Nitromethane From The People's Republic of China

Investigation No. 731-TA-650

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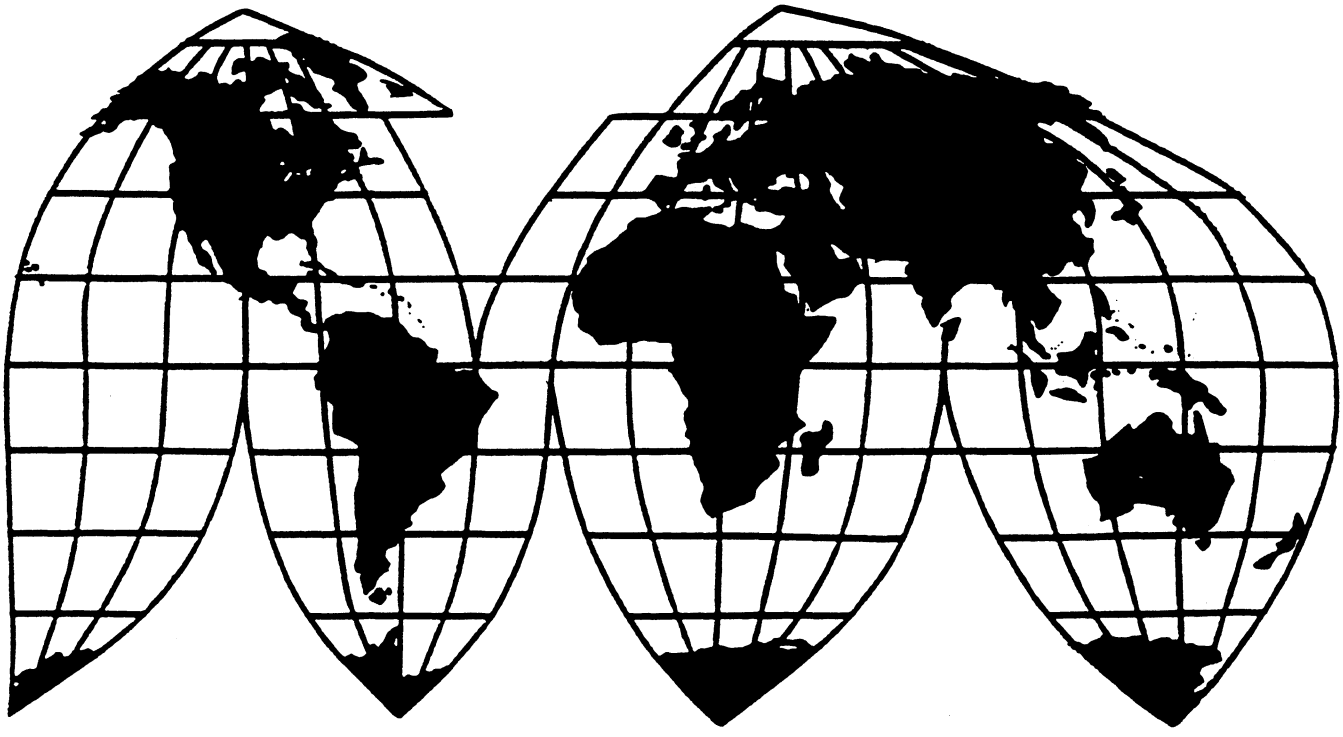
U.S. International Trade Commission



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U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

DETERMINATION AND VIEWS

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-650 (Preliminary)

NITROMETHANE FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured[2] or threatened with material injury[3] by reason of imports from the People's Republic of China of nitromethane, provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 24, 1993, a petition was filed with the Commission and the Department of Commerce by ANGUS Chemical Co., Buffalo Grove, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of nitromethane from the People's Republic of China. Accordingly, effective May 24, 1993, the Commission instituted antidumping investigation No. 731-TA-650 (Preliminary).

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[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] Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of nitromethane from the People's Republic of China.

[3] Chairman Newquist, Commissioner Rohr, and Commissioner Nuzum determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of nitromethane from the People's Republic of China.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of June 2, 1993 (58 F.R. 31415). The conference was held in Washington, DC, on June 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the information obtained in this preliminary investigation, we determine that there is a reasonable indication that an industry in the United States is materially injured,[1] or threatened with material injury,[2] by reason of allegedly less than fair value (LTFV) imports of nitromethane from the People's Republic of China (China).[3]

I. THE LEGAL STANDARD FOR PRELIMINARY INVESTIGATIONS

The legal standard in preliminary antidumping duty investigations requires the Commission to determine, based upon the best information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury by reason of the allegedly LTFV imports.[4] In applying this standard, the Commission may weigh the evidence before it to determine whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of material injury; and (2) no likelihood exists that any contrary evidence will arise in a final investigation."[5] The U.S. Court of Appeals for the Federal Circuit has held that this interpretation of the standard "accords with clearly discernible

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[1] Vice Chairman Watson and Commissioners Brunsdale and Crawford find a reasonable indication of material injury.

[2] Chairman Newquist and Commissioners Rohr and Nuzum find a reasonable indication of threat of material injury.

[3] 19 U.S.C. § 1673b(a). Whether the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

[4] 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001 (Fed. Cir. 1986); Calabrian Corp. v. United States Int'l Trade Comm'n, 794 F. Supp. 377, 386 (Ct. Int'l Trade 1992).

[5] American Lamb Co. v. United States, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, Slip op. 93-81, at 20-21 (Ct. Int'l Trade May 25, 1993); Torrington Co. v. United States, 790 F. Supp. 1161, 1165 (Ct. Int'l Trade 1992), aff'd, App. Nos. 92-1383, 1392, ___ F.2d ___ (Fed Cir. Mar. 5, 1993).

legislative intent and is sufficiently reasonable."[6]

II. LIKE PRODUCT AND DOMESTIC INDUSTRY

To determine whether a domestic industry is materially injured or threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant domestic industry as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[7] In turn, section 771(10) of the Act 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."[8]

The Commission's like product determinations are factual, and the Commission applies case-by-case the statutory standard of "like" or "most similar in characteristics and uses."[9] Generally, the Commission requires "clear dividing lines among possible like products" and disregards minor variations among them.[10]

Commerce has defined the scope of the imported product covered in this investigation as nitromethane (sometimes called nitroform), a chemical

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[6] American Lamb Co. v. United States, 785 F.2d at 1004.
[7] 19 U.S.C. § 1677(4)(A).
[8] Id. § 1677(10).
[9] Asociacion Colombiana de Exportadores de Flores, et al. v. United States, 693 F. Supp. 1165, 1169 (Ct. Int'l Trade 1988). In analyzing which domestic products are "like" the class or kind of imported articles subject to investigation, the Commission considers factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and where appropriate, (6) price.
[10] Torrington v. United States, 747 F. Supp. 744, 748-749 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991); see S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

compound with the formula CH_3NO_2, classifiable under the subheading 2904.20.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS) and having the following characteristics:

> Nitromethane is a nitroparaffin in which the nitro group is attached to the single carbon atom of that member of the alkane family known as methane. Nitroparaffins are any of a homologous series of compounds whose generic formula is $C_NH_{2N+1}NO_2$, the nitro groups being attached to a carbon atom through the nitrogen.[11]

Nitromethane is a clear colorless liquid with a dangerous explosion and fire risk.[12] Nitromethane is generally used as a solvent, extraction agent, stabilizer in chlorinated hydrocarbons, or as a raw material in the chemical synthesis of many other organic chemicals or derivatives.[13] For example, it is used in the production of chloropicrin (a pesticide) and 1,1,1-trichloroethane,[14] as a specialty fuel additive, as an explosive, and in the production of derivative products.[15]

ANGUS Chemical Company, the sole remaining U.S. producer of nitromethane, produces the product by reacting nitric acid (HNO_3) with propane gas (C_3H_8) at high temperature and pressure.[16] This process produces four organic chemicals known as nitroparaffins: nitromethane, nitroethane, 1-nitropropane, and 2-nitropropane, in relatively fixed amounts.[17]

Respondent ICC Industries, Inc. (ICC), a U.S. importer and distributor

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[11] 58 Fed. Reg. 33617 (June 18, 1993).
[12] Report at I-4.
[13] Id. at I-4, 8; Petitioner's Postconference Brief at 15.
[14] 1,1,1-trichloroethane is used, among other things, as a solvent for cleaning precision instruments, in metal degreasing, as a pesticide, and in textile processing.
[15] Report at I-4, I-8, I-24; Petitioner's Postconference Brief at 15.
[16] Report at I-4; Conference Transcript at 47-48. W.R. Grace & Co., the other U.S. producer during the period of investigation, used a different production process. This process involved nitrating a mixture of propane and ethane. Report at I-9.
[17] Report at I-4.

of the subject merchandise, argues that nitroparaffins as a whole are the like product because they share common manufacturing processes, facilities and employees, have common channels of distribution, and are perceived by producers as a single like product.[18] Respondents Wego Chemical & Mineral Corp., Trinity Manufacturing, Inc., and the Coalition of American Nitromethane Distributors and Consumers (collectively "Coalition") argue for a like product inclusive of all four nitroparaffins, as well as nitroparaffin blends and downstream products (e.g., nitroparaffin derivatives) produced through mixing or synthesizing nitroparaffins with other chemicals.[19] They argue, among other things, that these products all belong to the same "family" of products in ANGUS's marketing and sales materials and that they are produced at various stages of the same production process as nitromethane.[20]

Petitioner argues that the like product is nitromethane because its chemical properties, end uses, and distribution patterns are distinct from the other nitroparaffins and are so perceived by producers and customers.[21] Petitioner used the Commission's traditional five-factor finished/unfinished product analysis to address the question of whether derivative products are "like" nitromethane. It is unclear whether such an analysis is appropriate in this investigation and whether it is consistent with Commission precedent.[22]

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[18] Respondent ICC's Postconference Brief at 4.

[19] Respondent Coalition's Postconference Brief at 1-2. The derivatives that ANGUS produces along with their prices are listed in Appendix E of the report.

[20] Respondent Coalition's Postconference Brief at 1-2.

[21] Petitioner's Postconference Brief at 14.

[22] See Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 (Mar. 1991). In the Tungsten Ore investigation, the Commission concluded:

> Broadening like product to include products downstream from the articles subject to investigation . . . would not only be contrary to the factors normally considered in defining the like product,

(continued...)

However, we note that if we were to pursue that analysis for purposes of this preliminary determination, nitroparaffin derivatives would not be the same like product as nitromethane. The derivatives require further processing,[23] are not substitutable or interchangeable with nitromethane, and are not dedicated to the same end uses in their differing stages of processing.[24] Moreover, nitromethane is not dedicated to producing only nitroparaffin derivatives, and embodies many unique characteristics that enable it to be used in various end uses, imparting different qualities to the various end uses.[25]

Application of the Commission's six like product factors produces the same result. The physical characteristics (e.g., molecular structure and chemical composition) and end uses of nitromethane are quite distinct from the nitroparaffin derivatives, and the products are not interchangeable.[26] Moreover, although nitromethane and the nitroparaffin derivatives have

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[22](...continued)
but would also be a significant departure from our practice to date.
USITC Pub. 2367 at 6-11. This conclusion was followed in the final investigation. E.g., Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Final), USITC Pub. 2447, at 8 n.35 (Nov. 1991).

[23] Petitioner's Postconference Brief at 16-17. Although respondents argue that derivatives are "produced at various stages of the same production process," this is true only if downstream production or further processing is not considered important. We find that the manufacturing process of nitroparaffin derivatives is quite different than that of nitroparaffins, as the former require further processing and sometimes involve different manufacturing facilities and production employees. See Report at I-13; Petitioner's Postconference Brief at 16-17; Conference Transcript at 92-93.

[24] Report at I-3 - I-5, I-24; Petitioner's Postconference Brief at 2, 10-12; Conference Transcript at 32-33, 37-38, 41-43, 60-61, 80; Respondent ICC's Postconference Brief at 2.

[25] Petitioner's Postconference Brief at 16-19;

[26] Report at I-3 - I-5, I-24; Petitioner's Postconference Brief at 2, 10-12; Conference Transcript at 37, 38, 41-43, 60-61, 80; Respondent ICC's Postconference Brief at 2.

similarities in channels of distribution,[27] customers and producers perceive nitromethane to be a different product than the nitroparaffin derivatives,[28] and the products have different prices.[29]

Broadening the definition of like product to include derivatives, which are downstream products, also has the effect of including within the definition of the domestic industry producers of a downstream product whose interest, as customers, i.e., purchasers of unfair imports, in the investigation is contrary to the domestic producers of those articles.[30]

We also do not expand the like product to include the other

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[27] Report at I-9 - I-10; Conference Transcript at 45-46; Respondent ICC's Postconference Brief at 5. We note that the channels of distribution for the nitroparaffin derivatives are somewhat different as they are sold both directly and to distributors whereas nitromethane is sold direct to end users. Conference Transcript at 45-47; Petitioner's Postconference Brief at 18. Petitioner argues that nitromethane has channels of distribution different than the other nitroparaffins, but bases this conclusion on the fact that the different products are transported by different means, which is not the analysis the Commission typically uses when considering channels of distribution. See Petitioner's Postconference Brief at 12-13.

[28] Petitioner's Postconference Brief at 13; Conference Transcript at 47. Respondent ICC asserts that because U.S. producers do not maintain separate marketing activities or accounting, financial, and employment records among their operations, they must perceive nitromethane and the other nitroparaffins and nitroparaffin derivatives to be a single product line. Respondent ICC's Postconference Brief at 4-5; Respondent Coalition's Postconference Brief at 2. Evidence before the Commission and discussed above fails to substantiate respondent's argument.

[29] Report at I-24 - I-29, Tables C-1 - C-5 (providing unit values), Appendix E; Petitioner's Postconference Brief at 14; Conference Transcript at 49, 59, 77.

[30] The determination in Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 (Mar. 1991), highlighted other concerns:

> Moreover, to the extent that the effect of the dumping is to depress or suppress prices for the articles subject to investigation, and thus lower the cost of production of the downstream product, the financial condition of the downstream consumers' operations may be enhanced, thereby masking any injury suffered by U.S. producers of the article subject to investigation, if consumers of the article subject to investigation were included in the definition of the like product.

Id. at 10.

nitroparaffins. Although the chemical base of nitromethane is somewhat similar to the other nitroparaffins, the molecular structure and chemical composition of nitromethane are quite distinct.[31] There are also distinct differences in end uses between nitromethane and the other nitroparaffins. Because nitromethane has only one carbon atom, unlike the other nitroparaffins, its reaction with other chemicals produces a different product than that which would result when using the other nitroparaffins.[32] In addition, nitromethane has different stabilization characteristics and is a more efficient stabilizer than the other nitroparaffins.[33]

Nitromethane's end uses are different from the end uses of the other nitroparaffins,[34] and these other products are not interchangeable with nitromethane. Significantly, none of the other nitroparaffins can be used instead of nitromethane in nitromethane's primary end use market, i.e., to

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[31] Report at I-3 - I-4; Petitioner's Postconference Brief at 10-11. Staff Report at I-4; Conference Transcript at 37-38; Respondent ICC's Postconference Brief at 2.

[32] Conference Transcript at 37-38.

[33] Id. at 38; Report at I-24 n.56.

[34] Report at I-4 - I-5, I-24; Conference Transcript at 41-45, 80; Petitioner's Postconference Brief at 2, 11, Exhibit A (noting that customers attempted to find substitutes for nitromethane but could find none). Nitromethane, nitroethane, and 1-nitropropane are all used simultaneously as ingredients in 1,1,1-trichloroethane production. See Report at I-4 - I-5, I-24 & n.59. Neither 1-nitropropane nor nitroethane can substitute completely for nitromethane in producing this product (production of 1,1,1-trichloroethane requires all of these nitroparaffins). See id.; Conference Transcript at 41-43, 60-61. However, producers of this product can alter the mixture of these three ingredients -- portions of one ingredient substituting for portions of another. The amount that nitromethane may be reduced in the mixture is limited because nitromethane has unique and desirable stabilizing qualities that the other nitroparaffins cannot replicate. Conference Transcript at 38; Report at 24 n.56. There appear to be no other end uses in which nitroethane and 1-nitropropane can be used interchangeably or as substitutes for nitromethane. See Petitioner's Postconference Brief Exhibit A; Conference Transcript at 43. We note also that because of its ozone depleting qualities, 1,1,1-trichloroethane must be phased out of use under the mechanisms of the Montreal Protocol. Report at I-7. Thus, even this limited interchangeability should decrease in the future.

produce chloropicrin.[35]

Although nitromethane and the other nitroparaffins have similar broad channels of distribution (direct sales to end users),[36] customers and producers perceive nitromethane to be a different product than the other nitroparaffins.[37] On May 1, 1991 ANGUS experienced an explosion and fire that forced it to cease production of nitromethane and nitroparaffins while it rebuilt its facility. At this time, some customers reportedly attempted to use nitroethane, 1-nitropropane, or 2-nitropropane in place of nitromethane and found they could not do so.[38] Producers, although using similar production processes and marketing strategies, recognize that there are differences between the products.[39]

All nitroparaffins are co-products produced in the same manufacturing process using the same production facilities and similar production employees.[40] ANGUS cannot separate its production of any one of the nitroparaffins from production of the other nitroparaffins, as the manufacturing process produces fixed yields of each nitroparaffin.[41] Finally, significant price differentials exist between nitromethane and other nitroparaffins.[42]

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[35] Report at I-4; Conference Transcript at 43-45; Petitioner's Postconference Brief at 3, 11-12, Exhibit A.
[36] Report at I-9 - I-10; Conference Transcript at 45-46; Respondent ICC's Postconference Brief at 5.
[37] Petitioner's Postconference Brief at 13; Conference Transcript at 47.
[38] Conference Transcript at 38.
[39] Petitioner's Postconference Brief at 13; Conference Transcript at 47.
[40] Report at I-4 - I-5; Conference Transcript at 48; Respondent ICC's Postconference Brief at 3-4; Petitioner's Postconference Brief at 13-14.
[41] Report at I-4 - I-5, I-11; Conference Transcript at 48; Respondent ICC's Postconference Brief at 48; Petition at 2; Petitioner's Postconference Brief at 41.
[42] Report at I-24 - I-29, Tables C-1 - C-5 (providing unit values), Appendix E; Conference Transcript at 49, 59, 77; Petitioner's Postconference Brief at 14.

For the reasons stated above, we define the like product as nitromethane and do not expand the definition to include either the other nitroparaffins or the nitroparaffin derivatives. Accordingly, we define the domestic industry as the producers of nitromethane during the period of investigation, including ANGUS and W.R. Grace (which ceased production in mid-1992).

III. RELATED PARTIES

Under section 771(4)(B) of the Tariff Act of 1930, the Commission may exclude producers who are "related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise."[43] Exclusion of related parties is within the Commission's discretion based on the facts presented in each investigation.[44] If producers are related parties under section 771(4)(B), the Commission determines whether "appropriate circumstances" exist to exclude these producers from the domestic industry.[45] The rationale for the related parties provision is the concern that domestic producers who either are related to foreign producers or exporters, or are themselves importers of the subject merchandise, may be in a position that shields them from any injury that the LTFV imports might cause.[46]

In analyzing whether appropriate circumstances exist to exclude related parties, the Commission principally examines three factors:

> (1) the percentage of domestic production attributable to related producers;
>
> (2) the reasons why the related producers chose to import the product under investigation -- to benefit from the unfair trade

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[43] 19 U.S.C. § 1677(4)(B).

[44] See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1168; Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348. 1352 (Ct. Int'l Trade 1987).

[45] 19 U.S.C. § 1677(4)(B).

[46] See S. Rep. No. 249, 96th Cong., 1st Sess. at 83 (1979).

> practice or to enable them to continue production and compete domestically; and
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> (3) the competitive position of the related producers vis-a-vis other domestic producers i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.[47]

The Commission also has considered the ratio of import shipments to U.S. production for related producers.[48]

Petitioner imported the subject product during the period of investigation.[49] Therefore, although no party has argued for exclusion of a related party, we have considered whether ANGUS warrants exclusion as a related party, and have found that appropriate circumstances do not exist to exclude it.

ANGUS is a U.S. corporation that has been producing nitroparaffins for over 37 years. It was the sole domestic nitromethane producer until 1986 when W.R. Grace began production. After mid-1992, ANGUS again became the sole domestic producer, as W.R. Grace ceased production. ANGUS's nitromethane production was continuous until May 1, 1991, when a major fire and explosion forced the shutdown of ANGUS's domestic production.[50] ANGUS resumed full production in May 1992 following a two-phase reconstruction program which restored ANGUS's pre-explosion nitromethane production capacity. During its

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[47] See Torrington Co. v. United States, 790 F. Supp. at 1168-70 (upholding the Commission's practice of examining these factors in deciding that appropriate circumstances did not exist to exclude a related party); Sandvik AB, 721 F. Supp. at 1331-32; see also Empire Plow Co., 675 F. Supp. at 1352 (declaring the Commission's approach reasonable in light of the legislative history).

[48] Steel Wire Rope from the Republic of Korea and Mexico, Inv. Nos. 731-TA-546 & 547 (Final), USITC Pub. 2613 at 14 (Mar. 1993); Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. No. 731-TA-520 (Final), USITC Pub. 2528 at 14 (June 1992).

[49] Report at I-9.

[50] Id. at I-14.

production hiatus, ANGUS attempted to maintain its customer base by supplying purchasers with subject nitromethane imported from China.[51]

ANGUS accounted for a substantial amount of reported nitromethane imports from China in 1991 and January-March 1992.[52] ANGUS imported 4.5 million pounds in 1991-92.[53] All of ANGUS's 1992 imports of nitromethane occurred in January-March 1992.[54] ANGUS ceased importing before it came back on line and did not import in 1993. In comparison, it produced internally much higher levels than these import levels in both 1991 and 1992[55] and currently accounts for all domestic production of nitroparaffins.[56] ANGUS has always maintained a prominent position as a producer within the domestic nitroparaffins market.[57] Although these import levels are high, they are much less important in this investigation because ANGUS imported only while it rebuilt its facility after the explosion.

ANGUS testified that although it purchased some small amounts from W.R. Grace and a European affiliate, it had no alternative source of supply for the large nitromethane purchases it made, as neither W.R. Grace nor sources in other countries had the capacity to satisfy ANGUS's demands.[58]

Because ANGUS is responsible for a substantial percentage of domestic production, currently is the sole domestic producer, and imported only while not producing and to continue to supply existing customers, we find that appropriate circumstances do not exist to exclude ANGUS from the industry as a

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[51] Conference Transcript at 15-17, 40; see also Petitioner's Postconference Brief at 5-7.
[52] Report at I-9.
[53] Conference Transcript at 16; Petitioner's Postconference Brief at 6-7.
[54] Report at I-9.
[55] Id. Table 3.
[56] Id. at I-8 - I-9 and Table 3.
[57] Id. Table 3.
[58] Conference Transcript at 15-16, 40.

related party. Although we do not exclude ANGUS, as discussed below, we consider its importing to be an important factor and condition of competition affecting this industry.

IV. CONDITION OF THE DOMESTIC INDUSTRY

In determining whether the domestic industry is materially injured by LTFV imports, the statute directs us to consider "all relevant economic factors which have a bearing on the state of the industry in the United States."[59] These include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development.[60] [61] 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."[62]

Much of the analysis of the foregoing factors is provided in general

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[59] 19 U.S.C. § 1677(7)(C)(iii)

[60] Id. § 1677(7)(C)(iii)

[61] Commissioner Rohr regrets that his colleagues have abandoned the listing of the factors the Commission actually considers in its evaluation of the condition of the industry for a mere recitation of the statute, which by its own terms was never meant to be exclusive. For example, over the years the Commission has recognized that there is no direct indicator called output but rather such measurable "things" such as production and shipments. "Profits" standing alone are usually meaningless unless evaluated in the context of net sales, cost of goods sold, and other expenses. That is why the Commission traditionally recognized that it was evaluating the "financial performance" of the industry not merely its profits or just return on investment. The traditional listing of the factors used by the Commission included within its coverage everything that the statutory list includes and more that the Commission in its experience over the last 15 years has found to be relevant. Its statement reflected the way in which these indicators of an industry's condition were actually evaluated. To return to a rote recitation of the words of the statute is to decrease the transparency of Commission decisionmaking and does the public a major disservice. He hopes that in the future his colleagues will return to explaining to the public what it is they actually do.

[62] 19 U.S.C. § 1677(7)(C)(iii).

terms. This is done to protect the confidentiality of the underlying data, which has been obtained from only two firms.

The fire and explosion at ANGUS's Sterlington, Louisiana plant on May 1, 1991, highlights a very significant factor and condition of competition. The explosion forced ANGUS to cease production during reconstruction for 10 months, e.g., until March 1992.[63] As noted above, during that time period, it sold from inventory, imported, and bought from W.R. Grace to maintain its customer base.[64] Many of the changes in industry data from ANGUS coming back on line appear only in a portion of the data for 1992 and in interim period 1993. Because the explosion and production hiatus occurred in the middle of the period of investigation, there are no consecutive periods that are comparable, including 1993 data.

Another factor and condition of competition concerns W.R. Grace ceasing production of nitromethane in the second quarter of 1992.[65] There is some conflicting evidence on the reasons behind W.R. Grace's exit from the industry.[66] Moreover, W.R. Grace experienced operating problems in 1990 and early 1991, but experienced temporary enhanced operating levels during ANGUS's production hiatus.

There were no subject imports in 1990, and for portions of both 1991 and 1992, ANGUS had temporarily ceased production and had to import subject products to maintain its customer contacts. Therefore, the interim data for 1993 discussed below are particularly[67] important in this investigation as

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[63] Report at 1-8 - I-9, I-14.
[64] Id. at I-14.
[65] Id. at I-9.
[66] See infra sections V and VI.
[67] Commissioner Nuzum concurs that the interim data in this investigation provide important information regarding the impact of the subject imports on

(continued...)

they are the only data showing both ANGUS's products and subject imports simultaneously present in the domestic market for an entire reporting period.[68]

Apparent U.S. consumption of nitromethane on the basis of quantity, including that consumed internally in the production of derivatives, decreased during 1990-91 and then increased slightly during 1991-92, but not to its 1990 level.[69] Apparent U.S. consumption was higher in interim (January-March) 1993 compared with interim (January-March) 1992.[70]

Production and average-of-period capacity to produce nitromethane declined considerably from 1990 to 1991 due to the explosion in May 1991 at ANGUS's plant. From 1991 to 1992, production and average-of-period capacity increased considerably, as ANGUS completed the reconstruction of its plant by May 1992.[71] Both indices increased in interim 1993 compared with interim 1992.[72] Average-of-period capacity utilization increased from 1990 to 1991, then fell in 1992,[73] and from interim period 1992 to interim period 1993.[74]

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[67](...continued)
the condition of the domestic industry. Rather than place particular weight on this three-month period, however, she has considered as at least equally important the data for full-year 1992. U.S. production was on-going throughout the year, with the largest U.S. producer fully operational during most of the period. Imports also continued to enter the market, albeit at declining levels, throughout the year.

[68] Vice Chairman Watson does not give special consideration to the interim 1993 data which comprises a period of only three months. He further declines to make any assumptions regarding the full-year 1993 based on the interim data.

[69] Report at I-7, Table 1. On the basis of value, apparent U.S. consumption decreased from 1990 to 1991, but increased in 1992. Id.

[70] Id. Table 1. The value of apparent U.S. consumption was slightly higher from interim period 1992 to interim period 1993. Id.

[71] Id. at I-10 - I-11, Table 2. Average-of-period capacity and capacity utilization for 1990-92 represent average yearly capacity and capacity utilization, respectively. For the interim periods, these indices represent averages for the first quarter of 1992 and 1993, respectively.

[72] Id.

[73] Id. Table 2. We note that W.R. Grace ceased production in mid-1992.

Domestic producers' U.S. shipments of nitromethane decreased consistently throughout the period of investigation, with the vast majority of that decline again related to production shutdowns by ANGUS in 1991 and W.R. Grace in 1992.[75] From interim period 1992 to interim period 1993, shipments increased sharply.[76] The average unit value of domestic producers' U.S. shipments increased steadily from 1990 to 1992, but decreased from interim period 1992 compared with interim period 1993. U.S. producers' exports of nitromethane decreased by both quantity and value from 1990 to 1991, but increased in 1992.[77] Exports decreased by both quantity and value in interim period 1993 compared with interim period 1992.[78]

Domestic producers' end-of-period inventories of nitromethane were drawn down during 1991, but were built back up in 1992. Inventories were higher in interim period 1993 compared with interim period 1992.[79] End-of-period inventories in relation to production rose steadily throughout the period of investigation.[80]

The average number of production and related workers producing nitroparaffins remained relatively stable during 1990-92, and from interim period 1992 compared with interim period 1993.[81] ANGUS reported that it did

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[74](...continued)
[74] Id. End-of-period capacity utilization levels demonstrated somewhat similar trends, interim period 1992 to interim period 1993.
[75] Id. Table 4. Values of U.S. producers' shipments similarly decreased, from 1990 to 1993.
[76] Id. From interim period 1992 to interim period 1993, the value of U.S. producers' shipments also increased. Id.
[77] Id.
[78] Id. Unit values of exports rose steadily from 1990-92 and were highest in interim 1992, but fell in the following interim period. Id.
[79] Id. Table 6.
[80] Id.
[81] Id. Table 7. Neither of the two domestic producers kept employment records for their nitromethane production separate from their production of the other nitroparaffins. ANGUS, however, uses virtually the same production
(continued...)

not lay off any workers during its nitromethane production shutdown.[82] The number of hours worked by such workers fluctuated, increasing from 1990 to 1991, then in 1992 decreasing almost to the 1990 levels. The hours worked increased only slightly in interim period 1993 compared with interim period 1992.[83]

Although the Commission requested financial data from domestic producers concerning their nitromethane operations only, W.R. Grace was unable to report its nitromethane operations data separately from its nitroparaffins data.[84] We discuss the nitromethane operations of ANGUS separately from W.R. Grace, as ANGUS did report data on its nitromethane operations separately.[85] The petitioner comprised the bulk of the industry data from the earlier portions of the period of investigation and all of the data for the latter portions of the period of investigation. Because we do not have separate data on

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[81](...continued)
employees for nitromethane production that it uses for nitroparaffins production. In providing employment data on nitromethane only, ANGUS simply allocated a portion of its overall employment data from its nitroparaffins operations to derive its employment data for its nitromethane operations. Id. at I-13 n.35. Because ANGUS uses the same employees to produce nitromethane that it uses to produce nitroparaffins, merely dividing by a certain amount is not an accurate method of reporting employment data. Therefore, employment data on nitroparaffins is provided above because it is the narrowest category for which the industry could report data. See 19 U.S.C. § 1677(4)(D).

[82] Petitioner's Postconference Brief at 28-29; see also Report Table 7.

[83] Report Table 7. Because productivity of production and related workers and unit labor costs are based on production we do not find data on these indices meaningful in light of ANGUS's production hiatus.

[84] We note that nitromethane production comprises a considerable percentage of overall production of nitroparaffins during the period of investigation. Report Table 5. Therefore, we find that analyzing nitroparaffin operations of W.R. Grace is the best information available on its nitromethane operations. In any final investigation, the Commission will again endeavor to obtain data on W.R. Grace's nitromethane operations only.

[85] There are issues concerning the accounting methods that the domestic producers use, which may underreport some of W.R. Grace's financial data and which may affect the accounting of ANGUS's operations after its explosion. The Commission will explore these issues further in any final investigation.

nitromethane for W.R. Grace, we discuss the overall nitroparaffins operations of this producer as this is the narrowest set of data that includes this domestic producer's nitromethane operations. Although we must discuss the operations of these two producers separately due to the reporting problems discussed above, our analysis is based on the condition of the industry as a whole.

From 1990 to 1992, net sales (both quantity and value), gross profits, operating income, and net income for ANGUS in its nitromethane operations declined considerably.[86] All of these financial indicators followed the same pattern -- decreasing each year from 1990 to 1992, then increasing dramatically from interim period 1992 to interim period 1993.[87] Both the 1990-91 and 1990-92 declines reflect ANGUS's production shutdown from May 1991-March 1992.

Financial indicators for nitroparaffin operations of W.R. Grace followed different patterns. Net sales (by quantity and value) of nitroparaffins produced by Grace increased each year from 1990 to 1992, but were lower in interim period 1993 compared with interim period 1992.[88] Grace experienced net losses in its nitroparaffin operations from 1990 to 1992, but maintained slight gross profits in interim 1992 and interim 1993.[89] As a percentage of net sales, Grace also experienced net losses in its nitroparaffin operations from 1990 to 1992, but slight profits in both interim periods.[90] Operating losses occurred each year from 1990 to 1992 and in interim 1992, but improved

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[86] Report Table C-2.
[87] Id.
[88] Id. Table 11.
[89] Id.
[90] Id.

over the period.[91] Grace experienced operating income in interim 1993.[92] As a percentage of net sales, operating income and net income of nitroparaffin operations followed the same pattern.[93] [94]

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGED LTFV IMPORTS [95] [96]

In determining whether there is a reasonable indication of material injury to the domestic industry by reason of the imports under investigation, the statute provides that the Commission consider in each case:

> (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, and
>
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations in the United States.[97]

In assessing the effect of dumped imports, we compare the current condition of the domestic industry to that which would have existed had imports not been dumped.[98] [99] Then, taking into account the condition of the

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[91] Id.
[92] Id.
[93] Id.
[94] Based on their analysis of these indicators, Chairman Newquist and Commissioner Rohr find no reasonable indication that the domestic industry is experiencing material injury.
[95] Chairman Newquist and Commissioner Rohr find no reasonable indication of material injury and, thus, do not join this analysis of reasonable indication of material injury by reason of alleged LTFV imports.
[96] Commissioner Nuzum does not join this discussion. See her separate views regarding the impact of the subject imports on the condition of the domestic industry.
[97] 19 U.S.C. § 1677(7)(B)(i).
[98] See id. § 1677(7)(C)(iii).
[99] Vice Chairman Watson believes that in some cases the record evidence is such to allow such an analysis, which although not required by the Act, can be relevant. He does not, however, join such an analysis in this immediate case. See Minivans from Japan, Inv. No. 731-TA-522 (Final), USITC Pub. 2529, at 29 n.114 (July 1992).

industry, we determine whether the resulting change of circumstances constitutes material injury.[100] For the reasons discussed below, we find a reasonable indication that the domestic nitromethane industry is materially injured by reason of alleged LTFV imports of nitromethane from China.

A. Volume of Subject Imports

No imports of nitromethane from China entered the United States in 1990. In 1991, 5.8 million pounds of nitromethane from China entered the United States,[101] and in 1992, there were 3.95 million pounds imported from China.[102] In interim period 1993, there were 348,000 pounds of nitromethane imports from China, compared with 2.6 million pounds in interim period 1992.[103] Subject imports comprised less than 35 percent of market share by quantity and value in 1991,[104] well over 45 percent in 1992, but lower than 20 percent in interim period 1993, compared with over 60 percent in interim period 1992.[105]

ANGUS imported the Chinese product during the time it did not produce nitromethane.[106] The market share of subject imports in 1991 and 1992 includes a substantial amount of Chinese product imported by ANGUS, which may distort the analysis of whether the volume of subject imports is significant. We consider the volume of subject imports in 1991 and 1992 excluding those imported by ANGUS in order to avoid this distortion. There were 5.3 million pounds of subject imports in 1991-92, excluding ANGUS's subject imports, with

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100 Vice Chairman Watson does not join in this discussion.
101 Report Table 19. These imports represent $11.36 million by value. Id.
102 Id. These imports represent $6.23 million by value. Id.
103 Id. These imports represent $4.9 million and $357,000, respectively. Id.
104 Id. Table 20. Exact market share figures are confidential.
105 Id.
106 Petitioner's Postconference Brief at 6-7.

approximately one-half entering in 1991 and one-half entering in 1992.[107]

It is clear that the larger the volume of alleged LTFV imports, the larger the effect they will have on the domestic industry. In order to determine whether even a large volume is significant, however, we must consider additional factors, such as the availability of substitute products, the degree of substitutability between the domestic like product and subject imports and other non-price factors. Given the condition of the industry and the evidence on the record regarding non-price factors, as discussed below, we find the volume of imports to be significant.

B. Effect of Alleged LTFV Imports on Domestic Prices

To analyze the effect of the volume of subject imports on domestic prices of the like product and on the domestic industry, we consider a number of factors about the industry and the nature of the products, such as the availability of substitute products in the market, the degree of substitutability between the subject imports and the domestic like product, and the alleged dumping margin, which is 233 percent in this case.[108]

Purchasers have no good substitutes for nitromethane.[109] Nor are there

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[107] The exact amounts of these imports are confidential as they could be used with other data disclosed above to reveal ANGUS's imports in 1991 and 1992.

[108] Vice Chairman Watson did not consider the alleged dumping margin in his analysis.

[109] Report at I-5, I-8, I-24; Conference Transcript at 38-39, 43; Petitioner's Postconference Brief at 12, 43. We note that there may be limited substitutability between the end products that use nitromethane and the products that compete with these end products. However, absent additional evidence showing the importance of nitromethane in the use of these end products, we are reluctant at this time to place much weight on the substitutability of these end products, but will explore this issue further in any final investigation.

On a related point, we note that nitromethane apparently is priced higher in end use markets that rely importantly on nitromethane and in end use markets that do not experience competition from other end use products in certain applications. See Report at I-25.

virtually any imports from sources other than China. Therefore, a purchaser's only choice is between subject imports and the like product.

Substitutability between the domestic like product and subject imports is another factor we considered in this case. Clearly, the more substitutable the alleged LTFV imports are with the domestic like product, the more likely consumers will base their purchasing decisions on price differences between the products.

The imported and domestic product appear to be close substitutes and are sold to similar end use markets.[110] Because subject imports are readily substitutable for the domestic like product, purchasers of subject imports would likely switch to the domestic product in response to small increases in prices.[111] Had subject imports been fairly traded, they would have sold at

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[110] Report at I-24 - I-25, I-26; Conference Transcript at 60-61. There is evidence to suggest that, early in the period of investigation, the imported products were not directly substitutable for the domestic product in some end uses due to Chinese limitations on quality (or purity level). However, the imported product now appears to be of the same quality as the domestic product. Report at I-26; Conference Transcript at 60-61. Moreover, in the end use market where imports compete most with the domestic product, these quality concerns generally do not, and did not, apply. Report at I-26 - I-27.

[111] Vice Chairman Watson does not join the remainder of this section B. He does not draw the conclusion that prices of the subject imports would have necessarily increased to the extent that Chinese imports would no longer be sold in the domestic market. He notes that dumping can be eliminated in whole or in part by a decrease in home market or third country prices. He does not, therefore, find it appropriate to base his pricing or injury analysis on alleged dumping margins or consideration as to what prices would have been absent the dumping.

Prices of imported Chinese nitromethane declined significantly during the period of investigation. See Report at I-28 - I-29. In comparison, prices of the domestically produced product remained stable or increased through 1991, generally declining thereafter except in the end use market where imports were not sold. See id. at I-27 - I-29. Data gathered in any final investigation may determine conclusively whether ANGUS or the Chinese producers are the price leaders. Price comparison data indicates that prices were consistently lower for imported product sold by ANGUS than for U.S. produced nitromethane. Where price comparisons between all other imported

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prices up to 233 percent higher than their dumped prices. Thus, it is unlikely that any sales of Chinese imports would have occurred had they been fairly traded.

ANGUS is currently the only U.S. producer, and there are virtually no imports from other sources. Therefore, ANGUS would have had virtually no competition if subject imports were fairly traded. As a result, ANGUS would have been the sole supplier in the domestic market, and could have increased its price.

C. Impact on the Domestic Nitromethane Industry

In assessing the impact of alleged LTFV imports on the domestic industry, we consider, among other relevant factors, U.S. consumption, production, shipments, capacity utilization, employment, wages, financial performance, capital investment, and research and development expenses.[112] [113]

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[111](...continued)
Chinese nitromethane and the domestic product were possible, data indicates mixed patterns of underselling and overselling. See id. at I-29.

Based on the above, Vice Chairman Watson does not believe that the pricing data gathered in this preliminary investigation supports a conclusion that the record as a whole contains clear and convincing evidence of no material injury.

[112] 19 U.S.C. § 1677(C)(iii).

[113] Vice Chairman Watson does not join the following two paragraphs. He notes that throughout the period of investigation, net sales (both quantity and value), gross profits, operating income, and net income for ANGUS's nitromethane operations (the only company able to report separate financial data for nitromethane) declined considerably, and that the financial condition of W.R. Grace, as represented in its nitroparaffin operations (the narrowest category for which W.R. Grace's data could be reported) was poor. The record also contains evidence which supports the petitioner's allegations of lost sales and revenue. See Report at I-29. Based on this preliminary record, Vice Chairman Watson finds a reasonable indication that a domestic industry is materially injured by reason of the subject imports.

He also notes that the parties in this investigation dispute the reasons behind W.R. Grace's exit from the industry. See Conference Transcript at 20-21, 48, 75, 83, 89-90, 92; Report at I-9 n.24, I-29. Although the evidence suggests that it is likely W.R. Grace exited the market for reasons other than subject imports from China, outstanding issues still remain, and Vice Chairman

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With the alleged high dumping margins, it is unlikely that any Chinese imports would have entered at fairly traded prices. ANGUS, the sole remaining U.S. producer, has unused capacity. Given ANGUS's unused capacity and the high market share of subject imports, we believe domestic shipments could have increased significantly because ANGUS would have had virtually no competition if subject imports were fairly traded.

As discussed, if subject imports were fairly traded, ANGUS would have been the sole source for nitromethane. As a result, ANGUS could have either increased its prices or its shipments to achieve the maximum amount of profit the market would bear. Therefore, ANGUS would likely have been materially better off if the subject imports had been fairly traded.

For these reasons, we conclude that there is a reasonable indication that the domestic industry is materially injured by reason of alleged LTFV imports of nitromethane from China.

VI. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGED LTFV IMPORTS[114]

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." The Commission cannot base such a determination on mere conjecture or supposition.[115]

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[113](...continued)
Watson cannot conclude that "no likelihood exists that contrary evidence will arise in a final investigation." See, e.g., American Lamb, 785 F.2d at 1001. He intends to more fully explore this issue in any final investigation.

[114] Vice Chairman Watson and Commissioners Brunsdale and Crawford find a reasonable indication of material injury by reason alleged LTFV imports and, thus, do not join in this analysis of reasonable indication of threat of material injury.

[115] 19 U.S.C. § 1677(7)(F)(ii).

The Commission must consider ten factors in its threat analysis, including: (1) any increase in production capacity or existing unused or underutilized capacity in the exporting country likely to result in a significant increase in imports; (2) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level; (3) 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; (4) any substantial increase in inventories of the merchandise in the United States; and (5) any other demonstrable adverse trends that indicate the probability that 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.[116] [117] The presence or absence of any single threat factor is not necessarily dispositive.[118]

There are very conflicting assertions on the capacity and capacity utilization levels of producers of nitromethane in China in this

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[116] Id. § 1677(7)(F)(i)(I)-(X). Since this investigation does not involve either a subsidy or an agricultural product, certain factors (factors I and IX of the statute) are not applicable. Factor VIII of the statute concerns the potential for product shifting by foreign manufacturers from products that are subject to existing antidumping or countervailing duty investigations or orders to production of products subject to investigation here. This factor does not appear applicable because there is no evidence to suggest that the facilities of the Chinese producers are used to produce merchandise subject to any other final antidumping or countervailing duty orders or investigations. For example, the Chinese nitromethane producers do not appear to produce chloropicrin, for which an outstanding antidumping order exists. However, we will explore this issue further in any final investigation.

[117] In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. 19 U.S.C. § 1677(7)(F)(iii)(I). However, we received no information that there are any dumping findings or remedies against the subject products in foreign markets.

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

investigation. What little evidence we were able to gather in this preliminary investigation suggests that the producers in China were able to increase their production capacity of nitromethane in 1991 in response to the increase in demand for their product due to the ANGUS explosion and production hiatus. There is some evidence suggesting that some of these producers have shifted capacity from producing nitromethane to producing other chemical products; however, these producers can presumably shift back to producing nitromethane. Because the United States has comprised one of the largest nitromethane markets for Chinese producers, the limited data available indicate that excess capacity would likely result in increased imports to the United States.

Imports of nitromethane from China increased from 1990 to 1991, although they subsequently decreased.[119] Despite these recent decreases, however, the share of the domestic market held by Chinese imports is significant. Moreover, Chinese producers were able to rapidly increase their shipments to the United States during ANGUS's production hiatus and could do the same in the future.[120]

Prices of nitromethane imported from China declined significantly during the period of investigation,[121] and there is evidence to suggest that these declines have had a depressing effect on prices of domestically produced nitromethane, as prices of domestically produced nitromethane declined in the markets to which nitromethane is sold.[122] We conclude in this preliminary

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[119] Report Table 19.
[120] Id. at I-22 - I-23, Table 19; Conference Transcript at 23, 48, 61, 75, 89-90, 92.
[121] Report at I-28 - I-67, Table 22, Figure 2.
[122] Report at I-27 - I-28, Table 21, Figure 1. Prices increased only in the end use market in which the Chinese product does not compete.

investigation that increased imports would have a depressing effect on the prices of domestically produced nitromethane.

Because the imported product now has improved purity characteristics, it is readily substitutable with the domestic product.[123] Thus, any significant increase in imports at depressed prices likely would result in adverse effects on the domestic industry.

Although we find that the weight of the evidence suggests that W.R. Grace exited the market for reasons other than subject imports from China, we find that other outstanding issues still remain, and we cannot conclude that "no likelihood exists that contrary evidence will arise in a final investigation."[124] Based on the evidence cited above we find a reasonable indication of threat of material injury by reason of allegedly LTFV imports of nitromethane. The likely effects of any increased allegedly LTFV imports would be particularly significant in light of the continuing market share of low-priced subject imports and the relatively vulnerable condition of the sole remaining domestic producer as it resumes operations.

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[123] Conference Transcript at 16, 27-29, 60-61, 105-106, 128-129.

[124] See, e.g., American Lamb, 785 F.2d at 1001. In this regard, we intend to more fully explore the following issues in any final investigation, in addition to other issues specifically noted above in this determination: Chinese producers' capacity and capacity utilization; the price effects of subject imports; and who is the price leader in the domestic market.

We also note that there is an outstanding antidumping order against chloropicrin from the PRC. Noting that nitromethane is a major ingredient for chloropicrin, we ask the parties to address the relationship, if any, between imports of nitromethane and the existence of the order against chloropicrin imports from China. Also, are there any recent changes in the U.S. market or other traditional markets for exports of nitromethane from the PRC which increase the likelihood of imports of nitromethane into the United States.

ADDITIONAL VIEWS OF COMMISSIONER JANET A. NUZUM

Investigation No. 731-TA-650

On the basis of the record developed in this preliminary investigation, I find that there is no reasonable indication that the industry in the United States producing nitromethane is materially injured by reason of imports of nitromethane from the People's Republic of China (China) that are alleged to be sold at less than fair value (LTFV) in the United States. The record does not, however, support the conclusion that there is no reasonable indication of threat of material injury to the domestic industry by reason of the subject imports. I therefore determine that there is a reasonable indication of threat by reason of such imports.[1]

In making this preliminary determination, I have considered whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[2] The U.S. Court of Appeals for the Federal Circuit has held that this interpretation of the standard "accords with clearly discernible legislative intent and is sufficiently reasonable.[3] I have no reason to believe that evidence contrary to my determination here with regard to present injury by reason of the subject imports will arise in a final investigation; however, I will

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[1] Material retardation of the establishment of an industry is not at issue in this investigation.

[2] American Lamb Co. v. United States, 785 F.2d 994, 1001 (Fed. Cir. 1986); Calabrian Corporation v. United States International Trade Commission, Slip Op. 92-69 (CIT 1991) (citing American Lamb).

[3] American Lamb, 785 F.2d at 1004. The Court also stated that, to reach an affirmative determination, the Commission must find that there is more than a possibility of material injury. Id. at 994.

reconsider the issue of present injury on the basis of the fuller record developed in any such investigation.

I join Chairman Newquist and Commissioner Rohr in their affirmative determination of a reasonable indication of threat of material injury.[4] These additional views present my analysis with regard to my negative determination of a reasonable indication of present material injury by reason of the subject imports. These views differ in approach, although not in result, from those of my colleagues Chairman Newquist and Commissioner Rohr.

Legal Standard

Under section 733(a) of the Tariff Act of 1930, as amended (the Act), the Commission determines whether, based on the best information available at the time of the preliminary determination, "there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury," by reason of imports alleged to be sold at LTFV in the United States.[5] Section 771(7)(A) of the Act defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[6]

In making this determination, the Commission is specifically required to consider the volume of imports, the effect of imports on prices in the United States, and the impact of the imports on domestic producers of the like product.[7] Many factors are considered by the Commission in its investigation under this framework. "The presence or absence of any factor which the Commission is required to evaluate . . . shall not necessarily give decisive

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[4] See Views of the Commission at 27-30.

[5] 19 U.S.C. § 1673b(a).

[6] 19 U.S.C. § 1677(7)(A).

[7] 19 U.S.C. § 1677(7)(B).

guidance" with respect to our determination.[8] Decisions are based on the record as a whole.

In determining whether or not there is a reasonable indication that an industry is materially injured by reason of allegedly LTFV imports, the Commission may consider alternative causes of injury, but is not to weigh causes.[9] The Commission need not determine that the LTFV imports are "the principal, a substantial, or a significant cause of material injury."[10] Congress clearly indicated that to do so "has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; industries that are often the most vulnerable to less-than-fair-value imports."[11] Rather, a finding that the subject imports are contributing to the material injury is sufficient.[12]

The Commission's determination must be based on positive evidence in the record; it may not be based on speculation or supposition. In evaluating the record, the Commission may weigh the evidence and selectively rely on certain evidence as more credible; however, the Commission's determination in the final analysis must be supported by substantial evidence on the record.[13]

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[8] 19 U.S.C. § 1677(7)(E)(ii).

[9] E.g., Citrosuco Paulista, S.A. v. United States, 704 F.Supp. 1075, 1101 (CIT 1988).

[10] S. Rep. No. 249, 96th Cong., 1st Sess. 57, 74 (1979).

[11] Id. at 74-75.

[12] See, e.g., Metallverken Nederland, B.V. v. United States, 728 F.Supp. 730, 741 (CIT 1989); Citrosuco Paulista, S.A. v. United States, 704 F.Supp. 1075, 1101 (CIT 1988).

[13] 19 U.S.C. § 1516a(b)(1)(B).

Like Product and Domestic Industry

I concur with my colleagues that the like product in this investigation is nitromethane and that the domestic industry consists of all U.S. producers of nitromethane. I therefore join in the discussion of like product and domestic industry as expressed in the Views of the Commission.[14] I also find that appropriate circumstances do not exist to exclude ANGUS Chemical Co. (ANGUS), the petitioner in this investigation, from the domestic industry as a related party. I also join in the discussion of related parties in the Views of the Commission.[15]

Conditions of Competition Distinctive to the Domestic Industry

In evaluating the impact of dumped or subsidized imports on a domestic industry, the Commission is required to "evaluate all relevant economic factors . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[16] I find that a discussion of these particular conditions of competition, including a general understanding of the market forces at work in this industry, provides a useful starting point for my analysis.

In this investigation, any analysis of the data must take into consideration the severe disruption in domestic supply that occurred as a result of an explosion and fire that destroyed ANGUS' production facility in May 1991.[17] During the rebuilding of its plant, ANGUS sought out and reportedly developed Chinese sources of nitromethane to supply its U.S.

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[14] See Views of the Commission at 6-13.

[15] See id. at 13-16.

[16] 19 U.S.C. § 1677(7)(C)(iii). I have not identified a business cycle distinctive to this industry.

[17] Report of the Commission (Report) at I-8. ANGUS' plant was the *** of two U.S. production facilities at that time. Id. at I-11, table 3.

customers.[18] The increase in imports from China into the United States appears to be in large part the result of these efforts.[19] Once the plant was again operational, the volume of imports from China subsided.[20] Operations at ANGUS resumed somewhat prior to expectations,[21] however, and certain volumes of already-contracted-for imports continued to arrive during this period.[22]

Another factor of competition was the exit from the industry of the second U.S. producer -- W.R. Grace -- in mid-1992, just as ANGUS' plant became fully operational. I do not find that the confidential record[23] provides any support for petitioner's contention[24] that subject import volumes and prices played a significant part in Grace's plant closure. I do find that Chinese nitromethane that remained in the market after ANGUS resumed production did so in part as a result of Grace's exit; that is, that some purchasers that had depended on Grace as a secondary or back-up supplier to ANGUS continued to buy Chinese nitromethane rather than shift all reliance to ANGUS.[25]

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[18] See Petition at 12; Transcript at 84.

[19] ANGUS accounted for *** percent of reported imports of nitromethane from China in 1991 and *** percent in 1992. Report at I-9. See also Petitioner's postconference brief at 6-7. I note that firms other than ANGUS imported substantial quantities of nitromethane from China during this period; the bulk of these exports, however, were also intended to supply the market after the ANGUS plant explosion. See, e.g., Report at I-29. Some of these importers reported that they only entered the nitromethane market after the explosion and that ANGUS was their first customer. Id. at I-26.

[20] Petition at 14 and exhibits D, E, and G.

[21] I note that *** held *** inventories of Chinese nitromethane when ***. Report at I-21.

[22] Id. at I-29.

[23] See id. at I-9 n.24.; I-13 - I-14; I-25 n.59; I-26 n.60; I-29 n.64; I-29. See also ***.

[24] E.g., Transcript at 19-21.

[25] See, e.g., Report at I-29. The petitioner estimated the average monthly volume of Chinese product imported during July 1992 through March 1993 at "more than 200,000 lbs" which it characterized as "about the level of

Of substantially less consequence as a factor of competition -- given these other factors -- was an overall decline in consumption from 1990 to 1992.[26]

Volume of the Subject Imports

The Commission is required to consider the volume of the subject imports, and 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."[27]

There were no reported U.S. imports of nitromethane from China in 1990.[28] In 1991, however, these imports jumped to 5.8 million lbs., valued at $11.4 million. The level of imports decreased substantially in 1992, falling to 4.0 million lbs. and $6.2 million. In the first quarter of 1993, the subject imports totalled 348,000 lbs. and $357,000, averaging one-tenth the respective comparable first quarter 1992 levels. The unit value of imports declined steadily.[29]

[monthly] domestic sales by Grace in 1991." Petition at 14. Grace's actual average monthly 1991 domestic sales were *** (see report at I-12, table 5) and average monthly subject import volumes during July 1992 through March 1993 were 223,000 lbs (see petition at exhibit E).

[26] Apparent U.S. consumption fell from *** pounds, valued at ***, in 1990 to *** pounds, valued at *** in 1992. Report at I-7, table 1.

[27] 19 U.S.C. § 1677(7)(C)(i).

[28] Elsewhere in the record there are indications that there was some very small quantity of nitromethane imported in 1990. The petitioner has indicated, however, that such imports were minimal. E.g., Petition at 11; Transcript at 14.

[29] Report at I-23, table 19.

Shifts in market share of the subject imports fluctuated as dramatically as did import volumes, but following a different pattern.[30] In terms of quantity, U.S. shipments of the subject imports increased their share of apparent domestic consumption from 1990 to 1992; that share then fell sharply in January-March 1993 compared with January-March 1992.[31] Some portion of import market share in both 1992 and the first quarter of 1993 was accounted for by shipments of the subject imports from inventory that had been built up during 1991.[32]

To a large extent, therefore, the observed increases in the volume and market share of the subject imports during 1990-92 are explained by the need to replace -- not displace -- U.S. supply during the period May 1991 to mid-1992.[33] The petitioner states that, by the end of 1992, it had recovered most of the market share held before its plant explosion.[34] The fact, however, that imports continued to enter the market in early 1993 presents the suggestion of some adverse volume effect by the imports on the condition of the domestic industry as a whole. Upon closer scrutiny, however, several

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[30] Market share is calculated on the basis of shipments of imports. The difference between imports and shipments of imports is accounted for by a buildup in inventory levels during 1991. Compare id. at I-24, table 20, (market share) with id. at I-23, table 19, (imports) and id. at I-21 (inventories).

[31] U.S. shipments of the subject imports accounted for *** percent of apparent domestic consumption, by quantity, in 1991, *** percent in 1992, *** percent during January-March 1992, and *** percent during January-March 1993. Id. at I-24, table 20.

[32] Again, compare id. at I-24, table 20, with id. at I-23, table 19, and id. at I-21.

[33] After the ANGUS explosion, *** reported that it could sell all the nitromethane it could produce and reasonably raise prices, but ***. Id. at I-26 and n.60. ***. Id. at I-26 n.60.

[34] E.g., Petition at 13. The petition goes on to state that ANGUS held this market share only at the expense of price and profit erosion. Id.

factors dispel that suggestion, as explained below in my discussion of the impact of the subject imports on the domestic industry.

Price Effects of the Subject Imports

The Commission is also required to consider the effect of the subject imports on prices in the United States for the like product. In evaluating this effect, the Commission must consider whether there has been significant price underselling by the subject imports, and whether the subject imports either depress prices to a significant degree, or prevent price increases which otherwise would have occurred to a significant degree.[35]

Underselling

I do not find that the record supports the conclusion that the subject imports undersold the domestic product to a significant degree during the period of investigation. The data gathered by the Commission allows for both price comparisons between ANGUS' own imported Chinese nitromethane and domestic products, and for price comparisons between all other importers' imports of Chinese nitromethane and domestic products. I find the latter comparisons[36] to be more relevant to my analysis.[37] The record contains some statements to the effect that U.S. producers may command some price premium over the imported product due to such factors as product purity, leadtimes,

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[35] 19 U.S.C. § 1677(7)(C)(ii).

[36] In *** comparisons, there were *** instances of overselling, with a range of ***. There were *** instances of underselling, with a range of ***. Thus, both the number of observations and the ranges show a pattern of ***. Report at I-29.

[37] I note that *** price comparisons between ANGUS' imports and domestic production show *** instances of *** by the imported product, with a range of ***. Id. These comparisons represent largely price competition between ANGUS' imports and ***. In view of the fact that, after its plant was rebuilt ANGUS' domestic production *** (id. at I-28) -- I am not inclined to view ANGUS' import sales prices as representative of import sales prices generally. The record indicates, for example, that ANGUS ***. Id.

and the value of relationship with the domestic supplier.[38] The alleged price premiums do not, however, alter my conclusion with regard to overselling.[39]

Price depression and price suppression

The record indicates some erosion of price levels following the reentry of ANGUS' domestic production into the market.[40] Reportedly, ANGUS' plant came back on line somewhat earlier than expected by purchasers, who had contracted for delivery of Chinese nitromethane in mid- and third quarter 1992.[41] There also remained some inventories of imported nitromethane during this period.[42] New production, existing inventories, and contracted-for imports appear to have combined to create an oversupply situation. Purchasers reported that, during this period, ANGUS lowered domestic nitromethane prices to closer to the level of its own imported nitromethane prices.[43] The petitioner has reported that importers at this period in time aggressively

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[38] One chloropicrin producer reported *** for the domestic industry of ***, and one specialty fuel producer reported ***. Id. at I-29.

[39] *** in the chloropicrin market -- easily the larger of the two end uses for which *** were reported -- was well in excess of *** per pound and ***. In the specialty fuels market, *** by such importers likewise *** and *** than this amount. ***. Compare id. at I-27, table 21 with id. at I-28, table 22.

In any event, I note that the fact that domestic producers may be able to obtain some price premium compared with importers does not negate the possibility of adverse price effects by the imports.

[40] Import price levels had *** in 1991. Id. at I-28, table 22. Domestic prices to *** prior to the ANGUS plant explosion. Id. at I-27, table 21. These price declines occurred during periods of relatively limited competition between imported and domestic supplies. I do not view them as particularly instructive with regard to my analysis of price suppression and depression, except to the extent that they suggest that market forces unrelated to import competition may also have had some depressing effect on domestic prices.

[41] Id. at I-29.

[42] The *** of these inventories were ***. Id. at I-21.

[43] Id. at I-26; I-29. ***. Id. at I-26. ***. See id. at I-29.

priced their nitromethane in competition with ANGUS.[44] The record, however, offers scant evidence of price leadership by importers other than ANGUS itself. Thus, while I conclude that the record does provide evidence of price depression by the subject imports, I did not place a great deal of weight on this factor in arriving at my determination in this investigation.[45]

I have also examined the record for other evidence of adverse price effects by the subject imports. Both the anecdotal evidence of lost sales and lost revenues and the data for unit values are consistent with other pricing data discussed above.[46]

In conclusion, information on sales of imports by other importers does not provide substantial evidence of an adverse price effect by the subject imports.[47] Having weighed the available evidence,[48] I conclude that the record does not support a finding of significant adverse price effect by the subject imports. As explained below, to the extent that import prices had any adverse impact on the industry, I do not find that that impact rises to the level of material injury.

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[44] E.g., Transcript at 17.

[45] I note that *** in such price depression.

[46] Specifically, the anecdotal evidence of lost sales and lost revenues indicates that importers initially purchased the Chinese product due to the reduction of domestic supply following the ANGUS plant explosion. Those purchasers who continued to source from China in late 1992 and early 1993 did so either as a result of existing contracts or to maintain a secondary source of supply. Thus, price does not appear to have played a significant role in the decision to purchase the imported products. Nevertheless, purchasers were able to negotiate lower prices for domestic products based on the prices at which imports were being offered -- ***. Report at I-29.

The unit values of U.S. shipments of imported nitromethane were initially *** and declined. U.S. shipment unit values peaked in 1992 but declined to a low in early 1993. Id. at I-23, table 19; I-12, table 5.

[47] In contrast, much of the record evidence of ***.

[48] See American Lamb, 785 F.2d at 1004.

Impact of Subject Imports on the Condition of the Domestic Nitromethane Industry

I find no evidence of a significant adverse volume impact on the condition of the industry by reason of the subject imports.[49] This finding is based first on my conclusion that the subject imports played no role in the exit of W.R. Grace from the domestic industry. Indeed, the confidential record clearly establishes in my mind that the closure of that plant was entirely due to factors other than the subject imports.[50] Thus, declines in industry production, capacity utilization, shipments, employment, net sales, value of assets, capital expenditures, research and development expenses, and market share that relate to Grace's closure[51] are not indicative of any adverse impact on the domestic industry by the subject import volumes or prices.

With regard to ANGUS, I find that declines in industry capacity, production, shipments, net sales, gross profits and margins, operating income and margins, cash flow, and value of assets that relate to the plant

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[49] I will not repeat the description of the levels and trends of the various industry indicators which is presented in the Views of the Commission at 16-22.

[50] See Report at I-9 n.24.; I-13 - I-14; I-25 n.59; I-26 n.60; I-29 n.64; I-29. See also ***.

[51] See Report at I-11, table 3; I-12, table 5; I-15, table 11; I-18, table 16; I-18, tables 17 and 18. See also W.R. Grace questionnaire response at 18. The petitioner concedes that it has regained its market share lost after the plant explosion. E.g., Petition at 13. The record actually suggests that the petitioner gained part of Grace's market share as well. See supra n.25.

Some of the declines relating to Grace's closure affect the 1991-92 comparisons and nearly all affect the first quarter 1992 and 1993 comparisons. The aggregate data did not in all cases show declines because of ***. For example, *** declined ***, but ANGUS' increased by a greater amount; the aggregate data therefore show an increase.

shutdown[52] are likewise not indicative of any adverse impact on the domestic industry by the subject import volumes or prices. This is the second factor upon which my negative present injury determination is based.

What is left in terms of declines, therefore, is the reported[53] sluggish merchant market demand for ANGUS' nitromethane in the second half of 1992 and the first quarter of 1993. In this regard I note the following: 1) ANGUS' capacity utilization in 1992;[54] 2) the unit value of ANGUS' domestic shipments in 1992;[55] 3) ANGUS' 1992 company transfers;[56] and 4) 1992 cash flow, and gross profits and operating income as a percent of net sales.[57] Some of these indicators declined in the interim 1993 period, a fact which I have taken into consideration in my threat analysis.[58] The petitioner has focussed particularly on return on equity in its injury arguments.[59] I do not feel,

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[52] See Report at I-11, table 3; I-12, table 5; I-17, table 14; I-18, table 16. The petitioner reported *** in employment during its plant shutdown. Id. at I-13.

Most of the declines relating to ANGUS' shutdown affect the 1990-91 comparisons and some affect the 1990-92 comparisons.

[53] E.g., Petitioner's postconference brief at 22-27.

[54] At *** percent, this compares *** with 1990 capacity utilization of *** percent and 1991 capacity utilization of *** percent. Report at I-11, table 3.

[55] At *** per pound, this *** with the comparable 1990 and 1991 data (*** respectively). Id. at I-12, table 5. The same observation may be made for per-unit net sales. Id. at I-16, table 13.

[56] This indicator showed ***. Id. at I-11 and table 5. Thus, any sluggish demand for merchant sales in 1992 was ***. ***.

[57] Each of these items ***. In view of the fact that consumption also declined overall during this period, and ANGUS' plant did not come back on line completely until mid-1992, I am not inclined to view *** with great consternation. I note that 1992 net income as a percent of sales was *** the 1990 level; however, I generally place more weight on net and gross profit margins. Id. at I-17, table 14.

[58] Interim 1993 financial data ***. Id.

[59] Petition at 15 and exhibit I.

however, that these data present an accurate picture of the financial position of the company.[60]

I note that I apply no specific profitability threshold in making my determination. An industry exhibiting high profit levels may be suffering material injury by reason of subject imports. Conversely, an industry with low profit levels may not be suffering material injury by reason of the subject imports. My determination is made based on an examination of profitability levels in conjunction with all other relevant factors; no single factor is dispositive.[61]

In this case, I find no evidence that the volume of the subject imports had a significant adverse impact on the domestic industry. Although market shares of the subject imports were higher in 1992 than in 1990, the condition of the industry as measured by both capacity and financial performance rebounded in 1992 after a serious setback in 1991.[62] I also find no evidence of a significant adverse price effect by the subject imports. I do not find, on balance, that there was either significant price depression or significant underselling by the imports. Although price levels were lower in late 1992 and early 1993, the impact of such price levels had at most a de minimis impact on the condition of the industry. Consequently, I determine that the

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[60] In 1990, operating income as a ratio to total establishment assets was *** percent. With the *** as a result of the plant explosion, that ratio fell to *** percent. Id. at I-19, table 15. The large investment made in 1992 for the rebuilding of the plant resulted in a substantial increase in ***. This investment was significantly greater than the investment in the plant prior to the explosion. Therefore, comparing fixed asset ratios for after the rebuilding to before the rebuilding would not be appropriate. See id. at I-17.

[61] 19 U.S.C. § 1677(7)(F)(ii).

[62] I do not find that the fact that ANGUS has been unable to completely take over the market share formerly held by W.R. Grace constitutes evidence of a significant adverse volume effect. Some purchasers in this industry have traditionally maintained secondary or backup sources of supply. Report at I-29.

industry producing nitromethane in the United States is not materially injured by reason of the subject imports from China.

My views with respect to threat of material injury by reason of the subject imports, along with those of Chairman Newquist and Commissioner Rohr, are contained in the Views of the Commission.

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

On May 24, 1993, counsel for ANGUS Chemical Co., Buffalo Grove, IL, filed petitions with the U.S. International Trade Commission (the Commission) and the U.S. Department of Commerce (Commerce) alleging that an industry in the United States is materially injured and is threatened with material injury by reason of imports from the People's Republic of China (China) of nitromethane[1] that are alleged to be sold in the United States at less than fair value (LTFV). Accordingly, effective May 24, 1993, the Commission instituted antidumping investigation No. 731-TA-650 (Preliminary) under section 733(a) of the Tariff Act of 1930 (the act)[2] 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 into the United States.

The statute directs the Commission to make its preliminary determination within 45 days after receipt of the petition, or, in this investigation, by July 8, 1993. Notice of the institution of the Commission's investigation was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on June 2, 1993. Commerce published its notice of initiation in the Federal Register on June 18, 1993.[3] Copies of the cited Federal Register notices are presented in appendix A. The Commission held a public conference in Washington, DC, on June 14, 1993, at which time all interested parties were allowed to present information and data for consideration by the Commission. A list of conference participants is presented in appendix B. The Commission's vote in this investigation was held on July 2, 1993. The Commission has not conducted a previous investigation on the subject product.

A summary of the data collected in this investigation is presented in appendix C.

THE PRODUCT

Description and Uses

Nitromethane (sometimes called nitroform) is one member of a class of organic chemicals known as nitroparaffins (or nitroalkanes). Nitroparaffins include all straight- or branched-chain alkanes that have had one of the hydrogen atoms replaced by a nitrate (NO_2) group. However, for all practical purposes the group of chemicals called "nitroparaffins" includes nitromethane (1 carbon atom); nitroethane (2 carbon atoms); 1-nitropropane (3 carbon atoms with the nitrate on the first carbon in the chain); and 2-nitropropane (3 carbon atoms with the nitrate on the second carbon in the chain). These

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[1] Nitromethane is one of four coproducts, known collectively as nitroparaffins, that also include nitroethane, 1-nitropropane, and 2-nitropropane. Imports of nitromethane are provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States (HTS).

[2] 19 U.S.C. 1673b(a).

[3] 58 F.R. 31415 and 58 F.R. 33617.

chemicals are all considered primary nitroparaffins in that they each have only one nitro group attached to the base alkane.

Nitromethane is a colorless liquid soluble in water and alcohol. It is a chemical with a dangerous explosion and fire risk, with a lower explosion limit of 7.3 percent in air and a flashpoint of about 96° to 112°F. It evaporates relatively easily and is moderately toxic if inhaled or ingested. It is a relatively heavy organic chemical, weighing about 8.66 pounds per gallon, or about 14 percent more than an equal volume of water.

The manufacturing processes between the imported nitromethane and the domestic product are different. As a result, there are some differences in the impurities contained in the final product. Although the imported nitromethane contains more impurities than the domestic product, these impurities do not appear to prevent using nitromethane from either source in most of the end-use products or applications. Moreover, the impurity level of the imported nitromethane has improved since 1991.

Nitromethane has a large number of industrial uses as a solvent, fuel additive, extraction agent, stabilizer in chlorinated hydrocarbons, and as a raw material in the chemical synthesis of many other organic chemicals. Currently, the largest use for nitromethane is in the production of chloropicrin, a primary soil nematocide. Other major uses include use as an additive in racing car and rocket fuels and use in the manufacture of a variety of preservatives, pharmaceuticals, and pharmaceutical intermediates.

Production Process

The domestic manufacturer, ANGUS Chemical Co., makes nitromethane at one production facility, in Sterlington, LA. ANGUS produces nitromethane and other primary nitroparaffins at this plant by reacting nitric acid (HNO_3) with propane gas (C_2H_6) at high temperature and pressure. The resulting mixture of assorted nitroparaffins, unreacted starting materials, and waste byproducts (e.g., water, hydrogen, nitric oxide, and carbon monoxide and dioxide) is then separated by filtration, distillation, and other chemical processes into individual products and byproducts. The nitromethane product resulting from this production process is in excess of 98 percent pure, with impurities consisting primarily of other nitroparaffins. Four coproducts (nitroparaffins) result from the process of producing nitromethane. In 1992 the ANGUS plant produced nitroparaffins in the following ratios: nitromethane ***, nitroethane ***, 1-nitropropane ***, and 2-nitropropane ***.[4]

[4] ANGUS' postconference brief, p. 41.

Substitute Products

There are no viable substitute products available for nitromethane in the applications in which it is principally used, particularly in those applications that use it in a chemical reaction to produce a different chemical product.[5] These processes require molecules with unique sets of chemical and physical specifications. If a different starting material is used in the chemical reaction, a different end product will always be obtained. In certain applications, such as use as an organic solvent, there may on occasion be other products that provide limited substitutability. However, these instances are commercially insignificant.

Like Product Positions

Petitioner argues that the "like product" is nitromethane and does not include the nitroparaffin coproducts not subject to the petition. Petitioner points to differences in the factors traditionally considered by the Commission in making like product determinations. These factors include (1) physical characteristics and uses, (2) interchangeability of the products, (3) channels of distribution, (4) customer and producer perceptions of the product, (5) the use of common manufacturing facilities and production employees, and (6) price.[6] Petitioner contends that nitromethane and the nitroparaffin coproducts have distinctly different chemical compositions and uses, the nitroparaffin coproducts cannot be used as substitutes for nitromethane, and thus customers and producers do not perceive the four nitroparaffins as a single like product. However, the channels of distribution are similar, the manufacturing facilities and production employees are shared, and prices for nitromethane and the nitroparaffin coproducts are similar.[7] Respondents argue that all nitroparaffins, including nitromethane, nitroethane, 1-nitropropane, and 2-nitropropane, should be considered one like product.[8] Respondents argue that although the four nitroparaffins have distinct chemical compositions and cannot be used interchangeably, they do have common manufacturing facilities, production employees, and channels of distribution. In addition, counsel for the Coalition argues that nitroparaffin derivatives should also be included in the like product.[9]

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[5] Some substitutability exists in 1-1-1-trichloroethane in which nitromethane, nitroethane, and 1-nitropropane function as stabilizing agents.

[6] ANGUS' postconference brief, pp. 10-15.

[7] Ibid.

[8] ICC Industries, Inc., postconference brief, pp. 1-5, and Wego Chemical, Trinity Manufacturing, and the Coalition of American Nitromethane Distributors and Consumers (Coalition), postconference brief, p. 2.

[9] For a detailed discussion of petitioner's position on the reasons that the like product should not include nitromethane derivatives, see ANGUS' postconference brief, pp. 15-19.

U.S. Tariff Treatment

Nitromethane is classified in the HTS in subheading 2904.20.50, with a column-1 general duty rate of 7.9 percent ad valorem. This rate applies to countries entitled to the column-1 general (most-favored-nation) duty rate, including China. Nitromethane imported from designated-beneficiary countries under the Generalized System of Preferences (GSP), the Caribbean Basin Economic Recovery Act (CBERA), the U.S.-Israel Free-Trade Area Implementation Act of 1985 (IFTA), the U.S.-Canada Free-Trade Agreement (CFTA), and the Andean Trade Preference Act (ATPA) are entered free of duty. The column 2 rate of duty, applicable to those countries enumerated in general note 3(b) of the HTS, is 30.5 percent ad valorem.

THE NATURE AND EXTENT OF ALLEGED SALES AT LTFV

In order to calculate the estimated dumping margin for nitromethane from China, the petitioner compared U.S. prices of the subject merchandise with estimates for foreign market value (FMV) based on constructed value. As China is a state-controlled-economy country under section 773(c) of the act, the constructed FMV was based, in part, on the value of various factors of production in India, a country with comparable economic development. Petitioner argues that India should not be used as a surrogate non-state-controlled-economy country for purposes of determining FMV, because most of the nitromethane produced in India is consumed internally, and consequently it is not representative of a market price nor does it fairly reflect the cost of manufacturing and selling for a commercial market. Petitioner calculated the FMV using estimates generally based on its own experience in the United States and Ireland and its knowledge of China's nitromethane manufacturing process.[10]

Petitioner alleges that imports of nitromethane from China are being sold in the United States at a LTFV margin of 233 percent. Petitioner also alleges that the dumping margin is large enough to indicate that the importers knew or should have known that Chinese nitromethane was being sold in the United States at LTFV. Petitioner also believes that imports from China are surging and will be found to be massive over a relatively short period. Thus, pursuant to section 733(e) of the act, petitioner requests a finding of critical circumstances and a retroactive duty on Chinese nitromethane to a date 90 days prior to Commerce's preliminary determination of sales at LTFV.

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[10] Petition, exhibit C.

THE U.S. MARKET

Apparent U.S. Consumption[11]

Data on apparent U.S. consumption of nitromethane were compiled from information submitted in response to Commission questionnaires and are presented in table 1. The table presents consumption of nitromethane and consumption of all nitroparaffins.[12] These data are composed of the sum of U.S. shipments of U.S. producers[13] and U.S. importers.

Table 1
All nitroparaffins and nitromethane: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

The data show that apparent U.S. consumption of nitromethane on the basis of quantity, including that consumed internally in the production of derivatives, *** during 1990-91 and then *** during 1991-92, although still ***. During January-March 1993, apparent U.S. consumption *** compared with the corresponding period of 1992. Demand for nitromethane in the chloropicrin market is predicted to increase, as the use of methyl bromide (a pesticide which is an ozone depleter) in the United States is restricted due to the Montreal Protocol. Another growing use of nitromethane is in hobby racing fuels.[14] The demand for 1-1-1-trichloroethane (formerly the largest market for nitromethane) has been declining as its use is being phased out under the Montreal Protocol.

Apparent U.S. consumption of all nitroparaffins, including internal consumption, *** during 1990-91, and then *** during 1991-92. Such consumption *** in interim 1993 compared with the corresponding period in 1992.

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[11] The Commission received questionnaire responses from the two U.S. producers in operation during 1990-March 1993. Producer and importer questionnaire responses have been used in the calculation of apparent consumption.

[12] Total nitroparaffins is the sum of nitromethane, nitroethane, 1-nitropropane, and 2-nitropropane.

[13] Includes company transfers and open-market sales.

[14] Transcript of the public conference (conference TR), pp. 95-96 and 107-108; respondents' postconference brief, pp. 10-11.

U.S. Producers

Two firms produced nitromethane in the United States until 1992; ANGUS Chemical Company (ANGUS),[15] and W.R. Grace & Co. (Grace).[16] ANGUS[17] and its corporate predecessors have been producing nitroparaffins at facilities in Sterlington, LA,[18] for 37 years.[19] ANGUS has production facilities for the four basic nitroparaffins and their derivatives in Louisiana. Nitroparaffin derivatives are also produced by ANGUS Chemie GmbH, Ibbenbueren, Germany, a wholly owned subsidiary of ANGUS, from nitroparaffins supplied by the Sterlington plant.

ANGUS manufactures nitromethane by a process involving the nitration of propane. The propane is purchased locally from a gas field, and the nitric acid is produced by ANGUS from ammonia purchased from an adjacent ammonia plant. Nitromethane, accounting for approximately 25 percent of ANGUS' total nitroparaffin production, has the widest and most valuable end uses of the four nitroparaffins. ANGUS also produces a wide range of nitroparaffin derivatives at its Sterlington plant.[20]

On May 1, 1991, a major fire and explosion at the Sterlington, LA, plant caused extensive damage to the production facility.[21] The undamaged derivatives facility was brought back into operation within 3 weeks by using inventories of basic nitroparaffins,[22] supplemented by supplies purchased from

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[15] ANGUS, the petitioner, is a wholly-owned subsidiary of ANG Holdings (U.S.), Inc., with headquarters in Northbrook, IL. Alberta Natural Gas Company, Ltd., Calgary, Canada, is the ultimate parent of ANGUS, ***.

[16] Grace ceased producing nitroparaffins in the second quarter of 1992 and sold its organic chemicals business in December 1992. During 1989-90 Grace accounted for approximately 25 percent of the total commercial sales of nitromethane in the United States; conference TR, p. 14. Grace ***.

[17] ANGUS was formed in 1982 to purchase the nitroparaffins division of International Minerals and Chemical Corp., now IMCERA Group, Inc. Subsequently, IMCERA transferred its fertilizer operations, including its ammonia plant adjacent to ANGUS, to IMC Fertilizer, Inc.

[18] The Sterlington plant had an annual capacity of 15 million pounds of basic nitroparaffins production when it was built in 1955. The current capacity of the plant of 90 million pounds per year was reached in 1975; conference TR, p. 13. Capacity did not increase when the plant was rebuilt following the explosion.

[19] ANGUS assumed operation of the Sterlington facility on Feb. 29, 1992. The plant had previously been operated by IMC Fertilizer under a management and supply agreement. ANGUS had an option to either terminate the operating agreement or extend it for up to four additional terms of 5 years each. Approximately $2.8 million was paid to IMC under an agreement which included the purchase of adjacent land and utilities.

[20] For example, ANGUS produces tris-amino crystals from a several-step process involving nitromethane, formaldehyde, and hydrogen; tris-amino is used primarily as a pharmaceutical and diagnostic buffer; conference TR, p. 12.

[21] ***.

[22] Nitromethane deliveries were allocated to customers based generally on 1990 sales.

alternate sources.[23] A two-phase reconstruction program began in August 1991. Phase I restored approximately 80 percent of 1990 nitroparaffin production volumes by March 1992. Phase II restored the nitroparaffin operation to full production capability by mid-1992. The rebuilding project, which cost more than $100 million, included many process and equipment changes. The changes were implemented to minimize and/or insure the safe handling of detonable streams, to improve overall plant safety, and to decrease waste streams and environmental emissions.

W.R. Grace & Co., founded nearly 140 years ago, produced nitromethane in Deer Park, TX, from 1986 to 1992. As noted earlier, Grace ceased production of nitroparaffins in mid-1992.[24] Prior to that Grace produced nitromethane by nitrating a mixture of propane and ethane. ***.

U.S. Importers

Fifteen firms were named in the petition as importing nitromethane from China.[25] The Commission sent importer questionnaires to firms identified in the petition and in the Customs Net Importer File (CNIF). Eleven firms provided information regarding imports of nitromethane from China.[26] ***.

The petition alleges that nitromethane produced in China is transshipped through Hong Kong and Japan;[27] however, *** reported importing Chinese nitromethane through Hong Kong. None of the responding firms reported imports of nitroethane, 1-nitropropane, or 2-nitropropane, and there were no reported imports of nitromethane from China in 1990. ***.

Channels of Distribution

All of the nitromethane produced in the United States and not used captively is sold directly to end users that use it as a solvent in polymers for coatings, as a component of special fuels, as a stabilizer for chlorinated

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[23] During its 10-month production outage, ANGUS imported nitromethane from China and an affiliate in Europe and also purchased nitromethane from Grace; conference TR, pp. 15-16.

[24] Petitioner testified at the conference that Grace's decision to terminate this business was due in large part to competition with the imports from China (conference TR, p. 20, and postconference brief, pp. 34-36). However, ***. Mr. Rabaglia, Product Manager, Wego Chemical & Mineral Corp., testified at the conference that Grace planned on exiting the nitroparaffin market well before the explosion in 1991 because of continuing manufacturing problems with the plant; conference TR, pp. 89-90.

[25] Seven of these firms responded that either they did not import the subject merchandise or they purchased imported Chinese nitromethane from the importer of record (a purchaser questionnaire was not issued in this preliminary investigation).

[26] The firms reporting imports of nitromethane from China are concentrated on the west and east coasts.

[27] Petition, p. 4.

hydrocarbons, and as an extraction solvent.[28] In addition, derivatives of nitromethane are used in the manufacture of pharmaceuticals and pharmaceutical intermediates and serve a wide range of specialty chemical markets.[29] Nitromethane imported from China is sold both to distributors and end users, with the majority going directly to end users. Imported nitromethane is used primarily as a raw material in the synthesis of chloropicrin, a primary soil nematocide.

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

The data reported in this section of the report are for the two U.S. firms that provided information in response to the Commission's producer questionnaire. ANGUS and Grace are believed to be the only U.S. firms producing nitromethane during any part of the period January 1990 through March 1993.[30]

U.S. Capacity, Production, and Capacity Utilization

The Commission requested U.S. producers to provide data on their full production capability[31] to produce all nitroparaffins[32] and nitromethane in 1990-92, January-March 1992, and January-March 1993. These data are presented in tables 2 and 3.

Table 2
All nitroparaffins and nitromethane: U.S. capacity, production, and capacity utilization, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

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[28] Currently, the three major end uses of nitromethane are for production of chloropicrin, 1-1-1-trichloroethane (which is being phased out because it is an ozone depleter), and racing fuels; conference TR, pp. 25 and 40-42, and petitioner's postconference brief, p. 39.

[29] For example, ANGUS reacts nitromethane to produce tris-amino crystals, which have applications in the buffer market; conference TR, p. 33.

[30] As noted earlier in the report, Grace stopped producing nitromethane in the first half of 1992.

[31] Full production capability was defined as the maximum level of production that the plant could reasonably expect to attain under normal operating conditions.

[32] "All nitroparaffins" includes the coproducts nitromethane, nitroethane, 1-nitropropane, and 2-nitropropane.

Table 3
All nitroparaffins and nitromethane: U.S. capacity, production, and capacity utilization, by firms, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Average-of-period capacity to produce nitromethane *** between 1990 and 1991 due to the explosion in May 1991 at ANGUS' Sterlington plant.[33] Such capacity *** between 1991 and 1992 as ANGUS completed phase I in March 1992 and phase II in May 1992 of the reconstruction of its plant. Capacity to produce nitromethane *** in the first quarter of 1993 when compared with the first quarter of 1992. The average-of-period capacity to produce all nitroparaffins followed the same trends as those reported for nitromethane. Both firms reported operating ***.

U.S. production of nitromethane *** in January-March 1993 compared with January-March 1992. Production of all nitroparaffins followed the same trends as those reported for nitromethane. Average-of-period capacity utilization for nitromethane and all nitroparaffins *** during 1990-91 and *** in 1991-92. Such capacity utilization *** in interim 1993 compared with interim 1992.

The following tabulation shows the relative share of each nitroparaffin in ANGUS' total production of such products during 1990-March 1993 (in percent):

				Jan.-Mar.--	
Product	1990	1991	1992	1992	1993

* * * * * * *

U.S. Producers' Shipments

Total U.S. shipments[34] of nitroparaffins by the two U.S. producers (based on quantity) *** between 1990 and 1991 and then *** between 1991 and 1992 (tables 4 and 5). U.S. shipments of nitroparaffins *** in interim 1993. U.S. shipments of nitromethane *** during 1990-92 and then *** in January-March 1993 compared with the corresponding period in 1992.

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[33] ***.

[34] U.S. shipments equal company transfers plus domestic shipments. Shipments by ANGUS of imported product are excluded.

Table 4
All nitroparaffins and nitromethane: U.S. producers' shipments of domestic product, by types of shipments, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Table 5
All nitroparaffins and nitromethane: U.S. producers' U.S. shipments, by firms, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

U.S. producers captively consume large quantities of their nitroparaffin production in the manufacture of derivatives. The following tabulation presents U.S. producers' captive consumption, domestic shipments, and export shipments of nitromethane, nitroethane, 1-nitropropane, and 2-nitropropane during 1990-March 1993 (in percent):

				Jan.-Mar.--	
Product and firm	1990	1991	1992	1992	1993

* * * * * * *

ANGUS markets its nitroparaffins worldwide, with Europe and Japan being its two largest export markets. Prior to ceasing production, Grace also exported its nitroparaffins worldwide, with the *** being its main export markets for nitromethane.

U.S. Producers' Inventories

The level of end-of-period inventories of nitromethane held by U.S. producers *** in 1990 to *** in January-March 1993 (table 6).

Table 6
All nitroparaffins and nitromethane: End-of-period inventories of U.S. producers, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

U.S. Producers' Employment

The number of production and related workers (PRWs) producing nitroparaffins *** between 1990 and 1992 and *** in the interim periods (table 7).[35] The hours worked by such employees *** between 1990 and 1991 and *** in 1992. Hours worked *** in January-March 1993 compared with the corresponding period of 1992. Wages paid *** throughout the period, and total compensation paid ***. During 1990-92, hourly wages *** in 1990 to *** in 1992. Productivity levels were *** in 1991 and January-March 1992 and unit labor costs were ***. During this period ANGUS' plant was being rebuilt, and thus production levels were lower than normal.

Table 7
Average number of U.S. production and related workers producing all nitroparaffins and nitromethane, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

In its questionnaire the Commission requested U.S. producers to provide detailed information concerning reductions in the number of PRWs producing nitroparaffins during January 1990 through March 1993 if such reductions involved at least 5 percent of the workforce, or 50 workers. ***.

Financial Experience of U.S. Producers

Two producers (ANGUS and Grace), accounting for all U.S. production of nitroparaffins during January 1990-March 1993, furnished financial data.

Overall Establishment Operations

ANGUS' Sterlington, LA, establishment produces all four nitroparaffin coproducts. The original plant was built during the 1950s. ANGUS also produces various related derivative products and ***. Financial data for ANGUS' overall establishment operations are presented in table 8.

Grace's Deer Park, TX, establishment was built during the 1980s. Its establishment operations consisted solely of the production of nitroparaffins, although ***.

* * * * * * *

[35] ***.

Table 8
Income-and-loss experience of ANGUS on the overall operations of its establishment wherein nitroparaffins are produced, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Impact of Fire and Explosion

The explosion at the plant in 1991 was discussed in ANGUS' financial statements as follows:

> Operating Activities
>
> The fire and explosion at the Sterlington facility has had a significant impact on ANGUS' operations in 1992 and 1991. ANGUS basic nitroparaffin facility was out of operation from May 1991 until March 1992, when partial production resumed. Full productive capacity was not achieved until September 1992.
>
> During the period of plant outage, sales of many products were continued through the use of existing inventories and by purchasing substitute products from alternative manufacturers. Market disruption was severely felt in the markets for nitromethane and nitromethane derivative products, as minimal inventories of these products existed at the time of the explosion.
>
> Financial Impact
>
> ANGUS carried insurance which mitigated much of the financial impact to the company in 1992 and 1991 arising from the fire and explosion. Insurance proceeds were received periodically throughout the term of the plant rebuild. The company reached a final settlement for $150 million with its business interruption and property damage carrier in mid-1992.[36]

Problems in Evaluating Industry Data

Evaluating the financial data in this investigation poses various problems, including the following:

1. ANGUS' operations during part of 1991 and 1992 were shut down by an explosion; thus there are no consecutive periods that are comparable, including 1993 data.

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[36] Financial Statement of ANGUS, Dec. 31, 1992, p. 3.

2. ***. It terminated production during 1992, and continued sales in 1993 ***.

3. ***.

4. ANGUS' plant was rebuilt during 1992. As a result, ***. Thus, ratios of profitability based on assets are not comparable over the 3 years.

Operations on Nitroparaffins

The combined income-and-loss experience for the two producers of nitroparaffins is presented in table 9. Separate data for ANGUS and Grace are presented in tables 10 and 11, respectively. The aggregate industry was *** between 1990 and 1992.

Table 9
Income-and-loss experience of U.S. producers on their operations producing all nitroparaffins, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Table 10
Income-and-loss experience of ANGUS on its operations producing nitroparaffins, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Table 11
Income-and-loss experience of Grace on its operations producing nitroparaffins, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Grace was ***.

On the basis of operating income, ANGUS was ***. Most of ANGUS' sales are for ***. Operating income, as a share of net sales, for ANGUS' overall nitroparaffin operations ranged between *** during the period for which data were obtained.

On a quantity basis, aggregate transfers of nitroparaffins were more than *** the volume of trade sales in each period. As a share of its total sales, ANGUS' transfers amounted to *** in interim 1993. Transfers, domestic sales, and export sales were *** during the period of investigation. ANGUS indicated that its transfers were at ***.

Operations on Nitroparaffin Coproducts

*** to provide separate income-and-loss data on each of the coproducts, including the subject product, nitromethane. A summary of ANGUS' income-and-loss data for each product is shown in table 12.

Table 12
Income-and-loss summary of ANGUS on its nitroparaffin operations, by products, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

* * * * * * *

Per-Unit Analysis

Unit sales data for each nitroparaffin coproduct, for ANGUS, by type of sale (transfer, domestic trade, and exports), on a dollars-per-pound basis, are presented in table 13. Also included in the table is an analysis of unit cost of goods sold for ANGUS, by product and by total nitroparaffins.

Table 13
Summary of ANGUS' nitoparaffin net sales, by types of sales and by products, quantites, values, and unit values, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

As previously indicated, ANGUS reported that its transfers are at ***. However, its data show that these transfer prices are in most cases ***. ***. One of the difficulties in analyzing ANGUS' data is that it ***. Nitromethane will be discussed separately later in this section.

Operations on Nitromethane

Income-and-loss data for ANGUS' nitromethane operations are presented in table 14. ***.

Table 14
Income-and-loss experience of ANGUS on its operations producing nitromethane, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

ANGUS' operating income margins were ***. There was an aberration in ANGUS' nitromethane income-and-loss data ***. Although the average selling price of nitromethane ***. The average selling price for ANGUS' exports and domestic trade sales ***. The proportion of transfers (quantity) of nitromethane compared with total nitromethane sales *** during the period of investigation. ***.

Measuring ANGUS' Financial Performance for Nitromethane

One of petitioner's methods for measuring financial injury is the decline in its return on equity. The return on equity used by the petitioner is the ratio of operating income to all assets. ANGUS' contention is that it has invested a considerable amount of capital in rebuilding its plant, and thus its return on equity for nitromethane is insufficient. As stated in its petition, "The key figure is return on equity . . . . The nitroparaffins business has been profitable for ANGUS, but the business is very capital intensive."[37] Exhibit I presented ANGUS' fixed assets, net assets, net earnings, and return on equity (quarterly, but annualized on a percentage basis.)[38]

In its questionnaire response, ANGUS submitted ***. The firm claims that it would not have invested in the plant if it had known that the nitromethane price would decline to $1.00 a pound.[39]

***.[40] However, as nitromethane only accounts for approximately ***.

The large investment made in 1992 for the rebuilding of the plant resulted in a substantial increase in ***. This investment is significantly greater than the investment in the plant prior to the explosion. The old plant was over 35 years old and had ***.[41] Therefore, any fixed asset ratios for the new facility compared with the old plant would not be suitable.

---

[37] Petition, p. 15.
[38] Ibid, exhibit I.
[39] Conference TR, p. 34.
[40] In its questionnaire response, ANGUS submitted ***.
[41] The book value is the remaining portion of the total cost of an asset after depreciation.

A summary of various financial ratios for ANGUS is shown in table 15.

Table 15
Summary of various financial performance ratios for ANGUS, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Investment in Productive Facilities

U.S. producers' investment in property, plant, and equipment are shown in table 16. Return on assets are presented in table 15.

Table 16
Value of assets of U.S. producers' establishments wherein all nitroparaffins[1] are produced, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Capital Expenditures

Capital expenditures by U.S. producers are shown in table 17.

Table 17
Capital expenditures by U.S. producers of nitroparaffins, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Research and Development

Research and development expenses are presented in table 18. ***.

Table 18
Research and development expenditures of U.S. nitromethane producers, fiscal years 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Capital and Investment

The Commission requested U.S. producers to describe and explain the actual and potential negative effects of imports of nitromethane from China on their growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of nitromethane. Their responses are presented in appendix D.

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 factors[42]--
>
> > (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,

---

[42] 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."

> (VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,
>
> (VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 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.[43]

Subsidies (item (I)) and agricultural products (item (IX)) are not issues in this investigation; information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship between Imports of the Subject Merchandise and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of Alleged Material Injury to an Industry in the United States." Presented below is the available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets.

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[43] 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, U.S. importers of nitromethane from China ***. Imported nitromethane is either purchased on consignment for the end user (often a mixer of chloropicrin) or is imported directly by the end user for consumption in producing an end product. ***. Such inventories *** in 1991 to *** in 1992, representing ***. Inventories *** in January-March 1992 to *** in the corresponding period of 1993, representing ***. The ratio of inventories to total shipments of imports from China *** in 1992. This ratio *** in January-March 1992 to *** in the corresponding period of 1993.

U.S. Importers' Current Orders

In its questionnaire the Commission asked firms to report future contracts for importing nitromethane from China after March 31, 1993. Such reported orders totaled *** with delivery scheduled through June 1994. *** arranged for approximately *** of nitromethane to be delivered in ***; *** reported that *** (approximately *** pounds) were to be shipped by ***; *** expected *** in ***, with the same quantity to also be delivered in ***; *** estimated that a total of *** for *** of its *** had been contracted for delivery during ***;[44] and *** expected to receive a *** of *** of Chinese nitromethane in ***.[45]

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

According to the petitioner there are four main producers/exporters of nitromethane in China, with a combined capacity to produce 20 million pounds of nitromethane per year: Dandong Chemical Plant, Luzhou Chemical Plant, Kunshan Synthetic Chemical Factory, and Shanhai Pu Tang Chung Hang Chemical Factory.[46] China increased its capacity to produce nitromethane in 1991 after the explosion suffered by ANGUS.[47] During 1992 more than 30 plants in China were manufacturing nitromethane, mostly in small quantities.[48] The majority of these factories shut down or produced other products after ANGUS resumed production of nitromethane.[49]

The chemical process used by the Chinese consists of reacting sodium nitrite ($NaNO_2$) in a water slurry with dimethyl sulfate ($(CH_3)_2SO_4$).[50] This

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[44] According to ***.

[45] ***.

[46] The Commission requested information from the U.S. Embassy in Beijing but the Embassy was unable to obtain any data regarding nitromethane within the deadline provided by the Commission; telegram, June 1993.

[47] Conference TR, pp. 55-56.

[48] Petition, p. 4. ***.

[49] Conference TR, p. 97.

[50] Mr. Granzow, president of ANGUS, testified that the Chinese process is a higher cost process than that used by ANGUS because it starts with more sophisticated higher cost raw materials; conference TR, p. 30.

reaction usually is carried out at or below 20°C (68°F) to limit the formation of coproducts. These coproducts are primarily methyl nitrite (CH_3ONO), which is used to make nitrile and nitroso esters, and an aqueous solution of sodium sulfate (Na_2SO_4). The sodium sulfate can be recovered and used in the manufacture of soaps and detergents, paper and pulp, textiles, glass, and a variety of other products. As a result of the chemistry involved, the only nitroparaffin produced is nitromethane. The initial nitromethane product, when separated from the coproducts, is over 96 percent pure nitromethane. The primary contaminant is water, which can be removed by azeotropic distillation. The nitromethane thus produced is suitable for nearly all domestic uses. Additional distillation is sometimes done to remove colored impurities. Crude nitromethane (typically less than 97 percent pure) is recovered by azeotropic distillation. Crude nitromethane is not suitable for use as is. It must be purified to produce a commercially viable product. Crude wet nitromethane is purified in a two-stage batch distillation. The finished product contains greater than 99 percent nitromethane and less than 0.1 percent water.[51]

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

U.S. Imports

Table 19 presents data received from the 11 responding firms importing nitromethane, which are believed to account for virtually all imports of nitromethane from China.[52] The HTS item listed in the petition is a basket category that includes imports of other chemicals; therefore, the Commission could not rely on official statistics for import data. Many of the firms contacted by the Commission reported that they did not import nitromethane.

No imports of nitroparaffins were reported in 1990, and no nitroparaffins other than nitromethane were imported subsequently. During the ANGUS production outage in 1991 and 1992, there was a marketplace shortage of nitromethane and, in response, increased production of nitromethane was brought on the market, almost entirely from China. *** reported importing *** of Chinese nitromethane from Hong Kong in 1991.

The quantity of U.S. imports of nitromethane from China decreased by 32.2 percent between 1991 and 1992 and by 86.6 percent during January-March 1993 compared with the corresponding period in 1992.[53] The value of the imports from China declined by 45.1 percent between 1991 and 1992 and by 92.7 percent in interim 1993.

---

[51] Petition, exhibit C.

[52] With the exception of *** of nitromethane in 1991 and *** in 1992 imported from ***, China was the only foreign source of nitromethane during 1990-March 1993.

[53] Imports from China declined during the period that the ANGUS facility came back on line.

Table 19
All nitroparaffins and nitromethane: U.S. imports, by sources, 1990-92, January-March 1992, and January-March 1993

Item	1990	1991	1992	Jan.-Mar.-- 1992	1993
	Quantity (1,000 pounds)				
All nitroparaffins:					
China	0	5,833	3,955	2,595	348
Other sources	***	***	***	***	***
Total	***	***	***	***	***
Nitromethane:					
China	0	5,833	3,955	2,595	348
Other sources	***	***	***	***	***
Total	***	***	***	***	***
	Value (1,000 dollars)				
All nitroparaffins:					
China	0	11,362	6,237	4,885	357
Other sources	***	***	***	***	***
Total	***	***	***	***	***
Nitromethane:					
China	0	11,362	6,237	4,885	357
Other sources	***	***	***	***	***
Total	***	***	***	***	***
	Unit value (per pound)				
All nitroparaffins:					
China	(1)	$1.95	$1.58	$1.88	$1.03
Other sources	***	***	***	***	***
Average	***	***	***	***	***
Nitromethane:					
China	(1)	1.95	1.58	1.88	1.03
Other sources	***	***	***	***	***
Average	***	***	***	***	***

[1] Not applicable.

Note.--Unit values are calculated 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.

U.S. Market Shares

Market shares of U.S. shipments of nitromethane and nitroparaffins, including that consumed internally, are presented in table 20. The share of U.S. shipments based on the quantity of nitroparaffins *** in 1992. U.S. producers' market share then *** in January-March 1992 to *** in the corresponding period of 1993. U.S. producers' market share of nitromethane *** in 1992. U.S. producers then *** in interim 1992 to *** in interim 1993. China's share of the nitroparaffins market *** in 1991 to *** in 1992. China's share then *** in interim 1992 to *** in interim 1993. China's share of the nitromethane market *** in 1991 to *** in 1992. Such market share *** in January-March 1992 to *** in the corresponding period of 1993.

Table 20
All nitroparaffins and nitromethane: Shares of apparent consumption based on U.S. shipments of domestic product and U.S. shipments of imports, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Prices

Marketing Characteristics

Demand for nitromethane is derived from the demand for the products using nitromethane. Nitromethane is used primarily for the following end uses: (1) the production of chloropicrin and 1-1-1-trichloroethane, as a specialty fuel or an explosive, and (2) in the production of derivative products.[54] [55] Nitromethane is sold to unrelated purchasers in the chloropicrin, 1-1-1-trichloroethane, specialty fuel, and explosive markets. It is also used captively by U.S. producers in the production of the derivative products. U.S. producers and importers agreed that there are no direct substitutes for nitromethane for nearly all of its applications.[56] However, there are substitutes for the products in which nitromethane is used.

The largest market for nitromethane is the chloropicrin market. It represented approximately *** percent of the total domestic shipments of

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[54] Chloropicrin is an active agent used in soil fumigants for killing fungi. 1-1-1-trichloroethane is a degreasing solvent used for metal cleaning. Specialty fuels include hobby fuel for models and racing fuel for dragsters.

[55] In 1992 approximately *** percent of nitromethane was sold to unrelated purchasers, whereas *** percent was used captively by the U.S. producers to produce the derivative products. With the departure of Grace from the industry in late 1992, the petitioner, ANGUS, and its subsidiaries are believed to be the only current producers of the derivative products in the world.

[56] ***.

nitromethane in the open market during 1992.[57] The demand for nitromethane in the chloropicrin market is expected to increase due to the identification of a product used in conjunction with chloropicrin, methyl bromide, as an ozone depleter. Chloropicrin producers contacted by the Commission reported that, as methyl bromide is phased out, they expect the use of chloropicrin, and thereby nitromethane purchases, to increase. The demand for nitromethane in the 1-1-1-trichloroethane market has already declined, because 1-1-1-trichloroethane was identified as an ozone depleter under the Montreal Protocol and is mandated to be phased out as a product.

For open market sales, U.S. producers reported selling nitromethane to all end-use markets, whereas U.S. importers reported selling to the ***, and to the U.S. producer, ANGUS. During 1992 U.S. producers reported selling approximately *** percent of their nitromethane shipments to the specialty fuel market, *** percent to the 1-1-1-trichloroethane market, *** percent to the chloropicrin market, and *** percent to the explosive market.[58] ANGUS reported selling over ***. Other U.S. importers reported selling approximately ***.

Nitromethane is priced on a per-pound basis and is generally sold on a delivered basis by U.S. producers; U.S. importers sell on both a delivered and an f.o.b. basis. Nitromethane is priced differently according to the end-use market to which it is sold. *** reported that pricing to these markets generally depends on the importance of nitromethane to the specific end-use product and whether there are other competing products for the end-use application. Nitromethane is priced the lowest for the chloropicrin market.

Both U.S. producers have list prices for nitromethane, but list prices *** to meet competition in each end-use market.[59] U.S. producers reported that their average leadtimes were up to ***, whereas U.S. importers reported lead times generally ranging between ***. Sales terms are typically *** for U.S. producers and between *** for U.S. importers. Both U.S. producers and importers reported that transportation costs are not considered an important factor in the sale of nitromethane and are generally only *** percent of the price of the product.

The Commission requested U.S. producers and importers to report whether they were ever unable to supply nitromethane to a customer in a timely manner at prevailing prices and in the quantities desired during January 1990-March 1993. Both U.S. producers and six importers of the Chinese nitromethane reported problems with product supply for the U.S. market. The supply of nitromethane was severely interrupted in May 1991 when ANGUS' U.S. production facility was severely damaged by a major fire and explosion. ANGUS had no production for 10 months and was not back to full capacity until July 1992. ANGUS allocated its approximate 1-month inventory of nitromethane to its customers on the basis of previous purchases and started to import

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[57] The 1-1-1-trichloroethane and specialty fuel markets represented approximately *** percent of nitromethane open market purchases during 1992, respectively.

[58] An additional *** percent of sales went to other applications.

[59] ***.

nitromethane from China. ***. Grace also allocated its nitromethane by selling the product only to its existing customers.[60]

*** reported that imports from China were not a factor in the marketplace before the ANGUS explosion but became so after the explosion, because U.S. producers were then unable to satisfy demand in the U.S. market. *** reported that after the explosion it could sell all the nitromethane it could produce and could reasonably increase prices. Some U.S. importers reported that they entered the nitromethane market only after the ANGUS explosion and that ANGUS was their first customer.[61] Purchasers of the Chinese product reported that availability was the primary reason for buying the Chinese product during the period after the explosion. *** reported that the Chinese were very opportunistic during this period and sold poor quality nitromethane at high prices and with poor delivery. U.S. importers reported that timely delivery of nitromethane from China was difficult because of long leadtimes and limited availability from China.

Following the construction of ANGUS' new production facility in 1992, *** lost due to the explosion. During this postconstruction period ANGUS sold both the imported Chinese nitromethane and its own production. ***. Some purchasers contacted by the Commission reported that they had ANGUS lower its U.S.-produced nitromethane price to more closely match the price of ANGUS' own imported Chinese product.

*** agreed that the U.S.- and the Chinese-produced nitromethane are interchangeable. However, *** reported that there were important differences between the quality of the Chinese and the U.S.-produced nitromethane. They reported that the Chinese nitromethane was inferior to the U.S. product because of its higher water and acidity content. These higher levels made the Chinese product more corrosive than the U.S. product and lowered the yield.

Although the purity levels of the initial imported Chinese nitromethane ranged between 95 and 98 percent, as compared with 99 percent for the U.S. product, the purity level for the Chinese product improved during January 1990-March 1993. Industry sources reported that the Chinese priced the higher purity product somewhat higher than the lower purity nitromethane. However, some purchasers reported that the quality difference did not matter for their end-use application. Chloropicrin producers reported that since the production of chloropicrin is an aqueous-based process, additional water content of the Chinese material did not present a major obstacle. Typically, chloropicrin producers purchased the lower purity, lower priced nitromethane, and specialty fuel end users purchased the higher purity, higher priced nitromethane. During 1992 most of the imported Chinese product sold on the open market was to the chloropicrin market.

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[60] ***.

[61] These were ***.

Questionnaire Price Data

The Commission requested price and quantity information from U.S. producers and importers for their quarterly sales of nitromethane during the period January 1990-March 1993. U.S. producers and importers were requested to provide price data for nitromethane sold to the chloropicrin market, the specialty fuel market, and the 1-1-1-trichloroethane market. U.S. importers were also requested to provide price data for nitromethane sold directly to U.S. producers of nitromethane.

Usable price data were received from both U.S. producers and nine U.S. importers of nitromethane. ANGUS also submitted unit value and quantity data for all four nitroparaffin products and some of their derivative products. See appendix E for this information. Reported pricing accounted for approximately *** percent of U.S. producers' domestic shipments of nitromethane and *** percent of U.S. importers' domestic shipments of nitromethane during 1992.[62]

U.S. Price Trends

Weighted-average delivered prices for U.S.-produced nitromethane sold to the chloropicrin and the 1-1-1-trichloroethane markets *** through the second quarter of 1991, the time of the ANGUS explosion, and prices for nitromethane sold to the specialty fuel market generally *** during the same period (table 21, figure 1). Prices for nitromethane sold to the three markets then *** through the end of 1991. Once ANGUS rebuilt its production facility, prices generally *** for nitromethane sold to *** but generally ***.[63]

Table 21
Weighted-average net f.o.b. and delivered selling prices and quantities of U.S.-produced nitromethane sold to the chloropicrin market, the specialty fuel market, and the 1-1-1-trichloroethane market, by companies and by quarters, January 1990-March 1993

* * * * * * *

[62] ANGUS accounted for *** percent of total domestic shipments of imported Chinese nitromethane during 1992.

[63] ***.

Figure 1
Weighted-average net delivered selling prices of U.S.-produced nitromethane sold to the chloropicrin market, the specialty fuel market, and the 1-1-1-trichloroethane market, by quarters, January 1990-March 1993

* * * * * * *

Although nitromethane was ***.

Chinese Price Trends

Price trends for imported Chinese nitromethane are reported separately for sales by the U.S. producer, ANGUS, and for all other importers. *** other importers during the time periods for which prices were reported (table 22, figure 2). ***.

Table 22
Weighted-average net f.o.b. and delivered selling prices and quantities of imported nitromethane from China sold to the chloropicrin market, the specialty fuel market, and to U.S. producers, by quarters, January 1990-March 1993

* * * * * * *

Figure 2
Weighted-average net f.o.b. selling prices of imported nitromethane sold to the chloropicrin market, the specialty fuel market, and to U.S. producers, by quarters, January 1990-March 1993

* * * * * * *

ANGUS' Price Trends

Figure 3 shows prices for ANGUS' U.S.-produced and its imported Chinese nitromethane sales to the chloropicrin and specialty fuel markets.

Figure 3
ANGUS' delivered selling prices of its U.S.-produced and imported Chinese nitromethane sold to the chloropicrin market and the specialty fuel market, by quarters, January 1990-March 1993

* * * * * * *

Price Comparisons

There were *** instances in which comparisons between ANGUS' imported Chinese nitromethane and the U.S.-produced nitromethane were possible (table 23). ***.

Table 23
Nitromethane: Margins of under/(over)selling for sales to the chloropicrin and the specialty fuel markets, by quarters, January 1990-March 1993

* * * * * * *

In *** instances where comparisons between all other imported Chinese nitromethane and the domestic product were possible, the Chinese product was priced ***.

Exchange Rates

The exchange rate for the People's Republic of China is determined by the Government of China rather than the free market. Therefore, meaningful exchange-rate data for the Chinese currency cannot be presented.

Lost Sales and Lost Revenues

The Commission received *** allegations of lost sales and *** allegations of lost revenues involving *** purchasers by one U.S. producer, ANGUS.[64] The lost sales allegations totaled *** and involved *** pounds of nitromethane. The lost revenue allegations totaled *** and involved *** pounds. Staff contacted *** firms representing *** of the lost sales allegations involving *** pounds and totaling *** and *** of the lost revenue allegations involving *** pounds and totaling ***.

* * * * * * *

[64] ***.

APPENDIX A

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

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-650 (Preliminary)]

Nitromethane From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-650 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of nitromethane,[2] provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 8, 1993.

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

EFFECTIVE DATE: May 24, 1993.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-205-3190), 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:

[2] The subject nitromethane is a chemical compound with the chemical formula CH_3NO_2.

Background

This investigation is being instituted in response to a petition filed on May 24, 1993, by ANGUS Chemical Company, Buffalo Grove, IL.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

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

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

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 14, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202-205-3190) not later than June 10, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 17, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

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

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

By order of the Commission.

Issued: May 27, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-13023 Filed 6-1-93; 8:45 am]

BILLING CODE 7020-02-P

(A-570-823)

Initiation of Antidumping Duty Investigation: Nitromethane From the People's Republic of China

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

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, (202) 482-4929, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

INITIATION OF INVESTIGATION:

The Petition

On May 24, 1993, we received a petition filed in proper form by Angus Chemical Company, filing on behalf of the domestic nitromethane industry (petitioner). We received a supplement to the petition on June 7, 1993.

In accordance with 19 CFR 353.12, the petitioner alleges that nitromethane from the People's Republic of China (PRC) is, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it is the only remaining producer of nitromethane in the United States. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The product covered by this investigation is nitromethane, a chemical compound with the formula CH_3NO_2. Nitromethane is a nitroparaffin in which the nitro group is attached to the single carbon atom of that member of the alkane family known as methane. Nitroparaffins are any of a homologous series of compounds whose generic formula is $C_nH_{2n+1}NO_2$, the nitro groups being attached to a carbon atom through the nitrogen.

Nitromethane has numerous industrial uses, including as a solvent in polymers for coatings, as a component of special fuels for internal combustion engines, as a stabilizer for chlorinated hydrocarbons, and as an extraction solvent. Nitromethane is a raw material used in the synthesis of other useful chemicals including chloropicrin, a primary soil nematocide; tris (hydroxymethyl)-aminomethane, a pharmaceutical and diagnostic buffer; and bronopol, a preservative for nonwoven moist toilettes.

Nitromethane is classifiable under the subheading 2904.20.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading, a basket provision, is defined to include sulfonated, nitrated, or nitrosated derivatives of hydrocarbons, whether or not halogenated. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Petitioner based United States Price for nitromethane on weight-averaged duty-paid and delivered prices paid by U.S. customers, as reported to ANGUS sales representatives. Petitioner made deductions to the U.S. prices, where appropriate, for ocean freight, U.S. customs duties, foreign inland freight, and U.S. inland freight.

Petitioner, alleging that the PRC is a non-market economy country within the meaning of section 773(c) of the Act, based foreign market value on the factors of production generally used in producing the subject merchandise in the PRC. To estimate the factors of production, petitioner used information it obtained from a March 23, 1993, report by Bechtel Corporation, a major

industrial construction firm that has experience in planning and building petrochemical facilities in India. To value the factors of production, petitioner selected India as the most comparable surrogate for the PRC. For purposes of this initiation, we have accepted India as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act. Petitioner, therefore, first attempted to value the factors of production using Indian information. Where this was not possible, petitioner valued the factors of production based on its own experience. Petitioner obtained and valued the factors of production of the subject merchandise in the PRC as follows:

- For sodium nitrite, dimethyl sulfate, sulfuric acid, and 50 percent sodium hydroxide, petitioner used rates per metric ton, reported in U.S. dollars based on Indian prices as contained in the Bechtel Report.
- For steam, electricity, and water, petitioner estimated the quantities required to operate a nitromethane plant on a commercial scale. Petitioner valued these utilities in India based on the Bechtel Report.
- For labor, petitioner estimated the number of workers involved in producing nitromethane based on its own experience. Petitioner valued these labor figures in India based on the Bechtel Report.
- For depreciation, petitioner estimated the capital costs based on its own experience. Depreciation was based on a ten year period.
- For insurance and general plant overhead, petitioners used Indian percentage rates based on the Bechtel Report.
- For waste disposal, petitioners relied on the Richardson Index to obtain a percentage of raw material costs.
- For selling, general and administrative expenses (SG&A), petitioner used the statutory minimum of ten percent of the cost of manufacture.
- For profit, petitioner used the statutory minimum of eight percent of the cost of manufacture plus SG&A expenses.

Based on petitioner's calculations, the dumping margin is 233 percent. For purposes of this initiation, no adjustments were made to petitioner's calculations.

Initiation of Investigation

We have examined the petition on nitromethane from the PRC and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of nitromethane from the PRC are being, or are likely to be, sold in the United States at less than fair value.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by July 8, 1993, whether there is a reasonable indication that imports of nitromethane from the PRC are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in a termination of the investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

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

Dated: June 14, 1993.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration

[FR Doc. 93-14448 Filed 6-17-93; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B

CALENDAR OF THE PUBLIC CONFERENCE

CALENDAR OF THE PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission conference:

Subject: NITROMETHANE FROM THE PEOPLE'S REPUBLIC OF CHINA

Investigation No. 731-TA-650 (Preliminary)

Date and Time: June 14, 1993 - 9:30 a.m.

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

In support of the Imposition of Antidumping Duties:

Saunders & Monroe--Counsel
Chicago, IL
On behalf of

ANGUS Chemical Company, Buffalo Grove, IL

Gary W. Granzow, President and Chief Executive Officer
Janet Mann, Vice President of Marketing
Mark Joselin, Corporate Counsel
Ralph Eichmiller, Director of Marketing Operations

O. Wayne Chandler, Industry Consultant

Thomas F. Bush, Jr.)
)--OF COUNSEL
Matthew Van Tine)

In opposition to the Imposition of Antidumping Duites:

Bruce Aitken, P.C.
Washington, DC
On behalf of

Coalition of American Nitromethane Distributors and Consumers

John Wilhelm, Niklor Chemical Co., Inc., Long Beach, CA

Joseph Rabaglia, Product Mgr., and Bert Eshaghpour, Wego Chemical & Mineral Corp., Great Neck, NY

Frank Lesueur, World Wide Racing Fuel

Gil Smith, President, Trinity Manufacturing Inc., Hamlet, NC

Robert Norder, Vice President - Material Manufacturing, ASHTA Chemicals Inc.

Bruce Aitken)
)--OF COUNSEL
Dan Oliver)

APPENDIX C

SUMMARY TABLES

Table C-1
All nitroparaffins: Summary data concerning the U.S. market, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Table C-2
Nitromethane: Summary data concerning the U.S. market, 1990-92, January-March 1992, and January-March 1993

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Table C-3
Nitroethane: Summary data concerning the U.S. market, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

Table C-4
1-nitropropane: Summary data concerning the U.S. market, 1990-92, January-March 1992, and January-March 1993

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Table C-5
2-nitropropane: Summary data concerning the U.S. market, 1990-92, January-March 1992, and January-March 1993

* * * * * * *

APPENDIX D

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS OF NITROMETHANE FROM THE PEOPLE'S REPUBLIC OF CHINA ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND EXISTING DEVELOPMENT EFFORTS

The Commission requested U.S. producers to describe and explain the actual and negative effects, if any, of imports of nitromethane from the People's Republic of China on their growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of nitromethane). Producers were also asked whether the scale of capital investments undertaken has been influenced by the presence of imports of this product from the People's Republic of China. Their responses are shown below:

* * * * * * *

APPENDIX E

PRICING DATA ON NITROPARAFFINS AND DERIVATIVE PRODUCTS

Table E-1
Nitroparaffins: Unit value data for ANGUS' sales of its U.S.-produced nitroparaffins and their derivatives, by nitroparaffin type, 1990-92 and January-March 1993

* * * * * * *