

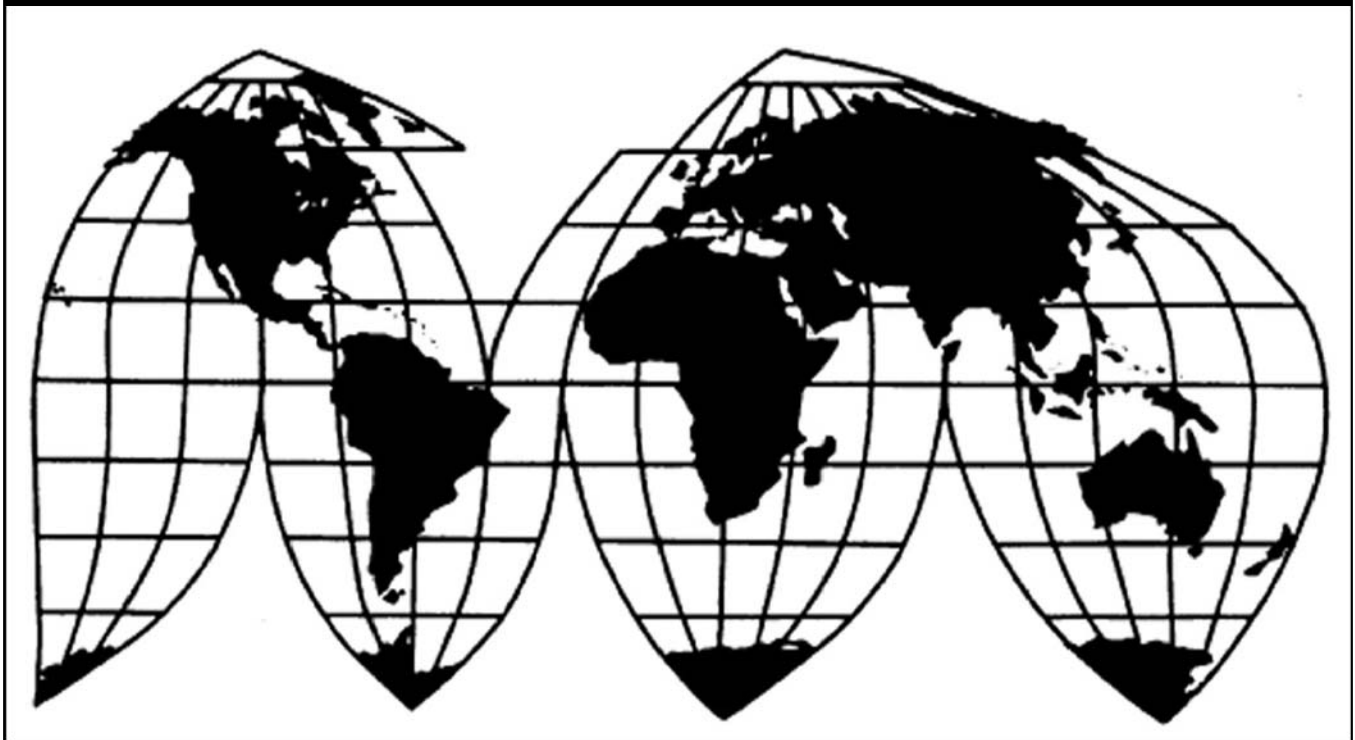
Sodium Metal from France

Investigation No. 731-TA-1135 (Final)

Publication 4045

November 2008

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1135 (Final)

SODIUM METAL FROM FRANCE

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from France of sodium metal, provided for in subheading 2805.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective October 23, 2007, following receipt of a petition filed with the Commission and Commerce by E.I. du Pont de Nemours and Co., Wilmington, DE. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of sodium metal from France 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 investigation 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 June 11, 2008 (73 FR 33115). The hearing was held in Washington, DC, on October 14, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in this final phase investigation, we find that an industry in the United States is not materially injured or threatened with material injury by reason of imports of sodium metal from France that are sold in the United States at less than fair value (“LTFV”).

I. BACKGROUND

The petition in this investigation was filed on October 23, 2007. The petitioner is E.I. du Pont de Nemours & Co. Inc. (“DuPont” or “Petitioner”).¹ Representatives from DuPont appeared at the hearing, and DuPont filed prehearing and posthearing briefs.

The sole producer of sodium metal from France, MSSA S.A., and its affiliated importers, MSSA Co. and Columbia Sales International, Inc. (collectively “MSSA” or “Respondents”), also appeared at the hearing and submitted prehearing and posthearing briefs. Various purchasers of sodium metal appeared at the hearing, including Ferro Corporation (“Ferro”), which submitted prehearing and posthearing briefs, and MEMC Pasadena, Inc. (“MEMC”), which filed a posthearing brief.²

II. DOMESTIC LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁵

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission

¹ DuPont was the sole domestic producer of sodium metal during the period of investigation and therefore accounted for all reported U.S. production of sodium metal. Confidential Staff Report (“CR”) at I-3; Public Staff Report (“PR”) at I-2 to I-3.

² Other purchasers that appeared at the hearing were Ciba Corp. (“Ciba”), Afton Chemicals Corp. (“Afton”), and Honeywell Specialty Materials (“Honeywell”). CR/PR at Appendix B-4.

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

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

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 the determination of the U.S. Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly sold at LTFV,⁹ the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Scope and Product Description

In its final determination, Commerce defined the imported merchandise within the scope of this investigation as follows:

sodium metal (Na), in any form and at any purity level. Examples of names commonly used to reference sodium metal are sodium metal, sodium, metallic sodium, and natrium.¹¹

Sodium metal is used in a wide range of applications as an intermediate product in the manufacture of chemicals and pharmaceuticals and in metal refining.¹² Sodium metal is particularly well-suited for these applications because it is a strong reducing agent. Because sodium metal is highly reactive and may combust spontaneously if it comes into contact with air or water, it is a hazardous material that is difficult and expensive to transport and store.¹³

Several important sources of demand for sodium metal have declined or disappeared entirely, although new applications are under development. Prior to the period of investigation, sodium metal’s largest end use was as a raw material in the production of tetraethyl lead and tetramethyl lead used to formulate anti-knock additives for gasoline used in automobiles. Consumption for this application was dramatically reduced with the phasing out of leaded gasoline during the 1970s and 1980s.¹⁴ In 2006, a *** purchaser of sodium metal ceased purchases when it discontinued its production of the herbicide paraquat.¹⁵ Downstream products that have been identified as potential growth areas for sodium metal

Trade 1996).

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

⁸ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

⁹ See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725 (Fed. Cir. April 25, 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

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, Inc. v. United States, 501 F.3d 1291, 1298, n.1 (Fed. Cir. 2007) (“Commerce’s [scope] finding does not control the Commission’s [like product] determination.”); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹¹ 73 Fed. Reg. 62,252 (October 20, 2008).

¹² CR at I-5; PR at I-4.

¹³ Hearing Tr. at 164-165, 167-68, 172 (Rice) and 176-77 (Love); CR at I-5 and II-4; PR at I-4 and II-2.

¹⁴ CR at I-6 n.9; PR at I-5 n.9; DuPont’s Prehearing Br. at 10-11.

¹⁵ CR at II-7 to II-8 n.24; PR at II-4 n.24.

include sodium methylate, which may be used in the production of biodiesel fuels; polysilicon wafers used in solar cells; and titanium metal used in aircraft.¹⁶

C. Analysis

Petitioner argues that, as in the preliminary phase of this investigation, the Commission should find a single domestic like product consisting of sodium metal, coextensive with Commerce's scope of investigation.¹⁷ Respondents do not oppose Petitioner's proposed domestic like product definition.

In the preliminary phase of this investigation, the Commission found "a single domestic like product consisting of sodium metal, coextensive with the scope of this investigation."¹⁸ In so doing, the Commission found that sodium metal, regardless of grade, exhibits certain general physical characteristics and uses, is generally interchangeable in end uses, is sold exclusively to end users, is produced using basically the same processes, equipment, and employees, and is generally perceived to be a single product.¹⁹

In the final phase of this investigation, no party advocates defining the domestic like product differently. No new information has been developed since the preliminary phase of the investigation to suggest that a different like product definition would be warranted. Accordingly, we find a single domestic like product, coextensive with the scope of the investigation, as in the preliminary phase.

III. DOMESTIC INDUSTRY

A. In General

Section 771(4)(A) of the Act defines the relevant industry as the domestic "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."²⁰ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

B. Analysis

Petitioner argues that, as in the preliminary phase of this investigation, the Commission should find that the domestic industry consists of all domestic producers of sodium metal.²¹ Respondents do not oppose Petitioner's proposed domestic industry definition.

In the preliminary phase of this investigation, the Commission found a single domestic industry consisting of all domestic producers of sodium metal.²² In this final phase, no party advocates defining the domestic industry differently. No new information has been presented since the preliminary phase of the investigation to suggest that a different domestic industry definition would be warranted.

¹⁶ CR at I-6; PR at I-5.

¹⁷ DuPont's Prehearing Br. at 2-3.

¹⁸ Sodium Metal from France, Inv. No. 731-TA-1135 (Preliminary), USITC Pub. 3973 (Dec. 2007) at 6.

¹⁹ Id.

²⁰ 19 U.S.C. § 1677(4)(A).

²¹ Petitioner's Prehearing Br. at 3.

²² Sodium Metal from France, Inv. No. 731-TA-1135 (Preliminary), USITC Pub. 3973 (Dec. 2007) at 6.

Accordingly, based on our finding with respect to the domestic like product, we define a single domestic industry consisting of the sole domestic producer of sodium metal, *i.e.*, DuPont.

IV. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS²³

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports subject to investigation.²⁴ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.²⁵ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”²⁶ 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.²⁷ 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.”²⁸

The statute requires the Commission to determine whether the domestic industry is “materially injured by reason of” the unfairly traded imports.²⁹ The statute, however, 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.³⁰ 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 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 must ensure that subject imports are more than a minimal or tangential cause of material injury and that there is a sufficient causal nexus between subject imports and material injury.³¹ Thus, the Commission interprets the “by reason of” language in a manner

²³ Negligibility is not an issue in this investigation under 19 U.S.C. § 1677(24). No party submitted any argument regarding the issue of negligible imports. Subject imports from France were well above three percent of total imports for the most recent 12-month period preceding the filing of the petition, October 2006 to September 2007. Specifically, subject imports from France accounted for *** percent of total imports of the merchandise in that period. CR at IV-7; PR at IV-2.

²⁴ 19 U.S.C. §§ 1671d(b) and 1673d(b).

²⁵ 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).

²⁶ 19 U.S.C. § 1677(7)(A).

²⁷ 19 U.S.C. § 1677(7)(C)(iii).

²⁸ 19 U.S.C. § 1677(7)(C)(iii).

²⁹ 19 U.S.C. § 1673d(b).

³⁰ 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] . . . [however] regardless of what approach is used, whether it be the two-step or unitary approach or some other approach, the three mandatory factors must be considered in each case”), aff’d, 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

³¹ 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 Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006), where the court stated that the “causation requirement is met so long as the effects of dumping are not merely incidental, tangential, or trivial.” See also Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“to ensure that the subject imports are causing the injury, not simply contributing to the injury in a tangential or minimal way.”); Gerald Metals,

that implements the statutory requirement of finding a causal, not merely a temporal, link between the subject imports and the material injury to the domestic industry.

In most investigations, there are other economic factors that also may be causing injury to the domestic industry. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from these sources to the subject imports, but does not require the Commission to isolate the injury caused by other factors from injury caused by unfair imports.³² The statutory scheme clearly contemplates that an industry may be facing difficulties from a variety of sources, including non-subject imports and other factors, but the existence of injury caused by other factors does not compel a negative determination if the subject imports themselves are making more than a minimal or tangential contribution to material injury.³³ The legislative history further clarifies that dumped imports need not be the “principal” cause of material injury and that the “by reason of” standard does not contemplate that injury from dumped imports be weighed against other factors, such as non-subject imports, which may be contributing to overall injury to an industry.³⁴

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

Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (“the statute requires adequate evidence 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.”); Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 2007-1552 at 10 (Fed. Cir., Sept. 18, 2008).

³² Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act (URAA), H.R. Rep. 103-316, Vol. I at 851-52 (1994) (“[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.”); 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, Slip Op. 2007-1552 at 17.

The Federal Circuit has affirmed the following principle: “[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.” Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001)(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. 701-414 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.”).

³³ See SAA at 851-52, 885.

³⁴ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47; see also Nippon Steel Corp., 345 F.3d at 1381 (“[D]umping need not be the sole or principal cause of injury.”).

“ensure[s] that it is not attributing injury from other sources to the subject imports.”³⁵ Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”³⁶ The Federal Circuit has provided guidance on the questions that it would raise and expect the Commission to have considered in its analysis “where commodity products are at issue and fairly traded, price competitive, non-subject imports are in the market.”^{37 38}

Nonetheless, the question of whether one out of several possible causes of injury exceeds the minimal or tangential threshold and is an independent cause of material injury to the domestic industry is left to the expertise of the Commission. The finding as to whether the threshold is satisfied is a factual one, subject to review under the substantial evidence standard. Congress has delegated these factual findings to the Commission because of the agency’s institutional expertise in resolving injury issues.³⁹

A. Conditions of Competition and the Business Cycle

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

1. Demand Conditions

Overall U.S. demand for sodium metal tends to follow general activity in the U.S. economy and is generally derived from demand for the intermediate products in which it is used.⁴⁰ As noted above, sodium metal has numerous industrial and commercial uses. Because it is a strong reducing agent, it is

³⁵ Mittal Steel, Slip Op. 2007-1552 at 16-17; see also id at 9 (“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.

³⁶ Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005). See also Mittal Steel, Slip Op. 2007-1552 at 20 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

³⁷ Mittal Steel, Slip Op. 2007-1552 at 13-21.

³⁸ Commissioner Pinkert does not join in this sentence. He points out that the Federal Circuit, in Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006) and Mittal Steel, held that the Commission is required, in certain circumstances, to undertake a particular kind of analysis of non-subject imports. Mittal Steel 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 1269. 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.

Slip Op. 2007-1552 at 20. Commissioner Pinkert notes that such a counterfactual analysis is unnecessary here. He determines independently of that type of analysis that the domestic industry is not materially injured by reason of the subject imports.

³⁹ Mittal Steel, Slip Op. 2007-1552 at 9-10; Nippon Steel Corp., 458 F.3d at 1350, citing United States 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.”).

⁴⁰ CR at II-17; PR at II-8.

most frequently used in refining and as an intermediate product in the manufacture of chemicals, pharmaceuticals, and metals.⁴¹

There are relatively few major purchasers of sodium metal in the U.S. market. In 2007, the largest customer, ***, accounted for almost *** percent of apparent U.S. consumption and *** percent of DuPont's total U.S. shipments.⁴² The top twelve responding purchasers accounted for 96.7 percent of reported sodium metal purchases between 2005 and the first quarter of 2008.⁴³

Demand for sodium metal in the U.S. market, as measured by apparent U.S. consumption, fluctuated over the period examined, increasing from *** pounds in 2005 to *** pounds in 2006, before falling to *** pounds in 2007, a reduction that ***, reflects the ***.⁴⁴ Apparent U.S. consumption was *** pounds in interim 2008 compared with *** in interim 2007.⁴⁵

The demand for sodium metal for some uses is shrinking, while the demand for other uses is growing. As noted above, the consumption of anti-knock additives for gasoline was dramatically reduced prior to the period examined,⁴⁶ and in 2006 Syngenta discontinued its production of paraquat.⁴⁷ Potential sources of future increases in demand include the production of biodiesel fuels, polysilicon wafers used in electronic and photovoltaic applications, and titanium metal used in aircraft.⁴⁸

The parties offered different projections of future demand in these potential growth areas. MSSA and MEMC project an increase in demand for sodium metal by certain key downstream industries, particularly ***. By contrast, DuPont claims that the sodium metal market is mature and is experiencing a long-term secular decline.⁴⁹ DuPont further argues that all projections regarding growth strategies and product development for sodium metal are speculative and that many factors will play a role in determining whether the projected growth in demand will come to fruition. DuPont estimates that future demand for sodium metal will be weak, whereas MSSA and MEMC project that demand for sodium metal in these growth areas will increase *** in the near future.⁵⁰

Although the parties offered differing demand forecasts for the market overall, company-specific projections for most major participants in the U.S. market showed *** six to 12 months. Within that time frame, DuPont reports that it anticipates ***.⁵¹ Similarly, MSSA expects its exports of sodium metal to the United States to be ***.⁵² MEMC, a major U.S. purchaser of sodium metal, projects that its demand

⁴¹ CR at I-5; PR at I-4.

⁴² Derived from CR/PR at Tables III-4 & IV-4.

⁴³ ***. CR at II-7; PR at II-4.

⁴⁴ CR/PR at Table IV-4; CR at IV-7; PR at IV-3. The parties offered different responses when reporting how U.S. demand for sodium metal changed during the period examined. DuPont reported declining demand during the period examined. However, 12 out of 23 purchasers reported that demand for sodium metal remained unchanged during the period examined, while six out of 23 purchasers reported an increase in demand, three out of 23 purchasers reported fluctuating demand, and two purchasers reported declining demand. Moreover, two importers of sodium metal reported *** in demand during the period examined. CR at II-18; PR at II-8 to II-9.

⁴⁵ CR/PR at Table C-1.

⁴⁶ CR at I-6, n.9; PR at I-5 n.9.

⁴⁷ CR at II-7 to II-8 n.24; PR at II-4 n.24.

⁴⁸ CR/PR at Table II-3; CR at I-5 to I-6; PR at I-5.

⁴⁹ Hearing Tr. at 29 (Kaplan) and 155 (Hilk).

⁵⁰ CR at II-18 to II-20; II-24 to II-25; PR at II-8 to II-9; PR at II-11 to II-12.

⁵¹ DuPont's Posthearing Brief at Exh. 1 at 23.

⁵² CR/PR at Table VII-1; CR at II-24 to II-25; PR at II-11 to II-12.

for sodium metal will ***.⁵³ Based on the *** of these major market participants, we conclude that demand for sodium metal is likely to increase substantially within the next six to 12 months.⁵⁴

2. Supply Conditions

As noted above, the sodium metal market is comprised of one U.S. producer, DuPont, one foreign producer, MSSA, and a relatively small number of purchasers.⁵⁵ The Commission received a questionnaire response from DuPont, the sole domestic producer of sodium metal during the period examined, *** supply to the U.S. market.⁵⁶ DuPont's capacity *** apparent U.S. consumption throughout this period.⁵⁷ Its production capacity remained relatively flat during the period examined, while its production decreased by *** percent between 2005 and 2007.⁵⁸ As a result, DuPont's capacity utilization decreased during the period examined.⁵⁹ Although DuPont's U.S. shipments *** between 2005 and 2007, its export shipments increased.⁶⁰

The U.S. market was also supplied by an increasing quantity of imports. Nearly all imports of sodium metal were produced by MSSA, the sole foreign producer of the subject merchandise from France.⁶¹ Nonsubject imports were very small in volume, and were produced entirely or almost entirely in China.⁶²

Both DuPont and MSSA manufacture sodium metal using the Downs cell production process.⁶³ The nature of this process requires that sodium metal plants run the Downs cells at full capacity, 24 hours a day, 7 days a week, except for brief scheduled maintenance shutdowns.⁶⁴ Once placed in operation, a cell cannot be stopped for more than a few hours or it will be ruined.⁶⁵ Furthermore, once placed in operation, a cell's production level cannot be adjusted incrementally for changes in demand.⁶⁶ The cell is either on or off, producing at full capacity or not at all.⁶⁷ Once a sodium metal producer puts a Downs cell into operation, the cell will likely stay in operation for ***.⁶⁸

⁵³ CR at II-24; PR at II-11. Other purchasers projected *** fluctuations in amounts purchased. CR at II-24 to II-25; PR at II-11 to II-12.

⁵⁴ No party projected declines in other demand segments that would offset these projected increases in demand for sodium metal.

⁵⁵ Imports of sodium metal from nonsubject sources were low throughout the period examined, accounting for less than *** percent of total subject imports in all years. CR at II-17; PR at II-8.

⁵⁶ CR/PR at Table C-1.

⁵⁷ CR/PR at Table C-1.

⁵⁸ DuPont's capacity was approximately *** pounds from 2005 to 2007 and was approximately *** pounds in both interim 2007 and interim 2008. DuPont's production fell from *** pounds in 2005 to *** pounds in 2007 and was *** pounds in both interim 2007 and interim 2008. CR/PR at Table C-1.

⁵⁹ DuPont's capacity utilization dropped from *** percent in 2005 to *** percent in 2006 and *** percent in 2007. DuPont's capacity utilization was *** percent in interim 2008 compared to *** percent in interim 2007. CR/PR at Table C-1.

⁶⁰ CR/PR at Table C-1.

⁶¹ CR/PR at Table IV-2.

⁶² CR at II-17; PR at II-8; CR/PR at Table IV-2.

⁶³ CR at I-7; PR at I-5.

⁶⁴ DuPont's Prehearing Br. at 6-7.

⁶⁵ DuPont's Prehearing Br. at 6-7.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ DuPont's Prehearing Br. at 6.

Given the nature of the Downs cell production process and the need to operate equipment continuously, both DuPont and MSSA favor signing their major bulk purchasers to long-term contracts. *** of U.S. sales of sodium metal during the period examined were based on long-term contracts.⁶⁹ In 2007, *** percent of DuPont’s U.S. shipments of domestically-produced sodium metal were accounted for by only *** long-term contracts, while *** percent of subject imports were accounted for by another *** long-term contracts.⁷⁰ DuPont’s long-term contract with *** accounted for almost *** of DuPont’s total U.S. shipments from January 2005 through June 2008.⁷¹

These long-term contracts vary considerably. In terms of length, they range from ***.⁷² Although most of such contracts are volume-based “requirements” contracts, they differ considerably in terms of the share of the customer’s needs to be supplied under the contract, ranging from *** to *** percent.⁷³ In some long-term contracts, the price is fixed for the duration of the contract, but in other contracts the price may vary depending on the volume purchased, by year, and by method of delivery. A contract may also include price escalator or hardship clauses⁷⁴ that allow for additional variations in price under the contract. Some long-term contracts use tiered pricing in which one price applies to initial purchases up to a certain volume, but other prices apply to specified additional volumes.⁷⁵ They may also include meet-or-release clauses, most-favored customer clauses, evergreen clauses, and cleanout provisions.^{76 77} Because the contracts have so many variables, it is difficult to compare the pricing and terms of different contracts or even to compare a single purchaser’s contracts with different suppliers.

The Commission asked the parties to supply information regarding competition and bids submitted for major contracts for the purchase or sale of sodium metal. During the period of investigation, *** purchased solely from DuPont pursuant to a contract entered into prior to the period examined.⁷⁸ According to ***,⁷⁹ ***, DuPont’s ***, also purchased virtually all of its requirements from DuPont. In fact, ***.⁸⁰ With respect to the remaining purchasers, DuPont and MSSA did not, in most reported instances, submit contemporaneous bids and did not always compete for the same portion of a purchaser’s business.⁸¹

⁶⁹ CR/PR at Table V-1.

⁷⁰ CR/PR at Table V-1.

⁷¹ CR/PR at Tables III-3 & III-4.

⁷² CR/PR at Table V-1.

⁷³ CR/PR at Tables V-2 & V-3.

⁷⁴ Hardship clauses specify that either party may give the other party notice that it is experiencing a material hardship such as *** and “are designed as mechanisms to recover unforeseen cost increases, unforeseen changes in operations and a vast myriad of things” and are resolved through “significant negotiation.” Hearing Tr. at 116-117 (Hilk); see also, ***.

⁷⁵ CR/PR at Tables V-2 & V-3.

⁷⁶ CR/PR at Tables V-2 & V-3.

⁷⁷ A meet-or-release clause specifies that the supplier must meet a competitive bid from another supplier or be allowed to be released from the contract. See, e.g., ***. A most-favored customer clause can specify that a seller will not ***. An evergreen clause, also called an extension clause, specifies that a contract will remain in effect past the contract’s end date unless one of the parties notifies the other of its intention to terminate the contract. See, e.g., Hearing Tr. at 124 (Merrill), ***. A cleanout provision consists of a payment from the supplier to a customer to give financial assistance in the cleaning of the customer’s sodium metal storage tank and/or pipeline. See, e.g., Hearing Tr. at 78 (Merrill) and 178 (Love), and ***.

⁷⁸ CR/PR at Table V-5.

⁷⁹ CR at II-34 n.106; PR at II-18 n.106. According to ***, MSSA ***. CR at II-34; PR at II-18.

⁸⁰ CR/PR at Table V-5.

⁸¹ CR/PR at Table V-5.

3. Interchangeability and Other Non-Price Factors

Sodium metal is sold in a variety of forms, not all of which are interchangeable. All of DuPont's sodium metal is sold in bulk form, while MSSA's exports to the United States include sodium metal in large bulk containers and smaller fused drums, as well as ingots, sticks, and doses in drums, which are offered in a number of configurations, weights, and lengths.⁸² For purchasers requiring small quantities, ingots, sticks, and doses are the only feasible form in which they can purchase sodium metal.⁸³ Nevertheless, most domestic and subject sodium metal is sold in bulk form.⁸⁴ Approximately *** percent of MSSA's total U.S. shipments during January 2005 through June 2008 consisted of ingots, sticks, or doses.⁸⁵

Sodium metal is also sold according to producer-specific grades. These grades vary in terms of their maximum and average calcium content, measured in parts per million (ppm). DuPont produces three grades of sodium metal in the United States: Technical (400 ppm maximum and *** ppm average calcium content); Niapure (400 ppm/*** ppm); and Niapure Select (200 ppm/*** ppm).⁸⁶ MSSA (France) exports four quality levels of sodium metal to the United States: Technical (S+) (400 ppm/*** ppm); SoPure (200 ppm/*** ppm); Refined (R) (10 ppm/*** ppm); and Extra Refined (R) (10 ppm/*** ppm) products.^{87 88}

The record establishes that impurities, including but not limited to calcium, pose a major concern for many sodium metal customers. Although these impurities generally have no adverse effects on the end products made using sodium metal, they can negatively affect product handling by creating a sludge that accumulates and hardens, thus clogging pipelines. This sludge can also build up in customers' storage tanks and railcars, necessitating costly and potentially dangerous removal operations, sometimes requiring that personnel employ jackhammers while breathing from a supplied air source.⁸⁹ In the case of one major sodium metal purchaser, MEMC, the presence of halides (bromine and chloride) is a special concern. MEMC reports that the presence of halides in excess of a certain threshold interferes with its production of solar and semiconductor products.⁹⁰

The parties dispute the extent to which differences in quality limit interchangeability between the domestic and subject sodium metal. In general, DuPont maintains that there are no quality distinctions between its product and the subject product and that purchasers that switched to subject imports did so on

⁸² CR/PR at Table II-1.

⁸³ CR at II-6; PR at II-3.

⁸⁴ CR/PR at Table II-2.

⁸⁵ CR/PR at Table II-2. DuPont imports ingots, sticks, and doses from China for sale in the United States. CR at II-30 to II-31; PR at II-15.

⁸⁶ These specifications are based on certificates of quality and show the maximum level of calcium for each grade level. The technical grade sodium metal involves only primary filtration, whereas the other two grades of sodium metal involve primary and secondary filtrations. CR/PR at II-1 & II-2.

⁸⁷ CR/PR at II-1 & II-2.

⁸⁸ DuPont primarily shipped *** of U.S.-produced sodium metal in the U.S. market during January 2005-June 2008 (*** percent of its total U.S. shipments). CR/PR at Table III-5. MSSA, however, shipped *** bulk sodium metal during that time period (*** percent of its total U.S. shipments). Most of the increase in MSSA's U.S. shipments during January 2005-June 2008 was accounted for by ***. CR/PR at Table IV-3.

⁸⁹ Hearing Tr. at 183 (Sloane); CR at II-37; CR at V-37; CR at V-47. In the case of Ciba, its calcium-related problems relate not to storage or pipelines, but rather its production process, which is highly sensitive to impurities. Ciba must purchase sodium metal containing less than 10 parts per million calcium, which is available only from MSSA. Hearing Tr. at 189 (Johnson).

⁹⁰ Hearing Tr. at 170-171 (Rice).

the basis of price, not quality.⁹¹ According to DuPont, all sodium metal with a maximum calcium content of 200 ppm or higher is completely interchangeable.⁹² For its part, MSSA asserts that its product is significantly lower in impurities and causes fewer problems for purchasers. Some purchasers reported no quality-related problems with the DuPont product, while others reported that they had significant problems with the DuPont product and that their experience with MSSA's product was substantially better.⁹³

DuPont maintains that any sludge accumulation problems that some purchasers experienced were ***.⁹⁴ ***.⁹⁵ DuPont also noted that, after delivery, customers often perform an operation in which they apply a nitrogen bath to the sodium metal to prevent contact with the air.⁹⁶ DuPont suggested that purchasers, while performing that operation, may have utilized low quality nitrogen that contained residual moisture or oxygen.⁹⁷ DuPont also disputes that impurities are necessarily the cause of the sludge, noting that the content of the accumulation is mostly sodium metal (85 percent), that sludge accumulation is therefore inevitable with sodium metal, and that customers that cleaned out their tanks when they switched to MSSA's product may not have used it long enough to experience sludge accumulation.⁹⁸

MSSA argues that its S+ and SoPure grades of sodium metal are superior in quality to DuPont's products.⁹⁹ MSSA asserts that calcium levels above 200 ppm can cause severe problems for purchasers as the calcium residue settles out of the sodium metal.¹⁰⁰ It contends that customers prefer sodium metal with less calcium and are willing to pay a price premium for it, because calcium deposits can plug pipelines and build up in storage tanks and railcars, requiring expensive and dangerous operations to remove the calcium sludge.¹⁰¹ MSSA further claims that ***.¹⁰²

MSSA suggests three other reasons why its technical grade and SoPure grade create less calcium buildup than DuPont's products with the same maximum allowable calcium content (DuPont's technical grade and Niapure Select grade, respectively). First, ***.¹⁰³ Second, ***.¹⁰⁴ According to MSSA, ***.¹⁰⁵ Third, ***.¹⁰⁶

⁹¹ CR at II-29; PR at II-14.

⁹² Hearing Tr. at 201-202 (Malashevich); DuPont's Prehearing Br. (App. D at 2) ("all forms and grades of sodium metal in which the technical sales specifications are at or above 200 ppm calcium are completely interchangeable with each other").

⁹³ CR at II-28 to II-31; PR at II-14 to II-15.

⁹⁴ CR at II-3; PR at II-2.

⁹⁵ CR at II-4; PR at II-2.

⁹⁶ ***.

⁹⁷ Hearing Tr. at 47-48 (Fetzer); See Hearing Tr. at 176 (Love) and 219 (Rice) (on use of nitrogen).

⁹⁸ Hearing Tr. at 315-316 (Fetzer).

⁹⁹ CR at II-2 to II-3; PR at II-2.

¹⁰⁰ MSSA Prehearing Br. at 16.

¹⁰¹ MSSA Prehearing Br. at 16.

¹⁰² CR at II-3; PR at II-2.

¹⁰³ CR/PR at II-2.

¹⁰⁴ CR at II-3; PR at II-2.

¹⁰⁵ CR at II-3; PR at II-2.

¹⁰⁶ CR at II-3; PR at II-2.

Purchasers supplied extensive commentary on the relative performance of the DuPont and MSSA products. Although *** did not complain about the presence of impurities in DuPont's product,¹⁰⁷ many other customers did. Customers that complained about sludge buildup and related difficulties while using DuPont's product were ***.¹⁰⁸ At the hearing, representatives of Afton, Ciba, Ferro, Honeywell, and MEMC testified that sodium metal supplied to them by DuPont caused safety, storage, and/or process problems that they did not encounter with sodium metal from MSSA.¹⁰⁹ For example, MEMC reported that sludge buildup problems with DuPont's sodium metal forced MEMC to ***.¹¹⁰ MEMC indicated that it also incurred considerable expenses in assuring the safe disposal of the hazardous sludge.¹¹¹ In addition to problems with sludge, MEMC reported that the halide content of DuPont's product had adverse consequences with respect to its production of solar and semiconductor products.^{112 113} MEMC also reported that DuPont's sodium metal failed to meet MEMC's bromine and chloride requirements, even after MEMC relaxed the specification in order to accommodate DuPont. MEMC indicated that as a result of DuPont's high halide content, MEMC ***.¹¹⁴ Representatives from Afton, Ciba, MEMC, Honeywell, and Ferro testified that they did not encounter any of the cost, storage, safety or other problems with MSSA's sodium metal that they had previously encountered with DuPont's sodium metal before switching suppliers.¹¹⁵

Additional information on quality issues was reported via purchaser questionnaire responses. Five of 10 responding bulk U.S. purchasers reported that the domestic like product and subject imports were "never" or only "sometimes" interchangeable.¹¹⁶ Eleven of 26 U.S. purchasers also reported that DuPont's sodium metal "rarely or never" met minimum quality specifications.¹¹⁷ By contrast, virtually all U.S. purchasers reported that MSSA's sodium metal "always" met minimum quality specifications,

¹⁰⁷ In its questionnaire response, *** did not identify any problems with DuPont's sodium metal production, noting that its "****." CR/PR at Table II-7.

¹⁰⁸ ***.

¹⁰⁹ Hearing Tr. at 165-170 (Rice), 174-179 (Love), 181-184 (Sloane), 186-188 (Winters), and 190-191 (Johnson) (DuPont product failed Ciba's production trials).

¹¹⁰ MEMC Posthearing Response to Questions from Commissioners at Q-5 to Q-8.

¹¹¹ Hearing Tr. at 166 (Rice).

¹¹² At the hearing, Doug Rice of MEMC testified as follows about DuPont's failure to meet MEMC's halide requirements for sodium metal: "Although MSSA provides sodium with 20 ppm halide content, we relaxed this specification to 35 for DuPont, to be able to qualify to MEMC. We remain concerned about the capability for them to produce at 20, so there was a relaxation of the specification for DuPont. With our most current supply from DuPont, for improved quality product, to support our ISO 9001 certification requirement, DuPont missed its target delivery date by months. And even then, its sodium metal had a halide content of 50 parts per million, 15 ppm higher than we were able to allow for our qualification requirements." Hearing Tr. at 171.

¹¹³ MEMC's Posthearing Br. at Exh. 1, 4, and 10c.

¹¹⁴ MEMC Posthearing Resp. to Questions from Commissioners at Q-3.

¹¹⁵ CR at II-29; Hearing Tr. at 165-170 (Rice), 174-179 (Love), 181-184 (Sloane), 186-188 (Winters), and 190-191 (Johnson); ***.

¹¹⁶ CR/PR at Table II-9. Out of 17 total responding U.S. purchasers, 7 reported that the domestic like product and subject imports were "always" interchangeable, 3 reported that the domestic like product and subject imports were "frequently" interchangeable, 4 reported that the domestic like product and subject imports were "sometimes" interchangeable, and 3 reported that the domestic like product and subject imports were "never" interchangeable. CR/PR at Table II-8.

¹¹⁷ Out of 26 responding purchasers, DuPont was able to meet minimum quality specifications "always" for 10 purchasers, "usually" for 4 purchasers, "sometimes" for 1 purchaser, and "rarely or never" for 11 purchasers. CR at II-40; PR at II-20.

and none reported that MSSA's sodium metal "rarely or never" met minimum quality specifications.¹¹⁸ Further, more than half of the responding U.S. purchasers reported that DuPont's sodium metal was inferior to MSSA's product in terms of "quality exceeding industry standards."¹¹⁹

Purchasers were asked to list the three top factors they considered when deciding from whom to purchase sodium metal.¹²⁰ The consideration most frequently identified as the most important factor was quality (20 of 39 responses).¹²¹ Quality was also the consideration most often identified as the second-most important factor (13 of 39 responses).¹²² By contrast, price was seldom listed as the most important factor (4 responses), or second-most important factor (5 responses), although it was the consideration most commonly identified as the third-most important factor (16 of 44 responses).¹²³ Among bulk U.S. purchasers of sodium metal, price was ranked as the most important factor by ***,¹²⁴ Availability and product form/grade were ranked third and fourth most frequently by most purchasers as one of the three most important factors in purchasing decisions, and both were reported as the most important factor more frequently than price.^{125 126} Furthermore, avoidance of calcium buildup/clogging was considered "very important" by 9 of the 11 largest purchasers.¹²⁷

Some purchasers reported choosing their sodium metal supplier for logistical reasons. ***,¹²⁸ ***,¹²⁹ In addition, ***,¹³⁰

The desire to secure a second source of supply also influenced some purchasing decisions. For example, *** reported buying *** percent of its sodium metal from DuPont and the remaining *** percent from MSSA, not because of price, but because it desired a second source of sodium metal.¹³¹ At the hearing, representatives of Afton, Ciba, Honeywell, and MEMC noted their desire to purchase from a

¹¹⁸ Out of 29 responding purchasers, MSSA was able to meet minimum quality specifications "always" for 27 purchasers and "usually" for 2 purchasers. CR at II-40; PR at II-20.

¹¹⁹ Out of 19 responding purchasers, 11 purchasers reported that the domestic like product was "inferior" to subject imports in terms of whether quality exceeds industry standards, 7 purchasers reported that the domestic like product and subject imports were "comparable" in terms of whether quality exceeds industry standards, and 1 purchaser reported that the domestic like product was "superior" to subject imports in terms of whether quality exceeds industry standards. CR/PR at Table II-11.

¹²⁰ CR at II-30; PR at II-20.

¹²¹ CR/PR at Table II-4.

¹²² CR/PR at Table II-4.

¹²³ CR/PR at Table II-4.

¹²⁴ CR at II-31; PR at II-15.

¹²⁵ CR/PR at Table II-4.

¹²⁶ DuPont argues that since 5 of 34 responding purchasers reported that they did not or would not pay a price premium for a higher grade of sodium metal, price plays a more critical role in purchasers' decision making process than quality. CR at II-35; Hearing Tr. at 66-67 (Kaplan). At the hearing, however, representatives of Afton, MSSA, Ferro, and MEMC disputed DuPont's contention, clarifying that although they would not pay a higher price for a higher grade of sodium metal, they would pay more for higher quality. Hearing Tr. at 277-279 (Kennis, Love, Rice, and Sloane).

¹²⁷ CR/PR at Table II-6.

¹²⁸ CR at V-40; PR at V-13.

¹²⁹ CR at V-41; PR at V-13.

¹³⁰ ***. CR at II-34 n.106; PR at II-18 n.106.

¹³¹ CR/PR at Table V-5; CR at II-30; PR at II-15.

second source and that they have taken measures to mitigate against supply disruptions caused by single sourcing.¹³²

Other customers stated that they switched to MSSA because of concerns about competition with DuPont in the downstream market. *** reported that they would purchase sodium metal from MSSA because they did not want to rely on DuPont, given that they competed with DuPont in their downstream markets.¹³³

Finally, other purchasers reported that they bought from MSSA because they require sodium metal in ingot or brick form. DuPont does not produce these forms of sodium metal in the United States and therefore does not compete with MSSA in this sector of the market with U.S.-produced material.¹³⁴ Sodium metal in the form of ingots, sticks, and doses accounted for approximately *** percent by weight of U.S. shipments of the subject imports.¹³⁵

Accordingly, for most sodium metal customers, quality, logistics, safety, and other non-price factors were paramount considerations in their purchasing decisions. Although price was rated an important factor by some purchasers, non-price factors tend to be determinative. In the few instances where domestic sodium metal directly competed with subject merchandise, purchasers selected the subject imports for non-price reasons.

B. Volume of the Subject Imports

Section 771(7)(C) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹³⁶

The volume of subject imports increased from 2005 to 2007, both in absolute terms and relative to consumption and production in the United States. The volume of subject imports measured by quantity increased irregularly during the period examined, increasing from *** pounds in 2005 to *** pounds in 2006, then falling to *** pounds in 2007.^{137 138 139} The market share of subject imports by volume increased from *** percent in 2005 to *** percent in 2006 and *** percent in 2007.¹⁴⁰ Meanwhile, DuPont’s market share by volume fell from *** percent in 2005 to *** percent in 2006 and *** percent in 2007.¹⁴¹

¹³² Hearing Tr. at 212-213 and 233 (Rice), 215 and 264-265 (Johnson), 282-284 (Johnson, Rice, Sloane, and Winters), and 286 (Doobay).

¹³³ CR at II-30; PR at II-15.

¹³⁴ CR at II-6; PR at II-3. DuPont imports sodium metal in ingot form from China. CR at II-6 to II-7; PR at II-3. More than half of responding purchasers reported that sodium metal from China “rarely” or “never” satisfied minimum quality specifications. CR at II-40; PR at II-20.

¹³⁵ CR/PR at Table II-2.

¹³⁶ 19 U.S.C. § 1677(7)(C)(i).

¹³⁷ The volume of subject imports measured by quantity was *** pounds in interim 2008 compared with *** pounds in interim 2007. CR/PR at Table IV-2.

¹³⁸ Subject imports measured by value increased from *** in 2005 to *** in 2006 and *** in 2007. They were *** in interim 2008 compared with *** in interim 2007. CR/PR at Table IV-5.

¹³⁹ The volume of subject imports measured by quantity of U.S. shipments of imports during the period examined increased from *** million pounds in 2005 to *** million pounds in 2006 and *** million pounds in 2007. CR/PR at Table IV-4.

¹⁴⁰ The market share of subject imports by volume was *** percent in interim 2008 compared with *** percent in interim 2007. CR/PR at Table IV-5.

¹⁴¹ DuPont’s market share was *** percent in interim 2008 compared with *** percent in interim 2007. CR/PR at Table IV-5.

In examining the significance of the volume of subject imports, we note that, although subject imports increased by *** pounds from 2005 to 2007 and took market share from the domestic industry, these trends were unrelated to the pricing of subject imports from France, as discussed in the following section. *** of subject imports, and the increase in subject imports over the period examined, were accounted for by MSSA's ***.¹⁴² Another share of subject imports consisted of ingots, sticks, and doses, which DuPont does not produce in the United States.¹⁴³ Moreover, DuPont's declining market share was significantly affected by the closure in 2006 of *** customer, Syngenta, and decreased shipments during 2006-07 to its largest customer, ***. These changes resulted in a decrease in DuPont's shipments and a decline in overall consumption;¹⁴⁴ this lost volume, however, was not related to subject imports.

In addition, the decline in DuPont's shipments was partly related to a shift in purchasing by MEMC. From 2005 to 2007, MEMC's purchases of sodium metal from DuPont declined by ***; however, as noted earlier, MEMC reported that DuPont's sodium metal caused quality problems, such as sludge buildup, which caused MEMC to ***. Moreover, MEMC reported that it purchased sodium metal from MSSA for logistical reasons, as it is able to receive sodium metal from MSSA via pipeline.¹⁴⁵ As discussed in greater detail below, MEMC ***. We find based on this evidence that the increase in the quantity of subject imports that is attributable to MEMC was due to non-price reasons.

For the foregoing reasons, we conclude that the volume of subject imports and the increases in that volume were significant in absolute terms and relative to consumption and production in the United States. For the reasons discussed below, however, the increase in subject imports and subject import market share was not related to the price at which such imports were sold.

C. Price Effects of the Subject Imports

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

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁴⁶

In conducting our analysis of price effects, we must first determine the data upon which to rely. Our general practice is to examine quarterly weighted-average prices reported by domestic producers and importers in order to evaluate the frequency of underselling and to discern price trends during the period examined. Occasionally, however, we have examined competitive bids submitted by domestic producers and importers, usually where a large share of sales in the market are pursuant to a relatively small number

¹⁴² CR/PR at Tables IV-3, IV-8, and V-7; Hearing Tr. at 313-14 (Merrill).

¹⁴³ CR/PR at Table II-2.

¹⁴⁴ Thus, given the decline in consumption from 2006 to 2007, the *** increase in the shipments of subject imports during the same period resulted in a larger increase in market share for subject imports.

¹⁴⁵ MEMC reported that "MEMC cannot...support its operations without the MSSA pipeline....We simply cannot supply sufficient quantity of sodium using the railcar unloading system with DuPont's product." Hearing Tr. at 160 (Rice).

¹⁴⁶ 19 U.S.C. § 1677(7)(C)(ii).

of long term contracts.¹⁴⁷ As explained below, the parties disagree as to the most probative data set in the current investigation.

DuPont contends that the Commission should rely upon bid data rather than quarterly pricing data for analyzing price effects. According to DuPont, the aggregated quarterly pricing data do not accurately reflect head-to-head price competition for customers between DuPont and MSSA.¹⁴⁸ DuPont emphasizes that the U.S. sodium metal market consists of just two suppliers (DuPont and MSSA) that sell to a handful of large bulk purchasers pursuant to long-term contracts. DuPont claims that, under these conditions, the bid data offer the most accurate assessment of price competition.

Alternatively, DuPont argues that, if the Commission decides to evaluate quarterly pricing data, it should remove purchases made by *** from the data because, according to DuPont, ***.¹⁴⁹

MSSA and Ferro oppose DuPont's request to remove purchases by *** from the quarterly pricing data. They argue that these purchases should not be removed because *** during the period examined.¹⁵⁰ In addition, they contend that the Commission should rely upon quarterly price comparisons between subject imports and the domestic like product, not bid data for selected customers. They argue that because sodium metal prices change over time based on market conditions, even within the framework of a single contract, the most reliable way to capture contemporaneous price competition between DuPont and MSSA is by examining the quarterly pricing data. They emphasize that the Commission traditionally relies upon quarterly pricing data in analyzing price effects and that there is no reason to depart from that standard methodology in this investigation.

The Commission typically relies upon quarterly pricing data in analyzing price effects, and we do not find any compelling reason to depart from our normal procedure in this investigation. The quarterly pricing data capture sales to all customers in the U.S. market for sodium metal during the period examined for the defined pricing products.¹⁵¹ They also account for price changes that may have gone into effect under the terms of long-term contracts during the period examined (i.e., price changes under escalator clauses, hardship clauses, meet-or-release clauses, and the like). Moreover, the quarterly pricing data use weighted-average prices, a methodology which has been endorsed by our reviewing court.¹⁵²

We do not find DuPont's arguments to remove purchases by *** from the quarterly pricing data to be persuasive. As noted above, DuPont's long-term contract with *** accounted for almost *** of DuPont's U.S. shipments during the period examined.¹⁵³ Accordingly, the removal of *** from the quarterly pricing data would eliminate *** of the domestic industry's sales during the period examined. This would leave the Commission with a limited and unrepresentative sample of sales on which to base its underselling analysis. Moreover, for purposes of methodological consistency, if we remove *** from the quarterly pricing data, we should also remove other sodium metal purchasers that ***. Under the statute, the Commission's task is to examine the effect of subject imports on the domestic industry "as a whole." Disregarding *** of the domestic industry's sales would not achieve this objective.

We do agree with DuPont, however, that it may also be useful to examine bid data. Bid data are arguably helpful in discerning price effects in a market like the U.S. sodium metal market, where there are just two main suppliers and in which a relatively small number of bulk purchasers have agreed *** to

¹⁴⁷ See e.g., Vector Supercomputers from Japan, Inv. No. 731-TA-750 (Final), USITC Pub. 3062 at 18-19 (October 1997); Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA-736 & 737 (Final), USITC Pub. 2988 at 29-30 (Aug. 1996).

¹⁴⁸ DuPont's Prehearing Br. at 18-19.

¹⁴⁹ DuPont's Prehearing Br. at 26 n.12 and at 39; DuPont's Producer Questionnaire Response at Question II-10; and DuPont's Posthearing Br. at 5 (quoting testimony of Hilk of DuPont).

¹⁵⁰ DuPont's Prehearing Br. at 26 n.12.

¹⁵¹ In this investigation, the two pricing products accounted for *** of U.S. shipments by DuPont and MSSA.

¹⁵² See, e.g., Nippon Steel Corp. v. United States, 19 CIT 450, 466 (1995).

¹⁵³ CR/PR at Table III-4.

overlapping long-term contracts. Since contracts vary with regard to terms and length, it is useful to examine the contracts on a purchaser-by-purchaser basis. At the same time, however, it is important to note certain limitations on the probative value of the bid data available in this investigation. While bids may be indicative of underselling if there are competing bids made at the same time for a single contract,¹⁵⁴ the record in this investigation reflects that most bids submitted by DuPont and MSSA to the various purchasers were not contemporaneous and were not made on the same contract volume. Moreover, the price that is bid to obtain a long-term contract is little more than a “snapshot” of the beginning price. As discussed above, the price may – and usually does – change over the term of the contract. In addition, the comparability of competing bids can be greatly affected by the other terms offered by the suppliers, some of which are difficult to measure.

Given the considerations described above, we rely on quarterly weighted-average prices, while also examining the bid data in our pricing analysis.¹⁵⁵

The Commission received quarterly pricing data from the sole domestic producer, DuPont, and one responding U.S. importer of sodium metal from France, MSSA. Pricing data reported by responding firms accounted for *** percent of DuPont’s U.S. commercial shipments of U.S.-produced sodium metal measured by quantity and *** percent of U.S. commercial shipments of sodium metal produced in France measured by quantity.¹⁵⁶ Using the Commission’s standard quarterly pricing analysis incorporating sales to all U.S. purchasers, the aggregated quarterly pricing data for all U.S. sales reported by both DuPont and MSSA show overselling by subject imports in the vast majority of quarters.¹⁵⁷ On a U.S. f.o.b. selling price basis, subject imports oversold the domestic like product in 29 out of 32 quarters, with average margins of overselling ranging from 8.7 percent to 14.7 percent.¹⁵⁸ On a U.S. delivered price basis, subject imports oversold the domestic like product in 27 out of 32 quarters, with average margins of overselling ranging from 3.7 percent to 11.2 percent.¹⁵⁹ Accordingly, the quarterly pricing data do not show that subject imports undersold the domestic like product to a significant degree.

We next consider the bid data on a purchaser-by-purchaser basis.

***. ***. MSSA submitted bids to ***.¹⁶⁰ ***.¹⁶¹ Further, MSSA did not submit any formal bids to *** during the period of investigation; *** did report that *** offered to sell sodium metal in ***. However, *** did not purchase material from MSSA and continued its ***. Accordingly, we find that there is no evidence in the record of price competition by MSSA for sales to ***.

Syngenta. Syngenta was ***.¹⁶² ***.¹⁶³ As noted above, Syngenta ceased operations in 2006.

¹⁵⁴ Compare, Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA-736 & 737 (Final), USITC Pub. 2988 at 30 (Aug. 1996) (finding significant adverse price effects due to “head-to-head price competition” between domestic and foreign producers offering competing bids on the same individual contracts).

¹⁵⁵ Although Vice Chairman Pearson joins his colleagues in examining the bid data in order to determine whether subject imports undersold the domestic like product, he bases his determination primarily on an analysis of quarterly weighted average prices.

¹⁵⁶ CR at V-22; PR at V-8.

¹⁵⁷ If *** were removed from the quarterly pricing data, it would ***. For the comparisons of DuPont’s product 1 and MSSA’s product 1, there would be ***. For DuPont’s product 1 compared with MSSA’s product 2, there would be ***. CR at V-22 n.38; PR at V-8 n.38.

¹⁵⁸ CR/PR at Table V-9.

¹⁵⁹ CR/PR at Table V-9.

¹⁶⁰ CR/PR at Table V-5.

¹⁶¹ CR at II-34 & n.106; PR at II-18 n.106.

¹⁶² CR/PR at Table V-5.

¹⁶³ CR/PR at Table V-5.

***. The record does not establish that MSSA *** DuPont in competition for sales to *** during the period examined. ***.¹⁶⁴ Prior to the period examined, ***.¹⁶⁵ While ***¹⁶⁶ the change was not motivated by price, but because ***.¹⁶⁷ In fact, ***.¹⁶⁸ ***.¹⁶⁹

MEMC. ***.¹⁷⁰ ***.¹⁷¹ ***.¹⁷² ***. At the hearing, Doug Rice of MEMC testified that after experiencing these quality and safety problems with DuPont’s sodium metal, MEMC began looking for another supplier and eventually decided to switch to MSSA for nearly all of its supply needs.¹⁷³ ***.¹⁷⁴

***.¹⁷⁵ ***.¹⁷⁶ ***.¹⁷⁷ ***.¹⁷⁸ In the end, ***.¹⁷⁹ Accordingly, even when ***.¹⁸⁰ ¹⁸¹

Ferro. Ferro began purchasing *** after DuPont was unable to meet Ferro’s sodium metal requested delivery schedule reportedly due to a shortage of delivery trucks.¹⁸² In addition, Ferro indicates that it switched to MSSA because it had experienced sludge buildup in storage tanks and pipelines from DuPont’s sodium metal, making it necessary, among other things, to replace one of its storage tanks and shut down half of its plant for 13 days in March 2008.¹⁸³ In apparent acknowledgment that there was a problem with the sodium metal it sold to Ferro, DuPont agreed to pay a portion of the costs – \$*** – for cleaning Ferro’s tanks in order to remedy the sludge buildup.¹⁸⁴ DuPont also offered to replace one of

¹⁶⁴ CR/PR at Table V-5.

¹⁶⁵ ***. CR/PR at Table II-3.

¹⁶⁶ CR/PR at Table V-5.

¹⁶⁷ CR/PR at Table V-5; CR at II-30; PR at II-15.

¹⁶⁸ CR at V-8 to V-9 n.22; PR at V-5 n.22.

¹⁶⁹ ***. CR/PR at Table V-10 & n.5.

¹⁷⁰ MEMC summarizes these incidents in a timeline as an exhibit to its posthearing brief. See MEMC’s Posthearing Br. at Exhibit A (timeline of incidents).

¹⁷¹ MEMC’s Posthearing Br. at Exhibit A.

¹⁷² Hearing Tr. at 170-172 (Rice).

¹⁷³ Hearing Tr. at 170-174 (Rice).

¹⁷⁴ Hearing Tr. at 167-68 (Rice). ***. MEMC Posthearing Br. at Exh. 4.

¹⁷⁵ CR at II-38; PR at II-19.

¹⁷⁶ CR at II-38; PR at II-19.

¹⁷⁷ CR/PR at Table V-5 n.3.

¹⁷⁸ CR/PR at Table V-5 n.3.

¹⁷⁹ CR/PR at Table V-5; MSSA’s Posthearing Br. at Exhibits 4, 5, and 8..

¹⁸⁰ CR/PR at Table V-5; MSSA’s Posthearing Br. at Exhibits 4, 5, and 8. At the hearing, MEMC’s representative indicated that MEMC’s main concern was quality when it rejected DuPont’s lower bid. Specifically, MEMC’s representative testified as follows: “Price is a tertiary factor. In fact, MEMC has rejected price offers from DuPont that are lower than MSSA’s prices. And MSSA has refused to accept immediate release requirement spurred by a lower DuPont quote to MEMC.” Hearing Tr. at 172-173.

¹⁸¹ DuPont argues that MEMC instead switched for its supply of sodium metal for reasons of price. See e.g., DuPont’s Posthearing Br. at 8-9 and Exh. 1 at 25-26. While MEMC certainly attempted to negotiate favorable prices, extensive record evidence persuades us that MEMC shifted suppliers on the basis of differences in quality.

¹⁸² Ferro Posthearing Br. Ex. 1 at 4; Hearing Tr. at 174 (Love). ***. CR/PR at Table V-10 n.3.

¹⁸³ Hearing Tr. at 175-176 (Love).

¹⁸⁴ Hearing Tr. at 176-178 (Love); CR/PR at Table V-5.

Ferro's storage tanks.¹⁸⁵ The problems Ferro experienced with DuPont's sodium metal caused it to switch to MSSA for reasons other than price.^{186 187}

In sum, because of consistent overselling in the quarterly price data and a lack of clear evidence of underbidding in the bid data,¹⁸⁸ we find that the price data on the record do not support a finding of significant underselling by the subject imports.

We have also considered movements in quarterly prices for sodium metal over the period examined. For Product 1 (DuPont's technical grade sodium metal), the f.o.b. prices fluctuated without a clear trend for the period.¹⁸⁹ For Product 2 (Niapure grade sodium metal), although the domestic f.o.b. price fluctuated in a general downward trend between 2005 and 2006, it steadily increased during the last four quarters of the period examined and was *** percent higher in the last quarter of the period examined than in the first quarter.¹⁹⁰ Given that Product 1 accounted for over *** percent of DuPont's total U.S. shipments during the period examined, we place little weight on prices for Product 2 in our analysis of price trends.¹⁹¹ The lack of clear evidence that domestic prices declined during the period examined precludes a finding that subject imports have depressed prices for domestically produced sodium metal to a significant degree.

Regarding possible price suppression by reason of the subject imports, the domestic industry's cost of goods sold ("COGS") as a share of net sales increased steadily throughout the period examined, from *** percent in 2005 to *** percent in 2006 and *** percent in 2007.¹⁹² It was *** percent in interim 2008 compared to *** percent in interim 2007.¹⁹³ Although it appears from this information that DuPont was unable to raise its prices to cover increasing costs, we find that that failure was not due in any significant degree to the pricing of subject imports. DuPont's cost-price squeeze during the period examined was primarily attributable to declining production rather than to rising raw material costs, as DuPont was forced to spread fixed costs over fewer units sold. The decline in production resulted from declining demand and other factors that were unrelated to the price of subject imports.

In 2007 and again in the first quarter of 2008, DuPont lost sales volumes to ***.¹⁹⁴ As noted above, ***. Moreover, Syngenta, DuPont's ***, stopped purchasing from DuPont in 2006 when it closed its Texas facility and ceased production of the herbicide paraquat.¹⁹⁵ As is also discussed above, MEMC and Ferro switched suppliers for quality and safety reasons that were unrelated to the pricing of MSSA's subject merchandise. In addition, DuPont's long-term contracts substantially inhibited its ability to raise prices in the short term. With declining demand, as in the last full year of the period examined, DuPont could not raise prices to its customers in order to offset production declines. Because the evidence in the

¹⁸⁵ Hearing Tr. at 178 (Love).

¹⁸⁶ Hearing Tr. at 178 (Love).

¹⁸⁷ As in the case of MEMC, DuPont argues that Ferro switched suppliers on the basis of price. See e.g., DuPont's Posthearing Br., Exh. 1 at 36-39. Based on the evidence above, which was generally consistent with the reports of various other purchasers, we credit Ferro's explanation that its decision to switch suppliers was driven by quality-based considerations.

¹⁸⁸ We do note that one purchaser, ***. CR at II-7. Accordingly, we do not find the evidence with respect to *** motivations to be typical of other purchasers, especially given the weight of the purchaser questionnaire responses and hearing testimony from other purchasers that quality, safety, and cost issues were the predominant factors behind switching sodium metal suppliers.

¹⁸⁹ CR/PR at Table V-6.

¹⁹⁰ CR/PR at Table V-6.

¹⁹¹ CR/PR at Table II-2.

¹⁹² CR/PR at Table C-1.

¹⁹³ CR/PR at Table C-1.

¹⁹⁴ ***. CR/PR at Table II-3 & n.4.

¹⁹⁵ CR at II-8; PR at II-4.

record demonstrates that the domestic industry's cost-price squeeze was unrelated to the pricing of subject imports, we find that subject imports have not suppressed prices for domestically produced sodium metal to a significant degree.

For the above reasons, we find that subject imports did not have significant price-depressing or price-suppressing effects on domestic prices during the period examined.

D. Impact of the Subject Imports on the Domestic Industry¹⁹⁶

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹⁹⁷ 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."¹⁹⁸

We have examined the performance indicators in the trade and financial data for the domestic industry producing sodium metal, *i.e.*, DuPont. These data indicate *** declines for most of the period examined, with some improvement in interim 2008 compared with interim 2007. DuPont's capacity remained essentially flat throughout the period examined.¹⁹⁹ Its production,²⁰⁰ capacity utilization,²⁰¹ shipments,²⁰² and sales revenue²⁰³ all declined *** from 2005 to 2007, although they all improved *** when the interim periods are compared.²⁰⁴

¹⁹⁶ In its final determination, Commerce calculated a weighted-average dumping margin of 66.64 percent for subject imports from France. *Notice of Final Determination of Sales at Less than Fair Value and Negative Critical Circumstances*, 73 Fed. Reg. 62252 (October 20, 2008).

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

¹⁹⁸ 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).

¹⁹⁹ DuPont's production capacity increased from *** pounds in 2005 to *** pounds in 2006 and 2007. DuPont's production capacity was *** pounds in both interim 2007 and interim 2008. CR/PR at Table C-1.

²⁰⁰ DuPont's production fell from *** pounds in 2005 to *** pounds in 2006, then dropped to *** pounds in 2007. DuPont's production was *** pounds in the first half of 2008 compared to *** million pounds in the first half of 2007. CR/PR at Table C-1.

²⁰¹ DuPont's capacity utilization fell from *** percent in 2005 to *** percent in 2006 and *** percent in 2007. It was *** percent in the first half of 2008 compared to *** percent in the first half of 2007. CR/PR at Table C-1.

²⁰² U.S. shipments fell from *** pounds in 2005 to *** pounds in 2006 and *** million pounds in 2007. They were *** pounds in the first half of 2008 compared with *** pounds in the first half of 2007. CR/PR at Table C-1.

²⁰³ U.S. net sales revenue fell from *** in 2005 to *** in 2006 and *** million in 2007. U.S. net sales revenue was *** in the first half of 2008 compared with *** in the first half of 2007. CR/PR at Table C-1.

²⁰⁴ CR/PR at Table C-1.

DuPont's average number of production related workers,²⁰⁵ hours worked,²⁰⁶ and wages paid²⁰⁷ all declined during the period examined. Its productivity appears to have increased ***,²⁰⁸ but its capital expenditures fell during the period examined.²⁰⁹

DuPont's financial indicators declined irregularly over the period examined. DuPont experienced *** throughout the period examined.²¹⁰ DuPont's ratio of operating income to net sales followed a similar negative trend.²¹¹ DuPont's net sales (by quantity and by value) also declined between 2005 and 2007.²¹²

Although DuPont's financial performance generally deteriorated during the period examined, we find that this trend was not linked to the subject imports. As discussed above, subject imports did not have any significant adverse price effects during the period examined, and DuPont lost business to MSSA largely for non-price reasons. When it entered into the ***,²¹³ Once DuPont lost contracts with its other major customers for non-price reasons (e.g., ***), DuPont was *** on its remaining sales in the United States, which are largely to ***. As noted above, DuPont's unit COGS increased throughout the period examined.²¹⁴ Despite these increasing costs and DuPont invoking the hardship clause, DuPont was unable to obtain a commensurate price increase for sales to *** due to its unprofitable long-term contract with that customer.²¹⁵ Consequently, DuPont's financial condition deteriorated.

From 2005 to 2007, DuPont's U.S. shipments declined by *** pounds.²¹⁶ Although DuPont's sales to *** declined by more than *** pounds between 2005 and 2007 due to declining demand,²¹⁷ DuPont was able to offset these declining shipments to *** to a degree by increasing its sales volumes to *** and other customers.²¹⁸ *** the decline in DuPont's shipments – *** – is attributable to Syngenta, which stopped purchasing sodium metal in 2006 altogether when it exited the market for reasons which had nothing to do with subject imports.²¹⁹ Of the remaining decline ***,²²⁰ As discussed above, ***

²⁰⁵ The number of workers employed by the domestic industry fell from *** in 2005 to *** in 2006 and *** in 2007. The number of workers employed by the domestic industry was *** in the first half of 2008 compared with *** in the first half of 2007. CR/PR at Table III-8.

²⁰⁶ The number of PRW hours worked fell from *** in 2005 to *** in 2006 and *** in 2007, and was *** in interim 2008 compared with *** in interim 2007. CR/PR at Table III-8.

²⁰⁷ Wages paid by the industry declined from \$*** in 2005 to \$*** in 2006 and *** in 2007. Wages paid by the industry were \$*** in the first half of 2008 compared with \$*** in the first half of 2008. CR/PR at Table III-8.

²⁰⁸ Productivity increased from *** pounds produced per hour in 2005 to *** pounds produced per hour in 2006, then fell to *** pounds produced per hour in 2007. Productivity was *** pounds produced per hour in interim 2008 compared with *** pounds produced per hour in interim 2007. CR/PR at Table III-8.

²⁰⁹ The industry's capital expenditures declined from \$*** in 2005 to \$*** in 2006 and *** in 2007, and were \$*** in interim 2008 compared with \$*** in interim 2007. CR/PR at Table VI-4.

²¹⁰ The domestic industry's *** were *** in 2005, *** in 2006, and *** in 2007. The domestic industry's *** were *** in interim 2007 and *** in interim 2008. CR/PR at Table C-1.

²¹¹ The domestic industry's ratio of *** to net sales was *** percent in 2005, *** percent in 2006, *** percent in 2007, *** percent in interim 2007, and *** percent in interim 2008. CR/PR at Table C-1.

²¹² CR/PR at Table C-1.

²¹³ DuPont's Posthearing Br. at 5; Hearing Tr. at 40 (Hilk).

²¹⁴ CR/PR at Table C-1.

²¹⁵ During the period of investigation, DuPont's contract price to *** changed *** because of the hardship clause, raising prices over \$*** per pound. CR/PR at Table V-10.

²¹⁶ CR/PR at Table III-3.

²¹⁷ ***. CR/PR at Table II-3 & n.4.

²¹⁸ CR/PR at Table III-4.

²¹⁹ CR/PR at Table II-3.

²²⁰ CR/PR at Table II-3.

switched suppliers for quality, safety, and logistical reasons, which were unrelated to the pricing of subject imports from France. Because DuPont's negative production trends and financial performance were due to the factors described above and was unrelated to the pricing of subject imports, we find that subject imports did not have a significant adverse impact on the domestic industry.

V. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States 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."²²¹ The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."²²² In making our determination, we have considered all factors that are relevant to

²²¹ 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

²²² 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

this investigation.²²³ For the reasons discussed below, we determine that the domestic industry is not threatened with material injury by reason of subject imports from France.

MSSA projects *** exports to the United States in 2008 and 2009.²²⁴ These exports, however, are projected to be mainly ***. As discussed above, *** switched from DuPont to MSSA for quality, safety, and logistical reasons. Meanwhile, Interstate purchases sodium metal from MSSA because it does not want to rely on DuPont as its supplier of sodium metal given that it competes with DuPont in the downstream market for sodium methylate.²²⁵ Thus, any increase in subject imports in the imminent future would likely be unrelated to the price at which such imports are offered. Moreover, because customers in the U.S. sodium metal market are almost exclusively under long-term contracts ranging from *** to *** years, the potential for an imminent significant increase in sales of the subject imports in the United States is limited.²²⁶

²²³ 19 U.S.C. § 1677(7)(F). The Commission must consider, in addition to other relevant economic factors, the following statutory factors in its threat analysis:

(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 subtitle 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 1671d(b)(1) or 1673d(b)(1) of this title with respect to either the raw agricultural product or the processed agricultural product (but not both),

(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).

Moreover, the Commission shall consider the threat factors “as a whole” in making its determination “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur” unless an order issues. In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.

We find that factors (I) and (VII) are inapplicable in this investigation because no countervailable subsidies are involved and there are no raw agricultural products under investigation.

²²⁴ MSSA’s exports to the United States are projected to ***. CR at VII-5; PR at VII-3.

²²⁵ Hearing Tr. at 196.

²²⁶ Furthermore, we note that MSSA’s capacity utilization rates ranged from *** percent to *** percent during the period examined; MSSA’s capacity utilization rates are projected to *** percent in 2008 and *** percent in 2009. CR/PR at Table VII-1.

In addition, U.S. demand for sodium metal is projected to increase due to increased U.S. demand for ***,²²⁷ As noted above, ***, and *** have projected significantly growing demand for sodium metal.²²⁸ Accordingly, some of the projected increase in subject import volumes is likely to be absorbed by rising future demand. Thus, the projected future increase in subject import volume is not likely to take existing sales of customers from the domestic industry in the imminent future.

We also find that any limited additional volume of subject imports from France is not likely to have a significant depressing or suppressing effect on domestic prices and that such subject imports will not enter the U.S. market at prices that are likely to increase demand for further imports. As explained above, subject imports oversold the domestic product extensively during the period examined, and MSSA did not underbid DuPont for sales to most major U.S. customers. Moreover, even when competing with domestic product, the subject imports were selected for non-price reasons. Accordingly, we have found that subject imports have not depressed or suppressed domestic prices to a significant degree. There is nothing in the record to suggest that this will change in the imminent future.

The domestic industry showed signs of vulnerability during the period examined given its declining financial performance. Nevertheless, given that demand for sodium metal will likely increase, that any increase in the volume of subject imports would likely be unrelated to the price at which that merchandise is offered, the absence of any potential for product shifting,²²⁹ the lack of evidence of significant price effects from subject imports during the period examined or likely effects in the imminent future, and the small inventories of the subject merchandise,²³⁰ we find that material injury by reason of subject imports will not occur absent issuance of an antidumping duty order against subject imports from France. We therefore conclude that the domestic sodium metal industry is not threatened with material injury by reason of imports from France.

CONCLUSION

For the reasons stated above, we find that the domestic industry producing sodium metal is not materially injured or threatened with material injury by reason of subject imports from France that are sold in the United States at less than fair value.

²²⁷ CR at VII-5; PR at VII-3.

²²⁸ MSSA Posthearing Br. at 14-15; MEMC Posthearing Br. at 2.

²²⁹ MSSA reported ***. This limits MSSA's ability to switch from manufacturing other products to manufacturing sodium metal. CR at II-16; PR at II-7.

²³⁰ MSSA's inventories were *** throughout the period examined, ranging from a period low of *** pounds in *** to a period high of *** pounds in ***. As a ratio to imports, MSSA's inventories were just *** percent in interim 2008. CR/PR at Table VII-2. Accordingly, MSSA's inventories are unlikely to be a source of significant increases in subject imports.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by E.I. du Pont de Nemours and Company (“DuPont”), Wilmington, DE, on October 23, 2007, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of less-than-fair-value (“LTFV”) imports of sodium metal¹ from France. Information relating to the background of the investigation is provided below.²

Effective date	Action
October 23, 2007	Petition filed with Commerce and the Commission; institution of the Commission’s investigation (72 FR 61374, October 30, 2007)
November 20, 2007	Commerce’s notice of initiation (72 FR 65295)
March 19, 2008	Commission’s preliminary determination (73 FR 15777, March 25, 2008)
May 28, 2008	Commerce’s preliminary determination and postponement of Commerce’s final determination (73 FR 30605); scheduling of final phase of the Commission’s investigation (73 FR 33115, June 11, 2008)
September 4, 2008	Revised scheduling of final phase of the Commission’s investigation (73 FR 52887, September 11, 2008)
October 14, 2008	Commission’s hearing ¹
October 20, 2008	Commerce’s final determination (73 FR 62252)
November 13, 2008	Date of the Commission’s vote
November 24, 2008	Commission’s determination transmitted to Commerce
¹ A list of witnesses appearing at the hearing is presented in app. B.	

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

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

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

¹ See the section entitled “The Subject Merchandise” in *Part I* of this report for a complete description of the merchandise subject to this investigation.

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

determination regarding whether there is material injury by reason of imports.

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

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

...

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

...

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

...

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

Organization of the Report

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

U.S. MARKET SUMMARY

Sodium metal is used in a wide range of applications generally as an intermediate product in the manufacture of chemicals and pharmaceuticals, as well as in metal refining. The sole U.S. producer of

sodium metal is DuPont, while the leading producer of sodium metal outside the United States is Métaux Spéciaux (“MSSA”) of France. The *** U.S. importers of sodium metal from France are MSSA and Columbia Sales International, Inc. (“Columbia Sales”), while the *** importers of sodium metal from nonsubject countries (primarily China) include DuPont.

Apparent U.S. consumption of sodium metal was *** pounds (\$***) in 2007. Currently, only one firm, DuPont, is known to produce sodium metal in the United States. The U.S. producer’s U.S. shipments of sodium metal totaled *** pounds (\$***) in 2007, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from France totaled *** pounds (\$***) in 2007 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from nonsubject sources totaled *** pounds (\$***) in 2007 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

SUMMARY DATA AND DATA SOURCES

A summary of data collected in the investigation is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on the questionnaire response of DuPont that accounted for all U.S. production of sodium metal during the period January 2005-June 2008. U.S. imports are based on responses to the Commission’s U.S. importers’ questionnaires. Data regarding sodium metal from other countries are based on public sources, where available.

PREVIOUS AND RELATED INVESTIGATIONS

The only other investigation by the Commission to include sodium metal was a survey of the aluminum, magnesium, calcium, barium, sodium, and potassium industries in 1921.³

NATURE AND EXTENT OF SALES AT LTFV

On October 20, 2008, Commerce published a notice in the *Federal Register* of its final determination of sales at LTFV with respect to imports from France.⁴ Table I-1 presents Commerce’s dumping margins with respect to imports of sodium metal from France.

Table I-1
Sodium metal: Commerce’s final weighted-average LTFV margins with respect to imports from France

Manufacturer/exporter	Final weighted-average margin (percent)
MSSA S.A.S.	66.64
All others	66.64
Source: <i>Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances</i> , 73 FR 62252, October 20, 2008.	

³ *Aluminum, Magnesium, Calcium, Barium, Sodium, and Potassium: Ores, Metals, and Manufactures*, United States Tariff Commission, Tariff Information Surveys on the Articles in Paragraph 143 of the Tariff Act of 1913 and Related Articles In Other Paragraphs, 1921, C-16.

⁴ *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances*, 73 FR 62252, October 20, 2008.

THE SUBJECT MERCHANDISE

Commerce’s Scope

Commerce has defined the scope of this investigation as: *Sodium metal (Na), in any form and at any purity level. Examples of names commonly used to reference sodium metal are sodium metal, sodium, metallic sodium, and natrium. The American Chemical Society Chemical Abstract Service (“CAS”) has assigned the name “Sodium” to sodium metal. The CAS registry number is 7440–23–5.*⁵

Tariff Treatment

Sodium metal is classifiable in the Harmonized Tariff Schedule of the United States (“HTS”) under subheading 2805.11.00. Table I-2 presents current tariff rates for sodium metal.

Table I-2
Sodium metal: Tariff rates, 2008

HTS provision	Article description	General ¹	Special ²	Column 2 ³
		Rates (percent ad valorem)		
2805	Alkali or alkaline-earth metals; rare-earth metals, scandium and yttrium, whether or not intermixed or interalloyed; mercury:			
2805.11.00	Alkali or alkaline-earth metals: Sodium	5.3%	(⁴)	25%
¹ Normal trade relations, formerly known as the most-favored-nation duty rate; imports from France are dutiable at this rate. ² Special rates are not applicable when the General rate is free. ³ Applies to imports from a small number of countries that do not enjoy normal trade relations duty status. ⁴ General note 3(c)(i) defines the special duty program symbols enumerated for this provision. No such program applies to products of France.				
Source: Harmonized Tariff Schedule of the United States (2008).				

THE PRODUCT

Description and Applications

Sodium metal (Na) is a silver-white metal, which is soft and malleable. It has a melting point of 97.6°C and density of 0.97 g/cm³ at 20°C. Sodium metal readily reacts with oxygen in air, losing its luster and becoming dull gray due to the formation of a sodium oxide coating. It also reacts rapidly with water, including ambient moisture in air. If it is protected from exposure to oxygen and moisture, sodium metal has an unlimited storage life.⁶

Sodium metal is used in a wide range of applications as an input in the production of chemicals and pharmaceuticals and in metal refining. Sodium metal is used in the manufacture of chemicals because it is a strong reducing agent.⁷ The major chemicals produced with sodium metal are sodium borohydride, sodium azide, sodium methylate, sodium tertbutoxide, agricultural chemicals (herbicides

⁵ Ibid.

⁶ Petition, pp. 3-4.

⁷ A reducing agent is an electron donor. When reacted with another atom or molecule, the reducing agent, e.g., sodium, may, if the conditions are right, donate electrons to that atom or molecule. After the reaction, the reacting sodium atom loses an electron to become an ion with a charge of +1. The atom or molecule that has reacted with the sodium atom will have gained an electron to become chemically changed.

and insecticides),⁸ dyes such as synthetic indigo, nylon synthetic fibers, rubber compounds, and flavors and fragrances.⁹ Sodium metal is also used to produce pharmaceutical products such as barbiturates, vitamins A and C, ibuprofen, and sulfa methoxizane. In metal manufacturing, sodium metal is used as a reducing agent to produce pure metals such as titanium, tantalum, hafnium, and zirconium. Other metal industry uses include silicon manufacturing; refining metallic lead, silver, and zinc; alloying metals; and steel de-scaling via sodium hydride. Finally, sodium metal is useful as a scavenging agent in smelting processes.¹⁰

Three downstream products of sodium metal are of special interest due to the potential for strong growth in the future. Sodium methylate is a catalyst used by some companies in the production of biodiesel fuel, which will likely see increased production due to state and federal mandates for biofuel usage. Second, polysilicon wafers used in solar cells may benefit from government supports for alternative energy; however, not all production processes for manufacturing polysilicon wafers use sodium metal. Lastly, titanium metal, primarily used in aircraft manufacturing, could be made in a less expensive manner via a new production process that uses sodium metal.¹¹

Manufacturing Processes

Sodium metal is produced by the electrolysis of molten sodium chloride (NaCl) in an apparatus known as a Downs cell (figure I-1).¹² Both DuPont and MSSA have stated that the production process for manufacturing sodium metal from Downs cells in the United States and France is essentially the same.¹³ The Downs cell consists of a large steel tank lined with a refractory material containing one or more carbon anodes, each surrounded by a cathode. The small gap between the cathode and anode is filled with a molten sodium chloride (NaCl) mixture, which includes calcium chloride (CaCl₂) and barium chloride (BaCl₂) to lower the melting point of sodium chloride. When an electrical current is applied across the gap, the sodium chloride breaks down into sodium metal, which collects at the cathode, and chlorine gas (Cl₂), which collects at the anode. A fine metal mesh between the cathode and anode prevents the sodium and chlorine from reacting again to form sodium chloride. The chlorine gas bubbles up through the molten salt and is collected in the chlorine dome at the top center of the vessel. The chlorine gas is liquified to be used in another process or sold to another chemical producer. The sodium metal, which is less dense than the molten salts, floats up from the cathodes into a collector, then up a riser and into a holding container. Sodium metal produced by this method is about 99.8 percent pure.¹⁴

⁸ One example of a herbicide that, until recently, was produced in the United States from sodium metal is Paraquat. Transcript of the Commission's November 13, 2007 conference in the preliminary phase of the investigation ("conference transcript"), pp. 82-83 (Hilk); Paraquat Information Center located at <http://www.paraquat.com/>; retrieved on November 27, 2007.

⁹ Prior to the phasing out of leaded gasoline from the U.S. market, the largest end use for sodium metal was in the production of the gasoline additives tetraethyl lead and tetramethyl lead. Mannsville Chemical Products Corp., *Chemical Products Synopsis*, May 1999.

¹⁰ Petition, pp. 3-5. ***. While there are designs for a Generation IV sodium-cooled fast reactor (SFR) that would use sodium metal, none are scheduled to be built in the United States in the foreseeable future. <http://www.eia.doe.gov/cneaf/nuclear/page/analysis/nucenviss2.html>, retrieved on July 21, 2008.

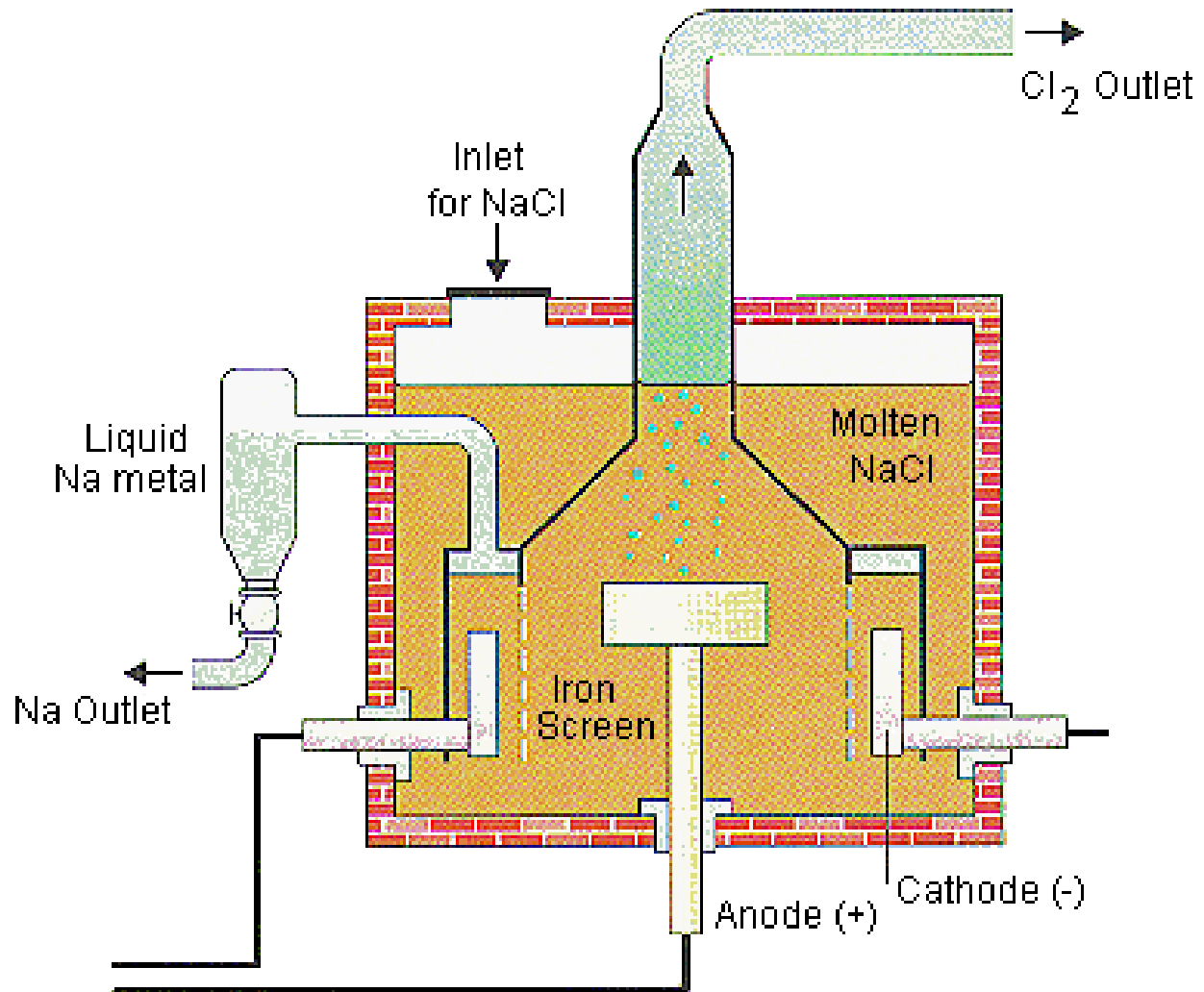
¹¹ ***; Conference transcript, pp. 94-96 (Bourrier).

¹² Petition, exh. I-2.

¹³ Petitioner's postconference brief, p. 7; Conference transcript, p. 142 (Bourrier); *Antisubsidy Complaint, Sodium Metal from USA*, non-confidential version, June 9, 2008, p. 10.

¹⁴ Petition, p. 4.

Figure I-1
Sodium metal: Downs cell schematic



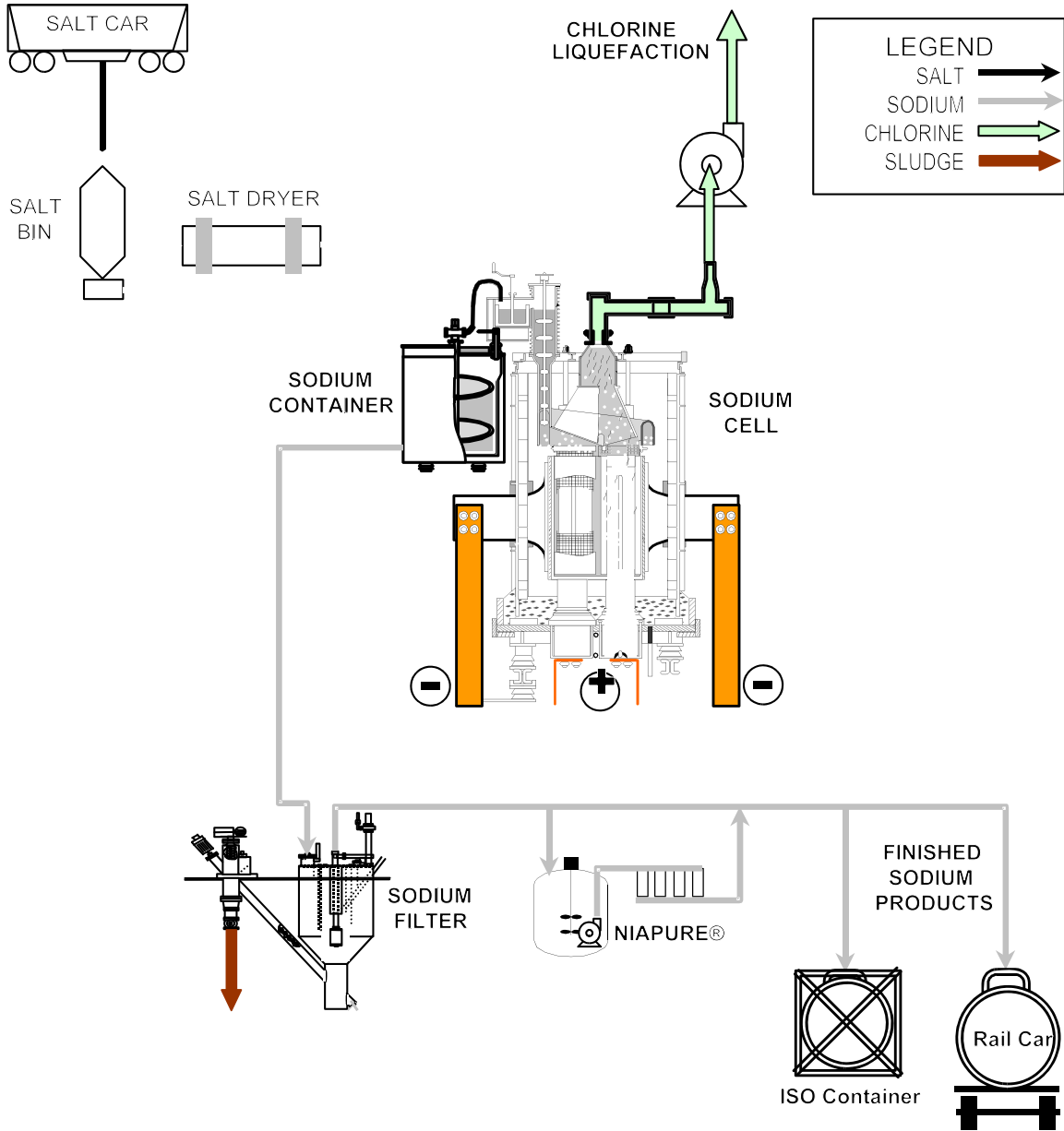
Source: Purdue University, <http://chemed.chem.purdue.edu/genchem/topicreview/bp/ch20/faraday.php>.

*** (figure I-2), ***.¹⁵

When the holding container is full, the sodium metal is taken to a filtration unit where it is cooled to approximately *** and undergoes a primary filtration ***. Filtration at this temperature results in a calcium concentration of about *** ppm, yielding a commercially viable product, which is sold as technical grade. For higher purity, DuPont ***. This grade of sodium metal, sold by DuPont as Niapure, has a calcium concentration of approximately *** ppm. For even higher level of purity, DuPont ***, leaving sodium metal containing no more than *** ppm calcium. DuPont markets this grade as Niapure

¹⁵ ***.

Figure I-2
Sodium metal: DuPont's production flow chart



Source: DuPont.

Select.¹⁶ MSSA reported that ***.¹⁷ These results of these *** are discussed in greater detail in *Part II* of this report.

Although DuPont *** high-grade sodium metal containing no more than 10 ppm calcium, it ***.¹⁸ MSSA (France) *** produce such very low calcium sodium metal, as discussed in greater detail in *Part II* of this report.

Following filtration, the molten sodium metal is transferred to various containers for shipping such as an iso-container, a tank railcar, or a fused drum. The molten sodium metal can be poured into molds to form ingots or rods that can be packaged into drums.¹⁹ The railcars and iso-containers consist of an inner and an outer shell with heat transfer coils between the shells. When molten sodium metal is added to the railcar or iso-container for bulk delivery, cooling water is passed through the heat transfer coils to cool the sodium metal below its freezing point.²⁰ Since sodium metal reacts readily with oxygen or water vapor in air, the dead space at the top of the railcar or iso-container is filled with inert nitrogen gas. When the railcar is received by the customer, piping is attached to circulate a heated oil through the coils of the railcar or iso-container to heat the sodium above its melting point, typically to a temperature of around 135°C. The molten sodium metal is then pumped out of the railcar or iso-container into either a storage container or directly into a process. To again prevent the reaction of oxygen or water vapor with the sodium metal, the customer blankets the sodium metal in the storage tank or railcar with nitrogen gas. Once the container is emptied, the customer returns it to the sodium metal manufacturer.

The average Downs cell will produce sodium metal and chlorine continuously for *** days, although DuPont reported that it does have some Downs cells that have run for up to ***. Downs cells run continuously and are only occasionally shut down for a *** maintenance period. The primary task during this shutdown is the replacement of the wire mesh that separates the cathode and anode. DuPont reported that Downs cells can be shut down for around *** and can be restarted without any problems. If the Downs cells are without electricity between ***, there is a risk that the salt bath, which is kept molten by the electric current, will begin to solidify to a point that it cannot be remelted to continue operation. If it is shut down longer than ***, the Downs cell becomes inoperable and has to be dismantled and rebuilt.²¹

***.²²

¹⁶ Staff field trip report, DuPont, July 14, 2008.

¹⁷ MSSA also reported that it cleaned its tanks on a regular basis, specifically its storage tanks every year and its iso-containers less than every five years. Hearing transcript, p. 194 (Chaminant).

¹⁸ Staff telephone interview with ***, November 27, 2007.

¹⁹ Petition, p. 15. Ingots generally have a rectangular, square, or trapezoidal cross-section, and weigh between 500 grams and 7 kilograms. Rods, also known as sticks, generally have a circular cross section and weigh 12 to 500 grams. Rods can be further manufactured into doses, which are primarily used by aluminum foundries. Doses weigh between 25 and 100 grams and are wrapped in aluminum foil, which avoids the need for special handling. *Antisubsidy Complaint, Sodium Metal from USA*, non-confidential version, June 9, 2008, p. 12.

²⁰ For safety reasons, the U.S. Department of Transportation requires that sodium metal be shipped as a solid. ***.

²¹ Staff field trip report, DuPont, July 14, 2008. DuPont reported that re-manufacturing and re-assembling parts from an old Downs cell to build a new Downs cell can take ***. DuPont's supplemental response to the U.S. producer's questionnaire, August 28, 2008. MSSA stated that a Downs cell in operation cannot be stopped for more than *** without severe damage, which actually kills the Downs cell. In addition, MSSA reported that building up a new Downs cell requires ***. MSSA's foreign producer questionnaire response.

²² Staff field trip report, DuPont, July 14, 2008.

The production of sodium metal is highly capital-intensive.²³ Plants typically have one or more backups for essential equipment, such as salt feed systems and rectifiers.²⁴ Backup equipment is necessary because the electrolytic cells can become inoperable if they are shut down for even a short period of time. According to DuPont, sodium metal production, in terms of the number of production workers needed, is ***. The movement of sodium metal containers by forklift and the need for routine sampling of the salt bath among other duties require ***.²⁵ The primary energy usage in the plant is the large amount of electrical energy needed for the electrolysis of sodium chloride.²⁶

DOMESTIC LIKE PRODUCT ISSUES

No issues with respect to domestic like product have been raised in this investigation. In the preliminary phase of the investigation, the Commission defined a single domestic like product consisting of sodium metal, coextensive with the scope of the investigation.²⁷ The petitioner had contended that the Commission should find one domestic like product, coextensive with the scope of the investigation.²⁸ Respondents noted that they were not challenging the petitioner's proposed definition of the domestic like product for purposes of the preliminary phase of the investigation.²⁹ Respondents did not address or challenge the petitioner's proposed definition in the final phase of the investigation.

²³ Conference transcript, p. 15 (Hilk); Hearing transcript, p. 273 (Gastinne).

²⁴ ***. Staff field trip report, DuPont, July 14, 2008.

²⁵ Staff field trip report, DuPont, July 14, 2008.

²⁶ MSSA estimated that it requires roughly 10,000 kWh per ton. *Antisubsidy Complaint, Sodium Metal from USA*, non-confidential version, June 9, 2008, p. 4.

²⁷ *Sodium Metal From France, Investigation No. 731-TA-1135 (Preliminary)*, USITC Publication 3973, December 2007, p. 6.

²⁸ Petitioner's postconference brief, p. 3.

²⁹ Conference transcript, p. 128 (Silverman).

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

MARKET CHARACTERISTICS

Channels of Distribution

The sole U.S. producer of sodium metal, DuPont, and U.S. importers of sodium metal from France and China shipped their sodium metal almost exclusively to U.S. end users during January 2005-June 2008. DuPont uses some of its U.S.-produced sodium metal ***,¹ and *** reported selling *** to distributors. Several small purchasers noted that they had distributed sodium metal; however, these were relatively small purchasers that subdivide the metal into extremely small portions (e.g., 5-gram bottles) for sales to entities such as schools.

Product Grade/Quality Levels

DuPont produces three grades of sodium metal in the United States, and MSSA (France) exports to the United States four quality levels of sodium metal. All of DuPont's sodium metal is sold in bulk form, but MSSA's exports include bulk sodium metal in large bulk containers and smaller fused drums, as well as ingots, sticks, and doses in drums, which are offered in a number of configurations, weights, and lengths. The different grades/qualities of sodium metal produced by DuPont and exported from France to the United States by MSSA during January 2005-June 2008 are shown in table II-1.

Table II-1

Sodium metal: Grade names and specifications of domestic and subject products

DuPont		MSSA (France)	
Name	Specification ¹	Name	Specification ¹
Technical	99.89% pure; 400 ppm Ca ²	Technical (S+)	99.8% pure; 400 ppm Ca ³
Niapure	99.89% pure; 400 ppm Ca ⁴	SoPure	99.8% pure; 200 ppm Ca ⁵
Niapure Select	99.91 % pure; 200 ppm Ca ⁶	Refined (R)	99.9% pure; 10 ppm Ca ⁷
		Extra Refined (R)	99.98% pure; 10 ppm Ca ⁷

¹ These specifications are based on certificates of quality and show the maximum level of calcium for each grade/quality level. The technical grade/quality of sodium metal involves only primary filtration, whereas the other grades/qualities of sodium metal involve primary and secondary filtrations.

² The maximum and average calcium levels for DuPont's technical grade are 400 and ***.

³ The maximum and average measured calcium levels for MSSA's S+ grade are ***.

⁴ The maximum and average calcium levels for DuPont's Niapure grade are 400 and ***.

⁵ The maximum and average measured calcium levels for MSSA's SoPure grade are ***.

⁶ The maximum and average calcium levels for DuPont's Niapure Select grade are 200 and ***.

⁷ The maximum and average measured calcium levels for MSSA's Refined/Extra Refined grades are ***.

Source: Documents supplied by DuPont and MSSA.

As seen in table II-1, DuPont's technical and Niapure grades of sodium metal and MSSA's technical (S+) grade of sodium metal from France contain similar levels of calcium, while DuPont's Niapure Select grade of sodium metal and MSSA's SoPure quality of sodium metal from France contain

¹ Petitioner's postconference brief, exh. 1, p. 14. DuPont used approximately *** percent of its U.S.-produced sodium metal to produce *** during January 2004-September 2007.

similar levels of calcium.² DuPont asserted that the grades of sodium metal with a maximum of 400 ppm calcium (as shown in the tabulation--both DuPont's and MSSA's technical grades/quality and DuPont's Niapure grade) are high enough quality for almost every application.³ On the other hand, respondents asserted that both the technical (S+) and SoPure grades of sodium metal imported from France, with a maximum calcium content of 400 and 200 ppm, respectively, offer many important advantages over DuPont's products.⁴ MSSA (France) asserted the following explanation for, and the advantages of, its technical (S+) quality of sodium metal, as compared with DuPont's technical grade sodium metal.⁵

***.⁶ ***."

MSSA (France) also gave the following explanation for its asserted advantages of its SoPure quality of sodium metal over the DuPont Niapure Select grade (both with a maximum of 200 ppm calcium).⁷

***."

***.⁸

***.^{9 10} DuPont has "worked with them {customers} to identify either poor quality nitrogen supply that goes into their system, or they may be getting contamination from their own downstream products that come back and create reaction products in their storage tank."¹¹ DuPont asserts that the sludge which accumulates is mostly (85 percent) sodium metal, and that the physical properties of sodium metal make it difficult to handle.¹² Any grade of sodium metal is at least 990,000 ppm sodium. As such, a lower calcium content may make customers think the sodium metal with a lower calcium content from MSSA is a better product, but the sodium metal will eventually form sludge in a customer's system (likely in the form of sodium oxide), no matter what the calcium content is.¹³

Table II-2 shows total quantities of each grade and form of sodium metal that DuPont produced domestically and the product imported from France by MSSA (USA) and Columbia Sales¹⁴ on a U.S. commercial shipments basis for both the U.S.-produced and subject imported sodium metal and, for DuPont, its internal use of its U.S.-produced sodium metal during January 2005-June 2008.

² There does not appear to be a U.S.-produced sodium metal comparable to MSSA's Refined and Extra Refined grades of French sodium metal.

³ Conference transcript, pp. 15 and 66 (Hilk).

⁴ Letter from ***, Hunton & Williams LLP, counsel to respondents, November 20, 2007.

⁵ Ibid.

⁶ ***. Ibid.

⁷ Ibid.

⁸ ***.

⁹ When oxygen contacts sodium metal, it reacts to form sodium oxide. Since sodium oxide is not soluble in sodium, the sodium oxide falls out of solution. If the sodium oxide contacts a calcium atom, the molecules will react to form calcium oxide and sodium metal. Calcium oxide is also not soluble in sodium metal and will fall out of solution when formed. ***. ***.

¹⁰ ***.

¹¹ Hearing transcript, p. 47 (Fetzer).

¹² Hearing transcript, pp. 18 and 315 (Fetzer).

¹³ DuPont's posthearing brief, p. 14.

¹⁴ MSSA and Columbia Sales accounted for *** of the total reported U.S. shipments of imported sodium metal from France during January 2005-June 2008.

Table II-2

Sodium metal: Quantities sold by DuPont and U.S. importers, by grade/quality, January 2005-June 2008

* * * * *

As seen in table II-2, DuPont shipped *** its technical grade (maximum 400 ppm of calcium) U.S.-produced sodium metal in the U.S. market during January 2005-June 2008 (**% percent of its total U.S. shipments). On the other hand, MSSA shipped *** its SoPure quality (maximum 200 ppm of calcium) bulk sodium metal during that time period (**% percent of its total U.S. commercial shipments). MSSA alleges that “***.”¹⁵ Part IV of the report also shows that most of the increase in MSSA’s U.S. shipments during January 2005-June 2008 was accounted for by *** of sodium metal.

Also seen in table II-2, it does not appear that DuPont routinely produces a sodium metal grade with calcium contents as low as MSSA’s Refined and Extra Refined qualities (maximum 10 ppm of calcium) and it does not produce bricks, ingots, sticks, or doses.¹⁶ Columbia Sales¹⁷ asserted that some small- and medium-size customers require sodium in ingot form primarily because they are not equipped to handle large quantities of sodium in bulk form, or need sodium in ingot form because of the manner in which sodium is introduced into their production process.¹⁸ As a result, Columbia Sales asserted that the ingot or brick form of sodium metal is neither interchangeable nor competitive with bulk sodium metal.¹⁹ On the other hand, DuPont, which imports sodium metal bricks from China, asserted that it competes with the imported French sodium metal in ingot form because it is capable of producing sodium metal in this form.²⁰

Purchaser Characteristics

Purchaser questionnaires were sent to 71 purchasers identified by the producer and importers. Forty-three purchasers responded to the purchaser questionnaire. Four reported either not purchasing sodium metal, or purchasing very small amounts. Of the 39 purchasers that replied further, 35 identified themselves as end users, while four consider themselves distributors, all of which purchase sodium metal only in ingot/brick form. Combined, these purchasers accounted for 45.6 million pounds of sodium metal in 2005, 47.9 million pounds in 2006, and 38.6 million pounds in 2007.²¹

¹⁵ ***.

¹⁶ Instead, DuPont imports bricks from China. Conference transcript, p. 99 (Matusewitch)

¹⁷ Columbia Sales reported that it has been a North American agent for MSSA’s bulk product from France since 1990. It also acts as an importer/distributor of some sodium metal from France and sells the product in drums of sodium ingots or in sodium-infused drums to the smaller customers. Conference transcript, p. 96 (Matusewitch).

¹⁸ Hearing transcript, pp. 197-198 (Matusewitch) and ***.

¹⁹ Ibid. Nearly all of the 39 responding purchasers reported buying either bulk or ingots/bricks exclusively. *** reported buying 100 percent of its domestically produced sodium metal in ingot/brick form (though this is actually of Chinese origin); of its bulk sodium metal imported from France, 95 percent is in bulk form and 5 percent in ingot/brick form. *** and *** reported experimenting with ingots instead of their usual bulk sodium metal. These purchases amounted to 1 and .01 percent of their purchases, respectively. Only one purchaser, (***), stated that it had appreciably changed the form of sodium metal it was buying since January 2005; it stopped buying sodium metal altogether.

²⁰ Conference transcript, pp. 43-44 (Hilk).

²¹ These purchase data represent *** percent of all sales reported in the current investigation.

The top 12 responding purchasers accounted for 96.7 percent of reported purchases between 2005 and the first quarter of 2008: ***,^{22 23} Of these firms, five (***)²⁴ purchased both domestically produced and subject sodium metal from France, whereas *** only purchased domestically produced sodium metal and *** solely purchased French sodium metal. Overall, in 2007, 3 responding purchasers only purchased domestically produced sodium metal; 6 purchased Chinese ingots distributed by DuPont; 6 purchased only French bulk sodium metal; 13 purchased only French ingots; 5 bought a combination of domestic and French bulk sodium metal; 3 purchased domestic and French ingots; and 1 purchased domestic and French ingots as well as bulk French sodium metal.²⁵ In general, large purchasers typically buy sodium metal in bulk form, which is more easily delivered in large amounts; smaller purchasers will buy ingots instead.

Two purchasers (***) noted competing with ***. The type, quantity, and applications/end uses of purchasers' requirements for sodium metal, and DuPont's reported history with each customer is presented in table II-3.

**Table II-3
Sodium metal: Purchases by top purchasers, January 2005-March 2008, grade of sodium metal purchased, its end use or application, and the purchasers' reported purchasing history with DuPont prior to 2005**

* * * * *

SUPPLY AND DEMAND CONSIDERATIONS²⁶

U.S. Supply²⁷

U.S. Production

Based on available information, the single U.S. producer, DuPont, had an ability to respond to changes in U.S. demand with small-to-moderate changes in the quantity of shipments of U.S.-produced sodium metal to the U.S. market during January 2005-June 2008. Factors contributing to this degree of responsiveness of supply are discussed below.

²² All other purchasers accounted for less than 1 percent of the reported purchaser totals; in fact, the smallest 21 purchasers combined accounted for less than 1 percent of all purchases made in the period for which data were collected in the investigation. In the first quarter of 2008, *** was the fifth-largest purchaser, accounting for *** percent of reported purchases, ***.

²³ In July 2008, it was announced that Rohm and Haas is being purchased by Dow Chemical for approximately \$15.3 billion. "Crystallizing Dow's Transformation: The Acquisition of Rohm and Haas," Andrew Liveris, Chairman and CEO, Dow Chemical, July 10, 2008.

²⁴ With respect to long-term contracts, ***. For more information about contracts, please see Part V.

²⁵ For these tabulation purposes, quantities that were solely for testing purposes and resulted in shares that were less than 1 percent of purchases, were disregarded. Some purchasers reported purchasing domestically produced ingots. These were classified as Chinese ingots distributed by DuPont.

²⁶ Short-run effects discussed in the supply and demand sections refer to changes that could occur within 12 months, unless otherwise indicated.

²⁷ More detailed data on U.S. sodium metal production, production capacity, capacity utilization, inventories, and exports are shown in Part III.

Industry capacity

Based on DuPont's reported capacity and production, the domestic industry's annual capacity utilization for sodium metal decreased during 2005-07 by *** percentage points, from *** percent to *** percent. Capacity utilization was *** percent during January-June 2008 compared to *** percent during January-June 2007.²⁸ These levels of capacity utilization indicate that the U.S. producer of sodium metal generally had a *** amount of available capacity,²⁹ particularly during January-June 2008, with which it could increase production of sodium metal in the short run in the event of a price change. Once started, production capacity needs to be kept online. In its producer questionnaire response, DuPont stated that "***."³⁰ MSSA noted a similar characteristic. It stated that, "Due to the long life time of the electrolysis cells . . . and the fact that stopping them earlier will 'kill' them (no re-start possible), sodium producers need long term forecast . . . The capital expenditure related to a new cell makes it economically not affordable to start a new cell without being sure to operate it for its entire lifetime. So, sodium producers can only start new cells when they have a strong commitment from customers on long term."³¹ Additionally, DuPont's contract with ***. Furthermore, DuPont reported that the capital-intensive and energy-intensive nature of the sodium metal production process,³² the *** ratio of fixed-to-variable costs, and the labor-intensive nature of production³³ requires the firm to operate the plant close to 100 percent of available Downs cell capacity to achieve the most efficiencies and to minimize unit costs.³⁴ DuPont reported that its break-even capacity was a minimum of *** Downs cells during 2006 and year-to-date 2007, but for most of this period it has operated at *** this break-even capacity (*** Downs cells).

Inventory levels

DuPont reported its end-of-period inventory quantities, which increased from *** percent of its total shipments during 2005 to *** percent during 2007; these inventories were *** percent of annualized shipments during January-June 2008 compared to *** percent during January-June 2007. The flexibility to use inventories to respond to price changes in the short run may be constrained to the extent that the U.S. producer's inventories consist of products that are not required by the increased demand, or consist of products already committed to customers in the U.S. and/or export markets. In the preliminary phase of this investigation, DuPont reported that its sodium metal inventories were ***.³⁵ Based on that information, it does not appear likely that DuPont's inventories of sodium metal would contribute to its supply flexibility in the short run.

²⁸ MSSA disagrees with ***. ***.

²⁹ Based on slots available for Downs cells.

³⁰ DuPont's producer questionnaire response.

³¹ MSSA's antitrust complaint filed with the European Commission, non-confidential version, June 9, 2008, p. 26.

³² DuPont reported that its sunk investment in sodium metal production facilities is four to five times the annual revenue, which results in the capital-intensive nature of sodium metal production (conference transcript, p. 15 (Hilk)). In addition, DuPont reported that it located its sodium metal plant next to Niagara Falls to take advantage of the hydroelectric power, as did the French producer of sodium metal by locating its production facilities in the French Alps next to a hydroelectric power source (conference transcript, p. 16 (Hilk)).

³³ DuPont reported that sodium metal production requires a high number of operators performing physical and manual tasks while the production cells run 24 hours per day, which limits flexibility of labor use (conference transcript, pp. 16-17 (Hilk)).

³⁴ Conference transcript, pp. 15-16 (Hilk).

³⁵ Petitioner's postconference brief, exh. 1, p. 15.

Alternate markets

DuPont reported that exports of its U.S.-produced sodium metal increased *** from 2005 to 2007, from *** percent of the quantity of its total shipments of U.S.-produced sodium metal to *** percent in 2007. During the first half of 2008, these exports accounted for *** percent of total shipments, compared to *** percent in the first half of 2007. These exports increased steadily during this period in absolute quantity and as a share of DuPont's total sodium metal shipments. The rising level of exports during the period indicates that DuPont's supply flexibility may be enhanced by shifting shipments between the United States and other markets in the short run in response to price changes, but may be constrained by long-term contract commitments.

Production alternatives

DuPont reported producing *** lithium at its sodium metal production facilities and also reported producing chlorine, though chlorine is a byproduct of sodium metal (and lithium) production. Lithium accounted for about *** percent of sales from its production facilities, and sodium metal accounted for the remaining *** percent of such sales. The ability of the U.S. producer to shift production between sodium metal and other products would enhance its supply responsiveness in the short run in response to relative price changes between sodium metal and the production of alternative products. This flexibility of supply does not pertain to byproducts, as no switching of production among different products occurs.

Imports from France

Based on available information, staff believes that the sole French producer of sodium metal, MSSA, has the ability to respond to changes in demand with moderate to large changes in shipments of French-produced sodium metal to the U.S. market. Factors contributing to this degree of responsiveness of supply are discussed below.

Industry capacity

MSSA reported that total capacity utilization for sodium metal in France decreased ***, from *** percent in 2005 to *** percent in 2006 and 2007. Capacity utilization increased from *** percent during the first half of 2007 to *** percent during the same period in 2008.³⁶ MSSA's capacity utilization is projected to average *** percent in 2008 and *** percent in 2009, despite the projection of ***. These levels of capacity utilization indicate that MSSA had a *** ability to increase production of sodium metal in the short run during January 2005-June 2008 in the event of a price change, and this *** ability is estimated to continue throughout 2008 and during 2009.

MSSA *** constructing a sodium metal production facility in China to serve mostly the Asian market. At the same time, MSSA *** reduce its production capacity in France to its optimum level of *** of sodium metal per year. ***.³⁷

³⁶ MSSA used a *** its capacity utilization. Using ***, capacity utilization for MSSA ranged between *** percent and *** percent during January 2005-June 2008.

³⁷ MSSA's posthearing brief, response to hearing and Commission questions, p. 31.

Inventory levels

MSSA reported that the ratio of end-of-period inventories to its total shipments decreased irregularly during 2005-07, increasing from *** percent in 2005 to *** percent in 2006, then decreasing to *** percent in 2007; MSSA's sodium metal inventories were *** percent of its total annualized shipments during January-June 2008.³⁸ The flexibility to use inventories to respond to price changes may be constrained in the short run to the extent that MSSA's French inventories of sodium metal consist of products that are not required by any increased demand, or consist of products already committed to customers. MSSA reported that all of its French sodium metal inventories is pre-sold.³⁹ As a result, it does not appear to be likely that MSSA's French inventories of sodium metal would enhance its supply flexibility in the short run.

In addition, MSSA and Columbia Sales also reported U.S. end-of-period inventory quantities of their imported sodium metal from France. These U.S. inventories of sodium metal imported from France decreased from *** percent of total U.S. shipments of product imported from France during 2005 to *** percent in 2006 and *** percent in 2007, and, annualized, were *** percent during January-June 2008. In the preliminary phase of this investigation, MSSA and Columbia Sales, which together accounted for most of the U.S. imports of sodium metal from France, reported that *** percent of their U.S. inventories were committed to their contracted U.S. customers.⁴⁰ In their importer questionnaire responses, MSSA and Columbia Sales alleged that "****." As a result, it does not appear that U.S. inventories of sodium metal imported from France would enhance the short-run supply flexibility of this source of sodium metal in the U.S. market.

Alternate markets

MSSA reported that its sodium metal produced in France was shipped *** to third-country markets,⁴¹ *** to the United States, and *** to *** home-market requirements. Shipments to the United States increased irregularly as a share of total exports, from *** percent in 2005 to *** percent in 2006 and *** percent in 2007. The level and percentage share of exports to the United States was higher in interim 2008 than in interim 2007, *** percent as compared with *** percent. MSSA predicts this pattern ***, with the share *** percent for whole-year 2008 to *** percent for 2009. These data for alternate markets indicate that MSSA had *** third-country markets for its sodium metal from which it could shift shipments of sodium metal to the United States in the short run in the event of a price change in the U.S. market.⁴²

Production alternatives

MSSA reported ***. This limits MSSA's ability to switch from manufacturing other products to manufacturing sodium metal.

³⁸ MSSA's foreign producer questionnaire response.

³⁹ MSSA's posthearing brief, response to hearing and Commission questions, p. 33.

⁴⁰ MSSA's postconference brief, Answers to Staff Questions, p. 9.

⁴¹ These markets include ***.

⁴² This flexibility may be constrained in the short run to the extent that MSSA's sales of sodium metal in third-country markets were not used/acceptable in the U.S. market, or to the extent that MSSA has binding supply agreements longer than 12 months with customers in third-country markets.

Supply of Nonsubject Imports of Sodium Metal to the U.S. Market

Based on import statistics presented in Part IV, China also exported sodium metal to the United States at least sometime during January 2005-June 2008.⁴³ According to representatives from DuPont and MSSA, China is the only other country producing sodium metal.⁴⁴ Imports of sodium metal from China accounted for *** to *** percent of the quantity of total U.S. imports of sodium metal during 2005-07, and were *** percent of total imports in the first half of 2008.

U.S. Demand

Demand for sodium metal, as measured by annual apparent U.S. consumption, fluctuated but decreased during 2005-07, by a total of *** percent on a quantity basis during this period; however, apparent U.S. consumption was *** percent higher in January-June 2008 than in January-June 2007.

Overall U.S. demand for sodium metal reportedly tends to move with general economic activity in the U.S. economy, and with demand in the sectors for which it is used.⁴⁵ The properties of sodium metal make it useful as a reducing agent, which is its principal use; in silicon manufacturing; in refining metallic lead, silver, and zinc; in alloying metals; in steel de-scaling via sodium hydride; and as a scavenging agent in smelting processes.⁴⁶ Most of the products produced with sodium metal are intermediate products rather than end products.⁴⁷ As a result, demand for sodium metal is generally derived from demand for the intermediate products in which it is used, as well as demand for the final products which are likely produced with a number of intermediate products and not just sodium metal.⁴⁸

*** described sodium metal as being an important element in some production processes and as having no direct substitutes, but demand is typically in small amounts for most applications. A large portion of demand reportedly comes from about 8 to 10 major customers, so the loss of one customer can have a large impact on a supplier.^{49 50} *** reported that “***.”⁵¹

The U.S. producer, importers, and purchasers provided a variety of responses when reporting how U.S. demand for sodium metal has changed since January 1, 2005. DuPont reported “a long-term secular decline in demand extending into the foreseeable future,” with no growth in the next few months in this stable and mature market.⁵² If a rebound in the decline of apparent consumption is going to occur, it is not anticipated for at least several years.⁵³ ***, the two responding U.S. importers of sodium metal from France, Columbia Sales and MSSA, reported ***. Just over half (12 of 23) of the responding purchasers noted that demand for sodium had remained unchanged. Of the remaining 11, six (including ***)

⁴³ China was the only known nonsubject-country supplier during the period of investigation, according to producers, importers, and purchasers of sodium metal. Importer ***.

⁴⁴ Hearing transcript, p. 115 (Jaffe), and p. 294 (Chaminant).

⁴⁵ Conference transcript, pp. 41-42 (Hilk); and petitioner’s postconference brief, exh. 1, p. 9.

⁴⁶ Petition, pp. 4 and 12.

⁴⁷ Ibid.

⁴⁸ The variety of different downstream products in which sodium metal is used tends to enhance its price elasticity of demand.

⁴⁹ Hearing transcript, p. 25 (Merrill), and p. 29 (Kaplan), and DuPont’s prehearing brief, pp. 10-11.

⁵⁰ *** of the *** substantive U.S. purchasers identified by DuPont provided comments in the Lost Revenue/Lost Sales section of Part V. The remaining substantive purchasers were ***.

⁵¹ ***.

⁵² Hearing transcript, p. 29 (Kaplan) and p. 155 (Hilk).

⁵³ DuPont’s prehearing brief, p. 11.

reported an increase in demand, three (***) reported fluctuating demand, and two (including ***) noted decreasing demand.

***. At the hearing, one witness for DuPont stated, “in the next six to 12 months, it’s very difficult to say there’s going to be a really big significant volume that moves the needle on demand at all.”⁵⁴ Specifically, in the next six to 12 months, DuPont expects to contract out ***, though it only expects to deliver ***.⁵⁵

In an appendix to its prehearing brief, DuPont submitted 14 articles regarding the polysilicon market, 11 regarding the biodiesel market, and 3 regarding the titanium market.⁵⁶ It reported that there are alternative non-sodium using processes for making polysilicon, so an increase in demand for polysilicon will not necessarily equate to increased demand for sodium. DuPont cited articles about two polysilicon producers that have cancelled plans for building or expansion of polysilicon factories. Further, it finds that the polysilicon market may be oversupplied by 2010, if not earlier. One recent research article expects the photovoltaic industry to be oversupplied by 2009, based on uncertain, capped, or reduced subsidies in key countries (Spain, Germany, and the United States).⁵⁷ One of DuPont’s representatives testified that, “we just don’t see a very high potential for growth the next quarter of next year, because there needs to be commercialization of these technologies.”⁵⁸ DuPont also notes that increased sodium metal demand is not necessarily tied to an increasing biodiesel market, since there are different technologies used to make biodiesel fuel.⁵⁹ Also, it reported that the biodiesel industry is experiencing cost pressures due to rising prices of feedstocks (mainly soybean oil), and in November 2007, the industry was running at 20 to 25 percent capacity.⁶⁰

In addition to sodium methylate and polysilicon, DuPont reported that titanium also can be manufactured without the use of sodium metal, and the majority of the world’s production uses a process that does not require sodium metal.⁶¹ Further, it noted that the process using sodium metal (the Armstrong process) has yet to be implemented on a large scale. The purchase of International Titanium

⁵⁴ Hearing transcript, p. 154 (Hilk).

⁵⁵ DuPont’s posthearing brief, Responses to Commission Questions, p. 23.

⁵⁶ DuPont’s prehearing brief, exh. C.

⁵⁷ The analysis for Spain, however, assumes a reduction of subsidies on 400MW to 300MW of solar power, based on action taken in June 2008. In September, though, Spain increased those subsidies to cover 500MW of solar power. Also, instead of letting subsidies expire, on October 3, 2008, the United States extended solar investment tax credits for eight years amounting to a 30-percent tax break on residential and commercial solar installations. No projections have been submitted assuming the expansion and extension of these incentives.

Based on the articles submitted by DuPont, though there may be an oversupply of polysilicon leading firms to cancel announced expansions, capacity was still forecasted to be triple between 2007 and 2010. Photovoltaic cell production has been doubling about every two years to meet demand. DuPont’s prehearing brief, exh. C-1-g.

⁵⁸ Hearing transcript, p. 154 (Hilk).

⁵⁹ DuPont’s prehearing brief, exh. C.

⁶⁰ During late 2007 through July 2008, soybean oil prices were at historic highs, reaching 70 cents per gallon. They have since declined to around 40 cents per gallon as of October 2008. The price of crude oil also has declined greatly in that time period as well. The relationship between crude oil and soybean oil is what is important. Hearing transcript, p. 114 (Hilk). The price of soybean oil is reportedly tracking the price of crude oil. “Tyson, Syntroleum OK Renewable Diesel Plant,” Jack Peckham, Diesel Fuel News, July 21, 2008, included as exhibit 14 of MSSA’s posthearing brief, response to hearing and Commission questions. At the hearing, representatives from DuPont testified that it “discontinued effort on a capital project whereby we were going to expand one of our DuPont facilities to produce the sodium methylate required for this market,” and that the legislation signed on October 3, 2008 that extends through 2009 and increases the tax credit for biodiesel, from 50 cents to one dollar has, and will likely have a only a questionable effect on the biodiesel market. Hearing transcript, pp. 113-114 (Merrill and Hilk).

⁶¹ DuPont’s prehearing brief, exh. C.

Products, LLC (“ITP”), by a subsidiary of Cristal Global will enable ITP to construct a 4 million pound plant, but no other producers of titanium that would employ the Armstrong process.⁶²

Both *** describing the growth prospects for various market segments using sodium metal. With respect to polysilicon⁶³ for semiconductor wafers, global growth for 2006-10 is expected to be at *** percent per year, with photovoltaic panel growth expected to reach *** percent per year, and *** percent per year for the next 10 years. *** expects the sodium metal market for polysilicon in the United States to grow by *** per year, and *** worldwide. Nine articles were submitted by ***, which summarized the forecasts of demand growth for the sodium methylate (for use in biodiesel fuels⁶⁴) market to be in the 20-percent per year range for the United States and the rest of the world, which would add another *** of sodium demand per year. For the titanium market, ***.⁶⁵ Additionally, *** estimated the growth in demand for sodium metal based on growth in five other industries: silanes (*** per year); polyester polymers (*** per year); sodium sulfur batteries (*** per year in an industry which has only one producer in the world, NGK in Japan, and is in the development stage in the United States; ***); nuclear reactors (*** ***); and high performance pigments (unknown amount).⁶⁶

Eight of 37 responding purchasers reported changes in end uses for sodium metal since January 2005.⁶⁷ Two purchasers (***) stated that demand has decreased due to the closure of Syngenta’s plant. Three (***) reported increased demand due to sodium methylate production for biodiesel. *** reported that DuPont installed a titanium powder production facility in Salt Lake City. *** stated that demand for one of its downstream products, ***, has decreased due to competition from Asia, resulting in lower demand for sodium metal in this end use. *** also estimated that sodium metal used for producing sodium methylate has increased from about *** pounds in 2004 to *** pounds in 2007, with an estimated growth rate of *** percent in the next year. Finally, *** reported that ***. It has seen a ***. *** also noted increased demand for sodium metal from the polysilicon industry.

Five of 24 responding purchasers noted business cycles or conditions of competition that are distinctive to the sodium metal market. Among these purchasers, *** reported that its own business cycle is tied to the *** industry. *** reported distinctive long-term contracts, which are typically based on the life cycle of the production cells (3-10 years), while purchasers *** reported that demand for sodium metal is tied to the increasing sodium methylate market. Five of 23 responding purchasers reported that the emergence of new applications and/or markets for sodium metal had an effect on business cycles, conditions of competition distinctive to the sodium metal market, or other demand factors. All of the purchasers that responded affirmatively, and even one purchaser responding negatively, singled out the sodium methylate market in their responses. *** also mentioned the polysilicon market.

Ten of 39 responding purchasers noted that they have experienced or expect changes in demand for the downstream products they produce that require sodium metal. Seven purchasers reported increased demand for sodium metal due to increased demand from the biodiesel market. The remaining three purchasers noted: (1) that *** will likely undergo fluctuations in demand in the near future, (2)

⁶² According to ***. Staff telephone interview with ***.

⁶³ Eight articles and various e-mails were submitted supporting ***.

⁶⁴ Biodiesel is a renewable fuel and an alternative to ethanol and gasoline. Interstate asserted that there are about 100 plants currently producing biodiesel fuel, while others reportedly are coming on stream, such as Cargill, ADM, Louis Dreyfus, and REG Renewable Fuels, with which it has contracts. These companies reportedly are building plants that will produce around 700 million gallons of incrementally new biodiesel fuel, which will require, according to Interstate, an additional 24 million pounds of sodium metal in the U.S. market. Conference transcript, pp. 113-126 (Merz).

⁶⁵ ***. ***. ***.

⁶⁶ One article submitted by *** noted that demand for “green” tires is estimated to increase by 7-8 percent per year in Japan.

⁶⁷ One purchaser, ***, noted no changes for itself, but what it understands to be a change in the market.

demand for sodium isobutoxide is expected to increase, and (3) that the growth in solar products will continue to drive demand increases. Of those purchasers that responded to this question, seven reported that there would be an impact on demand for sodium metal. Six of the seven (***) reported that these changes in demand would increase demand for sodium metal, while purchaser *** stated that fluctuations in downstream demand would cause demand for sodium metal to fluctuate as well.⁶⁸ Purchaser *** noted that demand for sodium metal was so high that imports of *** had no effect on its production. Purchaser *** said that the overall effect of imports of the products that it produces using sodium metal on the sodium metal market is indeterminate, because the sodium metal market has “exploded” but imports of downstream products that it produces using sodium metal have increased. *** reported a negative impact on their production due to imports of their downstream product.⁶⁹

At the hearing, a representative from Ferro reported that at a May 2008 meeting, DuPont stated that it would need six months to begin supplying Ferro in 2008, that DuPont could possibly supply Ferro in 2009, and that it could not promise supplies in 2010. The purported reason reported by Ferro was DuPont’s delivery system, the growing biodiesel market, and having six bids out in the market for photovoltaic applications, each amounting to 10 million pounds.⁷⁰ Growth for the products that Ferro produces containing sodium metal is reportedly relatively stable.⁷¹ A representative from Honeywell stated that demand is such that it has had to increase its capacity by 50 percent in the past year, as compared to operating at 50 to 60 percent of utilization, owing to increasing demand.⁷² Mr. Puntureri of Interstate, which uses sodium metal to produce chemicals for biodiesel fuel, reported demand for biofuels accelerating, expecting “three-and-a-half to four times as much volume” in its second year of operation as compared to its first.⁷³ A representative from MEMC testified that it has doubled its capacity since between March and June of 2008, and the industry-standard rates of growth are estimated to be 10 to 20 percent per year for the electronics industry and 40 to 60 percent per year for solar applications.⁷⁴

Respondents Ferro, MEMC, and MSSA submitted estimates of demand growth at specific companies in their posthearing briefs. Ferro expects its demand to remain stable for the foreseeable future.⁷⁵ MEMC submitted monthly forecasts for its demand extending through the end of 2009. Whereas it purchased *** pounds of sodium metal in 2007, this will increase to *** pounds in 2008 and *** pounds in 2009.⁷⁶ MSSA expects increasing demand in the sodium metal market, based on demand

⁶⁸ Additionally, purchaser *** reported that increased demand in the titanium industry would have a positive effect on demand for sodium metal, even though it did not report any changes in demand for its downstream product.

⁶⁹ Purchaser *** was the other purchaser and noted that its planned U.S. production is driven by increased demand for sodium methyllate.

⁷⁰ Hearing transcript, p. 270 (Kennan).

⁷¹ Hearing transcript, p. 290 (Kennan).

⁷² Hearing transcript, p. 289 (Winters).

⁷³ Hearing transcript, p. 290 (Puntureri).

⁷⁴ Hearing transcript, pp. 164 and 291-292 (Rice).

⁷⁵ Ferro’s posthearing brief, p. 8.

⁷⁶ MEMC’s posthearing brief, p. 2 and exh. 11.

projections from its customers. ***.⁷⁷ ***.⁷⁸ ***.⁷⁹ MSSA also recently met with ***.⁸⁰ ⁸¹ ***.⁸² ***.⁸³

Purchasers were asked how demand for their downstream product or products changed between January 2005 and June 2008. Among all responding purchasers' downstream products, demand for 23 products was unchanged, 14 products had increased demand, 10 products had decreased demand, and demand for 6 products fluctuated.⁸⁴ Five purchasers reported that imports of downstream products have had an effect on demand for their products, and therefore, sodium metal.⁸⁵

Substitute Products

Based on available information, U.S. end users are likely to respond to changes in the price of sodium metal with small-to-moderate changes in their purchases of sodium metal, such that U.S. demand is likely to be price inelastic.⁸⁶ According to DuPont, the main contributing factor to this level of responsiveness of demand is the apparent lack of any direct substitutes for sodium metal, the generally low cost share of sodium metal, and generally no readily-available substitutes for the products produced with sodium metal.⁸⁷ On the other hand, the reported existence of at least some alternative products or processes in the downstream markets and the diverse demand for sodium metal all would tend to somewhat enhance the price responsiveness of U.S. demand for sodium metal.

DuPont, importers, and purchasers of sodium metal were requested to discuss any substitutes for sodium metal.⁸⁸ Two of three responding importers (***) and 36 of 37 responding purchasers reported

⁷⁷ ***.

⁷⁸ ***.

⁷⁹ ***.

⁸⁰ Ibid.

⁸¹ ***.

⁸² ***.

⁸³ ***.

⁸⁴ Among the top 12 purchasers, demand for intermediate goods incorporating sodium metal increased for products made by ***; decreased for products made by ***; fluctuated for products made by ***; and remained unchanged for products made by ***. (Some purchasers manufacture more than one intermediate good, and more than one final good.) Demand for final products incorporating sodium metal increased for ***; decreased for ***; fluctuated for ***; and remained unchanged for ***.

⁸⁵ Large purchasers *** reported decreased production of at least one product due to increased imports, though *** replied that the overall "market has exploded so impact is not determinate."

⁸⁶ DuPont asserted that the U.S. sodium metal market is a mature market, such that lower prices will not result in increased demand, but rather will cause customers to shift between suppliers on the basis of price (petition, p. 22). In addition, *** asserted that there were no direct substitutes for sodium metal, such that U.S. demand for sodium metal was price inelastic (staff telephone interview with ***).

⁸⁷ Petitioner's postconference brief, p. 18.

⁸⁸ The producers and importers were requested to provide examples of the top two economic substitutes for sodium metal and this request was preceded by the following explanation: "Substitution in demand refers to products that can, based on market price considerations and consumer/industrial user preferences/technical requirements, reasonably be expected to substitute for each other when the price of one product changes vis-à-vis the price of the other product—some consumers/ industrial users may require greater price changes than others before they switch among the alternative products."

that no substitutes exist for sodium metal.⁸⁹ Additionally, DuPont stated that there are “***.” *** described alternative processes that can produce polysilicon (the Siemens process) and titanium (the Kroll process) that do not use sodium metal.⁹⁰

Cost Share

As noted earlier, sodium metal is used in the production of a variety of products, particularly when it is used as a reduction agent. Purchasers were asked, of the intermediate and final goods produced with sodium metal, what the share of the cost of those goods is attributable to sodium metal. Given the broad range of uses for sodium metal, answers spanned a large range - from .002 percent for *** to 46 percent for *** and to 90 percent for ***. The cost shares for some of the larger purchasers (in order of ***), and their intermediate or final goods include: ***, 45 percent and ***, 24 percent; ***, intermediate ***, 7.4 percent, and ***, 5.33 percent; ***, 1 percent, and ***, less than 1 percent; ***, 6.2 percent, and ***, 6.14 percent; ***, 32 percent, and ***, 4 percent; ***, 5.8 to 7.2 percent, and 4.6 to 5.0 percent, respectively; ***, 11 to 20 percent; ***, 5 to 20 percent, which comprise 55 percent of ***; and ***, 8 to 12 percent, and ***, 1.5 to 11.2 percent.

Demand Outside the United States

The U.S. producer, importers, and purchasers were requested to comment on demand for sodium metal outside of the United States since January 2005. DuPont, importers MSSA and Columbia Sales, and 13 purchasers supplied useable responses. *** reported overall increasing world demand, driven by demand in China despite declining demand in parts of the world (Greece, Turkey, the Czech Republic, Italy, and others) for tetraethyl lead. ***.

*** reported increasing demand outside the United States and *** submitted an analysis of its projections for demand for sodium metal outside the United States. Based on its interpretation of the marketplace and articles it submitted, *** expects demand in the rest of the world to increase as follows: *** annually in the polysilicon market; *** annually in the sodium methylate (biodiesel) market ***; and unknown increases in the sodium sulfur battery market *** (which is still in development), and the fast breeder nuclear reactor market. Additionally, *** noted increased demand for pharmaceutical ingredient applications and for synthetic indigo dye, particularly in China, despite flat demand ***. Six smaller purchasers⁹¹ reported unchanged demand outside the United States, whereas seven larger purchasers⁹² reported increasing demand outside the United States, with three specifying China and one specifying Taiwan and Europe.

SUBSTITUTABILITY ISSUES

The degree of substitution between sodium metal produced in the United States and that imported from France depends upon such factors as relative prices, conditions of sales (order lead times, payment terms etc.), purchaser supply requirements, and product differentiation. Product differentiation depends on factors such as the calcium content, range of products, quality (grade standards, defect rates, product

⁸⁹ Only *** reported a possible substitute for sodium metal - sodium hydroxide - if an alternative production process is used to produce ***, though this would require a capital project to switch production methods.

⁹⁰ ***.

⁹¹ The largest of these purchasers was ***, which accounted for 1.2 percent of responding purchasers' total purchases from 2005 through the first quarter of 2008. The other four were much smaller.

⁹² The smallest of these purchasers was ***, which accounted for 1.2 percent of responding purchasers' total purchases from 2005 through the first quarter of 2008.

consistency, etc.), availability, reliability of supply, and product services, as well as the market perception of these factors. Based on the reported information, there appears to be a moderate substitution in demand between sodium metal produced domestically and that imported from France.

Factors Affecting Purchasing Decisions

Many factors influence a purchaser's decision regarding its suppliers of sodium metal. On average, a purchaser will contact one to two suppliers of sodium metal before making its decision, though four purchasers reported contacting up to three suppliers, and some with long-term contracts reported contacting none. Three of 39 purchasers reported having changed suppliers since 2005: ***. Five purchasers became aware of new suppliers since 2005, and six expect new suppliers to enter the sodium metal market in the future. Those purchasers identifying countries or suppliers all identified China as the potential new supply source.

Major Factors in Purchasing

DuPont asserted that price was the largest single factor affecting purchase decisions in the U.S. market for sodium metal.⁹³ DuPont also asserted that U.S. customers perceive no difference between domestically produced and imported sodium metal, such that even small differences in price will lead to a rapid depression and suppression of prices for all purity levels of sodium metal.⁹⁴ On the other hand, MSSA asserted that U.S. customers purchase from MSSA instead of DuPont for various non-price reasons, including principally the following four non-price reasons—quality differences, ingot/brick form availability, second sourcing, and downstream competition.⁹⁵ The respondents identified two U.S. purchasers of sodium metal, ***, that specifically indicated that quality reasons based on lower calcium levels of MSSA's product compared to DuPont's product was the reason for purchasing the imported product. *** also reported that it had problems with DuPont's sodium metal.⁹⁶ At the hearing, representatives from Afton, Ciba, Ferro, Honeywell, and MEMC testified that sodium metal supplied to them by DuPont caused safety, storage, and process problems that they did not encounter with sodium metal from France.⁹⁷ Ciba and MEMC have been unable to qualify DuPont's sodium metal for certain products because of the product's inability to flow through Ciba's microfilters and too high of a type of impurities called halides for MEMC.⁹⁸

MSSA also indicated that some purchasers require ingots or bricks over bulk sodium metal and noted that the former products are not produced by DuPont; the respondents identified a U.S. purchaser

⁹³ Petitioner's postconference brief, p. 14.

⁹⁴ Petitioner's postconference brief, p. 8.

⁹⁵ MSSA's postconference brief, pp. 10-14.

⁹⁶ ***.

⁹⁷ Hearing transcript, pp. 165-170 (Rice), 174-179 (Love), 181-184 (Sloane), 186-188 (Winters), and 190-191 (Johnson).

⁹⁸ Hearing transcript, pp. 170-171 (Rice), and 190-191 (Johnson). The halides MEMC is referencing are bromine and chloride.

of MSSA's ingots, ***, that cited quality problems with DuPont's imported sodium metal bricks from China. Marc Matusewich, a representative of importer Columbia Sales, described at the hearing the reported need for ingots in the U.S. sodium metal market: first, MSSA is the only producer that makes certain sizes of ingots required by various purchasers; second, ingots can be sold in smaller quantities for purchasers that do not need an entire iso-container or iso-tank full of sodium metal; and third, the ingots produced in China have "severe quality problems."⁹⁹ A representative from Environmental Protection Services, Inc. reported at the Commission's hearing why his firm cannot use bulk sodium, but must instead buy ingots.¹⁰⁰

MSSA cited another U.S. purchaser, ***, that reported buying *** percent of its sodium metal from DuPont and the remaining *** percent from MSSA, not because of price, but because it desired a second source of sodium metal. At the hearing, representatives from Afton, Ciba, Honeywell, and MEMC noted the desire or the ability to purchase from a second source and, lacking a second source, have taken measures to mitigate against supply disruptions.¹⁰¹

Finally, the respondents indicated that three U.S. purchasers, Interstate, Texas Molecular LP ("Texas Molecular"), and ***, reported purchasing sodium metal from MSSA, as they did not want to rely on DuPont as their sole source of the product because they competed with DuPont in their downstream markets—sodium methylete for Interstate and Texas Molecular, and ***.

Purchasers were asked to identify the three major factors considered by their firm in deciding from whom to purchase sodium metal (table II-4). Quality was most frequently reported to be the first- and second-most important factor, and was reported as such by 33 purchasers total, including 9 of the largest 12 responding purchasers. It was not reported among the top-three most important factors for ***, and was ranked third for *** behind ***. For the third-most important factor, price was the most common response (16 responses). Among the large purchasers, price was the most important factor for ***. It was the second-most important factor for ***, the third-most important factor for ***, and was not among the three most important factors for ***. Availability and product form were the third- and fourth-most frequently reported responses, though these were both reported as the most important factor more frequently than price was. Other factors listed among the top three factors were delivery, reliability of supply and prearranged contracts/traditional supplier.

Purchasers were also asked how frequently they purchased the lowest-priced sodium metal. Three purchasers (including ***) replied "always," six (including ***) replied "usually," nine (including ***) replied "sometimes," one replied "sometimes/never," and 15 (including ***) replied "never."

⁹⁹ Hearing transcript, pp. 197-199 (Matusewich).

¹⁰⁰ Hearing transcript, pp. 200-201 (Donzella).

¹⁰¹ Hearing transcript, pp. 212-213 and 233 (Rice), 215 and 264-265 (Johnson), 282-284 (Johnson, Rice, Sloane, and Winters), and 286 (Doobay).

Table II-4**Sodium metal: Ranking factors used in purchasing decisions, as reported by U.S. purchasers**

Factor	Number of firms reporting ¹			
	First	Second	Third	Total
Quality (including consistency, meeting specifications, and trace metal impurities)	20	13	4	37
Price/cost	4	5	16	25
Availability/ability to supply	7	8	5	20
Form/grade/ingot size/oxide content	7	6	4	17
Delivery (including method of delivery and lead times)	0	2	7	9
Reliability of supply	0	2	3	5
Prearranged contract/traditional supplier	0	2	2	4
Other ²	1	1	3	5

¹ Some firms reported more than one first, second, or third most important factor.

² Other items reported were "that our sodium supplier does not compete against us in the downstream product market," "ability to clean out sludge buildup in our existing tanks and restore them to service in a timely, safe and cost effective manner, with greatly reduced future cleanouts," payment terms, "willing to sell relative small quantities," and "response to changes in demand."

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

Importance of Specified Purchase Factors

Purchasers were asked to rate the importance of 17 factors in their purchasing decisions (table II-5). Also, the responses given by the top 10 purchasers of bulk sodium metal to some of the factors are presented in table II-6. The factors listed as "very important" by the majority of firms were quality meets industry standards (38 firms), availability (37 firms), reliability of supply and product consistency (36 firms each), form requested (33 firms), and delivery time (24 firms). Price was considered "very important" by 20 purchasers and "somewhat important" by 19.¹⁰² No other factor was rated as very important by a majority of the responding firms.

¹⁰² Of the top 10 purchasers of bulk sodium metal, *** consider price as "somewhat important" and *** consider it "very important."

Table II-5
Sodium metal: Importance of factors as reported by U.S. purchasers

Factor	Very important	Somewhat important	Not important
	Number of firms responding		
Availability	37	2	0
Avoidance of calcium buildup/clog	14	16	9
Delivery terms	12	23	4
Delivery time	24	14	1
Discounts offered	5	20	14
Extension of credit	5	21	13
Form requested	33	5	1
Minimum quantity requirements	13	16	10
Price	20	19	0
Product consistency	36	3	0
Product range	10	16	12
Quality exceeds industry standards	10	18	11
Quality meets industry standards	38	1	0
Reliability of supply	36	2	1
Sodium oxide buildup/clogging	11	16	12
Technical support/service	10	17	12
U.S. transportation costs	11	20	8
Other ¹	9	2	0

¹ Other includes appearance, safety, responsible care, technical expertise, low K, low surface oxide, ingot diameter, low chloride content, logistics, having two sources, and "whether our supplier competes with us on downstream product."

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

Table II-6
Sodium metal: Importance of specific factors as reported by the top 10 U.S. purchasers in bulk form

* * * * *

Factors Determining Quality

Purchasers were asked to identify the factors that determine the quality of sodium metal. Purchasers reported numerous specific factors relating to both the product itself as well as the supplier of sodium metal. Of the 35 responding purchasers, factors relating to purity of the sodium (including calcium, chlorine, and other impurities) were noted 18 times, and relatedly, quality meeting specifications was noted 11 times.¹⁰³ Other factors reported include: the form of the sodium/ingot size, product performance in the purchasers' manufacturing process (including its effect on the cost of manufacturing), product consistency, low oxide levels, packaging, appearance, supply security/reliability, the type of oil coating on an ingot, customer service, and DuPont's recommendation.

¹⁰³ Purity and meeting specifications were noted by *** of the top purchasers of sodium metal.

Quality Level Preferences

Purchasers were asked about their preferences regarding a higher grade of sodium. Four of 39 responding purchasers (***) noted that they had requested a higher grade of sodium metal than they were buying at that time. Three of these four reported buying the higher grade sodium (only *** did not, because ***). Additionally, *** stated that it bought some of MSSA's SoPure product, because at that time, it was the grade available, as opposed to DuPont's technical grade.

Additionally, seven of the 39 responding purchasers (***) noted above, as well as ***) were offered a higher grade of sodium than they were buying at the time of the offer. *** stated that, "MSSA offered to sell *** sodium with a lower calcium content than the technical grade DuPont supplies. This occurred in a series of proposals Metaux made between ***.¹⁰⁴ It should be noted that they offered us the same grade material that DuPont was providing but indicated that they would keep 'back-up inventory' of a lower-calcium grade material in the U.S. that could be supplied to us." *** did not accept the offer, noting that "****."^{105 106} Three purchasers did buy the higher grade, while four did not. *** purchased a load of *** for a manufacturing and logistics trial, *** tested ***, and *** has had discussions with ***.¹⁰⁷ ***, which did not purchase the higher grade sodium, stated, "****." DuPont has not met *** specification.

Only five of 34 responding purchasers reported that they had paid or would be willing to pay a higher price for a higher grade of sodium metal. Responses for large bulk purchasers of sodium metal are presented in table II-7. Importer MSSA reported that it hopes to *** for its SoPure grade of sodium over its S+ grade.^{108 109} Importer MSSA has stated that "although some customers prefer a specialty grade sodium metal to the technical grade, a degree of substitutability otherwise exists."¹¹⁰

Table II-7
Large bulk sodium metal purchasers' views regarding purchasing a grade of sodium metal with a lower calcium content

* * * * *

¹⁰⁴ ***.

¹⁰⁵ According to the findings of the National Labor Relations Board in a labor dispute involving DuPont's sale of assets to China for making ingots, "During the negotiations, on August 15, 2001, Rohm & Haas demanded of Respondent {DuPont} that, in order to justify an increase in Respondent's business, Rohm & Haas had to avoid being 'single sourced.' Respondent was able to use its sale of its technology to {Chinese producer} Lantai on August 11 and its ability to purchase bulk sodium from Lantai to guarantee to Rohm & Haas that second source of bulk sodium." MSSA's posthearing brief, exh. 30, p. 7.

¹⁰⁶ Upon further inquiry, ***.

¹⁰⁷ The delivery was made shortly thereafter. MEMC's posthearing brief, exh. 10-C.

¹⁰⁸ In fact, MSSA stated that "****."

¹⁰⁹ In addition, the responses of purchasers in the Lost Revenues and Lost Sales section of Part V also cite price and non-price factors in their decisions from whom to source sodium metal.

¹¹⁰ MSSA's antisubsidy complaint filed with the European Commission, non-confidential version, June 9, 2008, p. 10.

Changes in Product Range

The U.S. producer, importers, and purchasers of sodium metal were asked to describe any significant changes in the product range or marketing of sodium metal in the United States since January 2005. The U.S. producer, DuPont, and four importers of sodium metal responded; ***, reported some changes, while *** reported no such changes.¹¹¹ ***.¹¹² ***. Additionally, DuPont reported that ***.

As the U.S. sales agent for the bulk sodium metal imported from France by MSSA, Columbia Sales noted some additional changes in the product range of this product in the recent past. MSSA has been marketing *** U.S. imports of sodium metal from France with a relatively new grade called SoPure, which has a calcium content of less than 200 ppm.¹¹³ With the SoPure grade of sodium metal, according to Columbia Sales, calcium oxides do not form and, as a result, consumers do not experience plugging of their pipes or a build-up of calcium sludge in their storage tanks. In addition, MSSA's *** is being supplied *** grade of sodium metal by pipeline to the customer's storage tanks from MSSA's transloading facility, ***. Importer *** reported that in 2007, its customer suffered an industrial accident, which ended its participation in the sodium metal market.

Certification/Qualification Issues

Purchasers were asked if they require certification or prequalification of their suppliers. Fifteen of 36 responding purchasers reported that they required certification or prequalification on some portion of their purchases, and 13 required it for all of their purchases.¹¹⁴ Various purchasers had different criteria for obtaining certification; some required product trials and tests, ISO and current GMP certifications, conformance with HAZMAT guidelines, or specific sizes of ingots. Nineteen purchasers reported factors considered when choosing a supplier, which included factors such as quality meeting specifications, form of product, availability, customer service, lead time, safety in the manufacturing process, and logistics. Four of 33 responding purchasers (***, Ciba, ***, and MEMC) reported that they had failed to qualify DuPont's product since January 2005.¹¹⁵

Purchasers were asked how often domestic, imported French, and imported nonsubject sodium metal met minimum quality specifications during 2005-07, either for their firm or their firms' customers. Out of 26 responding purchasers, domestic producers were able to meet minimum specifications "always" for 10 purchasers (including ***),¹¹⁶ "usually" for 4 purchasers (including ***), "sometimes" for 1 purchaser, and "rarely or never" for 11 purchasers (including ***).¹¹⁷ Of 29 responding purchasers,

¹¹¹ *** imports primarily sodium metal ingots from France and relatively small quantities of sodium metal in fused drums, while *** imports sodium metal from France and sells it in very small quantities to research institutions.

¹¹² ***.

¹¹³ SoPure was ***, during which time *** was the U.S. importer of the sodium metal from France (staff telephone interview with ***, Hunton & Williams LLP, counsel to respondents, November 29, 2007). According to Columbia Sales, calcium levels above 200 ppm settle out of the sodium as calcium oxides. Calcium oxides can plug pipelines, thus forcing shutdown of production. Calcium oxides also can build up in customers' storage tanks, resulting in costly and potentially dangerous sludge removal every five or ten years, depending upon the amount of buildup. Conference transcript, pp. 96-97 (Matusewitch).

¹¹⁴ *** did not require certification for their suppliers, and *** had already qualified ***.

¹¹⁵ See, e.g., hearing transcript, pp. 171-172 (Rice) and pp. 190-191 (Johnson).

¹¹⁶ DuPont asserted that ***. This is incorrect. *** did not respond to this question. DuPont's posthearing brief, p. 12.

¹¹⁷ ***.

imported French sodium metal met minimum specifications “always” for 27 purchasers (including ***) and “usually” for 2 purchasers (including ***). Responses are summarized in the following tabulation:

Country meeting minimum quality specifications:	<u>Always</u>	<u>Usually</u>	<u>Sometimes</u>	<u>Rarely or never</u>
United States	10	4	1	11
France	27	2	0	0
China	3	1	0	5
Switzerland	0	1	0	0
Source: Compiled from data submitted in response to Commission questionnaires.				

Comparisons of Domestic Product, Subject Imports, and Nonsubject Imports

Interchangeability

DuPont and U.S. importers of sodium metal were requested in their questionnaires to report on the extent of interchangeability (products from different countries physically capable of being used in the same applications) of sodium metal produced domestically and imported from France or any countries other than France. They were also asked to report the extent of any non-price differences that would affect sales in the U.S. market among these various sources of sodium metal. Responses of DuPont, importers, and purchasers regarding the degree of interchangeability between domestic and imported sodium metal are summarized in table II-8. DuPont, importers, and purchasers were also requested in their questionnaires to provide any comments where they deemed products to be “sometimes” or “never” interchangeable. These comments are included in the text, and for large purchasers’ comments regarding interchangeability, in table II-9. DuPont and importers’ responses regarding differences other than price which affect competition are summarized in table II-10. Comments were requested whenever nonprice factors were “always” or “frequently” significant in competition.

With regard to the degree of interchangeability, one U.S. producer, 3 importers, and 18 purchasers provided the requested information (table II-8). *** reported that government regulations require that sodium metal be transported in solid form. For transfer, the sodium must be melted at temperatures exceeding 98 degrees Celsius, at which temperature calcium solubility is around 200 ppm. Most customers, *** reports, maintain their tanks at 120 to 125 degrees Celsius, at which calcium solubility is about 380 to 435 ppm. This heat results in the calcium staying in solution form. Therefore, according to ***, all sodium at or above 200 ppm is interchangeable.

Importer MSSA reported that ***. MSSA also noted that ***. Columbia Sales reported that ***.

Fifteen purchasers provided comments regarding the interchangeability of sodium from different countries. A summary of responses regarding the interchangeability of domestic and imported French sodium metal for purchasers accounting for more than 1 percent of reported purchases in January 2005-March 2008 is presented in table II-9. Some purchasers also compared imported Chinese sodium metal

Table II-8

Sodium metal: Perceived degree of interchangeability of sodium metal produced in the United States, imported from France, and imported from third countries and sold in the U.S. market¹

Country pair	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. France	***	***	***	***	1	0	1	1	7	3	4	3
U.S. vs. China	***	***	***	***	0	0	1	1	3	1	1	3
U.S. vs. Other	***	***	***	***	1	0	0	0	1	0	0	0
France vs. China	***	***	***	***	0	0	2	0	2	1	2	3
France vs. Other	***	***	***	***	1	0	0	0	1	0	0	0

¹ Producers, importers, and purchasers were asked, "Are the sodium metal products produced in the United States, imported from France, and imported from other countries used interchangeably (i.e., can they physically be used in the same applications)?"

Note.--A = Always, F = Frequently, S = Sometimes, N = Never. In addition to the responses shown in the table, one purchaser answered both "sometimes and "never" in comparing U.S. product and product from France.

Note.--No responses were provided comparing the U.S. and France to India.

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

Table II-9

Sodium metal: Large purchasers' views regarding the interchangeability of domestic and imported French product, by size of purchaser

* * * * *

Table II-10

Sodium metal: Perceived importance of differences in factors other than price between sodium metal produced in the United States, imported from France, and imported from third countries and sold in the U.S. market¹

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. France	***	***	***	***	2	0	1	0
U.S. vs. China	***	***	***	***	2	0	0	0
U.S. vs. Other	***	***	***	***	0	0	1	0
France vs. China	***	***	***	***	2	0	0	0
France vs. Other	***	***	***	***	0	0	1	0

¹ Producers and importers were asked, "Are differences other than price (i.e., quality, availability, transportation network, product range, technical support, etc.) between sodium metal produced in the United States, imported from France, and imported from other countries a significant factor in your firm's sales?"

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

Note.--No responses were provided comparing the U.S. and France to India.

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

to domestic and imported French sodium metal, and some smaller purchasers (***) noted, in general, the superiority of the imported French sodium metal.¹¹⁸

For responses regarding differences in factors other than price affecting competition, DuPont and three importers reported the requested information (table II-10), and DuPont, MSSA, and Columbia Sales added comments. DuPont stated that ***. MSSA reported **. Columbia Sales noted that **.

When asked if there was a difference in products between domestic and imported French sodium metal, Ciba reported that qualification trials it performed with DuPont's Niapure Select caused significant micro filtration problems and could not be used in its production process, and caused damage to the filters, which had to be repaired.¹¹⁹ *** relayed that the difference was "indeterminate. The difference between the two lies in the calcium build-up contribution to equipment over the long term." *** added, "There is no difference in the final product specifications, however it is more difficult to use DuPont sodium because of the presence of metal oxide impurities and the buildup of sludge in our tanks and transfer piping." *** stated, "U.S. produced sodium was of lower grade/quality. France imported sodium was {of} higher grade/quality. Cost associated with US grade were higher due to lower quality." No difference in final products was reported by *** in comparing products made using domestic vis-à-vis imported French sodium.

Country Comparisons

Purchasers were also asked to compare sodium metal produced in the United States to that made in France and nonsubject countries with respect to 17 different attributes (table II-8). Purchasers were further requested to compare domestic and French sodium metal with sodium metal from nonsubject countries (table II-11). Twenty-four purchasers provided responses.

The majority of firms comparing products from the United States and France reported that the U.S. product was comparable with sodium metal imported from France for most factors except avoidance of calcium buildup and clogging and quality exceeds industry standards, for which the U.S. product was considered to be inferior. Table II-12 presents how large bulk purchasers compared domestic and imported French product on six of the factors.

¹¹⁸ In its posthearing brief, DuPont asserted that "****." ***. This assertion, however, is incorrect. **.

¹¹⁹ Hearing transcript, pp. 190-191 (Johnson).

Table II-11
Sodium metal: Comparisons of U.S. product, product from France, and product from other countries, as reported by U.S. purchasers

Factor	U.S. vs France ¹			U.S. vs China			France vs China			France vs Switzerland		
	S	C	I	S	C	I	S	C	I	S	C	I
	<i>Number of firms responding</i>											
Availability	3	13	4	2	3	0	4	4	0	0	1	0
Avoidance of calcium buildup/clog	1	7	11	2	3	0	3	3	0	0	1	0
Delivery terms	2	14	3	3	1	1	3	3	0	0	1	0
Delivery time	3	13	4	3	2	0	4	1	1	0	1	0
Discounts offered	0	16	1	1	3	0	0	5	0	0	1	0
Extension of credit	1	17	1	1	3	0	1	4	0	0	1	0
Form requested	1	14	5	3	1	1	5	1	1	0	1	0
Minimum quantity requirements	2	15	2	2	3	0	2	4	0	0	1	0
Price ²	3	11	3	0	1	3	1	3	2	0	1	0
Product consistency	1	11	8	2	2	1	3	3	1	0	1	0
Product range	1	11	6	1	3	0	2	3	0	0	1	0
Quality exceeds industry standards	1	7	11	0	3	1	3	0	1	0	1	0
Quality meets industry standards	1	11	8	1	3	1	5	1	1	0	1	0
Reliability of supply	3	14	3	4	0	1	4	2	1	0	1	0
Sodium oxide buildup/clogging	1	10	8	1	4	0	2	2	1	0	1	0
Technical support/service	3	14	2	3	2	0	3	4	0	0	1	0
U.S. transportation costs ²	3	13	2	3	2	0	2	3	1	0	1	0

¹ In comparing U.S. vs France, one firm rated the U.S. both superior and comparable in terms of price. In addition to the listed factors, purchasers wrote in other factors. These include safety and responsible care, for which U.S. and French suppliers were rated as comparable; and storage tank cleanout, quality control data history, chlorine specification, and logistics, for which the U.S. product was rated inferior to the French product.

² A rating of superior means that the price/U.S. transportation cost is generally lower. For example, if a firm reported "U.S. superior," it meant that the price of U.S. product is generally lower than the price of the imported product.

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

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

Table II-12
Sodium metal: Large bulk purchasers' comparisons of domestic and imported French product regarding 6 factors

* * * * *

Purchases from Specific Countries and/or Producers

Purchasers were asked how frequently they and their customers purchase sodium metal based on the producer and country of origin. The following tabulation summarizes the responses:

Purchaser/customer decision	Always	Usually	Sometimes	Never
Purchaser makes decision based on producer	12	1	0	23
Purchaser's customer makes decision based on producer	0	0	0	15
Purchaser makes decision based on country of origin	5	0	1	30
Purchaser's customer makes decision based on country of origin	0	0	0	15

Most purchasers (23 of 36) reported that they “never” make purchases based on the producer of sodium metal although 12 firms reported that they “always” make purchases based on the producer. Those reporting “always” cited the following reasons: customer service, quality and quantity, long-term supplier, approved/qualified suppliers that meet technical specifications, DuPont material unacceptable, supply of ingots required, MSSA’s product is visibly cleaner, and MSSA is the only source for the Extra Refined grade that meets the purchaser’s requirements. All 15 responding purchasers reported that their customers “never” make decisions based on the producer. Thirty of 36 responding purchasers reported that the source country was “never” important for their purchases, and all 15 responding purchasers reported that it was “never” important for their customers.¹²⁰

Buying domestically produced sodium metal is not an important factor in the purchasing decisions for 37 of 39 responding purchasers. The two remaining purchasers, ***, reported buying *** percent of their purchases domestically. *** stated that “***.” Purchasers *** do not purchase domestically, but separately reported that “***,” and “***.”

A majority of responding purchasers (17, as compared to 16) reported that certain forms, grades/purities, and/or other types of sodium metal are available only from a single source. Twelve of these purchasers focused their responses on product from France. Fourteen of 38 purchasers or their customers will specifically order sodium metal from one country over another. Ten of these purchasers (including ***) referenced MSSA in their answers, whereas one (***) referenced its long-term contract with DuPont.

ELASTICITY ESTIMATES

U.S. Supply Elasticity¹²¹

The domestic supply elasticity for sodium metal measures the sensitivity of the quantity supplied by DuPont to changes in the U.S. market price of sodium metal. 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 and from production of other products, the existence of inventories, and the availability of alternative markets for U.S.-produced sodium metal.

In the short term, DuPont has the ability to respond to changes in price with small-to-moderate changes in the quantity shipped to the U.S. market. Supply responsiveness is enhanced by possible available capacity, the ability to switch from producing other products, the quantity of inventory on hand, and *** amount of exports, but is limited by the need for long-term contracts to start a new Downs cell, and ***. Domestic supply elasticity is likely in the range of 1 to 2.

¹²⁰ Of the large purchasers of bulk sodium metal, *** reported “always” making supply decisions based on the firm supplying the sodium metal, and *** reported “sometimes” making a decision based on the country of origin. All other large purchasers of bulk sodium metal reported “never” making decisions based on these factors.

¹²¹ A supply function is not defined in the case of a non-competitive market.

U.S. Demand Elasticity

The U.S. demand elasticity for sodium metal measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of sodium metal, and is likely to be low. This estimate is driven by factors discussed earlier, such as the low cost share of sodium metal in the production of construction products, and few substitute products, though the large number of uses for sodium metal serves to enhance the responsiveness of demand. An estimate of $-.25$ to $-.5$ is suggested.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.¹²² Product differentiation, in turn, depends upon such factors as quality (both perceived and actual), grade, and conditions of sale. Producers and importers disagree as to the interchangeability of domestic and imported sodium metal, but do agree that for some products, substitutability is one-way. Purchasers' reporting of the existence of sludge buildup and clogging due to the reported calcium content, as well as the necessity some purchasers have for buying ingots, bricks, sticks, and doses, tend to decrease substitutability between domestic and imported French sodium. Based on available information, the elasticity of substitution between domestic and subject sodium metal is likely to be moderate for most applications; an estimate of 1 to 3 is suggested. DuPont asserts that this suggestion is too low and that the elasticity of substitution is within the range of 4 to 6, based on the fact that U.S. purchasers that bought sodium in bulk form "generally found ***" and that five of the ten largest responding purchasers found the French and domestic sodium to be "always" or "frequently" interchangeable.¹²³ MSSA, on the other hand, believes that this estimate is overstated since MSSA does not compete with DuPont for ***.¹²⁴

¹²² The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like product 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.

¹²³ DuPont's prehearing brief, app. D, pp. 2-4.

¹²⁴ MSSA's prehearing brief, p. 8.

PART III: U.S. PRODUCER’S 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 margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire response of DuPont, the petitioner and sole U.S. producer of sodium metal during the period for which data were collected.

U.S. PRODUCER

DuPont, a publicly traded firm, has a plant located at Niagara Falls, NY, which produced *** pounds of sodium metal in 2007. During 2007, the Niagara Falls plant produced sodium metal (*** percent) and lithium (*** percent) in the same facility; a byproduct of both of these products is chlorine.¹ DuPont reported that since January 1, 2005, it had reduced its operational Downs cell capacity by approximately *** cells, equivalent to about a *** percent decline in the number of operating cells.^{2 3}

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

DuPont’s capacity, production, and capacity utilization data for sodium metal are presented in table III-1 and figure III-1.⁴ Reported U.S. production decreased by *** percent between 2005 and 2007, with a *** percent decline between 2005 and 2006, and a further decline of *** percent between 2006 and 2007. Production during the interim period (January-June) of 2008 was *** percent higher than production during the interim period of 2007. Capacity utilization tracked production, declining by *** percentage points between 2005 and 2006, and further falling by *** percentage points from 2006 to 2007. Capacity utilization was *** higher, by *** percentage points, in interim 2008 compared with interim 2007.^{5 6}

¹ DuPont’s U.S. producer’s questionnaire response. DuPont reported that during 2007 it allocated *** percent of the same production and related employees to the production of lithium, with the remaining *** percent allocated to the production of sodium. DuPont noted that the production of lithium requires *** manpower than the production of sodium. DuPont’s supplemental response to the U.S. producer’s questionnaire, August 28, 2008.

² DuPont, as shown in the tabulation below, presented in half-year periods, also reported that cell usage declined over the period for which data were collected.

Item	1H 2005	2H 2005	1H 2006	2H 2006	1H 2007	2H 2007
Average number of cells used	***	***	***	***	***	***
Source: Compiled from data submitted in response to Commission questionnaires.						

³ DuPont reported that ***. DuPont’s supplemental response to the U.S. producer’s questionnaire, August 28, 2008.

⁴ The data in this and other tables in Part III are for DuPont, the sole U.S. producer; all production is in bulk form.

⁵ DuPont reported that its production capacity is based on utilizing all existing Downs cell capacity for which slots are available. DuPont reported that the major pieces of infrastructure, such as transformers, rectifiers, and supporting equipment in order to process the material, are already in place, ready to use. Hearing transcript, p. 104 (continued...)

DuPont reported that its production capacity was constrained by ***.⁷ Furthermore, DuPont stated that the maximum quantity of sodium metal that could be processed per year in the primary filter stage was *** pounds, *** pounds in the Niapure process stage, and *** pounds in the Niapure Select process stage.⁸ DuPont reported that this processing capacity is ***.⁹

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

* * * * *

Figure III-1
Sodium metal: DuPont's capacity, production, and capacity utilization, 2005-07, January-June 2007, and January-June 2008

* * * * *

Table III-2 presents data on DuPont's production by reported grade for the period for which data were collected. *** DuPont's production over the period under investigation was *** grade sodium metal, although its production of that grade declined by *** percent between 2005 and 2007, with a ***-percent decline between 2005 and 2006 and a ***-percent decline between 2006 and 2007. Meanwhile, production of the *** grade increased by *** percent between 2005 and 2006, and again by *** percent from 2006 to 2007. DuPont reported that the decline in production of *** grade sodium metal was

⁵ (...continued)
(Wallden).

⁶ The following tabulation presents DuPont's production capacity based on the average number of cells in actual operation, plus the average number of cells ready to be installed and put into operation. DuPont reported that its Niagara plant has *** shops dedicated to the production of sodium metal, each with *** Downs cell positions. Of the total *** possible Downs cell positions, *** Downs cell positions are currently available for sodium metal production, as ***. DuPont stated that it ***. During the period for which data were collected, DuPont built *** Downs cells per year on average. According to DuPont, each Downs cell produces an average of *** pounds of sodium metal per year.

DuPont asserts that this method of calculating production capacity is not an accurate measurement of production capacity as DuPont has the ability to activate new Downs cells, and could achieve full capacity utilization in ***, if demand for sodium metal warranted it. DuPont's supplemental response to the U.S. producer's questionnaire, September 11, 2008.

Capacity utilization calculated using the capacity in the tabulation below and the production in table III-1 ranged from a high of *** percent in 2005 to a low of *** percent in interim 2008.

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
Capacity	***	***	***	***	***

⁷ DuPont ***.

⁸ DuPont reported that ***. DuPont's U.S. producer questionnaire response.

⁹ DuPont's supplemental response to the U.S. producer's questionnaire, August 28, 2008.

partially due to ***. This *** explains the increase in production of *** grade between 2005 and 2006. DuPont commenced producing *** grade in *** upon the request of one of its customers, ***, but ***.¹⁰

Table III-2
Sodium metal: DuPont's production by grade, 2005-07, January-June 2007, and January-June 2008

* * * * *

U.S. PRODUCER'S SHIPMENTS

Data on DuPont's shipments of sodium metal are presented in table III-3. DuPont's U.S. commercial shipments of sodium metal decreased by *** percent by quantity (and by *** percent by value) from 2005 to 2006, and declined by a further *** percent by quantity (*** percent by value) between 2006 and 2007. This decline in U.S. commercial shipments was partially offset by DuPont's export shipments which increased by *** percent from 2005 to 2007, and represented *** share of total shipments. Export shipments grew from *** percent of the total quantity of DuPont's shipments in 2005 to *** percent in 2007. DuPont reported that its exports of sodium metal, which were *** grade sodium metal, were increased to ***. These exports ***. This allowed DuPont to ***.¹¹

In 2005, DuPont had *** internal consumption of its sodium metal and transferred *** percent of its total shipments to related firms. DuPont increased its transfers to related firms to *** percent of its total shipments in 2007, and ***.¹²

Table III-4 presents commercial shipment data to DuPont's three largest customers and to all others for the period for which data were collected. As shown in the table, U.S. commercial shipments to *** increased between 2005 and 2006 by *** percent, but declined by *** percent from 2006 to 2007.¹³ DuPont's U.S. commercial shipments to *** were *** percent higher in interim 2008 than in interim 2007. The reduction in DuPont's U.S. commercial shipments between 2006 and 2007 also reflects ***.

Table III-3
Sodium metal: DuPont's shipments, by type, 2005-07, January-June 2007, and January-June 2008

* * * * *

Table III-4
Sodium metal: DuPont's U.S. commercial shipments to its top three and all other customers, 2005-07, January-June 2007, and January-June 2008

* * * * *

Table III-5 presents data for DuPont's U.S. shipments by grade for the period for which data were collected.¹⁴ Shipments of technical grade sodium metal decreased by *** percent by quantity (and by *** percent by value) from 2005 to 2006, and further declined by *** percent by quantity (*** percent by value) between 2006 and 2007. Shipments of technical grade sodium metal were *** percent higher by

¹⁰ DuPont's supplemental response to the U.S. producer's questionnaire, September 8, 2008.

¹¹ DuPont's U.S. producer questionnaire response.

¹² ***. DuPont transferred sodium metal to ***. In the second half of 2007, DuPont ***. DuPont's U.S. producer questionnaire response.

¹³ DuPont reported that decline from 2006 to 2007 was ***. Petitioner's posthearing brief, app. 1, p. 28.

¹⁴ DuPont reported that ***.

quantity (***) percent by value) in interim 2008 compared with interim 2007. Shipments of specialty grade sodium metal (Niapure) initially increased (***), from 2005 to 2006, then increased by *** percent between 2006 and 2007. DuPont started shipping *** in ***, but neither *** nor the increase in shipments of *** in the quantity and value of shipments of the technical grade sodium metal over the period for which data were collected. Accordingly, technical grade sodium metal, as a share of U.S. shipments, *** between 2005 and 2007, while the share represented by ***. DuPont reported that this *** of each grade was partially a result of ***.¹⁵

The average unit values for technical grade sodium *** over the period for which data were collected, from \$*** per pound in 2005 to \$*** per pound in 2007. Over the same period, Niapure average unit values also ***, from \$*** per pound in 2005 to \$*** per pound in 2007. DuPont reported that the *** in the average unit values of both grades were partially a result of ***.¹⁶ The *** average unit values of Niapure Select, as compared with those of Niapure, were also a result of ***.¹⁷

Table III-5

Sodium metal: DuPont's U.S. shipments by grade, 2005-07, January-June 2007, and January-June 2008

* * * * *

U.S. PRODUCER'S INVENTORIES

Table III-6, which presents end-of-period inventories for sodium metal, shows that inventories increased both absolutely and relative to production, U.S. shipments, and total shipments throughout the period for which data were collected.¹⁸

Table III-6

Sodium metal: DuPont's end-of-period inventories, 2005-07, January-June 2007, and January-June 2008

* * * * *

U.S. PRODUCER'S IMPORTS AND PURCHASES

During the period for which data were collected, DuPont did not purchase sodium metal. The company, however, did import sodium metal from China, as shown in table III-7. As a ratio to production, imports increased over the period for which data were collected, but remained ***, rising from *** percent to *** percent of U.S. production between 2005 and 2007. DuPont reported importing sodium metal from China ***.¹⁹

¹⁵ DuPont's supplemental response to the U.S. producer's questionnaire, September 8, 2008.

¹⁶ The *** average unit value for technical grade was also a result of ***.

¹⁷ DuPont's supplemental response to the U.S. producer's questionnaire, September 8, 2008.

¹⁸ DuPont noted that ***. DuPont's U.S. producer questionnaire response.

¹⁹ DuPont's importer questionnaire response.

Table III-7

Sodium metal: DuPont's imports, 2005-07, January-June 2007, and January-June 2008

* * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

DuPont's aggregate employment data for sodium metal are presented in table III-8. Employment of production and related workers ("PRWs") by DuPont decreased by *** from 2005 to 2007, and was *** in interim period 2008 compared with interim period 2007. Hours worked by PRWs declined by *** percent from 2005 to 2006, and by *** percent between 2006 and 2007. Wages paid to PRWs similarly declined by *** percent from 2005 to 2006, and by *** percent in 2007. DuPont reported that these declines reflected the ***.²⁰

Productivity levels increased by *** percent between 2005 and 2006, then decreased by *** percent in 2007. During the interim periods, productivity increased by *** percent. Unit labor costs fluctuated *** during the period for which data were collected.

Table III-8

Sodium metal: DuPont's employment-related data, 2005-07, January-June 2007, and January-June 2008

* * * * *

²⁰ DuPont's supplemental response to the U.S. producer's questionnaire, August 28, 2008.

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

U.S. IMPORTERS

Table IV-1 presents information on U.S. importers. Questionnaires were sent to 14 firms identified by the petitioners and U.S. Customs and Border Protection (“Customs”) as possible importers of sodium metal. Of the 13 firms that responded, eight reported that they did not import sodium metal, two stated that they imported from a nonsubject country (i.e., China) but did not import from France, and three importers indicated that they imported sodium metal from France. The three firms’ imports of sodium metal from France account for *** U.S. imports from France by quantity in 2007, as measured in official Commerce statistics.

*** of the importers that submitted data in response to the Commission’s U.S. importers’ questionnaire indicated that they imported sodium metal from China: U.S. producer DuPont and ***. DuPont’s imports of sodium metal from China are believed to account for ***.

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

* * * * *

U.S. IMPORTS

Table IV-2 presents and figure IV-1 depicts U.S. imports of sodium metal during 2005 to 2007 and January-June 2007 and 2008. U.S. import data are based on responses to the Commission’s U.S. importers’ questionnaires.¹ U.S. imports of sodium metal from France increased by *** percent between 2005 and 2007, increased by *** percent from 2005 to 2006, then declined by *** percent between 2006 and 2007, and were *** percent higher in interim 2008 than in interim 2007. The value of imports of sodium metal from France also increased overall between 2005 and 2007, increasing by *** percent between 2005 and 2006, and then declining by *** percent from 2006 to 2007. The average unit value of imports from France decreased *** between 2005 and 2007 from \$*** to \$***, but rose to *** in interim 2008. Imports from nonsubject sources, namely China, also increased overall during 2005-07 (by *** percent), but, in contrast to imports from France, declined (by *** percent) between 2005 and 2006 and then increased (by *** percent) from 2006 to 2007. The value of nonsubject imports declined by *** percent between 2005 and 2006, followed by an increase of *** percent between 2006 and 2007.² Despite the overall increase in imports from nonsubject sources between 2005 and 2007, these imports remained a very small share of total U.S. imports, and represented an even smaller share at the end of the period than in 2005. The unit value of nonsubject imports fluctuated over the period for which data were collected.³

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

* * * * *

¹ Official Commerce statistics based on HTS subheading 2805.11.00 reported imports from countries other than France and China, which are believed to be misclassified. Hearing transcript, p. 115 (Jaffe) and p. 294 (Chaminant).

² This increase ***.

³ During 2005-07, the unit value of nonsubject imports ***.

Figure IV-1

Sodium metal: Quantity of subject and nonsubject U.S. imports, 2005-07, January-June 2007, and January-June 2008

* * * * *

U.S. Shipments of Subject Imports, by Type

Table IV-3 presents data on reported U.S. shipments of subject imports of sodium metal, by type, over the period for which data were collected. In terms of both quantity and value, imports of S+, SoPure, and Refined grades increased from 2005 to 2007 (by *** percent, *** percent, and *** percent, respectively). ***.

Table IV-3

Sodium metal: Reported U.S. shipments of imports from France, by type, 2005-07, January-June 2007, and January-June 2008

* * * * *

MSSA reported that the increase in imports of the S+ grade between 2006 and 2007 was accounted for by ***. In 2007, *** purchased sodium metal *** from MSSA, and in 2008 ***. MSSA reported that the increase in shipments to *** was due to the increase in demand for ***, and, in turn, ***.⁴

The increase in shipments of SoPure was reported by MSSA to be a result of ***.⁵

Negligibility

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.⁶ Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. Subject imports from France accounted for *** percent of total imports of sodium metal by quantity between October 2006 and September 2007.⁷

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

Table IV-4 presents data on the apparent U.S. consumption of sodium metal. Table IV-5 presents data on U.S. market shares. Figure IV-2 graphically presents data on apparent U.S. consumption and U.S. market shares.

The quantity of total apparent U.S. consumption increased by *** percent from 2005 to 2006, and then decreased by *** percent in 2007, for an overall decrease of *** percent between 2005 and 2007.

⁴ MSSA's supplemental response to the importer's questionnaire, August 28, 2008.

⁵ Ibid.

⁶ Section 733(a)(1) of the Act.

⁷ Calculated from official Commerce statistics.

However, the quantity of apparent U.S. consumption increased (by *** percent) in January-June 2008 compared with the level in January-June 2007. Import shipments increased by *** percent between 2005 and 2007 while DuPont's U.S. shipments decreased by *** percent. The decline in DuPont's U.S. shipments between 2006 and 2007 was partially the result of ***.⁸ From 2005 to 2007, the increase in imports of sodium metal from France accounted for almost all of the increase in total imports. U.S. shipments by DuPont, as well as importers' shipments from France and China, were higher in January-June 2008 than in January-June 2007.

Table IV-4
Sodium metal: Apparent U.S. consumption, by sources, 2005-07, January-June 2007, and January-June 2008

* * * * *

DuPont's U.S. shipments decreased as a share of the quantity and value of apparent U.S. consumption of sodium metal from 2005 to 2007, while imports from France increased by both measures. Throughout the period for which data were collected, nonsubject imports accounted for a relatively small share of the U.S. market in terms of quantity and value (in 2007, nonsubject imports accounted for *** percent of the U.S. market by quantity, and *** percent of the U.S. market by value).

Table IV-5
Sodium metal: Apparent U.S. consumption and market shares, by sources, 2005-07, January-June 2007, and January-June 2008

* * * * *

Figure IV-2
Sodium metal: Apparent U.S. consumption, by sources, 2005-07, January-June 2007, and January-June 2008

* * * * *

Table IV-6 presents information on the ratio of subject and nonsubject imports to U.S. production of sodium metal. Subject imports increased from *** percent of U.S. production in 2005 to *** percent of U.S. production in 2007. Nonsubject imports increased from *** percent of U.S. production in 2005 to *** percent in 2007, and were *** percent or less of U.S. production throughout the period for which data were collected.

Table IV-6
Sodium metal: Ratios of U.S. imports to U.S. production, by sources, 2005-07, January-June 2007, and January-June 2008

* * * * *

COMPARISONS OF U.S. SHIPMENTS OF THE DOMESTICALLY PRODUCED AND FRENCH PRODUCTS

Table IV-7 and figure IV-3 present average unit values for U.S. shipments of sodium metal produced in the United States, France, and all other countries. While the unit values of DuPont's total

⁸ ***.

U.S. shipments declined *** over the period for which data were collected, the unit values of U.S. shipments of imports from France increased.

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

Table IV-7
Sodium metal: Average unit values of U.S. shipments of sodium metal, 2005-07, January-June 2007, and January-June 2008

* * * * *

Figure IV-3
Sodium metal: Average unit values of U.S. shipments, by source, 2005-07, January-June 2007, and January-June 2008

* * * * *

Table IV-8 presents U.S. shipment data for sodium metal domestically produced and imported from France, by grade, for the period for which data were collected. U.S. shipments of technical grade sodium metal by DuPont, which represented *** of the company’s U.S. shipments, decreased *** percent between 2005 and 2007. Over the same period, U.S. shipments of imports from France of *** grade sodium metal, representing *** of such shipments, increased by *** percent.

The average unit values of DuPont’s U.S. shipments of *** declined from 2005 to 2007. While the average unit value of total imports of sodium metal from France increased over the same period, this was not true for every grade of sodium metal. From 2005 to 2007, the unit value of ***.⁹

Table IV-8
Sodium metal: U.S. shipments, by selected sources and reported grades, 2005-07, January-June 2007, and January-June 2008

* * * * *

⁹ Imports from France of “Other” grade of sodium metal were reported by ***, which reported that it imported sodium metal from France and ***.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICING

U.S. prices of sodium metal can fluctuate based on demand factors such as general U.S. economic activity as well as shifts in demand for products in the sectors where sodium metal is used.¹ Prices of sodium metal can also fluctuate based on supply side factors, most notably the cost of sodium chloride and energy. In addition, the form and the purity of the sodium metal being produced may have an effect on the overall cost of production, and therefore price.² Order size, length of the contract, and the mode of transportation employed in delivery may also influence prices.

Raw Material Costs

Total raw material costs were *** percent of DuPont's total costs of goods sold for sodium metal in the United States during 2005, and decreased irregularly to *** percent in 2007, but increased to *** percent in interim 2008. The principal raw material input used to produce domestic sodium metal is sodium chloride, and the electricity required to produce sodium metal ***. Sodium chloride accounted for *** percent of DuPont's cost to produce sodium metal during 2007, while the cost of electricity accounted for *** percent of DuPont's cost of goods sold. Despite *** from 2005 to 2007, other factory costs ***.³ DuPont ***.⁴

Tariff Rates and Transportation Costs to the U.S. Market

The U.S. normal trade relations *ad valorem* import duty rate under HTS subheading 2805.11.00 was 5.3 percent for U.S. imports of sodium metal, including those from France, during 2005-07 and into 2008. Transportation charges to ship sodium metal from France to the U.S. ports of entry, as a ratio to the U.S. official customs value, was 6.9 percent in 2007.

U.S.-Inland Transportation Costs

DuPont and the principal U.S. importer of sodium metal from France, MSSA, reported in their questionnaire responses U.S. delivered and f.o.b. selling prices to their U.S. customers. From these data, staff calculated the average U.S. freight costs to the two companies' U.S. customers' locations for bulk shipments of sodium metal shipped by iso-containers, tank rail cars, and/or tank trucks. U.S.-inland freight costs for the domestic product averaged *** percent of the delivered price during 2005, increasing irregularly to *** percent in 2007 and *** percent in the first half of 2008.⁵ Inland freight costs for MSSA for sodium metal not transported via pipeline increased from *** percent of the delivered price during 2005 to *** percent in 2007 before declining to *** percent in interim 2008.

¹ Conference transcript, pp. 41-42 (Hilk).

² E-mail from ***, Crowell & Moring LLP, counsel to petitioner, October 25, 2007; and conference transcript, pp. 29 and 38-39 (Hilk).

³ ***.

⁴ DuPont's producer questionnaire response.

⁵ DuPont also reported that ***. DuPont's producer questionnaire response in the preliminary phase of the investigation.

DuPont and three responding U.S. importers of the sodium metal from France, including MSSA,⁶ estimated their U.S. shipments of all their domestic and subject imported sodium metal during January 2005-June 2008 that were shipped to U.S. customers in three specified distance categories from their production or warehouse facilities. DuPont reported shipping *** percent less than 100 miles, *** percent between 100 and 1,000 miles, and *** percent more than 1,000 miles. MSSA, on the other hand, shipped *** percent less than 100 miles, *** percent between 100 and 1,000 miles, and *** percent more than 1,000 miles.⁷ DuPont and all three U.S. importers of sodium metal from France reported selling sodium metal nationwide.⁸

Sodium metal is shipped in bulk in the United States by iso-containers, tank rail cars, tank trucks, fused drums, and pipelines; if in solid (e.g., ingot) form, it is shipped loose in drums.⁹ Bulk sodium metal is piped into iso-containers, tank rail cars, tank trucks, and fused drums as a liquid, but then solidifies prior to transit.¹⁰ The sodium metal is heated at the customers' locations to a liquid so it can be pumped into the customers' holding tanks, where it remains in liquid form and is ready to use. Sodium metal in solid form typically is shipped in this form.¹¹ Bulk sodium metal shipped by pipeline, however, is kept in its liquid state while in transit.¹²

Exchange Rates

Figure V-1 shows quarterly nominal and real exchange rate indices (the latter are nominal exchange rates adjusted for relative rates of inflation in France and the United States) of the euro relative to the U.S. dollar during January 2005-June 2008.

⁶ In addition to MSSA (USA), which imported the sodium metal from France in bulk form (for sales to industrial/commercial users), two other importers--Columbia Sales and ***--reported imports of sodium metal from France. Columbia Sales imports *** the ingot form of sodium metal from France for sales to industrial/commercial users, and *** imports *** quantities of sodium metal for research uses (***).

⁷ Columbia Sales ***.

⁸ In the preliminary phase of the investigation, ***.

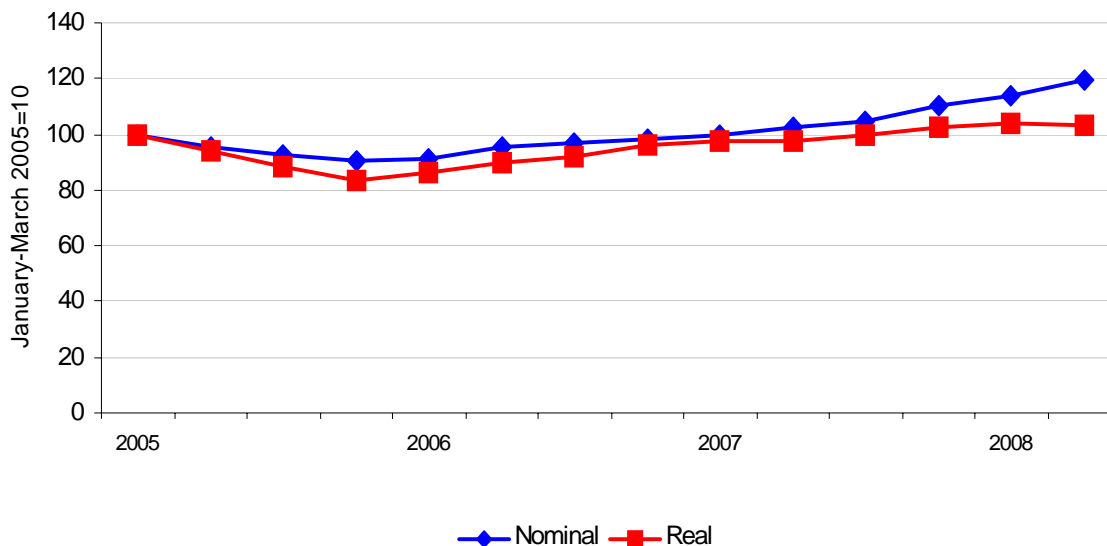
⁹ Sodium metal quickly oxidizes in air and reacts violently with water, releasing hydrogen gas, which will ignite and explode in air. Thus, companies that ship sodium metal normally use specialized containers, such as iso-containers, tank rail cars, and tank trucks, to protect against this reactivity and to permit the reduction of sodium metal to a molten state using hot oil so it can be unloaded to a storage facility. Different size iso-containers reportedly have capacities of 30,000, 33,000, and 36,000 pounds for sodium metal; tank rail cars have capacities of 100,000, 130,000, and 150,000 pounds for sodium metal; and tank trucks hold 36,000 pounds of sodium metal. Petition, exh. I-3. Iso-containers resemble tank trucks with ribbing (extra steel) around the tank. The iso-container can be moved to a truck or rail. According to DuPont, iso-containers differ from the specially designed rail cars and tank trucks in which the company also ships sodium metal. Conference transcript, pp. 49-50 (Hilk). The iso-containers, tank rail cars, and tank trucks are double-jacketed so heated oil can be pumped around the solid sodium metal to liquefy the material (usually taking 8-10 hours to accomplish). Electrical bands, hot boxes, or other means are used to liquefy the sodium metal in fused drums. Staff telephone interview with ***. Fused drums have a maximum capacity of 180 kg, or almost 397 pounds, of sodium metal in bulk form. The sodium metal from France shipped in fused drums is ***. ***. Letter from ***, Hunton & Williams LLP, counsel to respondents, November 15, 2007; and staff telephone interview with ***.

¹⁰ Reportedly, it is illegal to ship liquid sodium metal in the United States. E-mail from ***, Crowell & Moring LLP, counsel to petitioner, October 25, 2007; and conference transcript, p. 51 (Hilk).

¹¹ Staff telephone interview with ***.

¹² ***.

Figure V-1
Nominal and real exchange rate indices of the euro relative to the U.S. dollar, by quarters, January 2005-June 2008



Note.--Index (Jan.-Mar. 2005=100). Exchange rates are in U.S. dollars per euro.

Source: International Monetary Fund, *International Financial Statistics*, retrieved from imfstatistics.org, September 5, 2008.

During the preliminary phase of the investigation, MSSA discussed the impact of exchange rates, particularly the U.S. dollar/euro rate, on its imports of sodium metal from France.¹³ MSSA reported that ***. MSSA noted that, at the time, ***, which took into consideration ***. MSSA reported that ***, although part of its costs of importing sodium metal from France is in U.S. dollars (U.S. inland transportation costs, Customs duties, commission fees, and maritime shipping costs). MSSA reported that as soon as it had the opportunity, it ***. MSSA reported increasing its selling prices in 2007 ***,¹⁴ and ***.

PRICING PRACTICES

The U.S. producer, DuPont, and importers of sodium metal from France sell nearly exclusively to U.S. end users of sodium metal. The majority of U.S. sales of sodium metal is typically negotiated between the sodium metal suppliers and U.S. end users as multiple-year contracts or agreements (long-term sales), followed in frequency by short-term sales and then by spot sales.¹⁵ Pricing terms were

¹³ Respondents' postconference brief, Answers to Staff Questions, p. 12.

¹⁴ *** MSSA's postconference brief, Answers to Staff Questions, p. 7 and ***.

¹⁵ Spot sales are usually one-time delivery, within 30 days of the purchase agreement; short-term sales are for multiple deliveries for up to 12 months after the purchase agreement; and long-term sales are for multiple deliveries for more than 12 months after the purchase agreement. Short-term and long-term sales can be established by contracts or verbal agreements.

reportedly negotiable with the seller for 17 purchasers, and set by the supplier for 22 purchasers.¹⁶ The U.S. producer of sodium metal and three responding U.S. importers of sodium metal from France reported their 2007 U.S. shipments by type of sale. *** percent of domestically produced sodium metal is sold via long-term contract, and *** is sold ***. For sodium metal imported from France, *** percent is sold pursuant to long-term contracts, *** percent is sold via short-term contracts, and *** percent is sold on the spot market.¹⁷

Long-Term and Short-Term Contracts/Agreements and Spot-Basis Sales

The U.S. producer, DuPont, and U.S. importers of sodium metal reported the terms of long-term and short-term contract/agreement sales and described how these prices were negotiated. DuPont and the two responding importers of the sodium metal from France, MSSA and Columbia Sales, reported the general details of their long-term and any short-term contracts, which are shown in the table V-1.

Table V-1
Sodium metal: Selected sales provisions for long- and short-term contracts by DuPont, MSSA, and Columbia Sales

* * * * *

DuPont, MSSA, and Columbia Sales also discussed how they negotiate prices for their long-term and short-term contracts for sodium metal; such negotiations were *** for long-term and short-term sales for DuPont and MSSA, while Columbia Sales ***. DuPont reported that the “***.”¹⁸ With regard to its long-term contracts, ***.

Some purchasers reported that the length and volume of the contract had an effect on the pricing they received. Four purchasers stated that a longer-term contract resulted in lower pricing, four stated that it resulted in stable or firm pricing, and three said that it had no effect. Ten purchasers noted that higher volume contracts resulted in lower pricing, compared to four (low volume) purchasers which noted that volume had no effect. Thirty-one of 36 responding purchasers replied that they “never” mention competing prices to their suppliers when negotiating a price for sodium metal; four “sometimes” do (including ***); and one “always” does (***). At the hearing, most purchasing witnesses described the contract negotiation process as opaque, i.e., not sharing competing bids among their suppliers.¹⁹

MSSA reported that *** help determine what price it will write into a long-term contract. It does not offer *** or ***. For short-term agreements, ***. For spot sales, ***.²⁰ In the preliminary phase of the investigation, Columbia Sales reported the following in discussing how it negotiated prices for its imported sodium metal from France in long-term agreements:²¹

“***.”

For importer ***, price is set by ***. For its spot sales, *** reported that *** for its spot sales.

Producer DuPont and importers MSSA and Columbia Sales reported some specific details with regard to the contracts that were in effect during January 2005-June 2008. A summary of these details are presented in tables V-2 through V-4 and these firms with long-term contracts represent more than ***

¹⁶ The larger purchasers were the ones whose terms are more likely negotiable.

¹⁷ MSSA ***, Columbia Sales ***, and ***.

¹⁸ DuPont’s producer questionnaire response.

¹⁹ Hearing transcript, pp. 211-212 (Kennan) and 214 (Sloane).

²⁰ ***.

²¹ Columbia Sales did not respond to these questions in the final phase of this investigation.

Table V-2
Sodium metal: Active long-term contract details for DuPont, as reported by DuPont, January 2005-June 2008

* * * * *

Table V-3
Sodium metal: Active long-term contract details for MSSA, as reported by MSSA, January 2005-June 2008

* * * * *

Table V-4
Sodium metal: Active long-term contract details for Columbia Sales, as reported by Columbia Sales, January 2005-June 2008

* * * * *

percent of all sales of sodium metal in the United States during January 2005 - March 2008. Additionally, purchasers were asked similar details about the contracts that they had signed and/or were in effect during the period of study. These details are mostly in line with the details presented by DuPont and MSSA.^{22 23}

In addition to those contracts reported by DuPont, MSSA, and Columbia Sales, purchaser *** included details about its *** with ***, and purchaser *** detailed *** with ***. The ***. Additionally, DuPont reported in its posthearing brief that it had signed ***.²⁴

Contracts do not all come due at the same time for every purchaser, though some do, so contract negotiations can include multiple bidders. A representative from DuPont averred that “I would say there’s not a lot of overlapping contracts. A customer makes a decision at a point in time whether they’re going to source a portion of their material from each producer or sole source from one. I would say even where customers have chosen to split their share, okay, I think those are generally done at the same point in time that decision is made to go in that direction.”²⁵ MSSA agreed with this assessment, submitting that “it’s extremely rare to know that we are alone in front of the customer. Normally, we have a competitor in front of us. So, it could be DuPont, it could be Chinese -- we have some ideas of who is in front of us, sometimes both of them, but it’s not an open bid.”²⁶ Purchasers were asked to submit data regarding the bids they received for sodium metal in contracts that were in effect during, and since 2005.²⁷ Those details are presented in table V-5.

²² With respect to its contract, purchaser *** reported ***.

²³ Purchaser *** also listed a contract not included in the tables for ***.

²⁴ DuPont’s posthearing brief, Responses to Commission Questions, pp. 18-19. ***.

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

²⁶ Hearing transcript, pp. 242-243 (Chaminant).

²⁷ *** provided further details of the bid received in ***. “***.”

Table V-5
Sodium metal: Contract bids received by purchasers negotiated or to be in effect January 2005- June 2008

* * * * *

Other Pricing Practices

*** reported that they did not sell their sodium metal over the internet; the remaining responding U.S. importer, ***, reported selling *** percent of its 2007 U.S. shipments of imported sodium metal from France over the internet.²⁸ All responding purchasers reported not buying sodium over the internet.

DuPont and two of three responding U.S. importers of the sodium metal from France, ***, reported quoting prices on *** basis, whereas the remaining U.S. importer of the French material, ***, reported quoting prices on *** basis.²⁹ DuPont and the three responding U.S. importers of sodium metal from France reported offering payment terms of net *** days, although one of the importers, ***, reported offering one of its customers, ***, net *** days and another customer, ***, net *** days (the latter since the beginning of 2007).

Although *** and the *** reported that they have no discount policy, *** reported that quantity plays a role in determining price.³⁰ DuPont's largest U.S. customer in 2007 was ***, accounting for *** percent of its U.S. sodium metal shipments to unrelated parties during this year, based on quarterly and yearly pricing data. M SSA asserted that DuPont's largest customer buys sodium metal based on a global negotiation such that, according to M SSA, the prices agreed to in Europe will apply to the United States.³¹

DuPont and the three responding U.S. importers of sodium metal from France--Columbia Sales, M SSA,³² and ***--reported the shares of their U.S. 2007 commercial shipments that were from U.S. inventory and/or direct from U.S. production or French production/inventory; the firms also reported the order lead times for delivery to their customers from each of these supply sources.³³ For DuPont, *** percent of its sales were from inventory, and *** percent from direct production; ***. *** percent of M SSA's shipments are from inventory, with lead times of ***, whereas the remaining *** percent being shipped from production has a lead time of ***. For Columbia Sales, *** are made from its inventory, and have a lead time of *** days.

Price Leadership

Purchasers of sodium metal were asked if any firms were price leaders in the market. DuPont was listed as a price leader by 13 purchasers, M SSA by 8 purchasers, and Columbia Sales by 3

²⁸ ***.

²⁹ *** reported that they arranged U.S.-inland freight to their U.S. customers, but ***.

³⁰ DuPont reported that "****." E-mail from ***, Crowell & Moring LLP, counsel to petitioner, November 28, 2007.

³¹ Conference transcript, p. 11 (Silverman).

³² M SSA reported that just-in-time deliveries and logistic solutions are very important to U.S. customers of sodium metal because sodium metal is such a highly reactive product. Large customer inventories reportedly are impractical for most customers, and sodium metal requires expensive and specially-designed transportation equipment to protect the sodium metal from contact with air and water. M SSA's postconference brief, p. 5.

³³ M SSA reported that lead times have changed since January 2005, as ***.

purchasers.³⁴ Listed among the reasons for price leadership for DuPont were that it is the only major sodium metal producer in the United States; that it is the only producer with which some companies are familiar; a difficulty in logistics for other companies' imports; that DuPont set the price until alternative suppliers were found; and that its prices were competitive. Some of the ways purchasers noted MSSA's price leadership were that it offered competitive pricing in the United States in order to grow its business, it leads the industry in all price announcements, and it initiated discussions to raise prices due to a changing business environment. Among other replies, *** reported that it negotiates on a global basis for sodium metal, and that there is no global price leader.

PRICE DATA

Pricing data were requested in U.S. producer and importer questionnaires for sales to unrelated U.S. customers for the following sodium metal product categories produced in the United States and imported from France on both a delivered and f.o.b. basis,³⁵ based on the grades that are available in the U.S. market and shipped not via pipeline.³⁶

Product 1 (Producer).--Sodium metal (Na) in bulk form with maximum calcium (Ca) levels equal to or less than 400 ppm, and shipped by iso-containers, rail tank cars, and/or tank trucks. This pricing product refers to DuPont's Technical grade.

Product 1 (Importers).--Sodium metal (Na) in bulk form with maximum calcium (Ca) levels equal to or less than 400 ppm, and shipped by iso-containers, rail tank cars, and/or tank trucks. This pricing product refers to MSSA's Technical (S+) grade.

Product 2 (Producer).--Sodium metal (Na) in bulk form with maximum calcium (Ca) levels equal to or less than 400 ppm, but subject to secondary filtration, and shipped by iso-containers, rail tank cars, and/or tank trucks. This pricing product refers to DuPont's Niapure grade.

Product 2 (Importers).--Sodium metal (Na) in bulk form with maximum calcium (Ca) levels equal to or less than 200 ppm, subject to secondary filtration, and shipped by iso-containers, rail tank cars, and/or tank trucks. This pricing product refers to MSSA's SoPure grade.

Product 3 (Producer).--Sodium metal (Na) in bulk form with maximum calcium (Ca) levels equal to or less than 200 ppm, subject to secondary filtration, and shipped by iso-containers, rail tank cars, and/or tank trucks. This pricing product refers to DuPont's Niapure Select grade.

Product 3 (Importers).--Sodium metal (Na) in bulk form with maximum calcium (Ca) levels equal to or less than 10 ppm, and shipped by iso-containers, rail tank cars, and/or tank trucks. This pricing product refers to MSSA's Refined grade.

³⁴ Of the large bulk sodium metal purchasers, MSSA was identified as a price leader by four (***), and DuPont was identified by three (***).

³⁵ Two quarters of data *** had ***. Staff telephone interview with ***.

³⁶ The petitioner, DuPont, suggested this product category for collecting price data, and indicated that the specified product form (bulk) and modes of transport, on a delivered price basis, represent the normal business practice of competition in the U.S. market between the domestic and imported French sodium metal. Data were not requested for ingots, bricks, sticks, and doses, since DuPont does not produce these forms of sodium metal. In 2007, DuPont reported *** pounds of commercial shipments of imported ingots, bricks, sticks, and doses from China. This amounts to *** of DuPont's commercial shipments of sodium metal in 2007.

Additionally, U.S. importers were requested to supply U.S. selling value and quantity data for three product categories of sodium metal shipped via pipeline for each of the three grades of sodium metal that are available in the United States:

Product 4.--Sodium metal (Na) in bulk form with maximum calcium (Ca) levels equal to or less than 400 ppm, and shipped by pipeline. This pricing product refers only to MSSA's Technical (S+) grade.

Product 5.--Sodium metal (Na) in bulk form with maximum calcium (Ca) levels equal to or less than 200 ppm, subject to secondary filtration, and shipped by pipeline. This pricing product refers to MSSA's SoPure grade.

Product 6.--Sodium metal (Na) in bulk form with maximum calcium (Ca) levels equal to or less than 10 ppm, and shipped by pipeline. This pricing product refers to MSSA's Refined grade.

These specifications were consistent with 35 of 37 responding purchasers' understanding of the specifications of sodium metal offered by DuPont and MSSA. Purchaser *** added that there is also a chlorine content specification, and purchaser *** added,

“***,”

and,

“***.”

Additionally, each U.S. importer was requested to provide the selling price data for the specified sodium metal product category that it imported from its largest nonsubject country source, though no data were received since China *** only sell non-bulk form sodium metal in the domestic market.

The U.S. producer of sodium metal, DuPont, and one responding U.S. importer of sodium metal from France, MSSA, reported the requested selling price information, but not for all products or periods. DuPont reported total sales quantities of the U.S.-produced sodium metal in 2007 that totaled more than *** percent of its *** pounds of reported U.S. commercial shipments of U.S.-produced sodium metal during this period. MSSA reported total sales quantities of the subject imported sodium metal for 2007 which accounted for *** percent of the *** pounds of reported U.S. commercial shipments of imported sodium metal from France.

F.o.b. quarterly pricing data are presented in tables V-6 through V-8, as well as in figures V-2 and V-3.^{37 38} Data for domestic products 1 and 2, both of which are 400 ppm calcium or lower products are presented with imported product 1, which is also a 400 ppm calcium or lower product in table V-6 and

³⁷ F.o.b pricing data are presented, though delivered pricing data are available and do not change the analysis greatly. On the whole, average margins of overselling were *** to *** percent higher with f.o.b. data for table V-6, and *** percent lower for table V-7. Average and maximum calcium levels for each product were requested from all producer and importer questionnaire recipients. The average levels are reported in the tables as well.

³⁸ DuPont asserts that quarterly pricing data are not valid in this case, due to the presence of long-term contracts. Instead, head-to-head pricing comparisons are the preferred metric. Also, it asserted that if the Commission is to look at quarterly pricing data, it should remove *** from its data. DuPont's posthearing brief, Responses to Commission Questions, pp. 10-11. Respondents do not believe either of these would yield a proper point of comparison. MSSA's posthearing brief, p. 10 and Ferro's posthearing brief, pp. 3-7. If *** were removed from the data, changes would occur to the analysis *** in table ***. See appendix D for more details.

figure V-2. Quarterly data for domestically produced product 3 and imported product 2 are presented in table V-7 and figure V-3, as they are both 200 ppm calcium sodium metal products. Table V-8 and figure V-4 contain data for imported products 3 and 5. Data for domestically produced product 1 compared to imported French product 2 are reported in appendix D.

Table V-6

Sodium metal: Weighted-average quarterly f.o.b. prices, quantities, and margins of underselling/ (overselling) for domestic products 1 and 2 and product 1 imported from France (products listed at 400 ppm calcium or lower), January 2005-June 2008

* * * * *

Table V-7

Sodium metal: Weighted-average quarterly f.o.b. prices, quantities, and margins of underselling/ (overselling) for domestic product 3 and product 2 imported from France (products listed at 200 ppm calcium or lower), January 2005-June 2008

* * * * *

Table V-8

Sodium metal: Weighted-average quarterly f.o.b. prices and quantities of products 3 (listed at 10 ppm calcium or lower) and 5 (listed at 200 ppm calcium or lower) imported from France, January 2005-June 2008

* * * * *

Figure V-2

Sodium metal: Weighted-average f.o.b. selling prices and quantities of domestic products 1 and 2 and product 1 imported from France (products listed at 400 ppm calcium or lower), January 2005-June 2008

* * * * *

Figure V-3

Sodium metal: Weighted-average U.S. delivered and f.o.b. selling prices and quantities of domestic product 3 and product 2 imported from France (products listed at 200 ppm calcium or lower), January 2005-June 2008

* * * * *

Figure V-4

Sodium metal: Weighted-average quarterly f.o.b. prices and quantities of products 3 (listed at 10 ppm calcium or lower) and 5 (listed at 200 ppm calcium or lower) imported from France, January 2005-June 2008

* * * * *

Price Trends

Weighted-average f.o.b. selling prices of the domestic product 1 (technical grade sodium metal) began and ended the period of investigation at around \$*** per pound. During four of six quarters between the second quarter of 2005 and the third quarter of 2006, its price was at or above \$*** per pound, reaching a maximum of \$*** per pound in the third quarter of 2006.³⁹ Prices for domestic product 2 (Niapure grade) decreased irregularly from the third quarter of 2005 to the second quarter of 2007, but have increased in each quarter since that time, by a total of *** percent. Quarterly pricing for product 1 imported from France (S+ grade) decreased irregularly from the second quarter of 2005 until the third quarter of 2007, but have increased *** since that time (by *** percent).

Quarterly f.o.b. pricing data for domestic product 3 (Niapure Select grade) fluctuated during the four quarters for which data are available. Pricing for product 2 imported from France (SoPure grade) varied *** during the first seven quarters for which data were collected, then increased by *** percent in the fourth quarter of 2006, before falling back to a price in the same range as before by the third quarter of 2007. Its price has increased *** since then (by *** percent). ***, the 200 ppm calcium grades of sodium metal were ***. DuPont explained that its Niapure Select grade of sodium was sold ***. ***.⁴⁰ ***.⁴¹

Prices for product 3 imported from France (R-grade (Refined) or ER-grade (Extra-Refined)) decreased irregularly during 2005, but have increased in each quarter since that time. In general, the price product 3 was about ***. Quarterly prices for product 5 (SoPure via pipeline) were \$*** per pound during 2005 and \$*** per pound for most of the remainder of the period under study.

On a delivered basis, the trends are similar to these, though the prices are somewhat elevated for all products, except ***.

Pricing Comparisons

A total of 32 quarterly net weighted-average selling price comparisons were possible between the domestic sodium metal product during January 2005 and June 2008. Details regarding these comparisons can be found in table V-9. Comparisons are presented on both an f.o.b. and delivered basis. All three of the quarters in which underselling occurred when comparing domestic product 2 to imported product 1 happened during the three most recent quarters (the four most recent quarters for the delivered basis comparisons). In general, domestic and imported prices were closer for the 200 ppm calcium products (domestic product 3 and imported product 2), though there were only four quarters in which comparisons could be made. Average margins of overselling were slightly higher for f.o.b. prices than for delivered prices.

³⁹ This quarter's data is ***.

⁴⁰ Letter from ***.

⁴¹ ***.

Table V-9

Sodium metal: Number of quarters of underselling and overselling and highest and lowest margins of underselling and overselling by product number, and by delivery basis

Product		Number of quarters of underselling	Number of quarters of (overselling)	Average margin of underselling	Range of margins of underselling	Average margin of (overselling)	Range of margins of (overselling)
U.S.	France	F.o.b.					
1	1	0	14	--	--	(14.7)	(4.8) - (24.5)
2	1	3	11	7.7	***	(12.1)	(3.0) - (21.4)
3	2	0	4	--	--	(8.7)	***
		Delivered					
1	1	1	13	0.7	0.7 - 0.7	(11.2)	(3.1) - (24.1)
2	1	4	10	7.7	***	(7.1)	(0.0) - (16.3)
3	2	0	4	--	--	(3.7)	***

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

Head-to-Head Price Data

Purchasers were requested to submit their direct and indirect purchase quantity and value data from each source from which they bought sodium metal during January 2005-March 2008. Also, importers were requested to submit data for each of their top purchasers during the period of study. Each was asked to provide quarterly purchase data for their largest customer and yearly data for 2005, 2006 and 2007 for each of their second- through eighth-largest customers during 2007. The data received from purchasers, as well as that received from DuPont and MSSA, are presented in table V-10, along with pricing details of contracts that were reported by responding firms.

Table V-10

Sodium metal: Purchases by, and sales to top bulk purchasers, delivered prices, as reported by purchasers, DuPont, and MSSA, January 2005-March/June 2008, and the purchasers' reported purchasing history with DuPont

* * * * *

LOST REVENUES AND LOST SALES

DuPont's Allegations

In the petition, DuPont reported seven lost revenue allegations and eight lost sales allegations,⁴² reportedly due to competition from imports of sodium metal from France during January 2003-September

⁴² DuPont indicated that, prior to having lost sales, it was never approached by any of its customers about concerns regarding the calcium content of DuPont's sodium metal. Petitioner's postconference brief, exh. 1, pp. 3-4. All lost sale and lost revenue allegations involved the product ***.

2007 and expected in 2008.⁴³ The seven lost revenue allegations involved a total value of \$*** and *** of sodium metal, while the eight lost sales allegations involved a total value of \$*** and *** of sodium metal. DuPont frequently was unable to provide competing prices of the subject imported sodium metal. No further lost sales or lost revenue allegations were submitted with DuPont’s producer questionnaire response in the final phase of this investigation.

The six U.S. purchasers cited in the lost revenue and/or lost sales allegations, the transaction information supplied by DuPont, and whether the responding purchasers agreed, disagreed, or cited “other” to the allegations are shown in table V-11 for lost revenue allegations and table V-12 for lost sales allegations. Comments of all six responding purchasers and of DuPont are shown in the text.

Table V-11
Sodium metal: U.S. producer’s lost revenue allegations

* * * * *

Table V-12
Sodium metal: U.S. producer’s lost sales allegations

* * * * *

Purchaser Responses

***⁴⁴ reported that it “disagreed” with the *** involving the firm.⁴⁵ *** made the following comments:

“***.”

***⁴⁶ reported “other” for the *** involving the firm.⁴⁷ *** reported that in the ***, the decision was not purely a price decision. In the ***, *** made the following additional comment:

“***.”⁴⁸

In the ***, *** made the following additional comments:

“***.”

***⁴⁹ reported that it “disagreed” with the *** involving the firm.^{50 51} In the ***, *** made the following additional comment:

“***.”

In the ***, *** made the following comments:

“***.⁵² ***.⁵³ ***.”

*** also made the following statements:

⁴³ DuPont’s sales of sodium metal ***.

⁴⁴ ***. Petition, exh. III-5, p. 1.

⁴⁵ E-mail from ***.

⁴⁶ ***. Petition, exh. III-5, p. 2.

⁴⁷ Fax from ***.

⁴⁸ In addition, *** reported that “***.” *** importer questionnaire response.

⁴⁹ ***. Petition, exh. III-5, p. 2.

***. Petitioner’s postconference brief, exh. 2, pp. 2-3.

⁵⁰ E-mail and fax from ***.

⁵¹ In addition, *** reported that “***.” *** importer questionnaire response.

⁵² ***. Respondents’ postconference brief, Answers to Staff Questions, p. 7.

⁵³ ***. E-mail and fax from ***.

“***.”⁵⁴

“***.”⁵⁵ ***.”⁵⁶ ***.”⁵⁷

***⁵⁸ reported that it “disagreed” with the *** involving the firm.⁵⁹ *** provided the following comments involving the ***:

“***.”

In the ***, *** provided the following comments:

“***.”

1. “***.”⁶⁰

2. “***.”

3. “***.”

“***.”

***⁶¹ reported that it “disagreed” with the *** involving the firm.⁶² *** provided the following comments involving the ***:

“***.”

In the ***, *** provided the following comments:

“***.” Additionally, ***.”⁶³

***⁶⁴ reported that it “disagreed” with the *** involving the firm.⁶⁵ *** provided the following comments involving the ***:

“***.”

and,

“***.” shown below.

In the ***, *** provided the following comments:

“***.”

“***.”⁶⁶

“***.”⁶⁷

⁵⁴ ***.

⁵⁵ ***. Petitioner’s postconference brief, exh. 2, p. 2.

⁵⁶ ***. Petitioner’s postconference brief, exh. 2, p. 2.

⁵⁷ Respondents’ postconference brief, Answers to Staff Questions, p. 7.

⁵⁸ ***. Petition, exh. III-5, p. 2.

⁵⁹ Fax from ***.

⁶⁰ In addition, MSSA reported that “***.” MSSA’s preliminary importer questionnaire response.

⁶¹ ***. Petition, exh. III-5, p. 2.

⁶² E-mail from ***.

⁶³ Respondents’ postconference brief, exh. 3 (letter from ***).

⁶⁴ ***. Petition, exh. III-5, p. 3.

⁶⁵ E-mail from ***.

⁶⁶ ***. Petition, exh. III-5, p. 3.

***. MSSA’s posthearing brief, pp. 5-6 and exh. 5.

⁶⁷ ***.

Comments of Other U.S. Purchasers from the Preliminary Phase

U.S. purchasers of sodium metal—⁶⁸ ⁶⁹ Interstate,⁷⁰ ⁷¹ and Texas Molecular,⁷²— provided comments regarding supply comparisons between DuPont’s sodium metal and the imported sodium metal from France during the preliminary phase of the investigation.⁷³

⁷⁴ reported that it purchases ⁷⁵ sodium metal to produce ⁷⁶.

⁷⁴ ⁷⁵ ⁷⁶.

Interstate purchases sodium metal to manufacture sodium methylate, a product that is used for numerous applications, including the catalyst system for biodiesel production; the firm noted that its involvement in sodium methylate production is recent. Interstate sells its sodium methylate produced from sodium metal imported from France to its biodiesel customers and to some of its pharmaceutical and surfactant customers.⁷⁷

Interstate asserted that when it was first trying to secure a vendor for sodium metal, DuPont would not quote the firm a price over the phone.⁷⁸ Because Interstate did not want DuPont to know it was going to produce sodium methylate (the firms were competitors in the downstream market), it contacted MSSA.⁷⁹ After hearing from MSSA about their sodium metal with lower calcium content than that of DuPont, and because they were not a competitor, Interstate agreed to source the product from MSSA. At that point, Interstate reportedly put together several multi-year customers for sodium methylate supply.⁸⁰ Interstate’s promotional material (submitted as an exhibit at the conference) advertises the superior quality of its sodium methylate, partially due to the purity of sodium metal supplied by MSSA. Interstate emphasized that its decision to buy sodium metal from MSSA is not based on price but based on (1) a

⁶⁸ Respondents’ postconference brief, pp. 11-12 and exh. 1 (letter from ⁷³).

⁶⁹ Respondents’ postconference brief, p. 14 and exh. 4 (letter from ⁷³).

⁷⁰ Conference transcript, pp. 113-126 (Merz).

⁷¹ Respondents’ postconference brief, p. 12 and exh. 2 (letter from ⁷³).

⁷² Conference transcript, pp. 110-113 (Harris).

⁷³ In addition, ⁷³ asserted that “⁷³” ⁷³ importer questionnaire response.

⁷⁴ ⁷³. Respondents’ postconference brief, exh. 4, p. 2 (letter from ⁷³).

⁷⁵ ⁷³. Ibid.

⁷⁶ ⁷³. Respondents’ postconference brief, exh. 4, pp. 2-3 (letter from ⁷³).

⁷⁷ Conference transcript, pp. 113-126 (Merz). In early February 2007, prior to the firm beginning production of sodium methylate, Interstate asserted that it learned from its customers that one or two sodium methylate producers, out of three such producers attending a meeting of 100 or more major biodiesel manufacturers, attempted to coerce the biodiesel producers to sign a seven year take-or-pay contract for sodium methylate. The U.S. biodiesel producers reportedly were told that if they did not agree to the terms, the sodium methylate producers may sell their sodium methylate in Europe instead of the United States and short the market. Ibid.

⁷⁸ ⁷³. Staff telephone interview with ⁷³.

⁷⁹ Interstate did not want to purchase sodium metal imported from China (the only other source of this material of which Interstate was aware), based on everything it heard in the news about product coming out of China, including its customers’ negative opinions about bringing in Chinese product. Conference transcript, p. 118 (Merz).

⁸⁰ According to Interstate, while it was gearing up its U.S. production of sodium methylate (it had not produced any yet), DuPont began to make negative comments about Interstate’s product to some of the firm’s target and contract customers by saying it was poor quality overall, and it had a high moisture content. Interstate stated that such claims were untrue, but, according to Interstate, DuPont tried with such claims to get its customers to exclude Interstate Chemical in the bid process for sodium methylate supply contracts.

competitive position vis-à-vis DuPont in the downstream market and (2) because of the higher quality product from MSSA.⁸¹

In addition, Interstate asserted that in the fourth quarter of 2007, it received a call from the General Manager of *** who indicated that they were building inventory and had some *** for sale.⁸² Interstate reported that it purchased *** from ***, because the price was below market and even below its cost.⁸³ According to Interstate, several customers have told the firm that they buy sodium methyllate from Interstate, in part because Interstate does not use DuPont's sodium metal as a raw material feedstock for Interstate's sodium methyllate.⁸⁴

*** manufactures a *** in the United States for the *** industry by using sodium metal, which ***. *** purchases the imported sodium metal from France. According to ***, DuPont currently ***. *** made the following statements:

“***.”⁸⁵

At the preliminary conference, Texas Molecular⁸⁶ stated that earlier in 2007 it had contacted DuPont for a price quote for approximately 3 million pounds of sodium metal per year, but the firm had not yet received a response as of November 2007. Texas Molecular believes it had not heard from DuPont because the latter firm is also producing sodium methyllate and Texas Molecular would be competing with DuPont.⁸⁷ Texas Molecular anticipates a strong and growing U.S. demand for sodium metal, as it meets the strong and growing U.S. demand for sodium methyllate in the U.S. biodiesel market. Texas Molecular asserts that the growth of the sodium methyllate market will boost overall demand for DuPont's own sodium metal production, either through its own internal consumption or through sales of sodium metal to other sodium methyllate producers.

⁸¹ Interstate stated that it expects to expand its sodium methyllate business rapidly in the coming months and years, but it must be able to depend on a reliable supply of sodium metal. It expressed concern regarding DuPont's willingness to supply Interstate, because Interstate chose to compete with them and not make product for DuPont like ***, and also because Interstate testified at the Commission's conference on behalf of MSSA.

⁸² DuPont reportedly had, at least temporarily, cut its purchases from *** by approximately one-half of its production capacity. According to Interstate (as relayed by ***), one of DuPont's sodium methyllate customers slowed its purchases.

⁸³ ***. Respondents' postconference brief, e-mail from ***. According to Interstate, the biggest issue in the biodiesel industry is having a high quality product. According to Interstate, *** told the firm that DuPont's sodium metal has calcium impurities that vary from tank wagon to tank wagon and needs to be filtered, occasionally multiple times, so the downstream sodium methyllate will meet color and haziness specifications, and be free of suspended solids; this reportedly increases *** costs to produce ***.

⁸⁴ As examples, a few of Interstate's customers who use sodium methyllate to make surfactants (products such as soaps and cosmetic facial creams) indicated that they cannot use sodium methyllate made by DuPont, because it does not pass their chemistry lab tests due to the calcium impurities in DuPont's sodium metal, according to Interstate. In addition, Interstate explained that its Caterpillar-made trucks (Interstate reportedly has 150 tractors and 250 tank wagons) burn diesel fuel, but Caterpillar does not allow Interstate to use more than five percent biodiesel in the Caterpillar engines right now (the Cummings engines allow 15 percent diesel), or it voids the warranty. The reason for these restrictions on biodiesel is that the industry producing biodiesel has not standardized its product quality.

⁸⁵ ***. Letter from ***.

⁸⁶ Texas Molecular was not purchasing sodium metal in late 2007, but was reportedly in the process of entering the sodium methyllate market. The firm reported that it expected to begin sourcing the sodium metal from MSSA in February or March of 2008. DuPont stated that after the preliminary conference, it attempted to contact representatives of Texas Molecular regarding meeting their needs for sodium metal, as it had no record of being contacted by Texas Molecular. DuPont has not heard back from representatives of Texas Molecular. DuPont's posthearing brief, Responses to Commission Questions, pp. 39-40. The Commission did not receive a purchaser questionnaire response from Texas Molecular.

⁸⁷ When Texas Molecular learned that DuPont was the only U.S. producer of sodium metal they decided not to pursue this supplier, as DuPont would be a competitor.

Texas Molecular reported that it is not interested in purchasing Chinese sodium metal because of serious quality concerns it has with the Chinese product, particularly with respect to calcium content.⁸⁸ Texas Molecular reported that, in contrast to DuPont, MSSA was willing to negotiate with the firm. In addition, Texas Molecular understands that MSSA's sodium metal is a better quality than DuPont, with less calcium, which can clog storage tanks, making it costly and dangerous to clean. Also, according to Texas Molecular, its customers told the firm that they have had concerns with sodium methyllate produced using sodium metal from DuPont. Texas Molecular plans to advertise, as a sales tool, the superiority of its sodium methyllate, based in part on lower residuals due to cleaner sodium metal from MSSA.

⁸⁸ Texas Molecular stated that in November 2007, Chinese companies (through distributors in the United States) have offered pricing for the Chinese sodium metal that is less expensive than the French material.

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

BACKGROUND

DuPont, the only U.S. producer of sodium metal, reported its sodium metal financial results on the basis of U.S. generally accepted accounting principles (“GAAP”) and for calendar-year periods.

DuPont’s sodium metal operations take place within its Reactive Metals business unit which is itself one of 18 business units comprising DuPont Chemical Solutions Enterprise (“DCSE”). DCSE is in turn part of DuPont’s Safety and Protection segment.¹

Verification of DuPont’s U.S. producer questionnaires response was conducted on September 19 through September 21, 2008 in Wilmington, DE and Niagara Falls, NY. Changes pursuant to verification are reflected in this and other affected sections of this report.

OPERATIONS ON SODIUM METAL

Income-and-loss data for operations on sodium metal are presented in table VI-1 and on an average unit basis in table VI-2. A variance analysis of sodium metal financial results is presented in table VI-3.

Table VI-1

Sodium metal: Results of sodium metal operations, 2005-07, January-June 2007, and January-June 2008

* * * * *

Table VI-2

Sodium metal: Results of sodium metal operations (*per pound*), 2005-07, January-June 2007, and January-June 2008

* * * * *

Table VI-3

Sodium metal: Variance analysis of sodium metal operations, 2005-07, January-June 2007, and January-June 2008

* * * * *

Commercial sales, consisting of both U.S. and export sales, represent the majority of DuPont’s sodium metal revenue, with the balance consisting of internal consumption and transfers.² In Part III of this report, table III-3 shows that DuPont’s sodium metal export volumes increased during the period for which data were collected in the investigation and that on an average unit basis export sales were *** compared to average U.S. commercial shipment values. The *** in DuPont’s export volume, as indicated previously in this report, is generally related to ***. As shown in table VI-2, average per-pound commercial sales values increased somewhat during the period, which in turn resulted in the *** positive price variances reflected in table VI-3.

¹ Letter from Crowell Moring on behalf of DuPont, November 16, 2007. ***. Verification report, p. 3.

² ***. DuPont’s questionnaire response, questions II-15 and II-17. ***. Verification report, p. 7.

Notwithstanding *** overall increases in period-to-period average sales values, DuPont reported declining gross profitability and consistent *** during the period. As shown in table VI-3, *** cost of goods sold (“COGS”) *** were the primary factors causing DuPont’s higher relative *** in 2007 and interim 2008. While DuPont indicated in its questionnaire response that increased *** costs contributed to higher overall sodium metal COGS during the period, table VI-2 shows that higher *** costs was a secondary factor with the primary factor being higher *** costs.

In contrast with most cases where direct labor is the smallest component of COGS, sodium metal direct labor is the *** component of COGS after ***. As indicated in footnote 3, direct labor is classified by DuPont as a ***.³ With regard to the importance of direct labor in the cost structure of sodium metal, a company official at the staff conference stated that “. . . sodium metal production is labor intensive relative to other chemical processes. Sodium metal production requires a high number of operators performing physical and manual tasks. Because the production cells have to run 24 hours a day, flexibility of manpower is limited.”⁴ According to the company and with respect to the decline in sodium metal production during the period, ***.⁵ This flexibility in part helps explain the absence of *** increase in DuPont’s average direct labor cost as sodium metal production volumes declined during the period.⁶

Sales volume and corresponding capacity utilization, as reported in the company’s questionnaire response, declined *** in 2007 compared to 2006. While the *** share of fixed costs reportedly associated with the production of sodium metal (e.g., ***) indicates that changes in overall COGS were likely affected to some extent by reduced fixed cost absorption, sodium metal operations have several characteristics with regard to cost structure which also affect trend analysis. At verification it was noted that a primary cost, electricity, is ***.⁷ With respect to costs matched against sodium metal revenue, the company ***.⁸ Additionally, in 2007 and the interim periods a calculation methodology (see footnote 9) ***.⁹ Finally, changes in the relative value of the company’s net chlorine byproduct credit affected the level of COGS reported in interim 2008 compared to interim 2007.¹⁰

DuPont’s ratio of selling, general and administrative (“SG&A”) expenses to sodium metal sales ranged from *** percent to *** percent during the full-year periods, while interim 2007 and interim 2008 SG&A expense ratios were *** percent and *** percent, respectively. The G&A component, as shown in table VI-1, represents *** of DuPont’s total sodium metal SG&A expenses. DuPont’s overall sodium metal SG&A expenses represent ***.¹¹

While DuPont’s SG&A expenses were *** as a share of sodium metal sales, the table VI-3 variance analysis shows that net SG&A expense variances were *** with the exception of the interim period and generally played *** role in terms of explaining overall changes in sodium metal operating results.¹²

³ ***. Verification report, p. 8.

⁴ Conference transcript, pp. 16-17 (Hilk).

⁵ DuPont’s supplemental response to the U.S. producer questionnaire, August 28, 2008.

⁶ ***. Verification report, pp. 5-6.

⁷ As formally defined by DuPont, ***. August 28, 2008 letter from DuPont with attachments.
***. Verification report, pp. 9-10.

⁸ ***. Verification report, p. 11.

⁹ ***. Verification report, p. 9.

¹⁰ ***. Verification report, p. 10.

¹¹ Letter from Crowell Moring on behalf of DuPont, November 16, 2007. According to the company ***. Email with attachments from Crowell Moring on behalf of DuPont, November 21, 2007. ***. Verification report, p. 11.

¹² DuPont’s sodium metal SG&A expense ratios (see table VI-1) were *** compared to the company’s full-year public consolidated SG&A-equivalent expense ratios which ranged from 16.7 percent to 18.0 percent. (Note: DuPont’s consolidated SG&A, gross profit, and operating income ratios were calculated by staff using public

(continued...)

As shown in table VI-1, in 2007 and interim 2008 DuPont reported *** in sodium metal other income. According to the company, ***.¹³

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-4.

Table VI-4

Sodium metal: Capital expenditures, R&D expenses, assets, and return on investment related to sodium metal operations, 2005-07, January-June 2007, and January-June 2008

* * * * *

In 2005 and 2006, DuPont’s sodium metal capital expenditures were *** the 2005 and 2006 depreciation expenses reported in table VI-1, while in 2007 reported capital expenditures were approximately *** of the corresponding 2007 depreciation expense.¹⁴

In contrast with capital expenditures, sodium metal R&D expenses reached their *** level in 2007 with the increase in 2007 attributable in part to ***. When asked to describe sodium metal R&D expenses in general, DuPont stated that ***.¹⁵

CAPITAL AND INVESTMENT

The Commission requested DuPont to describe any actual or anticipated negative effects of imports of sodium metal from France on its growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments.

Actual Negative Effects

DuPont ***.

Anticipated Negative Effects

DuPont ***.

¹²(...continued)

financial information. DuPont 2007 10-K, p. F-4.) In contrast, DuPont’s public consolidated gross profit margins, ranging from 25.5 percent to 26.6 percent during the full-year periods, were *** reported sodium metal gross profit margins. Ibid. As such and as compared to its sodium metal operations, DuPont’s consistent and relatively high operating profitability at the public consolidated level, ranging from 8.1 percent to 9.9 percent during the full-year period, can generally be attributed to higher gross profit margins as opposed to lower relative SG&A expense ratios.

¹³ DuPont’s supplemental response to the U.S. producer’s questionnaire, August 28, 2008. ***. Verification report, p. 6.

¹⁴ ***. DuPont’s supplemental response to the U.S. producer’s questionnaire, August 28, 2008. ***. Verification report, p. 11.

¹⁵ Letter from Crowell Moring on behalf of DuPont, November 16, 2007. ***. August 28, 2008 letter from DuPont with attachments.

PART VII: THREAT CONSIDERATIONS AND *BRATSK* INFORMATION

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

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

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

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

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

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

(V) inventories of the subject merchandise,

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

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

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

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

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

Information on the volume and pricing of imports of the subject merchandise is presented in *Parts IV* and *V*; and information on the effects of imports of the subject merchandise on the U.S. producer's existing development and production efforts is presented in *Part VI*. Information on inventories of the subject merchandise; the foreign producer's 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 in relation to *Bratsk* rulings.

THE INDUSTRY IN FRANCE

MSSA is the sole producer of sodium metal in France, with a plant located in Pomblière Saint Marcel, France. Table VII-1 presents data for MSSA during 2005-07, January-June 2007, January-June 2008, and forecasts for 2008 and 2009. Figure VII-1 presents MSSA's shipments by destination. Production fluctuated between 2005 and 2007, ending the period ***. Capacity utilization for MSSA remained relatively flat, around *** percent during 2005-07.^{3 4} Over the same period, exports to

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 MSSA reported that its production capacity is based on ***. MSSA noted that it has an average of *** Downs cells ready for installation for each of its *** electrolysis halls. Each electrolysis hall has *** Downs cell positions, but *** during 2005-07. The modifications necessary to access the remainder of the Downs cell positions would take ***. In addition, to build up a new Downs cell requires at least a *** lead time, and MSSA can only place *** into operation per week. MSSA's foreign producer questionnaire response, app. 1.

⁴ The following tabulation presents MSSA's production capacity calculated using the assumption that all potential Downs cell positions contained an actively producing Downs cell. MSSA asserts that this is not an accurate measurement of production capacity, as a Downs cell position without a Downs cell is not a productive asset, and that it takes up to a total of *** to get a Downs cell ready for production, at a cost of approximately \$*** to fabricate and install. MSSA's supplemental response to the foreign producer's questionnaire, September 10, 2008.

Capacity utilization calculated using the capacity in the tabulation below and the production in table VII-1, ranged from a low of *** percent in 2006 to a high of *** percent in interim 2008.

(continued...)

MSSA's *** market, other EU countries, fell by *** percent,⁵ while exports to the United States increased by *** percent. MSSA's exports to other EU countries are projected to *** in 2008 and 2009, while exports to the United States are projected to *** between 2007 and 2008, and *** percent in 2009.⁶ MSSA attributed this to ***.⁷ The *** of MSSA's shipments to France and other EU countries over the period for which data were collected was of *** grade sodium metal, with a relatively small quantity of *** grade to ***. MSSA also reported exports to *** of *** grades.

MSSA reported that in Europe, sodium metal is mostly used for "sodium borohydride in paper pulp bleaching, triphenylphosphine TPP for vitamins synthesis and chemical catalysts, and indigo blue synthesis for blue jeans dyeing."⁸ The EU market customer base for sodium metal, according to MSSA, consists largely of a small number of chemical producers, with considerable market power to discipline price increases. In addition, these chemical producers have the option to switch processes for making downstream products using inputs other than sodium metal. Besides competition from DuPont's sodium metal imports, MSSA also faces competition in the EU from imports from China. MSSA stated that demand in its largest market, the EU, has been steady in recent years, but new applications are likely to bring about growing demand in the near future.⁹

Table VII-1
Sodium metal: MSSA's operations, 2005-07, January-June 2007, January-June 2008, and projected 2008-09

* * * * *

Figure VII-1
Sodium metal: MSSA's shipments, by destination, 2005-07, and projected 2008-09

* * * * *

U.S. IMPORTERS' INVENTORIES

Reported inventories of U.S. imports are presented in table VII-2. Inventories of French sodium metal increased irregularly from 2005 to 2007, while the ratios of inventories to imports and to U.S.

⁴ (...continued)

Item	Calendar year			January-June	
	2005	2006	2007	2007	2008
Quantity (1,000 pounds)					
Capacity	***	***	***	***	***

⁵ MSSA identified the following countries as other EU export markets: ***.

⁶ MSSA reported that while the biodiesel and photovoltaic markets are projected to grow in both the United States and in the EU, unlike in the United States, the manufacturing processes in the EU of these two products do not use sodium metal as an input. MSSA's posthearing brief, response to hearing and Commission questions, p. 36.

⁷ MSSA's foreign producer questionnaire response. In the preliminary phase, MSSA reported that it ***. MSSA reported that ***. MSSA's posthearing brief, response to hearing and Commission questions, p. 2 fn. 2. Demand estimates are discussed in greater detail in *Part II* of this report.

⁸ *Antisubsidy Complaint, Sodium Metal from USA*, non-confidential version, June 9, 2008, p. 4.

⁹ *Ibid.*, p. 24.

shipments of imports declined.¹⁰ Inventories from China initially decreased ***, and then increased in 2007, a trend followed by the ratio of inventories to U.S. shipments of imports from China.¹¹ The ratio of inventories from China to imports increased between 2005 and 2006, then declined from 2006 to 2007. Inventories from France were lower, while inventories from China were higher, in absolute and relative terms, in January-June 2008 compared to January-June 2007.

Table VII-2

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

* * * * *

U.S. IMPORTERS' IMPORTS SUBSEQUENT TO JUNE 30, 2008

The Commission requested importers to indicate whether they imported or arranged for the importation of sodium metal from France after June 30, 2008. Three U.S. importers reported that they had placed orders for sodium metal from France (***) scheduled for entry into the United States in the period of July-December 2008, and *** pounds during January-June 2009 were reported. Table VII-3 presents these three U.S. importers' July 2008-June 2009 orders for sodium metal from France.

Table VII-3

Sodium metal: U.S. importers' current orders, by sources, July 2008-June 2009

* * * * *

ANTIDUMPING INVESTIGATIONS IN THIRD-COUNTRY MARKETS

No producer, importer, or foreign producer reported any countervailing or antidumping duty orders on sodium metal from France in third-country markets.

On June 10, 2008, MSSA filed an antisubsidy complaint with the European Commission against imports of sodium metal in bulk form¹² from the United States, contending that DuPont's sodium metal production receives countervailable subsidies from the State of New York through the provision of electricity at below-market rates. On July 23, 2008, the European Commission published the notice of initiation of its antisubsidy investigation.¹³ On the same date, the European Commission also published the notice of initiation of its antidumping investigation concerning imports of sodium metal from the United States, pursuant to an antidumping complaint filed by MSSA.¹⁴

¹⁰ MSSA, which represented ***, stated that it is ***, and that all the inventory is pre-sold. MSSA's posthearing brief, response to hearing and Commission questions, p. 33.

¹¹ *** of the inventories of imports from all other sources were held by DuPont.

¹² Sodium metal in the form of ingots, bricks, sticks, and doses was excluded from the scope of the complaint.

¹³ *Notice of initiation of an anti-subsidy proceeding concerning imports of sodium metal originating in the United States of America*, Official Journal of the European Union, C186/35, July 23, 2008.

¹⁴ *Notice of initiation of an anti-dumping proceeding concerning imports of sodium metal originating in the United States of America*, Official Journal of the European Union, C186/32, July 23, 2008.

INFORMATION ON NONSUBJECT SOURCES

“Bratsk” Considerations¹⁵

As a result of the Court of Appeals for the Federal Circuit (“CAFC”) decision in *Bratsk Aluminum Smelter v. United States* (“Bratsk”), the Commission is directed to:

*undertake an “additional causation inquiry” whenever certain triggering factors are met: “whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.” The additional inquiry required by the Court, which we refer to as the Bratsk replacement / benefit test, is “whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.”*¹⁶

Nonsubject-Source Information

As discussed in *Part IV* of this report, the only other known nonsubject country is China.¹⁷ Imports from China accounted for only *** percent, by quantity, of total U.S. imports of sodium metal during 2007. Figure VII-2 shows the volume of subject and nonsubject imports for the period for which data were collected. The average unit values of imports from France and China during the period for which data were collected are presented in table IV-2 in *Part IV* of this report.

Figure VII-2

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

* * * * *

China

Other than the United States and France, China is only other known producer of sodium metal.¹⁸ Chinese producers use Downs cells similar to the production process in the United States and France.

¹⁵ DuPont asserted that *Bratsk* is not applicable as a *Bratsk* replacement/benefit test is not met in this investigation. Petitioner’s prehearing brief, p. 15, fn. 8. The Respondents did not address the applicability of *Bratsk* in the final phase of the investigation, but asserted in the preliminary phase that *Bratsk* was not applicable as sodium metal is not a commodity and thus does not meet the first triggering factor. Conference transcript, p. 133.

¹⁶ *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

¹⁷ Global Trade Atlas reported imports of sodium metal into the United States from sources other than France and China. MSSA stated in its antisubsidy complaint filed with the European Commission (non-confidential version, p. 35) that “To the best of MSSA’s knowledge, there are no producers of sodium metal outside of the Community, other than the USA and China.” Both MSSA and DuPont stated at the hearing that there are producers in France, the United States, and China, and that the imports from other countries under HTS subheading 2805.11.00 are believed to be misclassified. Hearing transcript, p. 115 (Jaffe) and p. 294 (Chaminant).

¹⁸ Both MSSA and DuPont stated at the hearing that there are producers in France, the United States, and China, and that the imports from other countries under HTS subheading 2805.11.00 are believed to be misclassified. Hearing transcript, p. 115 (Jaffe) and p. 294 (Chaminant).

With a reported capacity of *** metric tons (*** pounds),¹⁹ China allegedly is currently experiencing excess capacity,²⁰ but its sodium metal facilities are located in a remote region of China and the producers rely on relatively inefficient and slow trucks for shipments. The leading Chinese producer of sodium metal is a company (Lantai) located in Inner Mongolia. In addition, there are four or five smaller producers in China. The sodium metal produced in China is primarily for use in China for such applications as manufacturing indigo dye and chemicals used for crop protection. MSSA reported that China is a competitor for the lower-purity sodium metal which is the only grade that China reportedly makes.²¹

Despite these limitations, China has developed business relations with both DuPont and MSSA for sodium metal. As documented in the conference transcript, MSSA *** open a plant in China to produce sodium metal in part because of expected growth in demand in China, the largest global market for sodium metal.²² MSSA stated that ***.²³ DuPont has also developed business relations in China for sodium metal. DuPont ***.²⁴

In its antisubsidy complaint filed with the European Commission, MSSA stated that the Chinese government recently rescinded a 13-percent value added tax rebate previously applicable to many of its exports, including sodium metal, and that this measure is likely to be followed by “some magnitude of export tax.” MSSA further stated that “Perhaps for these and other reasons particular to demand for Chinese sodium metal in the marketplace, Chinese prices for sodium metal sold in the Community have been rising sharply of late.”²⁵ Table VII-4 presents the destinations of China’s sodium metal exports during 2005-07.

¹⁹ Telephone interview with ***, November 21, 2007.

²⁰ Conference transcript, p. 27 (Mr. Hilk).

²¹ Conference transcript (Bourrier), p. 127.

²² Conference transcript (Bourrier), p. 92.

²³ MSSA’s posthearing brief, response to hearing and Commission questions, p. 2 fn. 2.

²⁴ DuPont’s importer questionnaire response.

²⁵ *Antisubsidy Complaint, Sodium Metal from USA*, non-confidential version, June 9, 2008, p. 36.

Table VII-4
Sodium metal: Export destinations for China, 2005-07

Item	Calendar year		
	2005	2006	2007
Quantity (1,000 pounds)			
China:			
India	9,568	11,208	12,645
Brazil	2,989	2,140	1,746
Finland	119	993	669
United States	430	207	401
Germany	118	257	364
Belgium	71	80	256
Taiwan	254	148	183
Japan	252	212	175
Mongolia	0	26	110
Netherlands	3,132	945	106
All others	560	516	263
Total	17,492	16,733	16,917
Source: Compiled from <i>Global Trade Atlas</i> .			

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION****[Investigation No. 731-TA-1135 (Final)]****Sodium Metal From France****AGENCY:** United States International Trade Commission.**ACTION:** Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-1135 (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 France of sodium metal, provided for in subheading 2805.11.00 of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 28, 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 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of sodium metal from France are being sold in the United States at less than fair value within the

¹ For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "sodium metal (Na), in any form and at any purity level."

meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 23, 2007, by E.I. du Pont de Nemours & Co. Inc., Wilmington, DE.

Participation in the investigation 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 this investigation 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 investigation 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 investigation.

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 this investigation available to authorized applicants under the APO issued in the investigation, 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 investigation. A party granted access to BPI in the preliminary phase of the investigation 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 this investigation will be placed in the nonpublic record on September 19, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on October 14, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 2, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and

nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 7, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 26, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 21, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before October 21, 2008. On November 6, 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 November 7, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 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 investigation must be served on all other parties to the investigation (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: This investigation is 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: June 5, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

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phase of the subject investigation (73 FR 33115, June 11, 2008). The Commission is revising its schedule.

The Commission's new schedule for the investigation is as follows: the prehearing staff report will be placed in the nonpublic record on September 26, 2008; the deadline for filing prehearing briefs is October 6, 2008.

For further information concerning this investigation 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: This investigation is 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: September 5, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-21097 Filed 9-10-08; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1135 (Final)]

Sodium Metal from France

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

DATES: *Effective Date:* September 4, 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
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
this investigation may be viewed on the
Commission's electronic docket (EDIS)
at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On May 28, 2008, the Commission established a schedule for the conduct of the final

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-427-827]

Sodium Metal from France: Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances

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

SUMMARY: The Department of Commerce (the Department) has determined that sodium metal from France 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 below in the section entitled "Continuation of Suspension of Liquidation."

EFFECTIVE DATE: October 20, 2008.

FOR FURTHER INFORMATION CONTACT:

Dennis McClure or Joy Zhang, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-5973 or (202) 482-1168, respectively.

SUPPLEMENTARY INFORMATION: On May 28, 2008, the Department published in the *Federal Register* its preliminary determination in the antidumping duty investigation of sodium metal from France. See *Sodium Metal from France: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 30605 (May 28, 2008) (*Preliminary Determination*).

In the *Preliminary Determination*, based on our examination of E.I. DuPont de Nemours & Co. Inc.'s (the petitioner) targeted dumping allegation filed on April 21, 2008, we determined that there is no pattern of constructed export prices for comparable merchandise that differs significantly among purchasers. Therefore, we applied the average-to-average methodology to all U.S. sales by MSSA S.A.S., MSSA Co., and Columbia Sales International (collectively, MSSA). In the *Preliminary Determination*, the Department invited comments regarding the overall application of the targeted dumping test applied in this proceeding. Accordingly, we received comments within the case briefs submitted by the petitioner and MSSA on July 25, 2008. The petitioner and MSSA submitted rebuttal comments on July 30, 2008.

We conducted sales and cost verifications of the responses submitted by MSSA. See Memorandum to the File from Dennis McClure and Joy Zhang, Case Analysts, through James Terpstra, Program Manager, Office 3, entitled "Verification of the Sales Response of MSSA S.A.S., MSSA Co., and Columbia Sales International in the Antidumping Duty Investigation of Sodium Metal from France," dated July 18, 2008 (Sales Verification Report); see also Memorandum to the File through Neal M. Halper, from LaVonne Clark, entitled "Verification of the Cost Response of MSSA S.A.S. in the Antidumping Investigation of Sodium Metal from France," dated July 1, 2008 (Cost Verification Report). All verification reports are on file and available in the

Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

Based on the Department's findings at verification, as well as the minor corrections presented by MSSA at the start of its respective verifications, we requested during verification that respondents submit revised sales databases. As requested, MSSA submitted its revised sales databases at verification on July 16, 2008.

On September 15, 2008, the petitioner submitted an allegation of critical circumstances. MSSA submitted comments responding to the petitioner's allegation of critical circumstances on September 25, 2008.

Period of Investigation

The period of investigation (POI) is October 1, 2006, to September 30, 2007. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

Scope of the Investigation

The merchandise covered by this investigation includes sodium metal (Na), in any form and at any purity level. Examples of names commonly used to reference sodium metal are sodium metal, sodium, metallic sodium, and natrium. The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States subheading 2805.11.0000. The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "Sodium" to sodium metal. The CAS registry number is 7440-23-5. For purposes of the investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

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 Antidumping Duty Investigation of Sodium Metal from France" from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration (Decision Memorandum), dated October 10, 2008, 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.

Targeted Dumping

In the *Preliminary Determination*, with respect to targeted dumping, we followed the methodology outlined in the post-preliminary targeted dumping analysis in the investigations of Certain Steel Nails from the PRC and the UAE. SEE Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, RE: Antidumping Duty Investigation of Certain Steel Nails from the Peoples Republic of China (PRC) and the United Arab Emirates (UAE), Subject: Post-Preliminary Determinations on Targeted Dumping, dated April 21, 2008 (April 21, 2008 Nails decision memorandum).¹ Based on the targeted dumping test that we applied in the *Preliminary Determination*, we did not find a pattern of constructed export prices for comparable merchandise that differ significantly among customers.² As a result, we applied the average-to-average methodology to the constructed export prices of all of MSSA's sales to the United States during the POI and calculated a preliminary margin of 62.62 percent for MSSA.³

In the *Preliminary Determination*, the Department applied the Nails targeted dumping test based on the methodology outlined in the April 21, 2008 Nails decision memorandum and found no targeted dumping. We have analyzed the case and rebuttal briefs⁴ with respect to targeted dumping issues submitted for the record in this investigation and considered the changes made to the targeted dumping test applied in the final determinations of UAE and PRC Nails and PRC Tires.⁵

¹ See *Preliminary Determination* at 30606.

² *Id.* at 30607.

³ *Id.* at 30609.

⁴ See the petitioner's case brief, dated July 25, 2008; see also: MSSA's rebuttal brief, dated July 30, 2008, respectively.

⁵ See *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) and accompanying Issues and Decision Memorandum (*Steel Nails from the UAE*) dated June 6, 2008, at Comment 5; see also: *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical*

As a result of our analysis, we utilized the Nails targeted dumping test from the *Preliminary Determination* and applied certain modifications from *Nails and PRC Tires* for purposes of the final determination.⁶

As in the *Preliminary Determination*, we did not find a pattern of export prices for comparable merchandise that differ significantly among customers. For further discussion, see Comments 2 and 3 of the Decision Memorandum and the Memorandum to James Terpstra, Program Manager for the Office of AD/CVD Operations, from Dennis McClure and Joy Zhang, Analysts for the Office of AD/CVD Operations, RE: Antidumping Duty Investigation of Sodium Metal from France, Subject: Final Analysis Memorandum for Sales MSSA, dated October 10, 2008 (Final Analysis Memorandum).

Critical Circumstances

On September 15, 2008, the petitioner filed a critical circumstances allegation with respect to imports of sodium metal from France. On September 25, 2008, MSSA submitted comments and monthly shipment data in response to the petitioner's allegation. Although the Department found that in accordance with section 735(a)(3)(A)(ii) of the Act, the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury of such sales, the Department has made a final negative determination concerning critical circumstances for MSSA and all other French manufacturers and exporters because, in accordance with section 735(a)(3)(B) of the Act, and based on MSSA's shipment data, MSSA and all other companies did not have massive imports during a relatively short period. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Melissa Skinner, Director, AD/CVD Operations, Subject: Antidumping Duty Investigation of Sodium Metal from France, Regarding: Final Negative Determination of Critical

Circumstances, dated October 10, 2008, which is hereby adopted by this notice.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by MSSA 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 MSSA. See Sales Verification Report and Cost Verification Report.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculation for MSSA. For a discussion of these changes, see the Decision Memorandum at Comments 6, 8, 10, and 11, Final Analysis Memorandum, and Memorandum to Neal M. Halper, Director, Office of Accounting, from LaVonne Clark, Senior Accountant, Reference: Antidumping Duty Investigation of Sodium Metal from France, Subject: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination MSSA S.A.S., MSSA Co., and Columbia Sales International, Inc. (collectively "MSSA"), dated October 10, 2008.

Final Determination Margins

We determine that the following weighted-average dumping margin exists for the period October 1, 2006, to September 30, 2007:

Manufacturer/Exporter	Weighted-Average Margin (percent)
MSSA S.A.S.	66.64
All Others	66.64

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 Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from France, entered, or withdrawn from warehouse, for consumption on or after May 28, 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 margin, as indicated in the chart above, as follows: (1) the rate for MSSA S.A.S. will be 66.64 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 66.64 percent. The suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that 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 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.

Circumstances, 73 FR 33977 (June 16, 2008) and accompanying Issues and Decision Memorandum (*Steel Nails from the PRC*) dated June 6, 2008, at Comments 3, 5, and 9 (collectively, *Nails*); see also: *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) and accompanying Issues and Decision Memorandum (*PRC Tires*) dated July 7, 2008, at Comments 23. B and 23. G.

⁶ *Id.*

Dated: October 10, 2008.

David M. Spooner,

*Assistant Secretary for Import
Administration.*

**Appendix -- Issues in Decision
Memorandum**

ISSUES

Comment 1: Whether the Department
Should Include "Form" As Part of
Model Match Criteria

Comment 2: Whether the Department
Should Calculate the Antidumping Duty
Margin using the Transaction-to-
Transaction Methodology

Comment 3: Whether the Department's
Targeted Dumping Test is Flawed and
Should be Replaced with the
"preponderance at two percent test" (P/
2 test)

Comment 4: Whether the Department
Should Alter Its Level of Trade Analysis

Comment 5: Whether the Department
Should Calculate Certain Home Market
Packing Expenses Based on Facts
Available

Comment 6: Whether the Department
Should Re-allocate Indirect Selling
Expenses Based on Sales Value

Comment 7: Whether the Department
Should Deduct Freight from Transfer
Price Before Calculating Domestic
Indirect Selling Expenses

Comment 8: Whether the Department
Should Correct MSSA Co.'s Inventory
Carrying Costs in the United States

Comment 9: Whether the Department
Incorrectly Characterized MSSA Co.'s
Quantity and Value Reconciliation

Comment 10: Whether the Department
Correctly Calculated Indirect Selling
Expenses Incurred in the Home Market
for Purposes of the CEP Deduction

Comment 11: Whether the Department
Should Consider Certain Expenses
Reported as Indirect Selling Expenses as
Direct Deductions from the U.S. Price

[FR Doc. E8-24912 Filed 10-17-08; 8:45 am]

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APPENDIX B
HEARING WITNESSES

CALENDAR OF THE PUBLIC HEARING

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

Subject: Sodium Metal from France
Inv. No.: 731-TA-1135 (Final)
Date and Time: October 14, 2008 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, DC.

OPENING REMARKS:

Petitioner (**Matthew P. Jaffe**, Crowell & Moring LLP)
Respondents (**William Silverman**, Hunton & Williams LLP)

In Support of the Imposition of Antidumping Duties:

Crowell & Moring LLP
Washington, DC
on behalf of

E.I. du Pont de Nemours & Co. Inc. (“DuPont”)

Kenneth J. Hilk, Business Marketing Manager, Reactive Metals Business, DuPont
Brian Merrill, Global Sales Leader, Reactive Metals Business, DuPont
Richard Wallden, Plant Manager and Supply Chain Manager, Reactive Metals Business,
DuPont
Larry Fetzer, Technical Service Consultant and Product Stewardship Coordinator,
Reactive Metals Business, DuPont
Dr. Seth T. Kaplan, Principal, The Brattle Group

Matthew P. Jaffe)
Nicole M. Jenkins) – OF COUNSEL
Sabina K. Neumann)

In Opposition to the Imposition of Antidumping Duties:

Hunton & Williams
Washington, DC
on behalf of

MSSA S.A.S. and its U.S. subsidiary, MSSA Co. (collectively “MSSA”)

Bruno Gastinne, President and CEO, MSSA S.A.S.
Frederic Chaminant, Sales Director, MSSA S.A.S.
Guy Donzella, Environmental & Safety Manager, Environmental Protection Services, Inc.
Marianne Johnson, Senior Purchasing Agent, Ciba Corp.
Marc Matusewitch, President, Columbia Sales International, Inc.
Al Puntureri, President, Interstate Chemicals Co., Inc.
Beth Sloane, Purchasing Manager, Afton Chemical Corp.
Nigel Winters, Technical & Quality Manager, Honeywell Specialty Materials
Sedesh Doobay, Procurement Counsel, Honeywell Specialty Materials
Bruce Malashevich, President, Economic Consulting Services, LLC
Jennifer Lutz, Economist, Economic Consulting Services, LLC

William Silverman)
Richard P. Ferrin) – OF COUNSEL
Douglas Heffner)

Troutman Sanders LLP
Washington, DC
on behalf of

Ferro Corporation

Jim Love, Business Manager, High Performance Solvents, Ferro Corp.
Jim Kennan, Global Purchasing Manager, Ferro Corp.

Julie C. Mendoza)
) – OF COUNSEL
R. Will Planert)

Bryan Cave LLP
Washington, DC
on behalf of

MEMC, Inc.

Doug Rice, Manager, Support Services, MEMC Pasadena

Lyle B. Vander Schaaf) – OF COUNSEL

REBUTTAL/CLOSING REMARKS:

Petitioner (**Matthew P. Jaffe**, Crowell & Moring LLP)

Respondents (**William Silverman**, Hunton & Williams LLP)

APPENDIX C
SUMMARY DATA

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

* * * * *

APPENDIX D
ADDITIONAL QUESTIONNAIRE PRICE DATA

Table D-1
Sodium metal: Weighted-average U.S. f.o.b. selling prices, quantities, and margins of underselling/(overselling) of domestic product 1 and imported French product 2, by quarters, January 2005-June 2008

* * * * *

Table D-2
Sodium metal: Weighted-average U.S. f.o.b. selling prices, quantities, and margins of underselling/(overselling) of domestic product 1 without * and imported French product 1, by quarters, January 2005-June 2008**

* * * * *

Table D-3
Sodium metal: Weighted-average U.S. f.o.b. selling prices, quantities, and margins of underselling/(overselling) of domestic product 1 without * and imported French product 2, by quarters, January 2005-June 2008**