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SULFANILIC ACID FROM THE REPUBLIC OF HUNGARY AND INDIA

Determination of the Commission in
Investigation No. 701-TA-318
(Final) Under the Tariff Act of 1930,
Together With the Information
Obtained in the Investigation

**USITC PUBLICATION 2603
FEBRUARY 1993**

Determinations of the Commission in
Investigations Nos. 731-TA-560 and
561 (Final) Under the Tariff Act
of 1930, Together With the Information
Obtained in the Investigations

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

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Don E. Newquist, Chairman

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Anne E. Brunsdale

Carol T. Crawford

Janet A. Nuzum

Robert A. Rogowsky,
Director of Operations

Staff assigned:

Debra Baker, 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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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.

DETERMINATIONS AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-318 (Final) and 731-TA-560 and 561 (Final)

Sulfanilic Acid from the Republic of Hungary and India

Determinations

On the basis of the record¹ developed in its countervailing duty investigation, the Commission determines,² pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from India of sulfanilic acid³ that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of India. The Commission further determines, pursuant to 19 U.S.C. § 1671d(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

On the basis of the record developed in its antidumping investigations, the Commission determines,⁴ pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Hungary of sulfanilic acid that have been found by Commerce to be sold in the United States at less than fair value (LTFV). The Commission also

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 Commissioners Brunsdale and Crawford dissenting.

³ The products covered by these investigations 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, respectively, of the Harmonized Tariff Schedule of the United States.

⁴ Chairman Newquist and Commissioner Nuzum dissenting.

determines,⁵ pursuant to section 735(b), that an industry in the United States is threatened with material injury by reason of imports from India of sulfanilic acid that have been found by Commerce to be sold at 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

Following preliminary determinations by Commerce that imports of sulfanilic acid from India were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and that imports of sulfanilic acid from Hungary and India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)), the Commission, effective August 18, 1992, instituted investigation No. 701-TA-318 (Final) and, effective October 22, 1992, instituted investigations Nos. 731-TA-560 and 561 (Final). Notices of the institutions of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the Federal Register of September 2, 1992 (57 F.R. 40201) and the Federal Register of November 18, 1992 (57 F.R. 54420). The hearing was held in Washington, DC, on January 5, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

⁵ Commissioners Brunsdale and Crawford dissenting.

VIEWS OF VICE CHAIRMAN WATSON, COMMISSIONER ROHR,
COMMISSIONER BRUNSDALE AND COMMISSIONER CRAWFORD

On the basis of the information obtained in these final investigations, Vice Chairman Watson, Commissioner Rohr, Commissioner Brunsdale and Commissioner Crawford determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of sulfanilic acid from the Republic of Hungary (Hungary) which have been found by the Department of Commerce (Commerce) to be sold at less-than-fair-value (LTFV).¹ Vice Chairman Watson and Commissioner Rohr also determine that an industry in the United States is threatened with material injury by reason of imports of sulfanilic acid from India which have been found by Commerce to be subsidized and sold at LTFV, and they 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 imports from India had there not been a suspension of liquidation.^{2 3}

¹ See Views of Vice Chairman Watson and Commissioner Rohr on Threat of Material Injury by Reason of Imports from Hungary and India, infra, at 13, and Views of Commissioners Brunsdale and Crawford, infra, at 25. Chairman Newquist and Commissioner Nuzum do not participate in these views and dissent with regard to the determination that the domestic industry is not materially injured or threatened with material injury by reason of imports from Hungary. See Views of Chairman Newquist and Commissioner Nuzum, Concurring in Part and Dissenting in Part, infra, at 49.

² See Views of Vice Chairman Watson and Commissioner Rohr on Threat of Material Injury by Reason of Imports from Hungary and India, infra, at 13. Commissioners Brunsdale and Crawford dissent with regard to the finding of threat of material injury by reason of imports from India. See Views of Commissioners Brunsdale and Crawford, infra, at 25. Chairman Newquist and Commissioner Nuzum do not participate in these views, however, they agree with Vice Chairman Watson and Commissioner Rohr that the domestic industry is threatened with material injury by reason of imports from India. See Views of Chairman Newquist and Commissioner Nuzum, Concurring in Part and Dissenting in Part, infra, at 49.

³ Material retardation of the establishment of an industry is not an issue in these investigations and therefore will not be discussed further.

I. LIKE PRODUCT AND DOMESTIC INDUSTRY⁴

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"⁵ 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"⁶

The Commission's decision regarding the appropriate like product is essentially a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁷ The Commission disregards minor variations between the articles subject to an investigation and generally looks for clear dividing lines among possible like products.⁸

The imported articles subject to these investigations, as defined by

⁴ Chairman Newquist and Commissioner Nuzum concur in the discussion of like product and domestic industry.

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

⁷ See Calabrian Corp. v. United States, 794 F. Supp. 377 (Ct. Int'l Trade 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.

⁸ See S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

Commerce, are:

[A]ll 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).⁹

In the Commission's final determination involving sulfanilic acid from China, as well as in the preliminary determinations involving sulfanilic acid from Hungary and India, 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").¹⁰ The evidence on the record in these final investigations continues to support our previous determinations that the three forms of sulfanilic acid are one like product.¹¹ We again find that the three forms of sulfanilic acid have similar physical characteristics,¹² end uses,¹³ channels of distribution,¹⁴ common manufacturing processes and production employees.¹⁵ In addition, there is sufficient interchangeability between the grades for

⁹ 57 Fed. Reg. 23378 (June 3, 1992). Although the Commission accepts the class or kind determination of Commerce, the Commission determines which domestic products are like those within Commerce's scope. Algoma Steel Corp., Ltd. v. United States, 688 F. Supp. 639 (Ct. Int'l Trade 1988), aff'd 865 F.2d 240 (C.A.F.C. 1988), cert. denied, 109 S.Ct. 3244 (1989); Bulk Ibuprofen from India, Inv. Nos. 701-TA-308 and 731-TA-526 (Preliminary), USITC Pub. 2428 (Sept. 1991) at 4; Steel Wire Rope from Argentina and Mexico, Inv. Nos. 731-TA-476 and 479 (Final), USITC Pub. 2410 (Aug. 1991) at 4.

¹⁰ Sulfanilic Acid from the People's Republic of China, Inv. No. 731-TA-538 (Final), USITC Pub. 2542 (Aug. 1992) at 7; 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) at 8.

¹¹ None of the parties to these investigations challenges the Commission's previous determinations of a single like product. Report at I-13 to I-14.

¹² See Report at I-4.

¹³ Report at I-5 and I-8 to I-10.

¹⁴ Report at I-27.

¹⁵ Report at I-5 to I-8.

purposes of a like product determination.¹⁶

Therefore, we 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.¹⁷

II. CONDITION OF THE INDUSTRY

In determining whether an industry is materially injured, or is threatened with material injury, by reason of LTFV and subsidized imports, the Commission considers "all relevant economic factors which have a bearing on the state of the industry in the United States"¹⁸ 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.¹⁹ 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."²⁰

¹⁶ See Report at I-10 to I-13. The Commission has found that complete interchangeability is not required for purposes of the like product determination. In Industrial Nitrocellulose from Brazil, People's Republic of China, Republic of Korea, United Kingdom, West Germany and Yugoslavia, the Commission stated that "[t]o the extent that the various grades are not completely interchangeable, we should note that, in the past, the Commission has not required complete interchangeability to include products in one like product." Inv. Nos. 731-TA-439 through 445 (Preliminary), USITC Pub. 1989 (Nov. 1989) at 6.

¹⁷ The Hilton Davis company was the only other domestic producer of sulfanilic acid (technical grade) during the period of investigation. Hilton Davis, however, no longer produces sulfanilic acid and instead purchases its requirements. Report at I-23.

¹⁸ See 19 U.S.C. § 1677(7)(C)(iii).

¹⁹ 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.

²⁰ Id. There is no evidence in the record regarding a business cycle distinctive to the sulfanilic acid industry.

There are several conditions of competition distinctive to the domestic sulfanilic acid industry. In 1985 and 1986 the Food and Drug Administration placed more stringent limits on the amount of impurities that are acceptable in food dyes, which effectively preclude the use of technical grade sulfanilic acid as an input and instead require the use of refined grade sulfanilic acid or sodium sulfanilate.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 for higher quality.²² For these reasons, 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.²³

One new development that has occurred since the Commission's final investigation involving sulfanilic acid from China is that the domestic producer has recommenced production of the refined grade sulfanilic acid and has made some commercial sales of this product. Petitioner discontinued production of refined grade sulfanilic acid in 1989, but continued to sell sodium sulfanilate and technical grade sulfanilic acid.²⁴

The refined grade sulfanilic acid produces a wastewater stream that requires processing in order to comply with the Clean Water Act (33 U.S.C. § 1251 et seq.); however, petitioner stated that in late 1989 the cost of compliance with the Clean Water Act made it commercially unfeasible to

²¹ Report at I-12 n.43.

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

²³ See Report at I-56 and Table D-1. Imports from Hungary have consisted solely of refined grade sulfanilic acid, whereas imports from India have consisted of both refined and technical. Report at I-25 to I-26.

²⁴ Report at Table D-3.

continue to sell the refined grade for a price that would compete with imported sources.²⁵ Petitioner unsuccessfully attempted to produce a refined grade at a lower cost by a method that did not produce a wastewater stream, but it was unacceptable to potential customers because of the level of impurities.²⁶ Finally, in August 1992, petitioner began producing the refined grade again by treating the wastewater, and at least one customer was willing to pay the higher cost associated with this environmental treatment.²⁷

Taking these conditions of competition into account, we examine the various indicators of the domestic industry's performance.²⁸ From 1989 to 1991 U.S. consumption of sulfanilic acid increased in terms of both quantity and value. Between interim (January-September) 1991 and interim 1992, however, such consumption decreased.²⁹

U.S. production decreased from 1989 to 1990, then increased from 1990 to 1991, and decreased in interim 1992 compared to interim 1991.³⁰ U.S. shipments, in quantity and value, increased from 1989 to 1991, but then decreased in interim 1992 compared to interim 1991.³¹ The unit value of U.S. shipments also increased from 1989 to 1991, but decreased in interim 1992 as

²⁵ Report at I-20 to I-22. Petitioner also stated in October 1991, however, that imports from China were not a factor in its decision to stop producing refined grade. See Conference Transcript -- Sulfanilic Acid from the People's Republic of China (Oct. 24, 1991) at 56.

²⁶ Report at I-21 n.78.

²⁷ Report at I-21 to I-22.

²⁸ Except for during the interim 1992 period (January-September), the economic indicators discussed in these investigations are virtually the same as those discussed in the final investigation involving sulfanilic acid from China.

²⁹ Report at Table C-1. During the interim 1992 period, consumption of each grade of sulfanilic acid fell. Report at I-20 & n.70.

³⁰ Report at Table 2.

³¹ Report at Table 3.

compared with interim 1991.³²

Average U.S. capacity remained constant between 1989 and 1990, increased from 1990 to 1991, and did not change between interim 1991 and interim 1992.³³ Capacity utilization decreased from 1989 to 1990, increased in 1991, and then decreased in interim 1992 as compared with interim 1991.³⁴ The domestic producers' end-of-period inventories decreased from 1989 to 1991, and in interim 1992 inventories were lower than interim 1991 inventories.³⁵

The number of production and related workers remained relatively stable, but did decrease from 1989 to 1991, as well as in interim 1992 compared with interim 1991.³⁶ Hours worked decreased steadily from 1989 to 1991 and in interim 1992 as compared with interim 1991.³⁷ Total compensation paid to production and related workers decreased from 1989 to 1990, increased from 1990 to 1991, and then decreased in interim 1992 as compared with interim 1991.³⁸ Productivity decreased from 1989 to 1990, but then increased between 1990 and 1991, and decreased in interim 1992 compared to interim 1991.³⁹

An examination of the petitioner's financial data on its sulfanilic acid operations shows that net sales decreased from 1989 to 1990, then increased in

³² Report at Table 3. The domestic industry's export shipments decreased from 1989 to 1990, then increased from 1990 to 1991, but decreased in interim 1992 compared to interim 1991. The unit value of export shipments increased from 1989 to 1991, but then decreased in interim 1992 compared to interim 1991. Id.

³³ Report at Table 2.

³⁴ Id. Capacity utilization varies by grade: petitioner reported the highest capacity utilization rate for its production of sodium sulfanilate and the lowest capacity utilization rate for its refined grade sulfanilic acid. Report at I-30.

³⁵ Report at Table 4. The ratio of inventories to total shipments, as well as the ratio of inventories to production, decreased from 1989 to 1991 and then increased in interim 1992. Id.

³⁶ Report at Table 5.

³⁷ Id.

³⁸ Id.

³⁹ Id.

1991, and decreased in interim 1992 as compared with interim 1991.⁴⁰

Petitioner reported operating losses in 1989 and 1990 and a positive operating income in 1991. Operating income in interim 1992 was less than operating income in interim 1991.⁴¹ The operating income margin as a percentage of net sales improved from 1989 to 1991; however, it decreased in interim 1992 as compared to interim 1991.⁴² In addition, petitioner had a negative return on total assets in 1989 and 1990 and a positive return on total assets in 1991.⁴³ Petitioner also testified at the Commission's hearing that it has been unable to raise capital.⁴⁴ Petitioner was unable to provide data on research and development expenses.^{45 46}

⁴⁰ Report at Table 7 and Table C-1.

⁴¹ Id.

⁴² Id.

⁴³ No data on return on total assets were provided by the petitioner for the interim periods. Report at Table 10.

⁴⁴ Petitioner stated that it was turned down for both state and bank loans. See Hearing Transcript at 27-28 (Jan. 5, 1993).

⁴⁵ Report at I-39.

⁴⁶ Commissioner Rohr determines, based on an analysis of the above factors, that the domestic industry is not currently experiencing material injury.

**VIEWS OF VICE CHAIRMAN WATSON AND COMMISSIONER ROHR
ON THREAT OF MATERIAL INJURY BY REASON OF IMPORTS
FROM HUNGARY AND INDIA**

On the basis of the information obtained in these investigations, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of sulfanilic acid from Hungary. We also determine that an industry in the United States is threatened with material injury by reason of imports of sulfanilic acid from India.

Vulnerability of the Industry

For purposes of our analysis of the vulnerability of the sulfanilic acid industry, we incorporate the discussion contained in the Condition of the Industry section of the views of the Commission majority.¹ In making our determination, we relied on no single indicator. We conclude, in light of the indicators in the record, that the domestic industry, based on its most recent performance, cannot be said to be currently experiencing material injury.² Further, we

¹ See Views of the Commission, *supra* at 8.

² Vice Chairman Watson does 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. He concludes, however, that the domestic industry is not currently experiencing material injury by reason of the subject imports from Hungary and India based on a further evaluation of the record evidence giving due consideration to the statutory factors enumerated in 19 U.S.C. § 1677(7).

In reaching his negative material injury determination he has concluded that it is inappropriate to cumulate those imports recently under investigation from China with those from the subject countries. Vice Chairman Watson notes that an antidumping order against imports from China of sulfanilic acid went into effect on August 19, 1992. Only those imports from China that entered the United States prior to that date can be considered for cumulation with the subject imports in this investigation. The antidumping order placed against the Chinese imports was based upon the threat of material injury. Because we found that the Chinese imports were not causing material injury to the domestic industry last August, it is now inappropriate to find that such imports are continuing to impact the U.S. industry.

Vice Chairman Watson has also determined that the subject imports from India adversely impact the domestic industry and are not negligible. He bases this conclusion on the rapid increase in subject imports from India during the period of investigation and the significant level of market penetration reached by those imports in the interim 1992 period.

In reaching his determination of no material injury by reason of imports from Hungary, he notes that during the period of investigation all of the subject imports from Hungary were of refined sulfanilic acid. Warner-Jenkinson, which has stated a strong preference for using only the refined form purchased from Hungary. During the period of

conclude that the condition of the domestic industry is not such as to be highly vulnerable to the price and volume effects of the unfairly traded imports.

Cumulation

Commissioner Rohr has expressed his concerns in the past over the use of formal cumulated analysis in Commission threat opinions. As he has explained, a threat analysis involves the assessment by the Commission of the capabilities and intentions of foreign producers with regard to the domestic market and domestic industry. Formal cumulation, by ignoring differences in the trends in the various threat indicators, raises the possibility that the capabilities or intentions of one set of foreign producers will be "assigned" to another set of foreign producers.

For example, some foreign producers may have demonstrated an intention to take actions in the domestic market that would be injurious to the domestic industry, such as aggressively seeking market share by underselling. This set of producers may not have the capability to accomplish that intent, because they cannot expand their production. With a cumulated analysis, however, they may be found to threaten the domestic industry because producers in another country, who may not have been expanding market share or underselling, have additional available capacity to expand their production.

Commissioner Rohr has also been mindful of the fact that imports from different sources may have a collective impact on a domestic industry. This is what he believes the

investigation, the sole U.S. producer did not manufacture the refined form after 1989, and it was not until August of 1992 that it resumed production of refined sulfanilic acid. Only one small domestic sale of the refined form was reported by R-M Industries, Inc. in interim 1992.

In regard to the volume of the subject imports from Hungary, although the quantity and value of those imports rose slightly over the period of investigation, those sales did not compete with sales of the domestic producer's product. Regarding the price effect of the subject imports, due to the fact that R-M Industries, Inc. ceased production of the refined grade in 1989, relevant price comparisons cannot be made during most of the period of investigation. In general, prices of the Hungarian product rose over the period of investigation. As a result, he finds no evidence of significant underselling, price suppression or depression. There is also no evidence that the subject imports from Hungary have adversely impacted on the domestic industry. Despite the slight increase in the quantity and volume of the subject imports from Hungary, the overall condition of the domestic industry has improved over the period of investigation.

Court of International Trade had in mind when it stated that "cumulation" *may* be appropriate in certain circumstances in the context of threat analysis. He has reconciled these difficulties by undertaking what he terms "informal" cumulation in his threat determinations. In performing this "informal" cumulation, Commissioner Rohr provides individual analysis of the threat posed by imports from a particular country but takes into account the presence of other unfairly traded imports in his consideration of "other demonstrable adverse trends." By so doing, he can consider the collective impact of imports in the context of individual threat indicators while avoiding the unfair assigning of the consequences of the capabilities or intentions of one country to others.

Vice Chairman Watson concurs with Commissioner Rohr that cumulation, while not mandatory in threat cases, is discretionary and feasible in certain circumstances. He is also concerned that an overly broad application of the cumulation provision might result in a determination that ignores the differences in the trends in the various threat factors or assigns the capabilities or intentions of one set of foreign producers to another.

In determining whether to cumulate for purposes of a threat determination, Vice Chairman Watson considers whether the price and volume effects of each subject countries' imports compete with each other and with the like product of the domestic industry in the U.S. market.³ The Court of International Trade has affirmed the Commission's consideration of other factors such as whether the volume of imports from different countries subject to investigation are increasing at similar rates, the respective margins of underselling and the likely rates of increase in U.S. market penetration by those countries' imports.⁴

In the present case, although a reasonable overlap of competition exists between imports from the subject countries and the domestic industry in the United States, Vice Chairman

³ 19 U.S.C. Section 1677 (7) (F) (iv). See, Sulfur Dyes from China, India and the United Kingdom, Inv. Nos. 731-TA-548, 550 and 551 (Preliminary), USITC Pub. 2514 (May 1992).

⁴ Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); 693 F. Supp. 1165, 1171-72 (Ct. Int'l Trade); Asociacion Columbiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1171-72 (Ct. Int'l Trade 1988); Asociacion Columbiana de Exportadores de Flores v. United State, 704 F. Supp. 1068-1072 (Ct. Int'l Trade 1988).

Watson finds other factors more important in determining whether to cumulate. A comparison of imports from Hungary and India in these investigations indicates markedly different patterns of shipments, market penetration, capacity and capacity utilization. Moreover, the historical patterns of trade, intentions and capabilities of the potential exporters in the respective countries greatly differ.

The Statutory Factors

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 unfair imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."

The factors the Commission must consider in a threat analysis are:

(I) if a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

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

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

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

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

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

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

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation,

(IX) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood 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.⁵

The determination of the Commission cannot be based on mere speculation. In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.⁶

Initially, we note that items (VIII) and (IX) are not legally relevant to our determination in these investigations. These investigations involve a single, non-agricultural product. They involve dumping of the Hungarian product and both dumping and subsidization of the Indian product. Further, there is no indication that Hungarian or Indian exports of sulfanilic acid have been the subject of antidumping determinations in third countries. We therefore focus our analysis on the remaining factors.

Hungarian Imports

The present investigation involves products from Hungary that have been found to be dumped in the U.S. market but not subsidized. Therefore, factor I, the nature of the subsidies, is not legally relevant to this evaluation of the threat posed by the Hungarian product.

Factors II and VI involve an assessment of the production capacity and capacity utilization of the foreign industry. Nitrokemia, the sole Hungarian producer and exporter of sulfanilic acid, has operated at significantly high capacity utilization levels over the period of investigation.⁷ The Hungarian industry expanded its capacity in 1991 at the request of a European customer. This expansion was the result of improvements to the factory's existing production line; any further expansion would require the installation of an entirely new production line.⁸ Although the capacity expansion in 1991 did lead to an increase in exports

⁵ 19 U.S.C. § 1677(7)(F)(i), as amended by 1988 Act, sections 1326(b), 1329.

⁶ See 19 U.S.C. § 1677(7)(F)(iii), as amended by 1988 Act, section 1329.

⁷ Report at I-42.

⁸ Report at I-42, footnote 135.

to the U.S.⁹, evidence on the record indicates that this increase resulted from unusual circumstances, and that although sporadic increases may occur in the future, they will not occur in significant quantities or in continuous periods.¹⁰ Furthermore, the record clearly indicates that Nitrokemia's primary interest is with the European market; there is no evidence that this will not continue to be the case in the future.¹¹

With respect to factor III, there has been an increase in U.S. market penetration in the interim 1992 period, however, we do not believe this penetration will increase to an injurious level for several reasons. First, Nitrokemia sells its refined sulfanilic acid to a very limited U.S. clientele and has no plans to expand this clientele base. As we stated previously, Nitrokemia's primary market continues to be in Europe. Moreover, Nitrokemia has never solicited sales from any U.S. purchaser and there is no evidence to suggest they plan to do so in the future. Secondly, Nitrokemia has refused to supply sulfanilic acid to other U.S. purchasers even though demand is high.¹² Although Nitrokemia will continue to supply Warner-Jenkinson with refined sulfanilic acid to the extent it has supply after meeting the

⁹ Prehearing brief, p. 34.

¹⁰ The fact that sulfanilic acid sales constitutes only a small proportion of Nitrokemia's total sales, coupled with the fact that Nitrokemia's reportedly poor overall financial status would prevent Nitrokemia from installing a new production line, leads us to conclude that Nitrokemia will not, and cannot, expand their sulfanilic acid production capacity any further in the foreseeable future. This prevents Nitrokemia from increasing exports to the U.S. without cutting back on shipments to long-standing customers in other key markets.

¹¹ We note that the import projections for 1992 made by the Hungarian respondents in the preliminary investigation did not match projections made in response to the Commission's questionnaire in this final investigation. The difference between the two projections is adequately explained by the unexpected sale by Nitrokemia of residual capacity refined acid to Warner-Jenkinson. See, Letter of counsel dated February 10, 1993 responding to questions from staff. We also note that there have been some discrepancies as to sales made in the U.S. Although we find more troubling the fact that Commerce determined to revert to the use of BIA for its margin calculations based upon the discovery of certain unexpected documentation, we find the evidence upon which we base our conclusions to be sufficiently reliable. Moreover, the facts and circumstances surrounding Commerce's decision have not been made part of the record in these investigations. It is based on the record over the period of investigation, as well as testimony from others in the industry, that we have been able to substantiate Nitrokemia's capacity and export projections.

¹² Preliminary conference Tr. at 111-112; Hearing Tr. at 107, 141.

needs of its European customers, we note that Nitrokemia has not been able to fulfill Warner-Jenkinson's entire demand throughout the period of investigation. As a result, Warner-Jenkinson has been forced to find alternative sources of refined sulfanilic acid.¹³

Factor IV requires the Commission to consider the potential price effects of the dumped Hungarian product. We note that during the period in which the U.S. industry sold refined sulfanilic acid, the Hungarian product undersold the domestic product.¹⁴ The Hungarians do not sell any other grade of sulfanilic acid. We also note that the record indicates refined sulfanilic acid sold at prices below that of domestic sodium sulfanilate.¹⁵ However, we feel there have been no price suppressive or depressive effects on the domestic industry because of the very limited number of domestic purchasers of the Hungarian product. Since the Hungarians cannot even meet the demands of their limited U.S. purchasers, it is highly unlikely that they will be able to suppress domestic prices for refined sulfanilic acid or any other grade of sulfanilic acid. Prices for all domestically produced grades of sulfanilic acid have fluctuated over the period of investigation, but are all priced higher in the last quarter for which data was collected than they were during the first quarter¹⁶. Furthermore, since the domestic industry has resumed production of refined sulfanilic acid, they have been able to sell their product at prices higher than that charged by the Hungarians.¹⁷

Factor V relates to inventories. We note that Hungarian inventories do not appear to be a relevant factor. There is not complete information on the record concerning U.S. inventories of the Hungarian product.

Factor VII refers to other demonstrable adverse trends affecting the industry. We consider the presence of other unfairly traded imports such a factor when the conditions

¹³ Report at I-44.

¹⁴ Report at I-62.

¹⁵ Report at Table 18,19.

¹⁶ Report at I-59-61.

¹⁷ Report at I-61

indicate that such imports are having a combined effect on the domestic industry. Since the preliminary determination in these investigations, a final affirmative determination regarding imports from China has resulted in the imposition of antidumping duties. We note that imports from China should not be cumulated in these current investigations since Congress has stated that cumulation in threat cases "would not include imports which are subject to preexisting orders, since it would no longer be possible for such imports to constitute a threat"¹⁸ However, due to the limited and specific nature of the imports from Hungary, we do not believe it is appropriate to view such imports as adding to the effect of the Chinese imports on the domestic industry. In these investigations, imports from India are also alleged to injure or threaten to injure the domestic industry. Similarly, considering the limited and specific nature of the Hungarian imports, we do not cumulatively assess the impact of the Hungarian imports with those from India.

Finally, with respect to factor X, we note that since the preliminary investigations, the domestic industry has resumed production of refined sulfanilic acid. Although the domestic industry must meet environmental restrictions on the disposal of the wastewater stream which results from the refining process, there is no evidence on the record that indicates that the prices charged by the Hungarians in the domestic market are increasing the difficulty of the domestic industry in obtaining the operating returns necessary to provide financing for the proper disposal of the wastewater. The domestic industry has been able to sell its newly produced refined sulfanilic acid at a very competitive rate. Furthermore, any inability on behalf of the domestic industry to increase sales of its refined sulfanilic acid at this time does not appear to be related in any way to the presence of the Hungarian imports, but rather, to quality problems perceived, real or not, by domestic purchasers.¹⁹

Based on the record in this final investigation, we determine that the Hungarian imports of sulfanilic acid do not pose a real and imminent threat of material injury to the domestic industry.

¹⁸ H.R. Rep. No. 40, 100th Cong., 1st Sess. 131 (1986)

¹⁹ Report at I-30, Footnote 111.

Indian Imports

With regard to factor I, Commerce in its final determination found an estimated net subsidy of 43.71 percent ad valorem being provided to all producers and exporters in India.²⁰ Commerce used the information provided by the petitioner as the best information available to calculate the amount of the subsidy.²¹ Although both domestic and export subsidies were alleged by the Petitioner, and reviewed by Commerce, there is no indication as to what percentage of the total subsidies are export subsidies and what percentage are domestic subsidies.²²

The evidence regarding factors II and VI indicate that Indian capacity for both technical and refined sulfanilic acid has been increasing dramatically over the period of investigation. Substantial additional increased capacity is projected for 1993.²³ Capacity utilization levels for both technical and refined sulfanilic acid have been extremely low over the period of investigation and are projected to remain low through 1993.²⁴ Based on these data, there is a substantial amount of unused capacity with which Indian producers could use to increase production of sulfanilic acid for shipment to the United States.

With respect to factor III, the record indicates that there has been a rapid increase in U.S. market penetration by the Indian imports. There were no Indian imports of sulfanilic acid in the beginning of the period of investigation, but by 1992, imports gained a significant share of the U.S. sulfanilic acid market.²⁵ The U.S. market share of Indian imports, expressed as a

²⁰ Report at I-15.

²¹ Report at I-15.

²² Federal Register, Vol.57, No.107, June 3, 1992

²³ Report at Table 12. We note that estimates on the total capacity to produce technical grade sulfanilic acid by all manufacturers in India vary among sources. Report at I-47-48.

²⁴ Report at Table 12.

²⁵ Report at Table 14.

percent of consumption for the nine month interim 1992 period, is substantially greater than for the same period in 1991.²⁶ Moreover, the record contains evidence that Indian producers are increasing their focus on the U.S. market. We note that at least one major Indian producer of sulfanilic acid, Jeevan Products, has been working with a U.S. chemical distributor to develop the capacity to produce and sell refined sulfanilic acid in the U.S. market.²⁷ The record also indicates that Indian producers have developed a network of potential U.S. distributors, having used a number of different importers in the past.²⁸

With respect to prices of the Indian product, factor IV, there is little information available due to the sporadic shipments that have been made.²⁹ There appears to be some underselling which is supported by anecdotal evidence in the record.³⁰

Regarding factor V, domestic inventories have remained insignificant, however, we note that Indian producer's inventories of refined sulfanilic acid have steadily increased both in terms of quantity and as a percent of production.³¹

With respect to factor VII, other demonstrable adverse trends, we consider the presence of the unfairly traded imports such a factor when the conditions indicate that such imports are having a combined effect on the domestic industry. For reasons stated in our analysis of the Hungarian imports, we do not believe it is appropriate to view imports from China as adding to the effect of the imports from India. Additionally, we do not cumulatively assess the impact of the Indian imports with those from Hungary due to the limited and specific nature of the Hungarian imports.

²⁶ Report at C-3.

²⁷ Report at I-49. It is anticipated by a U.S. distributor that Indian refined sulfanilic acid would be purchased by Hilton Davis, Sandoz, and Warner-Jenkinson.

²⁸ Report at I-25.

²⁹ Report at I-62.

³⁰ Report at I-66, F-3.

³¹ Report at Table 12.

Lastly, with respect to factor X, the record in these final investigations supports the conclusion that Indian producers have developed the capacity to produce refined grade sulfanilic acid of acceptable quality and have begun to focus on the U.S. market. Should the market penetration of Indian imports continue to increase at the current rate, there is little doubt that such imports will have a deleterious effect on the domestic industry's ability to resume production of refined sulfanilic acid.

Based on our analysis of the record in these final investigations, we determine that Indian imports of sulfanilic acid do pose a real and imminent threat of material injury to the domestic industry.

VIEWS OF COMMISSIONERS BRUNSDALE AND CRAWFORD

Sulfanilic Acid from the Hungary and India

Inv. No. 731-TA-560 and 561 (Final)

Having reviewed all the evidence of record in the investigations, we determine that the domestic industry is not materially injured, or threatened with material injury, by reason of dumped imports from Hungary or dumped and subsidized imports from India. Our discussion of the like product and the domestic industry is included in the views of Vice Chairman Watson, Commissioner Rohr, Commissioner Brunsdale, and Commissioner Crawford. In these views we discuss why the domestic industry producing sulfanilic acid is neither materially injured nor threatened with material injury by reason of subject imports.¹

I. INTRODUCTION

Sulfanilic acid is produced in three grades: technical grade, sodium sulfanilate (salt), and refined grade. All three grades are included in the scope of these investigations. 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). Technical grade is used to produce concrete additives.

¹ The record in these investigations has been consolidated with the records in the investigation involving sulfanilic acid from the People's Republic of China. See Sulfanilic Acid from the People's Republic of China, Inv. No. 731-TA-538 (Final), USITC Pub. (2542).

Petitioner, the sole U.S. producer of sulfanilic acid, produced primarily technical grade and salt until six months ago, when it began to produce the refined grade.² Petitioner produces salt in both liquid and powder form. Imports from India consist of refined grade and a small amount of technical grade,³ while imports from Hungary are exclusively refined grade.

II. CUMULATION

In determining whether there is material injury by reason of dumped and subsidized imports, the Commission is required to assess cumulatively the volume and price effects of imports from two or more countries subject to investigation if such imports compete with each other and with the domestic like product.⁴

Two cumulation issues are presented in these investigations. First, we consider whether it is appropriate to cumulate imports of sulfanilic acid from China that have been subject to an antidumping duty order since August 19, 1992. Second, we consider whether imports of sulfanilic acid from India compete with other subject imports and the domestic like product or if they are "negligible."

²Hearing Transcript (Hungary and India) at 39-40.

³ While the data are confidential, the vast majority of imports from India during the period of investigation were refined grade. There have been no Indian imports of technical grade since 1991. Staff Report at D-3.

⁴ 19 U.S.C. § 1677(7)(C)(iv)(I).

A. CUMULATION OF IMPORTS FROM CHINA

On August 19, 1992, imports of sulfanilic acid from China became subject to an antidumping duty order and therefore are no longer "subject to investigation."⁵ Nonetheless, if the statutory requirements for cumulation are otherwise met, we may cumulate imports subject to an ongoing investigation with imports that were recently subject to antidumping or countervailing duty orders.⁶ As noted in Gray Portland Cement and Cement Clinker from Japan:

The issue in such cases is whether the final order is sufficiently "recent" that the unfairly traded imports which resulted in imposition of the order are continuing to have an effect on the domestic industry, or whether the order is sufficiently removed in time that LTFV imports entered prior to date of the order no longer have a continuing injurious impact on the domestic industry.⁷

The antidumping duty order placed against imports of sulfanilic acid from China became effective in August 1992, approximately six months before the vote in these final investigations. In the past, the Commission has found that imports subject to an outstanding order for as long as eight

⁵ Final Determination of Sales at Less than Fair Value: Sulfanilic Acid from the PRC, 57 Fed. Reg. 37524 (Aug. 19, 1992).

⁶ See, e.g., Gray Portland Cement and Cement Clinker from Japan, Inv. No. 731-TA-461 (Final), USITC Pub. 2376 (April 1991) at 30; Forged Steel Crankshafts from Brazil, USITC Pub. 2038 at 7; Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers from Italy and Yugoslavia, Inv. Nos. 731-TA-342 and 346 (Final), USITC Pub. 1999 (Aug. 1987) at 16.

⁷ USITC Pub. 2376 at 30. See also H.R. Rep. No. 40, 100th Cong., 1st Sess. 130 (1986).

months to be sufficiently recent to warrant cumulation.⁸

However, the time period alone is not controlling; rather, the Commission must determine whether the imports from China are continuing to have an effect on the domestic industry.⁹

The final antidumping duty order placed against the Chinese imports was based upon threat of material injury.¹⁰ Thus, since the Commission found last August that Chinese imports did not materially injure the domestic industry, we cannot find that such imports are continuing to have an injurious impact on the U.S. industry.¹¹ The antidumping duty order placed against China has eliminated any threat from the Chinese imports that was caused by

⁸ See Certain Welded Carbon Steel Pipes and Tubes from the Philippines and Singapore, Inv. Nos. 731-TA-293, 294, and 296 (Final), USITC Pub. 1907 (Nov. 1986) and Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. Nos. 731-TA-349 (Final), USITC Pub. 1994 (July 1987) at 16.

⁹ The imports that the Commission would cumulate under these circumstances are only those imports from China that entered the United States prior to the date that the antidumping duty order went into effect. Any imports entered after the antidumping duty order became effective are considered to be the equivalent of fairly traded. USITC Pub. 2376 at 30. See also H.R. Rep. No. 40, 100th Cong., 1st Sess. 130 (1986); Industrial Nitrocellulose from Yugoslavia, Inv. No. 731-TA-445 (Final), USITC Pub. 2324 (Oct. 1990) at 6.

¹⁰ Commissioner Brunsdale did not participate in that investigation. Commissioner Crawford found that the domestic industry was neither materially injured nor threatened with material injury by reason of dumped imports of sulfanilic acid from China.

¹¹ In Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994 (July 1987) at 20, Chairman Liebler and Vice Chairman Brunsdale stated that "cumulation of the Singapore imports is particularly inappropriate since there was no determination that they were actually causing any material injury."

unfair pricing. There is no evidence that any significant amount of Chinese sulfanilic acid that could be considered to have a continuing impact on the domestic industry entered the United States prior to the antidumping duty order.¹² Therefore, we find it inappropriate under these circumstances to cumulate imports of sulfanilic acid from China with the imports from Hungary and India.

B. CUMULATION OF IMPORTS FROM INDIA

Indian respondents have argued that imports of sulfanilic acid from India do not compete with the Hungarian subject imports and with the domestic like product, since such imports are of a lower quality and are only sold in the Northeast.¹³ They argue that the sulfanilic acid imported into the United States from India in 1992 was refined grade to be used for evaluation purposes only.¹⁴

At the hearing, Sandoz, the major U.S. purchaser of sulfanilic acid from India in 1992, stated that many of the samples of the Indian product were not acceptable and two-thirds of one shipment was returned to one Indian importer.¹⁵ Our reviewing court has held, however, that only a "reasonable

¹² See Staff Report at Table D-4.

¹³ Post-hearing Brief of Jeevan Products, Perfect Pharmacists, Ltd. and PMC Specialties Group (Jan. 15, 1993) at 5; Hearing Transcript at 170-171 and 183 (Jan. 5, 1993).

¹⁴ Post-hearing Brief of Jeevan Products, Perfect Pharmacists, Ltd. and PMC Specialties Group (Jan. 15, 1993) at 7.

¹⁵ Post-hearing Brief of Jeevan Products, Perfect Pharmacists, Ltd. and PMC Specialties Group (Jan. 15, 1993) at 5.

overlap" of competition is required. There is evidence in the record that Indian imports are somewhat substitutable with imports from other sources, and that in some instances the ultimate purchaser may not even know the country of origin of the sulfanilic acid.¹⁶ Therefore, despite the quality problems with the Indian imports that respondents have listed, we find that there is a sufficient overlap of competition for purposes of cumulation.¹⁷

Under the statute, the Commission is not required to cumulate imports from a particular country in any case in which the Commission determines that "imports of the merchandise subject to investigation are negligible and have no discernable adverse impact on the domestic industry."¹⁸ In the preliminary investigation Commissioner Brunsdale determined that imports from India were negligible and had no discernable impact on the domestic industry. Commissioner Crawford reached the same conclusion in the case involving China. In both cases the market share of imports from India was well below 1 percent of the U.S. market, a level the Commission has determined to be negligible.

¹⁶ See, e.g., Report at I-26 n.101.

¹⁷ In Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. Nos. 731-TA-520 and 521 (Final), USITC Pub. 2528 (June 1992), the Commission cumulated imports from China despite allegations that approximately 50 percent of such imports did not compete with other subject imports and the domestic product due to the inferior quality of the imports from China. The Commission nonetheless found a "reasonable overlap of competition." Id. at 23.

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

The record in the China investigation included interim data from January to March 1992. The import data collected by the staff on Indian sulfanilic acid since the final determination in the China investigation includes interim data from January to September 1992. Import penetration approached 5 percent in that interim period -- well above the level that the Commission has considered negligible.¹⁹ We therefore determine the evidence of record supports a decision to cumulate imports from India.

III. NO MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE (LTFV) AND SUBSIDIZED IMPORTS

In making its determination, the Commission is required to consider the volume of subject imports, and the effect of such imports on domestic prices, and the impact 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," and is directed to evaluate relevant economic factors in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."²⁰

A. ECONOMIC FACTORS

Petitioner is the sole U.S. producer. Since it produced primarily technical grade and salt until six months ago, we could only find material injury by reason of the subject imports if the dumped and subsidized price of refined sulfanilic

¹⁹ Report at Table 16.

²⁰ 19 U.S.C. § 1677(7)(B) and (C).

acid imports from Hungary and India induced purchasers to switch from the domestic technical grade or salt to the refined grade.

External Factors

Two external factors directly affect the U.S. market. First, the 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 certain purchasers for the refined grade, which represented nearly all of the combined imports from Hungary and India during the period of investigation.²¹

Second, petitioner withdrew from the refined market in 1989 as a result of its inability to comply with U.S. environmental laws without incurring substantial costs.²² Thus, petitioner did not produce a grade of sulfanilic acid suitable for the needs of major purchasers until the very end of the period of investigation. While the domestic producer has begun to produce the refined grade, it sells for a substantially higher price than either the subject imports or fairly traded imports. In

²¹ Staff Report at Table D-1.

²² Conference Transcript (Hungary and India) at 38-39. We 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 conference in the earlier investigation on China, 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.

addition, the vast majority of petitioner's sales continue to be technical grade and salt.²³

Fairly traded Imports

Fairly traded imports are a particularly relevant economic factor in this investigation. The market share of nonsubject imports exceeded petitioner's market share in both 1989 and 1990.²⁴ Between 1990 and 1991, Japan, a primary source of refined grade, severely curtailed its exports to the United States, creating a shortage. Because petitioner did not produce refined grade, purchasers were forced to satisfy their needs from other import sources, primarily China. Until the investigation of Chinese imports began in late 1991, the increase in the market share of subject Chinese imports nearly equalled the decrease in the market share of nonsubject imports from other sources.²⁵ During much of the interim period ending September 1992, imports from China were subject to investigation and the final dumping margins were uncertain. As a result of the 85.29 percent preliminary duties and the uncertainty of the final duties, Chinese customers turned to the subject imports. The market share of Chinese imports dropped and the market share of subject imports increased rapidly. Thus, subject imports did not displace domestic sales; rather, they filled a part of the market

²³ Refined accounted for less than 5 percent of petitioner's sales of sulfanilic acid during the interim period. See Table D-3.

²⁴ Report at Table 16.

²⁵ Id.

abandoned by the Japanese that could not be filled by Chinese imports. Now, even with the 19.14 percent final antidumping duties imposed on imports from China in August 1992, Chinese imports are still relatively low priced, and according to purchasers, should continue to have a strong presence in the U.S. market.²⁶

Substitutability

The degree of substitutability is an integral part of the statutory analysis of the volume effects, price effects, and impact on the domestic industry of subject imports. A greater degree of substitutability between subject imports and the domestic like product will produce greater volume effects, price effects, and impact on the domestic industry. Conversely, limited substitutability produces smaller effects.

Because of its high level of impurities, technical grade is a poor substitute for either salt or refined grade.²⁷ In addition, the substitutability between domestic salt and imported refined grade is limited.

The three largest purchasers of sulfanilic acid account for over two-thirds of domestic apparent consumption. Each of these purchasers has used both refined grade and salt in its operations,²⁸ suggesting to some that at least some degree of

²⁶ Report at G-1 and G-2; Hungary and India Hearing Transcript at 99, 155 and 159; Sandoz confidential submission dated January 22, 1993.

²⁷ Report at I-15.

²⁸ Report at I-23 and Table E-1.

substitutability exists 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.²⁹ 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 its production process and facilities, and by the costs of switching from one grade to the other.

Questionnaire responses state that purchasers find it crucial that the sulfanilic acid they buy produces a high quality end product.³⁰ Thus, many of the major purchasers require the refined grade.³¹ Sandoz testified that using salt instead of refined grade compromises the reliability of its production process, and, therefore, the quality of its products.³² Warner-Jenkinson testified that refined grade is required to meet stringent FDA regulations limiting impurities contained in its food colors.³³

²⁹ China Hearing Transcript at 92 and at 147.

³⁰ Memo EC-Q-013 dated February 8, 1993 at 26.

³¹ 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.

³² China Hearing Transcript at 91.

³³ Salt is itself an impurity that must be removed to meet FDA requirements. China Hearing Transcript at 93-95.

Sandoz testified that refined grade is necessary to operate its facilities efficiently and economically. Its Fair Lawn plant, which no longer produces a product using sulfanilic acid, had used salt "with great difficulty and at significant cost", and its South Carolina plant has "never been able to use salt".³⁴

Sandoz further testified that using salt at its South Carolina plant would reduce its efficiency by (1) producing "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.³⁵

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 as much as 400,000 pounds); (2) increasing purification time by 15 percent; and (3) increasing labor and material costs.³⁶ Furthermore, Warner-Jenkinson testified that it has built a production facility specifically designed to use refined grade.³⁷

Testimony at the hearing on the Hungary and India investigations further demonstrates that the degree of

³⁴ China Hearing Transcript at 79. All sulfanilic acid production has been consolidated into the South Carolina plant, which has been designed and built specifically to use refined grade. Hungary and India Hearing Transcript at 97-98.

³⁵ China Hearing Transcript at 88 - 92.

³⁶ China Hearing Transcript at 95 - 99.

³⁷ China Hearing Transcript at 94.

substitutability is very limited. Warner-Jenkinson testified that it immediately loses 15 percent of its production capacity because of the additional volume required when using salt. That reduction in production capacity equals \$1.6 million in sales revenues.³⁸

Clearly, the purchasers that have production facilities designed to use refined grade, not salt, 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.

One important purchaser expressed a preference for salt in the liquid form, claiming it provided greater ease of handling.³⁹ Another major purchaser stated that it considers refined grade and salt "interchangeable" raw materials, although it prefers salt.⁴⁰ These statements are not inconsistent with the conclusion that refined and salt are poor substitutes for each other. Purchasers have distinct preferences depending on their needs and facilities. The ability to use salt when refined is in short supply, to avoid shutting down production, does not make the two grades practical or economic substitutes. Based on the evidence described above, we conclude that the elasticity of substitution between refined grade and salt is small, and that the degree of

³⁸ Hungary and India hearing transcript at 110-111.

³⁹ See Report at E-3.

⁴⁰ Report at I-11.

substitution among subject imports and the like product is extremely limited.

B. VOLUME EFFECT

The statute directs that, in determining whether there is material injury by reason of dumped and subsidized imports, the Commission must 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."⁴¹

The market share of subject imports, by value, increased from about 5 percent in 1989 to about 10 percent in 1991, and to about 20 percent in the interim period.⁴² The market share of petitioner remained relatively steady at around 40 percent from 1989 to 1991, but then increased to nearly 50 percent in the interim period. Although the increase in subject imports during the interim period is large, its significance is tempered by the presence of fairly traded imports in the U.S. market. As discussed above, the uncertainty surrounding the final dumping margin on imports of the refined grade from China caused a decline in imports from China and a surge in subject imports. At the same time, petitioner's market share also increased.⁴³

The dumping margins in these investigations are 58.14 percent for imports from Hungary and 114.8 percent for imports

⁴¹ 19 U.S.C. § 1677(7)(C)(i).

⁴² Report at I-90.

⁴³ Report at I-90.

from India. The countervailing duty margin for India is 43.71 percent. It is likely that no imports from India and fewer imports from Hungary would be sold in the U.S. market at their fairly traded prices. Petitioner's market share would probably not increase if there were no imports from India and fewer imports from Hungary. Petitioner testified that for refined grade to be a viable product, it would have to charge \$1.50 per pound.⁴⁴ With the imposition of dumping duties on the refined grade from China, Chinese imports are fairly traded. Even if the price of these imports rose by the entire antidumping duty of 19.14 percent, it still would be priced considerably below \$1.50 per pound,⁴⁵ and below the price that Sandoz paid for petitioner's new refined grade. Therefore, purchasers would likely buy the fairly traded Chinese imports, not petitioner's products.

Indeed, the record demonstrates that customers have been purchasing substantial quantities of Chinese refined grade since the antidumping order was issued. Sandoz testified that it still buys Chinese refined, and its confidential information shows the amount of Chinese refined grade Sandoz plans to purchase in 1993.⁴⁶

⁴⁴ Hungary and India Transcript at 82.

⁴⁵ Based on the unit value of Chinese imports during the period of investigation (Report at Table 14).

⁴⁶ Hungary and India Hearing Transcript at 99, 155, and 159; Sandoz confidential submission dated January 22, 1993.

Because fairly traded imports from China are lower priced than petitioner's refined grade and appear to be a much closer substitute for subject imports than for the domestic like product, it is likely that the market share of the domestic producer was not limited to a large degree by dumped and subsidized imports.

C. PRICE EFFECTS

The statute directs that, in evaluating the effect of subject imports on prices, the Commission must 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.⁴⁷

Price is almost always important in any purchasing decision. However, relative value, not absolute price, is the determinative factor. In general, purchasers look at what they are getting for their dollar -- that is, at 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.

Petitioner stopped producing refined grade in 1989 and has only recently resumed production. Therefore, the only price comparisons between imported and domestic refined grade are for 1989. Only one price comparison exists for the technical grade

⁴⁷ 19 U.S.C. § 1677(7)(C)(ii).

from India. While the prices of subject imports were lower than prices of the domestic like product in those few price comparisons that exist, we find them largely irrelevant in considering present material injury.

However, record evidence demonstrates that non-price factors play a crucial role in this market. As discussed above, substitutability between imported refined grade and domestic salt is very limited. 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 essential in 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 useful, and cannot support a conclusion that price underselling is significant or that domestic salt prices have been suppressed to a significant degree.

Finally, the price trends from 1989 to 1991 demonstrate that domestic salt prices have not been depressed.⁴⁸ Given the relatively low levels of the domestic producer's capacity utilization in this case and the significant presence of fairly traded imports, it is not likely that subject imports had a significant effect on domestic prices.

⁴⁸ Report at Table 18.

D. IMPACT ON THE AFFECTED INDUSTRY

The statute directs the Commission to examine the impact of subject imports on the domestic industry, lists specific factors for the Commission to consider, and provides that the "Commission shall evaluate all relevant economic factors. . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁴⁹

We have considered all of the statutory impact factors discussed under the heading "Condition of the Industry" in the views of Vice Chairman Watson, Commissioner Rohr, Commissioner Brunsdale, and Commissioner Crawford. While we do not reach a separate legal conclusion on material injury based on the condition of the industry, our evaluation of the statutory impact factors leads us to find that injury by reason of the subject imports, if any, 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.⁵⁰ In addition, the reported data on U.S. consumption in 1989 may be understated by as much as 10 to 15 percent.⁵¹

Petitioner's financial performance is consistent with its market performance. We do not view the level of or trends in

⁴⁹ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁰ See China Hearing Transcript at 33-34 and Report at I-36 to I-38.

⁵¹ Report at Table 1.

absolute profits (in this investigation, from loss to profit) as probative of financial performance. A firm's financial performance relative to its operations provides a more appropriate evaluation. In 1991, petitioner's operating income as a percentage of net sales was substantial, and its operating return on assets was more than twice its operating income margin. Moreover, its financial performance improved during the period of investigation .

In terms of market performance, petitioner increased sales, capacity, and capacity utilization. Even with the large increase in market share of subject imports during the interim period, petitioner's market share increased.

In summary, petitioner's market 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, we conclude that the domestic industry would not have been materially better off even if subject imports had been fairly traded.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV AND
SUBSIDIZED IMPORTS⁵²

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.⁵³ The statute provides that a threat determination "shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent,"⁵⁴ that our decision "may not be made on the basis of mere conjecture or supposition,"⁵⁵ and that the evidence must show more than a "mere possibility" that injury might occur.⁵⁶ We have examined all the threat criteria that are relevant to this case, but will discuss here only the five that we consider most important.

(1) Capacity Increases. We consider if any increase in capacity, or unused capacity is likely to result in a significant increase in imports. 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

⁵² The Commission has discretion to cumulate in a threat determination. We have decided to analyze the threat of material injury in the light most favorable to petitioner, and therefore have cumulated subject imports in our analysis.

⁵³ 19 U.S.C. § 1677(7)(F)(i).

⁵⁴ 19 U.S.C. § 1677(7)(F)(ii).

⁵⁵ 19 U.S.C. § 1677(7)(F)(ii).

⁵⁶ Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780 (1981).

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 constitute such positive evidence.⁵⁷

Record evidence in the case before us demonstrates that Hungary's extremely high level of capacity utilization for refined grade is projected to continue in 1992 and 1993.⁵⁸ India has significant excess capacity and has tried to target the U.S. market, but it is doubtful that it could make significant inroads. At their height Indian imports captured less than 5 percent of the U.S. market, and sales were concentrated in a period of a few months. One important purchaser stated that it did not intend to purchase the Indian product in the foreseeable future because its quality was unacceptable. Another stated that it had purchased such a small amount that it could not even evaluate the product. Clearly, it would be speculative to assume that, just because India has excess capacity, it will have a significant impact on total U.S. imports of sulfanilic acid.

(2) Inventory Increases. Inventories of the subject imports have not substantially increased relative to production in the United States. In fact, inventories of the Hungarian product

⁵⁷ 590 F. Supp. at 1280.

⁵⁸ Report at Table 12.

relative to production actually fell during the interim period. And, while inventories of the Indian product increased, given its small market share, the overall level of inventories was not affected in a significant way.

(3) Market Penetration. While there has been a rapid increase in subject imports during the interim period, that increase was in response to a shortage of refined grade created by the withdrawal of other imports and the investigation against Chinese imports. Petitioner's market share did not fall when the subject imports increased. Now that the Chinese product is fairly traded and still relatively low priced, it is likely that, if anything, the market share of subject imports will decline.

(4) 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, yet petitioner resumed production of refined grade in competition with the subject imports.

Sandoz has agreed to purchase a substantial quantity of petitioner's refined grade sulfanilic acid in both 1993 and 1994. While petitioner continues to have some excess capacity to produce the refined grade at this point, that is not unusual

given its recent entry into the market. Warner-Jenkinson testified that it is testing petitioner's refined grade to see if it is of acceptable quality. High prices relative to the Chinese product, and not subject imports, appear to be the factor most likely to limit the quantity of petitioner's sales of refined. Accordingly, subject imports did not and will not have significant negative effects on petitioners existing development and production efforts.

(5) Domestic prices. It is unlikely that imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices. The global market for refined sulfanilic acid appears to be very competitive. However, the domestic producer's salt occupies a market niche that may be somewhat shielded from that competition. At least one large customer mentioned its preference for the salt in solution form. Given transport costs, salt solution is a market niche that will continue to be dominated by the domestic producer. Petitioner's refined grade is currently priced too far above the price of fairly traded imports to be an economically viable substitute for the subject imports. Some customers, however, obviously are willing to pay a significant price premium to purchase the domestic product.

Given the various factors outlined above, there is no positive evidence that a threat of material injury exists, much less that such a threat is real and 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.

V. CONCLUSION

Based on our overall evaluation of the record, the volume of subject imports, their effect on domestic prices and the impact of subject imports on the domestic industry, we conclude that there is no material injury or threat of material injury by reason of the dumped and subsidized imports of sulfanilic acid.

VIEWS OF CHAIRMAN NEWQUIST AND COMMISSIONER NUZUM,
CONCURRING IN PART AND DISSENTING IN PART

On the basis of the information obtained in these final investigations, we determine that an industry in the United States is threatened with material injury by reason of imports of sulfanilic acid from Hungary that have been found by the Department of Commerce (Commerce) to be sold at less-than-fair-value (LTFV), and imports from India that have been found by Commerce to be sold at LTFV and subsidized.¹ We further determine, in accordance with 19 U.S.C. §§ 1671d(b)(4)(B) and 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.

Before setting out our separate views, we note that we concur with our colleagues' analysis and finding that there is a single like product, sulfanilic acid, and a domestic industry consisting of a single producer, R-M Industries, Inc. We also note that we concur with Vice Chairman Watson and Commissioner Rohr in their affirmative determinations with respect to imports from India. However, because our analysis differs in several respects from that of our colleagues, and because we also arrive at an affirmative determination with respect to imports from Hungary, for the sake of clarity, we set forth here our entire analysis (other than like product and domestic industry).

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

I. 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 considers "all relevant economic factors which have a bearing on the state of the industry in the United States"² 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.³ 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."⁴

As we noted in the previous investigations involving sulfanilic acid, there are several conditions of competition distinctive to the domestic sulfanilic acid industry. First, since 1989, U.S. demand for the refined forms of sulfanilic acid (both sodium sulfanilate and refined grade sulfanilic acid) expanded at a greater rate than demand for technical grade sulfanilic acid.⁵ 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

² See 19 U.S.C. § 1677(7)(C)(iii).

³ 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.

⁴ Id. No parties have raised any issues regarding a business cycle distinctive to the sulfanilic acid industry.

⁵ See Report at Table D-1 and I-56.

as an input for the food dyes industry.⁶

Thus, demand for sulfanilic acid has shifted towards the more refined forms of sulfanilic acid. Imports from Hungary have consisted only of refined grade sulfanilic acid, while imports from India have consisted of both technical and refined grade, although primarily the latter.

Another condition of competition affecting this industry is the increase in the cost of compliance with environmental regulations during the period of investigation. 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.⁷ In the preliminary investigations of imports from Hungary and India and the final investigation of imports from China, we noted that the petitioner had discontinued production of the refined grade 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.⁸

One significant new development since our preliminary determination is R-M's reentry into the market for refined grade sulfanilic acid.⁹ Toward the end of 1992, R-M and Sandoz entered into a contract whereby Sandoz agreed to purchase a portion of its refined grade acid requirements from R-M Industries. To date, Sandoz is the only domestic purchaser of sulfanilic acid that has

⁶ Report at I-10 n.35.

⁷ Report at I-21 n.75.

⁸ Sulfanilic Acid from Hungary and India, Invs. Nos. 701-TA-318 (Preliminary) and 731-TA-560 and 561 (Preliminary), USITC Pub. 2526 at 10 (June 1992); Sulfanilic Acid from the People's Republic of China, Inv. No. 731-TA-538 (Final), USITC Pub. 2542 at 9 (August 1992).

⁹ Hearing Transcript at 28-29.

agreed to purchase refined grade acid from R-M, although R-M is attempting to sell its refined grade acid to other domestic customers.

Finally, testimony from U.S. purchasers during the hearing in these investigations as well as testimony by the petitioner in the earlier investigations has highlighted the large degree of instability and unpredictability in the world-wide sulfanilic acid market. Warner-Jenkinson addressed some of the difficulties it has encountered in finding a stable and reliable source of supply of sulfanilic acid.¹⁰ Japanese producers of sulfanilic acid largely exited the U.S. market in mid-1990.¹¹ Further, as already discussed, the U.S. market has been affected by the promulgation of new regulations, which have affected producers and consumers of sulfanilic acid alike.

Against this backdrop of conditions of competition, we examine the various indicators of the domestic industry's performance. We begin by noting that the record in these investigations concerning the condition of the domestic industry overlaps substantially with the record in the recently concluded investigation involving imports of sulfanilic acid from China. Consequently, our findings with respect to the full three years 1989-91 are the same in both sets of investigations.¹² In the investigation involving imports from China, the Commission majority concluded that although the domestic industry's condition had shown overall improvement over the period of investigation, "other factors indicate that the improved performance in 1991 does not necessarily reflect long term or even moderate trends, and that this

¹⁰ Hearing Transcript at 233-234.

¹¹ Report at I-53.

¹² See Sulfanilic Acid from the People's Republic of China, Inv. No. 731-TA-538 (Final) USITC Pub. 2542 at 9-12 (August 1992).

industry is vulnerable to the effects of unfair imports."¹³ The additional evidence gathered in these investigations has borne out our concerns. Virtually all market and industry indicators showed negative trends during the interim period of January-September 1992, as compared to the same period in 1991. Domestic consumption declined sharply. Although domestic shipments remained fairly stable in terms of quantity, they declined in terms of value. While capacity remained stable, production and capacity utilization declined.¹⁴ Employment, hours worked, hourly wages paid, total wages paid and productivity declined as well, while unit labor costs increased.¹⁵

R-M's financial condition also showed some deterioration during the interim period as compared to the first nine months of 1991. Net sales declined. Actual operating income also declined, which aggravates R-M's overall difficulties in obtaining financing.¹⁶ After three years of substantial improvement, R-M's operating income as a percentage of net sales also declined.¹⁷

In the investigation of imports from China, the Commission majority noted R-M's low current ratio (current assets divided by current liabilities), which indicates R-M has been having difficulty financing its current obligations.¹⁸ R-M's current ratio remains precariously low.¹⁹ Its ability to obtain financing has not improved.²⁰

¹³ Id. at 11.

¹⁴ Report at Table C-1.

¹⁵ Report at Table 5.

¹⁶ Report at Table 7.

¹⁷ Id.

¹⁸ Sulfanilic Acid from the People's Republic of China, Inv. No. 731-TA-538 (Final) USITC Pub. 2542 at 12 (August 1992).

¹⁹ Report at I-36.

²⁰ Hearing Tr. at 27-28.

In sum, the industry's deterioration during the second and third quarters of 1992 makes clear that it remains extremely vulnerable to the effects of unfairly traded imports.

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

A. Cumulation

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.²¹

Petitioner argues that imports from Hungary and India should be cumulated. Respondents disagree and, in addition, argue that imports from India are "negligible."²²

1. Imports from China

Before proceeding to the issue of whether to cumulate imports from Hungary and India, we briefly address first the question of whether we should cumulate imports from China. The antidumping duty order issued against imports of sulfanilic acid from China became effective in August 1992, and was based upon the Commission's determination of threat of material injury. For purposes of injury analysis under the antidumping and countervailing duty law, that order has, as a legal matter, eliminated any threat that was caused by unfair pricing of the imports from China. There is no evidence of any

²¹ 19 U.S.C. § 1677(7)(F)(iv).

²² See, infra, at 57-60.

significant amount of inventories of Chinese sulfanilic acid that entered the United States prior to the issuance of the order which might have a continuing impact on the domestic industry. Therefore, we find it inappropriate under these specific circumstances to cumulate imports of sulfanilic acid from China with the imports from Hungary and India.

2. 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.²³

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 factors is not exclusive.²⁴ Further, our reviewing court has held that only a

²³ 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).

²⁴ Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (Ct. Int'l Trade 1989).

"reasonable overlap" of competition is required.²⁵

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 certain preference for one form over the other. Nonetheless, purchasers can, and have, switched between the two forms.²⁶ 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.²⁷ A purchaser may also switch to sodium sulfanilate from the refined acid, however, if the price is low enough.²⁸ In some cases, purchasers of optical brighteners and dyes have even been able to substitute technical grade sulfanilic acid in their production processes.²⁹ Finally, purchasers have used different forms of sulfanilic acid in order to maintain several sources of supply.³⁰

²⁵ See Granges Metallverken AB v. United States, 716 F. Supp. 17, 22 (Ct. Int'l Trade 1989).

²⁶ See, e.g., Report at I-17 to I-19, E-3. During the China investigation, 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." China 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 E-3.

Moreover, the record in these investigations indicates that Warner-Jenkinson * * * . Id.

²⁷ Report at I-24 to I-25.

²⁸ Pre-Hearing Brief of R-M Industries at 32 (December 29, 1992).

²⁹ Report at I-10 n.35.

³⁰ Report at I-24 to I-25.

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.³¹ Also, the record shows that imports from Hungary and India have been available simultaneously in the U.S. market during the latter portion of the period of investigation.³²

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.³³ In this regard, we note that volumes and market penetration levels of the Indian and Hungarian imports have each increased during the period of investigation.³⁴ Also, the limited direct price comparisons available in these investigations indicate that subject imports from each country have been sold at prices below those offered for the domestic like product.³⁵

3. 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

³¹ See Report at I-27. 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-58.

³² Report at Table 14.

³³ 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).

³⁴ See Report at Table 14 and Table 16.

³⁵ For pricing information, see Report at I-57 to I-67.

"imports of the merchandise subject to investigation are negligible and have no discernable adverse impact on the domestic industry."³⁶ 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.³⁷

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, and even more substantially during the interim period.³⁸ Furthermore, Indian producers have reported that, prior to the initiation of these investigations, they intended to increase sharply their exports of sulfanilic acid to the United States in 1992 and 1993.³⁹ Their revised projections in the final investigations of decreased exports to the United States were based in part on the possible imposition of antidumping and countervailing duties.⁴⁰

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.⁴¹

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

³⁷ 19 U.S.C. § 1677(7)(C)(v).

³⁸ Report at Table 14 and Table 16.

³⁹ Report at Table 13 (and accompanying notes).

⁴⁰ Id. and I-26 n.102.

⁴¹ Report at Tables 17-19. The fact that there is not a significant amount of pricing information for the Indian imports is not surprising given that the Indian producers only recently entered the U.S. market for sulfanilic acid.

Moreover, 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.⁴² Moreover, we find that the domestic market for sulfanilic acid is sufficiently price sensitive that even a relatively small quantity of unfair imports may result in price suppression or depression.⁴³

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, although there were more continuous imports during the interim period.⁴⁴ Further, as noted, there are plans by Indian producers to increase such sales in the near future.⁴⁵ In short, although imports from India may have been somewhat sporadic thus far, India has already demonstrated an ability to increase the rate of its imports significantly.⁴⁶ Hence, although imports into the United States from India are only a recent phenomenon, the rapid U.S. market penetration that occurred in the interim period in January-September 1992 demonstrates that Indian exporters are able to increase their U.S. market share in a short period of time.⁴⁷

For the above reasons, we determine that it is appropriate to assess cumulatively the volume and price effects of imports from Hungary and India.

⁴² Antidumping Petition, Sulfanilic Acid from the Republic of Hungary and India, and Countervailing Duty Petition, Sulfanilic Acid from India, Attachment G (May 7, 1992).

⁴³ 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-68.

⁴⁴ Report at Table 14.

⁴⁵ Report at Table 13.

⁴⁶ See Report at Table 14.

⁴⁷ Id.

In any event, in light of the vulnerable condition of the domestic industry to unfairly priced imports, even if we do not cumulate the volume and price effects of the imports from Hungary and India, we nonetheless determine that the industry is threatened with material injury by reason of the subject imports from these countries individually.

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."⁴⁸ The statute identifies ten specific factors to be considered and we have considered all of the factors relevant to the particular facts of these investigations. 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.⁴⁹ ⁵⁰ The presence or absence of any single threat factor

⁴⁸ 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 threat 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).

⁴⁹ 19 U.S.C. § 1677(7)(F)(i)(I)-(X). Factor (I) directs the Commission to consider the nature of any subsidies involved. On January 8, 1993, the Department of Commerce issued its affirmative countervailing duty determination with respect to imports of sulfanilic acid from India. In its notice, Commerce stated that it received only one submission from a U.S. importer, and apparently no submissions from the Indian producers. Accordingly, Commerce based its determination on the best information available, which was information provided by petitioner, and did not address the nature of the subsidies any further. 58 Fed. Reg. 3259. We note that the alleged subsidies include preferential export loans, preferential post-

(continued...)

is not necessarily dispositive.⁵¹

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 Hungary and India and a corresponding increase of imports from these countries into the United States during the period of investigation.⁵²

Further, during the period of investigation there has been a rapid increase in market penetration by the subject imports in terms of both quantity and value, and this increase was especially sharp during the interim period.⁵³ We note that although the domestic producer's market share also

⁴⁹(...continued)

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).

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.

⁵⁰ 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 Hungary or India.

⁵¹ See, e.g., Rhone Poulenc, S.A. v. United States, 592 F. Sup. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

⁵² See 19 U.S.C. § 1677(7)(F)(i)(II); Report at Table 11, Table 13, Table 14.

⁵³ 19 U.S.C. § 1677(7)(F)(i)(III); Report at Table 16. Although we are careful about the amount of weight we place on interim data, we think there is good reason to pay close attention to the interim data in these investigations. First, it is new information that has become available since our affirmative threat determination involving imports from China. Second, notwithstanding evidence that some importers apparently have refused to import sulfanilic acid from India because of these investigations, imports from India have nevertheless increased. Finally, the instant investigations apparently have not hindered the Hungarian respondent's ability or intent to increase its exports to the United States. See Report at Table 15 (showing monthly imports from Hungary, India and China from January to September 1992).

increased during the interim period, the rate of increase in imports from Hungary and India outpaced the domestic industry in terms of market penetration.⁵⁴ Further, in terms of increases in absolute volume and value of shipments, imports from Hungary and India, whether cumulated or examined singly, greatly outpaced domestic shipments, which actually declined in the interim period.⁵⁵

We note that R-M Industries changed senior management in late 1990. In the investigation concerning China, the Commission majority observed:

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.⁵⁶

Based on the available data on price comparisons and trends, the majority concluded there 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"⁵⁷ The additional pricing information gathered in these investigations supports our earlier conclusion. The domestic industry's prices for sodium sulfanilate remained flat. Prices for Hungarian acid continued to undersell the domestic industry's sodium sulfanilate throughout the interim period. More importantly, Hungarian refined grade acid was priced considerably below R-M's

⁵⁴ Report at Table C-1. The domestic industry's increase in market share during the interim period actually reflects the decline in domestic consumption during that period. Id.

⁵⁵ Report at Table C-1.

⁵⁶ Sulfanilic Acid from the People's Republic of China, Inv. No. 731-TA-538 (Final) USITC Pub. 2542 at 21 (August 1992).

⁵⁷ Id.; 19 U.S.C. § 1677(7)(F)(i)(IV).

refined grade acid.⁵⁸

With respect to India, the information available shows that, when it was present in the market, the price of technical grade sulfanilic acid from India was significantly lower than the price for domestic technical grade sulfanilic acid.⁵⁹ Moreover, imports of refined grade acid from India during the latter part of the interim period 1992 also were priced substantially below R-M's refined grade acid.

With regard to inventories, most U.S. importers report that they generally do not maintain inventories of sulfanilic acid.⁶⁰

With regard to "the presence of underutilized capacity for producing the merchandise in the exporting countr[ies],"⁶¹ the data show that Hungarian capacity utilization levels were high throughout the period of investigation. During the interim period, however, although capacity utilization levels were high, they nevertheless showed a relatively significant decline when compared to the same period in 1991. Further, this decline in capacity utilization occurred at the same time that Hungary reported a strong shift in shipments of sulfanilic acid from its European markets to the United States.⁶²

Both Nitrokemia and Warner-Jenkinson contend that Nitrokemia does not pose a threat to the domestic industry because Nitrokemia's principal markets for sulfanilic acid are located in Western Europe and because Nitrokemia sells refined grade sulfanilic acid in the United States only to Warner-Jenkinson.

⁵⁸ See Report at Table 19 and Petitioner's Post-hearing Brief (attaching copy of contract with Sandoz).

⁵⁹ India was the only subject country that reported exports of technical grade sulfanilic acid during the period of investigation. Report at Table 17.

⁶⁰ See 19 U.S.C. § 1677(7)(F)(i)(V); Report at I-42.

⁶¹ 19 U.S.C. § 1677(7)(F)(i)(VI).

⁶² Report at Table 11.

We do not find these self-serving statements very persuasive, however, in light of the record evidence of Nitrokemia's demonstrated ability to shift a substantial portion of its exports to the United States in a very short time-frame. To the extent that Warner-Jenkinson is a purchaser of refined grade sulfanilic acid, Nitrokemia's sales of refined grade acid to Warner-Jenkinson at prices that are below those of R-M Industries are bound to put downward pressure on R-M's prices as it attempts to sell its refined grade acid to U.S. purchasers such as Warner-Jenkinson.

Further, even if R-M Industries had not reentered the market for refined grade sulfanilic acid, in our view, the record indicates there is sufficient substitutability between refined grade acid and sodium sulfanilate such that the Hungarian product also puts downward pressure on R-M's salt product.⁶³

We also note that we are troubled by some discrepancies in the record concerning Nitrokemia's intentions with respect to its participation in the U.S. market. During the conference in the preliminary investigation in May 1992, Nitrokemia's director of marketing testified under oath that Nitrokemia had no additional shipments planned for the United States. Yet, other evidence in the record is not consistent with this testimony.⁶⁴ We are, frankly, skeptical about Nitrokemia's explanation.⁶⁵ Nitrokemia had indicated

⁶³ In that connection, we note that * * * . Report at Table E-1.

⁶⁴ Report at I-43. * * * . Nitrokemia purports that the reason for its ability to make these increased shipments to Warner-Jenkinson was unanticipated underutilized capacity. Id.

⁶⁵ We also note that the Commerce Department resorted to the use of best information available in its final affirmative dumping determination because of information discovered during the verification visit to Nitrokemia. See Final Determination of Sales at Less than Fair Value: Sulfanilic Acid from the Republic of Hungary, 58 Fed. Reg. 8256 (Feb. 12, 1993) ("A document examined at verification and the circumstances surrounding its discovery, has called into question the reliability of all of the data presented by respondent during this investigation.")

that it makes 3-5 year sales commitments with its European customers.⁶⁶ Yet, even with such relatively long-range commitments, Nitrokemia apparently had significant excess capacity in 1992 which enabled it to greatly increase its exports to the United States. Nitrokemia fails to offer any evidence that it will not continue to have underutilized capacity in the imminent future which it can use to produce refined grade acid for the United States market.

Moreover, Nitrokemia's explanations simply underscore the uncertain nature of the world-wide market for sulfanilic acid on both the supply and demand sides. Companies have experienced repeated shortages of sulfanilic acid as various producers have entered and exited the market. The market in Western Europe, according to Nitrokemia's testimony, apparently experiences significant swings in demand. We believe this unpredictable market is an incentive to Nitrokemia to bolster its presence in the United States, where there is apparently relatively steady demand for sulfanilic acid as compared to Western Europe.

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 has recommenced production and sale of refined grade sulfanilic acid, it is operating at only 50 percent capacity for that product.⁶⁷ If imports of refined grade sulfanilic acid continue to

⁶⁶ Report at I-43 n.136. It appears from the context of Nitrokemia's testimony during the conference that these are quantity commitments. Conference transcript, pp. 115-119.

⁶⁷ Hearing transcript at 41-42.

enter the United States at unfair prices, we believe it is likely that the domestic industry will be precluded from continuing to produce and sell its own refined grade sulfanilic acid at prices that can compete with the subject imports. 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.⁶⁸

Finally, in considering other demonstrable adverse factors that indicate the probability that importation of the subject merchandise will be a cause of actual injury, we note again Nitrochem's demonstrated ability to shift its sales of refined grade acid from Western Europe to the United States, as well as the uncertain nature of the European market for sulfanilic acid.

We also note that Indian producers fully expected to increase their exports of refined grade acid to the United States; the only reason they did not do so to the extent indicated earlier was because of these investigations. Further, PMC Industries, an importer that has been working with the Indian producers, testified that they intended to begin marketing their refined acid product to such U.S. customers as Warner-Jenkinson, Hilton Davis and Sandoz. It appears the only existing barrier to these unfairly priced imports are these investigations. We are persuaded that, absent the imposition of antidumping and countervailing duty orders, imports from India will increase significantly at prices that will tend to suppress or depress domestic prices for sulfanilic acid.

⁶⁸ See discussion, supra, concerning the condition of the industry; Pre-Hearing Brief of R-M Industries at 6 (June 25, 1992).

III. APPLICATION OF SECTIONS 1671d(b)(4)(B) and 1673d(b)(4)(B)

When the Commission makes a final threat determination, it must make an additional finding, pursuant to 19 U.S.C. §§ 1671d(b)(4)(B) and 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 these investigations occurred on August 11, 1992 and October 22, 1992, the dates of publication of Commerce's preliminary affirmative determinations.⁶⁹

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 during the relevant period would have resulted in material injury.

CONCLUSION

Based on our analysis of the full record and the statutory threat factors, we find that the domestic industry producing sulfanilic acid is threatened with material injury by reason of LTFV imports of sulfanilic acid from Hungary, and LTFV and subsidized imports of sulfanilic acid from India.

⁶⁹ 57 Fed. Reg. 35784 (August 11, 1992); 57 Fed. Reg. 48203 (October 22, 1992); 57 Fed. Reg. 48207 (October 22, 1992).

INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

Institution

Following preliminary determinations by the U.S. Department of Commerce (Commerce) that imports of sulfanilic acid and sodium sulfanilate¹ from India are being subsidized by the Government of India (57 F.R. 35784, August 11, 1992)² and that imports of sulfanilic acid and sodium sulfanilate from the Republic of Hungary (Hungary) and India are being, or are likely to be, sold in the United States at less than fair value (LTFV) (57 F.R. 48203, October 22, 1992), the U.S. International Trade Commission (Commission), effective August 18, 1992, instituted investigation No. 701-TA-318 (Final) and, effective October 22, 1992, instituted investigations Nos. 731-TA-560 and 561 (Final) under sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and 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 investigations 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 November 18, 1992 (57 F.R. 54420). The Commission's hearing was held in Washington, DC, on January 5, 1993.³

Commerce's final subsidy and LTFV determinations for the investigations concerning India were made effective January 8, 1993 (58 F.R. 3251, 58 F.R. 3259);⁴ its final LTFV determination for Hungary was made on February 3, 1993.⁵ The applicable statute directs that the Commission make its final injury determinations within 45 days after the final determinations by Commerce.

¹ The products covered by these investigations 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, respectively, of the Harmonized Tariff Schedule of the United States (HTS). (Sodium sulfanilate was previously classified in HTS subheading 2921.42.70; the subheading redesignation became effective on July 2, 1992, pursuant to Presidential Proclamation 6446, published in the Federal Register on June 17, 1992.)

² Copies of cited Federal Register notices are presented in app. A.

³ A list of witnesses appearing at the Commission's hearing is presented in app. B.

⁴ In accordance with section 705 of the Tariff Act of 1930, Commerce extended the due date for the final countervailing duty determination pertaining to sulfanilic acid from India to coincide with the date of the final determination in the antidumping duty investigation of sulfanilic acid from India (57 F.R. 38485, Aug. 25, 1992).

⁵ At the request of respondents Nitrochemia Ipartelepek and Nitrochem Co., Commerce extended its period of time for making its final determination for Hungary from Dec. 29, 1992, to Feb. 3, 1993 (57 F.R. 57729, Dec. 7, 1992).

Background

These investigations result from a petition filed by R-M Industries, Inc. (R-M), Fort Mill, SC, on May 8, 1992, alleging that an industry in the United States is materially injured or threatened with material injury by reason of imports from 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. In response to that petition the Commission instituted countervailing duty investigation No. 701-TA-318 (Preliminary) and antidumping investigations Nos. 731-TA-560 and 561 (Preliminary) under sections 703 and 733 of the Tariff Act of 1930 and, on June 22, 1992, determined that there was a reasonable indication of a threat of material injury by reason of allegedly subsidized imports from India of sulfanilic acid. The Commission further determined that there was a reasonable indication of the threat of material injury by reason of allegedly LTFV imports from Hungary and India.⁶

Previous Commission Investigations Concerning Sulfanilic Acid

On August 10, 1992, the Commission transmitted its determination to Commerce that an industry in the United States is threatened with material injury by reason of imports from China of sulfanilic acid.⁷ The Commission's investigation resulted from a petition filed by R-M on October 3, 1991. In the past, the Commission has cumulated imports subject to a current investigation with imports subject to an outstanding order up to eight months old;⁸ consequently, imports from China are presented in this report.

THE PRODUCT

Product Description

Sulfanilic acid and sodium sulfanilate⁹ are gray-white to white crystalline solids. All grades of sulfanilic acid (also called 4-aminobenzenesulfonic acid) and its monosodium salt, sodium sulfanilate (4-

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

⁷ The Commission further found that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation. Following the Commission's determination, Commerce published its antidumping duty order requiring cash deposits to cover estimated antidumping duty margins of 19.14 percent for Sinochem Hebei and 85.20 percent for all other firms (57 F.R. 37524, Aug. 19, 1992).

⁸ See USITC Gray Portland Cement and Cement Clinker from Japan: Determination of the Commission in Investigation No. 731-TA-461 (Final) Under the Tariff Act of 1930. Together with the Information Obtained in the Investigation, USITC publication 2376, Apr. 1991, pp. 29-36.

⁹ These products are often collectively referred to in the industry and in this report as "sulfanilic acid."

aminobenzenesulfonic acid, monosodium salt) imported from Hungary and India are subject to these investigations (and were subject to the investigation concerning imports from China). Sulfanilic acid is assigned the Chemical Abstracts Service (CAS) registry number CAS 121-57-3, while the sodium salt is assigned the CAS number 515-74-2. According to R-M, sulfanilic acid (not including sodium sulfanilate) is produced in two grades: technical (or crude) sulfanilic acid, and refined (or pure) grade. Sodium sulfanilate, in contrast, is produced and sold only as one (pure) grade.¹⁰ Both sulfanilic acid and sodium sulfanilate are used to produce synthetic dyes (including food colorants) and optical brightening agents, and are used in concrete additives.

Manufacturing Processes

Manufacturing Process Utilized by U.S. and Indian Producers

The chemistry for producing sulfanilic acid and its monosodium salt¹¹ is similar for U.S. and Indian producers and commonly is referred to as the "baking process" (see figure 1).^{12 13} The following statement drawn from information in the petition (pp. 19-24) is a description of that process:

First, sulfanilic acid is synthesized by combining aniline with sulfuric acid. This results in the formation of the sulfuric acid salt of aniline (aniline hydrogen sulfate). The aniline hydrogen sulfate is then heated (or "baked")¹⁴ to convert it to crude or technical grade sulfanilic acid, containing approximately 0.5 percent residual aniline and 0.5 percent alkali insoluble matter.¹⁵ To further purify the acid to meet customer specifications, technical-grade material is converted into the sodium salt by the addition of aqueous sodium hydroxide. The resulting 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

¹⁰ 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.

¹¹ Although sodium sulfanilate is not believed to be produced for sale in India, it is formed during part of the process used by both R-M and Indian manufacturers to produce refined grade sulfanilic acid.

¹² 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 for the investigations on Hungary and India (Conference transcript), pp. 114-115).

¹³ The baking process is also used by producers in China.

¹⁴ The petitioner conducts the synthesis of crude sulfanilic acid ***.

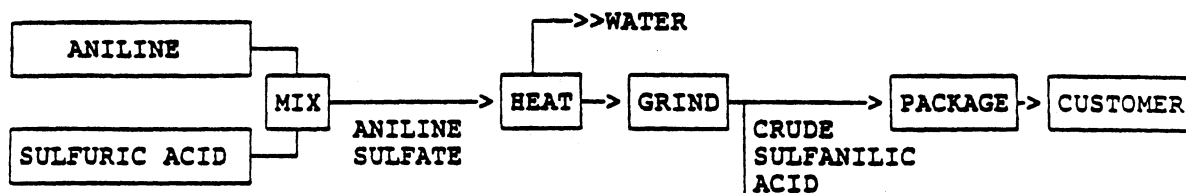
***. ***. ***.

¹⁵ ***.

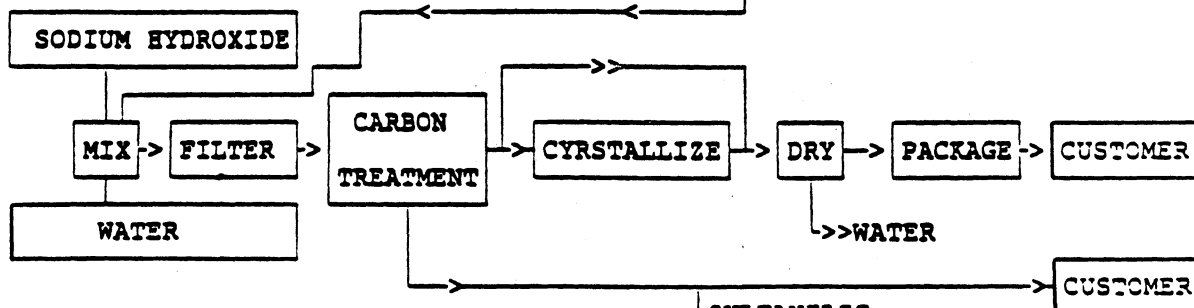
Figure 1

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

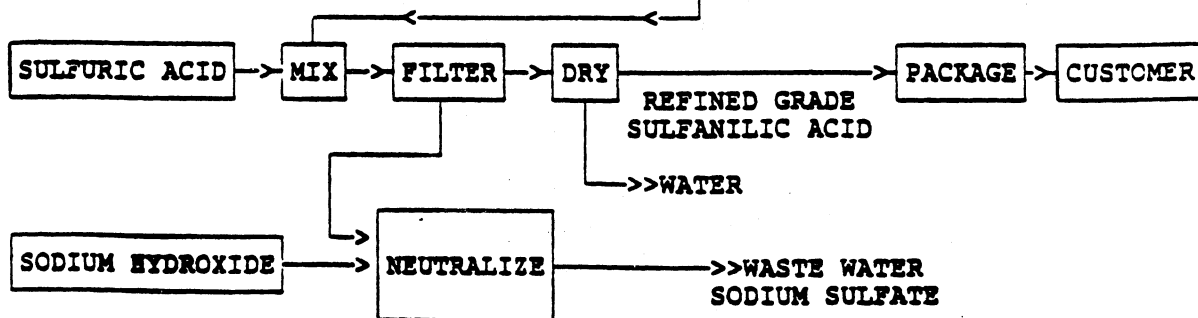
CRUDE (TECHNICAL) SULFANILIC ACID PRODUCTION



SULFANILIC ACID SODIUM SALT PRODUCTION



REFINED GRADE SULFANILIC ACID PRODUCTION



Source: Petition on China, Attachment A.

undesirable organic contaminants.¹⁶ Finally, the aqueous sodium sulfanilate is either (1) loaded into tank trucks for delivery to customers, (2) dried and packaged as a free-flowing powder, or (3) made acid with additional sulfuric acid to precipitate a purified form of sulfanilic acid (i.e., refined grade).

According to the petitioner, the only other U.S. producer of sulfanilic acid during the period of investigation, Hilton Davis Co., used a process similar to the petitioner's (***) in order to minimize the risk of exposing production workers to the hazards associated with use of aniline and sulfuric acid. In contrast, the petitioner suggests that Indian (and Chinese) 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 are transferred to an oven.¹⁷ 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 Chinese sodium salt is believed to be produced by a process similar to the petitioner's.

Manufacturing Process Utilized by Nitrokemia

Nitrokemia, the only producer of sulfanilic acid in Hungary, testified at the Commission's conference in the instant investigation that its production process for sulfanilic acid is considerably different from that of the domestic producers and other manufacturers. Referring to the "baking" technology as outdated, representatives of the Hungarian producer explained that the patented, ***, one-stage process used by Nitrokemia¹⁸ does not go through the intermediate production steps of creating either the technical grade or the sodium sulfanilate; instead, 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.¹⁹

In its response to the Commission's "foreign producer" questionnaire, respondent labels Nitrokemia's use of ***. Another important characteristic

¹⁶ 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 that cannot be sold.

¹⁷ Fundamental Process of Dye Chemistry, pp. 126-128. Producers in China confirm that this is an adequate description of their process. Of the Indian producers, Jeevan Products states that its production process is ***. ***. Responses by Jeevan Products and Perfect Pharmacists to the Commission's "foreign producer" questionnaire.

¹⁸ Nitrokemia began commercial production in *** utilizing ***. Response by Nitrokemia to the Commission's "foreign producer" questionnaire.

¹⁹ Conference transcript, pp. 113-115. Nitrokemia labels the baking step used by other producers as ***. ***. Response by Nitrokemia to the Commission's "foreign producer" questionnaire."

of its process is ***. Also, as far as the respondent is aware, Nitrokemia is alone among world producers in ***.²⁰ Finally, respondent maintains that the Nitrokemia process uses less energy and creates far less waste water than that of other manufacturers of the product.²¹

The following is a description provided by Nitrokemia of their proprietary production process:

* * * * *

The following statement (prepared by staff) compares the U.S. and Hungarian production processes:

* * * * *

Uses

Sulfanilic acid is used to produce 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 pure 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.

²⁰ According to respondents, these differences improve product quality and lead to less problematic waste products.

Due to the use by Nitrokemia of ***. ***. ***. Response by Nitrokemia to the Commission's "foreign producer" questionnaire.

²¹ Conference transcript, pp. 113-115. ***. Response by Nitrokemia to the Commission's "foreign producer" questionnaire.

²² Response by Nitrokemia to the Commission's "foreign producer" questionnaire.

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.²³ Optical brighteners also are 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 1990.²⁴

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).²⁵ Commission records show that there was one U.S. producer of FD&C Yellow No. 5, and two producers of FD&C Yellow No. 6, in 1991.²⁶ 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.²⁷

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.²⁸ FD&C Yellow No. 5 is approved for ingested use only,²⁹ whereas FD&C Yellow No. 6 has no use restrictions.³⁰

²³ Kirk-Othmer, Encyclopedia of Chemical Technology, 3d ed., vol. 4, (1978) (New York: John Wiley and Sons, Inc.).

²⁴ Synthetic Organic Chemicals, United States Production and Sales, 1990, USITC publication 2470, Dec. 1991.

²⁵ Daniel M. Marmion, Handbook of U.S. Colorants for Food, Drugs and Cosmetics, (New York: John Wiley and Sons, Inc., 1979), pp. 56-57.

²⁶ Synthetic Organic Chemicals, United States Production and Sales, 1991.

²⁷ Also, *** produced FD&C Yellow No. 6 in 1990. Synthetic Organic Chemicals, United States Production and Sales, 1990.

²⁸ Kirk-Othmer, Encyclopedia of Chemical Technology, 3d ed., vol. 6, (1978).

²⁹ As specified 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 must 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. Azo dyes have no similar analogs among natural coloring matter.³¹ These dyes are adaptable to a wider variety of applications than any other dye group, including uses with all natural and synthetic fibers.³²

Concrete Additives

Crude or technical grade sulfanilic acid is used to produce a chemical that, 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 the market has been growing in recent years.

Interchangeability Among the Three Grades of Sulfanilic Acid

The Commission has been presented with varying statements regarding interchangeability among technical sulfanilic acid, refined sulfanilic acid, and sodium sulfanilate.³³ There is general agreement that there are limited end-use applications for the (unpurified) technical grade product;³⁴ its high level of impurities makes it impractical to use in the production of optical brighteners, food colors, or most specialty dyes.³⁵

³⁰ (...continued)

³⁰ Except that no colorant is certified for use in the area of the eyes and no color additive is certified for use in injectable drugs or surgical sutures unless specifically stated for such use (which FD&C Yellow No. 6 is not).

³¹ K. Venkataraman, Synthetic Dyes, vol. I, (New York: Academic Press, Inc., 1982), p. 409.

³² Ibid., p. 410.

³³ The issue of "interchangeability" among grades of sulfanilic acid is extensively addressed by parties in briefs submitted to the Commission. See petitioner's prehearing brief (pp. 4-5 and pp. 10-13) and posthearing brief (exhibit 1) and Hungarian respondent's prehearing brief (pp. 3-9) and posthearing brief (pp. 10-13).

³⁴ As stated, technical grade sulfanilic acid is primarily used as a concrete additive, though some manufacturers reported using it for producing certain types of dyes. (***) has equipment to further refine this grade for use in its downstream products.) The refined grade sulfanilic acid can be substituted for the technical, but cost generally precludes this option.

³⁵ However, there are some exceptions. Sandoz classifies sulfanilic acid as either free acid (which includes both technical and refined grades) or salt (which includes just sodium sulfanilate). Sandoz prefers to use free acid in its production processes. What is most important to the firm is the amount of individual or specific impurities that are present in the acid it purchases; the overall impurity level may be less relevant. Although Sandoz prefers to purchase refined grade, a technical grade of high quality (most specifically,
(continued...)

The larger question is the degree of 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 did not manufacture refined grade sulfanilic acid during most of the period of investigation, the company's sodium salt is purified and should be acceptable to any customer who uses refined acid.³⁶ R-M also notes that the primary use for sulfanilic acid is in the production of optical brighteners (whose reaction process almost always begins with an alkaline solution).³⁷ In contrast, the production of food colors reportedly requires an acid (not alkaline) solution for the first stage of the reaction process. However, this requirement does not preclude use of the sodium salt; rather, the pH must be adjusted, changing the alkaline salt to sulfanilic acid.^{38 39}

Several domestic purchasers of sulfanilic acid agree, at least in part, with the petitioner. Spokesmen for *** stated that their firm considers the refined acid and its sodium salt as interchangeable raw materials, although it does have a preference for sodium sulfanilate.^{40 *** 41 ***}

³⁵ (...continued)

*** has sometimes been used. (Staff conversation with ***, Director of Purchasing (Sandoz), Dec. 21, 1992 and hearing transcript, pp. 137-138.) The firm is not, however, willing to purchase and purify lower quality technical grade material. An internal Sandoz memorandum dated Nov. 10, 1992, referring to *** states: "****." (Jan. 22, 1993 submission, p. II-6.) See also testimony by Sandoz that discusses "in situ" purification of technical grade sulfanilic acid (hearing transcript, p. 176).

Warner-Jenkinson has also used (with unsatisfactory results) high-quality, "hand-picked" batches of technical grade sulfanilic acid. (Conference transcript, pp. 87, 127, and 154-157; field visit to Warner-Jenkinson, May 6, 1992; app. E.)

³⁶ Purchasers specify maximum acceptable levels of impurities, such as ***. (Petition, Attachment E.) Petitioner states: "Neither of the two refined grades will impart undesirable color to brighteners or elevate the level of amines above FDA standards in food colors. (Petitioner's posthearing brief, exhibit 1.) However, R-M does acknowledge that different consumers usually prefer one grade over another. (Conference transcript, pp. 9 and 26.)

³⁷ Manufacturers of optical brighteners can use the refined grade; but the petitioner states that in most cases the acid must be converted to a salt before the reaction process can begin. (***)

³⁸ The pH can be adjusted through the addition of sulfuric acid or hydrochloric acid. Sulfuric acid is used in the manufacture of food dyes and is readily available to end users. ***. Furthermore, R-M states that it is not, in fact, always necessary to convert the salt to the pure acid form prior to the manufacture of food dyes. In support, they reference relevant scientific literature, Hilton Davis' patent describing the manufacturing procedures it uses to make Yellow No. 6 (a food dye), and ***. (Petitioner's posthearing brief, exhibit 1, pp. 5-7.)

³⁹ For additional information on the question of interchangeability from the petitioner's standpoint, see R-M's postconference brief in investigation No. 731-TA-538 (Preliminary), pp. 14-16 and 22-24.

⁴⁰ ***.

⁴¹ Staff conversation on Oct. 25, 1991, with ***.

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.⁴² 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;⁴³
2. The volume added to the tank by the addition of sulfuric acid reduces the batch size by approximately 10 to 15 percent and decreases overall efficiency in production;⁴⁴
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.⁴⁵

Another purchaser, Sandoz, agrees that the different grades of sulfanilic acid are not interchangeable. Sandoz is a large producer of optical brighteners; however, 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

⁴² In its response to the Commission's purchaser questionnaire, *** stated that sodium sulfanilate and refined grade sulfanilic acid are not interchangeable.

⁴³ 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 changed its regulations for FD&C Yellows Nos. 5 and 6, respectively. Permissible levels of aniline amines in these dyes were set at 100 and 250 parts per billion, respectively.

⁴⁴ Conference transcript, p. 89. Warner-Jenkinson acknowledged that the ***. (Field visit to Warner-Jenkinson, May 6, 1992.)

⁴⁵ Based upon its review of relevant scientific literature (attached as exhibit B-1 to its posthearing brief) and a sample analysis performed by R-M's Quality Control and R-D Manager comparing use of the free acid and the salt in producing a food dye (attached as exhibit D-1 to its posthearing brief), petitioner disagrees with points 2 through 4 above. Petitioner states that its analysis shows that "regardless of whether you start with the free acid or salt, you end up with almost exactly the same final composition of food color, salt, and water." Furthermore, use of the salt actually increases the efficiency and productivity of the operation. (Petitioner's posthearing brief, exhibit 1, pp. 5-7.) However, it should be noted that the sample analysis was based on the patented process used by a manufacturer other than Warner-Jenkinson (specifically, by Hilton Davis to manufacture its Yellow No. 6).

facilities at the current Sandoz plant are not set up to use the product.⁴⁶ Further, a production specialist for Sandoz testified that use of sodium salt makes the chemicals react at a faster pace and makes the final product inconsistent and unstable.⁴⁷

In conclusion, information provided by industry representatives shows that the various grades of sulfanilic acid can be and have been used interchangeably by the domestic industry. However, a particular consumer often may have a material preference in deciding which form of the chemical to purchase. Also, some production lines (of end users) only accommodate certain products and there are changing quality requirements that may not have been met consistently by technical grade or by the sodium salt. Another key factor that has governed actual (as opposed to desired) purchases is availability. The section of this report on "U.S. purchasers" (and appendix E) lists the actual purchases made, by grade.

Like Product Positions

R-M argues that technical sulfanilic acid, refined sulfanilic acid, and sodium sulfanilate are "like products" because the physical characteristics are similar⁴⁸ and are all used in the production of optical brighteners, food colors, specialty dyes, and concrete additives; 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.⁴⁹ Insofar as the "domestic industry" is concerned, petitioner states that because technical sulfanilic acid, refined sulfanilic acid, and sodium

⁴⁶ The machinery at the Sandoz plant in Fair Lawn, NJ, was able (after modification) to accommodate sodium sulfanilate. However, that plant closed in 1992. All production of optical brighteners has been transferred to Sandoz' Martin, SC, plant where, due to plant design limitations, sodium salt has never been and cannot be used. Similarly, in 1991, Warner-Jenkinson opened a new plant in St. Louis that is "designed and constructed based on the refined free acid." (Hearing transcript, p. 112.)

⁴⁷ Conference transcript, pp. 104-105 and 159-161. Sandoz provided documentation describing problems encountered with use of sodium sulfanilate and identified specific optical brighteners with which it cannot be used. (Jan. 22, 1993 submission, pp. II-1 and II-3.)

Don Voigt, Director of Purchasing (Sandoz), testified at the Commission's hearing that the firm's ability to use various grades of sulfanilic acid has differed over time. Although sodium salt has been used in the past to manufacture optical brighteners, the company is able to produce a higher quality product when using the refined grade. That level of quality is now expected by its customers. (Hearing transcript, pp. 97-101.)

⁴⁸ They all provide the same molecular entity in the synthesis of the downstream products.

⁴⁹ 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, pp. 3-5 of petitioner's postconference brief (investigation on China), and pp. 12-22 of the petition on Hungary and India.

sulfanilate constitute the like product, the domestic industry consists of the producers of the same.

Counsel for the respondents in the preliminary investigations on Hungary and India did not challenge the petitioner's proposed definitions. The Commission, in its preliminary determinations in the subject investigations, defined the like product as all forms of sulfanilic acid.⁵⁰

U.S. Tariff Treatment

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 Generalized System of Preferences (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 were (until January 12, 1993) eligible for duty-free entry under the GSP. During part of the period covered by these investigations, sulfanilic acid from both Hungary⁵¹ and India⁵² were eligible for duty-free entry under the GSP.

Sodium sulfanilate is classified in HTS subheading 2921.42.75, with other aniline derivatives and their salts. The column 1-general rate of duty is the same as that for HTS subheading 2921.42.24. However, imports classified in this subheading are not eligible for duty-free entry under the GSP.

⁵⁰ See Sulfanilic Acid from the Republic of Hungary and India . . ., USITC Publication 2526, June 1992, p. 8 and p. 31.

⁵¹ On May 24, 1990, the Embassy of the Republic of Hungary submitted a petition requesting duty-free entry of sulfanilic acid from Hungary to the Office of the United States 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 to add sulfanilic acid to the list of import-sensitive articles that cannot be designated as articles eligible for GSP duty-free entry. On Dec. 23, 1992, the President suspended the duty-free entry afforded under GSP to sulfanilic acid (57 F.R. 61757, Dec. 28, 1992). The column 1-general rate of duty applies to all entries of sulfanilic acid from Hungary entered into the United States or withdrawn from warehouse for consumption, on or after January 12, 1993.

⁵² On Apr. 29, 1992, the President suspended the duty-free entry afforded under GSP to certain articles which are the product of India (57 F.R. 19067). Included in the suspension list was HTS subheading 2921.42.24, covering sulfanilic acid.

NATURE AND EXTENT OF SUBSIDIES AND SALES AT LTFV

Commerce's Final Countervailing Duty Determination

On January 8, 1993, Commerce published in the Federal Register (58 F.R. 3259) its final determination that an estimated net subsidy of 43.71 percent ad valorem is being provided to all producers and exporters of sulfanilic acid in India. Commerce used information provided by petitioner as "best information available" (BIA) to calculate the estimated net subsidy.⁵³

Commerce's Final LTFV Determinations⁵⁴

On February 12, 1993, Commerce published in the Federal Register (58 F.R. 8256) its final determination that sulfanilic acid from Hungary is being, or is likely to be, sold in the United States at LTFV; on January 8, 1993, Commerce published its final LTFV determination with respect to India in the Federal Register (58 F.R. 3251). Commerce's margins are presented in the following tabulation (in percent ad valorem):

| <u>Source and firm</u> | <u>LTFV margin</u> |
|--|----------------------|
| Hungary: | |
| Nitrokemia..... | 58.14 |
| All others..... | 58.14 |
| India: | |
| All manufacturers/producers/exporters... | 114.80 ⁵⁵ |

Calculation of LTFV Margins for Hungary

Because a document examined at verification, and the circumstances surrounding its discovery, called into question the reliability of all of the data presented by respondent during its investigation, Commerce used BIA (provided by petitioner) as the sole basis for its final determination.

⁵³ Petitioner based its estimation on Commerce's December 1991 preliminary determination on bulk ibuprofen from India, noting that ibuprofen and sulfanilic acid are similar products and may receive the same subsidies. The major subsidy program found in ibuprofen was the "Import Duty Exemptions Available Through Advance Licenses," a program alleged to be used in the present investigation by sulfanilic acid producers in India to import an input (aniline) duty-free.

⁵⁴ As noted earlier, the final LTFV margins for imports of sulfanilic acid from China were 19.14 percent for Sinochem Hebei and 85.20 percent for all other firms.

⁵⁵ Since section 772(d)(1)(D) of the Tariff Act of 1930 prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy, Commerce has subtracted the cash deposit rate attributable to the export subsidies found (i.e., 43.71 percent). Therefore, for duty deposit purposes the net estimated antidumping duty deposit rate is 71.09 percent.

Calculation of LTFV Margins for India

In order to obtain the estimated dumping margins of sulfanilic acid imported from India, Commerce compared the U.S. Price (USP) of such product with its Foreign Market Value (FMV) during the period December 1, 1991, through May 31, 1992. Commerce based USP and FMV on BIA, which was supplied by the petitioner.⁵⁶ USP was calculated using exporter's sales price; FMV was calculated using f.o.b. observed prices in India for all three grades of sulfanilic acid.

Critical Circumstances

In addition, Commerce, in response to petitioner's allegations, made a final determination that "critical circumstances" exist with respect to imports of sulfanilic acid from Hungary (58 F.R. 8256, February 12, 1993); Commerce also made a final affirmative critical circumstances determination with respect to India (58 F.R. 3251, January 8, 1993). When the Commerce Department makes affirmative final determinations with respect to critical circumstances, the Commission is required to determine "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."⁵⁷ The Commission is to make an evaluation as to whether the effectiveness of the antidumping duty orders would be materially impaired if retroactive duties were not imposed.⁵⁸ If the Commission finds either no material injury or only a threat of material injury, it need not reach critical circumstances determinations.

An affirmative critical circumstances determination by the Commission is a finding that, absent retroactive relief, the surge of imports that occurred after the case was filed, but before Commerce issued its preliminary determination, will prolong or will cause a recurrence of material injury to the domestic industry.⁵⁹ The purpose of this provision is to provide relief from effects of the massive imports and to deter importers from attempting to circumvent the dumping laws by making massive shipments immediately after the

⁵⁶ Commerce sent questionnaires to seven of the producers and/or exporters of the subject product that were identified in the petition. Three companies did not respond to its questionnaire (Beta Naphthol (P) Ltd., Kanoria Chemicals & Industries Ltd., and Chemco International); the four remaining companies did not sell sulfanilic acid into the United States during the period of investigation (Golden Dyes Corp. (India) Private Ltd., Synthetic Dyestuff (India) Corp., Atul Products, and Hickson & Dadajee Ltd.). None of these firms is believed by Commission staff to currently produce sulfanilic acid. On Nov. 4, 1992, Kokan Synthetics, an Indian producer of sulfanilic acid, informed Commerce that it was not contacted when Commerce sent out questionnaires.

⁵⁷ 19 U.S.C. § 1673d(b)(4)(A)(i).

⁵⁸ Id. § 1673d(b)(4)(A)(ii).

⁵⁹ See *ICC Industries, Inc. v. United States*, 632 F. Supp. 36, 40 (Ct. Int'l Trade 1986), *aff'd*, 812 F.2d 694 (Fed. Cir. 1987).

filing of an antidumping petition.⁶⁰ However, Congress was aware that critical circumstances determinations can be difficult and are not susceptible to precise mathematical calculations.⁶¹ Rather, Congress stated that the Commission is to focus on whether the effectiveness of the antidumping duty order would be materially impaired by failing to impose retroactive duties on the massive imports.⁶²

The statute requires that the Commission consider the following factors in evaluating the effectiveness of the antidumping duty orders absent the retroactive imposition of antidumping duties:

- (I) *The condition of the domestic industry;*
- (II) *Whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid potential imposition of antidumping duties;*
- (III) *Whether foreign economic conditions led to the massive imports of the merchandise; and*
- (IV) *Whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this part.*^{63 64}

The following tabulation (from data reported in response to Commission questionnaires) provides monthly data on U.S. imports of sulfanilic acid from Hungary and India by all firms⁶⁵ during January-September 1992 (in pounds):

⁶⁰ H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

⁶¹ H.R. Rep. No. 576, 100th Cong., 2d Sess. 612 (1988).

⁶² Id. at 611.

⁶³ 19 U.S.C. § 1673d(b)(4)(A)(iii).

⁶⁴ Congress has further stated that the Commission should examine the injury suffered as a result of the dumped imports. In addition, efforts by exporters to unload massive excess supply on the domestic market when international prices are depressed constitute a means for transferral of economic hardship and may call for retroactive duties if they materially increase the extent of injury suffered by the domestic industry. H.R. Rep. No. 576, p. 611.

⁶⁵ Using BIA, Commerce found that critical circumstances exist for all manufacturers and exporters of the subject product in Hungary and India.

| <u>Period</u> | <u>U.S. imports from--</u> <u>Hungary</u> | <u>India</u> |
|--------------------------------|--|--------------|
| January 1992..... | *** | *** |
| February 1992..... | *** | *** |
| March 1992..... | *** | *** |
| April 1992..... | *** | *** |
| May 1992 ¹ | *** | *** |
| June 1992..... | *** | *** |
| July 1992..... | *** | *** |
| August 1992 ² | *** | *** |
| September 1992..... | *** | *** |
| Total..... | *** | *** |

¹ The petition in the subject investigations was filed on May 8, 1992.

² Commerce's preliminary determination with respect to subsidized imports from India was issued effective Aug. 11, 1992; its preliminary determinations with respect to LTFV imports from Hungary and India were issued effective Oct. 22, 1992.

In making its critical circumstances determination in past investigations, the Commission has examined imports during the 3-month period prior to Commerce's preliminary determination.⁶⁶ Imports of sulfanilic acid from Hungary were *** pounds in July-September 1992 (the last full 3-month period prior to Commerce's determination) or *** percent *** than such imports in the preceding 3-month period (April-June 1992). There was a *** in such imports following the filing of the petition in May 1992: imports averaged *** pounds per month during January-May 1992 and *** per month during June-September 1992. *** the 1992 imports from Hungary were for the account of Warner-Jenkinson; the firm reports that ***.⁶⁷ *** imports entered from India in May-July 1992 than during the preceding 3-month period.

⁶⁶ The Commission has also examined the inventory level of imports (Gallard-Schlesinger, the major importer of the product, ***) and prices and price comparisons (see tables 17-21 and D-4).

⁶⁷ All of Warner-Jenkinson's 1992 purchases of Hungarian sulfanilic acid were in the form of ***. ***. ***. As of Aug. 31, 1992, Warner-Jenkinson had *** inventories of the Hungarian product. (Staff conversation on Feb. 2, 1993 with counsel for Nitrochemia.)

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.⁶⁸ 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).

Table 1

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

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|---------------------------------|---------------------------------------|-------|-------|--------------|-------|
| | | | | 1991 | 1992 |
| | Quantity (1,000 pounds ²) | | | | |
| Producers' U.S. shipments . . . | *** | *** | *** | *** | *** |
| Importers' U.S. shipments: | | | | | |
| Hungary | *** | *** | *** | *** | *** |
| India | *** | *** | *** | *** | *** |
| Subtotal | *** | *** | *** | *** | *** |
| China | *** | *** | *** | *** | *** |
| Subtotal | 749 | 1,185 | 3,654 | 2,676 | 1,935 |
| Other sources | *** | *** | *** | *** | *** |
| Total | *** | *** | *** | *** | *** |
| Apparent consumption . . | 5,334 | 7,108 | 7,906 | 5,761 | 4,959 |
| | Value ³ (1,000 dollars) | | | | |
| Producers' U.S. shipments . . . | *** | *** | *** | *** | *** |
| Importers' U.S. shipments: | | | | | |
| Hungary | *** | *** | *** | *** | *** |
| India | *** | *** | *** | *** | *** |
| Subtotal | *** | *** | *** | *** | *** |
| China | *** | *** | *** | *** | *** |
| Subtotal | 611 | 1,036 | 3,100 | 2,282 | 1,951 |
| Other sources | *** | *** | *** | *** | *** |
| Total | *** | *** | *** | *** | *** |
| Apparent consumption . . | 4,877 | 6,502 | 7,829 | 5,777 | 5,096 |

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.

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

⁶⁸ See app. C for summary data on the U.S. market.

Total reported apparent U.S. consumption of all grades of sulfanilic acid increased (in terms of quantity) by 48.2 percent between 1989 and 1991. Basic GNP expansion was the reason cited most frequently by purchasers for the overall increase in demand for this product. By grade, the use of technical sulfanilic acid in concrete additives has been growing.⁶⁹ The 1989-91 rise in consumption is also due to increasing use of (domestically produced) sodium sulfanilate and (imported) refined sulfanilic acid (table D-1).⁷⁰ Although two purchasers, Warner-Jenkinson and ***, suggested during the Commission's preliminary investigations that demand in their own firms would continue to grow in 1992, consumption decreased by 13.9 percent between interim 1991 and interim 1992.⁷¹ In terms of value, total reported apparent U.S. consumption increased by 33.3 percent in 1990 and by 20.4 percent in 1991, then decreased by 11.8 percent in interim 1992.

U.S. Producers

R-M Industries, Inc.

The petitioner, R-M Industries, Inc., is currently the only commercial producer of sulfanilic acid in the United States. R-M is a privately held company headquartered in Fort Mill, SC;⁷² 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 1982.⁷³ There was a period of almost 2 years during which the U.S. industry had no U.S.

⁶⁹ Technical sulfanilic acid is used to make another chemical that reduces the amount of water that is needed in concrete so that it is more pumpable. (However, both Sandoz and R-M testified that this application for the product is much more popular in Europe than in the United States.)

⁷⁰ Consumption of each grade of sulfanilic acid increased in terms of quantity from 1989 to 1991, although the figures for the refined grade fell from 1990 to 1991, as the decrease in imports from a large source of this product, Japan, overshadowed the rise in imports from China (table D-1). Japan began withdrawing from the market in late 1990 as a result of changing trends in the market for sulfa drugs (for certain Japanese manufacturers sulfanilic acid is a byproduct of the production of types of sulfa drugs). During the interim periods (January-September 1991 to January-September 1992), consumption fell for each grade of sulfanilic acid.

⁷¹ 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, pp. 132-133.) ***. ***. ***.

⁷² ***.

⁷³ 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. (Transcript of the conference on China, pp. 47-48.)

supplier. According to the petitioner, the void was filled by a nontraditional import source, Bayer AG, a producer of sulfanilic acid, optical brighteners, and specialty dyes in Germany. Bayer traditionally produced sulfanilic acid for its own use but was persuaded by a U.S. purchaser to supply it with sulfanilic acid.⁷⁴

R-M produced refined sulfanilic acid between 1986 and 1989 but then discontinued the product in 1989, reportedly due to high manufacturing costs and because the production process generated large amounts of contaminated waste water.⁷⁵ In its petition, R-M states that production of the refined grade was stopped as a result of the LTFV imports entering the United States.⁷⁶ During the period of the investigation, R-M offered sodium sulfanilate to consumers who previously purchased refined sulfanilic acid.⁷⁷ Production of refined sulfanilic acid resumed in August 1992, using equipment that had been "moth-balled" since 1989.⁷⁸ Prior to resuming production, R-M estimated that its price for refined grade would range from \$1.50 to \$1.75 per pound because

⁷⁴ Transcript of the conference on China, pp. 60-61. ***. ***.

⁷⁵ More than 3 pounds of waste water were generated for every pound of refined sulfanilic acid produced by R-M. 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 that 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 (generated in the production of other products) by truck to Tennessee for decontamination. This added great expense to the company's production costs, but did not affect the manufacture of sulfanilic acid since the refined grade (the only grade that generated a waste water stream) had been discontinued. (Conference transcript, pp. 39-41.)

⁷⁶ Petition, pp. 22-23.

⁷⁷ The Commission requested that R-M list previous customers of refined grade sulfanilic acid and 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 ***.

⁷⁸ Such equipment represented 90 percent of the resources needed by R-M to reenter the refined grade market. (Hearing transcript, p. 39.) Resuming production required an expenditure of approximately \$***. (Staff conversation on Feb. 2, 1993 with John Dickson (R-M)).

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, pp. 63-64 and 98-99, and hearing transcript, pp. 40-41.)

of costs associated with the new environmental requirements.⁷⁹ In the third quarter of 1992, R-M sold *** pounds of refined grade sulfanilic acid to Sandoz for \$*** per pound.⁸⁰ At the Commission's hearing, the President of R-M testified that \$0.95 to \$1.00 per pound was the highest price that could be obtained for refined product prior to the Commission's affirmative determination with respect to China (and anticipated affirmative determinations for Hungary and India).⁸¹

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.⁸²

⁷⁹ There are three methods that R-M could use to treat the waste water stream generated by producing refined grade sulfanilic acid: (1) shipment by truck to an outside commercial treater in Tennessee; (2) evaporation in a continuous dryer at the plant site and storage of the residual in a landfill; and (3) biological treatment at the plant site and return (of water) to the river. The first alternative is the most costly: R-M's President testified that use of this disposal method would add \$0.30 to the price of refined grade sulfanilic acid (which, as noted in earlier testimony, would result in a selling price of \$1.75 per pound). The last alternative (biological treatment) is the most cost efficient (costing about \$0.05 per pound); however, it requires that R-M build its own decontamination facilities. Such facilities are reported to require a major capital investment.

Waste water generated by current production of refined grade sulfanilic acid has been treated at R-M's Fort Mill, SC, production plant using the continuous drying equipment. This method was still "far more costly" than biological treatment (adding \$0.15 per pound). However, at this time, the dryer is down for maintenance and will be used for its originally intended purpose when it starts back up in late February. Beginning Jan. 25, 1993, R-M has begun sending all water generated by refined sulfanilic acid production to Tennessee for treatment.

In addition to the above alternatives, R-M had hoped to have the waste water treated at a new municipal treatment facility in Rock Hill, SC, located across the river from R-M's plant. The added cost of using the Rock Hill facility would have been \$0.10 per pound. However, a required "treatability study" has just been released in draft form; it concludes that the municipal treatment facility cannot satisfactorily treat the R-M waste stream. (Hearing transcript (pp. 43-46, 60-62, and 78-82) and Jan. 25, 1993 letter from R-M (with attached "R-M Industries/City of Rock Hill Treatability Study."))

⁸⁰ Don Voigt (Sandoz), testified that the price he agreed to pay R-M is "higher than any other source in the world." (Hearing transcript, p. 142.)

⁸¹ Hearing transcript, p. 39.

⁸² Transcript of the conference on China, pp. 57-58. R-M used to produce t-butyl-catechol (TBC), but this product was discontinued in the first quarter of 1991. (Staff conversation on June 9, 1992 with John Dickson (R-M)).

Hilton Davis Co.⁸³

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.⁸⁴ The company sold between *** and *** percent of its production of technical sulfanilic acid in 1990 and 1991 to an unrelated end user. Hilton Davis has also ***.⁸⁵ In January 1992, ***. The company has stopped internal production of the technical grade, ***.⁸⁶

U.S. Purchasers⁸⁷

There are approximately 12 significant purchasers of sulfanilic acid in the United States;⁸⁸ the petitioner notes that *** of these purchasers, ***, account for over two-thirds of total U.S. demand.⁸⁹ *** also makes significant purchases. From 1989 to September 1992, each of the *** companies listed above purchased substantial quantities of at least two of the three grades of sulfanilic acid, often for the same end use.⁹⁰ The tabulation below (compiled from responses to Commission questionnaires) shows purchases (in thousands of pounds) by the top five purchasers in 1992 (see appendix table E-1 for more detail):⁹¹

| <u>Purchaser and grade</u> | <u>1989</u> | <u>1990</u> | <u>1991</u> | <u>Jan.-Sept.</u> <u>1992</u> |
|----------------------------|-------------|-------------|-------------|----------------------------------|
| * * * | * | * | * | * |

The petitioner suggests that the pattern of purchasing different grades for a common end use demonstrates interchangeability among grades. However, some end users point to the lack of availability of a desired grade as the reason for the fluctuations. *** and *** (as described earlier in this report) use multiple grades of sulfanilic acid somewhat interchangeably. Sandoz, the ***,⁹² also purchased *** quantities of the technical grade⁹³ and sodium

⁸³ Hilton Davis indicated in its questionnaire response that it *** the petition. The firm is *** owned by PMC, Inc., Sun Valley, CA.

⁸⁴ ***.

⁸⁵ ***.

⁸⁶ ***. ***.

⁸⁷ For additional information on purchasers, see the section entitled "Purchaser Responses." Also see app. E for data regarding U.S. consumers' purchasing patterns from 1989 to September 1992 and purchasers' comments on the issue of interchangeability among the three grades of sulfanilic acid.

⁸⁸ ***.

⁸⁹ Petition, p. 54.

⁹⁰ ***.

⁹¹ All five purchasers buy from R-M. In addition, ***.

⁹² Sandoz states that it made a commitment to the use of refined sulfanilic acid as early as 1985 (at which time it encouraged R-M to produce it). (Jan. 22, 1993 submission, p. 3.)

sulfanilate.⁹⁴ The purchases (of product other than free acid) were, in large part, due to shortages of, and R-M's continued refusal to produce, refined sulfanilic acid.

Warner-Jenkinson also states that refined sulfanilic acid is currently the company's product of choice; however, the firm purchased *** quantities of technical grade and sodium sulfanilate during the period of investigation. (***)⁹⁵ Warner-Jenkinson testified that it was necessary to purchase other grades in order to keep its plant operating due to shortages that occurred in late 1990 and early 1991 (when Japan and then Hungary largely withdrew from the market); its January 22, 1993 submission to the Commission states that any purchases since 1989 of technical grade and/or sodium sulfanilate were due to the unavailability of refined sulfanilic acid.⁹⁶ Another reason for purchasing

⁹³ (...continued)

⁹³ The firm's use of technical sulfanilic acid is addressed in detail in the section of this report on "Interchangeability Among the Three Grades of Sulfanilic Acid." Due to its (periodic) success with that product (which was ***), Sandoz made a commitment to purchase some of R-M's technical grade. However, the product proved unacceptable (although the company felt obligated to meet its contractual agreements and did not cancel the contract). (Conference transcript, pp. 127-128.) Sandoz has now discontinued the purchase of all technical grade material. (Jan. 22, 1993 submission, p. 2.)

⁹⁴ The sodium sulfanilate was for exclusive use in the New Jersey plant (whose equipment was modified to accommodate it). It was first purchased in 1987 because of a chronic inability to obtain adequate quantities of the free acid. After Sandoz was able to obtain a sufficient supply of refined sulfanilic acid, it continued purchasing the salt from R-M "only" to maintain R-M as a supplier and a domestic source." (Purchase data provided by Sandoz show that it did, in fact, ***. (Table E-1.)) Sandoz has now discontinued the purchase of sodium sulfanilate from R-M ***. (Jan. 12, 1993 submission, p. 2.)

⁹⁵ Until the promulgation of the 1985-86 FDA standards, Warner-Jenkinson traditionally used technical grade sulfanilic acid. As is described in greater detail in app. E, Warner-Jenkinson continued to use the technical grade (purchased from R-M) in the late 1980s, attempting to meet FDA standards by "hand-picking" acceptable batches. (Petitioner states that Warner-Jenkinson purchased a "record" quantity of technical grade sulfanilic acid from R-M in 1987 and 1988. (Posthearing brief, Exhibit 1, p. 4)). However, its continued use of the technical grade was unsatisfactory; Warner-Jenkinson provided documentation in the form of *** (Jan. 22, 1993 submission, Exhibit 1). As a result (and at the reported urging of R-M), Warner-Jenkinson increased its purchases of sodium sulfanilate in 1990. Again, there were unsatisfactory results (see app. E and Warner-Jenkinson's Jan. 22, 1993 submission, pp. 2-3 and exhibit 3).

⁹⁶ Warner-Jenkinson is the *** purchaser of the Hungarian product. The firm began using refined sulfanilic acid from Hungary in 1988-89 and, in 1991, added Chinese sources of the product. Warner-Jenkinson reports that it "discovered" the Chinese source as part of a worldwide search it conducted during the 1990 shortage. (Jan. 22, 1993 submission.) As shown in table E-1, Warner-Jenkinson ***. In August 1990, Warner-Jenkinson signed a letter of intent to purchase large quantities of either technical grade sulfanilic acid
(continued...)

different grades, according to Sandoz and Warner-Jenkinson, is the desirability of maintaining several sources of supply. Additional information on the issue of interchangeability among grades is presented in the section of this report entitled "Purchaser Responses" and appendix E.

U.S. Importers

The Commission sent importer questionnaires in these final investigations to the 18 firms that reported imports of sulfanilic acid into the United States in response to Commission inquiries during the preliminary investigations concerning imports from Hungary and India and the final investigation concerning imports from China. Additional data were also obtained from a firm which first imported in the latter part of 1992.⁹⁷ Complete responses were received from all firms other than *** and ***.⁹⁸ The following tabulation lists importer (or consignee) names, grade of product imported, and source of imports:

* * * * *

Many of the importers are trading companies; others (***) are also end users of the product. *** imports of sulfanilic acid from Hungary were imported by Gallard-Schlesinger for the account of Warner-Jenkinson;⁹⁹ in 1991, ***.¹⁰⁰ As shown in the above tabulation, ***. In January-September 1992,

⁹⁶ (...continued)

or sodium sulfanilate from R-M. (Petitioner's prehearing brief, exhibit 2.)

Petitioner disputes Warner-Jenkinson's claim that purchases of sulfanilic acid other than refined grade in 1991 were due to shortages, stating that China (from which Warner-Jenkinson also purchased sodium sulfanilate in 1991) had ample excess capacity to supply the free acid. (Petitioner's posthearing brief, pp. 4-5.) Reported Chinese utilization of capacity to produce refined sulfanilic acid was *** percent in 1989, *** percent in 1990, *** percent in 1991, and *** percent in January-March 1992. (Data submitted in response to questionnaires during investigation No. 731-TA-538 (Final)).

⁹⁷ Importers were identified in the petition and through a review of customs documents. Import data included in this report are from responses to the Commission's questionnaires. (The HTS items covering sulfanilic acid are basket categories that include imports of other chemicals; therefore, the Commission cannot rely on official statistics for import data.)

⁹⁸ These firms did respond to the Commission's questionnaires in its final investigation on China. The data they provided at that time have been incorporated into this report.

⁹⁹ Hungarian respondent argues that "the fact that the Hungarian product has been purchased ***." (Respondent's prehearing brief, p. 18.)

¹⁰⁰ ***.

Sandoz was the ultimate purchaser for at least *** percent of the quantity of imports reported from India.¹⁰¹

Availability of grade varied among sources: only refined grade sulfanilic acid was imported from (and produced in) Hungary; technical grade product was imported from India in 1990 and 1991 and refined grade sulfanilic acid in 1991 and January-September 1992. China was the only reported source of imported sodium sulfanilate. In addition to the countries subject to investigation (and China), refined sulfanilic acid was also imported from France, Japan, and the United Kingdom. Imports of technical sulfanilic acid were also reported from the United Kingdom.

In its questionnaires, the Commission requested that firms report imports of (or contracts to import) sulfanilic acid from Hungary or India after September 30, 1992. The following information was provided concerning imports from Hungary:

| <u>Firm</u> | <u>Quantity</u> <u>(Pounds)</u> | <u>Time period of</u> <u>order and/or receipt</u> |
|-------------|------------------------------------|--|
|-------------|------------------------------------|--|

| | | | | | | |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
|---|---|---|---|---|---|---|

No firm reported plans to import from India after September 1992.¹⁰²

In its questionnaires, the Commission also requested that firms report 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.¹⁰³

¹⁰¹ In January-September 1992, Sandoz reported purchases of *** pounds of sulfanilic acid produced in India (table E-1). Purchases were made from ***. Staff conversation with *** (Sandoz). Importers/consignees reported importing *** pounds of sulfanilic acid from India in January-September 1992 (table 14). ***. ***. ***.

¹⁰² Two firms (***) reported that they discontinued importation of sulfanilic acid from India (including, in the case of ***, cancelling actual orders) due to the imposition of the preliminary countervailing and antidumping duties. Staff conversation with ***. *** further noted that the market is too uncertain at this time to accept orders (Jan. 12, 1993). Other trading companies (***) would consider importing sulfanilic acid from India except for the additional duties. Staff conversation with ***.

¹⁰³ Conference transcript, pp. 92-94 and 158-159.

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.¹⁰⁴

Importers of sulfanilic acid from 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 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 Indian merchandise is packed in 50- to 80-pound plastic or paper bags. The Hungarian product varies slightly from other 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.¹⁰⁵

CONSIDERATION OF THE QUESTION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

Section 771(7)(B) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(B)) provides that in making its determination in these investigations the Commission--

shall consider (I) the volume of imports of the merchandise which is the subject of the investigation, (II) the effect of imports of that merchandise on prices in the United States for like products,

¹⁰⁴ Shipments in liquid form usually occur within a ***-mile radius of the plant because shipping costs are almost three 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, pp. 58-59).

***. ***.

¹⁰⁵ 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, p. 162, and field visit to Warner-Jenkinson, May 6, 1992.) The option of supplying the product in supersacks is available to all manufacturers; ***. (Staff conversation on June 4, 1992 with John Dickson (R-M)).

and (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States; and

may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

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

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

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

In examining the impact required to be considered under subparagraph (B)(iii), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to, (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.

Available information on the volume of imports (item (B)(I) above) is presented in the section of this report entitled "U.S. Imports." Information on the other factors specified is presented in this section.

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).

Table 2

Sulfanilic acid: U.S. capacity, production, and capacity utilization, 1989-91, January-September 1991, and January-September 1992¹

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|------|------|------|------|--------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

¹ Capacity and production data are provided for U.S. producers' capacity for and production of technical (crude) sulfanilic acid.

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. Hilton Davis produced ***. 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.

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

Capacity to produce sulfanilic acid increased by *** percent from 1989 to 1991, raising total production capabilities to *** pounds in 1991.¹⁰⁶ The increase in capacity was due to numerous internal changes undertaken by R-M to increase its efficiency. Capacity to produce the technical grade increased by approximately *** pounds per year when ***.¹⁰⁷ Early in 1991, R-M made major improvements to ***. These improvements, in addition to modifications to ***, increased the sodium sulfanilate production capacity by approximately *** percent.

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

¹⁰⁶ 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, pp. 158-159.)

¹⁰⁷ ***. ***. (Staff conversation on Feb. 2, 1993 with John Dickson (R-M)).

company's production process to employ some of the equipment that was formerly used for production of the refined grade.^{108 109}

U.S. production decreased by almost *** percent from 1989 to 1990, but increased by nearly *** percent between 1990 and 1991.¹¹⁰ An approximate ***-percent decrease in production occurred in the interim period. Capacity utilization decreased by *** percentage points between 1989 and 1990, then rose by *** percentage points in 1991; utilization figures decreased by *** percentage points in the interim period. However, utilization of the capacity to produce varies by grade (table D-2): reported capacity utilization was *** percent for technical sulfanilic acid, *** percent for refined sulfanilic acid, and *** percent for sodium sulfanilate in January-September 1992. R-M currently is running its refined grade unit at *** of its capacity to produce and expects to do so throughout 1993 unless the firm is able to sell sulfanilic acid to Warner-Jenkinson.¹¹¹ Sandoz plans to continue purchasing from R-M

¹⁰⁸ 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, p. 28.) ***. Capacity expansion for the sodium salt would not be possible or necessary, however, if R-M decided to re-start its production of refined sulfanilic acid (which, in August 1992, it did).

¹⁰⁹ R-M's equipment for manufacturing sulfanilic acid is specialized and cannot be used for any other purpose. (Petitioner's prehearing brief, p. 15.)

¹¹⁰ 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, largely withdrew.

¹¹¹ Whether it will be able to do so is uncertain. ***. ***. Ken Goldacker, Manager of Purchasing (Warner-Jenkinson), testified at the Commission's Jan. 5, 1993 hearing that his firm is "encouraged by where R-M has gone as far as developing a refined product." There was additional testimony by parties concerning the August 1992 sample of refined sulfanilic acid that R-M sent to Warner-Jenkinson. Ken Goldacker stated (and R-M was aware) that Warner-Jenkinson did not test it upon receipt because it was off-white in color. Mr. Goldacker also stated that it was not initially tested "due to the fact that the (accompanying) letter indicated that this was tentative; that future production would be better." There may be some confusion concerning R-M's use of the word "tentative." The sample itself was not tentative, rather the attached specification was in that the "specs" could be adjusted to meet customers' needs. (Staff conversation on Feb. 2, 1993 with John Dickson (R-M)). Mr. Goldacker apparently understood the key words in the letter to be those that he quoted at the hearing: "We believe this refined sulfanilic acid we produce in the future will be more consistent and of higher assay." (Hearing transcript, pp. 29 and 47-52, and 142-146.) In fact, R-M's August 1992 transmittal letter stated (in full):

"I am also enclosing a tentative specification for this grade of sulfanilic acid. We believe that the refined free acid we produce in the future will be more consistent and of higher assay than material we previously produced. This is primarily due to the increased volume and consistency of its feedstock, sodium salt solution, which we have achieved over the past few years" (emphasis added). (Exhibit E-1 to

(continued...)

during 1993.¹¹² (As shown in table D-2, R-M reported that it has the capacity to produce *** pounds of refined sulfanilic acid annually.)

U.S. Producers' U.S. Shipments 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 U.S. shipments by grade).

Table 3

Sulfanilic acid: Shipments by U.S. producers,¹ by types, 1989-91, January-September 1991, and January-September 1992

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|------|------|------|------|--------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

¹ ***. 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, ***.

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

¹¹¹ (...continued)
petitioner's posthearing brief.) ***.

However, another key reason for Warner-Jenkinson not immediately testing the sample was the firm's past experience with unreliability on the part of R-M in terms of both (1) actual shipments and (2) samples submitted during R-M's experiment with "intermediate refined grade." (See app. E, Warner-Jenkinson's Jan. 22, 1993 submission, and hearing transcript, pp. 142-144.)

At this time, Warner-Jenkinson is continuing to monitor Sandoz' experience with R-M's refined grade. Any decision to actually use the product will depend upon how it performs in a production (not just laboratory) setting. Warner-Jenkinson notes that quality standards for food dyes and optical brighteners differ; ***. (Staff conversation on Feb. 2, 1993 with counsel for Nitrochemia.)

¹¹² In ***, R-M and Sandoz signed a sales agreement whereby R-M would supply Sandoz with *** pounds of refined sulfanilic acid ***. (The contracted price is \$*** per pound.)

U.S. Shipments

Domestic producers' total U.S. shipments (domestic shipments and company transfers) of sulfanilic acid increased by *** percent from 1989 to 1990 and by *** percent from 1990 to 1991. Shipments remained stable in the comparison of the 1991 and 1992 interim periods. The value of U.S. shipments followed a similar pattern, increasing by *** percent in 1990 and by *** percent in 1991, but decreasing by *** percent in interim 1992. The unit value of U.S. shipments of sulfanilic acid increased from \$*** per pound in 1989 to \$*** in 1991. Unit value was down slightly (to \$*** per pound) in January-September 1992. Broken out by grade, shipments of technical sulfanilic acid (excluding company transfers) actually decreased over the period of investigation, while shipments of sodium sulfanilate increased ***.

Export Shipments

R-M is *** that exports sulfanilic acid. The company reported exports of ***. In January-September 1992, R-M exported *** to ***¹¹³ (table D-3). Although export shipments decreased by *** percent between 1989 and 1990, there was a *** increase of such shipments in 1991. Exports in 1991 were *** times the level of 1990, although they decreased by *** percent in the interim periods. R-M explains this *** growth in exports as the direct result of company efforts to maintain sales despite increasing imports from China, Hungary, and India.¹¹⁴ The unit value of export shipments increased in 1990 and 1991 by *** percent and *** percent, respectively, but decreased by *** percent in interim 1992.

Total Shipments

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

¹¹³ *** is reported as R-M's best opportunity for export sales of the product. ***. ***. (Staff conversation on Feb. 2, 1993 with John Dickson (R-M)).

¹¹⁴ 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.) ***. ***. ***. (Field visit, R-M Industries, Apr. 30, 1992.)

U.S. Producers' Inventories

Information on U.S. producers' end-of-period inventories is presented in table 4. U.S. producers' end-of-period inventories of sulfanilic acid decreased irregularly by *** percent between 1989 and 1991, and by *** percent between the interim period of 1991 and the interim period of 1992. The ratio of inventories to total shipments decreased from *** percent in 1989 to *** percent in 1991 and then rose to *** percent in January-September 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-September 1991, and January-September 1992

| Item | 1989 | 1990 | 1991 | Jan.-Sept.- | |
|------|------|------|------|-------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

Note.--Partial year ratios are calculated using annualized production and shipments. Inventories represent the sum of inventories of all three grades. Technical grade inventories consist of both work in progress and finished goods that cannot be differentiated; therefore, ratios are calculated using production and shipments of all three grades combined (i.e., including technical grade production that is further processed and reported as company transfers).

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

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.

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

Table 5

Average number of U.S. production and related workers producing sulfanilic acid, hours worked,¹ wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs,² 1989-91, January-September 1991, and January-September 1992³

| Item | | | | | | | Jan.-Sept.-- | |
|------|------|------|------|------|------|---|--------------|------|
| | 1989 | 1990 | 1991 | 1991 | 1992 | | 1991 | 1992 |
| | * | * | * | * | * | * | * | * |

¹ Includes hours worked plus hours of paid leave time.

² On the basis of total compensation paid.

³ Firms providing employment data accounted for 100 percent of reported total U.S. shipments (based on quantity) in 1991.

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

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-September 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 ***.¹¹⁵ In addition, R-M reduced the salaried administrative staff by five employees ***.¹¹⁶ ***.¹¹⁷

¹¹⁵ ***. ***.

¹¹⁶ Those laid off included the sales manager for sulfanilic acid and the company controller. (Petition, p. 50, and staff conversation on June 9, 1992 with *** (R-M)).

¹¹⁷ ***. ***. (Staff conversation on June 2, 1992 with ***.)

Financial Experience of U.S. Producers

R-M Industries, representing *** percent of U.S. sulfanilic acid production in 1991, submitted financial data on the establishment¹¹⁸ in which sulfanilic acid is produced and on its sulfanilic acid operations. ***. Hilton Davis provided *** income-and-loss data on sulfanilic acid operations.¹¹⁹

Data for the annual periods of R-M Industries were verified by the Commission's staff.¹²⁰ ***. ***.

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 increased *** percent from \$*** in 1989 to \$*** in 1990, and increased *** percent to \$*** in 1991.¹²¹ 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 9-month period ended September 30, 1992, were *** percent less than the net sales of \$*** for the 9-month period ended September 30, 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.

***:

* * * * * * *¹²²

***.¹²³ ***:

* * * * * *

***. ***.¹²⁴

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

¹¹⁸ ***. ***. ***.

¹¹⁹ ***. ***. ***.

¹²⁰ The verification was conducted on July 1 and 2, 1992, with respect to investigation No. 731-TA-538 (Final) in addition to these investigations.

¹²¹ ***.

¹²² ***. ***.

¹²³ ***. ***.

¹²⁴ Telephone conversation, Oct. 21, 1991.

Table 6

Income-and-loss experience of R-M Industries on its overall establishment operations¹ in which sulfanilic acid is produced, calendar years 1989-91, January-September 1991, and January-September 1992

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|------|------|------|------|--------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

¹ ***. A complete description is included in the narrative of the report.

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

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):

| Item | As of Dec. 31-- | |
|---|-----------------|------|
| | 1990 | 1991 |
| Assets: | | |
| Current assets..... | *** | *** |
| Net property, plant, and equipment..... | *** | *** |
| Other assets and deferred charges..... | *** | *** |
| Total assets..... | *** | *** |
| Liabilities and capital deficiency: | | |
| Current liabilities..... | *** | *** |
| Long-term debt..... | *** | *** |
| Net capital deficiency..... | *** | *** |
| Total liabilities and capital deficiency..... | *** | *** |

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 ratio, the greater the "cushion" between current obligations and a firm's ability to pay them. ***. ***.¹²⁵

Subsequent to 1991, R-M has ***.¹²⁶ ***.

¹²⁵ A footnote to the 1991 audited financial statements states:

* * * * *

¹²⁶ A footnote to the 1991 audited financial statements states:

* * * * *

Operations on Sulfanilic Acid

Income-and-loss data for R-M on sulfanilic acid operations¹²⁷ are shown in table 7. Net sales of sulfanilic acid were stable at approximately \$*** for 1989 and 1990 and increased *** by *** percent to \$*** in 1991. The operating income (loss) was \$*** in 1989, \$*** in 1990, and \$*** in 1991. Operating income (loss) margins were *** percent in 1989, *** percent in 1990, and *** percent in 1991. Net sales of \$*** for the 9-month period ended September 30, 1992, were *** percent less than the net sales of \$*** for the 9-month period ended September 30, 1991. The operating income was \$*** in the 1992 interim period compared to an operating income of \$*** in interim 1991. The operating income margin as a share of sales was *** percent in interim 1991 and *** percent in interim 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 *** higher than the *** sold in both 1989 and 1990. R-M incurred operating losses in 1989 and 1990, but realized an operating income of \$*** per pound in 1991. Cost of goods sold decreased *** on a unit basis from \$*** in 1989 to \$*** in 1990, due, in part,¹²⁸ to a decrease in the cost of aniline, the primary raw material. Cost of goods sold decreased further on a unit basis to \$*** in 1991, principally due to the ***.

Table 7

Income-and-loss experience of R-M Industries on its operations producing sulfanilic acid,¹ calendar years 1989-91, January-September 1991, and January-September 1992

| Item | 1989 | 1990 | 1991 | Jan. - Sept. - - | |
|------|------|------|------|------------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

¹ ***. A complete description is included in the narrative of the report.

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

¹²⁷ ***.

¹²⁸ The product mix was also a contributing factor to the decreased cost of goods sold. The higher cost refined grade of sulfanilic acid was sold in 1989 but not in 1990.

Table 8

Income-and-loss experience (on a per-pound basis) of R-M Industries on its operations¹ producing sulfanilic acid, calendar years 1989-91, January-September 1991, and January-September 1992

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|------|------|------|------|--------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

¹ John Dickson, President, estimates that the cost of raw material is R-M Industries' only variable cost.

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

Cost of goods sold for interim 1992 was \$*** per pound compared to \$*** per pound in interim 1991. The cost of aniline continued to decline in interim 1992;¹²⁹ however, factory overhead increased \$*** per pound in interim 1992 compared to interim 1991, principally due to ***.¹³⁰ The lower unit sales price of \$*** with some volume decline contributed to the operating income decrease to \$*** per pound in interim 1992.

Hilton Davis provided *** financial data for sulfanilic acid *** produced for ***. Hilton Davis valued net sales at *** which is said ***. 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. Hilton Davis reported capital expenditures of \$*** in *** for *** sulfanilic acid.

¹²⁹ Testimony by John Dickson (R-M), hearing transcript, p. 63.

¹³⁰ Staff conversation with John Dickson, R-M (Dec. 4, 1992).

Table 9

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

| (In thousands of dollars) | | | | | | |
|---------------------------|------|------|------|--------------|------|---|
| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | | |
| | | | | 1991 | 1992 | |
| | * | * | * | * | * | * |

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

Investment In Productive Facilities

The investment in productive facilities and the annual return on total assets for R-M are presented in table 10 for operations on its overall establishment and sulfanilic acid. Hilton Davis reported an original cost of \$*** in *** for *** sulfanilic acid and a *** book value to \$*** in ***.

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

| Item | 1989 | 1990 | 1991 |
|------|------|------|------|
| | * | * | * |

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

Research and Development Expenses

R-M replied in the questionnaire response that research and development expenses ***.¹³¹ Hilton Davis reported \$*** research and development expenses in *** for *** sulfanilic acid.

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 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.

¹³¹ ***. ***.

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 factors¹³²--

(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,

¹³² 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.¹³³

Agricultural products (item (IX)) are not an issue in these investigations; information on subsidies (Item (I)) is presented in the section entitled "Nature and Extent of Subsidies and Sales at LTFV;" 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.

¹³³ 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."

U.S. Importers' Inventories

According to questionnaire responses, most U.S. importers of sulfanilic acid from Hungary and India typically do not maintain inventories of the product. Imported sulfanilic acid is either purchased on consignment for the end user or is imported directly by the end user for consumption in producing another product. ***. ***.¹³⁴ ***. ***. Data on total inventories reported are provided in table D-4.

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

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. Sales of sulfanilic acid accounted for *** percent of Nitrokemia's total sales in its most recent fiscal year. Nitrokemia produces only refined grade sulfanilic acid. *** of its exports to the United States are made to Gallard-Schlesinger, which resells them to Warner-Jenkinson for use in special food colors.

Hungary's reported capacity to produce sulfanilic acid was unchanged from 1989 to 1990 and rose by *** percent from 1990 to 1991 (table 11). 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. No future expansions are planned.¹³⁵ Reported annual capacity utilization has been consistently high since 1989, ranging from *** to *** percent, as production ***.

¹³⁴ ***. ***. ***. ***. Staff conversation on Dec. 2, 1992 with *** (***).

¹³⁵ 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 they would require the installation of an entirely new production line. (Conference transcript, pp. 115-119, and respondent's prehearing brief, p. 34.)

Table 11

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

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | | Projected-- | |
|------|------|------|------|--------------|------|-------------|------|
| | | | | 1991 | 1992 | 1992 | 1993 |
| | * | * | * | * | * | * | |

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

Hungarian exports to the United States *** by *** percent in 1990, then *** by *** percent in 1991. At the Commission's conference in May 1992, the Hungarian producer testified that Nitrokemia's exports to the United States were 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.¹³⁶ *** in its response to the Commission's questionnaire in this final investigation, exports to the United States were projected to total *** pounds in 1992, a ***-percent *** compared to such exports in 1991 and a ***-percent *** over 1990 exports. In the preliminary investigation, Nitrokemia projected 1992 exports at *** pounds. Hungarian respondents provided the following explanation for the difference between the projections provided during the Commission's preliminary investigation and those provided in this final investigation (and reflected by the data presented in table 11):

Warner-Jenkinson had placed its original orders for Nitrokemia's product for 1992 in January of that year. The quantity involved was dictated by the *** of its longstanding European customers, the focus of Nitrokemia's sulfanilic acid business. As the year progressed, however, the orders placed by European customers ***.

***.^{137 138}

¹³⁶ 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, pp. 115-119.)

***. ***. (Staff conversation on Feb. 2, 1993 with counsel for Nitrokemia.)

¹³⁷ Respondent's posthearing brief, Attachment I, p. 5.

¹³⁸ As shown in the section of this report entitled "Critical Circumstances," the rate of U.S. shipments of sulfanilic acid manufactured in Hungary *** during the summer of 1992.

Exports to the United States in 1993 are projected to ***.¹³⁹ Respondent states that "based on regular contacts with European customers," Nitrokemia is *** of that market and does not expect to have ***.¹⁴⁰ At the Commission's hearing, Warner-Jenkinson was not able to provide information as to where it will source its full requirement for sulfanilic acid in 1993.¹⁴¹

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. As shown in table 11, *** inventory levels were reported in September 1991. Counsel for the Hungarian respondent stated that ***.¹⁴²

India

The Commission requested information on the manufacture of sulfanilic acid in India (1) through telegrams to the U.S. consulate in Bombay, (2) through counsel for Indian producers who filed entries of appearance,¹⁴³ and (3) through direct contacts with identified producers.¹⁴⁴ There are three known producers of sulfanilic acid in India that manufacture refined sulfanilic acid: Jeevan Products, Kokan Synthetics, and Perfect Pharmacists.¹⁴⁵ Each firm responded to the Commission's questionnaire; data provided by the firms are presented in table 12.

¹³⁹ Except for 1992, exports to the United States have accounted for *** percent of total exports. European countries comprise Nitrokemia's largest market, accounting for *** of total exports. *** and *** have been the only other markets for the Hungarian product during the past 3 years, ***.

¹⁴⁰ Respondent's posthearing brief, Attachment I, pp. 5-6.

¹⁴¹ Ken Goldacker (Warner-Jenkinson) stated that they are searching for sources of refined sulfanilic acid "throughout the world" (including China), and are continuing to "look forward" to Hungary. Hearing transcript, p. 178. Refined sulfanilic acid from Hungary comprised *** percent of Warner-Jenkinson's total purchases in 1989, *** percent in 1990, *** percent in 1991, and *** percent in January-September 1992 (table E-1). At this time, Warner-Jenkinson ***. (***.) (Staff conversation on Feb. 2, 1993 with counsel for Nitrokemia.)

Documentation concerning R-M's efforts to sell refined grade sulfanilic acid to Warner-Jenkinson is provided in exhibits E-1 and F-1 to petitioner's posthearing brief and is discussed earlier in this report.

¹⁴² Staff conversation on Dec. 8, 1992 with counsel for Nitrokemia.

¹⁴³ Entries of appearance were filed by Perfect Pharmacists Pvt. Ltd. (Perfect Pharmacists) and Jeevan Products.

¹⁴⁴ Information on the number and identity of Indian manufacturers was provided by the petitioner, by the U.S. consulate in Bombay, and by U.S. importers and purchasers of sulfanilic acid.

¹⁴⁵ A response to the Commission's importers' questionnaire also identified *** as a manufacturer of refined grade sulfanilic acid. No additional information on this firm, including whether it is in fact a producer and not a trader, is available.

Table 12

Sulfanilic acid: Indian capacity, production, shipments, inventories, and capacity utilization, by grades, 1989-91, January-September 1991, January-September 1992, and projected 1992-93 ^{1 2}

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- ³ | | Projections | |
|------|------|------|------|---------------------------|------|-------------|------|
| | | | | 1991 | 1992 | 1992 | 1993 |
| | * | * | * | * | * | * | * |

¹ Data for the following firms are included in this table: Jeevan Products, Kokan Synthetics, and Perfect Pharmacists. Data reported by *** are for their *** fiscal year.

² No firm reported production of sodium sulfanilate.

³ *** did not report data for the interim periods.

Source: Compiled from responses to "foreign producer" questionnaires of the U.S. International Trade Commission and letter dated Jan. 12, 1993, from Perfect Pharmacists.

In addition to these firms, there are a number of firms that manufacture only technical grade sulfanilic acid.^{146 147} However, according to sources

¹⁴⁶ Firms identified as producers of technical grade sulfanilic acid by the U.S. consulate in Bombay include: Blue Blend Petrochemicals Limited (Bombay), Caffil Private Limited (Bombay), Gujarat Dyestuff Industries (New Delhi), Metro Chem Industries (Ahmedabad), and Roha Dye Chem Private Limited (Bombay). (The petition also named *** (locations unknown)). These firms do not export to the United States, and the consulate in Bombay was not able to obtain company-specific information for them. Also, none of the alleged manufacturers of technical sulfanilic acid that the Commission staff was able to locate and contact directly responded to requests for information. In addition, another firm (***) was named by a U.S. importer as a producer of technical grade sulfanilic acid.

Also, during its investigation, Commerce sent questionnaires to the following firms named in the petition:

Beta Naphtol (P) Ltd., Bombay
 Kanoria Chemicals & Industries, Ltd., Calcutta
 Chemco International, Bombay
 Golden Dyes Corp. (India) Private Ltd., Bombay
 Synthetic Dyestuff (India) Corp., Bombay
 Hickson & Dadajee, Bombay

The above firms either did not respond to Commerce's questionnaire or replied that they did not sell or export sulfanilic acid during the period of investigation (i.e., Dec. 1, 1991, through May 31, 1992). Based upon the

(continued...)

provided by the U.S. consulate in Bombay, technical grade sulfanilic acid generally is not exported.¹⁴⁸ Also, there is probably no manufacture of sodium sulfanilate: there is reportedly no local demand for the product and it also is not believed to be exported. However, Indian manufacturers have the ability to manufacture it.¹⁴⁹

Sulfanilic acid (including the technical grade) is manufactured in India by firms in the "small-scale sector;"¹⁵⁰ the firms produce a large range of chemical products other than sulfanilic acid.¹⁵¹ Production is based only on customer demand; when there are no current orders for sulfanilic acid, the equipment is used for the manufacture of other products.¹⁵² The bulk of the

¹⁴⁶ (...continued)

response from the U.S. consulate, it is known that at least one of these firms once produced, but no longer produces sulfanilic acid. There is no information on the record that any of these firms actually manufactured the product (including technical grade sulfanilic acid) since 1989.

¹⁴⁷ Parties at the Commission's hearing addressed the issue of whether imports from India of the technical product may constitute a threat of injury to U.S. production of all grades of sulfanilic acid. John Dickson, President of R-M, testified that the equipment to further purify the technical grade into refined sulfanilic acid is "relatively simple" and is "normally contained" in end users' production facilities (hearing transcript, pp. 71-72). Don Voigt (Sandoz) disagreed (hearing transcript, p. 106). See also internal memorandum provided by Sandoz (the firm that currently uses the majority of the Indian imports) stating that they are not willing to purify lower quality technical grade material (described in footnote 35 to this report).

¹⁴⁸ As shown in table 12, this is demonstrably not the case for manufacturers who have developed the ability to produce both the technical and refined grades; these firms may have more financial resources and be more export oriented than other producers. Since 1990, more than *** percent of these firms' production of technical grade sulfanilic acid has been exported (to markets other than the United States).

¹⁴⁹ Response by *** to the Commission's "foreign producer" questionnaire.

¹⁵⁰ In India, firms whose investment ranges from \$20,000 to \$240,000 are classified as participants in the "small-scale" sector; firms with an investment over \$240,000 are within the "large-scale" sector.

¹⁵¹ *** commented that due to their size, small-scale sector firms do not have the financial ability to devote their entire capacity to the manufacture of large quantities of a single product.

¹⁵² The process of manufacturing sulfanilic acid is reported as being "very simple," with a relatively small investment in machinery required to manufacture the technical grade. A ball mill facility is the only major equipment used; the availability of aniline, the key raw material, is the other important factor governing the ability to produce. (Also, the price of aniline is a key factor in the pricing of sulfanilic acid. Hindustan Organic Chemicals, the only large manufacturer of aniline in India, controls 80 percent of the local market for the product. Aniline is also imported into India.) (Response by consulate in Bombay to Commission request for

(continued...)

manufacturing facilities are located in the western Indian states of Gujarat and Maharashtra.¹⁵³ (Each of the producers of the refined grade product is located in or around Bombay.)

Manufacturers in India typically sell to chemical trading companies; prior to a sale for export, there is often more than one commercial transaction involving the product within India.¹⁵⁴ Such firms may export the product labeled or marketed as being of their own manufacture.¹⁵⁵

Data on the capacity to produce the subject product reported by the three manufacturers that produce the refined grade are presented in table 12. As shown, the capacity to produce technical sulfanilic acid more than *** from 1989 to 1991 and is projected to increase by an additional *** percent in 1993. The capacity to produce refined sulfanilic acid was *** from 1989 to 1990, *** in 1991, will *** in 1992, and is projected to *** in 1993. In 1991, the three responding firms reported *** pounds of capacity to produce the technical grade; of that capacity, *** pounds could be used for the manufacture of refined sulfanilic acid. Estimates on the total capacity to

¹⁵² (...continued)
information.)

*** agree that the technical grade is not particularly difficult to produce; however, *** firms state that successful production of the refined product is somewhat more problematic. It is particularly difficult to obtain uniform quality and consistency in refined sulfanilic acid. Production of technical grade material is achieved in a one-step reaction; production of refined material requires several steps on substantial, relatively expensive machinery. Jeevan Products is just now beginning the production of refined sulfanilic acid. The firm spent 2-1/2 years in the planning stage; the manufacture of an acceptable sample in a pilot plant required 9 to 10 months. Staff conversation on Dec. 21, 1992, with *** (Jeevan Products); hearing transcript (p. 200); and Jan. 12, 1993, letter from Perfect Pharmacists.

¹⁵³ When the dyestuff industry first developed in India in the early 1950s, sulfanilic acid was manufactured by several large-scale producers. However, most of these producers shut down operations in the early 1980s as it became more economical to buy the product from a small-scale producer on credit terms at a low cost. (Response by U.S. consulate in Bombay to Commission request for information.)

¹⁵⁴ Staff conversation on Dec. 9, 1992 with ***. Firms within the small-scale industrial sector do not have the financial resources to maintain an established marketing network. Marketing is typically routed through a network of brokers or export houses who locate buyers. In its response to the Commission's "foreign producer" questionnaire, *** noted that the impression of a capacity to produce that is larger than what actually exists is created by multiple export houses offering for sale the "same" sulfanilic acid. They question the accuracy of any estimates of aggregate production capacity. The U.S. consulate, in its response to a Commission request for information, concurred. At the Commission's hearing, Don Voigt (Sandoz) testified that trading companies are reluctant to disclose the name of the actual manufacturer to their customers (hearing transcript, p. 231).

¹⁵⁵ Jan. 12, 1993 letter from Perfect Pharmacists.

produce technical grade sulfanilic acid by all manufacturers in India vary among sources; for reasons noted above, any estimates may not be reliable. Petitioner estimates there is 14 million pounds of capacity that can be used to produce for export (petition, p. 56). The U.S. consulate in Bombay provided the following estimates of capacity (and utilization of that capacity) to produce sulfanilic acid:

| | |
|--|----------------------|
| Capacity to produce technical grade (1,000 pounds)... | 22,046 |
| Production of technical grade (1,000 pounds)..... | 13,228 |
| Calculated capacity utilization for technical grade (in percent)..... | 60.0 |
| Production of refined grade (1,000 pounds)..... | 2,205 |
| Exports of (primarily) refined grade (1,000 pounds).. | 1,212 ¹⁵⁶ |

Capacity utilization for the technical grade product is relatively low (ranging from *** percent in 1989 to *** percent in 1991) and that reported for the refined grade is lower still (ranging from *** percent in 1989 to *** percent in 1991).¹⁵⁷ In its January 12, 1993, letter to the Commission, Perfect Pharmacists ***,¹⁵⁸ As shown in table 12, the focus of production for the reporting firms is changing from the manufacture of technical grade sulfanilic acid to that of the refined product. In 1991, only *** percent of total shipments were refined grade; in contrast, in 1993, over *** percent are projected to be refined. After 1989, the majority of total shipments of technical grade sulfanilic acid were made to export markets. After 1990, the same was true for the refined grade. Inventories (compared to production) were relatively low (table 12).

Table 13 lists salient threat indicators concerning Indian production of sulfanilic acid, by grade, for each of the reporting firms.

¹⁵⁶ Although much of the information provided by the consulate in Bombay corresponded to information provided in response to the Commission's "foreign producer" questionnaire, there were also discrepancies. Areas where the two sources concurred included (as footnoted in table 13) capacity data for individual producers (Kokan Synthetics and Perfect Pharmacists). However, data on the production and export of refined grade provided by the consulate is *** higher than that provided by Kokan Synthetics and Perfect Pharmacists. (The embassy identified these two firms as the only manufacturers of refined grade in the "organized" sector.)

¹⁵⁷ Capacity utilization reported by *** was higher (over *** percent) for each period. However, as shown in table 12, the firm reported its capacity on the basis of operating only one shift per day.

¹⁵⁸ However, the firm further stated that practical capacity should be calculated as only 50 to 60 percent of the theoretical capacity that it reported in response to the Commission's questionnaire. Due to shortages of raw materials, labor (during the farming season that is geared to the monsoon), power cuts, and machinery breakdowns (due to use by unskilled labor), it is necessary to maintain a large installed capacity to maximize output when it is possible to actually manufacture.

Table 13

Sulfanilic acid: Indian producers' capacity, production, capacity utilization, and export shipments to the United States, by grades and producing firms, 1989-91 and projected 1992-93

| (In pounds, except for capacity utilization, which is expressed as a percentage) | | | | | |
|---|------|------|------|-------------------|-------------------|
| Item | 1989 | 1990 | 1991 | Projected 1992 | Projected 1993 |

Note.--***.

| | | | | | | | |
|-----|---|---|---|---|---|---|---|
| (1) | * | * | * | * | * | * | * |
| (2) | * | * | * | * | * | * | * |

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and Jan. 12, 1993 letter from Perfect Pharmacists.

As shown above, ***. ***. (***.) In ***, Jeevan Products will have completed a new sulfonation facility which will be used to produce sulfanilic acid.¹⁵⁹ Jeevan Products has been working with PMC Specialties, a U.S. chemical distributor, to develop the capability to produce and sell refined sulfanilic acid in the U.S. market.¹⁶⁰ Possible customers include Hilton Davis,¹⁶¹ Sandoz, and Warner-Jenkinson (hearing transcript, p. 217).

World Market

Sulfanilic acid is produced in Hungary, India, China, 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.¹⁶² Respondents testified that there is an adequate supply of sulfanilic acid in the world market from a multitude of sources.¹⁶³ However, both purchasers and importers admitted the need to maintain several sources of supply, given the periodic instability of product availability. Some purchasers testified that an apparent shortage had been

¹⁵⁹ ***. ***. Response by Jeevan Products to Commission inquiry for information.

¹⁶⁰ Mr. Fairweather, Director of International Trading (PMC Specialties), testified at the Commission's hearing that his firm approached Jeevan 2 years ago with the request that Jeevan Products begin making refined grade sulfanilic acid. (Hearing transcript, p. 217).

¹⁶¹ Petitioner cites the anticipated sales of refined sulfanilic acid by PMC Specialties to Hilton Davis (which has only purchased technical sulfanilic acid and sodium sulfanilate since ***, table E-1) as evidence that refined sulfanilic acid from India and the technical sulfanilic acid and sodium sulfanilate produced by R-M are "substitutable by definition." (Petitioner's posthearing brief, p. 3.)

¹⁶² Transcript of the conference on China, pp. 61-62.

¹⁶³ Transcript of the conference on China, p. 98.

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 acid.¹⁶⁴ Warner-Jenkinson would like to purchase more of the refined grade (available for a time 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. source.¹⁶⁵ 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.¹⁶⁶

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 17 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).¹⁶⁷ Imports of sulfanilic acid from Hungary, India, and China increased over most of the period of investigation, climbing by 59 percent in 1990 and by 232 percent in 1991; however, in January-September 1992, such imports decreased by 34 percent compared to January-September 1991. 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 1992.¹⁶⁸ Imports from India *** in 1990, then *** in 1991 and *** by *** percent in interim 1992. Imports from China climbed by *** percent in 1990 and by *** percent in 1991; a comparison of January-September 1991 to January-September 1992, however, showed a *** in imports of *** percent.¹⁶⁹

¹⁶⁴ Staff conversations on May 27, 1992 with *** and ***. The preliminary LTFV determination on China was effective on Mar. 18, 1992. (See 57 F.R. 9409, Mar. 18, 1992.)

¹⁶⁵ 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. *** its imports into the United States are shipped to 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, p. 142.)

¹⁶⁶ Conference transcript, pp. 140-144.

¹⁶⁷ As noted in the section of this report entitled "U.S. Importers" and in the footnotes to table D-5, staff included data reported by two firms in the final China investigation.

¹⁶⁸ *** that 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.

¹⁶⁹ In the past, the Commission has cumulated imports subject to a current investigation with imports subject to an outstanding order up to 8 months old. Commerce published its notice in the Federal Register of its final dumping order on sulfanilic acid from China on Aug. 19, 1992 (57 F.R. 37524).

Table 14

Sulfanilic acid: U.S. imports, by sources, 1989-91, January-September 1991, and January-September 1992¹

| | Jan.-Sept.--- | | | | |
|------------------------------------|---------------|-------|-------|-------|-------|
| Item | 1989 | 1990 | 1991 | 1991 | 1992 |
| Quantity (1,000 pounds) | | | | | |
| Hungary ² | *** | *** | *** | *** | *** |
| India ³ | *** | *** | *** | *** | *** |
| Subtotal | *** | *** | *** | *** | *** |
| China ⁴ | *** | *** | *** | *** | *** |
| Subtotal | 749 | 1,192 | 3,952 | 2,685 | 1,785 |
| Other sources ⁵ | *** | *** | *** | *** | *** |
| Total | *** | *** | *** | *** | *** |
| Value ⁶ (1,000 dollars) | | | | | |
| Hungary | *** | *** | *** | *** | *** |
| India | *** | *** | *** | *** | *** |
| Subtotal | *** | *** | *** | *** | *** |
| China | *** | *** | *** | *** | *** |
| Subtotal | 535 | 896 | 2,914 | 1,996 | 1,350 |
| Other sources ⁵ | *** | *** | *** | *** | *** |
| Total | *** | *** | *** | *** | *** |
| Unit value (per pound) | | | | | |
| Hungary | \$*** | \$*** | \$*** | \$*** | \$*** |
| India | *** | *** | *** | *** | *** |
| Average | *** | *** | *** | *** | *** |
| China | *** | *** | *** | *** | *** |
| Average | .71 | .75 | .74 | .74 | .76 |
| Other sources | *** | *** | *** | *** | *** |
| Average | *** | *** | *** | *** | *** |
| Share of total quantity (percent) | | | | | |
| Hungary | *** | *** | *** | *** | *** |
| India | *** | *** | *** | *** | *** |
| Subtotal | *** | *** | *** | *** | *** |
| China | *** | *** | *** | *** | *** |
| Subtotal | *** | *** | *** | *** | *** |
| Other sources ⁵ | *** | *** | *** | *** | *** |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Table continued.

Continuation of table 14.

¹ Interim periods include data on imports for January-March 1991 and January-March 1992 for *** and ***. A more complete description of such data is included in the footnotes to table D-5.

² Imports from Hungary entered under HTS No. 2921.42.2420 (as reported by Customs) are 836,712 pounds in January-September 1992. As shown in the table, *** pounds of sulfanilic acid were imported during that period.

³ Imports from India entered under HTS No. 2921.42.2420 (as reported by Customs) are 271,433 pounds in January-September 1992. These data are believed to include (1) an entry of *** pounds by *** of metanilic acid that was mistakenly classified as sulfanilic acid and (2) an entry of *** pounds by *** that was placed "in bond," inspected, and returned from the port to India. As shown in the table, *** pounds of sulfanilic acid were imported from India in January-September 1992.

⁴ Imports from China entered under HTS No. 2921.42.2420 (as reported by Customs) are 125,884 pounds in January-September 1992. As shown in the table, *** pounds of sulfanilic acid were imported during that period. On Oct. 9, 1992, John Dickson, President of R-M (citing the discrepancy between Journal of Commerce, PIERS Reports, and Commerce statistics), requested that the U.S. Customs Service begin an investigation to determine whether imports from China have been and are being misclassified.

⁵ Nonsubject imports from countries other than China are believed to be understated for 1989.

⁶ Landed, duty-paid at the U.S. port of entry, including ocean freight and insurance costs, brokerage charges, and import duties.

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 Hungary, India, and China climbed by 67 percent in 1990 and by 225 percent in 1991; the value of such imports was down by 32 percent, however, in interim 1992. The unit value of the Hungarian product *** from \$*** per pound in 1989 to \$*** in 1991; in interim 1992 the unit value was \$***. India's unit value started off at \$*** per pound in 1990, but *** to \$*** in 1991. In interim 1992, the unit value *** to \$***. The unit value for the Chinese sulfanilic acid started at \$*** per pound in 1989; it *** by \$*** in 1990; then *** by \$*** between 1990 and January-September 1992. Imports from Hungary were only of the refined grade; ***.¹⁷⁰ Imports from China were of refined sulfanilic acid and sodium sulfanilate.

¹⁷⁰ The Hungarian manufacturer of sulfanilic acid does not produce anything but the refined grade. India can produce all three grades; however, all imports reported during interim 1992 were of the refined grade. Three importers, ***, began importing the refined product in 1992. In addition, there were imports of technical grade sulfanilic acid in 1990 and 1991 from India.

Reported imports of sulfanilic acid by quantity from all other countries *** in 1990 by *** percent, then *** by *** percent in both 1991 and interim 1992. The main overall source of these imports was Japan, which principally manufactured sulfanilic acid as a byproduct in the production of sulfa drugs;¹⁷¹ *** firms reported importing the refined grade from this country over the period of investigation. In mid-1990 the Japanese in large part 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. It was the partial withdrawal of this source of refined grade sulfanilic acid in 1991 that opened the door for increased imports from *** that same year. The only other reported imports have been shipments of *** grade sulfanilic acid from ***.

Monthly imports of sulfanilic acid during January-September 1992 are presented in table 15.

Table 15

Sulfanilic acid: U.S. imports from Hungary, India, and China, by months, January-September 1992

| (In pounds) | | | | | | |
|-------------|----------------------|----------------------|----------------------|--------------------|-------|---|
| Month | Hungary ¹ | India ^{1 2} | Hungary and India | China ³ | Total | |
| | * | * | * | * | * | * |

¹ On Oct. 22, 1992, Commerce published notice in the Federal Register of its preliminary determination of sales at LTFV of sulfanilic acid from Hungary and India (57 F.R. 48203).

² On Aug. 11, 1992, Commerce published notice in the Federal Register of its preliminary subsidy determination on sulfanilic acid from India (57 F.R. 35784).

³ On Mar. 18, 1992, Commerce published notice in the Federal Register of its preliminary determination of sales at LTFV of sulfanilic acid from China (57 F.R. 9409). On Aug. 19, 1992, Commerce published notice in the Federal Register of its final dumping order on sulfanilic acid from China (57 F.R. 37524).

Source: Compiled from responses to questionnaires of the U.S. International Trade Commission.

¹⁷¹ Petition, p. 46.

In its investigation No. 731-TA-461 (Final), Gray Portland Cement and Cement Clinker from Japan (in which it found material injury), the Commission cumulated imports subject to a current investigation with imports subject to an outstanding order up to 8 months old.¹⁷² As shown in table D-5, all of the imports from Hungary, India,¹⁷³ and China that entered the United States in January-September 1992 were refined grade sulfanilic acid; during that period less than *** percent of U.S. producers' domestic shipments were of the refined product. There were, however, imports of technical grade product from India in 1990 and 1991 and imports of sodium sulfanilate from China in 1989, 1990, and 1991.

**Market Penetration by LTFV Imports From Hungary
and LTFV and Subsidized Imports From India**

Table 16 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 Hungary and India, by imports from China, and by imports from all other sources.

¹⁷² However, respondent argues that this precedent should not be applicable to an analysis of whether there exists merely a threat of material injury. (Hungarian respondent's prehearing brief, pp. 25-26.)

¹⁷³ Respondents state that imports from India "are of a distinctly lower quality than imports from Hungary" and cite testimony by Kenneth Goldacker (Warner-Jenkinson) that the quality of the Indian product is such that each incoming batch must be tested. (Hungarian respondent's posthearing brief, p. 6, citing hearing transcript at pp. 170-171.) Further information on this issue was provided by *** (***). *** stated that there is no difference in quality of the refined product among "sources" (i.e., countries). He described Hungarian and Chinese suppliers as having had an "impeccable record." There have been problems with consistency of quality among Indian suppliers; however, an individual supplier in India can also have an "impeccable" record. He also noted that while the Hungarian manufacturing process is different from that of other producers, the end-product is "the same." (Staff conversation on Dec. 21, 1992 with *** (***)).

***. ***. (Jan. 2, 1993 submission.)

Table 16

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

| | Jan. - Sept. -- | | | | |
|---------------------------------|--|------|------|------|------|
| Item | 1989 | 1990 | 1991 | 1991 | 1992 |
| | Share of the quantity of U.S. consumption (percent) | | | | |
| Producers' U.S. shipments . . . | *** | *** | *** | *** | *** |
| Importers' U.S. shipments: | | | | | |
| Hungary | *** | *** | *** | *** | *** |
| India | *** | *** | *** | *** | *** |
| Subtotal | *** | *** | *** | *** | *** |
| China | *** | *** | *** | *** | *** |
| Subtotal | 14.0 | 16.7 | 46.2 | 46.4 | 39.0 |
| Other sources | *** | *** | *** | *** | *** |
| Total | *** | *** | *** | *** | *** |
| | Share of the value of U.S. consumption ² (percent) | | | | |
| Producers' U.S. shipments . . . | *** | *** | *** | *** | *** |
| Importers' U.S. shipments: | | | | | |
| Hungary | *** | *** | *** | *** | *** |
| India | *** | *** | *** | *** | *** |
| Subtotal | *** | *** | *** | *** | *** |
| China | *** | *** | *** | *** | *** |
| Subtotal | 12.5 | 15.9 | 39.6 | 39.5 | 38.3 |
| Other sources | *** | *** | *** | *** | *** |
| Total | *** | *** | *** | *** | *** |

¹ Import shipments from other sources 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 Based on f.o.b. U.S. shipping point values.

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

Over the period of investigation, the U.S. producers' share of the quantity of total apparent consumption fluctuated; starting at *** percent in 1989, the U.S. producers' share dropped by approximately *** percentage points in 1990. A *** increase was shown in 1991, and data reported for January-September 1992 show a climb to *** percent of consumption. In terms of value, the U.S. producers' share decreased from *** percent in 1989 to *** percent in 1990; from this point on, the U.S. producers' share increased steadily, reaching *** percent in January-September 1992. The share of consumption (in terms of quantity) accounted for by imports from Hungary, India, and China grew by 32.2 percentage points during 1989-91, reaching 46.2 percent in 1991. By January-September 1992, however, the share had decreased somewhat to 39.0

percent of total U.S. consumption. The share of value held by imports from these countries shows a similar trend, increasing by 27.1 percentage points between 1989 and 1991, then accounting for a slightly lower share of value (38.3 percent) in January-September 1992. Examined country by country, China was the primary contributor to the pattern of growth in imports through 1991; imports from this country claimed *** percent of U.S. consumption in 1989 and *** percent in 1991. The share of U.S. consumption held by the Hungarian product ***. India's share of U.S. consumption is small, but has recently increased, reaching *** percent in interim 1992. The share of consumption claimed by imports from other sources climbed by *** percentage points from 1989 to 1990, then dropped ***, from *** percent in 1990 to *** percent in 1991. As mentioned earlier in the report, imports from Japan began declining in late 1990 and early 1991 as the country decreased exports to the U.S. market; ***.

Shares of consumption, by grade, are presented in table D-6. As the Hungarian respondent points out in its prehearing brief (pp. 18-20), market shares *** by grade. In January-September 1992 (in terms of quantity), the U.S. producer claimed *** percent of sodium sulfanilate shipments,¹⁷⁴ but only *** percent of refined grade shipments. The *** of R-M's technical grade shipments have been for use in its production of sodium sulfanilate and (since August 1992) refined grade sulfanilic acid.¹⁷⁵ R-M's domestic shipments (to unrelated customers) and importers' U.S. shipments of technical grade sulfanilic acid¹⁷⁶ are presented in the following tabulation (in 1,000 pounds):

| <u>Source</u> | <u>1989</u> | <u>1990</u> | <u>1991</u> |
|------------------|-------------|-------------|-------------|
| R-M..... | *** | *** | *** |
| U.S. importers.. | *** | *** | *** |
| Total..... | *** | *** | *** |

In the open market, the share of consumption of technical grade sulfanilic acid accounted for by R-M *** from *** percent in 1989 to *** percent in 1991.¹⁷⁷

¹⁷⁴ Prior to January-September 1992, imports of sodium sulfanilate from China entered the U.S. market. R-M has dominated the market for this product throughout the period of investigation.

¹⁷⁵ Thus, the market shares for technical grade sulfanilic acid as presented in table D-6 should be used with caution. In addition, the actual share of U.S. consumption of technical grade sulfanilic acid held by R-M is somewhat lower in the interim periods than is shown in table D-6. *** only provided data for January-March 1991 and January-March 1992 to the Commission.

¹⁷⁶ Imports include shipments from Japan (by ***) and shipments from the United Kingdom (by *** throughout the period of investigation).

¹⁷⁷ At the Commission's hearing, John Dickson (R-M) testified that imports of low-priced refined sulfanilic acid from Hungary and India could impact sales (pricing) of the technical grade product. (Hearing transcript, p. 22.)

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.¹⁷⁸ Finally, refined or pure sulfanilic acid generally has the highest price because it has higher production costs and the least impurities.

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. R-M stated that consumers usually visit R-M's plant and analyze its ability to deliver the product and its overall manufacturing process.¹⁷⁹ Purchasers also consider the environmental and worker safety conditions of the plant. ***. ***.¹⁸⁰ This process can take anywhere from a few days to several months.¹⁸¹

Sulfanilic acid is sold on both a contract and 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.¹⁸² R-M discusses general information regarding price and availability of imported product with potential customers and then quotes a price based on a minimum quantity of business. While later discussions may occur, price and quantity are usually negotiated by the end of each year and are fixed for the duration of the contract.¹⁸³ 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

¹⁷⁸ The price of sodium sulfanilate solution is based on the amount of free acid present. The sodium sulfanilate solution sold by the petitioner is *** percent salt and *** percent water.

¹⁷⁹ 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 (transcript of the conference on China, p. 73).

¹⁸⁰ ***.

¹⁸¹ ***.

¹⁸² ***. ***. ***. ***. ***.

¹⁸³ ***. ***.

modifications corresponding to price changes for aniline.¹⁸⁴ Contracts often contain standard quantity 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 ***.

The petitioner and the importer of the Hungarian product quote prices of sulfanilic acid on an f.o.b. basis, whereas importers of the Indian product reported that they quote and sell on a delivered basis.¹⁸⁵ Transportation costs account for between 1 and 8 percent of the overall product cost.¹⁸⁶ 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, purchasers generally 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.^{187 188}

¹⁸⁴ R-M provided a copy of its recent contract with Sandoz to provide refined grade sulfanilic acid. This contract stipulates that "****." The contract also states that ***.

¹⁸⁵ Because of these differences, f.o.b. prices are shown for the domestic and the Hungarian products, and delivered prices are shown for the Indian product. These prices are indexed to display price trends. R-M and the importers of the 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 India. In the case of Hungary, prices are compared only on an f.o.b. basis.

¹⁸⁶ Sodium sulfanilate in solution form is more costly to transport; R-M reported that transportation costs for the solution average about *** percent, while those for the powders average only *** percent. ***. ***.

¹⁸⁷ ***.

¹⁸⁸ 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.

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-September 1992. Prices were requested for the largest quarterly sale of technical sulfanilic acid, refined sulfanilic acid, and sodium sulfanilate.¹⁸⁹ 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 1989.¹⁹⁰ Usable pricing data were received from *** firms that imported sulfanilic acid from India and from *** firms that imported the Hungarian product.^{191 192} The products for which pricing data were received accounted for *** percent of U.S. producers' domestic shipments, *** percent of U.S. shipments of Hungarian product, and *** percent of Indian sulfanilic acid in 1991.¹⁹³

Sales of technical grade sulfanilic acid

Prices for domestic technical sulfanilic acid *** during the period with *** (table 17).^{194 195} Prices *** percent from the first to the fourth quarter of 1989.¹⁹⁶ These prices *** throughout the remainder of the period and were *** in July-September 1992 than they were in January-March 1989.¹⁹⁷

¹⁸⁹ Prices were requested for sodium sulfanilate sold both in dry and solution form.

¹⁹⁰ R-M ceased production of refined grade sulfanilic acid in late 1989, but restarted such production in mid-1992. R-M made a trial shipment of refined sulfanilic acid during July-September 1992 to Sandoz and has made other shipments since September. In ***, R-M and Sandoz entered into a contract for delivery of refined grade sulfanilic acid during ***.

¹⁹¹ ***, ***, ***.

¹⁹² Prices for sales of Chinese sulfanilic acid are presented in app. G.

¹⁹³ Price data reported for sales of Indian sulfanilic acid during 1992 accounted for *** percent of all shipments of Indian imports in that year.

¹⁹⁴ 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 usually sell on a delivered basis. Accordingly, price indexes are presented and discussed to gauge changes in the imported and domestic prices. R-M also provided delivered pricing information based on its knowledge of the delivery costs actually paid by its customers; these prices are used for comparison purposes.

¹⁹⁵ There were no imports of technical sulfanilic acid from Hungary during the period for which data were collected.

¹⁹⁶ ***,

¹⁹⁷ ***, ***.

Table 17

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

| Period | U.S. | | | India | | |
|--------|-----------------|-------|---------------|-----------------|-------|---------------|
| | F.o.b. | Price | Total | Delivered | Price | Total |
| | price | index | quantity | price | index | quantity |
| | <u>\$/pound</u> | | <u>Pounds</u> | <u>\$/pound</u> | | <u>Pounds</u> |
| | * | * | * | * | * | * |

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

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 \$*** in ***.

Sales of sodium sulfanilate

R-M was the only supplier that sold sodium sulfanilate powder during the period for which data were collected. Prices for domestic sodium sulfanilate powder *** from January-March 1989 to the same quarter of 1991, *** percent during that time (table 18). These prices ***. Prices *** in the first quarter of 1992; overall, these domestic prices were *** percent *** in April-June 1992 than in January-March 1989.

Table 18

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

| Period | Sales of powder | | | Sales of solution | | |
|--------|-----------------|-------|---------------|-------------------|-------|---------------|
| | F.o.b. | Price | Total | F.o.b. | Price | Total |
| | price | index | quantity | price | index | quantity |
| | <u>\$/lb</u> | | <u>Pounds</u> | <u>\$/lb</u> | | <u>Pounds</u> |
| | * | * | * | * | * | * |

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

R-M was also 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, *** percent in the first quarter of 1992, and were constant for the remainder of 1992. Overall, R-M's prices for sodium sulfanilate solution were *** percent *** in July-September 1992 than in April-June 1989.

Sales of refined grade sulfanilic acid

Prices for U.S.-produced refined sulfanilic acid were reported only for 1989 because R-M stopped manufacturing it at the end of 1989 (table 19).¹⁹⁸ Prices for this product *** from January 1989 to December 1989. ***. ***. ***. ***.

Prices for Hungarian refined grade sulfanilic acid *** during 1989, *** percent in the first quarter of 1990, and *** for the remainder of 1990.¹⁹⁹ These prices then *** percent in the first quarter of 1991, *** percent in the first quarter of 1992, and *** percent in the second quarter of 1992. Overall, prices for Hungarian refined sulfanilic acid were *** in the third quarter of 1992 than in the first quarter of 1989.

***. ***. ***.²⁰⁰

Table 19

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

| Period | United States | | | Hungary | | | India | | |
|--------|---------------|-------|----------|---------|-------|----------|-----------|-------|----------|
| | F.o.b. | Price | Total | F.o.b. | Price | Total | Delivered | Price | Total |
| | price | index | quantity | price | index | quantity | price | index | quantity |
| | \$/lb | | Pounds | \$/lb | | Pounds | \$/lb | | Pounds |
| | | * | * | * | * | * | * | * | |

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

¹⁹⁸ R-M reported that it made a trial shipment of *** pounds of refined grade product in August 1992 at a price of \$*** per pound. R-M entered into a contract with Sandoz in December 1992 to provide ***. The contract states that ***. The price for this material is \$*** per pound, which ***.

¹⁹⁹ These prices represent f.o.b. prices reported by ***. ***. ***. ***. ***. ***.

²⁰⁰ It is important to note that discussing price trends is difficult in the case of India due to the sporadic nature of sales. ***.

Price Comparisons

Price comparisons between domestic and imported sulfanilic acid were very limited during the period of investigation. Although a few shipments of technical and refined grade product were imported from India, all imports from Hungary were the refined material.

There was only one instance where the domestic and imported technical grade sulfanilic acid could be compared (table 20). Regardless of whether one compares prices on a delivered price basis or an f.o.b. basis, the Indian product was lower priced than the comparable domestic product.²⁰¹ 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 20

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

| Period | <u>Technical grade</u> | | <u>Refined grade</u> | |
|--------|------------------------|--------------------|----------------------|---|
| | <u>India</u> | | <u>Hungary</u> | |
| | F.o.b. basis | Delivered basis | F.o.b. basis | |
| | * | * | * | * |

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

R-M, the sole U.S. producer of refined sulfanilic acid, made commercial sales of the product only in 1989. Sales of refined grade material from India to the United States occurred only in 1991 and 1992. Therefore, there is no overlap between sales of domestic and Indian refined sulfanilic acid. There were four quarters in which comparisons could be made between the domestic and Hungarian material. As table 20 indicates, the Hungarian product was priced below the domestic product in all four quarters where comparisons were possible, with margins ranging from *** to *** percent.²⁰²

²⁰¹ 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 Indian material estimated their f.o.b. prices; therefore, comparisons are made on both bases.

²⁰² ***.

Purchaser Responses

The Commission sent questionnaires to 12 firms believed to be purchasers of domestic and imported sulfanilic acid in the United States; 8 responses were received, all of which provided usable data. During January 1989-September 1992, these firms purchased all three grades of sulfanilic acid and used them in the production of food colors, optical brighteners, and specialty dyes. These firms accounted for *** percent of U.S. shipments, *** percent of shipments of Hungarian product, and *** percent of shipments of Indian product during 1991.^{203 204} Information obtained from these purchasers is summarized below.

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.²⁰⁵ 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 most firms reported that they seldom change suppliers, four of the responding 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 had stopped selling refined grade sulfanilic acid. Other reasons given include the lack of Japanese product, a desire for multiple sources, and potential environmental problems with R-M.²⁰⁶ In general, purchasers stated that they usually contact between two and four suppliers before making a purchase.

Purchasers were asked to discuss the importance of several factors in their firm's purchasing decisions for sulfanilic acid.²⁰⁷ Virtually all of the responding purchasers reported that availability and product quality were very important.²⁰⁸ These two factors were ranked as the first and second most

²⁰³ However, these purchasers accounted for approximately *** percent of all Indian shipments in January-September 1992.

²⁰⁴ Warner-Jenkinson accounted for *** of the shipments of Hungarian sulfanilic acid during the period for which data were collected. The coverage reported for Hungary for 1991 is understated due to ***. Similarly, the coverage for Hungary for 1992 is overstated (i.e., greater than 100 percent) for the same reason. ***. ***.

²⁰⁵ These firms also purchased sulfanilic acid from other sources, such as Japan, China, and the United Kingdom.

²⁰⁶ ***.

²⁰⁷ These factors were availability, credit terms, prearranged contract, price, product quality, range of supplier's product line, and traditional source of supply.

²⁰⁸ Several firms reported that both of these factors were critically important to their business.

important factors by all but one purchaser.²⁰⁹ Price was characterized as being important by four firms and very important by two firms;²¹⁰ these firms ranked price as the third most important factor, behind availability and quality. 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 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. producers or importers equalize freight from the plant or warehouse.²¹¹

Product comparisons

Purchaser questionnaires requested that the responding firms discuss any differences between the domestic and subject imported sulfanilic acid that would explain price differences and purchasing patterns. Both product and marketing considerations were considered in responding. Comments of the responding purchasers are discussed below.

Purchasers reported that the cost of sulfanilic acid accounts for a relatively small portion of the final cost of their end product.²¹² Despite this, sulfanilic acid is an important input in the production of food dyes and optical brighteners because there are no substitutes for this input in these end uses. Furthermore, several purchasers report that substitution between the different grades of sulfanilic acid is limited, as each firm has either a preference or need for a specific grade of product. Many purchasers, including the three largest, have used all three grades of sulfanilic acid during the period 1989-92;²¹³ however, several (including two of the three

²⁰⁹ ***.

²¹⁰ ***.

²¹¹ 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, pp. 57 and 74).

²¹² ***. ***. ***. ***. ***.

²¹³ The choice of a grade is not determined by the end product for which it will be used. *** and Sandoz both manufacture optical brighteners, yet one (***) uses sodium sulfanilate solution and the other uses refined grade powder. A similar situation exists in the food dye market, with Warner Jenkinson using refined grade powder and *** mainly using sodium sulfanilate.

largest firms) stated that they purchased the undesirable grades because of external factors, such as shortage of product.²¹⁴ Despite the fact that purchasers have bought different grades of sulfanilic acid for the same uses, these firms have stated that certain grades work better in their production processes.^{215 216} They allege that using a different grade of sulfanilic acid can require plant modification, capital investment for new equipment, additional labor, and additional manufacturing steps for purification purposes.²¹⁷

Certain purchasers report that switching grades of sulfanilic acid also can reduce the efficiency of the plant. Sandoz reported that sodium sulfanilate is more difficult to process than the refined grade and changes the behavior of the batch in the production process. Warner-Jenkinson also noted that it experiences a 15-percent decrease in productivity and a 15-percent increase in purification time when it uses sodium sulfanilate in place of refined grade in its production process.²¹⁸ Finally, *** reported that sulfanilic acid with higher levels of aniline (e.g., technical grade) would require additional purification that would likely increase production costs.²¹⁹

Many purchasers have stated that the quality of their end products depends upon the use of the preferred grade of sulfanilic acid; therefore, shifting from one grade to another may alter the quality of the end product.
 ***. ***.²²⁰ ***.²²¹

The issue of interchangeability among the different grades of sulfanilic acid is important because the majority of the imported product is refined grade material which, until recently, was not available from domestic sources.²²² While different grades of sulfanilic acid may be interchangeable for some purchasers, for other purchasers the degree of substitutability among grades is limited by economic factors such as reduced plant efficiency, need

²¹⁴ See app. E. for detailed information concerning the purchasing decisions of Sandoz and Warner-Jenkinson with regard to the different grades of sulfanilic acid.

²¹⁵ ***. ***. ***. ***. ***.

²¹⁶ ***. ***. ***.

²¹⁷ Purchasers were 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.

²¹⁸ Ken Goldacker, Purchasing Manager for Warner-Jenkinson, reported that the 15-percent decrease in production capacity translates into 400,000 pounds of finished product and approximately \$1.6 million in sales revenues (transcript of the hearing, pp. 110-111).

²¹⁹ ***. ***.

²²⁰ See submission of Warner-Jenkinson, Jan. 19, 1993.

²²¹ ***. ***. ***. ***. ***.

²²² R-M reported that it manufactured and shipped small amounts of refined product in the third quarter of 1992. Sandoz received a trial shipment of the product and reported that initial tests indicated that the product was acceptable. Warner-Jenkinson received a sample that was tan in color, as opposed to the white color of the Hungarian product. Warner-Jenkinson stated that it has run some partial tests on R-M's material and the results show some improvement over past attempts. However, ***.

for additional inputs, plant reconfiguration, and additional purification procedures.²²³

Other factors also limit the degree of substitutability between domestic and imported sulfanilic acid, including product quality, terms of sale, delivery times, payment terms, etc. Quality is considered to be one of the most important factors in firms' purchasing decisions. ***.²²⁴ ***.²²⁵ Finally, according to ***, R-M offers sales terms of ***, while the terms of the Hungarian supplier are ***.

In the case of imports of Indian sulfanilic acid, information is somewhat limited. Two firms, ***, reported purchasing Indian sulfanilic acid. ***.

***. ***.²²⁶ ***.

One additional factor that tends to reduce the degree of substitutability is the existence of contracts and the terms of those contracts. ***. ***. Not only do these contracts ***, they ***. Finally, ***.²²⁷

Purchaser prices

Prices were submitted by four firms that purchased sulfanilic acid during the period of investigation; the pricing information received accounted for *** percent of U.S. producers' domestic shipments and *** percent of shipments of Hungarian product in 1991.^{228 229}

Weighted-average purchase prices for domestic technical grade sulfanilic acid fluctuated with no clear trend from January 1989 to September 1992 (table 21). These prices were *** in July-September 1992 than in January-March 1989.

²²³ Because these factors limit the degree of substitution between the different grades of sulfanilic acid, they also limit the substitution between the imported and domestic products. This is true because all imports from Hungary and the majority of imports from India are refined grade material which, until recently, has not been available from domestic sources. ***.

²²⁴ ***.

²²⁵ ***.

²²⁶ ***.

²²⁷ One importer of Indian material, ***, provided some information on its contract terms. *** reported that its contracts are usually for a 3-month period and generally fix both price and quantity.

²²⁸ No firms reported purchase prices for Indian sulfanilic acid. While most purchases in the sulfanilic acid market are made on a contract basis, firms that did purchase Indian product bought only small amounts and did not do so on a contract basis.

²²⁹ ***. ***. ***. ***.

Table 21

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

| Period | <u>Technical grade</u> | | <u>Sodium sulfanilate¹</u> | | <u>Refined grade</u> | | | |
|--------|------------------------|-----------------|---------------------------------------|-----------------|----------------------|-----------------|----------------------------|-----------------|
| | <u>United States</u> | | <u>United States</u> | | <u>United States</u> | | <u>Hungary²</u> | |
| | <u>Price</u> | <u>Quantity</u> | <u>Price</u> | <u>Quantity</u> | <u>Price</u> | <u>Quantity</u> | <u>Price</u> | <u>Quantity</u> |
| | <u>Per lb</u> | <u>Pounds</u> | <u>Per lb</u> | <u>Pounds</u> | <u>Per lb</u> | <u>Pounds</u> | <u>Per lb</u> | <u>Pounds</u> |
| | * | * | * | * | * | * | * | * |

¹ Prices are for sodium sulfanilate solution.

² ***.

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

Prices for domestic sodium sulfanilate *** percent from April-June 1989 to July-September 1990 but then *** percent by the second quarter of 1991. Although these prices then *** percent by April-June 1992, they were *** in that quarter compared with the corresponding quarter of 1989.

Prices for domestic refined grade sulfanilic acid were only reported for three quarters of 1989. These prices *** from the first to the second quarter of that year but then ***.

Delivered purchase prices for Hungarian refined grade sulfanilic acid *** percent by the second quarter of 1990. These prices then *** by January-March 1991 and then *** during the remainder of the period. Prices for Hungarian sulfanilic acid were *** in July-September 1992 than in January-March 1989.

Lost Sales and Lost Revenues

The Commission received lost sale and lost revenue allegations from ***. These allegations were submitted in the preliminary investigations; staff contacted all of the purchasers involved. A summary of the information obtained is presented below.

The Commission received *** allegations of lost sales and *** allegations of lost revenues from ***, due to competition from Hungary.²³⁰ The *** lost sales allegations totaled approximately \$*** and involved *** pounds of sulfanilic acid, while the lost revenue allegations totaled \$*** and

²³⁰ *** lost sales allegations and the *** lost revenue allegations concerned imports from both Hungary and China.

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; a summary of the information obtained follows.

*** named *** in *** lost revenue allegations and *** lost sales allegations concerning competition from Hungarian and Chinese product.²³¹ The lost revenue allegations totaled \$*** and involved *** pounds, while the lost sales allegations totaled approximately \$*** and involved *** pounds. ***.²³² ***.²³³ ***.

* * * * *

*** alleged that it lost revenues of \$*** on a sale of *** pounds of *** to *** due to competition from imports from India in 1991. ***. ***. ***.
***. ***. ***.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the currencies of the two countries subject to these investigations depreciated in relation to the U.S. dollar over the period from January-March 1989 through July-September 1992 (table 22).²³⁴ The nominal values of the Hungarian and Indian currencies depreciated by 30.3 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 relative to the dollar,²³⁵ while the Indian currency depreciated by 18.9 percent during the periods for which data are available.

²³¹ ***. ***.

²³² The FDA changed its regulations in 1985-86. Warner-Jenkinson continued to purchase technical grade from R-M through ***, according to its purchaser questionnaire response. ***. (See attachment 2 of the submission of Warner-Jenkinson, January 18, 1993.)

²³³ R-M produced refined grade until late 1989 and then restarted production in late 1992.

²³⁴ International Financial Statistics, November 1992.

²³⁵ Data for Hungarian nominal exchange rates were available through July 1992, whereas real exchange rates for Hungary were only available through December 1990.

Table 22

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-September 1992

| Period | U.S. | Hungary | | India | | India | |
|----------------|----------------------------|----------------------------|-----------------------------------|---|----------------------------|-----------------------------------|---|
| | producer price index | 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) | 134.2 | 59.3 | 76.1 |
| Oct.-Dec..... | 104.8 | (⁴) | 70.7 | (⁴) | 136.2 | 59.1 | 76.7 |
| 1992: | | | | | | | |
| Jan.-Mar..... | 104.6 | (⁴) | 69.1 | (⁴) | 139.9 | 59.0 | 78.9 |
| Apr.-June..... | 105.6 | (⁴) | 68.2 | (⁴) | 142.1 | 59.0 | 79.3 |
| July-Sept..... | 106.1 | (⁴) | 69.7 ⁵ | (⁴) | 146.3 ⁶ | 59.0 | 81.3 ⁶ |

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 Hungarian exchange rate data reported for July only.

⁶ Derived from Indian price data reported for July-August 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, November 1992.

APPENDIX A

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

[Investigation No. 701-TA-318 (Final)]

Sulfanilic Acid From India

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-318 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671(d)) (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 India 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 (HTS), that are alleged to be subsidized by the Government of India.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce has extended the date for its final determination to coincide with that to be made in the ongoing antidumping investigation on sulfanilic acid from India. Accordingly, the Commission will

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).

not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled for October 15, 1992).

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: August 18, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202-205-3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:**Background**

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India of sulfanilic acid. The investigation was requested in a petition filed on May 8, 1992, 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 section 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.

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

Issued: August 28, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-21108 Filed 9-1-92; 8:45 am]

SELLING CODE 7030-02-M

[Investigations Nos. 701-TA-318 (Final) and 731-TA-560 and 561 (Final)]

Sulfanilic Acid From the Republic of Hungary and India

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations and scheduling of the ongoing countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-560 and 561 (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 Republic of Hungary (Hungary) and India 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. The Commission also gives notice of the schedule to be followed in these antidumping investigations and the ongoing countervailing duty investigation regarding imports of sulfanilic acid from India (inv. No. 701-TA-318 (Final)), which the Commission instituted effective August 18, 1992 (57 FR 40201, September 2, 1992). The schedules for the subject investigations will be identical, pursuant to Commerce's alignment of its final subsidy and dumping determinations (57 FR 38485, August 25, 1992).

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

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW.,

¹ The products covered by these investigations 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).

Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of sulfanilic acid from Hungary and India are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The Commission instituted the subject countervailing duty investigation on August 18, 1992 (57 FR 40201, September 2, 1992). The antidumping and countervailing duty investigations were requested in a petition filed on May 8, 1992, by R-M Industries, Inc., Fort Mill, SC.

Participation in the Investigations and Public Service List

Any person having already filed an entry of appearance in the countervailing duty investigation is considered a party in the antidumping investigations. Any other persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, 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 the investigations 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 section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, 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 these investigations will be

placed in the nonpublic record on December 21, 1992, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on January 5, 1993, 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 December 28, 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 and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 30, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(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 section 207.22 of the Commission's rules; the deadline for filing is December 29, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 13, 1993; 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 investigations may submit a written statement of information pertinent to the subject of the investigations on or before January 13, 1993. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

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

Authority: These investigations are being conducted under authority of the Tariff Act of

1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: November 9, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-27936 Filed 11-17-92; 8:45 a.m.]

BILLING CODE 7020-02-M

**INTERNATIONAL TRADE
ADMINISTRATION****[A-533-806]****Final Determination of Sales at Less
than Fair Value: Sulfanilic Acid from
India****AGENCY:** Import Administration,
International Trade Administration,
Department of Commerce.**EFFECTIVE DATE:** January 8, 1993.**FOR FURTHER INFORMATION CONTACT:**
Mary Jenkins, Office of Investigations,
Import Administration, International
Trade Administration, U.S. Department
of Commerce, 14th Street and
Constitution Avenue, NW., Washington,
DC 20230; telephone (202) 482-1756.**FINAL DETERMINATION:** The Department of
Commerce (the Department) determines
that sulfanilic acid from India 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 (the Act), as amended. The
Department also determines that critical
circumstances exist.**Case History**

Since the publication of our
preliminary determination on October
22, 1992 (57 FR 48207), the following
events have occurred.

We published a preliminary
affirmative determination of critical
circumstances on December 7, 1992 (57
FR 57729). This determination was in
response to petitioner's October 14,
1992, allegation.

On November 4, 1992, John D.
Wilson, Consultation Services, sent us a
fax informing us that an Indian
producer of sulfanilic acid, Kokan
Synthetics, was not contacted when we
sent out our questionnaires.

On December 21, 1992, an *ex parte*
meeting was held with Rolf Th.
Lundberg, Deputy Assistant Secretary
for Impact Administration, and
representatives of certain Indian
sulfanilic acid producers and U.S.
importers. During this meeting the
representatives challenged our
preliminary determinations in both the
antidumping and countervailing duty
investigations. As Mr. Lundberg stated
at the meeting, these arguments were
too late to be considered for the final
determinations in either case. (See, *Ex
parte* Memorandum dated December 22,
1992.) In addition, certain arguments
which were contained in a November
11, 1992, brief submitted by these
parties in the countervailing duty case,
were discussed. For a further discussion
of this issue, see, Final Affirmative
Countervailing Duty Determination:

Sulfanilic Acid From India (CVD Final), published concurrently with this notice.

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, currently classifiable under the subheading 2921.42.24.20 of the Harmonized Tariff Schedule of the United States (HTSUS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under the HTSUS subheading 2921.42.24.20, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Refined sodium salt of sulfanilic acid (sodium sulfanilate), currently classifiable under the HTSUS subheading 2921.42.70, is a granular or crystalline material containing 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is December 1, 1991, through May 31, 1992.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for valuing the sales of the subject merchandise in this investigation. Section 776(c) provides that the Department may use BIA when a respondent refuses or is unable to produce information requested in a timely manner and in the form required.

We sent questionnaires to seven companies who were identified as producers to determine who would be

the appropriate recipients of the full antidumping questionnaire. We received questionnaire responses from four companies: Golden Dyes Corp. (India) Private Ltd., Synthetic Dyestuff (India) Corp., Atul Products, and Hickson & Dadajee Ltd. indicating that they had no sales or exports during the POI. The remaining three companies, Beta Naphthol (P) Ltd. (Beta), Kanoria Chemicals & Industries Ltd. (Kanoria), and Chemco International (Chemco), did not respond to our questionnaire. Because we have not received any response with which to perform our antidumping analysis for the latter three companies, we are making our determination on the basis of BIA. We selected as BIA the highest margin in the petition, in accordance with the two-tiered BIA methodology outlined in the Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews (57 FR 28360, 28379, June 24, 1992).

Fair Value Comparisons

To determine whether sales of sulfanilic acid from India 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 U.S. price on BIA, which was information supplied by the petitioner. Petitioner based U.S. price on exporter's sales price (ESP) methodology because sulfanilic acid was sold to unrelated purchasers in the United States after the importation of the subject merchandise into the United States.

Petitioner calculated ESP based on packed, C&F U.S. port of entry price quotations. Petitioner deducted foreign inland freight, foreign handling, ocean freight, U.S. brokerage and handling charges, and commissions incurred in the United States.

Foreign Market Value

We based FMV on BIA, which was information supplied by the petitioner. Petitioner based FMV on f.o.b. observed prices in India for all three grades of sulfanilic acid. No adjustments have been made to the observed Indian prices.

Final Affirmative Determination of Critical Circumstances

Petitioners alleged that "critical circumstances" exist with respect to

imports of sulfanilic acid from India. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect the following:

"(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 fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period."

Regarding criterion (A) above, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 25 percent or more in the case of purchase price comparisons, and 15 percent or more in the case of exporter sales price comparisons, sufficient to impute knowledge of dumping under section 735(a)(3) of the Act. The dumping margin found in this final determination is sufficiently high so that the importer of the merchandise knew, or should have known, that dumping was occurring.

Regarding criterion (B) above, pursuant to 19 CFR 353.16(f), 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. Because shipment data for Beta, Kanoria and Chemco was not reported, as BIA, we determine that imports were massive over a relatively short period of time. Accordingly, we find that critical circumstances exist for all manufacturers, producers and exporters of the subject merchandise.

With respect to Golden Dyes Corp. Private Ltd., Synthetic Dyestuff Corp., Atul Products, and Hickson & Dadajee Ltd., we make no specific determination with respect to the issue of critical circumstances because it is moot.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, for Beta, Kanoria, and Chemco, we are directing the Customs Service to continue to suspend liquidation of all entries of sulfanilic acid from India that are entered, or withdrawn from warehouse, for consumption on or after July 24,

1992, which is 90 days retroactive from the date of publication of our preliminary determination notice in the Federal Register. For all others, we are directing Customs to suspend liquidation of all entries of sulfanilic acid from India that are entered, or withdrawn from warehouse, for consumption on or after July 24, 1992.

The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of sulfanilic acid exceeds the United States price as shown below. The suspension of liquidation on sulfanilic acid will remain in effect until further notice. The dumping margin in this case is 114.8 percent for all manufacturers/producers/exporters. However, section 772(d)(1)(D) of the Act prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy. In this case, the product under investigation is subject to a countervailing duty investigation (see, CVD Final). We are subtracting the cash deposit rate attributable to the export subsidies found, 43.71 percent. Accordingly, for duty deposit purposes, the net estimated antidumping duty deposit rate is shown below.

| Manufacturers/producers/exporters | Margin (percentage) |
|-----------------------------------|---------------------|
| Beta, Kanoria and Chemco | 71.09 |
| All Others | 71.09 |

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. If the ITC determines that material injury, or threat of material injury, does not exist with respect to sulfanilic acid, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all sulfanilic acid from India, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

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

Dated: December 29, 1992.

Alan M. Dunn,
Assistant Secretary for Import
Administration.

[FR Doc. 93-356 Filed 1-7-93; 8:45 am]

BILLING CODE 3510-08-M

[C-533-807]

**Final Affirmative Countervailing Duty
Determination; Sulfanilic Acid From
India**

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

EFFECTIVE DATE: January 8, 1993.

FOR FURTHER INFORMATION CONTACT:
Rick Herring, Office of Countervailing
Investigations, Import Administration,
International Trade Administration,
U.S. Department of Commerce, 14th
Street and Constitution Avenue, NW.,
Washington DC 20230; telephone: (202)
482-3530.

FINAL DETERMINATION:

Case History

Since our preliminary determination on August 11, 1992 (57 FR 35784), the following events have occurred. On August 24, 1992, we received a supplemental response from the Government of India. On August 25, 1992, we aligned the final countervailing duty determination with the final determination in the companion antidumping duty

investigation (57 FR 38485). On November 18, 1992, we received a submission from PMC Specialties, an importer of sulfanilic acid from India.

Scope of 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, currently classifiable under the subheading 2921.42.24.20 of the Harmonized Tariff Schedule of the United States (HTSUS), contains 96 percent minimum Sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under the HTSUS subheading 2921.42.24.20, contains 98 percent minimum Sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Refined sodium salt of sulfanilic acid (sodium sulfanilate), currently classifiable under the HTSUS subheading 2921.42.70, is a granular or crystalline material containing 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of the Programs

We did not receive timely or complete responses to our questionnaire from any of the producers or exporters of Sulfanilic acid from India. Therefore, in accordance with section 776(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 355.37 (1992), we used the best information available to calculate the estimated net subsidy conferred upon the production and exportation of sulfanilic acid from India.

We used information provided by the petitioner as the best information available. Petitioner asserted that the net subsidy conferred on the production

and exportation of Sulfanilic acid was 43.71 percent *ad valorem*.

Comment

As previously noted, we received one submission from a U.S. importer. The portion of that submission relevant to this proceeding can be summarized as follows. The U.S. importer argues that there are three different grades of sulfanilic acid and that each of these grades should be considered separate products. In support of its position, the importer points to differences in the physical characteristics of various grades of sulfanilic acid due to purity levels. Further, the importer maintains that the different grades of sulfanilic acid are not always interchangeable for reasons associated with price and use of the product.

The U.S. importer also points out that the U.S. industry no longer manufactures the "pure" grade of sulfanilic acid and that the imposition of import duties would ultimately injure the domestic consumer. Accordingly, the importer requests that the Department promptly terminate the investigation.

DOC Position

The importer requests that the Department terminate this investigation, apparently based on a standing argument and on U.S. consumer's interests. To the extent that the importer is alleging that the petitioner does not have standing, the allegation is untimely pursuant to 19 CFR 355.31(c)(2)(1992). With respect to the effect of countervailing duties on domestic prices, there is no provision in the statute which permits the Department to take into account the interests of consumers in reaching a determination of whether the foreign producers are being subsidized. For these reasons, we have no basis to terminate this proceeding.

Verification

Due to the lack of timely and complete responses from any of the Indian producers or exporters of sulfanilic acid, we did not conduct verification.

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the Customs Service to suspend liquidation of all entries of sulfanilic acid from India which were entered, or withdrawn from warehouse, for consumption, on or after August 11, 1992, the date of publication of our preliminary determination in the Federal Register. As noted above,

however, this final countervailing duty determination was postponed from December 9, 1992, to December 29, 1992, to coincide with the final determination in the companion antidumping investigation.

Under Article 5, paragraph 3 of the General Agreement on Tariffs and Trade Subsidies Code, provisional measures cannot be imposed beyond a period of four months. Therefore, we have instructed the Customs Service to discontinue the suspension of liquidation of the subject merchandise entered on or after December 9, 1992, the date that falls four months after the preliminary determination in this case. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties equal to 43.71 percent *ad valorem* for all manufacturers, producers, and exporters in India of sulfanilic acid.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of sulfanilic acid from India entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to an Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)) and 19 CFR 355.20(a)(4) (1992).

Dated: December 29, 1992.

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

[FR Doc. 93-358 Filed 1-7-93; 8:45 am]

BILLING CODE 3510-08-M

[A-437-802]**Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid From the Republic of Hungary**

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

EFFECTIVE DATE: February 12, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1756.

Final Determination

The Department of Commerce (the Department) determines that sulfanilic acid from the Republic of Hungary (Hungary) 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 (the Act), as amended. A document examined at verification, and the circumstances surrounding its discovery, has called into question the reliability of all of the data presented by respondent during this investigation.

For this reason, we are using best information available (BIA), as provided by petitioner, as the sole basis for our final determination. The Department also determines that critical circumstances exist (see, the "Critical Circumstances" section of this notice). The estimated margins are shown in the suspension of liquidation section of this notice.

Case History

Since the publication of our preliminary determination on October 22, 1992 (57 FR 48203), the following events have occurred.

Respondent, Nitrokemia Ipartelep (Nitrokemia) and Nitrochem Co. Ltd. (Nitrochem), the related exporter of the subject merchandise produced by Nitrokemia, requested an extension for submitting a response to the Department's deficiency letter of September 2, 1992. On October 23, 1992, the Department granted an extension and stated that it would not consider for the final determination any information submitted after November 2, 1992, which was seven days prior to our then-scheduled verification. On November 2, 1992, respondent requested a postponement of the final determination until February 3, 1993, and also requested a public hearing. On December 7, 1992, we published a notice postponing the final determination until no later than

February 3, 1993. (57 FR 57729, December 7, 1992).

On November 3, 1992, respondent requested that the Department correct certain ministerial errors made in the Department's preliminary determination. On December 1, 1992, the Department informed respondent that no errors had been made in its preliminary determination. On November 3, 1992, respondent also provided additional information in response to the Department's September 2, 1992, deficiency letter. Because of the rescheduling of the verification, the Department accepted the November 3, 1992, response. On November 5, 1992, respondent requested a meeting with the Department staff to discuss the method for dealing with the market-oriented industry issue data. On November 9, 1992, we met with counsel for respondent and discussed verification procedures in general and verification procedures as they related to the market-oriented data.

We conducted verification at Nitrokemia at its facilities in Balaton Fuzfo, Hungary from November 30, through December 3, 1992, and at Nitrochem in Budapest, Hungary on December 4, 1992. On December 11, 1992, counsel for respondent met with Department officials to discuss circumstances surrounding a questionable verification exhibit obtained by the Department during verification.

On December 17, 1992, and January 6, 1993, respondent submitted new and unsolicited factual information to the Department. In accordance with section 19 CFR 353.31(a)(3), on December 22, 1992, and January 12, 1993, we returned the information to respondent.

On January 11 and 12, 1993, interested parties submitted case briefs. On January 12 and 14, 1993, rebuttal briefs were submitted. A public hearing was held on January 15, 1993. Finally, because certain verification reports were issued late, the Department allowed interested parties to submit additional comments on January 19 and 21, 1993.

Scope of 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 2921.42.2800 of the Harmonized Tariff Schedule of the United States ("HTSUS"), contains 98 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the HTSUS subheading 2921.42.2800, contains 98 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 HTSUS subheading 2921.42.7500 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 HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is December 1, 1991, through May 31, 1992.

Best Information Available

We have determined, in accordance with Section 776(c) of the Act, that the use of BIA is appropriate for valuing the sales of the subject merchandise in this investigation. Section 776(c) of the Act provides that the Department may use BIA when a respondent refuses or is unable to, produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation.

On December 4, 1992, Department officials conducted verification of information at Nitrochem, the exporter for subject merchandise produced by Nitrokemia. During review of Nitrochem's correspondence files we discovered a document related to respondent's attempt to demonstrate that it paid market prices for inputs used to produce the subject merchandise. This document, and the circumstances surrounding its discovery, has raised questions as to the reliability of the information submitted by the respondent.

Section 776(b)(1) of the Act requires that the Department verify all information relied upon in making a final determination. Due to time and resource constraints, it is not possible

for the Department to examine all documents supporting the information that is the basis of a respondent's questionnaire response. Rather, at verification, the Department selectively examines the respondent's financial and accounting records. These documents provide the documentary background support used by Commerce to evaluate the respondent's questionnaire response data and satisfy itself that all information has been accurately and correctly submitted. Further, and more importantly, the Department necessarily places great reliance upon the integrity and good faith of any respondent both in accepting submissions to the Department and verification documents, recognizing that in any proceeding information or documents can be fabricated for the purposes of misleading the Department, and done so in ways which are difficult to detect. When, as here, the Department comes into possession of information which appears to indicate that relevant information may have been fabricated for purposes of the investigation and that such information may well not be accurate, not only is that particular information unacceptable, all information submitted by that respondent must be viewed as suspect and unusable, regardless of whether it otherwise appeared to be successfully verified. No other conclusion could adequately protect the integrity of the Department's information gathering and verification process.

For this reason we are using BIA, as provided by the petitioner, as the basis for our final determination.

Fair Value Comparisons

To determine whether sales of sulfanilic acid from Hungary to the United States were made at less than fair value, as BIA we relied on the highest margin alleged in the petition as specified in the Initiation of Antidumping Duty Investigations: Sulfanilic Acid from India and the Republic of Hungary, 57 FR 23378, (June 3, 1992).

Final Affirmative Determination of Critical Circumstances

Petitioner alleged that "critical circumstances" exists with respect to imports of sulfanilic acid from Hungary. Section 735(a)(3) of the Act provides that critical circumstances exists if we determine that there is a reasonable basis to believe or suspect the following:

(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 fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Pursuant to 19 CFR 353.16(f), 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.

Regarding criterion (A)(ii) above, based on BIA as provided by the petitioner, the dumping margin found in this final determination is sufficiently high so that the importer of the merchandise knew, or should have known, that dumping was occurring.

Regarding criterion (B) above, because we could not verify respondent's shipment data, we determine that imports were massive over a relatively short period, based on BIA supplied by petitioner. Therefore, we determine that critical circumstances exist with respect to imports of sulfanilic acid from Hungary.

Interested Party Comment

Respondent argues that although a price quote reviewed at verification to support market-oriented price paid for a certain input was susceptible to several interpretations, all other information provided to the Department of Commerce with respect to the antidumping investigation of sulfanilic acid is complete and accurate.

Respondent states that the requested price quote was an effort only to develop corroboration of the market nature of the prices paid by respondent for one raw material input and not an effort to falsify the market price which was to be the basis of the corroboration. Respondent states that otherwise there was no question as to, or hint of defect in, the completeness and accuracy of any other data submitted by respondent and examined by the Department at verification.

Therefore, respondent argues that the sales and factors of production data which they submitted can be safely accepted by the Department as the best information available and should be adopted by it as far preferable to unverified alternative data, including the certainly self-serving, unverified data provided by petitioner in its petition.

DOC Position

While respondent has stated that there was no intent to present false and misleading information to the Department during verification, the Department has determined to apply BIA as the basis for the final determination. See our earlier discussion for our reasons for using BIA.

Other comments were submitted in this proceeding. However, based on the Department's decision to use BIA because of circumstances surrounding the verification, all other issues and the comments thereon are moot.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of sulfanilic acid from Hungary, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after July 24, 1992, which is 90 days retroactive from the date of publication of our preliminary determination notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin 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.

| Manufacturers/producers/exporters | Margin percentage |
|--|-------------------|
| Nitrokemia Ipartelep/Nitrochem Co. Ltd | 58.14 |
| All others | 58.14 |

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

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

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

[FR Doc. 93-3308 Filed 2-11-93; 8:45 am]

BILLING CODE 3510-06-P

APPENDIX B

LIST OF WITNESSES APPEARING AT THE COMMISSION'S HEARING

CALENDAR OF PUBLIC HEARING

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

Subject: : SULFANILIC ACID FROM
REPUBLIC OF HUNGARY AND
INDIA

Inv. Nos. : 701-TA-318 (Final) and
731-TA-560 and 561 (Final)

Date and Time : January 5, 1993 - 9:30 a.m.

Sessions were held in connection with the investigations in the Main Hearing Room 101 of the United States International Trade Commission, 500 E Street, SW., Washington, DC.

OPENING REMARKS

Petitioner

Respondent (Stroock and Stroock)

Respondent (Adduci, Mastriani, Meeks and Schill)

In support of Imposition of
Antidumping Duties:

Economic Consulting Services, Incorporated
Washington, D.C.

Daniel J. Cannistra, Senior Economist

R-M Industries, Fort Mill, South Carolina

John Dickson, President

-MORE-

In Opposition to the Imposition
of Countervailing and Antidumping
duties:

Stroock and Stroock and Lavan
Washington, D.C.

Nitrokemia Ipartelepek ("Nitrokemia")

Nitrochem Company Limited ("Nitrochem")

Kenneth Goldacker, Manager, Purchasing
Warner-Jenkinson

Don Voight, Director of Purchasing
Sandoz Chemicals

Matthew H. McCarthy)
)--OF COUNSEL
Panagiotis C. Bayz)

Adduci, Mastriani, Meeks
and Schill
Washington, D.C.

PMC Specialties Group
(a division of PMC, Incorporated)

Bradford C. Fairweather, Director,
International Trading

Jeevan Products (Indian Producer)

Vinoo Thakkar, Managing Director

Louis S. Mastriani)
)--OF COUNSEL
Gregory C. Anthes)

-END-

APPENDIX C
SUMMARY DATA CONCERNING THE U.S. MARKET

Table C-1

Sulfanilic acid: Summary data concerning the U.S. market, 1989-91, January-September 1991, and January-September 1992

(Quantity=1,000 pounds, value=1,000 dollars, unit values are per pound,
period changes=percent, except where noted)

| Item | Reported data | | | Period changes | | | | |
|------|---------------|------|------|----------------|------|---------|---------|---------|
| | 1989 | 1990 | 1991 | Jan.-Sept.-- | | 1989-91 | 1989-90 | 1990-91 |
| | | | | 1991 | 1992 | | | |
| | * | * | * | * | * | * | * | |

Source: Compiled from data presented in the body of this report.

APPENDIX D

**TRADE DATA, BY GRADES OF SULFANILIC ACID,
1989-91, JANUARY-SEPTEMBER 1991, AND JANUARY-SEPTEMBER 1992**

Table D-1

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

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|------|------|------|------|--------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

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

Table D-2

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

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|------|------|------|------|--------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

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

Table D-3

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

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|------|------|------|------|--------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

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

Table D-4

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

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|------|------|------|------|--------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

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

Table D-5

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

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|------|------|------|------|--------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

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

Table D-6

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

| Item | 1989 | 1990 | 1991 | Jan.-Sept.-- | |
|------|------|------|------|--------------|------|
| | | | | 1991 | 1992 |
| | * | * | * | * | * |

Source: Compiled from responses to questionnaires of the U.S. International Trade Commission.

APPENDIX E

**PURCHASES OF SULFANILIC ACID BY MAJOR
U.S. PURCHASERS, BY GRADES AND SOURCES,
1989-91 AND JANUARY-SEPTEMBER 1992, 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 and January-September 1992

| (In pounds) | | | | | | |
|---------------------------------|------|------|------|------|------|--------------------|
| Purchaser, grade, and source | 1989 | 1990 | 1991 | 1991 | 1991 | Jan.-Sept. 1992 |
| | * | * | * | * | * | * |

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

ADDITIONAL INFORMATION SUBMITTED BY PURCHASERS CONCERNING THEIR
PURCHASES OF SULFANILIC ACID

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APPENDIX F

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

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS OF SULFANILIC ACID
FROM HUNGARY AND INDIA ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL,
AND 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 Hungary and India on their growth, investment, ability to raise capital, and development and production efforts (including efforts to develop a derivative or improved version of its product).

***.

Actual Negative Effects

Hungary

* * * * *

Anticipated Negative Effects

Hungary

* * * * *

India

* * * * *

Influence of Imports on Capital Investment

Hungary and India

* * * * *

APPENDIX G
PRICES FOR CHINESE SULFANILIC ACID

Table G-1

Sulfanilic acid: Net delivered selling prices, price indexes, and total quantities of Chinese product, by quarters, January 1989-March 1992

| Period | Refined grade | | | Sodium sulfanilate | | |
|--------|---------------|-------|----------|--------------------|-------|----------|
| | Price | Price | Total | Price | Price | Total |
| | Per lb | index | quantity | Per lb | index | quantity |
| | | | Pounds | | | Pounds |
| | * | * | * | * | * | * |

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

Table G-2

Sulfanilic acid: Net delivered purchase prices, price indexes, and total quantities of Chinese product, by quarters, January 1989-March 1992

| Period | Refined grade | | | Sodium sulfanilate | | |
|--------|---------------|-------|----------|--------------------|-------|----------|
| | Price | Price | Total | Price | Price | Total |
| | Per lb | index | quantity | Per lb | index | quantity |
| | | | Pounds | | | Pounds |
| | * | * | * | * | * | * |

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

