

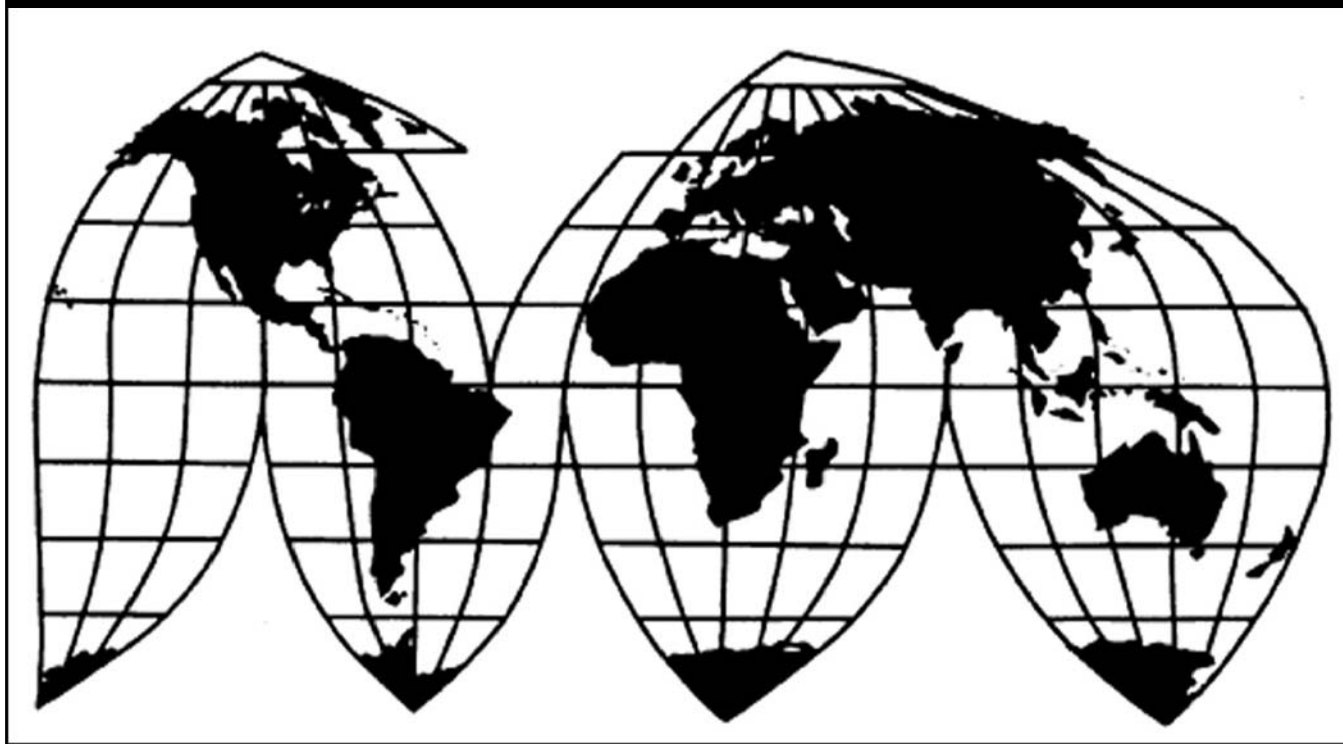
1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from China and India

Investigation Nos. 731-TA-1146-1147 (Final)

Publication 4072

April 2009

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been identified with asterisks (***) in this report.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-1146-1147 (Final)

1-HYDROXYETHYLIDENE-1,1-DIPHOSPHONIC ACID (HEDP) FROM CHINA AND INDIA

DETERMINATION

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China and India of 1-Hydroxyethylidene-1,1-Diphosphonic acid (HEDP), provided for in statistical reporting number 2931.00.9043 of the Harmonized Tariff Schedule of the United States, that have been found by the United States Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).² In addition, the Commission determines that it would not have found material injury but for the suspension of liquidation.

BACKGROUND

The Commission instituted these investigations effective March 19, 2008, following receipt of a petition filed with the Commission and Commerce by Compass Chemical International, LLC, Huntsville, TX. The final phase of these investigations was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of HEDP from China and India 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 November 14, 2008 (73 FR 67545) (subsequently revised in a notice published on January 30, 2009 (74 FR 5677)). The hearing was held in Washington, DC, on March 3, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Commissioner Charlotte R. Lane determines that an industry in the United States is materially injured by reason of such imports.

IEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is threatened with material injury by reason of imports of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (“HEDP”) from China and India that the Department of Commerce (“Commerce”) has found are sold in the United States at less than fair value (“LTFV”).^{1 2} In addition, we determine that we would not have found material injury but for the suspension of liquidation.

I. BACKGROUND

The petitions in these investigations were filed on March 19, 2008 by Compass Chemical International, LLC (“Compass” or “petitioner”). Respondents opposing the imposition of antidumping duties are the Ad Hoc Water Treatment Chemical Producers Committee and its constituent members Jiangsu Jianghai Chemical Group Co. Ltd., Wujin Fine Chemical Factory Co. Ltd. (“Wujin Fine Chemical”), and the Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory (“Wujin Water”), which are all Chinese producers of HEDP. No producer or importer of subject HEDP from India has made an appearance or provided any argument in the final phase of these investigations.

II. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ 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 {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.”⁴ 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”⁵

The decision regarding the appropriate domestic like product or products in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in

¹ Commissioner Charlotte R. Lane determines that an industry in the United States is materially injured by reason of HEDP imported from China and India that Commerce has found are sold at LTFV. See Separate Views of Commissioner Charlotte R. Lane. She joins sections I, II, III.A. and B., IV, and V.A.1., as well as the portions of sections V.B. and C. that address present material injury, except as noted in those sections.

² We have disregarded new factual information on page 6 and in Attachment A of the Final Comments filed by petitioner, pursuant to the statute and our regulations. 19 U.S.C. § 1677m(g); 19 C.F.R. § 207.30(b).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁸ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise subsidized or sold at LTFV,⁹ the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Product Description

In its notice of final determination of sales at LTFV, Commerce defined the imported merchandise within the scope of the investigations as follows:

[A]ll grades of aqueous, acidic (non-neutralized) concentrations of 1- hydroxyethylidene-1, 1-diphosphonic acid,¹¹ also referred to as hydroxyethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809-21-4. The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.00.9043. It may also enter under HTSUS

⁶ 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 the following: (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).

⁷ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

⁸ 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.”).

⁹ See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 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).

¹⁰ 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).

¹¹ C₂H₈O₇P₂ or C(CH₃)(OH)(PO₃H₂)₂.

subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.¹²

HEDP is an odorless, colorless or yellowish liquid that belongs to a class of chemicals known as phosphonates.¹³ As a “chelating agent” added to water to increase the solubility of certain ions and to inhibit the precipitation of certain mineral compounds,¹⁴ HEDP is principally used in the following applications: industrial water treatment, such as cooling and boiler water treatment to prevent the formation of scales that can reduce the efficiency of heat transfer surfaces; in municipal water systems, to prevent the precipitation of iron and manganese oxides from turning the water red or black; in the conversion of seawater and brackish water to fresh water for industrial use or drinking through desalination; in swimming pool applications, for stain and scale control; in industrial, institutional, and personal cleansing products; and for peroxide bleach stabilization.¹⁵

C. Domestic Like Product

In the preliminary phase of these investigations, the Commission considered whether to expand the domestic like product to include chemical products similar to HEDP, but ultimately defined the domestic like product as all HEDP, coextensive with the scope of the investigations defined by Commerce.¹⁶

In the final phase of these investigations, no new information has been developed to suggest that a different like product definition would be warranted. Moreover, petitioner and respondents agree that the Commission should define a single like product comprising all HEDP.¹⁷ Accordingly, for the reasons discussed in the preliminary phase of these investigations, we define a single domestic like product consisting of all HEDP, coextensive with the scope of the investigations.

D. Domestic Industry

Based on our finding that the domestic like product is HEDP, we find that the domestic industry consists of Compass, the only known domestic producer of HEDP.¹⁸

1. Related Party

We must determine whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to 19 U.S.C. § 1677(4)(B). Subsection 1677(4)(B) allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry

¹² HEDP from India: Notice of Final Determination of Sales at Less than Fair Value, 74 Fed. Reg. 10543, 10544 (Mar. 11, 2009); HEDP from the People’s Republic of China: Final Determination of Sales at Less than Fair Value, 74 Fed. Reg. 10545, 10545-46 (Mar. 11, 2009); Confidential Staff Report (“CR”) at I-6.

¹³ CR at I-7, 9; Public Staff Report (“PR”) at I-5, 7.

¹⁴ Petition at 5; CR at I-3, 7; PR at I-2, 5.

¹⁵ Petition at 5-6; CR at I-7-8, 10; PR at I-5-6, 8.

¹⁶ Confidential Views, HEDP from China and India, Inv. Nos. 731-TA-1146-1147 (Preliminary) (“Preliminary Views”), at 6.

¹⁷ See Petitioner’s Prehearing Brief at 4; Hearing Transcript at 123 (Craven).

¹⁸ CR at III-2; PR at III-1; CR/PR at Table III-1.

producers that are related to an exporter or importer of subject merchandise or which are themselves importers.¹⁹ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each investigation.²⁰

In the preliminary phase of these investigations, the Commission found that Compass qualified as a related party, but that circumstances did not warrant its exclusion from the domestic industry.²¹

In the final phase of these investigations, we again find that Compass qualifies as a related party because it imported a substantial quantity of HEDP from China over the 2005-2007 period.²² In addition, Compass is ***, and ***.²³

Because there is no new information on the record of the final phase of these investigations that would alter our analysis of Compass as a related party, we again find that circumstances do not warrant its exclusion from the domestic industry. We also note that, where the sole domestic producer is also a related party, as Compass is here, the Commission previously has found that appropriate circumstances do not exist to exclude the producer under the related party provision.²⁴

Moreover, Compass transformed itself from an importer of subject HEDP from China into a domestic producer during the period of investigation. Compass began the period of investigation as purely an importer of HEDP from China, importing *** pounds of subject HEDP from China in 2005.²⁵

¹⁹ 19 U.S.C. § 1677(4)(B).

²⁰ The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the following: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producer vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. These latter two considerations were cited as appropriate factors in *Allied Mineral Products, Inc. v. United States*, 28 CIT 1861, 1865 (2004) ("The most significant factor considered by the Commission in making the 'appropriate circumstances' determination is whether the domestic producer accrued a substantial benefit from its importation of the subject merchandise."); *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 12 (Ct. Int'l Trade 2001) ("the provision's purpose is to exclude from the industry headcount domestic producers substantially benefitting from their relationships with foreign exporters."), *aff'd*, 34 Fed. Appx. 725 (Fed. Cir. 2002); S. Rep. No. 249, 96th Cong. 1st Sess. at 83 (1979) ("where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry").

²¹ Preliminary Views at 11-13.

²² CR/PR at Table III-5.

²³ CR/PR at Table III-1 n. 1.

²⁴ *See* Preliminary Views at 13. *See also* *Tetrahydrofurfuryl Alcohol from China*, Inv. No. 731-TA-1046 (Preliminary), USITC Pub. 3620 (August 2003) at n. 20; *Industrial Nitrocellulose from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia*, Inv. Nos. 731-TA-96 and 439-445 (Review), USITC Pub. 3342 (August 2000) at 8; *Drafting Machines from Japan*, Inv. No. 731-TA-432 (Review), USITC Pub. 3252 (November 1999) at 5.

²⁵ CR/PR at Table III-5.

After acquiring a phosphonates production facility in Smyrna, GA in July 2006, however, Compass reduced its imports of subject HEDP from *** pounds in 2006 to *** pounds in 2007, as it increased its domestic production of the product from *** pounds in 2006 to *** pounds in 2007, and ceased importing altogether after the fourth quarter of 2007.²⁶ Accordingly, the ratio of Compass's subject imports to its domestic production declined from *** percent in 2006 to *** percent in 2007, and it was *** percent in interim 2007 compared with *** in interim 2008.²⁷ As a further indication of its commitment to domestic production, Compass reportedly invested more than \$2 million in the Smyrna facility during the period of investigation to improve the plant's operations.²⁸ Thus, by the end of the period, Compass's primary interest was in domestic production.^{29 30}

We therefore find that circumstances do not warrant the exclusion of Compass from the domestic industry as a related party.

III. CUMULATION³¹

A. Background

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 domestic like products in the U.S. market and no statutory exceptions apply.³² The statutory threshold for cumulation is satisfied in these investigations because the petitions with respect to China and India were filed on the same day, March 19, 2008.³³

In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

²⁶ CR/PR at Table III-5.

²⁷ CR/PR at Table III-5.

²⁸ CR at III-5 n. 9, VI-7-8; PR at III-3 n.9, VI-3-4; Hearing Tr. at 56-57 (McCaul); see also CR/PR at Table VI-3.

²⁹ We recognize that there is evidence that Compass may have benefitted financially from dumped imports of HEDP from China. In the preliminary phase of these investigations, Compass reported that it continued to import HEDP from China after acquiring the Smyrna facility because the ***. Compass's Importers' Questionnaire Response at Question II-4. Nevertheless, Compass emphasized that it purchased the Smyrna facility with the intention of becoming a domestic producer of HEDP, and anticipated that it could do so profitably by adopting a lower-cost method of producing HEDP. See Hearing Tr. at 12-13 (McCaul); Compass's Responses to Commissioner Questions at 1-2; Conference Tr. at 21.

³⁰ Chairman Aranoff and Commissioner Pinkert do not join the prior footnote as it does not in any way mitigate their reasons for not excluding Compass, as a related party, from these investigations.

³¹ Negligibility is not an issue in these investigations. Based on importers' questionnaire data, subject imports from China accounted for *** percent of all imports of HEDP and subject imports from India accounted for *** percent of all imports of HEDP during the most recent 12-month period preceding the filing of the petition for which data is available. CR at IV-10; PR at IV-3; CR/PR at Table IV-2.

³² 19 U.S.C. § 1677(7)(G)(i).

³³ CR at I-1; PR at I-1. We note that none of the statutory exceptions to cumulation is applicable.

- (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.^{34 35}

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.³⁶ Only a “reasonable overlap” of competition is required.³⁷

In the preliminary phase of these investigations, the Commission found a reasonable overlap of competition between and among subject imports from China and India and the domestic like product and thus analyzed subject imports on a cumulated basis.³⁸

In the final phase of these investigations, petitioner argues that the Commission should again consider subject imports from China and India on a cumulated basis because, in its view, there is a reasonable overlap of competition between subject imports from both countries and the domestic like product based on the four factors the Commission considers in analyzing the issue.³⁹ Respondents, though taking no position on the issue, have expressed the view that cumulation is probably appropriate.⁴⁰

B. Analysis

Based on the record of these investigations, we find a reasonable overlap of competition between subject imports from China and India and between subject imports from each source and the domestic like product. With respect to fungibility, the record indicates that there is a high degree of substitutability

³⁴ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

³⁵ 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. See Separate Views of Commissioner Charlotte R. Lane, Certain Lightweight Thermal Paper from China, Germany, and Korea, Inv. Nos. 701-TA-451 and 731-TA-1126-1128 (Preliminary), USITC Pub. 3964 (Nov. 2007).

³⁶ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

³⁷ The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 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, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988)), aff'd, 859 F.2d 915 (Fed. Cir. 1988). See Goss Graphic Sys., 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, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

³⁸ Preliminary Views at 19.

³⁹ See Compass’s Prehearing Brief at 9-15.

⁴⁰ See Hearing Tr. at 136 (Craven) (“We have no position on [cumulation]”), 142 (Craven) (“We think the competition between the products, all of the factors that you examine looking at cumulation suggest that cumulation is appropriate and we can’t really come up with a discretionary reason why you shouldn’t cumulate.”).

between subject imports from China and India and between subject imports from each source and the domestic like product.⁴¹ Witnesses for both petitioner and respondents testified at the hearing that the domestic like product and subject imports from China and India are interchangeable.⁴²

With respect to geographic overlap, HEDP from all three sources generally served the same geographic markets during the period of investigation. Most shipments of subject imports from China and India and the domestic like product went to customers in the Midwest, Northeast, and Southeast regions.⁴³ Although *** of subject imports went to customers in regions of the country that received *** of Compass's HEDP shipments,⁴⁴ there was still a significant overlap of competition in all regions of the country.

Subject imports from China and India and the domestic like product also shared the same general channels of distribution. The *** majority of HEDP from all three sources was sold to compounders during the period of investigation, and the next most important channel of distribution was sales to distributors.⁴⁵ The balance of shipments, accounting for a small share of subject import and domestic like product shipments, went to end users.⁴⁶

⁴¹ CR at II-10; PR at II-6. Petitioner and at least half of responding importers and purchasers reported that subject imports from China and India and the domestic like product are “always” used interchangeably. CR at II-15; PR at II-9; CR/PR at Table II-4. At least three-quarters of responding importers and purchasers reported that subject imports from China and India and the domestic like product are “always” or “frequently” used interchangeably. Id. Petitioner, three of seven responding importers, and seven of sixteen responding purchasers indicated that subject imports from China and India are “always” used interchangeably.” CR at II-19; PR at II-11; CR/PR at Table II-4. When asked whether differences other than price are ever significant to purchasers, petitioner responded “sometimes,” and two-thirds of importers of HEDP from China reported “sometimes” or “never,” though five of eight importers of HEDP from India reported “always” or “frequently.” CR/PR at Table II-5. Half or more of responding purchasers reported that the domestic like product was comparable to subject imports from China with respect to 14 of 16 characteristics, but inferior with respect to price. CR at II-16; PR at II-9; CR/PR at Table II-6. Half or more of responding purchasers reported that the domestic like product was comparable to subject imports from India with respect to 14 of 16 characteristics, including lowest price, but superior with respect to delivery time. Id.

⁴² See, e.g., Hearing Tr. at 24 (Failon) (“HEDP from the U.S., U.K., India, and China is completely interchangeable, period.”), 33 (Levin) (“As we reviewed HEDP is a commodity product, and subject imports are highly interchangeable with domestically produced HEDP.”), 142 (Craven) (noting “competition between the products” and that “the factors . . . suggest that cumulation is appropriate . . .”).

⁴³ Of Compass's HEDP shipments in 2007, *** percent were to the Midwest region, *** percent were to the Northeast region, and *** percent were to the Southeast region. CR at II-3; PR at II-1. Similarly, in 2007, *** percent of subject HEDP imported from China and *** percent of HEDP imported from India went to customers in the Midwest, *** percent of subject HEDP imported from China and *** percent of HEDP imported from India went to customers in the Northeast, and *** percent of subject HEDP imported from China and *** percent of HEDP imported from India went to customers in the Southeast. Id.

⁴⁴ CR at II-3; PR at II-1.

⁴⁵ During the period examined, *** to *** percent of subject imports from China, *** to *** percent of subject imports from India, and *** to *** percent of domestically produced HEDP was sold to compounders. CR/PR at Table II-1. The next most important channel of distribution for HEDP from all three sources was sales to distributors, which accounted for *** to *** percent of shipments of subject imports from China, *** to *** percent of shipments of subject imports from India, and *** to *** percent of domestic producers' HEDP shipments. Id.

⁴⁶ CR/PR at Table II-1.

Finally, HEDP from all three sources was simultaneously present in the U.S. market, with shipments of subject imports from China and India and the domestic like product occurring in each year of the period and in both interim periods.⁴⁷

Based on the record, we conclude that there is a reasonable overlap of competition between and among subject imports and the domestic like product, and, therefore, cumulate subject imports from China and India for our analysis of material injury by reason of subject imports.

C. Cumulation for Threat Analysis

Because our determinations address the issue of threat of material injury by reason of subject imports, we must also consider whether to cumulate subject imports from China and India for purposes of a threat analysis. In contrast to cumulation for material injury, cumulation for a threat analysis is discretionary. Under section 771(7)(H) of the Tariff Act, the Commission may “to the extent practicable” cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation in the material injury context are satisfied.⁴⁸

In the preceding section, we found that the requirements for cumulating subject imports for purposes of our material injury analysis are satisfied. We further find that subject imports from China and India are likely to compete under similar conditions of competition in the U.S. market in the imminent future, based on the following considerations.⁴⁹

First, subject imports from China and India increased at a similar rate over the period of investigation and held similar shares of the U.S. market at the end of the period. Between 2005 and 2007, subject imports by volume from China increased *** percent, and subject imports from India increased *** percent.⁵⁰ Although subject imports from India were *** percent higher in interim 2008 than in interim 2007, and subject imports from China were *** percent lower, the absolute volumes of subject imports from China and India were similar in interim 2008, at *** pounds and *** pounds, respectively.⁵¹ Accordingly, subject imports from China and India held similar shares of apparent U.S. consumption in interim 2008, at *** percent and *** percent, respectively.⁵²

Subject imports from China and India also undersold the domestic like product with similar frequency and at similar margins. Subject imports from China undersold the domestic like product in 31 of 47 quarterly comparisons, or 66.0 percent of the time, at margins ranging from 1.1 percent to 61.7 percent and averaging 20.4 percent.⁵³ Subject imports from India undersold the domestic like product in 11 of 15 quarterly comparisons, or 73.3 percent of the time, at margins ranging from 0.6 percent to 55.2 percent and averaging 23.8 percent.⁵⁴ We conclude that subject imports from China and India exhibited similar trends with respect to volume and underselling.

⁴⁷ CR at IV-11; PR at IV-4; CR/PR at Table IV-4.

⁴⁸ 19 U.S.C. § 1677(7)(H).

⁴⁹ In determining for purposes of a threat analysis whether to exercise his discretion to cumulate subject imports for which there is a reasonable overlap of competition, Commissioner Pinkert places primary weight on volume and price trends.

⁵⁰ CR/PR at Table IV-2.

⁵¹ CR/PR at Table IV-2.

⁵² CR/PR at Table IV-5.

⁵³ CR/PR at Table V-6.

⁵⁴ CR/PR at Table V-6.

Finally, subject foreign producers in China and India reported a similar degree of export orientation during the period of investigation and *** in 2008 and 2009. Subject producers in both countries reportedly exported *** of their shipments during the period examined, with *** of their shipments destined for the United States,⁵⁵ and projected a similar degree of export orientation in 2008 and 2009.⁵⁶ Although subject producers in India generally operated at *** capacity utilization than subject producers in China during the period of investigation,⁵⁷ subject producers in both countries projected *** capacity utilization in 2008 and 2009.⁵⁸ These data indicate that subject producers in China and India will have similar capabilities and incentives to increase their exports to the United States in the imminent future.

Based on the foregoing analysis, we have exercised our discretion to cumulate subject imports from China and India for our analysis of threat of material injury by reason of subject imports.

IV. CONDITIONS OF COMPETITION

We find the following conditions of competition pertinent to our analysis of whether the domestic industry is materially injured by reason of subject HEDP imports from China and India.

A. Demand Conditions

HEDP demand grew *** between 2005 and 2006, but declined thereafter. Apparent U.S. consumption of HEDP increased *** percent between 2005 and 2006, from *** pounds to *** pounds, but declined *** percent in 2007 to *** pounds, a level still *** percent higher than in 2005.⁵⁹ Apparent U.S. consumption was *** percent lower in January-September 2008, at *** pounds, as compared with January-September 2007, when it was *** pounds.⁶⁰

⁵⁵ Subject producers in China reported that exports accounted for between *** percent and *** percent of their shipments during the period of investigation, with exports to the United States accounting for between *** percent and *** percent of their shipments during the period. CR/PR at Table VII-2. Subject producers in India reported that exports accounted for between *** percent and *** percent of their shipments during the same period, with exports to the United States accounting for between *** percent and *** percent of their shipments. *Id.* at Table VII-3.

⁵⁶ Subject Chinese producers project that exports as a percentage of shipments will be *** percent in 2008 and *** percent in 2009, with exports to the United States as a percentage of shipments at *** percent in 2008 and *** percent in 2009. CR/PR at Table VII-2. Similarly, subject Indian producers project that exports as a percentage of shipments will be *** percent in 2008 and *** percent in 2009, with exports to the United States as a percentage of shipments at *** percent in 2008 and *** percent in 2009. *Id.* at Table VII-3.

⁵⁷ The reported capacity utilization rate of subject Indian producers *** that of subject Chinese producers ***. Specifically, subject producers in China reported a capacity utilization rate of *** percent in 2005, *** percent in 2006, and *** percent in 2007, with a capacity utilization rate of *** percent in interim 2007 and *** percent in interim 2008. CR/PR at Table VII-2. Subject producers in India reported a capacity utilization rate of *** percent in 2005, *** percent in 2006, *** percent in 2007, with a capacity utilization rate of *** percent in interim 2007 and *** percent in interim 2008. *Id.* at Table VII-3.

⁵⁸ Subject producers in China project a capacity utilization rate of *** percent in 2008 and *** percent in 2009. CR/PR at Table VII-2. Subject producers in India project a capacity utilization rate of *** percent in 2008 and *** percent in 2009. *Id.* at Table VII-3.

⁵⁹ CR/PR at Table IV-4.

⁶⁰ CR/PR at Table IV-4.

Although the recent decline in HEDP demand has coincided with a deterioration of the general economy, HEDP's diverse applications tend to insulate HEDP demand from general economic conditions to a certain extent.⁶¹ The largest source of demand for HEDP is in so-called "process cooling" applications, whereby water used to cool hot machinery and products such as steel is treated with compounds including HEDP.⁶² These applications appear to be the most exposed to general economic conditions, declining with the economic slowdown and the migration of textile production abroad, as industrial plants have closed or curtailed their production.⁶³ Similarly, falling oil prices have reduced the oil rig count and hence HEDP demand from oil producers.⁶⁴ Partially offsetting these declining uses for HEDP is HEDP's growing use in reverse osmosis (i.e., desalination) applications.⁶⁵

Demand for HEDP used in so-called "comfort cooling" applications, whereby water used in the cooling towers of large buildings is treated with compounds including HEDP, appears to be less subject to the economic cycle and more influenced by weather conditions.⁶⁶ Warm weather increases HEDP consumption in these applications due to the increased use of air conditioning.⁶⁷ Warm weather also increases HEDP consumption in swimming pools.⁶⁸ Overall, demand for HEDP is projected to decline somewhat in 2009 due to recessionary conditions.⁶⁹

B. Supply Conditions

1. Changes to the Domestic Industry

The domestic industry underwent significant changes during the period of investigation. From the beginning of the period of investigation through June 2006, Lynx Chemical Group LLC ("Lynx") was the only domestic producer of HEDP, which it produced with other phosphonates at its facility in Smyrna, GA.⁷⁰ Lynx's phosphonates production, including HEDP, was ***.⁷¹ After *** June 2006, Lynx sold the Smyrna facility to Compass in July 2006 and exited the HEDP market.⁷² Rhodia remains active in the U.S. HEDP market as an importer and marketer of nonsubject HEDP imported from the United Kingdom.⁷³

Compass began the period of investigation as purely an importer of subject HEDP from China, as addressed in section II.D.1. above. Compass decided to purchase the Smyrna facility from Lynx in July 2006 and phase out its imports because doing so appeared to be economically advantageous based on

⁶¹ Hearing Tr. at 67 (Failon) ("But, again, the fact that we have so many different industries and applications does recession proof the product to a degree. . .").

⁶² Hearing Tr. at 66 (Failon), 139-40 (Collias); CR at I-7-8, 10; PR at I-5-6, 8.

⁶³ Hearing Tr. at 28 (Failon).

⁶⁴ Hearing Tr. at 67 (Failon).

⁶⁵ Hearing Tr. at 28, 66-67 (Failon).

⁶⁶ Hearing Tr. at 139-40 (Collias); CR at I-7-8, 10; PR at I-5-6, 8.

⁶⁷ Hearing Tr. at 27-28, 67 (Failon), 139-41 (Collias).

⁶⁸ See Hearing Tr. at 27-28, 67 (Failon), 139-41 (Collias).

⁶⁹ Hearing Tr. at 28 (Failon), 67 (Failon), 92 (McCaul), 139-40 (Failon).

⁷⁰ CR at III-5-6; PR at III-3.

⁷¹ CR at III-6; PR at III-3. Compass and Rhodia provided partial data on Lynx's HEDP operations. CR at III-2; PR at III-1.

⁷² CR at III-5-6; PR at III-3.

⁷³ CR at IV-1-2; PR at IV-1; CR/PR at Table IV-1.

several assumptions that it deemed reasonable at the time.⁷⁴ Most importantly, Compass assumed that it would be able to reduce its HEDP production costs about 25 percent, *** by producing HEDP from lower-cost phosphorus acid crystal instead of from higher-cost phosphorus trichloride (“PCL₃”), as Lynx had done.⁷⁵ Compass also assumed that *** and that it would retain its existing customers while adding customers from Rhodia that were accustomed to purchasing HEDP produced at the Smyrna facility.⁷⁶ Based on these assumptions, Compass reportedly invested more than \$2 million in the Smyrna facility during the period of investigation and succeeded in realizing significant cost reductions, as well as yield and cycle time improvements.⁷⁷

2. Nonsubject Imports

The United Kingdom was the principal source of nonsubject imports during the period of investigation, with Chinese producer Wujin Water, for which Commerce calculated a dumping margin of zero, accounting for a much smaller share.⁷⁸ The volume of nonsubject imports from all sources fluctuated between years but increased overall by *** percent from 2005 to 2007.⁷⁹ U.S. shipments of nonsubject imports followed similar trends and accounted for a substantial share of apparent U.S. consumption during the period examined, ranging from a low of *** percent to a high of *** percent.⁸⁰

3. Raw Material Supply Disruptions in 2008

Events in China significantly disrupted the HEDP market in 2008. China accounts for 70 to 80 percent of global capacity to convert phosphorus ore into elemental phosphorus, which is used in the

⁷⁴ Hearing Tr. at 12 (McCaul) (“So in 2006 Compass decided, okay we’re going to acquire this manufacturing plant, and believed as I believe that we could be competitive, we could be successful in the business, especially by importing the competitively priced raw material from China, phosphorus acid, and using that to produce phosphonates rather than the method that had been used up to that point, which was using PCL-3 [sic].”).

⁷⁵ Compass’s Prehearing Br. at 23-24; Responses to Commissioner Questions at 1-2; Hearing Tr. at 12-13 (McCaul), 23 (Failon) (“Compass switched to scheme 2 [using phosphorus acid crystal of PAC to product HEDP] in order to take advantage of our favorable cost position on PAC. The company has been a leading importer and marketer of phosphorus acid since our inception in 1999, so we were no stranger to phosphorus acid. And based on our costs of both phosphorus acid crystal and our PCL-3 [sic] cost in late 2006 we anticipated more than a 25 percent reduction in our total raw material cost.”), 49 (Failon) (“we were convinced that we could be competitive by changing the operation and by using this different technology to make the product”), 116 (McCaul) (“The big change then was from phosphorus trichloride or PCL-3 [sic] to using phosphorus acid. We knew that going in, that we needed to make that change. It would reduce our costs considerably, and that was part of the whole economics of looking at the acquisition.”).

⁷⁶ Compass’s Prehearing Br. at 23-24; Responses to Commissioner Questions at 1-2; Hearing Tr. at 116-17 (McCaul) (“[W]hen Compass acquired this manufacturing facility, this plant that was producing and selling, albeit through another company, a large volume of phosphonates, Compass assumed that it would immediately have a sudden increase in total sales of phosphonates, because now it would have the product that had been importing previously, it kept those customers. And because we were manufacturing from that plant, that we would immediately have a large increase – maybe not one and one making two; but one and one making, you know, 1.8 or something like that. That was a big part of the whole economics.”).

⁷⁷ CR at III-5 n. 9, VI-7-8; PR at III-3 n.9, VI-3-4; CR/PR at Table VI-1; Hearing Tr. at 56-57 (McCaul).

⁷⁸ CR at IV-3 nn. 6-7; PR at IV-2 nn. 6-7; CR/PR at Table IV-2.

⁷⁹ CR/PR at Table IV-2.

⁸⁰ CR/PR at Tables IV-4-5.

production of both phosphonates such as HEDP and certain pesticides and fertilizers.⁸¹ In 2008, natural disasters, including winter storms, flooding, and earthquakes, as well as the Beijing Olympics, resulted in electricity rationing and the curtailment of energy-intensive phosphorus mining and production in China.⁸² At the same time, global phosphorus demand for agricultural applications reportedly surged as high oil prices created strong demand for corn-based ethanol, and the Chinese government imposed a 100-120 percent export tax on phosphorus exports in an effort to reduce the price of phosphorus-derived products for Chinese farmers.⁸³ Consequently, HEDP producers worldwide experienced both shortages of raw materials and a spike in raw material prices, from approximately \$1,000-2,000 per ton to \$9,000-10,000 per ton.⁸⁴ As subject and non-subject foreign HEDP producers were forced to reduce production and increase prices, Compass reportedly was able to pass its higher raw material costs on to customers, due in part to its favorable access to phosphorus acid crystal supplies from China.⁸⁵ Petitioner and respondents indicated that most of the factors that caused the market disruptions in 2008 were temporary and have since been resolved.⁸⁶

4. Substitutability

The record indicates that there is a high degree of substitutability between subject imports from China and India, and subject imports from each source and the domestic like product.⁸⁷ Witnesses for both petitioner and respondents testified at the hearing that the domestic like product and subject imports from China and India are interchangeable.⁸⁸ Though not all subject Chinese and Indian producers are

⁸¹ CR at I-10 n.32; PR at I-8 n.32; Hearing Tr. at 55 (McCaul), 71 (Failon).

⁸² See Compass Prehearing Br. at 20 n. 57; Respondents' Prehearing Br. at 12; Hearing Tr. at 15-16 (McCaul), 72 (Failon), 73 (McCaul), 126-27, 138 (Collias).

⁸³ Hearing Tr. at 53 (McCaul), 143 (Collias), 161 (Craven), 162 (Collias).

⁸⁴ Hearing Tr. at 51-53 (McCaul),

⁸⁵ Compass's Prehearing Br. at 20 n. 57; Hearing Tr. at 15, 110-11 (McCaul) ("But there were times during that period where we might have had some raw material and could make some product and, you know, were better positioned to negotiate better prices, yes. I don't think there's much doubt about that.").

⁸⁶ Hearing Tr. at 38-39 (McCaul) ("The situation is right now, pricing as I mentioned is falling dramatically, and it's appropriate that pricing should come down because costs have come down. And we've been doing it of course, moving pricing down because the raw material cost from China had escalated so steeply in 2008. So it is appropriate that prices should be coming down . . ."), 138 (Collias) ("To the best of our knowledge, at this time there is not the degree of competition for the phosphorus derived chemicals by the agricultural chemical industry. So we believe that the supply of these phosphorus derived chemicals such as PCL3 [sic] is much better for the availability to make and supply HEDP and other phosphonates as required by the industries."), 138 (Craven) ("These were temporary restrictions for the most part."); see also Compass's Prehearing Br. at 20 n. 57, 31; Compass's Posthearing Br. at 14-15.

⁸⁷ See footnote 40, *supra*.

⁸⁸ See, e.g., footnotes 40 and 42, *supra*. In addition, respondents implied that subject imports from China and India and the domestic like product are substitutable in arguing that most purchasers engage in dual sourcing, purchasing some combination of subject imports, nonsubject imports, and domestically produced HEDP. Respondents' Prehearing Br. at 14; Hearing Tr. at 121 (Craven), 153-54 (Collias); Respondents' Responses to Commissioner Questions at 5. Their argument that purchasers would likely increase purchases of the domestic like product rather than nonsubject imports if subject imports were to exit the U.S. market also presumes that subject imports are substitutable with the domestic like product. Respondents' Responses to Commissioner Questions at 2.

certified like Compass with respect to National Sanitation Foundation (“NSF”) standard 60,⁸⁹ NSF certification would not significantly reduce the interchangeability of subject imports from China and India, or between subject imports from each country and the domestic like product, because major HEDP producers in both China and India are NSF certified, and most HEDP applications do not require NSF certification.⁹⁰

V. MATERIAL INJURY AND THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. Legal Standards

1. In General

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.⁹¹ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the like product, but only in the context of U.S. production operations.⁹² The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁹³ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁹⁴ 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.”⁹⁵

Although the statute requires the Commission to determine whether the domestic industry is “materially injured by reason of” or threatened with material injury by reason of unfairly traded imports,⁹⁶ it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.⁹⁷ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that

⁸⁹ CR at II-13; PR at II-7. NSF certification is used to ensure the quality of the HEDP used in applications such as drinking water production, swimming pools, and spas. See Conference Tr. at 86 (Mangwani), 97 (Collias). Companies reportedly undergo a rigorous, fully documented process to achieve NSF certification, and a list of NSF-certified phosphonate suppliers is available on the NSF website. Id. at 97 (Collias).

⁹⁰ As of January 28, 2009, subject Indian producer Aquapharm and subject Chinese producer Wujin Fine Chemical were NSF certified. CR at II-13; PR at II-7. Only nine of 44 responding purchasers reported that they require their suppliers to be NSF certified for at least some of their purchases. Id.

⁹¹ 19 U.S.C. §§ 1671d(b), 1673d(b).

⁹² 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).

⁹³ 19 U.S.C. § 1677(7)(A).

⁹⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁹⁵ 19 U.S.C. § 1677(7)(C)(iii).

⁹⁶ 19 U.S.C. §§ 1671d(b)(1), 1673d(b)(1).

⁹⁷ Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), aff’d 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.⁹⁸

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.⁹⁹ In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.¹⁰⁰ Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject

⁹⁸ The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred “by reason of” the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

⁹⁹ SAA at 851-52 (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord Mittal Steel, 542 F.3d at 877.

¹⁰⁰ SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

imports, which may be contributing to overall injury to an industry.¹⁰¹ It is clear that the existence of injury caused by other factors does not compel a negative determination.¹⁰²

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure{s} that it is not attributing injury from other sources to the subject imports.”¹⁰³ ¹⁰⁴ Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”¹⁰⁵

The Federal Circuit’s decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit’s guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.¹⁰⁶ The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission’s interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the Court requires the Commission to have “evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports,’” and requires that the Commission not attribute

¹⁰¹ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

¹⁰² See Nippon Steel Corp., 345 F.3d at 1381 (“an affirmative material-injury [sic] determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

¹⁰³ Mittal Steel, 542 F.3d at 877-78; see also id. at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination . . . {and has} broad discretion with respect to its choice of methodology.”) citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

¹⁰⁴ Commissioner Pinkert does not join this paragraph or the following four paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal, held that the Commission is required, in certain circumstances, to undertake a particular kind of analysis of non-subject imports. Mittal explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price-competitive, non-subject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether non-subject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878.

¹⁰⁵ Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

¹⁰⁶ Mittal Steel, 542 F.3d at 875-79.

injury from nonsubject imports or other factors to subject imports.¹⁰⁷ Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.^{108 109}

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.^{110 111}

2. Material Injury by Reason of Subject Imports

In evaluating the volume of subject imports, section 771(7)(C)(i) 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."¹¹²

In evaluating the price effects of the subject imports, section 771(7)(C)(ii) of the Tariff Act provides that 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.¹¹³

¹⁰⁷ Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission's alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

¹⁰⁸ Commissioner Lane also refers to her dissenting views in Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv. Nos. 731-TA-1131-1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of Mittal Steel.

¹⁰⁹ To that end, after the Federal Circuit issued its decision in Bratsk, the Commission began to present published information or send out information requests in final phase investigations to producers in non-subject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large non-subject import suppliers). In order to provide a more complete record for the Commission's causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of non-subject imports.

¹¹⁰ Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

¹¹¹ We provide in the discussion of impact in section V.D. below a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

¹¹² 19 U.S.C. § 1677(7)(C)(i).

¹¹³ 19 U.S.C. § 1677(7)(C)(ii).

In examining the impact of subject imports, section 771(7)(C)(iii) of the Tariff Act provides that the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”¹¹⁴ 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.”¹¹⁵

3. Threat of Material Injury by Reason of Subject Imports

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹¹⁶ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.¹¹⁷ In making our determination, we consider all statutory threat factors that are relevant to these investigations.¹¹⁸

¹¹⁴ 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.”). The statute additionally instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping investigation as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V).

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

¹¹⁶ 19 U.S.C. § 1677(7)(F)(ii).

¹¹⁷ 19 U.S.C. § 1677(7)(F)(ii).

¹¹⁸ These factors are as follows:

(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

B. Volume of Subject Imports

Cumulated subject import volume increased significantly during the period of investigation in absolute terms and as a share of both apparent U.S. consumption and domestic production. Subject import volume increased *** percent between 2005 and 2006, from *** pounds to *** pounds, and another *** percent between 2006 and 2007, to *** pounds, representing a *** percent increase from 2005 to 2007.¹¹⁹ Subject import volume was *** pounds in January-September 2008, a level *** percent higher than that in January-September 2007, when subject import volume was *** pounds.¹²⁰

Cumulated subject import shipments in the U.S. market increased *** percent between 2005 and 2006, from *** pounds to *** pounds, but declined *** percent between 2006 and 2007, to *** pounds, a level still *** percent higher than in 2005.¹²¹ Subject import shipments were *** percent higher in January-September 2008, at *** pounds, than in January-September 2007, when they were *** pounds.¹²² That subject import shipments were *** percent higher in interim 2008 than in interim 2007 is particularly notable given that apparent U.S. consumption was *** percent lower in interim 2008 than in 2007.¹²³

Cumulated subject import shipments as a share of apparent U.S. consumption quantity increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, and was *** percent in January-September 2008, compared with *** percent in January-September 2007.¹²⁴ The ratio of subject imports to domestic production increased from *** percent in 2005 to *** percent in 2006, as Compass's acquisition of the Smyrna plant disrupted production at the facility, before declining to *** percent in 2007, a level still *** percentage points higher than in 2005.¹²⁵ The ratio of subject imports to domestic production was *** percent in January-September 2008, compared with *** percent in January-September 2007.¹²⁶

produce the subject merchandise, are currently being used to produce other products.

(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).

19 U.S.C. § 1677(7)(F)(i). To organize our analysis, we discuss the applicable statutory threat factors using the same volume/price/impact framework that applies to our material injury analysis. Statutory threat factor (I) is inapplicable to these antidumping investigations. Statutory threat factors (II), (III), (V), and (VI) are discussed in the analysis of subject import volume. Statutory threat factor (IV) is discussed in the price effects analysis, and statutory threat factor (IX) is discussed in the impact analysis. Statutory threat factor (VII) is inapplicable, as no imports of agricultural products are involved in these investigations. No argument was made that the domestic industry is currently engaging or will imminently engage in any efforts to develop a derivative or more advanced version of the domestic like product, which would implicate statutory threat factor (VIII).

¹¹⁹ CR/PR at Table IV-2.

¹²⁰ CR/PR at Table IV-2.

¹²¹ CR/PR at Table IV-4.

¹²² CR/PR at Table IV-4.

¹²³ CR/PR at Table IV-4.

¹²⁴ CR/PR at Table IV-5.

¹²⁵ CR/PR at Table IV-6.

¹²⁶ CR/PR at Table IV-6.

Although we recognize that Compass itself imported significant quantities of subject imports from China between 2005 and 2007, this fact does not alter our analysis of the significance of the volume of, and increases in, subject imports.¹²⁷ After acquiring the Smyrna facility from Lynx, Compass's primary interest became the domestic production of HEDP, as detailed in Section II.D.1. above, and it ceased importing HEDP altogether after the fourth quarter of 2007.¹²⁸ Compass's transition from importer to domestic producer may have contributed to the *** decline in subject import volume from China after 2006, given that its imports of subject HEDP declined by *** pounds or *** percent between 2006 and 2007 and went from *** pounds in interim 2007 to zero in interim 2008.¹²⁹ We note, however, that other importers rapidly increased their imports of subject HEDP to fill the vacuum left by Compass, such that the volume of subject imports from China was only *** pounds lower in interim 2008 than it had been in interim 2007, and cumulated subject import volume was *** percent higher in interim 2008 than in interim 2007 despite weakening HEDP demand.¹³⁰

Thus, based on the preceding analysis, we find that cumulated subject import volume is significant, both in absolute terms and relative to consumption and production in the United States, and that the increase in subject import volume and market penetration also was significant.¹³¹ We also find that this significant rate of increase in the volume and market penetration of cumulated subject imports during the period of investigation indicates the likelihood of substantially increased imports in the imminent future for the following reasons.

Subject foreign producers in both China and India increased their capacity *** during the period examined and possessed *** excess capacity at the end of the period with which to continue increasing their exports of HEDP to the U.S. market at a significant rate. We note at the outset that responding subject Chinese producers reportedly represented *** of Chinese HEDP production and exports to the

¹²⁷ Respondents argue that the Commission should disregard Lynx's HEDP shipment data and find that subject import volume was not significant because Compass's sales of HEDP, including both subject imports and the domestic like product, increased significantly during the period of investigation and at a greater rate than the volume of subject imports from China. Respondents' Prehearing Br. at 3-4. In analyzing the volume of subject imports, we have considered all domestic industry shipments, including Lynx's shipments, and all subject imports, including subject HEDP imported by Compass, in accordance with the statute. See 19 U.S.C. §§ 1677(4), (7)(B). As respondents acknowledge, we are not permitted under the statute to disregard the shipments of any domestic producer or count subject imports imported by a domestic producer toward domestic industry shipments. See Respondents' Responses to Commissioner Questions at 5.

¹²⁸ CR/PR at Table III-5.

¹²⁹ Compare CR/PR at Table III-5 with id. at Table IV-2.

¹³⁰ CR/PR at Table IV-2; CR at IV-7; PR at IV-2; Hearing Tr. at 180 (Collias) ("It takes time to establish a reputation and for people to get to know you and maybe start trusting you. And of course during 2008, having known a little bit more about us, we did get some more business because people were desperate to get some chemical. So we had an opportunity to at least start supplying some companies in 2008 that we never supplied in 2007.").

¹³¹ Commissioner Lane agrees with this sentence and the following discussion regarding the potential for increases in subject imports. However, she does not rely on the likelihood of substantially increased imports for purposes of her determination of present material injury.

United States,¹³² and coverage of the Indian HEDP industry is unclear.¹³³ Responding subject Chinese producers reported a *** percent increase in their capacity between 2005 and 2007, from *** pounds to *** pounds, and their *** pound capacity in January-September 2008 was *** percent higher than their *** pound capacity in January-September 2007.¹³⁴ Responding subject Indian producers reported a *** percent increase in their capacity between 2005 and 2007, from *** pounds to *** pounds, and a capacity of *** pounds in January-September 2008, which was *** percent higher than their capacity of *** pounds in January-September 2007.¹³⁵

A substantial proportion of the increased Chinese and Indian capacity *** at the end of the period of investigation. In January-September 2008, responding subject Chinese producers reported a capacity utilization rate of only *** percent, yielding excess capacity of *** pounds, while responding subject Indian producers reported a capacity utilization rate of *** percent, yielding excess capacity of *** pounds.¹³⁶ Responding Chinese and Indian producers alone possessed cumulative excess capacity of *** pounds in January-September 2008, equivalent to *** percent of apparent U.S. consumption during the period.¹³⁷ Responding Chinese and Indian producers project that they will continue to possess excess capacity of a similar magnitude in full year 2008 and 2009, and actual excess capacity in China, if not India, is likely to be even higher.¹³⁸

Subject foreign producers in China and India could also increase their exports to the United States in the imminent future by drawing from substantial end-of-period inventories held in the United States and in their respective countries. Subject import inventories in the United States were *** pounds in January-September 2008, equivalent to *** percent of U.S. shipments of subject imports during the period.¹³⁹ The end-of-period inventories held by responding Chinese and Indian producers in January-September 2008 were *** pounds and *** pounds, respectively.¹⁴⁰ In addition, Chinese respondents have indicated that “[n]othing limits the ability of the [Chinese] producers to make rapid shifts to and from HEDP from other phosphonates,” which would enable them to increase their exports to the United States still further.¹⁴¹

¹³² The four responding subject producers in China estimated that they accounted for *** percent of Chinese production of HEDP and *** percent of Chinese HEDP exports to the United States. CR at VII-3; PR at VII-2. We note that data for subject Chinese producers in the interim periods are further understated by ***. CR/PR at Table VII-2 note.

¹³³ One of two responding Indian producers estimated that it accounted for *** percent of Indian production of HEDP, and both responding Indian producers are believed to account for the vast majority of Indian HEDP exports to the United States. CR at VII-6; PR at VII-4.

¹³⁴ CR/PR at Table VII-2.

¹³⁵ CR/PR at Table VII-3.

¹³⁶ CR/PR at Tables VII-2-3. We note that responding Indian producers reported capacity utilization rates of *** in 2006 and 2007. *Id.* at Table VII-3.

¹³⁷ CR/PR at Tables IV-4, VII-2-3.

¹³⁸ Responding Chinese producers project that their capacity utilization rate will be *** percent in 2008, yielding *** pounds of excess capacity, and *** percent in 2009, yielding *** pounds of excess capacity. CR/PR at Table VII-2. Responding Indian producers project that their capacity utilization rate will be *** percent in 2008, yielding *** pounds of excess capacity, and *** percent in 2009, yielding *** pounds of excess capacity. *Id.* at Table VII-3.

¹³⁹ CR/PR at Table VII-5.

¹⁴⁰ CR/PR at Table VII-2-3.

¹⁴¹ Respondents’ Responses to Commissioner Questions at 4. Responding Indian producers reported that ***. Foreign Producers’ Questionnaires of *** and *** at Question II-4.

Subject Chinese and Indian HEDP producers not only possess the ability to increase exports to the United States significantly in the imminent future, but also the incentive to do so given their dependence on exports, including exports to the United States, during the period of investigation. As detailed in Section III.C. above, subject producers in both countries reportedly exported *** of their shipments during the period examined, with *** of their shipments exported to the United States, and project a similar degree of export orientation in 2008 and 2009. Indeed, Chinese respondents conceded that subject imports will continue to grow as they capture more of the U.S. market.¹⁴² They also have acknowledged that the export tax levied on phosphorus by the Chinese government will likely encourage increased Chinese exports of HEDP to the United States by reducing the cost of producing HEDP in China and raising the cost of producing HEDP in the United States, enabling Chinese producers to “sell product in the U.S. market below the cost of production of the domestic product.”¹⁴³

Consequently, we conclude that the cumulated volume of subject imports, which was significant during the period of investigation, is likely to increase substantially in the imminent future.

C. Price Effects of the Subject Imports

The record indicates that there is a high degree of interchangeability between subject imports and the domestic like product, as detailed in section III.B. above, and also that price is a significant factor in purchasing decisions. When asked to rank a number of factors that go into their purchasing decisions, 26 of 43 purchasers ranked price as either their number one or number two factor.¹⁴⁴ Moreover, 35 of 43 purchasers reported that price is “very important” to their purchasing decisions, and 28 of 44 purchasers reported that the lowest priced HEDP supplier “always” or “usually” wins the sale.¹⁴⁵

The Commission collected quarterly pricing data on four HEDP products consisting of identical HEDP distinguished according to delivery method (*i.e.*, truckload, bulk tanktruck, or LTL drums) and type of purchaser (*i.e.*, distributors or compounders).¹⁴⁶ Usable pricing data were reported by Compass, accounting for *** percent of domestic U.S. commercial shipments in 2007; ten importers of HEDP from China, accounting for *** percent of Chinese subject import U.S. commercial shipments in 2007; three importers of HEDP from India, accounting for *** percent of Indian subject import U.S. commercial shipments in 2007; and six importers of nonsubject HEDP, accounting for *** percent of nonsubject import U.S. commercial shipments in 2007.¹⁴⁷ These data indicate that subject imports generally undersold the domestic like product throughout the period of investigation, and particularly towards the end of the period.

Overall, subject imports undersold the domestic like product in 42 of 62 quarterly comparisons, or 67.7 percent of the time, at margins ranging from 0.6 percent to 61.7 percent and averaging 21.3 percent.¹⁴⁸ During the first three quarters of 2008, subject imports undersold the domestic like product with even greater frequency, in 9 of 10 quarterly comparisons, at margins ranging from 0.7 percent to

¹⁴² Respondents’ Responses to Commissioner Questions at 1.

¹⁴³ Respondents’ Responses to Commissioner Questions at 4; see also CR at III-11 n. 21; PR at III-4 n.21 (noting that the Chinese government levied an export tariff of 120 percent on yellow phosphorus as of May 1, 2008).

¹⁴⁴ CR/PR at Table II-2.

¹⁴⁵ CR/PR at Table II-3; CR at II-10-11.

¹⁴⁶ See CR at V-6; PR at V-4.

¹⁴⁷ CR at V-6; PR at V-4.

¹⁴⁸ CR/PR at Table V-6.

32.9 percent and averaging 13.3 percent.¹⁴⁹ We recognize that the pricing product representing the largest proportion of domestic sales volume, ***, also had the lowest proportion of subject import underselling. Although subject imports undersold the domestic like product in *** quarterly comparisons of ***, ***.¹⁵⁰

We find additional evidence of significant underselling in light of the significant volume of confirmed lost sales in 2007. *** confirmed that it purchased *** pounds of HEDP from subject Chinese producers instead of Compass *** due to the lower price of subject imports, ***.¹⁵¹ This lost sale alone, which is equivalent to *** percent of the domestic industry's U.S. shipments in 2007, was significant. Moreover, three purchasers that denied Compass's lost sales or revenue allegations, *** nevertheless acknowledged that Compass had lost sales or revenues to subject imports for price reasons.¹⁵² Given the frequency of underselling, the margins at which underselling occurred, and that underselling resulted in significant sales and revenues lost by the domestic industry, we find subject import underselling to be significant.¹⁵³

Despite some evidence that subject imports depressed and suppressed domestic prices, we are unable to draw any conclusion with respect to significant price depression or suppression due to the unusual market conditions in 2008 and the discontinuity in ownership of the Smyrna, GA facility. Pricing data indicate that domestic prices generally declined between 2005 and 2007, particularly with respect to products 3 and 4.¹⁵⁴ Domestic prices for products 2, 3, and 4 increased *** in the first three quarters of 2008, however, as events in China drove up raw material costs for HEDP producers worldwide.¹⁵⁵

¹⁴⁹ See CR/PR at Tables V-1-4.

¹⁵⁰ CR/PR at Table V-2.

¹⁵¹ CR at V-19; PR at V-6; CR/PR at Table V-7.

¹⁵² See CR at V-19-21; PR at V-6; CR/PR at Table V-7.

¹⁵³ Commissioner Lane does not join in the next two paragraphs. She finds that the evidence that subject imports suppressed domestic prices during the period of investigation is clear, and that there were significant adverse price effects by reason of subject imports during the period of investigation. She agrees with the discussion about the likelihood of significant price depression and suppression in the imminent future. However, she does not rely on the likelihood of significant prices depressing or suppressing effects in the imminent future for purposes of her present material injury determination because she found significant adverse price effects during the period of investigation. See Separate Views of Commissioner Charlotte R. Lane.

¹⁵⁴ Based upon weight-averaged quarterly pricing data, the domestic price of product 1 declined from \$*** per pound in 2005 to \$*** per pound in 2006. CR/PR at Table V-1. *** Id. The weighted average domestic price of product 2 declined from \$*** per pound in 2005 to \$*** per pound in 2006 and \$*** per pound in 2007. Id. at Table V-2. The weighted average domestic price of product 3 declined from \$*** per pound in 2005 to \$*** per pound in 2006 but increased *** to \$*** per pound in 2007. Id. at Table V-3. The weighted average domestic price of product 4 declined from \$*** per pound in 2005 to \$*** per pound in 2006 and \$*** per pound in 2007. Id. at Table V-4. We note that the volume of subject import commercial shipments of product 4 was the ***. See Id. at Tables V-1-4.

Average unit value ("AUV") data on the domestic industry's U.S. shipments reflect the same declining trend as pricing product data, though we note that AUVs may present product mix issues in that values may reflect different methods of delivery or channels of distribution rather than differences in price. The AUV of the domestic industry's U.S. shipments declined from \$*** per pound in 2006 to \$*** per pound and increased to \$*** per pound in 2007, a level *** percent lower than in 2005. Id. at Table IV-7. As with pricing product data, the AUV of the domestic industry's U.S. shipments was significantly higher in interim 2008, at \$*** per pound, than in interim 2007, at \$*** per pound. Id.

¹⁵⁵ See CR/PR at Table V-5; CR at V-1, VI-6 & n. 15; PR at V-1, VI-3 & n.15; see also Section IV.B.3., supra.

Although the domestic industry's ratio of unit cost of goods sold ("COGS") to net sales remained *** percent between 2005 and 2007, our assessment of petitioner's claim that subject imports suppressed domestic prices during the period is complicated by the significant change in the cost structure of the domestic industry that occurred after Compass acquired the Smyrna facility from Lynx in July 2006. Lynx operated the Smyrna facility through June 2006 with a relatively high cost structure.¹⁵⁶ After Compass acquired the facility in July 2006, it restored HEDP production very gradually after a period of evaluation, which significantly disrupted domestic HEDP production, affecting the ratio of unit COGS to net sales.¹⁵⁷ Only in 2007 and January-September 2008 did Compass produce HEDP on a normal basis, at that time with a significantly lower cost structure than Lynx due to the replacement of PCL₃ with phosphorus acid crystal in the production process. Thus, we are unable to draw any conclusions with respect to price suppression.

We find that subject imports 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, in the imminent future. As detailed above, HEDP produced in China, India, and the United States is highly substitutable, and price is an important factor to purchasers choosing among different sources of HEDP. Accordingly, the increased frequency of subject import underselling toward the end of the period of investigation, coupled with the likelihood of significantly increased subject import volume, makes it likely that subject imports will depress and suppress domestic prices in the imminent future.

We find further support for this finding in the apparent resolution of the unusual conditions in China that disrupted raw material supplies for HEDP producers worldwide during the first three quarters of 2008,¹⁵⁸ which had reportedly enabled Compass to increase its HEDP prices in tandem with its increased costs.¹⁵⁹ Petitioner witnesses testified at the hearing that HEDP prices have since declined significantly,¹⁶⁰ and Compass reported that its price for HEDP declined from \$*** per pound in

¹⁵⁶ See Hearing Tr. at 49 (McCaul) ("[T]he company that owned the plant just before Compass owned it was having financial difficulties and was unable to spend the money on the plant that was needed for maintenance and for capital replacements to make the plant operate as well as it could."), 115 (Commissioner Lane: "I'd like for you to discuss the production process and the differences between raw material inputs that were used in the Smyrna facility when [Lynx] was operating [it], and the raw material inputs used by Compass" Mr. Failon: ". . . [W]e anticipated and then realized a greater than 25 percent reduction in the total raw material cost by switching from [PCL₃] to phosphorus acid crystal.").

¹⁵⁷ See CR at III-3 & n. 7; PR at III-2 & n.7; CR/PR at Tables III-2 (domestic HEDP production declined from *** pounds in 2005 to *** pounds in 2006 before rebounding to *** pounds in 2007).

¹⁵⁸ Hearing Tr. at 38-39 (McCaul), 138 (Collias) ("To the best of our knowledge, at this time there is not the degree of competition for the phosphorus derived chemicals by the agricultural chemical industry. So we believe that the supply of these phosphorus derived chemicals such as PCL₃ [sic] is much better for the availability to make and supply HEDP and other phosphonates as required by the industries."), 138 (Craven) ("These were temporary restrictions for the most part."); see also Compass's Prehearing Br. at 20 n. 57, 31; Compass's Posthearing Br. at 14-15.

¹⁵⁹ Compass's Prehearing Br. at 20 n. 57; Hearing Tr. at 15 (McCaul) ("It drove up the cost of phosphorus derivatives, and drove up the cost of everything else that had a phosphorus element in it. And so our costs went up but pricing went up also, and it was an unusual situation."), 38-39 (McCaul), 110-11 (McCaul) ("But there were times during that period where we might have had some raw material and could make some product and, you know, were better positioned to negotiate better prices, yes. I don't think there's much doubt about that.").

¹⁶⁰ Hearing Tr. at 15 (McCaul) ("I would say this to you, that since that period of time elapsed, and I would say in the last three to four months, the prices have plummeted again, and the Chinese and Indians are offering product at incredibly low prices again."), 38-39 (McCaul) ("The situation is right now, pricing as I mentioned is falling dramatically, and it's appropriate that pricing should come down because costs have come down . . . but the extent to which they're coming down and the pricing that's being offered in the market today from China and India is just

September 2008 to \$*** per pound in February 2009.¹⁶¹ Compass also submitted ***.¹⁶² Chinese respondents themselves argued that “[c]ustomers need access to low cost HEDP” from China and India, implying that subject imports will continue to undersell the domestic like product.¹⁶³

Thus, we conclude that subject import underselling will likely continue, creating further demand for subject imports in the U.S. market and likely depressing and suppressing domestic prices to a significant degree.

D. Impact of the Subject Imports on the Domestic Industry¹⁶⁴

The domestic industry performed poorly during the period of investigation according to several key measures. The domestic industry’s rate of capacity utilization remained low throughout the period, at *** percent in 2005, *** percent in 2006, *** percent in 2007, *** percent in January-September 2007, and *** percent in January-September 2008.¹⁶⁵ Since the domestic industry’s annual production capacity was a constant *** pounds throughout the period, the industry’s capacity utilization rate varied in accordance with production.¹⁶⁶ Domestic industry production declined from *** pounds in 2005 to *** pounds in 2006, but increased to *** pounds in 2007.¹⁶⁷ Domestic industry production was *** pounds in interim 2008, compared with *** pounds in interim 2007.¹⁶⁸ The number of production related workers declined from *** in 2005 to *** in 2007 and the interim periods.¹⁶⁹ The industry lost money on an operating basis throughout the period examined, albeit at a declining rate ***, with operating losses of \$*** in 2005, or *** percent of net sales, \$*** in 2006, or *** percent of net sales, \$*** in 2007, or *** percent of net sales, \$*** in January-September 2007, or *** percent of net sales, and \$*** in January-

incredible.”).

¹⁶¹ Compass’s Posthearing Brief at 14-15.

¹⁶² Compass’s Posthearing Brief at 14-15, Exhibit 5; Purchasers’ Questionnaire Response of *** at Question II-2.

¹⁶³ Respondents’ Posthearing Br. at 1-2.

¹⁶⁴ In its final determination with respect to India, Commerce found a weighted-average dumping margin of 3.10 percent for Aquapharm Chemicals Private Limited and 3.10 percent for all others. HEDP from India: Notice of Final Determination of Sales at Less than Fair Value, 74 Fed. Reg. 10543, 10544 (Mar. 11, 2009). In its final determination with respect to China, Commerce found a weighted-average dumping margin of 36.21 percent for Changzhou Wujin Fine Chemical Factory Co., Ltd. and Jiangsu Jianghai Chemical Group Co., Ltd., and a PRC-wide rate of 72.42 percent. HEDP from the People’s Republic of China: Final Determination of Sales at Less than Fair Value, 74 Fed. Reg. 10545, 10547 (Mar. 11, 2009). Commerce calculated a zero dumping margin with respect to Wujin Water. Id. Respondents argue that the Commission should focus on Wujin Water’s zero margin as evidence that subject import underselling margins resulted from “fair price competition.” Respondents’ Prehearing Br. at 5-6. We note that imports of HEDP from Wujin Water are nonsubject imports for purposes of the final phase of these investigations and were therefore not considered in our analysis of subject import underselling.

¹⁶⁵ CR/PR at Table III-2.

¹⁶⁶ CR/PR at Table III-2.

¹⁶⁷ CR/PR at Table III-2.

¹⁶⁸ CR/PR at Table III-2.

¹⁶⁹ CR/PR at Table III-7. Hours worked increased from *** hours in 2005 to *** hours in 2007, but were lower in interim 2008, at ***, than in interim 2007, at ***. Id. Wages paid showed a similar trend, increasing from \$*** in 2005 to \$*** in 2007, but were lower in interim 2008, at \$***, than in interim 2007, at \$***. Id. Productivity generally declined during the period of investigation, increasing from *** pounds per hour in 2005 to *** pounds per hour in 2006 before declining to *** pounds per hour in 2007. Id. Productivity was *** pounds per hour in interim 2008, compared with *** pounds per hour in interim 2007. Id.

September 2008, or *** percent of net sales.¹⁷⁰ R&D spending declined throughout the period, and Compass's return on equity was *** percent in 2006 and *** percent in 2007.¹⁷¹

Other indices of domestic industry performance improved over the period, however. The domestic industry's net sales quantity increased from *** pounds in 2005 to *** pounds in 2006 and *** pounds in 2007, although the industry's net sales value lagged, declining *** from \$*** in 2005 to \$*** in 2006 before increasing to \$*** in 2007, about *** as in 2005.¹⁷² Although the domestic industry's net sales quantity was *** lower in interim 2008, at *** pounds, than in interim 2007, at *** pounds, the industry's net sales value was a much higher \$*** in interim 2008, compared with \$*** in interim 2007.¹⁷³

The domestic industry also increased its U.S. shipments over the period, although its share of apparent U.S. consumption declined *** between 2005 and 2007. The domestic industry's U.S. shipments increased from *** pounds in 2005, or *** percent of apparent U.S. consumption, to *** pounds in 2006, or *** percent of apparent U.S. consumption, to *** pounds in 2007, or *** percent of apparent U.S. consumption.¹⁷⁴ Its U.S. shipments were *** pounds in interim 2008, or *** percent of apparent U.S. consumption, compared with *** pounds in interim 2007, or *** percent of apparent U.S. consumption.¹⁷⁵

We are unable to conclude that the domestic industry is suffering present material injury by reason of subject imports based on the domestic industry performance data available on the record of these investigations.^{176 177} Much of these data suggest that the domestic industry's condition, although

¹⁷⁰ CR/PR at Table VI-1.

¹⁷¹ CR/PR at Table VI-3 (R&D expenditures declined from \$*** in 2005 to \$*** in 2006 and \$*** in 2007, and were \$*** in interim 2007 and \$*** in interim 2008). ***. Id. at Table VI-3 n. 1.

¹⁷² CR/PR at Table VI-1.

¹⁷³ CR/PR at Table VI-1.

¹⁷⁴ CR/PR at Tables IV-4-5.

¹⁷⁵ CR/PR at Tables IV-4-5.

¹⁷⁶ Commissioner Lane does not agree. She finds that the domestic industry did suffer material injury during the period of investigation and does not join in the remainder of these views. See Separate Views of Commissioner Charlotte R. Lane.

¹⁷⁷ Commissioner Pinkert does not join in this paragraph. Rather, he concludes based on the causation analysis required by the Federal Circuit in Bratsk that the domestic industry is not suffering present material injury by reason of subject imports. As a threshold matter, the record shows that the Bratsk "triggering" factors are satisfied. HEDP is a commodity product for these purposes, as it is highly substitutable regardless of the source. CR at II-15-19; PR at II-9-10; CR/PR at Table II-4; Hearing Tr. at 24 (Failon). In addition, price-competitive nonsubject imports are a significant factor in the U.S. market. Nonsubject imports from China and the United Kingdom accounted for virtually all nonsubject imports during the period of investigation and maintained a significant presence in the U.S. market throughout the period. U.S. shipments of nonsubject imports increased from *** pounds in 2005 to *** pounds in 2006, then declined to *** pounds in 2007, which nevertheless was higher than in 2005. Although they declined further in interim 2008 as compared to interim 2007, from *** pounds to *** pounds, they continued to be significant. CR/PR at Table IV-4. Nonsubject imports accounted for *** percent of U.S. consumption in 2005, *** percent in 2006, *** percent in 2007, *** percent in interim 2007, and *** percent in interim 2008. Id. This significant volume of nonsubject imports was sold in the U.S. market at competitive prices, underselling the domestic like product in 26 of 46 comparisons, or 56.5 percent of the time. Id. at Tables V-1-4.

Having found that the threshold criteria for a Bratsk causation analysis are met, Commissioner Pinkert further finds that, had subject imports exited the U.S. market during the period examined in this investigation, nonsubject imports would have replaced them without the domestic industry benefitting from the absence of the subject imports. The great majority of nonsubject imports during the period of investigation were from the United

precarious, improved somewhat toward the end of the period of investigation, with increasing U.S. shipments and market share and narrowing operating losses. Moreover, we are wary of comparing domestic industry performance between 2005 and June 2006, when Lynx owned the Smyrna facility, with domestic industry performance from July 2006 through the interim periods, when Compass owned the facility, given the substantial cost reductions that Compass realized through producing HEDP using phosphorus acid crystal instead of PCL_3 .¹⁷⁸ These cost reductions, as well as the unusual market conditions in 2008, make it difficult to discern the nature and extent of the impact of subject imports on the domestic industry during this period. We can therefore draw no definitive conclusion as to whether subject imports had a significant adverse impact on the domestic industry during the period examined.

We do find that the domestic industry is threatened with imminent material injury by reason of cumulated subject imports. The factors that contributed to the domestic industry's improved performance toward the end of the period of investigation – namely, the unusual market conditions of 2008 and Compass's cost reductions – have reportedly run their course. Compass's inability to realize additional significant cost reductions, and its significant and continuing operating losses during the period of investigation, make it vulnerable to material injury by reason of subject imports. Indeed, Compass officials testified at the hearing that Compass may have to reconsider its decision to produce HEDP domestically if current trends continue.¹⁷⁹

Kingdom, and UK producers had limited excess production capacity during the period of investigation, operating at capacity utilization rates exceeding *** percent in every portion of the period except interim 2008, in which they had a capacity utilization of *** percent. *Id.* at Table VII-7. Their ability to increase production in interim 2008, however, would likely have been constrained by the raw material supply disruptions affecting all HEDP producers at that time. Because of these capacity limits, imports from the United Kingdom would have been unable to replace subject imports even if all excess UK capacity had been devoted to doing so. The nonsubject Chinese producer, Wujin Water, however, had *** to replace *** subject imports during the period of investigation. Wujin Water reported a capacity utilization rate that never exceeded *** percent during the period and fell to *** percent in interim 2008. Its available capacity was *** pounds in 2005, *** pounds in 2006, *** pounds in 2007, *** pounds in interim 2007, and *** pounds in interim 2008. *Id.* at Table VII-6. This excess capacity *** subject imports from China, which peaked at *** pounds in 2006, throughout the period. *Id.* at Table IV-2. Given that nonsubject imports from China gained an increasing (although relatively small) share of the U.S. market during the period despite the presence of subject imports, there is every reason to believe that, in the absence of subject imports, they would have increased to fully replace the volume and market share of subject imports. The likelihood of such replacement is increased by the fact that nonsubject imports from China, unlike those from the United Kingdom, were sold in similar channels of distribution as subject imports. *Id.* at Table II-1.

The replacement of subject imports with nonsubject imports during the period would likely have erased any benefit to the domestic industry. Although nonsubject imports from China generally oversold subject imports from China and India with respect to *** and oversold subject imports from China with respect to ***, they were priced comparably to subject imports from China with respect to ***. *Id.* at Tables V-1-4, D-1-4. Thus, the quarterly pricing data demonstrate that the nonsubject imports generally were competitive in terms of price with the subject imports. Moreover, because HEDP is an interchangeable product regardless of source and price is a significant factor in customers' sourcing decisions, suppliers of nonsubject imports, particularly from China, would be motivated to sell in the United States at whatever price would be necessary to gain market share.

¹⁷⁸ See Section IV.B.1., *supra*. We are unable to quantify the reduction in Compass's unit raw material costs relative to Lynx's unit raw material costs due to differences in the reporting format used by Rhodia and Compass. CR at VI-4 n. 7; PR at VI-2 n.7. Compass reported that it reduced its HEDP production costs by 25 percent, *** by producing HEDP from low-cost phosphorus acid crystal instead of from high-cost PCL_3 . See Hearing Tr. at 23, 115 (Failon); Compass's Responses to Commissioner Questions at 2.

¹⁷⁹ Hearing Tr. at 6, 8 (Levin), 11, 16 (McCaul). Petitioner also claimed that Compass's operating income throughout the period of investigation (which was negative) was well below the "reinvestment level profit" necessary for Compass to maintain HEDP production in the United States, which it estimates to be an operating

As addressed above, we find it likely that current trends will continue. During the period of investigation, cumulated subject import volume increased significantly in absolute terms and relative to apparent U.S. consumption and domestic production. Subject import underselling was pervasive, and there was some evidence of price depression and suppression. In the imminent future, the subject foreign producers' substantial excess capacity and export orientation as discussed above in sections III.C. and V.B. make it likely that subject import volume and market share will continue to increase at a significant rate. The increased frequency of subject import underselling toward the end of the period of investigation, coupled with the high degree of substitutability of HEDP from different sources and the price sensitivity of the HEDP market, make it likely that significant subject import underselling will continue, increasing demand for subject imports and depressing and suppressing domestic prices. Given Compass's likely inability to realize additional substantial cost reductions, its operating losses are likely to grow significantly, imperiling the economic viability of its HEDP operations. In sum, we find that the domestic industry is threatened with imminent material injury by reason of subject imports.

We have considered the role of nonsubject imports in the U.S. market and concluded that they do not break the causal link between subject imports and the threat of imminent material injury to the domestic industry.¹⁸⁰ As an initial matter, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product, on the one hand, and nonsubject imports, on the other.¹⁸¹ Nonsubject imports also maintained a significant presence in the U.S. market throughout the period of investigation, satisfying *** of apparent U.S. consumption during the period.¹⁸²

Unlike subject import volume and market share, which were higher in interim 2008 than in interim 2007 despite weakening demand, nonsubject import volume and market share were significantly lower in interim 2008, at *** pounds or *** percent of apparent U.S. consumption, than in January-September 2007, at *** pounds or *** percent of apparent U.S. consumption.¹⁸³ Subject and nonsubject import volumes are likely to continue trending in opposite directions given that U.S. importers reportedly arranged for the importation of *** pounds of subject imports, but only *** pounds of nonsubject imports, for delivery subsequent to September 30, 2008.¹⁸⁴

Nonsubject imports also were generally priced higher than subject imports and did not undersell the domestic like product to the same extent. Nonsubject imports were priced higher than subject imports

profit of \$*** per year or a *** percent return on capital invested. Compass's Responses to Commissioner Questions at 3-4.

¹⁸⁰ Commissioner Pinkert does not join in the discussion of nonsubject imports except in regard to likely future nonsubject import volumes. See footnote 176, supra.

¹⁸¹ Compass and a majority of purchasers and importers reported that subject imports are "always" or "frequently" used interchangeably with nonsubject imports. See CR at II-18; PR at II-11; CR/PR at Table II-4; see also Hearing Tr. at 24 (Failon). Compass reported that differences other than price are "sometimes" significant to purchasers choosing among nonsubject imports, the domestic like product, and subject imports, while importers were generally evenly divided on the issue, with half reporting that such differences are "frequently" or "always" significant and half reporting that such differences are "sometimes" or "never" significant. See CR/PR at Table II-5. At least half of responding purchasers reported that the domestic like product was comparable to nonsubject imports with respect to all characteristics listed. Id. at Table II-6. We note, however, that the nonsubject imports considered by questionnaire respondents did not include nonsubject imports from China.

¹⁸² See Section IV.B.2., supra. U.S. shipments of nonsubject imports from both China and the United Kingdom increased from *** pounds in 2005, or *** percent of apparent U.S. consumption, to *** pounds in 2006, or *** percent of apparent U.S. consumption, but declined to *** pounds, or *** percent of apparent U.S. consumption, in 2007. CR/PR at Tables IV-4-5.

¹⁸³ CR/PR at Tables IV-4-5.

¹⁸⁴ CR/PR at Table VII-4.

in 42 of 81 comparisons, or 51.9 percent of the time, were priced the same as subject imports in 17 of 81 comparisons, or 25.9 percent of the time, and were priced lower than subject imports in only 22 of 81 comparisons, or 27.2 percent of the time.¹⁸⁵ Nonsubject imports were priced lower than the domestic like product in 26 of 46 comparisons, or 56.5 percent of the time, whereas subject imports undersold the domestic like product in 42 of 62 comparisons, or 67.7 percent of the time.¹⁸⁶ These data exaggerate the significance of nonsubject import underselling given that *** percent of nonsubject import shipments covered by the pricing data, and *** percent in the first three quarters of 2008, consisted of ***.¹⁸⁷

We have considered nonsubject producers' excess capacity and export orientation as well, and find that these data do not suggest an imminent significant increase in nonsubject imports. Nonsubject producers in the United Kingdom exported *** percent to *** percent of their production during the period of investigation, ***, and possessed significant excess capacity in 2007 and interim 2008.¹⁸⁸ Notwithstanding this excess capacity, however, nonsubject imports from the United Kingdom were *** lower in 2007 than in 2006 and lower in interim 2008 than in interim 2007, and there is nothing on the record to suggest that producers in the United Kingdom will market their HEDP in the United States any more aggressively in the imminent future.¹⁸⁹ Moreover, producers in the United Kingdom project excess capacity of only *** pounds in 2009, which would limit their ability to increase their exports to the United States.¹⁹⁰ Consistent with the preceding analysis, importers reportedly ordered only *** pounds of HEDP from the United Kingdom for delivery after September 30, 2008.¹⁹¹

Although nonsubject Chinese producer Wujin Water is projected to possess *** excess capacity in 2008 and 2009 and is *** export oriented, we find that Wujin Water is unlikely to increase its exports of HEDP to the United States significantly in the imminent future.¹⁹² Even as Wujin Water's excess capacity increased *** towards the end of the period of investigation,¹⁹³ nonsubject imports from China,

¹⁸⁵ See CR/PR at Tables V-1-4. Although the AUV of nonsubject import U.S. shipments was *** lower than that of subject import U.S. shipments in 2005 and equal to that of subject import U.S. shipments in 2006, the AUV of nonsubject import U.S. shipments was higher than that of subject import U.S. shipments in 2007 and interim 2007, and *** higher than that of subject import U.S. shipments in interim 2008. *Id.* at Table IV-7 (the AUV of nonsubject import U.S. shipments was \$*** in 2005, \$*** in 2006, \$*** in 2007, \$*** in interim 2007 and \$*** in interim 2008, while the AUV of subject import U.S. shipments was \$*** in 2005, \$*** in 2006, \$*** in 2007, \$*** in interim 2007, and \$*** in interim 2008). We again note that AUV comparisons may be influenced by product mix issues.

¹⁸⁶ Compare CR/PR at Tables V-1-4 with *id.* at Table V-6.

¹⁸⁷ See CR/PR at Tables V-1-4.

¹⁸⁸ CR/PR at Table VII-7.

¹⁸⁹ CR/PR at Table IV-2 (nonsubject imports from all other sources, primarily the United Kingdom, declined *** percent between 2006 and 2007, from *** pounds to *** pounds, and were *** percent lower in interim 2008, at *** pounds, than in interim 2007, at *** pounds); Hearing Tr. at 61-62 (Failon) (“[W]e have not seen [nonsubject UK producers] R[h]odia or Thermphos initiate the down[ward] spiral in pricing . . . we feel that it’s a pretty level playing field between us and the UK producers.”).

¹⁹⁰ CR/PR at Table VII-7.

¹⁹¹ CR/PR at Table VII-4.

¹⁹² Wujin Water projects that it will possess excess capacity of *** pounds in 2008 and *** pounds in 2009. CR/PR at Table VII-6. The ratio of Wujin Water's exports to shipments increased from *** percent in 2005 to *** percent in 2007, and was *** percent in interim 2008, down from *** percent in interim 2007. *Id.*

¹⁹³ Wujin Water possessed excess capacity of *** pounds in 2005, *** pounds in 2006, *** pounds in 2007, *** pounds in interim 2007, and *** pounds in interim 2008. CR/PR at Table VII-6.

unlike subject imports, declined ***.¹⁹⁴ And as with nonsubject imports from the United Kingdom, there is no information on the record to suggest that Wujin Water will market its HEDP in the United States any more aggressively in the imminent future. In addition, pricing product data indicate that competition between nonsubject imports from China and the domestic like product was attenuated to a certain degree toward the end of the period of investigation, in that most nonsubject imports from China ***, while most domestic HEDP *** during the first three quarters of 2008.¹⁹⁵ Finally, inventories of nonsubject imported HEDP in the United States, as well as inventories of HEDP in China and the United Kingdom, were *** lower than inventories of subject imports in interim 2008.¹⁹⁶

Thus, any injury we have found from cumulated subject imports cannot be attributed to nonsubject imports.

We have also considered whether there are other factors that might threaten the domestic industry with injury in the imminent future. As addressed in section IV.A. above, apparent U.S. consumption declined *** percent between 2006 and 2007, was *** percent lower in interim 2008 as compared to interim 2007, and may decline further in 2009.¹⁹⁷ Apparent U.S. consumption was still *** percent higher in 2007 than in 2005, however, and Compass, three of 12 responding importers, and eight of 17 responding purchasers indicated that HEDP demand increased during the period of investigation.¹⁹⁸ By contrast, only one responding importer and one responding purchaser indicated that HEDP demand had declined.¹⁹⁹ Given the significant increase in HEDP demand during the period of investigation and the fact that many HEDP applications are relatively insulated from the current economic downturn, we find it unlikely that HEDP demand will weaken significantly relative to 2005 levels in the imminent future. We also have considered the conditions in the market for acetic acid, the only byproduct of domestic HEDP production, and found that acetic acid prices and demand were stable at the end of the period of investigation and were expected to remain so.²⁰⁰

In sum, the record indicates that there is a causal nexus between subject imports and the threat of material injury to the domestic industry. We conclude that the likely significant increase in subject import volume and market share, and their likely significant adverse price effects, will imminently cause material injury on the domestic industry absent antidumping duty orders. Accordingly, we determine that

¹⁹⁴ Nonsubject imports from China declined *** percent between 2006 and 2007, from *** pounds to *** pounds, and were *** percent lower in interim 2008, at *** pounds, than in interim 2007, at *** pounds. CR/PR at Table IV-2. By comparison, subject imports increased *** percent between 2006 and 2007, from *** pounds to *** pounds, and were *** percent higher in interim 2008, at *** pounds, than in interim 2007, at *** pounds. Id.

¹⁹⁵ Specifically, there were *** nonsubject Chinese import shipments of product 2 during the first three quarters of 2008, although product 2 accounted for *** percent of domestic pricing product shipments during the period. See CR/PR at Tables D-1-4. Conversely, product 4 accounted for only *** percent of domestic pricing product shipments during the first three quarters of 2008, but *** percent, of nonsubject Chinese import pricing product shipments during the period. Id.

¹⁹⁶ In interim 2008, the ratio of nonsubject import end-of-period inventories to nonsubject import volume was only *** percent, while the ratio of subject import end-of-period inventories to subject import volume was *** percent. CR/PR at Tables IV-2 (nonsubject import volume was *** pounds in interim 2008), VII-5 (nonsubject import end-of-period inventories were *** pounds in interim 2008). During the same period, end-of-period inventories held by nonsubject HEDP producers in China and the United Kingdom, totaling *** pounds, were *** of the level of end-of-period inventories held by subject HEDP producers in China and India, which totaled *** pounds. Compare CR/PR at Tables VII-6-7 with id. at Tables VII-2-3.

¹⁹⁷ CR/PR at Table IV-4; Hearing Tr. at 67 (Failon), 92 (McCaul).

¹⁹⁸ CR at II-8; PR at II-5.

¹⁹⁹ CR at II-8; PR at II-5.

²⁰⁰ See Compass's Responses to Commissioner Questions at 11-12; Hearing Tr. at 23 (Failon), 94 (McCaul).

the domestic industry is threatened with material injury by reason of cumulated subject imports from China and India.

We further determine, pursuant to 19 U.S.C. §§ 1671d(b)(4)(B) and 1673d(b)(4)(B), that we would not have made material injury determinations but for Commerce's suspension of liquidation of subject imports in October 2008. Since our interim January-September 2008 data predate the suspension of liquidation, and there is no evidence that the pendency of these investigations significantly influenced subject import trends, the suspension of liquidation did not materially affect our material injury analysis.^{201 202}

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing HEDP is threatened with material injury by reason of dumped imports from China and India.

²⁰¹ No party argued that the Commission should discount post-petition data because they were influenced by the filing of the antidumping petitions. See Hearing Tr. at 100 (Levin) (“So, no, I wouldn’t attribute too much, if any, of the improvement in the domestic industry’s performance in 2008 as being a function of filing the petition.”), 145 (Commissioner Pinkert: “There was also testimony about what happened after the petition was filed . . . I wanted to give you an opportunity to comment on that as well as what possible explanation there might be for that.” Mr. Craven: “As the domestic industry was somewhat puzzled, I’m somewhat puzzled by those numbers as well.”).

²⁰² Commissioner Pinkert notes that the Bratsk causation analysis he performed was not materially affected by the pendency of these investigations.

SEPARATE VIEWS OF COMMISSIONER CHARLOTTE R. LANE

Based on the record in these investigations, I determine that an industry in the United States is materially injured by reason of subject imports of 1-Hydroxyethylidene-1, 1-Diphosphonic acid (“HEDP”) from China and India that have been found by the Department of Commerce (“Commerce”) to be sold in the United States at less than fair value.

I join the views of the Commission majority with respect to the legal standards in antidumping duty original investigations, domestic like product, domestic industry, cumulation, and conditions of competition. I also join portions of the views of the Commission majority with respect to the volume of subject imports and the price effects of subject imports. I write separately to discuss my conclusions regarding price effects of subject imports during the period of investigation and my reasons for finding that the domestic industry was materially injured by reason of subject imports during the period of investigation.

MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

As expressed in the views of the majority in which I join, the record shows that the cumulated subject import volume is significant, both in absolute terms and relative to consumption and production in the United States, and that the increase in subject import volume and market penetration has been significant. Likewise, the record shows that subject imports entered the market at prices that significantly undersold domestic shipments by significant margins and that underselling resulted in significant domestic industry lost sales and revenues.

I find that the domestic industry experienced some degree of price depression during the period of investigation and, more importantly, its prices were significantly suppressed. There was a degree of variability in some of the pricing products, including changes in volumes delivered each quarter that might have impacted the average per unit price of individual pricing products. However, the pricing product data reported to the Commission showed a slight downward trend in most pricing products until the fourth quarter of 2007. This downward trend is confirmed by the average unit value (“AUV”) of all domestic deliveries. The AUV of domestic deliveries was *** per pound in 2005. This average dropped to *** per pound in 2006 and then increased to *** per pound in 2007. Overall, the AUV of domestic deliveries was *** percent lower in 2007 than in 2005.¹

In a relatively strong market, the domestic price was suppressed in that the domestic industry was unable to price HEDP at levels sufficient to generate a gross profit in any full year examined. Operating revenue less cost of goods sold resulted in gross losses of \$*** from 2005 through 2007.² The ratio of cost of goods sold to sales was *** from 2005 through 2007. The domestic industry was clearly experiencing a cost/price squeeze from 2005 through 2007, even though it was able to somewhat reduce its ratio of cost of goods sold to sales in 2007.

The improvement in the ratio of cost of goods sold to sales in 2007 was only marginally attributable to beneficial movement in the unit value of net sales, which increased only *** per pound from 2006 to 2007. The improvement was much more attributable to a significant drop in the average cost of goods sold, which dropped from *** per pound in 2006 to *** per pound in 2007.³ This drop coincided with a full year of operations by Compass after it had upgraded the Smyrna production

¹ Confidential Staff Report (“CR”)/Public Staff Report (“PR”) at Table C-1.

² Id.

³ Id.

facilities and switched its process to incorporate a different, lower cost, raw material input in the production of HEDP. Compass had planned on reducing its cost of production through upgrades and input shifts at the plant, and as part of its planning process, anticipated capital investment at the facility.⁴ As opposed to the operating profit that Compass thought could be achieved with reduced production costs, Compass's investment, upgrades, and reduction in operating costs were "rewarded" with a gross operating loss of \$*** during the first full year that it operated the facilities. Compass officials testified, and Compass argues, that it did not plan on lower prices in 2006 and 2007, as compared to market prices in 2005, when it decided to go into the HEDP production business.⁵ Compass acquired the Smyrna, GA plant in the middle of 2006 with the expectation of receiving \$*** per pound for domestically produced HEDP and future increases in price.⁶ This price expectation was based on Compass's second-quarter of 2006 average sales price of imported HEDP. However, from the time that Compass acquired the Smyrna facility through the fourth-quarter of 2007, prices for its *** HEDP product, by volume, did not reach its target price in any quarter.⁷ At the same time, subject imports of the same product, which were, on average, being sold above \$*** per pound prior to Compass's acquisition of the Smyrna facility, dropped noticeably below that price level from the third-quarter of 2006 to the end of the period of investigation.⁸

The price suppression during the period of investigation was also manifest in the net operating losses experienced by the domestic industry. In addition to negative gross margins, indicating an inability to recover just the cost of goods sold, net operating income was negative throughout the period of investigation, including interim 2008.

For all of the reasons discussed above, I find that the record clearly indicates significant suppression of domestic prices during the period of investigation.

The record shows that the industry exhibited significant indicia of material injury during the period of investigation. The operating and financial data for the domestic industry throughout the period of investigation point to marginally stagnant performance, at best, in some areas, and to a much more dismal picture of performance in many important indices.

The U.S. industry's production, capacity, and capacity utilization remained relatively steady during the period of investigation and did not improve or was slightly lower in interim 2008 as compared to interim 2007. Production of HEDP increased only *** percent between 2005 and 2007 and was *** percent lower in interim 2008 as compared to interim 2007.⁹ Domestic capacity did not change during the period of investigation, remaining at *** pounds for the full years during the period of investigation and *** pounds for the interim period. Capacity utilization, which was at a high of only *** percent during the period of investigation, increased only *** percentage points from 2005 to 2007, and was *** percentage points lower in interim 2008 as compared to interim 2007. Although deliveries of U.S. production increased by *** pounds between 2005 and 2007, U.S. producer market share declined slightly, going from *** percent in 2005 to *** percent in 2007. These data indicate that the domestic industry was not sharing in the increase in domestic consumption that took place between 2005 and 2007. During that period, domestic consumption increased by *** pounds, or *** percent, from 2005 to 2007,

⁴ See CR/PR at III-5, note 10, quoting from Compass Business Plan Related to the Purchase of the Smyrna, GA facility. (****).

⁵ Petitioner's Post-hearing Brief at Exhibit 3, Answers to Commissioners' Questions at 1.

⁶ Id.

⁷ *** had the highest volume of sales in terms of quantity during the period of investigation for the domestic industry.

⁸ Id.

⁹ CR/PR at Table C-1.

including a *** percent increase between 2005 and 2006 before dropping back only *** percent from 2006 to 2007.¹⁰ In contrast to the inability of the domestic industry to even maintain market share within this increasing market, subject imports total market share increased from *** percent in 2005 to *** percent in 2007. The market share captured by subject imports continued to increase in interim 2008, going to *** percent.

U.S. shipments by the domestic industry increased both in terms of quantity and value during the period of investigation. However, the quantity of U.S. shipments of domestic production increased by *** percent with value increasing only *** percent.¹¹ During this period, domestic consumption increased *** percent in quantity and *** percent in value and subject imports increased *** percent in terms of quantity and *** percent in terms of value.

The number of HEDP production related workers declined during the period of investigation from *** to *** and productivity decreased by *** percent during the period of investigation.¹² Compass expended \$*** in 2006 and \$*** in 2007 for capital improvements at the Smyrna production plant. It made further capital improvements in interim 2008, expending *** during the first nine months of 2008.¹³ It had decreasing research and development expenses from 2006 to 2007 (\$*** to \$***).

Other important financial indices reflect a domestic industry that was performing poorly throughout the period of investigation, even taking into consideration some improvement in interim 2008. The domestic industry operated at a loss during the entire period of investigation. It is noted that the magnitude of the operating loss declined from 2006 to 2007, and was lower in interim 2008 as compared to interim 2007. However, this was after a significant increase in the operating loss in 2006. During the full years of the period of investigation, the domestic industry was able to cut its operating losses by ***, from an operating loss of \$*** in 2005 to a *** operating loss of \$*** in 2007.

The operating losses experienced by the domestic industry translated to *** cash flows from operation in 2005, 2006 and 2007 and a relatively *** cash flow in interim 2008.¹⁴ Although the magnitude of the *** cash flows declined and became *** in interim 2008, they indicate a poor financial picture, particularly when considered along with the significant capital expenditures made by Compass. *** of the capital expenditures in 2006 or 2007 could be funded from internal cash flow from operations and in interim 2008 only *** percent of Compass's capital expenditures could be funded from internal cash flow from operations.

Due to its extensive operating losses, Compass's return on investment was a negative *** percent in 2006 and negative *** percent in 2007.¹⁵ Even with improvements in interim 2008, the domestic industry continued to operate at a loss.

The data indicates that the domestic industry was injured during the period of investigation. This injury is neither unclear nor confused by the fact that there were changes in the domestic industry during the period of investigation. The data covering the period of investigation represented one domestic producer, Lynx, from 2005 to June of 2006, and a new domestic producer, Compass, from July of 2006 through interim 2008; certain anomalous market conditions in 2008; and an improving financial condition of the domestic industry towards the end of the period of investigation. However, these facts do not contradict a clear picture of poor financial and operating performance showing that the domestic industry

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ CR/PR at Table VI-3.

¹⁴ CR/PR at Table VI-1.

¹⁵ CR/PR at Table VI-3.

was materially injured during the period of investigation. If anything, the facts that Lynx ceased operations during the period of investigation, and Compass continued to struggle after acquiring the Lynx facility and upgrading and improving the production facilities, are factors that demonstrate the difficulty facing the domestic industry during the period of investigation. One domestic producer was not able to continue operations and a new domestic producer, while showing improvement in its financial condition after making significant capital expenditures and operational changes, still operated at a loss during the period of investigation.

For all these reasons, I find that the domestic industry suffered material injury during the period of investigation. Having made this finding, it is necessary to determine the extent to which the injury is attributable to subject imports.

In order to determine whether more than an incidental portion of the material injury experienced by the domestic industry is attributable to subject imports I analyze the likely effects on the domestic industry if subject imports had been fairly traded in the U.S. market. In order to determine the likely effect on the domestic industry I review the conditions of competition as they relate to the ability of the U.S. industry to beneficially increase gross revenue, net operating income and employment, through some combination of increased sales volumes or prices, if subject imports had been traded at fair value in the U.S. market.

Supply conditions provide an indication of how producers can respond to an increase in demand for their product. Supply conditions also affect the extent to which increases in demand may allow producers to increase prices. How producers can respond to increased demand depends on their existing excess capacity which is available to increase output, their ability to divert product that they have been selling into export markets back into the domestic market, the magnitude of inventory levels which are available for sale in the domestic market, and their ability to divert production from other product(s) to HEDP.

The domestic industry's rate of capacity utilization was low throughout the period of investigation. Capacity utilization ranged from a low of *** percent to a high of *** percent.¹⁶ The lowest level of capacity utilization did occur during 2006, which was the year of change in ownership and upgrade of the Smyrna production plant; however, capacity utilization was relatively low both before and after the changes at the production plant. The unused capacity that the domestic industry had available to increase production in response to favorable market conditions was *** pounds in 2005 and *** pounds in 2007.¹⁷ These levels of unused capacity equaled *** percent of total subject imports in 2005 and *** percent of total subject imports in 2007.¹⁸ Unused capacity equaled *** percent and *** percent of the domestic industry's total U.S. shipments in 2005 and 2007, respectively. These data indicate that the domestic industry had significant amounts of unused capacity with which it could increase production in the event of favorable market conditions.

The domestic industry had relatively low levels of exports and inventories during the period of investigation. These relatively low levels indicate that the domestic HEDP producers had limited ability to shift shipments from export markets to the U.S. market or to increase domestic shipments out of inventory in response to favorable prices in the U.S. market.

The domestic industry does have some capability to shift production from other products to HEDP. Equipment is generally dedicated to the manufacture of HEDP, although HEDP and ATMP can be manufactured simultaneously in adjacent units. Compass uses the same production employees to make both HEDP and ATMP so there is a capability to shift employees from ATMP to HEDP production.

¹⁶ CR/PR at Table C-1.

¹⁷ Id.

¹⁸ Id.

Compass has indicated that it possesses the ability to shift production from HEDP to other phosphonates.¹⁹ Therefore, Compass does have some capability to increase its HEDP capacity by shifting from other products to HEDP.

My analysis of the domestic supply factors indicate that the elasticity of domestic supply of HEDP is relatively high, due mostly to high levels of unused capacity and, to a lesser degree, due to the capability to shift from other products to HEDP. This finding is consistent with the Commission Staff's Final Report which suggests a domestic supply elasticity in the range of 3 to 6.²⁰

An analysis of demand conditions looks at options that are available to purchasers and how they are likely to respond to changes in market conditions, such as increased prices. The price that purchasers are willing or able to pay for HEDP will depend on a number of factors including the cost of the HEDP relative to the value of the products or processes that use HEDP, substitution alternatives, including purchasers' ability to switch to HEDP imports or alternate products in lieu of paying higher domestic prices, and purchasers' collective market power to resist price increases.

It is likely that changes in the price level of HEDP will result in a small change in the quantity of HEDP demanded. The main factors contributing to the small degree of responsiveness of demand to changes in the price of HEDP are the limited substitutability of other products for HEDP and the low cost share of HEDP in most of its end uses. Thus, the record shows that the demand elasticity is likely to be low. This is consistent with the Commission Staff's Final Report which suggests a demand elasticity in the range of -0.25 to -0.5.²¹

An important substitution factor unrelated to the ability of purchasers to substitute alternate products for HEDP is the ability of purchasers to substitute imported HEDP for domestic HEDP. If purchasers place a premium on price, a high elasticity of substitution for all imported product would indicate that purchasers would be likely to move to lower priced imports in response to increases in domestic price. This factor is important in two respects. One, to determine whether any imports, including subject imports, would be an important factor in holding down domestic price increases, and two, to determine whether increases in prices of subject imports would result in shifts to domestic HEDP, non-subject HEDP imports, or both.

In response to Commission questionnaires, price was reported by 40 out of 43 responding purchasers as being either the first, second, or third most important factor affecting purchasing decisions.²² This price sensitivity is important because it indicates that although there is a very low price elasticity of demand for this product, purchasers are likely to seek out the lowest price.

Purchasers also place a premium on product availability, quality, consistency, and reliability. These factors were identified as "very important" the greatest number of times by purchasers.²³ A comparison of U.S. to subject HEDP in categories other than price indicated that the vast majority of purchasers generally considered all subject product to be at least comparable to the U.S. product in most cases. Likewise, most purchasers generally considered non-subject imports as being at least comparable to U.S. product in these categories. The record indicates that there is a relatively high degree of substitutability between domestic HEDP, subject imports and non-subject imports. This is consistent with

¹⁹ See Hearing Transcript at 84 (McCaul) ("ATMP is manufactured in equipment that looks similar to the equipment that's used for HEDP and it is similar in many regards. . . . [I]f the demand for HEDP was large enough, you know, if the business was better, we could make more HEDP by converting some of the equipment that we currently use for amino phosphonates to make more HEDP.").

²⁰ CR at II-19; PR at II-13.

²¹ CR at II-20; PR at II-14.

²² CR/PR at Table II-2.

²³ *Id.* at Table II-3.

the Commission Staff's Final Report which suggests a substitution elasticity in the range of 3 to 5 between all supply sources, domestic, subject and non-subject.²⁴

Overall, the record indicates that lower priced subject imports were being substituted for higher priced domestic HEDP from 2005 through 2007. The record further indicates that non-subject imports were a significant factor in the market, but at prices that were generally in excess of subject import prices. Thus, if subject import prices had increased to levels where they would have been considered to be fairly traded, the response would have been higher prices for all suppliers in the U.S. market.²⁵

Given the range of domestic supply elasticity, price elasticity, and substitution elasticities, along with the importance of price in purchasing decisions, the data supports a finding that the shift in demand away from subject imports that would have occurred if subject imports had been fairly traded would have resulted in reduced market share for the subject imports and an increase in market share for both non-subject imports and domestic HEDP. Moreover, the domestic industry would have benefitted from the ability to increase prices if subject imports had been fairly traded even if it captured only a portion, or even none, of the shift in market share away from subject imports.²⁶

CONCLUSION

Based on the record in these final phase investigations, I conclude that subject imports had an adverse impact on the condition of the domestic industry during the period of investigation. In particular, I find that the absolute and relative volumes of subject imports, and the increase in those volumes, were significant and that subject imports undersold the domestic product. The magnitude of volume captured by unfairly traded imports and price effects of those imports, which depressed and suppressed domestic prices, has resulted in poor financial performance of the domestic industry over the period of investigation. I find that the record indicates that prices in the U.S. market would have been higher for all fairly traded HEDP in the absence of unfairly traded subject imports. The data also confirms that a shift in demand away from subject imports would have occurred if those imports had been fairly traded and the demand served by subject imports would have shifted to both non-subject imports and domestically produced HEDP. Thus, if subject imports had been fairly traded there would have been a beneficial

²⁴ CR at II-21; PR at II-14.

²⁵ My analysis and conclusion is consistent with and supported by the comments of the Ad Hoc Water Treatment Chemical Producers Committee ("AWTCP"). In its post-hearing brief, the AWTCP noted that in the absence of the low priced subject imports, the U.S. market demand would likely continue at levels comparable to the domestic consumption during the period of investigation and, in the absence of alternative low cost supplies, prices would increase. "If the subject imports were cut off from the market, the only alternatives would either be the U.S. industry or the [high priced] producers in the rest of the world. As HEDP normally makes up only a small part of any formulation used by the ultimate consumer, it would [not be economically practical] for U.S. formulators to [shift their production of the formulations to off-shore]. Rather, these U.S. formulators would have no option except to purchase either the U.S. produced product or the [high cost] non-subject imports." AWTCP Post-Hearing Brief at 2.

²⁶ Compass estimated that its revenue in 2007 would have increased by as much as \$*** if subject imports had been fairly traded. This would have resulted in a gross profit in lieu of the experienced gross loss. Compass further estimated that: "Even if the price of unfairly traded subject imports increased by only half the amount necessary to bring the U.S. price up to a fair value, Compass would be looking at a vastly improved financial position." See Petitioner's Post-Hearing Brief at 12. I perform my analysis of the data based on the supply and demand conditions of competition, elasticity of supply, price elasticity of demand and availability of supply alternatives, including non-subject imports. My analysis is not based on Compass's estimates of the beneficial impacts on its operations if subject imports had been fairly traded. I note, however, that the conclusions that I reach are consistent with Compass's estimates.

impact on the domestic industry, either in price increases, volume increases, or both. For these reasons, I find that the domestic industry producing HEDP is materially injured by reason of cumulated subject imports from China and India that are sold in the United States at less than fair value.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on March 19, 2008, by Compass Chemical International, LLC (“Compass”), alleging that an industry in the United States is materially injured or is threatened with material injury by reason of imports from China and India of 1-Hydroxyethylidene-1, 1-diphosphonic acid (“HEDP”)¹ that are allegedly sold in the United States at less-than-fair-value (“LTFV”). Information relating to the background of these investigations is provided below.²

Effective date	Action
March 19, 2008	Petition filed with Commerce and the Commission; Commission institutes investigations (73 FR 16058, March 26, 2008)
April 14, 2008	Commerce’s notice of initiation (73 FR 20023, April 14, 2008)
May 5, 2008	Commission’s preliminary determinations (73 FR 28507, May 16, 2008)
October 21, 2008	Commerce’s preliminary determination on China (73 FR 62470) and on India (73 FR 62465); scheduling of final phase of Commission investigations (73 FR 67545, November 14, 2008)
January 15, 2009	Revised scheduling of final phase of Commission investigations (74 FR 5677, January 30, 2009)
March 3, 2009	Commission’s hearing ¹
March 11, 2009	Commerce’s final determination on China (74 FR 10545) and on India (74 FR 10543) ²
April 3, 2009	Commission’s vote
April 17, 2009	Commission determinations transmitted to Commerce

¹ App. B presents a list of witnesses appearing at the hearing.
² Commerce made affirmative final determinations regarding imports of HEDP from China and India. Commerce calculated a dumping margin of 0.00 percent for Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. (“Wujin Water”), however; accordingly, HEDP manufactured and export by Wujin Water is treated as nonsubject merchandise in this report.

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

¹ A complete description of the imported product subject to these investigations is presented in *The Subject Merchandise* section located in *Part I* of this report.

² *Federal Register* notices cited after Commerce’s preliminary determinations in the tabulation are presented in app. A.

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 Report

Information on the subject merchandise, margins of dumping, and domestic like product is presented in *Part I*. Information on conditions of competition and other relevant economic factors is presented in *Part II*. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. The volume and pricing of imports of the subject merchandise are presented in *Parts IV and V*, 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 as well as available information regarding nonsubject countries.

U.S. MARKET SUMMARY

HEDP is generally added to water to increase solubility of certain ions and to inhibit the precipitation of certain mineral compounds. The U.S. market for HEDP totaled approximately \$*** and *** pounds in 2007. Currently, one firm, Compass, produces HEDP in the United States; Compass accounted for all U.S. production of HEDP in 2007. At least 18 firms have reported imports of HEDP from China, India, or other sources, essentially the United Kingdom since 2005. During 2007, Compass

accounted for *** percent of the total quantity of subject imports of HEDP from China, although this share declined to 0 percent in January-September 2008. Aquapharm was the leading importer of Indian HEDP and accounted for *** of the imports of HEDP from India during 2007, and throughout the period for which data were collected.

U.S. shipments of domestically produced HEDP by Compass totaled *** pounds valued at \$*** in 2007, and accounted for *** percent of apparent U.S. consumption by quantity (*** percent by value). U.S. shipments of subject imports from China totaled *** pounds (\$***) in 2007, and accounted for *** percent of apparent U.S. consumption by quantity (*** percent by value), while U.S. shipments of imports from India totaled *** pounds (\$***), and accounted for *** percent of apparent U.S. consumption by quantity (*** percent by value). U.S. shipments of imported HEDP from nonsubject sources totaled *** pounds (\$***), and accounted for *** percent of apparent U.S. consumption by quantity (*** percent by value).³

SUMMARY DATA AND DATA SOURCES

A summary of data collected in these investigations is presented in appendix C. Except as noted, U.S. industry data are based on questionnaire responses of the two current or former U.S. producers that accounted for all known U.S. production of HEDP during 2005-08. U.S. import and foreign industry data are based on responses to the Commission's U.S. importers' and foreign producers' questionnaires, as entries of HEDP are properly covered by a statistical reporting number that is broader than the subject merchandise.

PREVIOUS AND RELATED INVESTIGATIONS

HEDP has been the subject of one prior antidumping duty investigation in the United States. On December 31, 2007, Compass filed a petition alleging that an industry in the United States was materially injured or threatened with material injury by reason of imports from China and India of HEDP and Aminotrimethylenephosphonic Acid ("ATMP"). The Commission subsequently instituted preliminary phase antidumping duty investigations Nos. 731-TA-1138 and 1139.⁴ On January 17, 2008, before Commerce had initiated its investigations, Commerce and the Commission received a letter from Compass withdrawing its petition. Subsequently, the Commission discontinued its antidumping investigations concerning HEDP and ATMP from China and India.⁵

NATURE AND EXTENT OF SALES AT LTFV

On March 11, 2009, Commerce published a notice in the *Federal Register* of its final determinations of sales at LTFV with respect to imports of HEDP from China and India.⁶ Table I-1 presents Commerce's final margins of sales at LTFV with respect to such imports.

³ These imports included *** pounds (\$***) from the United Kingdom and *** pounds (\$***) from China (nonsubject).

⁴ *Notice of institution of antidumping duty investigations and scheduling of preliminary phase investigations: Aminotrimethylenephosphonic Acid (ATMP) and 1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) From China and India*, 73 FR 1366, January 8, 2008.

⁵ *Notice of withdrawal of petition in antidumping investigations: Aminotrimethylenephosphonic Acid (ATMP) and 1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) From China and India*, 73 FR 5211, January 29, 2008.

⁶ *1-Hydroxyethylidene-1,1-Diphosphonic Acid from India: Notice of final determination of sales at less than fair value*; 74 FR 10543, March 11, 2009. *1-Hydroxyethylidene-1,1-Diphosphonic Acid from China: Final determination of sales at less than fair value*; 74 FR 10545, March 11, 2009.

Table I-1

HEDP: Commerce's final weighted-average LTFV margins with respect to imports from China and India

Country	Manufacturer/exporter	Final weighted-average margin (percent)
China	Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd.	0.00 ¹
	Changzhou Wujin Fine Chemical Factory Co., Ltd.	36.21
	Jiangsu Jianghai Chemical Group Co., Ltd.	36.21
	All others	72.42
India	Aquapharm Chemicals Pvt. Ltd.	3.10
	All others	3.10

¹ With respect to Wujin Water, Commerce stated that it will instruct U.S. Customs and Border Protection (“Customs”) not to suspend liquidation of any entries of such HEDP from China, and will not require a cash deposit or the posting of a bond by importers when the subject merchandise is produced and exported by Wujin Water. 74 FR 10545, March 11, 2009.

Source: *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of final determination of sales at less than fair value*; 74 FR 10543, March 11, 2009. *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China: Final determination of sales at less than fair value*; 74 FR 10545, March 11, 2009.

THE SUBJECT MERCHANDISE

Commerce’s Scope

Commerce has defined the scope of these investigations as follows:

All grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid,⁷ also referred to as hydroxyethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809-21-4.⁸

Tariff Treatment

HEDP is classifiable in the Harmonized Tariff Schedule of the United States (“HTS”) under subheading 2931.00.90, and imports are reported under statistical reporting number 2931.00.9043.⁹ This subheading contains many other products besides HEDP. Table I-2 presents current tariff rates for HEDP.

⁷ C₂H₈O₇P₂ or C(CH₃)(OH)(PO₃H₂)₂

⁸ *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of final determination of sales at less than fair value*; 74 FR 10543, March 11, 2009. *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China: Final determination of sales at less than fair value*; 74 FR 10545, March 11, 2009.

⁹ *** also reported importing into the United States products covered and not covered by the scope of these investigations under statistical reporting numbers 2931.00.9041 (covering organo-phosphorus compounds having a particular structure) and 2931.00.9050 (the residual statistical reporting number for the subheading).

**Table I-2
HEDP: Tariff rates, 2009**

HTS provision	Article description	General ¹	Special	Column 2 ²
		Rates (percent ad valorem)		
2931.00	Other organo-inorganic compounds:			
2931.00.90	Other.....	3.7%	Free (³)	25%
2931.00.9043	Other.....			

¹ Normal trade relations, formerly known as the most-favored-nation duty rate.
² Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.
³ General note 3(c)(i) defines the special duty program symbols enumerated for this provision. Products of India, but not those of China, may be afforded duty-free entry under the Generalized System of Preferences (see HTS general note 4).

Source: Harmonized Tariff Schedule of the United States (2009).

THE DOMESTIC LIKE PRODUCT

The Commission’s decision regarding the appropriate domestic products that are “like” the subject imported products is based on a number of factors including: (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price. Information regarding the physical characteristics, uses, and the manufacturing process are discussed below.

For the purposes of its determination in the preliminary phase of these investigations, the Commission found “the domestic like product as coextensive with the scope and consisting of all HEDP.”¹⁰ The petitioner contends that the Commission should find one domestic like product that is coextensive with the scope of merchandise subject to the investigations.¹¹ Both respondents noted that they were not challenging the definition of the domestic like product.¹² No party requested the collection of additional information on domestic like product issues in the final phase of the investigations.¹³

Overview¹⁴

HEDP belongs to a class of chelating agents, known as organophosphonates or phosphonates, used extensively in industrial water treatment (including swimming pools), in industrial and household cleaning products, and personal care products.¹⁵ “Chelating agents (or chelants)” include a number of compounds, all having the ability to coordinate (bond) with metal ions at a minimum of two sites.

¹⁰ *1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from China and India, Inv. Nos. 731-TA-1146-1147 (Preliminary)*, USTIC Publication 3998, May 2008, p. 7.

¹¹ Hearing transcript, p. 29 (Levin).

¹² Conference transcript, p. 111 (Levinson) and hearing transcript, p. 123 (Craven).

¹³ Letter from Jeffrey Levin, counsel to Compass, October 16, 2008. No other party provided comments on the draft questionnaires in the final phase of the investigations.

¹⁴ Much of this background information comes from a “Technical Update on Chelation,” Monsanto Corp., August 1995, fax from ***, April 8, 2008.

¹⁵ In aqueous solutions, positively charged metal ions (such as Ca+2, Fe+3, Cu+2) are surrounded by negatively charged ions and water molecules. Metals can form a complex with the negatively charged molecules. When the metal complexes with negatively charged molecules at two (or more) sites a ring structure is created. The reaction is called chelation, the anionic ion is called a ligand or chelating agent, and resulting ring structure is called a complex or chelate.

Typically, this bidentate coordination (bond) solubilizes or otherwise inactivates these metals, reducing any adverse effects these metals might have on the system on which they are used.”¹⁶

Phosphonates are multifunctional acids, all containing the phosphonic acid group PO_3H_2 , attached to (slightly) different molecular structures.¹⁷ Phosphonates are a relatively new class of chelating agent used for industrial water treatment. They may have certain properties in common with other classes of chelating agents (particularly the polyphosphates).¹⁸ However, unlike other chelating agents, phosphonates are structurally stable at very high temperature and in strong acids. In 2006, U.S. phosphonate consumption accounted for approximately *** of the total U.S. consumption of the major industrial chelating agents related to industrial water treatment.¹⁹

Phosphonates, acting as chelating agents, perform a variety of functions to improve the quality of water supplies. The chemical characteristics of chelating agents allow for a number of applications in household cleaning supplies (soaps and detergents),²⁰ in municipal water supplies,²¹ in industrial water systems (heat exchangers, boilers, and cooling towers),²² and in stabilizing bleach.²³

¹⁶ SRI, Chemical Economics Handbook (“SRI CEH”): *Chelating Agents*, February 2007, p. 515.5001C.

¹⁷ HEDP is made using phosphorus acid and acetic anhydride. Production of HEDP requires the use of anhydrous phosphorus acid, while other phosphonates can be made using an aqueous phosphorus acid.

¹⁸ Petition, p. 4. In fact, the petition refers to generations of chelating agents, with each newer generation having an improved degree of activity or efficiency. Polyphosphates (which are not phosphonates) were referred to as first generation antiscalants/sequestrants, aminomethylene phosphonates were referred to as the second generation, HEDP was referred to as the third generation, and PBTC was referred to as a newer, more specialized phosphonate.

¹⁹ SRI CEH: *Chelating Agents*, February 2007, p. 515.500S.

²⁰ Phosphonates can remove soap scum with bar soap and eliminate graying with laundry soap. Metal ions such as magnesium or calcium can react with soap to form insoluble salts. This can form “bath-tub rings” from bar soap, or lead to graying or yellowing of fabrics in laundry soap. The addition of a chelating agent (e.g. phosphonate), will solubilize the metal and prevent it from reacting with the soap or settling on the fabric.

²¹ In water supplies, the presence of iron or manganese will color the water; and although not dangerous it is not aesthetically pleasing (and will generate customer complaints). Adding chelating agents can sequester the metal ions and prevent them from coloring the water.

²² “Scale” build-up is a problem in industrial water supplies. Scale consists mainly of calcium, magnesium, and iron salts. These products can build up on the walls of commercial water systems; but the condition can be alleviated by adding a “crystal growth modifier” to the system. These products, at very small concentrations, appear to distort and prevent crystal growth. The mechanism of prevention is different from sequestering, but phosphonates
(continued...)

A number of chemical classes of chelating agents used in water treatment, cleaning products, and in a number of other diverse industrial uses, have been developed over the years. The choice of chelating agent depends on a number of factors (including which metal ions are to be controlled, the pH of the system, the temperature range of the system, the economics of the system, and more recently, environmental issues). Table I-3 lists the five largest commercially available phosphonates, of which HEDP and ATMP are the two largest selling products.

Table I-3
Phosphonates: Commercially available phosphonates

Abbreviation	Chemical name	CAS No.
HEDP	(1-hydroxyethylidene) diphosphonic acid	2809-21-4
ATMP	Amino tris(methylene phosphonic acid)	6419-19-4
DTPMP	Diethylenetriamine penta(methylene phosphonic acid)	15827-60-8
PBTC	2-Phosphobutane-1,2,4-tricarboxylic acid	37971-36-1
BHMT	Aminotri(methylenephosphonic acid)	35657-77-3
Source: ***.		

Description and Applications

HEDP is a well-defined,²⁴ odorless, colorless to yellowish liquid. It is very water soluble, as either the acid or the salt. The finished product is produced as a technical grade, and is not further modified or purified to become food grade or U.S. Pharmacopoeia (USP) Grade. Once manufactured and adjusted to the correct aqueous concentration, it needs no further modification before it can be used as a chelating agent. The product has a long shelf life, and is often added to multi-purpose formulations, which do not appear to affect the chelating properties. Compared to other chelating agents, the molecule has multiple phosphonate (acid) groups and is very stable at high temperatures (greater than 130⁰ F) and acid levels; it resists oxidation by chlorine. The stability of the molecule is attributed to the C–P chemical bond in HEDP. Further, HEDP is considered safe. According to the Human & Environmental Risk Assessment Substance team, “{T}he human health risk assessment has demonstrated that the use of ATMP, HEDP, and DTPMP in household laundry and cleaning detergents is safe and does not cause concern with regard to consumer use.”²⁵

²² (...continued)

are very effective crystal growth modifiers in boilers and heat exchangers, particularly since they are stable at high temperatures over long periods of time.

²³ An important application for phosphonates is preventing bleaches from decomposing in the presence of trace amounts of metals such as iron, chromium, and nickel. Again, chelating agents can be introduced to sequester (tie up) the offending ions.

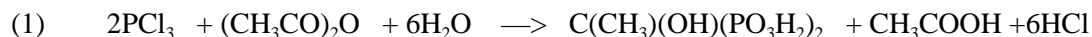
²⁴ Patented by Proctor & Gamble, January 30, 1968, Patent No. 3,366,675. The chemistry is described in the chemical literature, “Interaction of Acylating Agents and Phosphorus (III) Sources,” *Journal of the American Chemical Society*, August 23, 1972, pp. 6119-6124.

²⁵ HERA substance team, *Human & Environmental Risk Assessment on Ingredients in European Household Cleaning Products*, June 9, 2004, p. 5.

HEDP is a chelating agent that can perform three functions as it treats commercial water, the largest application for HEDP.²⁶ HEDP is unique among phosphonates in that it is the only phosphonate that combines these functional properties.²⁷ First, it can sequester heavy metal ions that color water supplies or heavy metals that interfere with the cleaning function of laundry soap or body soap.²⁸ Second, it can act as a scale inhibiting agent that prevents scale formation in commercial heating/cooling systems such as boilers, air conditioners, and cooling towers. Third, it can prevent the breakdown of oxidizing agents such as peroxide bleach.²⁹

Manufacturing Processes³⁰

There are two commercial methods for producing HEDP.³¹ One method is to react phosphorus trichloride with acetic anhydride in water. The phosphorus trichloride (also known as PCl₃) is converted to phosphorus acid within the reaction vessel (in situ), and then reacts with the acetic anhydride.³² Two by-products, hydrochloric acid (HCl) and acetic acid are produced, and can be sold on the merchant market. The balanced equation is:



The second method is a one-step version of the first process.³³ The phosphorus acid is purchased and then reacted directly with acetic anhydride. The phosphorus acid is anhydrous (devoid of water). As

²⁶ Hearing transcript, p. 66 (Failon).

²⁷ Hearing transcript, p. 22 (Failon).

²⁸ HEDP can qualify for NSF/ANSI Standard 60 certification for drinking water chemicals. NSF Product and Service listings, "<http://www.nsf.org/Certified/PwsChemicals/Listings.asp?CompanyName=&TradeName=&ChemicalName=Hydroxyethylidene+Diphosphonic+Acid&ProductFunction=&PlantState=&PlantCountry=>," retrieved December 12, 2008.

²⁹ SRI CEH: *Chelating Agents*, February 2007, p. 515.5001J.

³⁰ Much of the technical background was presented by ***, in staff phone interviews, April 3, 2008 and April 14, 2008.

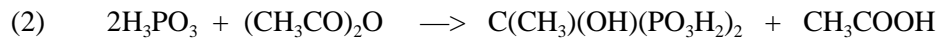
³¹ Petition, p. 4. A third commercial method exists using PCl₃ and glacial acetic acid, which is believed to be the method used by the Chinese producers. Email from ***, March 11, 2009, and hearing transcript, pp. 22-23 (Failon).

³² The major intermediate for HEDP is anhydrous phosphorus acid. Typically its precursor is phosphorus trichloride. Other phosphonates have less stringent technical requirements for their inputs. Phosphorus trichloride is a major phosphorus derivative, which is used in a number of different end-use products (other than water treatment products) such as pesticides (glyphosate/Roundup), flame retardants, and plastic additives. The raw material for these products, elemental phosphorus (P₄), is extracted from phosphorus ore. China has phosphate rock reserves about 6.6 million metric tons, Morocco has 5.7 million metric tons, South Africa has 1.5 million metric tons, and the United States has 1.2 million metric tons. USGS staff noted that China has 70-80 percent of the capacity to convert the ore to elemental phosphorus, and that, furthermore, over 90 percent of phosphorous rock worldwide is converted to fertilizer. http://minerals.usgs.gov/minerals/pubs/commodity/phosphate_rock/, retrieved March 12, 2009, and staff telephone interview with Stephen Janinski, U.S. Geological Survey, March 9, 2009.

Compass noted that the *** phosphorus mining operation in the United States is owned by Monsanto and is ***, primarily in the production of the herbicide Roundup. *** and https://www.monsanto.com/who_we_are/locations/unitedstates/idaho/sodasprings/default.asp, retrieved February 2, 2009.

³³ Compass reported that it used the second method, although it believes that both producers in China and India currently use the first method. ***. Chinese producers reported ***, while Aquapharm reported *** and Excel reported ***. Foreign producers' questionnaire, question II-5.

with the reaction starting with PCl_3 , the reaction is performed at a high temperature and for at least 10 to 12 hours. The balanced equation is:



The first reaction is potentially more cumbersome than the second, because the phosphorus trichloride is very reactive and must be stored away from air and moisture in special containers. At the end of the first step, the phosphorus acid must be anhydrous, because moisture will neutralize acetic anhydride and lower the yield. On the other hand, anhydrous phosphorus acid is a solid at room temperature, not violently reactive with air and water, and easier to handle. Nevertheless, the relative price of the phosphorus acid and phosphorus trichloride can be an important issue in determining which process a company will use.³⁴

HEDP must be batch manufactured in *** vessels due to the corrosive nature of the materials.^{35 36} Figure I-1 presents Compass's production flow.^{37 *** 38 *** 39}

Figure I-1
HEDP: Compass's production flow chart

* * * * *

Compass reported that at its manufacturing facility, the starting materials are checked for purity and the finished product is subject to a quality control inspection, the results of which are kept on file. A concern is the possibility for chloride contamination from HCl. The finished product is "Technical Grade;" there is no Food Grade or U.S. Pharmacopeia (USP) grade. At the Compass manufacturing facilities, the reaction vessels and storage tanks are dedicated to HEDP production. Other phosphonate products are manufactured in the same facility, but on separate, dedicated equipment.^{40 *** 41}

³⁴ Conference transcript, pp. 63-65 (McCaul). Compass noted that it anticipated a reduction in raw material costs of more than 25 percent when it switched from using phosphorus trichloride to phosphorus acid. Hearing transcript, p. 23 (Failon).

³⁵ Compass noted that ***. ***.

³⁶ Compass reported that ***. ***.

³⁷ Compass noted that domestic and imported HEDP are produced on similar equipment and using the same process. Conference transcript, p. 26 (Faillon).

³⁸ Compass noted that ***. ***.

³⁹ ***.

⁴⁰ Hearing transcript, p. 83 (Failon).

⁴¹ Staff phone interviews with ***, April 3, 2008 and April 14, 2008.

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

U.S. MARKET CHARACTERISTICS

Petitioner Compass indicated that domestic and imported HEDP are sold into common channels of distribution: distributors (resellers), compounders (formulators), and occasionally, to end-users.¹ Compass reported that distributors typically sell to accounts that purchase quantities that are less than a truckload (of drums) quantities while large compounders often buy in bulk tanktruck quantities, but also in truckload drum quantities, and end-users generally buy from producers only when they have a bulk requirement for HEDP.²

As shown in table II-1, in each period, over *** percent of shipments of U.S. product and imports from subject Chinese producers and India were to compounders and the bulk of the remaining shipments were made to distributors.³ Also, in each period, more than *** percent of shipments of imports from nonsubject countries were to end users and the bulk of the remaining shipments were made to distributors.⁴

Table II-1

HEDP: U.S. producers' and importers' channels of distribution, 2005-07, January-September 2007, and January-September 2008

* * * * *

Compass indicated that imported product competes with the domestic like product in all geographic markets in the United States and that imported product typically is stored and shipped from its warehouse locations to all geographic areas.⁵ Compass also noted that a large portion of the HEDP market is supplied through national and regional distributors that reportedly obtain their product through Chinese importers, Indian importers, and/or U.S. producers.⁶

Compass reported that in 2007, *** percent of its shipments of HEDP were to the Midwest region, *** percent of its shipments were to the Northeast region, and *** percent of its shipments were to the Southeast region. Responding importers reported that in 2007, *** percent of their shipments of imports from subject Chinese producers were to the Midwest region, *** percent were to the Northeast region, *** percent were to the Central Southwest, *** percent were to the Southeast region, and *** percent were to the Pacific Coast. Responding importers also reported that in 2007, *** percent of their shipments of imports from India were to the Northeast region, *** percent were to the Southeast region, *** percent were to the Midwest region, and *** percent were to the Mountain region.⁷

¹ Petition, p. 25.

² Petition, p. 25.

³ ***.

⁴ The end user data were provided by importer ***.

⁵ Petition, p. 29.

⁶ Petition, p. 29.

⁷ The regions were defined as follow: Northeast.-CT, ME, MA, NH, NJ, NY, PA, RI, and VT; Midwest.-IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, and WI; Southeast.-AL, DE, DC, FL, GA, KY, MD, MS, NC, SC, TN, VA, and WV; Central Southwest.-AR, LA, OK, and TX; Mountains.-AZ, CO, ID, MT, NV, NM, UT, and WY; Pacific Coast.-CA, OR, and WA; Other.-All other markets in the United States not previously listed, including AK, HI, PR, VI, among others.

Forty-four firms responded to the purchaser's questionnaire and indicated that they have purchased HEDP since 2005.⁸ Nineteen reported being compounder/formulators, 19 reported being distributors, and eight reported being end users.⁹

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, the U.S. HEDP producer has the ability to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced HEDP supplied to the U.S. market. The main factors contributing to the moderate degree of responsiveness of supply are the availability of unused capacity and an ability to produce alternate products, constrained by a limited ability to divert shipments from alternate markets and a limited ability to use inventories to increase shipments to the U.S. market.

Industry capacity

The U.S. producer's capacity utilization increased from *** percent in 2005 to *** percent in 2007. This level of capacity utilization indicates that the U.S. producer has unused capacity with which it could increase production of HEDP in the event of a price change.

Alternative markets

Exports by the U.S. producer, as a share of total shipments, decreased from *** percent in 2005 to *** percent in 2007. These data indicate that the U.S. producer has a limited ability to divert shipments to or from alternative markets in response to changes in the price of HEDP.

Inventory levels

The ratio of end-of-period inventories to total shipments for the U.S. producer decreased from *** percent in 2005 to *** percent in 2007. These data indicate that the U.S. producer has a somewhat limited ability to use inventories as a means of increasing shipments of HEDP to the U.S. market.

⁸ In their prehearing brief, the Ad Hoc Water Treatment Chemical Producers ("AWTCP") Committee indicated that some major purchasers of HEDP may not have received a questionnaire from Commission. AWTCP Prehearing brief, p. 14, fn. 4. The only purchaser identified by AWTCP was ***. In a staff interview on March 9, 2009, ***.

⁹ This includes two purchasers that reported being both compounder/formulators and distributors. The distributors include two firms that indicated that they were "resellers" and one firm that indicated that it was an alliance of multiple regional chemical distributors. The end users include one firm that indicated that it manufactures water treatment chemicals that contain HEDP and one water treatment company.

Production alternatives

According to Compass, equipment is generally dedicated to the manufacture of HEDP, although HEDP and ATMP can be manufactured simultaneously in adjacent units.¹⁰ Compass indicated that Compass relies on the same production employees to make both HEDP and ATMP, trained, for example, as “Mayoquest®/phosphonate” operators.¹¹ In its U.S. producer questionnaire response, ***. The AWTCP indicates that nothing limits the ability of producers in any nation to shift between producing HEDP and other phosphonates.¹² Therefore, Compass is believed to have an ability to product alternative products.

Subject Imports

Based on available information, Chinese producers have the ability to respond to changes in demand with large changes in the quantity of shipments of HEDP to the U.S. market, while Indian producers have the ability to respond with moderate changes in the quantity of shipments of HEDP to the U.S. market. The main factors contributing to the high degree of responsiveness of supply for Chinese producers are the availability of unused capacity, an ability to divert shipments from alternate markets, and an ability to produce alternate products, constrained by a limited availability of inventories. The main factors contributing to the moderate degree of responsiveness of supply for Indian producers are an ability to divert shipments from alternate markets and an ability to produce alternate products, constrained by a limited availability of inventories and the limited amount of excess capacity.

Importer *** indicated that in the second and third quarter of 2008, Chinese and Indian HEDP imports temporarily declined due to shortages of phosphorus, earthquakes in China, and the Olympics, but that by the fourth quarter of 2008, imports from China and India increased. Importer *** and Uniphos’s hearing testimony indicated that Chinese supply of HEDP was affected by a historic snow storm that shut down transportation routes, and caused a reduction in the availability of chemicals used to make phosphonates.¹³ In addition, importer *** indicated the snow storm *** and also affected the ability to load containers onto ships. This importer also indicated that phosphorus trichloride availability was reduced in 2008 due to increased Chinese demand for agricultural products which increased demand for herbicides using phosphorus trichloride. Purchaser *** indicated that it increased its inventory to serve many customers during the Olympics.

Industry capacity

During the period for which data were collected, the capacity utilization rate for Chinese producers of HEDP decreased from *** percent in 2005 to *** percent in 2007. The capacity utilization rate for the producer in India that provided complete data increased from *** percent in 2005 to *** percent in 2007.¹⁴ These levels of capacity utilization indicate that Chinese producers have unused capacity with which they could increase production of HEDP in the event of a price change, while Indian producers have very limited capacity with which they could increase production of HEDP in the event of a price change.

¹⁰ Petition, p. 26.

¹¹ Petition, p. 26.

¹² AWTCP posthearing brief, Response of AWTCP to Commissioners’ questions, p. 4.

¹³ Hearing transcript, pp. 126-127 (Collias).

¹⁴ However, Aquapharm (***) has projected ***.

Alternative markets

Shipments of HEDP from China to markets other than the United States increased from approximately *** percent of total shipments in 2005 to *** percent in 2007. Shipments of HEDP from India to markets other than the United States increased from approximately *** percent of total shipments in 2005 to *** percent in 2007. Available data indicate that subject producers in China and India have the ability to divert shipments to or from their home markets and alternative markets in response to changes in the price of HEDP.

Inventory levels

Chinese producers' inventories, as a share of their total shipments, increased from *** percent in 2005 to *** percent in 2007. Indian producer Aquapharm's (the producer in India that provided complete data) inventories of subject product in India, as a share of total shipments, decreased from *** percent in 2005 to *** percent in 2007. These data indicate that subject foreign producers, particularly those in India, have a limited ability to use inventories as a means of increasing shipments of HEDP to the U.S. market.

Production alternatives

All three responding subject Chinese producers and the only responding Indian producer indicated that they do not produce products other than HEDP on the same equipment and machinery used in the production of HEDP. Aquapharm indicated that it has equipment dedicated to the production of HEDP and that other equipment is used to produce other phosphonates.¹⁵ Compass indicated that domestic and imported HEDP are produced in similar manufacturing facilities, using similar production processes.¹⁶ Also, as noted earlier, the AWTCP indicates that nothing limits the ability of producers in any nation to shift between producing HEDP and other phosphonates.¹⁷ Accordingly, as with Compass's U.S. operations, subject producers are believed to have an ability to produce alternative products.

U.S. Demand

Based on the available information, it is likely that changes in the price level of HEDP will result in a small change in the quantity of HEDP demanded. The main factors contributing to the small degree of responsiveness of demand to changes in the price of HEDP are the limited substitutability of other products for HEDP and the low cost share of HEDP in most of its end uses.

Demand Characteristics

Compass indicated that HEDP is used in water treatment applications such as boiler water treatment, municipal water treatment, desalination, and swimming pool applications; industrial and institutional detergents and cleaners; peroxide bleach stabilization; and personal care products such as bar

¹⁵ Conference transcript, p. 138, (Mangwani).

¹⁶ Petition, pp. 26-27.

¹⁷ AWTCP posthearing brief, Response of AWTCP to Commissioners' questions, p. 4.

soaps and shampoos in which HEDP is used a preservative.¹⁸ Compass also indicated that the single-largest application for HEDP is in industrial water treatment.¹⁹

The U.S. producer and three of 12 responding importers indicated that demand for HEDP in the United States has increased due to growth in water treatment and other industries that use HEDP. The U.S. producer also indicated that purchasers are increasingly favoring HEDP over ATMP. Five of 12 responding importers indicated that demand for HEDP has not changed, one responding importer indicated that demand has decreased, and the three remaining responding importers indicated that demand has fluctuated.²⁰

Eight of 17 responding purchasers indicated that demand for their final products incorporating HEDP has increased since 2005. In addition, six purchasers indicated that demand for such products has not changed, one purchaser indicated that demand for such products has increased by an “insignificant” amount, one purchaser indicated that demand for their final products has fluctuated, and one purchaser indicated that demand for such products has decreased.

The U.S. producer and two of seven responding importers indicated that demand for HEDP outside the United States has increased since 2005. Two of seven responding importers indicated that demand for HEDP outside the United States has not changed, one responding importer indicated that demand has decreased, and the two remaining responding importers indicated that demand has fluctuated.

Substitute Products

Compass reported that customers and producers perceive HEDP as possessing distinct, characteristic physical, chemical, and functional properties such that polyphosphates, EDTA, ATMP and other AMPs (amino methyl phosphonates) are not viable substitutes.²¹ It also indicated that customers select HEDP due to performance or cost-performance advantages over other phosphonates and polyphosphates.²² According to Compass, there are several applications in which there is no real substitute for HEDP, including municipal water treatment, swimming pool stain and scale control, and bar soap preservative.²³ Respondents indicated that there are substitutes for HEDP such as other phosphonates, acrylic polymers, and glassy phosphates.²⁴ They indicated that although substitution typically would not occur instantaneously with a change in price, it could occur within a few months.²⁵

The producer, seven responding importers, and 10 responding purchasers indicated that there were at least some substitutes for HEDP. Substitutes named included ATMP, DETPMP, EDTA, PBTC, polyacrylates, and other phosphonates. One importer and seven purchasers indicated that there were no substitutes for HEDP and one responding importer indicated that it did not know of any substitutes for HEDP.

The U.S. producer, all but one responding importer, and all but two responding purchasers reported that the prices of substitute products have not affected the price of HEDP.²⁶ *** indicated that

¹⁸ Petition, pp. 6-7, 24.

¹⁹ Conference transcript, p. 53 (McCaul) and Hearing transcript, p. 66 (Failon).

²⁰ In this and subsequent sections, ***.

²¹ Petition, p. 26.

²² Petition, p. 26.

²³ Petition, p. 24.

²⁴ Conference transcript, pp. 132-133 (Zibrida) and p. 133 (Collias).

²⁵ Ibid.

²⁶ In its response to the preliminary phase questionnaire, *** indicated that the “plethora” of PBTC imports has depressed pricing for PBTC, making it more viable as an alternative to HEDP (and noted that this effect has no time (continued...))

substitute ATMP is a specialty product that has few producers and that all markets and pricing depends on the cost raw materials (phosphorous acid/PCl₃). In addition, one purchaser (***) indicated that although the price of substitutes has not affected prices of HEDP, the price of substitutes has affected which product they chose to purchase.

Cost Share

The cost share of HEDP is reportedly low for most end uses. Compass indicated that HEDP costs as share of total costs were about 20 to 25 percent for typical applications, but could range from less than 1 percent to 100 percent for certain applications.²⁷ However, Uniphos indicated that the HEDP cost share was less than 3 percent for water treatment chemicals that are used for cooling applications, process cooling, or comfort cooling.²⁸ Purchasers reported that cost share could range from 0.1 percent to 100 percent.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported HEDP depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, defect rates, etc.), and conditions of sale (e.g., price discounts/rebates, leadtimes between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that there is a high degree of substitutability between domestically produced HEDP and HEDP imported from the subject countries.

Factors Affecting Purchasing Decisions

Purchasers report that they consider a variety of factors to be important when selecting among competing HEDP suppliers including availability, price, and quality. As indicated in table II-2, price was named by 12 of 43 responding purchasers as the number one factor generally considered in deciding from whom to purchase HEDP, as the number two factor by 14 responding purchasers, and as the number three factor by 14 other responding purchasers. Also, as indicated in table II-3, 35 of 43 responding purchasers indicated that price was a “very important” factor in their purchase decisions for HEDP. Twenty-five of 44 responding purchasers indicated that the lowest-priced HEDP “usually” will win a sale, 12 reported “sometimes,” three reported “always,” and four reported “never.”

Quality was named by 15 of 43 responding purchasers as the number one factor generally considered in deciding from whom to purchase HEDP, the number two factor by nine purchasers, and the number three factor by six other responding purchasers. Also, as indicated in table II-3, 39 of 43 responding purchasers indicated that quality meeting industry standards was a “very important” factor in their purchase decisions for HEDP. However, only 11 of 43 responding purchasers indicated that quality exceeding industry standards is a “very important” factor in their purchase decisions. Quality characteristics that purchasers consider when determining the quality of HEDP include density, level of impurities, work ability in product formulations, purity, concentration, color, chloride content, iron content, pH, specific gravity, appearance, viscosity, phosphoric acid content, strength, packaging, scale inhibition activity, contaminants, consistency in meeting specifications, active content as HEDP, total acid number and titration curve (potentiometric), total inorganic PO₄, and sequestration value.

²⁶ (...continued)

lag). Response to ***. However, in its response to the final phase questionnaire, *** indicated that changes in the price of PBTC have not affected prices of HEDP.

²⁷ Conference transcript, pp. 53-54 (McCaul).

²⁸ Conference transcript, pp. 115-116 (Collias).

Table II-2**HEDP: Ranking of factors used in purchasing decisions, as reported by unrelated U.S. purchasers**

Factor	Number of firms reporting		
	Number one factor	Number two factor	Number three factor
Availability	9	12	9
Price	12	14	14
Quality	15	9	6
Lead time	0	3	3
Meets specifications	2	0	1
Reliability of supplier	0	1	3
Certification	1	0	1
Traditional supplier	1	1	0
Product consistency	0	0	1
Other ¹	3	3	5

¹ Other factors include “contract,” “extension of credit,” “delivery,” “performance,” “package size,” “product range,” “relationship with vendor,” “service,” “supply agreement” and “supply and availability from a local warehouse.”

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

Thirty of 44 responding purchasers reported that they require their suppliers to become certified or pre-qualified for all of their purchases of HEDP.²⁹ Three of 43 responding purchasers indicated that since 2005, certain domestic or foreign producers failed in their attempts to certify or qualify their HEDP or have lost their approved status. *** indicated that *** failed due to shifting sources, unreliable supply, insufficient volumes, and changing qualities; *** went out of business; *** failed due to unreliable supply and selling its plant; and *** failed due to shifting sources, and insufficient and unreliable supply. *** indicated that when *** refused to sell to the firm, it “moved on.” *** indicated that *** failed because it did not attain analytical conformance to the specification.

Nine of 44 responding purchasers reported that they require their suppliers to become certified with respect to National Sanitation Foundation (NSF) standard 60 for at least some of their purchases. The nine purchasers included six of the 19 compounder/formulators, four of the 14 distributors, and one of the eight end users.³⁰ Several of these nine purchasers indicated that they need NSF certification for some of their customers, particularly when the HEDP is used in water or for other human consumption. Some of these purchasers indicated that they require all of the HEDP they purchase to be NSF certified since it is impractical for them to segregate inventories, although two purchasers indicated that they require NSF certification for only some of their purchases. One importer and purchaser *** indicated that certification at the producer level is not always necessary if a purchaser is capable of certifying products under its own name. Purchaser *** observed that NSF certification is just one of many quality control systems available and believed it one of the least effective, behind ISO 9000, six sigma, or NACD, since certification simply requires paying a fee.

²⁹ In addition, one purchaser (***) indicated that it requires suppliers to become certified or pre-qualified for at least some of their purchases and that it required all of its purchasers to be become certified or pre-qualified in 2007.

³⁰ This includes two purchasers that reported being both compounder/formulators and distributors.

Table II-3**HEDP: Importance of factors used in purchasing decisions, as reported by U.S. purchasers**

Factor	Number of firms reporting		
	Very important	Somewhat important	Not important
Availability	40	3	0
Delivery terms	23	19	1
Delivery time	30	12	1
Discounts	11	25	7
Extension of credit	13	21	9
Price	35	8	0
Minimum quantity requirements	11	14	18
Packaging	16	16	11
Product consistency	38	4	1
Quality meets specifications	39	3	1
Quality exceeds specifications	11	19	13
NSF certification	4	14	24
Product range	12	15	15
Reliability of supply	36	5	2
Technical support	12	18	13
U.S. transportation costs	19	18	5

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

According to Compass, imports of HEDP from China and imports of HEDP from India are completely interchangeable with each other as long as the product meets specifications.³¹ However, importer Aquapharm indicated that some HEDP from China does not have NSF certification.³² As of January 28, 2009, the only foreign firms that had products that qualified for the NSF/ANSI Standard 60 for drinking water chemicals were Indian producer Aquapharm (Aquacid 105 NS and HEDP), UK producer Rhodia (Briquest® ADPA-60A), and Chinese producer Wujin Fine Chemical (XF-334 (N) HEDP).³³

Forty of 43 responding purchasers indicated that availability was a “very important” factor in their HEDP purchasing decisions. Nine of 43 responding purchasers reported that availability was the most important factor in their purchasing decisions, 12 purchasers reported it was the number two factor, and nine purchasers reported it was the number three factor. Reliability of supply was cited as a “very

³¹ Petition, p. 24.

³² Conference transcript, p. 86 (Mangwani). However, Uniphos indicated that Wujin Fine Chemical Factory has three of its phosphonates that are NSF certified. Conference transcript, p. 97 (Collias).

³³ U.S. producer Compass was also qualified for the NSF/ANSI Standard 60. NSF Product and Service listings, “<http://www.nsf.org/Certified/PwsChemicals/Listings.asp?CompanyName=&TradeName=&ChemicalName=Hydroxyethylidene+Diphosphonic+Acid&ProductFunction=&PlantState=&PlantCountry=>,” retrieved January 28, 2009.

important” factor by 36 of 43 responding purchasers and was cited as either the number two or number three factor used in purchasing decisions by four purchasers. Thirty-eight of 43 responding purchasers indicated that consistency was a “very important” factor in their purchasing decisions of HEDP, and one purchaser reported it as its third most important factor used in purchasing decisions. Both Compass and respondents indicated that purchasers typically rely on multiple suppliers.³⁴

One importer (***) indicated that regardless of the countries compared, availability, customer service, transportation network, a full product offering, technical service and brand recognition are always factors affecting HEDP purchasing decisions in the water treatment industry. Importer (***) indicated that it believes that price is the main factor, although there may be a few customers who prefer to buy U.S. produced material due to patriotic reasons or due to the style of drum openings. An importer of *** indicated that customers know and trust their sales and technical manager; trust that their product quality will be acceptable and consistent because they identify the source and provide certificates of analysis upon request; have an order-to-delivery response time of a few days; and offer an economical freight cost for shipping HEDP from the warehouse.

*** also indicated that his customers typically order other chemicals along with HEDP and in some cases, customers have ordered from it because other suppliers do not have inventory available or cannot deliver the product on the date needed. Several purchasers, including ***, indicated that they have purchased HEDP from one source although a comparable product was available from another source at a lower price because they were able to purchase other chemicals with their HEDP order.

Comparisons of Domestic Products and Subject Imports

As indicated in table II-4, the U.S. producer and at least one-half of responding importers and purchasers indicated that HEDP produced in the United States and imported from China and India is “always” used interchangeably. At least three-quarters of responding importers and purchasers indicated that HEDP produced in the United States and imported from China and India is at least “frequently” used interchangeably. One purchaser (***) indicated that the main factors that preclude interchangeable use are the level and types of impurities HEDP from different suppliers and that suppliers in some regions tend to have different standards for purity than suppliers in other regions.

As indicated in table II-5, the U.S. producer indicated that differences other than price between HEDP produced in the United States and imported from China and India were “sometimes” a significant factor in its sales of the products. At least 80 percent of responding importers indicated that differences other than price between HEDP produced in the United States and imported from China and India were at least “sometimes” a significant factor in their firm’s sales of the products.

Purchasers were also asked to compare HEDP produced in the United States and subject and nonsubject countries on the basis of different purchasing factors (table II-6). The U.S. product was ranked comparable with subject imports by at least half of responding purchasers for all characteristics except for availability, delivery time, and price. Compass indicated that domestic and imported HEDP generally are perceived as identical products by customers and producers alike.³⁵ According to Compass, customers routinely commingle imported and domestic material in their bulk storage tanks and assign the same raw material codes to both. Compass also indicated that producers, both domestic and foreign, occasionally swap product amongst themselves when it is convenient to do so.³⁶ Respondents indicated that the majority of the largest-volume users of HEDP do not store HEDP in bulk because they would not

³⁴ Conference transcript, pp. 43-44 (McCaul), pp. 93-94, 117-118 (Collias), p. 150 (Wang).

³⁵ Petition, p. 25.

³⁶ Petition, pp. 25-26.

Table II-4**HEDP: Perceived degree of interchangeability of product produced in the United States and in other countries¹**

Country comparison	Number of U.S. producers reporting				Number of U.S. importers reporting				Number of U.S. purchasers reporting			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. China	1	0	0	0	7	4	2	0	16	7	6	0
U.S. vs. India	1	0	0	0	5	3	1	0	9	7	2	1
U.S. vs. United Kingdom	1	0	0	0	6	2	0	0	7	5	1	0
U.S. vs. other countries	0	0	0	0	3	1	0	0	4	1	1	0
China vs. India	1	0	0	0	3	2	2	0	7	5	4	1
China vs. United Kingdom	1	0	0	0	3	3	1	0	4	5	3	0
China vs. other countries	0	0	0	0	3	1	0	0	1	2	1	0
India vs. United Kingdom	1	0	0	0	5	2	0	0	4	5	1	1
India vs. other countries	0	0	0	0	3	1	0	0	1	2	1	0

¹ Producers and importers were asked if HEDP produced in the United States and in other countries is used interchangeably.

Note.--“A” = Always, “F” = Frequently, “S” = Sometimes, “N” = Never.

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

want to take the risk of commingling product from different sources so they can trace back to where the product was sourced.³⁷

Comparisons of Domestic Products and Nonsubject Imports³⁸

As indicated in table II-4, the U.S. producer, at least 70 percent of responding importers, and at least half of responding purchasers indicated that HEDP produced in the United States and imported from the United Kingdom is “always” used interchangeably. As indicated in table II-5, the U.S. producer indicated that differences other than price between HEDP produced in the United States and imported from the United Kingdom were “sometimes” a significant factor in its firm’s sales of the products. Responding importers provided a variety of responses. Also, the U.S. product was ranked comparable with nonsubject imports by at least one-half of responding purchasers for all characteristics (see table II-6).

³⁷ Conference transcript, p. 96 (Collias), p. 118 (Karve).

³⁸ No separate data are available for nonsubject Chinese HEDP manufactured and exported by Wujin Water.

Table II-5

HEDP: Differences other than price between products from different sources¹

Country comparison	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. China	0	0	1	0	2	2	6	2
U.S. vs. India	0	0	1	0	2	3	3	0
U.S. vs. United Kingdom	0	0	1	0	2	2	0	4
U.S. vs. other countries	0	0	0	0	1	1	1	1
China vs. India	0	0	1	0	2	2	2	1
China vs. United Kingdom	0	0	1	0	2	2	2	1
China vs. other countries	0	0	0	0	1	1	1	1
India vs. United Kingdom	0	0	1	0	2	1	2	2
India vs. other countries	0	0	0	0	1	1	1	0

¹ Producers and importers were asked if differences other than price between HEDP produced in the United States and in other countries are a significant factor in their firms' sales of HEDP.

Note.--"A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never.

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

Comparisons of Subject Imports and Nonsubject Imports

As indicated in table II-4, the U.S. producer and at least 40 percent of responding importers indicated that HEDP imported from China and India and imported from the United Kingdom is “always” used interchangeably. At least two-thirds of responding importers and purchasers indicated that HEDP imported from China and India and imported from the United Kingdom was at least “frequently” used interchangeably.

As indicated in table II-5, the U.S. producer indicated that differences other than price between HEDP imported from China and India and imported from the United Kingdom were “sometimes” a significant factor in its firm’s sales of the products and at least 70 percent of responding importers indicated that differences other than price between HEDP imported from China and India and imported from the United Kingdom were at least “sometimes” a significant factor.

Comparisons of Subject Products from the Subject Countries

As indicated in table II-4, the U.S. producer, three of seven responding importers, and seven of sixteen responding purchasers indicated that HEDP imported from China and imported from India are “always” used interchangeably.

Table II-6
HEDP: Purchasers' comparisons of domestic and subject and nonsubject products

Factor	U.S. vs. China			U.S. vs. India			U.S. vs. UK		
	S	C	I	S	C	I	S	C	I
Availability	4	14	6	5	8	4	1	4	1
Delivery terms	4	16	4	3	12	2	0	6	0
Delivery time	10	8	5	10	4	2	2	3	1
Discounts offered	1	15	7	0	15	2	0	6	0
Extension of credit	3	19	2	2	14	1	0	6	0
Lower price	1	7	16	0	10	7	1	3	1
Lower transport costs	8	13	3	3	10	3	1	3	1
Minimum quantity requirements	5	17	2	2	13	2	1	5	0
NSF certification	4	13	1	3	10	1	0	3	0
Packaging	6	18	0	3	13	0	2	4	0
Product consistency	3	18	3	3	12	2	0	6	0
Product range	2	17	2	0	15	1	0	4	1
Quality exceeds industry standards	2	18	1	1	13	1	0	4	0
Quality meets industry standards	3	20	1	2	15	0	0	6	0
Reliability of supply	5	16	3	3	12	2	0	5	1
Technical support	9	13	0	5	9	1	0	6	0
Note.—S = domestic product superior, C = domestic product comparable, I = domestic product inferior.									
Source: Compiled from data submitted in response to Commission questionnaires.									

As indicated in table II-5, the U.S. producer and two of seven responding importers indicated that differences other than price between HEDP imported from China and imported from India were “sometimes” a significant factor in their firm’s sales of the products, two of seven responding importers indicated that these factors were “frequently” a significant factor, two responding importers indicated that they were “always” a significant factor, and the one remaining responding importer indicated that they were “never” a significant factor. Also, the imports from China and India were ranked comparable with each other by at least sixty percent of responding purchasers for all characteristics (see table II-7).

Table II-7
HEDP: Purchasers' comparisons of subject and nonsubject products

Factor	China vs. India			China vs. UK			India vs. UK		
	S	C	I	S	C	I	S	C	I
Availability	3	10	0	1	4	1	1	2	1
Delivery terms	2	10	1	1	5	0	1	2	1
Delivery time	3	8	2	1	5	0	1	2	1
Discounts offered	1	12	0	1	4	1	1	3	0
Extension of credit	0	13	0	0	5	1	0	4	0
Lower price	4	9	0	3	0	1	1	2	0
Lower transport costs	2	11	0	0	5	0	0	4	0
Minimum quantity requirements	0	13	0	0	6	0	0	4	0
NSF certification	0	9	2	0	2	1	0	3	0
Packaging	0	12	1	0	6	0	1	3	0
Product consistency	1	11	1	0	5	1	0	3	1
Product range	1	10	1	0	5	0	0	4	0
Quality exceeds industry standards	0	8	3	0	3	1	0	3	0
Quality meets industry standards	0	12	1	0	6	0	0	3	1
Reliability of supply	1	10	2	1	5	0	0	3	1
Technical support	1	9	2	0	5	1	0	3	1

Note.—S = domestic product superior, C = domestic product comparable, I = domestic product inferior.

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

ELASTICITY ESTIMATES³⁹

U.S. Supply Elasticity

The domestic supply elasticity for HEDP measures the sensitivity of the quantity supplied by U.S. producers to a change in the U.S. market price of HEDP. 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 the production of other products, the existence of inventories, and the availability of alternative markets for U.S.-produced HEDP.⁴⁰ Earlier analysis of these factors

³⁹ Parties were requested to comment on elasticities; these comments are addressed as appropriate.

⁴⁰ Domestic supply response is assumed to be symmetrical for both an increase and a decrease in demand for the domestic product. Therefore, factors affecting increased quantity supplied to the U.S. market also affect decreased (continued...)

indicated that the U.S. industry has a moderate ability to increase or decrease shipments to the U.S. market given a change in price levels. Staff estimates that the supply elasticity is between 3 and 6 for HEDP.

U.S. Demand Elasticity

The U.S. demand elasticity for HEDP measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of HEDP. 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 HEDP in the production of downstream products. Based on available information, the demand elasticity for HEDP is likely to be in the range of -0.25 to -0.50.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.⁴¹ Product differentiation, in turn, depends upon such factors as quality (e.g., chemistry, surfaces, coil sizes) and conditions of sale (e.g., service, availability, delivery). Compass indicated that it agrees that the elasticity of substitution should be at least in the range of 3 to 5, if not be higher.⁴² Based on this and other available information, the elasticity of substitution between U.S.-produced HEDP and subject imported HEDP is likely to be in the range of 3 to 5.⁴³

⁴⁰ (...continued)

quantity supplied to the same extent.

⁴¹ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and U.S. domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject product (or vice versa) when prices change.

⁴² Petitioner's prehearing brief, p. 13 fn. 37.

⁴³ Additionally, the elasticities of substitution between U.S.-produced HEDP and nonsubject imports and between subject imports and nonsubject imports are likely to be in the same range.

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

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the final margins of sales at LTFV was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in *Parts IV* and *V*. Information on the other factors specified is presented in this section and/or *Part VI* and (except as noted) is based on the questionnaire responses of two firms that accounted for 100 percent of U.S. production of HEDP during the period for which data were collected.

U.S. PRODUCERS

Phosponates

There are currently eight U.S. producers of phosponates. The U.S. producers of phosponates are either selling into the merchant market or are captive producers selling directly to related formulators, most of whose products are destined for the oilfield market. The two leading U.S. manufacturers of phosponates are petitioner Compass and Rhodia (which markets the Briquest line of phosponates).¹ In addition, *** has the ability to manufacture phosponates, in particular ***. Smaller producers with captive markets include ***. The combined annual phosponate production capacity of these companies is estimated to be ***.² However, the smaller producers of phosponates (primarily ***) typically are medium to large multinational companies that are part of the industrial water treatment industry and that produce a variety of water treatment chemicals for various industries, including industrial boilers and petroleum industry applications. These companies typically blend phosponates with other water treatment products to deal with complex issues related to improving commercial water supplies. ***, the largest company of the group dedicated to water treatment, had sales in 2007 of almost \$4 billion.^{3 4}

HEDP

The Commission sent producers' questionnaires to firms believed to have been current or former HEDP producers, including Compass and Rhodia (identified in the petition as U.S. producers of HEDP).⁵ Both firms submitted responses. The Commission also attempted to contact former producer Lynx Chemical Group LLC ("Lynx"); however, the company no longer exists. Instead, partial data for the former Lynx operation were provided by Compass and Rhodia.⁶

Table III-1 presents the list of reporting U.S. producers with each company's U.S. production location, share of U.S. HEDP production in 2007, and position on the petition.

¹ www.Rhodia-novecare.com has a list of the company's phosponate products. Retrieved April 11, 2008.

² SRI CEH: Chelating Agents, 2007, p. 515:5001R.

³ *** 2007 10K report.

⁴ Total U.S. production capacity for all forms of organophosponates in 2006 was estimated to be ***. ***.

⁵ In the preliminary phase of the investigations, the Commission also sent producers' questionnaires to the U.S. firms that produce or are capable of producing other phosponates. Four firms responded that they had not produced HEDP since 2005. In the final phase of the investigations, *** reiterated that it has not been a producer of HEDP in the United States since 2005, but that it ***.

⁶ ***. Petition, pp. 2-3.

Table III-1

HEDP: U.S. producers, positions on petition, plant locations, and shares of U.S. production in 2007

Firm name	Position on petition	Plant location	Parent company	Share of reported 2007 U.S. production (percent)
Compass Chemical International LLC ¹	Support (petitioner)	Smyrna, GA	100% Cathay Industries (USA)	100.0
Rhodia, North America / Lynx ²	***	Charleston, SC ³ / Smyrna, GA	100% Rhodia Group (France)	(³)

¹ Compass reported a ***. Compass reported that ***, an affiliated company that *** during the period for which data were collected, was integrated into Cathay Pigments (China), Ltd. *** was the broker Compass used for its HEDP imports from China. Compass also reported that ***, which operated independently, purchased HEDP predominately from Chinese producer ***. Petition, supplemental information, March 26, 2008, pp. 1-2.

² Rhodia reported that ***.

³ ***.

Source: Compiled from data submitted in response to Commission questionnaires, www.na.rhodia.com, and www.compasschemical.com.

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

U.S. producers' capacity, production, and capacity utilization data for HEDP are presented in table III-2 and figure III-1. These data show that production capacity remained stable during 2005-07, with average capacity utilization fluctuating based on production levels over the same period. Capacity utilization was *** percent in 2005, then fell to *** percent in 2006, before returning to *** percent in 2007. The decline in 2006 was due to substantially lower production level in the second half of 2006, as Compass acquired the Smyrna, GA, production facility in July and only gradually ramped up its production.⁷ Production levels were somewhat lower in January-September 2008 than in January-September 2007, resulting in a capacity utilization of *** percent.

Table III-2

HEDP: U.S. producers' capacity, production, and capacity utilization, 2005-07, January-September 2007, and January-September 2008

* * * * *

Figure III-1

HEDP: U.S. producers' capacity, production, and capacity utilization, 2005-07, January-September 2007, and January-September 2008

* * * * *

⁷ Conference transcript, p. 22 (Failon). Compass also reported that it did not produce HEDP when Compass first acquired the U.S. facility, but continued to import HEDP from China in the second half of 2006, and only started producing HEDP after a period of evaluation. Conference transcript, p. 62 (McCaul).

The Commission asked domestic producers to describe any plant openings, relocations, expansions, acquisitions, consolidations, closures, and prolonged shutdowns.⁸ Compass reported that it acquired a phosphonate plant in Smyrna, GA, and a blending facility in Huntsville, TX, from Lynx in July 2006.^{9 10} Prior to this, Compass was, since its establishment in August 1999, an import-based, hybrid supplier of specialty chemicals, including HEDP,¹¹ and used third party blending and warehousing service providers.¹² In January 2007, Compass merged with Cathay Pigments USA, Inc. to form Cathay Industries (USA). Cathay Industries (USA) is a wholly owned subsidiary of Cathay Industries International Ltd., which in turn is a wholly owned subsidiary of Cathay Pigments (Holdings) Ltd.¹³

Prior to its acquisition by Compass, the phosphonate plant in Smyrna, GA, was owned and operated by Lynx from 2004 through June 2006. During this period Lynx ***.¹⁴ In turn, ***.¹⁵

The Commission asked domestic producers to describe the constraints that limit production capacity.¹⁶ Compass responded that the *** limited its production capacity of HEDP.¹⁷

Compass, accounting for all the U.S. production of HEDP in 2007, reported that it *** produce other products on the same machinery and equipment, but *** produce other products, namely ***, with the workers used in the production of HEDP. *** reportedly accounted for ***, of its total production in 2007.

U.S. PRODUCERS' SHIPMENTS

Table III-3 presents information on U.S. producers' shipments of HEDP. U.S. producers' U.S. shipments, in terms of quantity, rose from 2005 to 2007 by *** percent, largely due to Compass ramping

⁸ Producers' questionnaire, section II-2.

⁹ Conference transcript, pp. 11-12 (Failon). Compass reported that it has invested "in excess of \$2 million of capital" at the Smyrna facility. Conference transcript, pp. 21-22 (Failon).

¹⁰ The Commission in its preliminary-phase determination stated that it would seek additional information on Compass's acquisition of the Smyrna facility, including its business plan associated with the purchase of the facility. *1-Hydroxyethylidene-1, 1-diphosphonic acid from China and India, Inv. Nos. 731-TA-1146-1147 (Preliminary)*, USITC Publication 3998, May 2008, p. 17, fn. 90. In response to this request, Compass reported that ***. Compass noted that prior to its acquisition, Lynx manufactured HEDP at the facility in Smyrna, GA exclusively for Rhodia, ***. Compass stated it was aware and took into consideration *** that it would be necessary to make *** capital investment in the facility to improve the plant's operations and ***. In addition to ***, Compass believed it could make the plant more competitive by utilizing lower cost raw materials imported from China (specifically Phosphorous Acid Crystal instead of PCl_3), as well as by ***. Moreover, Compass believed that it would have a large increase in sales of phosphonates from many of the existing Lynx's and Rhodia's customers supplied by the Smyrna manufacturing facility. Petitioner's postconference brief, exhibit 4; email from ***; and hearing transcript, p. 12, pp. 48-49, and pp. 116-117 (McCaul). Compass noted that it did not have any immediate plans at the time of acquisition, nor do they currently have plans, to expand capacity. Petitioner's posthearing brief, p. 10, fn. 21.

¹¹ Conference transcript, p. 10 (Failon).

¹² Conference transcript, p. 11 (Failon).

¹³ Hearing transcript, pp. 64-65 (McCaul), and Compass Chemical International LLC, "About us," found at <http://www.compasschemical.com/about/index.htm>, retrieved April 1, 2008.

¹⁴ Under the agreement, ***. Email from ***.

¹⁵ Rhodia's response to the producers' questionnaire, addendum.

¹⁶ Producers' questionnaire responses, section II-4.

¹⁷ Compass reported that in 2007 it changed its raw material input from phosphorous trichloride (PCl_3) to phosphorous acid. Compass stated that it made this change in part due to the availability of PCl_3 , its higher cost, and its hazardous nature. Lynx had obtained the PCl_3 it used in the production of HEDP from Rhodia. In contrast, Compass chose not to obtain PCl_3 from Rhodia, with which it competes in downstream markets. Conference transcript, pp. 64-66 (McCaul).

up its production after its July 2006 acquisition of the Smyrna, GA production facility.¹⁸ On a value basis, U.S. producers' U.S. shipments increased by only *** percent from 2005 to 2007, reflecting a decline in the average unit value of U.S. shipments of *** percent, from \$*** per pound in 2005 to \$*** per pound in 2007. U.S. producers' total shipments increased by *** percent during 2005-07, largely due to an increase in U.S. shipments in 2007. As a share of total shipments, U.S. shipments increased between 2005 and 2007, while export shipments declined.

Table III-3
HEDP: U.S. producers' shipments, by type and by company, 2005-07, January-September 2007, and January-September 2008

* * * * *

Compass's U.S. shipments were *** percent and *** percent higher, in terms of quantity and value, respectively, in January-September 2008 compared with January-September 2007, while Compass's export shipments on a quantity and value basis were *** percent and *** percent lower. Compass reported that the decline in export shipments was a result of ***.¹⁹

While Compass's U.S. shipments, on both a quantity and a value basis, were higher in January-September 2008 compared with January-September 2007, the increase in value was greater, resulting from an average unit value of \$*** per pound, compared to \$*** per pound in January-September 2007. Compass reported that this was due to ***.^{20 21}

*** the U.S. producers reported transfers to related firms, while *** had export shipments.²² Rhodia/Lynx and Compass reported *** internal consumption. Compass reported that *** percent of its internal consumption of HEDP was used to produce tetrasodium etidronate, a tetrasodium salt of HEDP.²³ *** percent of tetrasodium etidronate, in the form of ***, was processed into a downstream product, and was reported to account for *** percent of the downstream product's production cost. Tetrasodium etidronate is used almost exclusively in the production of bar soap as a preservative, and also functions as a water softener in soaps to prevent soap scum and bathtub rings by sequestering the calcium and

¹⁸ Conference transcript, p. 22 (Failon).

¹⁹ Email from ***. Principal export markets reported by Compass include ***.

²⁰ Email from ***.

²¹ In January 2005 the Chinese government eliminated the 8 percent export rebate for yellow phosphorus; on June 1, 2006, the government instituted a 20 percent export tariff; and by May 1, 2008, the Chinese government increased the export tariff to 120 percent. This caused one market participant to state "This six-fold price increase directly affects phosphorus prices globally, and forces us to adapt our prices in line with the amount of phosphorus used in the respective applications." LANXESS K.K., "Price increases for all LANXESS phosphorus chemicals," news release, May 26, 2008. Since then, the export tariffs have been reduced somewhat. However, "{b}y imposing restraints on exports, China has driven the world market price to an unprecedented level. At the same time, because the high tariffs discourage exports, the price of phosphorus inside China is relatively low. The difference in China and world-market prices provides a huge benefit to China's domestic producers of phosphorus derivatives." Richard V. Kennedy, China's Compliance with WTO Commitments, Before the Trade Policy Staff Committee, October 2, 2008, pp. 1-2. The difference in the landed price of U.S. PCl_3 and Chinese phosphorus acid may have influenced the Compass decision to switch to phosphorus acid. For further discussion, *see* conference transcript, pp. 62-66 (McCaul and Failon) and hearing transcript, pp. 51-54 (McCaul).

²² ***.

²³ Conference transcript, pp. 18-19 (Failon), and producers' questionnaire response, section II. Internal consumption ***.

magnesium in the water.²⁴ Compass reported that the increase in internal consumption was a function of ***.²⁵

U.S. PRODUCERS' INVENTORIES

Data on U.S. producers' end-of-period inventories of HEDP during the period for which data were collected are presented in table III-4. Inventories declined between 2005 and 2006, as Compass acquired the U.S. production facility in July 2006, but rose in 2007, ending the year *** percent below 2005 levels. Likewise, inventories as a ratio of production, U.S. shipments, and total shipments also declined in 2006, then partially recovered in 2007. Inventories were *** percent higher in January-September 2008 than in January-September 2007. Compass reported that ***.²⁶

Table III-4
HEDP: U.S. producers' end-of-period inventories, by company, 2005-07, January-September 2007, and January-September 2008

* * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES

During the period for which data were collected, both Compass and Rhodia reported imports of HEDP, and *** reported purchases of imported HEDP from other sources.²⁷ Compass reported that after purchasing the U.S. production facility, it began to ramp up production and phase out imports, and ceased importing HEDP in the fourth quarter of 2007.²⁸ *** purchases of HEDP from other U.S. importers were ***. Table III-5 presents company-specific information on U.S. producer Compass's U.S. production and imports of HEDP, and ratios to U.S. production of HEDP. Figure III-2 presents Compass's U.S. production, imports, and purchases of HEDP. Table III-6 presents company-specific information on U.S. producer Rhodia/Lynx's U.S. production and imports of HEDP, and ratios to U.S. production of HEDP.

Table III-5
HEDP: U.S. producer Compass's U.S. production, imports, ratio to production, and U.S. shipments, 2005-07, January-September 2007, and January-September 2008

* * * * *

Figure III-2
HEDP: U.S. producer Compass's U.S. production, imports, and purchases, 2005-07, January-September 2007, and January-September 2008

* * * * *

²⁴ Compass reported that this product can also be used in other applications where HEDP is used, particularly where the alkaline pH is preferred so as to avoid an exothermal or heat buildup during blending. Competing products include Thermphos's Dequest 2016 and Rhodia's Briquest ADPA 21SH. Conference transcript, p. 19 (Failon). Similarly, Indian producer Aquapharm reported that it produced and internally consumed tetrasodium salt, but that it did not sell this salt in the United States. Conference transcript, pp. 138-139 (Mangwani).

²⁵ Email from ***.

²⁶ Email from ***.

²⁷ ***.

²⁸ Conference transcript, p. 23 (Failon), and hearing transcript, p. 33 (Levin).

Table III-6

HEDP: U.S. producer Rhodia/Lynx's U.S. production, imports, ratio to production, and U.S. shipments, 2005-07, January-September 2007, and January-September 2008

* * * * *

As Compass's U.S. production commenced in 2006, its subject imports increased by *** percent between 2005 and 2006, but then declined by *** percent between 2006 and 2007, as production increased by *** percent. Subject imports by Compass declined to *** in January-September 2008, while production also declined, by *** percent in interim 2008 compared with interim 2007. Compass's U.S. shipments of U.S. production and subject imports followed a similar pattern, with U.S. shipments of subject imports increasing by *** percent between 2005 and 2006, then declining by *** percent from 2006 to 2007, while U.S. shipments of domestically-produced HEDP, which commenced in 2006, increased *** percent between 2006 and 2007. U.S. shipments of U.S. production by Compass was *** percent higher in interim 2008 compared with interim 2007, while Compass's U.S. shipments of subject imports declined *** percent. Total U.S. shipments of HEDP by Compass increased between 2005 and 2007 by *** percent, an increase of *** percent between 2005 and 2006 and *** percent between 2006 to 2007.

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. producers on the number of production and related workers ("PRWs") engaged in the production of HEDP, the total hours worked by such PRWs, and wages paid to such PRWs during the period for which data were collected are presented in table III-7. PRWs producing HEDP declined from *** to *** from 2005 to 2006, and rose in 2007 to ***, as Compass acquired the production facility from Lynx and ramped up its production. Hours worked per PRW increased by *** percent between 2005 and 2007, while productivity declined by *** percent and hourly wages increased by *** percent. The number of PRWs was stable, but the hours worked by PRWs were *** percent lower in January-September 2008 compared with January-September 2007, and the wages paid to PRWs decreased *** percent. Productivity was *** percent lower in January-September 2008 than in January-September 2007, while unit labor costs were *** percent lower.

Table III-7

HEDP: U.S. producers' employment-related indicators, 2005-07, January-September 2007, and January-September 2008

* * * * *

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

U.S. IMPORTERS

The Commission sent importer questionnaires to all U.S. producers, as well as 43 firms believed to be U.S. importers of HEDP. These companies represented approximately three-quarters of total imports from China under HTS subheading 2931.00.9043, a multi-product statistical reporting number,¹ almost all imports from India, and the vast majority of imports from all other sources, essentially the United Kingdom, in the period for which data were collected.^{2 3} Questionnaire responses containing usable data were received from 18 firms. Compass accounted for *** percent of reported subject imports of HEDP from China in 2007, and Aquapharm accounted for *** percent of reported imports of HEDP from India in 2007. In the same year, *** and *** accounted for *** percent and *** percent of nonsubject imports of HEDP from China (i.e. HEDP exported by Wujin Water), respectively. In 2007, Solutia accounted for *** percent of nonsubject imports from the United Kingdom, the largest nonsubject source.⁴ During the period for which data were collected, U.S. producers Compass and Rhodia imported HEDP from China and the United Kingdom, respectively. Through June 2006, Compass was solely an importer of HEDP from China. In July 2006, Compass acquired a HEDP plant in Smyrna, GA, and commenced U.S. shipments from this facility. Compass ceased importing HEDP from China in the fourth quarter of 2007.⁵ From 2005 to 2007, Compass accounted for ***, ***, and *** percent of the quantity of reported subject HEDP imports from China, respectively, and then 0 percent in January-September 2008. During 2005-07, Rhodia accounted for *** percent, *** percent, and *** percent of imports of HEDP from all nonsubject sources. ***.

Table IV-1 lists all responding U.S. importers of HEDP and their quantities of imports, by source, in 2007.

Table IV-1
HEDP: Reported U.S. imports, by importers and by sources of imports, 2007

* * * * *

¹ ***, ***, ***, and *** provided responses to the importers' questionnaire, but reported that they were not the importers of record, and as such are not included in the import data contained in this report.

² The Commission sent questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by the U.S. Customs and Border Protection ("Customs"), may have imported HEDP since 2005. Twenty-three firms reported that they had not imported HEDP from any country since January 1, 2005.

³ One purchaser, ***, reported purchases of HEDP in interim 2008 originating from *** Germany, though such purchases were small (*** pounds).

⁴ Solutia's water treatment phosphate business, Dequest, was acquired by Thermphos on June 1, 2007, but Solutia reported that ***, ***.

⁵ Hearing transcript, p. 7 (Levin).

U.S. IMPORTS

Table IV-2 presents data for U.S. imports of HEDP from China (subject), India, China (nonsubject), and other nonsubject sources, essentially the United Kingdom.^{6 7} Data on U.S. imports from China and nonsubject sources are based on responses to the Commission's U.S. importers' questionnaires, as official statistics are from a statistical reporting number that is broader than the subject product.⁸ Data for imports from India are based primarily on responses to the Commission's U.S. importers' and foreign producers' questionnaires from ***.⁹

Table IV-2
HEDP: U.S. imports, by sources, 2005-07, January-September 2007, and January-September 2008

* * * * *

The quantity of subject U.S. imports from China fluctuated over the period, increasing by *** percent from 2005 to 2006, then declining by *** percent in 2007. The value of subject imports from China rose between 2005 and 2006 by *** percent, and then by *** percent in 2007. Subject imports from China were *** percent lower on a quantity basis in January-September 2008 than in January-September 2007, and were *** percent higher on a value basis. The fluctuation in subject imports of HEDP from China ***. Compass noted that in 2006 after it bought the U.S. HEDP production facility, it had an increase in business and temporarily increased its imports of HEDP from China while it ramped up its U.S. production.¹⁰ Compass argues that the decline in HEDP imports from China between 2006 and 2007 was due in large measure to a decline in imports from China by Compass itself, in order to ramp up domestic production.¹¹

Offsetting *** in subject imports from China in 2007, other U.S. importers, which collectively represented almost *** of total subject imports from China in 2007, reported increases in subject imports from China. *** started importing in 2007, and importers *** increased their imports from China by ***. These importers also offset *** imports from China (subject) in 2008. *** reported that it increased imports from China due to the ***, and *** reported that it added new customers as it continued to penetrate the market, as well as due to supply shortages which caused some customers to seek other sources of HEDP.

Between 2005 and 2007 imports of HEDP from India, in terms of quantity and value, increased by *** percent and *** percent, respectively. Subject imports from India were *** percent higher in terms of quantity, and *** percent higher in terms of value, in January-September 2008 compared with January-September 2007.

⁶ Both Petitioners and Respondents reported that the United Kingdom was the only other major source of imports of HEDP into the United States. Conference transcript, p. 31 (Failon) and pp. 98-99 (Mangwani).

⁷ Wujin Water was found by Commerce to have dumping margins of zero percent, and as such is treated as a nonsubject source in this report. The U.S. nonsubject China import data provided by the *** does not ***. Wujin Water reported exports to the United States of *** pounds for 2005-07, respectively, and *** pounds for January-September 2007, and January-September 2008, respectively. ***, which was listed as a U.S. importer of HEDP by Wujin Water, reported that it ***. Email from ***, March 16, 2009.

⁸ Data for January-September 2007 for nonsubject imports by Solutia were estimated using data for July-December 2007 and calendar year 2007 from ***. ***. Email from ***, December 30, 2008. ***.

⁹ ***.

¹⁰ Conference transcript, p. 22 (Failon).

¹¹ Hearing transcript, p. 33 (Levin).

Nonsubject imports from China increased *** percent in terms of quantity, and *** percent in terms of value, between 2005 and 2007. The quantity of imports of HEDP from the United Kingdom, the only other substantial nonsubject source, rose by *** percent between 2005 and 2006, then fell *** percent in 2007. The increase in U.K. imports from 2005 to 2006 can be largely attributed to ***. In 2007 *** imports from the United Kingdom declined *** percent from 2006 levels.¹² The decline in U.K. imports can also be attributed to ***.¹³ The shares of quantity and value of U.S. imports from China and India increased from 2005 to 2007, while those of the United Kingdom declined.

The Commission asked importers if they imported HEDP under HTS statistical reporting numbers other than 2931.00.9043. Four importers, ***, reported importing HEDP under HTS statistical reporting numbers 2931.00.9041 or 2931.00.9050.¹⁴ This represented *** percent of total imports of HEDP from China over the period for which data were collected and *** percent of total imports of HEDP from India.

Table IV-3 presents data for U.S. imports of HEDP from China by source. The volume of subject imports from China by Compass increased by *** percent between 2005 and 2006, but declined by *** percent in 2007, while subject imports from China by all other importers declined by *** percent and then increased *** percent over the same periods. While Compass did not import HEDP from China in January-September 2008,¹⁵ subject imports from China by all other importers were *** percent higher compared with January-September 2007. Unit values of subject imports by all other importers of HEDP from China were lower than those of Compass in each period for which data were collected.

**Table IV-3
HEDP: U.S. imports from China, by sources, 2005-07, January-September 2007, and January-September 2008**

* * * * *

THE QUESTION OF NEGLIGIBLE IMPORTS

The statute (section 771(24)(A)(i) of the Act) provides that imports from a subject country corresponding to the domestic like product are negligible if 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 - in this case January 2007 through December 2007. Based on questionnaire responses of importers of HEDP from China, India, and nonsubject sources for that 12-month period, imports of HEDP from each of these sources exceeded the statutory threshold, as indicated in the tabulation below:

* * * * *

CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) fungibility, (2) presence of sales or offers to sell in the same geographical market, (3) common or similar channels of distribution, and (4) simultaneous presence in the market. Issues concerning fungibility, geographical markets, and channels of distribution

¹² ***.

¹³ ***.

¹⁴ *** reported importing HEDP under HTS numbers 2811.19, 2920.90, 3204.12, and 3923.90.

¹⁵ Hearing transcript, p. 23 (Failon).

are addressed in *Part II* of this report. With regard to presence in the market, the petitioner argued that imported HEDP from all subject countries has been simultaneously present in the U.S. market during the period for which data were collected.¹⁶ Respondents did not address presence in the market.¹⁷ HEDP produced in China and India was present in every year, interim period, and quarter for which data were collected.

APPARENT U.S. CONSUMPTION AND MARKET SHARES

Data on apparent U.S. consumption of HEDP are presented in table IV-4 and figure IV-1. From 2005 to 2006, apparent U.S. consumption of HEDP increased by *** percent in terms of quantity, and by *** percent in terms of value. From 2006 to 2007, the quantity of apparent U.S. consumption decreased by *** percent and the value decreased by *** percent. In January-September 2008 compared with January-September 2007, apparent U.S. consumption was *** percent lower in terms of quantity, but was *** percent higher in terms of value.

Table IV-4

HEDP: U.S. shipments of domestic product, U.S. shipments of imports by sources, and apparent U.S. consumption, 2005-07, January-September 2007, and January-September 2008

* * * * *

Figure IV-1

HEDP: Apparent U.S. consumption, by sources, 2005-07, January-September 2007, and January-September 2008

* * * * *

Data on U.S. market shares for HEDP are presented in table IV-5. From 2005 to 2006, U.S. producers lost *** percentage points of market share based on quantity and *** percentage points based on value. Between 2006 and 2007, U.S. producers gained *** percentage points of U.S. market share based on quantity and *** percentage points based on value. U.S. producers' market share was *** percentage points and *** percentage points higher by quantity and value, respectively, in January-September 2008 compared with January-September 2007. Subject imports from China gained *** percentage points of U.S. market share during 2005-06 based on quantity and *** percentage points based on value. Between 2006 and 2007, subject imports from China gained *** percentage points and *** percentage points, based on quantity and value, respectively. The U.S. market share of subject imports from China was *** percentage points lower, in terms of quantity, and *** percentage points lower, in terms of value, in January-September 2008 compared with January-September 2007. Subject imports from India declined by *** and *** percentage points between 2005 and 2006 based on quantity and value, respectively, but gained *** percentage points of U.S. market share in 2007. In January-September 2008 compared with January-September 2007 imports from India were higher by *** percentage points and *** percentage points, in terms of quantity and value, respectively. The market share of nonsubject imports from China increased by *** percentage points based on quantity and *** percentage point based on value during 2005-07. The market share of imports from other nonsubject

¹⁶ Compass also argued that the other factors are also met, and thus the Commission should cumulate imports from China and India. Hearing transcript, pp. 30-32 (Levin).

¹⁷ AWTCPC did not address any of the factors. AWTCPC stated that it was not taking a position on cumulation, but that cumulation was probably warranted. Hearing transcript, p. 123, p. 136, and p. 142 (Craven).

countries declined by *** percentage points based on quantity and *** percentage point based on value during 2005-07.¹⁸ In January-September 2008 compared with January-September 2007, the market share of U.S. importers from other nonsubject countries was lower by *** percentage points and *** percentage points on a quantity and value basis, respectively.

Table IV-5
HEDP: Apparent U.S. consumption and market shares, 2005-07, January-September 2007, and January-September 2008

* * * * *

RATIO OF IMPORTS TO U.S. PRODUCTION

Data on the ratio of imports to U.S. production of HEDP are presented in table IV-6.

Table IV-6
HEDP: U.S. production, U.S. imports, and ratios of imports to production, 2005-07, January-September 2007, and January-September 2008

* * * * *

COMPARISONS OF U.S. SHIPMENTS OF THE DOMESTICALLY PRODUCED AND IMPORTED HEDP

Table IV-7 and figure IV-2 present average unit values for U.S. shipments of HEDP produced in the United States, China, India, and all other countries. While the unit values of U.S. producers' U.S. shipments and U.S. shipments of subject imports from China and from India declined *** between 2005 and 2007, the unit values of U.S. shipments of nonsubject imports from China and all other sources increased. The unit value of U.S. shipments from all sources were higher in January-September 2008 than in January-September 2007. Some importers, namely ***, attributed this increase to, among other things, the disruption of supplies of HEDP from subject countries and raw materials from China, as well as increased demand for raw materials used in the production of nonsubject merchandise.

Table IV-7
HEDP: Average unit values of U.S. shipments, by source, 2005-07, January-September 2007, and January-September 2008

* * * * *

Figure IV-2
HEDP: Average unit values of U.S. shipments, by source, 2005-07, January-September 2007, and January-September 2008

* * * * *

Pricing practices and prices reported for domestically produced and imported HEDP in response to the Commission's questionnaires are presented in *Part V* of this report, *Pricing and Related Information*.

¹⁸ *** reported that ***.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

The principal raw materials used for producing HEDP in the United States are acetic anhydride and phosphorous acid.¹ Raw materials net of byproduct revenue accounted for *** percent of cost of goods sold for the U.S. producer of HEDP over the period for which data were collected. Compass indicated that annual average raw material costs for its Mayoquest® 1500 HEDP product increased by *** percent between 2005 and 2007, increasing from *** cents per pound in 2005 to *** cents per pound in 2006 to *** cents per pound in 2007.² See part VI for a further discussion on raw material costs, including continuing increases in input prices in 2008.

Transportation Costs to the U.S. Market

Transportation costs for HEDP from China and India to the United States (excluding U.S. inland costs) are estimated to be approximately 2.3 percent and 7.3 percent, respectively, of the total cost for HEDP in 2008 and 3.2 percent and 4.4 percent during 2005 to 2008. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.

U.S. Inland Transportation Costs

Transportation costs for U.S. inland shipments of HEDP generally account for a small-to-moderate share of the delivered price of these products. The one U.S. producer, Compass, reported costs of *** percent of the delivered price for HEDP. For all but one importer, the costs ranged from 1.5 to 15.0 percent of the delivered price for HEDP.³

Exchange Rates

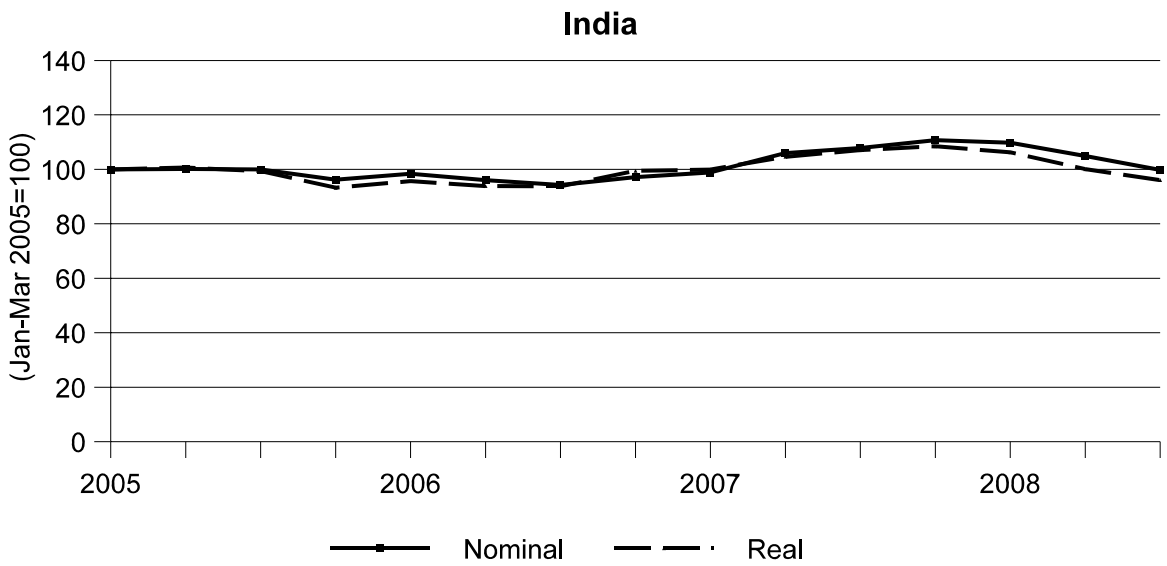
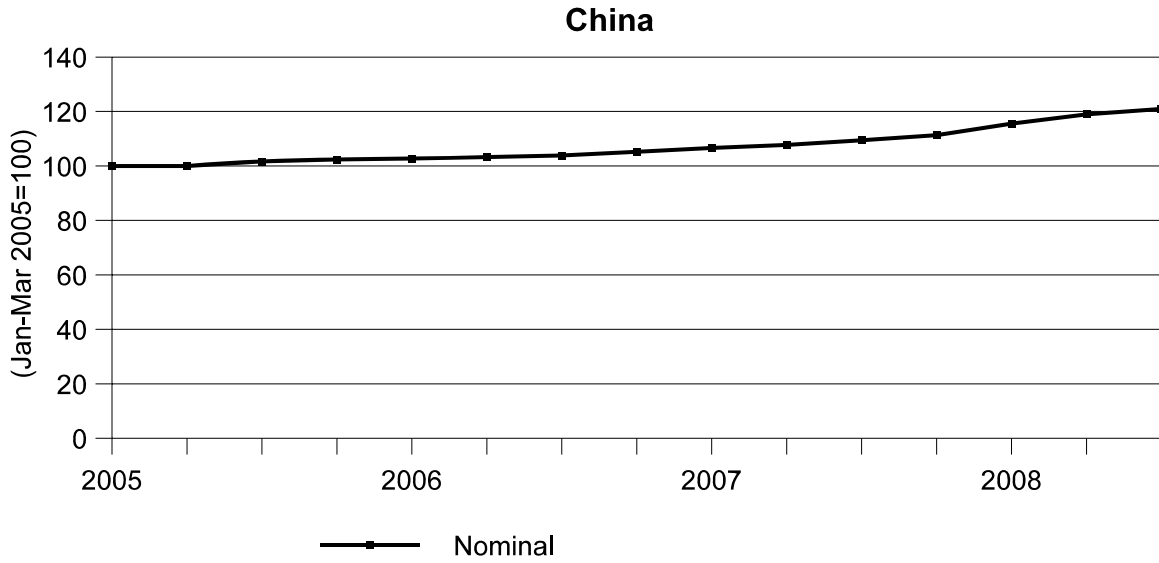
Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese currency appreciated 21.0 percent relative to the U.S. dollar from January-March 2005 to July-September 2008 (figure V-1). The nominal value of the Indian currency depreciated 0.2 percent relative to the U.S. dollar from January-March 2005 to July-September 2008 and the real value depreciated 3.9 percent.

¹ Petition, p. 4.

² Petition, pp. 29-30 and Exhibit AD-15. ***.

³ One importer (***) reported transportation costs of 25 percent.

Figure V-1
Exchange rates: Indices of the nominal and real exchange rates between the currencies of China and India and the U.S. dollar, by quarters, January-March 2005-July-September 2008



Source: International Monetary Fund, *International Financial Statistics* online, www.imfstatistics.org/imf/ retrieved January 23, 2009.

PRICING PRACTICES

Pricing Methods

Eleven of 15 responding importers indicated that they determine the prices that they charge for at least some of their sales of HEDP using transaction-by-transaction negotiations. Three of these eleven importers (***) also reported using contracts for some of their sales. One importer (***) reported using price lists while another importer (***) indicated that for its customer ***, it uses annual contracts and for its customer *** it quotes prices which may be valid for 3-6 months. One importer (***) reported using both contracts and price lists. U.S. producer Compass reported that it uses ***. U.S. producer Compass reported that it quotes prices of HEDP on *** basis, and importers reported that they quote on a f.o.b. basis, a delivered basis, or both.

One responding purchaser (***) reported participating in reverse internet auctions to purchase HEDP. This purchaser indicated that ***. However, *** indicated that they did not determine prices by reverse internet auction in their *** questionnaire responses. ***.⁴ Also, one importer (***) reported making *** percent of its sales through its e-commerce website.

The U.S. producer Compass reported that *** percent of its sales of HEDP were from inventory. Nine of sixteen responding importers reported that all of their sales are made from inventory and four importers (***) reported making at least 50 percent of their sales from inventory. The remaining three responding importers (***) reported making all of their sales to order.

The U.S. producer Compass reported lead times from inventory of *** days and lead times for sales to order of *** days. Lead times for delivery of HEDP for all but one responding U.S. importer ranged from one day to 30 days on sales from inventory and ranged from three days to 70 days on sales produced to order.

Twenty-five responding purchasers indicated that there are price leaders in the U.S. market for HEDP.⁵ Among the companies most mentioned was U.S. producer Compass, which was named by 16 purchasers; Brenntag and Rhodia were named by three purchasers; Buckman and Uniphos were named by two purchasers; and Hydrite, Solutia, SDA, Jiangsu Jianghai Chemical Group, Premier Water, Shanghai Kima Chemicals, HG Chem, Thermphos, Wujin Fine Chemicals, Wujin Water, Z&S, and Zibex were each named by one purchaser.⁶

Sales Terms and Discounts

U.S. producer Compass reported that *** percent of its sales are on a short-term contract basis and *** percent were on a spot sales basis. Nine of 17 responding importers reported that they sell exclusively on a spot sales basis, one importer reported making 90 percent of its sales on a spot basis, and another reported making 80 percent of its sales on a spot basis. Six importers reported making at least 40 percent of their sales on a contract basis (***)

U.S. producer Compass indicated that its contracts are *** in duration, sometimes permit ***, and sometimes contain ***. U.S. importers indicated that contracts are typically for periods from one month up to one year. Five of eight responding importers reported that price can be renegotiated for their contracts during the contract period. Five of eight responding importers indicated that contracts contain meet-or-release provisions and four of seven responding importers indicated that both price and quantity are fixed. The three remaining responding importers indicated that price was fixed.

⁴ In addition, ***.

⁵ In addition, six purchasers responded that there were no price leaders.

⁶ In addition one purchaser indicated simply that "Wujin" was a price leader.

*** and six of 14 responding importers indicated that they do not have discount policies for their sales of HEDP. Six responding importers reported the use of quantity discounts and four importers reported providing annual volume discounts.

PRICE DATA

The Commission requested U.S. producers and importers of HEDP to provide quarterly data for the total quantity and f.o.b. value of the following HEDP products shipped to unrelated customers in the U.S. market during January-March 2005 to July-September 2008:

Product 1.-- 60 percent nominal aqueous solution HEDP, including, but not limited to, Dequest® 2010 (Thermphos/Solutia), Briquest® ADPA-60A (Rhodia), Mayoquest® 1500 (Compass), Aquacid 105 EX (Aquapharm), XF-334 (Wujin Fine Chemical Factory), KW-100 (Kewei), and ZF111SG (Wujin Water Stabilizer Factory), sold in truckload (or full container load) of drums (or totes) to distributors (resellers).

Product 2.-- 60 percent nominal aqueous solution HEDP, including, but not limited to, Dequest® 2010 (Thermphos/Solutia), Briquest® ADPA-60A (Rhodia), Mayoquest® 1500 (Compass), Aquacid 105 EX (Aquapharm), XF-334 (Wujin Fine Chemical Factory), KW-100 (Kewei), and ZF111SG (Wujin Water Stabilizer Factory), sold in bulk tanktruck (or isocontainer) to compounders (a.k.a. formulators).

Product 3.-- 60 percent nominal aqueous solution HEDP, including, but not limited to, Dequest® 2010 (Thermphos/Solutia), Briquest® ADPA-60A (Rhodia), Mayoquest® 1500 (Compass), Aquacid 105 EX (Aquapharm), XF-334 (Wujin Fine Chemical Factory), KW-100 (Kewei), and ZF111SG (Wujin Water Stabilizer Factory), sold in truckload (or full container load) of drums (or totes) to compounders (a.k.a. formulators).

Product 4.-- 60 percent nominal aqueous solution HEDP, including, but not limited to, Dequest® 2010 (Thermphos/Solutia), Briquest® ADPA-60A (Rhodia), Mayoquest® 1500 (Compass), Aquacid 105 EX (Aquapharm), XF-334 (Wujin Fine Chemical Factory), KW-100 (Kewei), and ZF111SG (Wujin Water Stabilizer Factory), sold in LTL drums (or totes) to compounders (a.k.a. formulators).

Two U.S. producers (***),⁷ 10 importers of HEDP from subject producers in China (***), three importers of HEDP from India (***), and six importers of HEDP from nonsubject producers in the UK and China (***) provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. Pricing data reported by these firms accounted for approximately *** percent of U.S. producers' commercial shipments of HEDP, about *** percent of U.S. commercial shipments of subject imports from China, about *** percent of U.S. commercial shipments of subject imports from India, and about *** percent of U.S. commercial shipments of imports from nonsubject sources in 2007.

⁷ Price data from the ***.

Price Trends

Weighted-average prices of HEDP are presented in tables V-1 through V-4 and figure V-2. According to both Compass and respondents, the HEDP market exhibits seasonality, increasing during the second and third quarters due to increased air conditioning use and to a lesser extent due to increased demand for industrial cooling.⁸ Compass indicated that it makes no distinction between pricing of imported material versus domestically produced material.⁹ ***.

Weighted-average sales prices for most U.S.-produced and imported products generally fluctuated between 2005 and 2007 and then increased in 2008 (see table V-5).

Table V-1

HEDP: Weighted-average f.o.b. prices and quantities of domestic and imported product 1,¹ and margins of (overselling)/underselling by quarters, January 2005-September 2008

* * * * *

Table V-2

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

* * * * *

Table V-3

HEDP: Weighted-average f.o.b. prices and quantities of domestic and imported product 3,¹ and margins of (overselling)/underselling by quarters, January 2005-September 2008

* * * * *

Table V-4

HEDP: Weighted-average f.o.b. prices and quantities of domestic and imported product 4,¹ and margins of (overselling)/underselling by quarters, January 2005-September 2008

* * * * *

Figure V-2

HEDP: Weighted-average f.o.b. prices of products 1-4, January 2005-September 2008

* * * * *

Table V-5

HEDP: Summary of weighted-average f.o.b. prices for products 1-4, by country, January 2005 to September 2008

* * * * *

⁸ Conference transcript, p. 35 (Failon), pp. 102-103 (Collias).

⁹ Conference transcript, p. 77 (Failon).

Price Comparisons

Overall, there were 62 instances where prices for domestic HEDP and subject imports of HEDP could be compared. Of these 62 comparisons, there were 42 instances (68 percent) where the subject imported product was priced below the domestic product (table V-6). Margins of underselling averaged 21.3 percent, ranging from 0.6 percent to 61.7 percent. In 20 instances, the subject imported product was priced above the comparable domestic product. Margins of overselling averaged 20.0 percent, ranging from 1.6 percent to 91.7 percent.

Table V-6
HEDP: Instances of underselling/overselling and the range and average of margins for products 1-4, January 2005 to September 2008

Country	Underselling			Overselling		
	Number of instances	Range (percent)	Average margin (percent)	Number of instances	Range (percent)	Average margin (percent)
China (subject)	31	1.1 to 61.7	20.4	16	1.6 to 23.2	10.7
India	11	0.6 to 55.2	23.8	4	27.5 to 91.7	57.3
Total¹	42	0.6 to 61.7	21.3	20	1.6 to 91.7	20.0

¹ Total number of instances for all cited products, range of margins for all cited products, and average margin for all cited products.

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

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of HEDP to report any instances of lost sales or revenues they experienced due to competition from imports of HEDP from China and India since 2005. In their petition, Compass reported *** lost sales allegations totaling \$*** and involving *** pounds of HEDP and *** totaling \$*** and involving *** pounds of HEDP. Staff contacted the *** purchasers cited in the allegations; *** responded. The results are summarized in tables V-7 and V-8 and are discussed below.

Table V-7
HEDP: U.S. producers' lost sales allegations

* * * * *

Table V-8
HEDP: U.S. producers' lost revenue allegations

* * * * *

***.
 ***.
 ***.
 ***.
 ***.

*** disagreed with the lost sales allegation involving *** company. *** indicated that *** only purchased HEDP from the United States in 2007. *** also indicated in its purchaser questionnaire response that it only purchased U.S.-produced HEDP ***. However, the company also reported that it purchased *** pounds of U.S.-produced HEDP at a unit value of \$*** per pound and *** pounds of Chinese imports of HEDP at a unit value of \$*** per pound during ***. The company indicated that it decreased purchases of U.S.-produced HEDP (purchased from ***) and increased purchases of Chinese imports of HEDP (purchased from ***) because of the pricing of the Chinese imports was more competitive.

*** disagreed with the lost sales allegation involving *** company. *** indicated that the competing import price request was made to meet a competitive price from a domestic source.¹⁰ In its purchaser questionnaire response, ***.

*** disagreed with the lost sales allegation involving *** company. *** indicated that pricing was *** per pound delivered. *** indicated that ***.

*** disagreed with the lost sales allegation involving *** company. *** indicated that ***.

*** disagreed with ***. *** indicated that ***.

***.

¹⁰ Staff interview with ***, January 14, 2009.

PART VI: FINANCIAL EXPERIENCE OF THE U.S. PRODUCER

BACKGROUND

During the period for which data were collected, U.S. production of HEDP took place at a single facility in Smyrna, GA, which was operated by Lynx and subsequently by Compass. Financial results were reported on the basis of U.S. generally accepted accounting principles (“GAAP”). The U.S. producer questionnaire response of Compass was verified on February 26 and 27, 2009. Changes pursuant to verification are reflected in this and other affected sections of the staff report.

As described in Part III of this report, the character of U.S. HEDP operations changed during the period. ***.¹ Subsequent to its acquisition of the Smyrna, GA plant in mid 2006, Compass assumed responsibility for both manufacturing and marketing U.S.-produced HEDP along with the plant’s other output.² Consistent with the preliminary phase of these investigations and for the reasons described in footnote 3, HEDP financial results for 2005 and first half 2006 reflect the information reported by Rhodia,³ while HEDP financial results for second half 2006, full-year 2007, interim 2007, and interim 2008 represent the information reported by Compass.⁴

As described in Part III of this report, in early 2007 Compass became a subsidiary of Cathay Industries USA with its ultimate parent company being Cathay Pigments (Holdings) Ltd. According to a company official, there was no substantive change to Compass’s operations after it joined the Cathay group.⁵

OPERATIONS ON HEDP

Income-and-loss data for operations on HEDP are presented in table VI-1 and on an average unit basis in table VI-2. Due to the comparability issues described below, a variance analysis is not presented.

Table VI-1

HEDP: Results of operations, 2005-07, January-September 2007, and January-September 2008

* * * * *

Table VI-2

HEDP: Results of operations (*per pound*), 2005-07, January-September 2007, and January-September 2008

* * * * *

¹ Addendum to Rhodia’s U.S. producer questionnaire (preliminary phase). Unless otherwise noted the information provided by Rhodia is based on that company’s preliminary phase questionnaire response.

² Conference transcript, pp. 60-61 (McCaul).

³ ***. Auditor final phase notes (prehearing). Verification report, p. 12.

⁴ In the preliminary phase staff report, HEDP financial results for the first and second half of 2006 were presented separately. While the same underlying information is still reflected, the format for the final phase of these investigations has been changed to present only full-year 2006 financial results.

⁵ Conference transcript, p. 57 (McCaul).

As shown in table VI-1, overall HEDP operations generated operating losses ***. The trend reflected in table VI-2 indicates that average HEDP sales values declined in 2006 compared to 2005, then increased *** in 2007, and were *** higher in interim 2008 than in interim 2007.⁶

With respect to the average cost information shown in table VI-2, period-to-period comparisons prior to full-year 2007 are limited by changes in reporting entity, as well as the format in which HEDP financial results were reported.⁷ Comparability of period-to-period average raw material cost is further limited by changes in the phosphorus input used to produce HEDP. As described in Part I of this report, there are two HEDP production processes – both of which use acetic anhydride but which differ in terms of phosphorous input: phosphorus trichloride (PCl₃) or phosphorous acid crystal (PAC).⁸ During 2005 and much of 2006, PCl₃ was the primary phosphorous input used in the production of HEDP. According to a Compass company official, the only significant operational change after the company’s acquisition of the Smyrna, GA plant was the switch in 2007 from PCl₃ to PAC.⁹ With respect to the cost of raw materials after acquisition, the company also noted generally that “. . . Compass was, because of its situation, able to provide some raw materials at better costs than Lynx was able to, so there would have been some improvement in that regard.”¹⁰ According to Compass’s U.S. producer questionnaire, ***.^{11 12}

With respect to HEDP costs, Compass was asked to describe the expected impact of switching the phosphorous input from PCl₃ to PAC. In response, Compass indicated ***.¹³

⁶ While remaining *** of Compass’s overall HEDP activity, internal consumption volume increased *** at the end of the period. According to the company, ***. E-mail with attachment from ***, January 13, 2009. ***. E-mail with attachments from ***, January 20, 2009.

⁷ ***. Auditor preliminary phase notes. ***. Ibid. ***. Compass petition, pp. 4-5.

⁸ Petition, pp. 4-5.

⁹ Conference transcript, pp. 62-64 (McCaul). ***. E-mail with attachment from ***, January 13, 2009.

¹⁰ Conference transcript, p. 62 (McCaul). Hearing transcript, p. 23 (McCaul). With regard to the switch in 2007 from PCl₃ to PAC, it was also noted at the staff conference that Compass could no longer rely on Rhodia as a source of PCl₃ because Rhodia in effect became a competitor after the termination of the Lynx-Rhodia contract manufacturing agreement. Conference transcript, p. 64 (McCaul). Additionally, the switch to PAC from PCl₃, formerly the single most hazardous material at the Smyrna, GA plant, also reportedly reduced the overall hazardous material responsibilities of Compass. Conference transcript, p. 66 (Failon).

¹¹ ***. E-mail with attachments from ***, April 8, 2008. ***:

	Calendar year	January-September	
	2007	2007	2008
Pro forma operating income (loss) (thousand dollars)	***	***	***
Pro forma operating income (loss) margin (percent of sales)	***	***	***

Based on e-mail with attachments from ***, January 20, 2009. Auditor final phase notes (posthearing).

¹² A general shift to sourcing lower cost phosphorus-related inputs from China appears to have been ongoing prior to the period for which data were collected in these investigations; e.g., a public source described the importance of Chinese phosphorous and phosphorus-related inputs to Rhodia’s U.S. and European plants producing phosphorus derivatives, as well as Rhodia’s 2002 investment in a Chinese phosphorus producer. China gets big in some export markets, Chemical Week, August 27/September 3, 2003, p. 36.

¹³ E-mail with attachment from ***, January 26, 2009. Petitioner’s postconference brief, exhibit 1, pp. 1-2.

***. E-mail with attachment from ***, January 26, 2009. Information in the petition indicates that the blending of PAC to produce 70 percent aqueous phosphorous acid takes place at Compass’s plant in Huntsville, Texas. Compass petition, p. 2.

As shown in table VI-2, there was a notable increase in average raw material costs in interim 2008 compared to interim 2007.¹⁴ With regard to this increase, Compass stated that ***.¹⁵

As noted in Part I of this report, the HEDP production process using phosphorus trichloride (used by Lynx/Rhodia and Compass in 2005 and 2006, respectively) yields acetic acid and hydrochloric acid as byproducts, while the process using PAC (used by Compass in 2007 and interim 2008) yields only acetic acid.¹⁶ ***.¹⁷

Table VI-2 indicates that the average byproduct value declined at the end of the period.¹⁸ In conjunction with higher average raw material costs, lower overall byproduct revenue resulted in higher net COGS in interim 2008 which in turn partially offset the higher average HEDP sales value. With respect to this pattern, Compass stated that ***.¹⁹

As shown in table VI-2, average direct labor cost and average other factory costs were relatively stable in full-year 2007 and interim 2008. Similar to average raw material costs, prior to 2007 average direct labor and other factory costs are less comparable due to differences in reporting format. Notwithstanding these differences, the substantial decline in average other factory costs in 2007 and interim 2008, as compared to 2006, appears to be related primarily to higher overall capacity utilization (see table III-2, Part III of this report).²⁰

While Compass reported that there were no significant non-recurring expenses due to the transition in ownership, there was a general corporate restructuring of Compass to reflect its expansion into manufacturing operations, as well as capital expenditures at the Smyrna, GA plant to get it “. . . into an acceptable condition over the first twelve months of ownership.”²¹ As described by a Compass company official, “{t}here was equipment that had to be replaced; there were upgrades that had to be made. That was done by Compass, and that was a significant difference in the operation. The plant,

¹⁴ As indicated above, the primary raw material inputs for full-year 2007, interim 2007, and interim 2008 consisted of PAC and acetic anhydride.

¹⁵ E-mail with attachment from ***, January 13, 2009. According to a public source, the Chinese export tax on phosphorous reportedly increased from 20 percent to 120 percent effective May 20, 2008. Price increases for all LANXESS phosphorus chemicals, Chemical Business, June 2008, p. 79. In May 2008, earthquake damage also reportedly impacted one of four primary phosphorus production centers in China – damaging phosphorus mines, as well as phosphate processing facilities. Cost of China earthquake rises, Chemical & Engineering News, May 26, 2008, Vol. 86 Issue 21, p. 8. Testimony at the Commission’s hearing referenced problems related to a major snowstorm in China which also generally impacted phosphorous supply. Hearing transcript, p. 126 (Collias).

¹⁶ Supplemental information provided by Compass indicates that for every ***. E-mail with attachments from ***, January 20, 2009. ***. Verification report, p. 9-10.

¹⁷ Ibid.

¹⁸ As with raw material, direct labor, and other factory costs, average byproduct revenue is directly comparable only in full-year 2007, interim 2007, and interim 2008.

¹⁹ E-mail with attachment from ***, January 13, 2009. ***. Verification report, pp. 9-10. Auditor final phase notes (posthearing). ***. Field trip notes, Compass, p. 3.

²⁰ In 2006, the Smyrna, GA facility reportedly continued to operate throughout the transition in ownership between Lynx and Compass. According to a company official, however, there was a slowdown in second half 2006 production in part to work off some of Compass’s imported HEDP inventory. A relative decline in second-half 2006 HEDP sales volume also reflected the previous termination of the Lynx-Rhodia contract manufacturing agreement. Conference transcript, pp. 59-60 (McCaul).

²¹ E-mail with attachments from ***, April 8, 2008. Conference transcript, pp. 59-60 (McCaul).

currently, is in much better shape than it's ever been and it's running very smoothly now.” According to this company official, these investments were not made previously due to financial difficulties experienced by Lynx.²²

As shown in table VI-1, Compass’s selling, general and administrative (“SG&A”) expenses increased somewhat in interim 2008 compared to interim 2007. With respect to the G&A component, the company stated that ***.²³

Notwithstanding the increase in the absolute level of Compass’s SG&A expenses, the company’s SG&A expense ratio declined during the period due to increased revenue. In contrast, on an average unit basis interim 2008 SG&A expenses were ***.

With respect to Compass’s overall operations, HEDP ***. In 2007, U.S.-produced HEDP represented *** percent of the Smyrna, GA plant’s total revenue and *** percent of Compass’s overall establishment revenue.²⁴ The corresponding 2007 *** for the Smyrna, GA plant and Compass’s overall establishment operations were ***, respectively.²⁵

While HEDP is reportedly the largest volume phosphonate produced at the Smyrna, GA plant, tetrasodium etidronate is the only downstream product which is directly dependent on HEDP production.²⁶ According to a company official, with the minor exception of tetrasodium etidronate, the Smyrna, GA plant could operate without HEDP production. However, from the company’s perspective, the inability to produce and sell profitably the largest volume product, HEDP, calls into question the plant’s overall viability.²⁷ The Compass company official also noted that large volume HEDP production enhances the company’s supply relationships and infrastructure and that in this regard the elimination of HEDP production would likely affect the viability of the plant’s other products.²⁸

Notwithstanding the contribution of HEDP production to the overall operations of the Smyrna, GA plant, a company official indicated that it was not clear whether HEDP production would be continued after Compass’s acquisition: “. . . our first decision was that we weren’t going to make any HEDP. We continued importing product in the second half of 2006; and then we kept looking at it, though, and thinking we ought to be able to try to compete here on making HEDP in the U.S. So we changed our position on that and we started focusing on manufacturing HEDP.”²⁹

²² Conference transcript, p. 61 (McCaul). Hearing transcript, p. 49 (McCaul).

²³ E-mail with attachment from ***, January 13, 2009.

²⁴ In response to staff requests, Compass provided financial results for Compass’s overall establishment operations (2005, 2006, 2007), as well as plant-specific (Smyrna, GA) financial results (2006, 2007). Compass also provided Lynx’s financial results broken out by plant (including Smyrna, GA) (2005, 2006).

²⁵ ***. Auditor preliminary notes.

²⁶ As noted previously, the internal consumption reported in table VI-1 and table VI-2 represents HEDP used to produce tetrasodium etidronate (tetrasodium HEDP).

²⁷ Conference transcript, pp. 62, 67 (McCaul).

²⁸ Conference transcript, p. 68 (McCaul).

²⁹ Conference transcript, p. 62 (McCaul). ***. Compass U.S. producer questionnaire, IV-14.

CAPITAL EXPENDITURES, RESEARCH AND DEVELOPMENT EXPENSES, ASSETS, AND RETURN ON INVESTMENT

Data on capital expenditures, research and development (“R&D”) expenses, assets, and return on investment are presented in table VI-3.

Table VI-3

HEDP: Capital expenditures, R&D expenses, assets, and return on investment related to HEDP operations, 2005-07, January-September 2007, and January-September 2008

* * * * *

The capital expenditures for the period, including 2005, were reported by Compass.³⁰ As noted previously, the increases in capital expenditures during the period reportedly represented equipment upgrades that had been delayed/postponed by the predecessor company, Lynx.³¹ R&D expenses, which were also reported for the entire period by Compass, declined steadily. As described by Compass, ***.³²

CAPITAL AND INVESTMENT

The Commission requested the U.S. producer to describe any actual or anticipated negative effects of imports of HEDP from China and/or India on its firms’ growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments. Their responses were as follows:

Actual Negative Effects

Compass: ***.
Rhodia: ***.

Anticipated Negative Effects

Compass: ***.
Rhodia: ***.

³⁰ ***.

³¹ ***. Compass U.S. producer questionnaire, III-14.

³² E-mail with attachments from ***, April 8, 2008.

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

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 volume and pricing of imports of the subject merchandise is presented in *Parts IV* and *V* of this report; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in *Part VI*. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries and the global market.

THE INDUSTRY IN CHINA

The Commission requested data from 27 firms which were listed in the petition and believed to produce HEDP in China during the period for which data were collected.³ The Commission received responses from the following companies:

- Changzhou Kewei Fine Chemical Co., Ltd. ("Changzhou Kewei");
- Jiangsu Jianghai Chemical Group Co., Ltd. ("Jiangsu Jianghai Chemical");
- Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory ("Wujin Water"); and
- Wujin Fine Chemical Factory ("Wujin Fine Chemical")

These four firms claimed to account for approximately *** percent of total HEDP production in China and *** percent of total exports to the United States.^{4 5 6} The names of the foreign firms along with shares of production and exports to the United States (by quantity) are presented in table VII-1.

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 Petition, exh. AD-3.

⁴ Changzhou Kewei responded to the Commission's questionnaire in the preliminary phase of these investigations, but did not respond in the final phase despite attempts by the Commission's staff to contact the company or its counsel. Data for 2005-07 and 2008-09 are based on Changzhou Kewei's response to the Commission's questionnaire in the preliminary phase.

⁵ *** reported that it did not produce HEDP in China.

⁶ Wujin Water provided a response, but was found by Commerce to have a dumping margin of zero percent, and as such is treated as a nonsubject source in this report.

**Table VII-1
HEDP: Manufacturers/exporters in China, and quantities and shares of reported production and exports to the United States, 2007**

* * * * *

The Commission asked responding foreign producers to estimate the shares of their firm’s total sales that were represented by sales of HEDP in 2007; firms reported a simple average of 29.5 percent (***) percent for the three subject producers), with sales of HEDP ranging from *** percent to *** percent of total sales. *** Chinese producers reported plans to change production capacity or production of HEDP in China. Chinese producers of HEDP reported that none of the HEDP that they export was subject to antidumping findings or remedies in any WTO-member countries.

The AWTCP, a respondent coalition which consists of three Chinese producers,⁷ contended in the preliminary phase of these investigations that the demand for HEDP in China is at least 20,000 metric tons or 44.1 million pounds. AWTCP also asserted that “***.”⁸

Table VII-2 presents production and shipments data for three reporting subject producers in China, Changzhou Kewei, Jiangsu Jianghai Chemical Group, and Wujin Fine Chemical Factory.⁹ Chinese capacity increased by *** percent over the period 2005-07, with a commensurate increase in production of *** percent. From 2005 to 2007, capacity utilization for subject producers in China declined by *** percentage point from *** percent to *** percent. Individual Chinese producers’ average capacity utilization over the period 2005-07 ranged from *** percent to *** percent.¹⁰ Exports to the United States increased by *** percent from 2005 to 2007, compared with an increase of *** percent to all other markets. As a ratio of total shipments, exports to the United States increased from *** percent to *** percent between 2005 and 2006, then fell to *** percent in 2007. Exports to all other markets as a ratio of total shipments declined from *** percent in 2005 to *** percent in 2006, and rose to *** percent in 2007.¹¹ Ratios of inventories to production and to total shipments remained relatively steady, but both were projected to increase *** percentage points in 2008 and *** percentage points in 2009.

**Table VII-2
HEDP: China’s (subject) reported production capacity, production, shipments, and inventories, 2005-07, January-September 2007, January-September 2008, and projections for 2008 and 2009**

* * * * *

⁷ AWTCP in the preliminary phase of the investigations also included Changzhou Kewei. This producer, however, withdrew its participation in the final phase investigations. Hearing transcript, p. 160 (Craven).

⁸ AWTCP postconference brief, p. Q-2.

⁹ In the preliminary phase of these investigations, Chinese producer Changzhou Kewei listed *** as one of its five largest U.S. importers. Because Changzhou Kewei did not provide a response in the final phase of these investigations, the firm’s response in the preliminary phase was used for data for 2005-07 and projections for 2008-09. Data for January-September 2007 and January-September 2008 do not include data for Changzhou Kewei.

¹⁰ Chinese producer *** which reported *** percent capacity utilization in ***, reported a *** percent increase in its production capacity in the following year resulting in a capacity utilization of *** percent in ***.

¹¹ Subject Chinese producers reported exports to ***.

THE INDUSTRY IN INDIA

The Commission requested data from six firms which were listed in the petition and believed to have produced HEDP in India during the period for which data were collected.¹² The Commission received responses from two firms, Aquapharm Chemicals Pvt. Ltd. (“Aquapharm”) and Excel Industries, Ltd.^{13 14} Aquapharm and Excel Industries reported that *** percent and *** percent, respectively of their total sales in the most recent fiscal year were sales of HEDP. Aquapharm, *** producer of HEDP in India, claimed to account for approximately *** percent of Indian production of HEDP, and together with Indian producer, Excel Industries, accounted for the vast majority of exports to the United States during the period 2005-07.^{15 16}

As shown in table VII-3, in 2007, *** percent of Aquapharm's total shipments of HEDP were exported to the United States, *** percent of its shipments were to its home market, *** percent were internal shipments, and *** percent were exported to other markets such as ***. Both Indian producers of HEDP reported that none of the HEDP that they exported was subject to antidumping findings or remedies in any WTO-member countries.

Table VII-3
HEDP: India’s reported production capacity, production, shipments, and inventories, 2005-07, January-September 2007, January-September 2008, and projections for 2008 and 2009

* * * * *

Aquapharm reported that it only sells to two customers in the United States; *** percent of its 2007 exports to the United States were to formulator/compounder/distributor Buckman and *** percent were to distributor Zibex. Aquapharm reported that it has a warehouse in Alabama, as well as an independent agent, to provide service to Buckman.¹⁷ Aquapharm stated that it had increased its HEDP production capacity in order to meet demand from the European Union.¹⁸ It also reported that it ***.¹⁹ Aquapharm reported that it anticipated growth in its sales in ***. Furthermore, Aquapharm stated that it did not expect significant growth in ***.

Table VII-3 presents data for reported production and shipments of HEDP for India. Production increased over the period 2005-07 and was projected to continue to increase in 2008 and 2009. Capacity utilization fluctuated from ***. Home market sales increased over the period by *** percent between 2005 and 2007, but were projected to decline in 2008 and increase in 2009, ***. In contrast, exports rose

¹² Petition, exh. AD-3.

¹³ Excel Industries provided a response to the foreign producers’ questionnaire containing limited trade data, which were incomplete and inconsistent. In its response Excel reported exports to the United States ranging from a *** to a low of ***. These exports accounted for ***.

¹⁴ In its preliminary phase response, Excel Industries reported that ***.

¹⁵ E-mail from ***, April 5, 2008, and conference transcript, p. 100 (Mangwani). The petitioners also report that these two producers are the largest producers and exporters to the United States of HEDP from India. Petition, p. 9 and Exh. AD-3.

¹⁶ There are two other producers of HEDP in India, Rencal Chemicals (India) Ltd. and United Phosphorus, Ltd., but they are reported to be relatively small. Conference transcript, p. 100 (Mangwani).

¹⁷ Conference transcript, pp. 85-87 (Mangwani).

¹⁸ Conference transcript, p. 110 (Mangwani).

¹⁹ In its response to the foreign producer’s questionnaire in the preliminary phase of these investigations, Aquapharm reported that it ***. Aquapharm reported in the final phase that ***. Aquapharm stated that ***. Email from ***, February 16, 2009.

by *** percent over the same period, with a *** percent increase in exports to the United States and a *** percent increase in exports to all other markets. Exports were projected to increase although at a slower pace, *** percent to the United States and *** percent to all other markets between 2007 and 2009. As a share of total shipments, exports increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007. This increase was largely attributable to exports to non-U.S. markets, which increased from *** percent of total shipments in 2005 to *** percent in 2006 and *** percent in 2007. Exports to the United States as a share of total shipments declined from *** percent in 2005 to *** percent in 2006 and *** percent in 2007.

In January-September 2008 compared with January-September 2007, capacity and production were *** percent and *** percent higher, respectively, though capacity utilization was *** percentage points lower. Internal consumption, home market shipments and exports to the United States and all other markets were higher, by *** percent, *** percent, *** percent, and *** percent, respectively. As a percent of total shipments, internal consumption and exports to the United States were higher, by *** and *** percentage points, respectively, while home market shipment and exports to all other markets were lower, by *** and *** percentage points respectively.

Aquapharm reported in the preliminary phase investigations that ***.

Aquapharm estimated that the demand for HEDP in India was approximately 7,000 to 8,000 metric tons (15.4 million to 17.6 million pounds), and was growing at a rate of about 14 to 15 percent per year due to growth in infrastructure and increased use in water treatment.²⁰

U.S. IMPORTS SUBSEQUENT TO SEPTEMBER 30, 2008

The Commission requested U.S. importers to indicate whether they imported or arranged for the importation of HEDP after September 30, 2008. Six of the 18 reporting U.S. importers stated that they had imported or arranged for importation since September 30, 2008, four from China (subject), one from India, and two from nonsubject sources. Table VII-4 presents U.S. imports from China (subject), India, and other nonsubject sources subsequent to September 30, 2008.

Table VII-4
HEDP: U.S. importers' orders of subject imports from China and India subsequent to September 30, 2008, by period

* * * * *

U.S. IMPORTERS' INVENTORIES

Data collected in these investigations on U.S. importers' end-of-period inventories of HEDP are presented in table VII-5. U.S. importers' reported inventories of subject HEDP from China increased by *** percent from 2005 to 2006, and by *** percent from 2006 to 2007, and by *** percent from 2005 to 2007. These inventories from China, relative to subject imports from China, also increased from *** percent in 2005, to *** percent in 2006, rising again in 2007 to *** percent.²¹ In 2006, Compass reported that it had an increase in business, and temporarily increased its imports of HEDP from China after it

²⁰ Conference transcript, pp. 100-101 (Mangwani).

²¹ One importer, Uniphos reported that it typically maintains two months of inventories in case of emergencies, especially as it generally takes four to eight weeks to receive a shipment from China. Moreover, Uniphos stated that almost all of its chemicals are generally sold out of inventory. Hearing transcript, p. 173 (Collias).

bought the U.S. HEDP production facility.²² Inventories from India increased by *** percent, an increase of *** percentage points relative to imports, between 2006 and 2007.²³

Table VII-5
HEDP: U.S. importers' end-of-period inventories of imports, by source, 2005-07, January-September 2007, and January-September 2008

* * * * *

Inventories of nonsubject imports from China increased by *** percent between 2005 and 2006 and *** percent between 2006 and 2007, resulting in an increase of *** and *** percentage points, respectively, relative to imports. Inventories from all other sources fell by *** percent from 2006 to 2007. This decline was due to a decline in inventories of imports from the United Kingdom reported by ***, which reported that ***.²⁴

INFORMATION ON NONSUBJECT SOURCES AND THE GLOBAL MARKET

In assessing whether the domestic industry is materially injured or threatened with material injury “by reason of subject imports,” the legislative history states “that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including non-subject imports) ‘to ensure that it is not attributing injury from other sources to the subject imports.’”

Nonsubject Source Information²⁵

In terms of percentage of world consumption of HEDP, the three largest regions are Western Europe (with somewhat greater than *** percent), the United States (with somewhat less than *** percent), and Japan (less than *** percent).²⁶ Within the class of phosphonates, there is product substitution over time as end-use formulations change, environmental regulations change, consumers change their preferences, and price. Estimated total capacity in 2006 for Western Europe was about *** metric tons (*** pounds). The two largest producers are Solutia and Rhodia. Each has an estimated *** percent market share. The two commodity phosphonates are HEDP and AMTP; however, most other phosphonates are manufactured in Western Europe. Production data for individual phosphonates are

²² Conference transcript, p. 22 (Failon). In addition, *** reported that they did not import HEDP from China in 2005, and therefore had no inventories prior to 2006.

²³ *** did not report inventories of HEDP from India for 2005.

²⁴ Email from ***.

²⁵ The petitioner contends that the nonsubject imports of HEDP from the United Kingdom are not price competitive with subject imports. Petitioner's posthearing brief, p.8. In addition, the petitioner points out that imports from the United Kingdom are predominately sold through a different channel of distribution than domestically produced HEDP or HEDP imported from China and India. *Ibid.* The petitioner also contends that the relationship between Rhodia in the United Kingdom and its importing company in the United States substantially mitigates the significance of nonsubject imports in the U.S. market. *Ibid.*

The Chinese producers contend the nonsubject imports are from high cost producers and are sold at high prices, and that if, as a result of an antidumping order on HEDP, imports of HEDP from India and China declined, “these high priced sales would not replace sales of low priced subject imports, rather U.S. production would likely replace the subject imports.” Respondent, AWTCP's posthearing brief, p. 2.

The Indian respondent, Aquapharm did not address the issue of imports from nonsubject sources.

²⁶ SRI CEH: *Chelating Agents, February, 2007*, p. 515.5000K.

difficult to obtain, but the following tabulation lists the major Western European producers of phosphonates:²⁷

* * * * *

China (Nonsubject)

In addition to the nonsubject producers in western Europe, Chinese producer, Wujin Water was found by Commerce to have a dumping margin of zero percent, and as such is treated in this report as nonsubject. Wujin Water estimated that it accounted for *** percent of total exports to the United States of HEDP from China in 2007. Other principal export markets reported by Wujin Water included ***.

Wujin Water reported that it *** produce other products other than HEDP on the same equipment and machinery used in the production of HEDP. The company estimated that HEDP accounted for *** percent of its total production in 2007, and *** percent of its total sales in its most recent fiscal year. Table VII-6 presents data for reported production and shipments of HEDP for the nonsubject China producer.

**Table VII-6
HEDP: China's (nonsubject) reported production capacity, production, shipments, and inventories, 2005-07, January-September 2007, January-September 2008, and projections for 2008 and 2009**

* * * * *

The Industry in the United Kingdom

During the period for which data were collected, two of the largest nonsubject producers of HEDP, Thermphos International and Rhodia, were located in the United Kingdom.²⁸ Rhodia, with production manufacturing facilities in West Midlands, United Kingdom, buys elemental phosphorus from Thermphos and makes phosphorus trichloride, which it uses to make phosphorus acid and other intermediate products including HEDP. Rhodia makes phosphorus trichloride in Charleston, SC, but no longer makes HEDP in the United States.²⁹

Prior to June 1, 2007, Solutia produced HEDP in its facilities in the United Kingdom. Thermphos, a producer of phosphorus, phosphoric acid, phosphates, phosphonates and phosphorus derivatives, acquired Solutia's Dequest business, including HEDP, on June 1, 2007. Under the purchase agreement Thermphos purchased Solutia's assets, including the primary production location in Newport, Wales, U.K.³⁰ In June 2004, Thermphos purchased Rhodia's European Specialty Phosphates business, which included part of Rhodia's HEDP production facilities in the United Kingdom.³¹ Thermphos acquires phosphorus ore from Europe (***) and makes the elemental phosphorus, which it uses to make phosphorus trichloride which it sells in the merchant market or uses to make further down-stream

²⁷ SRI CEH: *Chelating Agents, February, 2007*, p. 500.5003E. HEDP production was estimated to be between 10,000 and 50,000 metric tons per year during 1990-93. HERA substance team, *Human & Environmental Risk Assessment on Ingredients in European Household Cleaning Products*, June 9, 2004, p. 13.

²⁸ Conference transcript, p. 31 (Failon), and pp. 99-100 (Mangwani). ***.

²⁹ Conference transcript, pp. 13-14 (Failon).

³⁰ Thermphos International press release, May 31, 2007.

³¹ Rhodia 2004 annual report, p. 22.

products including HEDP.³² Thermphos estimated that it accounts for *** percent of total production in the United Kingdom. Table VII-7 presents data for reported production and shipments of HEDP for the United Kingdom.

Table VII-7

HEDP: United Kingdom's reported production capacity, production, shipments, and inventories, 2005-07, January-September 2007, January-September 2008, and projections for 2008 and 2009

* * * * *

³² Staff telephone interview with ***, January 28, 2009.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 731-TA-1146-1147
(Final)]

**1-Hydroxyethylidene-1,1-Diphosphonic
Acid (HEDP) from China and India**

AGENCY: United States International
Trade Commission.

ACTION: Scheduling of the final phase of
antidumping duty investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping duty investigation Nos. 731-TA-1146-1147 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China and India of 1-Hydroxyethylidene-1,1-diphosphonic acid (HEDP),¹ provided for in statistical reporting number 2931.00.9043 of the Harmonized Tariff Schedule of the United States.²

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:* October 21, 2008.

FOR FURTHER INFORMATION CONTACT:
Nathanael Comly (202-205-3174),
Office of Investigations, U.S.
International Trade Commission, 500 E
Street, SW., Washington, DC 20436.
Hearing-impaired persons can obtain
information on this matter by contacting
the Commission's TDD terminal on 202-
205-1810. Persons with mobility
impairments who will need special

¹ HEDP is identified by CAS registry number 2809-21-4.

² For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid, also referred to as hydroxyethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid."

assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of HEDP from China and India 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). These investigations were requested in a petition filed on March 19, 2008, by Compass Chemical International LLC, Huntsville, TX.

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 February 17, 2009, 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 March 3, 2009, 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 February 24, 2009. 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 February 26, 2009, 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 February 24, 2009. 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 March 11, 2009; 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 March 11, 2009. On March 31, 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 April 2, 2009, 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: November 7, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-26975 Filed 11-13-08; 8:45 am]

BILLING CODE 7020-02-P

established a schedule for the conduct of the final phase of the subject investigations (73 FR 67545, November 14, 2008). As a result of subsequent events, however, the Commission is revising its schedule.

The Commission's new schedule for the investigations is as follows: The Commission will make its final release of information on March 30, 2009; and final party comments are due on April 1, 2009.

For further information concerning these investigations see the Commission's notice cited above and 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).

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.

By order of the Commission.

Issued: January 15, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-1977 Filed 1-29-09; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1146-1147
(Final)]

1-Hydroxyethylidene-1,1- Diphosphonic Acid (HEDP) From China and India

AGENCY: United States International
Trade Commission.

ACTION: Revised schedule for the subject
investigations.

DATES: *Effective Date:* January 15, 2009.

FOR FURTHER INFORMATION CONTACT:

Nathanael Comly (202-205-3174),
Office of Investigations, U.S.
International Trade Commission, 500 E
Street, SW., Washington, DC 20436.
Hearing-impaired persons can obtain
information on this matter by contacting
the Commission's TDD terminal on 202-
205-1810. Persons with mobility
impairments who will need special
assistance in gaining access to the
Commission should contact the Office
of the Secretary at 202-205-2000.
General information concerning the
Commission may also be obtained by
accessing its internet server ([http://
www.usitc.gov](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: Effective
October 21, 2008, the Commission

DEPARTMENT OF COMMERCE

International Trade Administration

A-533-847

1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (the Department) has determined that 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from India 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). The estimated margins of sales at LTFV are listed in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 11, 2009.

FOR FURTHER INFORMATION CONTACT: Brian Smith and 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 and (202) 482-3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2008, the Department published in the **Federal Register** its preliminary determination in the antidumping duty investigation of HEDP from India. See 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from the Republic of India and the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 62465 (October 21, 2008) (*Preliminary Determination*).

We conducted verification of the questionnaire responses submitted by Aquapharm Chemicals Private Limited (Aquapharm) in November 2008. See Memorandum to The File from Case Analysts entitled “Verification of the Questionnaire Responses of Aquapharm Chemicals Pvt. Ltd. (Aquapharm) in the Antidumping Duty Investigation of 1–Hydroxyethylidene–1, 1–Diphosphonic Acid (HEDP) from India,” dated January 13, 2009 (Verification Report). The verification report is on file and available in the Central Records Unit (CRU), Room 1117 of the Department’s main building.

On January 26, 2009, Aquapharm and the petitioner submitted case briefs. On February 2, 2009, Aquapharm and the petitioner submitted rebuttal briefs. As neither party requested a hearing, a hearing was not held in this case.

Period of Investigation

The period of investigation (POI) is January 1, 2007, to December 31, 2007. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

Scope of Investigation

The merchandise covered by this investigation includes all grades of aqueous, acidic (non-neutralized) concentrations of 1–hydroxyethylidene–1, 1–diphosphonic acid¹, also referred to as hydroxyethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is

2809–21–4. The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

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 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from India” from John Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration (Decision Memorandum), dated March 5, 2009, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, 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 CRU. 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.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Aquapharm for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by Aquapharm. See Verification Report.

Final Determination Margins

Manufacturer/Exporter	Weighted–Average Margin (percent)
Aquapharm Chemicals Private Limited	3.10
All Others	3.10

We determine that the following weighted–average dumping margins exist for the period January 1, 2007, to December 31, 2007:

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

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 HEDP from India, entered, or withdrawn from warehouse, for consumption on or after October 21, 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 above and as follows: (1) the rate for Aquapharm will be 3.10 percent; (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 3.10 percent. 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, 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 material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. See section 735(c)(2) of the Act. 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

¹ C₂H₈O₇P₂ or C(CH₃)(OH)(PO₃H₂)₂

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: March 5, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

1. U.S. Date of Sale
2. U.S. Sales Type Designation
3. Level of Trade
4. U.S. Credit Expenses and Inventory Carrying Costs
5. Verification Corrections

[FR Doc. E9-5231 Filed 3-10-09; 8:45 am]

BILLING CODE: 3510-DS-S

Case History

On October 21, 2008, the Department published its preliminary determination that HEDP from the PRC is being, or is likely to be, sold in the United States at LTFV, as provided in the Act. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 62470 (October 21, 2008) (“*Preliminary Determination*”). For the *Preliminary Determination*, the Department calculated a 24.30 percent dumping margin for Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. (“Wujin Water”). The Department assigned a 72.42 percent dumping margin to the PRC-wide entity including Changzhou Kewei Fine Chemical Factory (“Kewei”) and a 24.30 percent dumping margin to separate rate applicants Changzhou Wujin Fine Chemical Factory Co., Ltd. (“Wujin Fine Chemical”) and Jiangsu Jianghai Chemical Group Co., Ltd. (“Jiangsu Jianghai”). On December 3, 2008, Wujin Water provided the Department with its final submission of surrogate values. In December 2008, Compass Chemical International LLC (“Petitioner”), Wujin Water, Wujin Fine Chemical, and Jiangsu Jianghai submitted case briefs and rebuttal briefs.¹ On January 14, 2009, the Department held a public hearing.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by the parties to this investigation are addressed in the “Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China” (“Issues and Decision Memorandum”), dated concurrently with this notice, which is hereby adopted by this notice in its entirety. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (“CRU”), Main Commerce Building, Room 1117, and is accessible on the internet at <http://www.trade.gov/ia>. The paper copy and electronic version of the memorandum are identical in content.

¹ Wujin Water, Wujin Fine Chemical, and Jiangsu Jianghai submitted case briefs and rebuttal briefs jointly.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Wujin Water for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain adjustments to the margin calculations used in the *Preliminary Determination*. These adjustments are discussed in detail in the Issues and Decision Memorandum and are listed below:

1. We recalculated the financial ratios using the April 2005 through March 2006 financial statement of Rencal Chemicals (India) Limited (“Rencal Chemicals”).
2. We recalculated the surrogate value for phosphorus trichloride using the April 2004 through March 2005 and April 2005 through March 2006 financial statements of Rencal Chemicals.
3. We recalculated the surrogate value for steam using the April 2007 through March 2008 financial statement of Hindalco Industries Ltd.
4. We revised the transportation distance of chemical drums.

Period of Investigation

The period of investigation (“POI”) is July 1, 2007, through December 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, *i.e.*, March 2008. *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid², also referred to as hydroxyethylenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809-21-4. The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes

² C₂H₈O₇P₂ or C(CH₃)(OH)(PO₃H₂)₂.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-934]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value

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

EFFECTIVE DATE: March 11, 2009.

SUMMARY: The Department of Commerce (the “Department”) has determined that 1-hydroxyethylidene-1, 1-diphosphonic acid (“HEDP”) 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 733 of the Tariff Act of 1930, as amended (“the Act”). The final dumping margins for this investigation are listed in the “Final Determination Margins” section of this notice.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Shawn Higgins, 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) 482-5831 and (202) 482-0679, respectively.

SUPPLEMENTARY INFORMATION:

only, the written description of the scope of this investigation is dispositive.

Scope Comments

The Department received no comments regarding the scope of this investigation.

Non-Market Economy Treatment

In the Preliminary Determination, the Department considered the PRC to be a non-market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). No party has commented on the Department's classification of the PRC as an NME. Therefore, for the final determination, we continue to consider the PRC to be an NME.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994), and 19 CFR 351.107(d).

In the Preliminary Determination, we found that Wujin Fine Chemical and Jiangsu Jianghai demonstrated eligibility for separate-rate status. Since the publication of the Preliminary Determination, no party has commented on the eligibility of Wujin Fine Chemical and Jiangsu Jianghai for separate-rate status. For the final determination, we continue to find that

the evidence placed on the record of this investigation by Wujin Fine Chemical and Jiangsu Jianghai demonstrates both *de jure* and *de facto* absence of government control with respect to each company's respective exports of the merchandise under investigation. Thus, we continue to find that Wujin Fine Chemical and Jiangsu Jianghai are eligible for separate-rate status. Normally the separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available ("AFA"). See section 735(c)(5)(A) of the Act. In this case, because there are no rates other than *de minimis* or those based on AFA, we have determined to take a simple average of the AFA and the *de minimis* rate calculated for Wujin Water as a reasonable method for purposes of determining the rate assigned to Wujin Fine Chemical and Jiangsu Jianghai. See section 735(c)(5)(B) of the Act. We note that this methodology is consistent with the Department's past practice. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Light-Walled Rectangular Pipe and Tube From the Republic of Korea*, 73 FR 5794, 5800 (January 31, 2008) ("*Preliminary Determination of Light-Walled Pipe*"), unchanged in *Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from the Republic of Korea*, 73 FR 35655 (June 24, 2008) ("*Final Determination of Light-Walled Pipe*"); see also "Corroboration" section below.

We determined in the Preliminary Determination that because Kewei withdrew from the investigation, thus preventing the Department from asking additional questions on its separate rate status and preventing the Department from verifying its responses, the Department has no basis upon which to grant Kewei a separate rate. We received no comments on this denial of a separate rate. Although Kewei remains a mandatory respondent, the Department will continue to consider Kewei part of the PRC-wide entity because it failed to demonstrate that it qualifies for a separate rate.

The PRC-Wide Rate

In the Preliminary Determination, the Department found that certain companies did not respond to our requests for information. See *Preliminary Determination*, 73 FR at 62473–74. We treated these PRC producers/exporters as part of the PRC-

wide entity because they did not demonstrate that they operate free of government control over their export activities. *Id.* In addition, in the Preliminary Determination, the Department applied total AFA to Kewei. We determined, as AFA, that Kewei was not eligible for a separate rate and we would treat Kewei as part of the PRC-wide entity. *Id.* No additional information was placed on the record with respect to any of these companies after the Preliminary Determination. Therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Rescission in Part and Intent to Rescind in Part*, 72 FR 14078, 14079 (March 26, 2007) ("*Preliminary Results of TRBs*"), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review*, 72 FR 56724 (October 4, 2007) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 2005–2006 Administrative Review*, 72 FR 70302 (December 11, 2007) ("*Final Results of TRBs*"). See also *Statement of Administrative Action* accompanying the Uruguay Round Agreements Act ("SAA"), H.R. Doc. No. 103–316, Vol. 1 (1994), at 870. We determine that, because the PRC-wide entity, including Kewei, did not respond to our requests for information, the PRC-wide entity has failed to cooperate to the best of its ability. See *id.* Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within an NME country are subject to government control, and because only Wujin Water, Wujin Fine Chemical, and Jiangsu Jianghai have overcome that presumption, we are applying a single antidumping rate (*i.e.*, the PRC-wide entity rate) to all other exporters of

subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *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 (May 3, 2000). The PRC-wide entity rate applies to all entries of subject merchandise except for entries from Wujin Water, Wujin Fine Chemical, and Jiangsu Jianghai.

In the *Preliminary Determination*, we assigned to the PRC-wide entity the margin alleged in the petition, *i.e.*, 72.42 percent. *See Preliminary Determination*, 73 FR at 22331. For the final determination, we have continued to assign to the PRC-wide entity the rate of 72.42 percent.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. *See Preliminary Determination of TRBs*, 72 FR at 14080 (unchanged in *Final Results of TRBs*).

Because there are no respondents receiving rates other than *de minimis* or those based on AFA, we relied upon our pre-initiation analysis of the adequacy and accuracy of the information in the petition to corroborate the 72.42 percent petition margin selected as AFA for the PRC-wide entity. This corroborated margin was then used in the calculation of the rate assigned to Wujin Fine Chemical and Jiangsu Jianghai pursuant to section 735(c)(5)(B) of the Act. *See "Import Administration Antidumping Investigation Initiation Checklist: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China,"* (April 8, 2008). We note that this practice is consistent with the Department's past practice in instances where the only rates on the record are either *de minimis* or based entirely upon AFA. *See Preliminary Determination of Light-Walled Pipe*, 73 FR at 5797 (unchanged in *Final Determination of Light-Walled Pipe*). During the initiation stage, we examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioner to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price ("EP") and normal

value ("NV") in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the EP and NV calculations. *Id.* Therefore, for the final determination, the Department finds that the rate derived from the petition for purposes of initiation has probative value for the purpose of being selected as the AFA rate assigned to the PRC-wide entity, including Kewei, and used in the calculation of the rate assigned to Wujin Fine Chemical and Jiangsu Jianghai pursuant to 735(c)(5)(B) of the Act.

Final Determination Margins

We determine that the following percentage dumping margins exist for the POI:

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. ³	0.00
Changzhou Wujin Fine Chemical Factory Co., Ltd. ⁴	36.21
Jiangsu Jianghai Chemical Group Co., Ltd. ⁵	36.21
PRC-wide Entity (including Kewei)	72.42

³Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. manufactures and exports subject merchandise.

⁴Changzhou Wujin Fine Chemical Factory Co., Ltd. manufactures and exports subject merchandise.

⁵Jiangsu Jianghai Chemical Group Co., Ltd. manufactures and exports subject merchandise.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with 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 HEDP from the PRC, except those produced and exported by Wujin Water, as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after October 21,

2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) The rate for the manufacturer/exporter combinations listed in the chart above will be the rate we have determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide entity rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. We are directing CBP not to suspend liquidation of imports of HEDP from the PRC produced and exported by Wujin Water, and entered, or withdrawn from warehouse, for consumption on or after October 21, 2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. CBP shall not require a cash deposit or the posting of a bond for Wujin Water because we have calculated a margin of zero percent for Wujin Water. 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 of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, 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 notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 5, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix:

Issues in Decision Memorandum

Comment 1: Financial Ratios

Comment 2: Surrogate Value for Phosphorus Trichloride

Comment 3: Surrogate Value for Chemical Drums

Comment 4: Surrogate Value for Steam

Comment 5: Treatment of Acetyl Chloride

Comment 6: Separate Rates for Wujin

Fine Chemical and Jiangsu Jianghai

Comment 7: Combination Rate for Hong Kong Exporter

[FR Doc. E9-5237 Filed 3-10-09; 8:45 am]

BILLING CODE 3510-DS-S

APPENDIX B
HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: HEDP from China and India
Inv. Nos.: 731-TA-1146 and 1147 (Final)
Date and Time: March 3, 2009 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

OPENING REMARKS:

Petitioner (Jeffrey S. Levin, Mondial Trade Compliance Services & Solutions, Inc.)
Respondents (David J. Craven, Riggle & Craven)

In Support of the Imposition of Antidumping Duty Orders:

Mondial Trade Compliance Services & Solutions, Inc.
Bethesda, MD
on behalf of

Compass Chemical International, LLC ("Compass")

Daniel McCaul, President and Chief Operating
Officer, Compass

Brian Failon, Vice President, Business Development
& Technology, Compass

Jeffrey S. Levin

) – OF COUNSEL

**In Opposition to the Imposition of
Antidumping Duty Orders:**

Riggle & Craven
Chicago, IL
on behalf of

The Ad Hoc Water Treatment Chemical Producers
Committee (“AWTCP”) and its individual
members

George Collias, Treasurer, Uniphos, Inc.

Dr. Jeff Wang, President, Bosgen, Inc.

David J. Craven

) – OF COUNSEL

REBUTTAL/CLOSING REMARKS:

Petitioner (Jeffrey S. Levin, Mondial Trade Compliance Services & Solutions, Inc.)
Respondents (David J. Craven, Riggle & Craven)

APPENDIX C
SUMMARY DATA

Table C-1
HEDP: Summary data concerning the U.S. market, 2005-07, January-September 2007, and
January-September 2008

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APPENDIX D

**ADDITIONAL SOURCE-SPECIFIC
TRADE AND PRICE DATA**

Weighted-average prices of HEDP which identify quarters in which Compass sold U.S.-produced HEDP and separately report Compass's sales of subject imports from China are presented in tables D-1 through D-4. Tables D-5 and D-6 present data on apparent U.S. consumption of HEDP by sources, including Compass.

Table D-1

HEDP: Weighted-average f.o.b. prices and quantities of domestic and imported product 1, for Compass and other firms by quarter, January 2005-September 2008

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Table D-2

HEDP: Weighted-average f.o.b. prices and quantities of domestic and imported product 2, for Compass and other firms by quarter, January 2005-September 2008

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Table D-3

HEDP: Weighted-average f.o.b. prices and quantities of domestic and imported product 3, for Compass and other firms by quarter, January 2005-September 2008

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Table D-4

HEDP: Weighted-average f.o.b. prices and quantities of domestic and imported product 4, for Compass and other firms by quarter, January 2005-September 2008

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Table D-5

HEDP: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent U.S. consumption, 2005-07, January-September 2007, and January-September 2008

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Table D-6

HEDP: Apparent U.S. consumption and market shares, 2005-07, January-September 2007, and January-September 2008

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