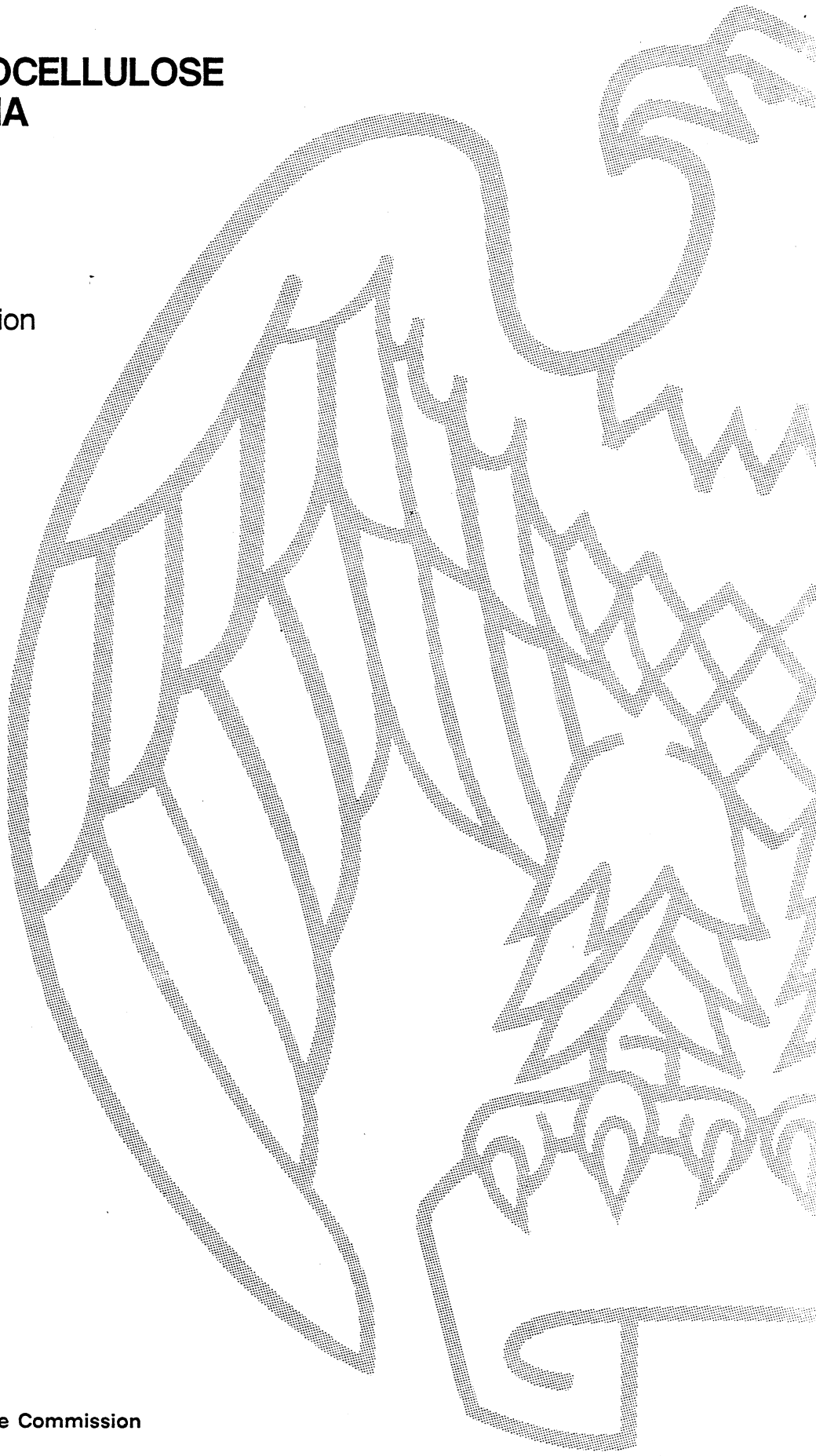
INDUSTRIAL NITROCELLULOSE FROM YUGOSLAVIA

Determination of the Commission in Investigation No. 731-TA-445 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation



USITC PUBLICATION 2324

OCTOBER 1990

United States International Trade Commission
Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would reveal the business proprietary operations of individual concerns may not be published and, therefore, has been deleted from this report.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-445 (Final)

INDUSTRIAL NITROCELLULOSE FROM YUGOSLAVIA

Determination

On the basis of the record[1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Yugoslavia of industrial nitrocellulose,[2] provided for in subheading 3912.20.00 of the Harmonized Tariff Schedule of the United States (previously classified in item 445.25 of the former Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective April 19, 1990, following a preliminary determination by the Department of Commerce that imports of industrial nitrocellulose from Yugoslavia were being sold at LTFV within the meaning of section 733(a) of the act (19 U.S.C. § 1673b(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the

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

[2] Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 9, 1990 (55 FR 19367). The hearing was held in Washington, DC, on May 29, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

On the basis of the information obtained in this final investigation, we unanimously determine that an industry in the United States is materially injured by reason of imports of industrial nitrocellulose from Yugoslavia that are sold at less than fair value (LTFV). [1]

The rationale for our determination in this investigation is substantially the same as that set forth in our views in our recent determination regarding LTFV imports from Brazil, the People's Republic of China, the Federal Republic of Germany, Japan, the Republic of Korea, and the United Kingdom, [2] which are incorporated herein by reference. It is fundamental that Commission decisions in Title VII investigations are sui generis because they are based upon the information of record in a particular investigation and that information usually varies from investigation to investigation. However, the record in this investigation is virtually identical to the record in our recent investigations of Brazil, the People's Republic of China, the Federal Republic of Germany, Japan, the Republic of Korea, and the United Kingdom. In these investigations, the Commission thoroughly discussed all the relevant issues in its determinations. Nor have the submissions of the respondents in this investigation raised any new issues. Therefore, we do not repeat in detail here our earlier analysis.

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[1] Acting Chairman Brunsdale hereby reaffirms and incorporates herein by reference her Additional Views in Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990). In her analysis in those investigations, she cumulated the imports from Yugoslavia at issue here.

[2] See Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990) (Views of the Commission).

I. Like Product and the Domestic Industry

In our preliminary determination in this investigation, and in the final determinations regarding LTFV imports from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, we found one domestic like product, consisting of "all industrial nitrocellulose." [3] The respondent in this investigation has not challenged the Commission's like product analysis, nor do we find any basis in the record for changing that determination. Therefore, we again adopt that like product definition. Further, we adopt the domestic industry determination made in the prior investigations of LTFV imports from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, in which we found one domestic like product, consisting of "all industrial nitrocellulose." [4]

II. The Condition of the Domestic Industry

In assessing the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, domestic production, capacity, capacity utilization, shipments, inventories, employment, and financial performance. [5] Consideration of all the indicators relating to the condition of the domestic industry leads us to conclude that the industry is

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[3] See Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990) at 8; Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, West Germany, and Yugoslavia, Invs. Nos. 731-TA-439-445 (Preliminary) USITC Pub. 2231 (November 1989) at 10.

[4] See Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990) at 8.

[5] 19 U.S.C. § 1677(7)(C)(iii).

experiencing material injury. Before describing the condition of the industry, we note that in conducting its analysis, the Commission considered data from the period January 1986-March 1990. [6]

Production, capacity utilization, and domestic market shipments are declining significantly. Overall trends in employment are also adverse. Further, on average, operating income of industrial nitrocellulose operations was negative from 1987 to 1989. Petitioner had slightly positive operating margins in the interim period of 1989, but had slightly negative operating margins during the same period of 1990. [7]

III. Cumulation

In our prior determinations regarding LTFV imports from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, we determined that cumulation with imports from Yugoslavia was required. That determination has not been challenged further in respondent's posthearing submissions. Nonetheless, the Commission has considered whether the fact that the imports from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany are already subject to an antidumping order alters the Commission's conclusion.

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[6] For a discussion of the Commission's reasoning for using data from this period, see Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990) at 9. We also note that the Commission would have reached an affirmative determination even if it had limited its analysis of the data considered (both with respect to the condition of the industry and with respect to the causation analysis below) to the more typical period of investigation; considering the additional data from 1986 only strengthened the support in the record for an affirmative determination.

[7] For a more detailed analysis of the condition of the domestic industry, see Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, (Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990) at 8-11.

In analyzing the causal nexus between the unfairly traded imports from a particular country that are the subject of an ongoing investigation, the Commission is required to cumulatively assess the volume and price effects, not just of the unfair imports from that country, but of all imports that compete with one another and with the domestic like product and that are "subject to investigation." 19 U.S.C. § 1677(7)(C)(iv). The legislative history accompanying the cumulation provision underscores Congressional concern with the collective hammering effect of simultaneous unfair acts by noting that the marketing of unfairly traded imports must be "reasonably coincident" for cumulation to be required. [8]

The intent and purpose of the statute as a whole is remedial. While the entry of an antidumping order leads to the imposition of duties on all subsequent imports, unfair imports entered prior to imposition of duties are still present in the marketplace and may still impact the domestic industry. The length of time of this continuing impact may vary from case to case depending upon such factors as the nature of the distribution system and the size of existing inventories. The Commission previously has found that this time lags falls within the range of six months to one year. [9] For this

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[8] See H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 173, reprinted in 1984 U.S. Code Cong. & Admin. News 5220, 5290; see also, House Comm. on Ways and Means, Trade Remedies Reform Act of 1984, H.R. Rep. No. 275, 98th Cong., 2d Sess. 37, reprinted in 1984 U.S. Code Cong. & Admin. News, 4910, 5127, 5164 (cumulation was mandated in order to eliminate inconsistencies in Commission action and to address simultaneous unfair acts or practices).

[9] Compare Iron Construction Castings from Brazil, India, and the People's Republic of China, USITC Pub. 1838 at 12-13 (cumulation, order one month old); Low-Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-247 (Final), USITC Pub. 1790 at 10 (Jan. 1986) (cumulation, order two months old); Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 at 7-10 (May 1986) (cumulation, order seven months old) with Carbon Steel Wire Rod from Poland, Inv. No. 731-TA-159 (Final), USITC Pub. 1574 (Sept. 1984) (no cumulation,

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reason, the Commission cumulates imports subject to an outstanding antidumping or CVD order when that order is recent.

The Commission's interpretation of 19 U.S.C. § 1677(7)(C)(iv) was recently upheld by the Federal Circuit in Chaparral Steel Co. v. United States. [10] Among the issues before the Court was the Commission's decision not to cumulate imports from South America and Spain, upon which CVD orders had been issued approximately three years prior to the investigation in question, because those imports did not enter the domestic market reasonably coincident in time with the imports from Norway that were subject to investigation. As support for its decision to uphold the Commission's decision not to cumulate the imports from these two countries, the Court pointed to the fact that Congress had amended the cumulation statute two times after the Commission's interpretation in that investigation, yet Congress did nothing to define a specific time period for the Commission to use in deciding whether to cumulate. The Court concluded:

> Although later congressional inaction is not dispositive of congressional intent, additional deference may be given to an agency interpretation when a statutory provision remains unchanged after Congress has considered an amendment, particularly one that plainly would have reversed established agency practice on the point in issue. (Citations omitted). [11]

Accordingly, it would be consistent with the Commission's past practice to

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[9](...continued)
order ten months old); Stainless Steel Sheet and Strip from Spain, Inv. No. 731-TA-164 (FINAL), usitc Pub. 1593 at 12 (Oct. 1984) (no cumulation, order 16 months old); Oil Country Tubular Goods from Canada and Taiwan, Inv. Nos. 701-TA-255, 731-TA-276-277 (Final), USITC Pub. 1865 at 7-9 (June 1986) (no cumulation, order 20 months old).

[10] 901 F. 2d 1097 (Fed. Cir. 1990).

[11] Id. at 1106.

cumulate imports subject to recently issued orders. [12] This is particularly true where, as here, the investigation was instituted simultaneously with other already completed investigations, [13] and the only reason that the final determinations are not concurrent is that Commerce extended the deadline in the Yugoslavia investigation. Indeed, we note that all of the data relevant to the issue of cumulation are identical. [14]

The Commission has already unanimously stated that there is sufficient evidence of competition among imports from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, and that both Chinese and Korean imports fail to qualify for the narrow statutory exception for negligible imports. [15] Respondent has presented no new arguments on this issue.

Accordingly, in reaching its determination in this final investigation, the Commission concludes that it is appropriate to cumulate the imports from Yugoslavia with the imports from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom and West Germany. [16]

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[12] See note 11, supra.

[13] 54 Fed. Reg. 39055 (September 22, 1989). See, e.g., Certain Telephone Systems and Subassemblies thereof from Korea (Final), USITC Pub. 2254 (January 1990).

[14] A decision by the Commission not to cumulate in such circumstances, when the other criteria for cumulation are satisfied, may encourage respondents to seek delays in Commerce proceedings in an effort to avoid cumulation by the Commission

[15] See Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990) at 12-14.

[16] In addition, we note that we have concluded, as an exercise of discretion, that the facts set forth in Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990) at 12-14, in combination with additional business proprietary information on the record, demonstrate that the imports from the seven countries subject to investigation compete with each other and with the domestic like product.

IV. Material injury by reason of LTFV imports

In addition to finding material injury to a domestic industry, the Commission must also determine whether such injury is "by reason of" the less than fair value imports. [17] In making this determination, we are required to consider, inter alia, the volume of the imports subject to investigation, the effect of such imports on domestic prices, and the impact of such imports on the domestic industry. [18] Evaluation of these factors involves a consideration of: (1) whether the volume of imports, or increase in volume is significant, (2) whether there has been significant price underselling by the imported products, and (3) whether imports have otherwise depressed prices to a significant degree, or have prevented price increases. [19] In addition, the Commission must evaluate the effects of the subject imports on such relevant economic factors as actual and potential changes in the profits, productivity, capacity utilization, and investment. [20]

We find that the imports from Yugoslavia, particularly when analyzed with the volume and price effects of imports from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, are a cause of material injury to the domestic industrial nitrocellulose industry. [21] We determine that the market share of industrial

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[17] 19 U.S.C. § 1673d(b)(1).
[18] 19 U.S.C. § 1677(7)(B).
[19] 19 U.S.C. § 1677(7)(C)(i-ii).
[20] 19 U.S.C. § 1677(7)(C)(iii).
[21] In making this determination, the Commission did not rely on any of the data in the questionnaires of those purchasers receiving the memorandum written by counsel for one of the respondents. The Commission had a sufficient number of unaffected questionnaires available so that we have an adequate purchasers' response; excluding the affected questionnaires from the record is not outcome determinative. The Commission also notes that its determination would not have changed even if these purchaser questionnaires had been part of the administrative record on which the Commission relied.

(continued...)

nitrocellulose from these seven countries increased dramatically between 1986-1989. Both market penetration and the absolute volume of subject imports increased significantly from 1986 to 1989. Although the absolute volume of imports decreased slightly in the interim period of 1990 when compared with the same period in 1989, market penetration was higher during that same period in 1990 than it had been in 1989. In fact, the total market share of industrial nitrocellulose imported from the seven subject countries in 1989 was approximately double their total market share in 1986. [22]

The presence of underselling by the cumulated imports is also a significant factor in the Commission's decision. A total of 662 quarterly comparisons of domestic versus import price were possible on a country-by-country basis. Comparisons in 435 instances indicate underselling by the imported nitrocellulose from one or another of the subject countries. [23] [24] Accordingly, we determine that the evidence of underselling on the record, overall, although mixed, is significant.

In this connection, the Commission considered carefully the evidence concerning underselling by petitioner of "Z" grade. We note that sales of "Z" grade constitute a relatively small percentage of petitioner's sales of industrial nitrocellulose. Further, while sales of "Z" grade could conceivably be causing some financial injury to petitioner, we reiterate that

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[21](...continued)
For a more detailed discussion of the Commission's reasons for deciding not to rely on these data, see, Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom and West Germany, Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990) at 15-17.

[22] Report at a-45-46, table 24.

[23] Report at a-63, a-64, a-65, a-66, a-68, a-70-72, a-74, a-75, a-76, a-77, and tables 33-41.

[24] See 19 U.S.C. § 1677(7)(E)(ii).

the subject imports need only be a cause of material injury. Thus, the Commission has determined that underselling by the subject countries is significant and supports an affirmative determination. [25]

In measuring the occurrences of underselling, the Commission made no adjustments to the prices, either upward or downward, for the fact that industrial nitrocellulose is shipped in various types of drums. The Commission's unwillingness to make such adjustments stems from the fact that the effect on nitrocellulose pricing of different types of drums can not be generalized and cannot be traced back to individual transactions. [26] The Commission notes, however, that if it had made adjustments to the prices in conducting its underselling analyses in the ranges estimated by the staff report, such adjustments would not have altered the outcome of the Commission's determinations.

Total market demand for nitrocellulose is only slightly affected by the price of nitrocellulose. [27] Therefore, underselling by the subject imports did not cause an increase in the quantity of nitrocellulose consumed. Rather, underselling caused a shift in market share within a relatively fixed level of consumption, to the detriment of petitioner.

The fact that the record is replete with confirmed instances of both sales and revenue lost to the subject imports is also significant to the Commission in reaching its determination in this final investigation. The

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[25] See, Negev Phosphates, Ltd. v. United States Department of Commerce, 699 F. Supp. 938, 948-49 (Ct. Int'l Trade 1988) (underselling "mixed" although significant); Copperweld Corp., UNR v. United States, 682 F. Supp. 552, 564-67 (Ct. Int'l Trade 1988) (statute's focus is on significant underselling; the Commission has discretion to determine whether underselling is significant) (emphasis added).

[26] Report at a-48-49, a-62.

[27] Memorandum INV-N-058, June 15, 1990, at 28-30.

Commission confirmed several instances in which Hercules lost revenue, either from reducing prices or from the rollback of price increases, in response to competition from the respondents. [28] The Commission also confirmed numerous instances of sales lost due to the lower price of products imported from the respondent countries. [29]

The Commission notes that, although petitioner did raise its prices during the period of investigation, the persistent underselling by the subject imports, resulting in instances of lost revenue and lost sales, prevented petitioner from raising its prices sufficiently to cover increased costs. [30] It should also be noted that when the petitioner raised prices, it lost market share, which had an adverse effect on plant capacity utilization and the economies of scale inherent in chemical production processes. [31]

CONCLUSION

For all the reasons set forth above, we determine that the U.S. industrial nitrocellulose industry is materially injured by reason of LTFV imports from Yugoslavia.

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[28] Report at a-82, a-83-85.
[29] Report at a-85-86, a-88-89, a-91-92.
[30] Letter of petitioner of March 9, 1990; prehearing brief of petitioner at 11-13. Additional support found in business proprietary information cannot be discussed in this public opinion.
[31] Id. A more detailed analysis of causation is provided in Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Invs. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 (June 1990) at 15-22. Additional support found in business proprietary information cannot be discussed in this public opinion.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

Following preliminary determinations by the U.S. Department of Commerce that imports of industrial nitrocellulose[1] from Brazil, Japan, the People's Republic of China (PRC), the Republic of Korea, the United Kingdom, West Germany, and Yugoslavia are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission, effective March 1, 1990, instituted investigations Nos. 731-TA-439-444 (Final);[2] and, effective April 19, 1990, instituted investigation No. 731-TA-445 (Final)[3] under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's final investigations, and of the public hearing to be held in connection therewith, was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the Federal Register.[4] The hearing was held in Washington, DC, on May 29, 1990.[5]

Effective May 22, 1990, Commerce determined (in final LTFV determinations) that imports of industrial nitrocellulose from Japan, the PRC, the Republic of Korea, the United Kingdom, and West Germany are being, or are likely to be, sold in the United States at LTFV (55 FR 21051-21061); and effective June 6, 1990, Commerce determined (in a final determination) that imports of industrial nitrocellulose from Brazil are being, or are likely to be, sold in the United States at LTFV (55 FR 23120-23123).

On June 28, 1990, the Commission notified Commerce of the Commission's unanimous determinations that an industry in the United States is materially injured by reason of imports from Brazil, Japan, the PRC, the Republic of Korea, the United Kingdom, and West Germany of industrial nitrocellulose that had been found by the Department of Commerce to be sold in the United States

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[1] Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of these investigations does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent. Industrial nitrocellulose is provided for in subheading 3912.20.00 of the Harmonized Tariff Schedule of the United States (HTS).

[2] Covering imports from Brazil, Japan, the PRC, the Republic of Korea, the United Kingdom, and West Germany.

[3] Covering imports from Yugoslavia.

[4] A copy of the Commission's notice on investigation No. 731-TA-445 (Final)(55 FR 19367-19368, May 9, 1990), as well as copies of other Federal Register notices cited in this report concerning Yugoslavia, are presented in app. A.

[5] A list of witnesses appearing at the Commission's hearing is presented in app. B.

at LTFV (55 FR 27698-27699, July 5, 1990). The views of the Commission are contained in USITC Publication 2295 (June 1990), entitled Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany: Determinations of the Commission in Investigations Nos. 731-TA-439 through 444 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations.

On July 5, 1990, the Commission was notified that Commerce had extended the date for its final determination as to whether imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at LTFV until not later than September 6, 1990 (55 FR 28073-28074, July 9, 1990). The Commission, therefore, revised its schedule in investigation No. 731-TA-445 (Final) (Yugoslavia) to conform with Commerce's new schedule (55 FR 30284, July 25, 1990). However, effective August 27, 1990, Commerce made an early final LTFV determination with respect to industrial nitrocellulose from Yugoslavia (55 FR 34946-34950).

The applicable statute directs that the Commission make its final injury determination within 45 days after the final determination by Commerce, and the Commission revised its schedule to conform with the statute (55 FR 37578, September 12, 1990).

Background

The industrial nitrocellulose investigations resulted from a petition filed by Hercules, Inc., Wilmington, DE, on September 19, 1989, alleging that an industry in the United States is materially injured or threatened with material injury by reason of imports of industrial nitrocellulose from Brazil, Japan, the PRC, the Republic of Korea, the United Kingdom, West Germany, and Yugoslavia. In response to that petition the Commission instituted investigations Nos. 731-TA-439 through 445 (Preliminary) under section 733 of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) and, on November 3, 1989, unanimously determined that there was such a reasonable indication of material injury.

As previously noted, effective June 28, 1990, the Commission unanimously determined that an industry in the United States is materially injured by reason of LTFV imports of industrial nitrocellulose from Brazil, Japan, the PRC, the Republic of Korea, the United Kingdom, and West Germany; therefore, this report is limited to new information for Yugoslavia received subsequent to Commerce's final LTFV determination.

Nature and Extent of Sales at LTFV

Effective August 27, 1990, Commerce determined (in a final LTFV determination) that imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at LTFV (55 FR 34946-34950). Commerce's final margin for Yugoslavia is 10.81 percent ad valorem.

As explained in Commerce's notice, the methods used to arrive at the final LTFV determination for Yugoslavia were unusual. Current Yugoslavian law

prohibits foreign government officials from visiting that country's industrial plants and, further, explosive nitrocellulose for military use is manufactured in the same plant in which industrial nitrocellulose is produced. The position of the Yugoslavian Government is that information about total nitrocellulose capacity, and much of the other nitrocellulose data, are classified as "national security" information and can not be disclosed to authorities in the United States. Therefore, Commerce was not allowed to conduct an on-site verification and ultimately accepted data submitted to it by the Yugoslavian producer and certified as accurate by the Government of Yugoslavia.

Report Format

This report is designed to be used in connection with Commission publication 2295.[6] That report included all information relevant to the investigation regarding imports of industrial nitrocellulose from Yugoslavia, with the exception of the final Commerce LTFV determination, which is presented above, and posthearing briefs on Yugoslavia by parties.

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[6] U.S. International Trade Commission, Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany: Determinations of the Commission in Investigations Nos. 731-TA-439 through 444 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations, USITC Publication 2295, June 1990.

APPENDIX A

FEDERAL REGISTER NOTICES

Therefore, the Commission's new schedule for the investigation is as follows: The deadline for filing posthearing briefs is September 18, 1990, and the deadline for Parties to file additional written comments on business proprietary information is September 24, 1990.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 4, 1990.

[FR Doc. 90-21399 Filed 9-11-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-445 (Final)]

Industrial Nitrocellulose From Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: Effective April 19, 1990, the Commission instituted the subject investigation and established a schedule for its conduct (55 FR 19367, May 9, 1990). The Commission held a public hearing in Washington, DC on May 29, 1990. Subsequent to the Commission's hearing, the Department of Commerce extended the date for its final less than fair value (LTFV) determination in the investigation from July 2, 1990, to September 6, 1990, and the Commission revised its schedule in the investigation to conform with Commerce's new schedule (55 FR 30284, July 25, 1990). Commerce subsequently made its final LTFV determination on August 27, 1990 (55 FR 34946). The applicable statute directs that the Commission make its final injury determination within 45 days after Commerce's final LTFV determination, or in this case by October 10, 1990.

assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: Effective April 19, 1990, the Commission instituted the subject investigation and established a schedule for its conduct (55 FR 19367, May 9, 1990). The Commission held a public hearing in Washington, DC, on May 29, 1990. Subsequent to the Commission's hearing, the Department of Commerce extended the date for its final determination in the investigation from July 2, 1990, to September 6, 1990. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: the deadline for filing posthearing briefs is September 20, 1990, and the deadline for Parties to file additional written comments on business proprietary information is September 25, 1990.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

Issued: July 16, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-17344 Filed 7-24-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-445 (Final)]

Industrial Nitrocellulose From Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contactng the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special

[Investigation No. 731-TA-445 (Final)]

Industrial Nitrocellulose from Yugoslavia

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigation and notice of a hearing to be held in connection with the investigation. To the maximum extent possible, the Commission shall conduct this investigation on the same schedule as the Commission's investigations Nos. 731-TA-439 through 444 (Final), industrial nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany (55 FR 9781, March 15, 1990).

SUMMARY: The Commission hereby gives notice of the institution of final antidumpting investigation No. 731-TA-445 (Final) (Yugoslavia), 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 is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Yugoslavia of industrial nitrocellulose,[1] provided for in subheading 3912.20.00 of the Harmonized Tariff Schedules of the United States), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before July 2, 1990, and the Commission will make its final injury determination by August 16, 1990 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: April 19, 1990.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of industrial nitrocellulose from Yugoslavia are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on September 19, 1989, by Hercules Incorporated, Wilmington, Delaware. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 47738, November 16, 1989).

Participation in the Investigation

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

[1] Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on May 14, 1990, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation; the hearing will be a consolidated proceeding for investigations Nos. 731-TA-439 through 445, industrial nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, West Germany, and Yugoslavia. The hearing will begin at 9:30 a.m. on May 29, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 18, 1990. 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 May 23, 1990, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is May 23, 1990. If prehearing briefs contain business proprietary information, a non-business proprietary version is due May 24, 1990.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2)).

Written Submissions

Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties in connection with this investigation must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on July 16, 1990. If posthearing briefs contain business proprietary information, a non-business proprietary version is due July 17, 1990. 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 on or before July 16, 1990.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietry information in connection with this investigation pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than July 20, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: May 2, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-10792 Filed 5-8-90; 8:45 am]

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Notices

Federal Register

Vol. 55, No. 165

Monday, August 27, 1990

DEPARTMENT OF COMMERCE

International Trade Administration

[A-479-801]

Final Determination of Sales at Less Than Fair Value; Industrial Nitrocellulose From Yugoslavia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial nitrocellulose from Yugoslavia. The ITC will determine within 45 days of the publication of this notice whether these imports injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-8498 or 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On April 17, 1990 the Department of Commerce (the Department) published an affirmative preliminary determination (55 FR 17290). On July 9, 1990 the Department published a notice postponing the final determination in this investigation until not later than September 6, 1990 (55 FR 28073). Interested parties submitted comments for the record in case briefs dated June 5, 1990 and in rebuttal briefs dated June 11, 1990. A public hearing was held on June 14, 1990.

Scope of Investigation

The product covered by this investigation is industrial nitrocellulose.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks.

The scope of this investigtion does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

The subject merchandise is classified under Harmonized Tariff Schedule (HTS) subheading 3912.20.00. HTS subheadings are provided for convenience and U.S. Customs purposes. The written description remains dispositive as to the scope of this investigation.

Period of Investigation

The period of investigation is April 1, 1989 through September 30, 1989.

Such or Similar Comparisons

For the purposes of this investigation, we have determined that all industrial nitrocellulose comprises a single category of such or similar merchandise. On the basis of six criteria (nitrogen percentage, viscosity rating, wetting

agent type, cellulose source, physical form, and wetting agent percentage) we determined that there were no sales of identical merchandise in the home market with which to compare merchandise sold in the United States. Therefore, we compared sales of the most similar merchandise and made adjustments for differences in physical characteristics of the merchandise in accordance with 19 CFR 353.57.

Fair Value Comparisons

Except for substantial deficiencies in its response to the Department's requests for information regarding cost of production (COP), the respondent in this investigation, Milan Blagojevic (MB), cooperated with the Department by filing timely and complete responses to the Department's requests for information. However, the Government of Yugoslavia refused to allow the Department to verify MB's responses.

By letter dated Janaury 26, 1990, the respondent informed the Department that there are "national interest problems associated with verification" and that "according to Yugoslavia law, foreign government officials are expressly forbidden from visiting Yugoslav plants." The respondent forwarded a request from the Government of Yugoslavia that asked the Department to request permission officially for verification and provide an outline of what a verification would entail.

The Department responded on February 2, 1990 with an official request for verification, stipulating the statutory basis for the request and providing a list of documents that are typically examined at verification. The Department wrote to respondent on April 9, 1990, requiring confirmation by April 17, 1990 of whether the Department would be allowed to verify. On April 16, 1990, the Department agreed to an extension until May 2, 1990 for confirmation of whether the Department would be allowed to verify MB's responses.

On April 25, 1990, in anticipation of a favorable reply from the Government of Yugoslavia, the Department notified the respondent of its intention to begin verification on May 14, 1990.

On April 30, 1990, the respondent requested an extension until May 4, 1990 to advise the Department of the Government of Yugoslavia's decision concerning verification.

On May 10, 1990, the respondent informed the Department that it was still attempting to get permission for verification from the Federal Secretariat for National Defense of Yugoslavia.

On May 22, 1990, the Embassy of Yugoslavia informed the Department of the "refusal of the competent Yugoslav authorities to grant permission for on-site verification of the production and business books of 'Milan Blagojevic' on the grounds of national security."

The Department wrote to the respondent on May 24, 1990, that, as the Department would not be allowed to verify MB's response, the Act requires the use of the best information available (BIA) for the Department's final determination.

On June 14, 1990, the Department held a hearing at which MB argued that, given the unique circumstances of the case, the Department should use MB's data as BIA. MB stated that it had fully cooperated with the Department during the investigation and that the denial of verification came solely from the Government of Yugoslavia.

On June 29, 1990, the Department wrote to the Minister for Economic and Financial Affairs at the Yugoslav Embassy, requesting that officials of the Government of Yugoslavia "examine MB's responses to the Department's requests for information, compare them to MB's books and records, and then provide the Department with a certification of the accuracy of the information provided by MB to the Department."

On August 9, 1990, the Department received a certification from the Federal Secretariat of National Defense of Yugoslavia through the Yugoslav Embassy in Washington. This certification stated that a "delegation composed of specialists in technical and financial fields" examined MB's books and found that the data submitted by MB was "accurate and correct."

Section 776(b) of the Act is unambiguous on the subject of verification: "(The Department) shall verify all information relied upon in making * * * a final determination in an investigation." Further, if the Department "is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action, which may include in actions referred to in paragraph (1) the information submitted in support of the petition."

The Department's regulations (19 CFR 353.37) provide that the Department will use BIA whenever the Department is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted. The regulations provide that BIA may include information submitted in support of the petition or information subsequently submitted by interested parties. If an interested party refuses to provide factual information requested by the Department or otherwise impedes the proceeding, the Department may take that into account in determining what is BIA.

MB's response must be considered "unverified" because the Department was denied the option of an on-site examination of MB's books and records. The statute and regulations expressly require that the Department use BIA in the absence of verified information. Given this requirement, the Department must determine what constitutes BIA in this case.

The statutory provisions regarding BIA have been interpreted by the Department and the courts as a tool that helps the Department, which does not have subpoena power over foreign respondents, to compel respondents to cooperate fully during all stages of an investigation. *See N.A.R., S.P.A.* v. *United States* (Ct. Int'l. Trade, Slip Op. 90-60 (1990)), citing *Atlantic Sugar, Ltd.* v. *United States*, 744 F.2d 1556, 1560 (Fed. Cir. 1984).

The General Agreement on Tariffs and Trade (GATT) provides in Article XXI that "Nothing in this Agreement shall be construed (a) To require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests * * * (ii) Relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment * * *." The Department in this case has not, and could not, compel the Government of Yugoslavia to provide information contrary to its essential security interests. However, as the Department has recognized in the *Final Affirmative Countervailing Duty Determination: Industrial Nitrocellulose from France* (48 FR 11971, 11972, March 22, 1983):

> While national security considerations cannot serve as a blanket excuse for non-cooperation, nor for non-compliance with our countervailing duty and antidumping laws, the legitimate national security interests of a respondent government must be taken into account in any decision regarding what constitutes best information available. Where access to information deemed relevant to an investigation is barred by legitimate claims of national security, resort to best information available supporting the most adverse assumptions or results would give every appearance of punishing the responsent for its invocation of a right recognized by the

GATT and by general principles of international law and sovereignty.

In general, the Department finds unacceptable the notion that information favorable to the respondent should be used as BIA any time a foreign government claims that a response to the Department's request for information or a verification of a response would be in conflict with that government's essential security interests. By their very nature, claims based on national security cannot generally be examined for "legitimacy" because the information required to make such a judgment would tend to reveal national security information. A broad interpretation of GATT Article XXI, therefore, would require the Department to accept claims of "essential security interests" by foreign governments without question, and use as BIA information favorable to the respondent. Such an interpretation would eviscerate U.S. antidumping laws and the intent of the GATT's Antidumping Code. A foreign government could invoke the "essential security interests" provision and thereby eliminate the administering authority's ability to examine the legitimacy of the claim.

In this case, however, the Department need go no further than the petition to learn that: "There is one other type of nitrocellulose called 'explosives grade nitrocellulouse' or 'smokeless nitrocellulose' which has totally distinct markets and uses. Explosives grade nitrocellulose has a nitrogen content of over 12.2 percent and is used in the manufacture of dynamite and propellants for civilian and military ammunition and implements of war." (Petition, at page 6).

It is not unreasonable to conclude from the petition, and our experience in other investigations of this product, that the respondent may have the ability to produce explosive grade nitrocellulose, and may, in fact, be supplying its government with explosive grade nitrocellulose for "implements of war." Preventing the disclosure of information relating to production of explosive grade nitrocellulose could reasonably be termed an "essential security interest."

Given the unique circumstances of this case, the Department accepts the claim of the Government of Yugoslavia that verification would conflict with its essential security interests. Therefore, as BIA, the Department is using the information provided by the respondent, and certified by the Government of Yugoslavia as accurate and correct, regarding MB's U.S. and home market sales.

With regard to the COP data submitted by MB, the Department wrote to the respondent on April 27, 1990, outlining substantial deficiencies and requesting information clarifying the COP response by May 9, 1990. MB did not respond to this request for information. Therefore, given the substantial deficiencies in MB's COP response, the Department is using, as BIA, the information provided by the petitioner in its January 12, 1990 COP allegation.

The Department considers MB's home market and U.S. sales information to be the best information available for the following reasons: (1) MB's responses regarding its home market and U.S. sales were complete and internally consistent; (2) MB expected, when it complied and submitted information to the Department, that the information would be subject to verification, giving MB an incentive to submit complete and accurate information; and (3) the Government of Yugoslavia's certification provides the Department with corroboration that the information provided by MB is accurate.

To determine whether sales of industrial nitrocellulose from Yugoslavia to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the United States Price and Foreign Market Value sections of this notice.

United States Price

We based United States price on purchase price in accordance with section 772(b) of the Act because all sales were made directly to unrelated parties prior to importation into the United States. We calculated purchase price based on packed f.o.b. Yugoslav port prices. We made deductions for foreign inland freight, foreign inland insurance, and foreign brokerage and handling. In an atempt to compensate for hyperinflation in Yugoslavia, foreign inland freight, foreign inland insurance, and foreign brokerage and handling were converted to U.S. dollars using the exchange rate in effect on the date the charges were incurred, rather than the date of the U.S. sale to which the charges pertain. In accordance with section 772(d)(1)(B) of the Act, we added import duties imposed by Yugoslavia which have not been collected by reason of the exportation of the merchandise to the United States.

We did not adjust for certain taxes (under section 772(d)(1)(C) of the Act) that the respondent reported were imposed in Yugoslavia and rebated by reason of the exportation of the merchandise to the United States. MB reported that it received a refund from the Yugoslav government for taxes paid by MB's suppliers at the rate of 4.92 percent of the gross unit U.S. price. However, MB was unable to provide sufficient information regarding the taxes. For example, MB could not show who paid the tax, when it was paid, the products that were taxed, or the tax rate. In fact, MB was unable to provide any evidence that the tax was paid.

Foreign Market Value

Because we determined Yugoslavia's economy to be hyperinflationary, we divided the period of investigation into six different sub-periods based on home market price changes. Home market prices remained constant during each of these sub-periods. In an attempt to eliminate the distortive effect of inflation on home market prices, each U.S. sale was compared to the foreign market value calculated for the sub-period in which the U.S. sale was made. We determined that there were sufficient sales during the period of investigation at or above the cost of production for use as foreign market value (*i.e.*, less than 90 percent but more than 10 percent of the sales were made at prices above the COP). For those sub-periods that contained home market sales at or above the COP, we based our calculation of foreign market value on home market sales in accordance with section 773(a)(1)(A) of the Act. Foreign market value for these sub-periods was based on packed, ex-factory prices to unrelated customers in the home market. One sub-period contained no home market sales at or above the COP. Accordingly, a significant percentage of U.S. sales were without home market sales comparisons. (*See e.g.*, Amended Final Determination of Sales at Less Than Fair Value: Tubeless Steel Disc Wheels from Brazil (53 FR 34556, September 7, 1988).) Therefore, we based foreign market value for this sub-period on constructed value. Constructed value was developed from the COP information provided by the petitioner in its January 12, 1990 COP allegation.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments for differences in credit expenses and bank charges. Because commissions were paid on U.S. sales and not on home market sales, we added U.S. commissions to the foreign market value and subtracted from foreign market value the lesser of U.S. commissions or home market indirect selling expenses. In an attempt to compensate for hyperinflation in Yugoslavia, U.S. commissions and bank charges were

converted to U.S. dollars using the exchange rate on the date they were incurred.

Finally, we made an adjustment for differences in packing costs by subtracting home market packing costs from the foreign market value and adding U.S. packing costs.

Currency Conversion

When calculating foreign market value, we normally make currency conversions using the exchange rates certified by the Federal Reserve Bank of New York, in accordance with 19 CFR 353.60. However, certified rates were not available for Yugoslav dinars for the period of investigation. Therefore, we used the daily exchange rates provided by MB in its response. We confirmed the accuracy of the rates by comparing them to the rates provided by Jugobanka in New York. Jugobanka officials explained that the rates provided to the Department were obtained from the Yugoslav central bank.

Interested Party Comments

Comment 1: The respondent argues that the Department should use the respondent's own data as the best information available because the Government of Yugoslavia's decision to forbid verification of the data was beyond the respondent's control. The respondent specifically cites Article XXI of the GATT, which states that one government cannot require another government to furnish information that compromises the latter's national security. The respondent also cites the Restatement (Third), Foreign Relations Law of the United States, which generally provides that "one state should defer to the greater interest of another one" in deciding a matter affecting both. Since verification would compromise Yugoslavia's national security, the Government of Yugoslavia's interest outweighs that of the United States. Therefore, verification cannot be required. The respondent further states that the information should be accepted because the respondent has sworn to its accuracy and portions of the information are "corroborated by documentation" or "supported by reasonable inferences."

The petitioner argues that the best information available is the information submitted in the petition. As support for its argument, the petitioner states that the respondent's information is suspect because it contains "inconsistencies and contradictions" and is unverified. The petitioner states that the incomplete and questionable nature of the data submitted by MB, as well as the inherent unreliability of unverified date, necessitate using information contained in the petition as the best information available. With respect to the Government of Yugoslavia's claim that verification would compromise national security, the petitioner argue that "there is no way for the Department to be sure that respondent did not actively participate in such a decision because it knew that the information it had supplied" would not verify, and that no legitimate national security claims apply with respect to production of industrial nitrocellulose.

DOC position: In the absence of verfied information, the Department used respondent's data regarding home market and United States prices as BIA. For COP, the Department used information supplied by the petitioner in its January 12, 1990 submission as BIA. See the Fair Value Comparisons section of this notice for a complete explanation.

Comment 2: The respondent contends that, because Yugoslavia's economy is hyperinflationary, the Department incorrectly converted home market dinar-denominated commissions and bank charges for purposes of the Department's preliminary determination. The respondent states that these amounts should have been converted to U.S. dollars on the date the expenses were incurred rather than on the U.S. sale date. In addition, the respondent states that U.S. packing costs should be converted on the date of shipment because the product is not packed until just prior to shipment. The respondent contends that, because of hyperinflation in Yugoslavia, conversion of packing costs unsing the exchange rate in effect on the date of sale seriously distorts the margin due to the interval between the date of sale and date of shipment.

The petitioner counters that the Department followed its normal practice by converting on the date of the U.S. sale, and that the appropriateness of an alternate currency conversion date cannot be determined without verification.

DOC position: The Department converted bank charges and commissions on the date they were incurred in an attempt to compensate for hyperinflation in Yugoslavia.

Unlike bank charges and commission, the precise date that packing costs were incurred cannot be determined. The nature of packing expenses is such that they are incurred over a period of time. Therefore the Department converted U.S. packing costs on the date of the U.S. sale. However, in an attempt to eliminate the distortive effects of hyperinflation, we used the dinar-denominated packing costs associated with the month in which the sale occurred.

Comment 3: The respondent states that the Department should adjust for a 4.92 percent refund of indirect taxes, which is paid by the Goverment of Yugoslavia upon export, as provided for under 19 CFR 353.41(d)(iii). Alternatively, the respondent proposes treating the taxes as a circumstance of sale adjustment.

The petitioner counters that the Department should not adjust for this refund because the respondent provided no evidence that the taxes are included in the home market price and because a circumstance of sale adjustment cannot be allowed without verification.

DOC position: No adjustment was made either under 19 CFR 353.41(d)(iii) or under 19 CFR 353.56 to account for taxes for the reasons outlined in the United States Price section of this notice.

Comment 4: The respondent argues that the Department should make a circumstance of sale adjustment for exchange rate gains and losses because the net gain is considered an income source associated with selling the subject merchandise to the United States.

The petitioner counters that such an adjustment is inappropriate both because the respondent was merely a successful currency speculator, not a user of forward money markets or exchange contracts (hedging mechanisms that the Department has recognized in previous cases), and because the claimed gain is unverified.

DOC position: The Department did not adjust for exchange rate gains or losses. The Department will adjust for exchange rate gains or losses only when the respondent can show actual exchange contracts and demonstrate that these contracts are tied directly to the sales that took place during the POI. (*See* Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) from Various Countries (54 FR 19085, May 3, 1989).)

Comment 5: The petitioner contends that the postponement of the final determination is unfair to the petitioner because it would allow MB to continue to make sales at less than fair value in the United States. The respondent counters that, as it is currently depositing a 9.42 percent dumping duty

as well as an additional import duty, petitioner is not being prejudiced by the postponement.

DOC position: On may 2, 1990 the Department received a request from MB to postpone the final determination. Section 735(a)(2) of the Act permits the Department to postpone making the final determination if it receives a request by an exporter who accounts for a significant proportion of exports of the subject merchandise. MB is such an exporter. The Department postponed the final determination in order to allow the Government of Yugoslavia the necessary time to certify MB's data.

Comment 6: The petitioner contends that the Department's request for certification of MB's data by the Government of Yugoslavia is legally objectionable because it allows for the submission of factual information after the established deadline. Further, the petitioner states that the Government of Yugoslavia cannot be considered a disinterested party. Any certification of accuracy provided by the inexperienced and potentially biased foreign officials is no substitute for a verification by the Department. The respondent counters that the Government of Yugoslavia does not have ties to MB and thus, is a disinterested party. In addition, the respondent contends that the Government of Yugoslavia merely certified the accuracy of MB's informaiton and did not submit any additional factual information. These actions complied with the direct request from the Department for certification.

DOC position: In accordance with 19 CFR 353.31(b)(1), the Department may request the submission of factual information "at any time during a proceeding." Because of the nature of this proceeding, we requested this certification. Therefore, the submission of a certification of MB's data by the Government of Yugoslavia is permissible whether it is considered factual data or not.

We accept the Government of Yugoslavia's certification as corroboration of the accuracy of MB's home market and U.S. sales informaiton as outlined in the Fair Value Comparisons section of this notice.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of industrial nitrocellulose from Yugoslavia, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall continue to require cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Yugoslavia exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/ Exporter	Weighted-average margin percentage
Milan Blagojevic	10.81
All others	10.81

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material unjury, does not exist with respect to imports of industrial nitrocellulose, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumpting duties on industrial nitrocellulose from Yugoslavia, entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20(a)(4).

Dated: August 21, 1990.

Marjorie Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-20094 Filed 8-24-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-479-801]

Postponement of Final Antidumping Duty Determination: Industrial Nitrocellulose From Yugoslavia

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

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation, Milan Blagojevic (MB), to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)(A)).

Based on the respondent's request, we are postponing our final determination as to whether imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value until not later than September 6, 1990.

EFFECTIVE DATE: June 9, 1990.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman at (202) 377-8498 or Bradford Ward at (202) 377-5288, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On April 24, 1990, we published a preliminary determination of sales at less than fair value of this merchandise. That notice stated that if the investigation proceeded normally, we would make our final determination by July 2, 1990 (55 FR 17290).

On May 2, 1990, MB requested a postponement of the final determination until not later than 135 days from the publication of the Department's preliminary determination pursuant to section 735(a)(2)(A) of the Act (19 U.S.C. 1673d(a)(2)(A)). MB accounts for all of the exports of the merchandise to the United States. Pursuant to 19 CFR

353.20(b), if exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing our final determination until not later than September 6, 1990.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: June 29, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-15759 Filed 7-6-90; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

LIST OF WITNESSES APPEARING AT THE COMMISSION'S HEARING

CALENDAR OF PUBLIC HEARINGS

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

Subject : Industrial Nitrocellouse from Brazil, Japan, The People's Republic of China, The Republic of Korea, The United Kingdom, West Germany and Yugoslavia

Inv. Nos. : 731-TA-439 through 445 (Final)

Date and Time: May 29, 1990 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101 of the United States International Trade Commission, 500 E Street, S.W. in Washington.

In Support of the Imposition of Antidumping Duties:

Kelley Drye and Warren
Washington, D.C.
on behalf of

Hercules Incorporated

W. Wells Hood, Vice President, Business Development and Marketing, Hercules Incorporated

J. Stephen Bryce, Business Manager, Coatings Aqualon Company, Hercules Incorporated

Michael P. Kelly, Counsel, Law Department, Hercules Incorporated

Daniel J. Klett, Economist, ICF Consulting Associates, Incorporated

Suzanne Eder, Coding Business Supervisor, Hercules Incorporated

Jeffrey Wolff, Products Supervisor, Hercules Incorporated

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In Support of the Imposition of Antidumping Duties cont'd:

Ad Hoc Group

J. Robert Pickering, President and CEO,
Lilly Industrial Coatings, Incorporated
Indianapolis, Indiana

Edgar N. Putman, Chariman and CEO,
Penn Color Company, Doylestown, Pennsylvania

Leon Cole, Senior Vice President, Surface
Protection Industries, Incorporated
Los Angeles, California

Frederick Parkinson, Vice President,
U.S. Cellulose Company, Incorporated
San Jose, California

Edward M. Lebow)
)--OF COUNSEL
David R. Busam)

In Opposition to the Imposition of Antidumping Duties:

PANEL OF PURCHASERS:

Mar-Lak Products Company
Hawaiian Gardens, California

Edward J. Spiering, Vice President

Tennessee Technical Coatings Corporation,
Lewisburg, Tennessee

John F. Rawe, Executive Vice President

Rudd Company, Incorporated
Seattle, Washington

Alan M. Park, Jr., General Manager

Seaside Incorporated, Long Beach, California

Joel Friedland, President

-more-

In Opposition to the Imposition of
Antidumping Duties:

Guardsman Products, Incorporated

Richard B. Chalker, Corporate Director

Skadden, Arps, Slate,
Meagher and Flom
Washington, D.C.
on behalf of

Asahi Chemical Industry Company, Limited

Mr. Okobu, Asahi Chemical Industry Company

Henry McFarland, Economist, Economist
International

Mr. VanLeewen, Economist, Economist International

William E. Perry)
)--OF COUNSEL
Mr. Burke)

Stein, Shostak Shostak and O'Hara
Los Angeles, California
on behalf of

E.T. Horn Company

Gene E. Alley, President, E.T. Horn Company

Robert Glenn White)--OF COUNSEL

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In Opposition to the Imposition of
Antidumping Duties:

Kaplan Russin and Vecchi
Washington, D.C.
on behalf of

Varteks-Vartimpeks

Bozidar Grobotek, of Impex Overseas, Agent
for Varteks-Vartimpeks

Milan Blagojevic

Akzo Coatings Incorporated
(formerly Reliance Universal, Incorporated)
(the only importer and purchaser of Milan Blagojevic)

T.H. McHenry, Manager of Corporate Purchases,
Akzo Coatings Incorporated

Robert Torba, Executive Vice President, Azako
Coatings Incorporated

Kathleen F. Patterson--OF COUNSEL

Howrey and Simon
Washington, D.C.
on behalf of

Imperial Chemical Industries PLC

ICI Americas Incorporated

David Wilkinson, Business Manager,
ICI Americas Incorporated,
Industrial Colorants

Michael A. Hertzberg)
)--OF COUNSEL
Paul M. Orbuch)

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In Opposition to the Imposition of
Antidumping Duties cont'd:

Wolff Walsrode AG and Wolff Products/
Mobay Corporation ("Wolff companies")

John A. Schoch, Jr., General Manager,
Chemicals, Wolff Products/Mobay
Corporation

Paul Plaia, Jr.)
)--OF COUNSEL
Juliana M. Cofrancesco)

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