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POTASSIUM HYDROXIDE FROM CANADA, ITALY, AND THE UNITED KINGDOM

Determinations of the Commission in
Investigations Nos. 731-TA-542,
543, and 544 (Preliminary) Under
the Tariff Act of 1930, Together
With the Information Obtained
in the Investigations

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Washington, DC 20436**

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-542-544 (Preliminary)

POTASSIUM HYDROXIDE FROM CANADA, ITALY, AND THE UNITED KINGDOM

Determinations

On the basis of the record¹ developed in the subject investigations, the Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, Italy, and the United Kingdom of potassium hydroxide, provided for in subheading 2815.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 2, 1992, a petition was filed with the Commission and the Department of Commerce by Linchem, Inc., Ashtabula, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of potassium hydroxide from Canada, Italy, and the United Kingdom. Accordingly, effective January 2, 1992, the Commission instituted antidumping investigations Nos. 731-TA-542-544 (Preliminary).

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

² Commissioner Watson not participating.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of January 9, 1992 (57 F.R. 924). The conference was held in Washington, DC, on January 23, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION¹

Based on the record in these preliminary investigations,² we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of potassium hydroxide, liquid or dry, from Canada, Italy, or the United Kingdom that allegedly are sold at less than fair value (LTFV).³

I. The Legal Standard for Preliminary Investigations

The legal standard in preliminary antidumping investigations is set forth in section 733 of the Act, 19 U.S.C. § 1673b(a), which requires the Commission to determine whether, based upon the best information available at the time of the preliminary determination, there is a reasonable indication of material injury or threat to a domestic industry or material retardation of the establishment of such an industry by reason of the subject imports.

In applying this standard, the Commission may weigh the evidence before

¹ Commissioner Watson did not participate in these investigations.

² The postconference briefs filed by the petitioner failed to comply with Commission rule, 19 C.F.R. § 207.3(c), the "24-hour rule." Specifically, petitioner's counsel filed a business proprietary version of petitioner's brief on January 28, 1992. A second version of their brief with numerous substantive changes was filed the next day. Commission Rule 207.3(c) explicitly states: "No changes to the document other than bracketing and the deletion of business proprietary information are permitted after the deadline." 19 U.S.C. § 207.3(c). We consider this failure to comply with the Commission's Rules as a very serious matter. Commission Rule 207.3(c) provides that failure to comply with the "24-hour rule" "may result in striking from the record of all or a portion of a submitter's document." In this instance, the Commission elected, as an initial matter, to strike from the record all copies of petitioner's postconference brief, however received, except the January 28, 1992 submission and permitted petitioner to refile bracketing corrections and a nonbusiness proprietary version of that submission. The Commission will continue to strictly enforce all Commission Rules, including Rule 207.3. See also additional views of Commissioner Nuzum.

³ Material retardation is not an issue in these investigations and will not be discussed further.

it to determine whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."^{4 5}

II. Domestic Industry/Like Product

To determine whether a "reasonable indication of material injury" exists, we first must determine the "like product" and the "domestic industry."⁶ Section 771(4)(A) of the Tariff Act of 1930 defines the relevant domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the whole domestic production of that product"⁷

⁴ American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986). In American Lamb, the Federal Circuit stated that the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations and that the "reasonable indication" standard requires more than a finding that there is a "possibility" of material injury. Id. at 1001-1004.

⁵ Commissioner Crawford agrees that the evidence of record does not warrant continuing this investigation. While she concurs with the majority in determining that there is no reasonable indication of material injury, or threat thereof, to the domestic industry by reason of the subject imports, she does not necessarily agree with each and every finding set forth in the opinion.

⁶ The respondents in this case raised the issue of whether the petitioner has the requisite standing to bring an antidumping case "on behalf of" the domestic potassium hydroxide industry. We previously have stated that the Commission does not have the authority under the statute to terminate an investigation for lack of standing. E.g., Gray Portland Cement and Cement Clinker from Japan, Inv. 731-TA-461 (Final), USITC Pub. 2376 at 5 (April 1991) ("Japan Cement"). The Court of International Trade (CIT) has determined that Commerce has the authority to decide whether to dismiss a petition for lack of standing. On January 29, 1992 in the Minebea opinion, Judge Tsoucalas of the CIT reasserted his ruling in his 1991 NTN Bearings decision that "[it] is the function of the ITA [Commerce] to determine standing. . . ." Minebea Co., Ltd. v. United States, Slip Op. 92-5 at 5 (CIT January 29, 1992) (quoting, NTN Bearings v. United States, 757 F. Supp. 1425, 1430 (CIT 1990)). Compare Suramerica de Aleaciones Laminadas, C.A. v. United States, 746 F. Supp. 139, 153 (CIT 1990), appeal docketed, No. 91-1015 (Fed. Cir. Oct. 5, 1990). We consequently make no determination on the issue of standing.

⁷ 19 U.S.C. § 1677(4)(A).

The term "like product" is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation"⁸

The Commerce Department has defined the product subject to investigation as: "[A]ll grades of KOH [potassium hydroxide], liquid and dry," from Canada, Italy, and the United Kingdom (U.K.).⁹ Potassium hydroxide (KOH), or caustic potash, is a chemical compound used primarily to manufacture other chemical compounds such as potassium carbonate, potassium phosphates, and potassium soaps.¹⁰

Our determination of what is the appropriate like product or products in an investigation is a factual determination, to which we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.¹¹ In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses, (2) interchangeability of the products, (3) channels of distribution, (4) customer and producer perceptions of the products, (5) the use of common manufacturing facilities and production employees, and (6) where appropriate, price.¹² No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor

⁸ 19 U.S.C. § 1677(10).

⁹ See 57 Fed. Reg. 3184 (January 28, 1992). Report at A-5.

¹⁰ See Report at I-3.

¹¹ Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1168, n.4 (CIT 1988) ("Asocoflores").

¹² E.g., Asocoflores, 693 F. Supp. at 1170, n. 8; Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final) USITC Pub. 2163 (March 1989).

variations.¹³

A. Domestic Products "Like" Imported Potassium Hydroxide

The principal like product issue that the Commission addressed in these investigations concerns whether liquid and dry potassium hydroxide (KOH) should constitute one or two like products. KOH is produced in two forms, liquid KOH on a 45 percent basis of concentration, and dry (flake grade or walnut grade) KOH on a 90 percent basis of concentration. For the reasons indicated below, we find both liquid and dry potassium hydroxide to be one like product in these investigations. This definition of the like product is coextensive with the definition of the imported product subject to investigation.¹⁴

Petitioner, one of three U.S. producers of potassium hydroxide,¹⁵ requested that "the Commission treat caustic potash [i.e., potassium hydroxide] in liquid and dry form to be a single like product."¹⁶ The Canadian and the U.K. respondents agreed with petitioner that "all potassium hydroxide, liquid and dry, constitutes one like product."¹⁷ However, the Italian respondent contended that dry and liquid KOH are different products typically sold through different channels of distribution to different customers for different applications.¹⁸ Further, this respondent argued that "the cost of the products is significantly different" which means that there

¹³ E.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Inv. Nos. 303-TA-19 and 20, 731-TA-391-399 (Final), USITC Pub. 2185 (May 1989).

¹⁴ See 57 Fed. Reg. 3184 (January 28, 1992). Report at A-5.

¹⁵ During the period of investigation there were four U.S. producers. However, one producer, Olin, ceased production in late 1990. Report at I-6.

¹⁶ Petitioner's Postconference Brief at 20.

¹⁷ Respondents' (Canada and U.K.) Postconference Brief at 7.

¹⁸ Respondent (Italy) Postconference Brief at 15 and 16.

is an entirely different market segment for the liquid form versus the dry form.¹⁹

In previous investigations, the Commission has found the liquid and dry forms of a material to be one like product when the liquid and dry forms have been at least somewhat interchangeable. For example, in Dry Aluminum Sulfate from Sweden, we found dry and liquid forms to be one like product because, despite varying physical properties, "they share the same chemical formula and generally may be used to perform the same functions."²⁰ In Dry Aluminum Sulfate the dry form was produced when the liquid aluminum sulfate underwent further processing in which the "water is removed by evaporation."²¹

While liquid and dry KOH are not similar in terms of their physical characteristics, their chemical composition is identical.²² The dry form merely contains no visible water. Dry KOH is simply liquid KOH that has undergone a heated evaporation and drying process.²³

¹⁹ Respondent (Italy) Postconference Brief at 16. This respondent alleged that the liquid is sold directly to its customers, large manufacturers, whereas the dry form is sold in smaller volumes primarily through distributors. *Id.* at 17 and 18.

²⁰ Dry Aluminum Sulfate from Sweden, Inv. No. 731-TA-430 (Preliminary), USITC Pub. 2174 (March 1989) at 6 and 7 (customer perception that liquid and dry aluminum sulfate are substitutable; any barriers to interchangeability may be overcome; also same channels of distribution and common production facilities); See, e.g., Sodium Thiosulfate from the Federal Republic of Germany, the People's Republic of China, and the United Kingdom, Inv. Nos. 731-TA-465, 466 and 468 (Final), USITC Pub. 2358 (February 1991); Industrial Nitrocellulose from Brazil, Japan, People's Republic of China, Republic of Korea, United Kingdom, West Germany, and Yugoslavia, Inv. Nos. 731-TA-439 - 445 (Final) USITC Pub. 2295 (June 1990) at 5 and 6 ("slight differences in the characteristics and uses in each grade mean that the grades are not perfectly substitutable. Nonetheless. . . they generally share the same categories of end uses"); Electrolytic Manganese Dioxide from Greece, Ireland and Japan, Inv. Nos. 406 - 408 (Preliminary) USITC Pub. 2097 (July 1988) (interchangeable uses and similar pricing); Potassium Permanganate from the People's Republic of China, Inv. No. 731-TA-125 (Final), USITC Pub. 1480 (January 1984).

²¹ Dry Aluminum Sulfate, (Preliminary) USITC Pub. 2174 at 7 (March 1989).

²² Report at I-4.

²³ Report at I-4.

Petitioner presented unchallenged information indicating that while customers might develop a preference for one form over another, for the most part, customers can, and will, use these products interchangeably; their choice depends mainly on price considerations, storage capability, and availability.²⁴ And, in fact, both forms are used in glass manufacturing, water treatment, heavy-duty industrial cleansing, pesticide production, alkaline battery manufacture, and gas purification.²⁵

The channels of distribution for the two forms are the same or substantially overlap. About 45 percent of liquid KOH sold in the U.S. market is purchased by distributors, with the balance shipped directly to end users.²⁶ Liquid KOH is shipped to end users and distributors either by tank cars or trucks, or through an intermediate terminal.²⁷ Dry KOH is shipped in large air-tight drums, bags, or super sacks, and is sold to both distributors and end users.²⁸

Both forms emerge as liquids from the common chlor-alkali production

²⁴ Tr. at 13; Petitioner's Postconference Brief at 22. There were conflicting statements by the petitioner as to whether a small percentage of the KOH customer base is restricted to use of only dry KOH. The petitioner noted at the conference that 10 percent of its total number of customers, primarily petroleum and gas purification companies, is restricted to use of only dry KOH. Petitioner stated: "Nine out of every ten of our dry customers liquify the flake they purchase from us and can use liquid as a substitute. The 10 percent that require flake are the oil and well drilling or in the oil and gas industries." Tr. at 14. However, the petitioner submitted, as part of its postconference brief, the results of a telephone survey conducted the day after the conference which found that the oil and gas industries use only liquid KOH. Petitioner's Postconference Brief at 22, and Appendix 2.

²⁵ Report at I-3 and I-4.

²⁶ Report at I-6.

²⁷ Report at I-4. Intermediate terminals are owned, or leased, by some of the producers and used as transfer facilities for shipping to an end-user or a distributor.

²⁸ Report at I-4 and I-6.

process.²⁹ Dry KOH is liquid KOH further refined by a heated evaporation and drying process, conducted in a separate production facility, often near the caustic potash plant.³⁰

Finally, the higher price for the dry KOH reflects the costly drying process.³¹ We note, in addition, that the dry KOH has a 90 percent basis of concentration, whereas liquid KOH has a 45 percent basis of concentration.

In summary, the virtually identical chemical composition, substantially similar uses, and actual interchangeability among liquid and dry KOH outweigh their differences in physical form and certain limited consumer preferences.³² We, therefore, find that both liquid and dry KOH are a single like product.

B. Domestic Industry

KOH is a chemical compound used primarily to manufacture other chemical compounds such as potassium carbonate. Petitioner proposed that the domestic industry should not include production of KOH for captive consumption, i.e., the domestic industry should be limited to the KOH production for the merchant market.³³ The Canadian and U.K. respondents contended that "the domestic

²⁹ Potassium hydroxide is made by the electrolysis of purified potash (KCl) brines in a chlor-alkali process, which produces two coproducts--chlorine gas and potassium hydroxide in fixed proportions. The chlor-alkali process uses salt and water as raw materials and electricity supplied to electrolytic cells to produce the end products. The process can produce chlorine and either potassium hydroxide or sodium hydroxide (NaOH), depending on the type of salt used. Report at I-4.

³⁰ Petitioner acknowledged that its dry KOH is produced through a tolling arrangement. Tr. at 143.

³¹ Report at I-4.

³² As noted in the legislative history to the Trade Agreements Act of 1979, "[t]he requirement that a product be 'like' the imported article 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 investigations." S. Rep. No. 249, 96th Cong., 1st Sess. at 90-91 (1979).

³³ Petition at 34-37; Tr. at 141.

industry consists of all integrated and merchant market operations of the domestic producers."³⁴ The difference could be important because U.S. producers captively consume a portion of their KOH production for the manufacture of potassium carbonate,³⁵ and the amount they consumed internally increased during the period of investigation.³⁶

We have considered this question in the past, finding, for example, in PET Film that "[i]t has been the Commission's practice to include all domestic production of the like product in the domestic industry, whether captively consumed or sold in the open market."³⁷ As we noted in Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats:

There is no statutory basis for excluding captive production. The statute defines the term "industry" as "the domestic producers as a whole of a like product, [or those producers whose collective output of the like product constitutes a major proportion of the total domestic production.]" 19 U.S.C. § 1677(4)(A). The statute further instructs the Commission, as a general rule, that "[t]he effect of the subsidized or dumped imports shall be assessed in relation to the United States production of a like product . . ." 19 U.S.C. § 1677(4)(D). Thus, the statute defines industry in terms of production, not in terms of markets, distribution channels, or similar factors.³⁸

We, therefore, find that the domestic industry consists of all U.S. production of KOH regardless of whether the production is for captive or

³⁴ Respondents' (Canada and U.K.) Postconference Brief at 7.

³⁵ Report at I-7.

³⁶ Report at I-7.

³⁷ Polyethylene Terephthalate Film, Sheet and Strip from Japan, and the Republic of Korea ("PET Film"), Inv. Nos. 731-TA-458 and 459 (Final), USITC Pub. 2383 at 19 (May 1991). See e.g., Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 at 24 (March 1991); Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Thereof from Canada, Japan, Malaysia, and Taiwan, Inv. Nos. 701-TA-292 and 731-TA-400 and 402-404 (Final), USITC Pub. 2152 (January 1989) (found no statutory basis for excluding captive production from the industry).

³⁸ Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Thereof from Canada, Japan, Malaysia, and Taiwan, (Final), USITC Pub. 2152 at 8 and 9 (January 1989) quoting, Industrial Phosphoric Acid from Belgium and Israel, Inv. Nos. 701-TA-285-286 and 731-TA-365-366 (Preliminary), USITC Pub. 1931 at 7, n.20 (1986).

merchant market consumption.

III. Condition of the Domestic Industry³⁹

The Commission obtained extensive information in these preliminary investigations concerning condition of the domestic industry -- data received accounted for 100 percent of U.S. production during the period of investigation.⁴⁰ However, much of the information on which we base our decision is business proprietary, as there were only four domestic producers during the period of investigation. Therefore, our discussion here of the condition of the industry must necessarily be in general terms.

In determining the condition of the domestic industry, we consider, among other factors, domestic consumption, domestic production, capacity, capacity utilization, shipments, inventories, employment, market share, domestic prices, profitability, the ability to raise capital, and investment.⁴¹ The Commission evaluates all of these factors in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."⁴²

Petitioner proposed that the Commission use petitioner's ECU (electrochemical cell unit) basis to compile data for all U.S. producers and

³⁹ Vice Chairman Brunsdale joins in this discussion of the condition of the domestic industry, but does not reach a separate legal conclusion regarding the presence or absence of material injury. She notes that a discussion of the domestic industry's condition is usually helpful in deciding whether any injury caused by allegedly dumped imports is material. See generally, Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) at 10-15 (Views of Chairman Brunsdale and Vice Chairman Cass). In this investigation, however, none of the analyses of causation, any member of the Commission customarily employs, shows that the allegedly dumped imports causes any material injury.

⁴⁰ Report at I-7.

⁴¹ 19 U.S.C. § 1677(7)(C)(iii).

⁴² 19 U.S.C. § 1677(7)(C)(iii). The issue of a distinctive business cycle was not asserted by any of the parties to the investigations and, therefore, was not addressed.

that the Commission use this method to consider the condition of the entire domestic industry.⁴³ Petitioner treated chlorine as a by-product and maintained that chlorine and KOH product costs should be commingled, with a credit added for chlorine revenues. This accounting method assigns the economic effects of the sharp decline in consumption for, and prices of, chlorine to the cost of producing potassium hydroxide.

We conclude that use of the ECU methodology for the entire domestic industry as a condition of competition that is distinctive to this industry is neither required nor appropriate. The other three domestic producers do not maintain their accounting systems on an ECU basis.⁴⁴

Under an accounting methodology commonly used in the chemical industry, domestic producers segregate their operations and allocate costs based on the volume (weight) output of the chemical reaction that produces the product. Under this methodology, the sharp decline in prices of chlorine⁴⁵ would not directly, nor indirectly, affect the financial performance data generated for potassium hydroxide production.

Since the methods employed by all U.S. producers adhere to generally accepted accounting principles (GAAP), we have considered the condition of the domestic industry based on the data as submitted by U.S. producers, despite the possible differences in accounting for chlorine costs.⁴⁶ The ECU method

⁴³ Petitioner's Postconference Brief at 6 and 23-24.

⁴⁴ Report at I-8 and I-9. The other three potassium hydroxide producers' also produce, or have produced, caustic soda (NaOH) as part of the same chlor-alkali process technology used to produce potassium hydroxide. *Id.*

⁴⁵ The list price for chlorine decreased from \$195 per short ton on January 2, 1989, to \$190 per short ton on April 3, 1989, and to \$125 per short ton on June 24, 1991. "Chemical Prices," Chemical Marketing Reporter, January 2, 1989, April 3, 1989, and June 24, 1991.

⁴⁶ See Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, Netherlands, Sweden, and the United Kingdom, Inv. Nos. 731- (continued...)

commingles the chlorine costs with potassium hydroxide costs. Using the ECU methodology, the declining chlorine revenues result in an adverse impact on the profitability of KOH producers.

Apparent U.S. consumption of potassium hydroxide by both quantity and value increased slightly from 1988 to 1990.⁴⁷ Apparent consumption by quantity continued to increase slightly from the interim period of 1990 (January-September) to the same period in 1991.⁴⁸

Domestic production of KOH increased moderately from 1988 to 1990, as well as from the 1990 interim period to the same period in 1991.⁴⁹ We note that there was a moderate increase in domestic production despite the fact that one producer, Olin, ceased KOH production during the period of investigation due to environmental issues. Capacity also increased during the period of investigation. One large domestic KOH producer, OxyChem advertised that it had increased KOH capacity by one-third.⁵⁰ While capacity slightly outpaced domestic production resulting in a marginal decline in capacity utilization, the utilization rates remained very high overall.⁵¹

Domestic shipments increased steadily in quantity from 1988 to 1990 and between interim periods of 1990 and 1991.⁵² Export shipments also increased steadily during the period of investigation.⁵³

⁴⁶(...continued)

TA-486-494 (Preliminary), USITC Pub. 2359 at 14 (February 1991) (Commission rejected the petitioner's request that market price for pulp rather than cost be used in considering condition of domestic industry based on Commission's use of generally accepted accounting principles (GAAP) which dictate the use of the lower of cost or market price).

⁴⁷ Report at Table 12, I-15.

⁴⁸ Report at Table 12, I-15.

⁴⁹ Report at Table 2, I-7.

⁵⁰ Tr. at Exhibit No. 1, p. 76.

⁵¹ Report at Table 2, I-7.

⁵² Report at Table 2, I-7.

⁵³ Report at Table 2, I-7.

The domestic industry's U.S. shipments relative to apparent consumption continued to hold the overwhelmingly dominant share of the domestic market throughout the period of investigation.⁵⁴

Meanwhile, there was a slight decline in apparent consumption by value between the interim periods with a corresponding slight decline in unit values.⁵⁵ Domestic shipments also decreased in value after 1989.⁵⁶ These slight decreases in value correspond to increases in domestic KOH production and, the domestic industry's dominant market share.

Inventory holdings were not significant and after an increase before 1989, they remained level from 1989 to 1990.⁵⁷ Inventories also rose slightly between the interim periods.⁵⁸

Employment is not a major indicator of the condition of the domestic potassium hydroxide production since there are relatively few employees in the production process. Even so, during the period of investigation, employment, hours worked, total compensation and hourly compensation all increased.⁵⁹ Unit labor costs, however, also increased as industry productivity experienced a slight decline.⁶⁰

Profitability overall was extremely positive and remained almost level during the period of investigation.^{61 62} On an aggregated basis, domestic

⁵⁴ Report at Table 12, I-15. The fact that the domestic industry has a dominant share of the market is a relevant factor in analyzing the condition of the domestic industry. See Minivans from Japan, Inv. No. 731-TA-522 (Preliminary), USITC Pub. 2402 at 33, n. 106 (July 1991); Coated Groundwood Paper, (Final), USITC Pub. 2467 at 9, n. 27 (December 1991).

⁵⁵ Report at Table 12, I-15.

⁵⁶ Report at Table 2, I-7.

⁵⁷ Report at Table 2, I-7.

⁵⁸ Report at Table 2, I-7.

⁵⁹ Report at Table 3, I-7.

⁶⁰ Report at Table 3, I-7.

⁶¹ Report at Table 5, I-10.

producers showed slight but steady increases in net sales from 1988 to 1990, albeit with a slight decline between the interim periods.⁶³ Operating income remained solidly positive with only slight fluctuations over the period of investigation apparently due to increases in the costs of goods sold.⁶⁴ Operating income as a percentage of net sales followed a similar trend.⁶⁵ Net income before taxes, and cash flow were also positive during the period of investigation.⁶⁶

Capital expenditures have been strongly positive, and producers' fixed assets increased substantially from 1988 to 1989, and remained level for the rest of the period of investigation.⁶⁷ Research and development expenditures were small and declined significantly.⁶⁸

Increases in domestic production, shipments, and apparent consumption, compensation, and overall profitability demonstrate that the industry is in good condition. We note that the expansion by some domestic producers has increased domestic competition and possibly had an adverse effect on other domestic KOH producers. Moreover, the industry overall has consistently devoted significant sums to capital expenditures. On the basis of these factors, we conclude that there is no reasonable indication that the domestic potassium hydroxide industry is materially injured.

⁶²(...continued)

⁶² Although financial results for individual industry participants varied, we are required to assess the performance of the industry as a whole. Sandvik AB v. United States, 721 F. Supp. 1322, 1330 (CIT 1989).

⁶³ Report at Table 5, I-10.

⁶⁴ Report at Table 5, I-10.

⁶⁵ Report at Table 5, I-10.

⁶⁶ Report at Table 5, I-10.

⁶⁷ Report at I-11.

⁶⁸ Report at I-11.

IV. No Reasonable Indication of Material Injury "by Reason of" Allegedly LTFV Imports

Even assuming that the domestic industry is materially injured, we determine that there is no reasonable indication that any such injury is "by reason of" alleged LTFV imports.

As in our analysis of the condition of the domestic industry, we note that much of the information on which we base our decision is business proprietary, as there is only one producer (and exporter to the United States) in each of the subject countries. Therefore, our discussion here of the effects of the subject imports must necessarily be in very general terms.

A. Cumulation

In determining whether there is material injury by reason of LTFV imports, the Commission is required to assess cumulatively the volume and effect of imports from two or more countries of like products subject to investigation if such imports are reasonably coincident with one another and compete with one another and with the domestic like product in the United States market.⁶⁹ The Commission has discretion not to cumulate imports from a

⁶⁹ 19 U.S.C. § 1677(7)(C)(iv); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990). In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

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

See Wieland Werke, AG v. United States, 718 F.Supp. 50-52 (CIT 1989); Granges Metallverken AB v. United States, 716 F.Supp. 17 (CIT 1989); Florex v. United States, 705 F.Supp. 582 (CIT 1989).

subject country that are negligible and have no discernible adverse impact on the domestic industry.⁷⁰ In determining whether there is a threat of material injury by reason of LTFV imports, cumulation is discretionary.⁷¹

Since we do not believe that there is a reasonable indication that subject imports, even if cumulated, are a cause of material injury to the domestic industry, we have assumed that cumulation is appropriate for the purposes of the discussion of causation which follows.

B. The lack of a causal nexus

In making a preliminary determination in an antidumping investigation, we determine whether there is a reasonable indication that an industry in the United States is materially injured "by reason of" the imports subject to investigation.⁷² The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."⁷³ In each case, we consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers.⁷⁴ In doing so, we consider whether import volumes or increases in volume are significant, whether there has been significant underselling by imports, whether imports significantly depress or suppress prices for the like product, and such factors as domestic production, sales, capacity utilization, inventories, employment, and profits.⁷⁵

Although we may consider information that indicates that injury to the industry is caused by factors other than the allegedly LTFV imports, it is not

⁷⁰ 19 U.S.C. § 1677(7)(C)(v).

⁷¹ 19 U.S.C. § 1677(7)(F)(iv). See discussion in threat of material injury section.

⁷² 19 U.S.C. § 1673b(a).

⁷³ 19 U.S.C. § 1677(7)(A).

⁷⁴ 19 U.S.C. § 1677(7)(B)(i).

⁷⁵ 19 U.S.C. § 1677(7)(C).

to weigh causes.⁷⁶ Subject imports need only be a cause of material injury.^{77 78}

The market share of cumulated imports from the subject countries has remained very low, fluctuating around 2-3 percent of apparent U.S. consumption throughout the period of investigation.⁷⁹ In addition, the absolute volume throughout the period of investigation has continued to be small in both quantity and value.^{80 81}

U.S. producers, however, continued to hold a dominant, and level, share of the U.S. market throughout the period of investigation.⁸² Apparent U.S. consumption by quantity increased from 1988 to 1990 and also recorded slight increases between interim periods.⁸³ While the value of apparent U.S. consumption declined slightly, with a resulting decrease in unit values of

⁷⁶ E.g., Citrosuco Paulista S.A. v. United States, 12 CIT____, 704 F. Supp. 1075, 1101 (1988); S. Rep. No. 249, 96th Cong., 1st Sess. 57 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

⁷⁷ See Iwatsu Electric Co. v. United States, 758 F. Supp. 1506 (CIT 1991); United Engineering & Forging v. United States, Slip Op. 91-101 (CIT, Nov. 18, 1991); LMI-La Metalli Industriale, S.p.A. v. United States, 712 F. Supp. 959 (CIT 1989).

⁷⁸ Vice Chairman Brunsdale agrees that the Commission is not to weigh causes. It must nonetheless decide whether the injury "by reason of" the subject imports is material. The Commission, in her view, should be wary of concluding that a recitation of the a-cause-of-material-injury formulation allows a finding of causation based on the most minimal harm to a distressed industry, rather than material harm to any U.S. industry. For a full treatment of this issue, see Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 at 147-249 and particularly 228-248 (November 1989) (Dissenting Views of Vice Chairman Cass).

⁷⁹ Report at Table 12, I-15.

⁸⁰ Report at Table 11, I-14.

⁸¹ Chairman Newquist notes that imports from the subject countries were a relatively constant, stable presence in the U.S. market during the period of investigation; therefore, these import trends do not suggest changes in the conditions of trade for U.S. producers caused by new emerging suppliers in the U.S. market.

⁸² Report at Table 12, I-15.

⁸³ Report at Table 12, I-15.

domestic shipments and imports from the 1990 interim period to the 1991 interim period, this decline corresponds to expansions in domestic capacity and increases in production.⁸⁴ One large U.S. KOH producer, OxyChem, advertised that it had increased capacity by one-third.

Prices of subject imports and the domestic product are not easily compared due to the varying, but substantial, transportation costs.⁸⁵ A review of the price comparison data collected by the Commission, however, reveals no indication that imports are significantly underselling domestic products. In fact, there are indications that, at least for some imports, the domestic prices are lower than import prices.

Together with this absence of significant underselling, we find that the small volume of subject imports has neither depressed nor suppressed prices.⁸⁶ In fact, the slight decreases in prices since 1989, corresponds to continued increases in domestic production and the continued dominance of U.S. KOH producers in the U.S. market. In contrast, during the same period of time, there were only slight fluctuations in market penetration by subject imports and volume of imports remained small throughout.

The evidence of record also clearly establishes that subject imports

⁸⁴ Report at I-7.

⁸⁵ Transportation costs may range from a small to a significant percentage of the cost of the product depending on the distance shipped. Report at I-15.

⁸⁶ Moreover, imports at such low levels are especially unlikely to affect prices in the KOH market. Even if we assume the imports could not be sold in the United States at all, except at less than fair value, their small share could easily be taken by domestic firms currently exporting KOH abroad. The record also shows that at least some sodium hydroxide producers have the capacity to switch production to KOH. It is reasonable to infer that they would do so, if KOH prices began to increase relative to sodium hydroxide prices. The effect of unfairly priced imports would therefore be a very slight reduction in the volume of KOH sold by the domestic industry. The reduction is so slight as to be inconsequential, immaterial, and unimportant.

have had no significant adverse impact on the domestic industry.⁸⁷ Profitability and investment are high, production and capacity have expanded. Moreover, the slight decline in high profits is the direct result of a depressed chlorine market and is unrelated to subject imports.

Based upon the information available in these investigations, we determine that, even if the domestic industry were injured, such injury is not "by reason of" cumulated allegedly LTFV imports from Canada, Italy and the United Kingdom. Most importantly, market penetration levels are very low and subject imports are not significant in volume. In addition, the pricing data collected by the Commission does not show any significant underselling and does not indicate that the subject imports' prices have had a significant depressing or suppressing effect on domestic prices.

V. No Reasonable Indication of Threat of Material Injury

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that threat of material injury is real and that actual injury is imminent."⁸⁸ The Commission considers as many of the ten statutory factors as are relevant to a particular threat analysis.⁸⁹ These factors include: increases in production capacity or existing unused or underutilized capacity in the exporting country that might lead to a significant increase in imports, any rapid increase in U.S. market penetration and the likelihood that the penetration will reach an injurious level, the probability that imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices, and whether there are

⁸⁷ Report at Appendix G.

⁸⁸ 19 U.S.C. § 1677(7)(F)(ii).

⁸⁹ 19 U.S.C. § 1677(7)(F)(i).

substantial increases in inventories of the imported products in the United States.⁹⁰

When we consider threat of material injury to a domestic industry by reason of imports from several countries, we may, at our discretion, cumulate the price and volume effects of each country's imports.⁹¹ The CIT has suggested that we measure the rate of increase in U.S. market penetration by imports, as well as consider the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.⁹² Since we do not believe that subject imports, even if cumulated, are a threat to the domestic industry, we have assumed cumulation for the purposes of the following discussion.

The evidence on the record indicates that there has not been a rapid increase in market penetration.⁹³ Market penetration has been extremely low throughout the period of investigation and actually declined from 1988 to 1990, but increased between interim period 1990 to interim period 1991.⁹⁴

⁹⁰ See 19 U.S.C. § 1677(7)(F)(i)(I)-(X). Several of the statutory threat factors have no relevance to these investigations and need not be discussed. Since there are no subsidy allegations, factor I is not applicable. Moreover, factor VIII regarding product shifting in countries covered by other antidumping orders and factor IX regarding raw and processed agriculture products also are not applicable to the facts of this case. In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or merchandise suggest a threat of material injury to the domestic industry. 19 U.S.C. § 1677(7)(F)(iii)(I).

⁹¹ See Steel Wire Rope from Argentina, Chile, India, Mexico, the People's Republic China, Taiwan, and Thailand, Inv. Nos. 701-TA-305-306 and 731-TA-476-482 (Preliminary), USITC Pub. 2343 at 14, 26-27 (December 1990) (citing Metallverken Nederland, B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asocoflores, 693 F. Supp. at 1171-72 (CIT 1988) aff'd after remand, 704 F. Supp. 1068, 1070-71 (CIT 1988)).

⁹² See Metallverken Nederland, B.V., 728 F. Supp. at 741-42 (CIT 1989); Asocoflores, 693 F. Supp. at 1171-72 (CIT 1988) aff'd after remand, 704 F. Supp. 1068, 1070-71 (CIT 1988).

⁹³ See 19 U.S.C. § 1677(7)(F)(i)(III).

⁹⁴ Report at Table 12, I-15.

Capacity in the subject countries decreased between 1988-1990, with a slight increase between interim periods.⁹⁵ Foreign capacity utilization rates declined slightly and continued to be lower than in the United States. The decline in capacity utilization has not led to any increase in the U.S. market share.⁹⁶ Also there are no significant increases in foreign capacity expected in the near future. Further, the underutilized capacity is not likely to result in a significant increase in market penetration of the subject imports, given the overall historical insignificance of the U.S. market relative to other markets for foreign production. On average, less than one-half of production in the subject countries is exported, with only a moderate share of overall total exports shipped to the United States.⁹⁷ There is no indication that there will be a change in these consistent patterns of trade in the near future. Thus, there is little likelihood that subject imports would reach an injurious level in the imminent future.

Regarding the price effects of future imports,⁹⁸ imports have not had a discernible adverse impact on domestic prices. Furthermore, there is no reasonable indication of evidence in the record that future imports would be any more likely to affect prices in the near future than they do now. The lack of a depressing or suppressing effect on prices, as noted above, is not likely to change in the near future. There has been little underselling, and domestic prices have been relatively stable while U.S. demand and U.S. production have increased. Overall foreign inventories have remained level,

⁹⁵ Report at Table 9, I-13.

⁹⁶ The "mere fact of increased capacity does not ipso facto imply increased imports to the United States." American Spring Wire Corp. v. United States, 8 CIT 20, 28, 590 F. Supp. 1273 1280 (CIT 1984) aff'd sub nom. Armco, Inc. v. United States, 760 F.2d 249 (Fed. Cir. 1985).

⁹⁷ Report at Table 10, I-13.

⁹⁸ See 19 U.S.C. § 1677(7)(F)(i)(IV).

and inventories of imports are very small. These factors do not support an affirmative threat determination.⁹⁹ Furthermore, there are no "other demonstrable adverse trends" that indicate that imports will be the cause of actual injury, nor are there "actual and potential negative effects on existing development and production efforts of the domestic industry."¹⁰⁰

Conclusion

As the foregoing discussion indicates, we have determined that the record as a whole contains clear and convincing evidence that there is neither material injury nor threat of material injury by reason of LTFV imports from any of the subject countries. Moreover, there is no likelihood that contrary evidence will arise in any final investigation. Accordingly, we have reached negative determinations with respect to each of the subject countries.

⁹⁹ 19 U.S.C. § 1677(7)(F)(i)(V).

¹⁰⁰ 19 U.S.C. § 1677(7)(F)(i)(VII) and (X).

ADDITIONAL VIEWS OF COMMISSIONER NUZUM

I concur with my colleagues on the disposition of this investigation. I would like to offer my additional views, however, concerning the apparent failure by petitioner's counsel to comply with the Commission's so-called "24-hour rule" and propose what I think might be appropriate Commission action in response to this incident.

The Commission's regulations clearly set forth the purposes and limitations of the 24-hour rule for the filing of briefs. Section 207.3(c) states in pertinent part:

If the Commission establishes a deadline for the filing of a document, and the submitter includes business proprietary information in the document, the submitter is to file and . . . serve the business proprietary version of the document on the deadline and may file and serve the nonbusiness proprietary version of the document no later than one business day after the deadline for filing the document. . . . If the submitter discovers it has failed to bracket [business proprietary information] correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes to the document other than bracketing and deletion of business proprietary information are permitted after the deadline.

19 C.F.R. § 207.3(c) (emphasis added).

The rule is designed to reduce the likelihood that business proprietary information ("BPI") will be inadvertently disclosed by providing counsel an extra day to prepare the public version of the brief and check the proprietary version for bracketing errors; neither new evidence nor refinements in the text, whether grammatical or substantive, is permitted, however. The rule became effective in April of 1991. To date, the rule has been very well-received by

counsel and parties who appear before the Commission. It also has aided the Commission by reducing the number of administrative protective order ("APO") violations and the concomitant need to commit scarce resources to investigate those violations.

The conduct at issue in this investigation concerns the filing of a substantially revised APO version of petitioner's post-conference brief after the original APO version was filed on the day it was due. Counsel filed the second version of the APO brief, containing numerous substantive and editorial changes, the following day, marking it "Corrected Copy." Counsel then filed yet a third version of the APO brief, marked "Bracketing Corrected," along with a public version of the brief before the close of business that same day. The third version did not contain any additional editing from the second version, but did correct certain bracketing errors contained in the second version.

Revising the text of a brief, such as has occurred here, during the 24-hour period that is provided solely for the purposes of correcting bracketing of BPI and submitting the public version, is a very serious matter that warrants a firm response. Parties and their counsel must not be allowed to manipulate the Commission's rules to serve their own purposes. The 24-hour rule was adopted by the Commission to strike a balance between protecting business proprietary information from inadvertent disclosure on the one hand, and avoiding breaches of APOs that result from the pressure of tight statutory deadlines on the other. The additional 24-hour period is essentially a privilege -- not a right -- conferred by the Commission on the trade bar.

I am particularly concerned that the instant failure to follow the Commission's rule appears to have been willful or, at the very least, grossly negligent. Petitioner's counsel was obviously aware of the existence of the

24-hour rule, for its original brief was marked "Bracketing of BPI not final for one business day after filing" and it proceeded to file both correctly bracketed and public versions within the next 24 hours. Yet, counsel failed to comply with the limitations of the 24-hour rule. Indeed, the failure in this case was not simply one or two changes, but spanned substantive and editorial changes on 29 of 50 pages. I would further point out that this counsel has appeared before the Commission prior to this investigation and is not a new entrant to the trade bar. In short, whether willful or negligent, such conduct cannot reasonably be characterized as an "inadvertent" failure to comply with the Commission's rules. Attorneys representing clients before the Commission must be familiar with and abide by the Commission's rules; otherwise, they do a great disservice both to their clients and to the Commission.

For all these reasons, I do not think it is sufficient merely to reject the second and third versions of the brief and allow counsel an additional period of time to resubmit a bracketing-corrected version of the original APO brief along with a corresponding nonproprietary version, which is what the Commission has already done. All this achieves is to have counsel do what should have been done in the first place, had counsel complied with the Commission's rules. At the same time, I believe that striking all versions of the petitioner's post-conference submission in their entirety -- which we have the authority to do -- is too draconian in this particular instance, and would result in punishing not only counsel, but also the party.

Accordingly, I have proposed that the Commission consider whether it is appropriate to suspend the 24-hour rule with respect to the persons determined to be responsible for making the impermissible changes in the post-conference

brief the next time they appear before the Commission.¹ In effect, they would be required to file the public version of the briefs at the same time as the business proprietary version. They would not be permitted to have an extra day to check the bracketing of business proprietary information or to delete such information from the public version.

I believe this would be an appropriate sanction because it would revoke the future benefit of the 24-hour privilege when counsel has abused the privilege. It would focus on the individuals responsible for the violation of the rule -- namely, counsel rather than the private sector party -- and still allow any party who retains that counsel the opportunity to present all evidence and arguments relevant to its case. I have, accordingly, requested the Office of the General Counsel to prepare for the Commission's consideration a memorandum concerning all of the circumstances surrounding the changes to the post-conference submission (including whatever views petitioner's counsel may offer), the Commission's authority to discipline and sanction persons appearing before the Commission for violations of Commission rules, including the 24-hour rule, and the proper procedure for doing so.

¹In the Matter of: Certain Dynamic Sequential Gradient Devices, Docket No. 1668, and Potassium Hydroxide, Liquid and Dry From Canada, Italy, and the United Kingdom, Inv. No. 731-TA-542-544, Transcript of Commission Meeting of February 13, 1992 at 10-12.

INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

On January 2, 1992, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by Linchem, Inc., Ashtabula, OH, alleging that imports of potassium hydroxide from Canada, Italy, and the United Kingdom (U.K.) are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Accordingly, effective January 2, 1992, the Commission instituted antidumping investigations Nos. 731-TA-542 through 544 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that 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 such imports.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on January 9, 1992 (57 F.R. 924).¹ The public conference was held in Washington, DC, on January 23, 1992,² and the vote was held on February 13, 1992. Potassium hydroxide has not been the subject of any other investigation conducted by the Commission.

NATURE AND EXTENT OF THE ALLEGED SALES AT LTFV

There is no information relating to the nature and extent of the alleged LTFV sales other than the allegations of the petitioner. The petitioner identified four producers, ICI Canada, Inc. (ICI Canada), Ontario, Canada; Montedipe S.p.A. (owned by Enichem S.p.A.), Milan, Italy; Samatec, Pisa, Italy; and ICI Chemicals & Polymers, Ltd. (ICI UK), Runcorn, U.K., which manufacture and export the subject product to the United States. Using price quotations to establish foreign market values and U.S. price, the petitioner calculated dumping margins of 73 percent for Canada, a range of 131 to 134 percent for Italy, and a range of 125 to 149 percent for the U.K. The Commerce Department modified these estimated dumping margins in its initiation notice to 66 percent for Canada, a range of 60 to 191 percent for Italy, and a range of 139 to 164 percent for the U.K. (57 F.R. 3184).

THE PRODUCT

Description and Uses

The imported merchandise subject to the petitioner's complaint--potassium hydroxide (KOH) or caustic potash, is a chemical compound used primarily to manufacture other chemical compounds (potassium carbonate, potassium phosphates, potassium soaps, and other potassium chemicals), which are used in glass manufacturing, water treatment, heavy-duty industrial

¹ Copies of the Commission's and Commerce's notices are shown in app. A.

² A list of witnesses appearing at the conference is presented in app. B.

cleansing, pesticide production, alkaline battery manufacture, and gas purification.

Potassium hydroxide is produced and sold in two forms, liquid KOH on a 45-percent basis of concentration, and dry (flake grade or walnut grade) KOH on a 90-percent basis of concentration. Most statistical data for the potassium hydroxide industry are reported on a 90-percent basis.³ The dry potassium hydroxide is chemically identical to the liquid KOH, except that it contains no visible water. The applications for liquid KOH include the glass industry, water treatment, industrial cleaners, and pesticides. The dry potassium hydroxide is primarily used in the following industries: petroleum, potassium chemicals, gas purification, industrial soaps, and alkaline batteries.⁴ The imported product and the domestically produced product are available in liquid and dry form, and share identical chemical properties. Liquid KOH is shipped to end users either by tank cars or trucks directly, or through an intermediate terminal. Dry KOH is shipped in large air-tight drums, bags, or super sacks.⁵ Data presented in the trade, employment, and financial sections of this report represent the aggregate of both the liquid and dry forms of KOH. Data concerning shipments, apparent consumption, and import shares of dry potassium hydroxide are presented in appendix C.

Potassium hydroxide is made by the electrolysis of purified potash (KCl) brines in a chlor-alkali process, which produces two co-products--chlorine gas and potassium hydroxide--in fixed proportions. The by-product in this production process is hydrogen. The chlor-alkali process uses salt and water as raw materials and electricity supplied to electrolytic cells to produce the end products. The process can produce chlorine and either potassium hydroxide or sodium hydroxide (NaOH), depending on the type of salt used. KCl is used to produce potassium hydroxide, and sodium chloride (NaCl) is utilized in sodium hydroxide production. Both hydroxide compounds are liquid solutions in water as they emerge from the chlor-alkali process. Dry potassium hydroxide must be further refined by a heated evaporation and drying process. This process is costly--the added value per ton accounts for *** the value of the liquid KOH.⁶

There are three types of electrolytic cells used in the chlor-alkali process--diaphragm cells, mercury cells, and membrane cells. Diaphragm cells are only suitable to produce NaOH; mercury and membrane cells can produce either KOH or NaOH. Membrane cell technology is superior to mercury cell technology for environmental and energy conservation concerns; however, it is more expensive because of the initial capital outlay. Foreign producers of KOH are using mercury cell technology, with the exception of ICI C&P in the U.K, that uses membrane cell technology. U.S. producers of KOH are using mercury cell technology exclusively today, although one producer has utilized membrane cells in the past few years. All foreign producers produce both KOH and NaOH. The Canadian and Italian firms have a limited ability to switch between KOH and NaOH production periodically; however, the British firm cannot

³ The data presented in the trade, employment, financial, and pricing sections of this report are on a 90-percent basis.

⁴ Petition, p. 21.

⁵ Petition, p. 3.

⁶ Supplement to petition, Jan. 21, 1992, p. 2.

switch its production between these products.⁷ All but one firm in the United States produce both potassium and sodium hydroxide, with limited switching ability. Generally, the chlor-alkali cells are dedicated to producing either KOH or NaOH.

U.S. Tariff Treatment

Potassium hydroxide is provided for in subheading 2815.20.00 of the Harmonized Tariff Schedule of the United States (previously under item 420.18 of the Tariff Schedules of the United States) and enters free of duty under column 1-general.

U.S. PRODUCERS

There are three producers of potassium hydroxide in the United States today--Linchem, Occidental Chemical Corp. (Oxychem), and Vulcan Materials Co. (Vulcan)--and a fourth producer, Olin Corp., that exited the industry in late 1990. Their plant locations, relative size, and position on the petition are presented in table 1.

Table 1

Potassium hydroxide: U.S. producers, plant locations, shares of U.S. and domestic shipments in 1990, and position on the petition, by firms

<u>Firm</u>	<u>Plant locations</u>	<u>Share of U.S. shipments</u> <u>Percent</u>	<u>Share of domestic shipments</u> <u>Percent</u>	<u>Position on petition</u>
Linchem, Inc.....	Ashtabula, OH	***	***	***
Occidental Chemical Corp..	Muscle Shoals, AL	***	***	***
Olin Corp.....	Niagara Falls, NY	***	***	***
	Solvay, NY	***	***	***
Vulcan Materials Corp.....	Port Edwards, WI	***	***	***

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Linchem was a division of the Hanlin Corp. (LCP Chemicals) until a late 1989 management buyout. Before the buyout, LCP Chemicals had several plants producing both NaOH and KOH, using the mercury cell technology. After the change in ownership, the KOH plant in Ohio, along with a corporate office in Edison, NJ, became incorporated as Linchem, a small privately held firm that produces KOH, potassium carbonate, and chloropicrin. A corporate restructuring in December 1991 resulted in the consolidation of Linchem's

⁷ Transcript of conference (transcript), pp. 119-121.

corporate office and plant at its Ashtabula facility. ***. It has a toll agreement with Olin to dry small amounts of its liquid potassium hydroxide.

Oxychem, a subsidiary of Occidental Petroleum Corp., Los Angeles, CA, is ***.

Olin's New York plant produced both NaOH and KOH during the period of investigation using the mercury cell technology, and it ***. Olin closed its Niagara Falls facility in November 1990 due to ***. *** and it continues to operate its drying facility in Solvay to process liquid KOH from Linchem.

Vulcan is a small producer of both NaOH and KOH, using the mercury cell technology. ***. Vulcan does not produce any dry KOH.

U.S. IMPORTERS

There are three principal U.S. importers of the subject product from Canada, Italy, and the U.K. ICI Americas, Inc. (ICI), Wilmington, DE, imports from both Canada and the U.K., and is a wholly-owned subsidiary of Imperial Chemical Industries PLC, London, U.K. (Imperial). It is the largest importer of KOH, accounting for about *** of total subject imports in 1990. ICI Canada, Inc. (ICI Canada), Montreal, Canada, is the importer of record for some Canadian shipments, and accounted for about *** of the subject imports in 1990.⁸ It is also owned by Imperial. Enichem America, Inc. (Enichem), New York, NY, a subsidiary of the ENI Group in Italy, is the principal importer of Italian KOH, and accounted for about *** of the subject imports in 1990.⁹ The imports from Italy are solely dry KOH; the imports from Canada and the U.K. are all liquid potassium hydroxide.

U.S. MARKET AND CHANNELS OF DISTRIBUTION

About 45 percent of the liquid potassium hydroxide sold in the United States is purchased by distributors; the balance is shipped directly to end users. Dry KOH is generally sold to both distributors and end users. The imported product is generally shipped from Canada to the Northeastern states, from the U.K. to terminals in Houston, TX, or Wilmington, CA, and from Italy to customers throughout the country. The domestic product is available in all markets. Because freight costs are relatively high, there is some amount of swapping and purchasing for resale among the domestic producers.

⁸ ***.

⁹ ***.

CONSIDERATION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

Data in the following sections account for 100 percent of U.S. production during the period covered by the investigations.

U.S. Production, Capacity, Capacity Utilization, Shipments, and Inventories

Data on U.S. production, capacity, shipments, and inventories are shown in table 2. During the period for which data were collected, production and capacity increased ***, while capacity utilization *** declined ***.

Internal consumption of KOH, which accounted for ***, increased *** during 1988-90, then rose *** between the interim periods of January-September 1990 and January-September 1991. Domestic shipments increased *** in quantity but decreased in value after 1989. Unit values also declined after 1989. Export shipments, ***, increased *** during the period. Inventory holdings increased *** during 1988-90, and increased *** between the interim periods. Inventory-to-shipment ratios fluctuated *** during the period for which data were collected.

Table 2

Potassium hydroxide: U.S. production, average capacity, capacity utilization, company transfers, domestic shipments, exports, and end-of-period inventories, 1988-90, January-September 1990, and January-September 1991

* * * * *

Employment

For the potassium hydroxide industry, as for most chemical industries, employment is not a major factor of production. Relatively few employees are actually engaged in the production process, and unit labor costs are low, as shown in table 3.

Table 3

Potassium hydroxide: Average number of U.S. production and related workers, hours worked by, productivity of, and total compensation paid to such workers, and unit labor costs, 1988-90, January-September 1990, and January-September 1991

* * * * *

During the period for which data were collected, employment rose ***. Hours worked, total compensation and hourly compensation paid, and unit labor costs also increased during the investigation period; however, industry productivity experienced a slight decline.

* * * * *

Financial Experience of U.S. Producers

Overall Establishment Operations

Four producers (Linchem, Olin, Oxychem, and Vulcan), accounting for all U.S. production of potassium hydroxide in 1990, supplied financial data.¹⁰

With the exception of Linchem, the other producers' establishments are facilities of major corporations. Linchem's establishment in Ashtabula, OH, is its only production facility. The company was formed in October 1989 as a result of a management leveraged buyout from its parent company, the Hanlin Group, Inc.¹¹ The overall establishment operations of the producers are different in terms of size, operating processes, and products and are therefore not included in this report.

Operations on Potassium Hydroxide - Linchem

* * * * *

Petitioner asserts that the financial performance of the industry should be evaluated on an ECU (electrochemical cell unit) basis. An ECU includes potassium hydroxide and the chlorine which is produced out of the same cell as potassium hydroxide. Chlorine's price has declined to such an extent that revenues are now relatively insignificant and, thus, chlorine is essentially a by-product.¹² The petitioner's position is that both products' costs should be commingled, and chlorine revenues should be deducted from the combined cost.¹³

"The distinction among joint products, by-products, and scrap is largely influenced by the relative sales values of the products in question. However, these distinctions are not firm; the variety of terminology and accounting practice is bewildering."¹⁴ A by-product is a product of a joint process that has minor sales value as compared with that of the major or chief product(s). The basic accounting for a by-product is to deduct the net realizable sales value from the cost of the main product. Co-products (joint products) are products of a joint production process that each have relatively significant sales value. The cost allocation for co-products is flexible.

At the conference, petitioner indicated that "all significant operating decisions are made on the basis of total financial return to and profit from operating a chlor-alkali cell or an ECU or an electrochemical unit. . . . A producer has no choice as to these ratios. A company which produces both caustic soda and caustic potash is able to monitor the spread in prices

¹⁰ Olin terminated its operations during 1990.

¹¹ ***.

¹² ***.

¹³ Post-conference brief of the petitioner, p. 28.

¹⁴ Cost Accounting: A Managerial Emphasis, Charles T. Horngren, Fifth Edition (1982), p. 539.

between potassium hydroxide and caustic soda.¹⁵ If there is a sufficient spread it's capable of swinging production from caustic soda to potassium hydroxide."¹⁶

The income-and-loss operations of Linchem, on an ECU basis, are presented in table 4. The effect on profitability of using an ECU basis is to increase the remaining costs relating to the production of potassium hydroxide as the price of chlorine declines, therefore imparting a more downward trend in profitability over the period of investigation. The estimated costs and expenses attributable to the buyout have been segregated below the operating income (loss) level. Linchem's financial data will not be discussed separately since its sales accounted for only *** percent of the industry. Its data are included in the discussion of the aggregate industry.

Table 4

Income-and-loss experience of Linchem on its operations producing potassium hydroxide, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * * * *

Operations on Potassium Hydroxide - Industry

As previously mentioned, the petitioner indicated that industry performance should be evaluated on an ECU basis. However, the other three producers ***. Their operations are similar (to each other) in that they ***. These producers also ***. This is illustrated by the flow chart provided by Vulcan in appendix D. Oxychem (the largest producer) was contacted and responded that it ***.

Occidental, the parent company of Oxychem, is the largest producer of caustic soda, chlorine, and potassium hydroxide in the United States. ***. Chlorine production is part of Oxychem's horizontally and vertically integrated business structure and is a separate product. This is illustrated in appendix E.¹⁷

The company ***, shown in appendix F, on a *** basis. ***.

¹⁵ The other potassium hydroxide producers also produce, or have produced caustic soda (NaOH), as part of the same chlor-alkali process technology used to produce potassium hydroxide. Chlorine is also produced in the caustic soda process.

¹⁶ Transcript of conference, pp. 14-15, Jan. 23, 1992, statement by Barney Baxter, Chairman & CEO of Linchem.

¹⁷ Annual Report (1990) of Occidental Petroleum (supplement), pp. 27-28.

The income-and-loss data of the aggregate industry using the producers' actual cost allocation methodologies (ECU for Linchem, *** for the other producers) are presented in table 5. ***. Aggregate net sales increased by *** in 1988 to *** in 1989. In 1990, sales were ***, an increase of *** percent over 1989 sales. Operating income was *** in 1988, *** in 1989, and *** in 1990. Operating income margins, as a share of net sales, were *** percent in 1988, *** percent in 1989, and *** percent in 1990. ***.

Table 5

Income-and-loss experience of U.S. producers on their operations producing potassium hydroxide, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * * * *

Net sales in interim 1991 were ***, a decline of *** percent from interim 1990 sales of ***. Operating income was *** in interim 1990 and *** in interim 1991. Operating income margins were *** in both interim periods. ***.

An income-and-loss summary, by producer, is presented in table 6. The alternative method, using ECU for Linchem and *** for Oxychem, is shown in appendix F.¹⁸ There are significant differences in profitability between the two presentations. For joint or co-products there are a number of acceptable methods of cost allocation. The value of by-products, however, normally is deducted from the cost of goods sold or treated as other revenue.

Table 6

Selected income-and-loss data of U.S. producers on their operations producing potassium hydroxide, by producers, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * * * *

Each organization allocates its costs on a basis most appropriate for its operations. In this case, the producers' original income-and-loss submissions seem appropriate for their operations, and conform to generally accepted accounting principles. In summary, at the present time, the companies that produce both caustic soda and potassium hydroxide (i.e., Oxychem and Vulcan) ***. The same was true for Olin before it closed its Niagara Falls plant in November 1990. ***.

Investment in Productive Facilities

U.S. producers' investment in property, plant, and equipment are shown in table 7. Rates of return are not included because of the ***.

¹⁸ ***.

Table 7

Value of U.S. producers' fixed assets used to produce potassium hydroxide, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * * * *

Capital Expenditures

Capital expenditures by the U.S. producers are shown in table 8.

Table 8

Capital expenditures by U.S. producers of potassium hydroxide, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * * * *

Research and Development

Research and development expenses for potassium hydroxide operations are shown in the following tabulation (in thousands of dollars):

* * * * * * *

Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of potassium hydroxide from Canada, Italy, and the U.K. on their firm's growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of potassium hydroxide). The producers' responses are presented in appendix G.

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY

Section 771(7)(F)(i) of the Tariff Act of 1930 (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 any merchandise, the Commission shall consider, among other relevant factors¹⁹--

¹⁹ Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual

(continued...)

(I) If a 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 subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

(IX) 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), and

¹⁹ (...continued)

injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(X) 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 like product.²⁰

Subsidies (item (I) above) and agricultural products (item (IX)) are not issues in these investigations. Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in appendix G. Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII)); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets, follows.

* * * * *

Information on foreign producers' operations is shown in tables 9 and 10. Data reported are believed to account for virtually all exports from the subject countries during the investigation period.

Table 9

Potassium hydroxide: Foreign production and capacity, by country, 1988-90, January-September 1990, and January-September 1991

* * * * *

Table 10

Potassium hydroxide: Foreign shipments, exports, exports to the United States, and inventories, by country, 1988-90, January-September 1990, and January-September 1991

* * * * *

There are three significant producers in the subject countries--ICI Canada, Enichem S.p.A., and ICI C&P. Both ICI Canada and ICI C&P are owned by Imperial. Enichem S.p.A. is owned by the ENI Group in Italy. A fourth producer, Sametac, located in Italy, reported only a small amount of capacity

²⁰ 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 GATT 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."

and no exports to the United States.²¹ ICI Canada and Enichem S.p.A. utilize mercury cell technology and produce both NaOH and KOH at their facilities. They have a limited ability to switch production from one product to the other. ICI C&P uses membrane cell technology and also produces NaOH; however, it does not have the ability to switch between NaOH and KOH production.²²

During 1988-90, foreign production, capacity, and capacity utilization fluctuated, with overall declines of ***, respectively. Production decreased and capacity increased from January-September 1990 to January-September 1991, resulting in a decrease in capacity utilization of ***. ***.

Foreign domestic shipments, exports to the United States, exports to other markets, and inventories generally declined from 1988 to 1990. From interim 1990 to interim 1991, domestic shipments continued to decline, although exports to the United States and to other markets increased ***. Inventories rose *** from interim 1990 to interim 1991. The ratio of total exports to all shipments decreased irregularly during 1988-90, then increased between the interim periods, ending where it began ***. The share of total exports that were exported to the United States remained essentially unchanged from 1988 to 1990, then increased *** in interim 1991. ***.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

Imports

Canada, Italy, and the U.K. are by far the United States' largest suppliers of foreign-made potassium hydroxide, together accounting for *** of total imports in 1990 (table 11). In assessing imports for these investigations, Department of Commerce official import statistics were determined to be unusable because they contain data on imports of potassium chloride, autohaze, and potassium bromides, in addition to imports of the subject product.²³ Data presented in table 11, derived from questionnaire responses, account for virtually all known imports from the subject countries.²⁴

Table 11
Potassium hydroxide: U.S. imports, by sources, 1988-90, January-September 1990, and January-September 1991

* * * * *

²¹ Letter to Commission staff, Jan. 20, 1992.

²² Transcript, p. 121.

²³ Staff interviews with importers, January 1992.

²⁴ The quantities of exports reported by Canadian and British firms were somewhat higher than reported imports from those countries. Accordingly, the higher reported quantities were used to develop import statistics in table 11.

Total subject imports declined *** during 1988-90, then increased *** from January-September 1990 to January-September 1991. ***. Unit values of subject imports increased during 1988-89, then declined during the remainder of the period.

U.S. Consumption and Market Penetration²⁵

Apparent U.S. consumption of potassium hydroxide increased *** in quantity and value during 1988-90 (table 12). From interim 1990 to interim 1991, the quantity of KOH consumed increased ***, while the value decreased ***, reflecting an overall decline in unit values of domestic shipments and imports during that period.

Table 12

Potassium hydroxide: Apparent U.S. consumption and ratios of imports to consumption, 1988-90, January-September 1990, and January-September 1991

* * * * * * *

As a share of consumption, total imports from the countries subject to these investigations decreased *** during 1988-90, then returned to *** in January-September 1991. ***.

Prices

The demand for potassium hydroxide is driven by the demand for downstream products such as potassium carbonate, fertilizers, soaps, and other products. Potassium carbonate, which accounts for roughly *** percent of the demand for potassium hydroxide,²⁶ is used as an input in the production of television picture tubes and other glass products. Factors affecting the overall demand for potassium hydroxide include the demand for downstream products and competition from substitute materials such as sodium hydroxide and potassium chloride that are used in the soap and fertilizer industries.

Because potassium hydroxide has a low value-to-weight ratio, transportation costs are an important part of the final delivered price to customers.²⁷ Linchem's price data show that its delivery cost shares *** percent, depending on the distance that the product was shipped. On average, ICI Americas' U.S. delivery cost shares of Canadian product ***. ICI Americas' delivery cost shares for sales of its imported Canadian product to both end users and distributors were ***. ICI Americas sold ***.

U.S. producers reported that ***. Oxychem sells to all points in the continental United States from either its facilities in Delaware and Alabama

²⁵ U.S. consumption and market penetration for the merchant market is presented in app. H.

²⁶ ***.

²⁷ ***.

or from terminal points across the United States. Most of Linchem's sales are in the Northeast, Midwest, and Southeast. ICI Americas reported that ***. ICI Americas sells Canadian potassium hydroxide in the Northeast and sells U.K. potassium hydroxide on the Gulf and West Coasts.

Producers and importers of potassium hydroxide quote prices in a variety of ways. ***.

Most sales of potassium hydroxide are made through contracts ***.

While contract sales predominate in this industry, some spot sales do occur. ***.

Questionnaire Price Data

The Commission requested U.S. f.o.b. and delivered prices, and total quantities and values sold of three representative potassium hydroxide products. For each product listed below, price data for the largest spot and contract sale of the specified product sold to end users and distributors were requested for each quarter during January 1988-September 1991.

Product 1: Liquid potassium hydroxide (45 percent KOH and 55 percent water by weight).²⁸

Product 2: Flake grade potassium hydroxide (90 percent KOH by weight)

Product 3: Walnut grade potassium hydroxide (90 percent KOH by weight)

* * * * *

Price trends

Consistent price series were difficult to develop because prices of potassium hydroxide were provided on a mixed f.o.b. plant, f.o.b. terminal, and delivered basis. Tables 13-15 include both f.o.b. and delivered price series. Table 13 shows delivered spot prices of U.S. product 1 and f.o.b. spot prices of U.S. product 2 sold to end users. Table 14 shows delivered contract prices of U.S. products 1 and 2 and Canadian product 1, and f.o.b. port of entry contract prices of U.K. product 1 sold to end users. Table 15 shows delivered contract prices of U.S. and Canadian product 1, and f.o.b. contract prices of U.S. products 2 and 3 and U.K. product 1 sold to distributors. Table 16 shows estimated f.o.b. plant unit values of Oxychem's products 1-3 sold to end users and distributors.

²⁸ Product 1 price data were reported on a ***.

Table 13

Potassium hydroxide: Delivered spot prices of U.S. product 1 and f.o.b. spot prices of U.S. product 2 sold to end users, and delivered spot prices of Italian product 2 sold to distributors, by quarters, January 1988-September 1991

* * * * *

Table 14

Potassium hydroxide: Delivered contract prices of U.S. products 1 and 2, and Canadian product 1, and f.o.b. port contract prices of U.K. product 1 sold to end users, by quarters, January 1988-September 1991

* * * * *

Table 15

Potassium hydroxide: Delivered contract prices of U.S. and Canadian product 1, and f.o.b. contract prices of U.S. products 2 and 3, and U.K. product 1, sold to distributors, by quarters, January 1988-September 1991

* * * * *

Table 16

Potassium hydroxide: Estimated f.o.b. plant unit values of Oxychem's products 1-3 sold to end users and distributors, by years, 1988-91

* * * * *

In general, the price series did not show consistent trends during January 1988-September 1991. F.o.b. spot prices of U.S. product 2 sold to end users *** overall during this period. ***. The other six U.S. price series either lacked sufficient data points to determine a trend or fluctuated too greatly to show a consistent pattern during this period.

* * * * *

Delivered contract prices of Canadian product 1 sold to distributors showed some evidence of ***. ***. Prices for the other Canadian price series did not show a consistent pattern. ***. The other U.K. price series did not have enough data points to show a consistent price trend. Delivered prices for spot sales of Italian product 2 sold to distributors fluctuated during the period, *** overall.

Price comparisons

Developing satisfactory price comparisons of the U.S. and subject imported products is difficult. ***. It is also difficult to match pricing points because potassium hydroxide products are sold through different channels of distribution and prices are quoted on different bases--f.o.b.

plant, f.o.b. terminal, and delivered. Because transportation costs can vary significantly²⁹ and producers and importers reported all three ways, sometimes two different ways in the same price series, objective comparisons of domestic and imported prices and margins of under/(over)selling could not be calculated.

Some observations are possible.³⁰ When one supplier sells its product f.o.b. at a higher price than another supplier sells its product delivered to different customers, the f.o.b. product's ultimate delivered cost will be even higher. In most industries, the product sold f.o.b. could be considered higher priced on both an f.o.b. and delivered basis. In the potassium hydroxide market, where location and transportation are so important, this would not necessarily be so if the locational differences were very large. ***.

* * * * *

Lost Sales and Lost Revenues

* * * * *

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the currencies of the three countries subject to these investigations fluctuated in relation to the U.S. dollar over the period from January-March 1988 through July-September 1991 (table 17).³¹ The nominal value of the Canadian currency appreciated by 10.8 percent, while the values of the Italian and British currencies depreciated by 5.1 and 6.2 percent, respectively. When adjusted for movements in producer price indexes in the United States and the specified countries, the real values of the Canadian and British currencies both appreciated by 2.2 percent relative to the U.S. dollar. The Italian currency showed a depreciation of 5.1 percent against the U.S. dollar through October-December 1989.

²⁹ ***.

³⁰ ***.

³¹ International Financial Statistics, Jan. 1992.

Table 17

Exchange rates:¹ Indexes of nominal and real exchange rates of selected currencies and indexes of producer prices in specified countries,² by quarters, January 1988-September 1991

Period	U.S. pro- ducer price index	Canada			Italy			United Kingdom		
		Pro- ducer price index	Nominal exchange rate index	Real exchange rate index ³	Pro- ducer price index	Nominal exchange rate index	Real exchange rate index ³	Pro- ducer price index	Nominal exchange rate index	Real exchange rate index ³
1988:										
Jan.-Mar.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.-June.....	101.6	100.9	103.1	102.4	101.3	97.4	97.2	101.4	102.6	102.4
July-Sept.....	103.1	102.1	103.9	102.9	102.5	89.1	88.6	102.6	94.4	94.0
Oct.-Dec.....	103.5	102.7	105.1	104.2	104.3	93.8	94.5	103.8	99.6	99.9
1989:										
Jan.-Mar.....	105.8	103.7	106.3	104.2	106.7	91.0	91.8	105.2	97.3	96.8
Apr.-June.....	107.7	103.9	106.2	102.5	108.2	87.7	88.1	106.6	90.6	89.7
July-Sept.....	107.3	103.6	107.2	103.5	108.8	89.1	90.4	107.8	88.9	89.3
Oct.-Dec.....	107.7	102.9	108.5	103.7	110.4	92.5	94.9	109.2	88.2	89.5
1990:										
Jan.-Mar.....	109.3	103.3	107.2	101.3	(⁴)	98.5	(⁴)	110.9	92.3	93.6
Apr.-June.....	109.1	103.5	108.3	102.7	(⁴)	100.2	(⁴)	113.2	93.2	96.8
July-Sept.....	111.0	103.6	109.9	102.5	(⁴)	104.9	(⁴)	114.3	103.6	106.7
Oct.-Dec.....	114.4	104.9	109.2	100.1	(⁴)	109.6	(⁴)	115.7	108.3	109.5
1991:										
Jan.-Mar.....	112.0	104.5	109.7	102.3	(⁴)	107.6	(⁴)	117.9	106.3	111.9
Apr.-June.....	110.9	102.9	110.3	102.3	(⁴)	95.9	(⁴)	120.1	95.1	102.9
July-Sept.....	110.7	102.1	110.8	102.2	(⁴)	94.9	(⁴)	120.7 ⁵	93.8	102.2 ⁵

¹ Exchange rates expressed in U.S. dollars per unit of foreign currency.

² Producer price indexes--intended to measure final product prices--are based on period-average quarterly indexes presented in line 63 of the International Financial Statistics.

³ The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and the specified countries.

⁴ Not available.

⁵ Derived from British price data reported for July-August only.

Note.--January-March 1988 = 100. The real exchange rates, calculated from precise figures, cannot in all instances be derived accurately from previously rounded nominal exchange rate and price indexes.

Source: International Monetary Fund, International Financial Statistics, January 1992.

APPENDIX A

COMMERCE'S AND COMMISSION'S FEDERAL REGISTER NOTICES

must complete preliminary antidumping investigations in 45 days, or in this case by February 18, 1992.

For further information concerning the conduct of these investigations 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 B (19 CFR part 207).

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3182), 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.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on January 2, 1992, by LinChem, Inc., Edison, NJ.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.22 and 207.10 of the Commission's rules, not later than seven (7) days after a public service list containing the names and addresses of all persons, of their representatives, who are parties to these investigations upon the expiration of the period of filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained

INTERNATIONAL TRADE COMMISSION

(Investigations Nos. 731-TA-542 through 544 (Preliminary))

Potassium Hydroxide From Canada, Italy, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-542 through 544 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that 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 Canada, Italy, and/or the United Kingdom of potassium hydroxide, provided for in subheading 2815.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission

by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in accordance with these investigations for 9:30 a.m. on January 23, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202-205-3182) not later than January 17, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 28, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3 and 207.7 of the Commission's rules.

In accordance §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: January 3, 1992.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 92-552 Filed 1-8-92; 8:45 am]

BILLING CODE 7020-02-M

[A-122-817, A-475-804, A-412-808]

Initiation of Antidumping Duty Investigations: Potassium Hydroxide, Liquid and Dry, From Canada, Italy, and the United Kingdom**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.**EFFECTIVE DATE:** January 28, 1992.**FOR FURTHER INFORMATION CONTACT:** Stefanie Amadeo, Office of Antidumping Duty Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1174.**Initiation of Investigations***The Petition*

On January 2, 1992, we received a petition filed in proper form by LinChem, Inc. (Petitioner), a producer of potassium hydroxide, liquid and dry, (KOH) in the United States. Petitioner submitted supplementary information on January 10, January 13, January 16, and January 22, 1992. In accordance with 19 CFR 353.12, the petitioner alleges that KOH from Canada, Italy, and the United Kingdom is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has standing to file the petition because it is an interested party, as defined under section 771(9)(D) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioner based United States Price (USP) on F.O.B. port of entry price quotations obtained from certain U.S. distributors and end-users of KOH

produced in Canada, Italy, and the United Kingdom. Petitioner adjusted the USP quotations for movement expenses incurred for transportation from plant to port of entry. We recalculated the movement expenses for imports of the subject merchandise from Italy.

Petitioner based foreign market value (FMV) for Canada on F.O.B. delivery point price quotations from producers of KOH. Petitioner based FMV for the United Kingdom on delivered price quotations and for Italy on both F.O.B. plant and delivered price quotations. Petitioner adjusted the FMV price quotations for movement expenses to arrive at a F.O.B. plant price for Canada and the United Kingdom. Petitioner adjusted the liquid KOH price quotations to a KOH price quotation on a dry basis. We adjusted the FMV price quotation for Italy to account for the value-added tax incurred in Italy. We deducted inland freight in Italy to obtain an F.O.B. plant price.

Based on the supplements to the petition, the dumping margin for subject imports from Canada is 66.01 percent, and the dumping margins for subject imports from the United Kingdom range from 138.98 percent to 163.91 percent. Based on the supplements to the petition, the dumping margins calculated by the Department for subject merchandise from Italy range from 60.16 percent to 190.88 percent.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of KOH from Canada, Italy, and the United Kingdom. Petitioner alleges that producers of KOH in Canada, Italy, and the United Kingdom and their importers should have known that they were selling KOH into the United States at less than fair value, and that a massive increase in imports has occurred over a short period of time.

Initiation of Investigations

We have examined the petition on KOH from Canada, Italy and the United Kingdom and have found that the petition meets the requirements of section 732(b) of the Act. Therefore we are initiating antidumping duty investigations to determine whether imports of KOH from the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigations

The merchandise subject to these investigations is all grades of KOH, liquid and dry. Imports of this product are currently classifiable under the

Harmonized Tariff Schedule (HTS) subheading 2815.20.0000. The HTS subheading is provided for convenience and customs purposes. Our written description of the scope of these investigations is dispositive.

Preliminary Determinations by the International Trade Commission

The International Trade Commission (ITC) will determine by February 18, 1992, whether there is a reasonable indication that imports of KOH, liquid and dry, from Canada, Italy, and the United Kingdom are materially injuring, or threaten material injury to, a U.S. industry. If the ITC's determinations are negative, the investigations will be terminated. Otherwise, if the investigations proceed normally, the Department will make its preliminary determinations on or before June 10, 1992.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: January 22, 1992.

Alan M. Dunn,
*Assistant Secretary for Import
Administration.*

[FR Doc. 92-2052 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

LIST OF WITNESSES AT THE CONFERENCE

LIST OF WITNESSES

Investigations Nos. 731-TA-542-544 (Preliminary)

Those listed below appeared at the United States International Trade Commission conference held in connection with the subject investigations on January 23, 1992.

In support of the imposition of antidumping duties:

Gardner, Carton & Douglas
Washington, DC
on behalf of

Linchem, Inc., Edison, NJ

R. R. Baxter, CEO, Linchem, Inc.

James Burrows, Vice President,
Charles River Associates, Inc.

Brad Miller, Charles River Associates, Inc.

W. W. Harrell Smith)
George Grammas)
Peggy Rodgers)--OF COUNSEL
Niall Murphy)

In opposition to the imposition of antidumping duties:

Howrey & Simon
Washington, DC
on behalf of

ICI Americas, Inc., Wilmington, DE, and
ICI Chemicals and Polymers, Ltd., Cheshire, UK

A. D. Domian, Sales Manager
ICI Americas, Inc.

Matthew Kendall, Business Manager, Chloralkali Products
ICI Chemicals & Polymers, Ltd.

Michael Hertzberg)--OF COUNSEL

Law Offices of Saul Sherman
New York, NY
Schnader, Harrison, Segal & Lewis
Washington, DC
on behalf of

ICI Canada, Inc., Montreal, Canada

Norman Thogerson, General Manager
ICI Canada

Frederick Peterson, President
Probe Economics, Inc.

Susan Manning, Economist
Capital Economics

Saul Sherman)
Carl Green)--OF COUNSEL

Sherman & Sterling
Washington, DC
on behalf of

EniChem Anic S.P.A., Milan, Italy,
and EniChem America Inc., New York, NY

I. Allen Negrin, Marketing & Sales/Petrochemicals
EniChem America

Tom Wilner)--OF COUNSEL
Wendy Ackerman)

APPENDIX C
DATA CONCERNING DRY POTASSIUM HYDROXIDE

Table C-1

Dry potassium hydroxide: U.S. company transfers, domestic shipments, and exports, 1988-90, January-September 1990, and January-September 1991

* * * * *

Table C-2

Dry potassium hydroxide: Apparent U.S. consumption and ratio of imports to consumption, 1988-90, January-September 1990, and January-September 1991

* * * * *

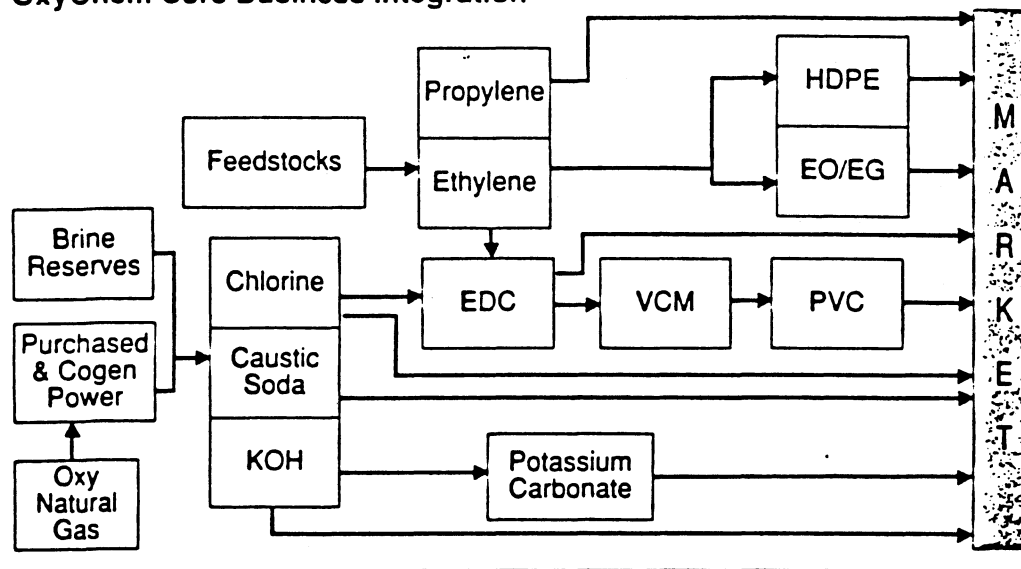
APPENDIX D

FLOW CHART OF VULCAN'S CHLOR-ALKALI OPERATIONS

* * * * *

APPENDIX E

FLOW CHART OF OXYCHEM'S CORE BUSINESS INTEGRATION

OxyChem Core Business Integration

Source: Annual Report (1990) of Occidental Petroleum (supplement).

APPENDIX F

**INCOME-AND-LOSS EXPERIENCE FOR LINCHEM AND OXYCHEM
USING ACTUAL FOR LINCHEM AND *** FOR OXYCHEM**

Table F-1

Alternative income-and-loss experience of Linchem and Oxychem on their operations producing potassium hydroxide, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * *

Table F-2

Selected income-and-loss data (alternative basis) of Linchem and Oxychem on their operations producing potassium hydroxide, by producers, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * *

APPENDIX G

**COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT
OF IMPORTS OF POTASSIUM HYDROXIDE FROM
CANADA, ITALY, AND THE UNITED KINGDOM ON THEIR
GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL,
OR EXISTING DEVELOPMENT AND PRODUCTION EFFORTS**

The Commission requested U.S. producers to describe and explain the actual and potential negative effects, if any, of imports of potassium hydroxide from Canada, Italy, and the United Kingdom on their growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of potassium hydroxide). *** did not respond. Responses of the other producers are indicated below:

* * * * *

APPENDIX H
DATA CONCERNING THE U.S. MERCHANT MARKET

Table H-1

Potassium hydroxide: Merchant market apparent U.S. consumption and ratio of imports to consumption, 1988-90, January-September 1990, and January-September 1991

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