite in liquid form by dissolving the dry material in water, and as also mentioned above, ***. See, e.g., BASF's Postconference Br. at 4-5, Answers to Staff Questions at 3-4; Hearing Tr. at 125 (Work).

⁶⁸ See, e.g., CR/PR at Tables III-5, IV-4.

particularly for technical-grade sodium nitrite in granular and prilled form.⁶⁹ The overlap among the domestic like product and subject imports from China and Germany is less for the liquid⁷⁰ and flake forms of sodium nitrite.⁷¹ As discussed in more detail in the conditions of competition section, subject imports from China and Germany are generally reported to be interchangeable with the domestic like product, although there are occasionally quality or other non-price concerns with the Chinese product. Moreover, different forms or grades of sodium nitrite are interchangeable, at least for certain end uses and/or purchasers, as discussed below. Based on the facts on the record in these investigations, we find that subject imports from China and Germany are fungible with one another and with the domestic like product.

⁶⁹ Sodium nitrite in granular form accounted for *** of the domestic industry's U.S. shipments throughout the period of investigation: (*** percent in 2005, *** percent in 2006, *** percent in 2007, and *** percent in interim 2008). The vast majority of U.S. shipments of subject merchandise from Germany consisted of sodium nitrite in granular form (*** percent in 2005, *** percent in 2006, *** percent in 2007, and *** percent in interim 2008). Whereas there were *** U.S. shipments by the domestic industry and *** U.S. shipments of subject imports from Germany of sodium nitrite in prill form, a generally growing portion of the U.S. shipments of subject merchandise from China during the period of investigation were comprised of sodium nitrite in prill form (*** percent in 2005, *** percent in 2006, *** percent in 2007, and *** percent in interim 2008). See, e.g., CR/PR at Table IV-3. The portion of U.S. shipments of subject merchandise from China that consisted of granular sodium nitrite was: *** percent in 2005, *** percent in 2006, *** percent in 2007, and *** percent in interim 2008. See, e.g., CR/PR at Table IV-3. We note that one importer of granular sodium nitrite from China reported that the company's 2007 and interim 2008 inventory of *** pounds of granular sodium nitrite has not been sold in the U.S. market because it contains an anti-caking agent that causes clouding. See, e.g., CR at VII-12 n.43; PR at VII-7 n.43. Collectively, these U.S. shipments of sodium nitrite in prill and granular form from China accounted for *** of the subject merchandise from China shipped in the U.S. market during the period of investigation.

⁷⁰ A large portion of the domestic industry's shipments throughout the period of investigation was sodium nitrite in liquid form (*** percent in 2005, *** percent in 2006, *** percent in 2007 percent, and *** percent in interim 2008) whereas there were limited U.S. shipments of subject merchandise from Germany in liquid form (*** percent in 2005, *** percent in 2006, *** percent in 2007, and *** percent in interim 2008), and there were *** U.S. shipments of subject merchandise from China in liquid form during the period of investigation. See, e.g., CR/PR at Table IV-3.

Because BASF uses a caustic soda-based production process, it does produce saleable pure liquor earlier in the production process, at the "liquor tub" phase, before the evaporation, crystallization, and centrifuge stages. BASF argues it is not practical to transport the pure liquor sodium nitrite overseas due to the large unit costs associated with shipping sodium nitrite in a water solution. According to BASF,***, but BASF found this method to be uneconomical. BASF ***. See, e.g., Confer. Tr. at 9-10, 17; Petitioner's Sodium Nitrite Process Flow Conference Exhibit; BASF's Postconference Br. at 4-6, Answers to Staff Questions at 3-4; Hearing Tr. at 125 (Work).

⁷¹ A *** portion of the domestic industry's U.S. shipments consisted of sodium nitrite in flake form: *** percent in 2005, *** percent in 2006, *** percent in 2007, and *** percent in interim 2008, whereas there were *** U.S. shipments of subject imports from China and *** U.S. shipments of subject imports from Germany that consisted of sodium nitrite in flake form during this period. See, e.g., CR/PR at Table IV-3.

BASF reports that it does not produce the flake form because to do so would require considerable investment in equipment that BASF does not currently have, approximately ***. See, e.g., Confer. Tr. at 6 (McGrath); BASF's Postconference Br. at 3-7, Answers to Staff Questions at 1, 4-5. Nevertheless, as discussed below, ***.

2. Same Geographical Markets

General Chemical and BASF reported selling their products ***. None of the responding importers of sodium nitrite from China reported selling the product nationwide; rather each reported selling in one or two specific market areas. Nevertheless, the market areas reported by these importers include the Northeast, West Coast, MidAtlantic, MidWest, Southeast, and Southwest.⁷² Thus, we find that subject imports from China and Germany and the domestic like product are sold in the same geographical markets.

3. Channels of Distribution

According to General Chemical, *** large national distributors account for the majority of the distributor business in the United States, but there are also a large number of end users.⁷³ Both domestically produced and imported sodium nitrite are sold to distributors and end users.⁷⁴ According to questionnaire responses, an increasing amount of the domestic industry's shipments went to distributors over the period of investigation, rising from *** percent of total shipments in 2005 to *** percent in 2006 and *** percent in 2007, and *** percent in interim 2008 compared to *** percent in interim 2007.⁷⁵ Imports of sodium nitrite from Germany to distributors generally increased over the period of investigation, rising from *** percent of total shipments in 2005 to *** percent in 2006 and *** percent in 2007, but were *** percent in interim 2008 compared to *** percent in interim 2007.⁷⁶ Subject imports from China showed an opposite trend, at least until interim 2008, although *** of these shipments still went to distributors.⁷⁷ Thus, we find that subject imports from China and Germany and the domestic like product are sold in overlapping channels of distribution.

4. Simultaneous Presence

Like domestic shipments of sodium nitrite, sodium nitrite produced in China and Germany was present in the U.S. market throughout the period of investigation. Based on Commerce statistics, imports

⁷² See, e.g., CR at II-1, IV-20; PR at II-1, IV-9; CR/PR at Tables IV-4 and IV-5.

⁷³ See, e.g., CR at II-2; PR at II-1.

⁷⁴ See, e.g., CR/PR at Table II-1; BASF's Postconference Br. at Answers to Staff Questions at 9; Petitioner's Postconference Br. at 6.

⁷⁵ The domestic industry's shipments to end users as a share of total shipments declined from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, and was *** percent in interim 2008 as compared to *** percent in interim 2007. See, e.g., CR/PR at Table II-1.

⁷⁶ U.S. shipments of subject merchandise from Germany to end users as a share of total U.S. shipments of subject merchandise from Germany declined from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, and was *** percent in interim 2008 as compared to *** percent in interim 2007. See, e.g., CR/PR at Table II-1.

⁷⁷ U.S. shipments of subject merchandise from China to distributors as a share of total U.S. shipments of subject merchandise from China declined from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, and was *** percent in interim 2008 as compared to *** percent in interim 2007. See, e.g., CR/PR at Table II-1. In turn, imports of sodium nitrite from China to end users rose from *** percent of total shipments in 2005 to *** percent in 2006 and *** percent in 2007; the portion of U.S. shipments of subject merchandise from China sent to end users was *** percent in interim 2008 compared to *** percent in interim 2007. See, e.g., CR/PR at Table II-1.

of sodium nitrite from China entered the United States with increasing monthly frequency over the period while those from Germany entered the United States consistently in every month.⁷⁸

C. Conclusion

Based on the record in these investigations, for the reasons discussed above, and in the absence of any contrary arguments, we conclude that there is a reasonable overlap of competition between subject imports from China and Germany and between subject imports and the domestic like product. We therefore cumulatively assess the volume and effects of subject imports from China and Germany for purposes of our material injury analysis.

V. MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.⁷⁹ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on producers of the domestic like product, but only in the context of U.S. production operations.⁸⁰ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁸¹

In these investigations, petitioner argues that the Commission should consider a four-year period of investigation that includes full-year data for 2004, 2005, 2006, and 2007 as well as the first quarter of 2007 and 2008.⁸² BASF disagrees, arguing that these investigations do not involve any of the circumstances the Commission has previously cited for deviating from its usual period of investigation; BASF also emphasizes that the state of the domestic industry in 2004 is not particularly relevant given that the Commission must find current material injury by reason of subject imports.⁸³

The Commission’s normal practice is to consider data for the three most recent calendar years, plus interim periods where applicable.⁸⁴ Nonetheless, we will expand the period of investigation if it is appropriate to do so in light of an industry’s cyclical nature or if there is a well-defined need to obtain a

⁷⁸ See, e.g., CR/PR at Table IV-6.

⁷⁹ 19 U.S.C. §§ 1671d(a) and 1673d(a).

⁸⁰ 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).

⁸¹ 19 U.S.C. § 1677(7)(A).

⁸² General Chemical asserts that the filing of the petitions in early November makes it likely that full-year 2007 data are impacted by these investigations, and it contends that the readily available data for 2004 provide insight about why the domestic industry consolidated. See, e.g., Petitioner’s Prehearing Br. at 23-24.

⁸³ See, e.g., BASF’s Posthearing Br. at Att. 1 at 20-21.

⁸⁴ See Silicon Metal from Russia, Inv. No. 731-TA-991 (Final), USITC Pub. 3584 at 11 n.68 (Mar. 2003) citing, inter alia, Kenda Rubber Industrial Co. v. United States, 630 F. Supp. 354, 359 (Ct. Int’l Trade 1986), aff’d on this point, Bratsk Smelter v. United States, Slip Op. 04-75 at 14-15 (Ct. Int’l Trade June 22, 2004) (“The statute ... does not direct the ITC to use a specific period of time for its analysis ... {but} ‘in making a present material injury determination, the Commission must address record evidence of significant circumstances and events that occur between the petition date and vote date’ ... {recognizing} that ‘older information on the record provides a historical backdrop against which to analyze fresher data.’” quoting Usinor v. United States, 26 CIT 767, 780 (2002).

broader perspective of the market.⁸⁵ In this case, we do not find it appropriate to expand the period of investigation to include the 2004 data series.

For the reasons stated below, we determine that the domestic industry producing sodium nitrite is materially injured by reason of subject imports from China and Germany.

A. Conditions of Competition and the Business Cycle

In evaluating the impact of subject imports on the domestic industry, the statute directs the Commission to consider all relevant factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁸⁶ In conducting our analysis in these investigations, we have taken a number of conditions of competition into consideration.

1. Product Considerations

Sodium nitrite is produced in several different forms and/or grades, as discussed above, and is a convenient source of nitrous acid for the production of other products. The cost of sodium nitrite as a share of the total cost of the various end use products in which it is used varies but may be as high as *** percent for certain *** or as low as *** percent for certain ***.⁸⁷ Oxidizing agents such as sodium nitrite can be used for various reactions. When asked whether there are substitutes for sodium nitrite, ***, *** importers, and all purchasers reported that there are no products that can be substituted for sodium nitrite.⁸⁸

2. Demand Considerations

Demand for sodium nitrite is driven by the production of downstream products.⁸⁹ Questionnaire respondents disagree about whether sodium nitrite demand in the U.S. market was stable, increasing, or decreasing during the period of investigation.⁹⁰ With respect to demand for dry sodium nitrite, General

⁸⁵ See, e.g., Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 at 18, n.133 (Mar. 2006); Purified Carboxymethylcellulose from Finland, Mexico, Netherlands, and Sweden, Invs. Nos. 731-TA-1084 to 1087 (Final), USITC Pub. 3787 at 14 (Jun. 2005) (declining to expand the normal three-year period in those investigations); Certain Aluminum Plate from South Africa, Inv. No. 731-TA-1056 (Final), USITC Pub. 3734 at 19 n.156 (Nov. 2004); see also Nucor Corp. v. United States, 414 F.3d at 1336 (explaining “current data typically is the most pertinent” and “in most cases the most recent imports will have the greatest relevance to the current state of the domestic industry” but noting the Commission has discretion to weigh data obtained).

⁸⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁷ See, e.g., CR at II-11 to II-12; PR at II-6 to II-7.

⁸⁸ See, e.g., CR at II-11; PR at II-6.

⁸⁹ See, e.g., Petitioner’s Prehearing Br. at 15; BASF’s Prehearing Br. at 20-21; Hearing Tr. at 165-67.

⁹⁰ See, e.g., CR at II-7 to II-9; PR at II-5 to II-6. General Chemical reported that ***. See, e.g., CR at II-7; PR at II-5. BASF reported that it ***. Of the four responding importers of sodium nitrite from China, two reported no change in demand in the U.S. market, but two reported an increase in demand. See, e.g., CR at II-9; PR at II-5. Four of six responding purchasers reported that demand for their end products that use sodium nitrite have increased which has resulted in an increase of their purchases of sodium nitrite. See, e.g., CR at II-10 to II-11; PR at II-6. One ***, and it noted that the demand for its products has increased, and as such, its demand for sodium nitrite has *** since 2005. See, e.g., CR at II-11 at n.22; PR at II-6 at n.22. Two purchasers reported that the demand for their end
(continued...)

Chemical reported *** since January 2005, although there has been ***, and BASF reported *** since 2005.⁹¹ Two of three responding importers of sodium nitrite from China reported that there has been an increase in demand for sodium nitrite in dry form, and the other reported no change.⁹² In terms of sodium nitrite in liquid form, General Chemical reported that demand has declined,⁹³ and BASF agrees.⁹⁴ The only importer of sodium nitrite from China to comment on this issue reported no change.⁹⁵

In recent years, certain firms that previously used sodium nitrite as a raw material or intermediate in their production operations moved overseas ***. In particular, PMC Specialties (a saccharin producer) ***.⁹⁶ Likewise, Chemtura (a rubber processing chemical producer and distributor) ***.⁹⁷ The closure of textile and related industries in the United States has also reduced demand for sodium nitrite.⁹⁸ Available data on apparent U.S. consumption indicate that demand in the U.S. market declined from *** pounds in 2005 to *** pounds in 2006 and to *** pounds in 2007, although apparent U.S. consumption was higher in interim 2008 (*** pounds) than in interim 2007 (*** pounds).⁹⁹

Notwithstanding these changes in demand, General Chemical asserts that its customer base is now “more established.”¹⁰⁰ It argues that there are some sodium nitrite applications that continue to grow at moderate rates,¹⁰¹ such as for water treatment, corrosion inhibition, and medical care.¹⁰² General Chemical also reports that research is ongoing for some possible new medical applications for sodium nitrite, although these applications are not expected to be large.¹⁰³ Long-term, General Chemical asserts that demand is likely to be stable, particularly given that no substitutes exist for sodium nitrite.¹⁰⁴

⁹⁰ (...continued)

user products which use sodium nitrite decreased since 2005, and as such, they decreased their purchases of sodium nitrite. These two firms, ***, both moved production of their end products offshore. ***. See, e.g., CR at II-11; PR at II-6.

⁹¹ See, e.g., CR at II-9; PR at II-5.

⁹² See, e.g., CR at II-9; PR at II-5.

⁹³ See, e.g., CR at II-10; PR at II-6.

⁹⁴ See, e.g., CR at II-10; PR at II-6.

⁹⁵ See, e.g., CR at II-10; PR at II-6.

⁹⁶ See, e.g., CR at II-10 to II-11; PR at II-6; CR/PR at Table III-3.

⁹⁷ See, e.g., CR at II-10, III-9 to III-12; PR at II-6, II-4 to III-5; CR/PR at Table III-3.

⁹⁸ ***. See, e.g., CR at II-8; PR at II-5. ***. See, e.g., CR at II-11; PR at II-6. On the other hand, ***. See, e.g., CR at II-8; PR at II-5.

⁹⁹ See, e.g., CR/PR at Table IV-7.

¹⁰⁰ See, e.g., CR at II-8 at n.15; PR at II-5 at n.15.

¹⁰¹ General Chemical also reports ***. See, e.g., CR at II-8; PR at II-5.

¹⁰² See, e.g., Confer. Tr. at 73-74 (McFarland); Petitioner’s Prehearing Br. at 15-16; CR at II-8 to II-9; PR at II-5.

¹⁰³ See, e.g., Confer. Tr. at 32-33, 53-54 (Nelson) (discussing on-going National Institute of Health studies), 54-55 (McFarland).

¹⁰⁴ See, e.g., Petitioner’s Prehearing Br. at 16.

Both domestic and imported sodium nitrite are sold to distributors and end users for a variety of end-use applications, as discussed above.¹⁰⁵ Producers generally ship full container loads to customers and distributors. Distributors break down the full load to supply smaller customers.¹⁰⁶ Some distributors warehouse imported products, supply other chemical products in addition to sodium nitrite in the same delivery, are willing to sell less than truck-load orders, and arrange logistics for certain end users.¹⁰⁷ Sodium nitrite produced domestically and imported from China and Germany was sold from inventory and produced to order during the period of investigation.¹⁰⁸ Lead times for sales of product from inventory were *** lead times for sales of sodium nitrite produced to order ***.¹⁰⁹

3. Supply Considerations

There are three sources of supply in the U.S. market: imports of subject merchandise from China and Germany, minimal imports from nonsubject countries, and production by the domestic industry.

a. Imports of Subject Merchandise from China and Germany

Based on the record in these investigations, there is one known producer of sodium nitrite in Germany, BASF AG; the company is recognized as the largest sodium nitrite producer globally.¹¹⁰ Petitioner General Chemical identified 92 potential producers of sodium nitrite in China, and staff successfully transmitted foreign producer questionnaires to 37 of them. No Chinese producer of sodium nitrite submitted a questionnaire response, although several importers of subject merchandise from China did submit questionnaire responses concerning their imports of subject merchandise from China, and their imports account for *** percent of total imports from China by quantity in 2007.¹¹¹

b. Nonsubject Imports

During the period of investigation, sodium nitrite was imported into the United States in limited quantities from two nonsubject countries (India and Poland). Imports from Poland were the only

¹⁰⁵ See, e.g., CR at II-2; PR at II-1 to II-2; BASF's Postconference Br. at Answers to Staff Questions at 9; Petitioner's Postconference Br. at 6.

¹⁰⁶ See, e.g., Petitioner's Prehearing Br. at 7; Hearing Tr. at 194 (Katz).

¹⁰⁷ See, e.g., Petitioner's Prehearing Br. at 13-14.

¹⁰⁸ General Chemical reported that *** percent of its sales were from inventory and *** percent of its remaining sales were produced to order (***). See, e.g., CR at II-1 n.4; PR at II-1 n.4. BASF reported that approximately *** percent of its sales (***) were from inventory and *** percent are made to order. See, e.g., CR at II-2 n.5; PR at II-1 n.5. Three of six responding importers of subject merchandise from China reported that *** percent of their sales were from inventory; two reported that *** percent of their sales were produced to order; and the remaining importer of subject merchandise from China reported that *** percent of its sales were from inventory and *** percent were produced to order. See, e.g., CR at II-2; PR at II-1.

¹⁰⁹ Lead times for General Chemicals sales of sodium nitrite from inventory were *** days compared to *** days for BASF and *** days for imports of sodium nitrite from China. See, e.g., CR at II-1 to II-2; PR at II-1.

¹¹⁰ See, e.g., CR at VII-6; PR at VII-4 to VII-5; Hearing Tr. at 94.

¹¹¹ See, e.g., CR at IV-1, VII-2 to VII-3; PR at IV-1, VII-2.

nonsubject imports present in the U.S. market throughout the period of investigation.¹¹² Throughout the period of investigation, nonsubject imports accounted for a very small and stable share of the market in terms of quantity and value, *** percent or less in each individual period.¹¹³

c. Domestic Supply

As noted earlier, there were two domestic producers during the period of investigation, General Chemical and Repauno. General Chemical's production facility in Solvay, New York has been producing sodium nitrite since 1920, and the firm has been a subsidiary of GenTek since 1999.¹¹⁴ Repauno's Gibbstown, New Jersey facility had been operating as a subsidiary of U.S. Salt, a manufacturer of salt and other inorganic chemicals based in Jacksonville, Florida, since U.S. Salt's 1999 acquisition of the sodium nitrite business then owned by DuPont.¹¹⁵ General Chemical emphasizes that negotiations about combining the two U.S. manufacturers of sodium nitrite began well in advance of the decisions of end users PMC Specialties and Chemtura to close certain of their U.S. operations. Repauno approached General Chemical in 2005 about a potential acquisition, and the negotiations were driven by the low price levels of subject imports in the U.S. market ***.¹¹⁶ Because the parties ultimately concluded that General Chemical "was better positioned to take advantage of a consolidation" since it "had a greater capacity to produce the dry form of sodium nitrite and it had a lower cost structure,"¹¹⁷ General Chemical's parent, GenTek, acquired Repauno in July 2006.¹¹⁸ The acquisition included Repauno's manufacturing facility, customer list, and its twenty-three employees for a purchase price of approximately \$4.5 million cash, plus working capital (ultimately valued at \$6 million).¹¹⁹

General Chemical explains that it made the decision to buy Repauno in order to ***, increase its own capacity utilization from *** to 100 percent by shutting down the Repauno facility, and reduce its operating costs by spreading the high fixed costs over approximately double the volume of production at a single facility.¹²⁰ ***.¹²¹ Although General Chemical ***, General Chemical contends that reduced demand for sodium nitrite products (including that related to the closure of certain of the U.S. sodium nitrite consuming facilities of PMC Specialties and Chemtura), the escalation of Repauno's caustic soda and natural gas raw material costs through 2005 due to Hurricane Katrina, and the impact of volume lost to unfairly traded imports caused General Chemical to accelerate the schedule and close Repauno's

¹¹² See, e.g., CR at IV-8; PR at IV-3.

¹¹³ See, e.g., CR/PR at Table IV-8. Nonsubject imports' share of the U.S. market increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, and was *** percent in interim 2008 as compared to *** percent in interim 2007. See, e.g., CR/PR at Table IV-8.

¹¹⁴ See, e.g., CR at III-1 to III-2; PR at III-1 to III-2.

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

¹¹⁶ See, e.g., Petitioner's Posthearing Br. at 12, 17, Exhs. 6-7; CR at III-2 to III-3; PR at III-2.

¹¹⁷ See, e.g., Hearing Tr. at 22 (McFarland).

¹¹⁸ See, e.g., CR at III-2; PR at III-2.

¹¹⁹ See, e.g., CR at III-3; PR at III-2.

¹²⁰ See, e.g., CR at III-2 to III-3; PR at III-2.

¹²¹ See, e.g., CR at III-6 to III-7; PR at III-3; Hearing Tr. at 22, 60-61.

facility in November 2006.¹²² General Chemical does not have the ability to reopen Repauno or to produce sodium nitrite at that facility.¹²³ The closure of Repauno's production operations in November 2006 removed nearly ***.¹²⁴

Because General Chemical manufactures sodium nitrite as part of a continuous production process, it operates its production facility "on a 24/7 basis" with an annual shutdown, and it contends that it and other sodium nitrite producers must run their facilities at full capacity.¹²⁵ The catalyst bed that is part of the first stage of General Chemical's sodium nitrite production process operates at over a thousand degrees Fahrenheit and cannot be easily switched on and off,¹²⁶ and ***.¹²⁷ Because it has to run the catalytic bed and absorption towers around the clock, General Chemical reports that it also needs an operator around the clock.¹²⁸ In addition to high fixed costs, during the period of investigation, the domestic industry experienced substantial increases in sodium nitrite raw material costs associated with increases in the prices of ammonia, caustic soda, and soda ash, all of which are globally traded products.¹²⁹ General Chemical only produces sodium nitrite at its manufacturing facility.¹³⁰

4. Product Mix, Substitutability, and Convertibility

Record evidence in these investigations indicates that, when produced to the same form or grade, sodium nitrite produced domestically and imported from China and Germany are highly substitutable for one another. Although most purchasers require their suppliers to be certified, questionnaire respondents generally reported that the domestic industry and producers in China and Germany are qualified to supply the U.S. market.¹³¹ Quality and price were identified by purchasers as the most important factors in their

¹²² See, e.g., Confer. Tr. at 12-13, 25, 35-36 (McFarland), 79-80 (Jaffe); Petitioner's Postconf. Br. at 13-14; Petitioner's Prehearing Br. at 43-45; Hearing Tr. at 46-47, 60-61 (McFarland), 107-08 (Opalewski); Petitioner's Posthearing Br. at 11-12, Exhs. 6, 7; CR at VI-1 n.3; PR at VI-1 n.3.

¹²³ See, e.g., Confer. Tr. at 65-67 (McFarland); CR at III-4; PR at III-3; Petitioner's Postconf. Br. at Exh. 1 at 5. During the time that it operated the Repauno facility, General Chemical owned the production equipment but did not own the land. It was allowed to operate the facility on land that was subject to a ***. When the Repauno facility was closed, General Chemical exited from the site, returned the land to DuPont, and ***. See, e.g., Confer. Tr. at 40 (McFarland); CR at III-4 at n.18; PR at III-2 n.18.

¹²⁴ See, e.g., CR at III-5; PR at III-3.

¹²⁵ See, e.g., Confer. Tr. at 9, 26 (McFarland), 31-32 (Nelson); CR at I-15 n.34; PR at I-9 n.34.

¹²⁶ See, e.g., Confer. Tr. at 26 (McFarland), 31-32 (Nelson).

¹²⁷ See, e.g., CR at I-15 to I-16, II-4 at n.10; PR at I-9, I-12, II-3 n.10.

¹²⁸ See, e.g., Confer. Tr. at 26 (McFarland).

¹²⁹ See, e.g., Confer. Tr. at 23-26 (McFarland); Petitioner's Prehearing Br. at 16-20; CR at VI-1, VI-4; PR at VI-1, VI-2; CR/PR at Tables VI-1, VI-2.

¹³⁰ See, e.g., Confer. Tr. at 40-41 (McFarland); CR at II-5; PR at II-3.

¹³¹ Fourteen of sixteen responding purchasers reported that for 100 percent of their purchases, they require suppliers to be certified. Certification or qualification times ranged from three weeks to more than six months. Nevertheless, according to responding purchasers, producers rarely fail to qualify, with only two questionnaire respondents reporting that any producer failed to qualify: one supplier was a producer of sodium nitrite in India, and the other two suppliers were Chinese producers. See, e.g., CR at II-26; PR at II-13.

purchasing decisions.¹³² In terms of quality,¹³³ all but one responding purchaser reported that domestically produced sodium nitrite “always” meets minimum quality specifications, and most responding purchasers reported that the Chinese and German product “always” meet minimum quality specifications, although three of seven responding firms reported that the Chinese product usually, sometimes, or never meets minimum quality specifications.¹³⁴ Relatively more of the responding purchasers found the domestic and German product comparable with respect to most purchasing factors whereas purchasers were more split about the comparability of the Chinese and U.S. products with respect to the same factors.¹³⁵ Overall, responding purchasers reported that U.S. product and the subject imports from China and Germany were always or frequently interchangeable.¹³⁶

As we indicated above in our fungibility discussion, there was a meaningful overlap among the domestic like product and subject imports from China and Germany in the U.S. market during the period of investigation for sales of dry forms and particularly technical-grade sodium nitrite in the dry granular and prill forms. BASF exports only granular sodium nitrite to the U.S. market from Germany, only granular sodium nitrite and sodium nitrite in prill form are imported from China, and a large portion of the domestic industry’s U.S. shipments are in liquid, granular, and flake forms. BASF acknowledges that converting dry sodium nitrite into a liquid form is theoretically possible, but asserts that it is impractical

¹³² Six responding purchasers ranked quality as the most important factor, three reported it as the second most important factor, and four reported it as the third most important factor. Five responding purchasers reported price was the most important factor, five reported that price was the second most important factor, and four ranked price as the third most important factor. See, e.g., CR/PR at Table II-4. Purchasers also identified availability, domestic sourcing, global portfolio, lead time, length of relationship, product consistency, reliability, and terms of sale as important factors in their purchasing decisions. See, e.g., CR/PR at Table II-4.

¹³³ Quality considerations important to purchasers included chemical assay, types and levels of impurities, solubility, quality, anti-caking agent used, concentration, purity, physical handling characteristics, and ability to meet customer specifications. See, e.g., CR at II-21; PR at II-10.

¹³⁴ See, e.g., CR at II-22; PR at II-10.

¹³⁵ See, e.g., CR at II-24; PR at II-11. As for non-price factors, General Chemical reported that non-price factors are *** a significant factor in its sales of sodium nitrite while BASF noted that these factors are *** a factor. BASF noted that whether or not these factors are significant depends on the end user’s application. ***, an importer of Chinese sodium nitrite, reported that sodium nitrite from Germany is an excellent product while there are sometimes problems with caking and clogging with Chinese sodium nitrite. Another importer of Chinese material, ***, reported that differences in distribution are factors that differentiate the domestic and Chinese products; it noted that U.S. producers sell through other distribution networks, generally larger distributors than its *** business. See, e.g., CR at II-27 to II-29; PR at II-13 to II-14; CR/PR at Table II-10.

¹³⁶ In terms of specific sales factors (such as availability, delivery terms, delivery time, discounts offered, extension of credit, minimum quantity requirements, packaging, lower price, product consistency, quality meets industry standard, product range, reliability of supply, technical support/service, and U.S. transportation costs), relatively more of the responding purchasers found the domestic and German product to be comparable with respect to most of the factors but there was more of a split between purchasers with regard to U.S. and Chinese products. See, e.g., CR/PR at Table II-7. General Chemical reported that domestically produced sodium nitrite is *** interchangeable with imports from both China and Germany. Respondent BASF reports that domestically produced sodium nitrite is *** interchangeable with the subject imports from China and Germany but that ***. Those who import the subject imports from China report that the U.S.-produced sodium nitrite is either always or frequently interchangeable with Chinese or German product. See, e.g., CR at II-27; PR at II-13; CR/PR at Tables II-9, II-10.

for its customers to buy dry sodium nitrite for conversion to liquid form at their scale of operations.¹³⁷ Since liquid customers are charged based on the price of the dry material in the solution, it would not be economical to buy the dry material and perform additional processing steps needed to produce the solution at an estimated cost of 8 to 9 cents per pound. Moreover, it contends that those intending to produce liquid sodium nitrite from the dry form need to take special precautions to avoid foaming and cloudy residues associated with the anti-caking agent in the dry form and to avoid ***.¹³⁸

Due to differences in product mix and limitations on converting from one form to another, BASF contends, any competition that the domestic industry faced from subject imports was for granular sodium nitrite. The domestic industry's U.S. shipments in granular form as a share of its total U.S. commercial shipments during the period of investigation, however, were as follows: *** percent in 2005, *** percent in 2006, *** percent in 2007, and *** percent in interim 2008.¹³⁹ General Chemical disagrees, contending that the dry forms are substitutable for one another and that sodium nitrite in dry form can be and has been used for the same applications as the liquid form.¹⁴⁰ General Chemical claims that many customers could switch from one form to another if they modified their production process and made certain capital investments.¹⁴¹

Whereas sodium nitrite meeting only technical grade specifications has not been certified for use in food products, sodium nitrite meeting food grade specifications can be substituted for sodium nitrite that meets technical grade specifications.¹⁴² Food grade sodium nitrite is produced using the same production lines as technical grade sodium nitrite, but food grade sodium nitrite is subject to higher quality specifications, especially with respect to the presence of heavy metals, compliance with FCC and cGMP, and registration with the FDA.¹⁴³

With respect to whether sodium nitrite in flake form is interchangeable with granular sodium nitrite, General Chemical reports that over time, *** of the end users that used to purchase flake have switched to another form of sodium nitrite.¹⁴⁴ Questionnaire respondents that were aware of the domestically produced flake form ***.¹⁴⁵ General Chemical's ***.¹⁴⁶ ***'s competitors use sodium

¹³⁷ See, e.g., Confer. Tr. at 6, 92-95 (McGrath), 97-102 (Work), 137-38 (McGrath); BASF's Postconference Br. at 3-8, Answers to Staff Questions at 6-9; BASF's Prehearing Br. at 1-16; Hearing Tr. at 189-90 (McGrath); CR at I-8 n.19; PR at I-6 n.19; BASF's Posthearing Br. at 1-4.

¹³⁸ See, e.g., Confer. Tr. at 111-12 (Work), 129, 134 (Work); BASF's Postconference Br. at 4-6, Answers to Staff Questions at 3-4, 7-8, 11, Atts. 1-2; Hearing Tr. at 129-31 (Katz); BASF's Posthearing Br. at 1-4, 25-32. General Chemical disagrees with BASF's assertion that foaming is a problem when producing liquid sodium nitrite from dry sodium nitrite containing an anti-caking agent. See, e.g., Petitioner's Posthearing Br. at 40.

¹³⁹ See, e.g., CR/PR at Table IV-3.

¹⁴⁰ See, e.g., Confer. Tr. at 18, 48 (McFarland), 28-29 (Nelson); Petitioner's Postconference Br. at 7-8; CR/PR at Table I-3.

¹⁴¹ See, e.g., Confer. Tr. at 11, 27-29 (McFarland); Hearing Tr. at 19 (McFarland).

¹⁴² See, e.g., Petitions at 31; Confer. Tr. at 27-28 (Nelson); Petitioners' Prehearing Br. at 7.

¹⁴³ See, e.g., Petitions at 31.

¹⁴⁴ See, e.g., Petitioner's Posthearing Br. at 52-53.

¹⁴⁵ See, e.g., CR at II-14; PR at II-7.

¹⁴⁶ See, e.g., Petitioner's Posthearing Br. at 52-53; CR at V-22; PR at V-10 (although ***).

nitrite in granular form,¹⁴⁷ and General Chemical asserts that *** could modify its production process if prices are low enough.¹⁴⁸

General Chemical asserts that the Chinese prilled product is a free-flowing form that is not subject to caking but that is similar to granular sodium nitrite mixed with an anti-caking agent or sodium nitrite in a flake form.¹⁴⁹ Commission staff followed up with many of the firms that reported purchasing prilled product from China during the period of investigation, and of the eight that responded, seven were distributors and one was an end user. Several of these distributors did not know what their customers used the prilled sodium nitrite to produce, but the others identified chemical compounding, pigment manufacturing, and water treatment as end-use applications. The one responding end user (***) reported that it had been buying domestic and German product but started buying prilled product from China for a new *** product.¹⁵⁰ These are some of the same applications for which other forms of sodium nitrite are used.¹⁵¹ Those that purchased the prilled product from China reported doing so to obtain a product that does not cake, and one liked the fact that the prilled product did not contain an anti-caking agent. Most of the purchasers of Chinese prilled product surveyed by staff did not appear to be aware of the domestically produced flake product, but some were also purchasing sodium nitrite in granular form.¹⁵² Those purchasers of Chinese prilled product that were aware of the domestically produced flake product reported that, unlike the prilled product, the flake product ***.¹⁵³

With respect to whether granular sodium nitrite is interchangeable with liquid sodium nitrite, several end-use applications can use either the dry or liquid forms: ***.¹⁵⁴ Of fifteen purchasers responding to the question, one firm reported that dry and liquid sodium nitrite are always used interchangeably. Three firms reported that the two forms are frequently interchangeable, six reported sometimes, and five reported never.¹⁵⁵ Purchasers were asked if they ever attempted to convert dry sodium nitrite to liquid sodium nitrite in their facilities. Seven of the responding sixteen purchasers reported “yes,” and the other nine reported “no.”¹⁵⁶ Of those purchasers that reported that they had attempted to convert dry to liquid (***), two reported that it was easy to do; two others reported that they prepare liquid products from the dry solution; one tried to do so in the 1980s but did not find it cost-effective. One other firm buys dry and puts it into liquid in one of its facilities but cannot add sodium nitrite directly to one of its reactors.¹⁵⁷ Some purchasers reported being able to use either liquid sodium

¹⁴⁷ See, e.g., CR at I-9 at n.23; PR at I-7 n.23.

¹⁴⁸ See, e.g., Petitioner’s Posthearing Br. at 52-53.

¹⁴⁹ See, e.g., Petitions at 32; CR at I-16; PR at I-12.

¹⁵⁰ See, e.g., CR at II-3 n.8, II-13 to II-14; PR at II-2 n.8, II-7.

¹⁵¹ See also, e.g., CR/PR at Table I-3.

¹⁵² See, e.g., CR at II-14; PR at II-7.

¹⁵³ See, e.g., CR at II-14; PR at II-7.

¹⁵⁴ See, e.g., CR/PR at Table I-3. General Chemical identified *** applications where ***. Id.

¹⁵⁵ See, e.g., CR at II-16; PR at II-8; CR/PR at Table II-2.

¹⁵⁶ See, e.g., CR at II-18 n.34; PR at II-9 n.34. When asked the same question, no responding importers reported having attempted this conversion. See, e.g., CR at IV-15 to IV-16; PR at IV-8.

¹⁵⁷ See, e.g., CR at II-18 n.34; PR at II-9 n.34.

nitrite or dry sodium nitrite in their facilities, and those reporting using only one or the other form reported what modifications would be necessary to switch to the other form.¹⁵⁸

Based on the record in these investigations, we find that dry forms of sodium nitrite are somewhat more easily substituted for one another, but somewhat less substitutable for the liquid form of sodium nitrite. Some end users are able to use either dry or liquid sodium nitrite, and other end users have switched from using one form to another or may be able to switch from using one form to another if they incur certain costs and make certain modifications. Although the record does not indicate that ***, switching between the various forms of sodium nitrite is technically possible, and purchasers take into account prices of other forms of sodium nitrite in their pricing negotiations.¹⁵⁹

B. Volume of the Cumulated Subject Imports from China and Germany

Section 771(7)(C) of the Tariff 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.”¹⁶⁰

In absolute terms, the cumulated volume of subject imports from China and Germany increased from 8.2 million pounds in 2005 to 11.2 million pounds in 2006 and 13.3 million pounds in 2007, and was higher in interim 2008 (3.8 million pounds) than in interim 2007 (3.3 million pounds).¹⁶¹ The share of apparent U.S. consumption held by cumulated subject imports, by quantity, increased by *** percentage points from 2005 to 2007, rising from *** percent in 2005 to *** percent in 2006, before increasing further to *** percent in 2007.¹⁶² The market share held by cumulated subject imports was also higher in interim 2008 (***) percent) than in interim 2007 (***) percent).¹⁶³ Thus, the data show that, even after the filing of the petitions in these investigations, the volume and market share of cumulated subject imports from China and Germany continued to increase, although at a slower rate than previously.¹⁶⁴

¹⁵⁸ See, e.g., CR/PR at Tables II-2, II-3.

¹⁵⁹ See, e.g., CR at II-10 to II-12, IV-3, V-16 n.26, V-19 to V-24; PR at II-6, IV-2, V-8 to V-10; CR/PR at Tables II-3 n.1, II-2 n.1, III-3, V-3 to V-6; Petitioner’s Prehearing Br. at 31-41; Petitioner’s Posthearing Br. at 9-10; Hearing Tr. at 130.

¹⁶⁰ 19 U.S.C. § 1677(7)(C)(i).

¹⁶¹ See, e.g., CR/PR at Table IV-2.

¹⁶² See, e.g., CR/PR at Table IV-8.

¹⁶³ See, e.g., CR/PR at Tables IV-8.

¹⁶⁴ See, e.g., CR/PR at Tables IV-7, IV-8; Petitioner’s Prehearing Br. at 2; Petitioner’s Posthearing Br. at 13-14. In final phase of these investigations, the statute requires the Commission to consider whether changes in volume, price effects, or impact are related to the pendency of these investigations. 19 U.S.C. § 1677(7)(I). If the Commission determines that such changes are related to the pendency of the investigations, it has the discretion under the statute to reduce the weight accorded to such information but is not required to do so. SAA at 854; see also Superalloy Degassed Chromium from Japan, Inv. No. 731-TA-1090 (Final), USITC Pub. 3825 at 15 n.122 (Dec. 2005); Magnesium from China and Russia, Invs. Nos. 731-TA-1071 to 1072 (Final), USITC Pub. 3763 at 20 (Apr. 2005) (noting overselling that occurred after the filing of the petition). Furthermore, in considering whether any improvements in the domestic industry’s condition during the investigations may be an indication of a change related to the filing of the petitions, the SAA states that the Commission may presume that such changes are related to the pendency of the investigations, rather than any other cause, absent evidence to the contrary. SAA at 854.

During this same period, the overall volume shipped and the market share held by the domestic industry fell. As total apparent U.S. consumption decreased by *** percent from 2005 to 2007,¹⁶⁵ the share of apparent U.S. consumption represented by the domestic industry's U.S. shipments, by quantity, declined from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, an overall decrease of *** percentage points.¹⁶⁶ The domestic industry's market share was lower in interim 2008 (*** percent) than in interim 2007 (*** percent).¹⁶⁷ As a ratio to U.S. production, by quantity, cumulated subject imports increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, for a period increase of *** percentage points.¹⁶⁸ Subject imports were equivalent to *** percent of U.S. production in interim 2008 as compared to *** percent in interim 2007.¹⁶⁹ Nonsubject imports were not an important presence in the market, with their market share accounting for *** percent or less throughout the period of investigation (equivalent to *** percent or less of U.S. production).¹⁷⁰

Thus, increasing volumes of subject imports from China and Germany took market share away from a domestic industry that generally refused to lower price for more volume, as we discuss in more detail below in our price effects analysis. Moreover, these increases in subject import volume occurred during a time of declining demand; the decline was particularly apparent for sodium nitrite in liquid form¹⁷¹ due in part to the move offshore of certain U.S. operations of end users Chemtura and PMC Specialties.¹⁷²

Due to differences in product mix and limitations on converting from one form to another, BASF contends that any competition that the domestic industry faced from subject imports was for granular sodium nitrite. The domestic industry's U.S. shipments of granular sodium nitrite as a share of its total

¹⁶⁵ Apparent U.S. consumption declined from *** pounds in 2005 to *** pounds in 2006 and to *** pounds in 2007, but was *** pounds in interim 2008 compared to *** pounds in interim 2007. See, e.g., CR/PR at Table IV-7.

¹⁶⁶ See, e.g., CR/PR at Table IV-8.

¹⁶⁷ See, e.g., CR/PR at Table IV-8.

¹⁶⁸ See, e.g., CR/PR at Table IV-9.

¹⁶⁹ See, e.g., CR/PR at Table IV-9.

¹⁷⁰ See, e.g., CR/PR at Tables IV-8, IV-9. Nonsubject imports' share of the U.S. market increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, and was *** percent in interim 2008 as compared to *** percent in interim 2007. See, e.g., CR/PR at Table IV-8.

¹⁷¹ U.S. shipments of sodium nitrite in liquid form declined from *** pounds in 2005 to *** pounds in 2006 and to *** pounds in 2007, and were *** pounds in interim 2008. See, e.g., CR/PR at Table IV-3.

¹⁷² During the period of investigation, Chemtura and PMC Specialties purchased sodium nitrite *** from ***, see, e.g., CR/PR at Table III-3; CR at IV-3; PR at IV-2, ***, ***. See, e.g., CR at II-11, IV-3; PR at II-6, IV-2. Shipments to *** represented *** percent of Repauno's U.S. shipments in 2005, and *** percent of Repauno's U.S. shipments in 2006. (Derived from CR/PR at Table III-3). Combined U.S. shipments to *** for *** declined from *** pounds in 2005 and *** pounds in 2006 to less than *** pounds in 2007, (derived from CR/PR at Table III-3; CR at IV-3; PR at IV-2), and accounted for a *** portion of the decline in U.S. consumption of sodium nitrite overall and particularly in liquid form during the period of investigation. But, even before the closure of these customers' U.S. operations, ***. See, e.g., Petitioner's Posthearing Br. at 9-10; CR at V-16 n.26; PR at V-8 n.26 (detailing ***); see also CR at V-19; PR at V-9; CR/PR at Tables V-5, V-6 (***). General Chemical points to BASF's concession at the hearing that Repauno lost at least one large-volume customer to BASF "before the period of investigation." Specifically, BASF captured Repauno's account at *** in 2002. See, e.g., Hearing Tr. at 130 (Katz); Petitioner's Posthearing Br. at 9-10. Furthermore, *** purchased *** pounds of liquid sodium nitrite *** that was produced *** by ***, *** located close to the ***. See, e.g., CR at II-10 to II-12, IV-3; PR at II-6, IV-2; CR/PR at Table II-2 & n.1 and Table II-3 & n.1. ***. (derived from CR at IV-3; PR at IV-2).

U.S. commercial shipments during the period of investigation were as follows: *** percent in 2005, *** percent in 2006, *** percent in 2007, and *** percent in interim 2008.¹⁷³ The domestic industry's U.S. shipments of all dry forms of sodium nitrite as a share of its total U.S. commercial shipments during the period of investigation were as follows: *** percent in 2005, *** percent in 2006, *** percent in 2007, and *** percent in interim 2008.¹⁷⁴ Even if, as BASF requests, we were to focus on U.S. shipments of dry sodium nitrite, or even more specifically U.S. shipments of sodium nitrite in granular form, the data show that, at the same time that the domestic industry was confronting lower sales volumes of and declining demand for sodium nitrite in liquid form, it was also losing sales of its dry sodium nitrite, including sodium nitrite in granular form.

The cumulated volume of subject imports from China and Germany increased in terms of dry sodium nitrite (and, more specifically, granular sodium nitrite) at the expense of the domestic industry. U.S. shipments of dry sodium nitrite from China and Germany increased from *** pounds in 2005 to *** pounds in 2006 and *** pounds in 2007, and were *** pounds in interim 2008, whereas the domestic industry's U.S. shipments of dry sodium nitrite declined from *** pounds in 2005 to *** pounds in 2006 and *** pounds in 2007, and were *** pounds in interim 2008.¹⁷⁵ U.S. shipments of granular sodium nitrite from China and Germany increased from *** pounds in 2005 to *** pounds in 2006 and *** pounds in 2007, and were *** pounds in interim 2008, whereas the domestic industry's U.S. shipments of dry sodium nitrite declined from *** pounds in 2005 to *** pounds in 2006 and *** pounds in 2007, and were *** pounds in interim 2008.¹⁷⁶ These data are consistent with the trends shown in the Commission's pricing data.¹⁷⁷ Other record evidence, which is consistent with these data, indicates that the domestic industry lost sales of sodium nitrite in dry form at specific accounts to subject imports from China and Germany.¹⁷⁸

For all of these reasons, and based on the record in these investigations, we find that the cumulated volume of subject imports from China and Germany and the increase in that volume, both in absolute terms and relative to production and consumption in the United States, is significant.

C. Price Effects of the Cumulated 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

¹⁷³ See, e.g., CR/PR at Table IV-3.

¹⁷⁴ See, e.g., CR/PR at Table IV-3.

¹⁷⁵ See, e.g., CR/PR at Table IV-3.

¹⁷⁶ See, e.g., CR/PR at Table IV-3.

¹⁷⁷ See, e.g., CR/PR at Tables V-2, V-3 (showing declining U.S. shipments of sodium nitrite in dry form and increasing volumes of cumulated subject imports of sodium nitrite in dry form from China and Germany).

¹⁷⁸ See, e.g., CR at V-19 to V-24; PR at V-8 to V-10; CR/PR at Tables V-5, V-6 (***, ***, ***, ***, ***, ***, ***, 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.¹⁷⁹

All sodium nitrite sales in the U.S. market are made through short-term contracts or spot sales.¹⁸⁰ Quality and price are relatively important factors in purchasing decisions,¹⁸¹ and purchasers reported that sodium nitrite produced domestically and imported from China and Germany almost “always” meets minimum quality specifications, as noted earlier. Purchasers also reported that they often purchase the lowest-priced sodium nitrite product.¹⁸²

General Chemical reported that its pricing to distributors is normally *** than to end users.¹⁸³ BASF reported that “pricing is generally based on the competitive situation, expected volume, and freight considerations; its pricing is *** but the distributors need to add their margin on top of BASF pricing, resulting in higher prices to their customers.¹⁸⁴ General Chemical argues that BASF ***, and because of its low prices, BASF, unlike the domestic industry, is able to secure quantity commitments from at least the larger distributors.¹⁸⁵ BASF reported ***, and importers of sodium nitrite from China reported making sales using price lists and through transaction-by-transaction negotiations.¹⁸⁶ BASF’s representative testified at the hearing that BASF does negotiate quantity commitments with its customers and contacts customers afterwards to ensure they fulfill those agreements.¹⁸⁷

General Chemical and seven responding U.S. importers of sodium nitrite provided quarterly pricing data for their shipments to unrelated U.S. customers of two sodium nitrite products: (1) technical-grade sodium nitrite with or without an anti-caking agent in granular or prilled form; and (2) food-grade sodium nitrite with or without an anti-caking agent in granular or prilled form.¹⁸⁸ In addition, General

¹⁷⁹ 19 U.S.C. § 1677(7)(C)(ii).

¹⁸⁰ See, e.g., CR at V-6; PR at V-4. General Chemical reports setting prices with its customers ***. See, e.g., CR at V-5; PR at V-4.

¹⁸¹ See, e.g., CR/PR at Tables II-4, II-6.

¹⁸² Of the responding purchasers, four reported that they always buy the lowest-priced product, three reported that they usually do, six reported sometimes, and two reported never. Six purchasers, however, reported that they had purchased sodium nitrite from a certain source when a comparable product was available at a lower price for reasons such as availability, desire to multiple source, distributor relationship, quality, and reliability. See, e.g., CR at II-22; PR at II-10.

¹⁸³ See, e.g., CR at II-2 n.6; PR at II-2 n.6.

¹⁸⁴ See, e.g., CR at II-2 n.6; PR at II-2 n.6; Hearing Tr. at 28-29, 39-40, 74-75, 102.

¹⁸⁵ See, e.g., Petitioner’s Posthearing Br. at 3.

¹⁸⁶ See, e.g., CR at V-5; PR at V-4.

¹⁸⁷ See, e.g., Hearing Tr. at 192-93.

¹⁸⁸ See, e.g., CR at V-8 to V-9; PR at V-5. Specifically, Product 1 is defined as follows: “minimum sodium nitrite component of 98.0 percent. Sodium nitrite may or may not contain an anti-caking agent. Sodium nitrite may or may not be sold in prill form. Do not include flake, liquor, or products that meet the Product 2 definition.” Product 2 is defined as follows: “Minimum sodium nitrite component of 99.0 percent. Certified as complying with the Food Chemical Codex (FCC) and current Good Manufacturing Practice (cGMP). Sodium nitrite may or may not contain an anti-caking agent. Sodium nitrite may or may not be sold in prill form. Do not include flake or liquor.” See, e.g., CR at V-8 to V-9; PR at V-5.

Chemical also provided pricing data on its U.S. shipments of sodium nitrite in liquid form.¹⁸⁹ By quantity, pricing data reported by responding firms accounted for *** percent of the domestic industry's U.S. shipments of sodium nitrite (both granular and liquid forms), *** percent of U.S. shipments of imports from China, and *** percent of U.S. shipments of imports from Germany.¹⁹⁰

Prices for U.S.-produced product 1 (technical-grade sodium nitrite) increased relatively steadily between the first quarter of 2005 and the first quarter of 2006, rising by *** percent during that time. After decreasing by *** percent in the *** quarter of 2006, prices for U.S.-produced product 1 increased by *** percent by the *** quarter of 2007 and then were stable throughout the remainder of the period of investigation. Prices for product 1 imported from China fluctuated over this period with no clear trend; these prices were *** percent higher in the first quarter of 2008 than they were in the first quarter of 2005. With regard to imports of product 1 from Germany, prices for this product increased *** over the period of investigation and were *** percent higher at the end of the period as compared to the beginning of the period.¹⁹¹

As for U.S.-produced product 2 (food-grade sodium nitrite), prices increased irregularly from the first quarter of 2005 to the first quarter of 2007, rising *** percent in that time; these prices were then *** through the remainder of the period of investigation. No questionnaire respondent reported importing product 2 from China during the period of investigation. Prices for product 2 imported from Germany were only reported for the period between ***. During that time, these prices declined irregularly from *** to *** 2007, falling *** percent in that time. Prices for product 2 imported from Germany then rose *** to a level that was *** percent higher than at the beginning of the period of investigation.¹⁹²

For product 1, the domestic industry's prices were *** percent higher at the end of the period compared to the beginning of the period of investigation, and for product 2, the domestic industry's prices were *** percent higher in the first quarter of 2008 than they were in the first quarter of 2005.¹⁹³ Thus, we do not find that price depression has occurred.

The pricing data collected in the final phase of these investigations showed widespread underselling by subject imports from China and Germany at unusually large margins. Subject imports undersold the domestic like product in 25 of 26 comparisons for product 1 (technical-grade sodium nitrite), with the margins of underselling ranging from *** percent to *** percent.¹⁹⁴ As BASF concedes, the domestic industry and subject imports from China and Germany all competed for sales of technical-grade sodium nitrite.¹⁹⁵ For product 2, food-grade sodium nitrite, subject imports undersold the domestic like product in 4 of 8 comparisons, with the margins of underselling ranging from *** to *** percent and the margins of overselling ranging from *** to *** percent.¹⁹⁶ We also examined the pricing data for product 1 by level of trade, but the data continue to show large margins of underselling by the subject imports whether the sales are to distributors or end users.¹⁹⁷ We find this underselling to be significant.

¹⁸⁹ See, e.g., CR at V-9; PR at V-6.

¹⁹⁰ See, e.g., CR at V-9; PR at V-6.

¹⁹¹ See, e.g., CR at V-13 to V-14; PR at V-7.

¹⁹² See, e.g., CR at V-14 to V-15; PR at V-7.

¹⁹³ See, e.g., CR at V-14; PR at V-7.

¹⁹⁴ See, e.g., CR/PR at Table V-4.

¹⁹⁵ See, e.g., BASF's Prehearing Br. at 2-16; BASF's Posthearing Br. at 1-4; CR/PR at Table V-2.

¹⁹⁶ See, e.g., CR/PR at Table V-4.

¹⁹⁷ See, e.g., CR/PR at Appendix D.

The domestic industry's unit cost of goods sold ("COGS") increased from \$*** per pound in 2005 to \$*** per pound in 2006 and \$*** per pound in 2007, and was \$*** per pound in interim 2008 compared to \$*** per pound in interim 2007.¹⁹⁸ As domestic prices increased irregularly over the period of investigation, the domestic industry's COGS as a share of net sales declined over the period of investigation from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, and was *** percent in interim 2008 compared to *** percent in interim 2007.¹⁹⁹ In other words, although the domestic industry faced increasing raw material costs,²⁰⁰ the industry's consolidation reduced its fixed costs,²⁰¹ and unit prices rose faster than unit COGS during the period of investigation.²⁰² On the surface, these trends do not suggest that the domestic industry experienced a significant cost-price squeeze.

We do not find that the evidence shows that subject imports from China and Germany had significant price suppressing or depressing effects on prices of the domestic like product. The record is clear, however, that low-priced subject imports displaced significant volumes of domestically produced sodium nitrite, while in some instances, the domestic industry was forced to reduce its prices of sodium nitrite in dry and liquid forms to compete with low-priced imports of sodium nitrite in dry form imported from the subject countries. Responses to the lost sales and lost revenue allegations and responses to other staff questions confirm these findings.²⁰³ We find, therefore, that there has been significant price underselling by the increasing volumes of subject imports from China and Germany that has adversely impacted the domestic industry by taking away market share during a time of declining demand.

¹⁹⁸ See, e.g., CR/PR at Table VI-1.

¹⁹⁹ See, e.g., CR/PR at Table VI-1.

²⁰⁰ See, e.g., Confer. Tr. at 23-26 (McFarland); Petitioner's Prehearing Br. at 16-20; CR at VI-1, VI-4; PR at VI-1, VI-2; CR/PR at Tables VI-1, VI-2.

²⁰¹ Although the consolidation of the domestic industry and the closure of the Repauno facility in November 2006, were the result, in large part, of low-priced competition from the subject imports, consolidation helped the domestic industry lower its costs in two ways. First, the closure of the Repauno facility meant that the domestic industry no longer had any fixed costs associated with running the Repauno facility. Fixed costs for this industry are relatively high, approximately ***. See, e.g., CR at VI-4; PR at VI-2. Second, the closure of the Repauno facility enabled General Chemical to increase the capacity-utilization level at its own facility and distribute its costs over a larger production output. Because of the efficiencies gained from the closure of the Repauno facility as well as sodium nitrite prices that continued to increase, the domestic industry was able to offset its increasing raw material costs at the end of the period of investigation in the face of subject imports from China and Germany that continued to be sold at low prices and increasing volumes in the U.S. market.

²⁰² See, e.g., CR/PR at Table VI-1 (indicating that net sales prices rose \$*** per pound between 2005 and 2007 whereas COGS rose \$*** per pound and that net sales prices were \$*** per pound higher in interim 2008 than in interim 2007 whereas COGS were \$*** higher in interim 2008 than in interim 2007).

²⁰³ See, e.g., Petitioner's Prehearing Br. at 31-41; CR/PR at Tables V-3 to V-4 (showing prices for domestically produced and imported sodium nitrite in dry form as well as prices of domestically produced sodium nitrite in liquid form, including ***); CR at V-19 to V-24; PR at V-8 to V-10; CR/PR at Tables V-5, V-6 (confirmed lost revenue allegation for sales of ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, and ***).

D. Impact of the Cumulated Subject Imports on the Domestic Industry²⁰⁴

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”²⁰⁵ These factors include output, sales, inventories, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”²⁰⁶

Our analysis of the impact of subject imports on the domestic industry is necessarily influenced by the purchase of Repauno’s assets in July 2006 followed by General Chemical’s decision to close the Repauno facility in November 2006 as well as the domestic industry’s loss of certain purchasers of sodium nitrite that moved their sodium nitrite-consuming operations offshore.

The domestic industry was performing poorly in 2005, and many of the domestic industry’s performance indicators worsened significantly between 2005 and 2006 as the volume of low-priced subject imports from China and Germany increased. After the closure of the Repauno facility at the end of 2006, some of the domestic industry’s performance indicators improved because ***; these improvements were at the expense of other indicators, principally capacity and employment. But, the volume of subject imports from China and Germany continued to increase between 2006 and 2007. In the face of these low-priced imports, the domestic industry continued to experience declining U.S. shipments and net sales; the consolidated and shrunken domestic industry only improved from ***.²⁰⁷

The domestic industry’s production of sodium nitrite declined progressively from *** pounds in 2005 to *** pounds in 2006 and *** pounds in 2007, but was *** pounds in interim 2008 as compared to

²⁰⁴ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final determination, Commerce calculated a weighted-average final dumping margin (in percent ad valorem) for imports of sodium nitrite from China of 190.74 percent for the China-wide entity, and it calculated a weighted-average final dumping margin of 237.00 percent for BASF and 150.82 percent for all other German producers/exporters of sodium nitrite. See, e.g., CR at I-6; PR at I-5; 73 Fed. Reg. at 38986.

In its final determination, Commerce found that the following programs provided countervailable subsidies to producers of sodium nitrite in China: GOC Loan Program, GOC Grant Programs, GOC Provision of Goods or Services for Less Than Adequate Remuneration, GOC and Local Income Tax Programs, GOC Tax Refund Program, GOC Tax Credit Programs, GOC Indirect Tax Programs and Import Tariff Programs, Provincial Loan Program, Provincial Grant Programs, and Provincial and Local Provision of Goods or Services for Less Than Adequate Remuneration. Commerce, therefore, assigned the following countervailable subsidy rates (in percent ad valorem): Shanxi Jiaocheng Hongxing Chemical Co., Ltd (169.01); Tianjin Soda Plant & Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd. (169.01); all others (169.01). See, e.g., 73 Fed. Reg. at 35641; CR at I-5 to I-6; PR at I-4 to I-5.

Petitioner argues that a large portion of the subsidies received by Chinese producers are export subsidies that encourage Chinese producers to export sodium nitrite. They note that the United States was China’s largest export market in 2006 and 2007. See, e.g., Petitioner’s Prehearing Br. at 59-60.

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

²⁰⁶ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885.

²⁰⁷ See, e.g., CR/PR at Table VI-1.

*** pounds in interim 2007.²⁰⁸ The domestic industry's U.S. shipments of sodium nitrite declined from *** pounds in 2005 to *** pounds in 2006 and *** pounds in 2007 and were *** pounds in interim 2008 as compared to *** pounds in interim 2007, after the filing of the petitions in these investigations in early November 2007.²⁰⁹ Subject imports from China and Germany continued to increase after the filing of the petitions, but not at the same rate. The domestic industry had lower market share in interim 2008 than in interim 2007 while subject imports' market share was higher in interim 2008 than in interim 2007, but the domestic industry's U.S. shipments were higher in interim 2008 than in interim 2007, after the filing of the petitions.²¹⁰

U.S. shipments of sodium nitrite in liquid form decreased *** from 2006 to 2007, in conjunction with Repauno's closure in 2006.²¹¹ As also discussed above, demand for sodium nitrite in liquid form declined during the period of investigation, particularly with the closure of certain U.S. production operations of Chemtura and PMC Specialities, but the domestic industry also lost sales of sodium nitrite in liquid and in dry form to subject imports from China and Germany and was forced to reduce its prices to meet low-priced subject imports from China and Germany, as indicated in the confirmed lost sales and lost revenue allegations and other information reported by purchasers during these investigations, discussed above. Because of lost sales volumes, the domestic industry was unable to operate at adequate capacity-utilization levels even after eliminating *** of its capacity and *** percent of its employees between 2006 and 2007.²¹²

The domestic industry's production capacity declined from *** pounds in 2005 to *** pounds in 2006. After the closure of the Repauno facility in November 2006,²¹³ the domestic industry's capacity declined to *** pounds in 2007; capacity was *** in interim 2008 and interim 2007.²¹⁴ The parties agree that sodium nitrite plants need to operate continuously and at high capacity-utilization levels.²¹⁵ The domestic industry operated at low capacity-utilization levels at the beginning of the period of investigation, and its capacity-utilization level declined further between 2005 and 2006. After General Chemical's closure of the Repauno facility in November 2006, the domestic industry's capacity-

²⁰⁸ See, e.g., CR/PR at Table III-1.

²⁰⁹ See, e.g., CR/PR at Table III-2. Exports were a *** share of the domestic industry's total shipments. See, e.g., CR/PR at Table III-2.

²¹⁰ We note that Commerce's preliminary countervailing duty determinations were issued within weeks of the end of period measured by the data in these investigations, and there is anecdotal evidence that the domestic industry continued to benefit from increased inquiries and increased sales in subsequent weeks. See, e.g., Hearing Tr. at 37-39, 105-06; Petitioners' Posthearing Br. at 22-23.

²¹¹ See, e.g., CR at III-12; PR at III-5.

²¹² See, e.g., CR/PR at Tables III-1, III-7.

²¹³ The domestic industry's end-of-period inventories of sodium nitrite, which were generally small throughout the period of investigation, increased by *** percent between 2005 and 2006 but were *** percent lower in 2007 than in 2006 and were lower in interim 2008 than in interim 2007. U.S. end-of-period inventories of sodium nitrite increased from *** pounds in 2005 to *** pounds in 2006 and *** pounds in 2007. See, e.g., CR/PR at Table III-6. U.S. end-of-period inventories were *** pounds in interim 2008 as compared to *** pounds in interim 2007. *Id.* The increase in end-of-period inventories by 2006 was related to General Chemical's closure of Repauno and assumption of its inventory, but end-of-period inventories both absolutely and as a ratio to production and shipments returned to a relatively low level in 2007. See, e.g., CR at III-15; PR at III-6; CR/PR at Table III-6.

²¹⁴ See, e.g., CR/PR at Table III-1.

²¹⁵ See, e.g., Confer. Tr. at 9, 26 (McFarland), 29-32 (Nelson), 99 (Work), 101 (Work), 131-33 (Work, McGrath).

utilization level increased between 2006 and 2007 and was higher in interim 2008 than in interim 2007.²¹⁶ The average number of production and related workers and hours worked declined consistent with the closure and hourly wages irregularly declined, but the domestic industry's productivity improved somewhat by the end of the period of investigation.²¹⁷

Net sales declined by *** percent from 2005 to 2007 when measured by quantity, or by *** percent over the same period when measured by value.²¹⁸ COGs as a share of net sales declined throughout the period of investigation. The consolidation of the domestic industry and the closure of the Repauno facility in November 2006 did help the domestic industry lower its costs by eliminating fixed costs on the Repauno facility and enabling General Chemical to increase the capacity-utilization level at its own facility so as to distribute its costs over a larger production output. In this manner, the domestic industry was able to offset its increasing raw material costs at the end of the period of investigation in the face of subject imports from China and Germany that continued to be sold at low prices and increasing volumes in the U.S. market at the expense of the domestic industry.

The domestic industry's operating income improved from *** in 2005 to *** in 2006 before improving to *** in 2007.²¹⁹ The domestic industry's ratio of operating income to sales improved by *** percentage points from 2005 to 2007. The domestic industry's operating income margin improved from *** percent in 2005 to *** percent in 2006 and *** percent in 2007.²²⁰

²¹⁶ The domestic industry's capacity-utilization level declined from *** percent in 2005 to *** percent in 2006 before increasing to *** percent in 2007, and the domestic industry's capacity-utilization level was *** percent in interim 2008 as compared to *** percent in interim 2007. See, e.g., CR/PR at Table III-1.

²¹⁷ The average number of production and related workers declined from *** in 2005 to *** in 2006 and *** in 2007, and was *** in interim 2008 as compared to *** in interim 2007. See, e.g., CR/PR at Table III-7. Thousands of hours worked decreased from *** in 2005 to *** in 2006 and *** in 2007, and were *** in interim 2008 as compared to *** in interim 2008. See, e.g., CR/PR at Table III-7. Hourly wages decreased from \$*** in 2005 to \$*** in 2006 to \$*** in 2007, and was \$*** in interim 2008 as compared to \$*** in interim 2007. See, e.g., CR/PR at Table III-7. Productivity declined from *** pounds per hour in 2005 to *** pounds per hour in 2006 then increased to *** pounds per hour in 2007, and was *** pounds per hour in interim 2008 as compared to *** pounds per hour in interim 2007. See, e.g., CR/PR at Table III-7.

²¹⁸ See, e.g., CR/PR at Table VI-1. Net sales measured by quantity declined from *** in 2005 to *** in 2006 and to *** in 2007, and were *** in interim 2008 as compared to *** in interim 2007. See, e.g., CR/PR at Table VI-1. Net sales measured by value declined from \$*** in 2005 to \$*** in 2006, and to \$*** in 2007, and were \$*** in interim 2008 as compared to \$*** in interim 2007. See, e.g., CR/PR at Table VI-1.

²¹⁹ See, e.g., CR/PR at Table VI-1. Operating income was *** in interim 2008 as compared to \$*** in interim 2007. CR/PR at Table VI-1.

²²⁰ See, e.g., CR/PR at Table VI-1. The operating income margin was *** percent in interim 2008 as compared to *** percent in interim 2007. Id. A variance analysis indicates that the increase in operating income between 2005 and 2007 is attributable to favorable variances on price (higher unit prices) and volume that combined were greater than the unfavorable variance on net cost/expense (higher unit costs). The higher operating income in interim 2008 as compared to the same period in interim 2007 reflected similar factors. Even though sales volume decreased *** from 2005 to 2007, the volume component of the variance analysis is positive because the component is determined by multiplying the 2005 to 2007 change in volume by the 2005 operating margin. Thus, the 2005 to 2007 change in volume *** multiplied by the 2005 operating margin ***. Put another way, the variance analysis resulted in a positive 2005 to 2007 volume component because the industry was selling ***. See, e.g., CR at VI-6 at n.8; PR at VI-2 n.8; CR/PR at Table VI-1.

Capital expenditures for General Chemical increased from \$*** in 2005 to \$*** in 2006, before declining to \$*** in 2007.²²¹ The value of capital expenditures in 2006 includes \$***, which represented the acquisition of Repauno by General Chemical in that year.²²² Research and development expenses by General Chemical were \$*** in 2005, *** in 2006 and \$*** in 2007.²²³

The volume of subject imports from China and Germany was large and increased throughout the period of investigation, and these imports consistently and significantly undersold the domestic like product. The domestic industry consolidated and gained some efficiencies from the closure of the Repauno facility, but even after the closure of *** and the filing of the petitions in these investigations, the domestic industry continued to face increasing volumes of low-priced subject imports as its costs increased. The domestic industry lost sales to subject imports from China and Germany and as a result experienced declines in U.S. shipments and production levels in an industry where production facilities need to be run continuously at high capacity-utilization levels. Based on the record in the final phase of these investigations, we conclude that subject imports from China and Germany are having a material adverse impact on the condition of the domestic industry.

Given our finding of a significant volume and significant increase in the cumulated volume of subject imports notwithstanding declines in apparent U.S. consumption during the period of investigation, our finding of significant underselling by subject imports from China and Germany, substantial evidence of confirmed lost sales and lost revenue allegations, other record evidence of an anecdotal nature provided by questionnaire respondents concerning the effect of subject imports on the domestic industry, and our finding concerning the declines in the domestic industry's performance during the period of investigation, we find that subject imports are having a material adverse impact on the domestic sodium nitrite industry.

VI. APPLICATION OF BRATSK ALUMINUM SMELTER v. UNITED STATES ANALYSIS

A. Background

Having reached an affirmative determination by application of the statutorily mandated factors, the Federal Circuit's decision in Bratsk Aluminum Smelter v. United States requires that we turn to an additional analysis which can, in some circumstances, negate an affirmative determination.²²⁴ The Federal Circuit directed the Commission to undertake an "additional causation inquiry" whenever certain triggering factors are met: "whenever the antidumping investigation is centered on a commodity product, and price competitive nonsubject imports are a significant factor in the market."²²⁵ The additional inquiry required by Bratsk, which we refer to as the Bratsk replacement/benefit test, is "whether nonsubject imports would have replaced the subject imports without any beneficial effect on domestic producers."²²⁶

As noted in our other determinations, we respectfully disagree with Bratsk that the statute requires any analysis beyond that already included in our discussion of volume, price, and impact above,

²²¹ See, e.g., CR/PR at Table VI-4. Capital expenditures were \$*** in interim 2008 as compared to \$*** in interim 2007. Id.

²²² See, e.g., CR at VI-8; PR at VI-3; CR/PR at Table VI-4.

²²³ See, e.g., CR/PR at Table VI-4. Research and development expenses were \$*** in interim 2008 as compared to \$*** in interim 2007. Id.

²²⁴ 444 F.3d 1369 (Fed. Cir. 2006); see also Caribbean Ispat, Ltd. v. United States, 450 F.3d 1346 (Fed. Cir. 2006).

²²⁵ Bratsk, 444 F.3d at 1375.

²²⁶ Bratsk, 444 F.3d at 1375.

and do not reiterate the Commission's interpretation of the statutory scheme here.²²⁷ ²²⁸ The Commission has a well-established approach to addressing causation.²²⁹ We conduct a Bratsk analysis because the Federal Circuit has directed us to do so, notwithstanding that, in our considered view, this test is not required by, or consistent with, the statute.

The Bratsk analysis "is triggered" whenever the antidumping or countervailing duty investigation "is centered on a commodity product, and price competitive nonsubject imports are a significant factor in the market."²³⁰ If both Bratsk triggering factors are satisfied, we apply the "replacement/benefit" test required under Bratsk.

B. Parties' Arguments

In the preliminary phase of these investigations, petitioner conceded that sodium nitrite was a commodity product, but it argued that a Bratsk analysis was unnecessary because nonsubject imports are insignificant.²³¹ In the final phase of these investigations, General Chemical contends that subject imports from China and Germany are fungible with sodium nitrite produced domestically and in nonsubject countries, but it again argues that nonsubject imports are not a significant presence in the U.S. market. It asserts that most of the limited volume of nonsubject imports are priced higher than subject imports. Although there was a very limited volume of nonsubject imports from Poland in the U.S. market during the period of investigation that was priced lower than subject imports, petitioner contends that the price of these imports increased after the petitions in these investigations were filed. Petitioner asserts that Poland

²²⁷ For a full discussion of our views on the applicability of Bratsk, see our Views in the Remand Determination for Silicon Metal from Russia, Inv. No. 731-TA-991 (Final) (Second Remand), USITC Pub. 3910 (Mar. 2007) and Views of the Commission in Certain Polyester Staple Fiber from China, Inv. No. 731-TA-1104 (Final), USITC Pub. 3922 at 24-26 (Jun. 2007). For a full discussion of Chairman Aranoff's views on the applicability of Bratsk, see the Views of the Commission in Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, Inv. No. 731-TA-961 (Final) (Remand), USITC Pub. 3903 (Jan. 2007). For a full discussion of Vice Chairman Daniel R. Pearson's views on the applicability of Bratsk, see his Separate and Additional Views in Silicon Metal from Russia. For a full discussion of Commissioner Okun's views of the applicability of Bratsk, see her Separate and Dissenting Views in Certain Lined Paper School Supplies from China, India, and Indonesia, Invs. Nos. 701-TA-442 to 443 and 731-TA-1095 to 1097 (Final), USITC Pub. 3884 (Sept. 2006).

²²⁸ Vice Chairman Pearson and Commissioner Okun discern two possible interpretations of the Bratsk opinion, which differ substantially. The so-called "replacement/benefit test" is noted above. The second one is that Bratsk is a further restatement of the causation approach prescribed by Gerald Metals. Under this interpretation, the Bratsk decision stands to remind the Commission of its obligation under Gerald Metals that the Commission may not satisfy the "by reason of" causation requirement by showing that subject imports contributed only "minimally or tangentially to the material harm." In other words, the Bratsk Court's relatively short discussion of the underlying determination may not have established a new and rigid replacement/benefit test. Rather, the Court may have discussed the triggering factors as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports. See Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminum v. United States in Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Prelim.), USITC Pub. 3912 (Apr. 2007). Vice Chairman Pearson and Commissioner Okun have included this analysis in the Commission's affirmative causation analysis.

²²⁹ See Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand), USITC Pub. 3910 at 3-8 (Mar. 2007) (articulating in detail the Commission's long-standing interpretation of the "by reason of" causation standard).

²³⁰ Bratsk, 444 F.3d at 1375.

²³¹ See, e.g., Petitions at 38.

either lacks available capacity or incentive to export, or is not qualified to serve U.S. customers because the volume of nonsubject imports did not increase after the filing of the petitions ***.²³²

Although invited at the staff conference to address the applicability of the Bratsk decision in these investigations,²³³ BASF did not do so. Likewise, BASF made no argument concerning Bratsk in its prehearing or posthearing briefs or during the hearing.

C. Analysis and Conclusion

In the preliminary determinations, the Commission noted that regardless of whether sodium nitrite is a commodity product, the information on the record at the time indicated that the second predicate for conducting a Bratsk analysis was not met because nonsubject imports were not a significant factor in the U.S. market, never having exceeded *** percent of apparent U.S. consumption between 2004 and interim 2007. The Commission invited any party holding a contrary view to so indicate in its comments on the draft questionnaires in any final phase investigations.²³⁴ No party filed any such comments.

In light of our discussion below, we need not reach the issue of whether sodium nitrite qualifies as a commodity product based upon Bratsk's definition of "commodity product" as "meaning that it is generally interchangeable regardless of its source."²³⁵ We thus do not decide whether the first trigger factor (*i.e.*, a commodity product) is satisfied in these investigations.

With respect to the second trigger factor (whether price competitive nonsubject imports are a significant factor in the U.S. market), although they increased over the period of investigation, nonsubject imports as a share of total imports by quantity never held more than *** percent of apparent U.S. consumption throughout the period of investigation, and nonsubject imports never accounted for as much as *** percent of total imports during this period.²³⁶ Moreover, responding importers of nonsubject merchandise reported that their imports were ***.²³⁷ Thus, we find based on this record that the second trigger (significant price-competitive nonsubject imports) is not satisfied in these investigations.

Because we find that the second Bratsk triggering factor is not met, we are not required to consider whether the first triggering factor (commodity product) is met or to address "whether nonsubject imports would have replaced subject imports without any beneficial effect on domestic producers."²³⁸ Our affirmative material injury determination, therefore, is consistent with the Court's holding in Bratsk.

²³² See, e.g., Petitioner's Prehearing Br. at 54-59.

²³³ See, e.g., Confer. Tr. at 67, 116.

²³⁴ See, e.g., USITC Pub. 3979 at n.168.

²³⁵ We note that it is improper to assume that simply because goods are generally interchangeable for purposes of the "reasonable overlap of competition" analysis for cumulation, or are interchangeable for purposes of defining the domestic like product, that they are necessarily "commodities" for purposes of assessing causation, which is the function of the Bratsk "test." See Silicon Metal from Russia, USITC Pub. 3910 at 10-11 (footnotes omitted), citing BIC Corp. v. United States, 964 F. Supp. 391, 397, 399 (Ct. Int'l Trade 1997) ({"L}ike product, cumulation and causation are functionally different inquiries because they serve different statutory purposes As a result, each inquiry requires a different level of fungibility. Hence the record may contain substantial evidence that two products are fungible enough to support a finding in one context (e.g., one like product), but not in another (e.g., cumulation or causation.")).

²³⁶ See, e.g., CR/PR at Tables IV-2, IV-8.

²³⁷ See, e.g., CR/PR at Table IV-3.

²³⁸ Bratsk, 444 F.3d 1375.

CONCLUSION

For the reasons stated above, we find that the U.S. industry producing sodium nitrite is materially injured by reason of subject imports of sodium nitrite from China that are subsidized and sold at less than fair value as well as subject imports of sodium nitrite from Germany that are sold in the United States at less than fair value.

PART I: INTRODUCTION

BACKGROUND

These investigations result from petitions filed on November 8, 2007, with the U.S. International Trade Commission (“Commission” or “USITC”) and the U.S. Department of Commerce (“Commerce”) by General Chemical LLC (“General Chemical”) of Parsippany, NJ, on behalf of the industry that produces sodium nitrite, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of sodium nitrite¹ from the People’s Republic of China (“China”) and less-than-fair-value (“LTFV”) imports of sodium nitrite from China and the Federal Republic of Germany (“Germany”). Information relating to the background of the investigations is provided below.²

Effective date	Action
November 8, 2007	Petitions filed with Commerce and the Commission; institution of the Commission’s investigations (72 FR 64241, November 15, 2007)
December 5, 2007	Commerce’s notice of initiation (72 FR 68563 and 68568)
December 26, 2007	Commission’s preliminary affirmative determinations (73 FR 2278, January 14, 2008)
April 11, 2008	Commerce’s preliminary affirmative countervailing duty determination (73 FR 19816)
April 23, 2008	Commerce’s preliminary affirmative antidumping duty determinations for China (73 FR 21906) and Germany (73 FR 21909); scheduling of final phase of Commission investigations (73 FR 24610, May 5, 2008)
April 28, 2008	Commerce’s alignment of final countervailing duty determination with final antidumping duty determination (73 FR 22920)
July 2, 2008	Commission’s hearing ¹
July 8, 2008	Commerce’s final determinations (73 FR 38981, 38984, and 38986)
August 11, 2008	Commission’s vote
August 20, 2008	Commission determinations transmitted to Commerce
¹ A list of witnesses appearing at the hearing is presented in app. B.	

¹ The definition of the sodium nitrite subject to these investigations is presented later in Part I of this report in the section entitled “The Subject Merchandise.”

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

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

. . .

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

. . .

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to

. . .

(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Organization of the Report

Part I of this report presents information on the subject merchandise, subsidies and dumping margins, and domestic like product. *Part II* presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume and pricing of imports of the subject merchandise, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury and the judicial requirements and information obtained for use in the Commission's consideration of *Bratsk* issues.

U.S. MARKET SUMMARY

Sodium nitrite is an industrial chemical that is used in a range of applications and chemical reactions including: alkaline detinning of scrap tin plate, chemical manufacturing, cooling systems, corrosion inhibition, heat transfer salts, meat curing, medicine, organic synthesis/azo dyes and inks, and wastewater odor control. Currently, only one firm, General Chemical, produces sodium nitrite in the United States.³ The leading producers of sodium nitrite in China are not known but the leading producer of sodium nitrite in Germany is BASF Aktiengesellschaft ("BASF AG"). The leading U.S. importers of sodium nitrite from China are *** and *** while the leading U.S. importer of sodium nitrite from Germany is ***. The leading importer of sodium nitrite from a nonsubject country (Poland) is ***. Current leading U.S. purchasers of sodium nitrite include distributors *** and end-users ***. Previous leading U.S. purchasers included ***.

Apparent U.S. consumption of sodium nitrite totaled *** pounds (or more than \$***) in 2007. General Chemical's reported U.S. shipments of sodium nitrite totaled *** pounds with a value of nearly (\$***) in 2007 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from China totaled 1.6 million pounds (\$476,000) in 2007 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from Germany totaled 11.7 million pounds (nearly \$2.7 million) in 2007 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from nonsubject sources (primarily Poland) totaled 629,000 pounds (\$113,000) in 2007 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C, table C-1. U.S. industry data are based on the questionnaire response of General Chemical, which incorporated information for Repauno's operations. General Chemical accounted for all U.S. production of sodium nitrite during 2007 and 2008. U.S. imports are based on official statistics from Commerce and have been adjusted to exclude incorrectly classified imports from Canada, Chile, Greece, Japan, the Netherlands, and Norway. Data regarding the German industry are based on the questionnaire response of BASF AG, the sole German exporter of subject sodium nitrite to the United States. Data regarding the industry in China are based on the petition, publicly available information, and importer questionnaire responses. Data regarding sodium nitrite from other countries are based on public sources, where available.

³ Repauno Products LLC ("Repauno") was purchased by General Chemical in July 2006, and its facility was permanently closed in November 2006. Petition, p. 41.

PREVIOUS AND RELATED INVESTIGATIONS

The Commission has not previously conducted an investigation that included sodium nitrite. However, the Commission has conducted investigations on other sodium compounds, including sodium thiosulfate from China, Germany, and the United Kingdom,⁴ anhydrous sodium metasilicate from France,⁵ and sodium azide from Japan.⁶ In February 2008 the Commission reached an affirmative determination in its final phase investigation of sodium hexametaphosphate from China, Inv. No. 731-TA-1110.⁷ The Commission is currently conducting a final phase investigation on sodium metal from France, Inv. No. 731-TA-1135.⁸

NATURE AND EXTENT OF SUBSIDIES AND SALES AT LTFV

Subsidies

On July 8, 2008, Commerce published its final determination of countervailable subsidies for producers and exporters of sodium nitrite in China.⁹ The following programs were determined by Commerce to be countervailable: GOC Loan Program, GOC Grant Programs, GOC Provision of Goods or Services for Less Than Adequate Remuneration, GOC and Local Income Tax Programs, GOC Tax Refund Program, GOC Tax Credit Programs, GOC Indirect Tax Programs and Import Tariff Programs, Provincial Loan Program, Provincial Grant Programs, and Provincial and Local Provision of Goods or Services for Less Than Adequate Remuneration.¹⁰ Table I-1 presents Commerce's findings of subsidization of sodium nitrite in China.

⁴ Because no domestic interested parties participated in Commerce's second review of the orders on sodium thiosulfate, the orders were terminated by Commerce in May 2005. *Sodium Thiosulfate from the People's Republic of China, Germany, and the United Kingdom: Final Results of Sunset Reviews and Revocation of the Orders*, 70 FR 24393, May 9, 2005.

⁵ Because no domestic interested parties participated in Commerce's second review of the order on anhydrous sodium metasilicate, the order was terminated by Commerce in October 2004. *Anhydrous Sodium Metasilicate from France: Revocation of Antidumping Duty Order*, 69 FR 61789, October 21, 2004.

⁶ The suspension agreement on sodium azide from Japan was terminated by Commerce because no domestic interested party responded to the notice initiating the first five-year review of the suspended investigation. *Sodium Azide from Japan*, 67 FR 2002, January 11, 2002.

⁷ *Sodium Hexametaphosphate from China, Determination*, 73 FR 14485, March 18, 2008.

⁸ *Sodium Metal from France, Scheduling of the Final Phase of an Antidumping Investigation*, 73 FR 33115, June 11, 2008.

⁹ *Sodium Nitrite from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 38981, July 8, 2008.

¹⁰ *Sodium Nitrite from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 73 FR 19816, April 11, 2008. "GOC" is the abbreviated form of "Government of China."

Table I-1
Sodium nitrite: Commerce’s final subsidy determination

Entity	Final countervailable subsidy margins (percent)
Shanxi Jiaocheng Hongxing Chemical Co., Ltd.	169.01
Tianjin Soda Plant & Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd.	169.01
All others	169.01
Source: 73 FR 38984, July 8, 2008.	

Sales at LTFV

On July 8, 2008, Commerce published its final determination of sales at LTFV with respect to imports from China. Commerce’s final weighted-average dumping margin for the China-wide entity is 190.74 percent.¹¹

On July 8, 2008, Commerce published its final determination of sales at LTFV with respect to imports from Germany. Commerce’s final weighted-average dumping margin for BASF AG is 237.00 percent while the antidumping duty margin for all other producers/exporters of sodium nitrite is 150.82 percent.¹²

THE SUBJECT MERCHANDISE

Commerce’s Scope

Commerce has defined the imported product subject to these investigations as:

Sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by these investigations may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. Sodium nitrite’s chemical composition is NaNO₂, and it is generally classified under subheading 2834.10.10 of the Harmonized Tariff Schedule of the United States (“HTS”). The American Chemical Society Chemical Abstract Service (“CAS”) has assigned the name “sodium nitrite” to sodium nitrite. The CAS registry number is 7632-00-0.¹³

¹¹ Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People’s Republic of China, 73 FR 38984, July 8, 2008.

¹² Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany, 73 FR 38986, July 8, 2008.

¹³ Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People’s Republic of China, 73 FR 38984, July 2, 2008.

Tariff Treatment

The product subject to these investigations is currently classified in subheading 2834.10.10 of the HTS at a general rate of duty of 5.5 percent *ad valorem*.¹⁴ The HTS tariff treatment of sodium nitrite appears in table I-2.

Table I-2
Sodium nitrite: Tariff treatment, 2008

HTS provision	Article description	General	Special ¹	Column 2
		Rates (percent <i>ad valorem</i>)		
2834 2834.10. .10	Nitrites; nitrates: Nitrites: Of sodium	5.5%	Free (A, AU, BH, CA, CL, E, IL, J, JO, MA, MX, P, SG)	54%
¹ General note 3(c)(i) to the HTS lists the programs related to the enumerated special duty rate symbols. Source: HTS (2008).				

THE DOMESTIC LIKE PRODUCT

The Commission’s determination regarding the appropriate domestic product that is “like” the subject imported product is based on a number of factors, including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price. The petition contends that the domestic like product is all sodium nitrite corresponding to the scope,¹⁵ and no party has argued for an alternative definition.¹⁶ In the preliminary phase of these investigations, the Commission defined one domestic like product coextensive with the scope and consisting of all sodium nitrite regardless of form or grade.¹⁷ Upon review of the draft questionnaires for the final phase of these investigations, no party suggested changes to the domestic like product definition.¹⁸ During the hearing held in connection with these investigations both the petitioner and the respondents stated that they are not arguing for a separate like product.¹⁹

¹⁴ For purposes of the scope of these investigations, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

¹⁵ Petition, pp. 4-5.

¹⁶ Conference transcript, p. 114 (McGrath).

¹⁷ *Sodium Nitrite from China and Germany, Inv. Nos. 701-TA-453 and 731-TA-1136-1137 (Preliminary)*, USITC Publication 3979, January 2008, p. 9.

¹⁸ Comments on the draft questionnaires filed by BASF AG and BASF Corp. jointly, and by General Chemical, April 18, 2008.

¹⁹ Hearing transcript, p. 39 (Cannon) and p. 155 (McGrath). However, the respondents do argue that different forms of sodium nitrite are not fully interchangeable and that there is attenuated competition between domestic and imported sodium nitrite. Hearing transcript, p. 190 (McGrath).

Physical Characteristics and Uses²⁰

Sodium nitrite is an industrial chemical with a chemical formula of NaNO_2 . It is a pale straw-colored material that is very soluble in water, where it forms a clear to slightly yellowish solution. Pure sodium nitrite melts at about 284°C and it begins to decompose at about 320°C into sodium oxide, nitrogen oxides, and nitrogen. Sodium nitrite is hygroscopic, but relatively insoluble in most organic solvents. Sodium nitrite is an active oxidizing agent and can also function as a reducing agent toward such powerful oxidizing agents as dichromate, permanganate, chlorate, and chlorine. In the presence of acids, sodium nitrite forms nitrous acid.²¹ In an acid medium, sodium nitrite reacts with organic alcohols and amines to form organic nitrites such as amyl nitrite.

Sodium nitrite is produced in both dry (flake, granular, or prill) and liquid (solution) forms. Dry sodium nitrite is sold in bags, drums, and super sacks, and the liquid form is sold in tank trucks and rail cars. Granular sodium nitrite is a powder that may or may not be treated with an anti-caking agent.²² If not treated, the sodium nitrite will harden over time into a solid brick-like mass that must be broken up. The flake form is sodium nitrite that has been fed through a compactor and then broken into flakes by a screen. Because of this additional processing it may be slightly more expensive than the granular product.²³ The prill form of sodium nitrite sold in the U.S. market is produced in China. It is a granular product that is similar in form to tapioca, i.e., small spherical shaped pieces that do not clump together or harden. The liquid form is sodium nitrite powder dissolved in water, typically about a 40 percent solution.²⁴

Many industrial applications of sodium nitrite are based on its oxidizing properties and its decomposition in an acid solution to nitrous acid. Some of the principal applications of sodium nitrite are in the production of chemicals and dyes including azo,²⁵ food, and textile dyes. Sodium nitrite is used with metals for coating, detinning, plating, and corrosion inhibition. It is also used by the rubber industry in synthetic rubber and blowing compounds. In addition, sodium nitrite is used in heat transfer salts. It is used in wastewater treatment to control odor and to inhibit the growth of bacteria. Finally, sodium nitrite

²⁰ The content of this section is drawn largely from the Petition, pp. 4-5, and General Chemical's company website found at <http://www.genchemcorp.com/products/sodiumnitrite.shtml>, retrieved on July 14, 2008.

²¹ Since nitrous acid is not commercially available due to its instability, sodium nitrite serves as the principal source of nitrous acid in a number of organic syntheses. Petition pp. 4-5 and General Chemical's company website, found at <http://www.genchemcorp.com/products/sodiumnitrite.shtml>, retrieved on July 14, 2008.

²² Food grade sodium nitrite is granular sodium nitrite that has been treated with an anti-caking agent (General Chemical uses Petro AG), tested for purity, and certified as meeting Food and Drug Administration standards. Conference transcript, p. 10 (McFarland), and pp. 28-29 (Nelson).

²³ General Chemical produces its flake form primarily for one customer, ***. Hearing transcript, p. 88 (McFarland) and petitioner's posthearing brief, responses to Commissioner questions, p. 53. General Chemical asserts that this customer's competitors use sodium nitrite in granular form and that this customer could modify its production process to use the granular form if prices are low enough. Hearing transcript, p. 36 (Nelson).

²⁴ Conference transcript, pp. 22-23 (McFarland), p. 23 (Jaffe). According to General Chemical, customers for liquid sodium nitrite tend to be larger customers that like the convenience and price of buying in bulk. Hearing transcript, pp. 18-19 (McFarland).

²⁵ Azo dyes are any of a large class of synthetic organic dyes that contain nitrogen as the azo group- $\text{N}=\text{N}$ - as part of their molecular structures; more than half the commercial dyes belong to this class. Depending on other chemical features, these dyes fall into several categories defined by the fibers for which they have affinity or by the methods by which they are applied. Encyclopedia Britannica online, found at <http://www.brittanica.com/eb/article-9011550/azo-dye>, retrieved on December 6, 2007.

is used in meat curing as a food preservative.²⁶ In the medical field, sodium nitrite is an antidote to cyanide poisoning and as such is used in cyanide antidote kits. A new medical application for sodium nitrite is being explored by the National Institutes of Health which is testing the use of sodium nitrite as a treatment for stroke victims, to increase blood flow to the heart and other muscles.²⁷ Table I-3 details the major end uses of sodium nitrite, the forms used by each end use, and the application process.

Table I-3
Sodium nitrite: End-use applications, forms used, and application process

* * * * *

Manufacturing Facilities and Production Employees²⁸

The industrial manufacturing process to produce sodium nitrite relies on the transformation of liquid ammonia and caustic soda or soda ash. Liquid ammonia is oxidized with air at a high temperature in a catalytic bed using a *** to form nitrogen oxides (NO and NO₂). The nitric oxides enter an absorption tower where they react with either soda ash (sodium carbonate) or caustic soda (sodium hydroxide) solutions to form a sodium nitrite solution.²⁹ If caustic soda is used, the liquid formed at this stage is sufficiently concentrated and pure to be sold directly to some customers for certain uses. If, however, soda ash is used, the liquid is highly diluted and must go through several steps to remove water, and thereby increase the sodium nitrite concentration.

Regardless of whether soda ash or caustic soda is used as a raw material, all sodium nitrite destined for sale as a dry product must undergo additional processing. The sodium nitrite liquid is pumped through an evaporator-crystallizer where sodium nitrite crystals are formed.³⁰ The crystals are centrifuged to separate the sodium nitrite crystals. The sodium nitrite crystals are then either dried to reduce the moisture from three percent to less than 0.2 percent³¹ (which yields a high purity product), dried and blended with an anti-caking agent³² (which increases the flowability of the powder), or further dried, compacted into a thin cake, and flaked. Food grade sodium nitrite undergoes a testing process which permits the manufacturer to certify that the sodium nitrite sold as food grade meets specific quality

²⁶ Petition, Exh. I-2.

²⁷ *Sodium Nitrite Could Be Disease Cure*, NewsMax.Com Wires, September 6, 2005, found at <http://archive.newsmag.com/archives/articles/2005/9/6/90936.shtml>, retrieved on July 16, 2008. *Hot Dog Preservative Could be New Medication*, Associated Press, September 5, 2005, found at <http://www.msnbc.com/id/9217682>, retrieved on July 16, 2008. Staff field trip report, General Chemical, November 19, 2007.

²⁸ The public content of this section is drawn from the Petition, pp. 32-33, and the conference transcript, pp. 9-11, 16-18 (McFarland). The confidential content of this section is drawn from the staff field trip report, General Chemical, November 19, 2007.

²⁹ General Chemical operates five absorbing towers which are three stories high. Hearing transcript, p. 17 (McFarland).

³⁰ General Chemical operates a *** while Repauno had a ***. Staff field trip report, General Chemical, November 19, 2007.

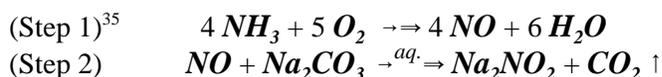
³¹ Hearing transcript, p. 19 (McFarland).

³² General Chemical uses Petro AG. Conference transcript, p. 10 (McFarland). Petro AG is an Akzo Nobel naphthalene sulfonate surfactant, "Azko Nobel Surfactants," found at <http://www.chembuyersguide.com/partners/akzosurface.html>, retrieved on December 3, 2007.

standards, especially with respect to the presence of heavy metals.³³ If the sodium nitrite was produced using soda ash, it would need to be dissolved to form a liquid product, if that is the saleable form preferred by the customer. This is accomplished by dissolving the centrifuged crystals in water and applying heat. Each shipment is diluted to the customer's specifications, although a liquid with a 40 percent sodium nitrite concentration is a common standard.

Figure I-1 is a chemical process flow diagram of General Chemical's sodium nitrite production operation. The process is asserted to be similar when caustic soda (sodium hydroxide) is used as a reactant instead of soda ash (sodium carbonate), the primary difference being that the sodium nitrite solution emerging from the "liquor tub" is much more concentrated and may be sold directly as liquid sodium nitrite (solution) in the 40-percent concentration range.

The first two steps (i.e., the catalytic oxidation (or "burning") of ammonia to form nitric oxide gas), immediately followed by its absorption by sodium carbonate solution to form the sodium nitrite product in the sodium nitrite process flow diagram are coupled continuous physico-chemical processes.³⁴ The remaining steps, shown as evaporators, crystallizers, and centrifuge on the flow diagram, are purely physical processes that typically operate in semi-continuous batch mode. The overall balanced chemical equations for the coupled first two continuous process steps are:

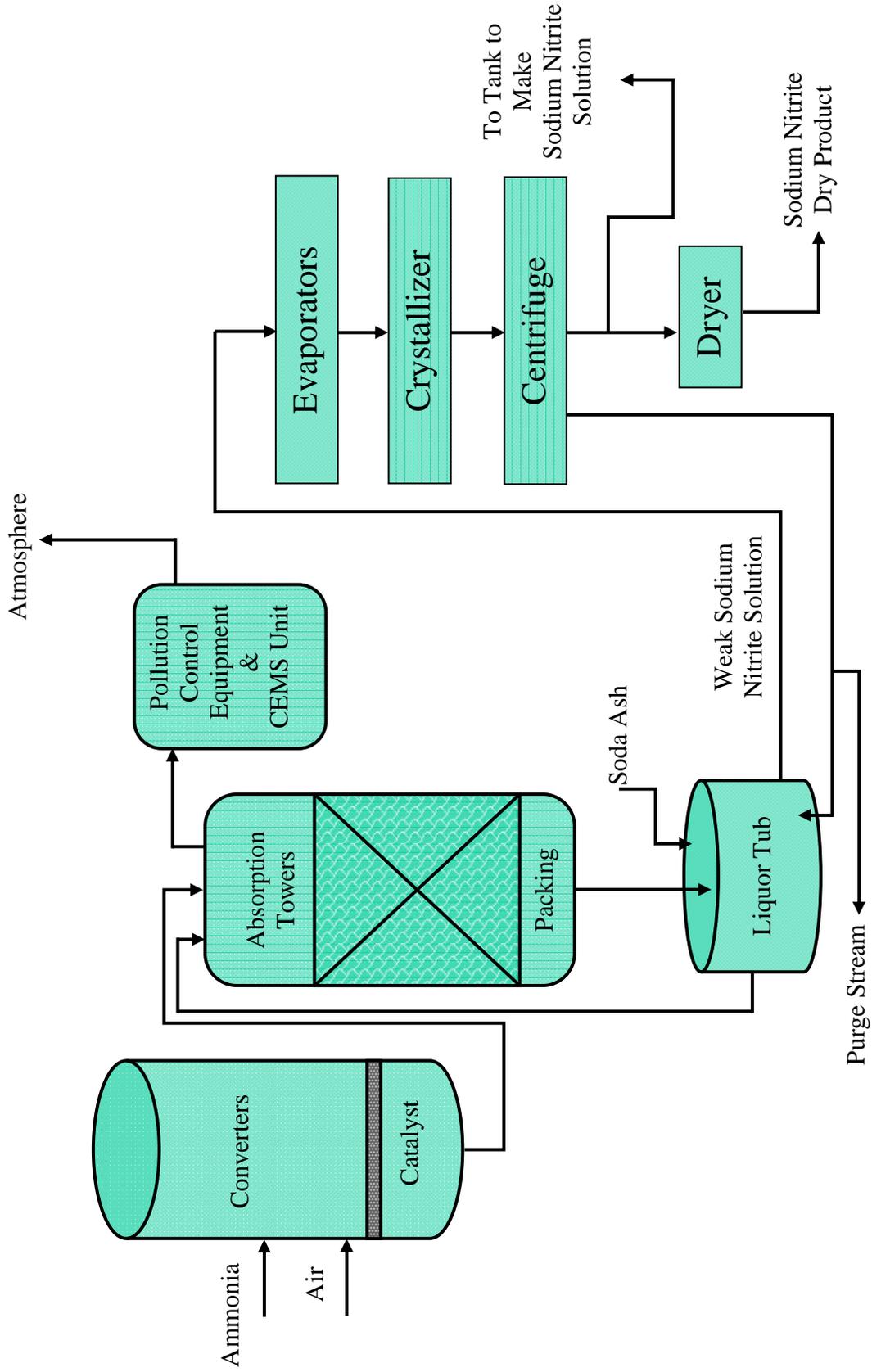


³³ Manufacturers of food-grade products must comply with the Food Chemical Codex (FCC) and current Good Manufacturing Practice (cGMP), and register with the Food and Drug Administration (FDA). Petition, p. 12.

³⁴ In a continuous process reactants, intermediate, and final products flow through the reactors uniformly and continuously rather than through open or closed reaction tanks. All process equipment in the process train must be sized to design throughput, as there is little or no intermediate storage. As a general matter, continuous processes can be less flexible as to operating rates, although some flexibility can be achieved through build-up and draw down of inventory. Also, continuous processes can be difficult to start and stop, as they have to operate in balance and equilibrium, and there may be "tails" of off-specification material or polluting streams requiring time-consuming and potentially costly disposal at each campaign start-up and shut-down. Continuous processes tend to be more efficient when being used for standardized, high-volume production, as opposed to batch operations, which tend to have greater operating flexibility. See, e.g. Staff field trip report, General Chemical, November 19, 2007. See also conference transcript, p. 26 (McFarland), and pp. 131-133 (Work) and (McGrath), and hearing transcript, p. 71 (McFarland).

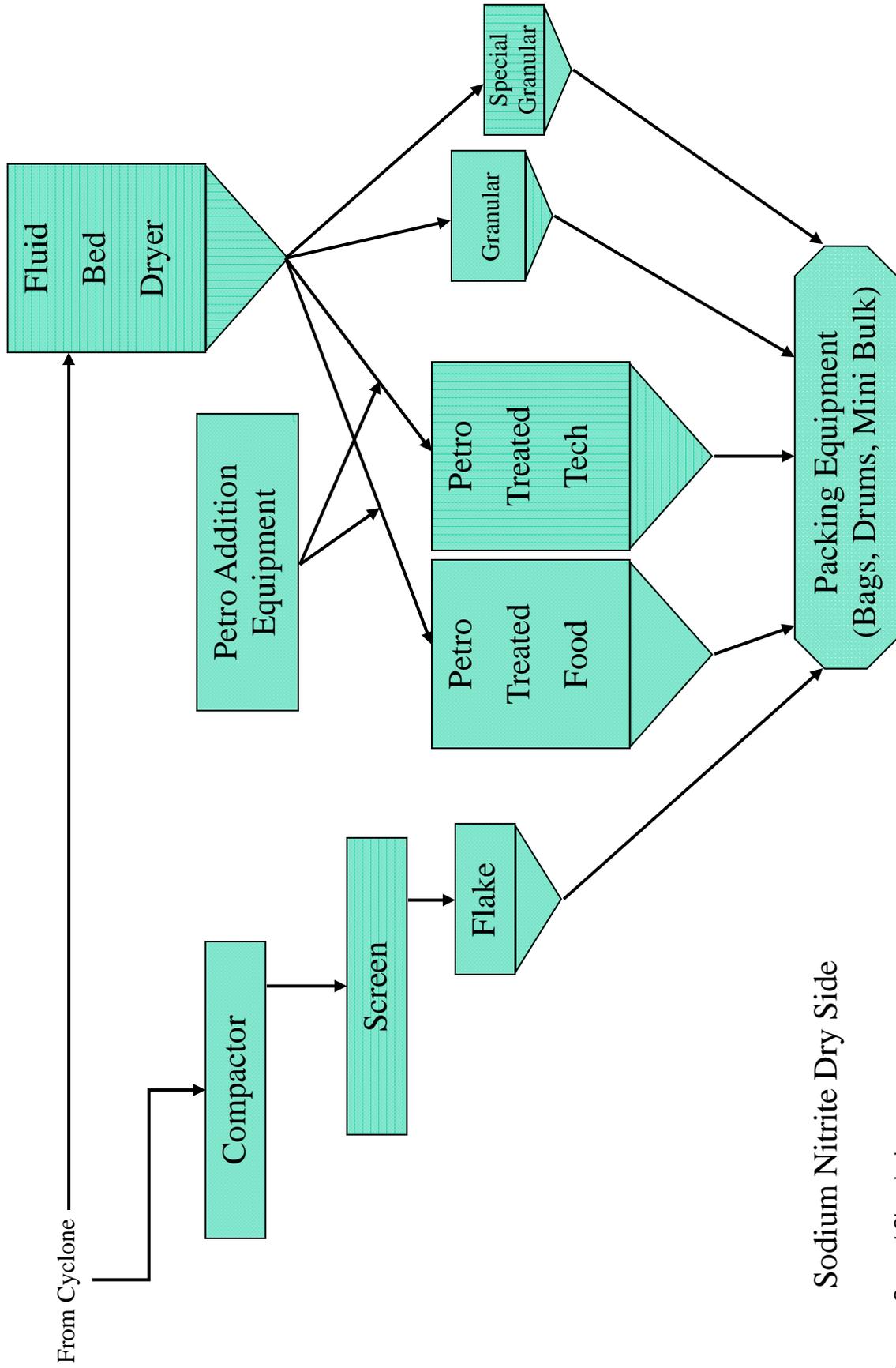
³⁵ Strictly speaking, the first step oxidation reaction at 1,000° F produces mixed higher oxides of nitrogen, but nitric oxide predominates. In the second step, the absorption reaction conditions are controlled so that the various mixed oxides of nitrogen self-react, so the resultant product is fairly high purity sodium nitrite. Equations from Kirk-Othmer, *Encyclopedia of Chemical Technology, Third Edition, Vol. 22*, p. 8 of 22, excerpt from the Internet version, John Wiley & Sons.

Figure I-1
Sodium nitrite: General Chemical's production process flow chart



Source: General Chemical.

Figure I-1 *Continued*
 Sodium nitrite: General Chemical's production process flow chart



Sodium Nitrite Dry Side

Source: General Chemical.

Whatever the configuration of the ammonia burner nozzle or combustion catalyst bed may be, the oxidation cannot proceed at much over the rated capacity or there will be excess oxides of nitrogen exhausted through the pollution control equipment in excess of the ***. On a reduced operating rate short of full capacity, at some reduction of ammonia flow, the flame will go out because of insufficient ammonia (fuel) flow, and the pressure generated by the 1,000° F flame temperature will collapse and stop moving the nitric oxide gas on to the absorption step. Low nitric oxide flow can cause a build-up of undesirable impurities at the second step if the sodium carbonate solution has to be re-circulated through the absorption tower too many times before becoming saturated with sodium nitrite product, ready to proceed to the subsequent product recovery and purification steps.

The industrial production of sodium nitrite is believed to be similar in the United States, China, and Germany. BASF AG is vertically integrated in the production of the raw materials for sodium nitrite, ammonia, and caustic soda.³⁶ BASF AG produces sodium nitrite using caustic soda and therefore can sell the liquid solution that is produced in the absorption tower, unlike General Chemical's Solvay, NY, plant, whose solution is not sufficiently concentrated at this stage. The former Repauno plant used caustic soda as a raw material and had a production flow similar to that of BASF AG.³⁷

Production in China differs slightly because not all Chinese producers have been able to add an anti-caking agent successfully.³⁸ Instead, they use a different method to achieve a product that flows.³⁹ At the end of the production process in China, the sodium nitrite is re-dissolved in water and put through a prill tower to form small beads or pellets.⁴⁰ This additional step yields small spherical pellets of sodium nitrite.⁴¹

³⁶ Conference transcript, p. 96 (Work).

³⁷ Conference transcript, pp. 131-132 (McGrath).

³⁸ One importer of sodium nitrite from China stated that the "Chinese product cakes, which limits product acceptance." *** importer questionnaire response, section III-17. The same importer explained that his company imported sodium nitrite from China in *** but because that order contained an anti-caking agent that caused clouding it has not been sold in the U.S. market. Staff telephone interview with ***.

³⁹ Conference transcript, p. 124 (Work).

⁴⁰ Petition, p. 24, conference transcript, p. 22 (Jaffe).

⁴¹ Petition, pp. 24 and 33.

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

U.S. MARKET CHARACTERISTICS

Sodium nitrite is available in two principal grades, technical grade and food grade. Food grade sodium nitrite is subject to specific quality standards, especially with respect to the presence of heavy metals. Manufacturers must comply with the Food Chemical Codex (FCC) and current Good Manufacturing Practice (cGMP) and register with the Food and Drug Administration (FDA). Sodium nitrite that meets only technical-grade specifications should not be used in food products; however, sodium nitrite that meets food-grade specifications can be substituted for sodium nitrite that meets technical-grade specifications.¹

Sodium nitrite is also available in different forms, specifically, dry and liquid. Dry sodium nitrite is available in multiple varieties, such as granular, flake, and prilled, while the liquid is available in multiple purity levels.² The dry form is sold in bags and the liquid is sold in tanks and rail cars.³

When firms were asked to list market areas in the United States where they sell sodium nitrite, General Chemical and BASF reported selling their products ***. None of the responding importers of sodium nitrite from China reported selling the product nationwide, rather they reported selling in one or two specific market areas. Market areas reported by these importers include the Northeast, West Coast, MidAtlantic, MidWest, Southeast, and Southwest.

U.S. producer General Chemical reported that *** of its sales are made from inventory, while the remainder (**% percent) of its sales were produced to order.⁴ Lead times for delivery of sodium nitrite for General Chemical were *** days for sales from inventory and ranged from *** to *** days for sales that were produced to order. BASF reported that approximately *** percent of its sales are from inventory and *** percent are made to order.⁵ Lead times reported by BASF were *** days for sales from inventory and *** for sales of product produced to order. One half of responding importers of sodium nitrite from China (3 of 6 firms) reported that *** percent of their sales were from inventory; two other importers reported that *** percent of their sales were produced to order. The remaining importer of Chinese material reported that its sales were split with *** percent sold from inventory and *** percent sold produced to order. Lead times for delivery of imports of sodium nitrite from China were between *** for product sold from inventory and *** weeks for product produced to order.

CHANNELS OF DISTRIBUTION

Both domestic and imported sodium nitrite are sold to distributors and end users. According to General Chemical, there are primarily *** large national distributors which account for the majority of the volume of the distributor business in the U.S. sodium nitrite market; there are also a number of large end users as well. While General Chemical reported that there are a number of small distributors and end

¹ Petition, p. 31.

² General Chemical produces and sells some high purity granular sodium nitrite product, but for customers that want a free flowing product, General Chemical adds an anti-caking agent and markets the resulting product as granular free-flowing sodium nitrite. Conference transcript, p. 18 (McFarland).

³ Petition, p. 4.

⁴ General Chemical reported that it considered sales that *** to be products that were produced to order; in addition, General Chemical also reported ***. General Chemical's producer questionnaire response, section IV-9.

⁵ BASF noted that the ***. BASF importer questionnaire response, section III-9.

users, it stated that the top 8 to 16 firms likely make up about 80 percent of General Chemical’s business.⁶ Based on questionnaire responses, an increasing share of U.S. producers’ shipments went to distributors over the period for which data were collected; these shipments rose from *** percent in 2005 to *** percent in 2007 (table II-1). On the other hand, U.S. producers’ shipments to end users declined from *** percent in 2005 to *** percent in 2007.⁷ Imports of sodium nitrite from Germany also increasingly went to distributors over the period, with the percentage rising from *** percent in 2005 to *** percent in 2007; shipments of German sodium nitrite to end users, thus, declined from *** percent in 2005 to *** percent in 2007. During 2005-06, *** of the shipments of imports of sodium nitrite from China were made to distributors; however, in 2007, the percentage of shipments made to distributors declined to *** percent. However, in January-March 2008, *** of the shipments of Chinese sodium nitrite were to distributors (*** percent).⁸

Table II-1
Sodium nitrite: U.S. producers’ and U.S. importers’ U.S. shipments by channels of distribution, 2005-07, January-March 2007 and January-March 2008

* * * * *

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

The supply response of U.S. producers of sodium nitrite to changes in price depends on such factors as the level of excess capacity, the availability of alternate markets for U.S.-produced sodium nitrite, inventory levels, and the ability to shift to the manufacture of other products. The available information indicates that the U.S. supply is likely to be elastic, due primarily to some available unused capacity and somewhat limited inventories combined with the existence of export markets.

Industry capacity

U.S. producers’ capacity to produce sodium nitrite declined by *** percent from *** in 2005 to *** in 2006. Data for 2007 show that U.S. producers’ capacity to produce sodium nitrite declined *** to

⁶ General Chemical stated that pricing to distributors is normally *** than to end users and this relationship has been *** since 2004. Petitioner’s postconference brief, Ex. 1, p. 2. With regard to pricing for distributors and end users, BASF reported that “pricing is generally based on the competitive situation, expected volume, and freight considerations. BASF pricing is *** but the distributors need to add their margin on top of BASF pricing, resulting higher price to their customers.” BASF postconference brief, Attachment 1, p. 9. Data collected during the final phase of these investigations indicate that this was true for General Chemical’s and BASF’s sales of granular sodium nitrite during January - March 2005 through January - March 2008 (see app. D).

⁷ This trend was the same with the interim data, with shipments to distributors increasing and shipments to end users declining from interim 2007 to interim 2008.

⁸ Shipments of Chinese sodium nitrite appear to have been to smaller distributors, as the ***. With respect to the increase in shipments to end users in 2007, this was the result of sales to *** by importer *** of *** pounds of sodium nitrite. In the fall of 2006, *** began producing ***. Staff telephone interview with ***, July 23, 2008.

*** as General Chemical closed the sodium nitrite facility in Gibbstown, NJ, that it had purchased.⁹ Interim data for January-March 2007 and January-March 2008 show overall capacity as ***. U.S. producers' capacity utilization declined from *** percent in 2005 to *** percent in 2006; however, capacity utilization then rose to *** percent in 2007. Interim data indicate that capacity utilization reached *** percent in January-March 2008. The most recent full-year data (i.e., 2007) indicate that the U.S. producer has some excess capacity with which it could increase production of sodium nitrite in the event of a price increase.¹⁰

Alternative markets

Total exports by U.S. producers, as a share of total shipments, increased from *** percent in 2005 to *** percent in 2007; interim data reflect the share of exports decreasing from *** percent in January-March 2007 to *** percent in the same period of 2008. These data indicate that the U.S. sodium nitrite producer may have some ability to divert shipments to or from alternative markets in response to changes in the price of sodium nitrite.

Inventory levels

The domestic industry's ratio of end-of-period inventories to total shipments increased from *** percent in 2005 to *** percent in 2006 but then declined to *** percent in 2007. Interim data also indicate a decline, with the ratio of inventories decreasing from *** percent in January-March 2007 to *** percent in the same period of 2008. These data indicate that the U.S. producer has some ability to use inventories as a means of increasing shipments of sodium nitrite to the U.S. market.

Production alternatives

General Chemical reported that it does not produce other products using the same equipment, machinery, and employees as are used to produce sodium nitrite.¹¹

Subject Imports

The responsiveness of supply of imports from China and Germany to changes in price in the U.S. market is affected by such factors as capacity utilization rates, the availability of home markets and other export markets, and inventories. No Chinese producer provided any data to the Commission, therefore

⁹ In July 2006, General Chemical's parent company, GenTek Inc., acquired the assets of Repauno, a U.S. producer of sodium nitrite with a facility in Gibbstown, NJ. General Chemical decided to close the Repauno facility in November 2006 and reported that, "as of today, General Chemical does not have the ability to reopen Repauno and produce sodium nitrite at that facility." Conference transcript, p. 40 (McFarland) and Petitioner's postconference brief, p. 14. Therefore, U.S. industry data for 2005-06 represent data for both General Chemical and Repauno and data for 2007-08 present data for General Chemical alone.

¹⁰ General Chemical reported that its production capacity is ***. General Chemical producer questionnaire response, section II-4. These factors may constrain General Chemical's ability to increase production overall or of the dry product. Moreover, the most recent interim data indicate a relatively high level of capacity utilization which could also constrain General Chemical's ability to increase production.

¹¹ In the preliminary phase of these investigations, General Chemical noted that it had a purge stream that was a waste product created in the production of sodium nitrite. General Chemical has been able to sell this byproduct. Conference transcript, p. 78 (McFarland). ***.

no analysis of supply responsiveness is presented.¹² Based on available information, the producer in Germany is likely to respond to changes in demand with at least moderate changes in the quantity of shipments of sodium nitrite to the U.S. market. The main contributing factors to this degree of responsiveness of supply in the case of Germany are the existence of alternate markets.

Industry capacity

There is one producer of sodium nitrite in Germany, BASF AG. During the period for which data were collected, the capacity utilization rate for BASF AG decreased from *** percent in 2005 to *** percent in 2006 but then increased to *** percent in 2007. Interim data show an increase from *** percent in January-March 2007 to *** percent in the same period of 2008. BASF AG reported that capacity utilization rates are projected to be *** percent in both 2008 and in 2009. Based on these data, there is little excess capacity with which BASF AG could increase its production of sodium nitrite to respond to price changes in the U.S. market.

Alternative markets

Available data indicate that the producer in Germany has the ability to divert shipments to or from alternative markets in response to changes in the price of sodium nitrite. During the period for which data were collected, the largest market for shipments of sodium nitrite for BASF AG was non-U.S. export markets, primarily ***. The percentage of BASF AG's shipments that were made to non-U.S. export markets ranged between *** and *** percent during 2005-07. Shipments of sodium nitrite from Germany to the United States increased as a share of total shipments, rising from *** percent in 2005 to *** percent in 2007; interim data show a *** increase from *** percent in January-March 2007 to *** percent in the same period of 2008. While the share of BASF AG's total shipments that went to the home market (commercial shipments) declined irregularly from 2005 to 2007, they still accounted for between *** and *** percent. The existence of both home market sales and significant non-U.S. export markets give the German producer the flexibility to divert shipments to the U.S. market in response to price changes.

Inventory levels

The German producer's inventories, as a share of total shipments, increased irregularly from *** percent in 2005 to *** percent in 2007 and are projected to be *** in both 2008 and 2009.¹³ These data indicate that the German producer is constrained in its ability to use inventories as a means of increasing shipments of sodium nitrite to the U.S. market.

Nonsubject Imports

Based on official import statistics of Commerce, as revised, U.S. imports of sodium nitrite from nonsubject sources accounted for between 1.6 and 4.5 percent of the quantity of total U.S. imports in between 2005 and 2007. These imports were 3.4 percent of total U.S. imports of sodium nitrite during January-March 2008.

¹² China is a leading global exporter of metallic nitrites, a group of products that includes sodium nitrite; indeed, it is a substantial net exporter of these products. However, the amount of sodium nitrite exports by China is unknown.

¹³ These data include liquid sodium nitrite that cannot be shipped outside the EU.

U.S. Demand

Demand Characteristics

The evidence discussed below indicates that the demand for sodium nitrite is likely to be relatively price inelastic. Apparent U.S. consumption decreased by *** percent from 2005 to 2007; interim period data indicate that apparent U.S. consumption was *** percent higher in January-March 2008 than in the same period of 2007.

When asked how the overall demand for sodium nitrite has changed since January 2005, General Chemical stated the following: ***, “***.”¹⁴

General Chemical also noted that while some of the end users of sodium nitrite have moved overseas, which has negatively affected demand in the U.S. market, there are some end uses that will continue to grow.¹⁵ For example, General Chemical stated that it believes that the use of sodium nitrite in water treatment and corrosion inhibition will continue and grow at a modest rate.¹⁶ In addition, while sodium nitrite has been used to treat cyanide poisoning, there are other potential medical applications that are being examined.¹⁷ General Chemical did note, however, that it believed that “the pharmaceutical market is never going to be large.”¹⁸

BASF reported that it “***.”¹⁹ Of the four responding importers of Chinese sodium nitrite, two reported no change in demand in the U.S. market. The other two importers reported an increase in demand. Reasons given include an increase in German product (as it does not cake) and GDP growth.

Producers and importers were also asked to discuss how the demand for liquid sodium nitrite and the demand for dry sodium nitrite has changed since January 2005. General Chemical reported that there has been *** in the demand for dry sodium nitrite. It stated that the demand for dry sodium nitrite in the United States has *** since January 2005 (based on General Chemical and Repauno sales data and U.S. Customs import data). General Chemical noted that the domestic industry has lost over *** tons of dry sodium nitrite demand during the same time period (i.e., since 2005); however, General Chemical also stated that, over the past 5 years, there has been *** in demand for dry sodium nitrite. BASF reported that there has been *** in the demand for dry sodium nitrite since January 2005. Two of the three responding importers of Chinese sodium nitrite reported that there has been an increase in the demand for dry sodium nitrite, while the remaining firm noted that there was no change.

¹⁴ General Chemical’s producer questionnaire response, section IV-14.

¹⁵ General Chemical noted that it expects the decrease in demand to level off. It stated that while some of the large chemical companies (e.g., companies in the rubber industry and saccharin industry) moved overseas, its customer base is now “more established” and General Chemical does not foresee a dramatic decline. Hearing transcript, p. 52 (McFarland).

¹⁶ Conference transcript, p. 73 (McFarland).

¹⁷ A study done by NIH indicates that “sodium nitrite, a naturally occurring chemical and common meat preservative, is only used medically to treat cyanide poisoning. But if the results of a new animal study hold up under further research in people, the chemical may one day be used to protect and preserve tissue and organ function after heart attack, high risk abdominal surgery, and organ transplantation.” (*NHLBI Study: The Promise of New Medical Uses for Sodium Nitrite for Heart Attack and Organ Damage*, <http://www.nih.gov/news/pr/apr2005/nhlbi-14.htm>, retrieved on December 5, 2007).

¹⁸ Conference transcript, p. 54 (McFarland). General Chemical also stated that it continues to try to expand demand by finding new uses for sodium nitrite. For example, if General Chemical gets a request for samples and it knows of a manufacturer in a specific industry who is using it in a new application, General Chemical will look at the trade associations and the industry associations of the product and try to get other manufacturers to see sodium nitrite as an option. Conference transcript, p. 54 (McFarland).

¹⁹ BASF importer questionnaire response, section III-14.

With regard to liquid sodium nitrite, General Chemical reported that the estimated demand for this form of sodium nitrite in the United States has decreased due to the closure of customers who preferred to use liquid or a pre-made solution form of sodium nitrite in their process and the continued closure of plants in the United States. Moreover, General Chemical stated that it has also seen customers switch from liquid sodium nitrite to dry material as a result of lower prices offered by the importers. According to General Chemical, customers that formerly purchased liquid sodium nitrite have switched to dry material and then put it into solution. Finally, General Chemical also noted that some of the submarkets which are showing increased demand, such as ***, tend to prefer dry material, not liquid. BASF reported that the demand for liquid sodium nitrite has *** since January 2005. BASF stated that several end user customers have either moved their production operations overseas or have stopped producing the end products which incorporated sodium nitrite. For example, BASF noted that ***.²⁰ BASF also reported that, in 2007, another large customer, ***.²¹ Only one importer of Chinese product commented on the demand for liquid sodium nitrite and noted that there has been no change.

Purchasers were asked if the demand for their end products (which use sodium nitrite) has changed since January 1, 2005. Four responding purchasers reported that the demand for their end products that use sodium nitrite have increased which has resulted in an increase in these firms' purchases of sodium nitrite.²² Two purchasers reported that the demand for their end products which use sodium nitrite decreased since 2005 and as such they decreased their purchases of sodium nitrite. These two firms, ***, both moved production of their end products offshore and as such ***. ***.

Substitute Products

Sodium nitrite is used as an intermediate product in a variety of end uses such as printing, dyes, corrosion inhibitors, rubber chemicals, metal coatings, heat transfer, and as food additives (e.g., curing agent in meat and meat products and in the manufacture of synthetic caffeine and saccharin). When asked whether there are substitutes for sodium nitrite, *** reported that there are no products that can be substituted for sodium nitrite. *** explained that sodium nitrite is a convenient source of nitrous acid in the manufacture of dyes, pigments, rubber processing chemicals, and blowing agents. According to ***, oxidizing agents (such as sodium nitrite) can be used for various reactions and large scale operations usually choose either nitrous acid or chlorine. And while either product could be used, any conversion from sodium nitrite would require a significant investment in process changes and equipment.²³

Purchasers of sodium nitrite were also asked if there were any products that could substitute for sodium nitrite, either in its liquid form or its dry form. All of the responding purchasers reported that there were no substitutes for either the dry form of sodium nitrite or the liquid form.

Cost Share

U.S. producers and importers were asked to estimate the share of the total cost of end products which is accounted for by the cost of sodium nitrite. *** did not provide any cost share estimates and it noted that "cost share information is proprietary and is based on the customer's process."²⁴ *** reported cost shares for textiles and pigments ***, crop protection and pharmaceuticals ***, heat transfer ***, and

²⁰ BASF estimated that ***.

²¹ BASF estimated that ***.

²² One purchaser, ***, and it noted that the demand for its products has increased, and, as such, its demand for sodium nitrite has *** since 2005.

²³ ***.

²⁴ Ibid., section IV-12.

metal surface treatment ***, ***, an importer of Chinese sodium nitrite, also provided estimates for water treatment *** and for antifreeze syrups ***. These relatively low cost shares contribute to the low elasticity of demand for sodium nitrite.

Purchasers of sodium nitrite were also asked to estimate the percentage share of the total cost of the end products that they produce which is accounted for by the cost of the sodium nitrite. The following tabulation summarizes the estimates provided by purchasers.

* * * * *

SUBSTITUTABILITY ISSUES

The degree of substitutability between domestic products and subject and nonsubject imports and between subject and nonsubject imports is examined in this section. The degree of substitution between domestic and imported sodium nitrite depends upon such factors as relative prices, quality, and conditions of sale (e.g., availability, price discounts/rebates, delivery, payment terms, product services, etc.). Based on available data, staff believes that there may be some differences between the grades/forms of sodium nitrite offered by domestic producers and sodium nitrite imported from China and Germany. For similar forms of sodium nitrite (e.g., dry and liquid), there appears to be a relatively high degree of substitution between domestic and subject imported products; however, when comparing different forms of sodium nitrite, the degree of substitution is lower.

As noted, the majority of shipments of sodium nitrite imported from China have been of prilled sodium nitrite product. Staff contacted many of the purchasers of Chinese prilled product to determine what applications prilled product was being used in and to discuss any differences between the prilled product and the other forms of sodium nitrite. Information was obtained from eight firms that have purchased Chinese prilled product during the period for which data were collected; of these firms, seven were distributors and one was an end user. While several distributors did not know what their customers used the sodium nitrite for, the other distributors listed chemical compounding, pigment manufacturing, and water treatment as end use applications. The one responding end user, ***, reported that it used the Chinese prilled product to produce *** product; *** stated that it had been buying *** product but started buying prilled for this new product. The following tabulation presents information obtained from purchasers with regard to Chinese prilled sodium nitrite.

* * * * *

Factors Affecting Sales and Purchases

As noted earlier, sodium nitrite is available in different grades (technical and food grade) and in different forms (granular, flake, liquid, and prill). With regard to the different grades of sodium nitrite, food grade must meet specific quality standards, and while a customer could purchase food grade sodium nitrite and use it in a technical application, the reverse is not true. Available information indicates that both grades have been available from domestic and German sources during the period for which data were collected.²⁵ With regard to the different forms of sodium nitrite, General Chemical sold granular, flake, and liquid in the U.S. market. *** percentage of General Chemical's sales were of sodium nitrite *** (**% percent); the next largest amount was *** (**% percent), followed by *** (**% percent). Interim data for January-March 2008 indicate that a General Chemical sold more *** than it did in *** (**% percent in **%) and less *** (**% in **%). BASF's shipments of German sodium nitrite in the U.S.

²⁵ See tables V-2 and V-3 of this report.

market, on the other hand, have been *** sodium nitrite in dry form; ***.²⁶ Data on shipments of Chinese product indicate that there have been sales of both granular and prilled sodium nitrite; in 2007, *** percent of shipments of Chinese sodium nitrite was prilled while *** percent was granular product. In January-March 2008, *** percent of shipments was prilled product while *** was granular.

General Chemical has reported that customers use sodium nitrite of the same form from different sources interchangeably and it stated that sometimes customers switch between different forms.²⁷ According to General Chemical, BASF’s dry sodium nitrite has in the past directly competed against domestically produced sodium nitrite liquid.²⁸ General Chemical stated that customers that normally buy liquid can take the granular dry product and liquify it for use in their production process.²⁹ BASF, on the other hand, has stated that it believes that there is little competition between sodium nitrite in dry form and sodium nitrite in liquid form.³⁰ According to BASF, it does not believe that any of its customers are buying granular product and converting it into solution in their own facilities. BASF noted that, for the same reasons that it is uneconomical for BASF to perform the necessary operations to convert dry to liquid, it would likewise be uneconomical for BASF’s customers.^{31 32} BASF also stated that it has never seen a customer switch from using granular to using solution in their production process.

Purchasers were asked if dry and liquid sodium nitrite are “always”, “frequently”, “sometimes”, or “never” interchangeable (i.e., can they physically be used in the same applications). Of the 15 purchasers that responded, only one firm reported that dry and liquid sodium nitrite are always used interchangeably. Three firms reported that the two forms of sodium nitrite are frequently interchangeable, six reported sometimes, and five reported never. Table II-2 summarizes information from purchasers.³³

**Table II-2
Sodium nitrite: Interchangeability between liquid and dry product, as reported by purchasers**

* * * * *

²⁶ ***. At the hearing, BASF stated that it “attempted to import granular material product from Germany and turn it into solution in the United States in a safe, responsible manner.” BASF “quickly discovered, however, that this process was not cost effective and the resulting solution was not competitive with the prices being offered by General Chemical.” Hearing transcript, p. 125 (Work).

²⁷ Petitioner’s postconference brief, p. 8.

²⁸ General Chemical stated “competition can and does take place between the different forms of sodium nitrite. The liquid form competes directly with the various dry forms.” Hearing transcript, p. 20 (McFarland).

²⁹ Hearing transcript, p. 20 (McFarland) and conference transcript, p. 42 (Nelson).

³⁰ Hearing transcript, pp.129-131 (Katz) and conference transcript, p. 95 (McGrath).

³¹ BASF stated that it believes that the decision to purchase dry or liquid is, in large part, a function of scale of size of plant/operation.

³² ***.

³³ During the preliminary phase of these investigations, staff received information from one additional purchaser in the final phase of these investigations. ***.

Purchasers were also asked whether or not they could use either liquid sodium nitrite or sodium nitrite in dry form or if they had only used one of the two forms (i.e., only used liquid or only used dry). These firms were also asked to describe any modifications to their plant or production process that may be necessary to switch to a different form.³⁴ Responses from purchasers are presented in table II-3.

Table II-3
Sodium nitrite: End uses of product, use of different forms of product, and ability to use different forms, as reported by purchasers

* * * * *

Factors Affecting Purchasing Decisions

Purchasers were asked to identify the three major factors considered by their firm in deciding from whom to purchase sodium nitrite (table II-4). As is seen in the table, purchasers of sodium nitrite most frequently reported that quality was the most important factor in their purchasing decision, with six firms ranking it as the number one factor. In addition, three purchasers reported that quality was the second most important factor and four additional firms ranked it the third most important factor. For price, five purchasers reported that it was the most important factor; five others reported that it was the second most important factor and four ranked it third. Other factors listed as one of the top three most important factors include availability, domestic sourcing, global portfolio, lead time, length of relationship, product consistency, reliability, and terms of sale.

Table II-4
Sodium nitrite: Most important factors in selecting a supplier, as reported by purchasers

Factor	First	Second	Third
Price	5	5	4
Quality ¹	6	3	4
Reliability ²	1	0	3
Availability	1	6	1
Other factors ³	3	1	2
¹ This includes responses from firms that reported either "quality meeting specifications" or "quality exceeding specifications." ² This includes one purchaser that reported "on time delivery every time" as the third most important factor. ³ Other factors cited include global portfolio, domestic sourcing, lead time, length of relationship, product consistency, and terms.			
Source: Compiled from data submitted in response to Commission questionnaires.			

³⁴ In addition, purchasers were also asked if they ever attempted to convert dry sodium nitrite to liquid sodium nitrite in their facilities. Seven of the responding 16 purchasers reported yes and the other nine reported no. Of those purchasers that reported that they had attempted to convert dry to liquid, two firms reported that it was easy to do; two others reported that they prepare liquid products from the dry solution; one stated that it was tried in the 1980s and it was not cost effective. One other firm that provided comments stated that it buys dry and cuts it into liquid in one of its facilities but that sodium nitrite cannot be added directly to one of its reactors. Purchasers' questionnaire responses, section III-23.

Purchasers were asked what characteristics determine the quality of sodium nitrite. Factors listed by responding purchasers include chemical assay, types and levels of impurities, solubility, quality, anticaking agent used, concentration, purity, physical handling characteristics, and ability to meet customer specifications. To better assess quality issues, purchasers were also asked how often domestically produced and imported sodium nitrite meet minimum quality specifications; table II-5 presents purchasers' responses.

Table II-5
Sodium nitrite: Ability to meet minimum quality specifications, by source

Country	Number of firms reporting ¹			
	Always	Usually	Sometimes	Never
United States	12	1	0	0
China	4	1	1	1
Germany	6	1	0	1
India	2	1	0	1
Poland	3	0	0	1

¹ Purchasers were asked how often domestically produced or imported sodium nitrite meets minimum quality specifications for their own or their customers' uses.

Source: Compiled from responses to Commission questionnaires.

As can be seen from table II-5, all but one of the responding purchasers reported that domestically produced sodium nitrite "always" meet minimum quality specifications; the remaining purchaser reported that it usually meets minimum quality specifications. Most responding purchasers reported that the Chinese and German products always met minimum quality specifications; although in the case of China, three of the seven responding firms reported that the Chinese product usually, sometimes, or never met minimum quality specifications.

Purchasers were asked if they always, usually, sometimes, or never purchased the lowest priced sodium nitrite. Of the responding purchasers, four reported that they always buy the lowest priced product, three reported that they usually do, six reported sometimes, and two reported never. Purchasers were also asked if they purchased sodium nitrite from one source although a comparable product was available at a lower price from another source. Six purchasers reported that they had purchased sodium nitrite from a certain source when a comparable product was available at a lower price. Reasons given include availability, desire to multiple source, distributor relationship, quality, and reliability.

Purchasers were asked to rate the importance of 18 factors in their purchasing decisions for sodium nitrite (table II-6). All responding purchasers reported that availability, price, and product consistency were "very important" in their purchasing decisions for sodium nitrite. Other factors ranked as "very important" by a majority of sodium nitrite purchasers were delivery terms, delivery time, form (dry vs. liquid), grade, product certification, quality meeting industry standards, and reliability.

Table II-6
Sodium nitrite: Importance of purchase factors, as reported by U.S. purchasers

Factor	Very important	Somewhat important	Not important
	<i>Number of firms responding</i>		
Availability	14	-	-
Delivery terms	8	5	1
Delivery time	10	4	0
Discounts offered	5	7	2
Extension of credit	4	6	4
Form	10	3	1
Grade	10	3	1
Minimum quantity requirements	1	8	5
Packaging	3	9	2
Price	13	-	-
Product certification	9	4	1
Product consistency	14	-	-
Quality meets industry standards	12	2	-
Quality exceeds industry standards	2	10	3
Product range	3	8	3
Reliability of supply	12	1	1
Technical support/service	5	7	2
U.S. transportation costs	7	6	1
Note.--Not all purchasers responded for each factor.			
Source: Compiled from data submitted in response to Commission questionnaires.			

Purchasers were asked for a country-by-country comparison of U.S.-produced sodium nitrite compared to sodium nitrite from China and Germany for 15 factors; results are shown in table II-7. In general, relatively more responding purchasers found the domestic and German product to be comparable with respect to most of the factors. On the other hand, there was more of a split between purchasers with regard to U.S.-produced and Chinese products. For U.S. product compared to Chinese product, more than one half of the responding purchasers reported that the domestic and Chinese sodium nitrite products were comparable with regard to discounts offered, minimum quantity requirements, packaging, quality that exceeds industry standards, and U.S. transportation costs. However, more than half of responding purchasers reported that the U.S. product was superior with regard to delivery terms, extension of credit, product consistency, and quality that meets industry standards. For the other factors (availability, delivery time, product range, and reliability of supply), purchasers were evenly split between the U.S. being superior and the U.S. and Chinese product being comparable.

Table II-7

Sodium nitrite: Comparisons of product by source country, as reported by purchasers

Factor	U.S. vs. China			U.S. vs Germany		
	S	C	I	S	C	I
	<i>Number of firms responding</i>					
Availability	3	3	0	4	3	0
Delivery terms	4	2	0	2	3	0
Delivery time	3	3	0	5	2	0
Discounts offered	0	5	1	0	5	0
Extension of credit	3	2	0	1	5	0
Minimum quantity requirements	1	5	0	0	7	0
Packaging	1	5	0	0	7	0
Lower price ¹	1	3	2	0	6	1
Product consistency	4	2	0	1	6	0
Quality meets industry standards	4	2	0	1	6	0
Quality exceeds industry standards	2	3	0	1	4	0
Product range	3	3	0	3	1	0
Reliability of supply	3	3	0	2	5	0
Technical support/service	3	2	1	3	4	0
U.S. transportation costs ¹	2	4	0	0	6	0
<p>¹ A rating of "superior" for this category means that the price and/or transportation costs of the U.S. product is generally lower than for the product from China.</p> <p>Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior.</p> <p>Note.--Not all companies gave responses for all factors.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>						

For comparisons between the U.S. product and German product (table III-7), a majority of responding purchasers reported that the two products were comparable with regard to delivery terms, discounts offered, extension of credit, minimum quantity requirements, packaging, lower price, product consistency, quality that meets industry standards, quality that exceeds industry standards, reliability of supply, technical support, and U.S. transportation costs. For three factors (availability, delivery time, and product range), a majority of purchasers reported that the U.S. product was superior to the German product.

Purchasers were asked if certain grades, forms, or types of sodium nitrite were available from a single source. Ten of the 13 responding purchasers stated that there were not certain grades/forms/types of sodium nitrite available from a single source. The three remaining purchasers replied "yes" and noted that liquid sodium nitrite is only available from the domestic producer. In addition, purchasers were also asked if they or their customers ever specifically order sodium nitrite from one country in particular over other possible sources of supply. Most purchasers (9 of 14) reported "no;" however, five firms replied "yes," with one noting that it prefers German product because the quality is equal or better than the U.S.

product and the price is competitive. This purchaser, ***, also noted that it is essential to maintain a second source of supply of sodium nitrite in the U.S. market. Another purchaser that reported “yes” indicated that “there are customers out there that do not want an imported source (China or Germany).” One additional purchaser, ***, noted that it bought only domestic sodium nitrite because domestic supply is “less of a hassle for the supply chain” because *** can receive sodium nitrite quickly if it is in a bind.

Purchasers were asked if they required certification or prequalification with respect to the quality, chemistry, strength, or other performance characteristics of sodium nitrite. Fourteen of 16 responding purchasers reported that they do require their suppliers to be certified before they will purchase sodium nitrite from them; the remaining two purchasers reported that they did not have such requirements. All of the 14 firms that do have a certification process reported that 100 percent of their purchases of sodium nitrite must be certified.

Purchasers stated that these procedures include lab evaluation, review of product specifications, sampling, and testing of finished product. Purchasers also noted the factors that they consider when they are considering a new supplier of sodium nitrite; these include quality, price, reliability, service, lead time for delivery, payment terms, supplier relationship, and supplier production capacity. Estimates of the time necessary for certification/qualification ranged from 3 weeks to more than 6 months. Purchasers were also asked if any suppliers failed in their attempt to qualify and only two of the responding firms replied “yes;” these two firms noted two suppliers of product from China and one from India.

Purchasers were asked about the extent to which they and their customers are aware of the specific producers or countries of origin of the sodium nitrite that they purchase; responses are presented in table II-8. With regard to knowledge of the producer of the sodium nitrite, it appears that this is important to the purchaser as 12 of 15 firms reported that they are always aware of the producer.

Table II-8

Sodium nitrite: The role of producer and country of origin in purchaser and customer decisions

Item	Always	Usually	Sometimes	Never
Purchaser is aware of the producer	12	1	1	1
Purchaser is aware of the country of origin	11	2	0	0
Purchaser’s customer is aware of the country	6	0	6	2
Source: Compiled from data submitted in response to Commission questionnaires.				

Similarly, the majority of purchasers reported that they are always aware of the country of origin of the sodium nitrite. Country of origin appears to be less important to the responding purchasers’ customers as six purchasers reported that their customers are always aware of the country of origin but six reported that their customers are only sometimes aware of the country of origin and two reported never.

Comparisons of Domestic Product and Subject Imports

In order to determine whether U.S.-produced sodium nitrite can generally be used in the same applications as imports from China and Germany, the U.S. producer, U.S. importers, and U.S. purchasers were asked whether the products can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. As indicated in table II-9, General Chemical reported that U.S. sodium nitrite is *** interchangeable with imports from both China and Germany. BASF reported that U.S. sodium nitrite is *** interchangeable with sodium nitrite from China and from Germany. BASF noted that ***. Importers of sodium nitrite from China reported that U.S.-produced sodium nitrite is either always or frequently interchangeable with Chinese and German product. Purchasers generally reported that the U.S. product and imports from China and Germany were always or frequently interchangeable.

U.S. producers and importers were also asked if differences other than price were significant in their sales of sodium nitrite. As seen in table II-10, General Chemical reported that non-price factors are *** a significant factor in its sales of sodium nitrite while BASF noted that these factors are *** a factor. BASF noted that, for U.S. product compared to German product, the German material is at a disadvantage because most end users and distributors must place an order and wait 8 to 10 weeks for the order to arrive by ocean shipment. ***, an importer of Chinese sodium nitrite, reported that sodium nitrite from Germany is an excellent product while there are sometimes problems with caking and clogging with Chinese sodium nitrite. Another importer of Chinese material, ***, reported that differences in distribution are factors that differentiate the domestic and Chinese products; it noted that U.S. producers sell through other distribution networks, generally larger distributors than its *** business.³⁵

Table II-9
Sodium nitrite: Perceived degree of interchangeability of product produced in the United States and in other countries

* * * * * * *

Table II-10
Sodium nitrite: Differences other than price between products from different sources

* * * * * * *

ELASTICITY ESTIMATES

U.S. Supply Elasticity

The domestic supply elasticity for sodium nitrite measures the sensitivity of quantity supplied by U.S. producers to changes in the U.S. market price of sodium nitrite. 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 sodium nitrite. Analysis of these factors earlier in this report indicates that the U.S. industry has the ability to increase or decrease shipments to the U.S. market; an estimate in the range of 4 to 6 is suggested.

Subject Supply Elasticity

The supply elasticity for sodium nitrite measures the sensitivity of quantity supplied by suppliers of subject product to changes in the U.S. market price of sodium nitrite. The elasticity of foreign 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, and the availability of alternate markets for U.S.-produced sodium nitrite. Analysis of these factors earlier indicates that the German producer industry is likely to be able to increase or decrease shipments to the U.S. market; an estimate in the range of 5 to 8 is suggested.³⁶

³⁵ *** importer final phase questionnaire response, section III-18.

³⁶ As noted earlier, no information was received from Chinese producers of sodium nitrite; therefore, no supply elasticity estimate is provided.

U.S. Demand Elasticity

The U.S. demand elasticity for sodium nitrite measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of sodium nitrite. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of the sodium nitrite in the production of any downstream products. Based on available information, the U.S. demand elasticity for sodium nitrite is likely to be in the range of 0.50 to 0.75.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.³⁷ Product differentiation, in turn, depends upon such factors as quality and conditions of sale (availability, sales terms/discounts/promotions, etc.). Based on available information, the elasticity of substitution between U.S.-produced sodium nitrite and imported sodium nitrite from China and Germany is likely to be in the range of 1 to 4.

³⁷ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and U.S. 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.

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 margins of subsidization and dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and are based on the questionnaire response of one firm that accounted for all U.S. production of sodium nitrite during 2007.

U.S. PRODUCERS

The Commission sent producer questionnaires to the single firm identified as a domestic producer of sodium nitrite and to one additional firm. The Commission received a completed questionnaire response from the petitioner, General Chemical.¹ General Chemical's headquarters are located in Parsippany, NJ, and its sodium nitrite plant is located in Solvay, NY, west of Syracuse.

General Chemical was founded in 1899 by the merger of 12 chemical producers. In 1920, General Chemical was one of five companies that merged to form Allied Chemical & Dye Corporation ("Allied"), and in that year the sodium nitrite plant was erected and began production. In 1986, Allied spun off 35 of the company's marginal businesses, and General Chemical re-emerged as a stand-alone company. In 1996, General Chemical became a publicly traded firm. General Chemical subsequently acquired Peridot Holdings, a manufacturer of sulfuric acid, water treatment chemicals, and aluminum sulfate products, and Reheis Inc., a producer of specialty chemicals. In 1999, in a move to consolidate its core industrial chemicals business, General Chemical spun off its specialty chemicals and auto parts businesses into a new company, Gen-Tek, Inc. ("GenTek").² Today, General Chemical is a subsidiary of General Chemical Performance Products LLC which is a subsidiary of GenTek and is traded on the NASDAQ (trading symbol GETI).³

Repauno began in 1880 as a joint venture between DuPont and other investors to produce explosives in Gibbstown, NJ. In 1884, DuPont became the majority owner, and expanded the product line at the Gibbstown facility. Over time, the production of explosives, ammonia, and industrial diamonds ended, leaving only the production of sodium nitrite on-site in 1999.⁴ That same year, U.S. Salt Holdings ("U.S. Salt"), a manufacturer of salt and other inorganic chemicals based in Jacksonville, FL, acquired DuPont's sodium nitrite business and created a subsidiary known as Repauno Products LLC to operate the sodium nitrite business.⁵ Repauno continued to produce sodium nitrite under U.S. Salt's

¹ General Chemical provided data on behalf of former producer, Repauno, which its parent company acquired in July 2006 and subsequently closed in November 2006. In addition, the Commission mailed its domestic producer questionnaire to potential producer, ***. In response, *** certified that it has not produced sodium nitrite since January 1, 2005. A third company, ***, is a ***. According to General Chemical, ***. Petitioner's posthearing brief, p. 18, fn. 45.

² The General Chemical Group Inc., "Company History," found at <http://www.fundinguniverse.com/company-histories/TheGeneral-Chemical-Group-Inc-Company-History.html>, retrieved on November 29, 2007.

³ General Chemical's domestic producer questionnaire response, I-2, and General Chemical, Overview, found at <http://www.genchemcorp.com/profile/overview.shtml>, retrieved on November 29, 2007.

⁴ DuPont Heritage, "Gibbstown, New Jersey," found at http://heritage.dupont.com/floater/fl_gibbstown/floater.shtml, retrieved on November 28, 2007.

⁵ Jacksonville Business Journal, "US Salt purchases DuPont's sodium nitrite operations," March 5, 1999, found at <http://jacksonville.bizjournals.com/jacksonville/stories/1999/03/08/newscolumn1.html>, retrieved on October 17,

(continued...)

ownership. In mid 2005, both producers were operating at a loss attributed to low output and unused capacity. As a result, they began to discuss a potential joint venture or merger.⁶ The parties concluded that General Chemical “was better positioned to take advantage of a consolidation” because it “had a greater capacity to produce the dry form of sodium nitrite and it had a lower cost structure.”⁷ Consequently, in July 2006, Repauno was acquired by GenTek, the parent company of General Chemical.

General Chemical explained that ***.⁸ As early as 2003 there were reports that the domestic sodium nitrite market had been contracting for several years because dye businesses were moving offshore and there was diminished demand. That same year a Repauno official stated that “The market has shrunk. Industries have been purchasing their intermediates offshore.”⁹ End users that moved offshore included manufacturers of rubber, plastics, and pigments.¹⁰

The acquisition included the manufacturing facility, its 23 employees, and the customer list of Repauno¹¹ for a purchase price of approximately \$4.5 million cash, plus working capital (ultimately valued at \$6 million).¹² Commenting on the acquisition, General Chemical’s General Manager, Thomas Testa, stated, “This acquisition strengthens our market position with our present customer base and will make us a much more efficient supplier of sodium nitrite into North America.”¹³ General Chemical anticipated that by purchasing Repauno’s customer list, replacing Repauno at numerous customer accounts, and shutting down the Gibbstown facility, it would be able to reduce operating costs by spreading the high fixed costs over approximately double the volume of production.¹⁴ General Chemical planned ***.¹⁵ In November 2006, however, General Chemical made the decision to consolidate production into its Syracuse sodium nitrite operation, resulting in an earlier than planned closure of the Gibbstown site.

According to General Chemical, several events changed the timing of its plans for the Gibbstown facility: structural changes in the domestic demand for sodium nitrite, increasing global raw material and energy costs, and the escalating level of low-priced dumped imports from Germany and most recently from China.¹⁶ Faced with this competitive situation, General Chemical closed the Repauno facility in November 2006. This closure included the ***.¹⁷ The Gibbstown site was turned back over to DuPont.¹⁸

⁵ (...continued)
2007.

⁶ Petitioner’s prehearing brief, p. 43. Hearing transcript, pp. 21-22 (McFarland).

⁷ Hearing transcript, p. 22 (McFarland).

⁸ General Chemical’s domestic producer questionnaire response, II-2.

⁹ Chemical Market Reporter, *Markets: Plastics, Coatings/Inorganics*, Section 2, “Repauno to Implement Sodium Nitrite Price Increase,” November 24, 2003.

¹⁰ Hearing transcript, p. 45 (McFarland).

¹¹ Hearing transcript, p. 83 (McFarland).

¹² GenTek Inc., 2006 form 10-K, pp. 1 and 23. General Chemical’s domestic producer questionnaire response, II-2.

¹³ GenTek Investor Relations, “GenTek Inc. Announces the Acquisition of the Assets of Repauno Products LLC,” July 27, 2006, found at <http://www.gentek-global.com/news/2006-7-27.cfm>, retrieved on November 28, 2007.

¹⁴ Hearing transcript, pp. 21-24 (McFarland), and p. 107 (Opalewski).

¹⁵ Petitioner’s prehearing brief, p. 44. ***.

¹⁶ General Chemical’s domestic producer questionnaire response, II-2. Hearing transcript, p. 26 (McFarland).

¹⁷ Petitioner’s postconference brief, exh. 1, p. 6.

¹⁸ General Chemical’s domestic producer questionnaire response, II-2, Petition, p. 41, and Staff field trip report, General Chemical, November 19, 2007. The land had been used under the terms of a ***.

Hence, General Chemical does not have the ability to reopen Repauno or produce sodium nitrite at that facility.¹⁹

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

U.S. producers' capacity, production, and capacity utilization data for sodium nitrite are presented in table III-1. The data are graphically presented in figure III-1. The capacity and production data are those of General Chemical for the entire period, as well as those of Repauno for 2005-06.²⁰

Table III-1
Sodium nitrite: U.S. capacity, production, and capacity utilization, 2005-07, January-March 2007, and January-March 2008

* * * * *

Because Repauno's Gibbstown facility was larger than General Chemical's Syracuse plant, the closure of Repauno's operations in November 2006 removed nearly ***.²¹ After the closure, General Chemical ***. Thus, between 2005 and 2006, domestic production of sodium nitrite declined by *** percent while domestic capacity declined by *** percent. Between 2006 and 2007, production and capacity declined further by *** and *** percent, respectively. In contrast, capacity utilization rose from 2006 to 2007 by *** percentage points following the removal of Repauno's capacity. General Chemical's capacity utilization was higher in January-March 2008 than in January-March 2007 as the company's production level was *** percent higher in the first quarter of 2008. General Chemical reported that it increased production anticipating the positive effects of the current investigations.²²

Figure III-1
Sodium nitrite: U.S. capacity, production, and capacity utilization, 2005-07, January-March 2007, and January-March 2008

* * * * *

General Chemical acquired Repauno in part to increase the capacity utilization of the Syracuse, NY, plant.²³ Prior to acquisition, General Chemical's capacity utilization had fallen to approximately 50 percent, but company executives wanted to increase General Chemical's capacity utilization to close to 100 percent.²⁴ Their plan was to run the Syracuse, NY, plant at full capacity to take advantage of fixed cost benefits, and run the former Repauno plant ***.²⁵ Presumably this allocation of resources was intended to continue until the planned closure of Repauno.²⁶

¹⁹ Conference transcript, p. 40 (McFarland). It is BASF AG and BASF Corp.'s position that the acquisition and later closure of Repauno resulted in financial losses for General Chemical that should not be attributed to import competition. Conference transcript, p. 104 (Work).

²⁰ General Chemical ***. General Chemical's domestic producer questionnaire response, I-6.

²¹ Petitioner's prehearing brief, p. 42.

²² Petitioner's posthearing brief, p. 24.

²³ Conference transcript, p. 13 (McFarland).

²⁴ Hearing transcript, p. 23 (McFarland).

²⁵ Petitioner's postconference brief, p. 25.

²⁶ Hearing transcript, p. 107 (Opalewski).

General Chemical's Syracuse plant has a nameplate capacity of *** but this capacity is constrained by the plant's ***.²⁷ ***.²⁸ General Chemical has several options to increase capacity if necessary including converting from the use of soda ash to caustic soda for an addition to annual production of *** pounds, or adding ten days of production and increasing the size of several pieces of equipment for an addition of *** pounds per year, but this latter option would require ***. In addition, the company could add a third production line to increase production by up to *** pounds per year, ***.²⁹

General Chemical's Syracuse plant equipment is ***.³⁰ General Chemical ***.³¹ Since January 1, 2005, General Chemical ***.³²

U.S. PRODUCERS' SHIPMENTS

Data on General Chemical's and Repauno's shipments of sodium nitrite are presented in table III-2. The companies reported ***. U.S. commercial shipments of sodium nitrite decreased by *** percent by quantity and *** percent by value from 2005 to 2007. The unit values of U.S. shipments and exports increased each year between 2005 and 2007. U.S. shipment unit values were higher in 2007 than in 2005 by *** percent, or \$*** per pound of sodium nitrite. Rising average unit values, however, did not fully offset declining shipment quantities, especially in the domestic market, and total shipment values for the domestic industry declined in each full year-on-year comparison. The quantity of General Chemical's U.S. commercial shipments in January-March 2008 was *** to the quantity of such shipments in January-March 2007. The company's U.S. shipment unit values were higher in January-March 2008 than in January-March 2007 by *** percent, or \$*** per pound of sodium nitrite, contributing to a higher quarterly U.S. shipment value.

General Chemical and Repauno reported exports, which *** of the quantity of U.S. producers' annual shipments of sodium nitrite throughout the period for which data were collected. The quantity of export shipments changed irregularly during the period. U.S. producers of sodium nitrite identified Canada as an export market; indeed, during the conference held in connection with these investigations, petitioner claimed that Repauno lost market share in Canada to imports from Germany, BASF AG specifically.³³

Table III-2
Sodium nitrite: U.S. producers' shipments, by types and shares, 2005-07, January-March 2007, and January-March 2008

* * * * *

In 2006, two of Repauno's customers, Chemtura (a rubber producer) and PMC Specialties (a saccharine producer), moved their operations overseas and ceased buying sodium nitrite from Repauno

²⁷ ***. Petitioner's posthearing brief, responses to Commissioner questions, p. 39.

²⁸ General Chemical's domestic producer questionnaire response, II-4, and Staff field trip report, General Chemical, November 19, 2007. *** is equal to an annual production capacity of approximately *** pounds.

²⁹ Petitioner's posthearing brief, responses to Commissioner questions, pp. 39-40.

³⁰ Staff field trip report, General Chemical, November 19, 2007. General Chemical's domestic producer questionnaire response, II-3.

³¹ General Chemical's domestic producer questionnaire response, II-7.

³² General Chemical's domestic producer questionnaire response, II-6.

³³ Canada is ***. General Chemical's domestic producer questionnaire response, II-9. Conference transcript, pp. 13, 34 (McFarland).

and General Chemical.³⁴ This change in Repauno’s customer base accounts in part for the decrease in Repauno’s U.S. commercial shipments in 2006.³⁵ Table III-3 presents information on the quantity of General Chemical’s and Repauno’s U.S. shipments to these former customers for 2005-07, January-March 2007, and January-March 2008. Information regarding *** shipments to Chemtura and PMC Specialties is presented in part IV of this report. During 2005 and 2006, these customers purchased sodium nitrite *** from ***. Chemtura purchased ***, while PMC Specialties predominantly purchased the *** but also purchased *** sodium nitrite between 2005 and 2006.³⁶

Table III-3
Sodium nitrite: General Chemical’s and Repauno’s U.S. shipments to individual customers, by quantity, 2005-07, January-March 2007, and January-March 2008

* * * * *

Table III-4 and figure III-2 present information on U.S. producers’ U.S. commercial shipments of sodium nitrite by form in 2005-07, January-March 2007, and January-March 2008. In table III-4, and throughout this report, quantities of liquid sodium nitrite are reported on a dry measure basis. Because General Chemical has predominantly produced dry sodium nitrite while Repauno predominantly produced the liquid form, U.S. shipments of dry sodium nitrite changed less than those of liquid sodium nitrite (which decreased *** after Repauno’s closure in 2006). However, shipments of granular *** sodium nitrite did decrease by *** percent between 2005 and 2007.

Table III-4
Sodium nitrite: U.S. producers’ U.S. shipments, by form, 2005-07, January-March 2007, and January-March 2008

* * * * *

Figure III-2
Sodium nitrite: U.S. producers’ U.S. shipments, by form, 2005-07, January-March 2007, and January-March 2008

* * * * *

Table III-5 presents information on U.S. producers’ estimated U.S. commercial shipments of sodium nitrite, by grade, in 2007 and January-March 2008. *** sodium nitrite constituted the bulk of General Chemical’s U.S. commercial shipments in 2007 and January-March 2008.

³⁴ Conference transcript, pp. 13-14 (McFarland). The closure of Chemtura’s U.S. operations was described as “being of concern, but contained.” Conference transcript, p. 13 (McFarland). The exact volume of General Chemical’s and Repauno’s sales to these companies appears in table III-3. The PMC plant closed in June and the Chemtura plant closed in November of 2006. Petitioner’s posthearing brief, p. 12. Additional information regarding PMC appears in Part II of this report.

³⁵ The decision to close the Repauno facility was made before PMC and Chemtura ceased their sodium nitrite purchases. Hearing transcript, p. 22 (McFarland).

³⁶ Repauno’s sales of sodium nitrite to PMC Specialties decreased from *** in 2005 to *** in 2006, to *** in 2007. E-mail from ***, July 17, 2008.

Table III-5
Sodium nitrite: U.S. producers' estimated U.S. shipments, by grade, 2007 and January-March 2008

* * * * *

U.S. PRODUCERS' INVENTORIES

Data collected in these investigations on domestic producers' end-of-period inventories of sodium nitrite are presented in table III-6. The data show that inventories had increased in 2006 because of the closure of Repauno and General Chemical's consequent assumption of Repauno's inventory. However, inventories in absolute terms and as a ratio to production and shipments declined in 2007 and interim 2008.³⁷

Table III-6
Sodium nitrite: U.S. producers' end-of-period inventories, 2005-07, January-March 2007, and January-March 2008

* * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES

During the period for which data were collected *** sodium nitrite. In addition, ***.³⁸ General Chemical reported that it ***.³⁹

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Table III-7 presents data on U.S. producers' employment-related indicia. Because the Repauno plant was not closed until November 2006, the impact of the resulting decrease in employment is not apparent in the data for 2006. A comparison between 2006 and 2007 data shows that employment of production-related workers ("PRWs") in the U.S. sodium nitrite industry was *** percent lower and hours worked were *** percent lower following the New Jersey plant closure. Wages paid to PRWs and hourly wages also declined throughout the period 2005-07 but were higher in interim 2008 compared to interim 2007. Productivity fluctuated throughout the period for which data were collected but was higher in interim 2008 than in interim 2007 by *** percent. General Chemical explained that in the first quarter of 2007 it ***. In the first quarter of 2008, following the filing of the petition and preliminary determinations, General Chemical ***.⁴⁰

Table III-7
Sodium nitrite: U.S. producers' employment-related data, 2005-07, January-March 2007, and January-March 2008

* * * * *

³⁷ General Chemical explained that "after the two domestic operations were merged, General Chemical ***." Petitioner's prehearing brief, pp. 42-43.

³⁸ General Chemical's domestic producer questionnaire response, II-8 and II-12.

³⁹ General Chemical's domestic producer questionnaire response, I-5.

⁴⁰ E-mail from ***, June 16, 2008.

When General Chemical acquired Repauno in July 2006, it offered jobs to the former Repauno employees, but when the plant was closed in November 2006, those employee positions were terminated.⁴¹ In January 2007, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance applicable to workers of the former Repauno plant. The intent of the certification was to include all workers of General Chemical who were adversely affected by increased imports.⁴²

⁴¹ General Chemical stated that this reduction in employment ***. General Chemical's domestic producer questionnaire response, II-9.

⁴² *General Chemical Performance Products, Repauno Products LLC, Gibbstown, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance*, 72 FR 11906, March 14, 2007.

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

U.S. IMPORTERS

The Commission sent importer questionnaires to 21 firms believed to have imported sodium nitrite since January 2005 and received usable data from 12 firms, partial information from one firm, and confirmation of non-importation by four firms.¹ Four firms did not respond to the Commission's importer questionnaire. Import data in this report are based on official Commerce statistics on imports for consumption as revised to exclude imports from Canada, Chile, Greece, Japan, the Netherlands, and Norway that were found to have been incorrectly classified.²

Of the importers that submitted useable data in response to the Commission's U.S. importers' questionnaire, eight indicated that they imported sodium nitrite from China, three imported from Germany, one from India, and two from Poland. BASF Corp.'s imports of sodium nitrite from Germany are believed to account for *** of U.S. imports from Germany, by quantity, in 2005-07 and January-March 2008. The responding firms' imports of sodium nitrite from China account for *** percent of total U.S. imports from China by quantity in 2007 and *** percent of U.S. imports from Germany as measured by official Commerce statistics. Table IV-1 presents information on U.S. importers.

Reporting U.S. importers of sodium nitrite are scattered throughout the United States. Two U.S. importers reported having business affiliations with subject countries. *** is related to ***, an exporter of sodium nitrite to the United States.³ BASF Corp. of the United States is a wholly owned subsidiary of German sodium nitrite producer BASF AG.⁴ BASF Corp. imports sodium nitrite produced by its parent company ***.

No importer reported importing the subject merchandise through a foreign trade zone. No importer reported entering or withdrawing imports of sodium nitrite from a U.S. bonded warehouse. No importer reported importing sodium nitrite under the temporary importation under bond program.

The Commission asked importers to comment on any changes in the character of their operations or organization relating to sodium nitrite. No responding importer reported experiencing any such changes since January 1, 2005.

¹ The following firms certified that they have not imported sodium nitrite from any country since January 1, 2005: ***. *** on behalf of ***, confirmed importing *** of sodium nitrite from China with a value of *** or \$*** per pound in 2006. E-mail from ***, May 22, 2008.

² During the preliminary phase of these investigations, importers accounting for 100 percent of reported imports of sodium nitrite from Chile, Japan, the Netherlands, and Norway confirmed that they did not import sodium nitrite and that their imports were either incorrectly classified or labeled. Importers accounting for the majority of reported imports of sodium nitrite from Canada confirmed that they did not import sodium nitrite and that their imports were either erroneously classified or incorrectly labeled. During the final phase of these investigations, *** confirmed that it does not produce sodium nitrite in Greece. E-mail from ***, July 14, 2008.

³ *** importer questionnaire response, I-4.

⁴ *** importer questionnaire response, I-3-I-5.

Table IV-1
Sodium nitrite: U.S. importers and imports, by source, 2007

Importer	China	Germany	All others	China	Germany	All others
	Quantity (1,000 pounds)			Share by source (percent) ¹		
Allchem Industries (Gainesville, FL)	***	***	***	***	***	***
BASF Corp. (Florham Park, NJ)	***	***	***	***	***	***
Chemicals Direct Inc. (Paterson, NJ)	***	***	***	***	***	***
Connell Bros. Company, Ltd. (San Francisco, CA)	***	***	***	***	***	***
Global Chemical Resources (Toledo, OH)	***	***	***	***	***	***
I.C. Trading Co., Ltd. (Glen Cove, NY)	***	***	***	***	***	***
Kapco Industries, Inc. (Carolina, PR)	***	***	***	***	***	***
Magnum International, Inc. (Calumet City, IL)	***	***	***	***	***	***
PHT International, Inc. (Charlotte, NC)	***	***	***	***	***	***
SDA Chemicals, Inc. (Garden Grove, CA)	***	***	***	***	***	***
Telechem International (Sunnyvale, CA)	***	***	***	***	***	***
Wego Chemical & Mineral Corp. (Great Neck, NY)	***	***	***	***	***	***
Total reported imports	***	***	***	100.0	100.0	100.0
¹ Shares are based on imports reported in importer questionnaires.						
Source: Compiled from data submitted in response to Commission questionnaires.						

During the period for which data were collected, importer *** did not sell sodium nitrite to ***, but did sell to ***. *** sales of sodium nitrite to *** totaled *** pounds in 2005 and were all of *** sodium nitrite.⁵ In *** BASF Corp. explored the possibility of producing sodium nitrite liquid in the United States by ***, and importing crystal and using it to produce sodium nitrite in solution.⁶ A portion of the liquid produced, *** pounds, was sold to *** in *** along with *** pounds of *** sodium nitrite.⁷ The *** sodium nitrite sold to *** was produced by ***.

⁵ *** supplemental response to staff questions, December 7, 2007, pp. 1-2.

⁶ Respondent's postconference brief, p. 5. *** supplemental response to staff questions, December 7, 2007, pp. 1-2. Hearing transcript, p. 125 (Work) and p. 130 (Katz).

⁷ This quantity does not account for the total amount of ***. In 2006, *** percent of *** sales, or *** pounds, were of liquid sodium nitrite. *** importer questionnaire response, II-6a and II-6b.

Although *** closed its ***, it maintains other production capabilities and continues to purchase *** sodium nitrite from ***. In 2007 *** sold *** pounds of *** sodium nitrite to ***.⁸ In January-March 2008 *** sold *** pounds of *** sodium nitrite to ***.⁹

U.S. IMPORTS

Table IV-2 and figure IV-1 present and depict U.S. imports of sodium nitrite during 2005 to 2007, January-March 2007, and January-March 2008. U.S. import data are based on official Commerce statistics for sodium nitrite as revised to exclude incorrectly classified imports from Canada, Chile, Greece, Japan, the Netherlands, and Norway.¹⁰

Between 2005 and 2007, U.S. imports of sodium nitrite from China and Germany increased by 62.1 percent overall. Imports from China increased from 519,000 pounds to 1.6 million pounds or by 213.2 percent by quantity between 2005 and 2007, and were 8.6 percent higher in January-March 2008 than in January-March 2007. Imports of sodium nitrite from Germany increased from 7.7 million pounds to 11.7 million pounds or by 51.9 percent by quantity between 2005 and 2007, and were 13.9 percent higher in January-March 2008 than in January-March 2007. U.S. imports from all other sources increased by 375.8 percent by quantity between 2005 and 2007, and were 42.9 percent higher in January-March 2008 than in January-March 2007, but never accounted for as much as 5.0 percent of the total quantity of imports. The average unit values of imports from China were higher than those from Germany in every full and partial year. The average unit values of imports from Germany, in turn, were higher than the collective average unit values of imports from nonsubject sources in 2005 through 2007 but were lower than nonsubject import average unit values during the interim periods.

During the period for which data were collected, in addition to the two subject countries, sodium nitrite was imported into the United States from two other countries: India and Poland. However, as shown in table IV-2, Germany has been, and continues to be, the largest single source of U.S. imports of sodium nitrite. As noted previously, the total quantity of sodium nitrite imports from all nonsubject sources increased from 2005 to 2007 by 375.8 percent. Poland was the only nonsubject country that was present in the U.S. market in each period, 2005-07 and January-March 2008. The average unit values of imports from Poland were noticeably lower than those for the subject countries, by as much as \$0.13 per pound in 2007. In January-March 2008, however, the average unit value for imports from Poland was the highest of all sources, possibly because of a reporting error in the data for February 2008.¹¹

⁸ *** supplemental response to staff questions, December 7, 2007, pp. 1-2.

⁹ E-mail from ***, June 17, 2008.

¹⁰ HTS statistical reporting number 2834.10.1000.

¹¹ Imports from Poland into the United States totaled 88,000 pounds with a unit value of \$0.15 per pound in January and 44,000 pounds with a unit value of \$1.94 per pound in February; there were no reported imports from Poland in March. Imports from Poland in April totaled 89,463 pounds with a unit value of \$0.23 per pound. All imports were by ***, which in its importer questionnaire response reported importing *** between January and March 2008 with a unit value of \$*** per pound. *** importer questionnaire response, section II-8a.

Table IV-2
Sodium nitrite: U.S. imports, by sources, 2005-07, January-March 2007, and January-March 2008

Source	Calendar year			January-March	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
China	519	1,044	1,626	683	742
Germany	7,717	10,175	11,723	2,648	3,015
Subtotal	8,236	11,219	13,349	3,331	3,757
India	0	46	50	0	0
Poland	132	313	580	93	132
Subtotal	132	359	629	93	132
Total	8,368	11,578	13,979	3,424	3,890
Value (1,000 dollars)¹					
China	122	245	476	174	255
Germany	1,627	2,072	2,680	571	744
Subtotal	1,750	2,318	3,155	745	999
India	0	22	19	0	0
Poland	17	47	94	21	99
Subtotal	17	69	113	21	99
Total	1,767	2,387	3,269	766	1,098
Unit value (per pound)¹					
China	\$0.24	\$0.24	\$0.29	\$0.26	\$0.34
Germany	0.21	0.20	0.23	0.22	0.25
Average	0.21	0.21	0.24	0.22	0.27
India	(²)	0.49	0.39	(²)	(²)
Poland	0.13	0.15	0.16	0.23	0.75
Average	0.13	0.19	0.18	0.23	0.75
Total	0.21	0.21	0.23	0.22	0.28

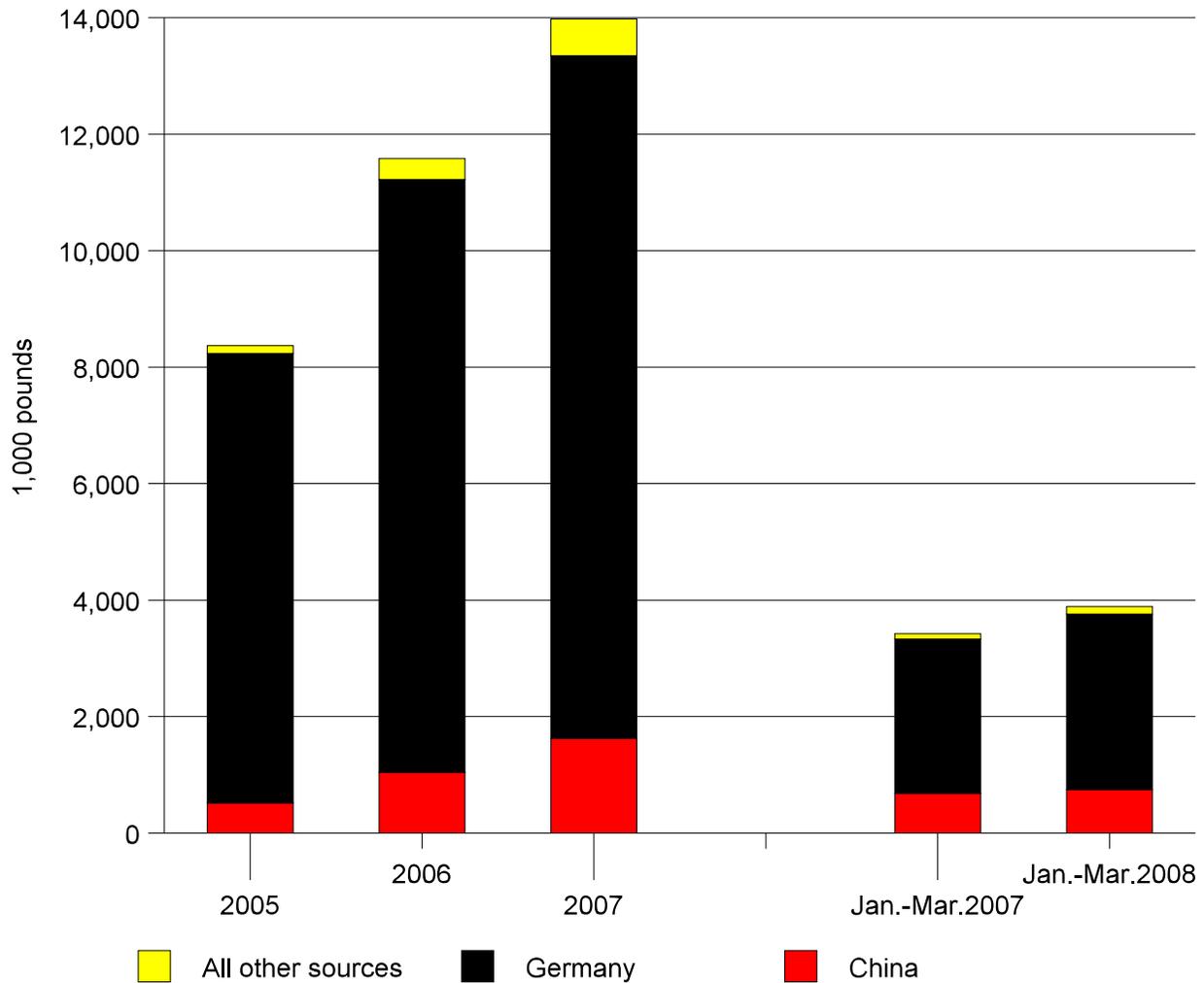
Table continued on next page.

Table IV-2--Continued

Sodium nitrite: U.S. imports, by sources, 2005-07, January-March 2007, and January-March 2008

Source	Calendar year			January-March	
	2005	2006	2007	2007	2008
Share of quantity (percent)					
China	6.2	9.0	11.6	20.0	19.1
Germany	92.2	87.9	83.9	77.3	77.5
Subtotal	98.4	96.9	95.5	97.3	96.6
India	0.0	0.4	0.4	0.0	0.0
Poland	1.6	2.7	4.1	2.7	3.4
Subtotal	1.6	3.1	4.5	2.7	3.4
Total	100.0	100.0	100.0	100.0	100.0
Share of value (percent)					
China	6.9	10.3	14.6	22.8	23.2
Germany	92.1	86.8	82.0	74.5	67.8
Subtotal	99.0	97.1	96.5	97.3	91.0
India	0.0	0.9	0.6	0.0	0.0
Poland	1.0	2.0	2.9	2.7	9.0
Subtotal	1.0	2.9	3.5	2.7	9.0
Total	100.0	100.0	100.0	100.0	100.0
¹ Landed, duty paid. ² Not applicable.					
Note.—Imports from Canada, Chile, Greece, Japan, the Netherlands, and Norway have been excluded based on confirmation of no imports from those countries.					
Source: Compiled from official Commerce statistics.					

Figure IV-1
Sodium nitrite: Quantity of subject and nonsubject U.S. imports, 2005-07, January-March 2007,
and January-March 2008



Source: Table IV-2.

NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.¹² Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 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 or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the

¹² Section 733(a)(1) of the Act.

individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible.¹³ Subject imports from China and Germany accounted for 12.7 percent and 83.2 percent, respectively, of total imports of sodium nitrite by quantity between November 2006 and October 2007.¹⁴

CUMULATION CONSIDERATIONS

In assessing whether subject imports are likely to compete with each other and with the domestic like product with respect to cumulation, the Commission generally has considered the following four factors: (1) the degree of fungibility, including specific customer requirements and other quality-related questions; (2) presence of sales or offers to sell in the same geographic markets; (3) common channels of distribution; and (4) simultaneous presence in the market. Channels of distribution and fungibility (interchangeability) are discussed in Part II of this report. Additional information concerning fungibility, geographic markets, and simultaneous presence in the market is presented below.¹⁵

Fungibility

U.S. producers and importers of sodium nitrite were asked to provide data concerning their U.S. (commercial) shipments of sodium nitrite by form in 2005-07 and January-March 2008. These data are presented in table IV-3 and figures IV-2 (U.S. producers' commercial shipments) and IV-3 (U.S. importers' combined subject commercial shipments).

Table IV-3

Sodium nitrite: U.S. producers' and importers' commercial shipments, by form, 2005-07 and January-March 2008

* * * * *

Figure IV-2

Sodium nitrite: U.S. producers' commercial shipments, by form, 2005-07 and January-March 2008

* * * * *

Figure IV-3

Sodium nitrite: U.S. importers' combined commercial shipments of subject imports, by form, 2005-07 and January-March 2008

* * * * *

¹³ Section 771(24) of the Act.

¹⁴ Calculated from official Commerce statistics as adjusted to exclude incorrectly classified imports from Canada, Chile, Greece, Japan, the Netherlands, and Norway.

¹⁵ Petitioners argue that imports from China and Germany should be cumulated. Hearing transcript, p. 39 (Cannon). Respondents argue that imports from China and Germany should not be cumulated for purposes of any threat of material injury analysis because sodium nitrite from China and Germany does not "participate in the same market." Hearing transcript, p. 181 (McGrath).

U.S. producers' U.S. shipments were concentrated in three forms: ***. When Repauno was operating, over *** percent of total U.S. commercial shipments were of *** sodium nitrite. As Repauno reduced its production and eventually closed, U.S. commercial shipments were increasingly in *** form. The composition of U.S. shipments of imports from China and Germany changed less noticeably over the period, and involved substantially less sodium nitrite in liquid form. The smaller volume of imports of liquid (or sodium nitrite in solution form) is consistent with testimony that "shipping solution internationally means shipping approximately 60 percent water, dramatically increasing the unit shipping cost of the sodium nitrite."¹⁶ U.S. shipments of imports from China were increasingly of *** sodium nitrite.¹⁷ In the fall of 2006 *** began producing a *** for which it purchased *** pounds of prilled sodium nitrite imported from China in 2007.¹⁸ No shipments of *** sodium nitrite from China were reported. U.S. shipments of imports from Germany were *** sodium nitrite. BASF Corp. reported that in 2006 *** percent, and in 2007 and 2008, *** percent of its shipments of imports were in ***. These *** shipments were the end result of an experiment in which BASF Corp. attempted to import granular product from Germany and ***. This experiment was abandoned because it was not economical and the resulting product was not competitive with the prices being offered by the domestic industry.¹⁹

The Commission asked importers whether they had ever attempted to convert dry sodium nitrite to liquid in their facilities. No responding importers have attempted this conversion at their facilities, although as discussed earlier in this report, some responding purchasers did report doing so. In addition, the petitioner reports that ***.²⁰

During 2005-07 and January-March 2008 there were virtually no shipments of imported liquid sodium nitrite and no domestic producer shipments of prilled sodium nitrite. Therefore, the following information is for dry and granular sodium nitrite only. All forms of sodium nitrite are included in the preceding tables and figures. Respondent BASF argues that subject imports of granular sodium nitrite do not compete with domestic liquid sodium nitrite and have not had a significant effect on the domestic market for sodium nitrite in its other forms.²¹ The following tabulation shows shares of quantity of U.S. producers' and importers' shipments of all forms of dry sodium nitrite during 2005-07 and January-March 2008.

* * * * *

The following tabulation shows shares of quantity of U.S. producers' and importers' shipments of granular sodium nitrite, including 99 percent pure and less than 99 percent pure, during 2005-07 and January-March 2008.

* * * * *

¹⁶ Respondent's postconference brief, p. 4.

¹⁷ One importer reported that the "Chinese (granular) product cakes, which limits product acceptance." *** importer questionnaire response, section III-17. The same importer explained that his company imported granular sodium nitrite from China in *** but because that order contained an anti-caking agent that caused clouding it has not been sold in the U.S. market. Staff telephone interview with ***.

¹⁸ Staff telephone interview with ***, July 23, 2008.

¹⁹ Respondent's postconference brief, p. 4, conference transcript, p. 113 (Work). ***.

²⁰ Petition, p. 40, and petitioner's posthearing brief, p. 50.

²¹ Respondent's posthearing brief, pp. 3-4, and hearing transcript, p. 184 (Work).

Figure IV-4 shows U.S. producers' and importers' commercial shipments of dry sodium nitrite during 2005-07 and January-March 2008. Figure IV-5 shows U.S. producers' and importers' commercial shipments of granular sodium nitrite during 2005-07 and January-March 2008. Figure IV-6 shows U.S. producers' and importers' market shares of commercial shipments of dry sodium nitrite during 2005-07 and January-March 2008. Figure IV-7 shows U.S. producers' and importers' market shares of commercial shipments of granular sodium nitrite during 2005-07 and January-March 2008.

Figure IV-4

Sodium nitrite: U.S. producers' and importers' commercial shipments of dry sodium nitrite, 2005-07 and January-March 2008

* * * * *

Figure IV-5

Sodium nitrite: U.S. producers' and importers' commercial shipments of granular sodium nitrite, 2005-07 and January-March 2008

* * * * *

Figure IV-6

Sodium nitrite: U.S. producers' and importers' market shares of commercial shipments of dry sodium nitrite, 2005-07 and January-March 2008

* * * * *

Figure IV-7

Sodium nitrite: U.S. producers' and importers' market shares of commercial shipments of granular sodium nitrite, 2005-07 and January-March 2008

* * * * *

Geography

As noted previously, sodium nitrite produced in the United States is shipped nationally. Imports of sodium nitrite are predominantly shipped nationally but also regionally. Information summarizing sodium nitrite shipments appears in Part II of this report. Table IV-4 presents imports from China by Customs districts from 2005 to 2007 and January-March 2008, while table IV-5 presents imports from Germany by Customs districts for the same period. Chicago, IL, was the largest district of entry for imports from China, accounting for 46.4 percent of total subject imports during 2005-07 and January-March 2008. Los Angeles, CA, was the second largest port, with 26.5 percent of imports from China, followed by Buffalo, NY. New York, NY, was the largest district of entry for imports from Germany, accounting for 31.2 percent of total subject imports during 2005-07 and January-March 2008. Cleveland, OH, was the next largest port with 30.3 percent of subject German imports, followed by Chicago, IL.

Presence in the Market

Sodium nitrite produced in China and Germany was present throughout the period for which data were collected. Table IV-6 presents monthly import entries into the United States by sources. Based on Commerce statistics, imports of sodium nitrite from China entered the United States with increasing monthly frequency over the period while those from Germany entered the United States consistently in every month.

Table IV-4

Sodium nitrite: U.S. imports from China, by Customs district, 2005-07 and January-March 2008

Custom district	Calendar year			Jan.-Mar.	Total
	2005	2006	2007	2008	
Quantity (1,000 pounds)					
Buffalo, NY	0	0	441	0	441
Chicago, IL	209	349	569	698	1,825
Cleveland, OH	86	126	0	0	212
Detroit, MI	0	0	2	0	2
Los Angeles, CA	180	336	481	44	1,041
Milwaukee, WI	0	46	0	0	46
New York, NY	44	44	132	0	220
San Juan, PR	0	55	0	0	55
Savannah, GA	0	88	0	0	88
Total	519	1,044	1,626	742	3,931

Source: Compiled from official Commerce statistics.

Table IV-5

Sodium nitrite: U.S. imports from Germany, by Customs district, 2005-07 and January-March 2008

Custom district	Calendar year			Jan.-Mar.	Total
	2005	2006	2007	2008	
Quantity (1,000 pounds)					
Buffalo, NY	1	42	0	0	43
Charleston, SC	475	340	727	143	1,684
Chicago, IL	1,016	1,048	1,775	643	4,483
Cleveland, OH	3,575	4,093	1,965	250	9,883
Detroit, MI	0	76	107	0	183
Houston-Galveston, TX	546	794	1,065	143	2,548
Los Angeles, CA	307	415	731	179	1,631
New York, NY	1,159	2,780	4,635	1,623	10,196
Norfolk, VA	480	589	609	36	1,713
Philadelphia, PA	82	0	36	0	118
San Francisco, CA	76	0	74	0	149
Total	7,717	10,175	11,723	3,015	32,631

Source: Compiled from official Commerce statistics.

Table IV-6

Sodium nitrite: U.S. imports, monthly entries into the United States, by sources, 2005-07 and January-May 2008

Quantity (1,000 pounds)

Source	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
2005:													
China	0	0	49	0	44	44	0	86	165	44	87	0	519
Germany	407	790	572	494	656	825	514	496	458	894	563	1,047	7,717
Subtotal	407	790	621	494	700	869	514	582	623	938	650	1,047	8,236
All other	44	44	0	0	0	0	0	0	44	0	0	0	132
Total	451	834	621	494	700	869	514	582	667	938	650	1,047	8,368
2006:													
China	0	174	44	42	43	44	88	43	44	265	127	130	1,044
Germany	864	790	1,383	813	1,177	878	736	847	558	410	1,114	606	10,175
Subtotal	864	964	1,427	855	1,220	922	824	890	602	675	1,241	735	11,219
All other	44	0	44	0	44	0	0	44	0	0	138	44	359
Total	908	964	1,471	855	1,265	922	824	934	602	675	1,379	779	11,578
2007:													
China	46	389	249	384	120	40	44	44	88	133	88	0	1,626
Germany	1,224	410	1,013	1,266	947	1,460	869	1,153	653	1,059	832	836	11,723
Subtotal	1,270	799	1,262	1,650	1,068	1,500	914	1,198	742	1,191	920	836	13,349
All other	49	0	44	0	52	44	0	42	132	44	134	89	629
Total	1,318	799	1,306	1,650	1,119	1,544	914	1,240	874	1,235	1,054	924	13,979
2008:													
China	218	437	88	43	44	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	830
Germany	1,239	686	1,091	1,016	143	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	4,174
Subtotal	1,457	1,122	1,178	1,059	187	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	5,004
All other	88	44	0	89	42	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	264
Total	1,545	1,166	1,178	1,149	229	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	5,267

¹ Data not available.

Note.—Imports from Canada, Chile, Greece, Japan, the Netherlands, and Norway have been excluded based on confirmation of no imports from those countries.

Source: Compiled from official statistics of Commerce.

APPARENT U.S. CONSUMPTION

Table IV-7 presents data on the apparent U.S. consumption of sodium nitrite. Figure IV-8 graphically presents data on apparent U.S. consumption.

Table IV-7
Sodium nitrite: Apparent U.S. consumption, by sources, 2005-07, January-March 2007, and January-March 2008

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
U.S. producer's shipments	***	***	***	***	***
U.S. imports from--					
China	519	1,044	1,626	683	742
Germany	7,717	10,175	11,723	2,648	3,015
Subtotal	8,236	11,219	13,349	3,331	3,757
All other sources	132	359	629	93	132
Total imports	8,368	11,578	13,979	3,424	3,890
Apparent U.S. consumption	***	***	***	***	***
Value (1,000 dollars)					
U.S. producer's shipments	***	***	***	***	***
U.S. imports from--					
China	122	245	476	174	255
Germany	1,627	2,072	2,680	571	744
Subtotal	1,750	2,318	3,155	745	999
All other sources	17	69	113	21	99
Total imports	1,767	2,387	3,269	766	1,098
Apparent U.S. consumption	***	***	***	***	***
Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.					

Figure IV-8
Sodium nitrite: Apparent U.S. consumption, by sources, 2005-07, January-March 2007, and January-March 2008

* * * * *

During 2005-07, total apparent U.S. consumption decreased by *** percent by quantity and *** percent by value. The quantity of subject imports increased 62.1 percent between 2005 and 2007 while the U.S. producer's U.S. shipments decreased by *** percent. From 2005 to 2007, imports of sodium nitrite from China increased by 213.2 percent and imports from Germany increased by 51.9 percent while imports from nonsubject sources increased by 375.8 percent. Imports from China, Germany, and nonsubject sources were all greater in January-March 2008 than in January-March 2007.

U.S. MARKET SHARES

Table IV-8 presents data on apparent U.S. consumption and market shares in 2005-07, January-March 2007, and January-March 2008. Figure IV-9 graphically presents data on U.S. market shares. The U.S. producer's share of the quantity and value of apparent U.S. consumption of sodium nitrite decreased from 2005 to 2007, while imports from China and Germany increased in both share of quantity and share of value. These trends appeared to continue into 2008.

Table IV-8
Sodium nitrite: Apparent U.S. consumption and market shares, by sources, 2005-07, January-March 2007, and January-March 2008

* * * * *

Figure IV-9
Sodium nitrite: Market shares, by sources, 2005-07, January-March 2007, and January-March 2008

* * * * *

RATIO OF IMPORTS TO U.S. PRODUCTION

Table IV-9 presents information on the ratio of subject and nonsubject imports to U.S. production of sodium nitrite. The ratio of subject imports to U.S. production increased from *** percent in 2005 to *** percent in 2007. Nonsubject imports as a share of U.S. production also increased from *** percent of production in 2005 to *** percent in 2007, reflecting both declining domestic production and increases in nonsubject imports. In January-March 2007 subject imports recorded their highest ratio to U.S. production, *** percent, for the period. In interim 2008, subject imports were lower, equivalent to *** percent of U.S. production.

Table IV-9
Sodium nitrite: Ratios of U.S. imports to U.S. production, by sources, 2005-07, January-March 2007, and January-March 2008

* * * * *

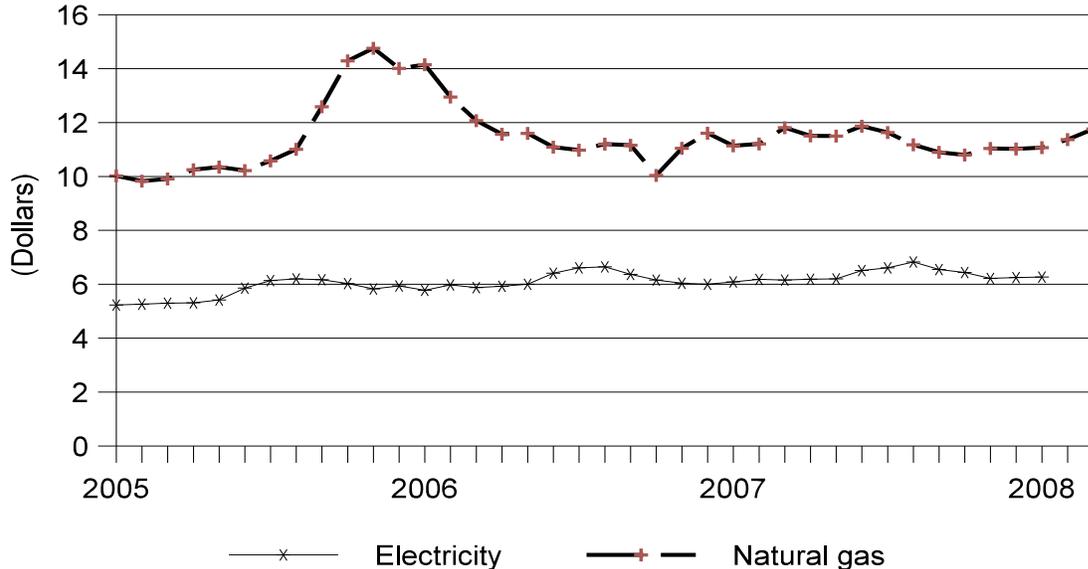
PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

The raw materials used to produce sodium nitrite include ammonia, soda ash, and caustic soda; all producers use ammonia but the use of caustic soda or soda ash depends upon the production process of the sodium nitrite manufacturer. U.S. producer General Chemical uses soda ash to produce its sodium nitrite while former U.S. producer Repauno used caustic soda.¹ General Chemical reported that raw material costs have increased over the period for which data were collected. In particular, General Chemical noted that the price it pays for ammonia is about 50 percent higher since 2003.² Similarly, General Chemical noted that, while it pays “a very competitive price for its soda ash,” the price of soda ash has also risen by about 50 percent.³ In addition, General Chemical also noted that prices for steam, electricity, and natural gas have increased by 10, 25, and 30-40 percent, respectively.⁴ Figure V-1 presents public price data for electricity and natural gas since January 2005.⁵

Figure V-1
Sodium nitrite: Prices for electricity and natural gas, January 2005-March 2008



Note.-- Prices for electricity are \$/kwh (for industrial customers) and are currently available through January 2008. Prices for natural gas are \$/thousand cubic feet and are currently available through March 2008.

Source: U.S. Energy Information Administration and U.S. Department of Energy.

¹ BASF uses caustic soda in the production of sodium nitrite and it noted that throughout the period of investigation, caustic soda has cost less in Europe than in the United States. BASF estimated that the price of caustic soda in Europe was 10 to 30 percent lower than the cost in the United States during the period examined. BASF posthearing brief, p. 7.

² Hearing transcript, p. 26 (McFarland) and conference transcript, p. 23 (McFarland).

³ Hearing transcript, pp. 25-26 (McFarland) and conference transcript, p. 24 (McFarland).

⁴ Hearing transcript, pp. 25-26 (McFarland) and conference transcript, p. 25 (McFarland).

⁵ Further information on U.S. producers' raw material costs since 2005 is provided in part VI.

Transportation Costs to the U.S. Market

Transportation costs for sodium nitrite shipped from China to the United States averaged 19.6 percent of the customs value during 2007; transportation costs for sodium nitrite shipped from Germany to the United States averaged 27.1 percent of the customs value during 2007. These estimates are derived from official import data.⁶

U.S. Inland Transportation Costs

U.S. producer General Chemical reported that *** of its sales are made between 101 and 1,000 miles from its production facility. Approximately *** percent of sales are to customers located over 1,000 miles from General Chemical's production facility and the remaining *** percent are made to customers located within 100 miles. According to General Chemical, U.S. inland transportation costs average between *** and *** percent of the total delivered cost of the sodium nitrite. BASF reported that *** of its sales were made to customers located over 1,000 miles from its storage facility; the remaining *** percent of BASF's sales were made within 100 miles of its facility. U.S. inland transportation costs for BASF were estimated to be *** percent of the total delivered cost. Importers of Chinese sodium nitrite were mixed with regard to distances of shipments. Of the seven responding firms, four reported that at least 75 percent of their shipments were between 100 miles from their facilities; two additional firms reported that all shipments are within 101 and 1,000 miles. The final two firms reported that all of their sales were made to customers located more than 1,000 miles from their facilities. Importers of Chinese material reported that U.S. inland transportation costs average between 9 and 20 percent of the total delivered cost of the sodium nitrite.

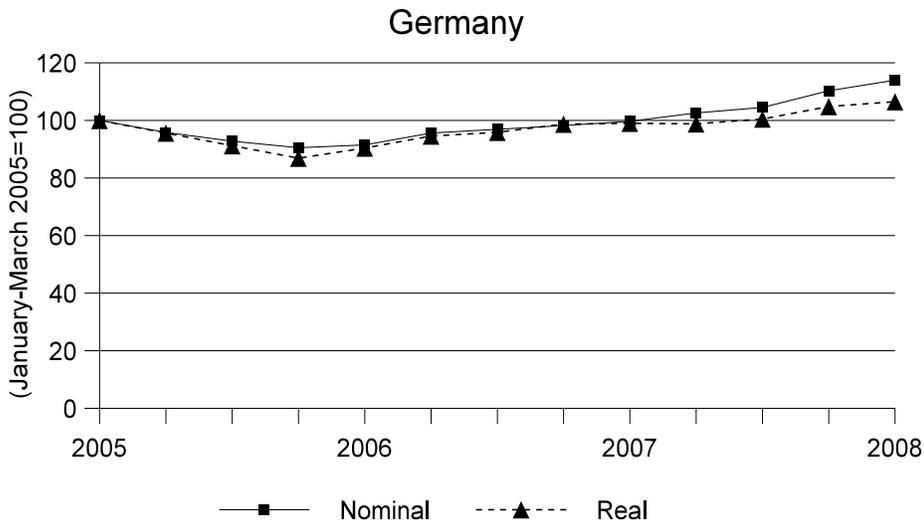
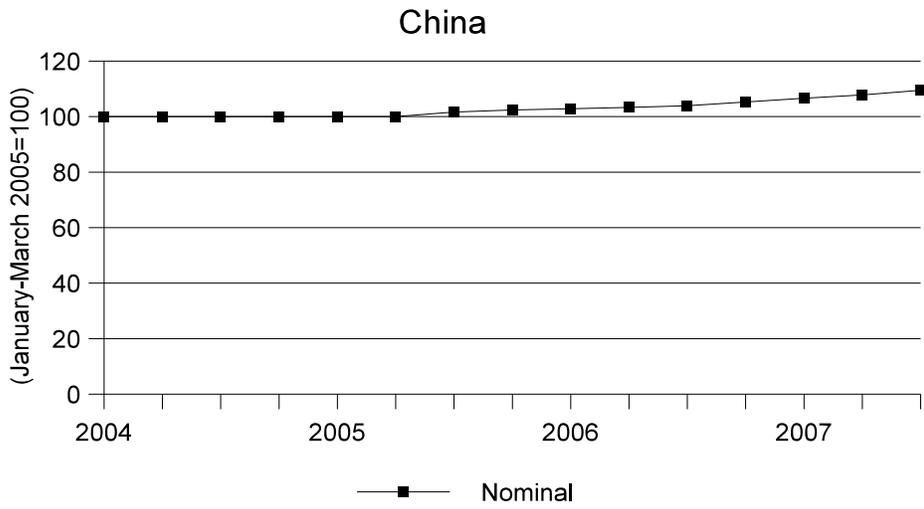
Exchange Rates

Nominal and real exchange rate data for China and Germany are presented on a quarterly basis in figure V-2.⁷ While the nominal exchange rate for the Chinese yuan was pegged to the U.S. dollar during the first half of the period for which data were collected, the dollar depreciated by 9.5 percent relative to the yuan in nominal terms from the third quarter of 2005 to the first quarter of 2008. The nominal and real exchange rates of the U.S. dollar relative to the euro depreciated over the period, with the nominal value depreciating 14.0 percent and the real value depreciating by 6.5 percent.

⁶ The estimated cost was obtained by subtracting the customs value from the c.i.f. value of the imports for 2007 and then dividing by the customs value.

⁷ A real value is unavailable for China. Real exchange rates are calculated by adjusting the nominal rates for movements in producer prices in the United States and each of the subject countries.

Figure V-2
Exchange rates: Indices of the nominal and real exchange rates of the Chinese and German currencies relative to the U.S. dollar, by quarters, January 2005-March 2008



Source: International Monetary Fund, International Financial Statistics, retrieved on June 6, 2008.

PRICING PRACTICES

Pricing Methods

General Chemical reported that pricing for sodium nitrite is set ***. According to General Chemical, ***. General Chemical noted that ***.⁸ BASF, the principal importer of German product, reported that it ***; for its large volume accounts, BASF noted that ***. Importers of Chinese sodium nitrite reported making sales using price lists (which are based on market prices) and by transaction-by-transaction negotiations.

General Chemical provided additional information on price negotiations with distributors. According to General Chemical, its sales personnel visit or phone key distributors multiple times a year. In November or December, discussions between General Chemical and distributors begin for pricing for the next six months. Once pricing is agreed upon, General Chemical will send a formal letter to the distributor; this letter represents a firm offer from General Chemical that sets price. However, distributors do not agree to fixed quantities and because the volume purchased by large distributors (such as Univar or Brenntag) is so great, General Chemical reported that it must commit to a price for a certain period.⁹ BASF reported similar negotiations with distributors and it noted that it has distributor agreements with all of our major distributors that are similar to those that General Chemical has, although it appears that BASF obtains some commitment on volume.¹⁰

U.S. producers and importers of sodium nitrite from China and Germany were asked to report the percentage of their sales that were on a (1) long-term contract basis (multiple deliveries for more than 12 months), (2) short-term contract basis, and (3) spot sales basis (for a single delivery) in 2007. U.S. producer General Chemical reported that *** of its sales of sodium nitrite were on a long-term contract basis, *** percent were on a short-term contract basis, and *** percent were on a spot basis. BASF reported that its sales of sodium nitrite imported from Germany were split between short-term contracts (***) percent) and spot sales (***) percent). Six of the seven responding importers of Chinese product reported that *** of their sales were made on a spot basis; the remaining importer reported that *** of its sales were on a short-term contract basis. Table V-1 summarizes responses of the U.S. producer and U.S. importers with regard to short-term contract provisions.

BASF was the only firm that reported using the internet to sell sodium nitrite. However, BASF does not use the internet to auction sodium nitrite, rather it is used as an order placement channel.¹¹ BASF's reported that ***. BASF estimated that approximately 50 percent of its sodium nitrite business is done through "World Account."¹²

⁸ In the preliminary phase of these investigations, General Chemical noted that ***. For sales to distributors, General Chemical reported that ***.

⁹ Hearing transcript, p. 28 (Nelson). In addition, General Chemical noted that, as a result, distributors can often force General Chemical to make concessions during the contract period simply by stopping orders or threatening to place orders for imported material. Ibid., p. 29 (Nelson).

¹⁰ According to BASF, these agreements have 30 day price protection requiring BASF to provide notification to a distributor 30 days in advance of a price change. BASF noted that each January, it discusses some commitment of volume because BASF must notify its parent company of its volume requirements in the United States. Hearing transcript, p. 192 (Katz).

¹¹ Conference transcript, p. 126 (Work).

¹² During the preliminary phase of these investigations, BASF noted that its internet business was growing and also has contributed to controlling selling costs. Conference transcript, p. 126 (Work).

**Table V-1
Sodium nitrite: Short-term sales contracts/agreements, by supplier, 2007**

Item	U.S.-produced sodium nitrite (General Chemical)	Imports by BASF from Germany	Imports from China ¹
Average contract duration	***	***	***
Can prices be renegotiated during contract period?	***	***	***
Contract fix price, quantity, or both?	***	***	***
Contract has meet-or-release provision?	***	***	***

¹ One importer, ***, reported using contracts; the remaining six responding importers of Chinese sodium nitrite reported selling *** percent on a spot sales basis.

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

Sales Terms and Discounts

General Chemical reported that it *** a discount policy for its sales of sodium nitrite. However, General Chemical noted that there are specific products that historically have been priced with *** discounts; these products include ***.¹³ General Chemical reported that its sales terms for sodium nitrite are typically *** and its prices of sodium nitrite are usually quoted on ***. For its sales of German sodium nitrite, BASF reported that ***. BASF also reported that its sales terms are generally *** and it sells its sodium nitrite on ***. Of the five responding importers of Chinese sodium nitrite, four reported that they have no set discount policy for their sales of sodium nitrite. The remaining importer noted that it does not have one discount policy, rather it normally offers slightly better prices for purchases of more than one ton. All of the responding importers of Chinese sodium nitrite reported that their sales terms were ***. These importers were mixed with regard to whether their sales were on an f.o.b. basis (three firms reporting) or a delivered basis (one firm); one of these importers noted that it sells on ***.

PRICE DATA

The Commission requested U.S. producers and importers of sodium nitrite to provide quarterly data for the total quantity and f.o.b. value of selected products that were shipped to unrelated U.S. customers. Data were requested for the period January 2005-March 2008. The products for which pricing data were requested are as follows:

Product 1. --Minimum sodium nitrite component of 98.0 percent. Sodium nitrite may or may not contain an anti-caking agent. Sodium nitrite may or may not be sold in prill form. Do not include flake, liquor or products that meet the Product 2 definition.

Product 2.-- Minimum sodium nitrite component of 99.0 percent. Certified as complying with the Food Chemical Codex (FCC) and current Good Manufacturing Practice (cGMP). Sodium nitrite may or may not contain an anti-caking agent. Sodium nitrite may or may not be sold in prill form. Do not include flake or liquor.

¹³ General Chemical producer questionnaire response (preliminary phase of these investigations).

The Commission received usable pricing data for sales of the requested products from the sole U.S. producer (General Chemical) and from seven importers, although not all firms reported pricing for all products for all quarters (tables V-2 to V-3 and figure V-3).¹⁴ Pricing data reported by these firms accounted for *** percent of U.S. producers' U.S. shipments of sodium nitrite (both granular and liquid) during January 2005-March 2008, *** percent of U.S. shipments of imports from China, and *** of U.S. shipments of imports from Germany.

Producer and importer questionnaires did not request price data for sodium nitrite in liquid form as the suggested products in the questionnaires were chosen to represent substantial sales of both domestic and imported sodium nitrite products (there have been only very limited sales of imported liquid sodium nitrite). However, at the hearing, General Chemical was asked to provide quarterly sales data for liquid sodium nitrite. These data are presented in table V-2 in conjunction with technical grade granular product. In addition, purchasers were asked if there is any relationship between the price of dry sodium nitrite and the price of liquid sodium nitrite. Of the 10 purchasers that responded, six reported that the prices of dry and liquid sodium nitrite are related. Four of these firms noted that price of dry sodium nitrite sets the price for liquid. One purchaser, ***, reported that since dry and liquid sodium nitrite are made from the same raw materials, price increases in raw materials will affect both; this purchaser reported that liquid sodium nitrite is more sensitive to freight price fluctuations.

Table V-2
Sodium nitrite: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarters, January 2005-March 2008

* * * * *

Table V-3
Sodium nitrite: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, January 2005-March 2008

* * * * *

Figure V-3
Sodium nitrite: Weighted-average prices of domestic and imported product 1, by quarters, January 2005-March 2008

* * * * *

Figure V-4
Sodium nitrite: Weighted-average prices of domestic and imported product 2, by quarters, January 2005-March 2008

* * * * *

With regard to sales of granular sodium nitrite (products 1 and 2), producers and importers were originally requested to provide data on their sales to all customers (i.e., not separately for sales to distributors and end users).¹⁵ However, subsequent to the hearing, staff requested General Chemical and

¹⁴ The Commission requested importers to provide data for sales of sodium nitrite imported from any country, including nonsubject sources. Two firms, ***, provided price data for sales of sodium nitrite from nonsubject countries. *** reported that it sold ***, ***.

¹⁵ General Chemical stated that “the Commission should distinguish between sales to distributors and sales to end users” Petitioner’s post hearing brief, Responses to Commissioners’ questions, p. 21.

BASF to provide pricing data for sales of product 1 to distributors only.¹⁶ These data show that the quantities of product 1 sold by General Chemical to distributors was *** than its sales to end users during the period for which data were collected. For BASF, ***. From *** through the first quarter of 2008, the quantity of product 1 sold by BASF ***. For China, the data for sales to end users was limited to 5 quarters.¹⁷ In general, prices for domestic and subject import product 1 sold to distributors and end users followed trends similar to data for sales to all customers.

Price Trends

Prices for U.S.-produced product 1 (technical grade sodium nitrite) increased relatively steadily from January-March 2005 to January-March 2006, rising by *** percent in that time (table V-2 and figure V-3).¹⁸ After a decreasing by *** percent in the *** quarter of 2006, prices for U.S.-produced product 1 increased by *** percent by *** quarter of 2007 and then were stable throughout the remainder of the period.¹⁹ Overall, prices for domestically produced product 1 were *** percent higher at the end of the period compared to the beginning of the period.²⁰ Prices for product 1 imported from China fluctuated over the period with no clear trend; these prices were *** percent higher in January-March 2008 than they were in January-March 2005.²¹ With regard to imports of product 1 from Germany, prices for this product increased *** over the period for which data were collected. Prices for German product 1 were *** higher at the end of the period as compared to the beginning of the period.²²

Prices for U.S.-produced product 2 (food-grade sodium nitrite) increased irregularly from January-March 2005 to the same quarter of 2007, rising *** percent in that time; these prices were then *** through the remainder of the period for which data were collected. Overall, these prices were *** percent higher in January-March 2008 than they were in January-March 2005 (table V-3 and figure V-4). Prices for product 2 imported from Germany were only reported for the period ***. During that time,

¹⁶ These data, which are presented in appendix D, were subtracted from total sales to determine end user prices.

¹⁷ Data for sales of Chinese sodium nitrite to distributors and end users was calculated using the information that these importers provided with regard to channels of distribution. All but one Chinese importer reported selling either solely to distributors or to end users. The one exception was ***, however, this company reported data for sales to distributors in 2005 and to end users in 2006.

¹⁸ General Chemical reported that food grade sodium nitrite is usually priced *** higher than technical free flowing sodium nitrite. However, in some quarters of the data reported by General Chemical, ***. General Chemical explained this outcome as follows: (1) the aggregate food grade price sometimes is *** than technical grade because *** and (2) the Product 1 definition that General Chemical provided to the Commission was developed to ensure that it captured competitive Chinese “prilled” product. However, by defining the product to include product “without anti-caking agents,” the data for product 1 include data for sales of High Purity Granular and High Purity Special Granular.” According to General Chemical, the incorporation of the prices for these product forms in the product 1 definition ***. Petitioner’s postconference brief, Exh. 1, pp. 2-3.

¹⁹ Prices for U.S.-produced liquid sodium nitrite were ***, then *** percent in the ***. These prices then *** before *** for the remainder of the period. At the end of the period (January-March 2008), these prices were *** percent *** than they were at the beginning of the period.

²⁰ During the period January-March 2005 to January-March 2008, prices for U.S.-produced product 1 sold to distributors increased by *** percent while those for sales to end users increased by *** percent (see app. D).

²¹ Prices for Chinese product 1 sold to distributors also fluctuated during the period for which data were collected and were at almost the same level at the end of the period as they were at the beginning. For sales to end users, prices for Chinese product 1 were limited (i.e., 5 quarters) but they were higher in January-March 2008 compared to October-December 2006 (see app. D).

²² During the period January-March 2005 to January-March 2008, prices for product 1 imported from Germany and sold to distributors increased by *** percent while those for sales to end users increased by *** percent (see app. D).

these prices declined irregularly from *** 2006 to *** 2007, falling *** percent in that time. Prices for German product 2 then rose *** to a level that was *** percent higher than the beginning of the period.²³

Price Comparisons

Margins of underselling and overselling are presented by product category in table V-4. As can be seen from the table, prices for sodium nitrite imported from China were below those for U.S.-produced sodium nitrite in 12 of 13 possible instances; margins of underselling ranged from *** to *** percent. In the remaining instance, prices for Chinese sodium nitrite were priced above the domestic product by *** percent.²⁴ With regard to Germany, prices for German sodium nitrite were below those for U.S.-produced sodium nitrite in 17 of 21 instances; margins of underselling ranged from *** to *** percent. In the remaining four instances, prices for German sodium nitrite were between *** and *** percent higher than those for U.S.-produced sodium nitrite.²⁵ For German imports, each instance of overselling was in a quarterly comparison of *** sodium nitrite.

Table V-4
Sodium nitrite: Instances, range, and average margins of underselling/(overselling), by product and by country, January 2005-March 2008

	Underselling			Overselling		
	Number of instances	Range (percent)	Average margin (percent)	Number of instances	Range (percent)	Average margin (percent)
By product:						
Product 1	25	***	***	1	***	***
Product 2	4	***	***	4	***	***
By country:						
China	12	***	***	1	***	***
Germany	17	***	***	4	***	***
Total	29	***	***	5	***	***

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

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of sodium nitrite to report any instances of lost sales or revenues they experienced due to competition from imports of sodium nitrite from China and/or Germany since January 2004. *** provided *** lost sales allegations and *** lost revenues allegations involving sodium nitrite imported from Germany and *** lost sales allegations and *** lost revenues allegation involving sodium nitrite imported from China; in addition, there was one additional allegation

²³ Staff confirmed the accuracy of this price with ***.

²⁴ Prices for Chinese product 1 sold to distributors were below prices for domestic product 1 sold to distributors in all 12 instances. For sales to end users, prices for Chinese product 1 were below those for the domestic product in all 7 instances where comparisons were possible (see app. D).

²⁵ For both sales to distributors and sales to end users, the German product was priced below the domestic product in all possible instances for which data were collected (see app. D).

that involved imports from both China and Germany.²⁶ The lost sales allegations totaled \$*** and the lost revenue allegations totaled \$***. Staff contacted the purchasers cited in the allegations and the results are summarized in tables V-5 and V-6 and discussed below.

Table V-5
Sodium nitrite: U.S. producers' lost sales allegations

* * * * *

Table V-6
Sodium nitrite: U.S. producers' lost revenue allegations

* * * * *

*** was named by *** in a *** allegation that totaled *** and allegedly involved *** of ***. *** agreed with this allegation.²⁷ *** submitted a purchaser questionnaire in these final investigations and it reported that it purchased from *** since 2005.²⁸ In its questionnaire response, ***. Recent interim purchase data show a ***.²⁹ *** reported that the relative share of its total purchases accounted for by purchases of domestic product increased *** percent from 2005 due to *** while the relative share of purchases of *** product increased ***. Furthermore, *** reported that ***.³⁰

*** was named by General Chemical in ***. While *** did not respond to the specific allegations, it did provide general information. *** was asked if it quotes prices offered by other suppliers when it is in negotiations with U.S. producers. *** stated that, "without disclosing the other party, *** will put forth quoted prices in order for other companies to see if they can beat another bid." *** was also asked if, since January 2005, U.S. producers reduced their prices of sodium nitrite in order to compete with prices of sodium nitrite imported from Germany. *** replied "yes." With regard to changing suppliers, *** was asked if, since January 2005, it switched purchases of sodium nitrite from U.S. producers to suppliers of sodium nitrite imported from Germany. *** reported that it had and in response to the question of whether price was the reason for the shift, *** stated "yes."

General Chemical named *** in *** concerning imports of sodium nitrite from ***. *** disagreed with *** and stated that price was not the reason for switching from the domestic producer. ***."

General Chemical named *** in *** involving imports from *** and in ***. *** agreed with *** and noted that it switched purchases from U.S. producers to *** producers because of price. While *** did not respond directly to ***, it did report that since January 2004, U.S. producers did reduce their prices of sodium nitrite in order to compete with prices of sodium nitrite from ***.

*** was named by General Chemical in *** involving imports of sodium nitrite from ***. For the *** allegation totaling *** and involving *** allegedly purchased from *** suppliers in ***, *** reported that it ***. *** noted that, based on his recollection, *** had been paying between *** per pound for sodium nitrite from ***. When *** inquired as to what the current price was, the price had *** per pound, which ***. For ***, it did note that it had been using ***. *** used ***. It noted that the use of dry or liquid depended on the production operation and that for ***, it had to have ***. ***, thus, ***

²⁶ General Chemical detailed ***. General Chemical's domestic producer questionnaire response, II-2. Petitioner's posthearing brief, p. 10. Hearing transcript, pp. 33-35 (Nelson), pp. 44-46 (McFarland).

²⁷ There were three other allegations involving ***.

²⁸ ***.

²⁹ ***.

³⁰ *** purchaser questionnaire response, section III-20.

is not buying ***. This was due to ***. According to ***, *** did shift to buying from *** as the price for material from *** per pound less.

*** was cited by General Chemical in *** involving imports of sodium nitrite from ***. While *** did not provide information on the specific allegation, it did note that *** of the sodium nitrite that *** buys is ***. According to ***, most companies buying sodium nitrite compare prices of dry sodium nitrite from different suppliers as opposed to comparing them to prices of liquid. With regard to relative prices, *** noted that prices for Chinese sodium nitrite are the lowest and prices for German products are “more reasonable.” *** noted that ***.

*** was named in a *** allegation which totaled *** and involved *** of *** allegedly purchased from *** suppliers in ***. *** disagreed with the allegation reporting that “***.”

*** was cited in a *** allegation totaling *** and involving *** of sodium nitrite purchased during ***. *** “disagreed” with the allegation; however, it noted that “***.”

*** was named in a *** allegation totaling *** and involving *** during ***. *** agreed with the allegation and noted that “***.”

*** was named in a *** allegation that totaled *** allegedly purchased from *** suppliers in ***. *** disagreed with the allegation and reported that “***.”

*** was cited in a *** allegation which totaled *** and involved ***. *** did not agree or disagree with the allegation ***; rather, it noted that the price of the rejected quote of U.S. producers was ***.

*** was cited in a *** allegation totaling *** and involving *** of sodium nitrite allegedly purchased from *** suppliers. While *** did not respond to a request for information sent in the preliminary investigations, it did provide a purchaser questionnaire response in these final investigations. In its questionnaire, *** reported that it did purchase *** pounds of *** sodium nitrite from *** in ***. In response to a question on changes in the relative shares of total purchases since 2005, *** reported that it had increased its purchases from *** suppliers because of price. The *** purchases were still ***.³¹

*** was cited in a *** allegation totaling *** and involving *** pounds of sodium nitrite allegedly purchased from *** suppliers in ***. *** did not respond directly to this allegation, however, it did provide a purchaser questionnaire response in these final investigations. *** reported *** purchasing sodium nitrite from ***. It noted that ***. *** also stated that ***. According to ***, it could not obtain competitive pricing from domestic manufacturers and ***. ***.

*** cited *** in *** lost sales and *** lost revenue allegations. *** did not comment on *** but with regard to ***, it stated that price was the reason that it shifted purchases to ***. *** noted however, that with the most recent duty ruling, it has now ***.

*** was named by General Chemical in *** allegation involving imports of sodium nitrite from ***. *** agreed with the allegation noting that it shifted its purchases of granular sodium nitrite to *** because of price. According to ***, ***.³² According to ***, it used *** and in ***. While *** noted that General Chemical did try to win back its business, *** wanted to have more than one source so it ***.

*** cited *** in *** due to competition with *** imports. While *** did not provide comments on the specific allegations, it did note that Chinese sodium nitrite used to be less expensive than the domestic product but this is no longer true. ***. ***. Finally, *** reported that the week after Commerce's preliminary determinations, a ***.

³¹ Purchases of domestic sodium nitrite accounted for *** percent of *** total sodium nitrite purchases in *** and *** percent in ***.

³² ***.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

General Chemical¹ provided usable financial data on its and Repauno's operations that have produced sodium nitrite since 2005.² The reported data are believed to represent all production of sodium nitrite in the United States in the period for which data were collected.

OPERATIONS ON SODIUM NITRITE

Combined income-and-loss data for General Chemical's and Repauno's sodium nitrite operations are presented in table VI-1, and are summarized briefly here. The quantity and value of total sales fell *** between 2005 and 2007, mostly attributable to declining sales by Repauno and its closure in November 2006.³ Higher average unit values of sales ameliorated the lower quantity sold. Sales quantity was lower in January-March 2008 than in January-March 2007, the effects of which were mostly offset by an increase in the average unit value of sales. The cost of goods sold ("COGS") fell overall on an absolute basis (driven by lower quantity sold) as well as when expressed as a ratio to net sales; however the average unit value of COGS increased, reflecting increased unit values of raw material and other factory costs. Operating income increased *** in 2005 and 2006 to *** in 2007. Operating income was higher in January-March 2008 than during the same period in 2007. The average unit value of operating income and the ratio of operating income to sales followed the changes in the value of operating income, as did net income before taxes and cash flow.

Table VI-1

Sodium nitrite: Combined results of operations of General Chemical and Repauno, fiscal years 2005-07, January-March 2007, and January-March 2008

* * * * *

The value of selling, general, and administrative ("SG&A") expenses increased from 2005 to 2007 and was higher in January-March 2008 than in January-March 2007. This is consistent with General Chemical's depiction of fixed costs (which do not vary with changes in sales or production

¹ General Chemical has a fiscal year ending December 31, as did Repauno. It reported data on its operations at Solvay, NY, for the entire period for which data were collected and for Repauno (Gibbstown, NJ) from 2005 through the closure date. The Gibbstown facility was leased from DuPont by U.S. Salt Holdings, and operated by that firm under the name of Repauno Products, LLC, from 1999 until July 2006. General Chemical purchased certain assets of Repauno, including *** in July 2006, but closed Repauno and relinquished the property lease back to DuPont in November 2006. General Chemical's postconference brief, exh. 1, item 11. Both the Solvay, NY, and Gibbstown, NJ, facilities produced only sodium nitrite during the period for which data were collected.

² Commission staff verified the U.S. producers' questionnaire response of General Chemical (and its estimates for the operations of Repauno) on May 22 and 23, 2008. See Memorandum INV-FF-055 (June 5, 2008).

³ During the staff conference, representatives of General Chemical stated that Repauno had lost two of its major accounts in 2006 when both firms moved operations using sodium nitrite offshore. According to testimony at the Commission's hearing, these events advanced General Chemical's decision to close Repauno from July 2007 (the date in its planning documents) to November 2006 in order to consolidate production in one plant, thereby reducing domestic production capacity and improving fixed costs. Hearing transcript, pp. 46-47 and 60-61 (McFarland), and 107-108 (Opalewski). See also General Chemical's posthearing brief, pp. 11-12 and exh. 6 and 7.

levels) comprising *** of SG&A expenses.⁴ On the other hand, COGS, for which ***,⁵ declined with the decrease in sales volume. Each component of COGS (raw materials, direct labor, and other factory costs) declined in value. They declined as well when expressed as a ratio to net sales, but the average unit value of raw materials and other factory costs increased.

During the staff conference, a witness from General Chemical stated that the firm experienced increases in raw material costs of approximately 50 percent while energy and utility costs nearly doubled.⁶ Total raw material and energy costs of General Chemical and Repauno together are shown in table VI-2. The costs of ammonia, caustic soda, and energy and utilities ***. In response to a question posed at the Commission’s hearing, General Chemical provided these same costs disaggregated between its Syracuse and Gibbstown facilities.⁷

Table VI-2
Sodium nitrite: Raw material and energy costs of General Chemical and Repauno, fiscal years 2005-07, January-March 2007, and January-March 2008

* * * * *

A variance analysis for the two U.S. firms is presented in table VI-3, based on information derived from table VI-1. The variance analysis assesses changes in profitability as related to changes in pricing, cost, and volume. Operating income increased by \$*** between 2005 and 2007, attributable to favorable variances on price (higher unit prices) and volume⁸ that combined were greater than the unfavorable variance on net cost/expense (higher unit costs). The increase in operating income in January-March 2008 compared to the same period in 2007 of \$*** reflected similar factors.

Table VI-3
Sodium nitrite: Variance analysis on results of operations of General Chemical and Repauno, fiscal years 2005-07, January-March 2007, and January-March 2008

* * * * *

⁴ General Chemical’s U.S. producers’ questionnaire, response to question III-12.

⁵ General Chemical’s U.S. producers’ questionnaire, response to question III-12.

⁶ The absolute value of these costs in total decreased because of the decline of Repauno’s sales, although soda ash costs increased. Generally, cost increases are shown chiefly in changes in the ratio to sales and per-unit values of each category. General Chemical’s director of business development and technology also stated that Repauno was affected more than General Chemical by increased raw material and energy costs because its production process was based on caustic soda, which is more expensive than soda ash as the raw material input, while General Chemical benefits from its proximity to relatively inexpensive electrical power (based on hydroelectric generation) and steam from a cogeneration facility. Hearing transcript, p. 72 (McFarland).

⁷ General Chemical’s posthearing brief, p. 32 and exh. 12. The statement in the brief that caustic soda costs are not included in table VI-2 is not accurate. The absolute value of those costs is shown, and the costs are included in total raw materials for purposes of calculating the ratio to sales and average unit value of sales.

⁸ Even though sales volume decreased *** from 2005 to 2007, the volume component of the variance analysis is positive because the component is determined by multiplying the 2005 to 2007 change in volume by the 2005 operating margin. Thus, the 2005 to 2007 change in volume *** multiplied by the 2005 operating margin ***. Put another way, the variance analysis resulted in a positive 2005 to 2007 volume component because the industry was selling ***.

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

General Chemical reported data on its capital expenditures and research and development (“R&D”) expenses related to the production of sodium nitrite, which are shown in table VI-4.

Table VI-4
Sodium nitrite: Capital expenditures and R&D expenses of General Chemical, fiscal years 2005-07, January-March 2007, and January-March 2008

* * * * *

The value of capital expenditures in 2006 includes \$*** for the acquisition of Repauno by General Chemical in that year. The total of capital expenditures (except in 2006) is a *** of depreciation in each period presented. When asked what a *** level of capital expenditures signified, operating personnel explained that ***.⁹

ASSETS AND RETURN ON INVESTMENT

The Commission’s questionnaire requested data on assets used in the production, warehousing, and sale of sodium nitrite to compute return on investment (“ROI”) for 2005 to 2007. The data for operating income are from table VI-1. Operating income was divided by total assets, resulting in ROI, shown in table VI-5.

Table VI-5
Sodium nitrite: Value of assets used in the production, warehousing, and sale, and return on investment of General Chemical and Repauno, fiscal years 2005-07

* * * * *

Nearly all accounts declined between 2005 and 2007 especially finished goods inventories. Other current assets, which include materials and work-in-process inventory, increased from 2005 to 2007. Non-current assets also increased in 2006 from 2005, attributable to increased values of intangible assets and assets held for sale (both related to the Repauno purchase). The decline in property, plant, and equipment in 2006 was the result of the closure and sale of Repauno’s Gibbstown, NJ facility.

CAPITAL AND INVESTMENT

The Commission requested U.S. firms to describe any actual or potential negative effects of imports of sodium nitrite from China and Germany on the 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). General Chemical’s responses are shown below.

* * * * *

⁹ In accounting terms, an expenditure is an incurred cost from which the benefits extend beyond the end of the fiscal year (i.e., beyond the current accounting period) while the benefits of an expense are shorter-term (do not extend beyond the current accounting period). Hence, maintenance and repair expenses are classified as short-term costs while investment in plant and equipment is a capital expenditure (the depreciation on plant and equipment is a short-term current expense).

PART VII: THREAT CONSIDERATIONS AND *BRATSK* INFORMATION

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider {these factors} . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).²

Information on the nature of the subsidies and sales at less than fair value was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" and dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission in relation to *Bratsk* rulings.³

THE INDUSTRY IN CHINA

Overview

The petition identified 92 potential producers of sodium nitrite in China but was unable to identify manufacturers that export sodium nitrite to the United States.⁴ Staff sent the foreign producer questionnaire, by fax and by e-mail, to all manufacturers listed and successfully transmitted the questionnaire to 37 companies in China. However, no questionnaire responses were received from producers of the subject merchandise in China.⁵ Importer questionnaire respondents that identified the foreign producer of their imports of sodium nitrite from China listed five producing firms: Hualong Ammonium Nitrate Co., Ltd. ("Hualong"), Jiaonan Hengyuan Chemical, Shanxi Jiaocheng Hong Xing Chemicals Ltd., Shanghai Huayuan Chemical Co., Ltd., and Weifang Longstar Chemical Inc.⁶

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

³ *Bratsk* information is minimal because during the preliminary phase of these investigations the Commission concluded that nonsubject imports are not a significant factor in the U.S. market for sodium nitrite. *Sodium Nitrite From China and Germany, Inv. Nos. 701-TA-453 and 731-TA-1136-1137 (Preliminary)*, USITC Publication 3979, January 2008, p. 26, n. 168. The Commission invited any parties holding a contrary view to so indicate in their written comments on the draft questionnaires. No party did so.

⁴ Petition, exh. I-4.

⁵ Petitioners suggest that the Commission should make an adverse inference because by not responding to the Commission's request for information, producers in China "did not act to the best of their ability." Petitioner's posthearing brief, responses to Commissioner questions, p. 51.

⁶ Importers' questionnaire responses, II-5a.

Hualong describes itself as the largest producer of sodium nitrite in Asia with an annual capacity to produce sodium nitrate and nitrite (combined) of 160,000 tons (or 320 million pounds) and exports to the United States, India, Indonesia, Italy, South Korea and the Middle East.⁷ In ***,⁸ On the *** another producer, Qingdao Hengyuan Chemical, with a reported sodium nitrite production capacity of ***.⁹

Shanxi Jiaocheng Hong Xing Chemicals Ltd. describes itself as the largest private nitrates manufacturer in China and specializes in fertilizer products but lists sodium nitrite among its main products. The company advertises sodium nitrite in four grades: superfine, food, first, and second.¹⁰ Weifang Longstar Chemical Inc. is a self-described “developing” producer of oil-drilling chemicals, anti-freezing chemicals, water treatment chemicals, and food additive chemicals and lists sodium nitrite (with a 99.0 percent purity) as one of its best selling lines.¹¹

Sodium nitrite produced in China is available for sale on the internet from such marketing sites as Alibaba and Global b2b Network. The sodium nitrite from China sold online is packaged in 25, 50, and 1,000 kg plastic woven bags, some lined with polyethylene bags. It is described as a white or light yellow prismatic crystal that is minimally 99.0 percent pure and that dissolves easily in water.¹² One online source of sodium nitrite lists its annual production capacity as 50,000 MT.¹³ General Chemical estimates, based on publicly available information, ***, that total Chinese capacity to produce sodium nitrite is *** pounds.¹⁴

Sodium Nitrite Operations

Table VII-1 presents data on exports of metallic nitrites (HTS subheading 2834.10) from China as reported by Global Trade Atlas and compiled from official sources. This is a larger commodity category, at the 6-digit international harmonization level, than HTS subheading 2834.10.10, which covers the subject sodium nitrite. It is not known by exactly how much this categorical coverage distorts the statistical information presented. It is likely to be very large, however, given that U.S. imports of sodium nitrite from China were approximately 1.6 million pounds in 2007 and the Global Trade Atlas reports

⁷ Hualong Ammonium Nitrate Co., Ltd., found at <http://www.cn-nitrate.com/intr-e.html>, retrieved on June 4, 2008.

⁸ Petitioner’s posthearing brief, responses to Commissioner questions, p. 35.

⁹ Petitioner’s posthearing brief, responses to Commissioner questions, pp. 42-43.

¹⁰ Shanxi Jiaocheng Hong Xing Chemicals Ltd., found at http://www.china-hxchemical.com/cgi/search-en.cgi?f=introduction_en_1+company_en_1&t=introduction_en_1, retrieved on June 11, 2008.

¹¹ Weifang Longstar Chemical Inc., found at <http://www.longstarchem.com/products.html>, and http://www.tradekey.com/profile_view/uid/128463/Weifang-Longstar-Chemical-Co-Ltd.htm, retrieved on June 11, 2008.

¹² Chongqing Fuyuan Chemical Co., Ltd., found at http://fuyuanchem.en.alibaba.com/product/50122758/50559926/Inorganic_Chemicals.html, retrieved on November 30, 2007. Shandong Ocean Chemical Import and Export Co., Ltd. Of Weifang City, found at http://www.sdhaihua.en.alibaba.com/product/50123192/50561639/Chemicals/Sodium_Nitrite.html, retrieved on November 30, 2007. Qindao Hengyuan Chemicals Co., Ltd., found at http://www.germes-online.com/catalog/98/99/573/144261/sell_normal_sodium_nitrite.html, retrieved on November 30, 2007.

¹³ Qingdao Chinabridge Import and Export Co. Ltd. of Qingdao City, found at http://www.global-b2b-network.com/b2b/98/592/177625/sodium_nitrite.html, retrieved on November 30, 2007.

¹⁴ Petitioner’s posthearing brief, responses to Commissioner questions, pp. 34-35.

exports of metallic nitrites from China to the United States of 13.4 million pounds in 2007. China is a net exporter of metallic nitrites.¹⁵

Table VII-1
Metallic nitrites: China's exports, by quantity and average unit value, 2005-07

Destination	2005	2006	2007	2005	2006	2007
	Exports (1,000 pounds)			Unit value (per pound)		
United States	12,597	13,397	13,386	\$0.12	\$0.13	\$0.14
India	10,200	13,282	13,146	0.12	0.12	0.14
South Korea	14,008	12,428	13,073	0.13	0.12	0.15
Indonesia	6,097	6,537	5,377	0.12	0.12	0.16
Taiwan	3,536	4,336	4,460	0.12	0.12	0.15
Thailand	2,662	3,236	3,817	0.12	0.12	0.15
Egypt	1,684	2,370	2,453	0.12	0.12	0.15
Iran	1,017	1,549	1,856	0.15	0.13	0.17
United Arab Emirates	4,020	2,799	1,577	0.13	0.13	0.12
Japan	798	1,091	1,378	0.21	0.15	0.20
Australia	634	747	1,310	0.16	0.13	0.16
Saudi Arabia	996	344	1,049	0.13	0.15	0.15
South Africa	1,725	1,146	929	0.13	0.14	0.15
Argentina	1,036	791	893	0.13	0.12	0.15
All other	12,100	11,069	8,434	0.13	0.13	0.16
Total	73,111	75,124	73,139	0.13	0.12	0.15

Source: Global Trade Atlas, Exports of Metallic Nitrites (HTS 2834.10) from China, 2005-07.

THE INDUSTRY IN GERMANY

Overview

The petition identified one producer of sodium nitrite in Germany: BASF AG. BASF AG has confirmed that there are no other sodium nitrite producers in Germany.¹⁶ In these final phase investigations BASF AG entered a notice of appearance, submitted both a foreign producer and an importer questionnaire, and participated at the Commission's hearing. Three responding importers,

¹⁵ In 2005 China imported 1,288,000 pounds and exported 73,111,000 pounds; in 2006 China imported 1,773,000 pounds and exported 75,124,000 pounds of metallic nitrites; and in 2007 China imported 340,000 pounds and exported 73,139,000 pounds of metallic nitrites.

¹⁶ Respondent's postconference brief, attachment 1, p. 5.

BASF Corp., ***, and ***, reported imports of sodium nitrite from Germany. BASF Corp. imported *** while *** imported from Germany in 2005 and 2006 only.¹⁷ In 2007, *** percent of BASF AG's exports to the United States were imported by its U.S. subsidiary, BASF Corp.¹⁸

Sodium Nitrite Operations

BASF AG is a global company that operates a sodium nitrite facility in Ludwigshafen, Germany. Sodium nitrite sales represented *** percent of BASF AG's total sales in 2007.¹⁹ Table VII-2 presents data for BASF AG during 2005-07, January-March 2007, January-March 2008, and forecasts for 2008 and 2009. BASF AG reported that ***.²⁰ BASF AG's projected capacity is ***.²¹ BASF's capacity is limited by ***.²²

Table VII-2

Sodium nitrite: BASF AG's operations, 2005-07, January-March 2007, January-March 2008, and projected 2008-09

* * * * *

BASF AG is vertically integrated in the production of most raw materials used to produce sodium nitrite, including caustic soda and ammonia. These products ***. However, ***.²³ In addition, the company has a committed long-term supply of natural gas, which is the primary input in the production of ammonia.²⁴ This reportedly reduces BASF AG's costs.²⁵ BASF's production process initially yields a saleable liquid sodium nitrite that then is converted into granular form by driving off the water. This is in contrast to General Chemical's process that first yields a weak liquid solution that must be concentrated.²⁶ BASF AG's production of sodium nitrite is depicted in figure VII-1.

Figure VII-1

Sodium nitrite: BASF's production process

* * * * *

BASF AG's production increased irregularly between 2005 and 2007, by *** percent overall. In addition, production in January-March 2008 was *** percent higher than production in January-March 2007, although BASF AG projects that full-year 2008 production will be less than that in 2007. As production increased between 2005 and 2007, internal consumption and home market shipments

¹⁷ *** importer questionnaire responses, II-7a.

¹⁸ BASF AG's foreign producer questionnaire response, I-3.

¹⁹ BASF AG's foreign producer questionnaire response, II-2.

²⁰ BASF AG's foreign producer questionnaire response, II-1.

²¹ BASF AG's foreign producer questionnaire response, II-7b. BASF AG has ***. BASF's responses to staff questions, July 8, 2008.

²² BASF AG's foreign producer questionnaire response, II-7b.

²³ Respondent's posthearing brief, responses to Commissioner questions, p. 1.

²⁴ BASF AG is involved in a joint venture and supply arrangement with GAZPROM, whereby gas is piped from Russia into Western Europe. Hearing transcript, p. 139 (Work).

²⁵ Hearing transcript, pp. 122-123 (Work).

²⁶ Hearing transcript, p. 129 (Katz).

experienced *** decreases while end-of-period inventories and exports both experienced increases overall. At the same time, exports to the United States increased in each year, by nearly *** percent overall.

The inventories reported by BASF AG include both saleable solution stored only in Germany and all forms of the crystal product. The crystal inventory is designated for specific customers (i.e. with custom bag markings and labels) and cannot be sold to other customers.²⁷ End-of-period inventories declined between 2005 and 2006, then reached *** in 2007, but were lower in January-March 2008 than in January-March 2007. Throughout the period for which data were collected, inventories remained equivalent to approximately *** percent of annual shipments.

BASF AG reported that, since 2005, ***.²⁸ Such *** are presented in table VII-3 of this report. BASF AG reported that it does not have commodity inventories in Germany or elsewhere because all sodium nitrite is “made-to-order.” The crystallized or powder form of sodium nitrite is stored for a few days only in a transit warehouse awaiting shipment, and the solution or liquid form (which is only sold in Europe) is stored in a tank into which material is pumped after production. According to BASF AG, the solution or liquid form is the only portion of BASF AG’s production of sodium nitrite that is not “made-to-order.”²⁹

Principal export markets for BASF AG’s sodium nitrite are those in ***.³⁰ BASF AG reported that it faces competition in the European Community with ***, according to its customers and distributors. The company further stated that ***.³¹ Some customers in ***.³²

BASF AG sells sodium nitrite over the internet, through a “World Account” program that allows customers to place orders and see their order status online. Registration is required to use the program and sales over the internet accounted for approximately *** percent of sales in 2007.³³ BASF AG only sells full ocean containers, of approximately 38,000 pounds each, directly to customers; all smaller orders are filled by distributors.³⁴

The reported trade data are based on the production of all grades of sodium nitrite at the BASF AG facility including solution with either 37 or 42 percent sodium nitrite concentrations. ***.³⁵ BASF AG produces the following four grades: high quality non-food grade (with and without an anticaking agent);³⁶ food grade (with and without an anticaking agent);³⁷ solution “N” (normal) with 37 percent and 40 percent NaNO₂; and solution “S” (special) with 28 percent and 40 percent NaNO₂.³⁸ BASF AG does

²⁷ Respondent’s postconference brief, attachment 1, p. 3.

²⁸ BASF AG’s foreign producer questionnaire response, II-4.

²⁹ Respondent’s postconference brief, attachment 1, p. 2.

³⁰ BASF AG’s foreign producer questionnaire response, II-7b.

³¹ BASF’s response to staff questions, July 8, 2008.

³² Respondent’s postconference brief, attachment 1, pp. 1-2.

³³ BASF AG’s foreign producer questionnaire response, II-5.

³⁴ Hearing transcript, pp. 176 and 194 (Katz).

³⁵ BASF AG’s preliminary phase foreign producer questionnaire response, II-7b.

³⁶ According to General Chemical, this product, “granular high purity grade” is comparable to General Chemical’s technical free-flowing grade. Petitioner’s postconference brief, p. 15.

³⁷ BASF AG has various certifications for food grade: ***. Respondent’s postconference brief, attachment 1, p. 12.

³⁸ BASF Group company website, Sodium Nitrite Grades, and Sodium Nitrite Solution, found at http://www.inorganics.basf.com/p02/CAPortal/en_GB/portal/Natriumnitrite/content, retrieved on December 12, 2007.

not produce a flake sodium nitrite product.³⁹ During the preliminary phase investigations, the company reported that ***.⁴⁰ BASF AG ***.⁴¹ However, ***.⁴²

U.S. INVENTORIES OF SODIUM NITRITE FROM CHINA AND GERMANY

Inventories of U.S. imports as reported are presented in table VII-3. Inventories of Chinese sodium nitrite increased from 2005 to 2007 by *** percent overall, while inventories of German sodium nitrite increased by *** percent overall. The ratios of subject inventories to imports and to U.S. shipments of imports increased overall from 2005 to 2007. Inventories of subject sodium nitrite were higher in January-March 2008 than in January-March 2007.⁴³ Inventories from all other sources were small in each full year and were comparable between interim periods.

Table VII-3

Sodium nitrite: U.S. importers' end-of-period inventories of imports, by source, 2005-07, January-March 2007, and January-March 2008

* * * * *

U.S. IMPORTERS' IMPORTS SUBSEQUENT TO MARCH 31, 2008

The Commission requested importers to indicate whether they imported or arranged for the importation of sodium nitrite from any country source after March 31, 2008. Eight importers reported that they did not have any orders for future delivery of sodium nitrite.⁴⁴ Three importers reported that they have orders for future delivery of sodium nitrite from China and Germany.⁴⁵ One importer reported having orders for future delivery of sodium nitrite from a nonsubject source, India.⁴⁶ Data relating to U.S. importers' orders for importation of sodium nitrite from China and Germany for entry into the United States in the period of April 2008 to March 2009, are presented in table VII-4.

Table VII-4

Sodium nitrite: U.S. importers' current orders from China and Germany, April 2008 - March 2009

* * * * *

³⁹ Hearing transcript, p. 128 (Katz).

⁴⁰ Respondent's postconference brief, attachment 1, p. 5.

⁴¹ BASF AG's foreign producer questionnaire response, II-3.

⁴² Respondent's posthearing brief, responses to Commissioner questions, p. 10.

⁴³ Importer, *** reported that the company's 2007 and January-March 2008 end-of-period inventory of *** pounds of granular sodium nitrite from China has not been sold in the U.S. market because it contains an anti-caking agent that causes clouding. Staff telephone interview with ***.

⁴⁴ Importers responding "no" to this question, II-3, included: ***.

⁴⁵ Importers responding "yes" to this question, II-3, included: ***.

⁴⁶ *** importer questionnaire response, II-3.

DUMPING IN THIRD-COUNTRY MARKETS

Exports of sodium nitrite from China and Germany are subject to antidumping duty orders in India. No questionnaire respondent reported any other countervailing or antidumping duty orders on sodium nitrite from China and/or Germany in third-country markets.⁴⁷

In 2000, India issued an antidumping duty order on imports of sodium nitrite from China with an antidumping duty of the difference between US\$524.63 per MT (\$0.24 per pound) and the landed price of imports per MT on all imports of sodium nitrite from China.⁴⁸ No producer or exporter in China participated in the original investigation.⁴⁹ After conducting a review of the order in 2005, the Government of India continued the order on imports of sodium nitrite from China.⁵⁰

The Indian antidumping duty order on imports from Germany entered into effect in November 2002 and was continued on March 3, 2008 after a sunset review.⁵¹ The applicable tariff rate was \$51.83 per metric ton (\$0.02 per pound), but in its sunset review the Ministry of Commerce & Industry revised the rate “considering the current level of dumping from subject countries and injury suffered by the domestic industry.” The new measure imposes an antidumping duty on a reference price basis.⁵² BASF AG reported that it did not participate in the original investigation or the sunset review because of the “low overall importance” of the Indian market to BASF AG.⁵³ According to BASF AG, the Indian antidumping duty order did not have any impact on BASF AG’s exports to other markets ***. BASF AG provided its export volumes to India before and after the imposition of the antidumping duty order, presented in the tabulation below.⁵⁴

* * * * *

INFORMATION ON NONSUBJECT SOURCES

Overview

As discussed in Part IV of this report, the leading nonsubject source of sodium nitrite is Poland and the only other nonsubject source country is India. Imports from all nonsubject sources combined accounted for 4.5 percent, by quantity, of total U.S. imports of sodium nitrite in 2007. Figure VII-2 shows the volume of subject and nonsubject imports for the period for which data were collected.

⁴⁷ All importer questionnaire responses, I-10.

⁴⁸ Petitioner’s postconference brief, exh. 11, Final Finding Notification, Section 13.

⁴⁹ Petitioner’s postconference brief, exh. 11, Final Finding Notification, Dumping.

⁵⁰ Petitioner’s postconference brief, exh. 11, Sunset Review, Final Findings, Section I, 59.

⁵¹ BASF AG’s foreign producer questionnaire response, II-6. Postconference brief of BASF AG and BASF Corp., attachment 1, p. 6. Government of India, Ministry of Commerce & Industry, Notification, Final Findings (Sunset Review), *Anti-Dumping (Sunset Review) investigations concerning imports of Sodium Nitrite originating in or exported from European Union*, No. 15/6/2006, March 3, 2008, found at http://commerce.nic.in/writereaddata/traderemedies/adfin_SSR_sodiumnitrite.pdf, retrieved on May 29, 2008.

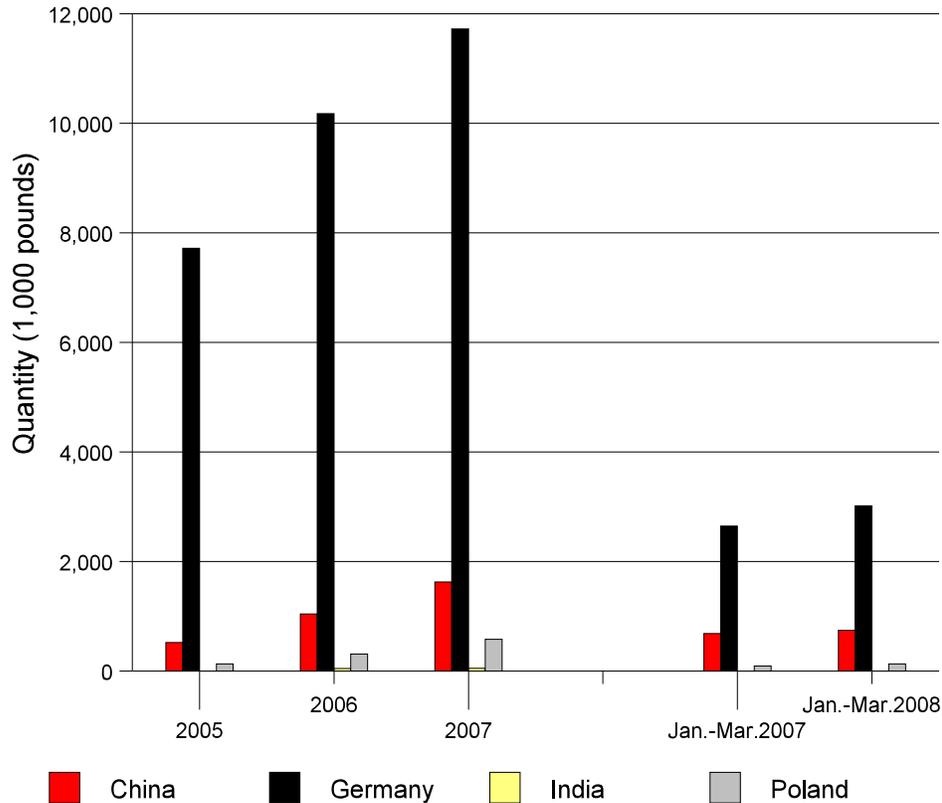
⁵² Government of India, Ministry of Commerce & Industry, Notification, Final Findings (Sunset Review), *Anti-Dumping (Sunset Review) investigations concerning imports of Sodium Nitrite originating in or exported from European Union*, No. 15/6/2006, March 3, 2008, pp. 16-17, found at http://commerce.nic.in/writereaddata/traderemedies/adfin_SSR_sodiumnitrite.pdf, retrieved on May 29, 2008.

⁵³ Respondent’s postconference brief, attachment 1, p. 6.

⁵⁴ Respondent’s postconference brief, attachment 1, p. 1 and E-mail from ***, June 17, 2008.

Figure VII-2

Sodium nitrite: U.S. imports, by sources, 2005-07, January-March 2007, and January-March 2008



Source: Table IV-2.

Nonsubject Sources of Sodium Nitrite

India

According to the Government of India’s Ministry of Commerce and Industry, there are four manufacturers that have the capacity to produce sodium nitrite in India: Deepak Nitrite Ltd. (“Deepak”), Punjab Chemicals and Pharmaceuticals Ltd., National Fertilizers Ltd., and Rashtriya Chemicals and Fertilizers Ltd. In addition, Thomas Global online lists 39 companies in India as sodium nitrite producers.⁵⁵ However, these companies have not been verified as authentic producers and/or exporters of sodium nitrite, nor is it known whether they have ever exported to the United States. During the hearing held in connection with these investigations a BASF witness stated that she is aware of competition from Indian sodium nitrite in the U.S. market.⁵⁶

⁵⁵ Thomas Global, Industry Directory, found at <http://www.thomasglobal.com/search/>, retrieved on December 5, 2007.

⁵⁶ Hearing transcript, pp. 196-197 (Katz).

Deepak Nitrite Ltd. is the largest of the four producers with 64 percent of domestic production in the period April 1, 2000 through March 31, 2001.⁵⁷ Deepak's capacity to produce nitrites and nitrates was 59.5 million pounds (27,000 MT) in each year from 1997 to 2001.⁵⁸ The Commission sent an abbreviated questionnaire to Deepak but the company did not respond.

Indian producers' total domestic sales of sodium nitrite were 51.7 million pounds (23,464 MT) in 1998-99.⁵⁹ Publicly available market price information for India (Mumbai) shows that reference prices for sodium nitrite from China, Germany, and India (listed as Deepak specifically) remained the same from August 2005 through January 2008, the most recent month for which data are available. The reference prices for sodium nitrite were listed beginning in August 2005 and continuing through January 2008⁶⁰ and were presented as 28 Rupees per kilogram for China (or \$0.29 per pound) and 29 Rupees per kilogram (or \$0.30 per pound) for both Germany and India.⁶¹

Poland

In a cover letter to its preliminary phase foreign producer questionnaire submission, BASF AG noted that sodium nitrite is also imported into the United States from a number of other countries, including India and Poland.⁶² During the hearing held in connection with these investigations, General Chemical's witness stated that imports from Poland have always been at a small level and that he is not aware of Polish producers being "particularly active in the marketplace."⁶³

Two importers were identified from proprietary Customs data as importers of sodium nitrite from Poland, ***. Both importers provided partial questionnaire responses that included data for imports from Poland.

One sodium nitrite producer in Poland has been identified, Zakłady Azotowe Kędzierzyn SA ("ZAK"). The Commission sent an abbreviated questionnaire to this company but the company did not respond. In addition to sodium nitrite, ZAK produces other basic chemicals, oxo alcohols, plasticizers, and nitrogen fertilizers. Sodium nitrite is not a leading product line for ZAK as evidenced by its 2006 revenues by division: plasticizers (54.8 percent), fertilizers (38.8 percent), power engineering (5.7 percent) and "other," which includes sodium nitrite (0.7 percent). Of its overall production in 2006 ZAK sold 50 percent domestically, 41 percent within the European Community, and exported 9 percent.⁶⁴

ZAK is a vertically integrated producer that began manufacturing sodium nitrite in the 1960s. ZAK produces ammonia feedstock for its sodium nitrite in a facility that was built in the early 1990s.⁶⁵ The plant's annual production capacity for sodium nitrite is not publicly available and is listed as being

⁵⁷ Government of India, *Anti-Dumping Investigation Concerning Imports of Sodium Nitrite from European Union (EU) and Taiwan- Final Findings*, October 28, 2002, attached to petitioner's postconference brief, exh. 10.

⁵⁸ Ibid.

⁵⁹ Government of India, *Anti-Dumping Investigation Concerning Imports of Sodium Nitrite from China PR- Final Findings* (Nov. 3, 2000); *Sunset Review Regarding Anti-Dumping Imposed on Sodium Nitrite Originating in or Exported from China PR- Final Findings* (Dec. 1, 2005), attached to petitioner's postconference brief, exh. 11.

⁶⁰ No monthly market prices are available for November 2005, December 2005, and January 2006.

⁶¹ Market Data, *Market Prices {Mumbai}*, Chemical Business, Issues August 2005-October 2005, February 2006-December 2006, January 2007-December 2007, and January 2008.

⁶² Letter from ***, BASF Corp., November 19, 2007.

⁶³ Hearing transcript, p. 55 (McFarland).

⁶⁴ ZAK Company website, 2006 Annual Report, found at http://www.zak.com.pl/attach/Pliki/zak_rr2006_ang.pdf, retrieved on June 18, 2008.

⁶⁵ ZAK Company website, History, found at <http://www.zak.com.pl/?dzial=13&lang=GB&node=13&doc=1000145>, retrieved on June 18, 2008. Respondent's posthearing brief, p. 9.

“as needed.” ZAK does not produce food grade sodium nitrite.⁶⁶ The technical grade sodium nitrite produced by ZAK has a minimum NaNO₂ content of 98.7 percent, a maximum water content of 0.4 percent, a maximum sodium nitrate content of 1.0 percent, a maximum water insoluble matter content of 0.05 percent, and a maximum chlorides content of 0.1 percent.⁶⁷ The company sells its sodium nitrite in 25-kg bags.⁶⁸

⁶⁶ ZAK Company website, Frequently Asked Questions, found at <http://www.zak.com.pl/?dzial=16&lang=GB&node=23>, retrieved on June 18, 2008.

⁶⁷ ZAK Company website, Sodium Nitrite Quality Specification, found at <http://www.zak.com.pl/?dzial=14&lang=GB&node=25#!>, retrieved on June 18, 2008.

⁶⁸ ZAK Company website, Frequently Asked Questions, found at <http://www.zak.com.pl/?dzial=16&lang=GB&node=23>, retrieved on June 18, 2008.

APPENDIX A
FEDERAL REGISTER NOTICES

DEPARTMENT OF COMMERCE**International Trade Administration****(C-570-926)****Sodium Nitrite from the People's
Republic of China: Alignment of Final
Countervailing Duty Determination
with Final Antidumping Duty
Determination****AGENCY:** Import Administration,
International Trade Administration,
Department of Commerce.**SUMMARY:** The Department of Commerce
(the Department) is aligning the final
determination in the countervailing
duty investigation of sodium nitrite
from the People's Republic of China

(PRC) with the final determination in the companion antidumping investigation.

EFFECTIVE DATE: April 28, 2008.

FOR FURTHER INFORMATION CONTACT:

Sean Carey or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3964 and (202) 482-3586, respectively.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

On November 28, 2007, the Department initiated the countervailing duty and antidumping duty investigations on sodium nitrite from the PRC. *See Sodium Nitrite from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 72 FR 68568 (December 5, 2007) and *Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 72 FR 68563 (December 5, 2007). The countervailing duty and antidumping duty investigations have the same scope with regard to the subject merchandise covered. On April 11, 2008, the Department published the preliminary affirmative countervailing duty determination pertaining to sodium nitrite from the PRC. *See Sodium Nitrite from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 73 FR 19816 (April 11, 2008). On April 14, 2008, counsel for petitioner (General Chemical LLC) submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC.

Therefore, in accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), we are aligning the final countervailing duty determination on sodium nitrite from the PRC with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC. The final countervailing duty determination will be issued on the same date as the final antidumping duty determination, which is currently scheduled to be issued on June 30, 2008.

This notice is issued and published pursuant to section 705(a)(1) of the Act.

Dated: April 18, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

[FR Doc. E8-9224 Filed 4-25-08; 8:45 am]

BILLING CODE 3510-DS-S

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 701-TA-453 and 731-TA-1136-1137 (Final)]

**Sodium Nitrite From China and
Germany**

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701-TA-453 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation Nos. 731-TA-1136-1137 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) 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 subsidized and less-than-fair-value imports from China and Germany of sodium nitrite, provided for in subheading 2834.10.10 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).

DATES: *Effective Date:* April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Dana Lofgren (202-205-3185), Office of

¹For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO₂." Commerce has further indicated that the American Chemical Society Chemical Abstract Service (CAS) registry number is 7632-00-0.

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 certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of sodium nitrite, and that such products from China and Germany 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 November 8, 2007, by General Chemical LLC, of Parsippany, NJ.

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 a 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 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 June 18, 2008, 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 July 2, 2008, 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 June 26, 2008. 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 be held at 9:30 a.m. on June 30, 2008, 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 business 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 deadline for filing is June 25, 2008. 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 July 10, 2008; 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 July 10, 2008. On August 4, 2008, 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 August 6, 2008, 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). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

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: April 29, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-9772 Filed 5-2-08; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE**International Trade Administration****C-570-926****Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination**

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

SUMMARY: The Department of Commerce (the Department) has reached a final determination that countervailable subsidies are being provided to producers/exporters of sodium nitrite from the People's Republic of China (PRC). On April 11, 2008, we issued the Preliminary Determination, *see Sodium Nitrite From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 73 FR 19816 (April 11, 2008) (Preliminary Determination). Because neither the Government of the People's Republic of China (GOC) nor the two mandatory company respondents participated in this investigation, the Department relied on facts available and applied adverse inferences in reaching the *Preliminary Determination*. The Department assigned a countervailable subsidy rate to each program under investigation using rates calculated in *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) and accompanying *Issues and Decision Memorandum (CFS from the PRC)*. We invited interested parties to comment on the *Preliminary Determination*. No interested party submitted comments regarding the *Preliminary Determination*.

Since the publication of the *Preliminary Determination*, the Department has reached affirmative final countervailing duty determinations in several investigations of products from the PRC. We have used the rates calculated in these intervening final determinations to revise the countervailable subsidy rates for certain programs. For information on the countervailable subsidy rates, *see* the "Final Determination" section of this notice.

EFFECTIVE DATE: July 8, 2008.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Paul Matino, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3586 or (202) 482-4146, respectively.

SUPPLEMENTARY INFORMATION:**Case History**

The following events have occurred since the publication of the *Preliminary Determination* in the **Federal Register** on April 11, 2008. On April 14, 2008, petitioner (General Chemical LLC) submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC. On April 28, 2008, the Department aligned the final countervailing duty determination with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC. *See Sodium Nitrite from the People's Republic of China: Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 22920 (April 28, 2008).

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is calendar year 2006. See 19 CFR 351.204(b)(2).

Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO₂ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0. For purposes of the scope of this investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On January 14, 2008, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from the PRC of subject merchandise. See *Sodium Nitrite from China and Germany: Investigation Nos. 701-TA-453 and 731-TA-1136-1137 (Preliminary)*, 73 FR 2278, (January 14, 2008).

Application of Facts Available and Use of Adverse Inferences

Section 776 of the Act, governs the use of facts available and adverse facts available. Section 776(a) provides that if an interested party or any other person (1) withholds information that has been requested by the Department; (2) fails to provide such information by deadlines or in the form and manner requested; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching its determination. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or to explain the deficiency.

If the party fails to remedy the deficiency within the applicable timelines, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) of the Act if: (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.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information. See *Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1, 889-90 (1994) (SAA) at 870.

In the *Preliminary Determination*, the Department based the CVD rates for the two mandatory company respondents, Shanxi Jiaocheng Hongxing Chemical Co., Ltd. (Shanxi Jiaocheng) and Tianjin Soda Plant, together with its subsidiary company, Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd. (Tianjin Soda Plant) on facts otherwise available, pursuant to section 776(a)(2)(C) of the Act because they did not respond to the Department’s countervailing duty questionnaire. Furthermore, in selecting from the facts available, the Department determined that an adverse inference was warranted, pursuant to section 776(b) of the Act because Shanxi Jiaocheng and Tianjin Soda Plant did not respond to the Department’s questionnaire and therefore did not cooperate to the best of their abilities in the investigation. Preliminary Determination at 19817-18.

Neither the GOC nor Shanxi Jiaocheng or Tianjin Soda Plant have provided any information or argument that would warrant a reconsideration of the Department’s *Preliminary Determination* that the reliance on facts available and the application of adverse inferences is warranted. Therefore, for purposes of this final determination we are relying on facts available and applying adverse inferences in accordance with section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as adverse facts available, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. The Department has no information on the record of this proceeding from which to select appropriate AFA rates for any of the subject programs, and because this is an investigation, we have no previous segments of the proceeding from which to draw potential AFA rates. In such cases, it is the Department’s practice to

select, as adverse facts available, the highest calculated rate in any segment of the proceeding. See, e.g., *Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review (Pistachios from Iran)*, 71 FR 66165 (November 13, 2006) and accompanying Issues and Decision Memorandum at Comment 1. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior commercial activity, selecting the highest prior rate “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” See *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

As stated in the *Preliminary Determination*, the Department determined that Shanxi Jiaocheng and Tianjin Soda Plant each failed to act to the best of its ability in this investigation; thus, for each program examined, the Department made the adverse inference that each company benefitted from the program, consistent with our practice. See, e.g., *Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea; Final Affirmative Countervailing Duty Determination*, 67 FR 62102 (October 3, 2002). In addition, we stated in the *Preliminary Determination* that our practice is to rely upon the highest calculated program rate for the same program or for a similar type of program.¹ See e.g., *Circular Welded*

¹ The Department’s first preference is to use the highest calculated rate for the same program (*i.e.* identical program). If there is no identical program, then the Department will use the highest calculated rate for a similar program (*e.g.* tax program to tax program, loan program to loan program).

Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum at 2 (*CWP from the PRC*); *CFS from the PRC* at Comment 24; *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum at 6–8 (*LWS from the PRC*); see also *Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) and accompanying Issues and Decision Memorandum at 2 (*LWRP from the PRC*). We have selected the adverse facts available rate to apply to each program, for purposes of this final determination, consistent with this practice.

Information from the petition indicates that during the POI, the standard income tax for corporations in China was 30 percent and there is an additional local income tax at the rate of three percent. See the November 8, 2007 letter to the Secretary of Commerce, at Exhibit IV–12. To determine the program rate for the 16 alleged income tax programs under which companies receive either a reduction or exemption of income tax, we have applied an adverse inference that Shanxi Jiaocheng and Tianjin Soda Plant paid no income taxes during the POI. Therefore, the highest possible combined countervailable subsidy for the 16 national, provincial, and local income tax programs subject to this investigation total 33 percent. Thus, we are applying a countervailable rate of 33 percent on an overall basis for the 16 income tax programs (*i.e.*, the 16 income tax programs combined provided a countervailable subsidy of 33 percent). This 33 percent AFA rate does not apply to income tax credit or income tax refund programs.

For the remaining programs subject to this investigation (including income tax credit and income tax refund programs),

we are applying, where applicable, the highest countervailable subsidy rate that was calculated in a prior final countervailing duty determination for a product from the PRC for the same or similar type of program (*i.e.*, subsidy programs regarding tax refunds or credits, value-added tax (VAT), and government-provided grants and loans). See *CFS from the PRC* at Comment 24 and *LWS from the PRC* at 6–8. Absent a subsidy rate for the same or similar type of program, we are applying the highest countervailable subsidy rate for any program otherwise listed in any prior final countervailing duty determination involving the PRC.² See *id.*

For a discussion of the application of the AFA rates for each program determined to be countervailable, see Memorandum to the File, *Sodium Nitrite from the PRC; Calculation of Countervailable Subsidy Rates for the Final Determination*, dated concurrently with this notice (*Sodium Nitrite Calculation Memorandum*). Attached to this memorandum are copies of *CFS from the PRC*, *LWS from the PRC*, *CWP from the PRC*, and *LWRP from the PRC*, which contain the public information concerning subsidy programs, including the subsidy rates, upon which we are relying as adverse facts available. See *Sodium Nitrite Calculation Memorandum*.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA at 869.

With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final countervailing duty determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available

data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. See, *e.g.*, *Fresh Cut Flowers from Mexico*; *Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996). In the absence of record evidence concerning these programs due to respondents' decision not to participate in the investigation, the Department has reviewed the information concerning China subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy for any China program from which the respondents could conceivably receive a benefit to use as AFA. The rate is therefore relevant to the respondents in that it is an actual calculated CVD rate for a China program from which the respondents could receive a benefit. No evidence had been presented or obtained which contradicts the reliability or relevance of the secondary information which was information from a prior China CVD investigation. See *Preliminary Determination* at 19819. Due to the lack of participation by the respondents and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we have assigned a subsidy rate to each of the two producers/exporters of the subject merchandise that were selected as mandatory respondent companies in this CVD investigation. We determine

² In applying the highest calculated countervailable subsidy rate for any program otherwise listed, we are disregarding the calculated rates for the programs "Hot-Rolled Steel For Less Than Adequate Remuneration" (*CWP from the PRC*), and "Government Provision of Inputs for Less Than Adequate Remuneration" (*LWS from the PRC*), because the industry under investigation in this

proceeding cannot use the products for which these rates were calculated. See *Sodium Nitrite From the Federal Republic of Germany And The People's Republic of China: Petition For The Imposition of Antidumping And Countervailing Duties*, (November 8, 2007) Volume I at 32–33. See also *Sodium Nitrite from China and Germany: Investigation Nos. 701-TA-453 and 731-TA-1136-*

1137 (*Preliminary*), ITC Publication 3979, January 2008 at 8. The Department's decision to not use, as AFA, these program rates is based on the particular facts of this investigation and this particular set of facts may not be applicable or identifiable in another proceeding.

the total net countervailable subsidy rates to be:

Producer/Exporter	Subsidy Rate
Shanxi Jiaocheng Hongxing Chemical Co., Ltd. (Shanxi Jiaocheng)	169.01%
Tianjin Soda Plant Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd. (Tianjin Soda Plant)	169.01%
All Others	169.01%

With respect to the all others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all others rate for exporters and producers not individually investigated. In this case, the rate established for the two mandatory respondents is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which we could determine an all others rate. As a result, we have used the AFA rate assigned for Shanxi Jiaocheng and Tianjin Soda Plant as the all others rate. This method is consistent with the Department's past practice. *See e.g.* Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, 66 FR 37007, 37008 (July 16, 2001); *see also* Final Affirmative Countervailing Duty Determination: Prestressed Steel Wire Strand From India, 68 FR 68356, 68357 (December 8, 2003).

Suspension of Liquidation and Cash Deposit Requirements

In accordance with sections 705(c)(1)(B) of the Act, we directed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from the PRC, which are entered or withdrawn from warehouse, for consumption on or after April 11, 2008, the date of publication of the *Preliminary Determination*. In accordance with sections 705(c)(1)(B) of the Act, we will instruct CBP to require cash deposits at the rates shown above on all entries of the subject merchandise from the PRC, entered or withdrawn from warehouse, for consumption on or after the date of publication of this final determination.

If the ITC issues a final affirmative injury determination, we will issue a countervailing duty order under section 706(a) of the Act. If the ITC determines that material injury to, threat of material injury to, or material retardation of, the domestic industry does not exist, this proceeding will be terminated and all estimated duties deposited or securities

posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: June 30, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

[FR Doc. E8-15479 Filed 7-7-08; 8:45 am]

BILLING CODE 3510-DS-S

nitrite 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 the Tariff Act of 1930, as amended (the Act). We made no changes to the preliminary dumping margin in this investigation. The final dumping margin for this investigation is listed in the "Final Determination Margin" section below. The period covered by this investigation is April 1, 2007, through September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Rebecca Pandolph, 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) 482-4162 and (202) 482-3627, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2008, the Department published in the **Federal Register** the notice of its preliminary determination of sales at LTFV in the antidumping duty investigation of sodium nitrite from the PRC. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People's Republic of China*, 73 FR 21906 (April 23, 2008) (*Preliminary Determination*).

With respect to the Department's invitation to comment on the *Preliminary Determination*, on May 23, 2008, General Chemical LLC (the petitioner) submitted a case brief. No other party submitted case or rebuttal briefs in this proceeding.

Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO_2 and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS).

DEPARTMENT OF COMMERCE

International Trade Administration
(A-570-925)

Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People's Republic of China

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

EFFECTIVE DATE: July 8, 2008.

SUMMARY: The Department of Commerce (Department) determines that sodium

The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

In its May 23, 2008, case brief, the petitioner argues that the Department should base its final determination, like the *Preliminary Determination*, on adverse facts available (AFA) because the two mandatory respondents, Qingdao Hengyuan Chemical Co., Ltd. (Qingdao) and Hualong Ammonium Nitrate Company Ltd. (Hualong), did not submit responses to the Department's questionnaire. In addition, the petitioner explains that it does not object to the preliminary AFA rate used by the Department (which is the highest margin alleged in the petition, as adjusted by the Department at initiation) because it believes the rate is consistent with both the dumping margins alleged in the petition and the dumping margins used for purposes of initiating the investigation. The petitioner notes that the Department's practice is to base an AFA rate on the highest margin in a proceeding and here the highest margin is the most probative evidence of current margins because, if it were not, evidence showing the margins to be less would have been provided.¹ See the May 23, 2008, submission, Sodium Nitrite from China: Case Brief of General Chemical LLC.

The petitioner also notes that no party filed separate rate information in this investigation. Given the PRC's status as a non-market economy (NME) country, and the lack of information on the record rebutting the Department's presumption that all companies in the PRC are subject to government control, the petitioner argues that the rate applied to the PRC-wide entity cannot be lower than the rate applied to Qingdao and Hualong. See the May 23, 2008, submission, Sodium Nitrite from China: Case Brief of General Chemical LLC.

We agree that the dumping margin in this case should be based on total AFA because the two mandatory respondents, Qingdao and Hualong, failed to respond to the Department's questionnaire. Moreover, by not responding to the Department's questionnaire, Qingdao and Hualong

failed to establish their entitlement to separate rates, and thus they are part of the PRC-wide entity. Therefore, the AFA rate will be applied to the PRC-wide entity. See "The PRC-Wide Rate" section of this notice below for a full discussion of this topic.

No Changes Since the Preliminary Determination

Based on our analysis of the comments received, the Department has made no changes to its *Preliminary Determination*.

Separate Rates

No party filed separate rates information in this investigation. Therefore, as was the case in the *Preliminary Determination*, we have considered all PRC exporters of subject merchandise to be part of the PRC-wide entity.

The PRC-Wide Rate

Section 776(a)(2) of the Act provides that if an interested party withholds information requested by the Department, fails to provide information by the deadline or in the form or manner requested, or significantly impedes a proceeding, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Furthermore, in selecting from among the facts otherwise available, section 776(b) of the Act permits the Department to use inferences that are adverse to a party if it finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information. Because, as noted above, Qingdao and Hualong are part of the PRC-wide entity, and they withheld information that is required by the Department to calculate dumping margins, the Department continues to conclude that it is appropriate to base the PRC-wide entity's dumping margin on facts available, pursuant to section 776(a) of the Act.²

Moreover, because Qingdao and Hualong did not respond to our request for information, we continue to find that the PRC-wide entity failed to cooperate to the best of its ability to comply with a request for information. Therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12,

2000) (applying total adverse facts available because the respondent failed to respond to the antidumping questionnaire). For the reasons noted in the *Preliminary Determination*, we continue to find that the highest dumping margin from the petition, 190.74 percent, as revised by the Department, is the appropriate AFA rate in this case. See *Preliminary Determination*, 73 FR at 21907-21908. As explained in the *Preliminary Determination*, we corroborated this rate pursuant to section 776(c) of the Act. See *Preliminary Determination*, 73 FR at 21908.

Since we begin with the presumption that all companies within an NME country are subject to government control, and no company submitted information to rebut that presumption, we are applying a single antidumping duty rate, the PRC-wide rate, to all exporters of subject merchandise from the PRC. See, e.g., *Synthetic Indigo from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706, 25707 (May 3, 2000) (applying the PRC-wide rate to all exporters of subject merchandise in the PRC based on the presumption that the export activities of the companies that failed to respond to the Department's questionnaire were controlled by the PRC government). Thus, the PRC-wide rate will apply to all entries of subject merchandise.

Final Determination Margin

We determine that the following weighted-average dumping margin exists for the period April 1, 2007, through September 30, 2007:

Manufacturer/exporter	Margin (percent)
PRC-Wide Rate	190.74

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise that is entered or withdrawn from warehouse, for consumption on or after April 23, 2008, 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 all companies based on the estimated weighted-average dumping margin shown above. The suspension of liquidation instructions will remain in effect until further notice.

¹ See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

² Section 782(d) of the Act is not applicable here because Qingdao and Hualong failed to provide any response to the Department's request for information.

**International Trade Commission
Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (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, 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 within 45 days of this final determination. 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 the 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 written 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 and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 30, 2008.

David M. Spooner,
*Assistant Secretary for Import
Administration.*

[FR Doc. E8-15488 Filed 7-7-08; 8:45 am]

BILLING CODE 3510-DS-S

SUMMARY: The U.S. Department of Commerce (the Department) determines that imports of sodium nitrite from the Federal Republic of Germany (Germany) are being, 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 final weighted-average dumping margins are listed below in the section entitled "Final Determination of Investigation."

EFFECTIVE DATE: July 8, 2008.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482 1766 or (202) 482 3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2008, the Department published the preliminary determination of sales at LTFV in the antidumping investigation of sodium nitrite from Germany. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909 (April 23, 2008) (*Preliminary Determination*). We invited parties to comment on the *Preliminary Determination*. We received case briefs from the petitioner, General Chemical LLC, and the respondent, BASF AG (BASF), on May 23, 2008. The petitioner submitted a rebuttal brief on May 28, 2008. No party requested a hearing.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the "Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Sodium Nitrite from the Federal Republic of Germany" (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated June 30, 2008, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memorandum, which is on file in the Central Records Unit, room 1117, of the main Department Building. In addition, a complete version of the Decision Memorandum can be accessed

directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is October 1, 2006, through September 30, 2007.

Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO₂ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Adverse Facts Available

For the final determination, we continue to find that, by failing to respond to the antidumping duty questionnaire, BASF, the sole mandatory respondent in this investigation, did not act to the best of its ability in this investigation. Therefore, the use of adverse facts available (AFA) is warranted for this company under sections 776(a)(2) and (b) of the Act. *See Preliminary Determination*, 73 FR at 21909-21910. As we explained in the *Preliminary Determination*, we selected as the AFA rate the highest margin alleged in the petition, 237.00 percent, as referenced in the notice of initiation. *See Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 68563, 68567 (December 5, 2007). Further, as discussed in the *Preliminary Determination*, we corroborated the AFA rate pursuant to section 776(c) of the Act. *See Preliminary Determination*, 73 FR at 21910-21912, and Comment 1 of the Decision Memorandum accompanying this notice for further discussion.

DEPARTMENT OF COMMERCE

International Trade Administration

A-428-841

Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany

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

All–Others Rate

For the final determination, we have continued to assign as the all–others rate the simple average of the margins in the petition in accordance with the Department’s current practice. See *Preliminary Determination*, 73 FR at 21912, and Comment 2 of the Decision Memorandum accompanying this notice for further discussion.

Final Determination of Investigation

We determine that the following weighted–average dumping margins exist for the period October 1, 2006, through September 30, 2007:

Manufacturer/exporter	Margin (percent)
BASF AG	237.00
All Others	150.82

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 subject merchandise from Germany, entered, or withdrawn from warehouse, for consumption on or after April 23, 2008, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margins, as indicated in the chart above, as follows: (1) the rate for the firm listed above will be the rate we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 150.82 percent.¹ These suspension–of–liquidation instructions 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 final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, 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 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/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 pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: June 30, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum*Comments*

Issue 1: Selection of the Adverse Facts Available Rate for BASF
Issue 2: Selection of the All–Others Rate
[FR Doc. E8–15458 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–DS–S

¹ This rate was incorrectly stated as 237.00 percent in the “Suspension of Liquidation” section of the *Preliminary Determination*. See *Preliminary Determination*, 73 FR at 21912.

APPENDIX B
HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Sodium Nitrite from China and Germany
Inv. Nos.: 701-TA-453 and 731-TA-1136-1137 (Final)
Date and Time: July 2, 2008 - 9:30 a.m.

The hearing in connection with these investigations was held in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

OPENING REMARKS:

Petitioners (James R. Cannon, Jr., Williams Mullen)
Respondents (Matthew T. McGrath, Barnes, Richardson & Colburn)

In Support of the Imposition of Antidumping and Countervailing Duty Orders:

Williams Mullen
Washington, D.C.
on behalf of

General Chemical LLC

Douglas McFarland, Director of Business Development
and Technology, General Chemical LLC

Tom Nelson, Business Manager, Sodium Nitrite,
General Chemical LLC

Vincent J. Opalewski, Vice President *and* General Manager,
Performance Chemicals Group, General Chemical LLC

**In Support of the Imposition of
the Antidumping and Countervailing
Duty Orders (continued):**

Jim Imbriaco, General Counsel, General Chemical LLC

James R. Cannon, Jr.)
) – OF COUNSEL
Dean A. Barclay)

**In Opposition to the Imposition of
Antidumping and Countervailing Duty Orders:**

Barnes, Richardson & Colburn
Washington, D.C.
on behalf of

BASF SE and BASF Corporation (“BASF”)

William J. Work, Business Manager Inorganics
and Electronic Chemicals, BASF

Karen A. Katz, Product Manager, Inorganics, BASF

Matthew T. McGrath)
Frederic D. Van Arnam) – OF COUNSEL
Stephen W. Brophy)

CLOSING/REBUTTAL REMARKS:

Petitioners (James J. Cannon, Jr., Williams Mullen)
Respondents (Matthew T. McGrath, Barnes, Richardson & Colburn)

APPENDIX C
SUMMARY DATA

Table C-1

Sodium nitrite: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			Jan.-Mar. 2007-08
	2005	2006	2007	January-March 2007	2008	2005-07	2005-06	2006-07	
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Germany	***	***	***	***	***	***	***	***	***
Subtotal (subject)	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Germany	***	***	***	***	***	***	***	***	***
Subtotal (subject)	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. imports from:									
China:									
Quantity	519	1,044	1,626	683	742	213.2	101.1	55.7	8.6
Value	122	245	476	174	255	289.2	100.8	93.9	46.3
Unit value	\$0.24	\$0.24	\$0.29	\$0.26	\$0.34	24.3	-0.2	24.5	34.8
Ending inventory quantity . .	***	***	***	***	***	***	***	***	***
Germany:									
Quantity	7,717	10,175	11,723	2,648	3,015	51.9	31.9	15.2	13.9
Value	1,627	2,072	2,680	571	744	64.7	27.3	29.3	30.3
Unit value	\$0.21	\$0.20	\$0.23	\$0.22	\$0.25	8.4	-3.4	12.2	14.4
Ending inventory quantity . .	***	***	***	***	***	***	***	***	***
Subject sources:									
Quantity	8,236	11,219	13,349	3,331	3,757	62.1	36.2	19.0	12.8
Value	1,750	2,318	3,155	745	999	80.4	32.5	36.2	34.1
Unit value	\$0.21	\$0.21	\$0.24	\$0.22	\$0.27	11.3	-2.8	14.4	18.8
Ending inventory quantity . .	***	***	***	***	***	***	***	***	***
All other sources:									
Quantity	132	359	629	93	132	375.8	171.2	75.4	42.9
Value	17	69	113	21	99	550.5	296.3	64.2	371.0
Unit value	\$0.13	\$0.19	\$0.18	\$0.23	\$0.75	36.7	46.1	-6.4	229.7
Ending inventory quantity . .	***	***	***	***	***	***	***	***	***
All sources:									
Quantity	8,368	11,578	13,979	3,424	3,890	67.0	38.4	20.7	13.6
Value	1,767	2,387	3,269	766	1,098	85.0	35.1	37.0	43.3
Unit value	\$0.21	\$0.21	\$0.23	\$0.22	\$0.28	10.7	-2.4	13.4	26.1
Ending inventory quantity . .	***	***	***	***	***	***	***	***	***

Table continued on next page.

Table C-1-Continued

Sodium nitrite: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			Jan.-Mar. 2007-08
	2005	2006	2007	January-March 2007	2008	2005-07	2005-06	2006-07	
U.S. producers ¹ :									
Average capacity quantity . . .	***	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***	***
Capacity utilization (1)	***	***	***	***	***	***	***	***	***
U.S. shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity . . .	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	***	***	***	***	***	***	***	***	***
Hours worked (1,000s)	***	***	***	***	***	***	***	***	***
Wages paid (\$1,000s)	***	***	***	***	***	***	***	***	***
Hourly wages	***	***	***	***	***	***	***	***	***
Productivity (pounds per hour	***	***	***	***	***	***	***	***	***
Unit labor costs	***	***	***	***	***	***	***	***	***
Net sales:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS) .	***	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income or (loss) . .	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***	***	***	***
Unit operating income or (los:	***	***	***	***	***	***	***	***	***
COGS/sales (1)	***	***	***	***	***	***	***	***	***
Operating income or (loss)/	***	***	***	***	***	***	***	***	***
sales (1)	***	***	***	***	***	***	***	***	***

- (1) "Reported data" are in percent and "period changes" are in percentage points.
- (2) Less than 0.05 percent.
- (3) Less than \$0.005 but positive.
- (4) Not applicable or not meaningful.

Note.-- Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

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

APPENDIX D

SALES PRICES TO DISTRIBUTORS AND END USERS

Table D-1

Sodium nitrite: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 sold to distributors and margins of underselling/(overselling), by quarters, January 2005-March 2008

* * * * *

Table D-2

Sodium nitrite: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 sold to end users and margins of underselling/(overselling), by quarters, January 2005-March 2008

* * * * *

