

SULFANILIC ACID FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination of the Commission in
Investigation No. 731-TA-538
(Final) Under the Tariff Act
of 1930, Together With
the Information Obtained
in the Investigation

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**United States International Trade Commission
Washington, DC 20436**



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UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

Don E. Newquist, Chairman
Peter S. Watson, Vice Chairman
David B. Rohr
Anne E. Brunsdale
Carol T. Crawford
Janet A. Nuzum

Robert A. Rogowsky,
Director of Operations

Staff assigned:

Lori Hylton, Investigator
Edward Matusik, Industry Analyst
Catherine DeFilippo, Economist
James Stewart, Accountant
Anjali Singh, Attorney

Robert Carpenter, Supervisory Investigator

Address all communications to
Secretary to the Commission
United States International Trade Commission
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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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.

DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-538 (Final)

SULFANILIC ACID FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China (China) of sulfanilic acid³ that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines, pursuant to 19 U.S.C. § 1673d(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

Background

The Commission instituted this investigation effective March 18, 1992, following a preliminary determination by the Department of Commerce that imports of sulfanilic acid from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the

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 Crawford dissenting and Commissioner Brunsdale not participating.

³ The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and the sodium salt of sulfanilic acid (sodium sulfanilate). Sulfanilic acid and sodium sulfanilate are provided for in subheadings 2921.42.24 and 2921.42.75 of the Harmonized Tariff Schedule of the United States.

Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 15, 1992 (57 F.R. 13118). The hearing was held in Washington, DC, on June 30, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF CHAIRMAN NEWQUIST, VICE CHAIRMAN WATSON,
COMMISSIONER ROHR, AND COMMISSIONER NUZUM

On the basis of the information obtained in this final investigation, we determine that an industry in the United States is threatened with material injury by reason of imports of sulfanilic acid from the People's Republic of China (China) that have been found by the Department of Commerce (Commerce) to be sold at less-than-fair-value (LTFV).¹ We further determine, in accordance with 19 U.S.C. § 1673d(b)(4)(B), that the domestic industry would not have been materially injured by reason of subject imports had there not been a suspension of liquidation.

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

In determining whether a domestic industry is materially injured or threatened with material injury by reason of imports subject to an investigation under Title VII of the Tariff Act of 1930, the Commission first defines the domestic "industry." Section 771(4)(A) of the Tariff Act of 1930 defines the relevant 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 of that product"² The statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation"³

The Commission's decision regarding the appropriate like product is essentially a factual determination, and the Commission has applied the

¹ Material retardation of the establishment of an industry is not an issue in this investigation and will not be discussed further.

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(10).

statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁴ The Commission disregards minor variations between the articles subject to an investigation and generally looks for clear dividing lines among possible like products.⁵

The imported articles subject to this investigation, as defined by Commerce, are:

[All grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and refined sodium salt of sulfanilic acid (sodium sulfanilate).⁶

In the Commission's preliminary determination involving sulfanilic acid from China,⁷ as well as in the recent preliminary determinations involving sulfanilic acid from the Republic of Hungary (Hungary) and India,⁸ the like product was defined as all forms of sulfanilic acid -- technical grade sulfanilic acid, sodium sulfanilate and refined grade sulfanilic acid (collectively referred to herein as "sulfanilic acid"). The evidence on the record in this investigation continues to support the Commission's previous

⁴ See Calabrian Corp. v. United States, slip. op. 92-69 (Ct. Int'l Trade, May 13, 1992); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd 938 F.2d 1278 (Fed. Cir. 1991). Factors the Commission considers in defining the like product include: (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, where appropriate, (6) price. No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. Torrington, 747 F. Supp. at 749.

⁵ See S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁶ Final Determination of Sales at Less than Fair Value: Sulfanilic Acid from the People's Republic of China, 57 Fed. Reg. 29705 (July 6, 1992).

⁷ Sulfanilic Acid from the People's Republic of China, Inv. No. 731-TA-538 (Preliminary), USITC Pub. 2457 (Nov. 1991). Vice Chairman Watson, Commissioner Crawford and Commissioner Nuzum did not participate in the preliminary investigation with respect to sulfanilic acid from China as they were not members of the Commission at that time.

⁸ Sulfanilic Acid from the Republic of Hungary and India, Inv. Nos. 701-TA-318 and 731-TA-560 and 561 (Preliminary), USITC Pub. 2526 (June 1992).

determinations that the three forms of sulfanilic acid are one like product.⁹ The three forms of sulfanilic acid have similar physical characteristics,¹⁰ end uses,¹¹ channels of distribution,¹² and common manufacturing facilities¹³ and production employees.¹⁴ There is also evidence of sufficient interchangeability among the different forms of sulfanilic acid, especially between refined grade sulfanilic acid and sodium sulfanilate, for purposes of our like product definition.¹⁵

We therefore again define the like product as all forms of sulfanilic acid; and we define the domestic industry as the only current U.S. producer of sulfanilic acid, R-M Industries, Inc.¹⁶

II. CONDITION OF THE INDUSTRY

In determining whether an industry is materially injured, or is threatened with material injury, by reason of LTFV imports, the Commission

⁹ None of the parties to this investigation challenges the Commission's previous determinations of a single like product.

¹⁰ All three forms of sulfanilic acid are gray-white to white crystalline solids. See Report at I-4.

¹¹ Both refined grade sulfanilic acid and sodium sulfanilate can be used for the same end uses. Technical grade sulfanilic acid, on the other hand, is used primarily for the production of sodium sulfanilate, refined grade sulfanilic acid, specialty synthetic organic dyes, and concrete additives; however in certain cases it can be used for some of the same end uses as the other forms of sulfanilic acid. See Report at I-7 to I-9 & n.25.

¹² Both domestic and imported sulfanilic acid are sold primarily to unrelated end users. See Report at I-20 to I-21; see also Sulfanilic Acid from the People's Republic of China, Inv. No. 731-TA-538 (Preliminary), USITC Pub. 2457, at 7-8 (Nov. 1991).

¹³ All forms of sulfanilic acid begin with the production of technical grade sulfanilic acid. The petitioner then produces the sodium sulfanilate from the technical grade whereas the Chinese importers report that they produce the refined grade directly from the technical grade. See Report I-5 to I-7.

¹⁴ See Sulfanilic Acid from the People's Republic of China, Inv. No. 731-TA-538 (Preliminary), USITC Pub. 2457, at 9 (Nov. 1991).

¹⁵ Report at I-9 to I-11. See also discussion, infra, at 15.

¹⁶ Hilton Davis Co. was the only other domestic producer of sulfanilic acid (technical grade) during the period of investigation, but Hilton Davis discontinued production of sulfanilic acid in 1991 because it is more economical to purchase its requirements. Report at I-17.

considers "all relevant economic factors which have a bearing on the state of the industry in the United States" ¹⁷ These include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investments, ability to raise capital, and research and development. ¹⁸ No single factor is determinative, and the Commission considers all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry." ¹⁹

As we noted in the preliminary investigations involving sulfanilic acid from Hungary and India, there are several conditions of competition distinctive to the domestic sulfanilic acid industry. First, during the period of investigation, U.S. consumption of the refined forms of sulfanilic acid (both sodium sulfanilate and refined grade sulfanilic acid) grew at a greater rate than consumption of technical grade sulfanilic acid. ²⁰ This trend is the result of several factors, including more stringent limits on impurities in food dyes imposed by the Food and Drug Administration. These limits effectively preclude the use of technical grade sulfanilic acid as an input. ²¹ In addition, at least one major producer of optical brighteners stated that it has moved away from use of the technical grade sulfanilic acid in favor of the refined forms of sulfanilic acid due to customer preferences

¹⁷ See 19 U.S.C. § 1677(7)(C)(iii).

¹⁸ *Id.* Because the domestic industry consists of only one producer, certain factors regarding the condition of the industry must be discussed in general terms in these views in order to avoid disclosing business proprietary information.

¹⁹ *Id.* No parties have raised any issues regarding a business cycle distinctive to the sulfanilic acid industry.

²⁰ See Report at D-3 (Table D-1).

²¹ Report at I-9 n.25.

for higher quality.²²

Another condition of competition affecting this industry is the increased cost of compliance with environmental regulations. The Clean Water Act (33 U.S.C. § 1251 et seq.) has imposed stricter requirements on the disposal of wastewater contaminants which are created when technical grade sulfanilic acid is purified into refined grade sulfanilic acid.²³ We note that the petitioner discontinued production of the refined grade sulfanilic acid in 1989, due to the combination of higher environmental costs associated with purification of the wastewater and competition from low-priced imports of refined grade sulfanilic acid.²⁴

Thus, demand for sulfanilic acid has shifted towards the more refined forms of sulfanilic acid. Imports from China have consisted primarily of refined grade sulfanilic acid; however, imports of sodium sulfanilate have accounted for an increasing share of subject imports.²⁵

With these conditions of competition in mind, we next examine the various indicators of the domestic industry's performance. From 1989 to 1991 U.S. consumption of sulfanilic acid increased by 48.2 percent in quantity and 58.5 percent in value. In the first three months of 1992 (interim 1992), however, consumption decreased by 20.0 percent in quantity and 16.8 percent in value as compared to the same period of 1991 (interim 1991).²⁶

U.S. production decreased from 1989 to 1990 but then increased significantly from 1990 to 1991, with an additional smaller increase in

²² Conference transcript -- Sulfanilic Acid from the Republic of Hungary and India at 103 (May 29, 1992).

²³ Report at I-16.

²⁴ Report at I-16.

²⁵ Report at D-3 (Table D-1).

²⁶ Report at I-14.

interim 1992 compared to interim 1991.²⁷ U.S. shipments, in quantity and value, increased steadily from 1989 to 1991 and remained stable in the interim period.²⁸ The unit value of U.S. shipments also increased from 1989 to 1991, but decreased slightly in interim 1992 as compared with interim 1991.²⁹

Average U.S. capacity remained constant between 1989 and 1990, increased 17 percent from 1990 to 1991, and decreased slightly from interim 1991 to interim 1992.³⁰ Capacity utilization decreased from 1989 to 1990, increased significantly in 1991 and continued to increase in interim 1992 as compared with interim 1991.³¹

The number of production workers decreased slightly over the period of investigation.³² Hours worked decreased steadily from 1989 to 1991 and decreased even further in interim 1992 as compared with interim 1991.³³ Overall, total compensation decreased, but increased significantly in interim period 1992 as compared with interim period 1991.³⁴ After a decrease from 1989 to 1990, productivity increased significantly between 1990 and 1991 and increased further in interim period 1992.³⁵

The financial data on the petitioner's sulfanilic acid operations show that net sales remained relatively stable in 1989 and 1990, increased significantly in 1991, and were relatively stable during interim 1992 as

²⁷ Report at I-21 (Table 2) to I-22.

²⁸ Report at I-22.

²⁹ Report at I-23. The domestic industry's export shipments decreased significantly from 1989 to 1990, but then rebounded in 1991 and in interim 1992. Report at I-23. The unit value of export shipments increased from 1989 to 1991, but then decreased slightly in interim 1992. Id.

³⁰ Report at I-21 (Table 2).

³¹ Report at I-21 (Table 2).

³² Report at I-24.

³³ Report at I-24.

³⁴ Report at I-24.

³⁵ Report at I-24.

compared with interim 1991.³⁶ The average unit sales value followed a similar pattern as net sales.³⁷ Petitioner reported significant operating losses in 1989 and 1990, and a positive operating income in 1991 and in interim 1992.³⁸ The operating income margin as a percentage of net sales improved significantly from 1989 to 1991; however, it decreased in interim 1992 as compared to interim 1991.³⁹ In addition, petitioner's return on total assets increased from 1989 to 1991.^{40 41 42}

Although the trends noted above show an overall improvement in the condition of the industry over the period of investigation, other factors indicate that the improved performance achieved in 1991 does not necessarily reflect long term or even moderate term trends, and that this industry is vulnerable to the effects of unfair imports. Evidence indicates that, despite the relative profitability of the industry in 1991, operating income continues

³⁶ Report at I-26 (Tables 7 and 8). The petitioner changed management in late 1990. Petitioner has alleged that in 1989 and 1990 it suffered from the effects of misappropriation of funds and other improper conduct by former management. If so, we note that this may affect the reliability of some of the data for 1989 and 1990. *Id.* at I-25. For these reasons, in analyzing the domestic industry trends, Commissioner Nuzum gave less weight to the earlier period of investigation and concentrated on the performance of the domestic industry under the current management.

³⁷ Report at I-26.

³⁸ Report at I-26 (Table 8).

³⁹ Report at I-26 (Table 7).

⁴⁰ No data on capital investment were provided by the petitioner for the interim periods. Report at I-27 (Table 10). There are also no available data regarding research and development expenses. *Id.*

⁴¹ Chairman Newquist and Commissioner Rohr determine, based on an analysis of the above factors, that the domestic industry is not currently experiencing material injury.

⁴² Vice Chairman Watson and Commissioner Nuzum do not reach a separate conclusion as to whether the domestic industry is currently experiencing material injury based solely on evidence in the record regarding the condition of the industry. Based, however, on the statutory factors enumerated in 19 U.S.C. § 1677(7), they do find that the domestic industry in this investigation is not currently experiencing material injury by reason of the subject imports.

to be insufficient to meet the needs for capital improvements (such as replacement of sulfanilic acid production equipment, repairs to the building in which sulfanilic acid is produced, and the construction of a new warehouse).⁴³ We note that capital expenditures on petitioner's sulfanilic acid operations decreased significantly from 1989 to 1991,⁴⁴ and the domestic industry has had to reduce the number of sulfanilic acid production employees and administrative staff in the latter half of 1991.⁴⁵ Also, we have considered R-M's low current ratio (current assets divided by current liabilities), which indicates R-M has been having difficulty financing its current obligations.⁴⁶ Furthermore, we find it significant that the domestic industry's rate of increase in production and domestic shipments between 1989 and 1991 did not keep pace with the overall increase in consumption during that same period, indicating that the domestic industry has been losing market share to imports.⁴⁷

The domestic industry's vulnerability to unfair imports is further demonstrated by the industry's performance during the second half of 1991, when R-M's domestic sales and operating margin decreased markedly.⁴⁸ We therefore conclude that the domestic industry is vulnerable to the effects of

⁴³ Report at F-3.

⁴⁴ Such expenditures did, however, increase in interim 1992 as compared to interim 1991. Report at I-27 (Table 9).

⁴⁵ R-M laid off the equivalent of three workers in its sulfanilic acid operations in 1991, and reduced its administrative staff by five employees. Report at I-24.

⁴⁶ Report at I-25 to I-26.

⁴⁷ Report at Att. 3.

⁴⁸ The decline in net sales and operating margins would have been even greater had it not been for the ability of the petitioner to export a significant percentage of its production of sulfanilic acid in the latter half of 1991. Report at I-23 & n.89.

unfair imports of sulfanilic acid.⁴⁹

III. THREAT OF MATERIAL INJURY BY REASON OF LTFV AND SUBSIDIZED IMPORTS

A. Cumulation^{50 51}

In analyzing whether unfair imports threaten to cause material injury to a domestic industry, the Commission is not required, but has the discretion, to cumulate the volume and price effects of imports from two or more countries if such imports compete with each other and with the like product of the domestic industry in the United States market, and are subject to investigation.⁵²

⁴⁹ Vice Chairman Watson, Commissioner Rohr and Commissioner Nuzum emphasize that their "vulnerability" finding is not intended as an independently determinative factor for their threat finding. It is, however, an important factor in explaining why the particular volume, price and other impacts of imports set forth in the statutory list of threat factors in section 771(7)(F) constitute a threat to a particular industry. An understanding of the condition of the industry at the time that a determination is made is necessary to an understanding of why imports are or are not a threat. An industry in relatively poor condition (i.e., a more vulnerable industry) may be threatened by particular imports while a less vulnerable industry might not be threatened by those same imports. Conversely, even a relatively less vulnerable industry might be threatened if the projected future impact of imports were sufficiently great.

⁵⁰ Chairman Newquist notes that Commerce has not issued final antidumping or countervailing duty determinations with regard to imports from Hungary and India. In addition, he determines that Chinese imports alone pose a real and imminent threat of material injury to the domestic industry. For these reasons, although Chairman Newquist does not disagree with this discussion of the relevant evidence and statutory factors, he does not reach an ultimate determination regarding cumulation. He notes, however, that he will address that issue in any final investigations involving subject imports from Hungary and India.

⁵¹ Commissioner Rohr does not join in this discussion of cumulation. He notes that, as a general matter, he does not find it appropriate to engage in "formal" cumulation in the context of his threat analyses. He continues to believe it better, in the context of threat analyses, to consider the impact of other unfairly traded imports in the context of other demonstrable adverse trends. He finds that the threat factors discussed below relating to Chinese imports are sufficient to justify an affirmative threat finding without regard to whether imports from Hungary and India are also having an effect on the industry.

⁵² 19 U.S.C. § 1677(7)(F)(iv).

Imports of sulfanilic acid from Hungary and India are subject to concurrent antidumping and countervailing duty investigations.⁵³ We therefore consider whether imports from India and Hungary compete with imports from China and with the domestic like product. We also consider whether imports from India should be excluded from cumulation as being "negligible."⁵⁴

1. The Competition Requirement

To determine whether the competition requirement has been met for purposes of cumulation, the Commission generally has considered four factors:

- (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 geographic 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; and
- (4) whether the imports are simultaneously present in the market.⁵⁵

While these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product, no single factor is determinative and this list of

⁵³ Imports of sulfanilic acid from Hungary have been exclusively of refined grade sulfanilic acid. Report at D-3 (Table D-1). Imports from India were primarily of technical grade sulfanilic acid, although imports of refined grade sulfanilic acid from India also were reported in 1991. Report at D-3 (Table D-1).

⁵⁴ See, *infra*, at 16.

⁵⁵ See, e.g., Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. Nos. 731-TA-520 and 521 (Final), USITC Pub. 2528, at 22 & n.74 (June 1992). Both the Court of International Trade and the Federal Circuit upheld the Commission's use of these four factors in Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade 1988), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

factors is not exclusive.⁵⁶ Further, our reviewing court has held that only a "reasonable overlap" of competition is required.⁵⁷

Based on the record evidence, we conclude there is a sufficient degree of fungibility among the different forms of sulfanilic acid to warrant cumulation. Regarding the extent to which refined grade sulfanilic acid and sodium sulfanilate are interchangeable, we recognize that most purchasers of sulfanilic acid have indicated a current preference for one form over the other. Nonetheless, purchasers can, and have, switched between the two forms.⁵⁸ For instance, evidence in the record indicates that a purchaser is likely to switch from refined grade sulfanilic acid to sodium sulfanilate when there is a shortage of the refined grade.⁵⁹ A purchaser may also switch to sodium sulfanilate from the refined acid, however, if the price is low enough.⁶⁰ In some cases, purchasers of optical brighteners and dyes have even been able to substitute technical grade sulfanilic acid in their production processes.⁶¹ Finally, purchasers have used different forms of sulfanilic acid in order to maintain several sources of supply.⁶²

⁵⁶ Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (Ct. Int'l Trade 1989).

⁵⁷ See Granges Metallverken AB v. United States, 716 F. Supp. 17, 22 (Ct. Int'l Trade 1989).

⁵⁸ See, e.g., Report at I-11, I-18, E-3. The purchasing manager of Warner-Jenkinson stated at the hearing before the Commission that "we are not in the market for sodium salt, we never have been and never will be. That is not a preference for refined acid, we just can not use the sodium salts." Hearing transcript at 92. He also stated: "We do not use technical grade. We do not use sodium salt." Id. at 102. We find such statements refuted by other evidence on the record showing that Warner-Jenkinson reported significant purchases of both technical grade sulfanilic acid and sodium sulfanilate during the period of investigation. See Report at I-18.

⁵⁹ Report at I-27.

⁶⁰ Pre-Hearing Brief of R-M Industries at 21 and Attachment 10 (June 25, 1992).

⁶¹ Report at I-9 n.25.

⁶² Report at I-18.

Imported and domestic products are sold through common or similar channels of distribution in the same geographic markets and, in some cases, to the same customers.⁶³ Also, the record shows that imports from Hungary, India and China have been available simultaneously in the U.S. market during the latter portion of the period of investigation.⁶⁴

In determining whether to cumulate in the context of a threat of material injury determination, the Commission also has considered whether there were similar trends in import volumes, market penetration and prices among the imports from the various subject countries.⁶⁵ In this regard, we note that volumes and market penetration levels of the Indian, Chinese and Hungarian imports have each increased during the period of investigation.⁶⁶ Also, the limited direct price comparisons available in this investigation indicate that subject imports from each country have been sold at prices below those offered for the domestic like product.⁶⁷

2. The Negligible Imports Exception

Under the statute, the Commission is not required to cumulate imports from a particular country in any case in which the Commission determines that

⁶³ See Report at I-20. Both U.S. producers and importers reported that the market is generally concentrated in the Northeast, Southeast and Midwest where the largest purchasers are located. Id. at I-39.

⁶⁴ Report at I-34 (Table 14).

⁶⁵ See, e.g., Asociacion Colombiana de Exportadores de Flores, et al. v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988); Sulfur Dyes from the People's Republic of China, Hong Kong, India and the United Kingdom, 731-TA-548 through 551 (Preliminary), USITC Pub. 2514, at 24 (May 1992); Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom, Inv. Nos. 731-TA-486 through 494 (Preliminary), USITC Pub. 2359, at 43 (Feb. 1991). See also Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169, at 55 n.20 (March 1989) (Views of Commissioner Newquist).

⁶⁶ See Report at I-34 (Table 14), I-37 (Table 15).

⁶⁷ For pricing information, see Report at I-38 to I-48.

"imports of the merchandise subject to investigation are negligible and have no discernable adverse impact on the domestic industry."⁶⁸ In determining whether the imports are negligible, the Commission considers all relevant economic factors, including whether:

- (I) the volume and market share of the imports are negligible,
- (II) sales transactions involving the imports are isolated and sporadic, and
- (III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.⁶⁹

Although the volume and market share of imports from India have been small throughout the period of investigation, they increased significantly between 1990 to 1991.⁷⁰ Furthermore, Indian producers have reported that they intend to increase sharply their exports of sulfanilic acid to the United States in 1992 and 1993.⁷¹

Although we received little information about Indian prices in the responses to the Commission questionnaires, that information shows that imports from India undersold the domestically produced sulfanilic acid.⁷² Petitioner has presented evidence of price quotes from the Indian State Trading Company that reveal offers for Indian products at prices substantially lower than U.S. prices for all three forms of sulfanilic acid.⁷³ Moreover, we find that the domestic market for sulfanilic acid is sufficiently price

⁶⁸ 19 U.S.C. §§ 1677(7)(C)(v) and 1677(7)(F)(iv).

⁶⁹ 19 U.S.C. § 1677(7)(C)(v).

⁷⁰ Report at I-34 (Table 14), Att. 3.

⁷¹ Report at I-32 to I-33.

⁷² Report at I-42 (Table 19). We will seek to obtain a better response rate to our questionnaires from Indian producers and importers in any final investigation involving sulfanilic acid from India.

⁷³ Antidumping Petition, Sulfanilic Acid from the Republic of Hungary and India, and Countervailing Duty Petition, Sulfanilic Acid from India, Attachment G (May 7, 1992).

sensitive that even a relatively small quantity of unfair imports may result in price suppression or depression.⁷⁴

Since our preliminary investigations involving India and Hungary, we have obtained additional information that suggests that sales transactions involving imports from India during the period of investigation were not continuous. This is due to the fact that U.S. purchasers have only recently become interested in obtaining Indian sulfanilic acid and, as such, have made only a few trial purchases. However, as noted, there are plans by Indian producers to increase such sales in the near future.⁷⁵ Even though imports from India may have been relatively sporadic thus far, India has already demonstrated an ability to increase the rate of its imports significantly.⁷⁶

Imports into the United States from India are only a recent phenomenon; such imports were almost nonexistent in 1989 and 1990.⁷⁷ Yet the rapid U.S. market penetration that occurred in 1991 demonstrates that Indian exporters are able to increase their U.S. market share in a short period of time. In addition, several U.S. firms reported plans to purchase shipments from India, but cancelled them as a result of the antidumping and countervailing duty investigations.⁷⁸

For the above reasons, Vice Chairman Watson and Commissioner Nuzum determine that it is appropriate to assess cumulatively the volume and price effects of imports from China, Hungary and India. In any event, even if Vice Chairman Watson and Commissioner Nuzum did not cumulate the volume and price

⁷⁴ The record contains evidence of at least one confirmed instance in which petitioner experienced price suppression caused by lower priced imports of Indian technical grade sulfanilic acid. Report at I-46.

⁷⁵ Report at I-32 to I-33.

⁷⁶ See Report at I-30 to I-31, I-34 (Table 14).

⁷⁷ Report at I-34 (Table 14).

⁷⁸ Report at I-19 to I-20.

effects of the imports from Hungary and India, they would nonetheless determine that the industry is threatened with material injury by reason of the subject imports from China.

B. Analysis of Threat of Material Injury By Reason of Unfair Imports

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 LTFV imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."⁷⁹ The statute identifies ten specific factors to be considered and we have considered all of the factors relevant to the particular facts of this investigation. These include data regarding foreign production capacity, market penetration, price suppression or depression, inventories of the subject merchandise, underutilized production capacity in the exporting countries, and the actual or potential negative effects on the domestic industry's existing development and production efforts.^{80 81} The presence or absence of any single threat factor

⁷⁹ 19 U.S.C. § 1677(7)(F)(ii). While an analysis of the statutory threat factors necessarily involves projection of future events, our determination is not made based on supposition, speculation or conjecture, but on the statutory directive of real and imminent injury. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); Hannibal Industries Inc. v. United States, 712 F. Supp. 332, 338 (Ct. Int'l Trade 1989).

⁸⁰ 19 U.S.C. § 1677(7)(F)(i)(I)-(X). Factor (I) directs the Commission to consider the nature of any subsidies involved. Petitioner has alleged that the Indian government subsidizes imports from India. We note that the alleged subsidies include preferential export loans, preferential post-shipment financing, and income tax deductions. Antidumping Petition, Sulfanilic Acid from the Republic of Hungary and India, and Countervailing Duty Petition, Sulfanilic Acid from India, at 39-44 (May 7, 1992). On the date of our vote in this final investigation, Commerce had not yet issued its preliminary determinations in the investigations involving Hungary and India.

Two of the statutory factors are not relevant to the facts of this investigation and therefore will not be discussed further. These are factors (VIII) regarding potential product shifting, and (IX) regarding raw and processed agricultural products.

is not necessarily dispositive.⁸²

To avoid disclosing business proprietary information, we will discuss only general trends regarding foreign producer data. First, there has been a significant increase in both capacity and production of sulfanilic acid in China, Hungary and India and a corresponding increase of imports from these countries into the United States.⁸³ We are particularly concerned with the Chinese producers' ability to increase production capacity and shipments to the United States in a short period of time. Respondents themselves have stated that there is little difficulty in producing refined grade sulfanilic acid and that the Chinese producers were able to do it "with very little technology and apparently minimal costs."⁸⁴ In addition, China has begun to ship large quantities of sodium sulfanilate to the U.S. market.⁸⁵

Further, during the period of investigation there has been a rapid increase in market penetration by the subject imports in terms of both

⁸¹(...continued)

⁸¹ The Commission also must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry. *Id.* at § 1677(7)(F)(iii)(I). We have not received any evidence that there are any dumping findings or remedies in any other country involving sulfanilic acid from China, Hungary or India.

⁸² See, e.g., Rhone Poulenc, S.A. v. United States, 592 F. Sup. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

⁸³ See 19 U.S.C. § 1677(7)(F)(i)(II); Report at I-30 to I-33. Imports from the subject countries increased by 59 percent from 1989 to 1990, and by 232 percent in 1991. Imports decreased in the interim 1992 period. We do not place much weight on the interim 1992 declines which we believe reflect the pendency of the antidumping and countervailing duty investigations and the suspension of liquidation of entries of Chinese sulfanilic acid. See, e.g., Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 743 (Ct. Int'l Trade 1989). We decline to draw any conclusions regarding projections of the full year import levels based on interim data.

⁸⁴ See Prehearing Brief on Behalf of the Respondents China National Chemicals Import and Export (Hebei Branch), Goodring International, Inc., and Sinochem (U.S.A.) at 4 (June 25, 1992).

⁸⁵ See Report at I-34 (Table 14), I-35, D-3 (Table D-1).

quantity and value.⁸⁶ The market penetration of cumulated imports on the basis of quantity climbed from 14 percent in 1989 to 46.2 percent in 1991.⁸⁷ In terms of value, the cumulated market penetration rate climbed from 12.5 percent in 1989 to 40.1 percent in 1991.⁸⁸ Most importantly, the data indicate that a small but significant percentage of that increase in market penetration has been at the expense of the U.S. producers' market share.

As we noted previously, R-M Industries changed senior management in late 1990. In order to put the company on a sounder financial basis, the new management changed R-M's pricing policy, which is reflected in the higher prices that R-M charged for sodium sulfanilate in late 1990 and 1991. One issue we must address, therefore, is whether R-M can maintain prices adequate to recover costs in the face of unfair imports. Based on the available data on price comparisons and trends, we conclude that there is a "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"⁸⁹ The information available shows that from January to March 1991, the price of technical grade sulfanilic acid from India was significantly lower than the price for domestic technical grade sulfanilic acid.⁹⁰ In addition, as noted before, petitioner has presented price quotes from the Indian State Trading Company that reveal offers for Indian products at prices substantially lower than U.S. prices for all three forms of

⁸⁶ 19 U.S.C. § 1677(7)(F)(i)(III); Report at Att. 3.

⁸⁷ Report at I-37 (Table 15).

⁸⁸ Report at I-37 (Table 15). The market penetration of imports from China increased dramatically in 1991 in terms of both quantity and value. *Id.* at Att. 3.

⁸⁹ 19 U.S.C. § 1677(7)(F)(i)(IV).

⁹⁰ India was the only country that reported exports of technical grade sulfanilic acid during the period of investigation. Report at I-40 (Table 16).

sulfanilic acid.⁹¹

Reported prices of refined grade sulfanilic acid from Hungary were also below the prices of domestic refined grade sulfanilic acid for all four quarters of 1989 during which time the domestic industry was still producing this grade; beginning in 1990 the petitioner discontinued the production of refined grade sulfanilic acid.⁹² Sales prices of Chinese sodium sulfanilate (with adjustments made for certain differences) were also below domestic prices for that product.⁹³ In addition, throughout the period of investigation, the prices of imported refined grade sulfanilic acid from Hungary and China were consistently lower than the prices of petitioner's sodium sulfanilate (both in liquid and powder form).⁹⁴

With regard to inventories, most U.S. importers report that they generally do not maintain inventories of sulfanilic acid.⁹⁵ However, for the first time in 1991 and in interim 1992, importers of the Chinese product reported a significant amount of inventories of sulfanilic acid.⁹⁶

With regard to "the presence of underutilized capacity for producing the merchandise in the exporting countr[ies],"⁹⁷ the data show that Chinese capacity utilization levels were high and increased from 1989 to 1990, decreased in 1991, and then increased in interim 1992 (but still remained

⁹¹ Antidumping Petition, Sulfanilic Acid from the Republic of Hungary and India, and Countervailing Duty Petition, Sulfanilic Acid from India, Attachment G (May 7, 1992).

⁹² Report at I-41 (Table 18).

⁹³ Prices for Chinese sodium sulfanilate were reported only in the latter three quarters of 1991. See Report at I-41 (Table 17).

⁹⁴ Cf. Tables 17 and 18, Report at I-41. If this pricing trend were to continue, it is likely that imports of refined grade would take market share away from petitioner's sales of sodium sulfanilate. See, e.g., Hearing transcript at 24-25.

⁹⁵ See 19 U.S.C. § 1677(7)(F)(i)(V); Report at I-29.

⁹⁶ Report at I-30, Att. 3.

⁹⁷ 19 U.S.C. § 1677(7)(F)(i)(VI).

below 1989 and 1990 levels).⁹⁸ This decline in the rate of capacity utilization by Chinese producers in 1991, when production and exports to the United States increased dramatically, was due to an even greater increase in capacity.⁹⁹ Hungary's capacity utilization levels were high throughout the period of investigation and India's capacity utilization rates were relatively low in 1989 and 1990 but then increased in 1991.¹⁰⁰

With regard to the actual and potential negative effects of the subject imports on the existing development and production efforts of the domestic industry, we note that although petitioner currently has all of the equipment to make refined grade sulfanilic acid, it faces substantial investment or increased costs to comply with the Clean Water Act if it is to begin producing refined grade sulfanilic acid.¹⁰¹ If imports of refined grade sulfanilic acid continue to enter the United States at unfair prices, we believe it is likely that the domestic industry will be precluded from producing and selling its own refined grade sulfanilic acid at prices that can compete with the subject imports.¹⁰²

Finally, in considering other demonstrable adverse factors that indicate the probability that importation of the subject merchandise will be a cause of

⁹⁸ Report at I-30 (Table 11).

⁹⁹ Report at I-30 (Table 11).

¹⁰⁰ Report at I-31 (Table 12) and I-33 (Table 13). Despite the relatively high capacity utilization rates overall, we again note the fact that these countries have been able to increase capacity rapidly in response to U.S. demand. See Prehearing Brief on Behalf of the Respondents China National Chemicals Import and Export (Hebei Branch), Goodring International, Inc., and Sinochem (U.S.A.) at 4 (June 25, 1992).

¹⁰¹ See 19 U.S.C. § 1677(7)(F)(i)(X); Conference transcript -- Sulfanilic Acid from the Republic of Hungary and India at 10 (May 29, 1992).

¹⁰² This is especially true in light of the fact that the costs of producing refined grade sulfanilic acid domestically have increased over the period of investigation and the domestic industry already has demonstrated difficulty in raising capital. See discussion, supra, concerning the condition of the industry; Pre-Hearing Brief of R-M Industries at 6 (June 25, 1992).

actual injury, we have examined the threatened impact of LTFV imports in the sodium sulfanilate segment of the market. As noted above, the domestic industry's performance, while showing some signs of weakening, has improved significantly over most of the period of investigation. This improvement has rested largely on R-M's sodium sulfanilate operations, where domestic consumption and R-M's exports, domestic shipments, and capacity utilization levels have increased. In this segment of the market, however, prices have begun to decline,¹⁰³ and LTFV imports from China have significantly increased in volume, as a share of domestic consumption, and as a share of total imports.¹⁰⁴

In addition, R-M is now seeking to re-enter the refined grade sulfanilic acid market. We are concerned that its ability to make the requisite capital investment and to recover costs are jeopardized by the continued and increased levels of LTFV imports.¹⁰⁵

IV. APPLICATION OF SECTION 1673d(b)(4)(B)

When the Commission makes a final threat determination, it must make an additional finding, pursuant to 19 U.S.C. § 1673d(b)(4)(B), as to whether material injury by reason of the subject imports would have been found but for any suspension of liquidation of entries of such imports. This finding determines the date of the imposition of duties -- either the date of suspension of liquidation or the date of the publication of the final order. Suspension of liquidation in this investigation occurred on March 18, 1992, the date of publication of Commerce's preliminary affirmative

¹⁰³ Report at I-41 (Table 17).

¹⁰⁴ Report at D-3 (Table D-1).

¹⁰⁵ See Report at F-3.

determination.¹⁰⁶

We find that the domestic industry would not have been materially injured even had there been no suspension of liquidation. While the industry was in a vulnerable condition, its performance had not deteriorated to the point where imports made during the relevant period would have resulted in material injury.

CONCLUSION

Based on our analysis of the record and the statutory threat factors, we find that the domestic industry is threatened with material injury by reason of LTFV imports from China.

¹⁰⁶ 57 Fed. Reg. 9409 (March 18, 1992).

DISSENTING VIEWS OF COMMISSIONER CRAWFORD
Sulfanilic Acid from the People's Republic of China
Inv. No. 731-TA-538 (Final)

Having reviewed all the evidence of record in this investigation, I determine that the domestic industry is not materially injured, nor threatened with material injury, by reason of the subject imports from the People's Republic of China (China).

I concur in the conclusion of my colleagues with respect to their discussion of the like product and the domestic industry.

I. INTRODUCTION

The record in this case has been consolidated with the records in investigations involving sulfanilic acid from the Republic of Hungary (Hungary) and India.¹ Sulfanilic acid is produced in three grades: technical grade; sodium sulfanilate (salt); and refined grade. All three grades of sulfanilic acid are included in the scope of these investigations.

Petitioner, the sole U.S. producer of sulfanilic acid, produces technical grade and salt, but does not produce refined grade. Petitioner produces salt in both liquid and powder form.

Imports from China consist of only refined grade and salt in powder form. Imports from India consist of only technical grade and refined grade. Imports from Hungary are exclusively refined grade.

¹ Sulfanilic Acid from the Republic of Hungary and India, Inv. Nos. 701-TA-318 and 731-TA-560 and 561 (Preliminary), USITC Pub. 2526 (June 1992).

I concur in the conclusion of my colleagues to cumulate subject imports from Hungary. However, I do not cumulate imports from India in either of my determinations.

Cumulation is not required if subject imports "are negligible and have no discernable impact on the domestic industry."² I find imports from India to be negligible. At no time during the period of investigation did combined imports of technical grade and refined grade from India account for even 1 percent of apparent consumption.³ Such a low level of market penetration has no discernable impact on the domestic industry. In addition, imports of technical grade from India do not compete with petitioner's salt, and petitioner testified that imports from India are of lower quality than petitioner's technical grade.⁴ Accordingly, I determine not to cumulate imports from India with subject imports from China.⁵

Country-specific data (e.g. import penetration) is confidential, while aggregate data is not confidential. Although I have not cumulated imports from India, this opinion refers to aggregate data including India to avoid disclosing confidential information.

² 19 U.S.C. § 1677(7)(C)(v).

³ The exact percentage is confidential.

⁴ See Conference Transcript (Hungary and India) at 66-67.

⁵ Even if imports from India were cumulated, my determinations would not change.

II. NO MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE (LTFV) IMPORTS

In making its determination, the Commission is required to consider the volume of subject imports, the effect of subject imports on domestic prices, and the impact of subject imports on the domestic industry. In addition, it "may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports."⁶

A. ECONOMIC FACTORS

The statute also directs the Commission to evaluate relevant economic factors in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."⁷ One distinctive condition of competition is essential to an evaluation of the impact of subject imports.

Petitioner is the sole U.S. producer. It produces only technical grade and salt. Petitioner does not produce the refined grade sulfanilic acid that constitutes over 80% of subject Chinese imports. Therefore, the only way material injury is possible by reason of the subject imports is if the imported refined grade is a close substitute for domestic technical grade or salt and is a better value. If so, Chinese subject imports could induce purchasers to buy the imported refined grade rather than domestic technical grade or salt.

This condition of competition also provides the framework to

⁶ 19 U.S.C. § 1677(7)(B)

⁷ 19 U.S.C. § 1677(7)(C).

analyze other relevant economic factors, including factors external to the domestic industry, nonsubject imports, and the degree of substitutability among subject imports and the like product.

External Factors

Two external factors directly affect the U.S. market. Food and Drug Administration (FDA) regulations impose stringent requirements on the level of impurities allowable for end products in which sulfanilic acid is used. These regulations create a strong preference among purchasers for the refined grade, which is the primary grade imported from China.

Petitioner withdrew from the refined market in 1989 as a result of its inability to comply with U.S. environmental laws. The substantial cost of complying with environmental laws was the reason petitioner stopped producing refined grade in 1989 and has not resumed production to date.⁸ Thus, petitioner does not produce a grade of sulfanilic acid suitable for the needs of major purchasers.

Nonsubject Imports

Nonsubject imports are a particularly relevant economic factor in this investigation. Before this investigation began in 1991, the market share of nonsubject imports exceeded petitioner's market

⁸ Conference Transcript (Hungary and India) at 38-39. I do not find credible petitioner's assertion in its petition concerning Hungary and India that petitioner stopped producing refined grade because of dumped imports. At the earlier conference in this investigation, petitioner stated that when it "got out of the business, the PRC [China] was not a factor in the market at all." Conference Transcript (China) at 56.

share in both 1989 and 1990.⁹ Between 1990 and 1991, Japan, a primary source of refined grade, severely curtailed its exports of refined grade to the United States, creating a shortage. Because petitioner does not produce refined grade, purchasers were forced to satisfy this demand for refined grade from other import sources, primarily China. Between 1990 and 1991, the increase in market share of subject Chinese imports nearly equalled the decrease in market share of nonsubject imports from Japan.¹⁰ Thus, subject imports did not displace domestic sales; rather, they filled a market abandoned by the Japanese.

Substitutability

Because of its high level of impurities, technical grade is a poor substitute for either salt or refined grade.¹¹ In addition, the substitutability between domestic salt and imported refined grade, and between domestic salt and imported salt is limited.

Refined grade and salt are used primarily as inputs into the production of optical brighteners (approximately 55 percent of apparent consumption) and the production of food colorings (between one-fourth and one-third of apparent consumption).

The three largest purchasers of sulfanilic acid account for over two-thirds of apparent consumption. Each of these purchasers has used both refined grade and salt in its operations,¹²

⁹ Report at I-37 (Table 15).

¹⁰ Report at I-37.

¹¹ Report at I-9.

¹² Report at E-3 (Table E-1).

suggesting at least some degree of substitutability between the two grades. The testimony by one purchaser that it "cannot" use salt may be viewed as inconsistent with petitioner's testimony that the purchaser recently purchased salt.¹³ Whether a purchaser is physically able to use salt, however, is not the relevant inquiry. The record shows that substitution between salt and refined grade is limited significantly by a purchaser's quality requirements for its end products, by a purchaser's production process and facilities, and by the costs of switching from one grade to the other, an integral element of the relative costs of using the two grades.

Responses to purchaser questionnaires demonstrate that product quality is very important in purchasing decisions.¹⁴ Major purchasers require refined grade to ensure the quality of their end products. Sandoz testified that using salt instead of refined grade compromises the reliability of its production process, and, therefore, the quality of its products.¹⁵ Warner-Jenkinson testified that refined grade is required to meet stringent Food and Drug Administration (FDA) regulations limiting impurities contained in its food colors. Salt is itself an impurity that must be removed to meet FDA requirements.¹⁶ The lower quality of salt, which does not meet the quality requirements for purchasers' end

¹³ China Hearing Transcript at 92 and at 147.

¹⁴ Memo EC-P-052 dated July 27, 1992 at 21.

¹⁵ China Hearing Transcript at 91.

¹⁶ China Hearing Transcript at 93-95.

products, further reduces the substitutability between the two grades.¹⁷

Sandoz testified that refined grade is necessary to operate its two facilities efficiently and economically. Its Fair Lawn plant has used salt "with great difficulty and at significant cost", and its South Carolina plant has "never been able to use salt".¹⁸ Sandoz further testified that using salt at its South Carolina plant would reduce its efficiency by: 1) resulting in "a product which contains only 40 percent of what we are trying to make, as opposed to 95 percent, which is achievable with the refined free acid"; 2) reducing production capacity by up to 30 percent; or 3) reducing the maximum batch size by 20 to 25 percent.¹⁹

Similarly, Warner-Jenkinson testified that using salt in its production process would decrease its efficiency by: 1) reducing batch size by up to 15 percent (reducing production by up to 400,000 pounds); 2) increasing purification time by 15 percent; and 3) increasing labor and material costs.²⁰ Furthermore, Warner-Jenkinson testified that it has built a production facility

¹⁷ In addition, other non-price factors (e.g. availability and leadtimes for delivery) limit the substitutability. See Memo EC-P-052 dated July 27, 1992 at 21-23.

¹⁸ China Hearing Transcript at 79. The Fair Lawn plant will be consolidated into the South Carolina plant, which has been designed and built specifically to use refined grade. China Hearing Transcript at 115.

¹⁹ China Hearing Transcript at 88 - 92.

²⁰ China Hearing Transcript at 95 - 99.

specifically designed to use refined grade.²¹

These purchasers have production facilities designed to use refined grade, not salt. They would experience substantial reductions in efficiency and increases in costs were they to use salt instead of refined grade. Thus, the degree of substitutability between the two grades is very limited in both practical and economic terms.

A statement by one major purchaser that it considers refined grade and salt "interchangeable" raw materials, although it prefers salt,²² does not by itself support a conclusion that the two grades are practical or economic substitutes. On the contrary, the record indicates that the grades are not substitutes except to the extent that purchasers can use salt when there are shortages of refined grade, as an alternative to ceasing production. The record evidence demonstrates that purchasers have used salt when the market for refined grade has been disrupted by shortages.

Nor are imported salt and domestic salt close substitutes. Imported salt is sold in only powder form, while domestic salt is sold in both powder and liquid forms. The different forms are non-price factors that limit substitutability between imported salt and domestic salt. In addition, there are differences in the physical composition of the same form of imported salt and domestic salt²³ that limit the degree of substitutability. Finally, confidential

²¹ China Hearing Transcript at 94.

²² Report at I-10.

²³ Report at I-41.

information about the sourcing patterns of the largest user of salt supports the conclusion that imported salt and domestic salt are not close substitutes.²⁴

Based on the record evidence described above, I conclude that the elasticity of substitution is small, and that the degree of substitution among subject imports and the like product is extremely limited.

B. PRICE EFFECTS²⁵

In evaluating the effect of subject imports on prices, the statute directs the Commission to consider whether there is significant price underselling by subject imports and whether subject imports depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.²⁶

Price is almost always important in any purchasing decision. However, relative price, not absolute price, is the determinative factor. In general, purchasers look at what they are getting for their dollar, the package of goods and services that includes not only the product but also terms and conditions of sale, financing, technical or maintenance services, and intangibles such as reliability, brand or supplier loyalty and a desire to maintain alternate sources of supply. Purchasers of any product determine

²⁴ Report at E-3 (Table E-1).

²⁵ Because imports of technical grade from India are not cumulated, there are no price effects of technical grade relevant to my determinations.

²⁶ 19 U.S.C. § 1677(7)(C)(ii).

value by comparing not only factors that differentiate between products, but also the bundle of other factors that are important to individual purchasers.

Petitioner stopped producing refined grade in 1989. After 1989, therefore, there are no contemporaneous price comparisons between imported and domestic refined grade. Price comparisons are possible only for imported refined grade, domestic salt, and imported salt. Information on the record shows that prices of subject imports were lower than prices of the like product during the period of investigation.

However, record evidence demonstrates that non-price factors play a crucial role in this market. As discussed above, there is limited substitutability between imported refined grade and domestic salt. The fact that two major purchasers cannot use salt without substantial reductions in the operating efficiency of their plants is of particular significance. The cost of this reduced efficiency is an essential and significant element of evaluating the price of domestic salt relative to the price of imported refined grade. Because the record compares absolute prices of domestic salt with absolute prices of imported refined grade, the price comparisons are not meaningful, and cannot support a conclusion that price underselling is significant or that domestic salt prices have been suppressed to a significant degree.

There is only one instance where salt prices could be compared, between a Chinese product that was different than the

domestic product.²⁷ Given the limited substitutability between imported salt and domestic salt, a single price comparison is not sufficient evidence to support a conclusion that any price underselling or price suppression by imported salt is significant.²⁸ Although the proportion of domestic salt sold in each form is confidential, it is relevant to evaluating the price effects.

Finally, the price trends from 1989 to 1991 demonstrate that domestic salt prices have not been depressed.²⁹

C. VOLUME EFFECT

In determining whether there is material injury by reason of LTFV imports, the statute directs the Commission to consider "whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."³⁰

The market share of subject imports increased from 14.0 percent in 1989 to 16.7 percent in 1990 and to 46.2 percent in 1991.³¹ Although the increase from 1990 to 1991 is large and the market share in 1991 is high, the significance of the volume of subject imports is tempered by the effect of nonsubject imports in

²⁷ Report at I-46.

²⁸ Confidential information provided by a major purchaser further supports a conclusion that price underselling or price suppression is not significant. Report at I-47.

²⁹ Report at I-41 (Table 17).

³⁰ 19 U.S.C. § 1677(7)(C)(i).

³¹ Report at I-37.

the U.S. market. As discussed above, the shortage of nonsubject imports of refined grade was supplied by imports of Chinese refined grade between 1990 and 1991. Indeed, petitioner's market share increased from 1990 to 1991³² and "remained fairly stable during the period of investigation accounting for about 40 percent of the market".³³

Imports of salt constitute less than 20 percent of subject imports from China. Although the quantity of imports of Chinese salt in 1991 increased dramatically relative to 1990, the increase was a function of a very small base in 1990.³⁴ Using 1989 as the base, the increase in market share of Chinese salt from 1989 to 1991 was not significant.³⁵ Furthermore, the volume of imports of Chinese salt increased from 1989 to 1991 at a substantially slower rate than the contemporaneous increase in salt consumption.

D. IMPACT ON THE AFFECTED INDUSTRY

The statute directs the Commission to examine the impact of subject imports on the domestic industry. The statute lists specific factors for Commission consideration and provides that the "Commission shall evaluate all relevant economic factors. . . within the context of the business cycle and conditions of

³² Report at I-37.

³³ Sulfanilic Acid from the Republic of Hungary and India, USITC Pub. 2526 (June 1992) at 36-37.

³⁴ Report at D-3 (Table D-1).

³⁵ Report at Table 15a, Supplemental staff submission to Commissioner Crawford.

competition that are distinctive to the affected industry."³⁶

The distinctive conditions of competition in this industry include the composition of, and products produced by, the domestic industry; external factors that affect the market; and the presence of nonsubject imports in the market. These conditions of competition are also relevant economic factors, and were described above.

In the context of these conditions of competition, I have considered all of the statutory impact factors discussed in the majority's opinion under the heading "Condition of the Industry." While I do not reach a separate legal conclusion on material injury based on the condition of the industry, my evaluation of the statutory impact factors leads me to find that injury, if any, by reason of the dumped imports is not material.

Petitioner experienced management problems that may have affected both its financial performance and the accuracy and reliability of its 1989 financial reports.³⁷ In addition, the reported data on U.S. consumption in 1989 may be understated by as much as 10 to 15 percent.³⁸

The large increase in market share of subject imports occurred between 1990 and 1991. Accordingly, the 1990 and 1991 data provide the most appropriate and reliable basis to evaluate the statutory

³⁶ 19 U.S.C. § 1677(7)(C)(iii).

³⁷ See China Hearing Transcript at 33-34 and Report at I-24 to I-28.

³⁸ Report at I-15.

impact factors.

1990 and 1991 data present a positive picture of petitioner's performance. Domestic sales and production capacity increased. At the same time, production increased at nearly three times the rate that capacity increased. As a result, capacity utilization increased significantly. Because of the large increase in market share of subject imports between 1990 and 1991, an evaluation of petitioner's market share is most important in this investigation. The large increase in subject imports did not displace petitioner's sales; petitioner's market share increased from 1990 to 1991. In fact, the large increase in market share of subject imports replaced a comparable decrease in nonsubject imports.

Petitioner's financial performance is consistent with its market performance. I do not view the level of absolute profits, in isolation, as probative of financial performance. Even a comparison of absolute levels from one year to the next (in this investigation, from loss to profit) lacks a solid frame of reference with respect to the magnitude and economic efficiency of a firm's operations. A firm's financial performance relative to its operations provides a more appropriate evaluation. Here, petitioner's operating income as a percentage of net sales in 1991 is substantial. Furthermore, in 1991 petitioner's operating return on assets was more than twice its operating income margin. In light of petitioner's poor financial performance early in the period of investigation before the large increase in market share of subject imports, an evaluation of other measures of financial

performance is not probative in the context of the impact of subject imports on the domestic industry.

With respect to the remaining statutory impact factors, I conclude that any impact is not significant in light of the conditions of competition.

In summary, petitioner's market performance and financial performance improved markedly at the time of a large increase in the market share of subject imports, the time when any material injury by reason of subject imports would have occurred. In the context of the conditions of competition distinctive to this industry, however, the impact of subject imports is, at most, minimal and clearly not significant.

The lack of substitutability and other non-price factors play crucial roles in purchasing decisions in this investigation, not the price of LTFV imports. Therefore, I conclude that the domestic industry would not have been materially better off even if subject imports had been fairly traded.

III. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

In making a determination of whether an industry is threatened with material injury, the Commission considers, among other relevant economic factors, enumerated statutory threat criteria.³⁹ A determination that an industry "is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or

³⁹ 19 U.S.C. § 1677(7)(F)(i).

supposition."⁴⁰

There is no information on the record that the volume of subject imports, the effect of subject imports on prices or the impact of subject imports on the domestic industry will change in the future. The large increase in subject imports during the period of investigation was in response to a shortage of refined grade created by the withdrawal of other imports and did not displace sales of the domestic like product. There is no evidence that a future shortage will occur. Even if a shortage occurred and subject imports increased to meet the demand, such an increase cannot injure an industry that does not produce the imported product. The domestic industry cannot lose sales if it has no product to sell. Accordingly, there is no evidence of material injury to the domestic industry.

Three enumerated statutory threat criteria are probative with respect to whether any threatened injury is likely to be material:

Probability that imports will depress or suppress prices

There is no evidence that the degree of substitutability among subject imports and the like product will increase in the future. Nor is there evidence that the price effects of subject imports will change, given the lack of substitutability between the products. Absent such evidence, a determination that the price effects will cause future material injury is analytically inconsistent with a determination of no present material injury.

⁴⁰ 19 U.S.C. § 1677(7)(F)(ii).

Other demonstrable adverse trends

There is no evidence of any other demonstrable adverse trends to support a conclusion that material injury is threatened.

Actual and potential negative effects on the existing development and production efforts of the domestic industry

Petitioner asserts that subject imports are responsible for its failure to produce refined grade sulfanilic acid. However, evidence on the record indicates that petitioner withdrew from refined grade production prior to the large increase in subject imports as a result of prohibitively high costs of complying with environmental laws and regulations. There is no evidence that these laws or regulations will change, so there is no likelihood that petitioner will resume production of refined grade in competition with the subject imports.

Therefore, I conclude that any threatened future injury by reason of subject imports is not material.⁴¹

In determining whether a domestic industry is threatened with material injury, we are cautioned that our decision "may not be made on the basis of mere conjecture or supposition."⁴² The evidence must show more than a "mere possibility" that injury might

⁴¹ A finding that the industry "almost" experienced injury or is "vulnerable" to future injury does not constitute evidence that any threatened injury will be material. Moreover, the statute does not direct the Commission to reach a separate legal conclusion on material injury based on the condition of the industry. Even so, the record shows that the domestic industry is not "vulnerable" to future material injury by reason of subject imports.

⁴² 19 U.S.C. § 1677(7)(F)(ii).

occur.^{43 44}

The remaining enumerated statutory threat criteria are relevant to whether any threat of material injury is real and whether actual injury is imminent.

Any substantial increase in U.S. inventories

As a percentage of consumption, U.S. inventories of subject imports are not substantial.⁴⁵

Presence of unused or underutilized capacity in the exporting country and any rapid increase in U.S. market penetration

In American Spring Wire Corporation v. United States, 590 F. Supp. 1273 (1984), excess capacity existed in the exporting country, and the exporter estimated only a minor increase in exports to the United States. The Court of International Trade held that "the mere fact of increased capacity does not *ipso facto* imply increased exports" and that a finding that imports will increase must be based on "positive evidence tending to show an intention to increase the levels of importation." The Court concluded that the mere existence of increased capacity does not

⁴³ Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780 (1981).

⁴⁴ Even had I cumulated imports from India, I would not find any threat to be "real and imminent." There is no evidence that the non-price factors discussed above will change in the future. The magnitude of the projected increase in exports to the United States is a function of the small, negligible base in 1991. Furthermore, the projected exports would capture a small market share, particularly compared to the Chinese market share in 1991. In this investigation of subject imports from China, any threat from cumulated imports from India is only a mere possibility.

⁴⁵ Report at I-29.

constitute such positive evidence.⁴⁶

Record evidence demonstrates that the extremely high level of Hungarian capacity utilization for refined grade is projected to continue in 1992 and 1993. In addition, the share of Hungarian exports to the United States did not change significantly during the period of investigation, and is projected to decline in 1992 and 1993.⁴⁷ Accordingly, Hungarian exports do not constitute a "real and imminent" threat to the domestic industry.

Chinese capacity for refined grade increased substantially during the period of investigation. While capacity utilization declined in 1991, it remained at a high level. Chinese capacity is projected to decline in 1992 and 1993. Exports to the United States are projected to decrease substantially in 1992 and 1993.⁴⁸

The record contains limited information concerning projected Chinese capacity, capacity utilization and exports of salt. However, that information shows that Chinese capacity utilization for salt is high, and that the Chinese home market for salt consumes the vast majority of Chinese salt production.⁴⁹

The fact that, in the past, Chinese exporters increased their capacity and exports to the United States does not constitute credible evidence that they can and will do so again in the future. To the contrary, the information on the record projects a decrease

⁴⁶ 590 F. Supp. at 1280.

⁴⁷ Report at I-37 (table 15) and I-31 (table 12).

⁴⁸ Report at I-30.

⁴⁹ Report at I-30 to I-31.

in both capacity and exports to the United States in 1992 and 1993, and that Chinese exports to markets other than the United States will increase.

Based on the above, there is no positive evidence to show any intention to increase the levels of importation of subject imports to the United States.

Potential for product shifting

The Chinese producers of subject imports do not own or control production facilities that can be converted to subject imports. Moreover, if they used existing facilities to produce more refined grade, the domestic industry would not be injured because it does not produce refined grade. There is no evidence that Chinese producers will increase the output of salt, since salt capacity utilization is high and home market demand is strong.

Thus, there is no positive evidence that there is a threat of material injury, much less that such a threat is real and that actual injury is imminent. Lacking the requisite positive evidence, the legal standard for a determination that an industry is threatened with material injury has not been met.

IV. CONCLUSION

Based on my overall evaluation of the record, the volume of subject imports, the effect of subject imports on domestic prices and the impact of subject imports on the domestic industry, I conclude that there is no material injury or threat of material injury by reason of LTFV imports of sulfanilic acid.

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION¹

Institution

Following a preliminary determination by the U.S. Department of Commerce that imports of sulfanilic acid and sodium sulfanilate² from China are being, or are likely to be, sold in the United States at less than fair value (LTFV) (57 F.R. 9409, March 18, 1992),³ the U.S. International Trade Commission, effective March 18, 1992, instituted investigation No. 731-TA-538 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's investigation and of a public hearing 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 April 15, 1992 (57 F.R. 13118). The hearing was held in Washington, DC, on June 30, 1992.⁴

Commerce's final LTFV determination was made on June 26, 1992. The applicable statute directs that the Commission make its final injury determination within 45 days after the final determination by Commerce.

Background

This investigation results from a petition filed by R-M Industries, Inc. (R-M), Fort Mill, SC, on October 3, 1991, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of sulfanilic acid and sodium sulfanilate from China. In response to that petition the Commission instituted investigation No. 731-TA-538 (Preliminary) under section 733 of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) and, on November 18, 1991, determined that there was a reasonable indication of such material injury or threat of material injury.⁵

¹ A summary of data collected in the investigation is presented as an attachment to this report.

² The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and sodium salt of sulfanilic acid (sodium sulfanilate). Sulfanilic acid and sodium sulfanilate are provided for in subheadings 2921.42.24 and 2921.42.75 of the Harmonized Tariff Schedule of the United States (HTS). (Sodium sulfanilate was previously classified in HTS subheading 2921.42.70; the new subheading designation became effective on July 2, 1992, pursuant to Pres. Proc. 6446, published in the Federal Register on June 17, 1992.)

³ Copies of cited Federal Register notices are presented in app. A.

⁴ A list of witnesses appearing at the hearing is presented in app. B.

⁵ Acting Chairman Brunsdale and Commissioner Lodwick found a reasonable indication of material injury, and Commissioners Rohr and Newquist found a reasonable indication of threat of material injury. (Commissioner Lodwick left the Commission in December 1991.)

Concurrent Commission Investigations Concerning Sulfanilic Acid

Concurrent with this final investigation, R-M filed a petition on May 8, 1992, alleging that an industry in the United States is being materially injured and is threatened with further material injury by reason of imports from the Republic of Hungary (Hungary) and India of sulfanilic acid and sodium sulfanilate that are alleged to be subsidized by the Government of India and to be sold in the United States at LTFV. Accordingly, effective May 8, 1992, the Commission instituted investigations Nos. 701-TA-318 and 731-TA-560 and 561 (Preliminary).⁶ A conference was held on May 29, 1992, and on June 22, 1992, the Commission determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the alleged LTFV imports from Hungary and India and by reason of the alleged subsidized imports from India.⁷ Because the Commission has made preliminary affirmative determinations with respect to Hungary and India, imports from these countries are considered "subject to investigation" and are discussed in this report.

THE PRODUCT

Product Description

Sulfanilic acid and sodium sulfanilate⁸ are gray-white to white crystalline solids. All grades of sulfanilic acid (also called 4-aminobenzenesulfonic acid) and its monosodium salt, sodium sulfanilate (4-aminobenzenesulfonic acid, monosodium salt) imported from China, Hungary, and India are subject to this and the above-mentioned investigations. Sulfanilic acid is assigned the Chemical Abstracts Service (CAS) registry number CAS 121-57-3, while the sodium salt is assigned the number CAS 515-74-2. According to R-M, sulfanilic acid is produced in two grades, namely, technical (or crude) sulfanilic acid, and refined (or pure) grade. On the other hand, sodium sulfanilate is produced and sold in only one grade. There appear to be no universally defined grade distinctions for either the acid or its monosodium salt, except for a third grade specified by the American Chemical Society (ACS), reagent grade. Sulfanilic acid and sodium sulfanilate are used to produce synthetic dyes (including food colorants) and optical brightening agents, and are used in concrete additives.

⁶ 57 F.R. 20711, May 14, 1992. The products covered by the investigations on Hungary and India are the same as those in the investigation on China.

⁷ 57 F.R. 29332, July 1, 1992. Commissioner Crawford did not participate in the vote. Commissioner Brunsdale dissented with respect to India and found material injury with respect to imports from Hungary.

⁸ These products are often collectively referred to in the industry and in this report as "sulfanilic acid."

Manufacturing Processes

The chemistry for producing sulfanilic acid and its monosodium salt is similar for all U.S., Chinese, and Indian producers and is commonly called the "baking process" (see figure 1).⁹ The synthesis of sulfanilic acid is accomplished by first combining aniline with sulfuric acid in equimolar quantities.¹⁰ This results immediately in the formation of the sulfuric acid salt of aniline, aniline hydrogen sulfate. The aniline hydrogen sulfate is then heated (or "baked") to convert it to crude sulfanilic acid, which is purified by neutralizing the acid with an inorganic base, such as sodium hydroxide (caustic soda) or sodium carbonate, to form sodium sulfanilate, which is soluble in water. The aqueous sodium sulfanilate solution can then be filtered to remove any particulate impurities and either dried to isolate the sodium sulfanilate, or made acid with additional sulfuric acid to precipitate a purified form of sulfanilic acid.

The petitioner conducts the synthesis of crude sulfanilic acid ***. These controlled reaction conditions yield a technical grade of sulfanilic acid containing approximately 0.5 percent residual aniline and 0.5 percent alkali insoluble matter. ***.

To further purify the acid to meet customer specifications, the technical-grade material is converted into the sodium salt by the addition of aqueous sodium hydroxide. The solution, 30 percent by weight sodium sulfanilate, is heated to 60°C and filtered to remove the insoluble materials. The hot solution is then treated with activated charcoal (carbon), which absorbs a large portion of the remaining aniline and other undesirable organic contaminants.¹¹ The aqueous solution is then either loaded into tank trucks for delivery to customers, or dried and packaged as a free-flowing powder into packages containing 60 pounds equivalent weight of sulfanilic acid as the sodium salt. According to the petitioner, the only other U.S. producer of sulfanilic acid, Hilton Davis Co., has used a process similar to the petitioner's in order to minimize the risk of exposing production workers to the hazards associated with aniline and sulfuric acid.

The petitioner suggests that the Chinese and Indian producers use the more traditional process of mixing the two reactants (aniline and sulfuric acid) together in an open vessel, then pouring the paste into metal pans that

⁹ H.E. Fierz-David and L. Blangey, Fundamental Processes of Dye Chemistry, (New York: Interscience Publishers, Inc., 1949), pp. 126-128. The Hungarians have reportedly patented a different production process that does not involve baking. (Transcript of the conference on Hungary and India (Conference transcript II), pp. 114-115).

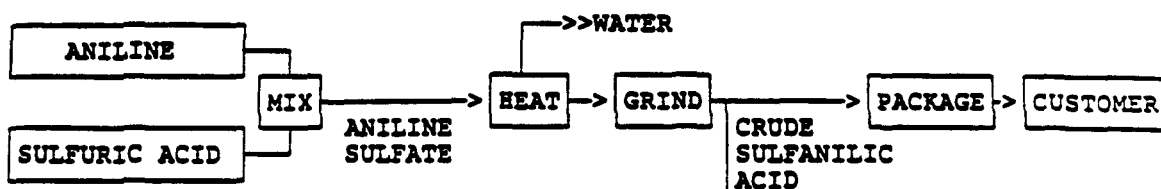
¹⁰ Addition in "equimolar" quantities refers to the practice of adjusting the weights of each chemical added such that a one-to-one ratio of molecules is maintained in the reaction mixture.

¹¹ The removal of aniline is a necessary step for certain end uses of sulfanilic acid and its monosodium salt, particularly in the production of dyes and optical brighteners. The presence of aniline in the dyes and brighteners production processes leads to off-colored material which cannot be sold.

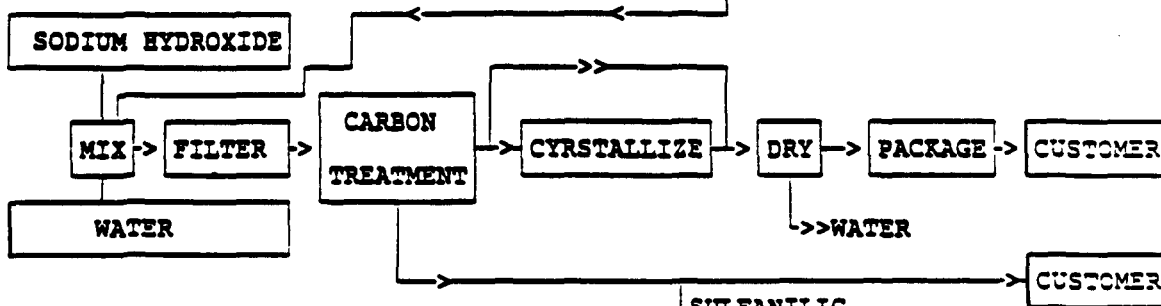
Figure 1

Sulfanilic acid: Flow diagram for the production of technical sulfanilic acid, sodium sulfanilate, and refined sulfanilic acid

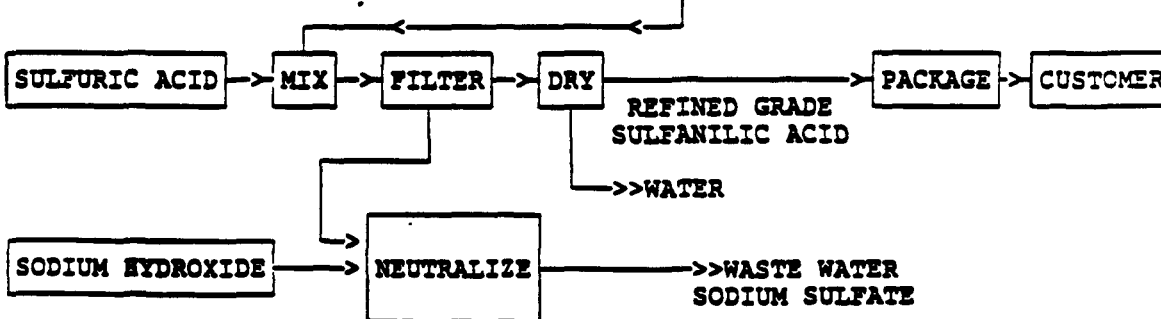
CRUDE (TECHNICAL) SULFANILIC ACID PRODUCTION



SULFANILIC ACID SODIUM SALT PRODUCTION



REFINED GRADE SULFANILIC ACID PRODUCTION



Source: Petition on China, Attachment A.

are transferred to an oven.¹² After heating, the solid sulfanilic acid chunks are broken into smaller pieces using manual labor, and then pulverized into a powder form. Because of the ***. The imported sodium salt is produced by a process similar to the petitioner's. ***.¹³

The following is a description of the production process used in Hungary for the manufacture of sulfanilic acid: "The aniline and sulfuric acid are reacted by a solvent agent under pressure. After having formed the arised sulphanylic acid to a salt which is readily soluble in water it will be made free of solvents and aniline and then cleaned by active carbon clarification. The sulphanylic acid will be precipitated by mineral acid, it will be centrifuged, dried and packed."¹⁴

Uses

Sulfanilic acid is used in the production of optical brighteners and synthetic organic dyes (including Food, Drug, and Cosmetic (FD&C) colorants), and to produce a certain concrete additive. The particular purity, chemical form, and physical form preferred depend on the end user's process. In most cases, the source of sulfanilic acid used for the production of synthetic organic dyes and optical brighteners must be refined material (either sodium sulfanilate or refined sulfanilic acid), generally meeting or exceeding the end user's specifications with respect to the nature and amount of contained impurities. Technical grade sulfanilic acid is used principally as a raw material to produce sodium sulfanilate and in the production of certain specialty synthetic organic dyes and a chemical used for special concretes.

Sulfanilic acid provides a unique portion of the molecular structure of FD&C Yellows Nos. 5 and 6, certain optical brighteners, and specialty azo dyes and, therefore, has no chemical substitutes. The singular molecular identity of a chemical accounts for the physical properties associated with that chemical, particularly, in the case of dyes, their color (or chromophoric) properties. All respondents to Commission questionnaires for the investigations responded that there were no other chemical substitutes for sulfanilic acid for their respective end-use applications.

¹² Fundamental Process of Dye Chemistry, pp. 126-128. The Chinese respondents agreed that this is an adequate description of their process. The Indian producers have not commented.

¹³ According to the Chinese respondents, ***. The respondents claim that this process eliminates the large volume of waste water created when the technical grade of the acid is converted to the sodium salt solution, filtered, and then precipitated out of solution by the addition of sulfuric acid. (Respondents' posthearing brief, p. 8.)

¹⁴ Petition on Hungary and India, Attachment F, p. 3 (quote from a May 24, 1990, petition filed by the Embassy of the Republic of Hungary with the Office of the United States Trade Representative, General System of Preferences (GSP) Subcommittee, requesting GSP treatment for refined grade sulfanilic acid).

Optical Brighteners

Optical brighteners, particularly paper brighteners, constitute the largest single end use for refined sulfanilic acid and sodium sulfanilate (estimated to be over 55 percent of total annual U.S. consumption). Also known as fluorescent whitening agents (FWAs) or fluorescent brightening agents, optical brighteners are synthetic organic chemicals used to compensate optically for the yellow cast obtained when white textiles or paper are bleached to remove colored impurities.¹⁵ Optical brighteners are also used to enhance the whiteness of plastics and paints, and as detergent additives. The largest producers of optical brighteners are Ciba-Geigy Corp., Sandoz Chemicals Corp., and Miles, Inc. (formerly Mobay Corp.). Commission records indicate that there were a total of four domestic producers of FWAs in 1990.¹⁶

Food Colorants

Approximately one-fourth to one-third of U.S. consumption of all refined sulfanilic acid and sodium sulfanilate combined is used to produce two FD&C colorants--namely tartrazine, or FD&C Yellow No. 5 (CAS 12225-21-7), and sunset yellow, or FD&C Yellow No. 6 (CAS 15790-07-5).¹⁷ Commission records show that there was one producer of FD&C Yellow No. 5, and three producers of FD&C Yellow No. 6, in 1990.¹⁸ FD&C Yellow No. 5 was manufactured by Warner-Jenkinson Co. FD&C Yellow No. 6 was produced by the Crompton and Knowles Corp., ***, and Warner-Jenkinson. Of the firms producing these two colorants, only ***.

FD&C Yellows Nos. 5 and 6 are approved for use in gelatin desserts, ice cream and frozen desserts, carbonated beverages, dry powdered drinks, candy and confectionery products that are oil- and fat-free, bakery products and cereals, and puddings.¹⁹ FD&C Yellow No. 5 is approved for ingested use only,²⁰ whereas FD&C Yellow No. 6 has no use restrictions.²¹

¹⁵ Kirk-Othmer, Encyclopedia of Chemical Technology, 3d ed., vol. 4, 1978, (New York: John Wiley and Sons, Inc., 1978).

¹⁶ Synthetic Organic Chemicals, United States Production and Sales, 1990, USITC publication 2470, Dec. 1991.

¹⁷ Daniel M. Marmion, Handbook of U.S. Colorants for Food, Drugs and Cosmetics, (New York: John Wiley and Sons, Inc., 1979), pp. 56-57.

¹⁸ Synthetic Organic Chemicals, United States Production and Sales, 1990.

¹⁹ Kirk-Othmer, Encyclopedia of Chemical Technology, 3d ed., vol. 6, 1978, (New York: John Wiley and Sons, 1978).

²⁰ In 21 C.F.R. § 201.20 (1991), labels for over-the-counter and prescription drug products intended for human use containing FD&C Yellow No. 5 must bear a statement such as: "Contains FD&C Yellow No. 5 (tartrazine) as a color additive." In addition, in the case of prescription drugs for human use, the label shall carry the warning that FD&C Yellow No. 5 may cause allergic-type reactions (including bronchial asthma) in certain susceptible persons. Labels for over-the-counter and prescription drug products intended for human use containing FD&C Yellow No. 6 must list the presence of this chemical as a color additive.

Specialty Synthetic Organic Dyes

Refined sulfanilic acid or its monosodium salt are the basis for a large number of azo dyes; the technical grade is also used in some applications. Azo dyes have no similar analogs among natural coloring matter.²² These dyes are adaptable to a wider variety of applications than any other dye group, including uses with all natural and synthetic fibers.²³

Concrete Additives

Crude or technical grade sulfanilic acid is used to produce a chemical which, when added to specialty concretes, reduces the amount of water required. This lighter material is used in the construction of high-rise buildings. Although refined sulfanilic acid could be used in this application, cost factors favor the technical-grade material. This end use for sulfanilic acid is probably the smallest market for this chemical, although this market has been growing in recent years.

Interchangeability Among the Three Grades of Sulfanilic Acid

The Commission has received mixed views on the issue of interchangeability among technical sulfanilic acid, refined sulfanilic acid, and sodium sulfanilate. Most agree that the technical grade has limited applications;²⁴ its high level of impurities makes it impractical to use in the production of food colors, optical brighteners, or most specialty dyes.²⁵ Although *** has the equipment to further refine this grade and then use it in

²¹ (...continued)

²¹ However, no colorant is certified for use in the area of the eye. In addition, no color additive is certified for use in injectable drugs or surgical sutures unless specifically stated for such use.

²² K. Venkataraman, Synthetic Dyes, vol. I, (New York: Academic Press, Inc., 1982), p. 409.

²³ Synthetic Dyes, p. 410.

²⁴ The technical grade is primarily used as a concrete additive, though some manufacturers also reported using it for certain types of dye. The refined grade sulfanilic acid can be substituted for the technical, but cost generally precludes this option.

²⁵ There are some exceptions to this, however. Sandoz distinguishes sulfanilic acid between the free acid (which includes both technical and refined grades) and the salt (which includes just the sodium sulfanilate). Sandoz prefers to use the free acid in its production process and usually looks for the refined grade. However, a high quality of the technical grade (such as that produced by ICI in France) can sometimes be used. Further, Warner-Jenkinson formerly used large quantities of the technical grade for food color production, but had to severely curtail such use in 1989 in response to the new FDA regulations that required lower levels of impurities. The company is sometimes able to use a high quality, "hand-picked" batch of technical, but this is rare. Recently it attempted to use some ***. (Conference transcript II, pp. 87, 127, and 154-157; field visit to Warner-Jenkinson, May 6, 1992.)

its downstream products, most companies do not have this capability. The larger question is the interchangeability between the refined grade and the sodium salt, both of which have been purified beyond the technical grade. The petitioner has testified that, although R-M does not manufacture refined grade sulfanilic acid, the company's sodium salt is a purified product and should be acceptable to any customer who uses refined acid.²⁶ R-M also notes that the primary use for sulfanilic acid is in the production of optical brighteners, and this reaction process almost always begins with an alkaline solution.²⁷ On the other hand, the production of food colors requires an acid solution for the first stage of the reaction process, but this does not preclude the use of the sodium salt; all that is required is a pH adjustment to change the sodium sulfanilate to sulfanilic acid.²⁸ The petitioner states that, regardless of the downstream product, it is no hardship for companies to switch between the sodium sulfanilate and the refined grade sulfanilic acid, especially when one considers that all the manufacturers are well-versed in the use of these chemicals.²⁹ On the issue of purity, R-M has testified that domestically produced sodium sulfanilate meets the specification requirements of all U.S. purchasers of sulfanilic acid.³⁰

Several domestic purchasers of sulfanilic acid agree with the petitioner. ***.³¹ Spokesmen for *** stated that their firm also considers the refined acid and its sodium salt as interchangeable raw materials, although it does have a preference for sodium sulfanilate.³² ***.³³

On the other side of the argument, some purchasers contend that the different grades of sulfanilic acid are not interchangeable, and that the refined grade is the product of choice. Warner-Jenkinson, one of the largest domestic manufacturers of food colors, testified that sodium sulfanilate is not an acceptable raw material in its production process for four basic reasons: (1) the stringent regulations of the FDA concerning permissible levels of impurities essentially mandate the use of the purest grade of sulfanilic acid available;³⁴ (2) the volume added to the tank by the addition

²⁶ However, R-M did acknowledge that different consumers usually prefer one grade over another. (Conference transcript II, pp. 9 and 26.)

²⁷ Manufacturers of optical brighteners can also use the refined grade, but the petitioner suggests that the acid must be converted to a salt before the reaction process can begin.

²⁸ The pH can be adjusted through the addition of sulfuric acid or hydrochloric acid. Sulfuric acid is a component in the manufacturing of food dyes anyway, so companies have the product on hand. ***.

²⁹ For additional information on the question of interchangeability from the petitioner's standpoint, see R-M's postconference brief (investigation on China), pp. 14-16 and 22-24.

³⁰ Purchasers specify maximum acceptable levels of impurities, such as ***. (Petition on Hungary and India, Attachment E.)

³¹ ***.

³² ***.

³³ ***.

³⁴ Prior to the late 1980s, the levels of aniline/amines that could be present in food dyes were not highly monitored. In 1985 and 1986 the FDA

of sulfuric acid reduces the batch size by approximately 10 to 15 percent and decreases overall efficiency in production;³⁵ (3) the use of salt generates sodium sulfates, which are an unnecessary waste product; and (4) the presence of additional salt in the production process requires increased purification time. Another purchaser, Sandoz, also states that the different grades of sulfanilic acid are not interchangeable. Sandoz is a large producer of optical brighteners, but the company's purchasing manager testified that its manufacturing reaction process does not begin with the salt. Although the purity level of the sodium sulfanilate is marginally acceptable, the facilities at the Sandoz plant are not set up to use the product.³⁶ A production specialist for Sandoz testified that the use of sodium salt makes the chemicals react at a faster pace and makes the final product inconsistent and unstable.³⁷ Two importers, Gallard-Schlesinger and Nu-Tech Chemical Industries, stated that their customers prefer the refined grade and have suggested to them that the products are not interchangeable.

The information provided by the industry representatives shows that the refined acid and its monosodium salt have, to a significant degree, been used interchangeably by the domestic industry. Although a particular consumer may have a material preference in deciding which form of the chemical to purchase, if supply disruptions occur, the refined acid can be substituted for the salt and vice versa in all major end-use applications. However, some consumers have expressed concern regarding the ability of production lines to efficiently accommodate different products, and the ability of the sodium salt to consistently meet growing quality requirements.

³⁴ (...continued)

changed its regulations on FD&C Yellows Nos. 5 and 6, respectively. Permissible levels of aniline were reduced in these dyes to 100 and 250 parts per billion, respectively. Although the sodium salt can meet these requirements, Warner-Jenkinson complained that the purity level of the salt fluctuates too much and has caused batches of food color to be rejected. A spot sample must be sent to the FDA for every batch of dye Warner-Jenkinson manufactures. (Conference transcript II, pp. 86-89, and field visit to Warner-Jenkinson, May 6, 1992.)

³⁵ Conference transcript II, p. 89. Warner-Jenkinson admitted that the ***. (Field visit to Warner-Jenkinson, May 6, 1992.)

³⁶ Don Voigt, purchasing manager for Sandoz, pointed out that a time factor had to be considered when looking at the company's use of different grades of sulfanilic acid. Although sodium salt has been used in the past to manufacture optical brighteners, the company has been able to produce a higher quality product when using the refined grade, and now customers expect that. Secondly, the machinery at the Sandoz plant in Fair Lawn, NJ, is able to accommodate the sodium salt, ***. All production of optical brighteners will be transferred to the plant in South Carolina where sodium salt has never been used and could not be accommodated by the equipment there. Mr. Voigt also stated that if his firm could use the sodium sulfanilate it would do so instead of paying more (i.e., \$*** per pound) for the refined grade. (Conference transcript II, pp. 103-105 and 130-131.)

³⁷ Conference transcript II, pp. 104-105 and 159-161.

Like Product Positions

R-M argues that technical sulfanilic acid, refined sulfanilic acid, and sodium sulfanilate are "like products" because the physical characteristics are similar³⁸ and are all used in the production of optical brighteners, food colors, specialty dyes, and concrete additives;³⁹ they are interchangeable; the channels of distribution are the same; there are common manufacturing facilities and employees; and producer and customer perceptions are the same.⁴⁰ Insofar as the "domestic industry" is concerned, petitioner states that because technical sulfanilic acid, refined sulfanilic acid, and sodium sulfanilate constitute the like product, the domestic industry consists of the producers of the same. Counsel for the Chinese respondents in the final investigation has not contested the petitioner's proposed definitions of the like product and domestic industry.⁴¹ Counsel for the respondents in the preliminary investigations on Hungary and India similarly did not challenge the petitioner's proposed definitions.

U.S. Tariff Treatment

As of February 1980, all U.S. imports from China have been eligible for entry under the rates of duty afforded to products of most-favored-nation (MFN) status countries. During part of the period covered by these investigations, such products from both Hungary⁴² and India⁴³ were eligible for

³⁸ They all provide the same molecular entity in the synthesis of the downstream products.

³⁹ All of R-M's major customers have used all forms of sulfanilic acid for a given application. (Petitioner's postconference brief (investigation on China), pp. 3-4.) These customers are ***.

⁴⁰ For a more detailed discussion of "like product" see pp. 8-19 of the petition on China, pp. 8-15 of the transcript of the conference on China (Conference transcript I), pp. 3-5 of petitioner's postconference brief (investigation on China), and pp. 12-22 of the petition on Hungary and India.

⁴¹ Prehearing brief (investigation on China), p. 6.

⁴² On May 24, 1990, the Embassy of the Republic of Hungary submitted a petition requesting duty-free entry of Hungarian sulfanilic acid to the Office of the U.S. Trade Representative (USTR), GSP Subcommittee. GSP status for the importation of refined sulfanilic acid was granted on July 1, 1991. On Mar. 27, 1992, R-M Industries filed a petition with the GSP subcommittee requesting that there be an immediate review of GSP status for sulfanilic acid. The petition stated that GSP eligibility for sulfanilic acid was resulting in a loss of business to the domestic industry. In addition, Congressman Spratt of South Carolina introduced a bill (H.R. 4219) in February 1992 which would add sulfanilic acid to the list of import-sensitive articles that may not be designated as articles eligible for duty-free entry.

⁴³ On Apr. 29, 1992, the President suspended the duty-free entry afforded under GSP to certain articles imported from India (57 F.R. 19067). Included in the suspension list was HTS subheading 2921.42.24, covering sulfanilic acid.

duty-free entry under the Generalized System of Preferences (GSP) (see appendix C for an explanation of tariff and trade agreement terms).

With the implementation of the HTS in 1989, all forms of sulfanilic acid and its monosodium salt were classified in subheading 2921.42.50, a residual (basket) provision for derivatives of anilines and their salts. On May 1, 1991, pursuant to Presidential Proclamation 6282 (to modify duty-free treatment under the GSP), metanilic acid and sulfanilic acid were provided for separately under new HTS subheading 2921.42.24, with a column 1-general rate of duty of 2.4 cents per kilogram plus 18.8 percent ad valorem (20 percent ad valorem equivalent in 1991). Imports of sulfanilic acid are eligible for duty-free entry under the GSP, the Caribbean Basin Economic Recovery Act (CBERA), and the United States-Israel Free Trade Area Implementation Act of 1985 (IFTA). The column 2 rate of duty is 15.4 cents per kilogram plus 60 percent ad valorem, and the 1992 Canada Free-Trade Agreement (CFTA) rate is 0.4 cent per kilogram plus 3.7 percent ad valorem. Where eligibility for special tariff rates is not claimed and established, goods are dutiable at general rates.

Sodium sulfanilate is classified in HTS subheading 2921.42.75, with other aniline derivatives and their salts. The column 1-general, column 2, and CFTA rates of duty are the same as those for HTS subheading 2921.42.24. However, imports classified in this subheading are not eligible for duty-free entry under the GSP; duty-free entry is provided under the CBERA and the IFTA.

NATURE AND EXTENT OF SALES AT LTFV

On July 6, 1992, Commerce published in the Federal Register (57 F.R. 29705) its final determination that sulfanilic acid from China is being, or is likely to be, sold in the United States at LTFV. Commerce did not, however, find the "massive" imports required to confirm the "critical circumstances" alleged by the petitioner.

Commerce's investigation involved China National Chemicals Import & Export Corporation (Sinochem), Hebei Branch. During the period May 1, 1991, through October 31, 1991, Commerce compared the United States price of sulfanilic acid to the foreign market value (FMV) of the Chinese product. Because China continues to be classified as a state-controlled economy under section 773(a) of the Act, Commerce determined FMV by valuing the factors of production for the subject merchandise in the surrogate, market-driven economy countries of India and Pakistan.⁴⁴

⁴⁴ The respondents claimed that sulfanilic acid is a market-oriented industry (MOI) since all of its factors of production were purchased at market-determined prices during the period of investigation. Based on this assertion, the respondents felt that Chinese prices for the factors of production should have been used to determine foreign market value. However, one of the primary components of sulfanilic acid is aniline, which is a derivative of crude petroleum. Because crude petroleum is a category one product controlled by the Chinese Government, Commerce determined that

(continued...)

Sinochem, the only party that responded to Commerce's questionnaires, received a company-specific dumping margin of 19.14 percent. Commerce established this rate based on Sinochem's sales of *** metric tons of sulfanilic acid valued at *** during the period of investigation. ***. All other exporters are subject to a dumping margin of 85.2 percent, which is based on the best information available.

U.S. MARKET

Apparent U.S. Consumption

Data on apparent U.S. consumption of sulfanilic acid were compiled from information submitted in response to Commission questionnaires. These data, presented in table 1, are composed of the sum of U.S. shipments of U.S. producers and importers (see appendix table D-1 for U.S. consumption by grade).

Total reported apparent U.S. consumption of sulfanilic acid, by quantity, increased by 48.2 percent between 1989 and 1991, then decreased by 20.0 percent between first quarter 1991 and first quarter 1992. Consumption of each of the grades increased over the period of investigation, but the figures for the refined grade fell in 1991, as the decrease in imports from a large source of this product, Japan,⁴⁵ overshadowed the rise in imports from China. Basic GNP expansion was the reason cited most frequently by purchasers for the overall increase in demand for this product.⁴⁶ Two purchasers, Warner-Jenkinson and ***, suggested that demand in their own firms would be growing in upcoming months.⁴⁷ In terms of value, total reported apparent U.S. consumption increased by 30.5 percent in 1990 and by 21.4 percent in 1991, then decreased by 16.9 percent in interim 1992.

⁴⁴ (...continued)

significant material inputs for sulfanilic acid may not be purchased at market-driven prices and that the sulfanilic acid industry could not be considered an MOI.

⁴⁵ Japan began withdrawing from the market in late 1990 as a result of changing trends in the market for sulfa drugs (Japanese sulfanilic acid is a byproduct of the manufacture of certain sulfa drugs).

⁴⁶ The use of technical sulfanilic acid in concrete additives has been growing (technical sulfanilic acid is used to make another chemical that reduces the amount of water that is needed in the concrete so that it is more pumpable). However, both Sandoz and R-M Industries testified that this application for the product is much more popular in Europe than in the United States.

⁴⁷ Warner-Jenkinson testified that it had plans to purchase several non-U.S. companies involved in dye production and would move the manufacturing side of the businesses to St. Louis, MO. This is expected to increase the company's demand for the refined grade of sulfanilic acid. (Conference transcript II, pp. 132-133.) ***.

Table 1

Sulfanilic acid: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption,¹ 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
Quantity (1,000 pounds ²)					
Producers' U.S. shipments . . .	***	***	***	***	***
Importers' U.S. shipments:					
China	***	548	2,881	578	***
Hungary	***	***	***	***	***
India	***	***	***	***	***
Subtotal	749	1,185	3,655	677	467
Other sources	***	***	***	***	***
Total	***	***	***	***	***
Apparent consumption . .	5,334	7,108	7,906	2,063	1,651
Value ³ (1,000 dollars)					
Producers' U.S. shipments . . .	***	***	***	***	***
Importers' U.S. shipments:					
China	***	437	2,355	456	***
Hungary	***	***	***	***	***
India	***	***	***	***	***
Subtotal	611	1,036	3,101	548	414
Other sources	***	***	***	***	***
Total	***	***	***	***	***
Apparent consumption . .	4,875	6,364	7,727	1,976	1,643

¹ Nonsubject import shipments are believed to be understated for 1989; consequently, U.S. consumption for 1989 may be understated by as much as 10 to 15 percent.

² Weights expressed in this report are in pounds of free acid.

³ F.o.b. U.S. shipping point.

Note.--Because of rounding, figures may not add to the totals shown.

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

U.S. Producers

R-M Industries, Inc.

The petitioner, R-M Industries, Inc., is the largest commercial producer of sulfanilic acid in the United States. R-M is a privately held company headquartered in Fort Mill, SC;⁴⁸ it accounted for *** percent of the sulfanilic acid manufactured in the United States in 1991. Prior to R-M's startup of production in May 1984, American Cyanamid Co. had produced sulfanilic acid for at least 30 years at its facility in Bound Brook, NJ. American Cyanamid discontinued production of sulfanilic acid in 1982.⁴⁹ There was a period of almost 2 years in which the U.S. industry had no U.S. supplier. According to the petitioner, a nontraditional import source, Bayer AG, in Germany, filled the void. Bayer is a producer of sulfanilic acid, optical brighteners, and specialty dyes. Bayer traditionally produced sulfanilic acid for its own use but was persuaded by a U.S. purchaser to supply it with sulfanilic acid.⁵⁰

R-M produced refined sulfanilic acid between 1986 and 1989 but then reported it was discontinuing the product in 1989 because of high manufacturing costs and because the production process generated large amounts of contaminated waste water.⁵¹ In the recent petition involving Hungary and India, R-M stated that production of the refined grade was stopped as a result of the LTFV imports entering the United States.⁵² During the period of the investigation, R-M has offered sodium sulfanilate to consumers who previously purchased refined sulfanilic acid.⁵³ Recently, however, the company has

⁴⁸ Everlight Chemical Industrial Corp., Taipei, Taiwan, has a 33-percent ownership in R-M.

⁴⁹ R-M negotiated with American Cyanamid for almost 3 years to purchase the equipment necessary to start up production of sulfanilic acid. R-M built a new building with a foundation specially prepared for the four reactors purchased from American Cyanamid to produce technical sulfanilic acid. (Conference transcript I, pp. 47-48.)

⁵⁰ Conference transcript I, pp. 60-61. ***.

⁵¹ More than 3 pounds of waste water is generated for every pound of refined sulfanilic acid produced. The yield from crude sulfanilic acid to refined is only 77 percent, meaning that the remainder is lost to the environment (petition on China, pp. 17-18). R-M's environmental concerns were further affected by the Clean Water Act which went into effect in April 1992. Prior to the Act, R-M was able to recycle all of its water on the premises; now, however, the company must ship almost all of its waste water by truck to Tennessee for decontamination. This has added great expense to the company's production costs, but it does not affect the manufacture of sulfanilic acid since the refined grade (the only grade that generated a waste water stream) has been discontinued. (Conference transcript II, pp. 39-41.)

⁵² Petition on Hungary and India, pp. 22-23.

⁵³ The Commission asked R-M to list previous customers of refined grade sulfanilic acid and to report whether or not these purchasers switched in 1989 to R-M's sodium sulfanilate or to imports of the refined grade. R-M reported that ***.

announced that it will begin production of the refined grade again if consumers are willing to pay a fair price.⁵⁴ Because of costs associated with the new environmental requirements, R-M estimated that its price for refined grade would range from \$1.50 to \$1.75 per pound.⁵⁵

Sulfanilic acid accounts for slightly over half of R-M's business. R-M also produces a pre-emergent herbicide and violet pigment on a contract basis and is the only U.S. producer of these materials.⁵⁶

Hilton Davis Co.⁵⁷

Hilton Davis Co., which accounted for *** percent of U.S. sulfanilic acid production in 1991, has produced small quantities of technical sulfanilic acid mainly for internal consumption at its plant in Cincinnati, OH.⁵⁸ The company sold between *** and *** percent of its production of technical sulfanilic acid in 1990 and 1991 to an unrelated end user. Hilton Davis also ***.⁵⁹ In January 1992, ***.⁶⁰

⁵⁴ Prior to announcing the company's willingness to resume production of the refined sulfanilic acid, R-M attempted to produce an "intermediate refined grade;" the manufacturing process for this product did not create a waste water stream, and R-M hoped to sell it at a price comparable to that of the sodium salt. While the company was successful in creating a product with very low levels of aniline, it had difficulty removing some of the color-imparting impurities. R-M sent samples of the product to Warner-Jenkinson and Sandoz, both of which said the impurity level was too high for their production requirements. (Conference transcript II, pp. 63-64 and 98-99.) R-M has received no requests for the refined grade following the announcement of its willingness to resume production.

⁵⁵ R-M's president initially testified that he would need \$1.75 per pound for the refined grade because the waste water would need to be shipped to Tennessee for decontamination. At the public hearing on the case, however, the company's president suggested he could compete at \$1.50 per pound for the refined grade. This new estimate is based on the possibility of having the waste water treated in nearby Rock Hill, SC, instead of in Tennessee. (Transcript of the hearing on China (Hearing transcript), pp. 42-44.) R-M's president had previously testified that if enough U.S. purchasers would buy the refined grade from his company the price would eventually go down; stable business would ultimately permit the company to build its own decontamination facilities on site and would lower the cost of production considerably. (For a complete discussion of R-M's ability to begin production of the refined grade, see Conference transcript II, pp. 37-43.)

⁵⁶ Conference transcript I, pp. 57-58. R-M used to produce t-butylcatechol (TBC), but this product was discontinued in the first quarter of 1991. (Telephone conversation with John Dickson, president of R-M, June 9, 1992.)

⁵⁷ ***.

⁵⁸ ***.

⁵⁹ ***.

⁶⁰ ***.

U.S. Purchasers⁶¹

There are approximately 12 significant purchasers of sulfanilic acid in the United States;⁶² the petitioner notes that *** of these purchasers, ***, account for over two-thirds of total U.S. demand.⁶³ *** also make significant purchases. From 1989 to 1991 each of the *** companies listed above purchased substantial quantities of at least two of the three grades of sulfanilic acid.⁶⁴ The tabulation below shows purchases (in thousands of pounds) by the top three purchasers (see appendix table E-1 for more detail on this issue):⁶⁵

* * * * * * *

The petitioner suggests that this pattern of purchasing different grades for a particular end use demonstrates the interchangeability of the grades. Some purchasers agree with this assessment, while others point to questions of availability as the reason for the fluctuations. Sandoz is the ***.⁶⁶ *** Warner-Jenkinson has suggested that the refined grade is the company's product of choice, this was ***. The company testified that the shortage that occurred in late 1990 and early 1991 (when Japan and then Hungary largely withdrew from the market) caused it to purchase whatever grade was available in order to keep the plant operating.⁶⁷ Both Sandoz and Warner-Jenkinson have expressed interest in maintaining several sources of supply, and they cite this as another reason for purchasing different grades.⁶⁸ ***.⁶⁹

⁶¹ For additional information on purchasers, see the section entitled "Purchaser Responses." Also see app. E for data regarding U.S. consumers' purchasing patterns during 1989-91 and purchasers' comments on the issue of interchangeability among the three grades of sulfanilic acid.

⁶² ***.

⁶³ Petition on Hungary and India, p. 54.

⁶⁴ ***.

⁶⁵ All three purchasers buy from R-M. In addition, ***.

⁶⁶ The sodium sulfanilate was for use in the New Jersey plant exclusively.

⁶⁷ ***. Ken Goldacker, purchasing manager, testified that Hungary's temporary exit from the market during February-July 1991 forced the company to buy whatever grade was available to keep the plant in operation. ***.

⁶⁸ Sandoz has also said it made a commitment to purchase some of R-M's technical grade, but when this product proved unacceptable the company felt obligated to purchase sodium salt instead of simply cancelling the agreement. The purchasing manager for Sandoz explained that his company is able to use the technical grade which is manufactured in France and had thought it might be able to use R-M's technical as well. (Conference transcript II, pp. 127-128.)

⁶⁹ ***.

U.S. Importers

The petitions in these concurrent investigations list four Chinese agencies and non-Chinese agents and trading companies, one importer of the Hungarian product, and six importers and/or trading agencies for the Indian product that the petitioner believes are responsible for the majority of imports of sulfanilic acid from the subject countries. A review of Customs documents, however, disclosed over 50 U.S. firms importing under the HTS items listed in the petitions.⁷⁰ The Commission sent questionnaires to 43 importers, including the firms listed in the two petitions.⁷¹

Of the 43 firms who received questionnaires, the Commission received responses from 42 companies. Twenty-four of those firms indicated that they did not import the merchandise subject to these investigations.⁷² Eighteen firms provided usable data on imports of sulfanilic acid.⁷³ Eight of these firms reported importing sulfanilic acid from China during the period of investigation:⁷⁴ Sandoz Chemicals, Sinochem (U.S.A.), Goodring International, Nu-Tech Chemical Industries, and *** imported refined sulfanilic acid; ***;⁷⁵ and ***.⁷⁶ ***. Two firms, Gallard-Schlesinger Industries and ***, reported imports of refined grade sulfanilic acid from Hungary during 1991;⁷⁷ Sandoz reported some imports from Hungary in 1989 and early 1992. During 1991 two firms, ***, reported imports of *** from India, and one firm, ***, reported imports of *** from India.⁷⁸ The remaining firms reported imports of sulfanilic acid from Japan, France, and the United Kingdom.

In its questionnaire, the Commission asked firms to report future contracts for importing sulfanilic acid from subject countries after March 31, 1992. ***.⁷⁹ Several firms mentioned that they had plans to purchase

⁷⁰ The HTS items listed in the petitions are basket categories which include imports of other chemicals; therefore, the Commission could not rely on official statistics for import data. Many of the firms contacted by Commission staff reported that they did not import sulfanilic acid.

⁷¹ Most of the firms reporting imports of sulfanilic acid are concentrated in the northeast.

⁷² Many firms reported that although they were not the importer of record, they did purchase and use imported sulfanilic acid.

⁷³ These firms are ***.

⁷⁴ Almost all of the reported imports from China occurred in 1990 and 1991.

⁷⁵ In 1991, ***.

⁷⁶ There were no imports of the technical grade from China. The only reported imports of technical sulfanilic acid were from the United Kingdom and India.

⁷⁷ Gallard-Schlesinger was responsible for over *** percent of total imports from Hungary; ***.

⁷⁸ *** brought in *** percent of total imports from India, while *** and *** were responsible for *** percent each.

⁷⁹ One container load is equivalent to 35,000 to 40,000 pounds of product. The method of packing the container generally accounts for the variance in overall weight; a container of loosely shipped bags can hold more volume than a container of palletized bags. ***.

shipments from India but had canceled them as a result of the current investigations.⁸⁰

The Commission also asked if there had been any changes in the character of the operations relating to the importation of sulfanilic acid. ***. Other purchasers reported that R-M had been unable to meet quantity demands and quality expectations at various times over the past three years, especially during a change in the company's management in 1990. Finally, several cited R-M's failure to supply the refined grade since 1989 as their reason for turning to the importation of sulfanilic acid.⁸¹

Many of the responding importers reported having an affiliation with foreign producers, usually through direct ownership. Most notably, ***. All of the imported product from all sources was reportedly either used to manufacture optical brighteners by the importer of record or resold to firms that produce optical brighteners, food colors, or dyes.

Channels of Distribution

Domestically produced sulfanilic acid is sold to both distributors and end users, with the majority going directly to end users that manufacture optical brighteners, food colors, specialty dyes, and concrete additives. R-M sells *** percent of its production to end users located within 1,000 miles of its plant; a small portion of the technical grade is shipped to unrelated distributors. R-M reported in its questionnaire that *** percent of its sales of sodium sulfanilate were in a liquid form.⁸²

Importers of sulfanilic acid from China, Hungary, and India reported that *** percent of their shipments went to unrelated end users. The only difference in the manner in which the U.S. consumer receives merchandise from the U.S. producer and the Chinese, Hungarian, and Indian producers is that the U.S. product is shipped by domestic trailer, and the subject imports are shipped by ocean container and then delivered by truck or in container to the customer. All Chinese and Indian merchandise is packed in 50- to 80-pound plastic or paper bags. The Hungarian product varies slightly from other

⁸⁰ ***.

⁸¹ Conference transcript II, pp. 92-94 and 158-159.

⁸² Shipments in liquid form usually occur within a ***-mile radius of the plant because shipping costs are almost 3 times greater for the liquid versus the dry product. The two largest purchasers of the sodium sulfanilate in aqueous solution are ***. The petitioner testified that customers located close enough to make transportation costs practical actually prefer the solution form over the powder form of sodium sulfanilate for three reasons: (1) it saves the customer the time and trouble of adding liquid to the powder; (2) it is easier and more efficient to measure out appropriate quantities of the salt in solution form; and (3) it is more convenient for workers to handle. (R-M questionnaire response and conference transcript II, pp. 58-59). ***.

imports and from the domestic product in its packaging; instead of 50- to 80-pound bags, some of the Hungarian product is packaged in "supersacks" of up to 1,000 pounds.⁸³

CONSIDERATION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The information presented in this section of the report is based on the questionnaire responses of the two firms that represented 100 percent of U.S. production of sulfanilic acid during the period of investigation.

U.S. Producers' Capacity, Production, and Capacity Utilization

Data on U.S. capacity, production, and capacity utilization are summarized in table 2 (see appendix table D-2 for capacity and production by grade).⁸⁴ Capacity to produce sulfanilic acid *** by *** from 1989 to 1991, *** total production capabilities to *** in 1991.⁸⁵ The ***.

Table 2

Sulfanilic acid: U.S. capacity, production, and capacity utilization, 1989-91, January-March 1991, and January-March 1992

* * * * *

⁸³ Warner-Jenkinson reported that this method of packaging facilitates the use of sulfanilic acid for two reasons: first, the large bags require less manpower when being added to a batch and, second, there is less room for human error in counting out the number of bags necessary for the batch process. (Conference transcript II, p. 162, and field visit to Warner-Jenkinson, May 6, 1992.) The option of supplying the product in supersacks is available to all manufacturers; ***.

⁸⁴ To avoid double counting R-M's capacity and production of sulfanilic acid when technical sulfanilic acid is further processed into sodium sulfanilate and refined sulfanilic acid, the staff used R-M's reported capacity and production of technical sulfanilic acid. R-M noted in its questionnaire response that it takes *** pounds of technical sulfanilic acid to make 1.0 pound of sodium sulfanilate and *** pounds of sodium sulfanilate (free-acid basis) to make 1.0 pound of refined grade sulfanilic acid. Hilton Davis produced ***.

⁸⁵ R-M noted that it had insufficient capacity to meet customers' demands in the second half of 1990 when orders for sulfanilic acid increased following Japan's withdrawal from the market. The company was forced to make partial shipments to some customers, including Warner-Jenkinson and Sandoz. Don Voigt (Director of Purchasing, Sandoz) also testified that R-M had insufficient capacity to meet his company's needs for refined grade sulfanilic acid when R-M was producing this product in 1986-89. (Conference transcript II, pp. 158-159.)

While uncertainty in the marketplace has prevented R-M from making further changes in capacity, the company's president testified that technical capacity could be easily increased to 7.5 million pounds per year with the addition of two new ball mills in what is currently used as warehouse space. Capacity for the sodium sulfanilate could also be increased by adapting the company's production process to employ some of the equipment which was formerly used for production of the refined grade.⁸⁶

U.S. production *** by almost *** from 1989 to 1990, but *** by nearly *** between 1990 and 1991.⁸⁷ An approximate *** in production occurred in the interim period. Capacity utilization *** between 1989 and 1990, but has been *** since then; utilization figures *** between 1990 and 1991, and by *** in the interim period.

U.S. Producers' U.S. Shipments⁸⁸ and Export Shipments

U.S. producers' U.S. and export shipments of sulfanilic acid are presented in table 3 (see appendix table D-3 for shipments by grade).

Table 3

Sulfanilic acid: Shipments by U.S. producers, by types, 1989-91, January-March 1991, and January-March 1992

* * * * *

U.S. Shipments

Domestic producers' total U.S. shipments (domestic shipments and company transfers) of sulfanilic acid *** from 1989 to 1990 and by *** from 1990 to 1991. Shipments *** in the comparison of the first quarters of 1991 and 1992. The value of U.S. shipments followed the same pattern, *** in 1990 and *** in 1991. The unit value of U.S. shipments of sulfanilic acid ***. Unit value was *** in January-March 1992. Broken out by grade, shipments of technical

⁸⁶ The president of R-M testified that a ball mill could be installed within 6 months (or in 3 months on a rush schedule). (Conference transcript II, p. 28.) ***. This capacity expansion for the sodium salt would not be possible or necessary, however, if R-M decides to re-start its production of refined sulfanilic acid.

⁸⁷ R-M's production of sulfanilic acid increased in late 1990 and early 1991 when the Japanese, who were a major supplier to the U.S. market, essentially withdrew.

⁸⁸ R-M produces refined sulfanilic acid and sodium sulfanilate from its technical sulfanilic acid. Such consumption of the technical grade occurs as part of a continuous process and is not considered a company transfer. Roughly *** of R-M's production of technical sulfanilic acid is used to produce sodium sulfanilate. Hilton Davis, a small U.S. producer, ***.

sulfanilic acid (excluding company transfers) actually *** over the period of investigation, while shipments of sodium salt *** significantly.

Export Shipments

R-M *** that exports sulfanilic acid. The company reported exports of ***. Although export shipments *** between 1989 and 1990, *** are visible in subsequent periods. Exports in 1991 were *** of 1990, and they *** in the interim periods. R-M explains *** in exports as the direct result of company efforts to maintain sales despite increasing imports from China, Hungary, and India.⁸⁹ The unit value of export shipments *** in 1990 and 1991 by ***, respectively, but *** in interim 1992.

Total Shipments

Total U.S. producers' shipments of domestically produced sulfanilic acid (by quantity) *** between 1989 and 1991 and by *** in the interim periods. The value of total shipments followed the same trend, *** between 1989 and 1991 and by *** in the interim periods.

U.S. Producers' Inventories

Information on U.S. producers' end-of-period inventories is presented in table 4 (see appendix table D-4 for inventories by grade). U.S. producers' end-of-period inventories of sulfanilic acid *** between 1989 and 1991, and by *** between the first quarter of 1991 and the first quarter of 1992. The ratio of inventories to total shipments *** in 1989 to *** in 1991 and to *** in the first quarter of 1992. The ratio of inventories to production followed a similar trend.

Table 4

Sulfanilic acid: End-of-period inventories of U.S. producers, 1989-91, January-March 1991, and January-March 1992

* * * * *

⁸⁹ The petitioner explains that exports were actively solicited when domestic sales appeared to be in jeopardy. The majority of the 1991 exports (70 percent) took place in the latter half of the year. (Petition on Hungary and India, p. 49.) ***.

U.S. Employment, Wages, and Productivity

Data on employment, wages, and productivity are shown in table 5. In its questionnaire, the Commission requested employment data for all sulfanilic acid combined, but asked if producers could provide the data separately for the three types of sulfanilic acid. Both producers reported that the data could not be provided separately. Hilton Davis' workers are represented by the International Chemical Workers Union; R-M's workers are not unionized.

Table 5

Average number of U.S. production and related workers producing sulfanilic acid, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, 1989-91, January-March 1991, and January-March 1992

* * * * * * *

The number of production and related workers was *** throughout the period of investigation, though a *** is evident in the comparison of interim 1991 and 1992. Hours worked *** by approximately *** between 1989 and 1991. Total compensation paid to such workers *** between 1989 and 1990 but *** in 1991 and *** in interim 1992.

In its questionnaire, the Commission requested producers to provide detailed information concerning reductions in the number of production and related workers producing sulfanilic acid during the period January 1989-March 1992, if such reductions involved at least 5 percent of the workforce, or 50 workers. R-M reported reductions in its workforce on ***; it laid off two workers *** and *** laid off an additional two workers ***.⁹⁰ In addition, R-M reduced the salaried administrative staff by five employees ***.⁹¹ ***.⁹²

Financial Experience of U.S. Producers

R-M Industries, representing *** percent of U.S. sulfanilic acid production in 1991, submitted financial data on the establishment⁹³ in which sulfanilic acid is produced and on its sulfanilic acid operations. ***. Hilton Davis provided *** income-and-loss data on sulfanilic acid operations.⁹⁴

Data for R-M Industries were verified by the Commission's staff. ***.

⁹⁰ ***.

⁹¹ Those laid off included the sales manager for sulfanilic acid and the company controller. (Petition on Hungary and India, p. 50 and ***.)

⁹² ***.

⁹³ ***.

⁹⁴ ***.

Overall Establishment Operations

Income-and-loss data of R-M on its overall establishment operations in which sulfanilic acid is produced are shown in table 6. Net sales on overall establishment operations *** percent from \$*** in 1989 to \$*** in 1990, and *** percent to \$*** in 1991.⁹⁵ The operating *** was \$*** in 1989, \$*** in 1990, and \$*** in 1991. The operating *** as a share of sales was *** percent in 1989, *** percent in 1990, and *** percent in 1991. Net sales of \$*** for the 3-month period ended March 31, 1992, were *** percent *** than the net sales of \$*** for the 3-month period ended March 31, 1991. The operating *** was \$*** in the 1992 interim period compared to an operating *** of \$*** in interim 1991. The operating *** margin as a share of sales was *** percent in interim 1991 and *** percent in interim 1992.

Table 6

Income-and-loss experience of R-M Industries on its overall establishment operations in which sulfanilic acid is produced, calendar years 1989-91, January-March 1991, and January-March 1992

* * * * *

R-M's overall establishment data for 1989 may not be ***.⁹⁶
***.

* * * * *^{97 98}

Financial Condition of R-M Industries

R-M's condensed balance sheets as of December 31, 1990, and December 31, 1991, are shown in the following tabulation (in thousands of dollars):

* * * * *

R-M's current ratio (current assets divided by current liabilities) was *** in 1990 and *** in 1991. This ratio is a rough indicator of a firm's ability to service its current obligations. Generally, the higher the current

⁹⁵ ***.

⁹⁶ ***.

⁹⁷ ***.

⁹⁸ Telephone conversation, Oct. 21, 1991.

ratio, the greater the "cushion" between current obligations and a firm's ability to pay them. ***.⁹⁹

Subsequent to 1991, R-M has ***.¹⁰⁰

Operations On Sulfanilic Acid

Income-and-loss data for R-M on sulfanilic acid operations¹⁰¹ are shown in table 7. Net sales of sulfanilic acid were *** for 1989 and 1990 and *** to *** in 1991. The operating *** was \$*** in 1989, \$*** in 1990, and \$*** in 1991. Operating *** margins were *** percent in 1989, *** percent in 1990, and *** percent in 1991. Net sales for the 3-month interim periods were ***. The operating *** was \$*** in the 1992 interim period compared to an operating *** of \$*** in interim 1991. The operating *** margin as a share of sales was *** percent in interim 1991 and *** percent in interim 1992.

Table 7

Income-and-loss experience of R-M Industries on its operations producing sulfanilic acid; calendar years 1989-91, January-March 1991, and January-March 1992

* * * * *

The average unit sales value (on a per-pound basis), as shown in table 8, for R-M's sulfanilic acid operations was \$*** in 1991 compared to \$*** in 1989 and 1990. The quantity sold (*** in 1991 was *** than the *** sold in both 1989 and 1990. ***. The quantities sold and unit values were similar for the two interim periods. The operating *** on a per-pound basis for the interim periods was *** the operating *** for 1991. Cost of goods sold *** on a unit basis from \$*** in 1989 to \$*** in 1990, principally due to a ***. Cost of goods sold *** on a unit basis to \$*** in 1991, principally due to the ***.

Table 8

Income-and-loss experience (on a per-pound basis) of R-M Industries on its operations producing sulfanilic acid, calendar years 1989-91, January-March 1991, and January-March 1992

* * * * *

⁹⁹ A footnote to the preliminary draft of the 1991 audited financial statements states:

* * * * *

¹⁰⁰ A footnote to the preliminary draft of the 1991 audited financial statements states:

* * * * *

¹⁰¹ ***.

Hilton Davis provided *** financial data for sulfanilic acid *** produced for ***. Hilton Davis valued its net sales at ***. These data are shown in the following tabulation:

* * * * * * *

Capital Expenditures

Capital expenditures of R-M for its establishment in which sulfanilic acid is produced and for sulfanilic acid are shown in table 9.

Table 9

Capital expenditures by R-M Industries on its overall establishment operations, calendar years 1989-91, January-March 1991, and January-March 1992

* * * * * * *

Investment In Productive Facilities

R-M's investment in productive facilities and annual return on total assets are presented in table 10 for its overall establishment and sulfanilic acid operations.

Table 10

Value of assets and return on assets of R-M Industries for its overall establishment and sulfanilic acid operations, calendar years 1989-91

* * * * * * *

Research and Development Expenses

R-M replied in the questionnaire response that research and development expenses ***.¹⁰²

Impact of Imports on Capital and Investment

The Commission requested the U.S. producers to describe any actual or potential negative effects of imports of sulfanilic acid from China, Hungary, and/or India on their growth, development and production efforts, investment, and ability to raise capital (including efforts to develop a derivative or improved version of their product). Comments from the companies are presented in appendix F.

¹⁰² ***.

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 the merchandise, the Commission shall consider, among other relevant economic factors¹⁰³--

(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,

¹⁰³ 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 injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(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 706 or 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

(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.¹⁰⁴

Subsidies (item (I)) and agricultural products (item (IX)) are not issues in this investigation; 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 F. Available information follows on U.S. inventories of the subject product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets.

U.S. Importers' Inventories

According to questionnaire responses, most U.S. importers of sulfanilic acid from China, Hungary, and India typically do not maintain inventories of the product. Imported sulfanilic acid is either purchased on consignment for the

¹⁰⁴ 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."

end user or is imported directly by the end user for consumption in producing another product. ***.

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other Than the United States

The Commission requested that counsel representing China and Hungary provide information on the production of sulfanilic acid in the subject countries. The information requested consisted of production, inventories, capacity, home-market shipments, and exports to the United States, Europe, Asia, Latin America, and all other countries for the period of the investigation and projections for 1992-93. Although no counsel came forward to represent India, counsel representing the importer Gallard-Schlesinger Industries, Inc., was able to provide some of the requested data on this country. Telegrams were also sent to the U.S. Embassies in the countries under investigation seeking information regarding the respective foreign industries. No applicable information from the Embassies has been received.

China

Counsel representing China National Chemicals Import & Export Corp., Hebei Branch (Sinochem), a Chinese exporter,¹⁰⁵ provided information on the Chinese producers of sulfanilic acid. The data provided include information for the following plants: ***.¹⁰⁶ Sinochem Hebei is only an exporter and does not manufacture sulfanilic acid.

China's reported capacity to produce refined sulfanilic acid *** dramatically during most of the period of investigation, *** by *** percent between 1989 and 1990 and by *** percent between 1990 and 1991 (table 11). The interim period, however, shows a *** of *** percent. These *** in capacity are explained by the ***; the *** however, is the result of ***.¹⁰⁷ Capacity utilization has fluctuated, *** percentage points in 1990, *** percentage points in 1991, then *** percentage points in the comparison of interim periods.

Table 11

Refined sulfanilic acid: Chinese capacity, production, inventories, capacity utilization, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * *

¹⁰⁵ The Chinese respondent accounts for approximately *** percent of total Chinese exports of sulfanilic acid. The respondent exports only the refined grade of sulfanilic acid; another trading company, ***.

¹⁰⁶ ***.

¹⁰⁷ ***.

Sinochem Hebei is an exporter only and has no sales of sulfanilic acid in the home market.¹⁰⁸ Exports of sulfanilic acid to the United States have been *** during most of the period of investigation; shipments were *** over the previous year by *** percent in 1990 and by *** percent in 1991. A ***-percent *** in exports to the United States was reported in the first quarter of 1992. Projections for calendar years 1992 and 1993 are *** percent from calendar year 1991.¹⁰⁹ China's exports to Europe *** by *** percent in 1991, but were *** by *** percent in the comparison of the first quarters of 1991 and 1992. Exports to Asia *** in 1990 *** but *** considerably in 1991 and *** in the first quarter of 1992.¹¹⁰ China began exporting to *** in 1991, and this was the only export market that showed *** in the interim 1992 period. Total Chinese exports of refined sulfanilic acid *** in 1990 and 1991 (by *** and *** percent, respectively) but *** by *** percent in the comparison of first quarter 1991 to first quarter 1992.

Hungary

Counsel representing the Hungarian producer and exporter of sulfanilic acid, Nitrokemia and Nitrochem & Co. Ltd., provided information on the country's production and export trends. The respondents are responsible for 100 percent of Hungarian production and exports of sulfanilic acid.

Hungary's reported capacity to produce sulfanilic acid was unchanged from 1989 to 1990 and rose by *** percent from 1990 to 1991 (table 12). This increase was the result of improvements to the factory's existing production line and was made at the request of one of Nitrokemia's largest European customers. Capacity was down in the first quarter of 1991 while the factory was closed for improvements to existing equipment. No future expansions are planned.¹¹¹ Capacity utilization has been consistently high since 1989, ranging from *** to *** percent, as production ***.

Table 12

Sulfanilic acid: Hungarian capacity, production, inventories, capacity utilization, and shipments, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

* * * * *

¹⁰⁸ ***. The respondents in the preliminary investigation on China testified that China has a growing internal use for sodium sulfanilate as an additive in the dye, detergent, textile, and paper and optical brightener industries. (Conference transcript I, pp. 115-116.)

¹⁰⁹ The counsel for Sinochem Hebei explains this projected *** as the result of: ***.

¹¹⁰ ***.

¹¹¹ The managing director of Nitrochem, Laszlo Karpati, testified that his company expanded its capacity at the request of Ciba-Geigy in Switzerland; Mr. Karpati reported that increased production resulting from this expansion will be used to supply traditional European customers. No further expansions are planned, as this would require the installation of an entirely new production line. (Conference transcript II, pp. 115-119.)

The Hungarian producer testified that his facility's production process for sulfanilic acid is considerably different from that of the domestic producers and of other manufacturers. Referring to the "baking" technology as outdated, the Hungarian producer explained that his patented, one-stage process does not go through the intermediate production steps of creating either the technical grade or the sodium sulfanilate; by going immediately to the refined grade, the Hungarians have apparently discovered how to create a stable and consistent product, with very low levels of aniline and impurities.¹¹² Further, the Hungarian producer explained that his company's process uses less energy and creates far less waste water than that of other manufacturers of the product.

Hungarian exports to the United States *** by *** percent in 1990, then *** by *** percent in 1991. Although the level of exports *** in the comparison of the interim periods, this is primarily due to the ***. The Hungarian producer testified that Nitrokemia's exports to the United States are not projected to increase; the improvement of production facilities in early 1991 was intended to permit increased sales to Nitrokemia's large and traditional European customers.¹¹³ Exports to the United States have consistently accounted for *** percent of total exports. European countries comprise Nitrokemia's largest market, accounting for *** percent of total exports. When production was *** in the first quarter of 1991 and exports to the United States ***, sales to Europe were ***. *** and *** have been the only other markets for the Hungarian product during the past three years, ***.

The Hungarian producer testified that small inventories of the product (equivalent to less than 5 percent of yearly production) are maintained in case of an unexpected factory shutdown.

India

Counsel representing Gallard-Schlesinger Industries, Inc., an importer of sulfanilic acid from ***, provided information on the known Indian producers of sulfanilic acid, ***.

As shown in table 13, India's reported capacity to produce sulfanilic acid *** from 1989 to 1991 and is projected to ***. Similarly, production *** from 1989 to 1991 and is expected to *** in 1992 and 1993. Capacity utilization *** from *** percent in 1989 to *** percent in 1991 and is projected to *** to *** percent in 1993.

¹¹² Conference transcript II, pp. 113-115.

¹¹³ Nitrokemia's representative stated that his company had been approached by Gallard-Schlesinger (a U.S. importer) and asked to supply additional sulfanilic acid. In spite of this obvious demand, the Hungarian official explained that his company's priority continues to be traditional European customers with whom sales commitments of 3-5 years are typically made. He testified that Nitrokemia will maintain the business of Warner-Jenkinson for the prestige it brings to the Hungarian factory; requests for additional U.S. customers will be turned down. (Conference transcript II, pp. 115-119.)

Table 13

Sulfanilic acid: Indian capacity, production, inventories, capacity utilization, and shipments, 1989-91 and projected 1992-93

* * * * *

India's shipments to its home market as well as to all major export markets *** during 1989-91. Exports to the United States *** from *** pounds in 1989 and 1990 to *** pounds in 1991 and are projected to *** to *** pounds in 1992 and *** pounds in 1993. As a share of total shipments, home-market sales *** from *** percent in 1989 to *** percent in 1991 and are projected to *** in 1992 and 1993. Exports to the United States are expected to *** from *** during 1989-91 to approximately *** of total shipments in 1992 and 1993. Exports to third countries *** from more than *** of total shipments in 1989 to more than *** in 1991 but are projected to *** to less than *** in 1992 and 1993.

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

U.S. Imports

Table 14 presents data received from the 18 responding importers of sulfanilic acid, which are believed to account for almost all imports of sulfanilic acid (see appendix table D-5 for imports by grade). Imports of sulfanilic acid from the subject countries increased over most of the period of investigation, climbing by 59 percent in 1990 and by 232 percent in 1991; however, a decrease of 54 percent was reported in the interim period. Imports from China climbed by *** percent in 1990 and by 474 percent in 1991; a comparison of first quarter 1991 to first quarter 1992, however, showed a *** in imports of *** percent. Only imports from Hungary witnessed *** in every period of investigation; shipments of the product *** by *** percent in 1990, by *** percent in 1991, and by *** percent in interim 1992.¹¹⁴ Imports from India *** in 1990 and *** by *** percent in 1991; there were *** , however, in January-March 1992.

¹¹⁴ *** the Hungarian factory that produces the subject merchandise was shut down in the early part of 1991; from February 1991 to June/July 1991 there were essentially no imports from Hungary.

Table 14

Sulfanilic acid: U.S. imports, by sources, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
Quantity (1.000 pounds)					
China ¹	***	548	3,143	578	***
Hungary	***	***	***	***	***
India	***	***	***	***	***
Subtotal	749	1,192	3,952	686	317
Other sources ²	***	***	***	***	***
Total	***	***	***	***	***
Value ³ (1.000 dollars)					
China ¹	***	416	2,221	413	***
Hungary	***	***	***	***	***
India	***	***	***	***	***
Subtotal	535	896	2,914	488	242
Other sources ²	***	***	***	***	***
Total	***	***	***	***	***
Unit value (per pound)					
China	***	\$0.76	\$0.71	\$0.71	***
Hungary	***	***	***	***	***
India	***	***	***	***	***
Average	\$0.71	.75	.74	.71	\$0.76
Other sources	***	***	*** ³	***	***
Average	***	***	***	***	***
Share of total quantity (percent)					
China	***	***	***	***	***
Hungary	***	***	***	***	***
India	***	***	***	***	***
Subtotal	***	***	***	***	***
Other sources ²	***	***	***	***	***
Total	***	***	***	***	***

¹ Includes *** pounds of Chinese material valued at \$*** that were transshipped through Hong Kong in 1991.

² Nonsubject imports are believed to be understated for 1989.

³ Landed, duty-paid at the U.S. port of entry, including ocean freight and insurance costs, brokerage charges, and import duties.

⁴ Not applicable.

Note.--Because of rounding, figures may not add to the totals shown. Unit values are calculated from the unrounded figures, using data of firms supplying both quantity and value information.

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

The value of imports from the subject countries climbed by 67 percent in 1990 and by 225 percent in 1991; the value of imports was down by 50 percent, however, in interim 1992. The unit value of subject imports decreased over the period of investigation in all cases except for ***. The unit value (per pound) for the Chinese sulfanilic acid started at \$*** in 1989; it *** by \$*** in 1990, then *** by \$*** between 1990 and the first quarter of 1992. The Hungarian product *** from a unit value of \$*** in 1989 to \$*** in January-March 1992; it reached its ***, however, of \$*** per pound in 1991. India's unit value started off at \$*** in 1990, but *** to \$*** in 1991.

There were *** imports of technical sulfanilic acid from China between 1989 and 1992. Imports of Chinese refined sulfanilic acid *** than the imports of sodium sulfanilate; 1991 imports of the Chinese refined grade were *** of 1989 imports, *** imports of Chinese sodium sulfanilate had ***. Imports from Hungary are only of the refined grade, and the majority of reported imports from India were ***.¹¹⁵

Reported imports of sulfanilic acid by quantity from all nonsubject countries *** in 1990 by *** percent, then *** in 1991 and interim 1992 by *** percent and *** percent, respectively. The main overall source of nonsubject imports was Japan, which principally manufactured sulfanilic acid as a byproduct in the production of sulfa drugs;¹¹⁶ *** firms reported importing the refined grade of the subject merchandise from this country over the period of investigation. In mid-1990 the Japanese essentially withdrew from the U.S. market as a result of changes in the market conditions relating to sulfa drugs. Imports from Japan fell from *** pounds in 1990 to *** pounds in 1991, a drop of *** percent. A decline of imports from Japan by *** percent in the comparison of interim 1991 to interim 1992 shows the country's continued withdrawal from the U.S. market. It was the disappearance of this source of refined grade sulfanilic acid in 1991 that opened the door for increased imports from *** that same year. The only other nonsubject imports have been shipments of *** grade sulfanilic acid from ***.

Sulfanilic acid is produced in Hungary, India, Japan, the United Kingdom, Germany, France, and Brazil. At the conference on China, the petitioner characterized the world market for sulfanilic acid as chaotic. Foreign sources of sulfanilic acid change from year to year and, therefore, the supply of sulfanilic acid is unstable.¹¹⁷ Respondents testified that there is an adequate supply of sulfanilic acid in the world market today from a multitude of sources, namely China, Hungary, and India.¹¹⁸ However, both purchasers and importers admitted the need to maintain several sources of supply, given the periodic instability of the product's availability. Some purchasers testified that an apparent shortage has been created as a result of the preliminary affirmative LTFV determination on China, and that their companies are not always able to purchase the grade of choice of sulfanilic

¹¹⁵ Hungarian manufacturers of sulfanilic acid do not produce anything but the refined grade. India produces all three grades; ***.

¹¹⁶ Petition on Hungary and India, p. 46.

¹¹⁷ Conference transcript I, pp. 61-62.

¹¹⁸ Conference transcript I, p. 98.

acid.¹¹⁹ Warner-Jenkinson would like to purchase more of the refined grade (available only through imports) but said importers have been unwilling to bring in the Chinese material. Sandoz attempted to purchase the refined grade from Hungary, but the Hungarian producer testified that it had the capacity to supply only one U.S. customer.¹²⁰ Two importers, Gallard-Schlesinger and Nu-Tech Chemicals, testified that they had attempted to bring in more of the refined grade from India, but that producers there were also limited by capacity.¹²¹

Market Penetration by LTFV Imports from China, Alleged Subsidized Imports from India, and Alleged LTFV Imports from Hungary and India

Table 15 details the degree of market penetration in terms of the percentage of total apparent consumption of sulfanilic acid accounted for by U.S. producers, by imports from the subject countries of China, Hungary, and India, and by imports from all other sources (see appendix table D-6 for shares of consumption by grade). Over the period of investigation, the U.S. producers' share of the quantity of total apparent consumption ***; starting at *** percent in 1989, the U.S. producers' share *** by approximately *** percentage points in 1990. A slight *** was reported in 1991, and the first quarter of 1992 showed a *** to *** percent of consumption. In terms of value, the U.S. producers' share *** from *** percent in 1989 to *** percent in 1990; from this point on, the U.S. producers' share *** steadily, reaching *** percent in the first quarter of 1992.

The share of consumption accounted for by imports from subject countries grew by 32.2 percentage points during 1989-91, reaching 46.2 percent in 1991. By the first quarter of 1992, however, the share had decreased to 28.3 percent of total U.S. consumption. The share of value held by imports from subject countries shows a similar trend, increasing by 27.6 percentage points between 1989 and 1991, then accounting for a lower share of value (25.2 percent) in January-March 1992. Examined country by country, China is the primary contributor to the above pattern of growth; imports from this country claimed *** percent of U.S. consumption in 1989 and 36.4 percent in 1991. *** does not follow the same pattern; the share of U.S. consumption held by the *** product *** during the period of investigation. ***'s share of U.S. consumption is ***, reaching *** percent in 1991. The share of consumption claimed by nonsubject imports *** by *** percentage points from 1989 to 1990, then *** considerably, from *** percent in 1990 to *** percent in 1991. As

¹¹⁹ Conversations with ***. The preliminary LTFV determination on China was effective on Mar. 18, 1992. (See 57 F.R. 9409, Mar. 18, 1992.)

¹²⁰ Although the Hungarian manufacturer, Nitrokemia, shut down production during February-June 1991 to "intensify" its production capabilities, the firm testified that increased production had been promised to one of its largest customers, Ciba-Geigy in Switzerland. Reportedly, the only U.S. company supplied by the Hungarians is Warner-Jenkinson. Gallard-Schlesinger, U.S. importer of the Hungarian product, testified that it had requested additional imports from Nitrokemia but had been turned down by the company for reasons of inadequate supply. (Conference transcript II, p. 142.)

¹²¹ Conference transcript II, pp. 140-144.

Table 15

Sulfanilic acid: Shares of apparent U.S. consumption supplied by U.S. producers and U.S. importers of product from China, Hungary, India, and all other sources,¹ 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
Share of the quantity of U.S. consumption (percent)					
Producers' U.S. shipments . . .	***	***	***	***	***
Importers' U.S. shipments:					
China	***	7.7	36.4	28.0	***
Hungary	***	***	***	***	***
India	***	***	***	***	***
Subtotal	14.0	16.7	46.2	32.8	28.3
Other sources	***	***	***	***	***
Total	***	***	***	***	***
Share of the value of U.S. consumption ³ (percent)					
Producers' U.S. shipments . . .	***	***	***	***	***
Importers' U.S. shipments:					
China	***	6.9	30.5	23.1	***
Hungary	***	***	***	***	***
India	***	***	***	***	***
Subtotal	12.5	16.3	40.1	27.7	25.2
Other sources	***	***	***	***	***
Total	***	***	***	***	***

¹ Nonsubject import shipments are believed to be understated for 1989; consequently, U.S. consumption for 1989 may be understated by as much as 10 to 15 percent.

² Less than 0.05 percent.

³ Based on f.o.b. U.S. shipping point values.

Note.--Because of rounding, figures may not add to the totals shown; shares are computed from the unrounded figures.

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

mentioned earlier in the report, imports from Japan and Hungary began declining in late 1990 and early 1991 as both countries decreased exports to the U.S. market; ***, while Hungary's exit accounts for its *** of consumption (**% percent) in interim 1991.

Prices

Marketing Characteristics

Sulfanilic acid is available in three different forms, and prices tend to vary among these forms. Technical sulfanilic acid is the lowest-priced of the three because its production costs are lower and it has impurities that are undesirable for many applications. Sodium sulfanilate has a higher value and price than the technical sulfanilic acid because it is treated to remove certain impurities in additional production processes.¹²² Finally, refined or pure sulfanilic acid generally has the highest price because it has higher production costs and the least impurities.¹²³

Before sulfanilic acid is purchased by consumers it must be qualified for use. According to the petitioner, qualification procedures are a major part of the purchasing decision.¹²⁴ R-M stated that consumers usually visit R-M's plant and analyze its ability to deliver the product and its overall manufacturing process.¹²⁵ Purchasers also consider the environmental and worker safety conditions of the plant. ***.¹²⁶ This process can take anywhere from a few days to several months.¹²⁷

Sulfanilic acid is sold on both a contract and a spot basis. R-M reported that approximately *** percent of its total sales in 1991 were made on a contract basis. Similarly, importers reported that *** of their sales are made using contracts that typically range in length from 3 months to 1 year.¹²⁸ Price and quantity are usually negotiated at the end of each year and are fixed for the duration of the contract. Negotiations for different customers are usually held simultaneously; therefore, ***. R-M stated that its contracts are in the form of a written letter confirming the deal. Prices are generally determined by the supplier's cost and the availability and price of competitors' products. R-M stated that its contract price is usually predicated upon a stable price of the raw materials used as inputs, primarily aniline. According to R-M, prices of aniline are often subject to fluctuations; therefore, its agreements to supply sulfanilic acid usually contain clauses that allow for price modifications corresponding to price changes for aniline.¹²⁹ Contracts often contain standard quantity

¹²² The price of sodium sulfanilate solution is based on the amount of free acid that is present. The sodium sulfanilate solution sold by the petitioner is *** percent salt and *** percent water.

¹²³ Although this material is customarily priced the highest, petitioner argued that the Chinese are selling refined sulfanilic acid at a price consistent with that of petitioner's technical sulfanilic acid (Conference transcript I, p. 16).

¹²⁴ Conference transcript I, p. 73.

¹²⁵ R-M reported that it has also begun to look at its raw material suppliers for qualification programs and statistical proof that the materials are meeting certain standards (Conference transcript I, p. 73).

¹²⁶ ***.

¹²⁷ ***.

¹²⁸ ***.

¹²⁹ Conference transcript II, pp. 72-73.

requirements; several suppliers of sulfanilic acid also reported that they charge price premiums for shipments below a single truckload; these premiums ranged from *** to *** percent.

Technical and refined sulfanilic acid are priced on a dollar-per-pound basis, whereas the sodium sulfanilate is sold on a dollar-per-pound-of-free acid basis. R-M reported that it issues price lists for its sulfanilic acid, but no importers reported using price lists for their sales. R-M stated that ***.

The petitioner and the importer of the Hungarian product quote prices of sulfanilic acid on an f.o.b. basis, whereas importers of the Chinese and Indian product reported that they quote and sell on a delivered basis.¹³⁰ Transportation costs account for between 1 and 8 percent of the overall product cost.¹³¹ R-M and the importers that sell the sulfanilic acid stated that they do not believe that transportation costs are an important consideration in their customers' purchasing decisions. However, all purchasers reported that transportation costs are an important factor in their purchasing decisions.

Both U.S. producers and importers reported that they can ship to the entire United States, but the market is generally concentrated in the Northeast, Southeast, and Midwest, where the large consumers are located. Sulfanilic acid is packed in bags that are then placed on a pallet and shrink-wrapped with polyethylene film for protection. The typical package contains around 2,000 pounds of material in bags. The cost of the packaging is included in the price of the sulfanilic acid but is not a significant portion of the total cost of the product.¹³² ¹³³

Price Trends

The Commission requested price and quantity data from U.S. producers and importers for their sales of sulfanilic acid during the period January 1989-March 1992. Prices were requested for the largest quarterly sale of technical

¹³⁰ Because of these differences, f.o.b. prices are shown for the domestic and the Hungarian products, and delivered prices are shown for the Chinese and Indian products. These prices are indexed to display price trends. R-M and the importers of the Chinese and Indian product estimated delivered and f.o.b. prices, respectively. Therefore, prices are compared both on an f.o.b. basis and a delivered basis for China and India. In the case of Hungary, prices are compared only on an f.o.b. basis.

¹³¹ Sodium sulfanilate in solution form is more costly to transport; R-M reported that transportation costs of the solution average about *** percent, while those for the powders average only *** percent. ***.

¹³² ***.

¹³³ Packaging costs are included in the cost of both the domestic and imported products. Price tables include packaging costs; staff has not adjusted these because the packaging costs are not significant and are included in both domestic and imported prices.

sulfanilic acid, refined sulfanilic acid, and sodium sulfanilate.¹³⁴ R-M provided data for technical sulfanilic acid and sodium sulfanilate for the entire period but only reported data for refined sulfanilic acid during the period January 1989-December 1989.¹³⁵ Usable pricing data were received from *** firms that imported sulfanilic acid from China and then resold the material; *** reported usable data for sales of Indian product and *** for Hungarian product.¹³⁶ Prices were reported for refined sulfanilic acid for 1990 and 1991. *** reported prices for its sales of sodium sulfanilate imported from China but only for the period ***. The products for which pricing data were received accounted for *** percent of U.S. producers' domestic shipments, *** percent of domestic shipments of Chinese material, *** percent of Hungarian, and *** percent of Indian sulfanilic acid in 1991.

Sales of technical grade sulfanilic acid

Prices for domestic technical sulfanilic acid *** during the period *** (table 16).¹³⁷ ¹³⁸ Prices *** percent from the first to the fourth quarter of 1989. These prices fluctuated throughout the remainder of the period and were *** in January-March 1992 than they were in the same quarter of 1989.¹³⁹

Table 16

Technical grade sulfanilic acid: Net f.o.b. prices, delivered prices, price indexes, and total quantities of U.S.-produced and Indian product, by quarters, January 1989-March 1992

* * * * * * *

Only *** reported prices for technical sulfanilic acid imported from India and *** during the period for which data were requested. The Indian product was sold for ***.

¹³⁴ Prices were requested for sodium sulfanilate sold both in dry and solution form.

¹³⁵ R-M ceased production of refined grade sulfanilic acid in late 1989.

¹³⁶ ***.

¹³⁷ As stated earlier, R-M and the importer of Hungarian material reported that they quote prices and sell product on an f.o.b. basis, while the other importers sell on a delivered basis. In addition to the actual f.o.b. and delivered prices, price indexes are also discussed to gauge changes in both the imported and domestic prices. R-M did provide delivered pricing information based on its knowledge of the delivery costs actually paid by its customers; these prices are used for comparison purposes.

¹³⁸ No importers reported prices for technical sulfanilic acid imported from China or Hungary.

¹³⁹ ***.

Sales of sodium sulfanilate

Prices for domestic sodium sulfanilate powder *** from January-March 1989 to the same quarter of 1991, *** percent during that time (table 17). These prices ***. Prices *** in the first quarter of 1992; overall, these domestic prices were *** percent *** in January-March 1992 than in the same quarter of 1989.

Table 17

Sodium sulfanilate: Net f.o.b. prices, delivered prices, price indexes, and total quantities of U.S.-produced and Chinese product in solution and powder form, by quarters, January 1989-March 1992

* * * * * * *

*** reported prices for Chinese sodium sulfanilate but only for ***; these prices *** percent during that time.¹⁴⁰ No prices were reported for Hungarian or Indian sodium sulfanilate.

R-M was the only supplier to report prices for sodium sulfanilate sold in solution form. Prices for this product *** from April-June 1989 to July-September 1990, *** percent during that time. These prices *** in the fourth quarter of 1990 before *** percent in the first quarter of 1991. Prices *** in 1991 before *** percent in the first quarter of 1992. Overall, R-M's prices for sodium sulfanilate solution were *** percent *** in January-March 1992 than in April-June 1989.

Sales of refined grade sulfanilic acid

Prices for U.S.-produced refined sulfanilic acid were only reported for 1989 because R-M stopped manufacturing it at the end of 1989 (table 18). Prices for this product *** from January 1989 to December 1989. ***.

Table 18

Refined grade sulfanilic acid: Net f.o.b. prices, delivered prices, price indexes, and total quantities of U.S.-produced, Chinese, and Hungarian product, by quarters, January 1989-March 1992

* * * * * * *

Prices for Hungarian refined grade sulfanilic acid *** during 1989, *** percent in the first quarter of 1990, and *** for the remainder of 1990.¹⁴¹

¹⁴⁰ ***.

¹⁴¹ These prices represent f.o.b. prices reported by ***. ***.

These prices then *** percent in the first quarter of 1991 but then *** percent in the first quarter of 1992. Overall, prices for Hungarian refined sulfanilic acid were *** in the first quarter of 1992 than in the same quarter of 1989.

Delivered prices for Chinese refined sulfanilic acid were reported for the period October-December 1990 to January-March 1992. Prices for this Chinese product *** from the fourth quarter of 1990 to the first quarter of 1991. These delivered prices *** from January-March 1991 to July-September 1991 and *** through the first quarter of 1992. Overall, these prices were *** at the end of the period than at the beginning. No prices were reported for Indian refined grade product.

Price Comparisons

The possibility of price comparisons between domestic and imported sulfanilic acid was very limited during the period of investigation. The majority of imports of sulfanilic acid from China and Hungary are the refined material. Because there were some sales of technical grade from India and sodium sulfanilate from China, there are some comparisons.

There was only one instance where the domestic and imported technical grade sulfanilic acid could be compared (table 19). Regardless of whether one compares prices on a delivered basis or an f.o.b. basis, the Indian product was lower-priced than the comparable domestic product.¹⁴² Comparing f.o.b. prices, the Indian product was priced *** percent below the domestic product in ***; using delivered prices, the Indian product was priced *** percent below the domestic product during that quarter.

Table 19

Margins of underselling for sales of technical grade sulfanilic acid, sodium sulfanilate, and refined grade sulfanilic acid, by quarters, January 1989-March 1992

* * * * *

There were some imports of sodium sulfanilate from China during the period of investigation; however, as stated earlier, ***. Prices for the Chinese product were *** lower than those for the domestic product.¹⁴³

¹⁴² As stated earlier, R-M and the importer of the Hungarian material sell their products on an f.o.b. basis, whereas the other importers sell on a delivered basis. R-M provided estimates of its delivered prices, and the importers of Chinese and Indian material estimated their f.o.b. prices; therefore, comparisons are made on both bases.

¹⁴³ ***.

In the refined grade market, sulfanilic acid was not imported from China until 1990. R-M, the only U.S. producer of refined sulfanilic acid, stopped producing and selling refined material in 1989. Therefore, there is no overlap between sales of domestic and Chinese refined sulfanilic acid. There were four quarters in which comparisons could be made between the domestic and Hungarian material. As table 19 indicates, the Hungarian product was priced below the domestic product in all four quarters where comparisons were possible, with margins ranging from *** to *** percent.¹⁴⁴

Purchaser Responses

The Commission sent questionnaires to 17 firms believed to be purchasers of domestic and Chinese sulfanilic acid in the United States; 12 responses were received, with 10 providing usable data.¹⁴⁵ During January 1989-March 1992, these firms purchased all three grades of sulfanilic acid and used them in the production of dyes and brighteners. These firms accounted for 95.5 percent of U.S. shipments and 88.9 percent of shipments of Chinese sulfanilic acid during 1991.¹⁴⁶ Information obtained from these purchasers is summarized below.¹⁴⁷

Because many of these firms require that a supplier's sulfanilic acid pass certain qualification procedures before it can be purchased, all purchasers reported that they are aware of the country of origin of the product. However, only about half of the purchasers reported that they always know the manufacturer of the sulfanilic acid that they are purchasing. These firms reported purchasing sulfanilic acid as frequently as monthly and as infrequently as annually. Although 4 of the 10 firms reported that they seldom change suppliers, 9 firms reported that they did change suppliers within the last three years. The most frequently mentioned reason for changing suppliers was the need to obtain high-quality product; these firms reported that it was necessary to switch from R-M to other sources because R-M was no longer selling refined grade sulfanilic acid.¹⁴⁸ Two firms mentioned the lack of Japanese production as a reason for changing suppliers. In general, purchasers stated that they usually contact between two and four suppliers before making a purchase.

¹⁴⁴ ***.

¹⁴⁵ Not all firms answered all questions; therefore, the number of responses to some questions is less than 10.

¹⁴⁶ These firms also purchased sulfanilic acid from other sources, such as Japan, Hungary, India, and the United Kingdom. Since the purchaser questionnaire was prepared in conjunction with the investigation concerning China, many of the responses deal specifically with imports from China.

¹⁴⁷ Of these firms, three (***) account for the majority of purchases of sulfanilic acid.

¹⁴⁸ ***.

Purchasers were asked to discuss the importance of several factors in their firm's purchasing decisions for sulfanilic acid.¹⁴⁹ Virtually all of the responding purchasers reported that availability and product quality were very important.¹⁵⁰ These two factors were ranked as the first and second most important factors by all but one purchaser. Price was characterized as being important by five firms and very important by one firm; these firms ranked price as the third most important factor, behind quality and availability.¹⁵¹ Purchasers were mixed as to the importance of credit terms; while one found it somewhat important, two found it important, and two others found it not important. The remaining factors, prearranged contracts, range of product line, and traditional source of supply, were reported to be not that important.

Purchasers were also asked to directly compare the U.S. and Chinese product with respect to nine different factors.¹⁵² Four firms responded to this question, and at least three of the four reported that the two products were identical with respect to delivery terms and technical support. In the areas of delivery time, packaging, and reliability of supply, half of the purchasers found the two products to be equal.¹⁵³ The majority of purchasers reported that the Chinese product was superior in the areas of product consistency and quality. Finally, three firms stated that the domestic product was higher-priced than the Chinese product.

Five of seven firms reported that Chinese sulfanilic acid was available at a lower delivered price than the domestic product during 1991. Two firms stated that the quality of the Chinese product was superior to that of the domestic; two stated that they were similar; and one stated that it was inferior.¹⁵⁴ Four of these purchasers stated that they did purchase the domestic product even though a lower-priced product from China was available. Reasons for doing so included preference for a domestic source, the ongoing antidumping investigation involving China, desire for multiple sources, and erratic supply, poor packaging, and undesirable pricing policies of the Chinese. ***.

Purchasers reported that they buy the U.S. product on an f.o.b. basis, while the imported product is usually purchased on a delivered basis. Transportation costs account for less than 5 percent of the total cost of the sulfanilic acid; however, all purchasers reported that delivery costs are considered when choosing a supplier. None of the firms reported that U.S.

¹⁴⁹ These factors were availability, credit terms, prearranged contract, price, product quality, range of supplier's product line, and traditional source of supply.

¹⁵⁰ Several firms reported that both of these factors were critically important to their business.

¹⁵¹ ***.

¹⁵² These factors were availability, delivery time, delivery terms, packaging, price, product consistency, product quality, reliability of supply, and technical support.

¹⁵³ In each of these areas, one purchaser found the domestic product to be superior and another found the Chinese product to be superior.

¹⁵⁴ The two remaining firms did not respond to this portion of the question.

producers or importers of the Chinese product equalize freight from the plant or warehouse.¹⁵⁵

All purchasers stated that there are no substitutes for sulfanilic acid. There also appears to be limited substitution between the different grades of sulfanilic acid.¹⁵⁶ Although only five purchasers responded to a question regarding interchangeability of the grades, four reported that refined sulfanilic acid and sodium sulfanilate cannot be used interchangeably in their production process. ***. Purchasers reported that switching from refined grade to sodium sulfanilate (or vice versa) is difficult because plants are designed to work with a particular grade of material. Therefore, modification and/or new equipment would be needed to make the switch from refined sulfanilic acid to sodium sulfanilate (or vice versa). Several purchasers stated that the quality of their end products depends upon the use of the preferred grade of sulfanilic acid. Switching grades of sulfanilic acid also reportedly reduces the efficiency of the plant. These firms were also asked to estimate how much lower-priced one type of sulfanilic acid would have to be to induce a shift to that grade of input. Most of the purchasers reported that it is difficult to estimate because there are many additional costs involved in switching.¹⁵⁷ In addition, purchasers stated that switching from sodium sulfanilate solution to powder would also be very difficult. ***.

Purchaser Prices

Prices were submitted by five firms that purchased sulfanilic acid during the period of investigation; the pricing information received accounted for 70 percent of U.S. producers' domestic shipments and 23 percent of importers' shipments of Chinese material in 1991.¹⁵⁸

Weighted-average delivered prices for domestic technical grade sulfanilic acid fluctuated during the period, showing no clear trend; these prices were *** in January-March 1992 than they were in January-March 1989 (table 20). No purchase prices were reported for technical grade sulfanilic acid imported from China.

¹⁵⁵ R-M reported that during a shortage period in January-April 1991, it had to ship sodium sulfanilate in solution form instead of in powder form. The cost of shipping solution is higher than that of powder; however, Mr. Dickson, president of R-M, reported that R-M did not absorb any of the additional freight costs. According to Mr. Dickson, the customers that were affected were spot customers; if the customers had been regular contract customers, R-M would have absorbed some of the additional costs (Conference transcript II, pp. 57 and 74).

¹⁵⁶ R-M stated that it believed that all purchasers could use any grade of sulfanilic acid; purchasers disagreed with R-M's assertions.

¹⁵⁷ Additional costs include those for new machinery, modification of existing machinery, additional labor, further purification procedures, etc.

¹⁵⁸ ***.

Table 20

Sulfanilic acid: Weighted-average net delivered purchase prices and quantities of U.S.-produced and Chinese products, by quarters, January 1989-March 1992

* * * * * * *

Purchase prices for domestic refined grade material were reported only for 1989. These prices *** percent from January-March to July-September 1989 but then *** percent in the last quarter of that year. Overall, these prices were *** at the end of 1989 than they were in the beginning. Prices for Chinese refined grade material *** in the last two quarters of 1990.¹⁵⁹ These prices then *** in the first quarter of 1991, *** in the second quarter, and *** during the rest of the year. Overall, these prices were *** in October-December 1991 than they were in July-September 1990.

Purchase prices for domestic sodium sulfanilate (in powder form) *** from July-September 1989 to January-March 1991. These prices *** during 1991 but *** in the first quarter of 1992. Overall, these prices were *** in January-March 1992 than in January-September 1989.¹⁶⁰ *** also reported prices for Chinese sodium sulfanilate but only for three quarters in 1991. These prices *** percent from April-June 1991 to July-September and *** in the fourth quarter.¹⁶¹

There are no comparisons to be made between purchase prices for technical or refined grade material. There is only one instance where sodium sulfanilate prices could be compared. However, the Chinese price is for a product that is different from the U.S. product. The Chinese price is lower than the domestic price, even when an adjustment is made to compensate for the difference.¹⁶²

Lost Sales and Revenues Involving China

Lost Sales and Revenues From the Final Investigation

*** submitted *** allegations of lost sales and *** allegations of lost revenues due to competition from Chinese product.¹⁶³ The *** lost sales allegations that specifically involved China totaled \$*** and involved *** pounds of sulfanilic acid; the lost revenue allegations totaled \$*** and

¹⁵⁹ ***.

¹⁶⁰ ***.

¹⁶¹ ***.

¹⁶² ***.

¹⁶³ *** of these lost sales allegations and *** lost revenues concern competition from Chinese and Hungarian product; they are covered in the section entitled "Lost Sales and Revenues Involving Hungary and India."

involved *** pounds of product. Staff contacted one of the two purchasers involved, and a summary of the information obtained follows.

* * * * * *164 165 166 167 168

Lost Sales and Revenues From the Preliminary Investigation

The Commission received *** allegation of lost revenues and *** allegations of lost sales from ***. The lost revenue allegation totaled \$*** and involved *** pounds of sulfanilic acid sold during ***. The *** lost sales allegations totaled \$*** and involved *** pounds of sulfanilic acid allegedly purchased from Chinese suppliers during ***. The staff contacted each of these three purchasers, and a summary of the information obtained follows.

* * * * * *169 170 171

Lost Sales and Revenues Involving Hungary and India

The Commission received *** allegations of lost sales and *** allegations of lost revenues from *** due to competition from Hungary.¹⁷² The *** lost sales allegations totaled approximately \$*** and involved *** pounds of sulfanilic acid, while the lost revenue allegations totaled \$*** and involved *** pounds of the product. *** also alleged that it lost revenues of \$*** on a sale of *** pounds of *** due to competition from Indian suppliers. Staff contacted both of the purchasers involved, and a summary of the information obtained follows.

* * * * * *173

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the currencies of two of the three countries subject to investigation depreciated in relation to the U.S. dollar over the period from January-March

164 ***.
 165 ***.
 166 ***.
 167 ***.
 168 ***.
 169 ***.
 170 ***.
 171 ***.
 172 *** lost sales allegations and the *** lost revenue allegations concerned imports from both Hungary and China.
 173 ***.

1989 through January-March 1992 (table 21).¹⁷⁴ ¹⁷⁵ The nominal values of the Hungarian and Indian currencies depreciated by 30.9 percent and 41.0 percent, respectively. When adjusted for movements in producer price indexes in the United States and the specified countries, the real value of the Hungarian currency appreciated by 10.6 percent while the Indian currency depreciated by 21.9 percent relative to the dollar during the periods for which data were collected.

Table 21
Exchange rates:¹ Indexes of nominal and real exchange rates of selected currencies, and indexes of producer prices in those countries,² by quarters, January 1989-March 1992

Period	U.S. producer price index	Hungary			India		
		Producer price index	Nominal exchange rate index	Real exchange rate index ³	Producer price index	Nominal exchange rate index	Real exchange rate index ³
1989:							
Jan.-Mar.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.-June.....	101.8	103.4	88.5	90.0	103.4	94.9	96.4
July-Sept.....	101.4	105.4	88.8	92.3	106.7	92.0	96.8
Oct.-Dec.....	101.8	105.4	89.3	92.5	107.9	90.4	95.8
1990:							
Jan.-Mar.....	103.3	118.7	84.4	97.0	108.6	89.7	94.4
Apr.-June.....	103.1	124.3	83.2	100.3	112.5	88.1	96.2
July-Sept.....	104.9	126.7	85.8	103.6	116.2	87.1	96.4
Oct.-Dec.....	108.1	135.0	88.6	110.6	119.3	84.5	93.3
1991:							
Jan.-Mar.....	105.9	(⁴)	76.9	(⁴)	123.5	81.2	94.8
Apr.-June.....	104.8	(⁴)	71.1	(⁴)	126.3	74.4	89.7
July-Sept.....	104.7	(⁴)	70.7	(⁴)	132.3	59.3	75.0
Oct.-Dec.....	104.8	(⁴)	70.7	(⁴)	136.2	59.1	76.7
1992:							
Jan.-Mar.....	104.6	(⁴)	69.1	(⁴)	138.5 ⁵	59.0	78.1 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 Indian price data reported for January-February only.

Note.--January-March 1989 = 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, May 1992.

¹⁷⁴ International Financial Statistics, May 1992.

¹⁷⁵ The value of the currency of the People's Republic of China is determined by the Government of China rather than the free market. Therefore, an accurate description of movements in the Chinese exchange rate cannot be presented.

APPENDIX A

**FEDERAL REGISTER NOTICES OF THE U.S. INTERNATIONAL TRADE
COMMISSION AND THE U.S. DEPARTMENT OF COMMERCE**

[Investigation No. 731-TA-538 (Final)]

Sulfanilic Acid the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-538 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) of sulfanilic acid and sodium sulfanilate,¹ provided for in subheadings 2921.42.24 and 2921.42.70 of the Harmonized Tariff Schedule of the United States.

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

EFFECTIVE DATE: March 18, 1992.

FOR FURTHER INFORMATION CONTACT: Lori Hylton (202-205-3199), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20438. 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.

¹ The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and sodium salt of sulfanilic acid (sodium sulfanilate). For a comprehensive description of the merchandise subject to this investigation, see International Trade Administration, Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China (57 FR 9408, March 18, 1992).

**SUPPLEMENTARY INFORMATION:
Background**

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of sulfanilic acid from China are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on October 3, 1991, by R-M Industries, Inc., Fort Mill, SC.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

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 this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on June 15, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on June 30, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 19, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties

nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 24, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; and deadline for filing is June 25, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs in July 8, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 8, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.8, 207.3 and 207.7 of the Commission's rules.

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

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

Issued: April 8, 1992

By order of the Commission.

Kenneth R. Mason,
Secretary.

(A-570-815)

Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid From the People's Republic of China

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

EFFECTIVE DATE: July 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Brian Smith, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 377-1756 and (202) 377-1786, respectively.

Final Determination

The Department of Commerce ("the Department") determines that sulfanilic acid from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673d). The Department also determines that critical circumstances do not exist. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Period of Investigation

The period of investigation ("POI") is May 1, 1991, through October 31, 1991.

Case History

Since the publication of our preliminary determination on March 18, 1992 (57 FR 9409), the following events have occurred.

On March 20, 1992, respondent, China National Chemicals Import & Export Corporation, Hebei branch ("Sinochem Hebei"), requested a 30 day postponement of the final determination and also requested a public hearing. On March 20, 1992, respondent also requested that the Department reissue its preliminary determination to correct alleged double counting of delivery costs to the factories for certain material and non-material inputs used to produce the subject merchandise. On March 28, 1992, we denied respondent's request to reissue the preliminary determination. However, we informed respondent that for the final determination, we would confirm whether all input prices included delivery to the factories.

Respondent alleged that the sulfanilic acid industry is a fully market-oriented industry ("MOI"). Based on the standard enunciated in the Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the

People's Republic of China 57 FR 9409, 9410, (March 18, 1992)) ("Sulfanilic Acid"), we sent an MOI questionnaire to respondent and the PRC government on March 28, 1992. On March 27, 1991, the PRC government submitted, through the U.S. embassy in Beijing, quantity and value data for inputs used to produce sulfanilic acid.

On April 3, 1992, we published a notice postponing the final determination until no later than June 28, 1992 (57 FR 11466). On April 9, 1992, Sinochem Hebei submitted its response to our MOI questionnaire. From April 20 through April 30, 1992, we conducted verification at Sinochem Hebei, Baoding No. 3 factory, and Xinyu factory at Shijiazhuang, Baoding, and Beijing, PRC. We also examined the sales information of Sinochem U.S.A. in New York, New York on April 23, 1992. On May 22, 1992, we issued verification reports of our findings.

On June 5, 1992, respondent and petitioner submitted their briefs. On June 10, 1992, respondent and petitioner submitted their rebuttal briefs. On June 11, 1992, we requested that respondent re-submit its brief because it contained new factual information in contravention to 19 CFR 353.31(a)(1)(i). On June 11, 1992, respondent re-submitted its brief. On June 12, 1992, respondent was instructed again to re-submit its brief because it still contained new factual information.

A public hearing was held on June 12, 1992. On June 12, 1992, we requested for a third time that respondent re-submit revisions to its brief to delete new factual information. To finally delete all new factual information from its briefs, respondent submitted revisions to its brief on June 12, and June 16, 1992. However, both submissions still contained new factual information. Therefore, on June 23, 1992, pursuant to 19 CFR 353.31(a)(3), we removed the new factual information in question from the record.

Separate Rates

In our preliminary determination, we stated that we would not make a final decision as to whether Sinochem Hebei should receive a company-specific rate until we examined the trading company's claims at verification.

Based on our findings at verification, we have determined that Sinochem Hebei has demonstrated, pursuant to the test enunciated in the Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"), that it is entitled to a separate rate. (For further discussion, see DOC Position to Comment 6 below).

Unless a respondent demonstrates entitlement to a separate, company-specific rate pursuant to the test enunciated in *Sparklers*, we will presume that they are subject to a single rate. (See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 56 FR 66831 (December 28, 1991) ("Butt-weld Pipe Fittings").) Since Sinochem Hebei was the only party to respond to our questionnaire, we will not issue company-specific rates to other PRC exporters of the subject merchandise because these exporters did not fully cooperate or provide all requested information in response to our questionnaire. Margins for the non-responding exporters will be determined based on application of the best information available ("BIA"), pursuant to section 776(c) of the Act. In determining what rate to use as BIA, we have followed the two-tiered methodology, outlined in *Sulfanilic Acid*.

Therefore, as BIA, the dumping margin for all other exporters who did not cooperate in this investigation is the rate set forth in the petition.

Scope of the Investigation

The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24.20 of the Harmonized Tariff Schedule of the United States ("HTS"), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the HTS subheading 2921.42.24.20, contains 96 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate), classifiable under the HTS subheading 2921.42.70, is a granular or

crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Fair Value Comparisons

To determine whether sales of sulfanilic acid from the PRC to the United States were made at less than fair value, we compared the United States price to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based United States price on purchase price for sales made directly to unrelated parties prior to the date of importation into the United States, in accordance with section 772(b) of the Act. Also, in accordance with section 772(b) of the Act, we considered sales made by Sinochem Hebei to Sinochem U.S.A. to be purchase price transactions. We used purchase price as defined in section 772 of the Act, because sulfanilic acid was sold to related purchasers in the United States prior to importation into the United States, and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

We calculated purchase price based on packed, c.i.f. port or undelivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, and marine insurance. At verification, we determined that respondent reported amounts for ocean freight and marine insurance based on services provided by shipping companies based in the PRC. Since surrogate country information was not available for these expenses, we used the reported U.S. dollar charges for these expenses as BIA, pursuant to section 776(c)(1) of the Act. (See, *Butt-weld Pipe Fittings*, 56 FR at 66833.)

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if (1) the merchandise is exported from a non-market economy country ("NMEA"), and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a)(2) of the Act.

The Department treated the PRC as an NME for purposes of the preliminary determination. Since no party to this proceeding has disputed this presumption, and given that there is no information on the record of this proceeding to support a different determination, the Department has treated the PRC as an NME for purposes of the final determination.

Respondent in this investigation has claimed that all of the manufacturer's material and non-material inputs used to produce sulfanilic acid were purchased at market-driven prices during the POL. Accordingly, respondent deems it appropriate for the Department to use the PRC prices for material and non-material inputs for valuing the inputs used to produce sulfanilic acid.

In the preliminary determination in this investigation, the Department announced that the following criteria would be used for determining whether an MOI exists in an economy which will otherwise be considered non-market:

- For merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production of the merchandise, whether for export or domestic consumption in the non-market economy country would be an almost insuperable barrier to finding a market-oriented industry.
- The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry.
- Market-determined prices must be paid for all significant inputs, whether material or non-material; and for an all but insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

If these conditions are not met, pursuant to 19 CFR 353.52, the producers of the merchandise under investigation will be treated as non-market economy producers, and the foreign market value will be calculated by using prices and costs from a surrogate country, in accordance with section 773(c)(3) & (4) of the Act.

Shortly after we stated the criteria for determining an MOI in an NME in our preliminary determination, we sent an MOI questionnaire to respondent and the PRC government to determine if

there was the absence of government control and market forces were at work with respect to the price of inputs used to produce the subject merchandise. In its April 9, 1992, response to that questionnaire, Sinochem Hebei claimed that the prices and costs for all and not some of the material and non-material inputs used to produce sulfanilic acid were market-driven and that none of the four factories' suppliers produced any of the inputs for in-plan production. Specifically, respondent claimed that none of the factories producing the subject merchandise for Sinochem Hebei purchased their material or non-material inputs from suppliers that also produced the same inputs for in-plan factories producing the subject merchandise or other types of merchandise that were designated for in-plan production.

In applying the MOI criteria to the sulfanilic acid industry in the PRC, we find that aniline is a significant material input used to produce sulfanilic acid. We have also found that aniline is a derivative of oil, which is a category one product centrally-controlled by the PRC government. Without the use of aniline, sulfanilic acid cannot be produced. We were told at verification that aniline is subject to state-required production. Because we requested but did not receive quantifiable data from the PRC government which might have established the extent of state-required production for this input, we lack the information necessary to evaluate whether or not the aniline prices are market-determined in the PRC. (For further discussion, see DOC position to Comment 4 below).

Since we find that a significant material input may not be purchased at market-determined prices, we do not need to consider whether (1) the prices of other material or non-material inputs are market-determined; (2) whether there is state-required production of the subject merchandise and (3) whether there is substantial state ownership in the sulfanilic acid industry. See, *Final Negative Countervailing Duty Determinations: Oscillating and Ceiling Fans from the PRC*, 57 FR 24018, 24019 (June 5, 1992). Therefore, we have determined that the criteria outlined in the preliminary determination has not been met. Based on this finding, we have used surrogate values in calculating FMV, as discussed below. (See, Comment 4 for a complete discussion of this issue).

Surrogate Country

Section 773(c) of the Act requires the Department to value the factors of

production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the most comparable to the PRC in terms of overall economic development, based on per capita gross national product ("GNP"), the national distribution of labor, and growth rate in per capita GNP. (See memorandum from the Office of Policy to David L. Binder, dated December 4, 1991.) Because India fulfills both requirements outlined in the statute, India is the preferred surrogate country for purposes of calculating the factors of production used in producing the subject merchandise. Since Pakistan is not a producer of sulfanilic acid, we have resorted to Pakistan for surrogate values only if Indian values were not obtainable.

We have used the values for the factors of production, as appropriate, from both countries. In our preliminary Determination, data for valuing the factors of production were obtained from the U.S. embassy in India and the U.S. consulate in Pakistan. Subsequent to our preliminary determination, a hierarchy for preferred input values was set forth in the notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992) (Comment 4) ("Butt-weld Pipe Fittings, Final"). Accordingly, in those instances in which petitioner or respondent questioned the validity of the input values used in the preliminary determination, specifically the values for anthracite coal and electricity, we have obtained and relied upon published, publicly available information. Where neither petitioner nor respondent questioned a value used in the preliminary determination, we continued to use that value.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for respondent Sinochem Hebei. The factors used to produce sulfanilic acid include materials, labor, and energy. We verified the production information of two of the four factories which submitted information on behalf of Sinochem Hebei. At verification, we found that the two factories we chose to verify did not incur costs for water used in the production process for the subject merchandise (see, Verification Report for Baoding and Xinyu factories, both dated May 22, 1992).

To value anthracite, we used published, publicly available information from the Monthly Statistics of the Foreign Trade of India (September 1990). (See, Comment 1 for a complete discussion of this issue).

To value sulfonic acid and activated carbon, we used POI price quotes provided by the U.S. consulate in Pakistan, a producer of comparable merchandise, because the U.S. embassy in India could not obtain values for these inputs. We adjusted the factor values to the POI using wholesale prices indices published by the International Monetary Fund.

To value coal, we used the published source, Monthly Statistics of the Foreign Trade of India (September 1990), and a 1990 Indian coal prices as published in *OECD IEA Statistics*. We calculated an average undelivered f.o.b. coal price because the coal prices from the OECD source differed greatly from the calculated import value for coal using Indian foreign trade statistics. (See, Comment 2 for a complete discussion of this issue).

To value electricity, we used the *OECD IEA Statistics*'s published, publicly available Indian electricity rate for 1985 and adjusted the value for the POI by using wholesale price indices published by the International Monetary Fund.

To value labor rates, we used unskilled and skilled labor rates, including benefits, obtained from the U.S. embassy in India. We adjusted the unskilled wage rate to account for the number of hours in an Indian work week based on information contained in the published source, Country Reports on Human Rights Practices for 1990.

Baoding, one of the factories examined, was a medium size plant. Therefore, we applied the unskilled labor rate provided by the U.S. embassy in India that was applicable for a medium size plant operation. For the other three factories, we applied the unskilled labor rate provided by the U.S. embassy in India for a small size plant operation. We used the same skilled labor rate for all factories.

We received cables from the U.S. embassy in India on January 30, and March 5, 1992, and the U.S. consulate in Pakistan on March 25, 1992, stating with the exception of plastic bags, all input prices used to value the factors of production were undelivered prices during the POI in each respective country.

To calculate FMV, the reported factors of production were multiplied by the appropriate India and Pakistan values for the various components. With

the exception of plastic bags, we added an amount for the delivery of inputs to the factory to arrive at a delivered cost of materials. In our preliminary determination, freight rates based on distance and weight were not available. Therefore, we calculated freight rates based on weight in the preliminary determination. However, for our final determination, we used a June 1992 truck freight rate based on weight and distance obtained from the U.S. embassy in India. We also used a December 1989 train freight rate based on weight and distance. We adjusted these factor values to the POI using wholesale price indices published by the International Monetary Fund.

We used an average percentage for factory overhead, based on Indian producers' experience, which we obtained from the U.S. embassy in India. Pursuant to section 773(e)(1)(B), we then added an amount higher than the statutory ten percent minimum for selling, general and administrative expenses, and an amount higher than the statutory eight percent minimum for profit, based on Indian producers' experience, which was obtained from the U.S. embassy in India. We also added, where appropriate, an amount for packing labor based on the appropriate Indian unskilled wage rate, and an amount for packing materials based on Indian prices to arrive at a constructed FMV for one metric ton of sulfanilic acid. We made no adjustments for selling expenses. (For a complete analysis of surrogate values, see our concurrence memorandum dated June 22, 1992.)

Critical Circumstances

Petitioner alleged that "critical circumstances" existed with respect to imports of sulfanilic acid from the PRC. Section 773(e)(1) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of investigation at less than its fair value, and (B) there have been massive imports of the merchandise which is the subject of the investigation at over a relatively short period.

Pursuant to section 773(e)(1)(B) of the Act, we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the

imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. (See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12552 (April 15, 1988)). To determine whether imports have been massive, we normally compare the export volume for the base period, which is a period of not less than three months beginning with the month the petition was filed, with a previous period of the same length. Since the petition was filed on October 3, 1991, we compared shipments for Sinochem Hebei, during the six month period from the filing of the petition, October 1991 through March 1992, to shipments during the six month period prior to the month in which the petition was filed, April through September 1991.

On February 24, 1992, respondent submitted quantity figures for exports of sulfanilic acid to the United States during the relevant months of 1991 and 1992. At verification, we found that the quantity figures contained in the February 24, 1992, response included amounts exported to their country designations as well as the United States. At verification, we did obtain accurate quantity figures of sulfanilic acid which Sinochem Hebei exported to the United States during the relevant months of 1991 and 1992.

Under 19 CFR 353.10(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports "massive." Based on our analysis of the data collected at verification, we find that imports of the subject merchandise from the PRC during the period subsequent to receipt of the petition have not been massive. The other PRC exporters of the subject merchandise accounted for a minimal amount of total PRC exports of the subject merchandise to the United States.

Since we do not find that there have been massive imports, pursuant to section 733(e)(1)(B) of the Act, we do not need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we have determined that critical circumstances do not exist with respect to imports of sulfanilic acid from the PRC.

Currency Conversion

When calculating foreign market value, we made currency conversions in accordance with 19 CFR 353.60(a).

Verification

Pursuant to section 776(b) of the Act, we verified information used in reaching our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Petitioner argues that the Department should use the domestic price of aniline in India instead of the Indian import price for aniline for calculating FMV. Petitioner maintains that the Department cannot use the import price because this price is based on imports of aniline sourced from Eastern Europe. Petitioner argues that in previous investigations, the Department has presumed that the countries of Eastern Europe are non-market economy countries, unless such countries successfully rebutted this presumption. Furthermore, the Department has stated in previous investigations that factor values should be based on prices of inputs produced in the selected surrogate market economy. Therefore, the Department cannot use the price of an input from a non-market economy in order to value the same input in a market economy country. Petitioner cites to Final Results of Certain Iron Construction Castings from the People's Republic of China, 57 FR 10644 (June 8, 1992), in support of its argument.

Respondent argues that the Department should not use the Indian domestic price aniline because the price is substantially greater than the U.S. price and also does not reflect a world market price for the input. Furthermore, respondent argues that even though the Indian import price is more reflective of a world price for aniline, the Department should not use this price either because the import price is also distortive of the actual cost of PRC producers. Respondent points out the PRC is an oil producer, whereas India is not, and because aniline is a derivative of oil, the Department should use an aniline price from a country, such as Mexico, where the cost of aniline would better reflect the costs PRC producers incur for using aniline.

DOC Position: As described above under the "Surrogate Country" section, when a particular surrogate value used in the preliminary determination was disputed by respondent or petitioner, we sought and employed published, publicly available information in accordance with the hierarchy enunciated in *Butt-Weld Pipe Fittings, Final*. Therefore, since the value for aniline has been placed in dispute, we

have used published and publicly available information to value aniline. We considered whether to use the domestic or import price for aniline at the preliminary determination. We determined that the import price was appropriate because imported aniline is used by Indian producers in manufacturing sulfanilic acid for exportation. Therefore, for aniline we used the Monthly Statistics of the Foreign Trade of India (September 1990).

Comment 2: Respondent argues that the Department should use the 1990 Indian coal price as published in *OECD IEA Statistics* rather than the Pakistani price for coal as contained in the U.S. cable because the Indian price reflects the price of coal in the PRC.

Petitioner argues that we should not use the Indian coal price information which respondent submitted in its brief because that information is new factual information which was untimely submitted to the Department.

DOC Position: Since the value for coal was placed in dispute, the Department first examined the 1990 Indian price for coal as published in *OECD IEA Statistics*. In addition, the Department independently obtained another published, publicly available Indian import price from the source, Monthly Statistics of the Foreign Trade of India (September 1990). These prices differed significantly. Since we have no information indicating which of the two prices is more accurate, we calculated and used a simple average of the published Indian coal prices to value coal for the POI. We adjusted the factor values to the POI using wholesale price indices published by the International Monetary Fund.

Comment 3: Petitioner argues that because the Department chose not to verify two of the four PRC producers of sulfanilic acid, the results of the two verified factories' information must be applied to the other verified producers. Otherwise, petitioner argues that the Department should disregard the information provided by the non-verified producers. Petitioner cites to section 776(b) of the Act in support of its argument and the recent decision reached in the Remand of *Sparklers*.

Respondent argues that the Department must accept as accurate the factors data of the two factories not chosen for verification because the Department elected not to verify that information.

DOC Position: We disagree with petitioner's contention. The purpose of verification is to spot-check the respondent's questionnaire response and is not intended to be an exhaustive

examination of the response. See, *Monsanto Company v. United States*, 696 F. Supp. 285 (CIT 1988). In this investigation, to determine factors of production, we selected two of the four factories as representative of subject merchandise produced in the PRC (see, memorandum to the file, April 6, 1992). At verification, we found that each factory is unique in its factors of production. We found no major discrepancies in the factors verified that would warrant disregarding the response for any of the four factories. However, we have adjusted our calculation to account for any unique factors that may be applicable to each of the factories.

Comment 4: Petitioner argues that since the People's Republic of China ("PRC") is an NME, the sulfanilic acid industry in the PRC cannot be an MOI. Petitioner maintains that respondent has not demonstrated that the prices for all inputs used to produce the subject merchandise are market-determined. Furthermore, petitioner maintains that even if the Department found the input prices to be market-determined in the PRC, it is not reasonable to convert these prices denominated in renminbi Yun (an alleged non-convertible currency) to a hard currency. Therefore, the Department must resort to surrogate values in calculating the FMV.

Respondent argues that the sulfanilic acid industry in the PRC is sufficiently market-oriented and that the PRC prices for all inputs used to produce the subject merchandise should be used to calculate the FMV. Respondent maintains that the Department should find that the PRC prices for inputs used to produce sulfanilic acid are market-oriented and an insignificant amount of the inputs are subject to mandatory in-plan production. In addition, respondent argues that the input prices are freely negotiated between the factories that use the inputs to produce sulfanilic acid and the suppliers that provide the inputs to the sulfanilic acid factories. Therefore, the Department should find that the sulfanilic acid industry in the PRC is sufficiently market-oriented, and, as a result, the Department should use the PRC prices instead of the surrogate values for calculating FMV.

DOC Position: We disagree with respondent. Prior to verification, and at verification, we requested information from the PRC government regarding the quantity of aniline subject to state required production. We were told at verification that the amount of aniline subject to state-required mandatory in-plan production was insignificant. However, the PRC government officials

with whom we met did not provide us with quantifiable data to support such a statement. We deem such information crucial for determining whether the sulfanilic acid industry in the PRC is an MOI, especially since aniline is a derivative of oil and oil is a commodity centrally controlled by the PRC government.

Without the requested information, we are unable to establish the amount of state-required production of this significant material input. Therefore, we cannot analyze the extent to which, aniline prices may be distorted by such state control over production.

As a result, in this investigation, respondent did not overcome the presumption that a significant material input (aniline) is subject to significant state required production. Therefore, respondent has not met the MOI criteria as set forth in the preliminary determination of *Sulfanilic Acid* for determining whether or not the sulfanilic acid industry is an MOI.

Comment 5: Respondent argues that even if the Department finds that some of the inputs do not meet the MOI criteria, the Department should still use the PRC prices for those inputs which the Department finds are not subject to the state plan and for which market prices are paid. Respondent maintains that the Department should restrict its analysis to only determining the proper unit price to use (i.e., surrogate value or NME value) on an input by input basis, and that the Department should not ignore the price of a particular input found to be market-determined simply because a price for another input is found not to be market-determined.

DOC Position: We disagree with respondent. If, as we have found here, an industry does not qualify as an MOI, the Department is obligated to apply section 773(c) of the Act. (See, "Foreign Market Value" section of this notice). Under this provision, the Department must use factor values from a market economy country. Thus, it cannot use the NME domestic price for any inputs.

Comment 6: Petitioner argues that the Department should assign one dumping margin to all PRC producers and resellers of the subject merchandise.

Respondent argues that a separate, company-specific rate should be calculated in this investigation for Sinochem Hebei. Respondent maintains that the only relationship between Sinochem Hebei and the other trading companies of China National Chemicals Import & Export Corporation, Beijing ("Sinochem China"), is in the production and sale of oil, a category one product which is under state control but not

subject to this investigation. Respondent contends that Sinochem Hebei is an independent entity regarding the production and sale of sulfanilic acid and all other chemical products which are category three products and are not under or subject to government control.

DOC Position: As stated in *Sparklers*, we will issue separate rates if a respondent can demonstrate both a *de jure* and *de facto* absence of central control. Evidence supporting, though not requiring, a finding of *de jure* absence of central control would include: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments devolving central control of export trading companies; or (3) any other formal measures by the government decentralizing control of companies. Evidence supporting a finding of *de facto* absence of central control with respect to exports would include: (1) Whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

We have determined that Sinochem Hebei is independently controlled and entitled to its own rate. At verification, we examined information on company ownership and relationships, sources of inputs, manufacturing processes, distribution channels, involvement of trading companies, controls on external trade, profit retention, and other facets of the production and sale of sulfanilic acid.

To support its argument of *de jure* absence of central control, respondent referenced State Council Directive No. 12 of 1988 as evidence that Sinochem China and its branches were separated. Pursuant to that regulation, the central government and Sinochem China were divested of the managerial and financial control over former Sinochem China branches. According to information supplied by company officials, due to the government mandated reorganization, the only relationship between Sinochem China and Sinochem Hebei is Sinochem Hebei's involvement in the sale of oil, which is a centrally controlled product. Otherwise, Sinochem Hebei has been an independent legal entity since 1988 and has neither financial, managerial, nor any other non-oil responsibilities to Sinochem China. At verification, our examination of the business and export licenses revealed no restrictive stipulations on the export of sulfanilic acid.

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In support of respondent's argument of the *facto* absence of central control, we found no evidence that prices for the subject merchandise are set by either the government entities, Sinochem China or by any of its related entities. Also, we found at verification that Sinochem Hebei's sales proceeds were deposited to its own account and that bank records revealed no payments to the PRC government or to Sinochem China. We found no evidence of any control exercised by Sinochem China over Sinochem Hebei's non-oil accounts. Moreover, based on our findings at verification, we have determined that Sinochem Hebei is required by PRC law to report its proceeds from the sale of oil to Sinochem China and prepare separate financial statements for its oil proceeds. We have also determined that Sinochem Hebei retains its proceeds from the sale of the subject merchandise and is a separate and financially independent entity with the exception of the oil relationship with Sinochem China.

Accordingly, in applying the above-referenced criteria, the evidence submitted on the record submitted by respondent demonstrates *de jure* and *de facto* absence of central control. Therefore, we have determined that Sinochem Hebei is independent and entitled to its own rate.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue suspension of liquidation of all entries of sulfanilic acid from the PRC, as defined in the "Scope of Investigation" section of this notice that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Weighted-average merchandise/ producer/exporter	Dumping margin
China National Chemical Import & Export Corporation, Wenzhou Branch, All others	10.14 66.50

ITC Notification

In accordance with section 731(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 731(d) of the Act (19 U.S.C. 1673d(d)) and (19 CFR 353.20(a)(4)).

Date: June 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import
Administration.

(PR Doc. 89-15725 Filed 7-2-92; 6:45 am)

ISSUED 0000 000-00-00

APPENDIX B
CALENDAR OF THE PUBLIC HEARING

CALENDAR OF PUBLIC HEARING

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

Subject: SULFANILIC ACID FROM THE PEOPLE'S REPUBLIC OF CHINA

Inv. No.: 731-TA-538 (Final)

Date and Time: June 30, 1992 - 9:30 a.m.

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

In Support of Imposition of
Antidumping Duties:

Economic Consulting Services, Inc.
Washington, D.C.
On behalf of

R-M Industries, Inc.
Fort Mill, SC

John A. Dickson, President

Daniel J. Cannistra
Economic Consulting Services, Inc.

In Opposition to the Imposition of
Antidumping Duties:

Miller, Canfield, Paddock and Stone
Washington, D.C.
On behalf of

Sinochem (U.S.A.) Inc.

Goodring International, Inc.

China National Chemicals Import and Export Corp.
(Hebei Branch)

Don Voigt, Director of Purchasing
Sandoz Chemicals

Mark Graham, Optical Brightener Project Manager
Sandoz Chemicals

Ken Goldaker, Purchasing Manager
Warner-Jenkinson Corporation

Tom Corrado, President, Nu-Tech Chemicals

Alex Battaglia, Traffic Manager
Sinochem U.S.A.

Ms. Jiao Ji Ying, Sales Manager
Sinochem Hebei

William E. Perry

Terry X. Gao

)
)--OF COUNSEL
)

APPENDIX C
TARIFF AND TRADE AGREEMENT TERMS

TARIFF AND TRADE AGREEMENT TERMS

The Harmonized Tariff Schedule of the United States (HTS) replaced the Tariff Schedules of the United States (TSUS) effective January 1, 1989. Chapters 1 through 97 are based upon the internationally adopted Harmonized Commodity Description and Coding System through the 6-digit level of product description, with additional U.S. product subdivisions at the 8-digit level. Chapters 98 and 99 contain special U.S. classification provisions and temporary rate provisions, respectively.

Rates of duty in the general subcolumn of HTS column 1 are most-favored-nation (MFN) rates; for the most part, they represent the final concession rate from the Tokyo Round of Multilateral Trade Negotiations. Column 1-general duty rates are applicable to imported goods from all countries except those enumerated in general note 3(b) to the HTS, whose products are dutied at the rates set forth in column 2. Goods from the People's Republic of China, Czechoslovakia, Hungary, Poland, and Yugoslavia are among those eligible for MFN treatment. Among articles dutiable at column 1-general rates, particular products of enumerated countries may be eligible for reduced rates of duty or for duty-free entry under one or more preferential tariff programs. Such tariff treatment is set forth in the special subcolumn of HTS column 1.

The Generalized System of Preferences (GSP) affords nonreciprocal tariff preferences to developing countries to aid their economic development and to diversify and expand their production and exports. The U.S. GSP, enacted in title V of the Trade Act of 1974 and renewed in the Trade and Tariff Act of 1984, applies to merchandise imported on or after January 1, 1976 and before July 4, 1993. Indicated by the symbol "A" or "A*" in the special subcolumn of column 1, the GSP provides duty-free entry to eligible articles the product of and imported directly from designated beneficiary developing countries, as set forth in general note 3(c)(ii) to the HTS.

The Caribbean Basin Economic Recovery Act (CBERA) affords nonreciprocal tariff preferences to developing countries in the Caribbean Basin area to aid their economic development and to diversify and expand their production and exports. The CBERA, enacted in title II of Public Law 98-67, implemented by Presidential Proclamation 5133 of November 30, 1983, and amended by the Customs and Trade Act of 1990, applies to merchandise entered, or withdrawn from warehouse for consumption, on or after January 1, 1984; this tariff preference program has no expiration date. Indicated by the symbol "E" or "E*" in the special subcolumn of column 1, the CBERA provides duty-free entry to eligible articles the product of and imported directly from designated countries, as set forth in general note 3(c)(v) to the HTS.

Preferential rates of duty in the special subcolumn of column 1 followed by the symbol "IL" are applicable to products of Israel under the United States-Israel Free-Trade Area Implementation Act of 1985, as provided in general note 3(c)(vi) of the HTS. Where no rate of duty is provided for products of Israel in the special subcolumn for a particular provision, the rate of duty in the general subcolumn of column 1 applies.

Preferential rates of duty in the special duty rates subcolumn of column 1 followed by the symbol "CA" are applicable to eligible goods originating in the territory of Canada under the United States-Canada Free-Trade Agreement, as provided in general note 3(c)(vii) to the HTS.

Other special tariff treatment applies to particular products of insular possessions (general note 3(a)(iv)), goods covered by the Automotive Products Trade Act (general note 3(c)(iii) and the Agreement on Trade in Civil Aircraft (general note 3(c)(iv), and articles imported from freely associated states (general note 3(c)(viii)).

The General Agreement on Tariffs and Trade (GATT) (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786) is the multilateral agreement setting forth basic principles governing international trade among its more than 90 signatories. The GATT's main obligations relate to most-favored-nation treatment, the maintenance of scheduled concession rates of duty, and national (nondiscriminatory) treatment for imported products; the GATT also provides the legal framework for customs valuation standards, "escape clause" (emergency) actions, antidumping and countervailing duties, and other measures. Results of GATT-sponsored multilateral tariff negotiations are set forth by way of separate schedules of concessions for each participating contracting party, with the U.S. schedule designated as Schedule XX.

APPENDIX D

**TRADE DATA, BY TYPES OF SULFANILIC ACID,
1989-91, JANUARY-MARCH 1991, AND JANUARY-MARCH 1992**

Table D-1

Sulfanilic acid: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, by grades, 1989-91, January-March 1991, and January-March 1992

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Table D-2

Sulfanilic acid: U.S. capacity, production, and capacity utilization, by grades, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table D-3

Sulfanilic acid: Shipments by U.S. producers, by grades and by types, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table D-4

Sulfanilic acid: End-of-period inventories of U.S. producers, by grades, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table D-5

Sulfanilic acid: U.S. imports, by grades and by sources, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table D-6

Sulfanilic acid: U.S. producers' and importers' shares of apparent U.S. consumption, by grades, 1989-91, January-March 1991, and January-March 1992

* * * * *

APPENDIX E

**PURCHASES OF SULFANILIC ACID BY MAJOR
U.S. PURCHASERS, BY GRADES AND SOURCES, 1989-91
AND
POSITIONS OF PURCHASERS ON THE ISSUE OF INTERCHANGEABILITY
AMONG THE THREE GRADES OF SULFANILIC ACID**

Table E-1

Sulfanilic acid: Purchases by major U.S. purchasers, by grades and sources, 1989-91

* * * * *

POSITIONS OF U.S. PURCHASERS ON THE ISSUE OF INTERCHANGEABILITY
AMONG THE THREE GRADES OF SULFANILIC ACID

The following information was compiled on purchasers' end uses for sulfanilic acid, their preferred grade, and their position on interchangeability based on questionnaire responses, telephone conversations, and field visits.

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APPENDIX F

**COMMENTS RECEIVED FROM U.S. PRODUCERS
ON THE IMPACT OF IMPORTS OF SULFANILIC ACID
FROM CHINA, HUNGARY, AND/OR INDIA
ON THEIR GROWTH, INVESTMENT, ABILITY
TO RAISE CAPITAL, AND/OR DEVELOPMENT
AND PRODUCTION EFFORTS**

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS OF SULFANILIC ACID FROM CHINA, HUNGARY, AND/OR INDIA ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND/OR DEVELOPMENT AND PRODUCTION EFFORTS

The Commission requested the U.S. producers to describe and explain the actual and potential negative effects, if any, of imports of sulfanilic acid from China, Hungary, and/or India on their growth, investment, ability to raise capital, and/or development and production efforts (including efforts to develop a derivative or improved version of their product).

* * * * *

Actual Negative Effects

China and Hungary

* * * * *

Hungary

* * * * *

Anticipated Negative Effects

China

* * * * *

Hungary

* * * * *

India

* * * * *

Hungary and India

* * * * *

Influence of Imports on Capital Investment

China, Hungary, and India

* * * * *

ATT-1

ATTACHMENT A

**SUMMARY DATA CONCERNING THE U.S. SULFANILIC ACID MARKET,
1989-91, JANUARY-MARCH 1991, AND JANUARY-MARCH 1992**

ATT-3

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